Asian Journal of Social Science Research (e-ISSN: 2600-9706)
Volume 6, Issue 2, 20024
DOI: https://doi.org/10.5281/zenodo.14580310

ADVOCATES AND SOLICITORS' EXPECTATIONS AND PERSPECTIVES TOWARDS THE ROLE OF OCCUPATIONAL THERAPISTS AS EXPERT WITNESSES IN THIRD-PARTY CLAIMS

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Received Date: 22/07/2024 Accepted Date: 30/11/2024 Published Date: 30/12/2024

ABSTRACT

In Malaysia, 1858 occupational therapists assist individuals in regaining independence in daily activities. This study examines the expectations and perspectives of Malaysian advocates and solicitors working on third-party claims involving road and industrial accidents. With an increase in these accidents, the demand for personal injury claims has surged, necessitating expert witnesses like occupational therapists. This qualitative study involved interviews with 13 Malaysian lawyers specializing in third-party claims. The interviews, conducted in English, lasted about 30 minutes each. The research aimed to explore the legal profession's views on the role of occupational therapists in assessing damages for personal injury claims. Findings highlight the importance of objectivity, experience, and thorough assessments by occupational therapists to meet legal standards. The study underscores the necessity for occupational therapists and legal professionals to collaborate closely to recognize the value of occupational therapy in personal injury claims. It also stresses the need for effective communication, multidisciplinary training programs, and uniform guidelines to bridge the gap between these professions. The conclusion emphasizes addressing the differences in expectations and understanding between the legal and occupational therapy fields. By doing so, it is possible to foster a more beneficial partnership, ultimately enhancing the handling of third-party claims. Addressing the study's limitations can further promote this collaborative effort.

Keywords: collaboration, expert witnesses, legal profession, accidents, occupational therapists, third-party claims

INTRODUCTION

Malaysia, a multicultural federation of 13 states and 3 parliamentary territories, is classified as an upper-middle-income nation by the World Bank, with a population of about 32.7 million (*Department of Statistics Malaysia: Current Population Estimates*, 2022). The country benefits from a well-developed healthcare system that supports diverse rehabilitation services, including those provided by occupational therapists. There are currently 1,858 registered occupational therapists (WFOT, 2023b) in Malaysia who deliver client-centered care aimed at enhancing individuals' participation in meaningful daily activities (WFOT, 2023a).

Occupational therapy (OT) is integral to rehabilitation, focusing on evidence-based strategies to maximize clients' functional outcomes (Cogan et al., 2020). Services include activities of daily living (ADL) training, cognitive and perceptual assessments, vocational rehabilitation, and return-to-work programs—essential for addressing post-accident needs and preventing income loss (Katsu et al., 2021). In the context of personal injury claims, these services become critical for translating injuries into functional losses that can be quantified in legal terms. However, current literature provides limited exploration of occupational therapists' specific contributions to third-party claims, particularly in Malaysia.

In the Malaysian legal context, legal practitioners such as advocates and solicitors, governed by the Legal Profession Act 1976, play a pivotal role in managing personal injury claims or "Third-Party Claims." These claims, stemming from road and industrial accidents, involve complex legal procedures and require multidisciplinary collaboration to determine damages accurately (Awang et al., 2017). Legal professionals rely on expert witnesses, including occupational therapists, to provide comprehensive and standardized assessments of claimants' disabilities and their impact on future earning capacity (Jansen van Vuuren, 2012). However, the extent to which occupational therapists' contributions are recognized and valued within the legal process remains unclear.

Despite occupational therapists' expertise in functional assessments aligned with court and government requirements, their role in third-party claims is often underutilized. Their ability to evaluate ADL, IADL, work capacity, and leisure activities and recommend home modifications or nursing care is critical for establishing fair compensation (van Biljon, 2013). However, barriers such as limited awareness among legal professionals and cost-related challenges hinder their broader integration into the legal domain. Additionally, policies such as the Allied Health Professions Act 774 are anticipated to further clarify their roles, but empirical evidence demonstrating the impact of these policies is scarce.

The increasing demand for expert witness reports, driven by the rise in personal injury claims, underscores the need to enhance collaboration between the legal and occupational therapy professions. This study explores the perspectives of Malaysian advocates and solicitors regarding the role of occupational therapists in third-party claims. Specifically, it examines the legal profession's understanding, expectations, and challenges concerning occupational therapy's scope in these cases.

Barriers such as limited awareness among legal professionals, high costs associated with OT assessments, and the lack of integration into legal processes contribute to the underutilization of occupational therapists in third-party claims. This gap highlights a pressing need to investigate the

expectations and perspectives of advocates and solicitors regarding occupational therapists in the Malaysian legal system.

RESEARCH PROBLEM

The lack of clarity on occupational therapists' roles in personal injury claims and the limited awareness among legal professionals hinder the effective integration of their expertise in legal proceedings. This study addresses the research problem by exploring the expectations of Malaysian legal professionals (advocates and solicitors) regarding occupational therapists' contributions to third-party claims. Specifically, the study investigates the barriers, opportunities, and current practices that shape this interdisciplinary collaboration.

RESEARCH OBJECTIVES

To our knowledge, no prior research in Malaysia has investigated this topic. This study aims to:

-To determine the role of occupational therapists in assessing damages for personal injury claims and the legal profession's understanding of this role.

-To understand the legal profession's perspectives on the scope of occupational therapy in third-party claims.

-To identify the expectations of the legal profession regarding occupational therapists in third-party claims.

By addressing these objectives, this research seeks to foster awareness among the Malaysian Bar Council, legal professionals, and the Malaysian Occupational Therapy Association. It aims to strengthen interdisciplinary collaboration, improve service delivery, and enhance education and training in this field. Ultimately, the findings may guide the development of this practice area, benefiting both professions and their clients.

SIGNIFICANCE OF THE STUDY

This study fills a critical gap in the literature by providing empirical evidence on the contributions of occupational therapists in third-party claims within the Malaysian legal framework. The findings could guide the development of policies and practices that integrate occupational therapy expertise into legal procedures, ultimately benefiting clients and improving the accuracy and fairness of compensation assessments.

METHODOLOGY

This study employed a qualitative methodology to explore the expectations and perspectives of advocates and solicitors regarding occupational therapy in third-party claims. A qualitative approach was selected for its ability to provide rich, in-depth insights into complex and under-explored issues, enabling the generation of new concepts and hypotheses. Non-numerical data, such as interview transcripts, were analyzed to uncover patterns and themes central to the research objectives. Table 1 below summarizes the framework used:

Table 1. Summary of Framework

RESEARCH OBJECTIVES	RESEARCH QUESTIONS	DATA COLLECTION METHODS	DATA SOURCES	DATA ANALYSIS TECHNIQUES
To determine the role of occupational therapists in assessing damages for personal injury claims and the legal profession's understanding of this role.	1. Do you think occupational therapists understand the legal process regarding third-party claims? 2. Do you understand occupational therapists' roles and their importance? 3. What considerations deter you from referring clients to an occupational therapist?	- Semi-Structured Interview	- Legal professionals (Advocates and Solicitors)	- Thematic Analysis
To understand the legal profession's perspectives on the scope of occupational therapy in third-party claims.	1. What is your opinion of occupational therapists as expert witnesses for third-party claims? 2. How vital are the recommendations of occupational therapists in third-party claims?	- Semi-Structured Interview	- Legal professionals (Advocates and Solicitors)	- Thematic Analysis
To identify the expectations of the legal profession regarding occupational therapists in third-party claims.	1. What factors would you consider when choosing an occupational therapist as an expert witness? 2. How can occupational therapists contribute to better assessment of damages in personal injury claims? 3. What should occupational therapists report on in third-party claims?	- Semi-Structured Interview	- Legal professionals (Advocates and Solicitors)	- Thematic Analysis

Purposive sampling was used to select participants who could provide insightful responses. The inclusion criterion is:

-Malaysian advocates and solicitors who practice personal injury claims from accidents and claims for total and permanent disability.

The exclusion criterion is:

-Advocates and solicitors practicing in fields other than those applicable to this study.

Thirteen legal professionals participated in the study, with interviews continuing until data saturation was reached. Saturation was determined when no new codes or themes emerged from the data, ensuring comprehensive coverage of the research objectives.

Data collection was conducted through semi-structured interviews lasting approximately 30 minutes each. The interview guide was developed based on a review of relevant literature and current practices in third-party claims. Questions explored demographics, knowledge, perspectives, and expectations regarding occupational therapists' roles as expert witnesses.

To ensure ethical compliance, the study obtained approval from the Perdana University Institutional Review Board (PU-IRB). All participants provided informed consent, and interviews were audio-recorded with their permission. Confidentiality was maintained by anonymizing participant data during transcription and analysis.

Thematic analysis was employed to analyze the interview transcripts. This approach involved the following steps:

1. Familiarization: Transcripts were reviewed multiple times to gain a thorough understanding of the data.
2. Coding: Meaningful segments of text were identified and coded.
3. Theme Development: Codes were grouped into overarching themes that addressed the research questions.
4. Reviewing Themes: Themes were refined to ensure they accurately reflected the data and research objectives.
5. Defining Themes: Final themes were clearly defined, and representative quotes were selected to illustrate findings.

The study ensured rigor and reliability by adhering to the criteria of confirmability, credibility, transferability, and dependability. The research findings include detailed reporting of the codes and themes to substantiate the analysis.

RESULTS AND DISCUSSION

The study included Malaysian-trained advocates and solicitors practicing in third-party claims. Thirteen participants from Johor, Kuala Lumpur, Negeri Sembilan, and Selangor were interviewed. Each interview, conducted in English, lasted approximately 30 minutes. Participants were encouraged to express additional views, and all discussions were audio-recorded.

A descriptive analysis of participants' demographics is summarized in Table 2. However, further analysis revealed that demographic factors such as years of experience and place of practice influenced participants' perspectives on the role of occupational therapists in third-party claims.

Table 2. Descriptive Analysis

ITEMS	N
Age	
21 – 30	4
31 – 40	4
41 – 50	3
51 – 60	2
Gender	
Male	6
Female	7
Race	
Chinese	2
Indian	8
Malay	1
Others (Sikh Punjabi)	2
Place of practice	
Johor	1
Kuala Lumpur	3
Negeri Sembilan	3
Selangor	6
Years of experience in Third-Party Claims	
<7 years	4
7 to 12 years	2

ITEMS	N
>12 years	7
Experience working with an occupational therapist	
Yes	5
No	8

The study identified themes that reflect the lawyers' perspectives on the roles and challenges of occupational therapists in third-party claims. Correlations between demographic factors and perspectives were noted where relevant.

Most advocates and solicitors exhibited limited awareness of occupational therapists' insights into the legal process. However, they were open to discussing their limited experiences. One advocate mentioned, "When they are called to court, they must understand the process and why they are called." Another stated, "I do not think they are aware of how they are called to testify in court."

The study revealed varied understandings among advocates and solicitors regarding occupational therapists' roles. Out of the 13 participants, 10 claimed to understand these roles. One advocate said, "Occupational therapists report on the well-being of the plaintiff after the accident." However, some showed limited understanding. One participant remarked, "I have limited understanding of their roles and do not need to engage them to prove my claims."

The primary barrier cited was the cost associated with occupational therapy reports. One advocate stated, "Costing is a primary challenge." Another mentioned, "The cost of the report in third-party claims is high, and some clients are reluctant to proceed."

Participants' perspectives were influenced by their roles as advocates for plaintiffs or defendants. A plaintiff-side advocate noted, "Occupational therapists have not been widely accepted in court as expert witnesses." Conversely, a defendant-side advocate believed, "They can provide clear insights on the residuals and extent of damages."

Advocates and solicitors exhibited varied perspectives on the importance of occupational therapy recommendations. Some plaintiff-side advocates stated, "With better awareness, people would consider occupational therapists' recommendations." However, others noted a lack of understanding and awareness among lawyers about the roles of occupational therapists.

Advocates emphasized the importance of impartiality, qualifications, and experience. One advocate remarked, "Experience and expertise are significant factors in appointing occupational therapists as expert witnesses."

Advocates expected occupational therapists to provide objective assessments using validated tools. One advocate stated, "Occupational therapists focus on the client's daily living activities, which is crucial for personal injury claims."

Advocates expected comprehensive reports on the client's post-accident functionality and needs. One advocate mentioned, "Reports should cover the client's day-to-day activities, employment capacity, and necessary assistance."

Participants' perspectives were influenced by demographic factors:

- Years of Experience: Advocates with more experience demonstrated better understanding and openness to engaging occupational therapists.
- Place of Practice: Advocates in Selangor and Kuala Lumpur, where access to diverse expert witnesses is greater, reported higher familiarity with occupational therapy roles.
- Prior Experience with Occupational Therapists: Advocates who had worked with occupational therapists exhibited clearer insights into their contributions and emphasized their value in personal injury claims.

CONCLUSION

This research aimed to clarify the role of occupational therapists in assessing damages for personal injury claims and to gauge the legal profession's understanding of this role. The study revealed that limited courtroom experience among occupational therapists contributes to a lack of understanding among legal practitioners about the therapists' views of the legal system. Some legal professionals believe that occupational therapists need to comprehend the legal system to fulfill their court obligations effectively. Advocates and solicitors exhibit varying degrees of understanding of occupational therapists' roles, influenced by their prior experiences. Cost of reports is a significant barrier when referring clients to occupational therapists.

Additionally, the study explored the legal profession's perspectives on the scope of occupational therapy in third-party claims. Advocates and solicitors, depending on their past experiences with occupational therapists, hold differing views on their use as expert witnesses. While some express concerns about the therapists' legal acceptance, others recognize their value in helping clients understand their challenges. Legal professionals expect occupational therapists to address malingering, examine loss of earning capacity, and evaluate return-to-work possibilities. Direct, client-centered assessments from occupational therapists are highly valued, emphasizing the importance of face-to-face evaluations.

The study also examined the legal profession's expectations of occupational therapists in third-party claims. Shaped by legal requirements and a growing awareness of occupational therapy's holistic approach, many participants believe that occupational therapists can provide expert evaluations and recommendations for clients with physical or mental health issues. Impartiality and fairness are crucial when selecting occupational therapists as expert witnesses. Legal professionals consider experience, breadth of knowledge, and practical training vital for this role. Occupational therapists are expected to enhance damage calculations by offering objective evaluations that consider daily living aspects beyond physical rehabilitation.

The study reveals a moderate contribution to theoretical understanding by highlighting the limited awareness among legal professionals regarding the roles and expertise of occupational therapists (OTs) in legal proceedings. While many participants claimed to understand occupational therapists' roles, there is evident variability and misconceptions. This underscores the need to further develop theoretical frameworks that articulate the alignment between occupational therapy practices and the legal domain, particularly in areas like personal injury claims and expert witness testimony.

LIMITATIONS

While this study provides valuable insights, several limitations must be acknowledged. First, the findings are based on a small sample of advocates and solicitors, which may not accurately reflect the perspectives of the entire legal community. A larger, more representative sample is necessary for generalizable results.

Second, the study relies primarily on qualitative data from interviews, which may not provide a comprehensive quantitative picture of the legal profession's perspectives. Future studies could benefit from a mixed-methods approach, combining qualitative interviews with quantitative surveys.

Third, the results are subjective, based on individual participants' interactions and experiences, which may not fully represent the roles and expectations of occupational therapists. Additionally, the study focuses on legal professionals in specific regions of Malaysia, limiting the generalizability of its conclusions to other areas.

Finally, while the study highlights various viewpoints, it only briefly addresses potential solutions to the identified impediments, such as the cost of occupational therapy reports. Discussing strategies to mitigate these issues would provide a more comprehensive context for the study's findings.

RECOMMENDATIONS

Occupational therapists play a crucial role in assessing damages in serious personal injury claims, but their contribution is often undervalued by the legal profession. Enhanced collaboration between advocates, solicitors, and occupational therapists can ensure fair and comprehensive compensation for accident victims, preparing them to meet life's challenges despite their disabilities. This approach emphasizes the importance of holistic rehabilitation, aiming for meaningful, long-term outcomes for victims.

ACKNOWLEDGEMENT

I extend my sincere gratitude to everyone who supported and guided me throughout the completion of this research. First and foremost, I deeply appreciate the invaluable guidance, encouragement, and patience of my supervisors: Prof. Nathan Vytialingam, Dean of Perdana University School of Occupational Therapy; Senior Advocate Mr. Santhana Dass Savarinathan; Dr. Sangeeta Kaur; and Mr. Chandra Kannan. Their expertise and insights were crucial in shaping this work. I am grateful to the faculty members of Perdana University School of Occupational Therapy for providing a stimulating academic environment that facilitated my growth as a researcher and scholar. Special thanks to the participants of this study whose contributions were essential to this research. Their willingness to share their opinions and experiences enriched this study. Finally, I want to acknowledge the unwavering support of my friends and especially my family, whose encouragement and belief in my abilities have been a constant motivation throughout my research journey. In conclusion, I am humbled and thankful for the support and guidance I received.

CONFLICT OF INTEREST

There is no conflict of interest.

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