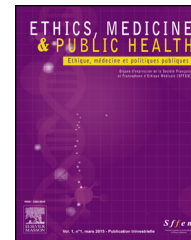




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DOSSIER ‘‘FORENSIC ETHICS’’ / *Thoughts*

Contemporary 21st century therapeutic jurisprudence in civil cases: Building bridges between law and psychology



La jurisprudence thérapeutique contemporaine dans les affaires civiles : construire des ponts entre le droit et la psychologie

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Summary To avoid trials in civil disputes has a long tradition, but most alternatives within Alternative dispute resolution (ADR) have been focused on legal arguments and economy of time and cost. A modern alternative should be interdisciplinary and be based on psychosocial knowledge and ambitions to find solutions that satisfy both parties in the long run. Therapeutic jurisprudence (TJ) is a relatively new concept and practice in Civil litigation. Therapeutic jurisprudence (TJ), developed by law professors David B. Wexler and Bruce Winick in the US in the 1980s, is based on the practical premise that findings from the behavioural sciences, predominantly psychology, can inform and improve how litigation is carried out. It is relevant to all areas of law in all countries/jurisdictions, and addresses well-being, positive win-win conflict resolution, positive communication and many other aspects of law. In this paper, therapeutic jurisprudence is discussed within the context of delivering a high quality, efficient and effective multi-professional litigation service. The relationship between therapeutic jurisprudence and total quality management (TQM) is explored in terms of process improvement, customer responsiveness and staff empowerment and ways to assess this. Therapeutic jurisprudence

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is recognised as a logical model for understanding and assessing the impact on the public and professionals of various aspects of the legal system. By clarifying the beneficial and non-beneficial/non-therapeutic effects of legal and medico-legal process, therapeutic jurisprudence can help to reshape current legal practice. To date, therapeutic jurisprudence has not had a significant presence or influence in Civil litigation. This paper illustrates the considerable opportunity to improve the process and outcome of civil cases both in the UK and worldwide. Financial goals and enhanced psychological expectations go hand-in-hand. Therapeutic jurisprudence and total quality management are ideal vehicles to achieve these. Realizing the synergy between therapeutic jurisprudence and total quality management will allow the judiciary, lawyers, barristers and experts to collaborate more effectively in many ways to enhance the positive conflict resolution expected by claimants and insurers alike. Reference is made to how the Civil procedure rules (CPR) were introduced into the UK Civil Legal system in 1999, with emphasis on the Joint Opinion process and how this has allowed clearer definition of evidential disagreement and resulted in earlier dispute resolution, to the benefit of claimants and cost containment. The eight key aims of CPR were: be just in the results it delivers; be fair in the way it treats litigants; offer appropriate procedures at a reasonable cost; deal with cases with reasonable speed; be understandable to those who use it; be responsive to the needs of those who use it; provide as much certainty as the nature of particular cases allows; and be effective: adequately resourced and organized. To facilitate the development of therapeutic jurisprudence in the 21st century in the area of Civil litigation, an "agenda for change" is suggested which includes issues such as elaborating a TQM model for legal services involving measurement of litigation culture and values and developing strategies for process improvement, customer responsiveness and staff empowerment, increasing lawyer awareness of "diagnosis, causation and prognosis" concepts and increasing communication skills/styles for lawyers and judiciary including conflict resolution skills. It is widely acknowledged that the main customer – the claimant – experiences a relatively high level of stress during the litigation process. Both lawyers and psychologists believe that litigation stress has moderate to major effects on claimants' psychological symptoms. However, the full extent to which litigation is stressful and what factors of litigation exacerbate or mediate psychological symptoms had not been well studied. Analysis and change that helps to reduce stresses on claimants and produces a more claimant-responsive service would be advantageous and are discussed in this paper. Staff/"internal customer" empowerment is addressed in terms of increasing communication skills/styles for lawyers, judiciary and experts including conflict resolution skills. Professionals see themselves as having good communication skills with each other. However, like husbands, wives and partners, professionals vary considerably not only among each other but also within themselves (time of day, context, level of self stress) in their delivery of effective communication with each other. Methods to enhance inter-disciplinary expert collaboration via Joint Opinion process (same discipline; different discipline) to provide an innovative and highly useful contribution to the court are discussed. Opportunity to support the developing experience of litigators and experts via accreditation, CPD and further training is essential. Implications for training and continuing education of various professional groups plus international dissemination and development of these ideas are discussed. Finally, therapeutic jurisprudence is recognised as an important model for understanding and assessing the impact on the public and professionals of various aspects of the legal system. By clarifying the beneficial and non-beneficial/non-therapeutic effects of legal and medico-legal process, therapeutic jurisprudence can help to reshape current legal practice. To date, prior to this publication, neither therapeutic jurisprudence nor total quality management has had a significant presence or influence in civil litigation. This paper illustrates the considerable opportunity to improve the process and outcome of civil cases both in the UK and worldwide. Financial goals and enhanced psychological expectations go hand-in-hand. Therapeutic jurisprudence provides an ideal vehicle for their maximization and the impartiality of all concerned. Therapeutic jurisprudence and total quality management encourage a reconceptualisation of the role of the key players: judges, barristers, lawyers, experts and claimants involving higher ethics of dialogue and care, enhanced communication skills, mutual sensitivity and an avoidance of legal problems.

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