

# A different seat in the courtroom

by Steven Berveling

Two major but very different parts of my life (as barrister and as endurance cyclist) coincided after a B-double truck caused me to have a major accident during a Perth-Albany- Perth cycling event: 1200km in less than 4 days. This article gives an insight in how I found being a plaintiff so very different, scary and exhausting in contrast to the role in court which we barristers usually undertake.

In summary, the truck's speed and proximity to me was such that its passing forced me into the road shoulder where I crashed, suffering numerous fractures. I was in three different hospitals for a month and off work for nearly six months. I am left with a lot of metal in various parts of my body but: I can breathe and stand upright!

After a prod and recommendation from a barrister neighbour, I wrote to Perth solicitors and due to the geographical separation between us, a face-to-face meeting took some time. However, about six months later Big Day No. 1 arrives: for me to visit my solicitors.

After a very pleasant civilised but long meeting I was taken to the lift lobby and I descended alone to the ground floor. Once there, rather than exit the building I quickly found a bathroom and bawled my eyes out; the emotion of the process got too much so quickly.

Then just medical and legal process action: lots of visits to numerous medical specialists and commencement of proceedings – until the Particulars of Damage was drafted and filed. Suddenly, a court document (something with which we all are familiar, regardless of its actual content) became deeply personal as it set out my injuries in a blunt tabulated form together with a dollar value. This contrasted enormously with my fantasy about my injuries, seen through my rose coloured glasses.

A pre-trial conference was scheduled – hence my second trip to Perth. The settlement negotiations therein gave a new perspective, with live tension between my sense of self-worth relating to the extent of injury, and on the other hand the numbers alongside the injuries being so much more than mere numbers to a plaintiff (ultimately my self-worth won out more).

We were able to settle only on quantum and not liability. We nevertheless continued with offers to settle, and my emotional involvement made this settlement negotiation all very sur-

real, despite my being a plaintiff who works as a barrister. Emotional reasons played a huge part in the process, in contrast to how we as barristers are so adept at removing our selves from such reasons.

In any event, all offers to settle were rejected. Hearing dates were appointed, and my third trip to Perth was scheduled into my diary. Suddenly I had to decide on what to



wear when usually that decision is made for barristers. A grey suit seemed too lawyerly, I opted for a jacket and tie instead (Lycra was definitely out of the question!)

After the opening, I was Witness No. 1. In my career I have seen thousands of witnesses take the oath, predominantly in NSW where the witness agrees (by saying 'so help me God' or 'I do') to the statement read out by the Court officer that the witness will say the truth, the whole truth and nothing but the truth. Instead, in Western Australia the witness actually reads out the statement.

I got to the 'I, Steven Mark Berveling, swear to Almighty God that...', and completely froze, unable to move and unable to say anything more. I could see the two barristers looking at each other, and the judge similarly wondering what to do now whilst my brain was saying 'Steven: you are really at the pointy end, and how dare anybody suggest that you might not say the truth!?' I regained composure but the episode confirmed the heavy toll that giving evidence takes on a witness,

especially as a plaintiff.

The evidence (from me, from an expert engineer specialising in the aerodynamics surrounding trucks, and from two eye-witnesses) took nearly 2½ days and finished late Friday morning. The matter was then adjourned for submissions the following Monday, but I needed to return to Sydney.

The energy that the hearing drained from me could be seen as soon as I left the courthouse. I slept in the taxi between Perth City in the airport (not a great distance); at the airport waiting for departure, as well as during the entire flight to Sydney. We landed in the evening and I then slept for 11 hours at home. Further, three days later I got the flu, and I cannot recall having ever had the flu with such severity: I was in bed for 1½ weeks, so ill that I wasn't bored whilst capable only of staring at the ceiling.

My solicitor learnt four days early that judgment would be delivered on the Thursday before Christmas. One could hope that such timing augured well, but I was unable to take any comfort from that and hardly slept on the Monday, Tuesday and Wednesday nights. My solicitor's call on judgment day removed the suspense: we had won! Both my partner and I fell asleep at 7PM that evening.

The judgment comprised 74 pages, essentially dealing with six seconds of my life surrounding my accident. In clinical detail the judge set out the facts of the case, the proximity of the truck to me, and ultimately how incredibly lucky I was. Those cold hard facts as set out by a totally independent unbiased person have an impact beyond the immediate result. The judge took away my rose coloured glasses about my injuries, leaving as one ramification a serious question in my mind as to my willingness to continue ultra-endurance cycling events.

I hope that through this discourse I have been able to humanise some of the litigation processes which we as barristers so easily take for granted as part of our work. I fully agree that as barristers we must remain separate from the emotion of litigation, but at the same time the toll that it can take on our clients cannot be underestimated. Litigation might be founded on documents but ultimately deals with human beings.