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ANZAPPL Sydney October 2008
Risk v. Rights Conference 1

Expert Evidence: Is a Department of Corrections Psychologist really an expert witness or a hired gun of the Department?



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- Can experts give evidence if they are effectively a party to the proceedings?
- Here the expert Dr Wales gave evidence both as to the facts in issue which he was personally being challenged about, and also evidence as to the correct system.



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- Dr Wales supervised a unqualified psychologist who carried a PCL-SV report
- No consent was obtained according to the interview notes
- The quality of the supervision was questionable
- Other test not normed for New Zealand at the time



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- Dr Wales affidavit was entitled
- **AFFIDAVIT OF DAVID SINCLAIR WALES ON BEHALF OF THE RESPONDENT IN OPPOSITION TO APPLICATION FOR JUDICIAL REVIEW**
- ? How can one oppose and be an expert - it is contrary to independence



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- Bizarrely the High Court Judge found

[5] Some of the issues on which I have allowed cross-examination do go to credit but I should make it plain that I am not interested in any suggestion that Dr Wales' evidence was doctored in any way by counsel: *Whitehouse v Jordan* [1981] 1 WLR 246; [1980] 1 All ER 267. I will assume that all of the affidavits in this case for both sides were prepared with the assistance of counsel, and there is no foundation for any suggestion of impropriety.

- Opening a challenge not just to the independence of the psychologist but also behaviour of:

- i. The Attorney-General's Counsel;
- ii. The Court



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- Independence of the Court;
- The uncertain duty of the Expert Witness
 - Mitchell and Mandhane, 42 Alberta Law Review, 2005, 435
 - Other Literature
 - No discussion of independence of the Court
 - See See *Bonisch v Austria*, 6 May 1985, Series A no. 92, (1987) 9 ECRR 191; 1986EuGRZ 127; (1986) Rev trim dr h 127. and *Mantovanelli v France*. ECHR, 18 March 1997