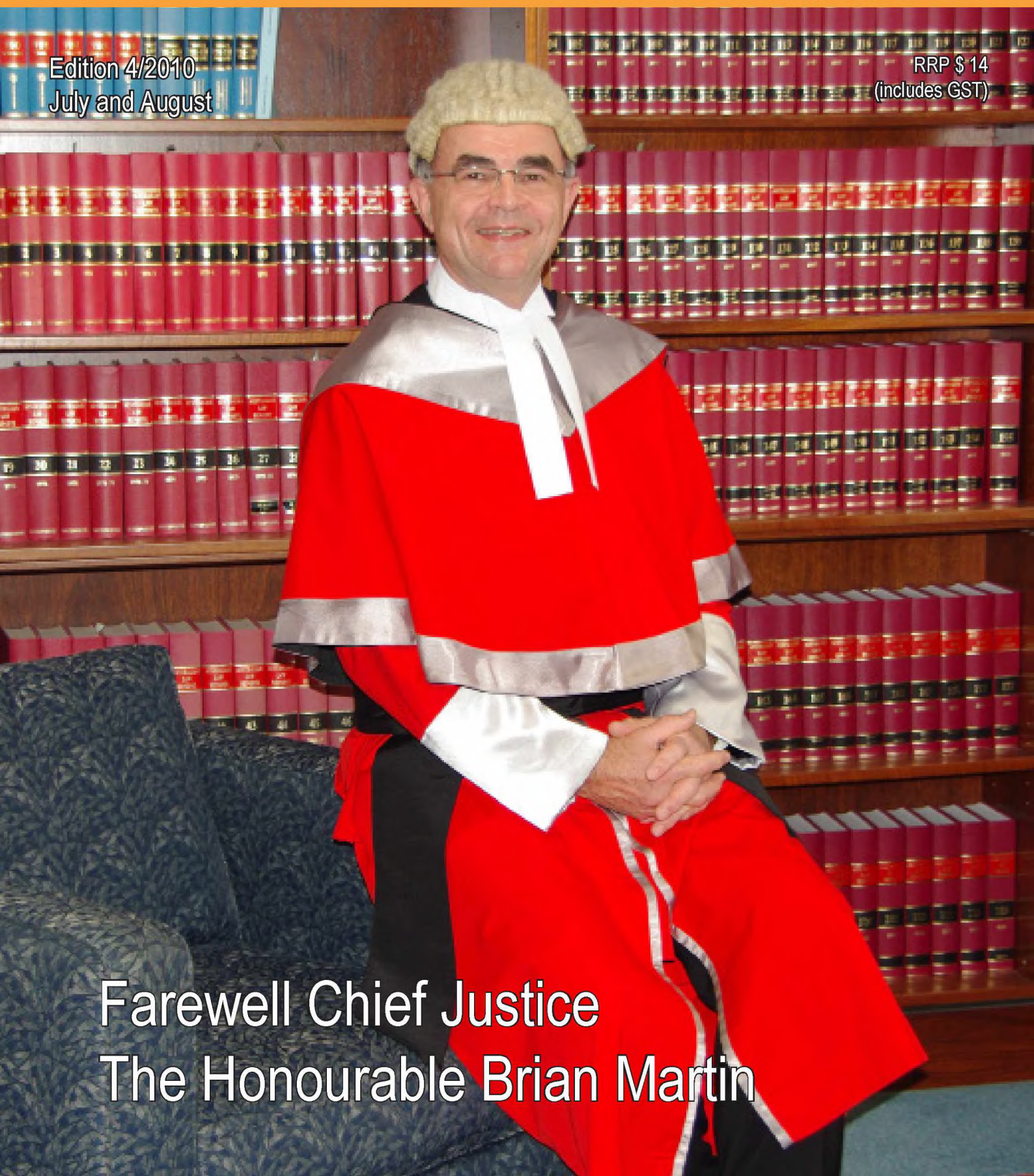


BALANCE

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Farewell Chief Justice
The Honourable Brian Martin

Where have all the lawyers gone? Far, far, far, away!

Matthew Storey,
President,
Law Society Northern Territory



This edition's column is somewhat introspective in that I want to discuss two related matters that impact on us all as a profession. Ultimately they also impact on the community we serve as a profession. The two matters are lawyer retention and depression in the profession. I say the matters are related, but this is really an intuitive assertion on my part.

I am not aware of any research showing a direct connection between the identified crisis in lawyer retention rates and the also identified high rates of anxiety and depression amongst the legal profession. However, causality between high depression rates and low retention rates is the thesis of this column. I will start by examining some of the statistics relating to retention before looking at the issue of depression.

Statistical Snapshot

Readers may recall in the last edition's column I referred to research conducted by LCA Recruitment and Retention Working Group which commissioned a nationwide survey of legal practitioners in rural,

regional and remote areas in 2009. There was a 24% response rate (1185 responses) to the survey.¹ Some of the report's findings were as follows.²

- Overall, 43% of principals surveyed indicated that their practice currently does not have enough lawyers to serve their client base.
- Sole practitioners made up 46% of all responses to the survey. Of this group, 30% have been practising in RRR areas for more than 21 years and almost 36% of these practitioners do not intend to be practising law in the next five years.
- Overall, 42% of the legal practitioners who responded to the survey do not intend to practise law in five years' time.
- Principals cited succession planning as their biggest concern (71%), followed by concerns about attracting additional lawyers to the firm (58%) and about attracting lawyers to replace departures (51%).
- Of the younger lawyers

surveyed (20-29 years), 30% indicated that they only intended to practise in their area for less than two years.

For this group, remuneration is also extremely important, with 25% indicating that they would leave the area for better pay.

Further, 28% of this younger age group would leave their current firms to join a city based firm and 15% would leave to start a new career.

Following the release of this report the Law Society Executive had a statistical snapshot of our members prepared. I found the results fascinating. They are reproduced in the tables opposite.

The statistical snapshot confirms much about what I had always presumed about the composition of the profession in the Territory but also provides a number of new insights. Some of the issues that struck me were as follows:

- Nearly 20% of the profession practises outside of Darwin. Although the snapshot doesn't go to this detail, I am aware that all but 15 or so of the non-Darwin practitioners are in Alice Springs. The "remote" (i.e. non Darwin) figure is much higher than I had imagined.
- Women represent 49% of the profession overall and they represent 42% of the remote profession. The gender balance is roughly similar between Darwin and remote practitioners.

“Overall, 42% of the legal practitioners who responded to the survey do not intend to practise law in five years time.”



Law Society Northern Territory Summary of Membership Data as at December 2009

Total LSNT Membership 489

Membership by Region

Darwin		Remote		Total
394	81%	95	19%	489

Membership by Gender and Region

Women						Men					
Darwin		Remote		Total		Darwin		Remote		Total	
199	41%	40	8%	239	49%	195	40%	55	11%	250	51%

Members by Years since Admission

	Women						Men						Combined	
	Darwin	%*	Remote	%*	Total	%*	Darwin	%*	Remote	%*	Total	%*		%
20+	23	21%	1	1%	24	22%	71	64%	16	14%	87	78%	11	23%
10 - 20	46	39%	10	8%	56	47%	50	42%	12	10%	62	53%	118	24%
5 - 10	57%	52%	9	8%	66	61%	35	32%	8	7%	43	39%	109	22%
< 5	70	49%	18	13%	88	62%	38	27%	17	12%	55	38%	143	29%
No PC held	3	38%	2	25%	5	63%	1	13%	2	25%	3	38%	8	2%
Total	199	41%	40	8%	239	49%	195	40%	55	11%	250	51%	489	

* % is of total members in that category

Members by Age

	Women						Men						Combined	
	Darwin	%*	Remote	%*	Total	%*	Darwin	%*	Remote	%*	Total	%*		%
51+	32	22%	4	3%	36	25%	82	57%	25	17%	107	75%	143	29%
40 - 50	39	39%	9	9%	48	48%	46	46%	7	7%	53	52%	101	21%
30 - 40	70	49%	14	10%	84	58%	45	31%	15	10%	60	42%	144	29%
< 30	58	57%	13	13%	71	70%	22	22%	8	8%	30	30%	101	21%
Total	199	41%	40	8%	239	49%	195	40%	55	11%	250	51%	489	

* % is of total members in that category

Members by Practising Certificate

	Women						Men						Combined	
	Darwin	%*	Remote	%*	Total	%*	Darwin	%*	Remote	%*	Total	%*		%
U	33	22%	8	3%	41	35%	60	52%	14	12%	74	64%	115	24%
RBS	149	39%	30	9%	179	48%	100	32%	35	11%	135	43%	314	64%
RCL	11	49%	2	10%	13	58%	6	29%	2	10%	8	38%	21	4%
B	6	57%	0	13%	6	70%	29	74%	4	0%	33	85%	39	8%
Total	199	41%	40	8%	239	49%	195	40%	55	11%	250	51%	489	

* % is of total members in that category



If one assumes that women are returning to the workforce, then one must also assume that they are not returning to the law.



- The “spread” of lawyers by “years since admission” (“pa”) and “age of practitioners” is largely even. This said, obviously the pa classifications of “<5”, “5 – 10”, “10 – 20” and “20+” are not of equal time. If you made classes of an equal 10 years by collapsing “<5” and “5 -10” into a single class and split “20+” into “20-30” and “30-40” (and presumed an even split to create these last two classes - which you shouldn’t) you see the following:
- The “post admission” attrition becomes more pronounced as there is a gender based analysis. While men and women make up the profession in fairly equal numbers overall (51%:49%) women make up 70% of lawyers under 30 yo (63% of the <5 years pa lawyers) and yet only 25% of the lawyers over 50 yo (22% of the 20+ pa lawyers).
- The demise of women in the law develops over time. In the 30-40 yo class women constitute 58% of the cohort; 48% of the 40-50 yo cohort; and, as noted above 25% of the 50 yo+ cohort.
- Not (necessarily) related to the attrition phenomenon is the fact that women hold only 35% of the unrestricted practising certificates.

0-10	: 51%
10-20	: 24%
20-30	: 12%
30-40	: 11%

A pronounced “post admission” attrition becomes more obvious.

- In numeric terms the attrition phenomenon is more obvious. Between <5 pa and 5-10 pa we lose 34 lawyers (149 down to 109). Combining these two classes then from 0-10 years pa and 10-20 years pa we go from 252 lawyers to 118 then down to (an imputed) 56 at 20-30 years pa.

Focussing on attrition; at first blush reaction may be “so what?” What is surprising about the fact that we go from 252 lawyers at 0-10 years pa to 118 at 10-20 years pa and then down to (an imputed) 56 at 20-30 years pa. Isn’t this normal?

A law firm is a pyramid: for every partner there will be “x” senior associates, “y” associates and “z” employed solicitors: $x < y < z$. Yet if

we stop and think about it we are saying it is “normal” that law will not be a career for one out of five people who commence practice.

In my first law lecture Professor Aughterson did the old “look to the left, look to the right, the people next to you will not make it to graduation” (just by the way the 66% attrition rate of commencing law students is still pretty accurate on a national basis).

But what we are saying is that if we take five (of one in three) who graduate and commence practice, three of them will have left practice by ten years later and four of them after 20 years.

Attrition rates like this may be “normal” but the question I want to ask is “why?” What happens to those of our colleagues we lose? Australian adult mortality rates are not such as to explain the issue. These of our colleagues are choosing to leave the law and, as I say, the question is why?

Of course one factor that springs immediately to mind and in part explains the gender imbalance is maternity leave. Yet this only explains the *ongoing* reduction in women practising law to the extent



Similarly the reduction in overall practitioner numbers indicates either a reduction in workforce participation rates commencing when practitioners turn 40, or that practitioners are not leaving the workforce but rather are simply leaving the law.





that women do not return to the workforce after having had children. If one assumes that women are returning to the workforce, then one must also assume that they are not returning to the law.

Similarly the reduction in overall practitioner numbers indicates either a reduction in workforce participation rates commencing when practitioners turn 40, or that practitioners are not leaving the workforce but rather are simply leaving the law. The latter seems to me far more likely and again the question is "why?" It is in this context that I want to consider the issue of depression and anxiety in the profession.

Anxiety and Depression

I have recently viewed a video entitled "*resilience@ law*" and produced by an organisation with the same name. The video discusses anxiety and depression in the legal profession primarily through interviews with practitioners who have suffered from depression, overcame the condition and continued to practice. In addition to these personal perspectives the

video provides some interesting data:

- Depression is an illness "like any other" and can be treated and overcome as such.
- Lawyers have nearly twice the incidence of depression to that experienced by the general community.
- Lawyers have the highest incidence of depression of all professions. The 2007 Bowen Consulting Annual Professions Survey found that over 14% of respondents in the law reported experiencing moderate to severe depressive symptoms. The next highest was patent attorneys with 13%. Accountants were 10%; engineers 8% and insurance professionals 6%.
- Anxiety is essentially a fear based emotional response that proceeds to a point where it causes dysfunction. The victim can develop anxiety caused by the symptoms of anxiety itself fearing they have some form of disease.
- Depression is a mood disorder; it causes a mood to be "down,

flat, blue". In its more advanced forms the victim feels a sense of hopelessness, whereas in a lesser form it is akin to a severe sadness. A persistent sense of hopelessness can often lead to suicidal tendencies.

- The two conditions can exist independently although a persistent anxiety will commonly lead to a depression.
- Depression will often advance in three stages. In the first stage there will be a "warning stage" often characterised by some palpitations, sweatiness, loss of concentration, some sleep disturbances. Often these symptoms are ignored and the condition will progress to the next stage where the body reacts by increasing blood pressure, pulse rate and blood sugars. This can lead to emotional and physical ill health. As progression of these symptoms can lead to a sense of hopelessness and helplessness that is depression.

In the interviews practitioners discuss how lawyers are "trained" to cope with stress (I think this is questionable actually); that this is

the nature of the industry and so an inability to "cope" is often perceived as an inability to "lawyer".

To this Dr Ian Chung a psychiatrist with Lawcare responds:

"There is this misguided sense of pride that they are somehow lesser if they have something wrong with them that somehow this means they are not strong enough - they are weak. Of course this is incorrect. True strength is when one can look at oneself and recognise that you are not travelling so well and engage with some one to do something about it."

Of course there is truth in both these perspectives. It is accurate (if unfortunate) to suggest that an inability to "cope" is seen in our profession (and society more generally) as a weakness; in a profession where stress is in the nature of the trade as a professional inability. So too is Dr Chung accurate in suggesting that a good professional will recognise when

they need assistance and take steps in this regard.

In the context of attempting to reduce attrition in the profession though the following comment from one of the interviewed solicitors, Jodie Sparrow, resonated with me:

"If law firms take people being depressed seriously and appreciate their staff as people and not as someone that is going to leave in two years then it would be better off for all concerned."

The attrition rates in our local profession and the looming crisis in the numbers of legal practitioners in rural, regional and remote practices suggests that some steps need to be taken to ensure the ongoing viability of our profession. I am not suggesting that the incidence of depression and taking measures to remedy this is a panacea to these issues, but they must surely form a part of the solution. As Ms Sparrow notes we must learn to see ourselves as "people and not as someone that is going to leave

in two years" or else that is what will happen.

By way of postscript I want to also note that NT Young Lawyers is in the process of arranging a CPD on depression in the profession and plan to use the "*resilience@law*" video as the major learning resource. Also, through arrangement with the Law Society, the Employee Assistance Service offers free, confidential, counselling to practitioners and their families. They can be contacted on (free call) 1800 193 123. ●

Footnotes:

1. The survey report is available at: <http://www.lawcouncil.asn.au/initiatives/rrr.cfm>.
2. Reproduced from *Recruitment and Retention of Legal Practitioners to Rural, Regional and Remote Areas Strategy: Discussion Paper*, Law Council of Australia, September 2009, p 8. Accessed at http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uid=0D46B351-1E4F-17FA-D28E-29B907CBACAB&siteName=lca on 20 October 2010.



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