



# Lawyers' Christian Fellowship

## NEWSLETTER

www.lcf.pnc.com.au

August 2002

### The Smith Lecture

2002



A lecture series in honour of the Rev Bruce Smith has been established.

The 2002 lecture:

#### Our Sense of Justice:

#### Evolutionary Accident Or Hardwired?

Will be delivered by

**Justice Ken Handley**  
of the Court of Appeal.

**Monday 12th August**

(In Sydney CBD)

Attendance is by invitation only and places for Fellowship members and their guests are limited to twenty.

The aim of the lecture series is to challenge non-Christians with an intelligent and thoughtful Christian perspective and attendees are requested to make use of that opportunity by inviting an appropriate guest.

## WRONGFUL LIFE

*With the handing down of three decisions in June by Justice Studdert of the Supreme Court, ruling that a wrongful life claim was not maintainable, the following Easter address by Dr Roger Chilton, senior minister at St Swithun's Pymble and our Christmas function speaker last year takes on a new relevance.*

It struck me as a very unusual legal case. Children who had suffered from disability as a result of medical negligence prior to their birth are suing their doctors for compensation. Among the plaintiffs are those who were conceived as a result of a failed vasectomy operation and those who were exposed to rubella during the pregnancy. The assumption is that, with proper medical advice and procedures, these children (who have suffered disability) would never have been born. They are, therefore, "wrongfully alive". Lawyers admit that this is an unfortunate phrase but it is an accurate one, for their coming into the world it is claimed, was the direct result of medical negligence.

What really is a wrongful life, a life that wasn't meant to be? Our scientific community is eager to go ahead with stem cell research by using fertilised human eggs for the production of cells (or parts of cells) that will assist in the treatment of human diseases and disorders. This has caused some concern in both the public arena and the church with a number of leaders questioning the future of genetic engineering once stem cell research is accepted as legitimate. Presumably, the

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## THE SECOND Australasian Christian Legal Convention

### A personal reflection

At the end of the first Australasian Christian legal Convention in Melbourne in early 2001 there was great enthusiasm that it not be the last. The Christian Legal Society in Queensland volunteered to take up the mantle and organise the second convention with Elenne Ford and Paul McQuade bearing the majority of the burden in organising the second convention with the wonderful assistance of Mary and Kate of "Your Registration Desk".

Responding to the feedback from the first convention the second convention boasted some features which its predecessor did not—the recording of the plenary sessions (thanks to Rowland), prayer meetings in the morning, more worship (ie music—including a choir and an organ), a bookstall and a pre-convention event.

The pre-convention event was presented by Ken Sande—one of the plenary speakers. Ken is the CEO of Peacemaker Ministries in the United States. Peacemakers had its origins in the Christian Conciliation Service which was started under the auspices of the Christian Legal Society in the United States. Ken led us through a bible study on peace-making. I must admit that I was concerned that what would be presented would be "secular" alternative dispute resolution with a Christian veneer. Those concerns proved

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unfounded as Ken led us through a biblically based response to conflict. The point that stuck in my mind was that conflict is an opportunity—it is an opportunity to glorify God, to serve other people and to grow to be like Christ. So often we avoid “conflict” because we believe it is anything but an opportunity and accordingly leave our relationships with other people unresolved.

But it was not how other people respond to conflict that was at the heart of these studies but how I as a follower of Christ respond when I am in conflict. Ken introduced us to the seven “A”s of confession:

**Address** everyone involved;

**Avoid**, if, but and maybe;

**Admit** specifically;

**Apologise** by expressing sincere sorrow for the way I have affected the other person;

**Accept** the consequences;

**Alter** my behaviour; and

**Ask** for forgiveness.

Other studies dealt with questions like “How can I help others to understand how they have contributed to this conflict?” and “How can I demonstrate forgiveness and encourage a reasonable solution to this conflict?”

My only regret with the pre-convention event is that I did not bring my minister along.

With the start of the Convention proper I was faced with the difficulty of choosing two seminar options out of nine. In the end I learnt from Matt Bristol how God is using his legal skills in Kyrgyzstan where he attempts to influence that society for Christ through the law firm that he has established. It was refreshing to hear how God can use a lawyer on what appears to be something of a wild frontier for Western concepts of justice.

I also heard Professor Ron McCallum, the Blake Dawson Waldron Professor of Industrial Law at Sydney University address the topic of “Fairness at Work—a Christian Approach to Labour Law. I must admit to being surprised to find two cases being discussed in some detail—after all didn’t the speaker realise I was on holiday.

I must admit to wanting to go to many of the other seminars. The materials from some of them looked great and would be well worth downloading when they are posted on the convention website. In particular the short course titled “Connecting Christian Life and Legal Practice” prepared by Christine Parker and Ian Barns reflected an enormous amount of research and thought. Christine was the course leader. She was until recently a lecturer at the University of New South Wales and now is lecturing at Monash University.

I can only hope that other speakers are as diligent as Christine in reducing their seminar material to writing so that it can be posted on the Convention website.

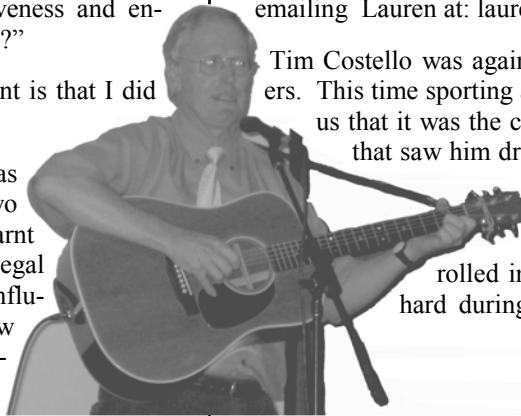
As is often the case there were many speakers whose minds

I wanted to pick over meals but I was one of many and some speakers couldn’t stay around because of other commitments.

An afternoon off provided the opportunity to rescue my cabin bound family from the caravan park and take them to SeaWorld—the first of what was to be two “world” visits on our holiday (I couldn’t face DreamWorld and it was too cool and wet for Wet n Wild world).

Murray Baird’s hypothetical once again proved popular as he teased out how should we, as Christians, measure performance and what should we value in our legal practice. Matthew Turnour put in a great performance as Clayton Kimpton.

Personally a highlight for me were the short sermonettes and the Sunday sermon by Dr Desmond Ford. A slight man with penetrating eyes and a sharp mind who articulately expounded the scriptures for us each morning and again on Sunday during the convention service. A student of the British Scholar F.F. Bruce the fire of the gospel burned brightly in this elder of the evangelical world. A complimentary CD of Dr Ford’s sermon “Seeking God First” is available to members of the fellowship by emailing Lauren at: [lauren@qldbar.asn.au](mailto:lauren@qldbar.asn.au)



Tim Costello was again one of the after-dinner speakers. This time sporting an arm in a cast. He informed us that it was the consequence of his midlife crisis that saw him dreaming of rising high above the pack (an Aussie Rules pack) and taking a mark. Seeing this dream as prophetic he enrolled in the seniors league and trained hard during the pre-season. Tim pointed out that his wife could not understand how her already overly busy husband needed this activity in his life but she watched on patiently. Tim’s first game saw him go to punch away, what he thought was the ball, but turned out to be someone’s head. Unfortunately for him this head was not as forgiving as the ball and he broke some bones in his hand. Being male and knowing that admitting that he done something to his hand would be a vindication for his wife he neglected to mention the incident for some days and did not seek medical treatment for his hand. It was not until he was speaking in Western Australia that he sought medical treatment after a doctor in the audience noticed the state of his hand and insisted that Tim accompany him to the hospital.

After dinner entertainment was provided by Professor John Wade who sang “Reasonable Man” - his Lord Alfred Denning tribute song —from John’s album “Reasonable Man: lawyering music”.

Frank Brennan, who had been unable to speak at the first convention because of commitments in East Timor, presented a very personal reflection on his involvement in the campaign for justice for indigenous people over the

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era of "designer babies" with certain characteristics and without certain defects is only just around the corner. I am not a scientist, but it troubles me to read in newspapers and magazines about complex issues of life and death without any apparent ethical framework.

That whatever scientists may be able to achieve in the attempt to produce "disability-free" offspring, they won't be able to eradicate the problem that infects all human life on our planet. This illness is so genetically virulent that it passes without any problem from generation to generation and across ethnic groups. It is equally prevalent in both males and females and its symptoms can be detected as easily in a two-year-old as in a one hundred-and-two year old. It has given rise to the need for prisons, insurance companies, padlocks, lawyers, security cameras, fences, police and much more. No educational or political system has been able to prevent its spread and everyone has probably contributed to the growth of this human illness.

The illness is spiritual, but it affects every part of our society and every individual. We don't like its effects in other people's lives and, if we are really honest, we do not like its presence in our own lives. It is the problem of evil in the world and especially the problem of human sinfulness affecting all of us. It started back with our first parents, Adam and Eve, and is just as real and undiminished in our lives today. Life is precious, life is beautiful, but life is infected with sin and we suffer daily from its pernicious influence. If our litigation-mad society wants to begin a really important class action, then let it sue every doctor, every midwife, every teacher, every politician, every marriage celebrant, for not warning us of the risks of giving birth to spiritually-disabled people who will in time not only mess up their own lives but every else's life as well. There's a world full of wrongful lives out there! Perhaps we would have been better off not to have been born at all!

What if one particular person had never been born? He was called a "man of sorrows", a madman, a demon-possessed man, even the devil himself but he was exactly the opposite. Some wished he had never been born and took the earliest opportunity to end his life as painfully as possible. The man was Jesus Christ and he came into the world to save sinners. As a result of his life, many millions of people have benefited from his legacy. He has caused men and women to fight illnesses and disease, to build public and private hospitals throughout the world, to establish homes and refuges and support for those

with physical and mental disability. That same man has brought about world-wide literacy programmes, the creation and translation of written languages, communications and telecommunications systems and a shared desire for the public education of every man, woman and child on the planet. Those things alone would make him the most significant, most influential human being of all history.

However, it was the battle against the deadly disease of sin that brought him to earth 2,000 years ago. Whatever other influence Jesus has had upon the world, this matters more than everything else. He was single-minded in his determination to deal with our wrongful lives. There was no law-suit, no media vilification, no Royal Commission, no retaliatory strike. Instead, this beautiful, perfect human life was exchanged for our wrongful lives. Jesus bore our sins, took our wrongdoing, our evil thoughts and actions on himself. How is this possible? It is the simple message of Christianity made visible every time you see a cross. This is the symbol of his death. The body pierced to save people. As the Bible puts it, "he who knew no sin became sin for us". As he suffered and died, Jesus became The Wrongful Life and he paid the price of his life so that we might be forgiven by God. He did it because he loves us. God does love you and you can measure the depth of his love every time you consider Jesus' death. If you were the only person on this planet whose wrongful life needed forgiveness, Jesus still died for you.

You and I cannot go back into the womb and start again with the hope of being different, of improving our lives, of re-inventing ourselves. Reincarnation sounds appealing at first glance but it is really a hideous treadmill of retribution without hope and without forgiveness. Nevertheless, we can have a fresh start! It begins when we own up to our own wrongfulness rather than blaming others or trying to sue them. We need to admit to God that we need his help. We need the forgiveness of God won by Jesus on the cross. We need to believe that Jesus died for us and in our place and to trust God's promise that we are forgiven.

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## *The Wrongful Life Trifecta*

In June Justice Studdert of the Supreme Court handed down decisions in *Harrington v Stephens* [2002] NSWSC 461, *Edwards v Blomely* [2002] NSWSC 460 and *Waller & Ors v James & Ors* [2002] NSWSC 462. These three cases had received some media attention at the time of their hearing because each dealt with a claim for what is called "wrongful life".

A wrongful life claim is a claim in negligence brought by a person (in these cases a child) seeking damages in consequence of a failure to prevent the child being born. The facts of *Edwards v Blomely* (the *Edwards* case) are instructive of the distinction between this claim and that more normally brought by the carers of the child for damages flowing from the care of the person. In the *Edwards* case the applicant was born as a consequence of a "failed vasectomy" by Dr Blomley. The child was born with a rare chromosomal disorder. In this case the parents had a claim against the surgeon in relation to the negligently performed vasectomy. The damages for that claim would include the cost of caring for the child. The claim for wrongful life was a claim brought by the child for the damage that child incurred as a consequence of being born.

After a careful review of the authorities, both in Australia, but more particularly in the United Kingdom, Canada, the United States, Germany, Austria and France, Studdert J found that a wrongful life claim was not one recognised in this jurisdiction.

Key in His Honour's decision were the public policy reasons:

- The precious nature of human life itself;
- The impact such a claim would have on the self esteem of those born with disabilities and the perception of their worth in the community at large;
- The potential claim that a mother could face from a child for not terminating the pregnancy ie for allowing the child to be born;
- The burgeoning costs of medical professional indemnity insurance as evidenced by the Health Care Liability Act 2002

Also key in His Honour's reasoning was the impossibility of determining damage and the impossibility of assessing compensatory damages.

New South Wales now joins the overwhelming majority of jurisdictions that have rejected claims for wrongful life. No doubt the decisions will be the subject of an appeal and of further reflection by the appellate courts.

For links to these cases go to the LCF website:

[www.lcf.pnc.com.au](http://www.lcf.pnc.com.au)

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past thirty years.

By Sunday afternoon I was ready to leave and rejoin my family on holiday—hopefully a little more conscious of God at work in this world and my life and a waste line that spoke of too much good food and good fellowship.

The only regret I had was that many of those who enjoyed the first Convention so much were not in attendance at the Second Convention.

The question remains—where will the next convention be held—Sydney perhaps? If Sydney—is the LCF up to the challenge of hosting the next convention?

## **The End of Marriage as we know it? an update**

In the December issue of this newsletter we drew your attention to the decision of Justice Chisholm of the Family Court in *Re Kevin*. An appeal from that decision has now been heard by the Full Court of the Family Court who have reserved their decision.

Since the date of that hearing a similar case has been determined by the European Court of Human Rights in the case of *Christine Goodwin v The United Kingdom* No 28957/95, 11 July 2002. In that case a transsexual sought a declaration that the United Kingdom was in breach of its obligations under various articles of the Convention for the Protection of Human Rights and Fundamental Freedoms in that various laws, including those with respect of marriage, birth certificates and social security discriminated against her on the basis that the applicant was a transsexual.

A remarkable feature of this decision is that the issue of whether English law recognised a marriage between two persons born with the same gender where one person had, had re-assignment surgery had only recently been ruled on in the Court of Appeal in *Bellinger v Bellinger* EWCA Civ 1140 [2001] 3 FCR 1. The European Court departed from that decision (in part because that possibility had been foreshadowed by the Court of Appeal) and also previous precedents of its own to find the United Kingdom had breached the Convention by having marriage laws that did not recognise a marriage involving persons born with the same gender.