

A VULNERABLE PROFESSION

Depression among lawyers

By Gordon Parker

In a 2009 review¹ commissioned by the Tristan Jepson Memorial Foundation, the authors detailed a number of issues that provide a parochial backdrop for this article. They described legal practice as intrinsically stressful, both in its actual practice and by its intrusion into private life. >>

The possibility that this might merely represent a minority view is countered by the Australian 2007 Beaton Consulting Survey,² which identified the highest rates of depression among professionals being achieved by lawyers (although their sibling rivals, medical practitioners, were not included in that study). The possibility that high stress and depression levels are simply a transient initiation 'rite de passage' among legal practitioners is countered by another finding from that report – in that depression severity scores increased with the age of the lawyers. Australia is not alone in this respect. Schiltz³ overviewed the legal practitioner scene in the USA. One survey quantified a rate of major depression that was 3.6 times higher for lawyers compared with non-lawyers from comparable socio-demographic backgrounds, while other surveys referenced by Schiltz quantified higher levels of anxiety, lower levels of career satisfaction and 'prodigious' rates of drinking. Schiltz offered a number of causal factors – commercialism (the law becoming less of a profession and more of a business with pressure for obtaining and retaining clients); a competitive workplace (especially within the 'big firm culture'); lengthy hours; decreased control over personal life; low levels of autonomy; a poor public image; the adversarial nature of the law; as well as a lack of civility, loyalty and collegiality. Seligman et al⁴ emphasised three key factors – lawyers being selected for their pessimism or prudence; high-pressure jobs with low personal autonomy; and US law being – like any sport where there is a 'winner' and a 'loser' – a zero-sum game, a result that advances negative emotions and declining mental health levels for individuals.

As a consequence of job demands and both generic and context-specific stressors, most overviews of mental health in the legal profession (for example, *Australasian Law Management Journal*⁵) weight several psychological consequences – of stress generally as well as self-management strategies, such as high use of alcohol and of some illicit drugs (especially stimulants).

If rates of psychiatric problems and psychological distress are high in lawyers, is this a reflection of a predisposing personality vulnerability over-represented in future lawyers and/or a consequence of legal training and legal practice? In essence, antecedent and/or consequence? Kelk et al¹ favoured the latter explanation by referencing a study demonstrating that pre-law students' scores on measures of anxiety, depression and wellbeing were not particularly distinctive but deteriorated over the course of their under-graduate law years.

I'm not so sure that lawyers' mental health is compromised only by environmental factors. So, rather than merely consider the effects of work practice 'drivers' or 'toxic' mental health factors following exposure to legal training and practice, some consideration of possible predisposing factors might be worthwhile.

Rather than rigorously review the literature, I will simply provide an overview of some of the salient issues

brought to me by lawyer patients over the years. Most have presented with biological mood disorders such as melancholia and bipolar disorder, conditions more likely to have genetic rather than environmental origins. Thus, rather than speculate as to whether there is any over-representation of profession-induced psychiatric 'disease' or psychopathology (which I doubt), I focus more on the other side of the equation. In essence, what factors contribute to the seeming low levels of wellbeing in lawyers?

DO INTELLIGENCE AND PERSONALITY CONTRIBUTE?

The practice of law attracts and benefits from practitioners possessing high intelligence. While I have long admired the intellectual brilliance of some barristers and other legal experts demonstrated by their capacity to assimilate highly technical and complex briefs rapidly and provide logical, well-informed and precise views, much legal practice makes little demand on high intelligence. For those who seek a career (or even a calling) rather than merely a 'job', the extent to which we find our ecological niche can move us along flourishing or languishing career trails. A boring job for an intelligent person is enervating and frustrating, and is ultimately likely to contribute to depression by failing to allow intrinsic intelligence to be realised and applied satisfactorily.

The law also attracts – and again generally benefits mostly from – those with a particular type of intelligence: essentially, the application of linear logic. Whether involved in a conveyancing task or acting as a High Court judge, the successful legal practitioner is one who is an 'explicit' learner (weighting facts and rejecting any reliance on intuition, implicit memory and divergent thinking). The greater the learning, the greater the likelihood of ascending the hierarchical career path and to have such values reinforced (hence, "My learned judge..."). Admirable in many ways – and to the practice of the law – but often weighting stolid and isolatory habits, and their consequences.

The law provides obvious attractions to those with a perfectionistic personality style. It may be that there is an over-representation of perfectionists in the law, but certainly the actual practice of law requires practitioners to practise perfectionism – and become even more perfectionistic over time. Perfectionism is generally highly valued, and is an advantage in many careers (for example, airline pilots, golfers) as such people value accuracy, and are reliable, conscientious and hard working. While I once operated according to the principle that 'You don't treat perfectionists, you employ them', excessive perfectionism becomes a disadvantage. Firstly, perfectionists set very high standards for themselves and for others, and often catastrophise if they fall below them, commonly losing perspective about the extent to which there was actually a 'failure' in standards. They set the bar at close to 100 per cent and thus often have difficulty in completing tasks, constantly wanting to rework them to produce the perfect product, with their idealised self-judgments never realised, which

can lead to procrastination and an inner sense of disquiet – never accepting that ‘good enough is good enough’. Their self-esteem is usually externally weighted rather than internally integrated, so that they judge themselves by their performance rather than by any inner identity markers or qualities, and are therefore hypersensitive to judgements made by others about their performance. They tend to lack flexibility and operate to a binary model, where decisions are either black or white, or perhaps more saliently here, ‘guilty’ or ‘innocent’. Real life provides advantages to people who are flexible and can consider a range of options, and who can tolerate ambiguity. Perfectionists risk becoming ‘workaholics’, having a poor work/life balance and difficulty in ‘turning off’. If over-invested in a legal career and that career or its components are not meeting their high standards, demoralisation and stress responses are predictable.

Perfectionistic lawyers generally decline to seek help – wishing to ever remain in control – and if encouraged/coerced to seek help (which they resist) are ‘high duty’ patients. They have difficulty in taking their hand off the tiller, or surrendering a level of control, a requirement of being a ‘patient’. Their lack of trust makes for difficulties in forming a treatment alliance, and so compromises management.

STRESSFUL SCENARIOS BROUGHT TO LAWYERS BY THEIR CLIENTS

Legal practice is disproportionately focused on negative events and interactions. Clients bring complaints and present them in self-justifying ways that are often non-negotiable. They may describe enormities (for example, being victims of rape or assault); and cycles of deprivation and abuse. Alternately, they may lie, dissimulate, engage in hyperbole or merely interpret the world according to a ‘victim’ mindset reflecting their personality. By direct or indirect means, the latter groups may enjoin their lawyer in their claims, effectively compromising the practitioner.

In most of the other so-called ‘helping professions’, the client/customer/patient presents concerns and problems openly and appreciates the professional’s advice and wisdom, and practitioners are rarely required to compromise themselves or their principles. By contrast, lawyers are required to ‘represent’ clients whose moral values and behaviours may have few or no redeeming features. As a psychiatrist, I can effectively choose not to ‘manage’ a particular patient. I have no wish to be manipulated by a sociopath who merely consults me with the objective of obtaining a beneficial medical report, and I have no empathic capacity to relate to – or even begin to try to assist – an adult guilty of personality-related violence and abuse. Lawyers have less flexibility, in that they work to a model where they have to suspend judgement to facilitate the best presentation of the evidence in representing their client – even if they suspect the individual to be a sociopathic killer, an exploitative bully prepared to crush others by engaging in expensive legal suits, or simply an unashamed liar. Yet every such client risks compromising the legal practitioner’s value

system. Janis Joplin observed: “Don’t compromise yourself. You are all you’ve got.” Such a model of practice and the compromising nature of the job description is the antithesis to the altruistic ideal sought by professionals.

ADVERSARIAL MODEL

In comparison with most other professions, the legal profession is based upon an adversarial model and one that again differs markedly from medicine. A medical practitioner is encouraged to ‘care’ for a patient, which requires a mix of technical competence and interpersonal skills. The latter inform – if not shape – interactions with patients and even when ‘non-specific’ (that is, expressed as empathy, warmth, congruence, etc) have high therapeutic impact. In essence, most medical practitioners prescribe medication and prescribe themselves, with patient-doctor interactions progressively less hierarchical in recent decades. While lawyers may have similar opportunities to assist distressed clients through their interpersonal interactions and by offering authoritative and informed advice, the dominant model is adversarial, disputative, seeking to destroy other peoples’ claims or arguments, and characterised by negativity and aggression. Some issues are resolved simply by financial might rather by what might be justifiably right. Values again risk being compromised.

In adversarial interactions there are, by necessity, winners and losers. While any individual (including lawyers) can >>

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argue that they have developed a carapace or that they can distance themselves from 'losses', I am not so sure that most lawyers (especially barristers) are as sanguine about losses as they claim, particularly when the nature of perfectionism is factored in.

CONSERVATISM

By definition, the law is intrinsically conservative, wedded to tradition and historical precedence, more looking to the past than to the future. It evolves slowly and lacks the 'creativity' provided in many other careers, where individuals have the opportunity to be excited by working at the cutting edge rather than merely applying a grinding tool. It therefore attracts and further promotes conservatism within its practitioners. The formalised courtesies in a courtroom, the measured rituals required, and the wit dryly and solemnly expressed, all work towards an impression of excessively stylised conservatism.

While conservatism is a profession-defining content value, does it necessarily have to define the style of so much legal practice if it is actually counter-productive for the wellbeing of many of its practitioners? It is encouraging to observe newer, less sterile, less hierarchical and more 'normative' interactions adopted by lawyers in mediation arenas. Whether it is that style of practice or more the characteristics of practitioners who choose to work in the latter arenas, such practitioners tend to describe a more pleasant ambience for the parties that also come to the table – and, the kicker here, personally experience a more satisfying workplace.

Such professional conservatism emphasises a collectivistic rather than individualistic mode of practice and thinking, which alone contributes to lower levels of personal wellbeing. An indicative marker of a dated view on many issues is the extent to which the legal profession has been slow to respect an equal opportunity model for women in its ranks. To achieve in the legal profession, many women feel constrained to present themselves as if they were more a member of the brotherhood than of the sisterhood, perhaps detecting a subliminal or overt Henry Higgins (or university college) mentality of 'Why can't a woman be more like a man?' Many female practitioners judge that they need to fashion themselves on a masculine model that values work above home life, of even dressing with a pin-stripe, and engaging in a male-derived banter style. For women, operating to such a conservative professional role model is another key compromise.

STOICISM

Psychiatric disorders have long been stigmatised, with sufferers viewed as morally or characteristically 'weak'. Those with mood disorders are often viewed – overtly or covertly – as needing 'to pull up their socks'. As observed by Matthew and Ainslie Johnstone,⁶ "Socks have little to do with mental health. If people could just 'snap out of it' they would. No one chooses to have depression."

Lawyers are encouraged, if not required, to appear 'stoical', to adopt a posture of denying that there are any problems. While admirable at some levels, such stoicism has many

downsides including feeding a range of defensive strategies (no admission of any weaknesses) and, of key relevance here, advancing stigma.

While I am aware that there are many leaders in the legal fraternity who have spoken up about the importance of understanding and assisting people with mood disorders, I have the strong sense (underpinned by reports from a number of my lawyer patients) that there is still more 'talking the talk rather than walking the walk'. If true, this suggests that the zeitgeist of invulnerability, stoicism and competitiveness remains dominant and that many people in the profession still view those with a mood disorder as having a 'weakness'. While I am aware that the legal profession has set up numerous strategies for addressing mood disorder issues (for example, workplace education, facilitated referral to mental health practitioners), much of the educational material is didactic and workplace-generic rather than capturing the nuances of legal practice and the 'human story'. There are few lawyers who describe distinctive support from their workplace. Support to lawyers (if present) is more in the nature of brisk sympathy (with sympathy more hierarchical than empathy), and focused more on outcomes (for example, 'handling' a lawyer with a depressive condition) rather to process issues (for example, building wellbeing in the workplace and profession).

WELLBEING

I have a suspicion (being unable to find any decent study) that members of the legal profession are low on wellbeing as a consequence of many of the factors mentioned above. Wellbeing is commonly measured by effectively asking people whether, if they could live their lives over again, they would change 'almost nothing'. There is, however, another measure that views sociability and community mindedness, and measures wellbeing by the extent to which the individual socialises, undertakes volunteer activities and (a deceptively profound question) agrees with the proposition that 'Most people are honest.' I have come across few lawyers who would so agree. Antecedent to – or consequence of – being a lawyer? Positive psychologists argue that wellbeing comes from creativity, curiosity, open-mindedness, courage and persistence, kindness and social intelligence, fairness, temperance (forgiveness and mercy, humility and modesty) and transcendence (that is, appreciation of beauty and excellence, gratitude, humour and spirituality). Most formal recipes for wellbeing give weight to relationships, to finding meaning in life, to finding something bigger than oneself in life, and to a sense of vitality. It is also associated with a level of compassion and caring for others, and comes more from giving than receiving (Aristotle stated that 'happiness is a consequence of a deed'). Such components are not seemingly integral to much legal practice. Few appear to be part of the contract.

AN 'INSIDE-OUT' VIEW

Having offered some gratuitous 'outside-in' views – and briefly contemplated whether they excessively focus on the negative – I was reassured to read barrister Charles

Waterstreet's *Sydney Morning Herald* column.⁷ He wrote that 'we have come to regard the courtroom as one of the most dangerous work environments. Everyone who works in the courtroom is at extreme risk of going mental... The toll on the practitioners and participants is sky high.' He went on to describe a range of other stressors, of evidence so gruesome that even the police refused to process it, and the 'sheer inhumanity of scale', with 'all being crushed by the sausage machine making mince-meat out of justice'.

SUMMARY

This set of generalisations seeks to suggest factors that explain why those in the legal profession have higher rates of depression and, perhaps more importantly, lower levels of wellbeing. In considering such factors, there is no challenge to the reality that the law is one of the pillars of a civilised society, and I simply focus on some of its current systemic components that risk compromising wellbeing. I would argue that being successful in the law is most likely achieved by being a perfectionistic workaholic, valuing competitiveness over co-operation. And, whether successful or not, lawyers work in an environment typified by the worst aspects of people's lives rather than their best, constrained by the profession's intrinsic conservatism with few ingredients that foster wellbeing and many that force compromises of their value systems and identity. Corrective

strategies may not be obvious, but are best shaped by identifying the causal and toxic factors at both the individual and system level. ■

Notes: **1** N Kelk, G Luscombe, S Medlow, I Hickie, *Courting the Blues: Attitudes Towards Depression in Australian Law Students and Legal Practitioners*, Brain and Mind Institute, Sydney, 2009. **2** Beaton Consulting and Beyondblue, *Annual Professions Survey 2007*, http://www.beatonglobal.com/pdfs/Depression_in_the_professions_survey.pdf, April 2007. **3** P Schiltz, 'On being a happy, healthy and ethical member of an unhappy, unhealthy and unethical profession', *Vanderbilt Law Review*, Vol. 52:871, 1999, pp872-951. **4** M Seligman, P Verkuil, T Kang, 'Why lawyers are unhappy', *Cardozo Law Review*, Vol. 23, 2002, pp33-53. **5** P Langfield, 'Trying to Tame the Black Dog: Major Players in the Legal Sector are Teaming Up to Help Address the Vexing Issue of Depression and Anxiety in the Workplace', *Australasian Law Management Journal*, Vol. May, 2010, pp7-10. **6** M Johnstone and A Johnstone, *Living with a black dog*, Pan Macmillan, Sydney, 2008. **7** C Waterstreet, 'The Trials of Justice', *Sydney Morning Herald*, March 11, 2011.

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