# Occupational Therapy Assessment and the Medico-Legal Report:

## *The Legal Perspective*

By

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DECLARATION

I hereby declare that the dissertation which I hereby submit to the University of the Free State for my Magister degree in Occupational Therapy is my own independent work and has not been submitted by myself for a degree to another university/faculty.

_____

MARIECHÉN JANSEN VAN VUUREN

I hereby waive authorship and copyright on the dissertation in favour of the University of the Free State.

_____

MARIECHÉN JANSEN VAN VUUREN

Dedicated to:

*My husband and best friend,*

*Chris,*

*whose faith in what Christ can do through me*

*is second only*

*to his faith in Christ Himself*

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# TABLE OF CONTENTS

**ACKNOWLEDGEMENTS....4**

**LIST OF TABLES....9**

**LIST OF FIGURES....11**

**CONCEPT CLARIFICATION....12**

**CHAPTER 1....23**

**INTRODUCTION AND ORIENTATION....23**

1.1 INTRODUCTION....23
1.2 PROBLEM STATEMENT AND RESEARCH QUESTION....28
1.3 PURPOSE OF THE STUDY....29
1.4 AIMS OF THE STUDY....29
1.5 RESEARCH STUDY DESIGN....30
1.6 VALUE OF THE STUDY....30
1.7 ETHICAL CONSIDERATIONS....31
1.8 COMPOSITION OF THE STUDY....32
1.9 SUMMARY....33

**CHAPTER 2....34**

**LITERATURE REVIEW....34**

2.1 DIFFERENT TYPES OF MEDICO-LEGAL WORK....34
2.2 THIRD PARTY LAW....35
2.3 CLAIMING FOR DAMAGES....36
2.4 EXPERT WITNESSES....37
*2.4.1 Problems and guidelines concerning expert witnesses....37*
*2.4.2 Assessments performed by expert witnesses....39*
2.5 THE FOCUS ON ASPECTS RELATING TO INCOME....40
2.6 THE ROLES OF DIFFERENT EXPERT WITNESSES....43
2.7 THE SCOPE OF OCCUPATIONAL THERAPY....46
*2.7.1 What is occupational therapy?....46*
*2.7.2 The 'occupation' in occupational therapy....47*
*2.7.3 Unique training and traits of occupational therapists....49*
*2.7.4 The role of the occupational therapist in medico-legal work....50*
*2.7.5 Important aspects to assess....52*

*2.7.6 Medico-legal process for expert witnesses ....56*
*2.7.7 Expectations from literature ....56*
2.8 INTER-PROFESSION COMMUNICATION ....58
*2.8.1 Room for interpretation ....59*
*2.8.2 Learning a new language ....59*
*2.8.3 Speaking a common language ....60*
2.9 HUMAN RIGHTS AS IT PERTAINS TO MEDICO-LEGAL WORK ....61

**CHAPTER 3 ....64**

**RESEARCH METHODOLOGY ....64**

3.1 INTRODUCTION ....64
3.2 RESEARCH APPROACH AND METHOD ....64
3.3 STUDY DESIGN ....66
3.4 STUDY POPULATION ....66
3.5 SAMPLING ....68
3.6 DEVELOPMENT OF THE MEASUREMENT INSTRUMENT ....69
3.7 NOMINAL GROUP ....69
3.7.1 THE CONSENSUS TECHNIQUE ....69
3.7.2 THE GROUP MODERATOR ....71
3.7.3 THE NOMINAL GROUP TECHNIQUE PROCESS ....71
3.7.4 TRUSTWORTHINESS OF THE NOMINAL GROUP DATA ....75
3.7.5 DESCRIPTION OF QUESTIONNAIRE ....77
3.8 PILOT STUDY ....77
3.9 MEASUREMENT ....82
*3.9.1 Process of questionnaire distribution and retrieval ....82*
*3.9.2 Data collection ....82*
3.10 METHODOLOGY AND MEASUREMENT ERRORS ....89
3.10.1 POPULATION ....89
3.10.2 DISTRIBUTION AND RETURN OF QUESTIONNAIRES ....89
3.10.3 COMPLETION OF QUESTIONNAIRES, OR MEASUREMENT ....90
3.10.4 MEASURING INSTRUMENT ....91
3.11 ETHICAL ASPECTS ....93
3.11.1 PROTECTION FROM HARM ....94
3.11.2 INFORMED CONSENT ....94
3.11.3 RIGHT TO PRIVACY ....95
3.11.4 HONESTY WITH PROFESSIONAL COLLEAGUES ....95
3.11.5 SELECTION OF PARTICIPANTS ....96

3.11.6 LANGUAGE....96
3.11.7 FEEDBACK TO PARTICIPANTS....96
3.12 CONCLUSION....96

**CHAPTER 4....98**

**RESULTS....98**

4.1 INTRODUCTION....98
4.2 RESULTS OF THE STUDY....98
*4.2.1 Background of participants and introductory results....99*
*4.2.2 The legal perspective of the scope of occupational therapy....101*
*4.2.3 The legal profession's expectations regarding occupational therapy....106*
*4.2.4 Definitions and terminology....114*
4.3 SUMMARY....123

**CHAPTER 5....125**

**DISCUSSION OF RESULTS....125**

5.1 INTRODUCTION....125
5.2 DISCUSSION OF THE RESULTS....125
*5.2.2 What attorneys expect from occupational therapists in medico-legal work....126*
*5.2.3 Understanding of the role of the occupational therapist in medico-legal work....135*
*5.2.4 Knowledge pertaining to occupational therapy terms used in reports....140*

**CHAPTER 6....145**

**CONCLUSIONS AND RECOMMENDATIONS....145**

6.1 INTRODUCTION....145
6.2 LIMITATIONS....145
6.3 VALUE OF THE STUDY....148
6.4 CONCLUSIONS....149
6.5 RECOMMENDATIONS....152
6.6 FINAL WORD....154

**BIBLIOGRAPHY....A**

**APPENDIX A: LETTER TO NOMINAL GROUP PARTICIPANTS....S**

**APPENDIX B: RESEARCH QUESTIONNAIRE..... V**

**APPENDIX C: INFORMATION LETTER FOR ATTORNEYS..... W**

**APPENDIX D: LETTER OF APPROVAL FROM ETHICS COMMITTEE ..... .Z**

**APPENDIX E: FINAL BUDGET FOR THE RESEARCH STUDY ..... AA**

**APPENDIX F: DECLARATION CONCERNING LANGUAGE EDITING.... CC**

# LIST OF TABLES


Table 3.1 Response to distributed questionnaires .....88
Table 3.2 Reasons for poor response / non-inclusion of forms .....88
Table 4.1 Participating attorneys' main area of speciality .....99
Table 4.2 Matters for which attorneys mostly refer to occupational therapists…….....100
Table 4.3 Main causes for delay in payments to occupational therapists……101
Table 4.4 Attorneys' understanding of what an occupational therapist does……101
Table 4.5 The role of the occupational therapist in medico-legal matters.102
Table 4.6 Experts approached for specific referral questions .....103
Table 4.7 Roles of the occupational therapist and educational psychologist (EP) in paediatric assessments .....104
Table 4.8 Role of the occupational therapist with reference to cognitive problems, as opposed to that of clinical psychologists or neuropsychologists.....104
Table 4.9 Role of occupational therapy in terms of earning potential and loss of earnings as opposed to that of industrial psychologist..105
Table 4.10 Most important factors occupational therapy referrals are based on .....106
Table 4.11 Most important reasons for occupational therapy referrals.....107
Table 4.12 Time or phase in the claims process when attorneys refer to occupational therapists.....107
Table 4.13 Stage at which attorneys refer to occupational therapists, i.e. time period until trial date .....108
Table 4.14 Median response regarding tasks an occupational therapist should perform and include in their reports.....108
Table 4.15 Importance of aspects addressed in occupational therapy reports. .....109
Table 4.16 Importance for occupational therapists to comment on specific aspects.....110
Table 4.17 Importance of utilizing certain factors in occupational therapy reports.....111

Table 4.18 Circumstances under which occupational therapy joint minutes are requested ..... 112
Table 4.19 Aspects occupational therapists should address in joint minutes ..... 112
Table 4.20 Time prior to trial that occupational therapy joint minutes are requested ..... 113
Table 4.21 Information which attorneys consider sufficient as a base for occupational therapists' comments on long-term expectations regarding a client ..... 113
Table 4.22 Information which attorneys provide so that occupational therapists can comment on long-term expectations regarding a client ..... 114
Table 4.23 Rating of level of knowledge of occupational therapy terms, and the importance attached to this ..... 115
Table 4.24 Attorneys' understanding of 'joint/combined minutes' ..... 115
Table 4.25 Attorneys' understanding of 'qualifying fee' ..... 116
Table 4.26 Attorneys' understanding of 'productivity' ..... 116
Table 4.27 Attorneys' understanding of 'earning potential' ..... 117
Table 4.28 Attorneys' understanding of 'functional capacity evaluation' ..... 117
Table 4.29 Attorneys' understanding of 'functional limitations' ..... 118
Table 4.30 Attorneys' understanding of 'occupation' ..... 118
Table 4.31 Attorneys' understanding of 'occupational disability' ..... 119
Table 4.32 Attorneys' understanding of 'occupational performance components' ..... 119
Table 4.33 Attorneys' understanding of 'vocational rehabilitation' ..... 120
Table 4.34 Attorneys' understanding of 'inconsistent/self-limiting behaviour' ..... 120
Table 4.35 Attorneys' understanding of 'pre-accident status' ..... 120
Table 4.36 Attorneys' understanding of 'scholastic potential' ..... 121
Table 4.37 Attorneys' understanding of 'classification of physical demands' or 'types of work' ..... 121
Table 4.38 Attorneys' understanding of 'alternative employment' ..... 122
Table 4.39 Concepts in the questionnaires that attorneys did not understand or were uncertain of ..... 122
Table 5.1 A comparative description of the occupational therapy role in medico-legal work ..... 136

# LIST OF FIGURES

Figure 1 Procedure followed for this research study. .....65
Figure 2 Summary of pilot study and follow-up process .....81
Figure 3 Overview of the questionnaire distribution and retrieval phases ....82

# CONCEPT CLARIFICATION

The following concepts were used in this study and are individually defined as utilized in the context of this study, unless defined later in the dissertation:

**Activity analysis**

Activity analysis is the process by means of which a therapist can determine the demands of a specific activity/task/occupation by assessing the physical, cognitive and psychological demands of this activity and breaking it down into component parts (Christiansen and Baum, 2005:543). In medico-legal work, this is an important skill as it allows occupational therapists to analyse a person's job demands and match his/her skills to these demands.

**Advocate**

Advocates are members of the legal profession who are briefed by an attorney in order to appear on behalf of a client in any court of law (Crosbie and Randall, 2007:4).

**Amenities**

Amenities are aspects which make life pleasurable or comfortable (Hornby, 2005:44). A loss of life amenities is thus a loss of general comfort, quality and enjoyment of life, such as occurs when a person becomes disabled (Klopper, 2008:165).

**Assessment**

Assessment refers to the process by which the necessary information is obtained in order to determine the abilities of a person and to compile an action plan in terms of his/her needs. This can be done by carefully selected activities, test instruments, standardized tests and interviews (Health Professions Council of South Africa, 2006).

**Attorney**

An attorney is a member of the legal profession who appears on behalf of a client. He/she can present directly to a magistrate, but in general has to work through an advocate in the High Court (Crosbie and Randall, 2007:4). However, if he/she has been working as an attorney for 5 years and possesses an LLB degree and/or a B.Proc degree, he/she may have the right to present a case in the High Court (Crosbie and Randall, 2007:4).

**Civil law**

This field of law involves matters between legal subjects where one subject is alleged to have wronged the other and thus claims damages for this wrong, such as in medical negligence claims. These legal subjects include individuals (natural persons) and organizations (juristic persons). The different parties are called the plaintiff party and the defendant party (Crosbie and Randall, 2007:1).

**Classification of physical demands**

Classification of the physical demands of a specific job aims to indicate the strength a person requires to perform that specific job in an adequate manner. Jobs are classified as being sedentary, light, medium, heavy or very heavy and this classification also takes into account a person's mobility skills (National Academy of Sciences, 1981:1).

**Contextual factors**

Contextual factors are factors connected to a specific context (Hornby, 2005:316), in other words if the context is South Africa, factors such as culture, unemployment and crime would apply. The legal context is also important, as legislation and case law vary between countries and even different regions.

**Damages**

Damages can refer to financial loss (such as medical expenses) and non-financial loss (such as pain, disability) caused by injury (prejudice) to the body of a person (Klopper, 2008:144).

**Defendant**

This is the person or organization against whom civil proceedings are instituted, i.e. the person or organization that should pay for the damages sustained by the injured party (Crosbie and Randall, 2007:4), such as the Road Accident Fund.

**Delict**

Delict indicates an act where a person infringes upon the rights of another, i.e. a wrongful act. It is accompanied by fault on the part of the wrongdoer and causes damages or loss (injury or harm) to the other. There must be a causal connection between the act and the final loss and no grounds for justification, such as self-defence and so forth (Crosbie and Randall, 2007:3).

**Disability**

This is a term that covers various aspects such as impairments, activity limitations and participation restrictions (WHO, 2012:1) and refers to a person's altered opportunity to interact with his/her society as before due to social and environmental obstacles (Chadwick, 2012:1).

**Earning potential or capacity**

Taylor describes a person's earning capacity as the ability to sell his or her services in the open labour market. It is also considered as the

> *"…economic value associated with the individual's access to jobs in the open labor market, placeability, earnings, labor force participation rate and work life expectancy"* (Taylor, 2008:2).

Earning capacity or potential should thus take into account a person's *"talent, skills, training and experience"* when determining whether he/she is able to work (USLegal, 2013:1).

**Expert or expert witness**

This is a person appointed to provide advice and services, including the giving of expert evidence (Crosbie and Randall, 2007:7). Similar to the South African context, the British Medical Association describes an expert witness as someone specifically called in by one side or the other to interpret the facts using his/her clinical expertise (British Medical Association, 2008). There are three elements of serving as an expert in a particular case, namely: provision of reports, time spent qualifying as an expert in the particular case and court attendance (British Medical Association, 2008).

**Functional capacity**

This indicates a person's capacity to function. Functional capacity assessments are the

> *"…measurement of the functional consequences of impairment in tasks that are pertinent to the particular role under consideration"*

(Matheson, 2003:5). Examples of these functional consequences would be a person's mobility or problem solving.

**Functional limitations**

These are restrictions of a person's ability to perform simple observable behaviours that share a common purpose (Matheson, 2003:3), such as during self-care or work.

**Health professional**

A health professional is a person providing services in terms of any health-related law, such as the Allied Health Professions Act, 1982 (Act no 63 of 1982) and Health Professions Act, 1974 (Act no 56 of 1974) (Department of Transport, 2006:6).

**Human rights**

Human rights can be described as

> *"…social or material entitlements which are recognised universally in national and international law and that address fundamental human needs."* (London, Baldwin-Ragaven, Kalebi, Maart, Petersen and Kasolo, 2007:1270).

**Impairment**

'Impairment' refers specifically to an alteration in a person's bodily functions or structure (World Health Organisation, 2012:1) or psychological function which is caused by injury, illness or congenital condition (Chadwick, 2012:1).

**Inconsistent/self-limiting behaviour**

This type of behaviour is occasionally seen during medico-legal assessments and indicates behaviour in a patient/client whereby

a) He/she limits herself by less than optimal effort exerted (Heilbronner, Sweet, Morgan, Larrabee, Mills and conference participants, 2009:1096) or
b) Her/his behaviour changes from one point to another, giving discrepant results, or is not consistent (Hornby, 2005:756) with other information provided about the person (Heilbronner *et al*, 2009:1103).

**Joint minute**

A document which indicates matters agreed and disagreed upon between two members of a profession called as opposing witness in a matter, addressing aspects stated in their individual reports (Nosango Mqutwa v RAF Case No 3178/2006:2). The purpose of the joint or combined minute is to settle as many disagreements as possible prior to the trial.

The Law Society is an organisation which not only ensures that attorneys comply with their Attorneys Act, but also promotes standards and rules amongst attorneys and support members of the public in any disputes or enquiries regarding attorneys (Law Society of the Northern Provinces, 2012:1).

**Litigation**

Litigation is the process of making or defending a case in court (Hornby, 2005:864).

**Medico-legal**

Medico-legal indicates anything "of, relating to, or concerned with medicine and law" (Merriam-Webster Online Dictionary, 2008:1).

**Medico-legal work**

The process of legal practitioners instructing expert witnesses to assess and report on an injured person, is referred to as medico-legal work (Health Professions Council of South Africa, 2006). Randall further describes that when occupational therapists perform work as an expert witness or as advisor to a court, this is considered as medico-legal work (2005:236).

**Medico-legal reports**

Medico-legal reports are based on a detailed assessment of the person's

> *"…physiological, psycho-social and functional activities and serves to advise on the general and special damage which falls into the expertise of the occupational therapist* (Van Greunen and Vlok, 1991:1).

The aim of such reports is to advise the court on how to compensate a person in order to reinstate him/her to his/her pre-injury state (Van Greunen and Vlok, 1991:1).

**Occupation**

Occupation can be described as the

> *"…engagement in activities, tasks and roles for the purpose of productive pursuit, maintaining oneself in the environment and for purposes of relaxation, entertainment, creativity, and celebration, or activities in which people engage to support their roles"* (Christiansen and Baum, 2005:548).

In the medico-legal context the term 'occupation' can therefore not only be applied to an individual's job or work, but also participation in daily life activities such as self-care and leisure activities such as sport (Townsend and Wilcock, 2004:77).

**Occupational balance**

Occupational balance is a "regular mix of physical, mental, social, spiritual and rest occupations that provide an overall feeling of well-being" (Christiansen and Baum, 2005:548).

**Occupational disability**

Any restriction of ability resulting from functional limitation to perform an activity within the range considered normal for the occupation (Matheson, 2003:3) can be considered an occupational disability.

**Occupational deprivation**

Whiteford describes occupational deprivation as

> *"…a state of preclusion from engagement in occupations of necessity and/or meaning due to factors that stand outside the immediate control of the individual"* (2000:201).

**Occupational capacity**

This can be described as

> *"…the result of a complex interaction between several elements in the person, in the physical environment and in the demands of the social environment"* (Thellefsen and SØrenson, 2004:10).

**Occupational performance areas**

Occupational performance areas (OPAs) include a person's activities of daily living e.g. self-care, education, work, play and leisure (Nelson, 2006:518).

**Occupational performance components**

OPCs refer to a person's basic abilities, such as sensory motor components, neuromuskoskeletal, motor, cognitive, psychosocial and psychological components (HPCSA Professional Board for Occupational Therapy, Medical Orthotics/Prosthetics and Arts Therapy, 2006:2).

**Occupational therapy**

As an occupational therapist experienced in the role as expert witness, Gloria Luke suggests a definition

> *"…which can be easily articulated to both [sic] the client, the legal profession and the court: Occupational Therapy is the physical and psychological assessment and treatment of a person by the specific use of selected activities"* (Luke, 2009:66).

**Personal injury**

Klopper describes personal injuries as

> *"…all injuries which physically affect the body of a person, as well as non-physical consequences, such as mental illness and emotional shock"* (Klopper, 2000:79).

**Plaintiff**

The plaintiff party submits the monetary claim, i.e. usually a person who has suffered injury with resultant physical and/or psychosocial problems affecting his/her function (Van Greunen and Vlok, 1991:1).

**Pre-accident status**

A person's pre-accident status indicates a person's status before (Hornby, 2005:1139) his/her accident and can refer to person's the

legal, social, professional status or ranking at that time (Hornby, 2005:1445).

**Professional ethics**

Professional ethics is described as a

> *"…careful and systematic reflection on and analysis of moral decisions and behaviour in the healthcare environment"*

(The Committee on Human Rights, Ethics and Professional Practice, 2005:4).

**Qualifying fee**

Randall and Crosbie (2012) describe a qualifying fee as

> *"The fee charged by an expert to qualify himself/herself to testify in relation to a particular matter…Reading of relevant material and conducting of necessary research in order to be in a position to testify on a specific matter form part of the qualifying fee, along with consultations with the attorney and/or advocate and listening to other experts giving evidence which is relevant to the opinions formed or expressed…".*

**Quantum**

The amount of financial compensation established in a case that may be claimed by the pursuer (Luke, 2009:7). Quantification of a claim is the process by which this amount is determined.

**Road Accident Fund (RAF)**

The RAF provides compulsory cover to all South African road users, against injury or death due to motor vehicle accidents. This cover serves as indemnity to a person who caused the accident, as well as personal injury and death insurance to the injured persons and their families (Road Accident Fund media release, 2010:3).

**Scholastic potential**

A child's scholastic potential pertains to their scholastic or educational (Hornby, 2005:1305) ability to perform or be developed scholastically (Hornby, 2005:1134), as well as the possibility of achievement in that capacity. It therefore indicates that possibility of the child a) reaching certain levels in education and b) using that education (Hornby, 2005:1134) after injury, illness or disability.

**South African Medico Legal Society (SAMLS)**

This South African organization attempts to improve the interaction between the health and legal professions and to improve medico-legal services. Membership includes various legal and health fraternities (SAMLS, 2012:1).

**Standardised tests**

Standardised tests indicate tests which are designed to be reliable, consistent and based on statistics (Zucker, 2003:3), scoring the tested person according to norms, such as age norms, or other criteria (Montgomery and Connolly, 1987:1873). Instructions and administration are also more consistent and objective in a standardised test (Montgomery and Connolly, 1987:1873), thus limiting the possibility of biasedness and incorrect interpretation (Zucker, 2003:3).

**Third party**

Klopper describes the 'third party' as the person who, for example, suffers damage due to a wrongful act by another person (Klopper, 2008:1, 27). The third party system however takes the liability away from the negligent or guilty person and places it on a 'third party', such as the insurer or the RAF (Klopper, 2000:21). Swanepoel however describes the 'third party' as a person who was not initially part of a dispute, but who is involved by means of Rule 13 (Swanepoel, 2006:134). For this study, the 'third party' refers to the person who suffered damages.

**Vocational rehabilitation**

Internationally various understandings of the term 'vocational rehabilitation' exists (WFOT, 2012:2), but for the purposes of this study and in accordance to the HPCSA the term indicates the field of expertise wherein occupational therapists work with mainly adults of working age who, due to illness or injury, cannot return to their original working conditions. Therapeutic intervention includes functional capacity assessments, work visits, liaising with employers, recommendation of reasonable accommodations in the work place, work hardening etc. (Health Professions Council of South Africa, Professional Board for Occupational Therapy, Medical Orthotics/Prosthetics and Art Therapy, 2006). An important aspect of vocational rehabilitation is aiming to improve occupational justice and the opportunity for persons to fulfil constructive roles in society (WFOT, 2012:1).

**Work**

The World Federation of Occupational Therapists as an international organisation advocates "the right of all people to participate in productive work" (WFOT, 2012:2). Work is an activity required for subsistence (Christiansen and Baum, 2005:9), such as school, home or family management and employment. For the purposes of this study, the term 'job' will be used to indicate in lay terms a person's vocation, work or occupation performed for remuneration.

# CHAPTER 1
# INTRODUCTION AND ORIENTATION

*JOHANNESBURG - On January 23, 2009, a young man from Germiston left his house at 11:00. On his way to work, his car was hit by a truck and he was rushed to the nearest hospital by ambulance. He sustained a severe neck injury. A few months later, he was encouraged by family members to claim from the Road Accident Fund. After a series of lengthy assessments, his case went to court and it was determined that he can no longer do his job as fitter and turner. He was awarded general and special damages for past and future medical expenses, as well as for loss of quality of life.*

## 1.1 INTRODUCTION

When an injured or ill person decides to claim for compensation from a third party, they often find that it is a tedious and cumbersome process (Road Accident Fund Annual Report, 2008:38). This is especially so when legal professionals require detailed information on the abilities of an injured person in the case of serious injuries with long-term functional implications (Klopper, 2008:293).

In such cases assessment reports are required from various health professionals (Klopper, 2008:294). These health professionals called upon to provide opinion to the legal profession are referred to as expert witnesses (College of Occupational Therapists (COT), 2009:1). Medical experts such as the orthopaedic and neurosurgeons are considered the primary experts, while allied health professionals such as occupational therapists (occupational therapists) and clinical psychologists are secondary experts. Industrial psychologists are considered the final opinion (Schwartz, 2008).

Broadly, the medico-legal field spans cases handled, for example, by the insurance industry, retirement and provident funds and statutory funds such as the Road Accident Fund (RAF) or the Commissioner for Compensation for Occupational Injuries and Diseases (COID).

From a legal point of view, the medico-legal process involves many role players, such as advocates, judges and attorneys. Focusing on the latter in this study, the role of the attorneys implies that they receive their instruction from the claimant or the third party and then appoint the relevant expert witnesses for medico-legal assessments and reports.

Considering the number of legal and health professionals involved in each medico-legal case, one can assume that the expenses involved in instructing the necessary professionals for third party claims are significant. Every year large sums of money (up to R 7 billion a year) are spent on legal costs for third party claims (RAF Media release, 2010:1). This media release also indicated that in fact only about 64% of the available RAF monies are used for actual benefit pay-outs to the claimant. Legal fees (Department of Transport, 2010:21) and medico-legal and other experts' (General Council of the Bar (GCB), 2003:18) expenses for the past few years thus overtook the compensation paid out to claimants. This is a perturbing fact and highlights why funds such as the RAF would adapt their policies and processes in order to enhance the efficacy of the claiming and pay-out processes.

To such purposes, the Satchwell Commission (or RAF Commission) was appointed in 1999 to investigate the possibility of a "reasonable, equitable, affordable and sustainable system" of compensation for road accident victims (General Council of the Bar, 2003:18). In this investigation and the RAF's process of streamlining their claiming process, the relevancy of certain role players has come under scrutiny. When a *direct payment system* from the RAF to claimants was announced by the RAF in the Government Gazette of 27 July 2007 (Road Accident Fund, 2007:72), the role of the attorneys for example, came under discussion. Subsequently the Law Society and South African Association of Personal Injury Lawyers (SAAPIL) has since 2007 been challenging the Minister of Transport and the RAF in court in this regard (Law Society of South Africa *et al.* v Minister of Transport and RAF, 2010). Their argument was that several regulations of the new RAF act was inconsistent with the Constitution and should be amended (Du Plessis, 2010:8).

The researcher's first argument is that these new developments (such as direct payments) in terms of RAF policy also predict significant changes to the occupational therapy profession as it relates to medico-legal work. A threat similar to that experienced by the personal injury lawyers has been perceived by several members of the occupational therapy profession, namely whether occupational therapists would continue to play an integral role in the claim and compensation process of third party claims. The researcher noted such tension regarding the role and integrity of the profession during medico-legal seminars, workshops and interest group meetings. Occupational therapists are mostly appointed in matters where the injuries are of a more serious nature and RAF work has to date constituted the bulk of occupational therapy medico-legal work (Crosbie and Randall, 2007:5). However in terms of the RAF Amendment Act of 2006, only serious injuries as defined according to the *American Medical Association Guides to the Evaluation of Permanent Impairment* (AMA Guides) are now considered for compensation for certain damages (Department of Transport, 2008:1). This is essentially a medical criterion (Rondinelli, Genovese, Katz, Mayer, Mueller, Ranavaya and Brigham, 2008:19) and many patients who would in the past have been referred for occupational therapy assessments are no longer eligible for comprehensive functional assessments. This has implications for the work load and income of medico-legal occupational therapists.

The new RAF regulations stipulate that an injured person should be assessed on a holistic basis to determine capacity and performance with regard to functionality (Department of Transport, 2006:6).

Determining an injured person's earning capacity or ability to work is probably one of the most complex aspects of a claim (Millard, 2006:690). It is however indicated by its authors that the AMA Guides are not intended to assess a person's ability to return to work (Rondinelli *et al.*, 2008:24). This would entail that medical practitioners who use the Guides should still

> *"...obtain additional consultant expertise and input to better define job-related functional abilities and limitations, as well as vocational*

*demands pursuant to such determinations."* (Rondinelli *et al.*, 2008:24).

As occupational therapists have been called upon for expert opinions on a person's ability to live independently, as well as his/her capacity to work since the 1980s (Allen, Ownsworth, Carlson and Strong, 2010:1), the occupational therapist can play a valuable role in assisting the medical and legal profession in the above regard.

The second argument is that discrepancies remain in terms of the role of the occupational therapist in the medico-legal field. This is evident in that certain occupational therapists have recently been instructed by attorneys to complete the RAF 4 Serious Injury Assessment form based on the AMA Guides (AMA/OT task group, 2012). This has become an increasingly controversial subject in occupational therapy, medical and legal circles. Regulatory organizations, such as the Health Professions Council of South Africa (HPCSA), have been approached by various parties to comment on the scope of the occupational therapist in this regard. The above scenario has been compounded by the long-standing question of which experts should comment on aspects integral to an injured person's claim, for example earning potential and early retirement.

Before an attorney can however ask an expert to comment on important aspects such as earning potential, he/she should have a solid understanding of the role of each specific expert. As predominantly attorneys refer for occupational therapy assessment reports, it is essential that they have an accurate picture of what can be expected from occupational therapists in the field of medico-legal work. A Canadian study revealed that one of the reasons for attorneys not using occupational therapists in legal matters is a limited understanding of how the occupational therapist can contribute to their cases (Hall-Lavoie, 1997:60). Canadian research data also indicates that attorneys who refer to occupational therapists have specific expectations of their occupational therapists, of which occupational therapists are not always aware or cannot always adhere to (Hall-Lavoie, 1997:60).

Literature pertaining to attorneys' perception of the role of the occupational therapist confirms the researcher's view that, although there has long been a need for more distinct guidelines regarding the scope of practice of different experts, this has become even more important in the light of recent developments. Carter (2011:9) reiterates that it is vital that expert witnesses testify and report only within their own field of expertise and ethically, health professionals should ensure that they are competent in terms of training and related experience (Department of Health, 2006:7).

The researcher's third and final argument is that occupational therapists play a vital role in answering to the specific needs and expectations regarding medico-legal assessments as stipulated by government policies and court. In the first place, occupational therapists are experts in commenting on a person's ability to work (Allen *et al.*, 2010:1). Their opinions relating to the ability of a person's ability to return to work are based on comprehensive and holistic assessments of occupational participation (Allen, Rainwater, Newbold, Deacon and Slatter, 2004:82). These assessments are not only limited to one sphere of a person's life or abilities.

Secondly, the occupational therapist is also particularly well positioned to recommend measures which will decrease or remove the loss of above-mentioned capacity or functionality, as well as determining the costs of disability (Crosbie and Randall, 2007:7).

Thirdly, as stated by Hall-Lavoie (1997:10) and others, occupational therapists play a valuable role in translating a diagnostic condition into its functional impact.

However, the aforementioned points all raise the challenge to occupational therapists that *all* possible factors contributing to a person's occupations should be taken into account during his/her assessment, especially work. These assessment findings and expert opinions should

then be presented to the legal professionals in an effective manner in the assessment report.

Hall-Lavoie also found in her study that attorneys considered it essential for occupational therapists to answer the referral questions and convey these answers effectively (Hall-Lavoie, 1997:48). Occupational therapists therefore especially need to increase the accuracy of their assessments and establish more transparent methods of interpreting findings and forming their opinions in the medico-legal industry (Allen *et al.*, 2004:83).

In summary, considering the new RAF legislation and pre-existing overlap of experts' professional barriers one has to ask: How secure is the role of the South African occupational therapist in the medico-legal field?

The researcher is of the opinion that South African occupational therapists require guidelines in terms of how the profession is viewed by other professions, what are expected of them and what the scope is wherein they can effectively operate. The researcher believes that results from this study will shed light on aspects that can be addressed by the profession in order to remain a vital role player in all areas of medico-legal work.

## 1.2 PROBLEM STATEMENT AND RESEARCH QUESTION

The following arguments have been presented in this introduction, which led to the problem statement:

- New developments in terms of government policy also predict significant changes to the occupational therapy profession as it relates to medico-legal work.
- Discrepancies remain in terms of the role of the occupational therapist in the medico-legal field.
- Occupational therapists play a vital role in answering to the specific needs and expectations regarding medico-legal assessments as stipulated by government policies and court.

This rationale has led to certain questions and the main research question for this study:

*What are the South African legal profession's expectations in terms of the medico-legal assessments and reports compiled by occupational therapists as expert witnesses in third party claims?*

This led to the formation of three specific sub-questions, namely:

- What does the legal profession expect of occupational therapists in medico-legal work?
- How do they understand the role of the occupational therapist in medico-legal work?
- Do the legal professionals have any difficulty understanding terms used by occupational therapists in medico-legal reports?

## 1.3 PURPOSE OF THE STUDY

In the light of the above, the purpose of this study is thus to describe the South African legal profession's expectations in terms of the medico-legal assessments and reports compiled by occupational therapists as expert witnesses in third party claims.

## 1.4 AIMS OF THE STUDY

The specific aims of this study were to:

- Describe the expectations of the legal profession with regards to occupational therapists working in the medico-legal field;

- Describe the knowledge of the legal profession pertaining to the scope of occupational therapy, specifically in medico-legal work and

- To identify possible barriers between the legal and occupational therapy professions in terms of profession-specific terminology and approaches.

## 1.5 RESEARCH STUDY DESIGN

A non-experimental descriptive quantitative study design was used. Descriptive research is specifically

> *"…used to generate new knowledge about concepts, or topics about which limited or no research has been conducted by describing concepts and identifying relationships"* (Burns and Grove, 2005:44).

The study entailed the completion of a written questionnaire by South-African trained attorneys who do medico-legal work. The questionnaire was compiled based on data obtained from a nominal group with occupational therapists in the medico-legal field, as well as on literature. The questionnaires were sent to attorneys who indicated in the Hortors Legal Diary that they specialize in third party and related matters.

## 1.6 VALUE OF THE STUDY

The researcher is hoping that answering the above identified research questions will lead to:

- Better understanding of the occupational therapists role and scope of practice in the medico-legal context.
- More effective service delivery (efficacy and aptness of assessment, report and recommendations)
- A more scientific, yet interpretive approach to a person's ability to return to pre-accident occupation post-injury
- Greater benefit to claimants by means of improved understanding and co-operation between legal and health professionals.
- Contribution to the profession of occupational therapy in terms of gaining of knowledge and guidelines for improvement.

It may further contribute to the science of occupational therapy, as well as to the graduate and post-graduate training of occupational therapists and legal practitioners in terms of medico-legal practice.

## 1.7 ETHICAL CONSIDERATIONS

Approval from the Ethical Committee of the Faculty of Health Sciences, University of the Free State was obtained prior to commencing data collection (ETOVS nr 19/2010).

Participation in this study was voluntary (Leedy and Ormrod, 2005:101) and once eligible attorneys had read the information letter attached to the written questionnaire, they had the choice whether to complete and return the form or not. Questionnaires were numbered, so the researcher could not identify the respondents. An inscription on the questionnaire was added to indicate that should a participant complete and return the questionnaire, it will serve as consent to use the information (Burns and Grove, 2005:193).

Subjects for this study were not selected. All attorneys that indicated in the Hortors Legal Diary that they do medico-legal work as applicable to this study were equally approached (Burns and Grove, 2005:190). The questionnaires obtained from attorneys who indicated that they did not in fact do this type of work, were excluded from this study.

Written questionnaires were only available in English, as this is the language mostly utilized in South African courts.

Participants' rights to privacy (Burns and Grove, 2005:186) were protected by handling results confidentially and discussing results without identifying participants.

Research results will be available to participants on request once the study is completed.

## 1.8 COMPOSITION OF THE STUDY

**Chapter 1** of this dissertation contains the introduction, background and orientation to the study and indicates the problem statement, research purpose and aims, research methodology, ethical considerations and the potential value of the study.

**Chapter 2** encompasses the literature review in which aspects such as the medico-legal process, legal procedures, legislation as well as guidelines for expert witnesses, report writing and assessments will be elaborated on. In this chapter the role of the occupational therapist as expert witness will be considered in detail.

In **Chapter 3** the research methodology used in this study will be discussed. Necessary amendments made to the methodology in order to improve participation will be discussed.

**Chapter 4** presents the results obtained from this study and several aspects will be discussed, such as expectations from the legal profession, concepts and terminology used in occupational therapy reports, roles and attorneys' knowledge regarding occupational therapy.

**Chapter 5** is the discussion chapter and will provide information on results obtained from this study, as well as a comparison to relevant literature.

**Chapter 6** offers the conclusion of this study and will summarize the conclusions, recommendations, shortcomings, and value of this study, supporting the rationale for the study.

## 1.9 SUMMARY

In Chapter 1 the background to this study is briefly discussed and an orientation to the main objectives sketched. Chapter 2 will reflect the relevant literature that pertains to this study.

# CHAPTER 2
# LITERATURE REVIEW

In the previous chapter, the research study was introduced to the reader and an orientation to the background, problem statement, purpose and aims, methodology, ethical considerations and value of the study was provided.

This chapter provides an overview of the literature pertaining to concepts discussed in this study. The main foci for the literature review include the following:

- Different types of medico-legal work
- Third party law
- The process of claiming for damages
- The role of expert witnesses
- The focus on aspects relating to income
- The scope of occupational therapy
- Inter-profession communication
- Human rights as it pertains to medico-legal work

Aspects not addressed in this literature study were not included for the purposes of the scope of the study.

## 2.1 DIFFERENT TYPES OF MEDICO-LEGAL WORK

For the purpose of this study, the reader is reminded that 'medico-legal work' refers to matters where health professionals are called to serve as expert witnesses in certain types of cases (Please refer to the Concept Clarification on page 18 in this regard).

South African law professionals and members of the public, when intending to talk about victims of motor vehicle accidents (hereafter referred to as MVAs) often simply refer to third party matters (Klopper,

2008:1). This is probably due to the large percentage of South African third party claims which continue to be RAF matters. For this reason, many examples relating to the RAF will be cited in this study. In any event, the quantification of a medical negligence matter is structurally similar to that of a motor vehicle accident matter (Jacobs, 2012).

However, in South-Africa, medico-legal matters can be an umbrella term for matters such as insurance claims, personal injury claims and the growing field of medical negligence claims (Letzer, 2012:35). This increase in medical negligence matters is brought on partially by significant changes in current legislation regarding the Road Accident Fund (RAF). As discussed in Chapter 1, an injured person has to be classified as having sustained serious injuries in order to qualify for a claim. The number of RAF claims referred to attorneys and health professionals are therefore decreasing and it appears that more personal injury lawyers are encouraging clients to come forward with medical negligence cases.

## 2.2 THIRD PARTY LAW

It is important to understand the field of law in which the South African third party system and bodies such as the RAF operate (Klopper, 2000:2), namely the law of delict. Since the civil law principles of countries such as Australia and Great Britain are similar to the South African, several overseas literature sources will be referred to in this study.

A South African expert in this field of third party claims, Klopper indicates that the law of delict is a field of civil law and is the underlying common law basis of third party matters. Claims are based on the recovery of certain damages caused by a delictual act, for example, a driver's act which results in the injury of another person (Klopper, 2000:2) or a doctor's performing of surgery which results in injury to a patient.

The third party can indicate the person who, for example, suffers damage due to a wrongful act by another person (Klopper, 2008:1). Crosbie and

Randall also state that, to cover those who commit a delict and then not have the means to pay compensation, (Crosbie and Randall, 2007:4), 'third parties' such as indemnity insurers/malpractice insurers and bodies like the RAF have been set up. The third party system thus takes the liability away from the negligent or guilty person and places it on a 'third party', such as the insurer or the RAF (Klopper, 2000:21).

## 2.3 CLAIMING FOR DAMAGES

Any person can utilize the third party claim procedure, provided there is proof that the claiming party is entitled to contribution for damages from the third party (Swanepoel, 2006:134).

The following are possible damages which might be recoverable from third party claims (Klopper, 2000:79-83):

- Medical and hospital costs (past and future)
- Loss of income (past and future)
- Loss of earning capacity
- Travelling and transport costs
- Costs of a nurse, assistant, servant, helper or manager
- Pain and suffering
- Psychological trauma resulting from physical injury
- Emotional shock
- Disfigurement
- Loss of amenities
- Loss of general health
- Shortened life expectancy

In order to assist in proving entitlement to contribution due to the above damages suffered, expert witnesses might be asked to comment on these aspects, either in support of, or contesting the grounds for a claim.

## 2.4 EXPERT WITNESSES

Due to their specific knowledge and training, expert witnesses are better equipped than lay people to form an opinion from certain facts (Illsley, 2006:14) and they thus play an important role in litigation (Law Society of New South Wales, 2010:205). They are asked to give their opinion to the court in matters such as third party matters. In particular, future medical and auxiliary expenses can only be established with the assistance of expert witnesses (Jacobs, 2012:9).

Especially technical and complex matters require that the experts are brought onto the case as early as possible (Law Society of New South Wales, 2010:211). The scope of the expert is an important factor to be aware of and kept in mind when selecting experts (Law Society of New South Wales, 2010:211) and the right 'mix' of experts will be determined by the nature of the claim. For example, in the case of a minor child who sustained head injuries and is now suffering from learning problems, possible experts who will be approached can include educational psychologists, occupational therapists and neurosurgeons. In the event of a traumatic amputation of an adult person's leg after a MVA, orthopaedic surgeons, occupational therapists and a prosthetist would typically be involved.

### 2.4.1 Problems and guidelines concerning expert witnesses

Despite the obvious and essential role of the expert witness in medico-legal matters, many legal professionals have had negative experiences with expert witnesses. Others also consider expert witnesses as an industry that aims to assist the courts, but at the same time generates significant costs (Luke, 2009:48). Some of the problems associated with expert witnesses are outlined below, along with general guidelines to which expert witnesses should adhere to avoid these problems.

The literature indicates that despite their good intentions, one seldom finds an expert witness whose professional opinion will go against that of

their instructing party (RAF Commission, 2002:674). Experts may thus be seen as “hired jacks” (RAF Commission, 2002:698) even though lobbying for the party which instructed them results in risk of exposure and reporting to the HPCSA (Carter, 2011:9).

As the outcomes of cases can be significantly affected by the expert witness, it is critical that an expert should at all times be independent (Carter, 2011:7) and impartial (Luke, 2009:44) and stay within his/her own area of expertise (Carter, 2011:9). As the selection of the appropriate expert for a matter is vital, there should be awareness under experts, but also under those who instruct them of what can/should be expected from specific expert witnesses in legal proceedings (Luke, 2009:47).

Another problem relating to expert witnesses is their use of terminology. A report may use the same terminology to convey different meanings, such as ‘work’ or ‘occupation’ (RAF Commission, 2002:98) and sometimes terminology is not defined at all, nor is the criteria used by the experts properly explained. Consistent use of language and criteria in expert reports is very important (RAF Commission, 2002:701).

Furthermore, expert witnesses do not always provide sufficient information regarding costs to properly guide the legal teams. Robert Koch, a South African based actuary who specializes inter alia in claims for compensation/damages for personal injury, in his Guidelines for Experts indicates that expenses listed by expert witnesses in reports are often overlooked. He notes that experts should specify the cost of all future expenses, the period over which expenses would be needed or surgery indicated and the percentage likelihood that this will become necessary (Koch, 2008:1).

Finally, problems may arise when expert witnesses lack hands-on experience in clinical work and legal professionals should be aware of this (Letzer, 2012:36). Clinical experience enables experts to better indicate interactions between an injured person’s experience of his/her disability and their environmental factors (RAF Commission, 2002:698).

### 2.4.2 Assessments performed by expert witnesses

The RAF Commission Report 2002 Volume 1 indicates the need to determine the state of health of any claimant, taking into account a person's pre-accident emotional and physical status, nature of the injury, degree of incapacity, future treatment required and prognosis (RAF Commission, 2002:670).

It is also essential to specifically determine the functional impact of injuries on a person in order to assist in quantifying the damages involved in personal injury claims (Crosbie and Randall, 2007:7), as quantification of a claim is the main reason attorneys refer clients for medico-legal assessments.

To comment on the nature, degree and impact of an injury on a person, medical or health professionals need to comprehensively assess the injured person. They should consider South African contextual factors (such as culture, employment status, religion and socio-economic status) in making their conclusions and recommendations. Such an assessment should be standardised, but also must assess a person on a holistic basis to determine capacity and performance with regard to functionality (Department of Transport, 2006:6).

Unfortunately several of the typical standardised tests used by occupational therapists and other experts in medico-legal assessments are not standardised for the SA population (Richmond and Holland, 2011:36). Therefore the use of such tests requires further knowledge and the skill from the occupational therapist to interpret, apply and contextualize findings, drawing all conclusions back to how the injured person has been affected functionally in his/her own surroundings. Ethically occupational therapists should also ensure that they use updated assessment measures to base their recommendations and conclusions on (Ethics Commission of the American Occupational Therapy Association, 2010:3).

In order to simplify this process of assessing a person's capacity after injury and limit legal and expert fees, statutory bodies such as the RAF are implementing new structures to determine the seriousness of injuries.

One such strategy is the introduction of the American Medical Associations (AMA) *Guides to the Evaluation of Permanent Impairment*. These Guides express an injured person's level of impairment as a percentage of whole person impairment, and in general the RAF now deems a person to have sustained a serious injury only if his percentage of Whole Person Impairment is 30% or greater. It has been pointed out that expressing a person's earning capacity and level of disability as a percentage is of great assistance to legal professionals, as mentioned in the case of JN Lapp v Standard General Insurance CO LTD (1983) and reiterated by Robert Koch (2008:1). However, in the researcher's view, the use of easier-to-quantify conclusions indicated by a percentage is contradictory to the complex nature of occupation. As one occupational therapist stated during an informal survey on the AMA Guides, launched by the researcher in August 2011:

> *"There is no percentage that one can link to one person. For one client the hands are part of his work and for other not…How can a professional piano player be compensated the same way as a housewife when a pinkie [sic] is amputated?" (Anonymous, 2011)*

## 2.5 THE FOCUS ON ASPECTS RELATING TO INCOME

Considering that the role of the RAF is to restore the health and economic status of a victim and their position in society (RAF Media Release, 2010:3), a person's ability to earn is an important aspect in third party claims. This role of the RAF, alongside the right of a person to participate in productive occupation, such as work, (WFOT, 2006:1) compels the court to consider the physical, mental and emotional benefits of working and the subsequent life roles related to a person's occupations.

Determining a person's ability to earn an income is also probably the most challenging part of a personal injury claim (Millard, 2006:690). It is therefore understandable why many expert reports focus on a person's past and future loss of income (RAF Commission, 2002:676).

Whether a person can return to work after an injury is however a complex matter and cannot be determined by a single aspect, such as the nature/degree of his injury. Rather, opinions must be derived from at least a basic understanding of essential occupational tasks and how the person's injury interacts with the demands of his/her occupations (Rondinelli *et al.*, 2008:24). In this study 'work', or 'productivity', (ibid, page 9) falls under the umbrella of 'occupation' (ibid, page 123), along with self-care and leisure (Hocking, 2000:61).

When considering the effect of a person's inability to work, one can easily understand why this important aspect needs to be assessed in detail post-injury. From an occupational perspective and in the researcher's opinion, the loss of the ability to work or perform occupation can be considered a form of general damages and a claimant should be compensated accordingly. Koch however, when referring to a person continuing to go to work despite pain or discomfort, indicates that the

> ***"…release from the need to work can justify a decrease to the award for general damage"*** (Koch, 2008:5).

The researcher finds this a disconcerting statement, as occupational therapists such as Christiansen and Baum (2005:150) and Wilcock (1999:2) describe occupation as the "major natural mechanism to meet basic needs and maintain health".

Not only does the ability to participate in occupations, such as work, furthermore play a vital role in a person's recovery post-injury due to its therapeutic power (Pierce, 2001:138), it is also considered the right of a person of any ability "to participate in productive occupations (WFOT, 2006:1). Therefore the researcher cannot consider the release from the need to work a form of gain for the injured person. The client would much rather gain from adequate treatment and rehabilitation post-injury, as well

as placement in a suitable work environment with the necessary accommodations made to enhance his/her comfort at work. Pierce also describes the impact of a changed occupational identity, for example when a client no longer has contact with familiar persons, routines and environments due to their inability to, for example, work (2008:254).

Spavins (2006:1) likewise found that a person's ability to participate in productive work activity contributes significantly to his/her physical and psychological well-being and that

> *"…the potential negative consequences of being out of work extend well beyond the loss of an income but also include loss of a role, loss of social contact and daily routine and very importantly, loss of self-esteem and self-worth."*

Christiansen and Baum (2005:136) state that partially due to the acceptance of a medical model, courts and legislators might underestimate a person's need to engage in meaningful occupation to improve or maintain health. Traditionally 'work' has been considered an activity which is performed merely to earn a living (Christiansen and Baum, 2005:9) and occupation is considered by many mainly as an economic requirement (ibid, page 136). Akin with this argument, the AMA *Guides to the Evaluation of Permanent Impairment*, an essentially medical model written by doctors, for doctors (Rondinelli *et al.*, 2008:19) does not allow for the assessment of a person's ability to work (Rondinelli *et al.*, 2008:24) when determining permanent impairment.

In an unpublished court ruling in the matter of Rudman v Road Accident Fund 2003(2) SA 234 SCA, the injured person claimed for loss of earning capacity. He was a self-employed hunter and farmer before his accident and was left unable to do either of these due to his injuries. His business could however continue and his claim was denied as he had failed to prove a loss of income or decrease in his income. The court ruled that there had to be proof that his reduced earning capacity had caused actual financial loss, which was not so in his case. The court further found that there was no indication that he would ever have to return to the open

labour market (Jacobs, 2012:15). This is an example of the financial implications of an injury bearing more weight in court than the disruption of this person's working life. What was not considered by the court, is that the ability to be productive often gives a person significant satisfaction (Pierce, 2001:253). Pierce also indicates "pleasure, productivity and restoration" as characteristics of occupation and the participation therein 2001:252). Again considering that the role of the RAF as stated before is to *restore* the health and economic status of a victim and their position in society (RAF Media Release, 2010:3), one has to question rulings as in the given example.

It further seems that members of the legal profession are of the opinion that a person's loss of productivity does not automatically indicate a loss of earning capacity and a loss of earning capacity does not necessarily equate to a loss of earnings (Jacobs, 2012:15). This appears to be in contradiction to Klopper's indication that a person is liable to claim for loss of earnings and the loss of earning capacity (Klopper, 2000:79-80).

## 2.6 THE ROLES OF DIFFERENT EXPERT WITNESSES

As noted earlier, a large variety of fields or specialties exist from which expert witnesses can be selected, which can become a problem should legal professionals not have a clear understanding of the different roles specific health care professions play (Letzer, 2012:36).

Little consensus could be found in the literature in terms of 'who does what'. In the course of the literature search, the researcher came across several opinions expressed by persons representing different professions involved in the medico-legal process. Some of these opinions are listed below to illustrate the poorly defined professional borders and expertise:

- Incapacity is determined by medical experts and claims are then quantified based on the medical experts' opinions (Millard, 2006:1).
- Earning capacity is determined by vocational rehabilitation experts, together with economic experts (Taylor, 2008:3).

- Only physicians with additional skills and knowledge can comment on a person's ability to work (Rondinelli *et al.*, 2008:24).
- Residual functional capacity cannot be based on the opinion of an occupational or physiotherapist

  *"…who has merely administered a series of (possibly random) exercises under the guise of a functional capacity evaluation"* (Taylor, 2008:5).
- Physicians are not the ideal health professionals to recommend future needs of a disabled person (Taylor, 2008:9).
- Attorneys are recommended to do work visits (visit the injured person's work place) (Jacobs, 2012:13).
- Any health professional can familiarize themselves with the nature of the person's work, such as the orthopaedic surgeon who drove the injured bus driver's bus (Jacobs, 2012:14) to get a feel for how the injury would affect his ability to drive.
- Skilled medical experts should ideally determine the functional loss of a patient (Driver-Jowitt in the RAF Commission, 2002:676).

As can be seen from the above, significant misconceptions exist in terms of the different role players in medico-legal work. Several of the above comments illustrate poor insight into the role of the occupational therapist. Especially the comment made by Taylor (2008:5) demonstrates a limited understanding of the role of the occupational therapist, specifically regarding the process of selecting and justifying testing methods in order to adequately evaluate an injured person's functional capacity post-injury.

The researcher wishes to reduce some of the confusion by providing more information on some of the professions with which the role of the occupational therapist is most commonly confused. To this end, the role of the various fields of psychology will be discussed below:

a) The clinical psychologist

According to the Health Professions Act (HPA), No. 56 of 1974, the scope of practice of the clinical psychologist includes working with persons with

problems such as developmental or psychological distress or psychopathology. Clinical psychologists can also diagnose psychiatric and psychological conditions (Department of Health, 2011:6).

b) The educational psychologist

The HPA stipulates the scope of the practice of the educational psychologist as the assessment and treatment of learning/developmental problems and psychopathology, as well as the underlying emotional, cognitive or neuropsychological problems (Department of Health, 2011:8).

c) The counselling psychologist

The scope of practice of the counselling psychologist includes assisting the client in dealing with various life challenges to improve psychological well-being. Counselling psychologists also identify psychopathology in patients referred to them (Department of Health, 2011:7).

d) The neuropsychologist

According to the HPA neuropsychologists work with persons experiencing neuropathology or affected central nervous system functioning. They also diagnose and assess psychological disorders caused by neurological conditions in order to differentiate between them and other psychological and non-neurological disorders (Department of Health, 2011:11).

e) The industrial psychologist

The role division between that of the occupational therapist and the industrial psychologist (IP) is probably the least defined and worst understood as far as involvement in third party litigation is concerned.

According to the Society for Industrial and Organizational Psychology (SIOP),

> *"Industrial-organizational (I-O) psychology is the scientific study of the workplace. Rigor and methods of psychology are applied to issues of critical relevance to business, including talent management, coaching, assessment, selection, training, organizational development, performance, and work-life balance.*" (Society for Industrial and Organizational Psychology, 2012:1).

The HPA describes the scope of practice of IPs as the application of psychology in the workplace. This can be done by performing psychometric tests to determine training, development and employment potential as well as effectiveness of the individual and the group in the work environment (Department of Health, 2011:9).

## 2.7 THE SCOPE OF OCCUPATIONAL THERAPY

In order to further discriminate the role of the occupational therapist from the above, the researcher refers to Crosbie and Randall (2007:5), who indicate that occupational therapists should look at work capacity and "gainful employment". This is especially so when past and future loss of earnings are implied. They proceed to state that occupational therapists should not venture into commenting on *earning capacity*, as this is the target field of IPs, economists and actuaries (Crosbie and Randall, 2007:5). Assuming that earning capacity refers more to salary-, employability and promotion-based matters, the researcher postulates that the role of the occupational therapist would lie more with the determination of a person's ability/capacity to work than his/her ability/capacity to earn. This is against the backdrop of the scope of occupational therapy being extensively revised based on its grossly inadequate scope of practice up to date.

### 2.7.1 What is occupational therapy?

Due to the variety of definitions and complexity of occupational therapy, no short definition exists and the roles of the occupational therapist will be discussed in more detail in the following section of this literature review. It

can however be stated that for the purpose of this study, occupational therapists, among other aspects, work with persons who experience "physical, psychological, cognitive or social barriers" due to injury, disability or illness (Kearney, 2004:1). This opinion is reiterated by the World Federation of Occupational Therapists (WFOT) which states that occupational therapists "have the knowledge and skills to support persons who experience limitations or barriers to participation in occupation" (Townsend, Hocking, Kronenberg, Rushford, Sinclair and Thomas, 2010:1). Occupational therapy as a profession also focuses very much on what is considered an "accepted quality of life" (Luke, 2009:61) as can be seen from the definition of occupational therapy as used by OTASA:

> *"Occupational Therapists use scientifically chosen meaningful activities to assist diverse clients with a range of problems to maximise their functioning. This empowers them to be as independent as possible and to experience dignity and quality of life at work, at home and at play."* (OTASA, 2000:1).

### 2.7.2 The 'occupation' in occupational therapy

All people are considered to have the right to engage in occupations in their society, including "productive work" (WFOT, 2012:2). Furthermore to the occupational therapist *"…being human means the ability to participate in meaningful and purposeful occupations of one's choice"* (Rauch Van der Merwe, 2010:5) and also to fill certain roles such as parent and student (Rauch Van der Merwe, 2010:6).

Authors such as Thellefsen and Sørenson (2004:5) therefore consider 'occupation' the target field of occupational therapists and the "core domain of concern and the therapeutic medium of occupational therapy" (Canadian Association of Occupational Therapists, 2008:1). Occupational therapists are also concerned with the relationship and interaction between occupation and factors such as health and quality of life (Hocking, 2000:60). This focus on and consideration of health and quality of life entails that occupational therapists:

- Analyse a person's daily occupations in order to identify factors that could impact on performance (OT Australia NSW, 2006:5).
- Facilitate the return of the person to previously disrupted roles and activities (Kearney, 2004:1).
- Adapt the person's physical and social environment to ensure that the demands of these occupational environments are reasonable in relation to the person's capacity (Thellefsen and Sørenson, 2004:10).
- Focus on adapting activity demands, allowing the person to live a life which he/she finds meaningful and which allows well-being (Thellefsen and Sørenson, 2004:10).

Occupational therapists can achieve the above by means of a number of strategies including vocational rehabilitation (Selander and Marnetoft, 2005:298) where necessary.

In essence, occupational therapy does not only focus on determining the extent to which a person has been affected *functionally*, but also assesses and describes what loss or gain of *meaning* has resulted when a person is unable to participate in an occupation. Persons whose independence in terms of self-care, work or leisure has been impacted on by injury may suffer from lack of motivation, isolation, boredom and despair and this may lead to depression (Luke, 2009:69). Whiteford (2000:203) indicated several other side effects of a person not being able to participate in an occupation, which is often referred to as occupational deprivation, such as:

- Disorientation, confusion and hopelessness due to lack of structure and variation of activity in daily life, so time is not spent in a meaningful, constructive or fulfilling way.
- "Maladaptive responses" such as sleeping the entire day, as well as suicidal tendencies.
- Difficulty to reintegrate into their community. One example is that a person's work place is often where he/she meets and interacts with people.

- Affected beliefs about oneself and one's identity. This is understandable as we often feel we have value when we work and can earn an income (Whiteford, 2000:203). As indicated before, Pierce also describes the impact of a changed occupational identity, for example when a client no longer has contact with familiar persons, routines and environments due to their inability to, for example, work (Pierce, 2003:254).

Dovetailing with occupational deprivation, the occupational therapist has a 'social vision' (Whiteford, 2000:203) of attempting to reintegrate injured or disabled persons to meaningful occupational participation and not merely assist in reinstituting and quantifying a possible financial loss in terms of ability to work. This forms part of the notion of 'occupational justice' (Townsend and Wilcock, 2004:80), indicating that everyone has the right to *"equally participate in their occupations"* (Piernik-Yoder, 2013:2). Hence suitable training of occupational therapists as expert witnesses is therefore essential in the South African context, from as early as a graduate level. Occupational therapy training should also ensure that occupational therapists are competent in "handling cases, which relate to, professional ethics, human rights and medical law in the clinical environment" (The Committee on Human Rights, Ethics and Professional Practice, 2005:1).

### 2.7.3 Unique training and traits of occupational therapists

The field of 'work' and the assessment thereof is unique to occupational therapy, as can be seen from the learning outcomes for a Bachelor's degree of Occupational Therapy, according to the South African Qualifications Authority-

> *"To select and use suitable activities or occupations combined with therapeutic principles in areas such as education and employment in order to improve health for productivity (employment and/or learning), self-care and play/leisure"* (South African Qualifications Authority (SAQA) (b), 2012:2).

The student of occupational therapy learns to utilize

> *"...specialised, professional knowledge of Human Occupation as it pertains to the individual, the community and society together with fundamental knowledge of Sociology/Community development, Psychology, Biomechanics, Physiology, Anatomy and selected conditions of various medical disciplines"* (SAQA (b), 2012:2).

To achieve this learning, students undergo integrated assessments which include work simulations and workplace assessments. Further requirements from SAQA include that the occupational therapist should be able to

> *"Achieve a match between individual and group occupational needs and the environments in which people …work…"* (SAQA (a), 2012:3).

It is thus argued that based on their theoretical and practical training occupational therapy graduates are skilled in the assessment of a person's ability to work by various means.

### 2.7.4 The role of the occupational therapist in medico-legal work

The OTASA policy statement on the role and scope of occupational therapy in medico-legal work states that occupational therapists are often asked to compile medico-legal reports in order to assist the court in determining what is needed to reinstate a person to his pre-injury state (Van Greunen and Vlok, 1991:1). Please note that this is the most recent version of this policy document and that this is still the official scope of the occupational therapist in medico-legal work according to the Occupational Therapy Association of South Africa (OTASA). The scope of occupational therapy with reference to medico-legal work is currently under revision by the HPCSA Professional Board of Occupational Therapy, Medical Orthotics/Prosthetics and Art Therapy.

The various areas of occupational therapy involvement in medico-legal work are evident from the literature, which reveals specific indications for

the utilization of occupational therapists in third party claims such as the following:

- RAF claims
- Claims from the Commissioner for Compensation for Occupational Injuries and Diseases (CCOID)
- Medical malpractice claims
- Disputes in insurance law

Crosbie and Randall, experienced South African occupational therapists in the medico-legal field, also indicate that occupational therapists may be involved with matters concerning the Commission for Conciliation, Mediation and Arbitration (CCMA), Labour Court, Family Court and civil matters relating to assault and negligence (Crosbie and Randall, 2007:9). It is partially the assessment skills inherent to occupational therapy that qualifies occupational therapists to be useful in such diverse court matters (Luke, 2009:64).

According to Luke (2009:61) occupational therapists are primarily concerned with the establishment of costs of care after injury. This can however not be the only focus, as occupational therapists also need to establish how the client's impairment/disability will affect his/her functionality in all areas of his/her life, including employment and education (SAQA (b), 2012:2). Within the medico-legal field, work is especially an important occupational area for adults. In the case of children, occupational therapists focus on functional tasks that support children's academic and other school related activities (Christiansen and Baum, 2005:350).

Some of the aspects occupational therapists can assess and comment on in medico-legal reports are:

a) A person's loss of capacity in terms of 'occupation' (work, self-care and leisure) (Crosbie and Randall, 2007:7).

b) A person's functionality (College of Occupational Therapists (COT), 2009:1).
c) A person's ability to work (Van Greunen and Vlok, 1991:2) or return to work. This aspect can be divided into a person's ability to work in general, a person's ability to perform specifically his own or previous job or a person's ability to perform alternative work.
d) General and special damages a person suffered. This can also be divided into two aspects, namely:
    - General damages (how the injured person's life roles and lifestyle are affected), for example if a person is no longer able to pursue his/her sporting activities after his/her injury.
    - Special damages (Van Greunen and Vlok, 1991:2), such as the costs of future expenses and loss of earnings.

### 2.7.5 Important aspects to assess

Occupational therapy medico-legal assessments must determine the impact of disability on the injured person's life (Luke, 2009:1). Occupational therapy assessments should specifically address the aspect of work and employment and must consider pre- and post-injury (residual) work capacity (Crosbie and Randall, 2007:4). The occupational therapist should also be able to provide the court with a realistic estimation of how the injured person would function in the long term (Luke, 2009:73).

Assessment of the injured, ill or disabled person should include:

- Physical abilities
- Psychosocial functioning
- Occupational performance (Crosbie and Randall, 2007:12) i.e. a person's ability to participation in activities of daily living such as self-care, work and leisure activities.

One of the means by which the occupational therapist can assess the above is functional capacity evaluations (FCEs), a standardised method of evaluation (Soer, Van der Schans, Groothoff, Geertzen and Reneman, 2008:389) which is becoming more popular and widely used (Taylor, 2008:5) as they offer

> *"…a medical basis for return-to work decisions by identifying productivity levels and/or modifications of physically contraindicated work activities"* (Workwell Systems, 2006:3).

Using various approaches and processes, various suitable and specific assessment tools can be selected to accurately assess the injured person's ability to work (Campbell, 2011:1). In South Africa predominantly occupational therapists perform and are trained in FCEs.

Vital questions about the injured or disabled person, such as his/her work capacity and the functional implications of his/her injury, cannot fully be answered by medical information and are best determined by means of such FCEs (Skei, 2008:8). To this extent, FCEs have three specific purposes by which to assist the occupational therapist in making recommendations for the injured or impaired person, namely to:

- Improve the likelihood of safety in task performance at work
- Improve performance in specific roles by identifying functional problems
- Determine the presence and extent of disability, so that a court can award remuneration accordingly (Matheson, 2003:2).

Whether or not an occupational therapist uses a standardized FCE system to assess, triangulation (using more than one method of gaining information) (Campbell, 2011:4) or cross-referencing is essential to determine a client's consistency in functional performance. This can be achieved through utilizing a range of information-gathering measurements such as:

- Self-reports, such as pain questionnaires

- Critical observations of activity participation during assessment
- Functional tests, such as a FCE (Allen *et al.*, 2004:91)
- Activity analysis, such as a job analysis
- Medical reports (OT Australia NSW, 2006:5)

As one can see from the above, the occupational therapy doing medico-legal work cannot simply document assessment results, but must also interpret, apply and contextualize those results according to the person, his/her needs and his/her environment. It is actually the professional opinion given by occupational therapists with regards to a person's work ability and employability in the open labour market, based on assessments such as FCEs (Soer *et al.*, 2008), that adds value in medico-legal cases (Allen *et al.*, 2004:92 and Law Society of New South Wales, 2010:210).

To obtain their opinion regarding a person's work ability it is essential that all occupational therapy medico-legal reports include information about the person's job (OTLA, n. d.:18-19), such as:

- job title
- broad job description
- inherent job requirements
- essential job functions
- physical demands
- psychological demands
- environmental demands
- mental demands
- effects of limitations on ability to work

When discussing work capacity, occupational therapists should also include the occupation a person was performing at the time of the injury and their capacity to return to that job, as well as a person's general work ability and any alternative if there are any restrictions in terms of work (Liebenberg-Winslow, 2011:8).

In summary, the occupational therapist can thus offer the court conclusions and recommendations regarding:

- Loss of amenities and
- Loss of work capacity (Crosbie and Randall, 2007:12)
- Work ability (Medico-legal interest group, 2010)
- Limitations which restrict participation in daily living and
- Future needs regarding work, equipment and/or adaptations and other support option (OT Australia NSW, 2006:5), such as
    - The need for occupational therapy, other therapies or rehabilitation
    - Case management (WFOT, 2012:1)
    - Assistive devices or special equipment
    - Assistance (personal, garden, domestic, household, home maintenance)
    - Transport and travel (COT, 2009:9)
    - Accommodation (Medico-legal interest group, 2010) and necessary adaptations (COT, 2009:9)
    - Holidays
    - Education and/or employment
    - Other relevant future needs (COT, 2009:9).

Although this is not a recent publication, Kennedy (1997:1) provides an apt description of the role of the occupational therapist in medico-legal work, stating occupational therapists' training in

> *"…biological, behavioral, social and occupational sciences. This provides them with a unique perspective and set of skills that are particularly well-suited to the questions to be answered in personal injury cases."*

In summary, the occupational therapist performing medico-legal assessments is expected to

> *"…combine an understanding of the meaning of occupation and empowerment through occupation with a client-centred, practical,*

*problem solving and holistic approach to the litigant"* (Luke, 2009:66).

### 2.7.6 Medico-legal process for expert witnesses

Typically, the following process is involved when an occupational therapist is instructed and utilized as an expert witness in medico-legal matters:

a) An instruction for a medico-legal assessment is issued by an attorney (or other person such as claims assessor).
b) The occupational therapist is provided with documentation regarding the client.
c) The occupational therapist peruses the documentation provided and prepares for the assessment (Crosbie and Randall, 2007:10).
d) The client is evaluated by means of questionnaires, interview, observations, standardized tests (such as FCEs) and functional activities.
e) Collateral information is obtained about the client (which may involve home and work visits).
f) Tests are scored and the results interpreted.
g) Investigations are carried out with regards to costing of recommendations.
h) The medico-legal report is compiled (Crosbie and Randall, 2007:11).
i) Meetings may take place with counsel (pre-trial meetings) and other experts (joint minute).
j) The occupational therapist may be required to appear in court (COT, 2009:6).

### 2.7.7 Expectations from literature

As this study aims to look at the occupational therapy medico-legal report through a legal eye, expectations and opinions from legal professions - as found in literature- are now discussed.

According to Schwartz (2008:1), a South African attorney, the ultimate goal of the occupational therapist in medico-legal work is to assist in quantifying a claim for loss of income. The occupational therapist is further expected to indicate how a person's injuries or impairment impact on his/her ability to work. In order to do this the occupational therapist should assess "physical ability, work speed, endurance, motivation and applicable category of work" (Schwartz, 2008:3). She also reminds occupational therapists that the court has to deliver a summary of the expert's reports to court and to the other party at least 10 days prior to the trial (Crosbie and Randall, 2007:10).

For the lack of local references, the researcher heavily relied on a Canadian study on the role of the occupational therapist as expert witness. This study revealed that the majority of attorneys found the following factors important when choosing an occupational therapist for medico-legal work (Hall-Lavoie, 1997:36), as indicated by excerpts from Hall-Lavoie's study in terms of *"Lawyers preference for qualifications of occupational therapists":*

- That the occupational therapist is a clinical specialist (75%)
- That the occupational therapist has previously qualified as an expert witness (69%)
- That the occupational therapist has 6-10 years of experience (62%)
- That the occupational therapist has published articles (53%)

The researcher is of the opinion that the above-mentioned characteristics of an occupational therapist having adequate clinical, work and court experience would provide a solid foundation for providing expert opinion, especially in light of the fact that there are no formalized post-qualifications for South African occupational therapists in the field medico-legal expertise. Whether SA attorneys however agree with their Canadian counterparts, is not known and will hopefully be revealed by this study's research results.

In the same Canadian study, pertaining to the aspects of evaluation occupational therapists would typically address in a traditional occupational therapy assessment report, none were seen as 'absolutely essential' by the attorneys. They perceived the following aspects as 'somewhat essential' (Hall-Lavoie, 1997:47):

- That the occupational therapist provides objective and clear findings of functional capacities (88%)
- That the occupational therapist clearly states opinions regarding functional capacity (88%)
- That results are documented clearly and comprehensively (80%)
- That the occupational therapist coordinates her/his findings with medical findings (75%)
- That the occupational therapist answers all referral questions (70%)

In addition to other expert witnesses, actuaries are also often consulted by attorneys to assist in calculating the accumulating of future financial implications of an injured person's claim and possibly also have distinct expectations regarding occupational therapy recommendations. In terms of living expenses, Koch (a SA-based actuary) is of the opinion that occupational therapists in their reports seldom consider the living expenses a normal person or family would have, regardless of injury or impairment. If a normal purchase (such as a microwave oven or bed) is listed, it should be motivated and the reason indicated why this would not have been bought under normal circumstances (Koch, 2008:6). An example would be that a person who sustained a back injury or leg amputation would have difficulty cooking over an open fire or getting up from sleeping on the floor.

## 2.8 INTER-PROFESSION COMMUNICATION

Although occupational therapists most probably have sound reasoning for conclusions and recommendations made in medico-legal reports, they should keep in mind that their audience in the legal and economic professions may have a limited understanding or incorrect perception of

occupational therapy. Therefore language should be clear and terminology defined (OT Australia NSW, 2006:5). South African occupational therapists most probably have the same problem, as South African attorneys specializing in third party claims also advise that jargon be avoided in occupational therapy reports (Schwartz, 2008:8).

### 2.8.1 Room for interpretation

Referring to language and terminology, the RAF report Volume 1 (2002:676) states that lay language "is a poor substitute for the description of anatomical and functional loss". Unfortunately the legal and insurance parties are still left with the challenge of attempting to translate disability into financial loss.

Occupational therapists attempt to bridge this gap (Driver-Jowitt, 2002:676) and can play an important role in translating a medical condition into its functional implications (Hall-Lavoie, 1997:10) as well as translating functional impairment into actual loss. An example would be of a professional piano player who suffered a traumatic amputation of several fingers on her non-dominant hand. According to measures such as the AMA Guides this person might not have suffered a serious injury, but considering this person's ability to perform her chosen occupation (both as her job and for relaxation) she has been restricted. The occupational therapist, based on a comprehensive functional assessment of the person, would therefore be able to conclude that she had indeed suffered a significant functional impairment with potentially catastrophic financial implications for her future.

### 2.8.2 Learning a new language

The occupational therapist's effective contribution to legal proceedings can be enhanced by understanding courtroom practice (Allen *et al.*, 2010:94). Likewise, legal professionals would do well to familiarize themselves with health-related terms, such as medical abbreviations (Jacobs, 2012:5). This is important as such terms and abbreviations are

often used in clinical notes and hospital records, as well as findings, conclusions and recommendations made by health professionals. The use of such field-specific terms and abbreviations can most definitely lead to unnecessary communication in order to clarify potential misunderstandings. Valuable information can also be overlooked should a lay person read medical or therapy notes and reports and not understand terms and abbreviations used.

### 2.8.3 Speaking a common language

A common language in describing the conclusions of assessments (Millard, 2006:693) will therefore be useful and both health and legal professionals should ensure that they understand terminology used by the other role players.

Even different professionals within the same profession may interpret a common word in an entirely different manner (Soer *et al.*, 2008), which in terms of third party matters can have dire repercussions for quantification of claims and recommendations regarding damages. A good example is the word 'productivity', which can be understood as:

- The rate at which a worker produces goods (Hornby, 2005:1159).
- A possible replacement for the term 'work' (Christiansen and Baum, 2005:9).
- Something that can be factually translated into a financial loss to the worker (e.g. being paid less) (Jacobs, 2012:15).

As a profession occupational therapists can address this problem by using reporting language which can be understood by other professionals outside of the health sector (Crosbie and Randall, 2007:11). They are also advised to explain the norm by which 'normal' is measured in their reports (Schwartz, 2008:8) and to clarify complex or vague concepts and terms.

As with occupational therapy graduates, the law graduate is seldom adequately equipped to handle third party claims (Klopper, 2000:19) and

medico-legal work. This literature review however indicates that even experienced and researched health and legal professionals are subject to misconceptions and varied opinions with regards to

a) definitions of concepts central to medico-legal work and
b) the scope of various health professional role players.

A quote from Dewey, in the researcher's opinion, adequately describes the need for effective communication and the effect thereof:

> *"There is more than a verbal tie between the words common, community, and communication....Try the experiment of communicating, with fullness and accuracy, some experience to another, especially if it be somewhat complicated, and you will find your own attitude toward your experience changing"* (Dewey, 2012).

## 2.9 HUMAN RIGHTS AS IT PERTAINS TO MEDICO-LEGAL WORK

OTASA's Code of Ethics and Professional Conduct indicates that

> *"…as registered practitioners we have the right and privilege to practice our professions."*

This however has implications for occupational therapists in terms of responsibility towards society. These include"core ethical and professional values and standards" such as

> *"…honesty, empathy, trustworthiness, compassion, tolerance, a strong sense of justice and duty, but above all, unquestionable professional integrity"* (OTASA, 2005:1).

This includes aspects such as:

- Providing assessment information, such as reports and verbal testimony, in language which is easily to use and understood (OTASA, 2005:2).

- Staying up to date with legislation and development as it pertains to their field, in this case occupational therapy and medico-legal work (OTASA, 2005:3).
- At all times using their *"clinical and ethical reasoning skills, sound judgment, and reflection"* to assist in decision-making regarding a person's ability to work (Ethics Commission of the American Occupational Therapy Association, 2010:2).
- To consider a person's human rights as a basis for decision making in medico-legal cases.

The aim of this chapter was to provide the reader with a literature-based background of the medico-legal process, expert witnesses and potential barriers to effective communication between the health and legal fraternities. The lack of a common medico-legal language was illustrated, as well as the poorly defined roles and expectations of various types of expert witnesses. Issues pertaining to human rights were also mentioned in short.

The aim of the RAF and other third parties as instruments to restore injured or impacted persons to their pre-incident state in terms of health, wellbeing and independence were also reiterated. This emphasis on restoration highlighted the important role of the occupational therapist in medico-legal work, since the unique role and core skills of the occupational therapist in fact focuses on the assessment of the impact of disability and injury on an individual and his environment (Luke, 2009:61).

The literature further clearly indicates that occupational therapists therefore have high expectations to adhere to and that their contribution and responsibility to the medico-legal field should not be taken lightly. Luke indicates that issuing medico-legal reports demands

> *"…an outstanding level of professional expertise, a comprehensive knowledge of legal procedures and an ability to present and substantiate the report in a court of law"* (2009:1).

Where this chapter provided more detailed background on the role and responsibility of the occupational therapist as expert witness in medico-legal work, the next chapter discusses the research methodology used in this study.

# CHAPTER 3
# RESEARCH METHODOLOGY

## 3.1 INTRODUCTION

In the previous chapter, literature pertaining to the role of the occupational therapist in medico-legal work was discussed. Different expectations from the legal profession, as well as the scope of practice of several role players were explored. Common challenges facing expert witnesses and legal professionals were furthermore included. Conflicting opinions in literature pertaining to the role and challenges of the occupational therapist in the medico-legal field, the expectation from legal professionals and actual practice were exposed, highlighting the purpose of this study, namely to describe the SA legal profession's expectations in terms of medico-legal assessments and reports compiled by occupational therapists as expert witnesses in third party claims.

This chapter continues to describe the research methodology used in this study, in terms of the research approach, study design, population, nominal group, pilot study, measurement and errors.

## 3.2 RESEARCH APPROACH AND METHOD

As described in Chapter 1, the main research questions for this study pertain to the legal profession's expectations of occupational therapists, how they understand the role of the occupational therapist and whether they understand terms used by occupational therapists in their reports. As the researcher wanted objective data (Terre Blanche, Durrheim and Painter, 2006:132) that could be generalized (Bailey, 1997:49) to the greater legal community, a quantitative positivist research design was used in this study. This can be described as "an approach based on things that can be seen or proved, rather than on ideas" (Hornby , 2005:1130).

Quantitative data is also used to make comparisons (Terre Blanche *et al.,* 2006:47) and relationships (Bailey, 1997:49) between different situations and plays an important role in developing a body of knowledge (Burns and Grove, 2005:32). In this study a quantitative approach was used in order to contribute to the body of knowledge of occupational therapy by providing facts pertaining to the research questions, as well as to compare expectations, definitions and perceptions held by attorneys to that of literature and the occupational therapy profession.

Figure 1 illustrates a schematic overview of the research procedure and course of events.

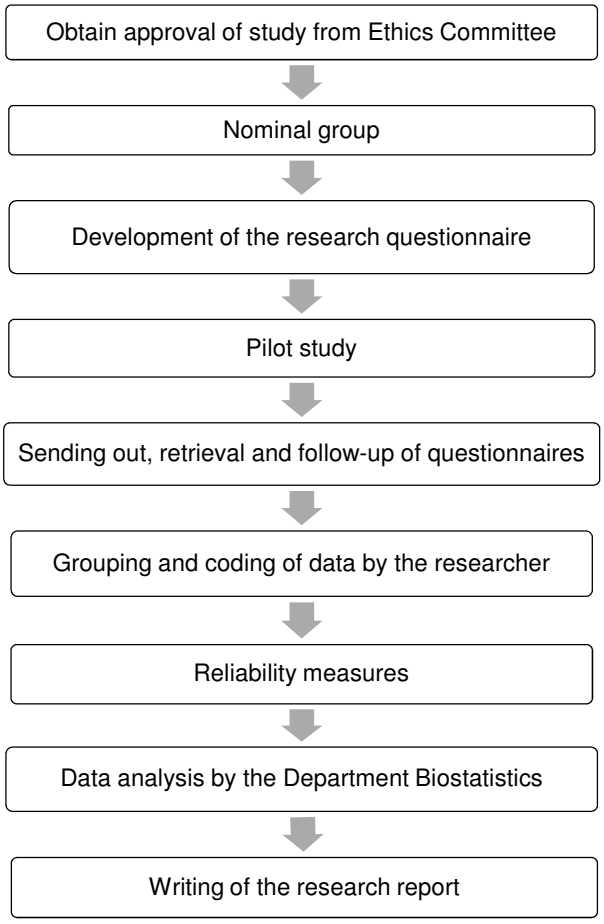


**Figure 1 Procedure followed for this research study.**

## 3.3 STUDY DESIGN

A quantitative non-experimental descriptive study design was used, as information had to be obtained from a large population (attorneys) in order to answer a set of hypotheses (Bailey, 1997:22) as indicated in Chapter 1.

Little South African literature is available that pertains to the specific role of the occupational therapist in medico-legal work, as well as in terms of guidelines and expectations relating to such work. Therefore, descriptive research was specifically

> *"…used to generate new knowledge about concepts, or topics about which limited or no research has been conducted"*

by describing concepts and identifying relationships (Burns and Grove, 2005:44).

## 3.4 STUDY POPULATION

Initially both attorneys and advocates from the Northern Provinces division (Gauteng, Mpumalanga, North-West and Limpopo) were to be included in the study. This geographical area was chosen as it is the largest of the South African Law Society divisions and is also where the researcher has her medico-legal practice. As any attorney or advocate can choose to represent a third party claim, the study was not limited to legal professionals who already specialize in third party claims.

Despite numerous attempts to recruit advocates as part of the identified pilot study population, there were unfortunately none who were willing to participate in the pilot study, as described later in the chapter. It was thus decided to base this research only on attorneys. Advocates also do not generally specialize in specific types of legal matters. Excluding advocates in the researcher's opinion detracted no value from the research results.

The remaining population of 3058 attorneys in Gauteng (and specifically 2372 in Johannesburg) therefore had to be further limited to make the

study executable. Different options were considered in order to diminish the sample size, namely:

- Limit the study to attorneys in Johannesburg.
- Limit the study to attorneys who specialize in medico-legal work and who belong to organizations such as the South African Association for Personal Injury Lawyers (SAAPIL) and the South African Medico Legal Society (SAMLS). This option was excluded due to these bodies' reluctance to provide members' information.
- Limit the study to attorneys known to the researcher by means of previous and on-going referrals. This option was decided against since these professionals are accustomed and familiar to the researcher's work style.

Ultimately, it was decided to confine the study population to South African attorneys who indicated in the Hortors Legal Diary 2010 edition that they specialize in medico-legal matters. The Hortors Legal Diary and Directory contains the names and details of persons and institutions that perform legal services and was used as a source of information due to the authoritative bodies to which South African attorneys belong to not being permitted to provide personal details of their members. Note that numbers obtained from the Hortors are approximates only, due to the following reasons:

- Attorneys are often incorporated with more than one firm.
- Firms often operate in more than one town or province.
- All members of a firm might not be listed and it is not always specified whether a member is an attorney or candidate attorney.

In a quantitative study, researchers specify characteristics that delimit the population through eligibility criteria (Polit, Beck and Hungler, 2001:233).The following *inclusion criteria* were adhered to:

- Attorneys listed in the Hortors Legal Diary as specializing in medico-legal work.

- South-African attorneys.
- Attorneys with candidateship in South Africa.
- Attorneys currently practicing in South Africa and who are registered with their applicable professional bodies, such as the Law Society of South Africa.

The following were *excluded*:

- Attorneys who specifically specialize in fields other than those applicable to this study.
- Attorneys who explicitly indicate that they do not represent claims related to this study.
- Attorneys not adhering to one or more of the above inclusion criteria.

## 3.5 SAMPLING

Initially, simple probability sampling was used as this ensures some representativeness (Polit *et al.*, 2001:234) and excludes researcher biases (Polit *et al.*, 2001:241). In order to provide the biostatistician with the population size in order to determine the sample size, the researcher consulted with the executive editor of the 2010 Hortors Legal Diary. A list of randomized numbers was to be provided by the Department of Biostatistics in order to identify participants.

According to the 2010 Hortors' Legal Diary, only 209 attorneys however listed themselves as specializing in third party claims or medico-legal matters. As there are thus only 209 possible participants, it was decided to include all the attorneys in the study. Therefore no sampling was necessary. Researcher biases were avoided, as all eligible attorneys received questionnaires.

## 3.6 DEVELOPMENT OF THE MEASUREMENT INSTRUMENT

A survey (in the form of self-reported questionnaires) was used, as questionnaires can provide information on the prevalence and interrelationships of variables within a population (Polit *et al.*, 2001:267).

As the researcher is not aware of any existing questionnaire available for the South African context, a questionnaire was compiled by the researcher, based on:

a) Subject-related literature,
b) The researcher's professional experiences and
c) Information obtained from a consensus group (by means of a nominal group technique) held with occupational therapists knowledgeable in the medico-legal field.

## 3.7 NOMINAL GROUP

To avoid the need for lengthy interviews with a group of occupational therapists in order to ascertain which aspects in their experience are necessary to include in a medico-legal report, it was decided to use a consensus technique. This is a group facilitation technique that explores the level of consensus in a group of experts by putting together and clarifying their expert opinions (Campbell and Cantrill, 2001:5).

### 3.7.1 The consensus technique

The nominal group technique (NGT) uses small groups of 5 to 9 participants to

> *"…generate information in response to an issue that can then be prioritised through group discussion"* and is considered to be *"cost-effective, time-efficient and equally well utilised with both health professional and consumer groups"*. (Potter, Gordon and Hamer, 2004:126).

Small groups are considered to promote active participation (McCawley, 2009:23), especially when complex matters are on the table.

Participants are directly involved in data collection and analysis, thus minimizing researcher-bias (Potter *et al.*, 2004:127).

To this end, all the occupational therapists who were listed at that time as involved with the Gauteng-based Occupational Therapy Medico-Legal Interest Group were approached. The interest group is a loosely constituted voluntary group falling under the auspices of OTASA. The interest group has been in existence since the 1990s. The researcher is also a member of this group but did not participate in the nominal group. Thirty five occupational therapists were approached via email in order to request participation in the nominal group. The email contained an information document with the identified research problems and aim of the group, as well as the expected length of time of the group. Only 6 out of 35 occupational therapists had responded due to the following:

a) There was another focus group held at the same time, also involving therapists in the medico-legal field.
b) There was a Workwell-training session the same morning, which involved several therapists in the medico-legal field.
c) The therapists were given relatively short notice in terms of the group time, as the medico-legal interest group secretary had not sent the minutes of the meeting during which the group was announced, out to all members timeously.
d) Several of the therapists who were willing to participate had relocated to other provinces.

A confirmation letter was sent to all occupational therapists who agreed to participate in the nominal group (see Appendix A).

### 3.7.2 The group moderator

The moderator who ran this group is a credible non-expert on the subject of medico-legal matters (Potter *et al.*, 2004:127), namely Dr Lizeth Roets from the School of Nursing, University of the Free State. She however has extensive practical and research experience in the utilization of nominal groups.

### 3.7.3 The nominal group technique process

The nominal group was presented on 26 March 2010 at Linksfield Hospital, Johannesburg. The group was planned to start at 9:00. One participant however went to the wrong venue (she was invited to another nominal group as well and confused the venues) and 2 group members were late due to the traffic. The group subsequently only started at 9:45. Two out of the 6 therapists failed to arrive and the final group consisted of the 4 therapists, the moderator and the researcher.

The researcher was present during the nominal group, but did not partake in the group in any way. Prior to the onset of the group, the area was prepared by the researcher and the moderator. The room was large enough and contained a large oval table so participants were seated in half moon formation, so as to be conducive to group participation. The flip chart was at the open end of the circle (Department of Health and Human Services, 2006:1), as well as the data projection screen. Snacks and refreshments were available.

The group process was followed as per research protocol, although the moderator made two minor changes to the wording of the questions in order to clarify such for the members. This occurred prior to the group session.

The group was opened by the moderator welcoming participants and thanking them for their participation. All participants were introduced to the moderator and researcher, as well as to each other. The group was

started by describing the aim and the process of the group to the participants and a short clarification of the research problems as identified by the researcher. The purpose of the group was explained to the group, namely that they were to provide answers to three questions in order to generate ideas, which would assist in the compilation of the research questionnaire. Answers obtained from these suggested ideas, should assist in describing the South African legal profession's expectations in terms of the medico-legal assessments and reports compiled by occupational therapists as expert witnesses in third party claims.

After the introduction, the questions were given to the participants in writing. Each participant was also provided with three empty pages and a pen. The research problem statements were displayed on the data projector for participants to refer to whenever they chose to. The research questions were as follows:

1. *Which aspects in your daily work give you reason to question the expectations of legal professionals referring to you in medico-legal work?*
2. *What gives you the impression that legal professionals you work with in the medico-legal field do not always fully understand the scope (or role) of the occupational therapist in medico-legal work?*
3. *Which occupational therapy-specific terminologies or concepts have you experienced to be misunderstood or incorrectly interpreted by legal professionals?*

Suitable time was allowed per question, during which all participants, in writing, provided their top five answers to one question at a time. Each participant was only allowed to write down five answers per question (See questions on page 47). Once a question was presented to the group and each participant had responded on her answer card, the participants were asked to prioritize her own five answers. The participants thus generated their own top five answers to each question. Rest breaks were provided between questions.

One therapist tended to misunderstand the questions, but was given the opportunity to adjust her answers once the other members had given theirs and the moderator allowed an additional 10 minutes for participants to answer this question.

Once all participants had written down their contributions, the moderator circulated through the participants in a 'round robin' fashion whereby each member verbally provided her first priority. This was then written on the flipchart. This process was repeated until all the members' top five priorities had been recorded, where after the moderator calculated the votes for a specific answer. The answers were then prioritised according to importance, as reflected in the members' voting. Once consensus was reached on the top five priorities of each answer to the posed questions, the provided information was checked with the members to ensure accurate interpretation by the moderator and researcher.

This process was repeated for all three questions. The group thus provided the researcher with prioritised lists of possible aspects to address in the questionnaire.

Five priority answers were obtained for questions 1 and 2, from more than 20 responses from the members for each question. All 9 answers from question 3 were included, as they gave so few responses. Where more than one aspect received the same number of votes, they were placed on the same level of priority.

The nominal group questions were compiled by the researcher based on field experience and perused literature. The formulated questions were considered stimulating and clear to the participants (Potter *et al*, 2004:127). The following indicates the problem identified by the researcher, the questions formulated by the researcher for the nominal group and the priority responses as provided by the group members:

**Problem 1:** Unclear expectations from the legal profession's point of view.

*<u>Question 1:</u> Which aspects in your daily work give you reason to question the expectations of legal professionals referring to you in medico-legal work?*

| **Participants' priority responses** |
|---|
| 1. Misunderstanding of the scope of occupational therapy |
| 2. Remuneration |
| 3. Expectations regarding the common minute |
| 4. Poor clarification of the legal process |
| 5.1 Time/place in process referral to occupational therapy take place<br>5.2 Time constraints regarding court dates/expectations<br>5.3 Occupational therapists role in cognitive aspects |

**Problem 2:** Uncertainty with regards to knowledge of legal professionals regarding scope of the occupational therapist working in the medico-legal field.

*<u>Question 2:</u> What gives you the impression that legal professionals you work with in the medico-legal field do not always fully understand the scope (or role) of the occupational therapist in medico-legal work?*

| **Participants' priority responses** |
|---|
| 1. Lack of specificity in referral (come without problems) |
| 2. Comments on 'loss of income' |
| 3. Request comments that are not/partially in our field, such as 'return to work' |
| 4. Pediatric assessments and overlapping areas/role of occupational therapy |
| 5.1 Referral request (comment on medical stuff)<br>5.2 Poor insight into what to expect of an occupational therapist<br>5.3 Long-term expectations based on insufficient info |

**Problem 3:** Incongruence in interpretation and expression of profession-specific concepts.

*<u>Question 3:</u> Which occupational therapy-specific terminologies or concepts have you experienced to be misunderstood or incorrectly interpreted by legal professionals?*

| Participants' priority responses |
|---|
| 1. Classification of physical demands |
| 2. 'Functional limitations' |
| 3. 'Productivity' |
| 4.'FCE' |
| 5. Employment placement categories |
| 6. 'Inconsistent / self-limited performance |
| 7. 'Pre-accident status' |
| 8. 'Scholastic potential' |
| 9. 'Vocational rehabilitation' |

On conclusion of the nominal group, the researcher felt that the group did not only provide useful responses to include in the questionnaire (measuring instrument), but also confirmed the research problems as indicated in the protocol. Although few therapists attended the group, the researcher is of the opinion that sufficient data (in terms of quality as opposed to quantity) was collected and that the group would have not been successfully concluded in the time available, had there been more group members. Members present work full-time in medico-legal work, were from varying speciality fields of occupational therapy, different cultural and age backgrounds, as well as varying number of years' work experience.

The information obtained from the nominal group was then incorporated into a preliminary questionnaire, which was supplemented with and compared to related literature and the researcher's professional experience in order to draw up the final questionnaire for the study (Roets, 1996:27).

Data was documented by the moderator during the meeting, but no transcriptions of the dialogue were made, as all input from the participants was documented on the cards and the flipcharts.

### 3.7.4 Trustworthiness of the nominal group data

The existence of consensus in a nominal group does not necessarily indicate the 'correct answer' (Potter *et al*., 2004:128), but the

trustworthiness of data can be determined by means of testing credibility, dependability, confirmability and transferability (Polit *et al*., 2001:312):

Credibility or the confidence in the truth of the data, for information obtained from this group was ensured by means of:

- *Persistent observation* of aspects relevant to the studied phenomena. This was encouraged by means of the researcher noting observations and the moderator confirming the information with the nominal group members.
- *Triangulation* was performed by means of data source triangulation (consulting diverse key informants on the same topic), investigator triangulation (using both the researcher and the group moderator to analyse data) and method triangulation (using a nominal group and questionnaires to obtain information) (Terre Blanche *et al.,* 2006:287).
- *External checks* were performed through peer debriefing, including discussing the aspects of the inquiry with objective peers, such as proposed questions to participants in the group prior to the group. Member checks also took place during the nominal group itself by that the provided information was checked with the members by the moderator to ensure accurate interpretation by the moderator and researcher.
- *Searching for disconfirming evidence* in the literature was conducted after the nominal group. No information was found in literature which conflicts with the information provided by the group participants.
- *Researcher credibility* was ensured by virtue of the moderator used in the nominal group being an expert in moderating nominal groups. The researcher herself is engaged in the medico-legal field on a full-time basis.

Transferability (the extent to which the findings can be transferred to other settings) was ensured by means of thorough description of the sampling and design used for the nominal group (Terre Blanche, 2006:381). No

researcher bias was created by the researcher being present in the nominal group and it is not expected that this had affected the trustworthiness of the data obtained during the nominal group.

### 3.7.5 Description of questionnaire

The research questionnaire (see Appendix B) as compiled by the researcher consists of 44 questions together encapsulating the identified research questions. Multiple choice questions, as well as open ended questions, were used. Similar questions were repeated with different wording in order to identify inconsistencies in information provided by the participants, as well as to improve internal reliability. Questionnaires were identified by means of a participation number, which was assigned randomly in numerical order prior to being delivered and posted.

## 3.8 PILOT STUDY

In order to identify potential problems pertaining to the research questionnaire, a pilot study was performed. The pilot study specifically aimed to determine:

a) The most effective and preferred method of questionnaire distribution.
b) The most effective method of data collection.
c) Whether the questions and language used are clear enough.
d) How accessible the questionnaire is (via internet link).
e) The time it takes to complete the questionnaire.

Once the initial sample was determined (attorneys and advocates from Gauteng, Mpumalanga, North-West and Limpopo), five attorneys, five advocates and two additional occupational therapists were asked to complete and return the newly developed questionnaire to identify possible problem areas (Burns and Grove, 2005:400). The approached occupational therapists were not members of the nominal group. The legal professionals were similar to the sample, but not included in the

study due to a technical point, such as specifically indicating that they specialise in medico-legal work. For these purposes, the questionnaires for attorneys and advocates were given to the head magistrate (known to the researcher) in Odendaalsrus, Free State, with a request to distribute them to attorneys and advocates in the area.

The researcher's original intent was to use one of two types of indirect delivery methods to provide questionnaires to potential participants. Proposed methods were to send the questionnaires via the post or via the internet (web form). The advantages of such methods are:

- Questionnaires can be sent to large numbers of people (Leedy and Ormrod, 2005:185 and Burns and Grove, 2005:398).
- These methods are more cost-efficient in relation to travel and telecommunication costs (Leedy and Ormrod, 2005:185).
- They are less time-consuming than structured interviews.
- The participants can remain anonymous to the researcher (Leedy and Ormrod, 2005:185); although they would no longer remain anonymous if they reply from identifiable email addresses, but since the research assistant was to handle the replies, they would still remain anonymous to the researcher.
- Participants will be more truthful and willing to answer sensitive, difficult or controversial questions (Leedy and Ormrod, 2005:185).

Furthermore the response time on emails is faster than responses to postal surveys, and costs can be further limited by using this method. It was decided to use emails by means of a hyperlink by means of which to distribute the questionnaires.

Results from the pilot study questionnaires were excluded from the final analysis, as the purpose of the pilot study was to refine the research process rather than generate results in its own right.

Once permission was granted from the Ethics Committee in July 2010, the electronic questionnaire was sent via email to the following:

- Eight (8) attorneys (according to the list of names and email addressed provided by the magistrate).
- Eight (8) advocates (according to a list obtained from the first 8 names of advocates practicing in the Free State as indicated in the Hortors 2009 edition).
- Five (5) occupational therapists known to the researcher or working in her own practice.

The researcher had decided to send more questionnaires than initially decided in order to increase the probability of sufficient questionnaires being returned to fulfil the needs of the pilot study.

An information document (see Appendix C) was sent along with the questionnaire, providing all necessary information (Burns and Grove, 2005:400) regarding the study. The retrieval date as indicated in the information document was 7 August 2010 and questionnaires were to be submitted electronically.

As there was no response after the two weeks response interval, as indicated on the information document, the research assistant telephonically followed up with the mentioned legal professionals. Feedback from the occupational therapists suggested that they were not sure whether they should complete the questionnaires as the information document provided indicated that the questionnaire was meant for legal professionals – this was despite the document clearly requesting them to complete it as part of the pilot study. One therapist indicated that as an occupational therapist she could not complete all the questions and thus could not submit the questionnaire.

Two weeks later a reminder letter was sent to all persons to whom the questionnaire had been forwarded. Most replied that they had not received the initial invitation and link. The research invitation, information

document and link were then resent to all the same individuals. One legal professional had received the resent questionnaire, but indicated that she was unsure whether she should complete it as she was not doing medico-legal work – this was despite the information document indicating that legal professionals participating in the study did not need to be actively involved in medico-legal work.

As there was still no response despite the above measures, the research assistant telephonically contacted all persons approached to participate in the pilot study. The research assistant was given the following instructions:

- To explain to the approached group why they were sent a questionnaire and how they were selected.
- To explain any inclusion or exclusion criteria.
- To ask whether they received the questionnaires and could follow the hyperlink.
- If they did, whether they could complete it before 7 August 2010.
- To ask whether they had any comments.
- To determine the reasons why they would/did not complete the questionnaire.

During the above follow-up, some potential participants did not give reasons for not participating while others (namely 3 advocates) gave reasons such as that they were not involved in medico-legal work or had problems such as having had a laptop stolen. Three other advocates, together with 4 of 8 attorneys and 4 of 5 occupational therapists indicated that they would complete questionnaires but ultimately failed to do so. One advocate indicated that he would phone back, but did not. No attorneys replied to the electronic questionnaire.

Due to the lack of response after the above follow-up, it was decided on 2 September 2010 to print hard copies of the questionnaire and hand deliver these to the approached group, and to organize a date for pick up.

Two occupational therapists were handed questionnaires, and both completed them.

As there was still no response from the approached attorneys, another colleague of the head magistrate gave questionnaires to two attorneys in her firm not previously approached to participate in the pilot study. Both completed and returned the questionnaires.

From this second attempt, 4 questionnaires were thus received for the pilot study: two from attorneys and 2 from occupational therapists. No questionnaires were received from advocates. Furthermore, the pilot study indicated that using an electronic questionnaire did not prove successful and it was decided that for the research study itself questionnaires would be printed and delivered to all participants. No comment was made on the content of the questionnaire and no changes were therefore made. The following figure provides a summary of the pilot study and follow up process:

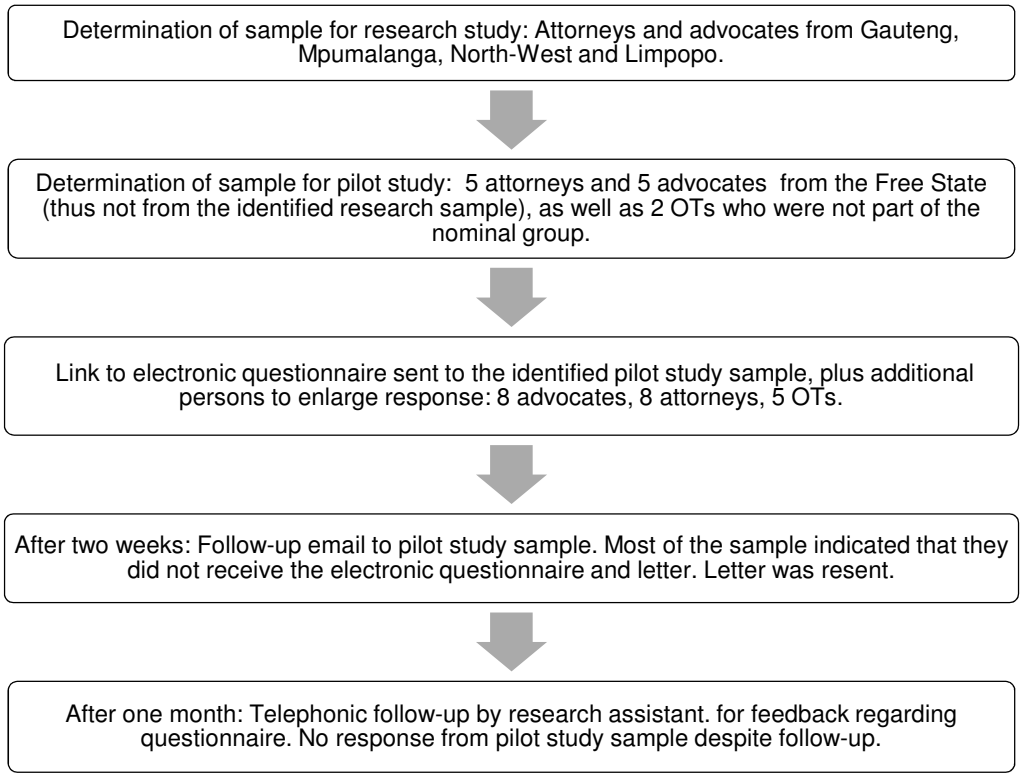


**Figure 2 Summary of pilot study and follow-up process**

## 3.9 MEASUREMENT

### 3.9.1 Process of questionnaire distribution and retrieval

Figure 3 illustrates a summary of the questionnaire distribution and retrieval phases:

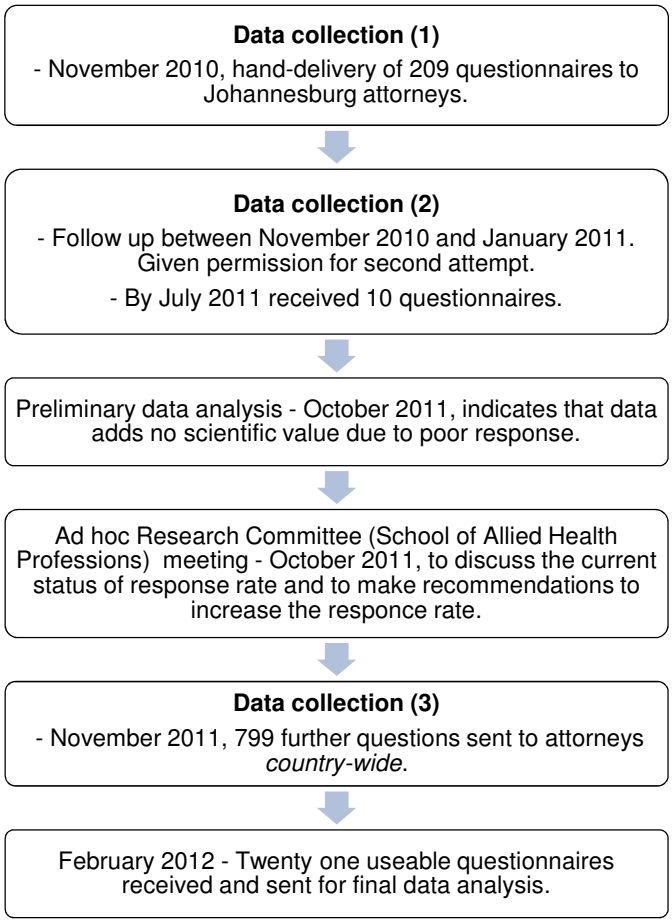


**Figure 3 Overview of the questionnaire distribution and retrieval phases**

### 3.9.2 Data collection

#### 3.9.2.1 Recruiting participants for the study

Initially eligible participants (attorneys and advocates from Gauteng, Mpumalanga and Limpopo) were to be approached by the research assistant telephonically or via email. The research assistant had to

ascertain willingness to participate, as well as referred method of distribution of questionnaire and language of questionnaire.

An electronic format would have allowed the researcher to handle large numbers of participants, but due to the difficulties encountered with electronic methods during the pilot study, it was decided that the sample size would be reduced to allow for printed questionnaires to be physically delivered to participants. This raised a number of considerations, including paper, printing, petrol and telecommunications costs as well as delivery times. On 3 November 2010, based on the poor response during the pilot study, the researcher's study leaders concluded that the researcher should proceed with execution of the study by an alternative method, namely hand delivering hard copies of the questionnaire to all 209 attorneys. This was on the basis that it would be possible to deliver 10 questionnaires per day.

No preliminary approach was made prior to the questionnaires being delivered to the attorneys, as all of them were listed in the Hortors as specializing in medico-legal work or third party claims. All questionnaires were printed out in hard copy and were accompanied by a cover/information letter (see Appendix C) on the official letter head of the University of the Free State. As no comment was made regarding language or content of the questionnaire or information latter, no changes were made to either of the two.

#### 3.9.2.2 Distribution and retrieval of questionnaires

##### *3.9.2.2.1 Initial questionnaire distribution*

Since it was decided against electronic questionnaires after the pilot study, the final questionnaires were printed out and placed in an A4 envelope, together with the information document as a cover letter. The name of the specific attorney, as well as the name of the firm and its physical address was printed on a label and stuck on the envelope.

Willing participants were given the following choices for return of questionnaires:

- Faxmail the questionnaire to the research assistant.
- Arrange with the research assistant for pick up.
- Email the electronically sent questionnaires.

Between 8 and 12 November 2010 all the 209 questionnaires were hand delivered to the attorneys by the researcher and research assistant. To avoid biases, the attorneys were not met face to face and the questionnaires were instead given to their secretaries or receptionists, or when no-one was present at the time of delivery, the questionnaires were left in the attorneys' mail boxes.

Within the same week, the research assistant telephonically started contacting all the attorneys who had not responded to the questionnaires, or whom the questionnaires could not be delivered to. No questionnaires had been received at this stage. Most indicated that they either did not receive or discarded their questionnaires. The same information letters and questionnaires were resent via email to these attorneys. As in the case of their physical addresses, the attorneys' email addresses were obtained from the Hortors Legal Diary. The research assistant handled the follow-up and resending of questionnaires, so the attorneys remained unknown to the researcher.

The research assistant continued doing individual telephonic follow-up with the approached attorneys between 12 November and 15 December 2010. On 20 January 2011 another follow up was done by the research assistant, who telephonically and via email contacted all the attorneys who had not yet returned their questionnaires.

These follow-ups unfortunately yielded poor success levels and only 8 questionnaires had been received at this point. Thus the research process was extended by an additional 6-month period during which the researcher attempted to gather more questionnaires by means of

personal interviews with possible study participants. Although the researcher was willing to travel to the attorneys, consult with them at any time of the day, wherever they worked or lived at full consultation costs, only 4 attorneys were willing to consult with the researcher. One had however returned a questionnaire already and two were not eligible for the study. These consultations only delivered one additional questionnaire.

During this 6-month period, the research assistant, by means of email and telephone, continued to do follow up with attorneys, to no avail. Only 1 additional questionnaire was received during this time.

A final follow-up was performed in July 2011, with no further questionnaires returned. The researcher had decided to no longer pursue follow-up with the attorneys, in order to preserve her professional reputation and avoid the attorneys feeling hounded.

Specific feedback offered to the research assistant, that may clarify the reasons for the poor response rate, is documented below. Please note that the number of feedbacks received would not add to 209 (as the study sample), as the below-mentioned process was followed:

- Questionnaires were prepared for hand-delivery to 209 attorneys, but 21 questionnaires were non-deliverable in November 2010, as the firms concerned had moved and did not provide their new addresses.
- Telephonic and email follow-up was done after the initial delivery continuously over the following 7 months. Where successful contact was made, it was established that for the most part the attorneys or their staff members had thrown the delivered questionnaire away without reading its contents.
- Seventy two (72) attorneys could not be contacted telephonically for follow-up, despite several attempts. This included the 21 attorneys whose forms could not be delivered.

- Seventeen (17) of the attorneys indicated that they either did not practice any longer, or do not do any third party or medico-legal work.

The researcher was thus effectively left with **120 possible participants**. Of this number:

- Two (2) of the attorneys indicated that they had returned the questionnaires, but these questionnaires did not reach the research offices. No reason for this could be found.
- Seventy seven (77) of the attorneys did not respond to follow-up which included questionnaires being resent to them. Included in this number are 12 who indicated that they would complete the questionnaire, but either did not or the questionnaires did not reach the researcher.
- Thirty (30) attorneys indicated that they were not able to complete the questionnaire, due to time restraints, lack of interest or no specific reason.
- One (1) attorney indicated a problem with the questionnaire itself, stating that it appeared too complex.

In total, **10 questionnaires** were returned, of which only one was obtained via personal interview with an attorney. This represented a 4.8% response in relation to the initial study population of 209 attorneys, or an 8.3% response in relation to the reduced study population of 120 attorneys who successfully completed questionnaires.

A preliminary data analysis was performed by the Department of Biostatistics in October 2011, but this indicated that the poor response rate obtained did not add scientific value to the study. At this point the researcher faced two options in terms of the way forward, namely

a) Continuing with the original study design and research methodology as discussed in this chapter with less desirable results, or

b) An alternative method which might improve response rate and scientific value, but had implications in terms of time and costs.

Possible alternatives were to use:

a) The Delphi-technique with expert occupational therapists in the medico-legal field in the Gauteng region or even the country.
c) Several focus groups with expert occupational therapists in the field of medico-legal in the Gauteng region.
d) Individual semi-structured interviews with occupational therapy experts in the medico-legal field in the Gauteng region.

The researcher opted to continue with the original research methodology, which implied a discussion of the obtained results and poor response rate.

Permission to perform another data collection phase on a countrywide basis was granted during an ad hoc meeting held between the two study leaders, the head of the UFS Occupational Therapy Department, the biostatistician and the head of the School for Allied Health Professions in October 2011.

#### *3.9.2.2.2 Second round of questionnaire distribution*

For this phase, a list was compiled of all attorneys in South Africa who indicated in the Hortors Legal Diary 2010 that they specialize in medico-legal work. Thus in November 2011 a further 799 questionnaires were posted to attorneys. These were all listed in the Hortors and might have included some of the previously approached attorneys, as this round was sent countrywide. The questionnaire remained the same, but during the second round of questionnaires distributed, the attorneys were not asked any personal detail by which they could be identified and only their profession and years of service was required. No changes were made to the information document, apart from the date of the letter.

By February 2012 **twenty-one (21) useable questionnaires** were received and sent to the Department of Biostatistics for final data analysis. This number did not include the previously obtained 10 questionnaires, as these were already with the Department of Biostatistics.

The following table summarizes the response to the questionnaires distributed to attorneys, as well as the reasons for poor responses from attorneys and non-inclusion of received questionnaires:

**Table 3.1 Response to distributed questionnaires**

| | **Initial questionnaires** | **2nd round of questionnaires** | **Total** |
|---|---|---|---|
| *Questionnaires distributed* | 209 | 799 | 1008 |
| *Number received* | 10 | 28 | 38 |
| *Questionnaires not included* | 0 | 7 | 7 |
| *Questionnaires included* | 10 | 21 | 31 |
| *Final response rates* | 8.3% | 2.6% | **3.5%** |

**Table 3.2 Reasons for poor response / non-inclusion of forms**

| | **Initial questionnaires** | **2nd round of questionnaires** | **Total** |
|---|---|---|---|
| *No response* | 77 | 770 | 847 |
| *Inability to contact attorney* | 72 | 0 | 72 |
| *Attorneys unable to complete the questionnaire for various reasons* | 30 | 1 | 31 |
| *No longer practicing or different area of speciality* | 17 | 4 | 21 |
| *Agreed to complete questionnaire, failed to return it* | 2 | 0 | 2 |
| *Indicated that the form is too complex* | 1 | 0 | 1 |
| *Returned empty questionnaire* | 0 | 3 | 3 |

### 3.9.2.3 Coding of questionnaires

On retrieval of the second round of questionnaires, coding of all 31 received questionnaires was conducted by the researcher, as well as interpretation of the data. Where open-ended questions were asked, coding was done by grouping similar answers, for example when participants were asked to define the term ‘productivity’, all answers

regarding a person's ability to work were grouped together and given the same code.

#### 3.9.3.4 Data analysis

The results of the study were processed by the Department of Biostatistics at the University of the Free State. Descriptive statistics, namely frequencies and percentiles for categorical data and medians and percentiles for continuous data were calculated. Due to the low response rate, no reliability questionnaires were sent out as indicated in the research protocol. Reliability questionnaires are typically sent out to 10% of the population in order to check the internal reliability, as well as test-retest reliability. Internal reliability was however addressed by that various questions in the questionnaire asked similar questions in a different manner.

## 3.10 METHODOLOGY AND MEASUREMENT ERRORS

Methodological and measurement errors can occur during execution of the research process and steps that were taken during this research study to counter these are listed below:

### 3.10.1 Population

Randomization is considered as the most effective method of controlling subject characteristics (Polit *et al*., 2001:190). Due to the small number of attorneys eligible, all were included and no sampling was necessary.

### 3.10.2 Distribution and return of questionnaires

A response rate of 50% is in general accepted as typical for a mailed questionnaire (Leedy and Ormrod, 2005:185). Return rate (Leedy and Ormrod, 2005:185) was encouraged by giving deadlines for the return of questionnaires, reminding participants to return the questionnaires (Bailey, 1997:98) and follow-up after two weeks. Prepaid self-addressed

envelopes (Leedy and Ormrod, 2005:193) were attached to posted questionnaires, but not to hand delivered questionnaires. Attorneys who were given hand delivered questionnaires were requested to return the completed questionnaires by means of fax or email or to arrange for pick-up by the researcher or research assistant.

### 3.10.3 **Completion of questionnaires, or measurement** (Polit *et al.*, 2001:304)

The following issues related to the questionnaires were taken into account during this study:

a) Transitory personal factors, such as fatigue or disinterest on the part of the participants were limited by ensuring that questionnaires were easy to use with clear instructions (Leedy and Ormrod, 2005:191), that they were stimulating with an attractive and pleasing format and that they were accompanied by a good information document to motivate participants.
b) Since the researcher was not present to explain questions questionnaires needed to be clear and unambiguous (Bailey, 1997:98). During the pilot study one occupational therapist and one attorney misunderstood the inclusion criteria as contained in the cover letter.
c) Language discrepancies can affect response rates. In the case of this study, potential participants were not prescribed a specific language in which the questionnaire had to be completed. The questionnaire was however compiled English. As the population under study hold tertiary degrees obtained in South Africa and since most magistrate and High court proceedings take place in English only, this was felt to be non-problematic.
d) Administration variables were controlled by that the researcher and research assistant collected data and that only the researcher grouped and coded questionnaire answers. There was thus no fluctuation in work methods and interpretation.

### 3.10.4 Measuring instrument

#### 3.10.4.1 Validity of the measuring instrument

It is important to ensure the validity of a measuring instrument, i.e. the degree to which an instrument measures what it is intended to (Polit *et al.*, 2001:308):

a) *Face validity* entails whether the instrument looks as if it is appropriate (Polit *et al.*, 2001:309). A neat and professional questionnaire was used and fields-specific terminology used, as obtained from the literature and the nominal group.

b) *Content validity* is concerned with the adequate coverage of the measured content area, and is especially relevant for tests of knowledge (Polit *et al.,* 2001:309) as in this study. To address this, experts from the occupational therapy content areas were approached during development of the questionnaire (nominal group) in order to ensure that the questions in the questionnaire covered all the content areas from an occupational therapy point of view.

c) *Internal validity:* This refers to the degree to which results of the study are a reflection of the real situation, that is, the legal and health profession context in every day practice (Burns and Grove, 2005:739). Selection biases can threaten the internal validity of a study, but can be addressed by randomization and other control methods (Polit *et al.*, 2001:193). No sampling was however required for this study as the entire identified population was used, thus the researcher was not involved in a sampling process or direct recruitment of participants. The researcher's secretary served as research assistant, as she has the use of a fully equipped office at her disposal. As she is accustomed to the confidential and professional handling of medico-legal documentation and information, she was considered suitable by the researcher for these purposes. Participants were however provided with the researcher's contact details so that they could contact the researcher for content-related queries. It

was noted that they would then no longer be anonymous, but as things transpired there were no queries.

d) *External validity* is the generalizability of the research findings to other settings or samples (Polit *et al.*, 2001:194). This can be addressed by means of adequate sampling design and ensuring that the sample is representative.

### 3.10.4.2 Reliability of the measuring instrument

Reliability (the consistency with which a measuring instrument yields a certain result when the measured entity remained unchanged) is a necessary but insufficient condition for validity (Leedy and Ormrod, 2005:29). It includes interrater reliability, internal consistency reliability, equivalent questionnaires reliability and test-retest reliability (Leedy and Ormrod, 2005:93). These were addressed in this study as follows:

a) *Interrater reliability:* Clear coding and interpretation methods were documented, as well as records kept of how coding and grouping of data was performed in order to ensure that other persons would have similar findings based on the questionnaires.

b) *Internal consistency reliability:* To ensure that several aspects of the measurement instrument will reveal the same information; different questions in the questionnaire asked similar information of the participants. This could have led to some repetitiveness, as well as the redundancy of certain questions. It is also possible that this might have caused the attorneys some irritation, limiting the chances of attempting or completing the questionnaire. The researcher also remained true to the original study design and research questions and only adapted the borders of the study population when it became necessary (to improve response rates).

c) *Equivalent questionnaires reliability:* To ensure that different versions of the questionnaire would reveal similar results, instructions did not vary as a similar questionnaire was completed by all participants.

d) *Test-retest reliability:* To ensure that similar results would be found if the questionnaire was performed at different occasions, the participants completed the questionnaires without intervention by the researcher. This reliability was also ensured during the one personal interview, by that the researcher did not provide any explanations and simply asked the question as it is in the questionnaire. The attorney's answers were not paraphrased and noted down in his exact words.

## 3.11 ETHICAL ASPECTS

Procedures were followed according to all University policies pertaining to research practices. The research protocol was presented to, and approved by the expert research committee of the Department of Occupational Therapy, as well as the research evaluation committee of the School of Allied Health Professions, Faculty of Health Sciences. The Ethics Committee of the Faculty of Health Sciences granted approval to conduct the study (ETOVS nr 19/2010) on 28 July 2010 and no data collection was commenced prior to this approval. Please see attached letter of approval from the Ethics Committee (see Appendix D). All amendments to the research protocol, as well as to the study methodology were sent to the Ethics Committee for approval every time changes had to be made.

In addition to the UFS Ethics Committee, the researcher obtained permission from the various provincial law societies to proceed with the study.

Leedy and Ormrod (2005:101) determined that research ethics rests on several pillars which were adhered to during this study. These are:

### 3.11.1 Protection from harm

No risks in terms of participating in this study were foreseen. Furthermore no significant disruption to the lives of the attorneys was made and the questionnaire could be completed in 30 minutes.

### 3.11.2 Informed consent

Every questionnaire was accompanied by an information letter (see Appendix C) which provided important information regarding the aim and purpose of the study, as well as inclusion criteria. The introduction letter contained a description of the study, as well as what would be expected of the participants.

Participation in this study was voluntary (Leedy and Ormrod, 2005:101) and this was made explicit in the information letter. Once eligible attorneys had read the information letter attached to the written questionnaire, they had the choice whether to complete and return the form or not.

An inscription was added on each questionnaire to indicate that should a participant complete and return the questionnaire, it will serve as consent to use the information (Burns and Grove, 2005:193). Attorneys involved were made aware of the requirements and implications of participating in the study and that results obtained from the study will be published in accredited journals. In addition they were advised that research results will be available on request once the study is completed.

Participants could terminate their participation, as is evident in the description of the course of the study, should they wish to at any time. Likewise participants were not penalized in any manner by their participation or their withdrawal from the study.

The participants were informed of the possible benefit for their field of work by participating in this study (see “Value of study”, as well the information document that accompanies the questionnaire).

The researcher’s and Ethics Committee’s contact numbers were also included in the information letter, should potential participants have had any questions regarding the study.

### 3.11.3 Right to privacy

Participants’ rights to privacy (Burns and Grove, 2005:186) were protected by handling results confidentially and discussing results without identifying participants. Questionnaires were numbered, so the researcher could not determine who returned questionnaires. During the second round of questionnaires distributed, the attorneys were not asked any personal detail by which they could be identified and only their profession and years of service were required.

The participants were informed that their information will be held confidential, but that no anonymity can be guaranteed due to email, fax and postal identification.

### 3.11.4 Honesty with professional colleagues

The researcher kept all records of the nominal group, as well as the questionnaires received.

Information obtained from the study was documented and reported in a proper and honest manner.

The researcher strived at all times to remain objective and to handle all information, participants and the process with integrity. All persons that assisted during the study (excluding study participants) were mentioned by name under “Acknowledgements” in the research report.

No participants of the nominal group, pilot study or research study were eligible for remuneration based on their participation.

Other important aspects in terms of ethical considerations were:

### 3.11.5 Selection of participants

Subjects for this study were not selected at any stage. All attorneys that indicated in the Hortors Legal Diary that they do medico-legal work as applicable to this study were equally approached (Burns and Grove, 2005:190). The questionnaires obtained from attorneys who indicated that they did not in fact do this type of work, were excluded from this study.

### 3.11.6 Language

Written questionnaires were only available in English, as this is the language mostly utilized in South African courts. Participants were not instructed to answer questions in a specific language. However, as practicing and South African trained legal professionals, the researcher presumed that all participants should be fluent in English, as this is the language which is used in the courts of South Africa.

### 3.11.7 Feedback to participants

Research results will be available to participants on request once the study is completed. The researcher aims to publish an article based on results from this study in the De Rebus, which is the official newsletter of the Law Society of South Africa. This might assist in informing participants that the study has been completed and such an article would contain some of the research results.

## 3.12 CONCLUSION

As stated at the beginning of this chapter, a quantitative approach was used in this study in order to contribute to the body of knowledge of

occupational therapy. This was done by providing facts, as well as by comparing the expectations, definitions and perceptions held by the participating attorneys to that of literature and the occupational therapy profession.

As it is evident from the discussion in this chapter extensive adaptations had to be made to the data collection process in order to raise the response rate. Factors were identified and addressed to the best of the researcher's ability. These adapted methods were explained in an addendum to the original research protocol as well as in the body of this chapter.

Chapter 4 proceeds to provide the results obtained from following this adapted research methodology as described in Chapter 3.

# CHAPTER 4
# RESULTS

## 4.1 INTRODUCTION

The aim of this study was to describe the South African legal profession's expectations in terms of the medico-legal assessments and reports compiled by occupational therapists as expert witnesses in third party claims.

This chapter contains the research results as obtained from the research methodology described in Chapter 3. In summary, these results were gathered by means of the questionnaire developed by the researcher, which was sent to the study population. The study population consisted of South African attorneys who were listed in the Hortors Legal Diary 2010 edition as specializing in medico-legal matters. As indicated before, the questionnaire (see Appendix B) was developed by means of:

- Information obtained from the nominal group held with occupational therapists knowledgeable in the medico-legal field.
- The researcher's professional experiences and
- Subject-related literature.

The questionnaire consisted of 44 questions pertaining to the legal profession's expectations and knowledge of occupational therapy, as well as terminology and concepts used by occupational therapists.

## 4.2 RESULTS OF THE STUDY

In the first part of this section, the background of the participating attorneys will be provided, as well as introductory results regarding their perspective of the occupational therapy profession.

Secondly the results relating to attorneys' perspective of the scope of occupational therapy will be revealed, after which the results pertaining to attorneys' expectations of occupational therapists will be presented. Finally, the results relating to definitions and terminology will be tabulated.

As the researcher is interested in the perspective of the broader attorney community regarding the research questions, the median was used to describe the sample's central tendency (Bailey, 1997:122). The median can be described as the numerical value separating the higher half of a sample from the lower half. Results were analysed as stated in section 3.9.3.4.

### 4.2.1 Background of participants and introductory results

Thirty one legal professionals participated in the study, all of whom were practicing attorneys at the time of completing the questionnaire. Questionnaires of attorneys who returned questionnaires, but did not meet the inclusion criteria, were not included in the study. In total seven questionnaires were excluded, of which four attorneys were no longer practicing as attorneys or specifically specialized in areas other than third party matters. The other three returned empty forms. The participating attorneys indicated their main area of speciality as follows:

**Table 4.1 Participating attorneys' main area of speciality**

| Area of speciality (Question 3) | Frequency of participants (n=31) | Percentage of participants |
|---|---|---|
| *Third party claims* | 10 | 32.26% |
| *Civil matters* | 3 | 9.68% |
| *Medical negligence matters* | 1 | 3.23% |
| *No specific area of speciality* | 1 | 3.23% |
| *More than one of the above* | 11 | 35.48% |
| *Other* | 5 | 16.13% |

As displayed in Table 4.1, just over a third of the attorneys indicated that they hold more than one speciality area, and the same proportion indicated that their main speciality is third party claims. Thus the

population included attorneys who are expected to be more knowledgeable about the role of the occupational therapist, as well as attorneys who deal with occupational therapists less often.

The median years of service as attorney was 13 years, with the maximum number of years being 46 and the minimum years of service 4 years. Again this indicated that the population included attorneys from highly experienced in terms of years of practicing, as well as more newly qualified attorneys.

Participants were from various provinces in South Africa.

Of the 31 attorneys, 29 (93.55%) indicated that they refer to occupational therapists, while 77.42% of the attorneys indicated that they do so regularly or as a rule.

**Table 4.2 Matters for which attorneys mostly refer to occupational therapists**

| Type of matters (Question 11) | Frequency (n=31) | Percentage |
|---|---|---|
| *Road Accident Fund matters* | 24 | 77.42% |
| *Personal injury matters* | 8 | 25.81% |
| *Medical/professional negligence/malpractice* | 5 | 16.13% |
| *Other: Family matters* | 2 | 6.45% |

Of the attorneys who indicated that they refer to occupational therapists regularly, the median refers to occupational therapists for RAF matters (64.52%). None of the participating attorneys indicated that they refer to occupational therapists for insurance matters or occupational injuries. This can indicate that the majority of occupational therapists who perform medico-legal work are at present performing predominantly RAF work.

Of the 31 attorneys 28 (90.32%) indicated that they definitely find occupational therapy reports beneficial to their cases, while 9.68% found occupational therapy reports to be beneficial on occasion. This information was obtained from question 12 in the questionnaire.

**Table 4.3 Main causes for delay in payments to occupational therapists**

| Reason indicated (Question 23) | Frequency (n=30) | Percentage |
|---|---|---|
| *Cash flow problems due to delayed payments from defendant/ taxation dates from courts* | 11 | 36.67% |
| *Tedious process of finalizing matters and contingencies* | 8 | 26.67% |
| *Client has insufficient funds and pay after settlement* | 4 | 13.33% |
| *Courts are overloaded/trial dates* | 3 | 10.00% |
| *Attorneys who pay their expert before report issue* | 2 | 6.67% |
| *Various reasons (cash flow, poor planning/communication, terms)* | 1 | 3.33% |
| *Problems pertaining to the claimant and the RAF* | 1 | 3.33% |

In terms of remuneration, the majority of the attorneys (80%) felt that occupational therapists were adequately remunerated (Question 22), with the main reasons for delay in payment to occupational therapists as indicated above. As can be seen from the above table, two of the participating attorneys did not indicate reasons for delayed payments, as they pay their experts before their reports are issued. Although this aspect of remuneration might not appear relevant to the research questions, the researcher felt that this could portray an attorney's perception of the value of occupational therapy services.

### 4.2.2 The legal perspective of the scope of occupational therapy

As per question 4, all participants indicated that they understand what an occupational therapist does.

**Table 4.4 Attorneys' understanding of what an occupational therapist does**

| Definition or criteria definition is based on (Question 5) | Frequency (n=29) | Percentage |
|---|---|---|
| *Assess clients specifically to determine general work* | 7 | 24.14% |

| | | |
|---|---|---|
| *capacity/earning potential/employability* | | |
| *Focus on treatment of disability or injury* | 6 | 20.69% |
| *Focus on assessment of function/level of functioning in all occupational performance areas* | 4 | 13.79% |
| *Holistic assessment of a person's ability to perform in all occupational performance areas* | 3 | 10.34% |
| *Assessment or treatment of specific occupation(s)* | 2 | 6.90% |
| *Assessment of physical ability to perform a specific job* | 2 | 6.90% |
| *Assessment of functional capacity, focusing on work* | 2 | 6.90% |
| *Someone who deals with injured or impaired persons* | 1 | 3.45% |
| *Rehabilitation* | 1 | 3.45% |
| *Other* | 1 | 3.45% |

The above table indicates that attorneys have overlapping, but distinctive opinions on the role description of occupational therapy. The majority of participants describe the role of the occupational therapist in terms of the assessment and treatment of incapacitated persons in a variety of performance areas, but focusing on work.

**Table 4.5 The role of the occupational therapist in medico-legal matters**

| Description of role (Question 14) | Frequency (n=27) | Percentage |
|---|---|---|
| *Assessment to specifically determine general work/earning capacity and loss of earnings* | 8 | 29.63% |
| *Give expert advice on general, collateral and special damages/losses* | 3 | 11.11% |
| *General assessment, report writing and court appearance* | 3 | 11.11% |
| *Assessment of degree of functional impairment* | 3 | 11.11% |
| *Holistic assessment to determine impact of injury on all OPAs and advise on assistive methods* | 2 | 7.41% |
| *Important/very important* | 2 | 7.41% |
| *Physical assessment in terms of work* | 2 | 7.41% |
| *As a support/summary to other experts* | 2 | 7.41% |
| *Assist in determining career path with adaptation of work place* | 1 | 3.70% |
| *Diagnosis of client's problems* | 1 | 3.70% |

The above table indicates that occupational therapists are considered to be experts who perform a broader assessment, but focus a great deal on work. Only one attorney highlighted the role of the occupational therapist in terms of work place adaption after injury or disability.

The participating attorneys indicated that they would typically refer to the following experts regarding specific referral questions, as per question 20 in the questionnaire:

**Table 4.6 Experts approached for specific referral questions**

| Specific aspect | OT | OT/IP | OT/DR | DR | IP | IP/DR | All (n=31) |
|---|---|---|---|---|---|---|---|
| *Functional capacity* | 16.13% | 12.90% | 51.61% | - | - | 3.23% | 12.90% |
| *Earning potential* | 12.90% | 38.71% | 6.45% | - | 9.68% | - | 29.03% |
| *Return to work* | 12.90% | 12.90% | 41.94% | 3.23% | - | - | 25.81% |
| *Loss of earnings* | 6.45% | 29.03% | 9.68% | - | 9.68% | 6.45% | 35.48% |
| *Early retirement* | 3.23% | 19.35% | 25.81% | 3.23% | - | - | 45.16% |
| *Medical aspects such as physical prognosis* | 3.23% | 3.23% | 41.94% | 38.71% | - | - | 9.68% |

**Key to table:**
*OT=Occupational Therapist*
*IP=Industrial Psychologist*
*DR=Medical doctor*

The above table indicates that occupational therapists are mostly consulted along with at least one other expert in order to answer specific referral questions. The researcher also noted that the majority (41.94%) of the attorneys would consult with occupational therapists regarding medical aspects such as prognosis, confirming the health-based nature of the occupational therapy profession, as well as the ability to comment on the long-term impact of injuries or disability.

The attorneys gave the following role descriptions for the role of the occupational therapist as opposed to other professions with which occupational therapy is commonly confused:

**Table 4.7 Roles of the occupational therapist and educational psychologist (EP) in paediatric assessments**

| Role description (Question 16) | Frequency (n=28) | Percentage |
|---|---|---|
| *Occupational therapists focus more on the physical abilities, as opposed to EP focusing on psychological and cognitive aspects* | 8 | 28.57% |
| *Occupational therapists focus more on functional and practical aspects* | 5 | 17.86% |
| *Different roles* | 4 | 14.29% |
| *In certain cases the EP is more appropriate, such as minors suffering head injuries* | 3 | 10.71% |
| *Does not know* | 2 | 7.14% |
| *Occupational therapists focus is more holistic, as opposed to that of education and cognition* | 2 | 7.14% |
| *Role of occupational therapy is more to assess future vocational difficulties* | 2 | 7.14% |
| *Other* | 2 | 7.14% |

It was clear from the above table that attorneys do perceive a fairly definite distinction between the role of the occupational therapist and the EP. It also appears as if the perception exists that the focus of the occupational therapist should be on the client's physical and functional problems, but that the occupational therapist should incorporate the impact of a person's cognitive and psychological on his/her future and general functioning. Interestingly 3 attorneys do not find the occupational therapist an appropriate expert witness in the assessment of children who suffered head injuries.

**Table 4.8 Role of the occupational therapist with reference to cognitive problems, as opposed to that of clinical psychologists or neuropsychologists**

| Role description (Question 17) | Frequency (n=28) | Percentage |
|---|---|---|
| *The occupational therapist determines impact/functional implications of cognitive problems on occupational performance areas rather than diagnosing* | 9 | 32.14% |
| *The occupational therapist focuses on practical and activity-based treatment as opposed to standardised tests* | 4 | 14.29% |
| *Supporting/limited role* | 4 | 14.29% |
| *Different roles* | 3 | 10.71% |

| | | |
|---|---|---|
| *More generalized assessment* | 3 | 10.71% |
| *No role* | 2 | 7.14% |
| *Physical vs. psychological assessment* | 1 | 3.57% |
| *Occupational therapists are better experts to comment on work* | 1 | 3.57% |
| *Does not know* | 1 | 3.57% |

Again it was indicated that the role of the occupational therapist lies more with the holistic and physical assessment and the functional and practical implications of a cognition problem, than with diagnosis. Two attorneys do not consider occupational therapists to play a role in cognitive assessments, while 4 attorneys only consider occupational therapists to play a supporting role in this regard.

**Table 4.9 Role of occupational therapy in terms of earning potential and loss of earnings as opposed to that of industrial psychologist**

| Role description (Question 18) | Frequency (n=29) | Percentage |
|---|---|---|
| *Occupational therapists devise and implement more practical solutions for impact on OPAs and work* | 5 | 17.24% |
| *Occupational therapists would look at what type of work someone can do within their abilities* | 4 | 13.79% |
| *Occupational therapists describe impact on all OPAs, where IPs interpret data and describe impact on career path, choices and ceilings* | 3 | 10.34% |
| *Supplementary or equal roles* | 3 | 10.34% |
| *Does not know* | 3 | 10.34% |
| *Other* | 3 | 10.34% |
| *Occupational therapists comment on work capability and IPs on earning potential* | 2 | 6.90% |
| *Occupational therapists focus on the physical and work site visits, IPs focus on possible career path* | 2 | 6.90% |
| *The IP comments on salary based aspects based on the occupational therapists assessment of earning potential* | 2 | 6.90% |
| *No role* | 1 | 3.45% |
| *Occupational therapists focus on specific occupations and IPs on the wider labour market, as well as the specific occupation* | 1 | 3.45% |

It would appear from the above table that attorneys perceive the role of the occupational therapist to lie more with a person's specific occupation and the type of work a person can do, where IPs are more concerned with salary, employment and career paths.

### 4.2.3 The legal profession's expectations regarding occupational therapy

This section lays out the results indicating what participating attorneys expect from occupational therapists in terms of aspects such as skills, assessments, reports and time management.

**Table 4.10 Most important factors occupational therapy referrals are based on**

| Factor | Median response | Frequency | Percentage | N |
|---|---|---|---|---|
| *Quality of report* | Very important | 24 | 80.00% | 30 |
| *Skills in testifying in court* | Very important | 21 | 70.00% | 30 |
| *Report writing skills* | Very important | 21 | 70.00% | 30 |
| *Years of relevant experience* | Important | 16 | 55.17% | 29 |
| *Objectivity of therapist* | Important | 16 | 55.17% | 29 |
| *Professional presentability* | Important | 16 | 55.17% | 29 |
| *Therapist's qualifications* | Important | 13 | 44.83% | 29 |
| *Turnover time of report* | Important | 12 | 40.00% | 30 |
| *Fees charged by the therapist* | Important | 11 | 36.67% | 30 |
| *Referral from law colleague or other experts* | Important | 10 | 34.48% | 29 |
| *Availability of therapist* | Important | 10 | 34.48% | 29 |
| *Flexibility in terms of payment arrangements* | Important | 7 | 23.33% | 30 |
| *Publications or research done by the therapist* | Fairly important | 13 | 43.33% | 30 |
| *Location of therapy rooms* | Fairly important | 11 | 37.93% | 29 |

The above table depicts results from various questions in order to provide a composite picture of the most important factors occupational therapy referrals are based on. The most important aspects to qualify an occupational therapist for referral from an attorney appears to be skills-based, namely report writing and testifying skills.

**Table 4.11 Most important reasons for occupational therapy referrals**

| Criteria (Question 8) | Frequency (n=30) | Percentage |
|---|---|---|
| *To determine if a client is functional in activities of daily living* | 6 | 21.43% |
| *To ascertain residual earnings potential* | 3 | 10.71% |
| *To cover all bases* | 2 | 7.14% |
| *On a recommendation from other experts* | 2 | 7.14% |
| *As a rule* | 1 | 3.57% |
| *When there was loss of earnings* | 1 | 3.57% |
| *To determine if a client is disabled in terms of career performance* | 1 | 3.57% |
| *More than one of the above* | 12 | 42.86% |

The above table relates to attorneys who indicated that they do refer to occupational therapists for assessment reports. Attorneys who do not refer to occupational therapists indicated that they would consider doing so in those cases where long-term medical problems are foreseen, or where it is necessary to determine how functional a client is in activities of daily living.

**Table 4.12 Time or phase in the claims process when attorneys refer to occupational therapists**

| Time/phase in claims process (Question 9) | Frequency (n=31) | Percentage |
|---|---|---|
| *After the initial (primary) experts' assessments* | 20 | 64.52% |
| *In preparation for quantum trial* | 4 | 12.90% |
| *Once the opposing part instructed an occupational therapist* | 2 | 6.45% |
| *Immediately once a case is opened* | 1 | 3.23% |
| *Before any other expert* | 1 | 3.23% |
| *Once all the other experts had assessed the client* | 1 | 3.23% |
| *Depends on situation, gut feeling or referral from other resorts* | 1 | 3.23% |
| *When there is possible loss of earnings* | 1 | 3.23% |

The above table indicates that the occupational therapist is considered mainly a secondary expert, assessing and commenting on the claimant's abilities after the initial medical experts' assessments.

**Table 4.13 Stage at which attorneys refer to occupational therapists, i.e. time period until trial date**

| Period of time (Question 10) | Frequency (n=30) | Percentage |
|---|---|---|
| *More than two years* | 2 | 6.67% |
| *More than one year* | 10 | 33.33% |
| *More than 6 months* | 12 | 40.00% |
| *Less than 6 months* | 6 | 20.00% |

It is noted that 80% of the attorneys indicated that they refer to occupational therapy for assessments more than 6 months prior to the trial date.

The following table serves to illustrate the extent of detail attorneys expect from occupational therapists in terms of testing done and discussions thereof in the reports:

**Table 4.14 Median response regarding tasks an occupational therapist should perform *and* include in their reports**

| Task (Question 15) | Frequency (n=30) | Percentage |
|---|---|---|
| *Scientific/standardised physical assessment* | 26 | 86.67% |
| *Job analysis* | 26 | 86.67% |
| *Interpretation and clinical reasoning to comment on work* | 24 | 80.00% |
| *Functional physical assessment* | 23 | 76.67% |
| *Formal work assessment (standardised tests)* | 23 | 76.67% |
| *Clinical observations* | 22 | 73.33% |
| *Use of formal standardised tests* | 21 | 70.00% |
| *Assessment of activities of daily living* | 21 | 70.00% |
| *Careful perusal of documentation* | 19 | 63.33% |
| *Work visit* | 17 | 56.67% |
| *Home visit* | 17 | 56.67% |
| *Correspondence with school, family, friends* | 17 | 56.67% |
| *Correspondence with employer/colleagues* | 16 | 53.33% |
| *Reporting on test scores only, as opposed to subjective opinion and interpretation* | 16 | 53.33% |

Seventeen (56.67%) of the attorneys indicated that they want the occupational therapist to communicate with themselves, but not include that communication in their reports.

The question tabulated in the following table aimed to determine the importance of aspects commonly addressed in occupational therapy reports:

**Table 4.15 Importance of aspects addressed in occupational therapy reports**

| Aspect | Median response | Frequency | Percentage | n |
|---|---|---|---|---|
| *Job analysis* | Very important | 20 | 71.43% | 28 |
| *Return to work* | Very important | 20 | 71.43% | 28 |
| *Physical assessment* | Very important | 19 | 67.86% | 28 |
| *Commenting on loss of amenities* | Very important | 17 | 58.62 | 29 |
| *Costing of recommendations to assist independence* | Very important | 16 | 57.14% | 28 |
| *Assessment of personal independence* | Very important | 16 | 55.17% | 29 |
| *Earning potential* | Very important | 15 | 53.57% | 28 |
| *Reporting on recreation and social aspects* | Important | 15 | 55.56% | 27 |
| *Assessment of work habits* | Important | 15 | 51.72% | 29 |
| *Life roles* | Important | 12 | 44.44% | 27 |
| *Use of formal/standardised tests* | Important | 11 | 40.74% | 27 |
| *Commenting on other experts' opinions* | Important | 11 | 37.93% | 29 |
| *Reporting on survival skills* | Important | 9 | 32.14% | 28 |
| *Commenting on psychological aspects* | Important | 8 | 28.57% | 28 |
| *Analysis of work history* | Important | 8 | 28.57% | 28 |
| *Obtaining collateral information* | Important | 7 | 25.93% | 27 |
| *Other* | Fairly important | 5 | 55.56% | 22 |

The above table combined various questions in order to indicate the importance of various aspects to be addressed in occupational therapy reports. It would appear from the above table that the occupational therapist's utilization of job analysis in order to comment on return to work is vital. Again the physical and OPA assessment requirement is quite high, as well as the subsequent commenting on loss of amenities and cost of future care.

The aim of the question tabulated below is to determine whether the attorneys consider it part of the occupational therapist's role to comment on aspects that might overlap with those addressed by other professions:

**Table 4.16 Importance for occupational therapists to comment on specific aspects**

| Aspect | Median response | Frequency | Percentage | n |
|---|---|---|---|---|
| *Assistance needed (caregiver, domestic worker)* | Very important | 24 | 82.76% | 29 |
| *Level of physical demands of a person's job* | Very important | 24 | 80.00% | 30 |
| *Functional prognosis in terms of injury* | Very important | 24 | 80.00% | 30 |
| *Functional implications of an injury* | Very important | 23 | 79.31% | 29 |
| *Percentage of disability in terms of work* | Very important | 21 | 72.41% | 29 |
| *Current ability to earn* | Very important | 21 | 72.41% | 29 |
| *Assistive devices for home and work* | Very important | 19 | 63.33% | 30 |
| *Future ability to earn* | Very important | 18 | 62.07% | 29 |
| *Loss of amenities* | Very important | 16 | 57.14% | 28 |
| *Loss of earnings/income* | Very important | 16 | 55.17% | 29 |
| *Matching job requirements to a person* | Very important | 16 | 55.17% | 29 |
| *Examples of types of jobs a person can do post-injury* | Very important | 16 | 55.17% | 29 |
| *Travelling and transport costs* | Very important | 16 | 55.17% | 29 |
| *Pain and suffering* | Important | 12 | 42.86% | 28 |
| *Alternative forms of employment* | Important | 10 | 34.48% | 29 |
| *Medical issues regarding a client/status/physical prognosis* | Important | 8 | 28.57% | 28 |
| *Cognitive problems* | Important | 7 | 24.14% | 29 |
| *Loss of general health* | Fairly important | 15 | 53.57% | 28 |
| *Disfigurement* | Fairly important | 11 | 39.29% | 28 |
| *Psychological trauma resulting from physical injury* | Fairly important | 11 | 37.79% | 29 |
| *Emotional shock* | Fairly important | 7 | 24.14% | 29 |

The above table (a combination of the results from various questions) reiterates that the attorneys perceive the occupational therapist to play a minor role in commenting on emotional and psychological aspects, as well

as medical aspects such as disfigurement and health. Of the aspects indicated as 'very important' the majority revolves around occupational performance areas, and specifically a person's ability to work. It was noted that attorneys attach great value to the occupational therapist providing the court with a *functional prognosis* for an injured or disabled client.

The following table indicates the importance attached by the attorneys to various measurements utilized by occupational therapists in their assessments and reports:

**Table 4.17 Importance of utilizing certain factors in occupational therapy reports**

| Aspect | Median response | Frequency | Percentage | n |
|---|---|---|---|---|
| *Alternative employment* | Very important | 23 | 79.31% | 29 |
| *Numerical expression of occupational therapy findings* | Very important | 20 | 66.67% | 30 |
| *Work classifications* | Very important | 19 | 63.33% | 30 |
| *Contextual factors that can influence earning potential* | Very important | 18 | 60.00% | 30 |

Both the above and the previous table highlight that attorneys prefer that occupational therapists use numerical expression such as percentages when expressing their findings and opinions, such as a percentage of work disability. This table combined the results from questions 38-40 and 43 in the questionnaire.

The following tables reflect the attorneys' responses to questions regarding joint or combined minutes:

**Table 4.18 Circumstances under which occupational therapy joint minutes are requested**

| Circumstance (Question 27) | Frequency (n=27) | Percentage |
|---|---|---|
| *If there are disputed aspects* | 6 | 22.22% |
| *If there is an opposing occupational therapist* | 5 | 18.52% |
| *Conflicting reports* | 5 | 18.52% |
| *Instruction from court or agreement between parties* | 4 | 14.81% |
| *Always* | 2 | 7.41% |
| *When matters proceeds to trial or settlement is envisaged* | 2 | 7.41% |
| *Never have* | 1 | 3.70% |
| *Does not know* | 1 | 3.70% |
| *When extra information is required* | 1 | 3.70% |

**Table 4.19 Aspects occupational therapists should address in joint minutes**

| Aspect (Question 25) | Frequency (n=29) | Percentage |
|---|---|---|
| *Recording of consensus and disagreement* | 9 | 31.03% |
| *Only disputed aspects* | 5 | 17.24% |
| *Comprehensive overview of experts assessments and findings* | 4 | 13.79% |
| *Issues such as disability/severity of injury, alternative job options, suitability thereof, functionality and retirement* | 3 | 10.34% |
| *Ability to work/earning capacity* | 3 | 10.34% |
| *Does not know* | 2 | 6.90% |
| *Other: Gathering of alternative information / Depends on each case* | 1 | 3.45% |
| *Future losses* | 1 | 3.45% |
| *Level of functionality on all aspects of daily living, focusing on work* | 1 | 3.45% |

Of the 29 attorneys who answered this question, 8 attorneys indicated specific aspects which occupational therapists need to address in joint minutes, with the focus on a person's functionality and ability to work.

**Table 4.20 Time prior to trial that occupational therapy joint minutes are requested**

| Period (Question 26) | Frequency (n=28) | Percentage |
|---|---|---|
| *More than one month* | 7 | 25.00% |
| *More than 2 weeks* | 10 | 35.71% |
| *1 week or less* | 10 | 35.71% |
| *Never have* | 1 | 3.57% |

The majority of the attorneys (53.57%) indicated that they feel occupational therapists are given sufficient time to complete joint minutes prior to the trial date, while seven (25%) felt they were not. The remainder were uncertain (n=28).

The following two tables focus on what information attorneys provide occupational therapists with prior to assessments:

**Table 4.21 Information which attorneys consider sufficient as a base for occupational therapists' comments on long-term expectations regarding a client**

| Information (Question 41) | Frequency (n=28) | Percentage |
|---|---|---|
| *Other* | 9 | 32.14% |
| *Specific various documentation* | 7 | 25.00% |
| *Everything available* | 4 | 14.29% |
| *Medical and employment information* | 4 | 14.29% |
| *Medical reports* | 2 | 7.14% |
| *Experts' reports* | 2 | 7.14% |

As can be seen from the above, only 14.29% of attorneys deem it necessary for occupational therapists to have all the documentation available regarding a client, in order to adequately comment on long-term implications of an injury. Subsequently only 20.34% provides all the available documentation, as seen in Table 4.22:

**Table 4.22 Information which attorneys provide so that occupational therapists can comment on long-term expectations regarding a client**

| Documentation provided (Question 42) | Frequency (n=29) | Percentage |
|---|---|---|
| *Specific documents (such as medical, work and background information)* | 13 | 44.83% |
| *Other experts' reports only* | 6 | 20.69% |
| *Everything available (did not specify)* | 3 | 10.34% |
| *All documentation requested* | 3 | 10.34% |
| *Documents (such as medico-legal reports) and brief from attorney* | 2 | 6.90% |
| *Medical reports only* | 1 | 3.45% |
| *Not applicable as occupational therapists should not comment on loss of earnings* | 1 | 3.45% |

A significant majority of attorneys have specific documentation they typically provide to an occupational therapist prior to assessment of a claimant. It is interesting to note that one attorney did not consider it part of the occupational therapist's role to comment on long-term expectations at all.

### 4.2.4 Definitions and terminology

Twenty eight out of thirty (93.33%) attorneys consider it important that all expert witnesses understand legal concepts.

In support of the above, all 30 attorneys who answered the relevant question indicated that it is important for occupational therapists to understand the legal process regarding medico-legal matters. Eighteen out of 29 (60%) attorneys indicated that they think occupational therapists understand the legal process involved, while four (13.33%) indicated that they do not.

Regarding occupational therapy terms, 26 out of 29 (89.66%) attorneys indicated that they understand terms used by occupational therapists. The median response was that it is very important for attorneys to understand occupational therapy terms (82.76%). There was however a discrepancy in answers as indicated below:

**Table 4.23 Rating of level of knowledge of occupational therapy terms, and the importance attached to this**

| Whether the attorney understands occupational therapy terms | Whether it is important to understand occupational therapy terms | Frequency | Percentage |
|---|---|---|---|
| Did not indicate | Did not indicate | 1 | 3.23% |
| Did not indicate | Very important | 1 | 3.23% |
| Yes | Did not indicate | 1 | 3.23% |
| Yes | Important/very important | 24 | 77.42% |
| Yes | Fairly important | 1 | 3.23% |
| No | Very important | 2 | 6.45% |
| No | Fairly important | 1 | 3.23% |

The above table depicts information obtained from questions 33 and 34 in the questionnaire. In total, the above table indicates a discrepancy between attorneys understanding of occupational therapy terms and how important it is to them. Two attorneys for instance indicated that it is very important to them to understand occupational therapy terms, but that they do in fact not understand occupational therapy terms. The majority however indicated that they find it important to understand occupational therapy terms and that they do understand these terms.

The following tables depict the participating attorneys' understanding of definitions and terminology commonly used in occupational therapy reports and in the medico-legal process:

**Table 4.24 Attorneys' understanding of 'joint/combined minutes'**

| Description (Question 24) | Frequency (n=29) | Percentage |
|---|---|---|
| *Reporting between opposing similar experts on matters agreed/disagreed upon to limit issues to be heard at trial* | 9 | 31.03% |
| *Meeting regarding disagreements and agreements in order to narrow down issues* | 9 | 31.03% |
| *Meeting between opposing similar experts in order to find common ground* | 6 | 20.69% |
| *Joint report by two experts* | 3 | 10.34% |
| *Meeting with other experts and advocate* | 1 | 3.45% |
| *Does not know* | 1 | 3.45% |

The largest percentage (31.03%) of the attorneys provided an accurate description for joint minutes, which will be discussed in more detail in Chapter 5. One attorney confused joint minutes with a pre-trial meeting (meeting with other experts and advocate ahead of the trial).

**Table 4.25 Attorneys' understanding of 'qualifying fee'**

| Description (Question 31) | Frequency (n=27) | Percentage |
|---|---|---|
| *Fee for preparation for trial* | 13 | 48.15% |
| *Fee to charge when reserving date to be available to testify in court* | 5 | 18.52% |
| *General fee* | 4 | 14.81 |
| *Fee paid and based on practitioner's qualifications and expertise* | 2 | 7.41% |
| *Trial appearance or testimony* | 2 | 7.41% |
| *Does not know* | 1 | 3.70% |

Again the largest percentage of the attorneys provided an accurate description of the term with only one attorney not knowing what it is and 8 attorneys providing general answers, as opposed to a specific description of the term 'qualifying fee'.

The following tables below depict answers provided by the attorneys for various aspects of question 35 in the questionnaire:

**Table 4.26 Attorneys' understanding of 'productivity'**

| Description | Frequency (n=27) | Percentage |
|---|---|---|
| *Ability to work* | 7 | 25.93% |
| *Rate at which a person works effectively* | 5 | 18.52% |
| *Large scale productivity/output* | 4 | 14.81% |
| *Efficiency* | 3 | 11.11% |
| *Job requirements and a person's potential* | 2 | 7.41% |
| *Level at which a patient is able to produce work in current state* | 2 | 7.41% |
| *Ability to produce* | 2 | 7.41% |
| *Measure of occupational disability after injury* | 1 | 3.70% |
| *Contribution by individual to total productivity* | 1 | 3.70% |

Literature pertaining to productivity will be discussed in Chapter 5. A diversity of meanings of 'productivity' is seen in the above table, with all the attorneys correctly linking productivity with work. Only 2 attorneys however indicated that productivity implies the efficacy or rate of work a person can produce.

**Table 4.27 Attorneys' understanding of 'earning potential'**

| Description | Frequency (n=27) | Percentage |
|---|---|---|
| *Ability or potential to earn* | 12 | 44.44% |
| *Expected prospective earnings* | 7 | 25.93% |
| *Ability to earn with regards to possible barriers* | 6 | 22.22% |
| *Probability of gaining employment* | 1 | 3.70% |
| *Potential for growth* | 1 | 3.70% |

None of the attorneys indicated that earning potential is similar to a person's ability to work, suggesting that earning potential and work ability/capacity are 2 distinct concepts. One attorney specifically referred to a person's probability of gaining employment, which can probably be termed more accurately as a person's employability, which can refer more to employment opportunities and unemployment rates than to a person's prospective earnings or ability to earn.

**Table 4.28 Attorneys' understanding of 'functional capacity evaluation'**

| Description | Frequency (n=25) | Percentage |
|---|---|---|
| *Assessment of ability to function in their job/to work* | 8 | 32.00% |
| *Level of functionality or ability after injury* | 4 | 16.00% |
| *Physical assessment of function, focusing on work* | 3 | 12.00% |
| *Ability to perform job/work* | 3 | 12.00% |
| *Does not know* | 2 | 8.00% |
| *Level of ability to function in job, indicated by a percentage* | 2 | 8.00% |
| *Ability to perform in all OPAs* | 1 | 4.00% |
| *Capacity to make work-related decisions* | 1 | 4.00% |
| *Standardised tests* | 1 | 4.00% |

Most attorneys indicated that the basis of FCEs lies in determining a person's ability to perform work, where 2 attorneys indicated that a

person's functionality is measured, but that this was not restricted to work ability.

**Table 4.29 Attorneys' understanding of 'functional limitations'**

| Description | Frequency (n=26) | Percentage |
|---|---|---|
| *A person's inabilities/restrictions as it relates to function* | 8 | 30.77% |
| *A person's inabilities* | 6 | 23.08% |
| *Restrictions in terms of physical abilities* | 6 | 23.08% |
| *Limitations that affect especially work* | 4 | 15.38% |
| *Any health problems that prevents a person from completing a range of tasks* | 1 | 3.85% |
| *Specific aspects of work affected, as opposed to complete job requirements* | 1 | 3.85% |

The majority of attorneys rightly indicated that this term refers to a person's inabilities or restrictions and that 'functional limitations' cover more than merely a person's ability to work.

**Table 4.30 Attorneys' understanding of 'occupation'**

| Description | Frequency (n=27) | Percentage |
|---|---|---|
| *Work/career/job you do, not specifying that it is necessarily for earning a living* | 14 | 51.85% |
| *Employment, including self-employment* | 7 | 25.93% |
| *How you earn a living (career/job/work)* | 5 | 18.52% |
| *Description of work* | 1 | 3.70% |

From the above table, it is clear that the general understanding under the participating attorneys is that 'occupation' refers to a person's work or job, even if this is not for monetary purposes. No mention was made of other activities of daily living.

**Table 4.31 Attorneys' understanding of 'occupational disability'**

| Description | Frequency (n=27) | Percentage |
|---|---|---|
| *Inability or limitations affecting a person's specific work/job aspects* | 15 | 55.56% |
| *Disability in terms of occupation* | 4 | 14.81% |
| *Inability to perform work* | 3 | 11.11% |
| *Physical limitations that hamper work* | 3 | 11.11% |
| *Restriction which impact on optimal general work ability* | 2 | 7.41% |

Considering that all the attorneys related occupation to work, it is expected that occupational disability would indicate a restriction in terms of a person's ability to work. This was evident in that all but 4 attorneys specifically indicated that it is a limitation in terms of work.

**Table 4.32 Attorneys' understanding of 'occupational performance components'**

| Description | Frequency (n=22) | Percentage |
|---|---|---|
| *Aspects and requirements of work/job* | 9 | 40.91% |
| *Way to measure occupational performance* | 3 | 13.64% |
| *Does not know* | 3 | 13.64% |
| *Aspects affecting work ability/Suitability to certain work environment or job* | 2 | 9.09% |
| *Ability to work* | 2 | 9.09% |
| *Various areas of one's occupational life* | 1 | 4.55% |
| *Basic abilities (strength, cognition etc.)* | 1 | 4.55% |
| *Other* | 1 | 4.55% |

Again 13 attorneys related occupation performance components to work-related aspects, with only 1 attorney recognizing that there could exist more than one (work) aspect of one's occupational life and only 1 attorney accurately indicating that OPCs refer to a person's basic abilities such as strength and cognition.

**Table 4.33 Attorneys' understanding of 'vocational rehabilitation'**

| Description | Frequency (n=25) | Percentage |
|---|---|---|
| *Job-specific intervention* | 8 | 32.00% |
| *Preparation for general return to work* | 5 | 20.00% |
| *Work rehabilitation* | 4 | 16.00% |
| *Non-specific therapy/treatment* | 3 | 12.00% |
| *Does not know* | 3 | 12.00% |
| *Other: Rehabilitation of speech* | 2 | 8.00% |

Seventeen attorneys indicated that vocational rehabilitation is therapeutic intervention that focuses on a person's work. The indication that vocational rehabilitation could refer to speech rehabilitation could indicate confusion between the role of the occupational therapist and that of the speech therapist that does speech rehabilitation.

**Table 4.34 Attorneys' understanding of 'inconsistent/self-limiting behaviour'**

| Description | Frequency (n=24) | Percentage |
|---|---|---|
| *Limiting performance out of fear of injury/malingering* | 5 | 20.83% |
| *A limitation that affects a person's ability, not based on motivation or agenda* | 4 | 16.67% |
| *Does not know* | 3 | 12.50% |
| *Fluctuation in ability to work or perform* | 3 | 12.50% |
| *Perceived and subjective lack of ability* | 3 | 12.50% |
| *Inconsistent, conflicting or unpredictable performance* | 3 | 12.50% |
| *Behavioural problems* | 2 | 8.33% |
| *Other: That which the client introduces* | 1 | 4.17% |

Two attorneys again linked this term to a person's ability to work, rather than a description of how a person performs while working or while his/her work ability is assessed.

**Table 4.35 Attorneys' understanding of 'pre-accident status'**

| Description | Frequency (n=24) | Percentage |
|---|---|---|
| *Level of performance/position/status pre-accident* | 11 | 45.83% |
| *Pre-accident presentation/condition* | 10 | 41.67% |
| *Pre-accident potential* | 2 | 8.33% |
| *Other* | 1 | 4.17% |

Twenty one attorneys recognized this term as the state a person was in prior to his/her injury/disability. When attempting to indicate a person's potential prior to his/her accident, one could possibly rather refer to pre-accident potential.

**Table 4.36 Attorneys' understanding of 'scholastic potential'**

| Description | Frequency (n=24) | Percentage |
|---|---|---|
| *Ability to learn and perform in school or tertiary education* | 8 | 33.33% |
| *Educational potential* | 7 | 29.17% |
| *Likely level to obtain* | 5 | 20.83% |
| *Wider trainability* | 2 | 8.33% |
| *Present scholastic performance* | 1 | 4.17% |
| *Potential but for the accident* | 1 | 4.17% |

The majority of the attorneys interpreted scholastic potential as a person's likelihood of pursuing and succeeding in further studies after the accident, whereas only one considered it a minor's current scholastic performance.

**Table 4.37 Attorneys' understanding of 'classification of physical demands' or 'types of work'**

| Description (Question 36) | Frequency (n=26) | Percentage |
|---|---|---|
| *Job analysis (indicates physical nature of different jobs)* | 11 | 42.31% |
| *Classification of work or nature of tasks* | 6 | 23.08% |
| *Measure to determine suitability of jobs* | 4 | 15.38% |
| *Other* | 2 | 7.69% |
| *Degree/extent of work the person will cope with* | 2 | 7.69% |
| *Does not know* | 1 | 3.85% |

As can be seen from the above, most of the attorneys recognized the aim of the classification of physical demands of a job as to determine what types of work a person would be able to do post-injury.

**Table 4.38 Attorneys' understanding of 'alternative employment'**

| Description (Question 39) | Frequency (n=27) | Percentage |
|---|---|---|
| *Alternative occupations/jobs* | 9 | 33.33% |
| *Sheltered employment* | 4 | 14.81% |
| *Type of sympathetic employment* | 3 | 11.11% |
| *Employment outside of open labour market* | 2 | 7.41% |
| *Other* | 2 | 7.41% |
| *Unemployable* | 2 | 7.41% |
| *Could discriminate alternative from sheltered work* | 2 | 7.41% |
| *Short-term employment for disabled people* | 1 | 3.70% |
| *Supervised employment* | 1 | 3.70% |
| *Post-accident employment potential* | 1 | 3.70% |

Two attorneys discriminated between the concept of 'sheltered' and 'alternative' employment, indicating that sheltered employment requires understanding and accommodation of the employer. Alternative employment is more suitable employment, taking into account the person's injury.

**Table 4.39 Concepts in the questionnaires that attorneys did not understand or were uncertain of**

| Concept (Question 44) | Frequency (n=31) | Percentage |
|---|---|---|
| *Occupational performance components* | 6 | 19.4% |
| *Inconsistent or self-limiting behaviour* | 5 | 16.1% |
| *Other* | 4 | 12.9% |
| *Functional capacity evaluation* | 4 | 12.9% |
| *Vocational rehabilitation* | 3 | 9.7% |
| *Joint minutes* | 2 | 6.5% |
| *Functional limitations* | 2 | 6.5% |
| *Pre-accident status* | 2 | 6.5% |
| *Scholastic potential* | 2 | 6.5% |
| *Classification of physical demands* | 2 | 6.5% |
| *Difference between occupational therapy and educational psychologist* | 2 | 6.5% |
| *Productivity* | 1 | 3.2% |
| *Earning potential* | 1 | 3.2% |
| *Occupation* | 1 | 3.2% |
| *Occupational disability* | 1 | 3.2% |
| *Alternative employment* | 1 | 3.2% |
| *Difference between occupational therapy and clinical/neuropsychologist* | 1 | 3.2% |
| *Difference between occupational therapy and industrial psychologist* | 1 | 3.2% |

As can be seen from the above, several attorneys indicated that they were uncertain of or unfamiliar with concepts or terminology used in this questionnaire. Terminology related to 'occupation', such as occupational performance areas, occupation and occupational disability, as well as the role difference between that of occupational therapists and fields of psychology were mentioned. Also other aspects specific to occupational therapy, such as FCE, vocational rehabilitation, classification of physical demands and functional limitations were noted as aspects which attorneys were unsure of. Aspects common to experts from different health professions such as inconsistent behaviour, pre-accident status, scholastic potential, productivity and earning potential was also indicated, possibly indicating that some language discrepancy also exists between those professions and that of the legal profession.

## 4.3 SUMMARY

Although the data obtained might possibly not be representative of the entire legal profession in South Africa, valuable insights were gained in terms of how attorneys see occupational therapists, what they expect of them and how commonly used occupational therapy terms are understood. The researcher is of the opinion that, despite a low response, useful information was obtained from the study. Although the response rate was low, the research results provided in this chapter do in fact provide answers to the research questions identified in Chapter 1. The information which can be deduced from these results has value for occupational therapists, expert witnesses and legal professionals in the medico-legal field. The researcher also authentically attempted to demonstrate clearly how alternatives for data collection based on a low response rate were carefully considered and implemented in order to remain true to a research process.

This chapter provided the results of this study as it pertains to attorneys' expectations of occupational therapists, their knowledge of the scope of occupational therapy and their understanding of concepts used by

occupational therapists. In the following chapter the results tabulated in this chapter are discussed in more detail and compared to available literature.

# CHAPTER 5
# DISCUSSION OF RESULTS

## 5.1 INTRODUCTION

Chapter 4 presented the research results as it pertains to the study. In this chapter the results will be discussed with regard to the main research questions for this study, namely:

- What does the legal profession expect of occupational therapists in medico-legal work?
- How do they understand the role of the occupational therapist in medico-legal work?
- Do the legal professionals have any difficulty understanding terms used by occupational therapists in medico-legal reports?

These results will be compared to and interpreted along with available literature.

## 5.2 DISCUSSION OF THE RESULTS

All of the 31 attorneys who participated in this study were South African trained and are practicing in various provinces in South Africa. The median number years of practice as attorney were 13 years, with the maximum number of years being 46 and the minimum 4 years. Of the attorneys who indicated a *specific area* of specialization, the highest percentage (32.26%) specializes in third party claims (see Table 4.1).

Of the 31 attorneys, 93.55% indicated that they refer to occupational therapy professionals on a regular basis or as a rule, with the matters concerned mostly being RAF matters (77.42%) (see Table 4.2). Personal injury matters contribute to 25.81% of the referrals, malpractice matters 16.13% and other matters (such as family matters) made up 6.45%. All of these referrals indicated by the attorneys are considered as part of the

medico-legal context, as they pertain to collaboration between health and the law (Merriam-Webster Online Dictionary, 2008).

In the following section the researcher addresses the legal profession's expectations of occupational therapists in medico-legal work, as revealed by this study.

### 5.2.2 What attorneys expect from occupational therapists in medico-legal work

In the following sections results from the study will be summarised and discussed as it pertains to the expectations of South African attorneys regarding occupational therapists performing medico-legal work. Once specific guidelines regarding the role and scope of the occupational therapist in medico-legal work is available, a more accurate comparison could be made between the attorneys' expectations of the occupational therapy and what the occupational therapy profession can in fact offer the legal profession in medico-legal matters.

#### 5.2.2.1 Good quality report for effective expert testimony

Literature however state that the occupational therapist's report is the most important aspect of his/her role in medico-legal matters (Luke, 2009:83) and that occupational therapists should also be able to "present and substantiate the report in a court of law" (Luke, 2009:1). Results from the current study reiterated these statements and indicated the most important factors on which the attorneys base their occupational therapy referrals to be (see Table 4.10):

- The quality of the occupational therapist's report
- His/her report writing skills (Randall, 2005:238)
- His/her skills in testifying in court (Luke, 2009:4)

Other important factors for the attorneys were turnover time for reports as well as the therapist's qualifications and his/her years of experience

(Randall, 2005:233). This notion was again confirmed in literature by Hall-Lavoie (see 2.7.7) where factors such as years of experience and training are indicated as factors that improve the credibility of the occupational therapist as expert witness (Luke, 2009:65, Hall-Lavoie, 1997:36, OT Australia NSW, 2006:3).

As indicated previously, the attorneys indicated the importance of a good quality occupational therapy report and "a well-reasoned report with clear unbiased opinions will obviate the need for giving evidence" (McCluskey, 2008:145). It is therefore essential that the occupational therapy report is of good quality and of a high standard (Randall, 2005:247). A good report should convey the findings of the occupational therapist accurately and "enhances the value of a case" (Luke, 2009:84). Failure to include important aspects such as work ability in occupational therapy reports unfortunately however occurs in occupational therapy reports (Allen *et al.*, 2004:90) and can reflect poorly on the therapist and the occupational therapy profession.

Most of the attorneys (90.32%) in this study however indicated that they definitely find occupational therapy reports beneficial to their cases, as also suggested by literature which describes the occupational therapist as

> *"…a practical and informative asset to the legal profession and a key participant in the pursuit of a fair and realistic case settlement"* (Luke, 2009:84).

#### 5.2.2.2 Answering specific referral questions

Of the attorneys who indicated specific reasons for referring to occupational therapists, the highest percentage (21.43%) of attorneys indicated that they refer clients to occupational therapists in order to determine if the client is functional in activities of daily living (see Table 4.11). Another prominent referral question for the occupational therapist to answer is the state of a client's residual earning potential. Twelve out of 30 (42.86%) attorneys however indicated that they expect occupational therapists to answer multiple referral questions including identifying loss of earnings and disability in terms of career performance. General aspects

identified by participants as very important to address in occupational therapy medico-legal reports (see Table 4.15) were:

- The client's ability to return to work and earning potential
- Job analysis of the client
- Physical assessment of the client
- Assessment of the person's level of personal independence
- Commenting on the client's loss of amenities
- The costing of recommendations to assist the client to be as independent as possible (Schwartz, 2008:3).

In addition to the above, commenting on recreation and social aspects, life roles, survival skills and psychological aspects were also considered *important*. This however does stand partially in contradiction with other results pertaining to the role of the occupational therapist in psychological problems (see Table 4.16), where they rated it *less important* that occupational therapists comment on a person's general health, disfigurement and psychological trauma and shock.

Attorneys also often require information on the probability of alternative jobs or employment for an injured or disabled person (see Table 4.17 and 4.38), an aspect which is often neglected in occupational therapy medico-legal reports (Allen *et al.*, 2004:90).

In addition, they deem it *very important* that occupational therapists consider contextual factors insofar as these influence a client's earning potential or capacity to work (see Table 4.17). Literature supports this notion, since aspects such as a person's social, cultural and economic environment, as well as his/her physical location, provides the context for a person's participation in occupation such as income-generating activities (Hocking, 2009:146). A very realistic contextual factor would typically be the availability of post-accident work for an incapacitated person. During 2012 over 4, 5 million South Africans were job-seeking and 67, 8% of them have been job-seeking for a year or longer (STATS SA, 2012:2). Furthermore, less than 2% of disabled persons in South

Africa are currently employed (Maja, Mann, Sing, Steyn and Naidoo, 2011:24).

Instructing parties can furthermore become frustrated when occupational therapists fail to answer the specific referral questions successfully, such as making unrealistic or inappropriate recommendations in their medico-legal reports (Randall, 2005:233). Occupational therapists would therefore do well to clarify with instructing attorneys on the specific referral questions that need to be answered, as well as the method in which the question should be answered (such as a functional capacity evaluation or work visit) (Randall, 2005:234). Seventeen (56.67%) of 30 attorneys indicated that they expect the instructed occupational therapist to communicate with the referring attorney (see notes under Table 4.14) in order to inter alia ensure good service delivery by clarifying the specific referral questions.

#### 5.2.2.3 Timeous service delivery

Ethically occupational therapists are to ensure a timely service to clients (Ethics Commission of the American Occupational Therapy Association, 2010:9) The participants in this study indicated that one of the most important factors occupational therapy referrals are based on is the turnover time for reports (time taken to write and submit reports), as well as the fees charged by occupational therapists. The literature supports this by stating that time and financial implications are important to the instructing parties (such as attorneys), but can prove to be problematic when considering referring matters to an expert witness (Luke, 2009:48). This is evident in the annual report of the RAF for 2008, which indicate that of the R 12.5 billion paid out for claims, 29% was paid for legal and expert witness expenses (RAF Annual Report, 2012:75). From the researcher's experience, the practical implications for instructing attorneys are that:

a) Expert witnesses charge specific rates for services delivery and for every aspect thereof (such as joint minutes, trial appearances,

addendum reports, reassessments, work visits) (Randall, 2005:245).

b) Expert witnesses are often booked in advance for medico-legal appointments or have delays in issue of reports due to delayed payment, workload or waiting for supporting documentation.

Most of the attorneys therefore indicated that they ensure the necessity for occupational therapy assessments and resultant expert witness fees by only referring to occupational therapists after the initial or primary medical experts' assessments or in preparation for a quantum trial (see Table 4.12). To encourage timeous receipt of reports, as well as to ensure availability of appointments for assessments, attorneys mostly refer to occupational therapists more than 6 months ahead of the trial (see Table 4.13). Literature indicates that occupational therapists should aim to hand over report within two to three weeks (Randall, 2005:240) or at least 10 days before the trial (Schwartz, 2008:1).

To further limit time and costs implications incurred by court appearances and preparation therefore, expert witnesses such as occupational therapists are often requested by the instructing attorney to provide 'joint minutes' (see Table 4.24) ahead of the trial date. Joint minutes can be described as combined minutes which report on aspects the experts agree or disagree on (Randall, 2005:246). These minutes are handed in to court before the trial. According to this study occupational therapy joint minutes are mostly required when there are conflicting or disputable aspects in the reports of the opposing occupational therapists (see Table 4.18). During this study, the attorneys indicated that the main purpose of joint minutes is thus to record consensus and disagreements regarding findings, based on the individual occupational therapist's assessments (see Table 4.24). Specific aspects to be mentioned in occupational therapy minutes were identified by the participants as disability, severity of injury, alternative employment, functionality and retirement (see Table 4.19). Ability to work or earning capacity was also identified as aspects which should be addressed in joint minutes.

Most attorneys (53.57%) felt that occupational therapists are given sufficient time in which to prepare joint minutes as the majority of attorneys (60.71%) surveyed request occupational therapy joint minutes timeously (more than two weeks prior to the trial date) (see Table 4.20). This is important, given that the court imposes its own deadlines on attorneys and their experts. For instance, in 2010 a practice directive regarding Rule 37 of the Uniform rules of court indicated that joint minutes between experts should not be handed in later than 5 days prior to the allocated trial date (Practice Directive for the North Gauteng High Court, 2010:4). The existence of such directive necessitates that occupational therapists performing medico-legal work keep up to date with current legislation and court procedures relevant to the courts in which they work.

Although the majority of attorneys (80%) felt that occupational therapists are adequately remunerated as expert witnesses several reasons for delayed payments were indicated, such as delayed payment from the defendant (such as the RAF) (see Table 4.3) (RAF Annual Report, 2008:38) or the client who instructs the attorney. They also noted that delays can result from the tedious process of finalizing matters due to contingencies, overloaded courts, poor planning and lack of communication between parties. Despite these issues, two participants in this study indicated that they pay for their occupational therapy reports before these are actually issued to them. In practice, the researcher has found that attorneys tend to be reluctant to pay for reports prior to issue of reports or settlement of the claim. This is reiterated by the small percentage of attorneys who indicated that they pay for reports on issue of the reports.

In practice the researcher finds these delayed payments a very real problem situation and debt collection companies are paid by both attorneys and expert witnesses to speed up RAF payments. The researcher is of the opinion (and this has been commented by medico-legal occupational therapists at meetings and workshops) that service delivery from their side can be affected by delayed payments from instructing parties. The researcher found, supported by literature (Randall,

2005:16), that not only does failure to be paid for services delivered affect the motivation and job satisfaction of the expert witness, but also the cash flow of the medico-legal practice (Randall, 2005:16) and the resultant availability of monies for practice expansion and further training (AMA Task Group, 2012:7) to better equip themselves as expert witnesses.

#### 5.2.2.3 Evidence-based recommendations and conclusions

Evidence-based therapy and assessment is becoming more relevant to every-day practice for occupational therapists and are therefore gaining more interest from this and other health care professionals (Dysart and Tomlin, 2002:276). This approach implies that intervention (or in the case of expert witnesses, recommendations and opinions) are based on recent sound research, which takes into account the needs of the client and utilizes the clinical judgment of the health care professional (CAOT, 2009:1). An evidence-based approach also includes research literature (Rappolt, 2003:589), standardised procedures, the "values, beliefs, knowledge and experiences of the clinician and the client" (Lee and Miller, 2003:473, 475).

This need for evidence-based opinions is depicted in Table 4.14 where participants in this study rated it important for occupational therapists to use formal/standardised tests (40.74%) to support their comments, while others (25.93%) viewed it as important to obtain collateral information regarding a client to substantiate the occupational therapist's conclusions and recommendations. Allen *et al.* confirm this by stating that, for example, a work visit in conjunction with a client's own job description may reveal more accurate information (Allen *et al.*, 2004:92). Furthermore, they indicated that aspects reported by clients themselves, such as self-care problems, should also be specifically assessed in order to confirm the client's subjective experience.

To ensure defendable and evidence-based recommendations and conclusions, a large percentage of attorneys indicated that occupational therapists should not only perform (see Table 4.15) scientific/standardised

assessments of clients (40.74%), as well as job analyses (71.43%), but also include these results in their reports (86.67%) (see Table 4.14). To ensure that recommendations are client-specific, attorneys indicated that occupational therapists' opinions regarding work should also be based on the occupational therapist's interpretation and clinical reasoning that are evidence-based (Allen *et al*, 2010:93). Testing equipment used by local occupational therapists are however mostly not standardised for the South African population and do not always reflect a person's actual performance in real life (Richmond and Holland, 2011:36).

The attorneys consistently indicated that it is very important that occupational therapists' findings be expressed numerically (see Table 4.17), such as in percentages. However, although rating systems such as the AMA Guides provide a percentage of Whole Person Impairment, those are not suitable to determine a person's ability to work (R. D. Rondinelli *et al*., 2008:24). The opinion of more than one occupational therapist during an informal survey on the AMA Guides, launched by the researcher in August 2011, indicated that it would be futile to rate a person's ability simply by means of a percentage based on the complex nature of occupation and occupational participation. Possible future research can address the need for an evidence-based rating scale which can be applied to a person's general ability to work, but until then we will have to continue using existing standardised measurement tools and match a person's job demands with his/her current abilities (Workwell Systems, 2006:102). The International Classification of Function (ICF) is one such a rating scale which can 'test' a person's ability, but despite its "…highly comprehensive classification covering virtually all aspects of the patient experience" (Cieza and Stucki, 2008:308), it is still not a measure of disability (Mont, 2006:6). The researcher remains of the opinion that no single test battery can completely and adequately gauge a person's ability to function, for example, in a specific working environment, due to the complex nature of disability.

Attorneys also find the use of classification systems, such as the US Department of Labour's physical demands levels of different types of work

contributory to a more substantial evidence-base for occupational therapy reports (see Table 4.17). This Dictionary of Occupational Titles used by the US Department of Labor describes roughly 13 000 different job titles (Mack, Stout, Rogers and Loughran, 2012:16). Allen *et al.* in their study of 51 medico-legal occupational therapy reports however found that in 53% of Australian occupational therapists' reports, they did not classify a person's physical capacity according to these ratings (Allen *et al.*, 2004:90) and stated that these classifications can fail to provide information regarding variations in job demands due to, for example, the country the person works in and different employer expectations (Allen *et al.*, 2004:91).

Aspects considered very important to be addressed by the occupational therapy report includes the following conclusions and recommendations (see Table 4.16):

- The assistance a client may need after injury (assistive devices, caregiver, transport).
- The functional prognosis of a person's injury.
- Level of physical demands of a client's past, present or possible future jobs.
- The client's percentage of work disability.
- The client's current and future ability to earn, as well as loss of earnings.
- The job-match between a person's capabilities and job requirements.
- Examples of types of jobs a client can do post-injury.
- The client's loss of amenities.

As can be seen from Table 4.6 (which will be discussed later in this chapter) occupational therapists are by no means the only experts to comment on some of the above factors, such as a person's suitability for a certain type of job, a factor which industrial psychologists might also comment on (Department of Health, 2011:9). Occupational therapists should therefore ensure that their opinions rest on evidence-based testing

and conclusions, which if not quantifiable are argued adequate and logical. According to the literature, occupational therapists need sufficient information and documentation regarding the client from the attorneys in order to formulate such evidence-based conclusions and recommendations (Luke, 2009:76). Timeous issue of background information to the instructed occupational therapist can also assist him/her in preparation for the assessment, as well as to arrange for alternative sources of information (such as a family member or work colleague) (Randall, 2005:235). As stated before, a person's functioning is also affected by environments (Hocking, 2009:146) and therefore collateral information is vital. In addition to this, collateral information is essential in the case of minors and head injured patients, as well as to detect "compensionationitis", a term used for persons with a compensation claim overplaying their symptoms (Randall, 2005:237). To this end, the attorneys participating in this study indicated specific and various forms of documentation which they typically provide to the occupational therapists they instruct. These include medical, work and background information, as well as other experts' reports; several of the attorneys indicated that they provide occupational therapists with all the documentation they have available (see Table 4.22). In practice, the researcher had found that although attorneys readily provide all medico-legal reports from their own experts, they are reluctant to do so for the reports compiled by experts for the opposed party.

The following section discusses how attorneys understand the role of the occupational therapist in medico-legal work.

### 5.2.3 Understanding of the role of the occupational therapist in medico-legal work

Attorneys were firstly asked about the general role of the occupational therapist (Table 4.4) and not specifically in medico-legal matters. All the participants indicated that they understand what an occupational therapist does, with 24.14% describing the occupational therapy role as the assessment of clients by an occupational therapist within the medico-legal

context specifically to determine general work capacity, earning potential and employability (Table 4.4). Others felt the occupational therapy role is to focus on treatment of disability or injury, as well as on assessment of a person's ability to function in all aspects of occupation (see Table 4.4). Ten per cent of the attorneys consider occupational therapists holistic assessors of a person's ability to perform in all occupational performance areas. Literature however shows a distinction between the roles of the occupational therapist in general, which is that of a therapist, and the role of the occupational therapist in medico-legal work, which is that of an assessor or consultant (Randall, 2005:231).

When thus asked to specifically describe the role of the occupational therapist in medico-legal matters, the overall response from the attorneys was that occupational therapists mainly assess clients to determine general work/earning capacity as well as loss of earnings (see Table 4.5). An unpublished document regarding minimum standards for occupational therapists doing medico-legal work was compiled by a group of 85 occupational therapists at a national medico-legal interest group workshop in October 2010. This document indicated the role of the medico-legal occupational therapist as assessor of a person's functioning, especially in terms of work, to determine the implications of injury. Other sources indicate the following:

**Table 5.1 A comparative description of the occupational therapy role in medico-legal work**

| Source | Description of the role of the medico-legal occupational therapist |
|---|---|
| **Other legal sources:** | |
| Schwartz, 2008:1 | *Indicating how injuries impact on a person's ability to work.* |
| **Occupational therapy sources:** | |
| OTASA | *The evaluation of the loss of function, specifically to determine the disabled person's ability to work (Van Greunen and Vlok, 1991:2)* |
| HPCSA | *HPCSA does not specify the role of the occupational therapist in medico-legal work.* |
| Luke, 2009:61,87 | *Determining and justifying the degree of damages claimed for by assessing of the impact of injury on a person.* |

It appears that some consensus can be reached that the role of the occupational therapist in medico-legal work, as perceived from both the service providers (occupational therapists) and the instructing parties (attorneys), is to assess a person in terms of functional aspects to determine the impact of the injury or disability, with a special focus on his/her ability to work.

The attorneys' perceptions of the roles of different experts were further explored by asking them which experts (occupational therapists, doctors or industrial psychologists) they would approach in relation to specific referral questions (see Table 4.6). Participating attorneys indicated that they would refer as follows:

a) Functional capacity - Mainly to occupational therapists and medical doctors (51.61%)
b) Earning potential – Mainly to occupational therapists and industrial psychologists (38.71%)
c) Return to work – Mainly to occupational therapists and medical doctors (41.94%)
d) Loss of earnings – To occupational therapists, medical doctors and industrial psychologists (35.48%)
e) Early retirement - To occupational therapists, medical doctors and industrial psychologists (45.16%)
f) Medical aspects such as physical prognosis – Mainly to occupational therapists and doctors (41.94%) (see Table 4.6)

It appears to the researcher that a multi-disciplinary and triangulating approach is taken by the legal profession to ensure the accuracy of information they are to use in court. This entails gathering information from more than one health professional on the same referral question (Burns and Grove, 2005:225) as indicated in Table 4.6. This is evident from the results as it was seen that crucial aspects such as return to work and functional capacity are referred for assessment and comment by expert witnesses from more than one profession.

Since the role of occupational therapist (Randall, 2005:230) is commonly confused with the role of other professions, the next part of the discussion describes how the participating attorneys perceived these roles. Please refer to paragraph 2.6 for more detailed descriptions of the following professions.

#### 5.2.3.1 Educational psychologist (see Table 4.7)

On the whole, the participating attorneys viewed the role of the occupational therapist as more holistic than that of the educational psychologist, with the former focusing specifically on a person's physical and functional abilities. Occupational therapists were considered as assessors of future vocational functioning, more than of the present scholastic difficulties of a minor. Three attorneys were of the distinct opinion that in cases involving minors with head injuries, educational psychologists are the more appropriate experts to refer to. Vlok, Smit and Bester (2011:25) and Sonday, Anderson, Flack, Fisher, Greenhough, Kendal and Shadwell (2012:2), for example, however indicate that occupational therapists play a major role in the assessment and treatment of scholastic and learning problems and underwent sufficient training in this regard as indicated in the requirements for a Bachelor's degree in Occupational Therapy (SAQA, 2012 (a) and (b)).

#### 5.2.3.2 Clinical or neuropsychologist (see Table 4.8)

The attorneys revealed that in their view regarding cognitive problems there is a clear distinction between the role of an occupational therapist and that of a clinical or neuropsychologist. They are of the opinion that occupational therapists do not diagnose cognitive disorders. Instead, they determine the impact of cognitive problems on a person's occupational performance areas. In support of this, four attorneys indicated that occupational therapists focus on practical and activity-based assessment and treatment, as opposed to standardised cognitive tests.

Two attorneys felt that occupational therapists have no role in terms of assessing a person's cognitive problems and four felt they have a limited and supporting role. Randall also postulates a possible unawareness from the legal profession regarding the extent of the occupational therapist's "mental health training and skills" (Randall, 2005:230). Within the field of allied health professionals, occupational therapists are considered as playing a vital role in encouraging mental health in clients (Janse van Rensburg, 2010:6). Although the participating attorneys were absolutely correct that occupational therapists are not permitted to diagnose psychological or cognitive disorders, the fact is that standardised tests are used extensively by occupational therapists in practice to assess aspects such as visual perception, sensory integration and other aspects which affect for example a child's psychological, cognitive and scholastic functioning (Bart, Hajami and Bar-Haim, 2007:598).

The different perceptions and the tendency of legal practitioners to rely on occupational therapists for comment on physical abilities and work is reiterated in literature (Schwartz, 2008:3) and the only psychosocial aspect mentioned was that of a person's motivation. Occupational therapists are however concerned with a much wider spectrum of psychosocial aspects that could affect a person's ability to work (Allen *et al.*, 2004:84).

#### 5.2.3.3 Industrial psychologist (see Table 4.9)

The attorneys indicated that the unique role of the occupational therapist is predominantly to devise and implement more practical solutions, to overcome the impacts of a person's injury on his/her occupational performance. Thus, they expect occupational therapists to address the type of work a person can do, whereas industrial psychologists (IPs) describe the impact of injuries on a person's career path, career choices and career ceilings. Thus, the attorneys considered the occupational therapist and IP to have supplementary or equal roles, with the occupational therapists commenting on work capability and the IPs commenting on earning potential.

However, evidence was found that occupational therapists indeed do play a major role in disability management in the workplace, due to their skills and training (Byrne, 2001:125). Occupational therapists are considered to play a substantial role in vocational rehabilitation (Beukes, 2011:42 and WFOT, 2012:1) and are considered "vocational specialists" (Maja *et al*., 2011:29), both aspects which are probably not common knowledge within the legal fraternity. They are moreover often approached to assist a person in return to work and liaise with the employer (Soeker, 2009:235). Occupational therapists are experts in assessing a client's ability to work, provide parameters for the type of work a person is able to do and advise on what would be necessary to allow the person to work again, rather than comment on loss of earnings and earning potential. The South African medico-legal interest group's minimum standards document confirms the researcher's opinion by stating that it is not within the scope of the occupational therapist to quantify loss of earnings (Medico-legal Interest Group, 2010). Occupational therapists are however required to comment on work ability and functional implications of an injury.

The following sections discuss what emerged from the study with regard to whether legal professionals have any difficulty understanding occupational therapy terminology used in medico-legal reports.

### 5.2.4 Knowledge pertaining to occupational therapy terms used in reports

Ninety three per cent of the attorneys considered it important that all expert witnesses understand legal concepts. Moving from a background of health training, expert witnesses from the health professions can find themselves in unknown territory and feeling poorly equipped (Randall, 2005:237).

Attorneys were also asked specifically whether they think occupational therapists understand legal terms and whether this is important. All consulted literature sources indicated that occupational therapists should

be up to date with relevant legal procedures (such as McCluskey, 2008:145 and Allen *et al.*, 2010:94) and need to have a knowledge base in terms of legislation, different legal role players and basic legal terminology (Randall, 2005:237).

As per Table 4.23 the largest percentage of attorneys felt that it is very important for them to understand occupational therapy terms (77.42%), whilst 89.66% of the attorneys indicated that they in fact do understand terms used by occupational therapists. The researcher is of the opinion that it is possible that the knowledge of professions outside of occupational therapy pertaining to occupational therapy terms are affected by occupational therapy theory being stringed with abstract terms and concepts which even occupational therapists do not have consensus about.

The attorneys mostly provided definitions which ranged from fairly to completely accurate, in relation to most of the terms contained in the questionnaire. The following terms, however, were poorly defined:

- Productivity (see Table 4.26)
- Occupation (see Table 4.30)
- Occupational disability (see Table 4.31)
- Occupational performance components (see Table 4.32)
- Alternative employment (see Table 4.38)

Probably the simplest of the above terms to clarify, is that of alternative employment (see Table 4.38). This has been defined in literature as a change in job/career or to other job positions offered to a retrenched employee by his previous employer (BM Pama and Others vs. Commissioner for Conciliation, Mediation and Arbitration, 2001:2). Although sheltered employment in itself is an alternative form of employment this rather refers to employment for handicapped persons (Kregel and Dean, n.d.:63). The participants' definitions showed poor understanding of these terms (see Table 4.38) which are often used by occupational therapists in medico-legal reports when discussing return to

work after injury and the need for vocational rehabilitation (Soeker, 2009:235).

Another term poorly understood by attorneys, as could be seen from the questionnaire, (see Table 4.30) was 'occupation'. Occupations have been described as activities of everyday life which occupy humans productively and give meaning (Thellefsen and SØrenson, 2004:5 and Canadian Association of Occupational Therapists, 2002), but also as *"a person's personally constructed, one-time experience within a unique context"* (Pierce, 2001:138). Occupation has further been defined to include self-care, leisure and social and economic contribution to the environment by fulfilling specific roles (Christiansen and Baum, 2005:548). For the purposes of this study, the researcher's focus point regarding 'occupation' was a combination of some of the above, namely that it refers to activities of everyday life which occupy humans productively and meaningfully and which comprises of self-care, leisure and work.

Occupational disability can therefore be described as any restriction or inability to perform such an occupation normally (Matheson, 2003:3).Occupational performance areas (OPAs) are described by (Nelson, 2006:518) as a person's activities of daily living (e.g. self-care), education, work, play and leisure. Occupational performance components (see Table 4.32) on the other hand refer to a person's basic abilities, such as motor, cognitive, psychosocial and psychological components (HPCSA Professional Board Standards of Practice for Occupational Therapists, 2006:2). In summary, occupational therapists use occupation as definition to describe a person's participation in a multitude of activities of daily living (Townsend and Wilcock, 2004:77) such as work or employment.

It is of concern that the aspects least understood by attorneys (or on which the least consensus exists) are those integral to the occupational therapy profession, such as occupational performance and disability (WITS Occupational Therapy Department, 2012:1). Considering the terms attorneys were unfamiliar with, it should be noted that in practice, these are essential aspects of the occupational therapy profession as

occupational therapists assess clients' involvement in and ability to participate in occupation by assessing their occupational performance areas and occupational performance components. This in turn allows them to determine whether occupational disability exists and ultimately, if necessary, to assist in recommending, preparing the client for and securing alternative employment for such a person.

The question should however be raised whether one can expect legal professionals to fully understand terms as 'occupation', if this is a concept that is continuously and extensively being developed and re-explored by the occupational therapy profession since the 1990s (Hocking, 2000:64)?

The researcher believes that it falls outside the scope of this study to revisit and attempt to clarify the complex nature of a person's occupations (Rebeiro, 2001:38). It is perhaps of more value to ensure that the word 'occupation' in occupational therapy exists to remind role players in the claim settlement process that an injured person's loss can be substantially more than just the ability to work. Instead such role players would do well to keep in mind that occupation includes pleasurable activities (Pierce, 2001:252) and personal independence, and the loss thereof absolutely devastating without him/her incurring any actual monetary loss. As Townsend and Wilcock state: ***"One might say that being deprived of occupations is the ultimate punishment"*** (Townsend and Wilcock, 2004:81).

It is however quite affirming that the attorneys in this study were largely accurate in relation to defining terms commonly used by occupational therapists, which is also congruent with the fact that the majority of them indicated that it is important to understand these terms (see Table 4.23).

The purpose and aims of this research study were to determine the legal profession's expectations regarding occupational therapy – specifically the scope of the occupational therapist and occupational therapy terminology in the medico-legal field of practice. The information derived has allowed these to be determined. In summary the results revealed that:

- Attorneys have distinct expectations from occupational therapists, which centre around good quality reports, the adequate answering of specific referral questions and timeous service delivery.
- The attorneys could give accurate descriptions of the role of the occupational therapist in various types of patients, as well as in general medico-legal work. The role of the occupational therapist in assessing certain diagnoses however appears underrated, such as in terms of psychological problems. The role of the occupational therapist as vocational specialist also seems less well-known.
- Apart from a few exceptions, the attorneys provided adequate definitions for terms used by occupational therapists, which indicate a good understanding of most occupational therapy - specific terms. Terms least understood tended to be terms not well-defined even in the occupational therapy profession.

The findings obtained from this study are thus relevant to the study in terms of the research purpose and aims.

Chapter 5 has discussed the results of this study against the backdrop of the literature, and has sought to answer the research questions. The following and final chapter will address the limitations and value of the study, as well as the researcher's conclusions and recommendations.

# CHAPTER 6
# CONCLUSIONS AND RECOMMENDATIONS

## 6.1 INTRODUCTION

In the previous chapter the results of the study were discussed and this included what attorneys seem to expect of occupational therapists, how they understand the scope of the occupational therapy profession and to what extent they understand occupational therapy terminology used in medico-legal reports.

In this chapter the limitations, value, recommendations and conclusions regarding the study will be presented.

## 6.2 LIMITATIONS

Various limitations in terms of this research study were identified, as it pertains to the following:

a) The pilot study

Limited responses to the pilot study impacted on the study as the researcher did not get adequate feedback in terms of aspects such as delivery method and content of the questionnaire, in order to adjust these aspects and ensure a better response rate for the study.

b) The source of contact details

The researcher was reliant on the Hortors Legal Diary 2010 edition for the attorneys' contact details. It was concluded that some attorneys do not annually update their practice information with Hortors and that the Hortors Legal Diary thus obtains outdated contact information for attorneys.

A more recent version of the Hortors could also have been utilised, although this had financial and time implications for the researcher.

Only the attorneys who listed themselves in the Hortors Legal Diary as specializing in matters related to this study, could be included in the study. It is therefore possible that results relating to this study are only applicable to the attorneys who participated in the study and cannot be generalized to the wider legal profession.

c) The population

The researcher and research assistant were likely to have better results had they dealt directly with the attorneys and not their secretaries or receptionists. A more suitable time of the year could also have been chosen for the study.

d) The measurement instrument

Possible reasons for the non-participation of legal professionals in the pilot study might have been due to time restraints and work load. The researcher is of the opinion that the response rate could have been higher if her questionnaire had been shorter. The length of the questionnaire led to possible time constraints from attorneys who were willing to participate. Completing the questionnaire is furthermore considered a non-billable task for attorneys, which makes it difficult for them to spend time on the questionnaire as opposed to doing their work.

In terms of content, more tightly worded and less questions in the questionnaire would have yielded more useful information. The questionnaire could have been considered too complex and lengthy for attorneys with time restraints to sort out concepts and the differences between various categories in the questionnaire. Such results also would have been easier to analyse and might have yielded a higher response rate.

The researcher provided a space at the top of the initial questionnaires for attorneys to provide information such as their name and contact details. Although it was not compulsory for them to complete this section, this might have stopped some attorneys from completing the questionnaire out of fear of exposure.

Refinements could also have been made in terms of the information document and the questionnaire. Some attorneys failed to provide definitions of terms when asked to do so and tended to only indicate whether an aspect is important, rather than to differentiate between the degrees of importance.

Possible participants might also have been hesitant to complete a questionnaire which was essentially a test of their knowledge of a field outside of their own. It was also possible that attorneys, being aware that the questionnaire was to be used for research purposes, did not want to appear uninformed and did some research themselves in order to provide the correct answers in the questionnaire. Although the questionnaire then did not test their actual knowledge, knowledge was still obtained by them. The researcher considers this a positive limitation in the study. It is also possible that the correct, or expected, answers were provided (although not necessarily adhered to) by the research participants, especially in terms of referral times and documentation provided, in order to not shed a negative light on the legal profession.

A final limitation identified by the researcher would be the terminology used by the researcher herself. Even in the occupational therapy profession various opinions exist regarding terminology used in our medico-legal reports. The best example in this study would be the use of the term ‘earning potential’. For a long time this was the word used by occupational therapists to describe whether or not a person can still work. More recently this became the term used by industrial psychologists when indicating whether and to what extent a person will be able to earn an income. At the time of the researcher starting this study, she was using this term of earning potential in her own medico-legal reports and only

later reverted to the term 'work capacity'. Attorneys were thus asked specifically about the occupational therapist's role in terms of 'earning potential' instead of 'work capacity'. This however revealed interesting results in itself as it, for example, became clear that attorneys do not make that discrimination in which term should be used either.

In summary, this study suffered from a very low response rate despite numerous and unabated attempts and methods for data collection - thus, the results were not statistically significant and may only be applicable to the attorneys who participated in this study.

## 6.3 VALUE OF THE STUDY

Despite the low response rate obtained in this study, the researcher believes that information gathered from this study can help lay a foundation for further research on this subject matter and related educational purposes. Valuable insights were also gained into the perception regarding occupational therapy that exists under members of the legal profession.

The results from this study are believed to:

- Improve the understanding of the occupational therapist's role and scope of practice in the medico-legal context.
- Improve service delivery (efficacy and aptness of assessment, report and recommendations) by occupational therapists to attorneys and other instructing parties.
- Improve the assessment approach to a person's ability to return to pre-accident occupation post-injury.
- Improve understanding and co-operation between legal and health professionals, which is ultimately to the client's advantage.
- Contribute to the profession of occupational therapy in terms of gaining of knowledge and guidelines for improvement of medico-legal services.

- Contribute to the science of occupational therapy, as well as to the graduate and post-graduate training of occupational therapists and legal practitioners in terms of medico-legal practice.

## 6.4 CONCLUSIONS

The following conclusions are made based on the results of this study:

a) Occupational therapy reports are considered beneficial to attorneys' cases and it appears that attorneys attempt to be accommodating in terms of adequate time of referral prior to the trial dates, as well as in terms of documentation provided.
b) Several of the terms used by occupational therapists in their medico-legal were misunderstood by the participating attorneys, or they indicated that they are unsure of these terms.
c) Attorneys seem to understand the role of the occupational therapist as encompassing both the assessment and treatment of incapacitated persons in a variety of performance areas (activities of daily living), but focusing on work.
d) Although attorneys thus had a fairly good idea of what an occupational therapist in medico-legal work does, the attorneys did not indicate a single aspect on which they consider occupational therapists to be the sole expert and occupational therapists are clearly considered secondary experts.
e) Definite aspects of the occupational therapist's role in medico-legal work seems to be unknown to or underrated by attorneys, such as:
    - The role of the occupational therapist in terms of work place adaptation after injury or disability appears to be underrated by attorneys.
    - The role of the occupational therapist in minors who sustained head injuries.
    - The performing of standardised tests.
    - In cognitive problems.
    - Assessment of psychological problems.

f) Despite terminology discrepancies such as earning potential and work capacity, the attorneys had a fairly good discrimination between role of the occupational therapist and the IP.
g) Attorneys do have distinct expectations of occupational therapists (quality of report, skills in testifying) understanding legal concepts, as well as preferred methods of assessment (visits, collateral, standardised etc.).

Attorneys, in summary, indicated certain factors as 'very important' for occupational therapists to assess and address in their medico-legal reports. These are:

Firstly, occupational therapists should *assess* a person's physical abilities and level of personal independence, as well as the assessment of the person's job to determine the physical demands thereof.

Secondly, occupational therapists should *comment* on job-related aspects, such as:

a) An analysis of the person's job
b) His/her ability to return to work
c) Matching job requirements to a person's abilities
d) Types of work a person can do
e) Alternative forms of employment.

The occupational therapist should also comment on earning-related aspects such as:

a) A person's earning potential
b) A person's loss of earnings
c) A person's current and future ability to earn
d) Contextual factors that can influence a person's earning potential.

The occupational therapist should also comment on a person's loss of life amenities.

Thirdly, the occupational therapist should *provide* the costing and need for aspects that would assist independence in a person, such as a caregiver and travelling costs.

Finally, the attorneys regard it as *very important* for an occupational therapist to *indicate* the implications of an injury/illness for a person, as well as their functional prognosis.

Factors that were only considered 'important' or 'fairly important' to a large extent reflect the attorneys' limited perception of the role and scope of occupational therapy and mostly referred to:

- Commenting on or assessing certain work-related aspects such as a person's work history.
- The assessment of a person's social and recreational life and survival skills.
- The assessment of a person's cognitive problems.
- The assessment of psychological aspects, such as trauma and emotional shock.
- The use of standardised tests.
- Commenting on person's pain and suffering.
- Commenting on medical issues regarding a client's physical status or prognosis, as well as disfigurement.

Although the researcher does not have any literature to support this, it is postulated that other health professionals who serve as expert witnesses have similar problems in their relationship with legal professionals, pertaining to terminology and scope of practice. Unfortunately, the researcher is of the opinion that this gap might never be completely bridged, since the focus of the health professions, and specifically that of occupational therapy, lies with health and well-being (Hocking, 2000:60), whilst the court and legal profession seem to focus more on losses which can be proven and translated into monetary terms (Jacobs, 2012:15 Bound by ethical codes and rules, occupational therapists should however

continue to strive to a “good-faith” relationship with the legal profession, as well as with other health care professionals and ensure to meet the “reasonable expectations” of professionals or institutions requiring their services (Ethics Commission of the American Occupational Therapy Association, 2010:9).

## 6.5 RECOMMENDATIONS

South African literature regarding medico-legal work and expert witnesses is rare, especially in terms of medico-legal related terminology and the scopes of practice of various expert witnesses. Furthermore there are limited opportunities for an occupational therapist desiring further education in this specialised field of the profession, to obtain such formalised training. Apart from isolated occupational therapists in medico-legal private practice presenting annual workshops on medico-legal matters, occupational therapists further rely on an Advanced Diploma in Vocational Rehabilitation to equip themselves for medico-legal work. In the researcher’s opinion neither of the above is entirely sufficient to prepare an occupational therapist for the medico-legal and especially the medical negligence work. The researcher would like to believe that this study can contribute to solving these above-mentioned problems and the following is suggested:

a) Development of accredited post-graduate training in medico-legal work. There are at present some talks of a coalition between UNISA (University of South Africa) and the South African Medico-Legal Society regarding training of expert witnesses, or the possibility of e-learning opportunities in this regard.
b) Greater exposure to the skills required for medico-legal work on a graduate level, such as rigorous assessment and evidence-based conclusions and recommendations.
c) Possible exposure of graduate or post-graduate level attorneys to the various health professional expert witnesses they may deal with in medico-legal work.

d) Revision and update of OTASA's policy on the role and scope of the occupational therapist within the medico-legal context.
e) Compilation of a medico-legal dictionary compiled by a multi-disciplinary team, containing terminology used in the South African medico-legal context.
f) Compilation of information brochures to be handed out to attorneys, containing information such as definitions.

A member of the legal fraternity can lose confidence in the credibility of a profession that has logical inconsistencies in their terminology and definitions (Nelson, 2006:520). This necessitates that occupational therapists realize that they themselves play a vital educational role in the medico-legal industry and the following is suggested:

- Adequate description of terms used in occupational therapy reports, by means of methods such as footnotes or appendices to their reports.
- Sufficient definition of the role of the occupational therapy report, as well as the scope of occupational therapy in reports and when testifying in court. The scope of occupational therapy is currently under revision by the HPCSA and occupational therapists should keep up to date in this regard.

Further research could address or include the following:

- The skills an occupational therapist needs to perform medico-legal work.
- Defining difficult concepts, such as 'productivity' and 'occupation' for the medico-legal context. Nelson reminds that a logical definition is uniquely applicable to specific particulars and these particulars are not be ascribed to other terms if possible (Nelson, 2006:511).
- A nominal group with overlapping professions about scope and terminology as it applies to medico-legal work.

## 6.6 FINAL WORD

Although they may not realize it, occupational therapists can work to towards encouraging that justice is served (Townsend and Wilcock, 2004:85).

In a country where statutory bodies such as the Road Accident Fund often fail to deliver the relief promised by their vision and mission statements and where unemployment and poverty are rampant, it is vital that all role players, including professional people do their bit in improving the lives of our fellow citizens.

In the South African medico-legal context, legal and expert witness fees constitute large percentages of the costs incurred and as stated before only 64% of the available Road Accident Fund monies are used for actual benefit pay-outs to the claimant (RAF Media release, 2010). Despite legislation encouraging employers to appoint disabled workers, South Africa seems to lack the infrastructure to accommodate the people incapacitated by motor vehicle accidents and to successfully re-integrate them into society, due to factors such as the high unemployment rates and poor implementation of e.g. policies regarding the employment of people with disabilities. Statutory bodies such as the RAF simply cannot afford the high numbers of experts and the concomitant fees charged for a single claim as well as the time spent in court.

Occupational therapists, as well as all other health and legal professionals, should therefore contribute to the efficacy of the court by means of aspects addressed in this study, such as answering the referral questions and appointing the right expert for that specific referral question. The researcher has however found in practice that where the roles of various health care professionals often overlap in terms of medico-legal work, the referral question is sometimes never fully answered. The biasedness of expert witnesses continue to be influenced by the side they play for and the proverbial ‘passing of the buck’ without appropriate recommendations consequently occurs between health

professionals when it comes to the making of complex conclusions such as productivity, return to work and early retirement. The researcher is of the opinion that organised multi-disciplinary communications and deliberations could aid this process of complex conclusion- and decision-making.

In order to ensure the best possible assessment results, conclusions and advice, health professionals should therefore be aware of the scope of their own and other professions and stick to what they know and do best, as well as what they were trained for. If attorneys are fully aware and informed in this regard, it is possible that three different expert witnesses might not be consulted where one would have been sufficient. Occupational therapists are ethically required to abide by the rules of the HPCSA and the Professional Board for Occupational Therapy, Medical Orthotics/Prosthetics and Arts Therapy (OTASA, 2005:4) and therefore can only offer a service approved and acknowledges by these bodies and nothing more. The scope of our profession can therefore only be defined by the HPCSA and the Professional Board and not by the expectations of any other statutory bodies or professions.

Occupational therapists also play a vital role in preventing the proverbial 'Tower of Babel' confusion when it comes to communication between the occupational therapy profession and that of other health and legal professions. Optimal communication and understanding is required for adequate intervention for our clients (Caspi, Bell, Rychener, Gaudet and Weil, 2000:3193). Pierce recommends that the occupational therapy profession should adapt our communication with persons outside of our profession (Pierce, 2001:144) and thus a common medico-legal language, especially in terms of vital concepts such as 'occupation' and 'productivity' will enhance co-operation between the health and legal professions, which would also benefit our clients.

Ultimately both the health and legal professionals performing medico-legal work should strive to assist in justice being served to our communal clients who have suffered some degree of incapacitation due to someone

else's wrongdoing, as well as to greater society. Although results obtained in this study were not statistically significant, they are considered by the researcher as valuable and definitely introductory to further work in this direction. Research such as this study can assist by providing new information to both the health and legal professions in terms of expectations from both sides of the fence, as well as terminology that is possibly vague and misleading.

The researcher would like to end this dissertation with a quote from Townsend and Wilcock (2004:71) which can possibly encompass the quintessential role of the occupational therapist in medico-legal work, as well as the importance of the complexity and subjectivity of the occupations we assess:

> *"The argument is that choice and control in what we do to participate in occupations is the basis of our empowerment as humans, and empowerment is a determinant of health for individuals and populations."*

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# APPENDIX A: LETTER TO NOMINAL GROUP PARTICIPANTS

15 March 2010

Dear colleague

Thank you for agreeing to participate in this nominal group, which forms part of my research towards a Master's degree in Occupational Therapy. The final details for the group meeting are as follows:

| | |
|---|---|
| *Date:* | ***Friday, 26 March 2010*** |
| *Time:* | ***9:00*** |
| *Venue:* | ***Netcare Linksfield Hospital*** |

*Snack and refreshments will be provided. The group will require no more than 4 hours of your time.*
*Directions are available on request.*

For my study I will be using a questionnaire that will be sent electronically to various legal professionals. To provide the context for the questionnaire, please refer to the following:

a) The **aim** of my research is to determine the legal professions' perspective on the role of the occupational therapist (more specifically in terms of assessment and reports) in medico-legal work. I have divided the aim into three objectives, namely:

- *To determine the expectations of the legal profession with regards to occupational therapists in the medico-legal field;*
- *To determine the knowledge of the legal profession pertaining the scope of OT, specifically in medico-legal work and*
- *To identify possible barriers between the legal and occupational therapy professions in terms of profession-specific terminology and approaches.*

b) I have identified three main **problems** that led me to my research aim, namely:

- *Unclear expectations of occupational therapists from the legal point of view*
- *A knowledge gap (from the legal point of view) with regards to the scope of the occupational therapist working in the medico-legal field*
- *Incongruence in interpretation and expression of profession-specific concepts,*
  *such as "earning potential", "loss of earning" etc.*

You will be expected to answer four questions that will assist in providing information related to each of the above research problems.

Do not hesitate to contact me on 082 554 0746 should you have any queries.

Thank you in advance.

M. Dolinschek

*Occupational Therapist*

# APPENDIX B: RESEARCH QUESTIONNAIRE

# APPENDIX C: INFORMATION LETTER FOR ATTORNEYS

**UNIVERSITEIT VAN DIE VRYSTAAT**
**UNIVERSITY OF THE FREE STATE**
**YUNIVESITHI YA FREISTATA**

**Department Of Occupational Therapy ♦ Faculty of Health Sciences ♦ P O BOX 339, Bloemfontein, 9300 ♦ Republic of South Africa ♦ Tel: (051) 4012829 ♦ Fax: (051) 4013288**

1 April 2010

Dear Sir/ Madam

I hereby introduce my research study to you. The aim of this study is to determine the expectations of the legal profession for the occupational therapist as expert witness in medico-legal matters. It is essential to determine the understanding with regards to occupational therapy and subsequent expectations of South African legal professionals who consult and employ occupational therapists in medico-legal matters. Such information will hopefully lead to a more scientific, yet interpretive approach to a person's ability to return to work post-injury and greater benefit to the patients by means of improved understanding and co-operation between legal and health professionals. It might further contribute to the knowledge base of occupational therapy, as well as the graduate and post-graduate training of occupational therapists and legal practitioners.

Some of the ways you can benefit from participation in this study are:

1. *Knowledge that you have participated in a study that might benefit your and other professions, as well as the clients we work with.*
2. *Becoming aware of possible shortfalls in your own understanding of aspects mentioned in the questionnaire, which might ultimately benefit your own career.*
3. *Sparking your interest in the profession of occupational therapy, which might lead to increased utilisation of occupational therapists in your cases, which ultimately should be to the advantage of the third party process.*
4. *Assistance in this study might lead to more effective service delivery by occupational therapists to legal professionals.*

To be eligible, participants should meet the following criteria:

- *They must be fully trained attorneys or advocates.*
- *Attorneys and advocates must be South-African trained or have done their candidateship in South Africa.*
- *All participants must be currently practicing in South Africa and registered with their separate professional bodies.*
- *Should a firm have a separate department for third party matters; only attorneys working in this department will be eligible. Any attorney working in a firm without such a separate department is eligible.*
- *Only attorneys and advocates listed in the Hortors Legal Diary will be eligible for this study.*
- *Only participants who practice in the Northern Provinces will be included.*

You will be expected to complete **one written or electronic questionnaire**.

Participation is voluntary and you will be under no obligation to continue with the process if you no longer wish to do so. You may withdraw from this study at any time if you wish to do so. Participants will not be remunerated for their participation in this study.

All efforts will be made to keep information provided by you confidential, but anonymity cannot be guaranteed. Results of the study might be published in accredited journals.

This information has been provided by the researcher, Mariechén Dolinschek. You are welcome to contact me at 082 554 0746. You are also welcome to contact the Secretariat of the Ethics Committee of the Faculty of Health Sciences, UFS at telephone number (051) 405 2812 if you have any queries. Ethics number: ETOVS NR 19/2010.

Thank you in advance.

Regards
M. Dolinschek

# APPENDIX D: LETTER OF APPROVAL FROM THE ETHICS COMMITTEE

# APPENDIX E: FINAL BUDGET FOR THE RESEARCH STUDY

| ***Expense*** | ***Approximate cost since the commencement of the study*** |
|---|---|
| Stationery | R 10 000-00 |
| Telephone expenses | R 6 000-00 |
| Petrol expenses | R 800-00 |
| Research assistant | R 2 600-00 |
| Moderator and nominal group | R 3 000-00 |
| Moderator fees | R 900-00 |
| Web form and design | R 3 000-00 |
| Editing of dissertation | R 8 000-00 |
| **Total** | **R 34 300-00** |

bb

# APPENDIX F: DECLARATION CONCERNING LANGUAGE EDITING

a

a

**Please note that by completing this form you are giving your permission to use the data in the research project. The data will be treated confidentially.**

*Please mark the applicable answer by making an "X" in the appropriate block.*
*Where explanations are required, please be as specific as possible when filling in your answers.*

**For official use only**

**Participant Number:** 1 to 5 ☐☐☐☐☐

**1 You are currently practicing as an _____** 6 ☐

**2 Years of service in this position: _____years** 7-8 ☐☐

**3 What is your main area of speciality? Please indicate one only.** 9 ☐

- ☐ No specific area of speciality
- ☐ Civil matters
- ☐ Third party claims resulting from MVA, occupational injury etc.
- ☐ Insurance and pension matters
- ☐ Medical negligence matters
- ☐ More than one of the above
- ☐ Other. Please specify_____

**4 Do you understand what an occupational therapist does?** 10 ☐

- ☐ Yes
- ☐ No

**5 If yes, please explain shortly:**

_____ 11-12 ☐☐

_____

**6 Do you refer to occupational therapists for assessment reports?** 13 ☐

- ☐ Yes
- ☐ No

**7 How often do you refer a client to an occupational therapist for an assessment?** 14 ☐

- ☐ Never
- ☐ Seldom
- ☐ Regularly
- ☐ Always

**8 If you answered "yes" to Question 6, please indicate the most important aspect you would base your decision on when considering to refer to an occupational therapist. Please indicate only one.** 15-16 ☐☐

**If you answered "no" to Question 6, please indicate what you consider the most important aspect a legal professional should base the decision on when considering to refer to an occupational therapist. Please indicate only one.**

- ☐ As a rule
- ☐ To cover all bases
- ☐ On a recommendation from other experts
- ☐ When there is physical injury
- ☐ When long-term medical problems are foreseen
- ☐ When there was loss of earnings
- ☐ To ascertain residual earnings potential
- ☐ When there was loss of earning capacity
- ☐ To determine if a client is functional in activities of daily living
- ☐ More than one of the above
- ☐ Other. Please specify_____

**9 At what time/phase in the claim process do you typically refer a client for an occupational therapy report?** 17

- ☐ Immediately once a case is opened
- ☐ After the initial medical experts' assessments
- ☐ Before any other expert
- ☐ Once the opposing party instructed an occupational therapist
- ☐ Once all the other experts had assessed the client
- ☐ Other

**10 How long before a trial date do you typically send a client to an occupational therapist? Please indicate only one.** 18

- ☐ More than 2 years
- ☐ More than 1 year
- ☐ More than 6 months
- ☐ Less than 6 months
- ☐ Less than 3 months

**11 For which matters do you mostly refer to occupational therapists? Please indicate only one.**

- ☐ Road Accident Fund matters 19
- ☐ Medical negligence / malpractice 20
- ☐ Occupational injuries 21
- ☐ Insurance matters 22
- ☐ Personal injury matters 23
- ☐ Other. Please specify_____ 24

**12 Do you consider occupational therapy reports beneficial to your cases?**

- ☐ Yes 25
- ☐ No
- ☐ Occasionally

**13 Please rate, according to importance, factors you would consider when choosing an occupational therapist to refer to:**

| 4 Very important | 3 Important | 2 Fairly Important | 1 Not important at all |
|---|---|---|---|

- ☐ Years of relevant experience 26
- ☐ Therapist's qualifications 27
- ☐ Publications or research done by the therapist 28
- ☐ Referral from law colleagues or other medico-legal experts 29
- ☐ Availability of therapist (waiting period for appointment) 30
- ☐ Fees charged by the therapist 31
- ☐ Location of the therapy rooms closest to your firm/chambers 32
- ☐ Skills in testifying in court 33
- ☐ Report writing skills 34
- ☐ Quality of report 35
- ☐ Turn-over time of report 36
- ☐ Objectivity of therapist 37
- ☐ Professional presentability 38
- ☐ Flexibility in terms of payment arrangements 39

**14 What do you consider the role of the occupational therapist in medico-legal matters?** 40-41

_____

_____

**15** **Please indicate which of these you expect an occupational therapist to perform and report on in an assessment report:**

**Scientific/standardized physical assessment**
☐ Perform ☐ Include in report 42 ☐

**Functional physical assessment**
☐ Perform ☐ Include in report 43 ☐

**Formal work assessment (standardized tests)**
☐ Perform ☐ Include in report 44 ☐

**Work visit**
☐ Perform ☐ Include in report 45 ☐

**Job analysis**
☐ Perform ☐ Include in report 46 ☐

**Correspondence with employer/colleagues**
☐ Perform ☐ Include in report 47 ☐

**Careful perusal of documentation**
☐ Perform ☐ Include in report 48 ☐

**Home visit**
☐ Perform ☐ Include in report 49 ☐

**Correspondence with school, family, friends**
☐ Perform ☐ Include in report 50 ☐

**Communication with yourself**
☐ Perform ☐ Include in report 51 ☐

**Use of formal standardized tests**
☐ Perform ☐ Include in report 52 ☐

**Assessment of activities of daily living**
☐ Perform ☐ Include in report 53 ☐

**Clinical observations**
☐ Perform ☐ Include in report 54 ☐

**Interpretation and clinical reasoning to comment on work**
☐ Perform ☐ Include in report 55 ☐

**Reporting on test scores only, as opposed to subjective opinion and interpretation**
☐ Perform ☐ Include in report 56 ☐

**16** **How would you differentiate between the roles of an occupational therapist in pediatric assessments, as opposed to that of an educational psychologist?** 57-58 ☐☐

_____

_____

**17** **How would you describe the role of an occupational therapist with reference to cognitive problems, as opposed to that of a clinical or neuropsychologist?** 59-60 ☐☐

_____

_____

**18** **How would you describe the role of an occupational therapist in terms of earning potential and loss of earning as opposed to that of an industrial psychologist?** 61-62 ☐☐

_____

_____

**19 How important is it that an occupational therapy report address each of the following?**

| 4 Very important | 3 Important | 2 Fairly Important | 1 Not important at all |
|---|---|---|---|

| | | | |
|---|---|---|---|
| | Assessment of personal independence | 63 | |
| | Reporting on recreation and social aspects | 64 | |
| | Commenting on psychological aspects | 65 | |
| | Commenting on loss of amenities | 66 | |
| | Job analysis | 67 | |
| | Analysis of work history | 68 | |
| | Assessment of work habits | 69 | |
| | Use of formal/standardized tests | 70 | |
| | Costing of recommendations to assist independence | 71 | |
| | Commenting on other experts' opinions | 72 | |
| | Earning potential | 73 | |
| | Physical assessment | 74 | |
| | Life roles | 75 | |
| | Reporting on survival skills | 76 | |
| | Obtaining collateral information | 77 | |
| | Return to work | 78 | |
| | Other | 79 | |

**20 Which of the following experts would you consult to comment on each the following? You can indicate more than one expert per option:**

**Medical aspects such as physical prognosis**

| | | | |
|---|---|---|---|
| | Medical expert / Doctor / Specialist | 80 | |
| | Occupational therapist | 1 | |
| | Industrial Psychologist | 2 | |

**Loss of earnings**

| | | | |
|---|---|---|---|
| | Medical expert / Doctor / Specialist | 3 | |
| | Occupational therapist | 4 | |
| | Industrial Psychologist | 5 | |

**Functional capacity**

| | | | |
|---|---|---|---|
| | Medical expert / Doctor / Specialist | 6 | |
| | Occupational therapist | 7 | |
| | Industrial Psychologist | 8 | |

**Return to work**

| | | | |
|---|---|---|---|
| | Medical expert / Doctor / Specialist | 9 | |
| | Occupational therapist | 10 | |
| | Industrial Psychologist | 11 | |

**Earning potential**

| | | | |
|---|---|---|---|
| | Medical expert / Doctor / Specialist | 12 | |
| | Occupational therapist | 13 | |
| | Industrial Psychologist | 14 | |

**Early retirement**

| | | | |
|---|---|---|---|
| | Medical expert / Doctor / Specialist | 15 | |
| | Occupational therapist | 16 | |
| | Industrial Psychologist | 17 | |

**21 How important is it that an occupational therapist comments on each of the following:**

| 4 Very important | 3 Important | 2 Fairly Important | 1 Not important at all |
|---|---|---|---|

| | | |
|---|---|---|
| ☐ | Medical issues regarding a client/status/physical prognosis | 18 ☐ |
| ☐ | Loss of earnings/income | 19 ☐ |
| ☐ | Future ability to earn | 20 ☐ |
| ☐ | Percentage of disability in terms of work | 21 ☐ |
| ☐ | Functional implications of an injury | 22 ☐ |
| ☐ | Matching job requirements to a person | 23 ☐ |
| ☐ | Level of physical demands of a person's job | 24 ☐ |
| ☐ | Assistance needed (caregiver, domestic worker etc) | 25 ☐ |
| ☐ | Psychological trauma resulting from physical injury | 26 ☐ |
| ☐ | Disfigurement | 27 ☐ |
| ☐ | Loss of general health | 28 ☐ |
| ☐ | Current ability to earn | 29 ☐ |
| ☐ | Functional prognosis in terms of injury | 30 ☐ |
| ☐ | Examples of types of jobs a person can do post-injury | 31 ☐ |
| ☐ | Alternative forms of employment | 32 ☐ |
| ☐ | Assistive devices for home and work | 33 ☐ |
| ☐ | Traveling and transport costs | 34 ☐ |
| ☐ | Pain and suffering | 35 ☐ |
| ☐ | Emotional shock | 36 ☐ |
| ☐ | Loss of amenities | 37 ☐ |
| ☐ | Cognitive problems | 38 ☐ |

**22 Do you think occupational therapists are adequately remunerated for medico-legal reports?** 39 ☐

- ☐ Yes
- ☐ No
- ☐ Uncertain

**23 In your opinion, what are the main causes of delays in payments for reports?**

_____ 40-41 ☐☐

**24 What do you see as a joint or combined minute?**

_____ 42-43 ☐☐

_____

**25 Which aspects should be addressed in an occupational therapy joint/combined minute?** 44-45 ☐☐

_____

_____

**26 How long before a trial date do you typically instruct a therapist to do a joint/combined minute?** 46 ☐

- ☐ More than 1 month
- ☐ More than 2 weeks
- ☐ 1 Week
- ☐ Less than 1 week
- ☐ The day before

**27 Under which circumstances do you require an occupational therapy joint/combined minute?** 47-48 ☐☐

_____

_____

**28 Do you think occupational therapists are given sufficient time to do joint/combined minutes prior to the trial date?** 49 ☐

- ☐ Yes
- ☐ No
- ☐ Uncertain

**29** **Do you think occupational therapists understand the legal process regarding medico-legal matters?** 50

- ☐ Yes
- ☐ No
- ☐ Uncertain

**30** **Do you think occupational therapists need to understand the legal processes pertaining to medico-legal matters?** 51

- ☐ Yes
- ☐ No

**31** **How would you define a "qualifying fee"?**

_____ 52-53

_____

**32** **Do you think it is important to ensure that your expert witnesses understand legal concepts?** 54

- ☐ Yes
- ☐ No

**33** **Do you feel you understand terms used by occupational therapists?**

- ☐ Yes 55
- ☐ No

**34** **How important is it for you to understand terminology that occupational therapists use in their reports and in court?** 56

- ☐ Very Important
- ☐ Important
- ☐ Fairly Important
- ☐ Not important at all

**35** **How would you define:**

**Productivity**

_____

_____ 57-58

**Earning potential**

_____

_____ 59-60

**Functional capacity evaluation (FCE)**

_____

_____ 61-62

**Functional limitations**

_____

_____ 63-64

**Occupation**

_____

_____ 65-66

**Occupational disability**

_____

_____ 67-68

**Occupational performance components**

_____

_____ 69-70

**Vocational rehabilitation**

_____

_____ 71-72

**Inconsistent / self-limiting performance**

_____

_____ 73-74

**Pre-accident status (developmental, scholastic)** 75-76

_____

_____

**Scholastic potential** 77-78

_____

_____

**36** **What do you understand under the concept of "Classification of Physical Demands" or "types of work" (Sedentary, light, medium, heavy or very heavy work)?** 79-80

_____

_____

**37** **How important do you consider these work classifications in an occupational therapy report?** 1

- ☐ Very Important
- ☐ Important
- ☐ Fairly Important
- ☐ Not important at all

**38** **How important do you consider the numerical expression of findings by an occupational therapist, e.g. the % disability, degree of incapacity etc?** 2

- ☐ Very Important
- ☐ Important
- ☐ Fairly Important
- ☐ Not important at all

**39** **How do you understand the concept of "alternative employment", such as sheltered or protected employment?** 3-4

_____

_____

**40** **How important do you consider it for an occupational therapist to comment on the above concepts in a report or make recommendations regarding this?** 5

- ☐ Very Important
- ☐ Important
- ☐ Fairly Important
- ☐ Not important at all

**41** **What information do you consider sufficient for an occupational therapist to comment on long-term expectations regarding a client?** 6-7

_____

_____

**42** **What information do you provide an occupational therapist with in order for him/her to comment on long-term expectations regarding a client?** 8-9

_____

_____

**43** **How important is it that an occupational therapist should comment on South African contextual factors that can influence a person's earning potential (such as high rates unemployment, poverty, cultural aspects etc)?** 10

- ☐ Very Important
- ☐ Important
- ☐ Fairly Important
- ☐ Not important at all

**44** **Please indicate any terminology or concepts contained in this questionnaire that you do not understand or are uncertain of:** 11-12

_____ 13-14

_____ 15-16

_____ 17-18

19-20

UNIVERSITEIT VAN DIE VRYSTAAT
UNIVERSITY OF THE FREE STATE
YUNIVESITHI YA FREISTATA

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E-mail address: StraussHS@ufs.ac.za

Ms H Strauss

2010-07-28

MS R HOUGH
DEPT OF OCCUPATIONAL THERAPY
CR DE WET BUILDING
UFS

REC Reference number: REC-230408-011

Dear Ms Hough

**ETOVS NR 19/2010**
**PROJECT TITLE: OCCUPATIONAL THERAPY ASSESSMENT AND THE MEDICO-LEGAL REPORT: THE LEGAL PERSPECTIVE.**
**RESEARCHER: MS M DOLINSCHEK**

- You are hereby kindly informed that the Ethics Committee approved the questionnaire of the above study at the meeting held on 27 July 2010.
- Committee guidance documents: Declaration of Helsinki, ICH, GCP and MRC Guidelines on Bio Medical Research. Clinical Trial Guidelines 2000 Department of Health RSA; Ethics in Health Research: Principles Structure and Processes Department of Health RSA 2004; Guidelines for Good Practice in the Conduct of Clinical Trials with Human Participants in South Africa, Second Edition (2006); the Constitution of the Ethics Committee of the Faculty of Health Sciences and the Guidelines of the SA Medicines Control Council as well as Laws and Regulations with regard to the Control of Medicines.
- Any amendment, extension or other modifications to the protocol must be submitted to the Ethics Committee for approval.
- The Committee must be informed of any serious adverse event and/or termination of the study.
- A progress report should be submitted within one year of approval of long term studies and a final report at completion of both short term and long term studies.
- Kindly refer to the ETOVS reference number in correspondence to the Ethics Committee secretariat.

Yours faithfully

.....
**CHAIR: ETHICS COMMITTEE**

Cc: Ms M Dolinschek

# ETHICS COMMITTEE

# OF THE FACULTY OF HEALTH SCIENCES

## ATTENDANCE LIST OF THE MEETING HELD ON 27 JULY 2010

## A. FACULTY MEMBERS

### 1. SCHOOL OF MEDICINE REPRESENTATIVES

| | | |
|---|---|---|
| Prof WH Kruger | Dept of Community Health (Chairperson)<br>M.B. Ch.B (UOFS)<br>M.Med. (Community Health) (UOFS),<br>MBA (PU for CHE) | Present |
| Prof DK Stones | Dept of Paediatrics and Child Health<br>M.B. CH.B (UCT)<br>M.Med Paediatrics (UFS) | Present |
| Dr SM le Grange (lady) | Dept of Surgery<br>M.B. Ch.B (UFS)<br>M.Med. (Surgery) (UFS)<br>Cert. Paedlatric Surgery<br>(College of Surgeons of SA) | Absent |
| Prof PJ Pretorius | Dept of Psychiatry<br>M.B. Ch.B (UFS)<br>M.Med (Psychiatry) | Present |
| Prof BJS Diedericks | Dept of Anaesthesiology<br>FFA (SA)<br>M.Med (Anaesthesiology) (UFS)<br>BA (Philosophy) UNISA<br>M.B. Ch.B (UFS) | Present |
| Prof WJ Steinberg | Dept of Family Medicine<br>DPH; DTM & H (Wits)<br>M.Fam.Med (UOFS)<br>Dip. Obst (SA), FCFP | Present |

| | | |
|---|---|---|
| Prof JH van Zyl | Departement Interne Geneeskunde<br>M.B. Ch.B (Pretoria)<br>Dip. Av Med,<br>M.Med (Interne Geneeskunde)<br>Add. Kwalifikasie: Gastro-enterologie | Teenwoordig |

## 2. SKOOL VIR VERPLEEGKUNDE VERTEENWOORDIGERS

| | | |
|---|---|---|
| Prof Y Botma<br>(Dame) | Skool vir Verpleegkunde<br>Onder-Voorsitter<br>B. Soc.Sc. (Verpl) Honn,<br>M. Soc.Sc., Ph.D. (UOVS)<br>IRENSA Diploma in Internasionale<br>Navorsingsetiek (2005) | Teenwoordig |
| Dr DE Botha<br>(Dame) | Skool vir Verpleegkunde<br>M. Soc.Sc (Verpl) (UOVS)<br>Ph.D (Verpl) (UOVS) | Teenwoordig |
| Dr L Roets<br>(dame) | Skool vir Verpleegkunde<br>B.Soc.Sc (Verpleegkunde) Hons (UV)<br>M.Soc.Sc (UV)<br>Ph.D (UV) | Teenwoordig |

## 3. SKOOL VIR AANVULLENDE GESONDHEIDS= BEROEPE VERTEENWOORDIGERS

| | | |
|---|---|---|
| Prof CM Walsh<br>(Dame) | Dept Menslike Voeding<br>B.Sc Dieetkunde (UV)<br>M.Sc Dieetkunde (UV)<br>Ph.D (Dieetkunde) (UV) | Teenwoordig |
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| Prof R–M Jansen<br>(Sekundeus) (Dame) | Departement: Privaatreg<br>B.Soc.Sc. (Verpl.) Honn.<br>B.Iur., LL.B., LL.M. (UOVS) | Afwesig |

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## D. DIE SENTRALE UNIVERSITEIT VAN TEGNOLOGIE, VRYSTAAT

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## E. EX OFFICIO LEDE (nie stemgeregtig nie)

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| Dr NRJ van Zyl | Kliniese Hoof: Universitas Hospitaal<br>Bloemfontein<br>M.Med. (UOVS)<br>Sake-Admin. MBL (UNISA) | Afwesig |
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## DECLARATION CONCERNING LANGUAGE EDITING

I would hereby like to certify that the following thesis submitted in fulfilment of the requirements for the degree Magister in Occupational Therapy in the Department of Occupational Therapy, Faculty of Health Sciences, University Free State, Bloemfontein, was edited for language usage by me:

"**OCCUPATIONAL THERAPY ASSESSMENT AND THE MEDICO-LEGAL REPORT: *THE LEGAL PERSPECTIVE"***

by Mariechén Jansen van Vuuren

The following were included in the language editing: Title page, Declaration, Acknowledgements, Table of contents, Summaries, Chapters 1 to 6, and Bibliography.

This thesis was proofread according to United Kingdom Oxford English.


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**Summary**

The involvement of the occupational therapist in medico-legal work or third party claims is not a new phenomenon. Research in this area however previously focused on the skills and other traits of the occupational therapist. Little is known about the legal profession's knowledge and expectations regarding the occupational therapist serving as an expert witness, especially in the South African legal, economic, social and cultural context. Discovering how especially attorneys perceive and experience the role of the occupational therapist in medico-legal work is therefore essential as occupational therapists' involvement in medico-legal work is mostly facilitated by attorneys who instruct medico-legal assessments. The process and methods of instructing and utilising expert witnesses such as occupational therapists is unfortunately often not optimally effective with potentially dire effects for a country such as South Africa which already battles with poverty and unemployment, especially under workers with disabilities.

International research has furthermore placed an increased emphasis on the role of the occupational therapist in encouraging and working towards aspects such as various forms of occupational justice and the impact of a person's inability or altered ability to participate in occupations as before injury or illness. Therefore, against a backdrop of changing legislation regarding third party claims and an increase in medical negligence claims, the scope and role of occupational therapy in this field was explored and defined in this study, based on information obtained directly from members of the South African legal profession. Barriers between the occupational and legal profession that could hinder fair compensation for the claimants, such as communication transgressions or ineffective service delivery, were also identified.

This study aimed to gather such information by means of a quantitative study under South African trained and based attorneys. A nominal group was used to support questionnaire development and also served to encourage the researcher that

aspects addressed in this study through the questionnaire was vital to the everyday practice of the South African occupational therapist performing medico-legal assessments and reports. Research results indicated that attorneys have distinct expectations from the occupational therapist, but that some confusion exists pertaining to the unique role and contribution of the occupational therapist compared to other health professions. Where attorneys appeared to have a generally good understanding of terminology used by occupational therapists in assessment reports, several occupation therapy specific terms had different meanings for the legal profession. Recommendations made based on this study are believed by the researcher to address the specific problems identified in this study and should encourage future research in this field.

***Opsomming***

*Die betrokkenheid van die arbeidsterapeut by medies-geregtelike werk of derdeparty eise is geen nuwe verskynsel nie. Vorige navorsing het egter gefokus op die vaardighede en ander eienskappe van die arbeidsterapeut en beperkte kennis bestaan oor die regsprofessie se kennis en verwagtinge van die arbeidsterapeut wat dien as kennergetuie en veral so in die Suid-Afrikaanse geregtelike, ekonomiese, sosiale en kulturele verwysingsraamwerk. Dit is egter belangrik om te bepaal hoe veral prokureurs die rol van die arbeidsterapeut in medies-geregtelike werk verstaan en beleef, aangesien prokureurs meestal die arbeidsterapeut se betrokkenheid by medies-geregtelike sake fasiliteer. Die proses en metode van instruksie en aanwending van kennergetuies soos arbeidsterapeute is ongelukkig gereeld oneffektief en kan moontlik ernstige nadelige gevolge inhou vir 'n land soos Suid-Afrika wat reeds sukkel met armoede en werkloosheid, veral onder persone met gestremdhede.*

*Internasionale navorsing lig verder ook die rol van die arbeidsterapeut uit in die bevordering van geregtigheid ten opsigte van 'n persoon se lewensokkupasies en die invloed van 'n persoon se onvermoë of veranderde vermoë om deel te neem aan hierdie okkupasies soos voor die besering of siekte. Dus is die bestek en rol van die arbeidsterapeut in die medies-geregtelike veld ondersoek en in hierdie studie en dit teen 'n agtergrond van veranderende wetgewing en 'n toename in*

*mediese nalatigheidsake, soos gebasseer op inligting verkry van lede van die Suid-Afrikaanse regsprofessie. Moontlike struikelblokke tot regmatige vergoeding vir eisers, soos onvoldoende kommunikasie of gebrekkige dienslewering is ook geïdentifiseer.*

*Hierdie studie het gepoog om hierdie inligting te verkry deur middel van 'n kwantitatiewe studie onder prokureurs wat opgelei en gebasseer is in Suid-Afrika. 'n Nominale groep is gebruik om vraelys-ontwikkeling te ondersteun en ook om aan die navorser te bevestig dat die aspekte aangespreek in die vraelys noodsaaklik is vir die daaglikse praktyk van die Suid-Afrikaanse arbeidsterapeut wat medies-geregtelike evaluasies en verslae doen. Navorsingsresultate dui aan dat prokureurs spesifieke verwagtinge van die arbeidsterapeut het, maar dat 'n mate van verwarring bestaan rondom die unieke rol en bydrae van die arbeidsterapeut in vergelyking met ander gesondheidsberoepe. Alhoewel prokureurs 'n redelike goeie begrip toon van terminologie gebruik deur arbeidsterapeute in evaluasie- verslae, was verskeie arbeidsterapie-spesifieke terme geïdentifiseer wat ander betekenisse inhou vir die regsprofessie. Die navorser het gepoog om die probleme soos geïdentifiseer in hierdie studie aan te spreek deur relevante aanbevelings en behoort ook toekomstige navorsing in hierdie verband aan te moedig.*

**Key words:** medico-legal, occupational therapy, legal professionals, assessment reports, terminology.