



The psychological impact of judicial work

Australia's first empirical research measuring judicial stress and wellbeing: an overview of a recent study

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Over the last 18 months, the work of the Wellbeing Committee of the NSW Bar Association has included research into judicial conduct and in particular bullying behaviour. This evolved out of the Quality of Working Life Survey undertaken by the NSW Bar Association in which 66% of respondents indicated that they had been subjected to judicial bullying. Qualitatively, that conduct ranged from inappropriate comments to abusive behaviour. The key feature of it was that the effect on the barrister was demeaning and humiliating.



One of the responses by the Wellbeing Committee was to publish an article in the *Judicial Officers Bulletin*¹ in which, among

other things, the causes of bullying were explored. This included the recognition of the work pressures under which judicial officers are required to perform.

The article said '.....there needs to be a more comprehensive understanding of the pressures facing judges. While there has been a reluctance to acknowledge the problem of judicial bullying, equally problematic is the reluctance to discuss the stresses of judicial life arising from (among other factors), the loneliness of the role, the strain of constant non-delegable decision-making,

the potential exposure to criticism from the media and the increasing demand on finite judicial resources often resulting in mounting caseloads.

Despite the emergence of counselling services and wellbeing programs, the suicide of Melbourne magistrate Stephen Myall earlier this year demonstrates that crippling caseloads is still an issue of critical importance. Similarly, the mental health issues consequent upon dealing with a long running hearing into child sexual abuse was made clear by Magistrate Heilpern in his address at the 2017 Tristan Jepsom Memorial Foundation Lecture.

While judicial stress does not justify bullying behaviour, it is a contributing factor and one which must be addressed in a thoughtful way. Our judicial system relies on both judges and advocates in order to operate efficiently and fairly. Judges are equally entitled to a workplace free from the overwhelming pressure caused by unmanageable caseloads and inadequate resources.

Recently, a study was published called 'The Psychological Impact of Judicial Work: Australia's First Empirical Research',² by C Schrever, C Hulbert, T Sourdin. In that article, the authors described the outcome of studies conducted between July 2016 and April 2017 for the purposes of ascertaining the sources, nature, prevalence and severity of judicial stress in Australia.

The sample pool comprised judicial officers with appointments to five Australian Courts (of the 38 currently in operation). The identities of the participating Courts is not revealed. However, it was confirmed that the Courts range from summary to appellate of varying territorial jurisdictions.

The average age of the participants was 57.8 years and the average length of service as a judicial officer (at the time of the study) was 9.5 years.

The testing was carried out by way of a tiered approach, comprising the following three distinct components:

1. A self-administered survey focussed on stress symptoms and experiences which also involved the collection of some limited demographic information.
2. A self-administered survey focussed on mental health literacy, burnout, secondary trauma, and alcohol use.
3. A semi-structured interview relating to the participants' particular experiences of work-related stress, major sources of judicial stress and ideas for programs and initiatives to reduce stress.

152 judicial officers participated in the first tier of testing. That number declined considerably in the subsequent tiers to 125 and 60 respectively.

The pattern of stress and psychological ill-

health among judicial officers differed from that of the Australian legal profession generally. By comparison with barristers, judicial officers reported higher rates of non-specific psychological distress in the 'moderate to high' range. However, the rate of distress in the 'very high' range was considerably lower for judicial officers than all levels of the legal profession.

Rather, judicial officers reported symptoms of depression and anxiety at rates similar to those suggested for the general population, which is dramatically lower than those of the Australian legal profession.

In the 'moderate to extremely severe' range, the rates of depression, anxiety, and stress symptoms for barristers and solicitors were more than three times that of judicial officers.

Although there is not evidence of a widespread mental health problem among the Australian judiciary, there is a stress problem. According to the report, i.e., a finding consistent with statistical data collected in the United States of America.

The authors propose three hypotheses as an explanations for the differences in psychological symptomatology between Australian judicial officers and the Australian legal profession generally:

1. Given judicial officers are invariably picked from the pool of legal practitioners; the workload of a judicial officer is less demanding than that of a practising solicitor/barrister, such that the key driver of mental health issues within the legal profession is less applicable to judges.
2. Practitioners appointed to the bench are more well-equipped for legal work, implying that the judicial appointment process is effective.
3. Given judges tend to serve their appointment at the mid-point of their lives, it may be a reflection on the well-documented observation that middle life tends to be a period of relative mental stability.

However, symptoms of 'burnout' and secondary trauma are features of the occupational stress experienced by many judicial officers. In that regard, 4% of judicial officers in the study scored within the 'highest risk' profile (i.e., high levels of exhaustion, cynicism, and low professional efficacy) for occupational stress. Only 24.8% of participants fell within the 'lowest risk' profile. This means that just under three quarters of the participating judicial officers had symptoms consistent with a degree of burnout risk.

The average score with respect to professional efficacy was in the 'high range' and exceeded that of other 'at-risk' professions (i.e., psychiatric workers, civil servants, and military). It is opined that, although judicial officers are more vulnerable to burnout,

their experiences of burnout symptoms are likely to be characterised by feelings of emotional depletion and loss of meaning rather than feelings or manifestations of incompetence or ineffectiveness.

The study places emphasis on findings in respect of Secondary Traumatic Stress (STS), which is also referred to as 'vicarious trauma'. The mean scores of participating judicial officers suggested that STS is a common feature of the occupational stress experienced by Australian judicial officers. An overwhelming majority of judicial officers met at least one symptom of STS at the time of assessment. More significantly, 30.4% of participating judicial officers fell within the 'moderate to severe' range for STS. It is suggested that, in conformity with some relevant research on the topic, 'moderate to severe' levels of STS are likely to satisfy the diagnostic criteria for Post-Traumatic Stress Disorder psychopathology.

Finally, the study concluded that rates of alcohol use among Australian judicial officers was comparable with that of the Australian legal profession generally. However, those rates are considerably higher than the documented level of alcohol use within the general Australian population. Over 30% of judicial officers participating in the study scored in the 'medium to high' risk levels indicating problematic alcohol use (as compared to 18.8% of the general population).

The Wellbeing Committee is continuing to pursue initiatives to come to a shared understanding of what constitutes judicial bullying, why it occurs, and an agreement from the Courts to address it.

A protocol or set of guidelines would also serve as a useful educational tool in orientation and legal development programs for newly appointed judges and also for barristers. Such a protocol would help reshape expectations of what is considered appropriate Courtroom behaviour. In time, there may be an appetite by the judicial system to adopt a Code of Conduct. In the meantime, the development of a transparent set of guidelines is being considered in many of the Courts. Further, the Wellbeing Committee is considering a number of other initiatives, including Courtroom observation by objective observers, further data collection to provide concrete examples of the types of conduct which are and are not acceptable and seeking ways in which complaints of judicial bullying can be made so as to maintain confidentiality of the complainants.

ENDNOTES

- 1 K. Nomchong SC 'Judicial Bullying: the view from the Bar' *Judicial Officers Bulletin* November 2018, vol 30 No 10.
- 2 This article is available via Westlaw AU: Schrever et al, 'The psychological impact of judicial work: Australia's first empirical research measuring judicial stress and wellbeing' 28 *JJA* 141.