

Cumulative Trauma and Stress as a Judicial Officer

Presentation to Queensland Magistrates

25 March 2021

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1. Good afternoon judicial colleagues and friends. I thank the Chief Magistrate, Judge Terry Gardiner, for the invitation to speak to you today on this important topic, dealing with cumulative trauma and stress as a judicial officer, and thank you for attending, whether in person or virtually.
2. I also acknowledge with respect the first and traditional owners of this land, and pay my respects to their Elders, those who have spoken for this land in the past and who do so today.
3. What is meant by “**cumulative trauma and stress**”? There is a useful description of the distinction between “trauma” and “stress” in a very recent article published by the Judicial Commission of NSW, in the Judicial Officers’ Bulletin from February 2021.

“**Trauma**” is used to indicate the result of a deeply distressing event that shocks the person and is not processed in the way other life events are processed. Trauma events might include the experience of a threat; vilification (for example, by the media, or negative references of a personal kind from a higher court) and vicarious trauma.

“**Stress**” refers to the impact of ongoing demands in the ordinary course of a person’s life. Stressful events are said to include a large workload, unfair allocation of work, poor administrative support, legal or other constraints on determinations, public expectations and negative public comment on the judiciary.

“Cumulative” trauma and stress I take to refer to the accumulation, over time, of the deleterious effects of all of these things.

4. Why is it an important topic? Because:

“Judicial officers are the pinnacle of the legal profession, protectors of the rule of law, and the third arm of government, and as such their occupational wellbeing and sustainability is a vital community concern”.¹

and

“As senior members of a stress-prone profession, managing workloads bordering on the oppressive, in the context of professional isolation, intense scrutiny and often highly traumatic material, there is good reason

¹ Carly Schrever, “Australia’s First Research Measuring Judicial Stress and Wellbeing: A Preview of the Findings” (2018) 92 ALJ 855 at 862.

to expect that judicial officers are at particular risk of work-related stress. Given the impact of judicial decisions on people's lives, and the pivotal role they play in our democratic system, courts arguably have a duty, not only to individual judges, but to the community more generally, to investigate and promote judicial wellbeing."²

5. Even more significantly, it is an important topic because we know that tragically there are judicial officers who have felt so bereft and desperate as a consequence of trauma and stress that they have taken their lives.³
6. In this presentation, I propose to begin by outlining the key findings from both the ground breaking research in relation to judicial stress and wellbeing carried out by Carly Schrever, from Victoria; as well as a more recent University of New South Wales judicial traumatic stress study; and then turn to some personal reflections on the topic, hopefully leaving time for questions or discussion at the end.
7. Although judicial stress and wellbeing has been a topic on the radar for many years,⁴ somewhat surprisingly it did not become the focus of targeted research until **Carly Schrever's work**, which is **the first empirical research measuring judicial stress and wellbeing amongst the Australian judiciary**.
8. As many of you would know, Carly Schrever is a psychologist and lawyer, who now holds the role of "Judicial Wellbeing Officer" with the Judicial College of Victoria. She regularly presents on this topic at judicial education conferences. I understand she last spoke on the topic of judicial wellness to Queensland Magistrates in March 2017.
9. Schrever's research study involved five courts, from summary to appellate level. 152 judicial officers participated in a survey investigating the nature, prevalence and severity of work-related judicial stress. Of those, 60 judicial officers participated in in-depth interviews exploring the perceived sources of stress and experiences of stress. The participants were a broadly representative sample of judicial officers across jurisdiction, age, gender and time served on their court.
10. A detailed description of the methodology adopted and the primary quantitative analysis of the survey data was the subject of a report published in the Journal of Judicial Administration in 2019.⁵ Further reports are anticipated: one will explore the jurisdictional and gender differences in judicial officers' stress and wellbeing levels; and

² Carly Schrever, "The Psychological Impact of Judicial Work: Australia's First Empirical Research Measuring Judicial Stress and Wellbeing" (2019) 28 JJA 141 at 142. References omitted.

³ See, for example, *Myall: Finding into death without inquest* [2020] VicCorC (COR 2018 1210): <https://www.austlii.edu.au/au/cases/vic/VicCorC/2020/26643.pdf>.

⁴ At least from the mid-1990's, when then Justice Michael Kirby delivered his somewhat controversial paper entitled "Judicial Stress: An Unmentionable Topic" (1995) 13 *Australian Bar Review* 101. Perhaps indicating the view then held by some other members of the judiciary of this "unmentionable topic", a commentary on Justice Kirby's paper, by Justice Jim Thomas of the Supreme Court of Queensland, was entitled "Get up off the ground": (1997) 71 ALJ 785.

⁵ Carly Schrever, "The Psychological Impact of Judicial Work: Australia's First Empirical Research Measuring Judicial Stress and Wellbeing" (2019) 28 JJA 141 (the **2019 report**).

another will discuss the qualitative findings regarding the sources and experiences of judicial stress arising from the 60 interviews with judicial officers and consider possible responses to judicial stress. I understand these second and third reports are expected to be published sometime this year.⁶

11. In the 2019 report, the primary analysis of the quantitative survey data is discussed by reference to six topics:
 - (a) Perceived Stress and Wellbeing;
 - (b) Non-specific Psychological Distress;
 - (c) Depressive and Anxious Symptoms;
 - (d) Burnout;
 - (e) Secondary Traumatic Stress; and
 - (f) Alcohol Use and Dependence.

12. Perceived Stress and Wellbeing: The report records that about one-eighth (or 12%) of respondents reported experiencing “stress” most or almost all of the time; while about three-quarters (76%) reported experiencing “personal wellbeing and satisfaction” most or almost all of the time. These were not mutually exclusive. That is, for those who reported experiencing stress most of the time, the majority of them also reported experiencing personal wellbeing and satisfaction most of the time.⁷

13. That is an interesting finding. It reflects a theme which emerges in relation to another of the findings I will come to shortly, in relation to “burnout”. But also a message that I think is important to keep steadily in mind in talking about this topic, which is to acknowledge the difficulty, but also the importance of the role that we perform, and the high level of personal and professional satisfaction that we can experience as a result of both. It may not always be enough to balance out the negative impacts of cumulative trauma and stress, but is an important part of the other side of the equation.

14. Another finding in this context was that a majority, about 62%, reported that they found judicial office a little or much less stressful than their pre-appointment career; although 20% said it was a little or much more stressful.⁸ That no doubt depends on what your pre-appointment career was, and how comfortable you are in your role as a judicial officer. As judicial officers, we are the scarlet pimpernels of the modern legal profession ... “generalists”. But very few of us were generalists in our pre-appointment roles. So there can be a huge learning curve in some areas of the law post-appointment. That is a significant cause of stress, I think, particularly in the early years.

15. Non-specific psychological distress: The report notes that the highest scoring items in this part of the survey were in relation to questions about feeling “tired out for no reason” (about 14% of judicial officers said they felt this way most of the time or all of the time)

⁶ See the Judicial Commission of NSW, *Judicial Officers’ Bulletin* (June 2019, volume 31, no. 5).

⁷ *Ibid*, n 4, at p 153.

⁸ *Ibid*, n 4, at p 154.

and feeling nervous (about 4.5 % reported feeling this way most of the time or all of the time).⁹

16. Overall, just over half (52.9%) of the judicial officers recorded some level of non-specific psychological distress in the moderate to very high ranges. Although that is said to be high in comparison with the general population, in terms of distress in the “very high” range, judicial officers’ rates are considerably lower than all levels of the profession and the general population.¹⁰
17. Depressive and Anxious Symptoms: The survey included questions drawing on items from the Depression, Anxiety and Stress Scale (DASS-21). According to Schrever, the three most strongly endorsed DASS-21 items were all from the “stress” section, with the following proportion of judicial officers reporting they experienced these things “a good part or most of the time” in the previous week: “I found it hard to wind down” (25%), “I found it difficult to relax” (15.3%) and “I found myself getting agitated” (8.6%).¹¹
18. It is well documented that lawyers and law students experience mental health problems at a much higher rate than the general population. However, in comparison to the statistics available for other lawyers, and the general population, in terms of moderate to extremely severe symptoms of depression, anxiety and stress, the survey results showed that judicial officers’ rates of such symptoms were dramatically lower than those reported for Australian lawyers, and lower also than those suggested for the Australian general population”.¹²
19. This finding is reflected in Schrever’s observation that the research reveals a judicial system under stress, but not in a mental health crisis.¹³
20. Burnout. “Burnout” is broadly defined as “a syndrome of emotional exhaustion, depersonalisation, and reduced personal accomplishment that can occur among individuals who work with people in some capacity”. It is distinguished from depression and anxiety in that those are global, pervading all aspects of a person’s life, whereas burnout is more distinctly linked to the working environment.¹⁴ In Schrever’s research, three elements relevant to “burnout” are identified: exhaustion (which refers to fatigue and depletion of emotional and mental energy); cynicism (which refers to an attitude of distance or indifference towards one’s work, including a loss of meaning); and professional efficacy (which refers to satisfaction with past and present accomplishments, and expectations of continued effectiveness at work). Burnout is associated with high exhaustion, high cynicism and low professional efficacy.¹⁵

⁹ Ibid, n 4, at p 154.

¹⁰ Ibid, n 4, at p 156.

¹¹ Ibid, n 4, at p 156.

¹² Ibid, n 4, at p 157.

¹³ Carly Schrever, “Australia’s First Research Measuring Judicial Stress and Wellbeing: A Preview of the Findings” (2018) 92 ALJ 855 at 862.

¹⁴ Ibid, n 4, at p 150.

¹⁵ Ibid, n 4, at p 151.

21. Among the items for which high scores indicate *higher* burnout (that is, exhaustion and cynicism), the three most strongly endorsed were:
- (a) “I feel used up at the end of the workday” (exhaustion), with 40% of judicial officers reporting they experience this feeling at least once a week;
 - (b) “I just want to do my work and not be bothered” (cynicism), with just over 38% of judicial officers indicating they experience this at least once a week; and
 - (c) “I feel emotionally drained by my work” (exhaustion), with just over 30% of judicial officers indicating they experience this at least once a week.¹⁶
22. Schrever observes that the survey results suggest that although judicial officers are vulnerable to burnout, our experiences of burnout symptoms are likely to be characterised by feelings of emotional depletion and loss of meaning; rather than feelings of incompetence and ineffectiveness.¹⁷
23. Secondary Traumatic Stress. Secondary Traumatic Stress (STS) is the psychological distress a person can experience as a result of exposure to information about the primary trauma suffered by another. This is sometimes referred to as vicarious trauma or compassion fatigue. The research utilised an instrument developed in the United States, for measuring secondary trauma reactions, called the Secondary Traumatic Stress Scale, which uses the diagnostic criteria for PTSD as its base. The STSS measures the frequency of intrusion, avoidance and arousal symptoms associated with the indirect exposure to traumatic events.¹⁸
24. Contrary to the popular belief that judicial officers enjoy a leisurely existence in ivory towers, courts are daily exposed to the very worst of human behaviour. We spend a lot of our professional life in the murky depths of the gutter, rather than the lofty heights of any tower. We have regular contact with distressing subject matter and distressed people. Schrever’s research looked at whether this exposure translates to psychological distress in the form of secondary trauma *reactions* among judicial officers.
25. An overwhelming majority (83.6%) of judicial officers endorsed at least one STS symptom in the week prior to completing the survey. Almost one-third (30.4%) scored in the moderate to severe ranges – the level at which formal assessment for post-traumatic stress disorder may be warranted.
26. Relevantly:
- (a) almost half, 48.7% of the respondents, reported having trouble sleeping (arousal);
 - (b) a little less, but still 46.7%, reported that “I thought about my court work when I didn’t intend to” (intrusion);

¹⁶ Ibid, n 4, at p 158.

¹⁷ Ibid, n 4, at p 164.

¹⁸ Ibid, n 4, at pp 151-152.

- (c) about 37% reported being easily annoyed (arousal);
 - (d) about 22% reported wanting to avoid working on certain types of cases or cases involving certain people (avoidance);
 - (e) a smaller proportion, but still considerable at about 18%, reported that it seemed they were reliving the traumas experienced by a person who came before them (intrusion); and
 - (f) just over 10% reported having disturbing dreams about the people that came before them (intrusion).¹⁹
27. Overall, the results indicated that about 62% of judicial officers were experiencing mild or higher levels of secondary traumatic stress, with 13% experiencing high or severe secondary traumatic stress. As Schrever observes, what can be taken from these results is that secondary traumatic stress “is a prominent feature of the occupational stress experienced by Australian judicial officers”.²⁰
28. Those figures are concerning, and really underscore the importance of:
- (a) normalising and demystifying this phenomena, to remove the stigma associated with speaking up about it in an emotionally honest way;
 - (b) being able to identify when this might be causing an issue – whether for ourselves or for a friend or colleague; and
 - (c) ensuring that we, collectively, are supported and encouraged to seek help when necessary, whether that is in the context of an in-house counselling service or from a private practitioner.
29. Alcohol Use and Dependence. The survey included a measure of alcohol use amongst the judiciary, given its prevalence within the legal profession. The survey revealed that just over 30% of judicial officers scored in the “moderate to high risk” for problematic use levels. This is similar to the rate of alcohol use among the legal profession generally (32%) but considerably higher than the general population (18%). As Schrever observes, it is not known whether the use of alcohol among judicial officers and lawyers is principally to manage stress or is a cultural feature of the profession.²¹
30. Following on from Schrever’s work, in **2019** a **study** was undertaken by two academic lawyers, a psychology academic and a clinical psychologist from the **University of New South Wales in relation to judicial officers’ work-based distress**. The study examined 205 judicial officers’ (mostly current, but also 11 retired) survey responses regarding the

¹⁹ Ibid, n 4, at p 159.

²⁰ Ibid, n 4, at p 164.

²¹ Ibid, n 5.

prevalence and impact of three kinds of traumatic stress: threat to the person, vicarious trauma and vilification.²²

31. In relation to each of these types of traumatic stress:
- (a) Threats – frighteningly, the report notes that 60.9% of respondents indicated they had been subject to one or more type of threat, including threats to kill or harm them, their family, or their children; as well as threats in the form of offensive language and gestures. The experience of threats was found to be more common for members of the Local Court than for the higher courts.
 - (b) Vicarious trauma – unsurprisingly, the most distressing material identified by respondents concerned evidence of violent or degrading offending, in particular sexual offending, against children. But other examples included sentencing proceedings, consequences flowing from a determination (such as bail, or a domestic violence order) and evidence of fatal injuries. Overall, 66% of respondents reported experiencing negative effects from exposure to evidence of this kind, with respondents from the Local Court once again more likely than those in higher courts to report experiencing negative effects from such exposure.
 - (c) Vilification – for the most part, this seems to refer to public criticism by the media including social media; although a not inconsiderable number of respondents identified such criticism occurring in court. Across all court levels, almost two-thirds (59%) of respondents reported experiencing some kind of vilification.
32. In terms of stress, the main stressors identified included large and/or unfairly allocated workload, poor administrative support, legal or other constraints on determinations, public expectation and negative public comment on the judiciary.
33. The authors of the report observe that their findings are broadly consistent with Schrever’s findings, in terms of the proportion of judicial officers reporting some degree of psychological distress (just over 50%) and the number of judicial officers presenting with symptoms of secondary traumatic stress warranting a PTSD assessment (about 30%).
34. A comprehensive study of the findings from the NSW study’s survey is under preparation for publication.
35. Returning to the Schrever work, although there is not yet available a detailed analysis of the interview data from the research study, in a shorter article published in 2018,²³ Schrever identified six key observations which emerged from the interview data, which are worthwhile mentioning here:

²² Jill Hunter, Richard Kemp, Kevin O’Sullivan and Prue Vines, “A fragile bastion: UNSW judicial traumatic stress study”, *Judicial Officers’ Bulletin* (Judicial Commission of NSW), February 2021, volume 33, no 1.

²³ Carly Schrever, “Australia’s First Research Measuring Judicial Stress and Wellbeing: A Preview of the Findings” (2018) 92 ALJ 855 at 860-862.

- First, workload is an issue for almost everybody: Workload was variously described as “punishing”, “horrendous” and “overwhelming”. Those in the summary jurisdictions spoke of “crushing daily lists” and the pace and intensity at which they have to work in order to discharge them. No doubt those are descriptions which resonate with you all.
- Second, the sources of judicial stress are increasing: They include the reduced respect for and faith in public institutions generally, of which the courts are but one casualty; increasingly critical and often ill-informed media coverage; the executive arm of government no longer defending and sometimes actively attacking the judiciary to score a political point; increased workload and case complexity; pace of legislative change; and the rise in numbers of self-represented parties.
- Third, stressors of “injustice” are felt most keenly. As Schrever observes, “[t]his may be the most significant, and perhaps unexpected, qualitative finding from the study. It does not refer to strict legal injustice, but rather the observation that judicial stress is at its worst when the demands of the job are accompanied by feelings of grievance or unfairness”.²⁴ Examples of this included critical media reports based on inaccurate reporting of the facts, or a lack of appreciation of the legal framework being applied; perceptions of inequity in work ethic and work distribution; and when hard work and innovation appear to go unrecognised or unrewarded.

Interestingly, Schrever says it was notable that when judicial officers were asked about the major sources of stress within the role, they generally did not discuss the *intrinsic* features of judicial work (eg the distressing content of the cases, or the challenges of decision-making). Rather they emphasised the organisational, structural and cultural sources of stress that are *extrinsic* to the task of judging, but nonetheless within the judicial working environment.

- Fourth, discussing stress and seeking support remains somewhat stigmatised: Schrever observes that there seems to be an enduring culture among judicial officers of denying stress and a reluctance to seek help, because of a perception of weakness, or concerns about confidentiality.
- Fifth, alongside experiences of stress, there is a deep sense of job satisfaction. Schrever records that many judicial officers spoke passionately of the sense of privilege and professional pride they feel in fulfilling an important social and democratic function, and the commitment they have to judicial process and the court system. She says “judicial officers know that their work is meaningful”. The intrinsic sources of stress within the judicial role – applying the law to complex or distressing factual scenarios, or managing the courtroom tensions in a challenging

²⁴

Ibid, at p 861.

case – are the very features of the role that make it meaningful. Judicial stress and judicial satisfaction are two sides of the one coin.

And finally, but I venture to say most importantly:

- Judicial officers sourcing the most enjoyment from the role, are those who prioritise their own wellbeing. In this regard, Schrever says that:

“A sizable minority of judicial officers spoke of consciously and deliberately putting in place practices and personal philosophies to maintain a healthy and balanced life on the Bench, and these are the people who spoke most enthusiastically about their judicial work. These included: taking regular leave, looking after their physical health, maintaining interests or friendships outside the law, and not hesitating to seek professional support during difficult or challenging periods. In some cases this commitment to wellbeing stemmed from an earlier personal crisis, and in all cases it was founded on a respect for the human dimension of judging and a recognition of its potential to impact wellbeing.”²⁵

36. Of note, one of the concluding comments made by Schrever in the 2019 report is that her present study focussed on the negative side of judicial wellbeing – judicial stress – but that the results provided an initial indication that personal wellbeing and satisfaction were prominent feelings alongside the stress of the role. As Schrever says:

“it is possible that the sources of fulfilment, accomplishment and purpose within judicial work compensate or offset for the sources of stress, providing a demanding but meaningful professional life”.²⁶

37. Although I’m sure most of us have dreamed of winning the Lotto and leaving all this behind, Schrever also alludes to another emerging theme from psychological research, which is that:

“meaning can be more integral to sustained wellbeing than ease or pleasure.”

So next time your Lotto numbers don’t come up, you can sustain yourself with that comforting thought.

38. With that summary of the recent research findings in mind, I turn to some **personal reflections** on the topic.

39. First, a confession. I wondered, when I began preparing this paper, if I was the right person to address you about this topic. We are all judicial officers, performing a similar role in the administration of justice, but the nature of the work that we do, and the circumstances in which we do it, can be quite different. I do not want to presume an

²⁵ Ibid, n 13 at p 862.

²⁶ Ibid, n 4, at p 167.

understanding, for example, of the burden of the oppressive and at times crushing court lists that you have to manage; nor to overlook the benefits, for example, of a slower pace of work, more time allowed in which to do the work, greater frequency of legal representation and the related benefit of some distance between the court as decision-maker and the people whose lives those decisions affect. I hope I have not done either of those things, in the reflections which follow.

40. **You are not alone:** The research findings reveal something comforting I think: you are not alone. If you are feeling stressed, distressed, tired, worn out, frustrated, sleep deprived, overwhelmed, cynical or resentful, you are not alone. Chances are, many of your colleagues are feeling the same way, or have recently or will soon. The reason I say it's comforting is that sometimes when you are feeling like that, you can feel alone, as though it is due to an inherent weakness or abnormality on your part. It's not. It's the job. The issue is what to do about it.
41. **Organisational responsibility:** As noted, Schrever's research revealed that the major source of stress for judicial officers was the organisational, structural and cultural sources of stress that are extrinsic to the task of judging, but part of the judicial working environment. There are two aspects to the take-home message from that – one is the importance of the leaders of our courts taking a proactive approach to the issue; the other is that we have to give those leaders the chance to do that – by speaking up when we need assistance.
42. **Emotional intelligence:** You may have read the speech given by Chief Justice Tom Bathurst, on the occasion of the Opening of the Law Term earlier this year, on the topic of Trust in the Judiciary.²⁷ Bathurst CJ identified three dimensions of trust in organisations: competence, integrity and benevolence. He said:

“Judges not only must be technically competent, but they must first and foremost be men and women of integrity with a deep appreciation of the needs and diversity of the community they serve. We promote trust in the judiciary when we as individual judges, and as an institution, are competent, uphold the highest standards of integrity and appreciate and respect difference”.

In that context, Bathurst CJ made some observations about merit and judicial appointment – that judicial officers should be appointed not merely on their technical ability, but also on their ability to inspire trust in the judiciary in the community. In terms of how judicial officers inspire trust, he noted that this might differ depending on the role and responsibilities of the judicial officer. So, for example, for a judicial officer in a trial court, as opposed to an appellate court, trust will be substantially based on so-called “soft skills”. As Bathurst CJ said:

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https://www.supremecourt.justice.nsw.gov.au/Documents/Publications/Speeches/2021%20Speeches/Bathurst_20210203.pdf

“These ‘soft skills’ are crucial to whether all individuals in the courtroom, defendants, victims or witnesses, feel as if they have had a ‘fair go’ and been treated with the respect they deserve. Take for example, a survivor of domestic violence giving evidence in criminal proceedings before a magistrate. At every stage an enormous amount of trust by the survivor is required. The survivor must first have trust in the police to report the violence. When the matter is brought before the courts, the survivor must trust that the magistrate will listen and deal with them sympathetically. The emotional intelligence and personal attributes of the judge is likely to foster trust in the judiciary more than their technical legal skills.”
[emphasis added]

43. Although a different topic, it occurred to me that these observations are relevant to the topic I am addressing today. It’s a bit like the airlines telling us to put our own oxygen masks on, before helping someone else. It goes against the grain a bit, especially when that someone else is your child, but it’s right of course. Unless you look after yourself, you cannot look after others.
44. In this context, but also more generally, I commend to you a book I recently read called “Judging and Emotion: A Socio-Legal Analysis”.²⁸ The concept of “emotion work” is referred to – with judging being one of the occupations identified as involving substantial amounts of emotional labour. The central argument of this work is that emotion and impartiality in judging and judicial work are not alternatives, or necessarily in conflict; rather emotion is integral to judicial work and in fact a significant resource – in terms of how we understand, experience, display, manage and deploy emotion as part of our everyday work.
45. **Workload:** The following reflections I group under the heading “workload” – acknowledging that workload is an issue for almost everybody:
- (a) Workload can be a cause of stress, anxiety and even depressive symptoms because of a combination of: experience, ability, quantity, complexity, subject-matter, time pressures, perceptions of unfairness, isolation and public glare.
 - (b) Reserved judgments, especially if they build up, are one of the most significant stressors in this job. What to do about this?
 - (i) First, whether you are recently appointed, or have been in the job for a while, I highly recommend doing a judgment writing course, as it is an excellent way to get better, and be more efficient, at writing judgments. There is also now a course designed to enhance skills in delivering oral judgments, which would also be an excellent thing to do.

²⁸ Sharyn Roach Anleu and Kathy Mack, “Judging and Emotion: A Socio-Legal Analysis” (Routledge, 2021).

- (ii) That leads to the next point – avoid reserving decisions if you don't have to. Plainly, if a point is complex, or there is a lot of evidence, or you are not sure what the answer is, you must take time to consider your decision. But if you know what the answer is, back yourself, and give the decision orally straight away – or even later that day or first thing the next morning.
 - (iii) Where you have to reserve a decision and write it: my approach, as simplistic as it sounds, is to get on with it straight away. Start writing the decision as soon as you can following a hearing (and even start during it). Don't put it off. If a particular judgment seems insurmountable, just pick a small part – the facts, or one issue – and work on that. All the small parts will add up in the end.
 - (iv) I also try to put into practice the advice from the judgment writing course that I did – which is to write plainly; get straight to the point; write for the parties – give them an answer, explain how you got there; record your findings and the principles you've applied; then move on. I think this approach makes for quicker decisions.
 - (v) Keep a “to do list” – which will ensure you don't forget about something, but also give yourself the satisfaction of crossing things off as they are completed. I am not sure what the practice is in your court, but it is also a good idea to keep the head of jurisdiction informed about your outstanding reserved judgments, both as a form of personal motivation, but also so that someone else is aware of your workload.
 - (vi) For what it may be worth, I have two post-it notes on my desk to motivate me when writing judgments:
 - “Perfect is good; done is better”, which comes from a very good friend and colleague – best advice ever; and
 - “The Ship Must Sail” – which comes from a judgment writing paper written by Justice Pat Keane (quoting one of his friends).
- (c) Distressing subject matter. We can see from the research findings that our exposure to the trauma of others, in the course of our work, is also a significant stressor. Something that I learned, when I was on the District Court, was the difference in terms of impact between reading about something, and actually seeing it. The particular example I have in mind was in relation to child exploitation material, and a case in which I had to sentence a person who had made such material, by creating videos of children, and then distributing them. Screen shots of those videos formed part of the material before the court on the sentence; in contrast to the written descriptions of content I had seen in other matters. I later learned, from a psychiatrist speaking at a conference, that there is a significant difference in terms of impact depending on the type of exposure that you have to the traumatic information.

I recall sitting on a panel at a District Court judges' conference a few years ago, when this topic came up. The former Chief Judge Kerry O'Brien was also on the panel. It was interesting, the distinction between our two perspectives – the Chief Judge's, as a very experienced Prosecutor prior to his appointment, and then over two decades on the court; and me, I think then about two years on the Court, with no previous criminal experience. Whereas I described lying awake for a few nights, not being able to get some distressing material out of my head; the former Chief Judge said that decades of experience gave him a kind of suit of armour. I'm sure many of you would say the same, based on your pre-appointment and post-appointment experience. But for those of you that feel affected by it, I think what I have found, upon self-analysis, is that:

- (i) there's nothing wrong with being affected by the trauma and suffering that we see in court – provided it does not impede our ability to discharge our duties impartially and dispassionately;

There is a reason why vicarious trauma, or secondary traumatic stress, are also called "compassion fatigue" – because in fact feeling compassion in the face of suffering is an appropriate human reaction.

- (ii) our training as lawyers does equip us to deal with what we see in court, and maintain objectivity – it is an inherent part of the skills and experience that you develop over time in the practice of the law;
 - (iii) most of the time, even if something stays with you for a few days, it passes as you move on to the next thing;
 - (iv) debriefing with a trusted colleague, or close family member, within the appropriate bounds of any confidentiality restrictions, is extremely helpful;
 - (v) but if you are struggling, it is essential that you speak up, because this is most definitely a problem better dealt with quickly, than neglected and left to fester. Speaking up may include telling your head of jurisdiction you need a break from a particular type of matter; or seeking some professional counselling.
- (d) Work load: when there's just too much of it. Again, it's important to speak up, rather than suffer in silence. Approach the head of jurisdiction, as it may be that there is something that can be done. Also, take offers of help when they are given. Many of us are too proud, or too perfectionist, or too something, to accept the help when offered. We think we should be capable of doing what has been allocated to us, and don't want to show what we perceive to be a weakness by letting someone else share the load. But it is not weak to do that. It is smart and sensible and responsible. It is also doing the right thing by the public who we serve. On the flipside, when you have capacity, offer to help a colleague out. Could I suggest that within your court, with judicial officers so spread out across the State, if you

notice a colleague struggling, even if you cannot help them out yourself, it may also be a good idea to let the head of jurisdiction know, so that something can be done about it at an organisational level.

- (e) Work load: perceptions of inequality, either in work distribution or work ethic. This is one of the stressors identified in Schrever's research, and I'm sure has been a topic of conversation, or at least internal thought, amongst many of you. My reflection on this is, simply: if you perceive someone else is not pulling their weight, rather than feeling resentful, and worrying yourself about it, given what the research findings reveal, consider whether they might be struggling in some way?

46. **Juxtaposition of isolation and intense public scrutiny.** Interestingly, isolation was not part of the six key findings mentioned as emerging from the interview data. But it is significant that we have to do our work in public and in isolation. In a blog interview I found online Schrever makes the point that:

“What is truly unique about judicial work is that it requires this complex, emotionally draining and high stakes work to be done both in public and in isolation. So, judges sit alone in the courtroom, and they make their decisions alone. However, the decision-making and the courtroom conduct is the subject of intense public and appellate scrutiny.”²⁹

This of course is true; but collegiality is alive and well amongst the judiciary, and even though we cannot delegate decision-making, we can talk to our colleagues about the legal issues we are struggling with; debrief about something particularly stressful and, importantly, share a laugh at times. Humour is a great helper.

In terms of media scrutiny, I always remember the advice which Chief Judge O'Brien gave me early on – that today's news is tomorrow's fish and chip wrapping (or it used to be anyway, before we got polystyrene packaging). That is sometimes easier said than done, especially when the reporting is inaccurate or, as in recent circumstances, unrelenting. The most helpful thing for me, when a decision I've made has been the subject of intense media scrutiny, has been the support of my colleagues – and being an ostrich.

However, apart from the strategy of ignoring it, I think courts do have a role to play in contributing to the knowledge and understanding that the community have of the work that goes on in the court and the decisions that are made. The way we conduct our courts, and ourselves in the courts, the explanations we give in *ex tempore* decisions, and the clarity of our written judgments all contribute to that. But beyond doing the best we can in those respects, there's not much we can do about inaccurate or sensationalised reports.

On the question of appellate scrutiny, I will be brief. It is uncomfortable, everyone finds it so. But “the first cut is the deepest”, as Cat Stevens (or Rod Stewart or Sheryl Crow)

²⁹ <https://www.sydneycriminallawyers.com.au/blog/no-longer-a-taboo-psychologist-carly-schrever-on-judicial-stress-and-wellbeing/>

would say – by which I mean the first time you are overturned on appeal is the worst, and it gets easier after that. And it’s something everyone in this job, other than judges of the High Court, has to deal with. It’s actually comforting if you think about it: the appellate process is a fundamental aspect of the fairness and efficiency of our legal system. It is also daily proof that there is rarely only one answer to a legal problem, and quite brilliant and reasonable minds can sometimes differ. Negative comments of a personal kind in appellate decisions are another thing altogether. Thankfully, I think that is uncommon. It should not happen.

47. **Direct engagement.** The enormous increase of self-representation in all courts is worthy of specific mention. More and more we have to engage directly with the people involved in the disputes or matters that come before the courts, rather than indirectly through a legal representative. This brings multiple challenges, including the emotional energy required to engage with the person concerned (who is likely to be in a high state of stress, possibly even distress) and also the increased difficulty and pressure on you as the judicial officer, because you cannot rely on a legal representative to draw the relevant legislation or authorities to your attention. Another dimension to this which is a cause of stress is the direct engagement you then have with the person(s) affected by your decision, in respect of which there is a much greater level of emotion work involved.
48. **What to do?** It is not stress per se that is problematic – but rather unmanaged stress that has the potential to be problematic. It is worthwhile remembering the last of the key points to emerge from Schrever’s survey data – that the judicial officers who are sourcing the most enjoyment from the role are those who prioritise their own wellbeing. We are all going to approach this differently, but for me the following are helpful:
- (a) Find a few close colleagues you can trust, to talk about an issue you are battling to solve or which is presenting as a “road-block”. This is not to delegate the decision-making responsibility; but it can be really useful to have a sounding board, the opportunity to articulate out loud what is floating around in your head.
 - (b) Talk about things that are troubling you – for example a difficult, upsetting sentence; an awful trial; or a problematic lawyer or litigant. We should all be encouraged to be emotionally honest with our colleagues, without fear of criticism or judgement. Compare Michael Kirby writing in 1995 on this “unmentionable” topic, and the response to that article, entitled “get up off the floor”. In 2021 we should be beyond that. Yes, you do have to put your big girl pants on and deal with it, but that does not mean you cannot talk to close colleagues about how uncomfortable they are, or that you wish the elastic would give a little. A problem shared is a problem halved, especially when you share it with someone who can understand and relate.
 - (c) More generally, speak up – let the leaders of the court know if you are having difficulties, either with workload or type of work or whatever it might be. If they don’t know, they can’t help you.
 - (d) Share a laugh with friends or colleagues.

- (e) Have other interests – so that you can, or have to, leave work behind. Mine are my children, a cause of stress in themselves, and I will need to find a hobby soon. But the point is, if you have something that makes you leave work behind – whatever it is – that is a good thing.
 - (f) Perhaps, become involved in other things within the court (for example, committees) or more broadly in relation to the judiciary. This can be really rewarding, and be a welcome break from the daily grind of our regular court work. But obviously you should pick and choose – if you’re feeling under the pump with court work, you don’t want to take on burdensome extra-curricular activities.
 - (g) All the usual advice: exercise (for me it’s walking and yoga), try to eat well, and don’t drink too much. If you walk with a colleague you can combine talking, debriefing, sharing, laughing, having an interest outside of work and exercise!
 - (h) Take your leave, regularly – whether for a break at home or a holiday away.
 - (i) Consider “e-mental health” resources. Visit headtohealth.gov.au for a comprehensive collection of digital mental health resources from trusted service providers. These are things you can do in your own time and space – including mindfulness and relaxation exercises.
 - (j) If you are struggling, don’t hesitate or wait too long, seek professional help as soon as you can. Many years ago, I attracted some attention as a fairly new barrister, standing up at a Bar Association conference and asking the panel of professional indemnity insurance representatives who were speaking – why was it that insurers penalise professionals who are proactive about their mental health, by denying them income protection cover? I did that because I had first-hand experience of that penalty. I had cause to seek professional help in my late teens and early 20s because of some challenges. I was then proactive, following up annually for a mental health check-up, even when I was otherwise fully recovered. When I came to the Bar, I had to disclose that in order to obtain insurance, and then was denied cover. It was not until much later that an exclusion for depression was made available. That did not concern me. I was concerned about not being covered for other health risks. The number of people who came to see me after that, quietly, without wanting to bring attention to themselves, was astounding. They were relieved that someone had stood up and said something. That experience reinforced to me how entrenched the negative stigma associated with mental health was; how damaging that was; and how important it was to be proactive and emotionally honest. So when I say “seek help, if you need it”, those are not empty words. You would do it if you broke your leg, or found a mysterious lump, so why not do it for what is probably your most precious resource, your mind?
49. For a useful collection of resources, go to:
<https://www.judicialcollege.vic.edu.au/resources/literature>.