

Lawyers and their influence on health outcomes in compensation systems

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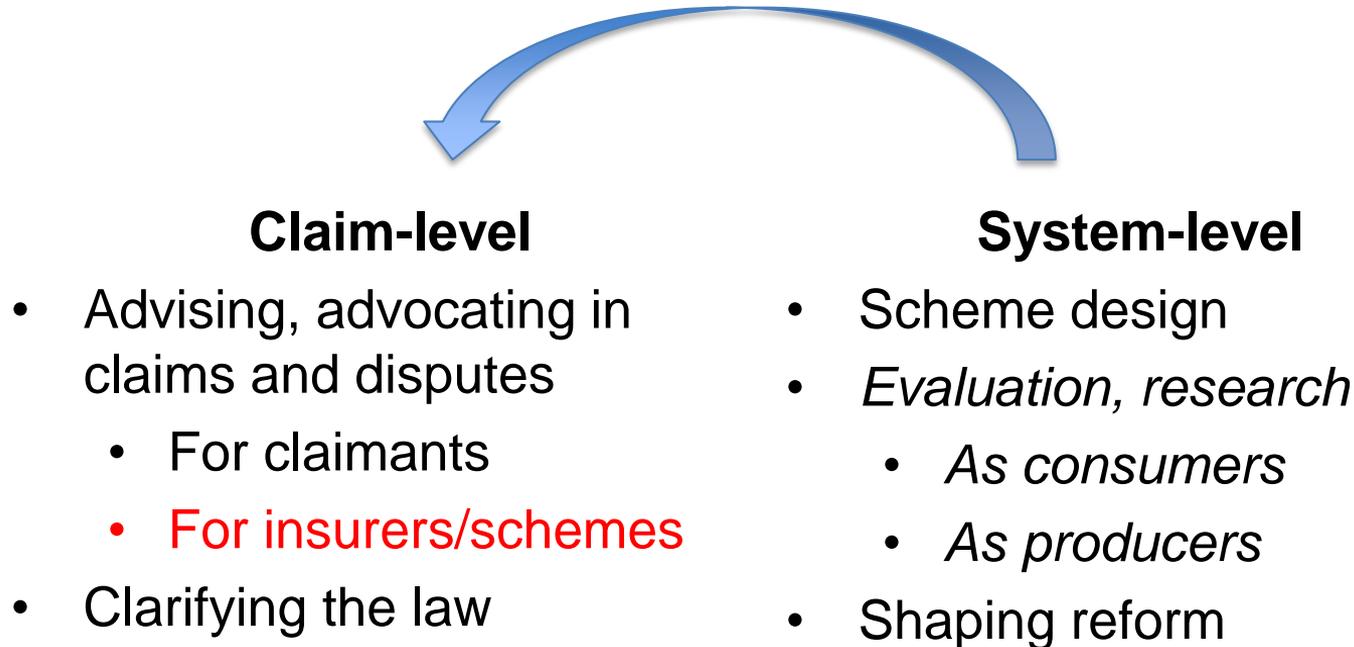
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- Injury compensation claims & systems – some propositions
- Lawyer roles in these settings
- Review of ‘lawyer use’ in injury outcomes research
- Claimants’ experiences in compensation systems – ethical questions
- Implications for research and practice

- Number of people entitled to claim > those who claim
- Optimal to prevent claims through **effective recovery** (not system complexity)
- Straightforward claims > difficult claims
- Difficult claims and disputes occur in all systems
 - **No fault ≠ no disputes or non-adversarial**
- Difficult claims involve delay → stressful → poor health outcomes, ↑↑ costs



Supply-side (lawyer) factors

- Legal culture
- Injury law reform – growth, contraction in practice areas
- Availability of conditional costs agreements ('no win, no fee')
- Law firm risk appetite
- Perceived strength of claim (lawyer selects claimant)
- Advertising (restrictions)
- Professional regulation

Demand-side (claimant) factors

- Uncertainty about rights
- Advice from friends, family, health practitioners, others
- Adverse encounters with insurer
- Lack of trust in insurer
- Perception that lawyer necessary in order to claim (or to achieve just/optimal result)
- Prefer to outsource dealing with/worrying about the claim

- Legal services contribute to claimant experience, scheme performance
- Little research explores the prevalence, characteristics of, and reasons for, use of legal services in compensation schemes
 - What might be impact of legal need, professional regulation, legal culture, clarity of law, opportunity for disputes, presence of other advisors, fees and funding?
- Despite this, 'lawyer use' has proven to be an attractive and convenient explanatory variable in injury outcomes research

Strategies used in response to personal injury problems: Evidence from the LAW Survey (LJFNSW)

<i>Personal injury problem type</i>	<i>Strategy</i>				<i>Total</i>
	<i>Legal adviser</i>	<i>Non-legal adviser</i>	<i>Handled without advice</i>	<i>Took no action</i>	
	<i>%</i>	<i>%</i>	<i>%</i>	<i>%</i>	
Motor vehicle	27.4	50.8	9.5	12.2	213
Work-related	14.6	60.2	6.1	19.1	606
Product	4.2	36.6	23.2	35.9	116
Other negligence	15.4	60.8	7.9	16.0	184
Any personal injury problem	16.1	56.1	8.8	19.0	1,119
Any type of problem	15.5	35.6	30.6	18.3	19,142

(Coumarelos, Grant and Wei 2017)

Questions

- How is lawyer use understood, constructed, defined and reported? What outcomes are explored?
- How does this body of research account for system-related factors connected to lawyer use?

Approach

- Narrative review of quantitative injury outcomes studies, 1985-2015
- Key search terms: lawyer (or attorney, solicitor, legal representation), injury, compensation, health outcomes

- Identified 51 studies published 1985-2015
 - Jurisdictions: US, Canada, Australia, the Netherlands, Switzerland, Italy, Denmark
 - Range of injury types: WAD, LBP, upper limb, fractures, major trauma, spinal surgery, unspecified
 - Diverse outcomes: physical and mental health, claim duration, medication, costs, RTW
 - **One study** explored lawyer use as outcome of interest (Casey et al, 2015)
- Variable, self-reported approach to 'lawyer use' definition
 - eg 'lawyer involvement', 'lawyer contacted', 'litigation', 'initiation of lawsuit', 'legal help', 'legal claim'
- Limited attention to challenges of interpreting 'lawyer use' (eg case selection)
- Some attention to reverse causality (Spearing et al, 2012)
- **Focus solely on claimant use of lawyers**

Grant et al (2014)

- Stressful claims experiences were prevalent among claimants to transport accident and workers' compensation schemes in three Australian states
- There were **strong associations** between stressful claims experiences and poorer long-term recovery
- Adjusting for factors that predisposed claimants to stress reduced the strength of the associations, but did not eliminate them
- Large body of qualitative evidence across different systems, jurisdictions shows claimants report distrust, stigmatisation and other negative experiences in claims processes

- Ethics as ‘the moral principles by which we are guided as individuals, and the rules of conduct recognised in a particular profession or area of human life’ (Crockett 2015)
- Lawyers have a hierarchy of professional duties
 - Duty to obey and uphold the law
 - Duties to the court and the administration of justice
 - Duties to clients
 - Duties to other persons

4. OTHER FUNDAMENTAL ETHICAL DUTIES

4.1 A solicitor must also:

- 4.1.1 act in the best interests of a client in any matter in which the solicitor represents the client,
- 4.1.2 be honest and courteous in all dealings in the course of legal practice;
- 4.1.3 deliver legal services competently, diligently and as promptly as reasonably possible;
- 4.1.4 avoid any compromise to their integrity and professional independence; and
- 4.1.5 comply with these Rules and the law.

FOUR APPROACHES TO LAWYERS' ETHICS (Parker 2004)

APPROACH	DO GENERAL ETHICS APPLY TO LAWYERS?	OBJECTIVE
ADVERSARIAL ADVOCATE	No. Role defined by adversarial framework.	Advocate client's interests as zealously as possible with barest obligation to legality.
RESPONSIBLE LAWYER	No. Role defined by spirit of the law.	Make law work as fairly and justly as possible.
MORAL ACTIVIST	Yes. Social theories of justice are important for lawyers.	Advance justice through: (1) Public interest lawyering and law reform activities (2) Client counselling to seek to persuade clients; or withdraw.
ETHICS OF CARE	Yes. Character, virtue and relational ethics are important for both lawyers and clients.	Both lawyer and client to preserve relationships and avoid harm.

- Flaws in injury research referring to ‘lawyer use’ – little accounting for system features and variable definition inconsistent, unclear
- Risks of current research practice
 - stigmatising claimants who use legal services (access to justice implications)
 - ethically problematic recommendations for withholding services and benefits
- Exploration of ‘lawyer use’ requires collaborative, interdisciplinary research
- First step: understanding ‘lawyer use’ as an outcome (PhD student Clare Scollay)
- Lawyers of all stripes should consider ethical implications of claimant experiences in compensation systems



Thank you

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