CHIROPRACTIC JOURNAL OF AUSTRALIA

Historical Vignettes: Important historical events that have shaped modern chiropractic practice in Australia.

Historical Vignette 3. The 1990 Plint v White Defamation Case: the removal of an impediment to interprofessional cooperation in the clinical setting.

Author Information:

J Keith Simpson BA(Hons), DC, PhD
Adjunct Senior Lecturer
College of Science, Health, Engineering and Education
Murdoch University.

Email: k.simpson@murdoch.edu.au

Historical Vignette 3: The 1990 *Plint v White* Defamation Case: the removal of an impediment to interprofessional cooperation in the clinical setting.

This is the third in a series of 4 Historical Vignettes. Each recounts an important event in Australian chiropractic history. This vignette describes how a university professor was convinced to cease telling first year psychology students that unskilled chiropractors break patient's necks. Inoculating students with such misinformation was a clear impediment to interprofessional cooperation that needed to be removed. Using documentary evidence, this historical vignette recounts the curious case of *Plint v White*.

On Monday 23rd April, 1990, Professor Kenneth White (KW) was recorded telling his first year University of Queensland psychology students during a lecture about pseudoscience:

> Manipulation, especially of the neck can be very harmful. There are many cases on record of unskilled chiropractors breaking patient's necks. This is not unusual event.
>
> Chiropractors discount the use of vaccinations and are taught that vaccinations are of no use. Children have died as a result of this.
>
> Chiropractors are involved in massive amounts of placebo therapy. There is no clear evidence that they [chiropractors] have any essential useful purpose. (1)

Attendees included medical, nursing, and physiotherapy students. Unsurprisingly some students attending the lecture were chiropractic patients. Similarly those students brought the professor's comments to their chiropractor's attention. This included executive members of the chiropractors' professional associations at the time: Alan Plint (AP) of The United Chiropractors Association and JK Simpson (JKS) of the Australian Chiropractors Association. With little investigation we learned it was 'common knowledge' that KW had been delivering this lecture with the same information for several years. We took legal action for defamation against KW.

Henderson Trout (HT), a prominent Australian law firm, was briefed in mid-June 1990 and provided written advice on 15 July 1990.

Generally, in Australian law, a group of people cannot be defamed as a class. In some circumstances, however, a statement denigrating a group of people may create a cause of action in an individual who is a member of the group that has been denigrated. In deciding whether or not such an individual has a cause of action in defamation, the test seems to be as follows —

Where the plaintiff is not named, the test which decides whether the words used refer to him is the question whether the words are such as would reasonably lead persons acquainted with the plaintiff to believe that he was the 'person referred to. There are cases in which the language used in reference to a limited class may be reasonably understood to refer to every member of the class, in which case every member may have a cause of action. (2)

HT outlined the challenges in succeeding but considered the action worth pursuing. HT advised it would be best to have a "well regarded, well experienced and reputable registered chiropractor" rather than an association sue the professor without involving the university because the "university may see this as a test case and back the professor" because of the obvious ramifications for freedom of academic discussion. To this end, AP, the chairman of the Queensland committee of the United Chiropractors Association, became the Plaintiff in the action brought against defendant KW.

HT advises KW of Legal Action

On 28th November 1990, HT served KW with a covering letter (1) and Supreme Court of Queensland Writ No. 1405 of 1990 (3). The letter advised KW that AP was "most concerned and offended" by KW's comments. He was told that the remarks were "inflammatory, clearly referrable to chiropractors and defamatory" to AP. Furthermore, AP's reputation was damaged by KW's publication to "a broad audience, including many medical students". HT pointed out the "inaccurate, unbalanced and unfair" nature of KW's comments. Specifically, KW failed to

> comment upon the strict registration requirements for chiropractic in this state [Queensland] and the powerful research by well regarded international medical organisations into the extensive and particular benefits of chiropractic treatment. (1)

KW was given 14 days to agree to:

1. Publish a written apology.
2. Provide students enrolled in the unit with a written statement referring to the registration requirements in this state [Queensland] for chiropractors and comments as to the research into the safety and effectiveness of chiropractic, so as to provide fair balance to KW's statements.
3. Publish a suitable letter of retraction in an appropriate University publication, so that previous recipients of KW's lecture may have the benefit of a balanced commentary on the discipline [of chiropractic].
4. An undertaking that KW's future lectures provide a balanced commentary on chiropractic with reference to registration requirements and international research.

KW was advised that AP would meet and discuss the research into the discipline of chiropractic if he considered such a meeting may be beneficial to his understanding and appreciation of AP's discipline. KW declined these conditions which meant that the case proceeded.

Statement of Claim

A statement of claim (SOC) is the initial filing in a case. The SOC establishes the claim and identifies who the parties to the claim are. The SOC sets out the material facts and the particulars which the plaintiff for must detail for the claim. Concurrent to submitting the SOC to the court, the other party is served with a copy of the SOC. HT engaged PDT Appelgarth of Counsel to prepare AP's SOC.

PDT Applegarth of Counsel: Memorandum of Advice on the Case

Mr PDT Applegarth, in 1990 a barrister of the Supreme Court of Queensland, was briefed to prepare the SOC. In doing so, he advised "this unfortunate action should not be encouraged." Mr Applegarth explained:

> The Defendant, if well advised, will take issue with the question of identification unless students in the group in fact identified the Plaintiff as one of the persons about whom Dr White spoke. …
>
> Notwithstanding the fact that Dr White clearly did not check his facts before making such generalised smears against chiropractors, the words were probably spoken on an occasion of qualified privilege and, in the absence of good faith, Dr White is likely to succeed in defending this action. (4)

Still, the SOC was prepared and filed in December 1990.

AP's SOC explained the lecture as described above. It stated that "the words complained of were defamatory of the Plaintiff according to their ordinary and natural meaning".

> Further, "according to their ordinary and natural meaning, the words complained of meant and were understood to mean that:
>
> a) the Plaintiff, in practising chiropractic, engaged in a practice that was dangerous to the public;
> b) the Plaintiff subscribed to the dangerous theory that vaccinations are of no use;
> c) the Plaintiff, in practising chiropractic, provided no useful care to patients;
> d) the Plaintiff, in practising chiropractic, engaged in false pretences.

> The publication of the words caused the Plaintiff severe distress and embarrassment, and were likely to injure him in his reputation, and in his profession as a chiropractor, and were likely to cause other persons to be induced to shun or avoid or ridicule or despise him. (3)

The SOC closed with advice that: The Defendant must lodge a Defence to the SOC within twenty-eight (28) days otherwise the Plaintiff may obtain Judgment against him.

An Early Win: Judgement for the Plaintiff

For reasons that later became apparent, an 'entry of appearance' was not filed with the Court. Failure to file an Appearance, indicates to the Court that the claim will not be defended. The result being a default judgment may be entered against the defendant. Consequently, on 17 December 1990, the Supreme Court of Queensland issued a Judgement by Default in favour of the Plaintiff which entitled AP to recover damages from KW (5).

Judgement for the Plaintiff Set Aside

The default judgement elicited a quick response. HT was contacted by Chambers, McNab, Tully & Wilson, Solicitors and Notaries in February 1991 advising from the outset KW intended to contest liability and defend the proceedings and had taken the appropriate step by notifying the University of Queensland's Legal Office which notified the University's professional indemnity Insurers. However, due to misunderstandings the court was not notified that KW was represented. A request was made to have the Judgement by Default set aside. (6) HT agreed to the request and awaited KW's defence to be prepared and lodged.

Let's Talk

We understood settlements are usually faster, more cost-effective, less stressful and provide a guaranteed outcome. Between December 1990 and May 1993 repeated written requests, were made to hold a without prejudice settlement conference. Our conditions for a confidential settlement were:

- A personal apology
- An association member to address future KW lectures where chiropractic was discussed
- A contribution to our legal costs

Besides these offers, a formal Offer to Settle under Order 26 of the Supreme Court of Queensland was served in February 1991. (7)

All were met with the same response via KW's solicitors: our client declines to attend a without prejudice conference.

KW's Defence

KW's legal representatives filed his defence on 15 May 1991 (8) . It was in part surprising and in part as expected. KW did not admit saying the offending statements. This was unexpected because we had an audio tape record of his lecture in which he was clearly heard saying the words. As expected, KW's defence denied:

- The words were defamatory of the plaintiff as alleged
- The words were incapable of implying that the Plaintiff was dangerous to the public,
- The words were incapable of implying that Plaintiff subscribed to the dangerous theory that vaccinations are of no use
- The words caused the Plaintiff severe distress and embarrassment or were likely to harm his reputation.

To 'cover his bases' KW's defence stated:

> In the alternative, the defendant says that if any of the words complained of in paragraph 3 of the statement of claim are-found to have been published by him and to be defamatory of the plaintiff such defamatory matter was published in good faith:—
>
> (a) for the purpose of giving information to the persons to whom the publication was made with respect to a subject as to which such persons had or were believed on reasonable ground by the defendant to have had such an interest in knowing, the truth as to make the defendant's conduct in making the publication reasonable under the circumstances;
>
> (b) in the course of, or for the purposes of, the discussion of a subject of public interest, public discussion of which was for the public benefit and so far as the defamatory matter 'consists of comment, the comment was fair.

KW's defence closed with the statement: "The defendant requires this action to be tried by jury. "

Queens Council Opinion

Given KW's repeated rejections for a settlement conference, the matter was heading for a jury trial. Our next step was to obtain a Queens Council opinion. In February 1992 Ian Callinan QC provided his considered opinion which could be summarized in one phrase: Although the words may be defamatory, the prospects of success at trial were 50% at best (9). It is beyond the scope of this vignette to examine KW's likely defenses. They included: 1) identification: AP would have to prove that the words referred to him; 2) Qualified privilege: a defense of qualified privilege permits a person in a position of authority or trust to make statements or relay or report statements that would be considered slander and libel if made by anyone else. 3) Good faith: the statements were

made for public information or advancing education. For details of these defenses see: Kenyon, A. (2013). *Defamation: Comparative law and practice*. UCL Press.

Given this, we made one last attempt for a settlement conference and if that was declined, we would abandon the action. The offer was declined (10). A Notice of Discontinuance was prepared and sent to the Defendant's solicitors in December 1993, thereby ending the legal action (11).

Upshot and Implications for the Profession

The beginning of the 20th century saw the health care system move from a heroic medicine 'one cause-one cure' sectarian practitioner model towards a multidisciplinary approach to healthcare. The Mayo Brothers, of Mayo Clinic fame, originated the concept of a multidisciplinary team approach (12). In his 1910 commencement address to Rush Medical College, William J Mayo told graduates

> It became necessary to develop medicine as a cooperative science; the clinician, the specialist, and the laboratory workers uniting for the good of the patient, each assisting in elucidation of the problem at hand, and each dependent upon the other for support.

Since then, multidisciplinary teams have been confirmed as best practice for patient care in several disciplines (13, 14). Theberge highlighted the intraprofessional challenges to chiropractors becoming part of a health care team including:

> (a) reduced scope of practice in which they work primarily as manual therapists; and
> (b) the exemplary performance of individual practitioners who 'fit' into multi-disciplinary sport medicine teams. (15)

These are not barriers however. Chiropractic integration into multidisciplinary teams has been most evident in sports chiropractic. When these challenges are overcome, the results for clients are excellent (16).

The interprofessional barriers preventing chiropractors from becoming part of multidisciplinary teams were more difficult to overcome. The Australian Medical Association borrowed the Iowa Plan (17) from its cousins in the United States of America. It's illegal ethics-based boycott preventing members from having interprofessional relations with chiropractors had been in place for decades (18). Chiropractors were considered members an "unscientific cult whose practitioners lack the necessary education and training to diagnose and treat any form of human disease" (17). The Australian Medical Association's policy labelling of chiropractic an 'exclusive dogma' and the boycott was not removed until 2002 (19). Medical registration boards in Victoria and Queensland [and likely in the other jurisdictions] warned medical practitioners that referral

of patients to chiropractors by medical practitioners would breach the professional misconduct provisions of the medical registration act. The Medical Board of Queensland held this position until mid-1988 (20). The lingering effects of these barriers to interprofessional cooperation was felt for years.

Given that *Plint v White* never made it to court and was not settled out of court, one could ask: was the 3-year process worthwhile? The short answer is yes. While no court ruling was obtained and KW never apologized or retracted the statements, he deleted the offending statements in subsequent lectures. He went further by inviting an association representative to address students about the profession. This was one of our requests from the outset. While there is no way to calculate the damaging effect of White's lectures on ingraining an anti-chiropractic mindset in first year medical, nursing and psychology students, it would be difficult to imagine White's comments had a positive effect. To have Professor White cease his generalized smears against chiropractors, replacing them with a balanced presentation from the profession could only be a good thing for future interprofessional relations.

Historical Vignette 4 recounts the 10-year David versus Goliath story of how perhaps the greatest impediment to the Australian chiropractic profession was dealt with. This refers to encouraging the Australian Medical Association (AMA) to remove its ethics-based boycott against chiropractic and revise its 'exclusive dogma' policy on chiropractic. The evolution of the AMAs policy has been recounted (19) elsewhere, the backstory has not. Historical Vignette 4 tells that story.

REFERENCES

1. Henderson Trout: Letter to K White 28/11/1990.
2. Henderson Trout: Briefing Letter to A Plint 10 July 1990.
3. Statement of Claim: Supreme Court of Queensland Writ No. 1405 of 1990.
4. PDT Applegarth: Memorandum of Advice Regarding Statement of Claim 14/12/1990.
5. Judgment by Defalult: Supreme Court of Queensland. No. 1405 of 1990 17/12/1990.
6. Chambers McNab Tully & Wilson: Letter to Henderson Trout Regarding Default Judgement. 5/2/1991.
7. Offer to Settle: Supreme Court of Queensland. No. 1405 0f 1990. 30/1/1991.
8. Defence: Supreme Court of Queensland. No. 1405 0f 1990. 16/5/1991.
9. IDF Callinan QC: Opinion re Allan Harold Plint and Kenneth White. 24 February 1992. .
10. Corrs Chambers Westgarth: Letter to Clayton Utz (Formerly Henderson Trout). 13/5/1992.
11. Clayton Utz: Letter to Alan Plint regarding Discontinuance. 16/12/1993.
12. Fye WB. The Mayos' Invention of Multispecialty Group Practice. Caring for the Heart: Mayo Clinic and the Rise of Specialization: Oxford University Press; 2015. p. 22–41.
13. Zajac S, Woods A, Tannenbaum S, Salas E, Holladay CL. Overcoming Challenges to Teamwork in Healthcare: A Team Effectiveness Framework and Evidence-Based Guidance. Frontiers in Communication. 2021;6.
14. Rosen MA, DiazGranados D, Dietz AS, Benishek LE, Thompson D, Pronovost PJ, et al. Teamwork in healthcare: Key discoveries enabling safer, high-quality care. American Psychologist. 2018;73(4):433.
15. Theberge N. The integration of chiropractors into healthcare teams: a case study from sport medicine. Sociology of Health & illness. 2008;30(1):19-34.
16. Nelson L, Pollard H, Ames R, Jarosz B, Garbutt P, Da Costa C. A descriptive study of sports chiropractors with an International Chiropractic Sport Science Practitioner qualification: a cross-sectional survey. Chiropractic & Manual Therapies. 2021;29(1):51.
17. Simpson JK. The Iowa Plan and the Activities of the Committee on Quackery. Chiroprac J Aust. 1997;27:5-12.
18. Ducret A. The AMA and chiropractic: a trade practices viewpoint. ACO (ACCC Journal). 1999;8(1):27-30.
19. Simpson JK. The Evolution of the Australian Medical Association's Exclusive Dogma Policy on Chiropractic. Chiropractic History. 2003;23(2):69-78.
20. Simpson JK. Chiropractic Registration - Queensland Style. Chiropr j Aust. 2005;35:93-100.