

# **MENTAL HEALTH FOR MEMBERS OF THE LEGAL PROFESSION –**

## **A MODERN CONUNDRUM<sup>1</sup>**

**By Greg Walsh OAM**

### **INTRODUCTION**

I have been a legal practitioner for 45 years and as an articled clerk prior to my admission, I have nearly 50 years of experience in the practice of law.

I have welcomed the opportunity of not only appearing in the State of NSW but all States of Australia including as trial Counsel and also in respect of disciplinary matters.

By way of background, I was honoured to serve as a councillor at the Law Society of NSW and also as a member of a number of committees, including a task force that examined many years ago this very issue. As a result of the work of that task force, there was set up by the Law Society of NSW a system for advising legal practitioners which is now known as the Senior Solicitor's Scheme. I am proud to be a member of that Scheme. In these circumstances and having regard to the fact that like all members of the community, we bring to our work our own life experiences and common sense, the issue of mental illness for not only legal practitioners but the community is one of much importance.

### **A MATTER OF STATISTICS**

It is always somewhat difficult to obtain statistics in respect of an issue of mental health affecting a profession. The statistics that I have researched indicate the following:

- 80% of all disciplinary matters involve lawyers who have an underlying health issue;
- Law students and young lawyers are the most vulnerable members of the profession;
- Alcohol and drug abuse in the legal profession is a matter of considerable concern;
- 33% of lawyers and 20% of barristers suffer disability and anxiety due to depression and failure to seek help, and often self-medicate with drugs and alcohol.<sup>2</sup>

An important aspect of my experience as a lawyer has been to represent solicitors, barristers and members of the judiciary in professional conduct and judicial conduct matters over a number of decades.

The focus of this presentation is to raise the issue of mental illness in a way that legal practitioners and others are in a practical way assisted to have a better understanding of this most important issue that can and does affect us all.

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<sup>1</sup> The author acknowledges the assistance of Dr Olav Nielssen and Dr Andrew Ellis, Forensic Psychiatrists, the Black Dog Institute and the Law Society of NSW

<sup>2</sup> Sydney University Brain and Mind Institute

## **A PROBLEM OF IDEATION**

I have over many years sought to address mental health issues of my clients virtually on what can be an 'every day' basis. It goes without saying that in my area of practice such as criminal law, subjective issues often play a very important part in underlying criminality.

An important factor is that clients are often very resistant to accepting the probability of mental illness, let alone a treatment plan.

Australia like many countries have done so much through organisations such as the Black Dog Institute, Beyond Blue, the Tristan Jepson Memorial Foundation and others to bring down the barriers that have affected members of the community dealing with mental health issues properly. As such, there is a greater understanding in the community of these problems.

However, in the legal profession, it has been my experience that lawyers are very resistant to accepting diagnosis and treatment. Such an approach is multi-faceted but can have much to do with the behavioural traits of lawyers who by their ideation and training are notoriously combative. It is not unusual for me to raise such issues with a colleague and their response is "*why do you think there might be some mental issue?*" The lawyer may well have presented with a history that was indicative of underlying subjective issues and of course it would be only natural that I would in an objective and supportive way, raise such an issue. It is not unusual for lawyers to want to conceal such problems as to admit their existence can be an acknowledgment of 'loss' or 'defeat'.

Another factor is the 'drive to achieve', rather than to 'enjoy'. I must put my hand up and readily acknowledge that my personality traits are such that I am constantly dogged by the need to achieve as a lawyer. It becomes, in many respects, a 'way of life'.

## **ANXIETY DISORDERS**

Everyone experiences a sense of apprehension and fear which often is associated with physical sensation, such as tightness in the chest or stomach.

Stress is a normal condition that enables us to act in a way that deals with a necessary response to a situation.

As a lawyer, many of us have no doubt experienced the sense of anxiety when one is in the Court room and about to undertake a particular matter, especially depending upon the nature of that case.

## **FEAR AND ANXIETY**

Anxiety alerts a person to danger, such that the person can deal with the situation arising. On the other hand, fear, whilst also an alerting signal, occurs in circumstances of a threat, whereas anxiety, occurs where the threat is unknown, vague or internal.

## **Symptoms**

Anxiety can become a serious problem when it occurs with frequency and affects a person's behaviour. This can occur in circumstances where a person feels a sense of shame or lack of self-worth. In such circumstances, a person may be confused and have difficulty perceiving the meaning of particular events, including affecting a person's concentration, recall and normal capacity to relate to others.

## **DEPRESSION**

A person will experience a range of moods and be able to control such. However, feelings of a loss of control, distress, guilt, lack of concentration and thoughts of self-harm, may indicate depression. Major depressive disorder has a lifetime prevalence of about 15% and for women as high as 25%.<sup>3</sup>

Signs of depression include:

- Depressed mood most of the day, nearly every day, as indicated by feelings of sadness or empty observations by others appears to be tearful;
- Diminished interest or pleasure in activities most of the day;
- Significant weight loss;
- Insomnia nearly every day;
- Agitation;
- Fatigue or loss of energy every day;
- Feelings of worthlessness or excessive guilt;
- Difficulties in thinking or concentrating; and
- Recurrent thoughts of death.

## **Symptoms**

An important aspect of mental health is that of possible symptoms that can be indicated as of undue stress, anxiety and or depression.

The Black Dog Institute has provided a check list of changes in behaviour which I think is of much importance. These are:

- Changes in routines, such as not taking part in social activities, sport;
- Pre-occupation with disturbing thoughts which may include self-harm and or suicide;

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<sup>3</sup> Caplin and Sadock Synopsis for Psychiatry 10<sup>th</sup> edition

- Constant thoughts/actions of anxiety and low mood;
- Poor concentration and desire to work;
- Lack of motivation;
- Social isolation;
- Decreased sense of enjoyment;
- Lack of personal care;
- Use of drugs of alcohol;
- Sensitivity to criticism;
- Irritability or aggression.

It is often the case that those who are often the closest to the person concerned, may be aware of these features. It is very important that friends and loved ones ask the person concerned how their feeling and is everything alright or are they ok. Is there something that they like to talk about?

The sense that someone else cares about you is a powerful fact that can greatly assist a person suffering from stress anxiety and or depression. Such can lead to the initiation of practical assistance to the person concerned.

## **HOW DO YOU RAISE THE ISSUE OF MENTAL HEALTH?**

As a result of considerable efforts by the Black Dog Institute, Beyond Blue, Tristan Jepson Memorial Foundation and other organisations, including the Law Society of NSW, the issue of how we can all better converse about mental health issues has received widespread attention.

In the context of legal practitioners, this is a critical issue. Lawyers are very reluctant to embrace mental health issues and I believe this is because they are naturally sensitive to any exposure to such issues in the context of their professional practice. This extends also to members of the Judiciary and the Bar.

I have had many conversations with members of the Profession who are embarrassed and terribly concerned about the implications of others, including regulatory authorities becoming aware of any mental health issues including drug and alcohol addiction.

I emphasised to legal practitioners who seek my help that I am firstly there to help them and not to judge them in any negative way. I am there to do my best to support them, not only in my capacity as a solicitor, but a member of the community. I believe that this is a fundamental approach that is of great assistance in helping members of the profession who may suffer from mental health issues.

I further assure such practitioners that whatever I discuss with them is absolutely confidential. The fundamental principal of legal professional privilege is paramount in this area. If at any

time disclosure is to be made, it must be affected by way of very careful and informed consent and written instructions.

There is nevertheless a very important need to maintain effective communications with any person about mental health issues. It is important to convey to the person concerned that you want to help them to feel better about themselves and engage them in conversation which places them at ease and is supportive and not judgmental.

It can be of course problematical to seek to conduct such communications, for instance, in a working environment, where issues of privacy may clearly arise. It might be best to arrange to have a meeting in private to enable such conversations to take place.

It is important to listen to the person and encourage them to express their views and feelings. It is probably best not endeavour to provide a lay person's diagnosis or suggested treatment plan. That is not what is needed in talking with a colleague in such circumstances. If the practitioner expresses any major depressive type symptoms such as suicidal thoughts, then of course it would be important to enquire as to whether these thoughts are in any way active and whether the person can urgently attend upon their general practitioner or if necessary, an appropriate clinical hospital. In my practice, I have had the actual experience of colleagues expressing suicidal thoughts and have had to take the step of encouraging them to urgently consult with their general practitioner. In several cases, I was able to arrange for such practitioners to attend upon a medical practitioner in close proximity to my office.

## **STRATEGIES FOR HELP**

### **Solicitor Outreach Service (SOS)**

The Law Society of NSW operates the Solicitor Outreach Service (SOS) – 1800 592 296.

The service provides:

- Up to three psychological counselling sessions per financial year; and
- 24/7 telephone crisis counselling with a psychologist.

The Law Society of NSW initiated SOS and its services are delivered by PeopleSense by Altius. If a legal practitioner requires ongoing mental health assistance, a treatment plan can be organised which can be provided by Medicare from the same psychologist outside of SOS with a referral from a GP under the Medicare Better Access to Mental Health Care initiative.

It is helpful to consult a psychologist from the scheme where you may be experiencing difficulties in your work and coping with stresses of professional life.

It is a key of the SOS that no information will be provided to the Law Society of NSW which could identify any solicitor accessing SOS. Statistical information is provided by PeopleSense, which does not identify any information in respect of any legal practitioner accessing the service.

The following FAQs are provided:

***Who can access this service?***

The Solicitor Outreach Service (SOS) is available to solicitors who hold a current practising certificate from the Law Society of NSW.

***Can my family or staff access the service?***

SOS is only available to NSW solicitors.

***Does it matter where I am located?***

You can access SOS irrespective of where you are located. Treatment may be provided in person, over the phone or via video-conferencing technology, depending on your individual circumstances.

***What is a psychologist and what do they do?***

In Australia, psychologists are registered health professionals. Psychologists have completed university training and professional supervision, and they are registered with the Psychology Board of Australia and listed with the Australian Health Practitioner Regulation Agency.

Psychologists need to satisfy yearly requirements to maintain their registration status. Psychologists must also adhere to strict professional standards and code of ethics.

Psychologists use evidence-based strategies to help people cope with emotional, work, stress, relationship, addiction, mental health and other difficulties.

***Can I only access this service for work related issues?***

You can access SOS for any concern or difficulty that you may be experiencing, personal or professional.

***Is it confidential?***

Yes, engagement with SOS is confidential. Although SOS is an initiative of the Law Society of NSW, the services are being delivered by third party provider, PeopleSense by Altius. PeopleSense will not be sharing any information with the Law Society of NSW which could identify solicitors accessing SOS.

As part of the psychological services provided, the psychologist will need to collect and record personal information relevant to your situation. Psychologists must comply with strict regulations around privacy and confidentiality.

To ensure that SOS is meeting the broad mental health and wellbeing needs of NSW solicitors, PeopleSense will be providing the Law Society of NSW with de-identified and aggregated reports. These reports will not contain any individual or identifiable information.

Please discuss any questions about confidentiality directly with PeopleSense, by phoning [1800 592 296](tel:1800592296).

***How much does it cost?***

Each NSW solicitor can access up to three psychology counselling sessions per financial year, as well as immediate access to crisis counselling if in distress, paid for by the Law Society of NSW.

***What if I want to continue with treatment?***

The psychologists employed by PeopleSense are registered with Medicare. Depending on your individual circumstances, you may be able to access Medicare-subsidised treatment with the same psychologist outside SOS with a referral from your GP under the Medicare Better Access to Mental Health Care initiative.

***Do I need to get a Mental Health Care Plan or referral from my GP?***

You do not need a referral from your GP to access SOS. However, you will need to consult with your GP if you wish to access Medicare-subsidised treatment outside SOS.

***When is a good time to seek help?***

If you need support, are struggling to carry-out day-to-day activities or have experienced difficulties coping for two weeks or more, consider seeking professional support.

***Who is the crisis counselling for?***

The crisis counselling is primarily intended for people experiencing acute distress or thinking about suicide.

***What should I expect when I speak with a psychologist?***

It is common to feel nervous or uncomfortable to begin with. These feelings often abate once treatment has commenced. During the initial session, the psychologist will ask questions so they can understand your situation and develop a customised treatment plan.

Psychology is talking therapy. Psychological treatment is a collaborative process, and results can take time and effort. Psychology tends to be goal directed and solution focused. You may be asked to identify treatment goals, to complete tasks outside of session and to report back on these within session. People generally require multiple sessions before noticing changes/improvements.

***Can I use a different service?***

This is the service offered via SOS. However, there are a range of other services that provide crisis support, mental health resources and online programs. There are also many privately operated mental health services. Your GP may recommend someone, or the Australian Psychological Society has an [online directory](#) which can be used to locate a psychologist via location or presenting issue.

***Can I seek funding from the Law Society to continue with my existing or preferred psychologist?***

The psychology services funded by the Law Society and which are provided as part of SOS are being delivered by PeopleSense by Altius. The Law Society is unable to offer funding or reimbursement for psychological sessions delivered by other service providers.

*Disclaimer: The Law Society of NSW does not warrant, guarantee or provide any representation in respect of the services provided by PeopleSense by Altius as part of the Solicitor Outreach Service. The Law Society of NSW is not liable in relation to any aspect of the services which PeopleSense by Altius may provide to you. The Law Society of NSW shall not be liable for any damages or costs of any type arising out of or in any way connected with any use of these services by any person. The general information provided by the Law Society of NSW about the Solicitor Outreach Service is not advice and should not be treated as such. This information is not intended to replace the medical advice of your doctor or other professional healthcare provider. Please consult your doctor or other professional healthcare provider for advice about a medical condition.*

***Phonelines***

- [Lifeline - 13 11 14](#)
- [Beyond Blue - 1300 224 636](#)
- [Mental Health Line \(NSW\) - 1800 011 511](#)
- [Suicide Call Back Service - 1300 659 467](#)
- [1800RESPECT - 1800 737 732](#)
- [Kids Helpline - 1800 55 1800](#)
- [SANE Australia - 1800 187 263](#)

**INITIATIVES**

The covid pandemic has been one of the greatest challenges to our community, including the legal profession. A term that comes to mind is that of languishing. The demands upon legal practitioners have been constant and many of my colleagues have experienced a great sense of isolation and feelings of abandonment.

In the context of sole practitioners and smaller law practices, the stress generated by the covid pandemic has been the greater. Larger law firms have responded to issues of mental health and have recognised such in initiating mental health and well being interventions.

In 2013, a survey of Australian lawyers addressed initiatives in coping with work related stress.<sup>4</sup> Effective strategies included time off work<sup>5</sup>, sport and exercise classes<sup>6</sup>, redistribution of work to other colleagues<sup>7</sup>, extra time to complete work<sup>8</sup> and mentoring programs.<sup>9</sup>

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<sup>4</sup> Chan, Suzanne Poynton and Jasmine Bruce 'Lawyer Stress and Work Culture; An Australian Study' (2014, University NSW Law Journal 10621080).

<sup>5</sup> 76%

<sup>6</sup> 74%

<sup>7</sup> 70%

<sup>8</sup> 70%

<sup>9</sup> 60%



In an extremely helpful article, ‘Assessing the Effectiveness of Wellbeing and Issues for Lawyers and Support Staff’ Poynton et al, observed that three levels of intervention were of the most assistance to legal practitioners. These were, primary interventions which involve elimination or reduction of work stresses in the organisation or work environment (e.g reducing job demands, improving job control and improving social support. Secondary interventions which are efforts designed to alter or improve the way individuals perceive and respond to stressors (e.g screening for stress symptoms, training programs for relaxation and anger management, cognitive behavioural therapy) and third tertiary interventions which are reacting efforts intended to treat, compensate and rehabilitate workers with stress related illness or mental health issues (e.g medical care, counselling, modification of drug stressors and return to work plans).<sup>10</sup>

Poynton et al examined the effectiveness of wellbeing initiatives and found that there was an important need for primary interventions in providing support for staff to reduce stress, ‘rather than simply responding to stressors’.<sup>11</sup> The review did not identify the law practice structure of the participants and it is the authors experience that sole practitioners and smaller law practices critically lack the resources for dealing with work demands. It is in this context that the importance of educating the profession on mental health issues is at the forefront. It is also vitally important that appropriate education and support programs continue to be made available to these types of law practices in such circumstances.

### **Suggestions for change**

The following are suggestions which can assist with maintaining a healthy approach to mental health in a law practice:

- If you are a principal or partner, it is important to show leadership to one’s staff. Greeting each staff member each morning and having regular positive communications is an effective way to maintain a positive atmosphere for staff. Staff benefit from feeling positive as an active member of the team.
- It is fundamental that communications between staff are always appropriate and cordial. Maintaining a blame game contributes to lack of respect and confidence and undermines good will in staff. It is always important to encourage staff and to acknowledge their good work, and to say thank you.
- Staff want to know that they’re part of an organisation that has an overall goal. Feedback from a principal, partner and other lawyers as to particular cases and the part played by staff can be very helpful.
- It is always important in circumstances of having sensitive communication to do so in private.

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<sup>10</sup> UNSW Law Journal volume 41(2)

<sup>11</sup> ‘Assessing the Effectiveness of Wellbeing and Issues for Lawyers and Support Staff’ UNSW Law Journal p.618

- Initiatives as to mental health and wellbeing are essential and can do much to build team spirit and feeling of wellbeing of all staff. Interventions include team walks and pilates/ yoga sessions and other activities.

## **YOUNG LAWYERS**

A recent survey in the UK, showed that 90% of young lawyers are suffering stress from work.<sup>12</sup> 50% felt that they could not work regularly due to work pressure.

Law students, young lawyers, paralegals in Ingham and Wales showed that 26% surveyed they suffered from ‘severe’ or ‘extreme’ stress.

A study by the Hazelden Betty Ford Foundation and the American Bar Association in 2016, found that 21% employed attorneys are problem drinkers, 28% suffer from some level of depression and 19% struggle with symptoms of anxiety.<sup>13</sup> A study conducted at the Yale Law School in 2014 found 70% of those surveyed struggle with mental health issues during their time at law school.

A study conducted in 2020, found that 31.2% of more than 3,800 respondents feel that they are depressed, 64% feel that they have anxiety, 10.1% feel they have an alcohol problem and 2.8% felt they have a drug problem.<sup>14</sup>

The legal profession is an extremely demanding one. Persons attracted to the profession often have a personality demanding success especially in the context of drive and ambition. A personality trait that is often encountered is one of being a perfectionist, together with competition to succeed. Whilst these are admirable personality traits, they can also lead to avoidant style coping strategies, which can result in perceptions of failure.

The practice culture of many law firms is one based upon extensive work hours and competition. The culture of a law practice can involve unrealistic demands for profit at the cost of the wellbeing of young lawyers and indeed senior practitioners.

Expectations of young lawyers can involve coping with unrealistic work levels, worsened by lack of support and supervision. Modern communications mean that work must be undertaken with immediacy.

The covid-19 pandemic has changed the working environment. Support staff no longer wish to work in the office. Support services for lawyers has increased accordingly. Support services for lawyers has increased accordingly. In smaller type practices, tasks such as photocopying, collating, answering phones, postage, typing, filing are often undertaken by young practitioners.

These factors have placed even more demand upon management of law practices. The UK survey found that 49.5% of stress was due to inefficient management.

A common problem, especially at this time, is the willingness of senior lawyers to respond these issues. Many such lawyers are struggling to cope themselves. Being in a position to help

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<sup>12</sup> UK Law Society; JLD Division 2017

<sup>13</sup> Hazelden Betty Ford Foundation 2016.

<sup>14</sup> ALN’s Mental Health and Substance Abuse Survey.

young colleagues requires energy and commitment. Senior lawyers can approach this important issue as if it is just ‘too hard’.

In an American study in 2020, 35% of surveyed respondents didn’t know whether their firm offered mental health support benefits.<sup>15</sup>

One approach to this problem is the importance of educating lawyers about mental health issues, including stress, anxiety and depression. Many young lawyers are concerned that their older counterparts have little insight to these problems in the workplace.

## **FACTORS CAUSING STRESS**

There are a number of overlapping factors which can cause undue stress.

These factors include:

- Excessive hours;
- Profit demands;
- Obtaining more business;
- Complying with deadlines in especially in the context of modern communications;
- Dealing with client expectations;
- Coping with a work environment where mental health issues are not readily understood.

## **WHAT CAN BE DONE TO ADDRESS STRESS?**

Young lawyers often feel that they’re not in a position to raise workplace issues that affect their wellbeing. They may have only been in the workplace for a relatively short period of time. The culture at the law practice may be such that a young lawyer must be ‘tough’. Afterall, it is that sort of profession. However, such an approach inevitably can lead to a poor workplace culture and the suffering from unnecessary stress, anxiety and depression. What can a young lawyer do about this? The following suggestions may help:

### **Recognition**

1. It is important to value yourself to an extent that you realise that there is a problem. A number of symptoms of stress have already been raised. It is far better to acknowledge to yourself that you have a problem as this will enable the issue to be addressed often much earlier than otherwise would have occurred. It is alright to admit that you do have a problem and that you want to do something about it.
2. You should not be afraid to raise the issue with a colleague or a more senior lawyer. If this is a problem then of course you can contact for instance, the Solicitors Assistance

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<sup>15</sup> ALN Mental Health and Substance Abuse Survey 2020

Scheme, on a confidential basis. This will enable you to at least be able to talk to someone who can help you and if necessary, refer you for further assistance.

### **Changing the workplace environment**

3. The issue that you are facing well may entail a need to communicate to more senior practitioners concerns about the workplace environment. It is important that you have the opportunity to raise any concerns in a constructive and supportive manner. After all, lawyers are trained to give advice to their clients about the need to seek redress in difficult circumstances. The work environment should be such that issues of concern can be raised in a constructive and supportive way.

### **Exercise**

4. Invariably, lawyers who are stressed can stop exercising as they feel jaded and lacking energy. It is a good idea to get a health check up from your GP including a cardiac review. This may well entail blood tests and other investigations but it is important that you have your health checked especially in circumstances of extreme stress.

### **A need for a holiday or even a brief change**

5. The covid pandemic has meant that many people have not travelled for now over 2 years. People, including young lawyers, are reluctant to travel. It may well be that simply taking a week off can help you considerably in coping with stressors.

### **Connecting with others**

6. It is often the case when young lawyers are stressed that they feel they are not connected to other members of the profession. The covid pandemic has increased these problems. Colleagues should not be your 'enemies'. Reaching out to them just to have a talk or say hello can be very beneficial. It may also be helpful if their encouraged to reach out to you. It is important to understand that the legal profession is indeed a 'profession'. The goal of a profession is not only expertise in learning application of such, but also helping others, and in particular, vulnerable members of the community. This is not a 'noble cause' but an essential aspect of being a member of the legal profession.