



**SUPREME COURT
OF QUEENSLAND**

National Conference of Regulatory Officers 2022
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Thursday, 3 November 2022
Address

**Helen Bowskill
Chief Justice**

Good afternoon everyone. I begin by acknowledging the traditional owners and custodians of the land in and around Brisbane, the Turrbal and Jagera peoples, and pay my respects to their Elders, those who have spoken for this land in the past and who do so today. I also acknowledge all of you as distinguished guests.

My thanks to Queensland's Legal Services Commissioner, Megan Mahon for inviting me to speak with you today at this the National Conference of Regulatory Officers, which brings together representatives from statutory regulators, law societies, bar associations and admitting authorities involved in the regulation of the legal profession across Australia and New Zealand.

I note that the theme of this year's conference is "The Great Adaptation", with the focus on considering how you regulate and adapt in the ever evolving landscape within which legal services are delivered and consumed.

Change is scary – many of us resist it; fear it; avoid it. But sometimes it's essential. Sometimes, the things we resist turn out to be not as bad as we thought, and even very good.

Today I'm speaking to you about mental health and wellbeing within the legal profession. I've given a few presentations on this topic over the last 18 months – to the Queensland Magistrates, Crown Prosecutors, to QCAT members and adjudicators and recently members of the Bar Association. One of the researchers whose work I have drawn on is Ms Carly Schrever, a lawyer and psychologist who is close to finishing her PhD, in relation to stress and wellbeing amongst Australian judicial officers, but who also holds the position of Judicial Wellbeing Advisor with the Judicial College of Victoria.

She has lead the way in undertaking the first empirical and psychologically grounded research into the sources and nature of work-related stress among the Australian judiciary. Her work was focussed particularly in Victoria, but I'm pleased to say there is a national study commencing soon, which will be very significant.

In any event, one of the key pieces of information I have taken from one of the reports of Ms Shrever's research, published in 2021,¹ is the articulation of "basic psychological needs theory", which posits that human thriving is contingent upon the satisfaction of three basic psychological needs:

- **Autonomy**, which refers to our need to feel authentic, self-determining and volitional, as opposed to controlled, coerced or pressured;
- **Competence**, which refers to our need to feel capable, confident and effective in relation to achieving desired outcomes as opposed to inept, self-doubting or ill-equipped; and
- **Relatedness**, which refers to our need to experience intimacy and genuine connection with others, as opposed to suffering from social exclusion and isolation

One of the key findings in that 2021 report was that judicial officers' levels of stress are predicted by the extent to which their basic psychological needs of autonomy, competence and relatedness are satisfied within their working environment. In particular, relatedness was identified as crucial to judicial officer wellbeing. As Ms Schrever and her co-authors put it in the 2021 report:

"Just like lawyers, law students and, indeed, all human beings, judicial officers need authenticity, autonomy, close relationships and supportive leadership and administration in order to thrive... Those judicial officers who reported experiencing closer and more trusting relationships at work were measurably less stressed than the others, perhaps pointing to the commonly cited experience of professional isolation as a particular stressor of judicial office...".²

Let me bring this back to practising lawyers. In 2014, the Law Council of Australia published the National Attrition and Re-engagement Study (NARS), a report which detailed the findings of research carried out from 2012-2013 in the form of surveys and in-depth interviews with over 4000 respondents from the legal profession.³ Interestingly, having regard to these three "basic psychological needs", the top three elements of job satisfaction for male and female respondents in the NARS were:

¹ Carly Shrever, Carol Hubert & Tania Sourdin, *Where Stress Presides: Predictors and correlates of stress among Australian judges and magistrates* (2021) Psychiatry Psychology and Law, at p 5.

² Ibid, at p 24.

³ Law Council of Australia, *National Attrition and Re-engagement Study (NARS) Report* (February 2014).

- “the relationships I have with colleagues” (81% of female respondents and 77% of male respondents) – *relatedness*;
- “the level of independence and control I have over my work” (77% of female respondents and 80% of male respondents) – *autonomy*; and
- “the extent to which I am respected by my clients” (73% of female respondents and 76% of male respondents) – *competence*.

Conversely, the NARS report identified that, for both men and women, one of the significant drivers of dissatisfaction was long working hours and the resultant poor work-life balance.

If you think about it, change and adaptation have the potential to impact upon each of those basic psychological needs, and even all three. So it’s appropriate, I think, to combine your discussion, from various angles throughout this conference, about the Great Adaptation, with a discussion about mental health and wellbeing.

For today’s purposes, I was not going to go through a detailed summary of the research data. Instead, I will just highlight some of the most recent data. The figures are sometimes surprising, even shocking – but whatever the descriptor, they tell us, if we didn’t already know, that this is a significant problem.

Then having set the scene, in terms of the magnitude of the problem – which many of you would no doubt already be aware of – I thought I would bring it back to the matters that may be of particular concern and relevance to you. In that regard, I think there are two aspects:

- what happens when this impacts upon a practitioner, not only in terms of their wellbeing, but in terms of their capacity to do their job – their competence; and
- acknowledging how this might also affect you – either directly, in terms of workload and other stressors; or indirectly, in the form of vicarious trauma, as a result of perhaps having to deal with some highly distressed people.

This is a big topic – not able to be addressed in half an hour – but what I hope to achieve is to shine a light on the issue, continue to encourage dialogue about it, and in that way contribute to removing the stigma associated with mental health, so that hopefully we can improve the situation for the many lawyers who are suffering, sometimes quite severely. There is organisational responsibility required. And it is an issue not just for individuals, or organisations like law firms or courts, but for the broader administration of justice and public confidence in the profession and the justice system.

According to the World Health Organisation, “good mental health” is a state where “every individual realizes his or her own potential, can cope with the normal stresses

of life, can work productively and fruitfully, and is able to make a contribution to her or his community”.⁴ That does not seem too much to ask, does it?

We have known for some time, at least since the 2009 “Courting the Blues” study,⁵ that law students and practising lawyers experience high levels of psychological distress and risk of depression, when compared with Australian community norms. The challenges this presents are compounded by concomitant stigmatising views towards mental illness and a reluctance to seek help from mental health professionals, for fear that it will affect their professional reputation and career progression. That remains the case today.

Is it us? Or the work we do?

In 2017, Judge Felicity Hampel SC, of the County Court of Victoria, delivered the Tristan Jepson Memorial Foundation⁶ Oration, entitled *Towards Wellbeing: How to be a Human Being and a Lawyer too*. Her Honour sought to challenge the notion that lawyers are special, different and destined to suffer higher levels of depression and anxiety and other mental illness than other professions or the population at large, because of the nature of the personalities that make us good at what we do or the nature of our work. In that context, she referred to a study undertaken by researchers at Curtin University, in relation to what makes people happy at work: the answer is, to do work that is meaningful to them, to have a level of freedom and autonomy in their work and to have supportive colleagues and bosses.

Once again, we see those three basic psychological needs reflected: competence, autonomy and relatedness.

I don’t think it’s us: I think it’s the job, the nature of the work we do as lawyers, the culture that has prevailed and the organisational structures. Legal practice is very stressful: we are dealing at times with highly distressed people, in situations of conflict and dispute, or trauma; there are time pressures; money pressures; unsustainable workloads; stereotypes of status; an established culture of drinking to cope, to name just a few of the stressors. Of course there is also enormous meaning and satisfaction which comes with the work that we do. That may not always be enough to balance out the negative factors. To address that, we may have to make some changes, individually, personally; organisationally; structurally.

That’s a good thing. It means we can do something about it. As Dolly Parton apparently said: “we cannot direct the wind, but we can adjust the sails”.

⁴ International Bar Association’s *Mental Wellbeing in the Legal Profession: A Global Study* report, at p 5.

⁵ Kelk et al, *Courting the Blues: Attitudes towards depression in Australian law students and lawyers* (Brain & Mind Research Institute, University of Sydney).

⁶ The organisation is now called [Minds Count](#).

In addition, there have been consistent studies demonstrating the concerning experience by lawyers of secondary trauma (or vicarious trauma). A 2021 review undertaken by the Department of Neuroscience, Psychology and Behaviour at the University of Leicester in the UK of published international research dealing with secondary trauma in the legal profession, confirmed that legal professionals experience secondary trauma at a level higher than that of the general population; that secondary trauma is more prevalent in legal professionals than it is in mental health professionals, social workers, psychologists, and administrative, hospital and prison staff; and that secondary trauma is more prevalent in criminal lawyers than non-criminal lawyers, and in judges compared to barristers.⁷

That is in fact one of the shocking figures to come out of Ms Schrever's research. An overwhelming majority (83.6%) of judicial officers endorsed at least one symptom of vicarious trauma in the week prior to completing the survey. And 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.⁸

This topic has become a particular focus recently, in light of the High Court's decision in *Kozarov v Victoria*⁹ a case involving a Crown prosecutor, who worked in the specialist sexual offences unit of the DPP, and sued for psychiatric injury.

As I have said when speaking to practitioners, it is important to keep in mind that stress is a normal part of life and, channelled effectively, can be good thing because it can propel performance. Similarly, vicarious trauma is an expected reaction to witnessing someone else's trauma – "it is a perfectly human response and not a sign of weakness, lack of adequate professional detachment or any other kind of inadequacy within the helping person".¹⁰

It is when these things are unmanaged that they have the potential to be problematic.

In that context, one of the key observations from Schrever's research study was that judicial officers sourcing the most enjoyment from the role are those who prioritise their own well-being. 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

⁷ Stine Iversen and Noelle Robertson, *Prevalence and predictors of secondary trauma in the legal profession: a systematic review* (2021) 28(6) *Psychiatry, Psychology and Law* 802. See also the study undertaken by researchers from Queensland's Griffith University: Patricia Weir, Liz Jones and Nicola Sheeran, *Australian lawyers' experience of exposure to traumatic material: a qualitative study* (2021) 28(3) *Psychiatry, Psychology and Law* 363.

⁸ Carly Schrever, *The Psychological Impact of Judicial Work: Australia's First Empirical Research Measuring Judicial Stress and Wellbeing* (2019) 28 JJA 141 at 159.

⁹ *Kozarov v Victoria* (2022) 399 ALR 573; [2022] HCA 12.

¹⁰ Niebler, *The cost of bearing witness: vicarious trauma in the legal profession*, Proctor, November 2019, at p 19.

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.”¹¹

The same must be true of legal practitioners.

The most recent research in relation to mental wellbeing in the legal profession was undertaken by the International Bar Association, in a global study the results of which are set out in a report published in October 2021.¹²

One in three respondents to this study – which was a substantial one, involving more than 3500 individual responses, and 186 institutional responses – said their work as a legal professional had a negative, or extremely negative impact on their wellbeing:

- the key factors impacting *negatively* on mental wellbeing were “stress”, “intense work/time demands”, “poor work-life balance” and “high pressure working environment”. Others included “lack of support” and “uncertainty”;
- factors that were said to contribute *positively* to respondents’ mental wellbeing were “a sense of purpose” followed by “interesting/ challenging work”, “the ability to connect with others” and “general job satisfaction”.

Once again, we see those three things – autonomy, competence and relatedness – reflected in the responses.

Also relevant in this context of wellbeing are the staggering figures in relation to bullying and sexual harassment in the legal profession.

In 2019, the International Bar Association presented its findings from an international survey on bullying and sexual harassment in the legal profession, entitled “Us Too?”.¹³ Again, it contains a comprehensive data-set – based on responses from 6,980 respondents from 135 countries.

The key findings of the report include:

- Bullying: almost half of the survey respondents said they had experienced bullying during their legal career. 55% of female respondents said they had been bullied, while 30% of male respondents said they had been bullied during

¹¹ Carly Schrever, *Australia’s First Research Measuring Judicial Stress and Wellbeing: A Preview of the Findings* (2018) 92 ALJ 855 at p 862.

¹² International Bar Association, *Mental Wellbeing in the Legal Profession: A Global Study* (October 2021).

¹³ International Bar Association, *Us Too? Bullying and Sexual Harassment in the Legal Profession* (2019).

their legal career. Younger legal professionals were more likely to report experiencing bullying. Ridicule or demeaning language was the most common form of bullying, followed by “overbearing supervision” and misuse of power position.

- Sexual Harassment: overall, the survey found that sexual harassment impacts more than one in five members of the legal profession. 37% of female respondents had personally experienced sexual harassment during their career, compared to 7% of male respondents.
- The country with the highest number of respondents for this international survey was Australia. Respondents from Australia reported higher rates of both bullying and sexual harassment than the global average: 73% of females and 50% of males reported experiencing bullying during their legal career, and 47% of females and 13% of males reported experiencing sexual harassment. This is despite the fact that bullying and sexual harassment policies exist in Australian legal workplaces at a higher rate than the global average. However, Australian legal practitioners were found to have less confidence in the ability of workplaces to handle such complaints compared with the global figures.¹⁴

There have also been more recent studies, in South Australia¹⁵ and Victoria¹⁶ in recent years – the outcomes of which reflect the figures from the IBA survey.¹⁷

As I mentioned at the outset, this topic has relevance for you in your role as regulators and admitting authorities of legal practitioners in two respects:

- For you as individuals working within a sector of the legal profession in which, on top of the issues of workload which affect everyone, you are exposed to incredibly stressful circumstances, including the trauma and distress of others; and
- Professionally, because of the relevance of mental illness, or mental ill-health to the regulatory and disciplinary regime.

As to the former – you as individuals – I come back to one of the key points from Ms Schrever’s research, which is that those who are sourcing the most enjoyment from their work are those who prioritise their own wellbeing. Acknowledging that we are going to approach this differently, for me the things I find helpful are:

¹⁴ Ibid, 87.

¹⁵ See the [Review of Harassment in the South Australian Legal Profession](#).

¹⁶ See the Victorian Legal Services Board and Commissioner’s report entitled [Sexual Harassment in the Victorian Legal Sector: 2019 study of legal professionals and legal entities](#).

¹⁷ See also the Law Council of Australia’s [National Model Framework for Addressing Sexual Harassment for the Australian Legal Profession](#), published in December 2021 and the Law Institute of Victoria’s paper entitled ‘[Sexual Harassment in the Legal Profession: What can we do about it?](#)’, published in February 2022.

- Find a few close colleagues you can trust, to talk about things that are troubling you – as the saying goes, a problem shared is a problem halved, especially when you share it with someone who can understand and relate.
- More generally, speak up – let the leaders of your organisation 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 do anything to help you.
- Share a laugh with your friends or colleagues. Humour is a great helper and healer.
- Have other interests outside of the law – so that you can, or have to, leave work behind, both physically and mentally.
- All the usual advice: exercise, try to eat well, and importantly don't drink too much. These can be the easiest things to drop or forget when you're really under the pump at work – you skip your morning walk to get in early and feel the need for a (or an extra) glass of wine to unwind at the end of the day. But as I'm sure many of you have experienced, those things can be counter-productive – especially to that other important thing, sleep. On the other hand, if you go for a walk with a colleague, perhaps at lunchtime or after work, you can combine talking, debriefing, sharing, laughing, having an interest outside of work and exercise – all of which are very productive.
- Take your holiday leave, regularly – whether for a break at home or a holiday away.
- Perhaps consider what are called “e-mental health” resources – things you can do in your own time and space – including mindfulness and relaxation exercises.
- Importantly, if you are struggling, don't hesitate or wait too long, seek professional help as soon as you can. Whilst lifestyle changes and “self-care” measures are beneficial and important, at times what is really required is medical treatment. I think we should view this as no different from what you would do if you had a serious physical ailment. 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? I would like to think the stigma associated with mental health issues has been significantly reduced over recent years, and I am told by young people, judges' associates for example, that things are quite different in that respect amongst their generation. But there is still work to be done to remove barriers which prevent people from comfortably speaking up and getting the help they need. We all have a role to play in that.

As to the latter – your work as regulators and admitting authorities – it is apparent that mental illness and mental ill-health can play a significant role in relation to disciplinary matters concerning legal practitioners, and admittees for that matter. In this regard, I would recommend, if you have not already come across it, an article called '*Lawyers, mental illness, admission and misconduct*', by Paula Baron & Lillian Corbin, published in the Legal Ethics journal in 2019.

In relation to admission, mental illness or impairment is of course not itself a bar to admission. Consistently with the research data – about the levels of psychological

distress and depression suffered by law students (as well as lawyers) – many applicants for admission disclose prior histories of mental illness, or mental health struggles. What is required is a consideration of how that bears on their suitability – their ability to satisfactorily carry out the inherent requirements of practice as an Australian legal practitioner¹⁸ – in the context of the overarching need to protect the interests of the public and the administration of justice. Former President of the Queensland Court of Appeal, Justice Margaret McMurdo, put it eloquently when she said, in the matter of *Doolan v Legal Practitioners Admissions Board* [2013] QCA 43 at [21]:

“Like the Board, this Court has considerable sympathy for the appellant's dilemma. He is academically qualified for admission as a legal practitioner and has completed his practical training. The hurdle to his admission is whether, through no fault of his, ill health will render him unable to satisfactorily carry out the inherent requirements of practice as an Australian legal practitioner. In determining that issue the Court's primary concern is not the best interests of the appellant but the interests of the administration of justice and the protection of the public generally, especially consumers of legal professional services.”

In that regard, frank disclosure, insight and proactivity will be positive factors; denial and avoidance will not be.

A recent example from Queensland is the case of *RBI* [2022] QCA 156, in which the failure by the applicant for admission to cooperate and engage with the Board's requirement for a health assessment led the court to conclude that her application must be dismissed because the court could not feel confident that she was, at that time, a fit and proper person to be admitted.

On the other hand, in an ACT case, *Application for Admission by B as a Legal Practitioner* [2016] ACTSCFC 2, an applicant with a long term psychiatric history, and a history of offences, some of which were attributed to or related to his mental illness, was found to be a fit and proper person to be admitted, albeit with some conditions. That was in circumstances where he had made full disclosure; the court considered he had “reached a stage where his mental health is under control and relatively stable”, he was compliant with his relevant treatment regime and was showing insight into his condition and the need for treatment; and the opinion of appropriate medical experts was optimistic and positive.

Turning then to the question of regulatory or disciplinary proceedings. In this context, it seems not uncommon for mental health issues to be an explanation, or part of the explanation – if not an excuse – for conduct falling below the expected standards, which finds lawyers facing disciplinary proceedings.

¹⁸ *Re Doolan* [2013] QCA 43 at [22].

In some cases, it may be sought to be relied upon as a defence – perhaps particularly to support a finding of unsatisfactory professional conduct, rather than professional misconduct; but more commonly, as a mitigating factor in terms of the appropriate sanction to be imposed.

The article I earlier referred to gives some examples of cases in which a court has emphasised that while mental illness may explain, it does not excuse, misconduct. One of those cases is *Legal Practitioners Conduct Board v Hannford* [2002] SASC 260; (2002) 83 SASR 277. The practitioner there had experienced financial pressures in his practice; and was assisted in his practice by his partner of some years, who suffered from mental illness and was eventually declared psychotic, causing the practitioner stress in his personal life and practice. At 281 [24], Gray J observed:

“While the medical condition of the practitioner's partner may go some way to explaining his conduct it can provide no excuse. Many practitioners are subjected to stress in their working lives. This is part of professional life. Practitioners must understand that personal stressors cannot ameliorate the seriousness with which professional obligations are viewed and the need for strict compliance at all times. A practitioner's professional standards must not be compromised or eroded.”

Reinforcing the paramount importance of protection of the public in matters such as these, the same judge, Gray J, later said, in *Law Society of South Australia v Nicholson* [2004] SASC 2 at [24]:

“When exercising its inherent jurisdiction the function of the court is to examine the relevant material to determine whether the practitioner has failed to maintain his or her conduct to the standards required of a member of the legal profession. In cases involving breaches of professional standards, the guiding principle is the protection of the public and the standing of the profession, rather than punishment of the practitioner.”

When it comes to considering the appropriate sanction, matters that have been emphasised as important are evidence of insight; together with evidence of positive steps taken to address the mental health issues that have been encountered, and a commitment to being proactive about that in the future.¹⁹ Where mental illness has contributed to a lawyer's misconduct, the importance of general deterrence may be moderated.²⁰ For example, in *Watts v Legal Services Commissioner* [2016] QCA 224 at [48], the Court of Appeal (Gotterson JA, McMurdo P and Morrison JA agreeing) said:

“With the benefit of Dr Madsen's unchallenged opinion that a risk of re-offending is very low and having regard to the factors listed by him as

¹⁹ See, for example, *Legal Services Commission v Cullen* [2020] QCAT 439 at [17] and *Legal Services Commissioner v McLeod* [2020] QCAT 371 at [35].

²⁰ See also *Legal Services Commissioner v McLeod* [2020] QCAT 371 at [30].

justifying it, including the appellant's developed resiliency, his capacity to cope under pressure, and evidence of his functioning effectively and making good decisions, I am not prepared to conclude that the appellant is now permanently unfit to practice. I am fortified in this approach by his subsequent conduct in admitting his guilt, repaying moneys when it was appropriate to do so, and withdrawing from legal practice since 2010. These are all relevant matters for consideration."

So returning to my earlier theme, about prioritising our mental health, as an essential element of practice as a lawyer; not only is it a good thing for us individually, but also organisationally and institutionally, in terms of the profession as a whole, and the administration of justice.

Thank you for the opportunity to speak with you today.