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No other recourse but to sue? The implications of Alex McKinnon's lawsuit against the NRL

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As the tackle that injured rugby league player Alex McKinnon shows, spinal cord injury can take place in a split-second. AAP/Paul Miller

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Alex McKinnon, who was left in a wheelchair following an on-field tackle in an NRL match in 2014, is set to sue the league and the player deemed responsible for his injury, Jordan McLean.

The legal circumstances are only part of the questions raised by a case like McKinnon's. There are also discussions to be had over compensation and insurance, and the personal impact of spinal cord injury.

A legal first

McKinnon's case marks the first time a player has directly sued rugby league's national governing body over an on-field injury in Australia.

Previously, players have sued other players over injuries deemed to have resulted from illegal play. In other cases, players have also cited the club of the player regarded as having caused the injury.

These cases have tested the legal concepts of:

- duty of care: that is, to whom one is responsible for the negligent behaviour that resulted in the injury and why;
- voluntary assumption of risk: that is, whether the injury arose from behaviour that was an inherent part of the activity and to which the injured party had tacitly accepted the risk, so therefore no-one was legally liable for the damage caused; and
- vicarious liability: that is, the employer is legally responsible because the behaviour that caused the injury occurred while the employee was carrying out their work duties, albeit negligently.

The tackle that injured Alex McKinnon.

Workers' compensation and sports insurance

In any other sphere of life, if a person is injured at work they are covered by workers' compensation.

In Australia, depending upon the state you live in, such claims have been limited with respect to monetary compensation. For example, in New South Wales a person acquiring a spinal cord impairment similar to McKinnon's is limited to a one-off lump-sum payment of A\$231,000.

Under any circumstances this figure can be regarded as grossly inadequate when you consider home modifications, purchase of assistive technology, and ongoing care and medical expenses.

Any sportsperson taking to the field typically does so under their state's sports injuries insurance scheme. However, it is open to the sporting organisation to opt for private insurance as a substitute or complement.

Under the **sports injury insurance scheme**, payments of benefits are made in respect of deaths and certain injuries suffered by people participating in sporting and recreational activities.

Significantly, the benefits payable are predetermined and limited, with a maximum benefit for a single incident capped at \$171,000. Hence – unless private insurance has been taken out – under workers' compensation or the sports injury insurance scheme the degree of coverage for spinal cord injury is inadequate.

Spinal cord injury

There are **around 12,000 people** living with spinal cord injury in Australia, with some 370 new cases each year. Of these, some 80% are male and 20% female. Most occur through motor-vehicle accidents (23%), unprotected road users (23%, including cyclists or pedestrians), high falls (18%), low falls (10%), being struck by objects (9%), or water-related injuries (9%).

Of those injuries, some 20% occurred in sport or leisure activities and 15% in work-related environments. Once a person has a spinal cord injury their **employment rate** declines from 78% pre-injury to 29% post-injury.

Any spinal cord injury is devastating to the person involved, their immediate family, and their circle of friends. At best it can be a lengthy hospitalisation, and end in a “miracle” story of the person walking out of the hospital.

Medically, spinal cord injury is at worst a lifelong change that **affects every daily function of the human body** – beyond merely walking. Socially it can mean a loss of job and income, the family home requiring major modifications if it can be made accessible, changes in family responsibilities, and the way members of the family relate to each other.

On top of all this, McKinnon has had his spinal cord injury and circumstances played out **in the public realm**.

As the tackle that injured McKinnon shows, spinal cord injury can take place in a split second. Whether the person is an elite athlete or not, there is a massive psychological adjustment that takes place. This period of adjustment can go on for years.

Depending on level of injury, personal care is an ongoing cost that is essential to maintaining good health and a functioning family unit. Then there is transport, housing modifications, assistive technology, ongoing medical expenses and specialised equipment for work and leisure. These have been estimated at a **lifetime cost of \$9.5 million** for a quadriplegic.

As McKinnon progresses in his recovery, the true cost of disability and his needs over a lifetime are only just starting to be realised. He **has said**:

It's only been in the last few weeks that I have understood that it will cost \$100,000 per year just to get me up out of bed in the morning.

The love of McKinnon's partner, family and friends can only do so much where professional allied health, medical and therapy interventions are required to lead an independent and dignified life as possible.

While the NRL has been supportive and offered McKinnon a **job for life**, he is starting to realise the real ongoing costs of disability may not be met by the generous charity that has already been provided.

McKinnon does not just want his basic needs met; he wants to be compensated for the life he envisioned a professional football career would give him, and what has been taken away through catastrophic injury. While the National Disability Insurance Scheme will provide for his basic needs, it does not provide for everything people with disability require to offset all losses because of their disability. Instead, it only meets requirements that can be regarded as “**fair and reasonable**”.

Given these circumstances, McKinnon has been left with no other recourse than to litigate to receive compensation for his loss of lifestyle.

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