

PLAYING THE GUITAR AT LEGAL AID AN INTERVIEW WITH ROBERT WHEELER

Have you ever wondered what it takes to work alongside mentally ill patients? Robert Wheeler, previously a solicitor at the Mental Health Advocacy Service, and currently the Legal Aid Regional Program Coordinator for Civil Law, is one exceptional individual who has dedicated substantial time to championing the rights of mentally ill patients. He also enjoys playing the guitar in his leisure time.

We set out to discover the motivations which shaped Robert's decision to work at the Mental Health Advocacy Service of the Legal Aid Commission.

Background

Robert initially studied Economics/Law at Macquarie University before realising half way through second year during a fascinating lecture on the 'Grand Utility Possibility Frontier' that his true calling was elsewhere. Robert graduated from Macquarie University with an Arts/Law degree majoring in Politics and having taken subjects ranging from philosophy to computing.

After some post-graduation travelling, Robert completed his College of Law component. At the time, he had some idea that he'd like to work in Legal Aid, but instead landed a job with Watson's Solicitors, a small private sole-practice that hired him on a contractual basis as cases arose. Mostly, his tasks included instructing counsel, as well as some court work and conveyancing. Over four years, he experienced a variety of practice areas including criminal, commercial, a brush of family law and entertainment law, occasionally working with rock stars and television/movie celebrities.

Career Path

One of his first cases involved instructing a barrister in a heroin importation trial with 10-13 co-defendants at the Darlinghurst District court. Due to unfortunate circumstances, the original judge suffered a heart attack after 4 weeks and the case had to be restarted, this time running for 13 weeks. For Robert, who had had a complacent sheltered childhood growing up on the North Shore with the bush as his backyard, this was an eye-opening experience to "see old cells dug out of the stone at Darlinghurst District Court; [which was an] introduction to a very different sort of world" of heroin users.

Eventually, a permanent full-time vacancy became available at Watson's Solicitors and before any candidates with suitable experience were located, Robert had in fact acquired the desired experience so Robert formally became a permanent staff member.

After a couple of years, Robert acquired a taste for a restaurant in Woy Woy, and sandwiched his time between working as a waiter and practising law privately as a side dish. But he was lured back to Watson's Solicitors and in September 1987 began his career at the Legal Aid Commission as a relief solicitor, principally in criminal law.

The first couple of days at Legal Aid were tiring for Robert – after a very busy day at Kogarah Court, Robert went home and collapsed from exhaustion on his comfy couch. Nevertheless, Robert's relief rotations led him to brief encounters with the Mental Health Advocacy Service ('MHAS') where he was stationed for two weeks. Being unfamiliar with the territory, he initially attended with another solicitor at Rozelle

When asked about his experiences in working with mentally ill clients, Robert replied fondly: “Quite amazing – even now...I tend to refer back to stories from my early experiences at MHAS”. Clearly Robert’s initial days at the MHAS have left a deep impression on him.

Fascinated and compassionately moved by a particular client, Robert was further inspired to become a mental health lawyer when he saw a photo of a patient with whom he could relate. The photo looked like it had been taken at the patient’s 21st birthday, and Robert “found that quite poignant – same age as me, same friends” and similar background to Robert himself – yet having very different and unfortunate life circumstances affected by mental illness.

Robert professes that at the time, he didn’t really know what mental illness was, and didn’t know what to expect. Despite this, he was quite shocked to hear that one client’s beliefs resembled stereotypical theories “in the way kids would joke about mental illness”, as the client held bizarre claims that his parents were not his biological parents but were impostors from Mars.

In particular, Robert was astounded when he saw that the client’s brother and sister who had come to support the client at his trial, were both of completely normal mental health – which emphasised to him the undiscerning nature by which mental illness “can happen to anybody [regardless of] intelligence, upbringing”. Robert felt fairly strongly that these were people in a pretty bad situation through no choice or fault of their own and deserved the best assistance Robert could provide for them. Subsequently, Robert leapt at the chance to work in the Mental Health Advocacy Service division of Legal Aid in 1988.

The MHAS provides free representation for mentally ill people in matters arising out of their mental illness, primarily in two areas - civil detention, and forensic patients. A patient with other legal issues will be referred to general Legal Aid services. MHAS also has responsibility to provide representation for a range of other matters, including Guardianship Tribunal orders that include decisions as to where someone lives, and their access to services based on disability.

Civil detention issues arise where a person has been determined by a doctor to be mentally ill and requiring hospitalisation. Following a number of further examinations at the hospital, they may be brought before a magistrate to determine whether they need to remain as an involuntary patient. If this occurs, the person is entitled to legal representation. There may also be subsequent hearings regarding this issue before the Mental Health Tribunal hearing under the *Mental Health Act*.

In criminal cases, a mentally ill person is called a ‘forensic patient’ if they have been found unfit to be tried; they have been found not guilty by reason of mental illness; or they became mentally ill in prison and were transferred to a psychiatric hospital.¹ As there needs to be caution in how these people are integrated back into the community, the Mental Health Review Tribunal will review a client’s case every six months² to determine whether the patient should remain in custody or be released conditionally, and the conditions of custody – e.g. specifying the ward they need to be located in, and permission to leave the grounds or walk around.

Drawing on his experience and knowledge in the regions, Robert is currently in a rotational management position as the Regional Program Coordinator for Civil Law

until February 2006. This role involves some responsibility for MHAS, and also ensuring that the Civil law program is consistently applied across all Legal Aid offices (Lismore, Newcastle, Coffs Harbour etc). From his current role, Robert has gained greater awareness about other areas of civil law which are covered by Legal Aid.

A memorable case Robert recalls involved a man who had incurred a substantial debt for a pay-per-call clairvoyant service that strung him on by telling him lies and promises about his business, and child and marital issues. The man lost his house due to the debt. Fortunately, the Coffs Harbour office ran a successful District Court action against the clairvoyant, obtaining an order for most of the money to be paid back to the unfortunate client.

Other Achievements

Robert has also made important contributions to law reform, having previously been involved in the Mental Health Act Implementation and Monitoring Committee. Currently, the 6 monthly review process is agonisingly slow since the Mental Health Review Tribunal only has power to make recommendations regarding the release of patients to the Minister of Health, and often must wait a prolonged period for approval.

While on the Committee, Robert submitted recommendations that the Tribunal, who are experts directly involved in assessing the patient, are in a better position to make orders than government ministers and should therefore be granted power to make orders rather than recommendations. Robert hopes that 10-15 years down the track some changes will finally take place. However, he expects that rather than granting power to make orders to the Tribunal, it may instead be taken away from the minister and given to the Supreme Court. This would not be the ideal solution, according to Robert, because the procedures of the Supreme Court are formal and complex, and its judges do not have the expert knowledge of mental health issues possessed by the Tribunal.

The Tribunal has made compassionate recommendations in the past which stirred public outrage through high media coverage, and this may explain Parliament's reluctance to grant this power to the Tribunal. Robert points out that often, the community or victim's friends and relatives feel outrage because unlike the Tribunal, they don't understand the legal framework in which the Tribunal must make its decisions, and are not aware of the details of the person's current condition.

When asked about his thoughts about the current legal definition of 'mental illness' and whether it is sufficiently broad, Robert gave a very practical answer. He acknowledges that as the current legal definition is based on symptoms or consequences³ and serious harm to the person or other persons⁴ rather than clinical diagnosis, it is sufficiently flexible to encompass a range of mental illnesses, and more importantly, is a functional definition. Further, the scope of the Act is broad enough to cover people who may not suffer a mental illness, but are 'mentally disordered person[s]'.⁵

Although the MHAS has developed a respected profile, the main difficulty Robert and his team faced was the government's long delays in returning decisions, especially when the patients were making good progress. Additionally, the government's reluctance to implement their law reform recommendations was disappointing.

³ Schedule 1, *Mental Health Act 1990*

On the other hand, one example of success in Robert's work was where he represented a female forensic patient achieving an appropriate result where she was found not guilty by reason of mental illness for the death of her own child. Instead of being detained in jail in the period leading up to the trial, she received the appropriate treatment and support enabling her rehabilitation and eventual discharge on conditional release. This was an occasion when the system worked according to its objective.

In closing

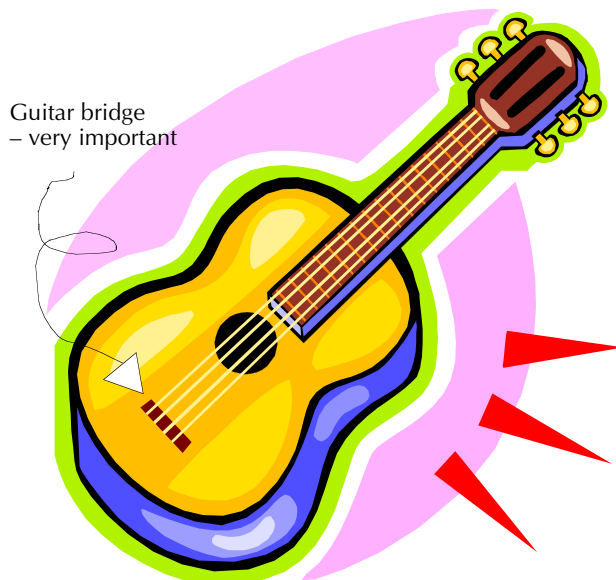
Like quite a few law students, Robert decided to take on a law degree partially because his elder brother was doing a law degree, and also because he saw law as a gateway to many career opportunities both within and outside the legal arena.

During the early development of his legal career, Robert himself was highly impressed by the guidance offered to him by the now Justice Greg James - an early mentor and role model he met at Watson's Solicitors who often counselled young lawyers in his chambers after hours. To Robert, he was "one of the most inspiring lawyers [Robert] ever worked with".

For law students and even those currently working in the legal arena who aspire to pursue a particular area of law but feel confronted by the fierce competitiveness of the legal industry and despair at ever reaching their dream specialisations, Robert offers some reassuring words: "you kind of end up where you belong after a period - it's difficult to get jobs. If you've got the choice that suits you, that's fine, take it. But if you want a job in law, then take whatever you can get and move towards it."

Afterthoughts

If society is a guitar, the attention and resources devoted to the welfare of the mentally ill can be likened to a guitar string neglected and untuned, ready to collapse but for its supporting bridge. In our local community, Robert's work in promoting the welfare of mentally ill patients is as vital as the bridge which allows mentally ill patients to integrate harmoniously into society. While this may not be everyone's dream specialisation, Robert has extensively contributed to increasing justice and has made significant differences to those clients he has represented.



In the eyes of those mentally ill patients, Robert has strummed out their cases in bold notes in the hope of evoking law reform to ease the unfairness of inappropriate detention for those whose circumstances are already compounded by being caught up between the strings of their unfortunate mental illness. Robert is clearly a person of great dedication and compassion - he is indeed an unsung hero of legal aid.

Winnie Ching & Simmy Lai