Medico-Legal Society of Queensland

Workshop: Expert Medical Reports – What's between the lines?"
Saturday, 3 April 2004, 9am
Trout Conference Room
Brisbane Private Hospital
Level 8, 259 Wickham Terrace
Brisbane

Chief Justice Paul de Jersey AC

I congratulate the Medico-Legal Society upon its initiative in convening this workshop. I acknowledge the array of highly qualified and experienced speakers, drawn from both medicine and the law, and I note the interesting nature of the topics to be addressed.

The "Brief History" of the Society published in 2002 to mark its 50th anniversary confirms unsurprisingly, that this morning's topic has regularly been on the agenda. It appears to have featured at meetings in March and May of 1953, and in 1992 the Society resolved "to draft a policy statement on the preparation of medico-legal reports for general discussion by members". That was done, and apparently beneficially. The subject is one which should regularly be revisited, and I thank the committee for facilitating the process. The vibrancy of the Society is a function of the enthusiasm particularly of those who run it, and they deserve recognition.

We are all aware of the topicality of the concept of expert evidence in this State, assured for the moment by the thrust of the Rules Committee to introduce rules of court providing, among other things, for single court-appointed experts in appropriate cases. The proposal has fired passions rarely evident in the history

of Queensland civilization. What has not attracted such notice, is that part of the proposal which quite comprehensively covers the content and presentation of expert reports, and it may be that will receive some airing this morning.

May I, as it were, set a basic scene by reading what the proposed rule 428 would require? It says, and this is surely non-contentious, and offered by way of convenient summary:

> "**(1)** An expert's report must be addressed to the court and signed by the expert.
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> **(2)** The report must include the following information–
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> (a) the expert's qualifications;
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> (b) all material facts, whether written or oral, on which the report is based;
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> (c) references to any literature or other material relied on by the expert to prepare the report;
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> (d) for any inspection, examination or experiment conducted, initiated, or relied on by the expert to prepare the report–
>
> (i) a description of what was done; and
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> (ii) whether the inspection, examination or experiment was done by the expert or under the expert's supervision; and
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> (iii) the name and qualifications of any other person involved; and
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> (iv) the result;
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> (e) if there is a range of opinion on matters dealt with in the report, a summary of the range of opinion, and the reasons why the expert adopted a particular opinion;
>
> (f) a summary of the conclusions reached by the expert;

(g) a statement about whether access to any readily ascertainable additional facts would assist the expert in reaching a more reliable conclusion.

(3) The expert must confirm, at the end of the report–

(a) the factual matters stated in the report are, as far as the expert knows, true; and

(b) the expert has made all enquiries considered appropriate; and

(c) the opinions stated in the report are genuinely held by the expert; and

(d) the report contains reference to all matters the expert considers significant; and

(e) the expert understands the expert's duty to the court and has complied with the duty."

That duty, of course, is to assist the court, and it overrides any obligation the expert may have to the client paying the fee.

That proposed rule summarizes the building blocks. This morning's speakers will no doubt explain how the blocks may be assembled, and presented, with a view – not to advancing the client's case, but optimally assisting the court in an objective way.

It is, for the court, reassuring to see experts wanting to refine these important skills. The assessment of expert evidence can be baffling for a judge, and while a comprehensive, well prepared report may act as a beacon, a deficient report may actually hinder the development of a just outcome.

The general credibility of expert evidence took something of a battering in this country through *Chamberlain*, where as we recall copper oxide dust was

mistaken for foetal blood. The United Kingdom has over the years witnessed massive problems with expert testimony, in the cases for example of the Guildford Four and the Birmingham Six, and very recently, with the evidence of Sir Roy Meadow and murder convictions concerning deaths attributed to SIDS. Lord Devlin described the earlier miscarriages of justice as "the greatest disasters that have shaken British justice in my time" (with the Maguire Seven : "The Conscience of the Jury" (1991) 107 LQR 398).

Now subject to the issue of perceived, unconscious partisanship which has motivated the Rules Committee's current initiative, I believe the standard of expert presentation in the courts of this State to be generally high, and I speak for the moment not only of the reports themselves, but also their elucidation in the witness box, aspects which Mr King-Scott may address. Performance in the witness box can be extremely important, as is indeed recognized by the fabled P D James in her novel "Death of an Expert Witness" (Faber, 1977):

> "The defence doesn't always accept the scientific findings. That's the difficult part of the job, not the analysis but standing alone in the witness box to defend it under cross-examination. If a man's no good in the box, then all the careful work he does here goes for nothing."

Yet it is the report which still provides the foundation, and enhancement of the quality of the report should be a continuing quest. And one should not overlook the possibility that the weight of a comprehensive and well-prepared report may lead to the resolution of a matter short of a hearing.

I again commend the Society, and you ladies and gentlemen for your attendance. I wish you a productive morning.