Assignments and Choice of Law in Australia

Assignments of choses in action can raise difficult choice of law issues, and readers may be interested in two decisions of the Federal Court of Australia that shed some light on this area.

In *Salfinger v Niugini Mining (Australia) Pty Ltd (No. 3)* [2007] FCA 1532 (8 October 2007), Heerey J considered the validity of a purported assignment of causes of action arising under Australian law pursuant to deeds of assignment governed by Canadian law. His Honour held that:

> *"Whether the causes of action in tort or equity are assignable is to be determined by the law under which the right or cause of action was created … In consequence, although both assignments in the present case included 'governing law' clauses, and were purportedly entered into in Canada, those clauses are not relevant in deciding whether the causes of action in question are assignable. That question is to be decided by the law of the place where the causes of action arose. As the causes of action relied on arose in Australia, Australian law is applicable."*

There is an interesting parallel between the recent decision and the earlier Full Federal Court case of *Pacific Brands Sport Leisure Pty Ltd v Underworks Pty Ltd* (2006) 149 FCR 395; [2006] FCAFC 40, which concerned the assignment of contractual rights (not causes of action). There, the court was content to proceed on the assumption (without needing to decide) that such assignments are to be governed by the proper law of the underlying contract, rather than the proper law of the contract of assignment.