

## **MANAGING STRESS<sup>1</sup>**

### **JUDGE C.F. WALL RFD QC<sup>2</sup>**

The situations which may cause stress and then perhaps clinical depression if not treated are many and varied and include

- overwork, long hours, losing sleep, work intruding into dreams
- smoking and trying to give up
- giving up smoking and putting on weight
- overweight and trying to reduce weight and concern about appearance
- problems at home, with parents, spouse, partner, children
- problems with friends
- debt, mortgages, repayments
- difficulty doing the job generally and in particular cases
- relationship problems at work with other staff
- various health issues
- billable hours
- subtle pressure at work; being shown a monthly report detailing everyone's billable hours
- working for more than one partner; "do the work now" from each
- staff dining room, lunch and dinner, don't leave the building, don't have a break, keep going

Stress may manifest itself in many and varied ways including

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<sup>1</sup> This paper was presented to a meeting of the Gold Coast District Law Association held at Southport on 22 September 2016.

<sup>2</sup> Judge of the District Court, Childrens Court and Planning and Environment Court, Queensland.

- irritability, incivility, difficulty concentrating, rudeness, impatience, intolerance, anxiety, feeling sick in the stomach, sweating at night, lack of self-esteem and confidence, pain for no apparent reason, personal problems (which can be both a cause and an effect), feelings of inadequacy and hopelessness, internal conflict, rashes, social dysfunction, other health problems and substance use/abuse including increased use of alcohol.

Today my emphasis will be on workplace stress for lawyers.

I am far from satisfied that employers are as understanding, caring and supportive as those referred to at the recent wellness breakfast. Some are but not all.

At our annual judges conference on 12 August last the Chief Justice, quoting the former Legal Services Commissioner said that emotional stress was a factor in 30% of disciplinary matters coming before the Legal Services Commissioner.

A junior lawyer in a Brisbane commercial firm has described to me conditions at 4 of the top-tier firms in Brisbane. One firm is said to be “perennially understaffed” and that is reflected in the hours expected to be worked. At that firm it was rare for members of the finance team to leave before midnight and some typically also worked every weekend. A 3<sup>rd</sup> year lawyer he knew worked 2-3 months straight with only 1 day off. He described work at 2 other firms as “nose to the grind, treated more like a commodity than a human, extremely long hours”. Clearly these working conditions can cause stress.

Other lawyers have described the top-tier firms as follows

- you are expected to marry the firm and commit foremost to your work which causes conflicts in sorting out a work, family, social life balance

- a female lawyer with young children said coping was challenging at times but she was only a part time partner working 40 hours a week. She may occasionally be afforded some flexibility to attend a child's sporting event but she'd have to catch up later
- a young lawyer leaves a spare suit at the office and returns to work at night after going to the gym in order to stay ahead. It is not unusual for him to only have 4-5 hours sleep a night
- the pressure of billable hours imposes unrealistic expectations
- a partner came home late one night. His wife was waiting with her bags packed. The children were already at her mothers
- young clerks are told "be there before the partner. Don't leave until after the partner leaves" otherwise they don't stand a chance at a graduate position

Of billable hours Allison Speigel, a lawyer, writing in the Globe and Mail in Canada on 10 June 2016 said it rewards time spent not value delivered. She continued

"Under the billable hours model, a law firm's revenue can only increase in one of two ways: higher hourly rates or more hours billed. Although hourly rates tend to increase every year, the market sets a ceiling. This leaves time billed as the only variable that can realistically change, which for many firms translates into an overriding emphasis on hours. Lawyers and, particularly, associates feel pressure to spend an increasing amount of their time working, leaving less time for family, friends and all other activities that contribute to a lawyer's sense of balance and well-being...

... many lawyers feel that their advancement within those firms is based largely on the hours they actually bill to paying clients...

Law firms are only as good as the lawyers they retain. Law firms should be spending more time figuring out how to keep their most valuable assets happy.”

Eight years after graduation Ms Spiegel says that most of her “law school friends have quit law for a life”; they have moved in-house or they are doing something tangentially related to law or they have quit the legal profession altogether.

A PsychSafe report by principal consultant, Dr Rebecca Michalak, referred to in the Australian Financial Review in November 2015 found that lawyers working in law firms with strenuous workloads, overtime and high pressure, had the lowest psychological and psychosomatic health and wellbeing compared to other professionals. A New South Wales judge has described the problem as “systemic”.<sup>3</sup> A Canadian judge has said he was amazed at the large number of lawyers who were troubled and in distress and suffering “serious unhappiness and stress”.<sup>4</sup> The PsychSafe study saw no significant difference based on private practice firm type (e.g. top-tier, mid-tier) indicating poor wellbeing is an issue throughout private practice. Lawyers were reporting the highest levels of alcohol and nicotine use/abuse. Lawyers were

“more likely than other professionals to be exposed to the majority of the poor interpersonal behaviour psychosocial risks/sub-risks examined (12 out of 15), including incivility, interpersonal deviance, verbal abuse, work obstruction, emotional neglect, mistreatment

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<sup>3</sup> Email to me 20 November 2015

<sup>4</sup> Email to me 20 November 2015

overall, bullying via destabilisation, isolation, overwork and threat to professional standing behaviours, gender harassment, and overall sexual harassment...

The majority (87.5-89.8%) of mistreated employees do not report their experiences, suggesting organisational 'cultures of silence' are widespread."

Management of stress depends on the type of stress being suffered. Bruce Humphrys of Hopgood Ganim speaking at the recent wellness breakfast described depression as "an invisible disease". Stress can only be properly managed if it is first understood what may have caused the condition. It may be managed by behavioural changes, assistance from family or employer or other employees, changes at work or professionally by a health professional. Medication alone is unlikely to assist, and may in the end exacerbate symptoms or lead to substance abuse.

What should be done to manage and minimise the likelihood of stress adversely impacting on the personal health of lawyers to the detriment of work performance?

The universal answer seems to be that the workplace needs to change. Employers must acknowledge that employees are human beings before they are lawyers otherwise good people will be lost to the profession.<sup>5</sup>

The PsychSafe study recommended increased attention to organisational characteristics and rather than focussing on the individual employee, focus should be on identifying trends and changes that may indicate exposure to work-related psychological risks and employers should recognise the risk and take steps to

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<sup>5</sup> Terry McCabe of McCabe Lawyers, Australian Financial Review, 19 November 2015

minimise it. This much was said by Mr Humphrys. Employers should install risk management strategies and invest in programs and initiatives specifically aimed at minimising problematic factors. Support programs to help employees exhibiting symptoms of stress should be put in place.

What can the individual do to manage the stressful environment associated with this type of employment? He or she should seek help (from a GP or by discussing problems with others including, if possible, the employer) and, if possible, make some lifestyle adjustments (e.g. exercise, eat well, less alcohol, more activities and interests away from work, more sleep, switch off from work, get a life away from work, work regular hours, take a regular lunch break). I appreciate such steps may only be possible if changes also occur at the workplace and this is where the problem can become quite circuitous. The changes suggested by Mr Humphrys at the wellness breakfast could not happen without the co-operation of the employer and at the moment it seems as if it is the employer who not only creates the problem, but also does not recognise it or put in place systems to minimise it. It is a cause and effect situation where symptoms are treated but not necessarily their cause which is unlikely to lead to a successful long term solution.

The Canadian judge I mentioned earlier has said that legal professional organisations need “assist” programs and “health” programs because there are serious risks of depression and addictions in the high pressure position of lawyers.<sup>6</sup>

What assistance is available to solicitors suffering symptoms of stress?

The Queensland Law Society recognises that “legal practice is an often stressful career” (perhaps an understatement) and has established Law Care which provides

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<sup>6</sup> Email to me 19 November 2015

free, confidential counselling services to members, their immediate family and legal support staff.<sup>7</sup> Law Care services are provided confidentially by a psychiatrist funded by Queensland Law Society and the services include assisting with work and life issues, money issues and nutrition issues using a dietician. It also assists managers and supervisors dealing with difficult or complex people issues. 6 hours of free counselling is available which is much more than the first consultation free of charge equivalent service provided to members of the Bar Association of Queensland via Bar Care. Barristers are responsible for payment of subsequent consultations.

The Queensland Law Society recognises that it is “important to seek help before problems become serious”.<sup>8</sup>

In the case of symptoms due to work pressures Law Care is likely to treat only those symptoms and not necessarily their cause. Counselling an individual cannot influence the employer to make necessary workplace changes. The changes made by Mr Humphrys were, I think, made by him as an employer and he also sought treatment for his particular symptoms. Symptoms not caused by work may in turn have an impact on ones performance at work which may then be productive of workplace caused symptoms. Treatment of the initial symptoms by counselling such as Law Care provides may cure those symptoms and in turn, as a result, may prevent development of further workplace caused symptoms.

Queensland judges have access to similar programs with no practical limitation as to hours. I used the service to help me give up smoking 10 years ago. It was very successful and the cost benefit to government has been enormous.

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<sup>7</sup> Queensland Law Society October 2015

<sup>8</sup> Queensland Law Society October 2015

Canadian judges have access to a free Judicial Counselling Program offering confidential professional assistance, advice and counselling for any stressors, including traumatic reaction to evidence, substance abuse, depression, anxiety, divorce, difficulties with children and giving judgments.<sup>9</sup>

The United Kingdom has had such a service for judges for over 20 years.<sup>10</sup>

It is clear that problems of the nature I have mentioned are recognised worldwide and that help is available. The services offered should be used otherwise the consequences of untreated stress are likely to be debilitating. Help should be sought. Don't be afraid to reach out for it. Try and discuss conditions with your employer. I also consider that the Law Society should emphasise to employers the seriousness of stress related symptoms and the need to accept responsibility for the environment that clearly contributes to those symptoms. Without employer involvement problems will persist.

In this respect the importance of taking holidays when they are due cannot be over-emphasised as a stress alleviating mechanism. A recent article in The Australian newspaper<sup>11</sup> quoting a doctor referred to holidays as "the ultimate health tonic". Anxiety and stress can mess with relationships and cause people to make wrong turns and bad decisions. Stress can compromise immune systems and lead to illness and disease. "Time out gives us a chance to rejuvenate... Rested and relaxed is the optimal. Holidays increase work productivity by significant amounts, which is why employers should encourage regular breaks".

The article continued

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<sup>9</sup> Email to me 20 November 2015

<sup>10</sup> Email to me 20 November 2015

<sup>11</sup> 12 August 2016 by Ruth Ostrow



“According to corporate studies an unhappy and unhealthy workforce can cost an average-sized company up to \$250,000 a year in sick pay and costs associated with resignations and rehiring”.

These are important considerations for both sides – employer and employee – to consider.

For those using the available counselling service it is recommended that you do so early. Early psychological intervention can be a preventative. Don't wait until a crisis situation develops. You should tap into available resources otherwise the situation may overwhelm you. Don't park your problems under a tablet. Seek early help. A free mobile phone app may assist. It is called “Smiling Mind” and you can listen to different mindfulness exercises. It is age specific and the exercises are of 1 – 45 minutes duration. It is very good. “Headspace” is also a free app which is good. Resources are there to help. There is also a website called “The Happiness Trap” by Russ Harris which contains worksheets, information about workplace resilience and other free resources. It is also offered as an app.

Thank you for your attention.