

**KEYNOTE ADDRESS**

**NATIONAL WELLNESS FOR LAW FORUM 2015**

**AUSTRALIAN NATIONAL UNIVERSITY COLLEGE OF LAW**

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**DEPRESSION: AN ISSUE IN THE STUDY OF LAW**

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In his book, *“Lincoln’s Melancholy; How Depression Challenged a President and Fueled his Greatness”*, Joshua Wolf Shenk wrote at page 16; - “Lincoln was not depressed in his late teens or early 20’s – at least as far as anyone could see.” At page 18, after a discussion of Lincoln’s worrisome personality, the author said: -

*“These streaks of sadness and worry may have been minor depressions. But it wasn’t until 1835 that serious concerns emerged about Lincoln’s health ... The first sign of trouble came with his intense study of the law.”*

Therefore the study of the law as being a possible stressor in the onset of major depression is not a new concept. However, concentration on the topic of “Depression and the Study of the Law” has been relatively scarce, at least in Australia, prior to the 2007 release of the National Depression Initiative. The Initiative relied on a survey by Beaton Consulting and Beyond Blue. The survey found levels of depression in lawyers and law students, which were alarming and more prevalent than in other professions or other students.

The incidence of depression amongst law students and legal practitioners was the subject of more detailed focus in a monograph called *“Courting the Blues”*, a combined production of the Brain and Mind Research Institute, the University of Sydney, and the Tristan Jepson Memorial Foundation. The monograph

dealt with “*attitudes towards depression in Australian law students and legal practitioners.*” It was co-authored by Dr Norm Kelk, Dr Georgina Luscombe, Dr Sharon Medlow and Professor Ian Hickie.

In the foreword to the work, the authors at page iii describe law students as “a cohort of students who are clever, competitive, perfectionistic, have high expectations, and who are generally quite hard on themselves.” The study that led to the production of “*Courting the Blues*” involved 741 final year law students from 13 Australian Universities, as well as 924 solicitors and 756 barristers.

In the summary of its findings, “*Courting the Blues*” made several significant points. Foremost among them, so far as law students are concerned, are dot points 4 and 5. The first of those dot points focussed on the high levels of psychological distress and risk of depression in law students and practising lawyers *when compared with other groups*. Thus reinforcing the findings of the 2007 initiative.

The fifth dot point as follows:

*“Participants also revealed a number of attitudes and behaviours which imply a general reluctance to seek help for mental health issues.”*

Reasons for these findings include negative attitudes about mental illness and a fear that people with mental illness may be discriminated against.

At page 3 of *“Courting the Blues”*, in the introduction section, the authors refer to studies undertaken in the United States which revealed that new law students did not come to the study of law with signs of depression but once commencing to study law an onset of certain symptoms occur. These include *“obsessive-compulsiveness, interpersonal sensitivity, paranoid ideation, hostility, depression, anxiety and loss of subjective well-being ...”*

Further support for the view that law students suffer higher levels of mental illness when compared with students of other disciplines is contained in an article published in vol. 14 of the QUT Review by Kate Galloway and Peter Jones of James Cook University entitled ‘Guarding our Identities; the Dilemma of Transformation in the Legal Academy’. At page 15 the authors contend that there should be profound changes to the way in which a law degree is conducted. The position is just as bleak in the United States, which can be seen from an article by Brian S. Clarke entitled *“Coming Out in the Classrooms: Law Professors, Law Students and Depression”* in the February 2015 edition of the Journal of Legal Education. At page 8 of the article Clarke observes that *“A third or more of our students are struggling with mental illnesses that are exacerbated*

or triggered by significant stressors of law school (and the various issues surrounding it including ... the cost, debt loads and job prospects).”

The failure of current law education methods to safeguard the mental well-being of students has led to suggestions, in recent studies, for change. The suggested changes made by Galloway and Jones and also in other studies, include the following:

- The inclusion of meditation and mindfulness in the curriculum;
- The highlighting of strategies for pastoral care and access to psychological assistance;
- The encouragement of cultural change in legal studies by a focus on the position of the law within a social context rather than for its black letter value. This would include developing critical thinking about legal concepts and the scope for changes in the law;
- Doctrinal content should not be the entire focus in legal studies. The law degree should be concerned with criticism and evaluation of the law as well as learning about the content of the law;

- Ethics leaning opportunities in the context of the law should also be taught;
- Soft skills should be encouraged. Soft skills were referred to by Galloway and Jones at page 17 of their article as including:
  - *“resilience, self-awareness and the ability to take multiple perspectives”*;
- More focus on legal research and less on examinations; and
- As recommended by an Australian Law Reform Commission Report in 2000, there should be *“a broader engagement with the law and the interaction of skills including the ability to build and sustain personal relationships, resilience, and self-awareness.”*

Having now had the experience of being a law student, legal practitioner and jurist, I consider that the mental well-being of law students would be greatly assisted by the curriculum including a mental well-being subject within it. This should preferably occur in the first year. Law students should also be actively encouraged to engage in meditation and mindfulness techniques. It would also be of assistance for practitioners, academics and jurists who have battled depression to share their experiences with students.

A 2011 study conducted amongst Melbourne University law students showed that improved levels of course satisfaction and engagement did not result in reduced levels of depression, anxiety

and stress. The results of the study and the conclusions flowing from it are set out in an article by Dr Wendy Larcombe and others in (2013)<sup>35</sup>Sydney Law Review 407, especially at 430 to 432. More is required than mere satisfaction with being a law student or a view that the law school may be meeting the expectations of a considerable number of its students. A disturbing aspect of the study is that there was evidence that many students considered depression to be part of the price of becoming a lawyer. The authors say that “it is imperative that this is not a lesson ‘taught’ by law schools.” It is hard to disagree with that statement.

The RMIT University’s JD Program has available for its students a counselling service which stresses the concept of resilience and the importance of developing and maintaining resilience. In a brochure handed out to its law students, the University sets out seventeen points designed to develop and maintain resilience. The brochure defines resilience, in effect, as the ability to persevere when the things go wrong and the capacity to face life’s challenges with greater resolve. Annexed to this paper, and marked “**A**”, is a list of the seventeen points.

It would be of great assistance to law students to know that their mental well-being would be the subject of continuing focus after graduation. The Tristan Jepson Memorial Foundation strives to do

just this. The Foundation was set up in memory of Tristan, who suffered depression as a practising solicitor. This led to the tragic consequences when he took his own life only four weeks after his 26<sup>th</sup> birthday. The Foundation's objective is to decrease work related psychological ill health in the legal community and to promote workplace psychological health and safety. It has made great efforts to achieve that aim, not least by the identification of thirteen psychological factors being elements that impact employees' psychological responses to work conditions. Various law firms and other entities, such as Telstra, Westpac, University of Western Sydney and Leighton Constructions, have signed up to promoting the presence of those factors in their workplaces. Annexed to this paper and marked **"B"** is a list of thirteen psychological factors.

Application of those factors will assist in harm minimisation for young lawyers as they enter a profession with many stressors ready to confront them in the office, in the court room and in their everyday challenges. I urge all law firms to adopt the Tristan Jepson model. This would act as a beacon to law students to realise that once entering practice their psychological needs would be respected.

In my home state of Victoria, the Law Institute and the Bar have combined to establish the "Well-being and the Law Foundation"



(“The WATL Foundation”). The Foundation aims to raise funds from the legal profession to enable it to engage in activities that increase awareness of mental health conditions within the profession and the broader legal community. WATL aims to develop a strategy to reduce the incidence and severity of poor mental health within the profession and the broader legal community. It supports practical initiatives such as the Vic Lawyers Help Line, which provides free health and well-being information by trained professionals for lawyers, law students and legal support staff.

I am honoured to be one of the inaugural ambassadors of the WATL Foundation, together with Robert Richter QC, Mr. Adam Lunn, a partner from the firm Mills Oakley., Ms. Kelli Ritchie, a director of SMR Legal in Shepparton and Mr. Patrick Easton, a past President of the law Students Society of Melbourne University. Mr. Richter, one of the most prominent criminal silks in Australia, spoke frankly about his struggles with anxiety. Mr. Lunn and Ms. Ritchie each spoke passionately about their struggles with depression. Mr. Eason spoke about the well-being initiatives implemented by the Law Students Society at Melbourne University. Until the launch of WATL I was unaware that any of the other ambassadors, renowned in their fields, suffered from depression or anxiety. In particular I was surprised to see the

highly combative and seemingly indestructible Robert Richter disclose his issue with anxiety.

I was referred to WATL by an academic at my old law school, Monash University. The academic was aware that I had been diagnosed with depression in mid-2008. He was also aware that I had recently relapsed in July 2013.

Given the short period of time between the launch of WATL and my relapse in July 2013, my presentation to the launch was somewhat more guarded than those discussed before. Even so, I naively thought that what I had to say would be no more than an address to a small gathering and would not receive wide publication or interest. To my surprise, I picked up my copy of The Age newspaper two days later to see on page 6 my photo accompanied by an article by journalist Jane Lee entitled ‘Judge Tells of Depression Struggle in Bid to Help Many in Legal Circles’.

To my relief, the article was an excellent one. It was fair and balanced and also touched on the contribution of Robert Richter QC and the Foundation’s patron Chief Justice Marilyn Warren of the Supreme Court of Victoria. Annexed to this paper and marked “C” is a copy of the article. The reaction to the article was surprising and in the question phase following this address I would

be happy to share anecdotes about the types of responses I received.

Being a WATL ambassador has given me an extra incentive to concentrate on the important issue of mental well-being for lawyers and law students. I have had the opportunity to address the young lawyers section of the NSW Law Society, the young lawyers section of the Law Institute of Victoria and students enrolled in the JD Program at RMIT University on the issue. At the same time, despite being aware of the issue and what I should do to assist myself in my own struggles with depression, I suffered a further relapse in late March 2014. The relapse necessitated an adjustment to my medication and a major realignment of work / life balance. This shows that the battle against depression is one that requires alertness to the prevention of relapse.

In New South Wales, an extremely valuable contribution to assisting law students combat depression has been made by the young lawyers' section of the Law Society of NSW in the booklet entitled "How to Survive and Thrive in your First Year of Law." The booklet gives helpful hints on how to pace oneself at law school to prevent burnout. It looks forward to the issues a student will encounter beyond graduation. Those issues include coping with stress, avoiding burnout and being alert to the signs of the onset

of depression – all of which apply equally to the student as they do to the young practitioner.

The most significant matter for law students, academics and practitioners to know about mental health (and Judges too for that matter) is that you are not alone and almost certainly there will be someone that has experienced exactly what you have experienced. Knowing that you are not alone and that there are people who have risen to high levels in the legal profession or academy, who have struggled with issues that you too have struggled with, should be a source of great encouragement. Successful people who have battled mental distress include, to name merely a few, Mark Twain, Theodore Roosevelt, Abraham Lincoln, Sir Winston Churchill, Geoff Gallop, Andrew Robb, Catherine Zeta Jones and Madonna. The mindset of knowing that they are not alone, together with the changes to law school curriculum to provide a greater focus on mental well-being, development of soft skills and an integrated attitude to the law, can only assist to improve the overall health of our law students and practitioners. As Brian Clarke wrote at page 8 of his article “Every student who is struggling with depression needs to know that he or she is not alone and that there are lots of people who understand. They need to know that understanding and help are there for the asking and that asking for help does not make one

weak; rather, it is a sign of profound strength.” To the last word of that quote I would suggest the words “and courage” may be added.

The need for intervention to assist students to deal with mental health matters is, in my view, more important now than it was in my law school days. There seems to be much greater pressure on today’s law students than the law student of the 1970s. The law student graduating in Victoria in the late 1970s would reasonably expect to find articles of clerkship without undue difficulty. If this proved not to be the case, there was always the Leo Cussen Institute, which was easier to get into than is now the case. If having served articles or clerkship or graduated from the Leo Cussen Institute a person was unable to find employment in a law firm, it would be possible to go to the Victorian Bar with very little upfront costs and no bar exam. These days it is exceedingly difficult to gain entry into the Victorian Bar. It is hard to find employment for young practitioners and traineeships (as articles of clerkship are now known) are also especially difficult to come by. The competition is intense. In addition there is also the overhanging issue of HELP, formerly known as HECS debt. Contrast the current position with a 1974 entrant to Monash University, with free tertiary education and bountiful employment opportunities upon graduation. Even with such comparatively advantageous

conditions compared to the modern day law student, there still existed pressures on law students in those days such as those driven by the desire to excel and enter the Honours Program. This may explain why, when my depression was first diagnosed in 2008, the psychologist considered that it has existed undiagnosed since I was 19, in second year law school.

Sadly, it would seem that the problems for law students are much greater than those of their predecessors whose main cause of depression was the desire to do well. The Australian Law Students Association recently produced a handbook for law students and law student societies entitled “Depression in Australian Law Schools’. The handbook has useful content about the issue of depression, including suggestions about how to help people with depression, suggestions about how to deal with stress and information for law student societies including material on mentoring programs. The handbook was produced with the assistance of Beyond Blue and is a worthwhile contribution to the material publically available to assist law students charter the dangerous waters of a law course and subsequent entry into legal practice.

Practical steps are being taken by various law students’ societies to address mental health issues. These include mindfulness

classes, R U OK days, publication of mental health guides and dissemination of lists of places where assistance can be obtained. In addition the “you are not alone” concept is being heavily promoted. For example, the Monash University Juris Doctor program has a guide for students which devotes a page to the concept of mindfulness. It helps students become more aware of what is happening in each moment and “fosters an attitude of acceptance, friendliness and genuine curiosity rather than habitual patterns of judgment and curiosity.” The booklet also refers to assistance being available from the health and well-being unit at Clayton Campus. The unit is staffed by counsellors, medical practitioners, multi-faith chaplains and student advisors. The guide also refers to the availability of free mental health services and identifies their location and hours of operation.

At Melbourne University the Law faculty has a dedicated wellbeing officer. There is a wellbeing committee consisting of staff and student representatives. The Melbourne University Law Students Society (LSS) is in the process of preparing a publication dealing with wellbeing issues. It does so annually. The booklet deals with social justice issues as well as wellbeing issues. It allows students to express their views on personal development issues. The faculty and the LSS are also preparing to organise workshops on the issues of vicarious trauma and looking for the signs of stress in

others. The idea behind the second workshop is to build a sense of community in the law faculty and have students looking out for each other's mental wellbeing.

In conclusion, if there is one thought that I would like to focus on from what has just been discussed, it is that depression is a critical issue for law students and young practitioners. It can no longer be treated as a side issue. Active planning to assist students to combat it is a necessity – not an option.



## **“A”**

### Resilience

*The ability to preserve and adapt when things go away (The resilience factor 2002).*

*The capacity to face life's challenges with greater resolve.*

#### Developing & Maintaining **Resilience**

1. Think ‘early intervention’
2. Maintain good physical and psychological health
3. Develop interpersonal skills – relating to others
4. Increase emotional intelligence (EI)
5. Strengthen self-esteem
6. Attend a Mental Health First Aid workshop
7. Learn about stress management
8. Practice mindfulness everyday
9. Adapt a ‘flexible optimism’ style
10. Engage in ‘happiness interventions’ daily
11. Work on your Signature Strengths

12. Understand your work environment and culture, be aware of the psychosocial risks
13. Maintain good work and life balance
14. Obtain a mentor
15. Validate help-seeking behaviours
16. Participate in counselling/therapy
17. Schedule 'time-out' to replenish

# PSYCHOSOCIAL FACTORS

## What are Psychosocial Factors?

Psychosocial factors are elements that impact employees' psychological responses to work and work conditions, potentially causing psychological health problems. Psychosocial factors include the way work is carried out (deadlines, workload, work methods) and the context in which work occurs (including relationships and interactions with managers and supervisors, colleagues and coworkers, and clients or customers).

## What is the relationship between Psychosocial Factors and psychological health?

Considerable evidence indicates that psychosocial factors may increase stress, which may then lead to mental distress. Does this mean that work "causes" mental disorders? In the majority of cases, no. The fact is that we simply do not know the specific cause of most mental disorders for particular individuals. We do know, however, that employees in workplaces with high psychosocial risk are more likely to have mental disorders. In addition, workplaces that do not attend to psychosocial risks are likely to make existing employee conditions worse and impede efforts toward effective treatment and rehabilitation. Furthermore, recently Canadian courts have rendered legal decisions that appear to attribute the cause of some types of mental disorder to the acts or omissions of the employer.

A supportive work environment reduces the onset, severity, impact and duration of mental disorders. Furthermore, organisations that make the effort to address psychosocial risks and create a psychologically healthy workplace will have healthier, happier employees, and are likely to reap benefits in productivity, sustainability and growth.

## How were the 13 Psychosocial Factors in Guarding Minds @ Work (GM@W) determined?

The 13 Psychosocial Factors were determined via a Grounded theory approach, which involved a thorough review of relevant literature and extensive consultation with Canadian employers, unions and employees. This included the following steps:

- review of the scientific literature pertaining to workplace mental health.

- review of relevant Canadian regulatory and case law pertaining to the workplace and psychological safety.
- Formation of an advisory committee which provided input on each step of the development of GM@W. The committee consisted of representatives from the mental health, scientific, union, occupational health and employer communities.
- consultation with experts in workplace mental health from countries and jurisdictions with well-developed workplace psychosocial risk assessment resources.
- implementation of focus groups across Canada with key stakeholders – legal professionals, union representatives, small and large employers, employees and researchers – to provide input into the description and relevance of the Psychosocial Factors.
- implementation of a national survey amongst a diverse array of informants to gain input into the description and sample questions for each of the 13 Psychosocial Factors.

The 13 Psychosocial Factors are consistent with domains identified by a large body of research as areas of fundamental psychosocial risk; the definitions and language used here are unique to GM@W. For each of the factors, lower scores indicate greater risk to employee psychological health and organisational psychological safety; higher scores indicate greater employee and organisational resilience and sustainability. The factors are interrelated and therefore influence one another; positive or negative changes in one factor are likely to change other factors in a similar manner. The 13 Psychosocial Factors are relevant to Canadian organisations and employees, whether those organisations are large or small, in the public or private sector.

## What Psychosocial Factors does GM@W address?

There are 13 Psychosocial Factors assessed by GM@W:

### PF1: Psychological Support

A work environment where coworkers and supervisors are supportive

of employees' psychological and mental health concerns, and respond appropriately as needed.

### PF2: Organisational Culture

A work environment characterized by trust, honesty and fairness.

### PF3: Clear Leadership & Expectations

A work environment where there is effective leadership and support that helps employees know what they need to do, how their work contributes to the organisation, and whether there are impending changes.

### PF4: Civility & Respect

A work environment where employees are respectful and considerate in their interactions with one another, as well as with customers, clients and the public.

### PF5: Psychological Competencies & Requirements

A work environment where there is a good fit between employees' interpersonal and emotional competencies and the requirements of the position they hold.

### PF6: Growth & Development

A work environment where employees receive encouragement and support in the development of their interpersonal, emotional and job skills.

### PF7: Recognition & Reward

A work environment where there is appropriate acknowledgement and appreciation of employees' efforts in a fair and timely manner.

### PF8: Involvement & Influence

A work environment where employees are included in discussions about how their work is done and how important decisions are made.

### PF9: Workload Management

A work environment where tasks and responsibilities can be accomplished successfully within the time available.

### PF10: Engagement

A work environment where employees feel connected to their work and are motivated to do their job well.

### PF11: Balance

A work environment where there is recognition of the need for balance between the demands of work, family and personal life.

### PF12: Psychological Protection

A work environment where employees' psychological safety is ensured.

### PF13: Protection of Physical Safety

A work environment where management takes appropriate action to protect the physical safety of employees.



## Judge tells of depression struggle in bid to help many in legal circles

JANE LEE

**A Federal Court judge has opened up about his battle with depression to encourage the legal profession to seek help for mental illness.**

Justice Shane Marshall said that when personal and professional stress led to his relapse into depression in June, he initially felt like it was a "failure". He believed he had overcome the problem years earlier, following a short period on anti-depressant medication.

"It's important to realise that it's an ongoing battle," Justice Marshall said at the launch of the Wellbeing and the Law Foundation. "It's an illness that can be treated properly with vigilance, and it's a battle you can't win on your own."

The judge, one of the foundation's ambassadors, said lawyers should tell people they could trust about their mental health problems.

When he was first diagnosed in 2008, "a senior judicial officer told me that I shouldn't tell anybody because people would use it against me. I thought I would've got greater sympathy from him if I'd walked in with a broken wrist."

Justice Marshall had also resisted speaking about his relapse: "I just thought [in a]

typical Australian male situation: 'Pull up your socks, kick yourself in the backside, you'll be right, don't tell anyone anything. It's a sign of weakness. Just battle through and you'll turn a corner' - which is nonsense. Your family can tell when there's something wrong."

The Victorian Bar Association and the Law Institute of Victoria launched their Foundation to raise awareness and funds for mental health in the legal profession.

According to the Law Institute, the Australian legal profession had one of the highest rates of depression in the workforce, with almost half of law students, 55 per cent of lawyers and 52 per cent of barristers reporting they had experienced depression in a 2010 study.

Justice Marshall said that the judiciary could be a deeply hierarchical "bear pit" rife with rumours of different judges' ability.

Another ambassador, prominent barrister Robert Richter, QC, said that the bar was similarly a "cesspit of gossip".

"It's a war zone, it's a combative profession where one is not permitted to show anything but invincibility," he said.

Mr Richter, who has also

suffered depression, said that barristers were most afraid of developing a bad reputation among their colleagues and clients but it was "possible to practice and have assistance at the same time... It's no disgrace to say 'I'm a terribly anxious person, I need help' before it gets to the point where it's crippling and disabling."

The foundation's patron, Supreme Court Chief Justice Marilyn Warren, said she often heard of young lawyers who had "suffered because of the demands and exploitation that is placed upon them... If we do not look after these individuals, the profession... the quality of the law and eventually the rule of law itself will suffer."



Justice Shane Marshall.