

'EXPERT WITNESS LIABILITY'

From: Findlay Turner
To: [IAIN MCKIE](#)
Sent: Friday, February 04, 2005
Subject: Scots Law Commission

Dear Iain

Just to let you know I recently raised the possibility of a review of the law regarding compensation for those suffering like Shirley from mistakes by government employees while giving expert evidence. This was prompted by the recent case of the mother imprisoned for 2yrs for infanticide in England based on flawed forensic evidence who has been refused compensation by the Home Office and whose case I felt had similarities to Shirley's.

My question was if professionals in the health service as an example are indemnified against error by the state why not state servants in other spheres such as fingerprint experts and surely the law required review. I indicated that the issue of compensation should be considered apart from the merits or otherwise of the case or the need to apportion blame on the grounds that even the best of us make genuine mistakes from time to time by an independent tribunal in a similar way to criminal injuries without the need for expensive litigation by injured parties.

Whilst the request has been rejected on the grounds that their work programme for the next five years had been established they have said it will be considered for future review. I find it interesting that they did not say it was a matter outwith their remit or that there was no need for review which infers to me that they agree there is something to be looked at.

If that is the case I wonder if there is any chance of getting a member of the legal establishment or an opposition law spokesman to go public on the issue.

Regards

Findlay.

From: [Iain McKie](#)
To: [Findlay Turner](#)
Sent: Friday, February 04, 2005
Subject: Scots Law Commission

Dear Findlay,

Great to hear from you and as I might have known you continue working away in the background.

I am intrigued by your idea for a number of reasons.

The fact is experts make mistakes - it is in the nature of life and instead of seeking to destroy them there should be the opportunity to admit mistakes

and compensate the victims without the current trauma that accompanies challenging an expert and any resultant civil action.

The amount of public and private money wasted on these exercises must be enormous if Shirley's case is anything to go by. We must already be into the £millions and climbing.

The criminal law protects expert witnesses to an unusual degree making it virtually impossible to sue them because of any erroneous conclusions given in evidence. This is extremely unfair on the victims of their 'mistakes' and does little to encourage the various professions to police themselves more effectively and improve their accreditation, supervision and training procedures.

The myth of infallibility has been well and truly blown apart with the child death injustices in England and cases like Shirley's and it is clear experts are going to experience more and more challenge. I can also understand some experts being reluctant to present evidence given the inexact state of some forensic sciences and areas of expertise because while they cannot be sued their reputation is torn to shreds.

All in all the area of expert witnesses is ripe for a political or other initiative.

I will circulate this correspondence with a view to attracting interest in the debate.

Best wishes,

Iain

From: Findlay Turner

To: [IAIN MCKIE](#)

Sent: Friday, February 04, 2005 1:22 PM

Subject: Re: Scots Law Commission

Dear Iain

Thanks for your response.

I agree with what you say.

I think I would emphasise that I think it is right in principle that those who give evidence in good faith whether as witnesses to fact or as experts assisting the courts to interpret the facts should do so without the fear of some penalty in the event of genuine error.

The law does have its methods of dealing with those who maliciously mislead the courts in criminal cases and in the event of someone suffering from perjured evidence or miscarriages of justice as a result the state seems to readily recognise the right to compensation but not apparently if an expert makes a professional error.

The offended party suffering at the hands of an incompetent expert in civil proceedings has remedies but not in criminal. This seems strange. The logic seems to be that provided experts in criminal cases, no matter how incompetent or out of step with current standards, express opinion in good faith and it is not upset in court, limitless numbers of people can end up in jail or be destroyed without compensation. The result of this crass thinking for example is that as I understand it there will be quite a number of innocent mothers jailed as the result of evidence by one incompetent paediatrician in England who will go uncompensated or will have to resort to expensive legal action which may not succeed.

If society can accept that people including experts from time to time can and do make mistakes it should be prepared to pick up the bill when such mistakes occur. The present situation defies reason as does the apparent lack of government action to do something about it.

This does give rise to the question why? Is it unreasonable to assume that the real answer relates to saving government money in compensating innocent victims as with Gulf War syndrome and many other such situations which the government wriggles out of.

It is up to us to tell the government what to do with our money. I would rather compensate the innocent than pay yet more lawyers to argue about it.

Regards

Findlay.

From: [Iain McKie](#)
To: [Findlay Turner](#)
Sent: Monday, February 07, 2005
Subject: Scots Law Commission

Findlay,

Sadly I feel you are right.

The motives are financial and partly not wanting to open the floodgates.

We must protect the majority of experts acting in good faith but at the same time ensure that we are protected against those whose eminence and infallibility precedes them into the witness box.

I look forward to meeting you in the not too distant future.

Best wishes,

Iain