

Therapeutic jurisprudence-continuous quality management and positivity in the civil justice system in Sweden and UK

Aim

Previous publications^{1,2} have developed the theme of Therapeutic Jurisprudence in the context of the Civil Justice system.³ In this paper we summarize and develop further our collaborative thinking in this innovative area in the UK and Sweden.

Keywords: therapeutic jurisprudence, Swedish civil justice, litigation, TQM, diagnosis, causation, prognosis, weighing up evidence, lawyers, barristers judges

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Introduction

The eight key aims of civil justice are:

- a. Be just in the results it delivers
- b. Be fair in the way it treats litigants
- c. Offer appropriate procedures at a reasonable cost
- d. Deal with cases with reasonable speed
- e. Be understandable to those who use it;
- f. Be responsive to the needs of those who use it
- g. Provide as much certainty as the nature of particular cases allows and
- h. Be effective: adequately resourced and organised

The key players in civil litigation are shown below in Figure 1. The Multifactorial process of civil justice is shown in Figure 2. For the concept of Therapeutic Jurisprudence to have any meaning it must address the recognised components of Total Quality Management⁴ as illustrated in Figure 3. The agenda for change which we intent to elaborate in the experimental seminar in Stockholm University in December, this year, involves the following areas

- a. Elaborating at TQM model for legal services involving measurement of litigation culture and values and developing strategies for Process improvement, Customer responsiveness and Staff empowerment.
- b. Increasing lawyer awareness of 'diagnosis, causation and prognosis' concepts.
- c. Increasing Communication skills/styles for lawyers and Judiciary including conflict resolution skills.
- d. Reducing effects of litigation stress on claimants.
- e. Increasing claimant information about litigation processes.
- f. Enhancing therapeutic nature of case conferences and case discussions.

- g. Enhancing inter-disciplinary expert collaboration via Joint Opinion process (same discipline; different discipline).
- h. Increasing understanding of lawyers and experts of concepts and practices of neutrality and impartiality, and of certainty/uncertainty.
- i. Increasing understanding of issues of credibility, truthfulness and reliability in evidence.
- j. Relevance of psychological therapy techniques to lawyer-claimant interactions and relationships (interviewing styles; empathy skills).
- k. Increasing awareness of logical models for 'weighing up evidence'.
- l. Supporting the developing experience of litigators, judiciary and experts via accreditation, CPD and further training.
- m. Supplementary complaint management with peer supervision and preventative debate.
- n. Supporting 'return to work' initiatives and therapy both for 'external' customers (claimant) and 'internal' customers (the legal and expert professionals).
- o. Encouraging claimants to take responsibility for their rehabilitation and therapy.
- p. Enhancing claimant involvement in their own litigation.
- q. Understanding advantages of collaborative lawyering and cooperative bargaining and how they contribute to a Therapeutic Justice approach to negotiation.
- r. How to interpret the opinions of external experts.

Following debate we intend to develop a series of likert-scale short questionnaires which will develop data on how professionals currently see the state of TJ and TQM in their own place of work. This will be carried out in pilot studies both in Stockholm and in London. An example of one such scale is shown in Figure 4. These will reflect the core values of a challenging TJ/TQM approach to legal services as Figure 5 illustrates: and will be consistent with the overall model of TQM as applied to legal and medico-legal services Figure 6.

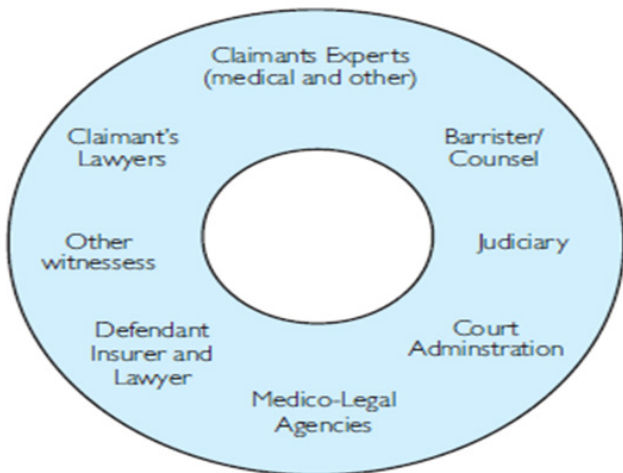


Figure 1 The key players in civil litigation.

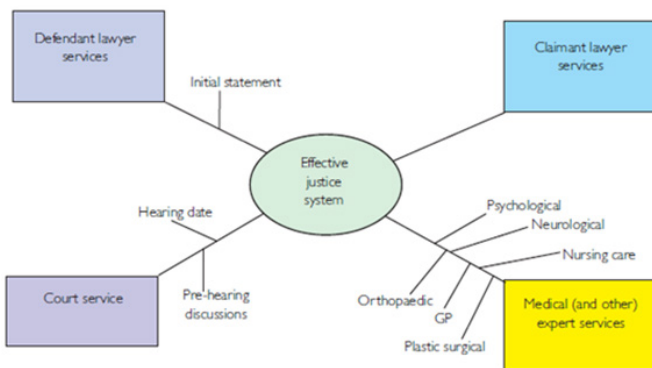


Figure 2 Multifactorial process of civil justice.

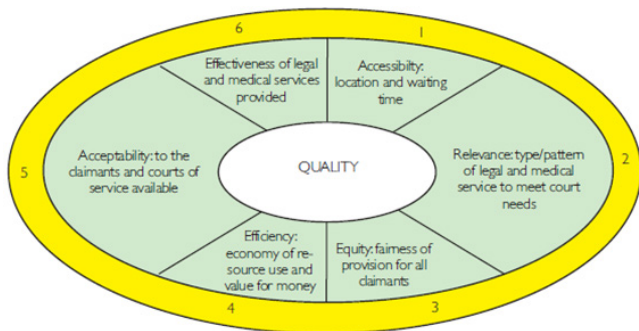


Figure 3 Components of quality in medical-legal services.

Poor Communication	1	2	3	4	5	Good Communication
Not interested in clients	1	2	3	4	5	Interested in clients needs/problems
Not interested in other other professionals	1	2	3	4	5	Interested in proffessionals needs/problems
Core values			TQM core values			
Best service possible for each claimant. Professional development. Effective teamwork.			Putting claimant first. Meeting and exceeding patient expectation. Getting services 'right first time'. Recognising staff value			

Figure 4 Therapeutic jurisprudence assessment tool: sample.

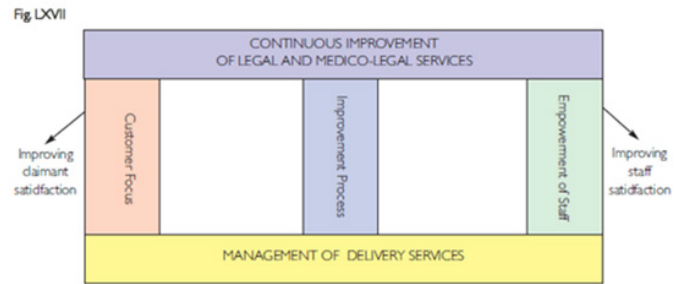


Figure 5 Illustrates: and will be consistent with the overall model.

Claimant and court trailing and identification of quality issues

Before deciding what to audit and how to improve legal and/or medical-legal services, the first step will be to define and specify the processes involved in delivering these services. Claimant – and court – trailing is a technique which will be articulated in more detail in the experiment.⁵ The basic 'justice trail' is illustrated below in Figure 6.

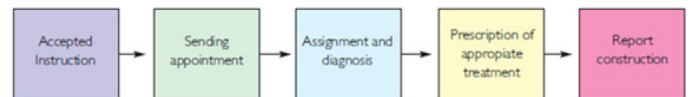


Figure 6 The basic 'justice trail' is illustrated.

Similar analysis will be developed for:

- Claimant trails
- Law and firm trails (both claimant and defendant)
- Barrister trails
- Court process trails
- Expert trails

The civil justice reforms, introduced in 1999, have improved access to justice by reducing cost, delay and improving outcomes of civil litigation, in the context of personal injury cases.² The overall culture has changed for the better and cooperation between parties has improved, due to better time and case management. The new regime for experts has worked well, supported by judges and lawyers. There is a higher settlement rate with the majority of cases being settled pre-issue. Dispute resolution is delivering higher quality, more rapidly. The courts in various common law jurisdictions around the world recognise the importance of expert testimony, and many (led by the UK and North America) have set and articulated clear rules and responsibilities being borne by experts, as exemplified following the Kaney case (UK) and Smith case (Canada). Can the civil justice system learn from other sectors about quality? The legal market has never been more competitive and scrutinized by public perception. The language and culture of civil justice is being influenced, quite rightly, by the concepts and practices of Total Quality Management (from the business sector) and Therapeutic Jurisprudence (from the medical/clinical/therapeutic sector). Over the next decade, there will be greater emphasis, in our opinion, on bridging the gap between lawyers, barristers and judges, on the one hand, and experts on the other, with both groups giving greater credence to the experiences and perceptions of claimants.^{6,7}

Conclusion

This short communication is raising critical issues in civil justice and how it can be made more 'therapeutic' using quality management concepts already seen in the manufacturing and health industries in both the UK and Sweden.

Acknowledgements

None.

Conflict of interest

The author declares no conflict of interest.

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