

The Future of Australian Legal Education

Concurrent session 1C – The ‘good’ lawyer

**Good mental health as an essential component of the “Good Lawyer”**

Alan Cameron AO FAAL

Chairperson

Tristan Jepson Memorial Foundation

Abstract

Law is not the only profession which appears to put extreme pressure on its members, leading to instances of poor mental health, substance abuse, and even suicide. But poor mental health is a significant problem throughout our profession – not just among the stereotypical young lawyers in large law firms working long hours under pressure to produce thousands of billable hours each year. It extends to small and mid size firms, sole practitioners, senior lawyers, judicial officers, and those in corporate and government environments. Worse, it appears to start while aspiring lawyers are still in law school. What is it about the law or the practice of law that causes these problems, or do we attract those who are susceptible to these afflictions? How can we reduce or eliminate these instances? The Guidelines issued by the Tristan Jepson Memorial Foundation address these matters.

1. Is there a problem?

Many lawyers, perhaps most lawyers, are content in the work they do and the lives they lead. We know that because published research over many years, and in different jurisdictions, shows that the proportion of lawyers with mental health issues is less than fifty percent.

But not much less.

So, yes, there is a problem. The North American literature has reported on the problem of unhappy lawyers for many years – quoting Benjamin Cardozo –

As to being happy, I fear that happiness isn't in my line. Perhaps the happy days that Roosevelt promises will come to me along with others, but I fear that all trouble is in the disposition that was given to me at birth, and so far as I know, there is no necromancy in an act of Congress that can work a revolution there.<sup>1</sup>

Seligman, Verkuil and Kang drew attention to the work of the New York City Bar Association which focused on the young lawyer's quality of life, citing their “unhappiness” and seeking to measure its

---

<sup>1</sup> Quoted in M Seligman, P Verkuil and T Kang, “Why Lawyers are Unhappy”, reproduced in (2005) 10 (1) Deakin Law Review 49, originally published in Vol 23 Cardozo Law Review (2001)

impact. They quote a 1992 survey in which 52 percent of lawyer respondents described themselves as dissatisfied, with many retiring early or leaving the profession. They continued as follows:

In many cases, the problem is not financial. Associates at top firms can earn (with bonuses) up to \$ 200,000 per year in their first year of practice. In the last decade, lawyers have surpassed doctors as the highest-paid professionals. But financial recognition may just be a symptom of the problem. The recent pay increases at large law firms are themselves partially caused by lawyer dissatisfaction. The euphemistic “retention bonuses” are awarded to ensure that young associates extend their service beyond two or three years. Combating this desire to leave early is among law firms' highest priorities, since they can only recoup their investment in new lawyers over a longer period of time

In addition to being disenchanted, lawyers are “in remarkably poor health”. They are at much greater risk than the general population for depression, heart disease, alcoholism and illegal drug use. For example, researchers at Johns Hopkins University found statistically significant elevations of major depressive disorder (“MDD”) in only three of 104 occupations surveyed. When adjusted for socio-demographic factors, lawyers topped the list, suffering from MDD at a rate 3.6 times higher than employed persons generally. The researchers noted the possibility that the work environments in these at-risk professions were conducive to depression. Further, they proposed that lawyers and secretaries - two of the three highest risk groups - have little autonomy and control, a factor that has been implicated in depression. These studies confirm the hypothesis that lawyer unhappiness can lead to serious health and social problems that pose a threat to the legal profession.<sup>2</sup>

The possible causes will be discussed below. The Australian research which quantifies the extent of the issue thoroughly and credibly in this country is *Courting the Blues*<sup>3</sup>. The research reported upon involved 741 students from 13 universities, 924 solicitors and 756 barristers. In short, the “study revealed high levels of psychological distress and risk of depression in the law students and practising lawyers who participated, when compared with Australian community norms and other tertiary student groups.”<sup>4</sup>

The authors noted that the “law student sample had a higher level of reported distress than other Australian samples for which this measure is available (see Table 12)”. Table 12 is reproduced below.

---

<sup>2</sup> M Seligman, n1, 3

<sup>3</sup> N Kelk, G Luscombe, S Medlow and I Hickie, *Courting the Blues*, Brain and Mind Research Institute: University of Sydney, Camperdown 2009; see also S Medlow, N Kelk and I Hickie, “Depression and the Law: Experiences of Australian Barristers and Solicitors”, (2011) Vol 33 Sydney Law Review 771, and (by the same authors) “Distress and Depression among Australian Law Students: Incidence, Attitudes and the Role of Universities” 2010 Vol 32 Sydney Law Review 113

<sup>4</sup> N Kelk and others, n3 viii

Table 12. Distribution of K-10 scores<sup>5</sup> across law students, medical students and a general population sample (percentages)

Level of distress	Law Students	Medical Students	General Population (ages 18-34 years)
Low or no psychological distress	31.5	45.2	57.9
Moderate distress	33.3	37	28.8
High distress	21.9	12.3	10.2
Very high distress	13.3	5.5	3.1

What the authors call “similar although less extreme comparisons for the practitioner samples”, are reported in Table 13.

Table 13. Distribution of K-10 scores across solicitors, barristers and a general population sample (percentages)

Level of distress	Solicitors	Barristers	General Population (aged greater than 17 years)
Low or no psychological distress	36.4	56.2	62.9
Moderate distress	31.6	27.2	24.1
High distress	22.3	12.5	9.2
Very high distress	8.7	4.2	3.8

You may be struck by the different outcomes between barristers and solicitors. The authors note the barrister sample was predominantly male and older, whereas females and younger age groups tend to have higher levels of reported distress.<sup>6</sup>

One could waste time and effort trying to analyse whether these detailed results show that North American lawyers are more or less disenchanted, or unhappy, than Australian lawyers. Rather than doing that, I will set out the conclusion in the terms used by the authors, as well as their observations on those conclusions, before turning to the possible causes of this distress.

---

<sup>5</sup> K-10, is the Kessler Psychological Distress Scale, referred to and explained in Kelk, *Courting the Blues*, n3 10

<sup>6</sup> N Kelk, *Courting the Blues*, n 3, 11

The primary finding of this Australian survey is to confirm the view, originating from international research, that law students and members of the legal profession exhibit higher levels of psychological distress and depression than do community members of a similar age and sex.

In drawing this general conclusion, three points should be noted:

Firstly, although the samples studied here have shown higher levels of psychological distress than both medical students and samples drawn from the general population, they should not be seen as severely dysfunctional. .. (L)aw students and younger lawyers are like their community peers, but somewhat more distressed.

Secondly, there are some signs that there are barriers to law students and practicing lawyers recognising their psychological distress and seeking help for it. Quite high proportions of the participants ... said that they would not seek help for depression. Many expressed quite strong negative views about the effectiveness of mental health professionals in assisting people with depression. Additionally, the survey participants agreed with a variety of negative views about depressed people, which might have a detrimental effect on their seeking assistance for their own depression, or in assisting their peers or employees.

Thirdly, despite the above, there are signs that law students and lawyers who do become depressed get help in quite high numbers. This is what would be expected of a group of such generally well-educated, highly employed and economically well-off people.<sup>7</sup>

2. Is unhappiness in the legal profession worse than in others, and if so, why would that be? (and would that matter)

In recent months there has been frequent newspaper coverage of the issues to do with depression and overwork in the medical profession<sup>8</sup>. So we know we are not alone in having these issues to address. But it has been argued that there are aspects of our profession which make the problem worse. Seligman and others suggest there are three principal causes of what they call the demoralization among lawyers.

The first is pessimism, not in the colloquial sense, but as a way of explaining the world. This kind of pessimist will view bad events as unchangeable, whereas optimists see setbacks as temporary.

They observe that “while pessimists tend to be losers on many fronts, there is one striking exception: pessimists may fare better in law. .. Specifically, the pessimists outperformed more optimistic students on traditional measures of achievement, such as grade-point average and law journal success.” They continue that “these data suggest that what is labelled as pessimism is not a detriment and may even be a virtue for lawyers. Pessimism encompasses certain “positive” dimensions; it contains what we call - in less pejorative terms – “prudence”. A prudent perspective,

---

<sup>7</sup> Kelk, n3 42

<sup>8</sup> For several recent examples, see the Sydney Morning Herald on July 9, July 5, June 27 and June 7, 2017

which requires caution, scepticism and “reality-appreciation”, may be an asset for law or other skill-based professions. .. Prudence enables a good lawyer to see snares and catastrophes that might conceivably occur in any given transaction. The ability to anticipate a whole range of problems that non-lawyers do not see is highly adaptive for the practicing lawyer. Indeed clients would be less effectively served if lawyers did not so behave, even though this ability to question occasionally leads to lawyers being labelled as deal breakers or obstructionists.”

But this does not necessarily end well – “The qualities that make for a good lawyer, however, may not make for a happy human being. Pessimism is well-documented as a major risk factor for unhappiness and depression. Lawyers cannot easily turn off their pessimism (i.e. prudence) when they leave the office. Lawyers who can see acutely how bad things might be for clients are also burdened with the tendency to see how bad things might be for themselves. Pessimists are more likely than optimists to believe they will not make partner, that their profession is a racket, or that the economy is headed for disaster. In this manner, pessimism that might be adaptive in the profession also carries the risk of depression and anxiety in the lawyer's personal life. The challenge is how to remain prudent professionally and yet contain pessimistic tendencies in domains of life outside the office.”<sup>9</sup>

The second possible cause may be what they call low decision latitude – a reference to the number of choices one has, or one thinks one has. In the North American context, and in 2001, junior lawyers at major law firms were seen as having this problem, because they have “little voice or control over their work, only limited contact with their superiors, and virtually no client contact”.<sup>10</sup> One wonders whether this would still be true today, there, or here.

The third possible factor is what they call the zero sum game aspect of litigation – that one side's gain always moves in lockstep with the other side's loss. “Lawyers are trained to be aggressive and competitive precisely because they must win the litigation game.”<sup>11</sup> Whether that is strictly true, in these days when lawyers are encouraged and sometimes compelled to pursue settlements, which by definition cannot be zero sum games, is perhaps arguable. It may be even a caricature of days past.

I venture to say that I see little to be gained in debating what activities tend to produce more or less mental illness among those involved. So long the statistics indicate that the occurrence of depression among our profession is well above the community average, leaders of the profession need to consider what to do about it. Arguably, reaching parity would not be the end of our concern, however, and not just for those individuals whose lives are blighted by their illness. As Professor Laura Rothstein wrote in 2008:

Even if the prevalence of mental illness and substance abuse problems are no higher for lawyers compared with the general population, the consequences of such impairment are significant. The stakes are high for lawyers themselves, who expend significant amounts of time and money obtaining the credentials to practice law. Legal educators, employers, and regulators have a

---

<sup>9</sup> Seligman, n1, 4

<sup>10</sup> Seligman, n1, 5

<sup>11</sup> Seligman, n1, 7

strong interest in protecting clients and the public from adverse events that might result from a lawyer's impairment. They also have an interest in protecting their credibility by assuring the public that they are appropriately monitoring misconduct. Clients have the highest stake in ensuring the competence of the lawyer providing the service because clients' lives are often affected in significant ways by the competence of the lawyers representing them.<sup>12</sup>

### 3. What can we do about it.

The Tristan Jepson Memorial Foundation was set up in response to these issues, by the parents of Tristan Jepson, a young lawyer who took his own life as a consequence of severe clinical depression.<sup>13</sup> Their intention was not only to create a memorial for their son, but to raise awareness and reduce the stigma about mental illness in the profession. The Foundation has now hosted twelve annual lectures in Sydney as well as lectures in Melbourne, Canberra, Brisbane, and Hobart.

It was at the first such lecture, in 2006, that the claim was made that the North American experience was not matched in Australia, which led to the commissioning of the research which underlay *Courting the Blues*.<sup>14</sup> There were Proposals for Change at the conclusion of that paper, including

- a. That it should be recognised that this was not a problem for individuals, but for communities – law schools, law firms, solo practitioners, professional associations and so on;
- b. That institutions (employers, professional bodies) should take on the mental health of its members as an essential institutional goal
- c. That mental health problems be seen as legitimate health problems
- d. That the occupational health and safety implications of mental health in the workplace be recognised

Those specifically directed to students included

- e. Students must develop differing skills which can be used in the professional and personal aspects of their lives
- f. In order to address the negativity or pessimism associated with legal practice, students (and practitioners) should be made aware of this kind of thinking, and be aware of their own mental style and of adapting it to different situations
- g. The strategies to be adopted in different universities (or other legal institutions) to deal with psychological distress are likely to vary greatly

---

<sup>12</sup> Rothstein, "Law Students And Lawyers with Mental Health and Substance Abuse Problems: Protecting the Public and the Individual" *University of Pittsburgh Law Review*, Vol 69 531, 533

<sup>13</sup> This material is based on the account in Kelk, n3, *Sydney Law Review* 2010 article.

<sup>14</sup> N3

Several years ago the Foundation decided to investigate whether it might be possible to promulgate guidance for legal institutions of all kinds as to how they might organise themselves to respond to these concerns. Our attention was drawn to the National Standard Canada: Psychological health and safety in the workplace<sup>15</sup>, and after considerable debate and discussion the Foundation released its own Guidelines some three years ago. The description which follows is based on the material on our website<sup>16</sup>:

The TJMF Guidelines are 13 workplace (psychosocial) factors which create a workplace where ALL staff feel....

(Organisational culture) there is trust honesty and fairness

(Psychological and social support) supported and able to get help when needed

(Clear leadership and expectations) they know what to do in their work as well as how their efforts contribute to the overall goals of the organisation.

(Civility and respect) they are treated with respect and courtesy

(Psychological competencies and requirements) they have a good job fit

(Growth and development) they are encouraged and supported to develop personally and professionally

(Recognition and reward) they are acknowledged appropriately in a timely manner and appreciated appropriately for the work they do

(Good involvement and influence by staff) they are included in discussions about their work and are able to participate in how decisions are made.

(Workload management) they are given the time and resources necessary to complete their work successfully

(Engagement) their work is meaningful

(Balance) they have choices and opportunities for flexible working arrangements to accommodate their work, family and personal priorities.

(Psychological protection) it is safe to speak up and that appropriate action will be taken and protection provided

(Protection of physical safety) their physical safety is protected

The aim of the guidelines is described as being to prevent injury, create a psychologically safe and healthy workplace, provide a framework for change, and sustain ongoing improvement.

---

<sup>15</sup> CAN/CSA-Z1003-13/BNQ 9700-803/2013 National Standard of Canada : Psychological health and safety in the workplace — Prevention, promotion, and guidance to staged implementation

<sup>16</sup> [www.tjmf.org.au](http://www.tjmf.org.au)

Those not already familiar with the Guidelines may notice at once, that they do not appear to be specific to the legal profession. And they are not. As the website proclaims, they were adapted by the Foundation from a National Standard, not specific to the legal profession, in Canada<sup>17</sup>. There are now around 180 signatories ranging from Courts (including the Federal Court and the Victorian Supreme Court), bar associations and law societies, law schools, law student societies, government departments and agencies, in house lawyers, to numerous law firms, ranging from global firms to one person practices. Several are international, and several are not “legal” at all - such as the Queensland Branch of the Australian Medical Association. The ability of the latter and other health related bodies to sign up reflects the generic nature of the guidelines, and their origin. Finally, the guidelines may be applied to all those in the relevant workplace, not just the lawyers..

It is of course strongly arguable that adoption of and adherence to the guidelines is simply good business practice, and in the long term commercial and financial interest of the signatories as well as those of their staff, members or other adherents. With respect to law schools, the Standards promulgated by the Council of Australian Law Deans for Australian Law Schools note that the “law school’s commitment to sound educational methods and outcomes includes a commitment to, and the adoption of practical measures to promote, student well-being, with particular reference to mental health and awareness of mental health issues.”<sup>18</sup>

The Foundation has not taken on any role of monitoring adherence to the guidelines by signatories. That would be resource intensive, and hopefully not required in any event – peer group pressure at all levels, and self interest, should operate to ensure that those who consciously sign up will have regard to them in their daily activities. The Foundation has supported and sponsored events at which signatories share the experiences with respect to implementing the guidelines

The guidelines serve as a memorial to the memory of one remarkable young man, a lawyer who took his own life, but are also a conscious attempt to make a difference in the lives of those affected by the stresses and strains of their working lives, and minimise the risk of others doing so in future.

A “good” lawyer, in addition to being a good person themselves as discussed by other participants in this session, is surely entitled to work in a place where the guidelines set out above, are in effect, and will then have every chance of being a good lawyer, in *every* sense.

---

<sup>17</sup> National Standard Canada: Psychological health and safety in the workplace  
CAN/CSA-Z1003-13/BNQ 9700-803/2013 National Standard of Canada : Psychological health and safety in the workplace — Prevention, promotion, and guidance to staged implementation  
[http://www.csagroup.org/documents/codes-and-standards/publications/CAN\\_CSA-Z1003-13\\_BNQ\\_9700-803\\_2013\\_EN.pdf](http://www.csagroup.org/documents/codes-and-standards/publications/CAN_CSA-Z1003-13_BNQ_9700-803_2013_EN.pdf)

<sup>18</sup> Available at [cald.asn.au](http://cald.asn.au)