



**THE AUSTRALIAN AND NEW ZEALAND ASSOCIATION OF  
PSYCHIATRY, PSYCHOLOGY AND LAW**  
*Issues at the Interface of Mental Health and Law*  
Recreation Hall, The Park Centre for Mental Health, Wacol  
Friday 15 August 2003

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**Justice Margaret Wilson**

1. Thank you for inviting me to open your conference.
2. The issues you are about to address - assessment of the risk of violence by mentally ill persons and the proper use of community treatment orders - are live issues across Australia and New Zealand. But I expect that on both sides of the Tasman there is a considerable spectrum of approach among policy makers, members of the professions and academics. This is an environment conducive to innovation in the continuing quest for the best outcomes for patients and for the community at large.
3. Meetings such as this provide precious opportunities to share the results of your endeavours and to reflect on how you might alter or adjust your own approaches.
4. The Mental Health Court is a specialist mental health tribunal constituted by a judge assisted by two psychiatrists (drawn from a panel of three). It is an institution unique to Queensland, which determines questions of criminal responsibility, hears appeals from the Mental Health Review

- Tribunal and carries out investigations into the detention of patients in authorised mental health services. By far the greatest part of its work is in determining questions of criminal responsibility - ie questions of sanity at the time of an offence and fitness for trial.
5. A finding of unsoundness of mind or of unfitness for trial can lead to the making of a "forensic order" - ie an order for someone's detention in an authorised mental health service for involuntary treatment and care. If there is a finding of unfitness for trial, but the Court is not satisfied that the unfitness is permanent, then a forensic order must follow.
  6. A forensic order may be accompanied by an order for limited community treatment or the approval of such treatment. In this context limited community treatment is somewhat of a misnomer. It may range from escorted leave on the grounds of a hospital to leave to live in the community with follow-up appointments at a community mental health clinic.
  7. Dr Jim Wood, one of the psychiatrists appointed to assist the Mental Health Court, is assiduous in keeping statistical records of the outcomes of cases before the Court. In the year ended 30 June 2003, 201 references were heard. In 47.8% of them forensic orders were made. 98% of the forensic orders were accompanied by provision for limited community treatment.

8. You may be interested in the results of the most recent sittings of the Court (3 weeks in June-July of this year).

- 40 cases were determined.
- There were 24 findings of unsoundness of mind, which, of course, resulted in the criminal proceedings being discontinued.
- There were 2 findings of temporary unfitness for trial.
- There were 2 findings of permanent unfitness for trial.
- 24 forensic orders were made, all accompanied by limited community treatment.
- 8 of those given limited community treatment were to be resident in hospital and 16 resident in the community.

There was also one case where the criminal proceedings were ordered to be continued, but the defendant was to be detained in an authorised mental health service in the meantime. The order for detention was accompanied by hospital resident limited community treatment.

9. So forensic orders are regularly made - almost always with some form of limited community treatment.

10. The desirability of a forensic order and the terms of the limited community treatment (subject to some fine tuning) are often agreed by the parties to the Mental Health Court proceedings - the Director of Mental Health, the Director of Public Prosecutions and the Defendant. This is an aspect of the Court's work where the input of the Assisting Psychiatrists is particularly valuable.
  
11. Sometimes the treating psychiatrist informs the Court that a forensic order is unnecessary, and that an existing involuntary treatment order would be sufficient to secure the patient's treatment needs. Each case has to be considered on its merits, but there are some common themes.
  - The patient will be someone who has been charged with an indictable offence, the facts of which are not in dispute - ie someone who has transgressed the criminal law.
  
  - Because of mental illness, the prosecution is to be discontinued, or put on hold if the patient is temporarily unfit for trial.
  
  - That mental illness is both the reason for the patient's being absolved of criminal responsibility for his actions and the reason for his needing treatment.
  
12. Under the Queensland legislation, an involuntary treatment order may be made by an authorised doctor. It may be made and sustained only if 14

- treatment criteria are met. They include lack of the capacity to consent to treatment or unreasonable refusal of treatment. An involuntary treatment order must be revoked if an authorised doctor is satisfied the treatment criteria no longer apply. So, such an order could be revoked after a brief period of remission, or by a young or relieving doctor not fully familiar with the patient's medical and criminal history.
13. By contrast, a forensic order is an order of the Mental Health Court. It cannot be revoked except by the Mental Health Review Tribunal on a review of the patient. The existence of a forensic order is a forceful reminder to the patient and those treating him of his having offended the criminal law and the care which must be exercised in his future interactions with the community. The Court is charged with the responsibility of weighing the seriousness of the offence, his treatment needs and the protection of the community in deciding whether a forensic order should be made. Proceedings before the Mental Health Court are not, and must not be perceived to be, a soft option for someone charged with a criminal offence.
14. A reference to the Mental Health Court must be accompanied by an expert report, and the parties are bound to disclose all reports, even those detrimental to their cases.

15. In most cases the Court appoints one or more experts to report on pertinent issues. The Assisting Psychiatrists review the files and recommend examiners with appropriate expertise and experience. I am generally guided by their recommendations in ordering examinations. The examiners they recommend are selected from a large panel of very experienced psychiatrists, all of whom are able and willing to prepare reports to a very high standard and to appear in Court for very modest fees (which are met by the Court).
16. The parties are still free to call their own experts, and sometimes do.
17. The first obligation of an expert witness, whether engaged by a party or appointed by the Court, is to assist the Court. It is not the function of an expert to be an advocate for the party who engages him. In Queensland, and I understand in some other jurisdictions, we are in the throes of a major recasting of the relevant civil procedure rules to restate this basic principle and to try to reduce the costs associated with the proliferation of experts in a case. Indeed, a revised draft of the new rules was posted on the Queensland Courts webpage last week. While the new rules will not be directly applicable to proceedings in the Mental Health Court, it is hoped that they will result in a cultural change in the way all litigation in this State is conducted.

18. So often a case begins with the experts seemingly at odds in their opinions. It is axiomatic that an expert opinion is only as good as the factual foundation on which it is based. It is surprising how often the differences between the experts are narrowed, if not eliminated, when they have a complete statement of the facts (ie of the same facts) put before them. It is a mark of the true professionalism of most of the psychiatrists who give evidence before the Mental Health Court that they consider all the medical records and collateral material put before them. They often spend many hours in Court or reading Court transcripts before expressing concluded opinions. They are prepared to depart from their previously expressed opinions when confronted with further or different facts which they consider lead to different results. Such open mindedness and intellectual honesty command tremendous respect.
19. I must congratulate the organisers of this conference on what promises to be a stimulating and relevant program. I commend the delegates for your attendance and what I know will be your enthusiastic participation in the sessions.
20. It is my privilege to declare the conference open.