

Psychological Reports in Criminal Cases

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Legal vs. Psychological

From a legal perspective -

- Establish whether the defendant had '*impaired mental functioning*' at the time of the offence/s.
- Determine whether the '*impaired mental functioning*' was **causally linked** to the commission of the crime/s.
- Reduce the moral culpability of the defendant.
- Result in a reduced sentence.

From a forensic psychological perspective -

- Does your client need a psychological report and what questions to ask them
- The brief and collateral that helps your client
- How to prepare your client
- An insight into the interview process
- What happens after the interview



The principles in *R v Verdins* (2007) 16 VR 269

“Impaired mental functioning at the time of the offending may reduce the offender’s moral culpability if it had the effect of:

- (a) impairing the offender’s ability to exercise appropriate judgment;
- (b) impairing the offender’s ability to make calm and rational choices, or to think clearly;
- (c) making the offender disinhibited;
- (d) impairing the offender’s ability to appreciate the wrongfulness of the conduct;
- (e) obscuring the intent to commit the offence; or
- (f) contributing (causally) to the commission of the offence.

As we have said, this is not to be taken as an exhaustive list.”



Sentencing Objectives

Addressing General and Specific Deterrence

On General Deterrence:

“When there is evidence before the Court that an offender was affected by a mental disorder or impairment at the time of the offending, it may reduce moral culpability so as to affect the punishment that is just in all the circumstances; denunciation of the offending conduct may be a less relevant sentencing objective; and **general deterrence may be moderated or even eliminated as a sentencing consideration** depending upon the nature and severity of the offender’s symptoms. The effects of mental health conditions at the time of sentence may also have a bearing on the sentence that would be just, and the extent to which specific and general deterrence can be achieved.”

Per Bradley J in *R v Collard* [2019] QCA 105 at [48].



Sentencing Objectives

Addressing General and Specific Deterrence

On Specific Deterrence:

“Impaired mental functioning, whether temporary or permanent (‘the condition’), is relevant to sentencing in at least the following six ways:

1. The condition may reduce the moral culpability of the offending conduct, as distinct from the offender’s legal responsibility. Where that is so, the condition affects the punishment that is just in all the circumstances; and denunciation is less likely to be a relevant sentencing objective.

2. **The condition may have a bearing on the kind of sentence that is imposed and the conditions in which it should be served.**

3. Whether general deterrence should be moderated or eliminated as a sentencing consideration depends upon the nature and severity of the symptoms exhibited by the offender, and the effect of the condition on the mental capacity of the offender, whether at the time of the offending or at the date of sentence or both.

4. **Whether specific deterrence should be moderated or eliminated as a sentencing consideration likewise depends upon the nature and severity of the symptoms of the condition as exhibited by the offender, and the effect of the condition on the mental capacity of the offender, whether at the time of the offending or at the date of the sentence or both.**

5. **The existence of the condition at the date of sentencing (or its foreseeable recurrence) may mean that a given sentence will weigh more heavily on the offender than it would on a person in normal health.**


6. **Where there is a serious risk of imprisonment having a significant adverse effect on the offender’s mental health, this will be a factor tending to mitigate punishment.”**

Verdins at [32]



How do you obtain the evidence needed from the Psychologist engaged?

- Consider the issues relevant to your case;
- **ENGAGE** the Psychologist **AS SOON AS POSSIBLE** - not when your case is awaiting sentence;
- Enquire of the Psychologist you intend to engage that the case falls within their area of expertise;
- Write a comprehensive letter of instruction which enquires of the specific issues you required to be addressed in the report;
- Prepare your client for the process - this includes gathering collateral information from previous counsellors/psychologists/psychiatrists, evidence of prior diagnoses, medical records, DVA or employment records, drug/alcohol rehabilitation treatment, ATODS etc;
- Advise your client of what is involved in the interview process;
- Encourage your client to follow all treatment recommendations.



When does a client need a psychological report?

The majority of your clients will benefit from a psychological report.

WHY?

- Mental health issues, trauma and alcohol and drug use are over-represented in the Criminal Justice system.
- Often these conditions are undiagnosed and untreated.



When does a client need a psychological report?

A psychological report is about *more* than just sentence mitigation.

- Assists the Court in seeing your client's **humanity**.
- Helps the Court **understand any adversity** your client may have experienced in their upbringing and provides a clear context to their offending (if relevant).
- Assesses and communicates their **risk of recidivism** for:
 - General recidivism, physical violence, sexual violence (including Child Sexual Exploitation Material offences), intimate partner violence, stalking, lone actor terrorism, and firesetting.
- Assesses and communicates their **remorse**.
- Provides clinical judgement on the negative impact of the alleged offence/s on your client.
- Provides clinical judgement on the negative impact of imprisonment/conviction.
- Provides **treatment recommendations to mitigate risk**.



Questions to ask your client

Have you ever...

- been diagnosed with a mental health condition?
- seen a psychologist, psychiatrist, or counsellor?
- experienced trauma?
 - Childhood abuse, trauma or neglect.
 - Exposed to death, threatened death, actual or threatened serious injury, or actual or threatened sexual violence.
- abused alcohol or illicit substances?
 - This can be a maladaptive coping mechanism for underlying/untreated mental health or trauma
- sought treatment for mental health, trauma, or alcohol or illicit substances?
 - Medication;
 - Therapy (individual or group programs); or
 - Inpatient admissions, detox or residential rehabilitation.
- been diagnosed with a significant medical condition?
 - Physical health concerns and/or poor prognosis can be linked to mental health.



Questions to ask your client

Have you ever (cont)...

- had difficulties with psychosocial stability?
 - study/education
 - maintaining employment
 - maintaining relationships
 - managing finances
 - finding or maintaining accommodation
- continued to offend after seeking intervention?

Other questions:

- Did your offending begin as an adult?
 - Late-onset offending is less common.
- Are your current alleged offence/s different from previous offending?



The brief and collateral that helps your client

A clear **LOI** that is thoughtfully considered.

Criminal/legal information:

- Criminal history;
- Traffic history;
- QP9s - alleged offence/s;
- QP9s - past similar offence/s;
- Statement of facts;
- DV history report; and
- Application for protection order.

Professional collateral information:

- Collateral from a GP, psychologist, psychiatrist, counsellor, or hospital regarding diagnosis and treatment.
- Previous assessments (mental health, psychological, psychiatric, other allied health, NDIS, etc.)
- Drug & alcohol assessments, intervention, or details of rehabilitation.
- Any collateral from a professional during the alleged offences.



How to prepare your client

Make sure your client knows:

- How they are proceeding with the charges.
- My opinion is independent with a **primary obligation to the Court** (not the client).
- **Confidentiality is not guaranteed.**
- What types of questions might be asked of them:
 - Personal and family background, education and employment history, past/current intimate relationships, drug and alcohol use, mental health and medical history, past forensic history, and the context surrounding the alleged offence/s.
 - Psychosexual history will also be obtained if alleged offence is of a sexual nature.
- What will be involved: an interview, administration of psychometric assessments, and gathering collateral.
- **BE HONEST AND OPEN** - tell the truth, not what you think the psychologist wants to hear.



What happens in the interview?

- Build **rapport** with the client.
- Ask them A LOT of questions.
 - If conducting a risk assessment, there will be additional questions specific to the assessment tool.
- Administer validated **psychological assessments**.
 - Usually includes a personality assessment or other relevant diagnostic tools.
- Ask questions to understand the **context surrounding the alleged offence/s**.
- Ask for consent to **gather collateral** from another person close to your client.
 - E.g. a partner or family member.



After the interview...

Your client will walk away from the interview feeling **heard, understood, and unjudged**.

The report should provide;

- An insight and narrative into who your client is.
- A **clear evidenced-based diagnosis will be made***, and it will be clear how the diagnosis contributed to the alleged offence/s
 - *if the client meets the criteria for a diagnosis according to the DSM-5-TR.
- A **clear opinion on the risk of recidivism**.
- A **psychological opinion** on what factors contributed to your client's alleged offence/s.
- An **opinion on the impact of a term of imprisonment**.
- Evidence-based **recommendations** that mitigate risk and support your client's mental health and well-being.



Questions? Comments?