

SAMLA-UCT PRACTICAL TRAINING WORKSHOPS IN MEDICO-LEGAL PRACTICE

Workshop 2 - Psychological Consequences - Emotional Shock – Constitutional Damages - Monetary & Non-Monetary Compensation (6 April 2019 to 4 May 2019)

LEARNING OUTCOME STATEMENT

HOW THE EXPERT WITNESS CAN HELP THE HONOURABLE JUDGE COMPENSATE THE VICTIM OF PERSONAL INJURY FOR PSYCHOLOGICAL DAMAGES

Dates: 6 April & 4 May

Structure: 2 Days plus assignment to write a topic specific report

Leader and workshop

committee/panel: Mr Trevor Reynolds

Adv John Mullins SC

Adv Ayesha Tiry

Ms Romany Sutherland

Dr Sharon Munyaka

Mr Gregory Whitaker

Prof Willem Moore –“Golden Thread” lecture on ethics and psychological harm

Outcomes: At the end of this independent workshop the delegates will be required to demonstrate an appreciation of the following:

1. Manifestations and mechanisms of psychological damages suffered as a result of personal injury; *inter alia* Major Depressive Mood Disorder, Adjustment Disorders, Grief, Anxiety Disorders, including Post-Traumatic Stress Disorder
2. Constitutional damages
3. Monetary and Non-Monetary Compensation
4. Is restitution achievable?
5. What the Judge Hears

Required product: An individual report, using given information, which assists the Honourable Judge in determining whether claimed psychological damages are reasonable; could reasonably be attributed to the alleged personal injury inflicted on the claimant; and could be resolved through some mechanism, whether monetary or non-monetary in nature.

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FRAMEWORK AND METHOD OF TRAINING DAY 1

Day one will be devoted to essential knowledge acquisition, to be conducted in a series of training sessions by members of the expert panel. Each training session will consist of a formal lecture, as well as comments by other members of the expert panel and questions/answers/comments by course participants in all venues. Topics of lectures will include : -

1. Lecture by a clinical psychologist addressing:
 - a. Mental health and socially accepted variance
 - b. Do psychological damages always result in diagnosable conditions?
 - c. Mechanisms of psychological harm
 - d. Manifestations of psychological harm
 - e. Nexus and proportionality

2. Lecture by Senior Counsel addressing:
 - a. What constitutes damages
 - b. What kinds of damages may be suffered
 - c. What kinds of damages are compensable and which are not

3. Lecture by industrial psychologist/actuary addressing:
 - a. The process of quantifying damages
 - b. Variables influencing quantification
 - c. Variables impacting quantum that is awarded; for example, discounting, contingencies and the like

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ABSTRACTS FOR DAY 1

This lecture, supported by anecdotal case material and shared experience from the delegates, will address:

1. Mental health and socially accepted variance.
 - 1.1. Socially appropriate adaptive behaviour is described.
 - 1.2. The delegate is sensitised to cultural variances in manifestations of socially appropriate adaptive behaviour.
 - 1.3. The impact of trauma on an individual's adaptive response.
 - 1.4. Possible emotional responses to a traumatic event, and words commonly used to describe those.
2. Do psychological damages always result in diagnosable conditions?
 - 2.1. "*Normal responses to abnormal circumstances*" will be discussed.
 - 2.2. Individual differences in adaptive behaviour will then be discussed in the context of psychopathology and diagnoses.
3. Mechanisms of psychological harm.
 - 3.1. Aspects addressed in this component include:
 - 3.1.1. Psychological consequences of physical injury
 - 3.1.2. Psychological consequences in the absence of physical injury
 - 3.1.3. Necessary proximity to the adverse event in order to suffer psychological sequelae; for example, could a loss of support claim include compensation for emotional losses?
4. Manifestations of psychological harm.
 - 4.1. This component of the lecture will sensitise delegates to possible behavioural manifestations of psychological consequences of personal injury or an adverse event.
5. Nexus and proportionality.
 - 5.1. It would seem that most claimants suffer "*shock*" or are "*traumatised*" after an adverse event. The delegate is sensitised to considering usual and reasonable responses to adverse events, in order to strengthen competence in recommending the canvassing of further expert opinion

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FRAMEWORK AND METHOD OF TRAINING DAY 2

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1. Day 2 will start with a lecture by Dr Willem Moore - Ethical Perspectives in Consideration of Psychological Consequences and Constitutional Damages.
2. Most of the day will be devoted to report back from the syndicate leaders, comments on the assignments and syndicate reports by members of the expert panel, as well as intensive critique and debate by course participants in all venues.
3. The concluding event of the workshop will be - Lessons from the Bench (presented by a yet to be approached Judge): how the evidence of mental health professionals, and more specifically clinical psychologists, is heard and contemplated, given the “subjective” (non-Newtonian) nature of the content and process of evaluating psychological harm.

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ABSTRACT FOR DAY 2

Ethical Perspectives on the role of expert witnesses in assisting Honourable Judges in the compensation of persons affected by Psychological consequences of accidents or Constitutional damages

Reports by expert witnesses fulfil an important role in assisting Honourable Judges in determining whether claimed Psychological damages such as Major Depressive Mood Disorder, Adjustment Disorders, Grief, Anxiety Disorders and Post-Traumatic Stress Disorder and also Constitutional damages are reasonable, could reasonably be attributed to the alleged personal injury inflicted on the persons affected and could be resolved through either monetary or non- monetary mechanisms.

The approach of these reports may however either be characterised by empathy or sympathy for the affected persons, by advocacy for the latter and even ‘hired gun/mercenary expertise’ that as such open the door to unethical and unprofessional practices in the determination of compensation for claimed Psychological and Constitutional damages.

In response to the latter, the presentation will focus on an adequate understanding of the concept and rationale of ethics, the crucial role of ethics in the maintenance of trust in institutions and professional behaviour, the importance of ethical principles such as integrity, competency, compassion, respect for human dignity and justice that constitute the standards of good professional practice and on the decisive role of deeply embedded morals, values and attitudes in an expert’s posture towards persons affected by Psychological and Constitutional damages.

Dr. Willem Moore