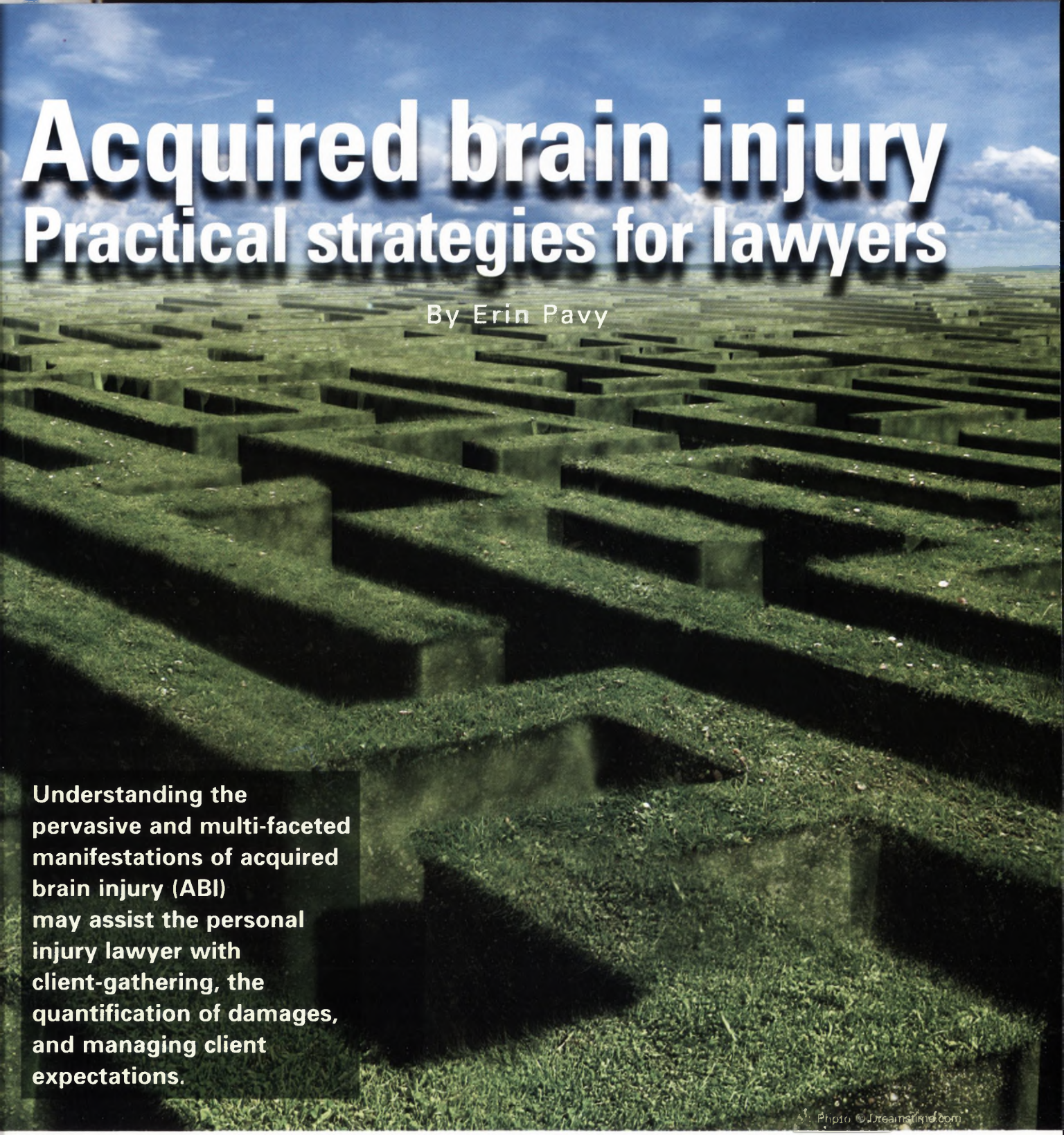
# Acquired brain injury
## Practical strategies for lawyers

By Erin Pavy



**Understanding the pervasive and multi-faceted manifestations of acquired brain injury (ABI) may assist the personal injury lawyer with client-gathering, the quantification of damages, and managing client expectations.**

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By the time lawyer contact occurs, most people with ABI have had a hospital inpatient stay, often in intensive care, accompanied by an array of contacts with neurologists, neurosurgeons and other medical and allied health professionals. A lawyer will be better positioned to assist the client if they are familiar with what the client and their family has experienced, and what is facing them.

In common law jurisdictions, care and future economic loss are usually the two largest heads of damage. 'He looks ok, so he must be ok', is a common misconception about ABI victims. Even 'mild' brain injuries can have catastrophic effects on employability, especially given the increase in the intellectual demands of most employment (that is, the ability to multi-task, learn and adapt to new technologies, undertake upskilling training and generally work under more intellectual pressure). The true impact of ABI is often brought into sharp focus when a client attempts to return to >>

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the workplace. Lawyers who understand the effects of ABI and how these manifest when clients attempt to sustain a return to work and their pre-injury lifestyles will be better able to determine and cost the appropriate care model, and quantify any economic loss.

The lawyer must also manage the client, their litigation guardian and family through the claims process. The setting of expectations for a legal process is not always easy, even for clients with full cognition. Explaining the legal process to most people with ABI is inherently challenging, due to their cognitive deficits.

This article provides information regarding the causes and common symptoms of ABI, and practical hints on how to manage the client and their family in an occupational therapist context. These strategies can be applied and adapted to the legal process.

## CAUSES OF ABI

ABI can be caused by an event that results in an impact to the head or rapid movement of the head (for example, motor vehicle accident, fall, assault), stroke, brain tumour, infection and diseases (for example, meningitis), anoxia/ hypoxia (near drowning, reduced oxygen intake, massive bleeding), alcohol and/or drug abuse, poisoning (for example, with neurotoxins) or neurological disorders, such as dementia, Parkinson's disease and multiple sclerosis.[1]

## ABI SYMPTOMS

Symptoms following an ABI can include cognitive, psychological and physical symptoms.

Common cognitive symptoms include:

- decreased concentration and attention (highly distractible);
- short- and long-term memory difficulties;
- communication problems (for example, aphasia, dysphasia);
- language difficulties (for example, word-finding and comprehension difficulties);
- difficulties with planning and organisation;
- reading and writing difficulties;
- poor reasoning and judgement;
- reduced insight into capabilities and symptoms, unrealistic expectations and poor appreciation of the impact of their own behaviour;
- slow to process information (that is, thinking);
- mental inflexibility/concrete thinking, rigidity;
- impaired ability to learn new tasks;
- difficulty initiating tasks (adynamia);
- disinhibition, impulsivity;
- reduced ability to multi-task;
- failure to learn from mistakes; and
- reduced problem-solving skills.

Common psychological symptoms include:

- emotional lability;
- irritability, aggression, poor anger control;
- anxiety;
- depression or low self-esteem;
- self-centredness; and
- grief and loss of sense of self and abilities.

Common physical symptoms include:

- headaches;
- vision impairment;
- hearing impairment, tinnitus;
- gait and balance dysfunction;
- giddiness/ dizziness;
- communication problems (that is, dysarthria);
- difficulty with swallowing (that is, dysphagia);
- paralysis;
- disturbed sleep patterns;
- decreased tolerance for noise;
- decreased co-ordination (dyspraxia, spasticity); and
- fatigue (lethargy) – as a direct symptom of ABI, or as a result of the individual needing to work harder (cognitively and / or physically) to complete daily tasks such as showering and dressing.[2]

This list highlights the complexity of ABI and why returning to the pre-injury home, lifestyle and workplace is usually challenging and sometimes impossible. A clear 'before and after' picture will enable future home, social and occupational options to be more accurately determined. Self-reporting is likely to be flawed due to insight, memory, cognition and psychological problems. Accordingly, interviewing siblings, parents, close friends and co-workers to obtain an understanding of how the client presented and functioned pre-injury, and how the symptoms are presently manifesting, is integral to developing a practical understanding of how the client has been affected, and therefore quantification of damages.

## COMMON STRATEGIES

Patience and empathy are essential when working with someone with ABI. Other strategies that can be adopted include:

- understand the client's full range of symptoms;
- ensure that proactive case management is implemented;
- involve support people (for example, family) who can assist the client to understand processes, attend appointments and organise documentation;
- liaise regularly with the family, case manager and allied health professionals to refine strategies;
- provide verbal and written information and allow the client an opportunity to record meetings;

- organise appointments in an environment where the client feels comfortable;
- provide concise regular progress reports to the client and support people involved (that is, family);
- provide a glossary of common terms and flowcharts illustrating the legal processes;
- formulate a basic written plan, summarising and breaking down tasks, identifying who is responsible for completing each task and the due date;
- supply information at a slow pace to allow time for processing;
- limit the amount of information provided at any one time by having short and concise meetings;
- minimise distractions (for example, close blinds in the room), and avoid rapid changes in topic;
- take regular breaks or breaks as required by the client;
- use simple terminology. Where more complex language is required, provide resources to assist the client's understanding (for example, a glossary of terms);
- ask the client to summarise the main points of the meeting. The client may seem to understand the conversation by adopting the appropriate body language, but this may be a strategy they have developed and is not necessarily an indication that they understand;
- allow the client time to respond, and avoid filling the gaps; and
- use an agenda. This should be visible during the meeting and accompanied by verbal prompts to assist the client to remain on track, especially if they are inclined to lose concentration and focus.

## Case management

Without intense and tailored rehabilitation, clients may reduce their activity and participation levels due to the symptoms of ABI, such as poor initiation, inability to problem-solve, organise or understand how to complete tasks.[3] Decreased activity increases the risk of secondary or additional social, cognitive, psychological and behavioural disabilities such as depression, anxiety and post-traumatic stress.[4] These secondary symptoms can interfere with a client's capacity to utilise coping strategies and their overall recovery.[5] Good case management should prevent any major decline in participation in daily tasks and rehabilitation.

Funded case management at the earliest opportunity can work by co-ordinating a multi-disciplinary team of medical and allied health professionals, as well as ensuring that:

- the right rehabilitation, strategies and adaptive equipment are in place;
- the support people involved gain some skills to manage symptoms long term, without which the client will experience sub-optimal outcomes; and
- the necessary care and/or respite care is implemented. Clients who are independent with daily tasks but are unable to return to work or lack the ability to engage in meaningful activity may still require care in the form of a support worker.

The timing for starting case management will be dictated partly by the medical and allied health professionals involved. However, the earlier case management is instigated, the better the outcomes are likely to be.

In the absence of case management, the family or other support people may be relied on heavily. Long term, this reliance can have a negative effect on everyone involved (that is, the client, family or other unpaid support people). Unpaid support people usually lack the skills and time required, and often become stressed and fatigued dealing with the client and the effects of the ABI. Having the appropriate services involved will provide the family with the best opportunity to gain essential skills and remain involved in the long-term management (as an adjunct to periodic or regular professional support and management).

The consequences of a lack of case management were shown in Barry's case. Barry's father resigned from work to assist Barry with rehabilitation, problem-solving, budgeting and engaging in positive daily activity. Barry's father completed this role for nine months and, in this time, he used his entire savings and did not contribute to his own superannuation. In addition, their relationship broke down, as his father was required to discipline his 28-year-old son. Early-funded case management, as well as a funded support worker, could have allowed Barry's father to continue working and maintain an age-appropriate relationship with his son.

Funded case management may also be required throughout an individual's lifespan as their circumstances >>

change. For example, clients who are independent with daily tasks (such as showering, dressing and community access) may not be able to organise and complete the tasks associated with relocating home. Even if the client has support people (friends and family) located close by, they may not be in a position to assist the client with all aspects of finding a new home and moving, and funded case management may be required.

Understanding the impact of ABI on clients attempting a return to work is vital when determining and costing appropriate care models and quantifying economic loss.

## STRATEGIES FOR SPECIFIC SYMPTOMS

### Challenging behaviour

Challenging behaviour can be defined as behaviour 'that causes stress for the person with the brain injury and/or their carers'.[6] Examples include screaming, yelling, swearing, sexually inappropriate comments and actions, violent behaviour, throwing things, making demands or threats, repetitive or inappropriate comments and/or actions, paranoid behaviour, dangerous behaviour (for example, self-harm), poor initiation or avoidance of task and situations.[7]

People who present with challenging behaviour will test the patience, understanding and tolerance of those around them, lawyers included. Challenging behaviour can stem from a learned response and/or the inability to control their behaviour as a result of the ABI.[8] An important factor in successful rehabilitation is how others respond to the behaviour.[9]

When working with a client who presents with challenging behaviour:

- maintain an emphasis on the behaviour, rather than the person;
- don't take the behaviour personally; and
- determine the reason for the behaviour; the client may have a valid point. Clients will often use whatever communication tool they have available (for example, act out physically by kicking or hitting people and/or objects because of an inability to speak).

Left unaddressed, challenging behaviour can escalate and cause the client to become even more isolated. Case management can facilitate the development of strategies – in the form of a behavioural management plan – to assist people to deal with the behaviour positively. In some instances, several key parties (carers and family members) will need to be trained by a multi-disciplinary team to use the plan. The costs associated with this type of program vary considerably, but a plan may cost more than $5,000 to establish and implement. The efficacy of such plans is reduced without regular monitoring and adjustment.

### Reduced insight

A lack of insight may make it difficult for the client to be a willing participant in medical appointments and assessments. If a client is unwilling to attend a neuropsychologist assessment, as they don't believe they have an injury, a lawyer can explain that it is essential for their legal case to attend the appointment, even if they don't believe the results. Litigation guardians have a key role in managing these issues.

### Reduced motivation

An individual may experience diminished or fluctuating interest in other people (friends and family), daily tasks, rehabilitation (for example, physiotherapy exercises) and vocational pursuits. Problems can occur in maintaining interest levels, whereby tasks are left incomplete and goals are not pursued. Such motivational deficits can present a major barrier to rehabilitation. However, this does not mean that the client is a 'malingerer'.

Case management is essential to develop achievable goals and assist the client to problem-solve and initiate tasks. For the lawyer, it means setting achievable goals (for example, the number of appointments the firm may book for the client in a week).

### Anger

Anger can be a reflection of the client's personality. But anger and/or aggression may also reflect skills lost through injury to manage their emotions, or frustration caused by their inability to complete daily tasks.

Understanding and avoiding the triggers that cause anger is the simplest strategy. If the trigger is an issue that needs to be addressed, ensure that the appropriate supports (for example, carer or family member) are in place to assist you and the client. In addition, meet the client in an environment where they are comfortable.

If a client becomes agitated or aggressive during a meeting, your aim is usually to assist the person to feel more comfortable and less threatened. This can be done by adopting non-threatening body language, and by lowering the volume of your voice and speed of speech.

### Drug and alcohol use

'Individuals who previously used alcohol and drugs as a strategy for coping with stress or during social interaction are likely to return to using this strategy following the injury to cope with stress and to maintain social relationships'.[10] Drugs and alcohol can be used as a means of coping with the enormous grief, stress and social isolation that can occur post-injury.[11] An increase in use should not be attributed solely to choices that the person made prior to the injury. Brain injuries affect a person's ability to make 'good' decisions.

Alcohol and substance use that may have had minimal effect on social and occupational functioning pre-injury can be magnified by ABI. A case manager can facilitate a co-ordinated response.

### Disinhibition

If this behaviour is present, the client may use inappropriate language, ask inappropriate questions or act inappropriately. There is a risk that a person presenting with this behaviour may become involved in the criminal justice system as a result of their inability to control certain behaviours.

Avoiding triggers, such as certain topics or meeting the client alone, are usually the best strategies. If the client is engaging in behaviour you consider to be inappropriate (for example, swearing) explain to them that what they are saying/doing is making you feel uncomfortable. Alternatively, a carer may be funded to be present during social outings and meetings as part of a behavioural management plan; this can be facilitated by a case manager.

### Impulsivity

Where a client is making decisions or acting impulsively (for example, instructing you to settle, as they have had enough of the legal process), encourage them to think about the personal and financial consequences. It is likely that the client has not, or does not have, the cognitive ability to think through the situation in its entirety.

Clients who display impulsive behaviour may contact you several times per day or week. Organise regular meetings (that is, weekly or monthly meetings scheduled on the same day and at the same time) rather than responding to every call. A simple message can be given by all parties (the lawyer and administrative staff), 'thanks for the call, Ben; please write down the issue and you can raise it at your weekly meeting', saving everyone time and encouraging the client to organise their thoughts.

### Psychological

Development of secondary psychological problems (for example, depression and anxiety) can occur during the period when the client returns home and starts to understand and come to terms with their 'new self'. Appropriate health professionals, such as a psychologist, can help the client to prepare for the transition, before symptoms develop.

If the client is experiencing psychological symptoms, the following can assist the lawyer:

- Have an understanding of the family dynamics, demographics and external influences;
- Help prepare clients for potentially stressful situations (for example, conferences);
- Set clear boundaries and expectations. A client may become close to their lawyer and look to them for advice or counselling related to issues outside of the legal matter. It is important that the lawyer direct the client to the appropriately qualified health professional (for example, psychologist or case manager).

### SUMMARY

Most people with ABI exhibit at least a couple of the symptoms from each of the categories listed above, under the heading 'ABI symptoms'. When correlated with an understanding of the physical and intellectual demands of a home environment, these co-existent symptoms will dictate the optimal care model and its costs.

For those clients for whom a return to the workforce is theoretically possible, lawyers, with the assistance of allied health professionals with ABI experience, can have a real world understanding of the profound and often insurmountable effects on employability of merely one symptom from each of the classes above. ■

**Notes:** **1** Brain Injury Association Queensland Inc, *Surviving Brain Injury*, Australian edn, 2002. **2** For adynamia, emotional lability, disarthria, dysphagia and dyspraxia, see http:/www.health.qld.gov.au/abios/asp/glossary.asp, © The State of Queensland, 2009. **3** '…a lack of brain stimulation, such as the absence of rehabilitation opportunities may prevent experience-dependent recovery'. BIAQ, p35. **4** *Ibid*, p35. **5** *Ibid*. **6** *Ibid*, p156. **7** *Ibid*, p157. **8** *Ibid*, p156. **9** *Ibid*, p157. **10** *Ibid*, '…as a means of coping with the enormous grief, stress and social isolation', p113. **11** *Ibid*, p113.

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