Occupational Therapists in Medico-Legal Work — South African Experiences and Opinions

Hester van Biljon, Occupational Therapist, Masters in Occ Ther, UFS
Work-Link Private Practice, Netcare Rehabilitation Hospital, Auckland Park, Johannesburg

ABSTRACT

In South Africa, occupational therapists' who practice in the medico-legal field face changes as the impact of new and amended legislation begins to be felt. This article looks at the current realities and experiences of South African occupational therapists' working in the Medico Legal field. The opinions of relevant role players are shared. The aim being for the profession as a whole, to profit from the pasts triumphs and disasters and to encourage the meeting of challenges and ethical questions raised, as we move into a new legislative era.

Key words: Occupational Therapy, Medico-Legal, Expert Witness, Ethics

INTRODUCTION

With new legislation the Medico-Legal field of practice for occupational therapists in South Africa stands at the brink of change. Current realities, experiences, and opinions of South African occupational therapists working in this field as well as the relevant role players are shared in this article. The aim is for the profession as a whole to profit from past triumphs and disasters and to encourage the meeting of challenges as well as the ethical questions raised.

Medico-legal work is a generic term used by occupational therapists in South Africa to describe a field of practice where the occupational therapist works with the legal fraternity to help them quantify or qualify a legal matter. At present, therapists are referred injured clients from private or state attorneys who request an assessment of the functional abilities/restrictions of these clients, a written report on the assessment for legal use and to be available for consultation and/or to testify as an expert witness. These therapists are usually called in to assist in personal injury matters (such as Road Accident Fund Claims, Medical Malpractice or Civil Claims), family matters (such as divorce with spouse maintenance and child custody), labour law matters or contractual disputes matters (such as insurance policies or claims).

In South Africa there is currently a great demand for occupational therapists to do medico legal work and the work is lucrative. This has led to a boom in this field of practice over the last decade. Throughout the country occupational therapists can be found working in private practices doing medico-legal assessments, writing reports and acting as expert witnesses, mostly for road accident fund claims. Free market forces that dictated that the most competent (occupational therapists) will get used the most and those with less skills and competence will be left without work has been interfered with[1] by legislation attempting to correct previous disadvantages caused by apartheid[2]. This together with the attraction of financial gain has caused many inexperienced and unskilled therapists to start doing medico-legal work, leading to incidents that cause concern amongst peers and that could tarnish the credibility of the profession as a whole. Changing legislation[3] is also affecting road accident fund claims (which generates most of the work for occupational therapists in medico-legal practices) as well as the role of the occupational therapist in this field. This is forcing therapists in the field into retrospection and re-alignment.

At the same time this new and amended legislation is forcing a change in all occupational therapy practice, moving it from an

era of medical paternalism to a more empathetic client-centered approach[4] with sobering implications for those practitioners who do not comply. Legislative changes increase the chances of all occupational therapists in practice to be held publically accountable for their work.

There is (and always has been) the possibility that any occupational therapist can be called on to be an Expert Witness or to defend their therapeutic intervention (or lack thereof) in a court of law. All practicing occupational therapists should be conscious of the fact that every patient assessed, managed and/or treated, every hospital note, and letter and report written, every assessment form completed or family meeting minutes taken could be of use in a legal matter. The therapist responsible could then be subpoenaed to appear in court, to explain and defend his/her findings and/or give his/her expert opinion. At present, in South Africa, it rarely happens that clinical occupational therapists are called on to testify in courts, but times are changing.

It would benefit the profession as a whole to learn from the triumphs and the disasters experienced by occupational therapist working in the medico-legal field.

THE AIM OF THIS ARTICLE

The aim is:

- to share the experiences and opinions of occupational therapists and relevant role players currently in the field of South African medico-legal practice.
- to formalise some of the informal discussions taking place at present and share experiences of triumphs and disasters, so that the profession as a whole can learn from and collectively work at preparing and realigning itself for future changes.
- to stimulate debate within the profession of occupational therapy about ethical issues within its medico-legal practice, and in so doing face the challenges that the profession has to meet in future and bring about positive change and transformation.

BACK GROUND AND LITERATURE REVIEW

In South Africa, occupational therapists started practising in the field of medico-legal work in the 1970/80's. There were initially very few occupational therapists interested or willing to do this type of work. A medico-legal meeting held in 1993, in Hillbrow Hospital, Johannesburg with Professor Sharon Brintnell from Canada, (currently Professor Emeritus and President of the World Federation of Occupational Therapists) as speaker had 12 attendees[5]. Attendees came from as far afield as Cape Town. The interest in the field has grown steadily and in the last few years prolifically. In 2010 a medico-legal workshop was held in Pretoria, Gauteng province, with speakers and attendees from this province. There were 80 attendees. This upsurge of occupational therapists into the field of medico-legal work holds the opportunity of merit or ruin for the profession as a whole. Transformation and growth is a sign of life in all organisms and within a profession it should be celebrated as the same. However unregulated and uncontrolled growth could hold cancerous implication for both organisms and professions. Sharing the experiences of occupational therapists within medico legal practice holds the opportunity of learning for the whole profession as the possibility of legal intrusion into general occupational therapy practices grows.

Kennedy notes that occupational therapists have been establishing their role in the field of personal injury litigation and that in particular there is an increased demand for occupational therapists' assessment skills to determine the impact of impairment on the individual's abilities[6]. "The role of the (occupational) therapist is to assist the plaintiff's or defendant's attorney in presenting evidence to the jury regarding injuries sustained by the injured party and the implication of these injuries on functional capacity"[7:593]. In this role the occupational therapist is used and known as an expert witness. "An Expert Witness is anyone with knowledge or experience of a particular field or discipline beyond what is expected of a layman. An expert witness is an expert who makes his or her knowledge available to a court to help it understand the issues of a case and reach a sound and just decision[8]. Carter[9] confirms that the primary function of an expert witness is to guide the court to a correct decision on questions falling within the expert's specialised field of practice and that an expert should be independent and objective at all times. An expert should never assume the role of an advocate and should prepare a report that contains the truth, the whole truth and nothing but the truth. Carter warns that "if an expert ignores the principles (set out in his article) he exposes himself to the risk of civil claims and complaints to the HPCSA"[7:7].

The most popular act under which occupational therapists are currently used as an expert witness for medico-legal work, the Road Accident Fund Act 56 of 1996, was amended[3] and came into operation on 1 August 2008. An appeal against this amendment was made and lost in March 2010. The actual implications of this amendment for occupational therapists in medico-legal practice are still uncertain with varied and contradicting opinions and expectations. A task team was formed and a report was submitted to the Occupational Therapy Association of South Africa (OTASA) with suggestions on contentious issues identified such as the AMA training and occupational therapists right to fill in the RAF4 form[10]. Other legislation and guidelines that impact on the profession of occupational therapy and that could draw **any** occupational therapist into contact with the legal fraternity makes for tedious but recommended reading as 'ignorantia juris non excusat / ignorance of the law is no excuse'[11,12,13,14,15,16,17,18,19,20,21].

There is abundant international as well as national literature available on the role of an occupational therapist in the field of medico-legal work: 'How to be a good Expert Witness, how to do a thorough assessment, how to write a good medico-legal-report, how to write Joint Minutes, court procedures and conduct[7,22,23,24,25]. In South Africa there are medico legal interest groups and peer gatherings where therapists get together to share and learn from each other[26]. Under the auspices of OTASA relevant publications and electronic mail are circulated, and training and formal workshops are held. Universities that train occupational therapists, offer pre-and post-graduation lectures, workshops, notes and short courses on matters related to medico-legal work. The course content of the pre-graduate courses is however not unified. There are also informal mentoring opportunities although the extent and content of mentoring is not regulated. All of these opportunities are however attended on a voluntary basis and are usually offered / organised by occupational therapists who do so in their free time and for no remuneration. There are, at present, no professional or ethical guidelines, competency standards or formal training to equip occupational therapist to represent their work and opinions in legal forums. Other than the drastic measure of reporting colleagues to the Health Professionals Council of South Africa (Health Professions Act section 42) there is no means of enforcing or addressing matters of professional concern in the medico-legal field of practice. At no or very little cost an occupational therapist can acquire the knowledge of, and access support, to be an effective Expert Witness and practitioner in the medico-legal field in South Africa. Yet despite this there are still incidences of professional concern that threaten the reputation of the profession.

We are not alone in these concerns. In June 2006 the Australian Association of Occupational Therapist – NSW put together 'Preliminary Guidelines for Occupational Therapy medico-legal practice'[21]. Their rationale for doing so was that they found a wide variation in the qualifications and experience of occupational therapists in this area of practice. This had the potential to undermine the credibility and authority of the profession in the eyes of clients, providers, insurers and the legal system. Furthermore, the assessment processes and documentation were regarded as a complex interweaving of expert clinical reasoning with appropriate access to comprehensive pre- and post-injury data, and the utilisation of suitable assessment tools and assessment environments. Where any of these components may be absent or their integrity compromised, there is potential for the quality of the assessment report

and the interpretation of its content to decline, thus putting client outcomes at risk[27].

The most valuable asset an expert witness has is his/her reputation[28]. The only way an occupational therapist's witness/opinion can be disregarded by the judge is for the opposing advocate to prove to the court that this occupational therapist is not knowledgeable and/or experienced in the matter discussed – in other words, cannot be considered as an expert witness[9]. Most advocates are skilled and talented in the art of cross examining expert witness for this very purpose. They question the occupational therapist's knowledge and experience in administration and interpretation of assessment methods/equipment, standardised tests, the use of equipment/treatment methods, previous exposure to related pathologies and treatment. Even seemingly unrelated knowledge is probed such as what is the difference between probability and possibility or assessment and evaluation or squatting and crouching. Any weakness in the therapist's knowledge and experience is looked for and exposed. They look for vagueness, inconsistencies or contradictions in reports and joint minutes. They test the parameters of the profession's knowledge base and are alert to un-objective reporting, weak ill-considered arguments and unsubstantiated conclusions. All of this is done to ensure that justice prevails and that expert witnesses really are experts[29]. This test of credibility is (in most cases) open to the public and all reports and joint minutes are 'public documents'. What happens in a court (e.g. the interaction between an advocate and an occupational therapist), can be published in newspapers and reported on radio or any other form of public media. In addition the conduct (and reputation) of an occupational therapist is circulated by word of mouth amongst relevant role players and more often than not a single therapist's conduct is represented as the profession's e.g. "In the matter of abc vs xyz the occupational therapists contribution was most helpful in supporting our legal argument." or not. A positive example was the much publicised matter of Motshabe vs Terre'Blance[30]. In a courtroom packed with journalists and interested public, the occupational therapist presented a professional and thorough evaluation of the functional damage a client sustained after a personal assault. In the process the profession of occupational therapy received widespread positive exposure.

Where it is true that an individual occupational therapist's conduct does not characterise the profession as a whole, it cannot be denied that the individual therapist represents the profession at any given point in time; the more public this representation, the greater the impact on the profession's reputation. When occupational therapists work in the medico-legal field they take themselves (and collectively the profession of occupational therapy) onto a level of public scrutiny that is rare for a profession usually working in hospitals, schools and private practices. The responsibility of the individual therapist and the reflection on the profession as a whole is obvious. As the scope of work for third party claims diminishes (an expectation resulting from the amended Road Accident Fund)[3] an increase in personal injury claims is foreseen. This is where the occupational therapist's (and other medical professionals) accountability for patient/client intervention or lack thereof will be tested in courts. In cases in which practice negligence is proven the quantum/extent of the damage suffered by the client as indicated by another occupational therapist who acts as an expert witness will come into play. Every therapist is now open to this level of public scrutiny.

This should not be a cause for panic that frightens therapists into inactivity. The many positive rewarding experiences of occupational therapists already in this field can be passed on to colleagues. These therapists' opinions carry the weight of lessons learnt, that could help to mobilise and energise the profession into meeting the new challenges, well prepared and confident.

METHOD

No formal research was done and no methodology was used for this article. At best it falls into the qualitative research epistemology (philosophy of knowledge) where the "instrument of research is the human mind"[31:10] with an interpretivist perspective as the author shares a subjective awareness and consciousness of her experiences as a vocational rehabilitation clinician and medico legal practitioner to understand and find meaning of the experiences for personal as well as professional worth[32,33]. The article's content is chosen by the author, from the author's twenty years of experience, working in the medico-legal field. During this time the author had been part of and exposed to numerous discussions, experiences (her own and those of colleagues) and opinions (individually and in groups) while working with occupational therapists, attorneys, advocates, judges, industrial psychologists, orthopedic surgeons, neurologists and (most importantly) clients. These have accumulated over the years in the memory of the author, stored in patient files, in personal journals and (when preparing for this article) in formal notes by the author. Themes were often found to be re-occurring and problems re-visited. These main themes and problems are addressed in this article.

The participants interviewed for this article were specifically chosen by the author by purposive sampling[32]. Many of the opinions given have become generic during the authors 20 years of discussions in this field, but some individual contributors were chosen by the author for their reputation, years of experienced in the field or for having raised valuable points of opinion. Individual contributors contacted were: two advocates, five attorneys, eight occupational therapists, one industrial psychologist, one orthopedic surgeon and two clients. These individuals were contacted by the author and the reason for and content of the article was discussed by them, those that agreed to participate were sent an electronic discussion format with open ended questions requiring a narrative response to stimulate their thoughts and opinions. Five contributors declined to participate, eight did not respond to the electronic format, two wished to remain anonymous and four gave consent to be named. All contributors (anonymous and named) were sent a copy of the final article for their perusal and approval before submission to this journal.

The opinions of the contributors are their own and do not necessarily reflect the opinion of the author or other interviewees.

Limitations of this article's content that have to be taken cognisance of are:

1. The subjectivity of an experienced reality and personal interpretation are central to this article and all associated limitations would apply.
2. There has been no testing or validation of the logic used and the opinions formed in this article.
3. The author feels herself qualified to form and share an opinion on the subject matter but acknowledges that she has colleagues with similar and in many cases superior experiences and interpretative abilities. Their opinions should be heard and valued.

RESULTS

Reasons why occupational therapist do Medico-Legal work:

Every occupational therapist the author had asked the question; 'why they do medico-legal work?' had (with varying degrees of priority) stated that they do it for the financial benefit. Medico-legal work is currently the most lucrative of all occupational therapy work.

Other reasons given were:

"The work is exciting and the parameters within which you work predetermined and exact."

"The adrenalin rush when being called on to testify as an expert witness is addictive and I love having my findings tested. It keeps me sharp and on my toes. It brings out the best in me."

"After a few cross examination experiences I find I apply a more critical mindset to all my work. I am constantly 'checking' what I do – thinking; what is the best way to test/treat this problem and am I doing this right? How will I explain this to someone who knows nothing of occupational therapy? I am generally more careful, but not in a

bad way. It makes me feel good to apply my mind to tasks that had previously been almost routine and mindless."

"As an expert witness I am treated with respect and deference by the lawyers and advocates which is a welcome change from the hospital, where I am often made to feel like an inferior, or not essential, member of the medical team."

"I did not enjoy doing medico-legal work and stopped doing it. It was too stressful and demanding on my after-hours time."

Individual occupational therapists shared the following of their experience in medico-legal work:

Lee Randall (34) 13 years of experience in medico legal work:

"I enjoy doing medico-legal *work. Having to analyses and synthesize the large amounts of information to try and get to the truth. I feel it makes one have to critique one's own practice, assumptions, tools and methods on a constant basis and return time and again to occupational science concepts as our professional knowledge base. It keeps me on my toes, in relation to current affairs, labour market realties, diagnostic conditions and their prognosis, functional norms and the evolving nature of occupations (including some weird and wonderful work occupations and leisure occupations).*

Medico-legal *work is 'high risk' work for occupational therapists who are trained to be client-centered but must now step into a justice-centered paradigm and not all occupational therapist's are cut out for it.*

I think many occupational therapist's perceive medico-legal work as a lucrative niche without having a clue as to how stressful and demanding it is. It is unwise for any occupational therapist to enter medico-legal work without sound clinical experience and either further training

I find it frustrating when colleagues are running a part time informal practice which is not adequately resourced to fulfill the demand of medico-legal work.

I also have grave problems with practices where junior occupational therapist's do much of the evaluation and a senior occupational therapist signs off the report without having directly been involved with the evaluating of the client."

Happy Shibambo (35) 19 years of experience in medico-legal work:

"To work in this field the occupational therapist needs to be able to be objective and have the ability to use therapeutic reasoning. They should only do this once they have a wealth of experience. Their writing skills and computer literacy needs to be good as well. You also need to spend a lot of time reading up and preparing for court as this is important for confidence and conduct in court.

Despite a lot of experience I still keep my occupational therapy knowledge up to date by reading books and journals and attending as many conferenced I can get to. Which is the positive aspect of this type of work is that it's an ongoing learning experience. With each case I learn something.

The stresses of this work are: deadlines associated with matters that go to court, doing minutes with occupational therapists who have very little experience and/or behave like lawyers."

Rene Walker (36) six years of experience in medico legal work:

"I feel occupational therapists in medico-legal practice, have to have advanced training and appropriate clinical experience especially with regards to the vocational and care aspects of an injured person.

The role of the occupational therapist is an ongoing problem and attorneys are not always clear on what we can offer or even why they refer to us.

I enjoy doing joint minutes with another occupational therapist, to be able to critically think through what we recommend. It has also been my experience that in more than 80% of cases there is no huge discrepancy between my report and the opposing occupational therapists report, which shows that we are truly objective and well trained in our assessments.

What I do find stressful is going to court and being cross examined as this requires thinking on your feet.

I feel frustrated when I am unable to assist a client in a practical way when it is clearly needed and I wonder if the recommendations that I made are ever implemented. There is no follow up. It feels un-therapeutic."

Phumla Motsa (37) one year of experience in medico-legal work:

I enjoyed doing medico-legal work during the time I was in the medico-legal field as I worked 'full time' in a rehabilitation center and felt I had adequate up to date clinical experience. Medico-legal work builds character and teaches critical thinking. It is exciting work and holds professional development benefits.

*It is important to have the right experience and skills, however it is not the exclusive domain of a few elitists or chosen therapist and everybody should be given the opportunity to learn the skills required if they choose to. I feel mentoring and formal training for this is the answer but it needs to be formalised and structured. There is no exam or board one needs to go through. Occupational therapists would be more effective if there was some sort of screening process to ensure that the court hears the opinion of an actual expert in the field. The criteria of what constitutes an 'expert' would also need to be d*ebated and discussed.

An area of concern in medico-legal work is the ability of the therapist to effect change in the lives of patients/clients they assessed. For example how many clients with the potential to return to work actually manage to do so without the professional assistance and guidance stated in the reports?

The following experiences illustrate some of the concerns described above:

The author recently (2011) met an occupational therapy colleague while they were waiting, in separate matters, to be called to testify as expert witnesses in one of the High Courts of South Africa. The colleague had qualified as an occupational therapist from a South African University in 2007. She then did her Community Service year in a Psychiatric Hospital in 2008. Thereafter she worked as a Claims Assessor in the Insurance Industry (a work that has no direct client/patient contact). Resigning in 2010 she set up her medico-legal private practice, working alone. She had bought two work samples, a Valpar 201 and Valpar 9, rented office space close to the courts and started marketing her services amongst attorneys. She said her practice was doing well but she felt she had 'wasted her money' buying the work samples as she never used them. She felt she got 'all the information she needed' from a good interview with the client. She did feel she should go on some 'legal courses to learn more about the law' but was not interested in 'the occupational therapy side of the work'. She was not a member of OTASA and did not feel she needed to attend any of the support groups or workshops offered by occupational therapists.

With no physical clinical experience, one year community service psychiatric experience and two years experience as a claims assessor this occupational therapist was being used as an Expert Witness in one of the High Courts of South Africa.

An occupational therapy colleague who has worked in a paediatric practice for 20 years and has 7 years of experience in medico-legal work recalls the following: She was involved in a paediatric medico-legal case for the plaintiff (the injured child). Another occupational therapist had been instructed by the defendants in the matter, to assess the same child and had been given the first occupational therapist's report as back ground information. When they were requested to do joint minutes it was glaringly obvious that the first report (the plaintiffs reports) had been 'copied' with a few 'cosmetic' changes and handed in as a 'defendants' report. At the end of the legal matter the invoice of the occupational therapist for the defense (who had put virtually no effort or original thought into the matter) was almost double that charged by the first occupational therapist for the plaintiff.

In another incident the author was asked to do an assessment for the plaintiff, a teacher from a rural area, who had been injured in a motor vehicle accident and who had sustained a head injury as well as orthopedic injuries. During assessment the signs of frontal lobe injury were overt and easily picked up with a formal cognitive assessment, work samples and activity participation. The occupational

therapist who was asked to assess the teacher for the defense, saw him two weeks after the author. The request for joint minutes was given a week before the trial date, three months later. The occupational therapist for the defense had not yet written his report. He was contacted telephonically and indicated that he felt the patient was 'exaggerating' his cognitive and his orthopedic problems. The day before the trial the defendant's occupational therapy report was still not available and it was not possible to reach him telephonically. The matter was settled without occupational therapy joint minutes or the report from the defendant's occupational therapist.

Ethical questions that have been points of ongoing discussion in medico-legal forums and amongst occupational therapists working in the field:

Many occupational therapists in medico legal practice do only this type of work. A client is seen for a few hours of intense assessment and evaluation. There after a report is written in which future rehabilitation and therapeutic intervention is recommended, work place accommodations or adaptations are discussed and recommended, assistive devices recommend with prices and details of service providers. Occasionally a work or home visit is done. In most practices no follow up is done. The issues which arise from this and require ethical reflection are two-fold:

1. No attempts are made to see if the client has had any insight or counseling regarding the recommendations made. No hand over to another therapist to implement the suggestions made or to offer therapeutic support for the client is done. Depending on the outcome of the case the money for suggested rehabilitations and accommodations and assistive devices is available but nobody including the occupational therapist checks what the money is being used for.
2. Many see a variety of pathologies/injuries and in some cases have little or outdated knowledge or expertise in the pathology. How much of an expert is an occupational therapist that has no experience in the assessment and treatment of the type of injury in question? After a few years of doing only medico-legal work she/he will be out of touch with the latest theoretical development, clinical practice and treatment outcomes for a specific injury/pathology. Yet despite this she/he is expected to give an 'expert opinion' on the matter. For example an occupational therapist, who has never clinically worked with for example a head injured person, cannot be expected to predict treatment outcome and know the effectiveness of various assistive devices. Without experience in placing or redeploying people with disabilities into the labour market they cannot be expected to indicate vocational ability or comment on job accommodation and related assistive devices. Such experience has a 'shelf life' and if not 'practised' it becomes outdated and irrelevant.

Another issue which is of concern is whether some occupational therapists lose their independence and objectivity if they work repeatedly or exclusively for a specific group of attorneys and develop a perception of 'being paid by the attorneys'. Despite this they should not lose their reputation of objective independence and become known as a 'plaintiff' or a 'defendant' occupational therapist. They should not allow attorneys to dictate their findings or opinion.

Surrogate assessments are also a matter of concern. Some occupational therapists work large 'volumes' of clients and use other therapist to do the testing and assessing of clients and write large parts of the report. They then sign the report and represent it in further development of the matter. The extent and degree of such 'surrogate assessment' varies but to what degree can this be allowed before it becomes ethically un-exceptable?

The absence of fee guidelines and/or fee structures is also of concern. A therapist can charge whatever they like for medico-legal work and in many cases their fees exceed the fees charged for similar assessments but paid by medical aids or insurance companies. How can the 'hourly tariff' of a single therapist change, depending on if she/he does a paediatric assessment for a medical insurer or a pediatric assessment for medico-legal purposes? How can the cost of a functional capacity evaluation done for medico-legal purpose be more than double/triple that of a functional capacity evaluation done for an insurance company?

Advocates and attorneys who have worked with occupational therapists as expert witnesses have expressed the following opinions:

"The occupational therapist offers a functional practical contribution to a case especially when quantifying work related damages."

"Occupational therapists often 'interpret' the findings of the doctor's reports into a practical reality that the court can understand and apply."

"Occupational therapists are the 'most affordable and available' of all expert witnesses e.g. it is 'cheaper' to have an occupational therapist on standby for a possible court appearance and pay him/her the 'reserved for the day' fee than doing this with an orthopedic surgeon or a neurologist."

"Occupational therapists often know the clients the best of all medical experts involved in a case. They spend more time talking to them and their families and actually go to the clients' homes and work places. It is of tremendous benefit to have an expert witness that can say 'I saw the clients place of work and x, y, z need to be done to enable him/her to go back to work'.

All of the contributors in the section above wanted to remain anonymous but the following two advocates, while wishing to remain anonymous for the article's purposes, expressed willingness to enter into debate with anyone in a private capacity regarding their expressed opinions. They can be contacted through the author.

Advocate A is a specialist in Family and Child Law. When questioned on his experience with occupational therapists as expert witnesses he offered the following opinions: "*The occupational therapist as an expert witness is over-rated and, in my opinion, they are doing medico-legal work only for the money. In my experience, they write long-winded reports full of non-committal rhetoric aimed at keeping themselves out of court instead of helping the legal teams to quantify and sort out the claimant's case. There is very little 'objective' substance to their reporting and they tend to give 'subjective' findings and observations. They also make poor witnesses as they tend to be nervous and meek once placed on the stand. They are easily bullied and rattled when cross examined by a skilled advocate.*"

Advocate B has worked with occupational therapists in road accident fund claims. He expressed the following: "*Unfortunately the general feeling in the legal fraternity is that expert witnesses, and this applies not only to occupational therapists, are 'hired guns' and can be told what to say and write in their reports.*"

CONCLUDING DISCUSSION

Experienced occupational therapists agree that medico-legal work sharpens a therapist's testing, interpretation, writing and reasoning skills. The experience (positive or negative) of having being an expert witness hones your skills and leaves you a better occupational therapist than you were before. In agreement with this the author is of the opinion that the expected increase of therapists' accountability, with the new legislation, holds a positive result for the profession in the long run. Our patients/clients stand to benefit the most as occupational therapists apply "unquestionable professional integrity and sincerely embrace the ethical principles that the patient/client's needs take precedent above all else"[4:34]. As our patients/clients' needs are met, our profession stands to benefit through increased credibility and demand for our services and recognition of our profession in whatever field of practice they are in. However, a positive attitude is not enough and individual therapists, as well as the profession as a whole, need to take note of the experiences of therapists who have engaged with medico legal work and meet the challenges cognisant and prepared.

In medico legal work the profession of occupational therapy has had a unique opportunity to establish its credibility as experts in

the assessment and identification of functional ability as it has been affected by various pathologies and injuries. This credibility is captured as public documents in every case an occupational therapist was involved in. It contributes (as does research and publication) towards establishing occupational therapists as leading experts in functional ability/disability at a high level of public exposure and needs to be guided and managed as rigorously as research and publication is. The ethical issues that have arisen in medico-legal work cannot be ignored without implication to the profession as a whole. This is a good time to 'call to order' and organise occupational therapy in medico-legal work.

Formalising and ensuring the standard of medico legal practice cannot be done by an external organisation or legislative body, it needs to be attended to from within the profession itself, starting with current medico-legal practitioners. Occupational therapists doing medico-legal work carry a collective responsibility for the standards of practice. The more experienced a therapists is, the greater their responsibility. Medico-legal practices and interest groups need to develop an inclusive-ubuntu mentality rather than an exclusive-elitist one. Occupational therapists working in medico legal work should see colleagues as team members rather than competitors. Medico-legal discussions, the sharing of experiences, relevant knowledge and information need to be opened up and be accessible to all occupational therapists. In South Africa the profession of occupational therapy is too small and vulnerable to justify the jealous hoarding of knowledge and information under the pretext of protecting intellectual property.

The author, in agreement with some of her colleagues, is of the opinion that the following strategies will contribute towards improving the standards of occupational therapists medico-legal work in South Africa:

1. **Formalising the content of pre-graduate tuition in fields relevant to medico-legal work** will ensure therapists graduating from the various universities will have the same levels of skills and allow them equal opportunity to access additional training and experiences necessary for medico-legal work
2. Medico-legal work **needs to be** *a part* **of a clinical practice relevant to medico-legal work** such as an adult rehabilitation practice or a pediatric practice or a vocational rehabilitation practice. From such practices only real experts qualified by the rule of 'experience trumps all' should be used to represent the profession in legal matters.
3. An expert (in the author's opinion) is someone with established, consolidated and up to date knowledge in a specific field of clinical practice indicated by formal qualification and CPU's and at least two years of practical experience in this field. **Formalised qualification and registration for such experts should be implemented** similar to what is currently done with other areas of occupational therapy specialisation.
4. The practice of **mentoring occupational therapists who want to go into medico-legal work** should become a norm and more widespread. How to mentor other occupational therapists within a field of specialty such as medico-legal work should be formalised and structured, researched and published so that the benefits of this process permeates the profession, perpetual hand-over of knowledge and experience and restricting the repetition of mistakes.

As the specialty of medico-legal practice benefits from the suggestions made, the public sharing of knowledge and experience from this field of practice will equip all occupational therapists with the skills and the confidence that, should the occasion demand and enable them to present their case and explain their conduct with confidence and integrity, in any legal forum. In this way an individual occupational therapist will if/when exposed to legal proceedings, come away from the experience strengthened and inspired. The profession as a whole and all our patients/clients will in this way benefit from current and future medico-legal practice and face public scrutiny of our profession's clinical conduct with confidence.

ACKNOWLEDGEMENTS:

To all the clients I have ever assessed and appeared for in medico-legal work: Thank you for entrusting me with the responsibility. More often than not it was I who came away enriched from our contact. This article is primarily aimed at improving my profession's interaction with and service to you.

To all my occupational therapy colleagues and students, especially those at 'The Work Link', and to all the industrial psychologists, doctors, judges, lawyers and advocates I have had the privilege of working with: I have shared some of the worst and some of the best experiences of my career. Thank you.

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Corresponding author

Hester van Biljon
vanbiljon@mjvn.co.za