

MENTAL HEALTH ISSUES IN LEGAL AID CONFERENCES

I suppose to this gathering of the converted it goes without saying that the primary purpose of encouraging Legal Aid clients to attempt to resolve their issues through conferencing – of course apart from the obvious cost benefits - is to allow them to be involved in the decision making process, and thereby to “own” the solution and hopefully be more likely to comply with the agreement. From Legal Aid’s perspective, I guess that the ultimate measure of success is that the dispute goes away and so do the parties.

Implicit in these goals however, is the fact that the individuals involved in conferences need to possess certain intellectual abilities and sufficient psychological stability to understand the issues and the process, to negotiate, and to make decisions.

I think that when Bernadette asked me to talk to you she had in mind looking at ways you could pick up mental health issues which might contra-indicate a successful conference, as well as those which, with the benefit of prior knowledge and special preparation, might not necessarily predict failure.

As I understand it your initial contact with the parties to a legal aid conference is in the form of the Confidential Client Assessment sheet filled out by each of the parties, and also in the rather similar but not identical, Confidential Solicitor Conference Assessment sheet, completed by the parties’ solicitors. Also, I understand you probably have telephone contact with those who choose to phone you about specific issues. I imagine that these issues are more likely to relate to the alleged mental health of the other party than to their own mental health. No doubt you will correct me if I am wrong on that score

- **Illiteracy:** If the form is not returned or the client telephones and says it will not be returned because he/she is illiterate, then this of course is an issue in itself whether or not there are any underlying mental health

issues. However, it might be an early indicator of problems with intellectual capacity – that is, of a low IQ – and this may be flagging the possibility that this person is not going to be capable of understanding the issues and will therefore be disadvantaged during the conferencing process, especially if self represented. For these people a more traditional process, whereby a decision is imposed by an arbitrator who is hopefully benevolent and fair, may actually be more equitable because of the power imbalance created by their mental disability.

- **Mental Illness:** Question 5 of your form says, *“Do you or the other person have any health problems that may affect your ability to discuss your differences (for example, alcohol or drug use/psychiatric or other illness). If yes, please provide details”*. I have never seen one of these forms completed but I imagine that people sometimes reveal of themselves that they suffer from depression or anxiety or possibly even such disorders as schizophrenia or bipolar affective disorder. However, as I said before, I expect that they would more frequently disclose these sorts of difficulties in relation to the other party. My own experience, for example, is that it is relatively common for there to be claims that the other party is **“manic depressive”**, this being the now outdated term for bipolar affective disorder. Often the so called patient is merely being diagnosed as having a mental illness because they have demonstrated fluctuations of mood in the context of a bitter separation. Sometimes, however, the claims are genuine. Remember that often the sickest individuals have the least insight and might not see themselves as the ones with the problem.
- **Assessing the Situation:** I don’t propose to give you a crash course on mental illness, but if there are suggestions of ongoing psychiatric treatment, then you might need to obtain further information. You could even need to ask for an authority from the party or their solicitor to allow you to speak with their treating GP or psychiatrist to establish their

capacity to engage in a conference. If the person is significantly depressed and/or suffering an anxiety disorder, their concentration is likely to be poor, they might have difficulty reading documents – such as lengthy affidavits (even your forms), they are likely to be somewhat dithering and disconnected and may even give the appearance of having an intellectual handicap (“pseudo-dementia”). Psychotropic or mind-altering medication might have a sedating effect. All of these features can contribute to a power imbalance during a conference.

- **Phobic Anxiety Disorders:** represent a group of disorders of which you probably should take particular note. Someone with agoraphobia for instance, is likely to find it extremely difficult if not impossible to leave their home. Even if their agoraphobia is not so severe as to prevent them from leaving the home, it may be that they are nonetheless extremely anxious, perhaps to the point of suffering a panic attack, when they attend for a conference. Similarly, phobias involving fear of travelling in motor vehicles, fear of lifts, fear of enclosed spaces and the like, can easily serve to make a person appear to be lacking in interest in the process or to be detached or aloof, when in fact they are struggling to maintain composure.
- **Schizophrenia and Other Psychotic Disorders:** Should a client indicate that they or the other party suffer from schizophrenia, bipolar affective disorder, or another form of psychotic disorder, such as a delusional disorder, then it is most important that there be some medical input supplied to you prior to the conference. Some of the modern medications for treating these types of disorders are very effective and have minimal side effects. If a person’s psychosis is controlled on one of these medications then the chances are that they might be able to negotiate quite effectively on their own behalf or with a solicitor. They are just as likely to be of normal or above average intelligence as anyone else in the community. However, if they are not reliable with taking their

medication, the medication does not suit them, or they are on one of the older types of anti-psychotic drugs which have the effect of causing them to appear confused and somewhat sedated, then they could be at a very grave disadvantage in the conferencing situation – especially, if attending without a lawyer. If they are undiagnosed and/or untreated, they might be out of touch with reality to the extent that they do not talk sense, believe strange and outlandish things are happening or even that their ex (or anybody else at the conference for that matter) is out to kill them. In the latter situation they could be dangerous.

- **Post Traumatic Stress Disorder:** This is a mental disorder which might not be directly reported to you but might be reflected in the answer to question 6 on the client assessment sheet, relating to the level of conflict / family violence during the relationship. Also, clues can be obtained from the answer to whether or not there has ever been a Protection Order, an Application for a Protection Order or a breach of a Protection Order. If there has in fact been a history of domestic violence, then the victim of that violence is likely to have been emotionally traumatized and could well be suffering post traumatic stress disorder. If this is the case then they are likely to feel highly anxious in situations which bring back memories of the domestic violence. Seeing their ex-partner or even attending a conference where that partner is present but in another room, can be sufficient to overwhelm them with anxiety and panic. This, of course would represent an extreme power imbalance. It is the classic situation in which conducting the conference in separate rooms is likely, but this might still not be sufficient to ensure an equitable process.
- **Personality Disorders:** Much is said about personality disorders – particularly in Family Reports. You might be briefed with a copy of a Family Report if there is a Child Representative in the matter. If the report writer is a psychologist or a psychiatrist, then there might be a diagnosis or suggestion of a personality disorder for one or the other or both parties.

The main thing to remember about people with personality disorders is that they have great difficulty experiencing empathy – that is, placing themselves in the position of another person and trying to see and understand that other person's point of view. People suffering with these disorders are classically difficult to relate to – whether they have a narcissistic personality disorder, which means that they are extremely egocentric and see everything only from the point of view of satisfying their own needs or wants or have an anti-social personality disorder which causes them to behave in destructive ways which do not take account of the other members of the community or society. There is a wide range of personality disorders but they all translate into “difficult” people. These difficult people are not good candidates for legal aid conferences. They probably need decisions to be imposed on them.

- **Alcohol or Drug Use / Abuse:** I'm assuming that the reference to this in your forms means “abuse” in terms of alcohol and “use” in terms of illegal drugs. Alcohol and illegal drug abuse are not likely to be referred to in the documents by the person with the problem. Your first indication that there might be a problem of this nature is likely to come from the other side. As you would no doubt be aware, false claims of this nature are very easy to make and more difficult to refute so you should not assume anything unless you have some corroborative evidence. Should such a claim be made I would be inclined to contact the person making the claim and try to have them quantify the level of use being referred to. If they say that the other party is an alcoholic, ask them what they mean. How often does the person drink? When they drink how much do they drink? What behaviour do they engage in when they drink? Are they violent when they drink? etc. If they use illegal drugs, which drugs do they use, how frequently do they use and what are the effects on them of this drug use? Obviously, if someone is going to turn up to a conference intoxicated or “off their face” on drugs, then gains are likely to be minimal. It could be a huge waste of everyone's time. If the drug addicted person is in need of a fix then they

are likely to be distracted and might agree to something for the wrong reasons.

- **Brain Damage:** If there is some indication that a party has suffered brain damage as the result of a head injury, brain tumor, or some other organic cause, then you might need to be alert to problems such as slow cognitive processing (**explain**), fatigue, poor comprehension, poor verbal expression, or even lack of impulse control. In the latter circumstance socially inappropriate behaviour is common and can include explosive outbursts, insults, etc. You are probably well advised to seek authority to speak to the person's treating health professional before making a decision as to whether to conference or not. You would, of course, need an authority from the client to do that.
- **Other Early Indicators:** One of the most obvious indicators that a person is not a good candidate for alternative dispute resolution is their being explosive or aggressive towards you, either in their written application or when spoken to on the telephone. Poor impulse control and excessive aggression can serve as warnings that the person is not likely to possess the personality features necessary for them to be objective about issues and to contain unresolved emotional conflict in the interests of attempting to reach a compromise solution.
- **Ways of Getting Around Mental Health Issues:** I've already mentioned contacting doctors. You might also like to contact any counsellors or other mental health professionals who have been involved with the person who is causing you concern. Other queries as to the mental health of the parties, might relate to their involvement with the Department of Families. The children of people with mental illness or mental disability are likely to come to the attention of the Department by virtue of notifications by one of the parties or by other interested and concerned persons.

- Conducting conferences totally in two rooms is another way of ensuring that people suffering from mental illness and/or substance abuse disorder are not disadvantaged by a power imbalance. If it is considered that coming together in the one conferencing room is advantageous, it might be necessary to instruct a party to indicate to the chairperson or their solicitor if and when feeling overwhelmed, so that the conference can resume in separate rooms.
- Ensuring that all persons involved are not constrained by a tight time schedule so that frequent breaks can intersperse the conferencing process, might help.