

## **MINDS COUNT ANNUAL LECTURE 2023**

### **"BURNING BRIGHT WITHOUT BURNING OUT"**

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Despite the law providing a potentially fascinating and highly rewarding career, we in the law are routinely informed that we are more miserable, more stressed, distressed, anxious, and depressed than most other professions. How can that be? After all, the law provides an opportunity for work that is intellectually stimulating, involves continuous improvement and development, exposes practitioners to all manner of people and all manner of problems, actively engages the lawyer in solving problems for others, enables lawyers to help people when they most need it and involves lawyers in upholding the rule of law in a modern liberal democracy which depends on the rule of law for its very existence.

I'm going to try to hazard a few guesses.

#### **1      **Becoming qualified as a lawyer****

Entry to law at university level is highly competitive. University law courses are highly competitive. Law degrees are also now expensive. While the cost can be deferred under the HECS scheme, day to day living costs cannot. Not all students have families capable of supporting them for the three to five years it takes to get a law degree, let alone on top of a first degree. Failing a course and having to repeat it might be the difference between being able to continue the degree or not.

Being able to work sufficient hours to pay for food and rent, all while trying to study and pass courses, must be enormously stressful. For some people, even the prospect of starting life with so much debt from their tuition costs, albeit deferred under the HECS scheme, can operate as a material deterrent to the undertaking of tertiary education.

In short, there are still significant barriers to entry to the legal profession which either exclude people altogether or, for those who can get over the initial barrier, impose great stresses on them, particularly people from disadvantaged social and economic backgrounds, who could make fine lawyers. I suspect the people who do overcome the barriers to entry and make it through their degree, particularly but not only those from disadvantaged social and economic backgrounds, carry a high stress load before they even enter the legal workplace.

## **2 Entering legal practice**

When a law student finishes their degree, they must find a job. Again, for many young people, this can involve overcoming significant hurdles. If they don't know anyone in the law, getting a foot in the door can be tough, particularly if the economy is on a downward swing when they graduate. When I graduated, it never occurred to me that a person like me, who knew no-one in the law, could become a Judge's Associate. It never occurred to me that I could become a barrister. Why? Because I had no inherited legal cultural capital and no idea how to acquire any. I was also far too retiring to have acquired any form of legal mentor while at

university. There must have been, and will still be, many people in the same position.

Many law graduates enter private practice. A number are quite likely to find that the performance pressure in private practice is just as intense as it had been at university. They may also find that the hours they must work often leave little time for anything other than sleeping and eating. They may also find or sense another common aspect of the legal workplace – quite extreme hierarchies and pay differentials. It should go without saying that this kind of environment – in which more junior lawyers have little autonomy over what they do and where their time is literally of lesser value than that of everyone above them in the pecking order – involves a risk to people's psychological wellbeing which calls for active ongoing cultural and individual management.

### **3 Why legal workplaces might cause burnout**

In their 2009 book *The Spirit Level: Why More Equal Societies Almost Always Do Better*, Kate Pickett and Richard Wilkinson identified some key matters about the adverse impacts of relative inequality within a society<sup>1</sup>, such as:

- health overall is related to income differences within, not between, rich societies;

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<sup>1</sup> Available on the website of The Equality Trust: [www.equalitytrust.org.uk](http://www.equalitytrust.org.uk).

- the more unequal the society, the worse the overall health of its population (including mental health), irrespective of average income; and
- on virtually any measure of wellbeing, the greater the inequality within a society, the worse its overall wellbeing – physical health, mental health, drug use, imprisonment rates, homicide rates, teenage birth rates, school drop-out rates, school performance, infant mortality rates, social mobility, life expectancy.

By no means all, but also not uncommonly, legal workplaces are like small unequal societies. From this perspective it is not surprising that they involve risks to psychological well-being which need to be recognised and managed.

Burnout has been described as "a psychological syndrome emerging as a prolonged response to chronic interpersonal stressors on the job. The three key dimensions of this response are an overwhelming exhaustion, feelings of cynicism and detachment from the job, and a sense of ineffectiveness and lack of accomplishment"<sup>2</sup>. In my experience, many lawyers have experienced at least one of these indicators at one time in their professional life.

If we are serious about protecting people's mental health in the legal profession, we should take a critical look at the culture of legal workplaces.

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<sup>2</sup> Christina Maslach and Michael P Leiter, 'Understanding the burnout experience: recent research and its implications for psychiatry', (2016) 15(2) *World Psychiatry* 103–111.

Let's point out the first elephant in the room. Work hours in the legal profession is a large systemic issue. I do not pretend to know how to begin to address that problem. But let's not fool ourselves – work hours matter. Working long hours and not getting weekends to recover and regular holidays uninterrupted by work demands, over the longer-term, place stresses on many people that are unsustainable. Systemic issues include:

- not time costing per se, but a workplace culture in which billable/recoverable hours effectively determine the entire system of expectations and rewards within the workplace such as salary, promotions, and payment of bonuses, as well as (critically) acceptable or tolerated partner/senior associate conduct;
- conversely, the lack of a system of expectations and rewards which, when crunch comes to crunch, involves factors other than billable/recoverable hours being relevant to salary, promotions, bonuses, acceptable or tolerated partner/senior associate conduct – for example, high-level expertise, quality of work output, ethical and effective leadership, ethical and effective mentoring, pro bono contributions, academic and other contributions; and
- expectations of unreasonable work hours and availability outside of traditional work hours being the norm and therefore not merely acceptable but culturally demanded.

There is space in the room for another elephant which should be pointed out – if the main driver of profit is the leveraging of the time of others, particularly young lawyers who cost far less than they make, you need to take care to avoid a culture of exploitation developing.

These larger systemic issues might be beyond our individual influence, but combating the cultural risks these systems involve are not beyond the collective influence of those who have power in legal workplaces. I don't want to diminish the significance of these issues, but I am going to move now to a (hopefully) more manageable topic.

No matter how little we feel we can influence systems at large, we also each have a personal responsibility for our own workplace relationships, particularly our relationships with people who are below us in the workplace hierarchy. They are the people who can be most harmed by our actions and our lack of thought and care.

I would be surprised if any person who has worked in a large enough office, legal or otherwise, cannot relate to this proposition, despite the psychological jargon:

"Externalizing disorders, mania proneness, and narcissistic traits seem to be related to heightened dominance motivation and inflated self-perceptions of power. In contrast, the research relates anxiety and depression to subordination and submissiveness, as well as a desire to avoid subordination."<sup>3</sup>

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<sup>3</sup> Sheri L Johnson, Liane J Leedom, and Luma Muhtadie, 'The dominance behavioral system and psychopathology: evidence from self-report, observational, and biological studies' (2012) 138(4) *Psychological Bulletin* 692.

If we consider legal workplaces through this kind of lens (whether the behaviours are consciously expressed or unconsciously manifested), conduct that may seem inexplicable and counter-productive can start to make more sense. I hold to the view that not many people consciously and deliberately set about engaging in behaviours that others perceive as inappropriate "externalising" of inner stresses, anxiety, or need for dominance. But if we see these kinds of behaviours as a largely or even wholly unconscious and unintended manifestations of the power relationships in hierarchical workplaces, we can understand the behaviours better (including our own) and the legal workplace can try to minimise these behaviours.

#### **4 10 workplace behaviours destructive of wellbeing**

I'm going to outline some everyday behaviours that people with power might have forgotten can have real impacts on people without power in the workplace. They are the kinds of behaviours that can become so routine and normalised that their potential adverse effects on others can go unnoticed. They do not fit within any obvious form of misconduct, such as overt bullying, sexual harassment, or sexual or psychological abuse. We might all have engaged in or been subjected to one or more of these behaviours at one or other time – but as the years have gone by, I have realised how unhelpful they are for the people subject to these behaviours, particularly if it is just part of the everyday culture of their workplace. And by "their workplace", from the perspective of a junior lawyer, culture is determined

by the people for whom they directly work, not by other people or by policies. This is why different junior lawyers can have completely different experiences within the same legal workplace, depending on the people with whom they work directly. The context within which these behaviours should be considered is that we are all acutely sensitive to the power dynamics of every workplace relationship of which we are part. No-one in a dominant workplace position should ever underestimate the vulnerability and sensitivity of a person in a subordinate workplace position.

**First**, there is the artificial deadline. Not knowing or understanding why you must produce something by a particular time, at potentially great personal inconvenience, deprives people of context and autonomy.

**Second**, there is a variant of the artificial deadline – the artificial deadline with the unreasonable turnaround time. Deadlines that are genuine and properly explicable and explained to those on whom they are imposed are one thing. Artificial deadlines and unreasonable turnaround times that are unconscious expressions of the power difference in a legal workplace seem to me to be a form of externalising behaviour. I suspect the working from home culture has further diminished the separation of work time and non-work time for people.

**Third**, there is the double whammy of the person imposing the artificial deadline and/or the unreasonable turnaround time then being unavailable to ensure that the work can be approved and distributed as required.

**Fourth**, there is the person with the power engaging in routine procrastination – the kind of procrastination that means, when the crunch comes and the work has not yet been reviewed or approved, everybody is placed under unreasonable pressure of time. This kind of procrastination can be another unconscious expression of power differences in a legal workplace. It can diminish the worth of the person who had done the work in good time and increase their stress enormously.

**Fifth**, there is the "keep them hanging around while I do something more important" syndrome. This involves keeping those with lesser power waiting, either outside your office or (even worse) inside your office so they are captive and can do nothing, while you do something else, anything in fact, but deal with the person who happens to be lower down the hierarchy than you are at that time. The something else can be a phone call, reading a document, sending an email, anything really – so long as it does not involve the person whose time is being devalued compared to your time, it qualifies.

**Sixth**, there is the fixing of internal meetings at times that might be thought to be outside standard working hours and without apparent thought to the impacts that might have on people with other responsibilities. People like to be consulted. If possible, they like to have some choice about when things are done. They also like to sleep, eat, and socialise. Again, even if unconscious, a lot of this kind of conduct seems to be about power and dominance.

**Seventh**, there are requests to meet at a particular time, which are then deferred until later and later in the evening so the other person is effectively trapped into remaining at work or available for work when at home and when they otherwise would be able to leave the office or turn off their computer. People who do this will usually have an apparently good reason for the delay, but I again suspect an unconscious power dynamic is at play.

**Eighth**, there is the atomisation of work involving lawyers being given individual tasks without context. No one can do a proper job without understanding the reason why they are doing it and how it fits within a broader context.

**Ninth**, there is the opposite of constructive feedback from the person with the power. Hallmarks of this are:

- conveying dissatisfaction with the work done without informing the person why the work does not meet the requirements;
- making up new requirements for the work as it is being reviewed without the person acknowledging they are changing the requirements and the reasons for doing so;
- adopting the "it's just easier if I redo the whole thing myself" mode of being, without explanation;
- nit-picking – changing minor things for no good reason other than the fact you can; and

- personalising negative feedback by belittling people's efforts or treating a below standard effort as if it reflects something negative and unchangeable about the person.

**Tenth**, to these we can add:

- taking from or not giving credit to the person who did the work;
- feeling free to lose our temper in the workplace in ways others find inappropriate or distressing (for example, yelling, door slamming, throwing or slamming objects or desks); and
- not taking responsibility for our own mistakes, particularly devolving blame to those lower down the hierarchy.

If we are old enough, we may have both experienced and engaged in these kinds of behaviours in some form or another in the workplace. The fact is most of us are keenly sensitive to these kinds of behaviours when we are on the receiving end of them. Because these behaviours are often unconscious expressions of stress in an imbalanced power relationship, however, many of us are less sensitive to our infliction of these behaviours on others. An easy test is this – if you wouldn't do it to someone above you in the hierarchy, don't do it to someone below you.

How do we all better guard against absorption into a workplace culture where the default setting is not well adapted to protecting people's psychological wellbeing?

At the least, we can each take a critical eye to the work structure of which we are

part, and, whatever the existing workplace culture or our capacity to influence or change it, try to maintain a keen awareness of the impacts or behaviours can have on others in the workplace.

It is not always easy to maintain awareness of the fact that every person with whom we work each has, in one of my favourite descriptions by George Eliot, "an equivalent centre of self, whence the lights and shadows must always fall with a certain difference"<sup>4</sup>. If we try to maintain that awareness, even when we feel under pressure, then we give our more junior work colleagues the best opportunity to fulfil their potential and enjoy the fascinating and rewarding professional life a career in the law can offer. This awareness might be a small but valuable step to help young lawyers burn bright and not burn out. But we should also remember this. Young lawyers will become old lawyers in their turn. One day, they will have the power. And one day, not too far away, people like me will not. Being kind to young lawyers is not just the decent thing to do, it is just common sense.

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<sup>4</sup> George Eliot, *Middlemarch* (Penguin Books, 2012) 229.