

Disclosure

→ We have become a signatory to the guidelines for two reasons: first, so that as an employer we can make our own workplace a better place. Second, so that as the legal regulator, we can be fully familiar with the cause, effect and solutions to fixing unhealthy workplaces. Understanding how to help lawyers in trouble should be “stock in trade” for a legal regulator. Following the guidelines itself will add to the regulator’s familiarity.

Legal regulators, law firms, mentors and practice managers, professional associations and universities are all talking about the reality of mental illness in the law. If they are also endorsing good initiatives like these guidelines then we have a much better chance of eliminating the stigma and minimising the incidence of mental illness in the profession.

Conclusion

Suppressing discussions about stress, depression and anxiety and failing to understand mental illness can only exacerbate the stigma associated with mental illness. Progressive law firms do much to reduce the stigma by anticipating the existence of mental illness in the workplace and many of them act on it. The regulator, too, has been proactive in dealing with mental health among practitioners.

The Board and Commissioner use regulatory tools and personal or pastoral approaches to help practitioners in trouble. A holistic approach using a similar mixed bag of tools has been employed in other jurisdictions with considerable success, particularly in Western Australia.

The objective is not to cast practitioners out of the profession, but to limit the harm done to them and to their clients when things go wrong, and to guide them back to productive practice. Effective and nuanced regulation can provide considerable assistance, but ultimately the best solution is found in effective preparation and support in practice. The information gleaned from complaints also offers insights into avoiding future problems common to some practitioners – especially those practising alone or in very small businesses. ■

Michael McGarvie is the Victorian Legal Services Commissioner and the CEO of the Victorian Legal Services Board. **Jennie Pakula** is the Manager, Assessment and Resolutions, with the Victorian Legal Services Board and Commissioner.

Helping junior lawyers thrive

The wellbeing of newly admitted lawyers is significantly shaped by their early experience of legal work. An environment that develops lawyers’ autonomy, competence and relatedness to others can minimise psychological distress and promote thriving. **BY TONY FOLEY, VIVIEN HOLMES, STEPHEN TANG AND MARGIE ROWE**

SNAPSHOT

- The transition from law student to newly-admitted lawyer is a critical time, not only for the mental health and wellbeing of these lawyers but for the future of the profession.
- An ongoing Australia-wide project led by ANU researchers examines the experience of lawyers in their first year of practice, identifying not only sources of distress but what helps junior lawyers thrive.
- Workplaces must help junior lawyers develop a sense of competence and professional efficacy. The ethical climate and learning practices of the workplace also significantly affect mental health and wellbeing.

There has been increased discussion over the past few years about the mental health of lawyers. Most previous studies have researched the extent and causes of psychological distress in law students and lawyers. There has been less attention on also understanding what helps lawyers to thrive and become happy, healthy and ethical members of the legal profession.

Our research project, the Transition to Professional Practice Project, has focused on this latter aspect, looking specifically at Australian lawyers in their first year of practice. This can be a difficult and exciting time, but is always a critical period of discovery and change. We were interested to see how newcomers make the transition from student to legal professional and how they develop their professional identity, in the sense of developing their beliefs and practices about what it means to be a lawyer. Lawyers-to-be are often not given opportunities to explore these issues in law school, sometimes resulting in a collision of expectations and reality when first exposed to legal practice.

Background

The project began in 2010 when we interviewed a group of new lawyers and their supervisors, and spent some time with them in their workplaces. From this initial work, we identified three recurring themes which signalled a successful transition from law student to legal professional:¹

- finding an appropriate balance between autonomous/independent work and close mentoring and supervision;
- realising that legal practice is not simply a



rational and rule-based activity, but one that will involve ongoing uncertainty, particularly in the interpersonal, emotional and complex human aspects of legal work; and

- finding a comfortable accommodation between their own values and those modelled by colleagues and their firm.

New lawyers who made a successful transition to practice found the right mix of autonomy and support. They developed a sense of professionalism that was broader than simply technical competence, and which incorporated traditional professional values of ethical practice, collegiality and public service. Those new lawyers who felt their transition was less successful lamented that they found themselves with either too much autonomy and not enough support, or too little scope for autonomy and supervision that stifled their growing initiative. Others felt uncomfortable with the ethical climate of their workplace or ill-equipped to handle the uncertainty of practice.

Framework

In the current stage of our research, we are surveying a wider pool of new lawyers to better understand this transition. Our focus is on the personal characteristics of new lawyers and the culture of their workplace. We are looking for connections between their degree of professional thriving and their development of a positive professional identity, the ethical and learning climate of their workplaces, and their psychological wellbeing.

One particular area of inquiry is to apply Self-Determination Theory (SDT), an extensively researched psychological theory of human motivation, as a way of explaining this relationship between professional identity formation and thriving (or otherwise). One important premise of SDT is that we are most effective, engaged and authentically motivated in what we do when three basic psychological needs are met in our environment.² When applied to new lawyers, these needs can be summarised as follows:

Autonomy: the lawyer feels that the workplace affords them a sense of agency and control in their work and that they feel supported to express ideas and make intentional choices consistent with their values (autonomy does not mean working completely independently and without support);

Competence: the lawyer feels a sense of increasing efficacy and mastery in their work and role as a legal professional; and

Relatedness: the lawyer feels a sense of connection and belonging to others at work, with the ability to interact meaningfully and give and receive care when needed.

Previous research has shown that law school impairs the meeting of these needs, with resulting declines in psychological wellbeing. However, studies of our practical legal training students at ANU Legal Workshop have shown that legal study need not have this effect.³ Given these findings and the centrality of these core needs, we wanted to map what happens in practice, and what best predicts continued thriving.

New solicitors

The second dimension of our study looks at the influence of a new lawyer's workplace, and their perceived fit with that workplace, including its ethical culture. Ethical culture relates to much more than overt unethical behaviour. It includes a melange of positive and negative norms, practices and attitudes which permeate the everyday practice of law and interaction with colleagues and clients. We also looked at the learning culture of the workplace. This relates to more than formal workplace learning and access to community legal education, and reflects the intention and willingness of both lawyers and the organisation to share information, give feedback, and adapt to change.

The third dimension examines new lawyers in terms of their own psychological wellbeing. In line with previous Australian and international research, we inquired about levels of psychological distress and impairment in new lawyers, particularly in terms of symptoms associated with depression, anxiety and stress. However, the absence of distress is not equivalent to the presence of positive wellbeing, so we also explored their job satisfaction, career satisfaction, and feelings of hope and optimism. Finally, we asked them to make self-assessments of their own professionalism and what qualities they saw as important in a legal professional.

Preliminary findings

As of July 2015, 245 new lawyers have participated in our ongoing survey. The average age of respondents was 26 and they worked in a variety of legal practices across Australia and under a variety of work conditions and pressures. Since we are identifying patterns of relationships and associations between variables, we do not need an exhaustive or strictly representative sample. While we hope to hear from more new lawyers, we are in a position to report some solid preliminary results.

A workplace that builds competence

We found that a workplace environment that builds competence promotes resilience and insulates new lawyers against psychological distress. Our results suggest that it is vital that new lawyers feel that they are effective (and getting better) in their legal work. To be clear, competence in this context is related to the extent to which a workplace allows the new lawyer to feel and express their competence (through doing work that requires and develops competence) – not just the individual's sense of competence, although the two need to align.

This is not to say that new lawyers should feel competent to run a complex transaction or litigious matter unassisted. This would be unrealistic. Most new lawyers graduate from law school at the top of their game and then enter at the bottom of what may be a large, complex organisation where informal rules and procedures dictate success. New lawyers quickly and rightly realise that they are not omniscient, but this sense of "not knowing" can go too far, to the detriment of psychological wellbeing. Our results suggest that it is important that lawyers' growing competence is validated

through recognition and meaningful feedback. This is assisted if they have a sense of direction and aspiration in terms of competency: having a "map" of where they are headed and what they might soon be able to do. Particular attention needs to be given to recognising competence in the interpersonal everyday aspects of practice – not just technical legal research, but often overlooked informal activities, such as how to use precedents or file court documents or handle a client's (or a partner's) late night email requests.

Throwing lawyers in at the deep end with no direct supervision or learning opportunity is detrimental to this sense of competence; yet so too is excessive hand-holding or unchallenging work with no learning rationale or signs of progression.

Importantly, a workplace which promotes a sense of competence, efficacy and capability plays a preventative role against psychological distress. We suggest that meeting their need to feel competent has a significant effect in terms of preventing psychological distress and promoting a successful transition to a thriving professional practice.

Supported autonomy and relatedness

While competence has a dual role, the strongest predictor of positive wellbeing (satisfaction and thriving) was a lawyer's sense that they had supported autonomy and agency in their work. Workplaces that reward new lawyers for applying their intrinsic curiosity, problem-solving abilities, people skills and personal values help meet this need for authentic and supported autonomy. New lawyers who felt that they could apply their talents to their work, rather than being told what and how to work, or being treated like an impersonal cog in a machine, were the most satisfied and had the strongest professional identity.

New lawyers also need to feel a sense of relatedness to others in their workplace and through their work. This is important not only to prevent psychological distress compounded by isolation or disconnection, but to facilitate thriving, satisfaction with their work and confidence in their professional identity. To thrive, they need to feel connected and have relationships (with peers, mentors, supervisors and the wider profession) in which they are valued.

Ethical and learning culture

A workplace in which everyone seems to be only concerned with their own interests, or which is merely perceived by employees to emphasise egoistic self-interest, contributes significantly to greater levels of psychological distress in its junior lawyers. An environment of competitiveness, suspicion or manipulation is not conducive to good mental health. While this is unsurprising, it is important that workplaces be aware that even the perception of a norm of self-interest may cause new lawyers to curtail their altruism, empathy and trust, which will in turn contribute to an increasingly distrustful work environment.

Interestingly, some participants' workplaces evidenced what might colloquially be referred to as a "cowboy mentality". That is a cultural norm which values power over honesty, and promotes a willingness to break ethical rules

in order to achieve a desired outcome. This type of ethical culture is, as would be expected, predictive of lower job satisfaction in new lawyers. However, it also seems to offset higher levels of distress among those lawyers who were showing some early indicators of impaired wellbeing. At this preliminary stage, we surmise that such a culture leads to a false, short-term sense of competence and power, which will in the long term impair thriving and lead to serious ethical dangers.

New lawyers in workplaces which have a culture of organisational learning had higher levels of satisfaction and professional identity. This kind of culture is most effectively modelled by partners and those in authority. Such a learning environment allows new lawyers to be meaningful, valued and effective parts of their workplace and the profession.

Conclusion

Some clear messages are emerging from this ongoing research. The legal profession needs to continue to do everything possible to minimise the worrying levels of psychological distress among its members. As part of these efforts, the profession needs to pay attention to the experiences of new lawyers. Legal workplaces that foster a growing sense of competence and provide a positive ethical culture help to minimise levels of distress during this formative period. If new lawyers are to thrive, they also need a sense of supported autonomy, a feeling of connection to others in their workplace and a work environment that models ongoing learning.

Our research makes clear that the profession can do much to ensure new members become happy, healthy and ethical lawyers.

If you are working as a lawyer in your first year of practice after admission, you are invited to take part in this online survey. For more information, please go to: <https://thematic.org/survey/newlawyers>. ■

Associate Professor Tony Foley is a former practising lawyer and now teaches and researches the legal profession, criminal justice practice and the environment at the ANU College of Law.

Vivien Holmes is a lawyer and senior lecturer at the ANU College of Law. She teaches and researches in the area of legal ethics.

Stephen Tang is a lecturer and psychologist at the ANU College of Law. His research applies clinical and experimental psychology to legal education and practice. **Margie Rowe** is a lawyer and senior lecturer at the ANU College of Law.

1. See our 2011 report, *A Puppy Lawyer is Not Just for Christmas*, <http://ssrn.com/abstract=1956348>.

2. Edward L Deci and Richard Ryan, *Handbook of Self-Determination Research*, University of Rochester Press, 2002.

3. Stephen Tang and Annela Ferguson, "The Possibility of Wellbeing: Preliminary Results from Surveys of Australian Professional Legal Education Students" (2014) 14 *QUT Law Review* 27.

It's time to impose rules

Self-regulation does not work, so a change in culture and approach is needed to avoid the anxiety and depression lawyers suffer.

BY LINDA WHITE AND EMELINE GASKE

We know long working hours and heavy workloads increase the likelihood of mental illness. It is time for law firms to be proactive in eliminating risks to the mental health of employees and review workloads, working hours and billable hour targets.

The evidence is clear: lawyers are suffering from mental health conditions at an alarming rate. Research suggests that the high pressure, large workloads and long working hours that typify the work of a lawyer are a significant cause.

The legal profession should be applauded for recent attempts to deal with lawyers' mental health more honestly and openly than in the past. However, a more fundamental shift is required.

Too much focus on the individual responsibility of lawyers to manage their own working hours, workloads and stress levels is ineffective in the face of structural and cultural problems. Instead, law firms must actively manage the high workloads, billing targets and resultant excessive hours worked by their employees to reduce the incidence of mental health problems and increase overall wellbeing.

An emerging crisis

It is now well accepted that there is a serious mental health problem among Australian lawyers. Repeated studies have shown that lawyers suffer anxiety and depression at rates significantly higher than the general population.

A 2014 study of Australian lawyers¹ found:

- 37 per cent of lawyers experienced moderate to extremely severe depressive symptoms, compared with 12 per cent of the general population;
- 31 per cent of lawyers experienced moderate to extremely severe anxiety symptoms, compared with 9 per cent of the general population; and →

SNAPSHOT

- Lawyers suffer stress, anxiety and depression at significantly higher rates than the general population and suffer mental illness at higher rates than other professionals.
- Although some firms promote measures for individuals to self-manage, these haven't been successful.
- It's time for an organisational approach reviewing workloads and targets along with external regulation via a modern award to back up the culture change needed.