

Psychologists, psychiatrists and PTSD

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As a Forensic Psychologist in private practice, I have been interested in some recent decisions in Australian Courts regarding the expert evidence provided by psychologists and psychiatrists.

In particular, I wish to draw attention to a successful appeal in the Northern Territory Supreme Court overturning a previous decision of a District Court Judge to disallow a psychologist's opinion on diagnosis of PTSD.

This summary comments of proceedings is based on the *Reasons for Judgement* delivered on 2 May, 1997 by Chief Justice Martin in the Supreme Court of Northern Territory at Alice Springs in the matter of Erminio Nepi (Appellant), the Northern Territory of Australia (First Respondent) and Brendan Ebaterintja (Second Respondent).

Essentially it was argued on appeal that the Judge hearing the case erred in law in ruling that a psychologist, Mr Tyrell, was not permitted to express his opinion that the applicant was afflicted by PTSD. There was also an appeal on damages awarded alleging inadequacy of such award in monetary value. Areas of law concerned with this judgement in the Supreme Court by Martin CJ were Section 19 of the *Local Court Act* (NT) 1989 and the application for an Assistance Certificate under the *Crimes (Crimes Assistance) Act* (NT) 1982.

The applicant made application for the Certificate as consequence of being the victim of assault in which he was hit with a steel bar, a chair and kicked whilst on the ground. Physical injuries sustained in the assault included lacerations, contusions, bruising and swelling to various parts of the victim's body, and dislocation of the left crania cervical joint.

Initially the application incorporated a claim for mental distress. The appeal was directed at a perceived error by the original judge regarding the psychologist's opinion

that the symptoms related to him by the appellant led to a diagnosis of PTSD as defined in DSM IV. Mr Tyrell (the psychologist) testifying as an expert witness had interviewed the appellant on two occasions in which he administered standard testing (Horowitz, *Impact of Events Scale*) and based his opinion of PTSD on clinical interview (structured and unstructured) and history. This is normal and acceptable practice.

Mr Tyrell's qualifications were detailed identifying him as a practicing Clinical Psychologist whose appropriate academic qualifications included a Masters Degree in Psychology. He is a member of appropriate professional Colleges of the APS. His clinical experience covers some 32 years including senior government posts and work of a psychological nature in Scotland and New Guinea.

In 1986 he became Regional Director of Health Services in Central Australia and entered private practice in 1991. His experience with PTSD in a clinical setting was documented including work conducted on behalf of the Department of Veteran Affairs. Thus Mr Tyrell presented as a worthy expert witness in diagnosing and offering opinion on PTSD. In deciding that Mr Tyrell was not able to provide such opinions his Worship relied upon admissibility of a psychologist's opinion in what was described as "similar circumstances" by referring to *Klimoski, the Water Authority of Western Australia* 1989 5 SR (WA) 148 and *Peislet v R* 19890 54 A Crim R 53". By so doing his Worship concluded in the following manner: "with respect I also adopt the reasoning of their Honours in each of the two cases referred to above. Mr Tyrell has also crossed the barrier of expertise. His conclusions were also of the nature of a medical diagnosis. I reject his conclusion that the Applicant is suffering from PTSD."

On Appeal it was pointed out that there are other cases which support more

strongly the proposition that a psychologist is able to provide an opinion of PTSD demonstrating that the opinion of psychologists as to PTSD had been frequently accepted and acted upon by the courts on previous occasions - *Enright v Windley Supreme Court of ACT*, 1 June 1995, for example, *W & W v R & G*, Family Court of Australia, 21 April 1994 etc; *Whitbread* (1995) 78 A Crim 452 is probably the best and most prominent case dealing with the difficulties at times arising between psychologists' and psychiatrists' opinions. Here it was viewed that once the question of treatment of medical illness is put aside there is no reason why psychologists may not be just as qualified or better qualified than a psychiatrist to express opinions about mental states and processes as per Hample J.

The cases his Worship relied upon in his original determination of the veracity of expert opinion of a psychologist in the diagnosis of PTSD involved different circumstances.

They involved the fact that inadequate assessment had been made and incomplete history had been taken on those previous occasions as quoted by his Worship. In contrast, criteria for offering an expert opinion were displayed by Mr Tyrell on this occasion but not taken into account.

In a move to clarify this position on whether a psychologist or psychiatrist is qualified to provide opinion on matters of mental health, a paper has recently been produced by Dr Jack White, Forensic Psychologist and Dr Ken O'Brien, Forensic Psychiatrist. I refer people to publication of *Inpsyche*, December 1997, Vol 19, Issue 6 which also goes into details of Mr Tyrell's case on this occasion.

In their article both Dr White and Dr O'Brien have stated:

"the decision as to who is the more appropriate person to ask may depend on the nature of the questions asked. The

psychologist is likely to be the most suitable person to provide quantitative measures of the persons' functioning (eg intelligence, anxiety, stress etc) in the context of either a crime or an accident. The psychiatrist is more appropriately trained to comment on a person's medical diagnostic status and treatment including medication. The essential difference in training between the two professional groups will influence the assessment and treatment techniques used by each.

The psychologist trained as a scientist will apply the scientific method, attempt to measure all the relevant variables and make conclusion on the basis of statistical norms. The psychiatrist trained as a medical practitioner will assess the patient's symptomatology and relate this to likely diagnosis and prognosis and ultimately determine the treatment course accordingly. Sometimes a psychologist and psychiatrist will be

asked the same questions and offer similar answers. Usually a psychologist and psychiatrist will apply different processes of deduction to reach the conclusions. Depending on the nature of the referral the psychologists and psychiatrists will compliment each other in providing a more complete picture of the client's circumstances."

Readers are urged to bear these comments in mind as lawyers who deal in personal injury and indeed criminal matters, when seeking opinion from psychologists and psychiatrists.

One of the main lessons I believe displayed in this appealed judgement is that experience, qualification and clinical expertise are important factors and are of relevance to cases at hand when deciding to accept an expert opinion in the court of law. It is our task as assisting professionals to provide opinions to courts who then make a decision upon matter of facts. The

opinions of psychologists and psychiatrists are but one source of information to assist the courts to form a judgement taking into account all relevant aspects of evidence in relation to a particular matter. Thus it is the case for lawyers to be aware that psychologists and psychiatrists operate in a scientist-practitioner paradigm and as such can be of great value to assist the court particularly in injury matters.

Both psychologists and psychiatrists have a role to play. It is the aim of this article to assist lawyers in deciding the appropriate expert in any particular matter. Such clarification is hoped to also assist both professions (legal and mental health) to form a closer equitable relationship in forensic matters. ■

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The Equine Lawyers Association

Dr B F Peachey, Brigg, UK

The Equine Lawyers Association was originally formed in Britain as a small interest group in 1995, but in 1997 was taken over by the publishers of 'Horse Law - the Equine Law & Litigation Reports'. 'Horse Law' became the journal of the Association, and Dr Barry Peachey, Britain's leading animal litigation specialist, became Chairman. In the last seven months the Association has increased in size five fold. It must be the fastest growing special interest group in English law, and is exceeding all its expectations thus far.

The journal, which is published bi-monthly, contains reports of equine litigation across the whole range of courts and tribunals. Focus articles include matters of topical equine law interest, and full listings

of all members are published. The Association has lawyer members, and professional services members, the latter group being mostly expert witnesses. As such its prime objective is to be an information forum for anyone with equine legal interests. It has started to attract members from other common law jurisdictions, especially the US and Canada, and is keen to encourage this international perspective.

Much equine litigation is centred around personal injury.

On Friday 16 January, the first ever National Equine Law Conference was held at Hartpury College, Gloucestershire, and

a variety of speakers addressed the audience on a range of topical equine law matters. This Conference will now become an annual event.

The Association maintains close links with the Association of Personal Injury Lawyers (APIL), the English equivalent of APLA, and there are a good number of lawyers who are members of both organisations. Much equine litigation is centred around personal injury. The Association is keen to foster further links around the world, and any members of APLA with horse interests would be warmly welcomed. ■

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