



Wellness for Law Forum 2019

Making Wellness Core Business

Keynote address by the Honourable Anne Ferguson

Chief Justice of the Supreme Court of Victoria¹

Good morning. I acknowledge the traditional owners of the land where we meet today, the Wurundjeri people of the Kulin nation. I pay my respects to their elders past and present.

Thank you Professor Horrigan for that very warm welcome. I would also like to thank the organisers of this conference and their supporters for giving me this opportunity. I am privileged to be here to speak with you.

The forum is the ninth annual gathering of the national Wellness Network for Law and its supporters, from academia and the profession. This year, the event theme is *Making Wellness Core Business* and today, the second day of the forum, is about issues in the legal profession.

In preparing for my speech today I reviewed the findings of the American Task Force on Lawyer Well-Being 2017 report 'The Path to Lawyer Well-Being: Practical Recommendations for Positive Change'. The study is comprehensive and geared to creating a nationwide movement to improve wellbeing in the legal profession. It begins with this straightforward observation: 'To be a good lawyer, one has to be a healthy lawyer.' It really captures my thinking on the topic, because I can't overemphasise that wellbeing is an indispensable part of a lawyer's competence.

In my experience, as lawyers we thrive when we're engaged with our work, with our colleagues and with causes or issues we're working towards. Sustainable engagement is the hallmark of a successful and satisfied lawyer and that's one good reason why paying attention to health and wellbeing is important.

¹ A speech delivered at the second day of the Wellness for Law Forum 2019.



Maintaining a healthy balance presents a challenge for all of us. Burnout, psychological distress and mental illness are widespread and affect people in all areas and levels of the profession, from law students to the judiciary.

It is clear that wellness must play a central part in everyday and strategic planning at tertiary institutions and in workplaces, including the courts.

The American report I mentioned concludes that 'change will require a wide-eyed and candid assessment of our members' state of being, accompanied by courageous commitment to *re-envisioning what it means to live the life of a lawyer.*'

It follows that it is not acceptable to place responsibility for maintaining wellbeing solely on individuals – the *way* we work needs to be transformed such that 'being well' is a realistic possibility for the average person working in this profession. Unfortunately the research shows that that is not presently the case.

Best practice certainly includes giving people the tools to look after themselves. But there needs to be the flexibility, and deliberate planning, to integrate wellbeing strategies into working life.

Best practice would also see us structuring our systems for work with an eye to reducing unnecessary sources of stress. For example, there may be two ways of doing a piece of work. The method which produces the least stress should be preferred.

The program of presentations at this forum and the ongoing research of the many academics and professionals who are now engaged in this field have already made huge leaps in increasing our understanding of, and addressing the issues associated with wellbeing, and will continue to do so.

For organisations – including courts, legal employers, and the Bar, we need to prioritise the implementation of this research.

As Chief Justice, my primary objective here today is to deliver the message that wellbeing is a priority for me. This means the wellbeing of judicial officers, court staff, practitioners and all other court users.

An emphasis on wellbeing has always been part of my personal and professional philosophy. Looking after my physical health, making time for family and friends, taking breaks; these are effective strategies that have served me well throughout my career in the law.

I don't hesitate in saying that an emphasis on wellbeing is the best way forward for the legal profession.



There are positive changes happening across all sectors of the profession and jurisdictions. I will speak today about some of the changes that are happening at the Supreme Court of Victoria, and also speak to some of the issues facing the profession generally.

My hope is that we are starting to break down the conventional stigma attached to discussing mental illness and to seeking help, and that we are moving toward a healthy, well-functioning and, most importantly, sustainable position in the profession.

Judicial wellbeing: what we know

A growing body of stress and wellbeing research has emerged in the legal sphere. Knowledge of the types and causes of judicial stress in particular has come a long way in recent years.

Later today, Carly Schrever will lead a panel discussion on judicial wellbeing and present the findings of her research on judicial stress and wellbeing in Australia.² Carly is a lawyer, provisional clinical psychologist, PhD candidate and the Judicial Wellbeing Advisor at the Judicial College of Victoria, an organisation which I chair.

Carly's research is the first empirical research into the nature, prevalence and severity of work-related stress among the Australian judiciary. The number of participants and quality of empirical method make her findings very significant. In summary, it confirms that judicial stress is real and common and provides a level of insight that hasn't existed previously. The results have already helped shape wellbeing programs for courts in many jurisdictions, including the Supreme Court of Victoria.

Carly will be presenting her findings in detail later today, so you will have to wait a little longer to hear that, but I wanted to take the opportunity now to explain how her work is already contributing to court reform and where we are heading in this field.

Judicial wellbeing: what we're doing

High levels of judicial stress are problematic; it's terrible for the individual judges who are experiencing these levels of stress, and it's also an issue of serious concern for the justice system and community. Judicial stress can impact the quality of judges' work and the experience of litigants, practitioners and other users of our courts.

Now we have the data to understand what we may have observed anecdotally, how can we address the problem?



There are a number of strategies. I'm going to mention four. Now I know that all the guidance is that I should only mention three because that is the limit on what people can retain, but I think each of my four strategies is equally important and I can't leave one out. So please bear with me.

The first strategy: Lead by example, and communicate that wellbeing is a priority.

Leadership and visibility are important. People need to know that their employer or organisation has the competence to assist them and that sustained stress and poor mental health is not an acceptable and inevitable side effect of the practice of law. Research shows that many lawyers do hold this view.

For judges in particular, we know there is this reluctance to talk about stress and to seek help. This is what Justice Michael Kirby, in his 1995 seminal essay 'Judicial Stress: An unmentionable topic', termed the 'cultural inhibition' to speak openly about this topic. On the other hand we know that those who do seek help will enjoy their work more.

If someone has a rotten day, go next door and talk to them. You might have a rotten day too. It's important to vocalise it, particularly with subject matter trauma. It's not the sole answer, it's not a simple issue, but I think it's a way of dealing with it. As a judge, sometimes you see the worst of humanity, that's really hard. But if you talk to somebody, it helps.

So we are doing a few things. We're keeping the conversation open and I'm trying to be very visible in encouraging healthy practices and doing the right things myself. This includes exercise, taking breaks and talking to my colleagues about issues that are concerning me.

The second strategy: Examine and modify structures and processes.

At the Supreme Court we look at how the work is done and whether structures, systems and procedures can be adapted to take away unnecessary sources of stress, without affecting the quality of the service provided by the Court. This approach did not start with me, but has been continuing for some time.

We are investing in programs to help us understand key wellbeing issues, and to address the problem areas. We are looking at all divisions of the court, and the experience of all court users. My philosophy is to think of the court as a workplace. That might sound uncontroversial, but actually there are many people who disagree with this as a primary characterisation. Courts serve an indispensable public purpose by independently applying the law equally to all who come before them. The way we work must conform to that fundamental purpose and promote it. However, this is not incompatible with building an effective, safe and healthy environment for people who work within the court, as well as other court users.



When you think of the court as a workplace there comes a natural inclination to draw on learnings from management theory and the health and psychological sciences. In the past, an impediment to understanding wellness issues in courts was the view that courts were somehow different and that judges were somehow immune from the difficulties that plagued the rest of the profession. By looking at things from this interdisciplinary perspective, we're able to identify and address important wellbeing issues.

The key risk areas have typically included excessive and uncontrolled hours and poor support. We've learnt that an effective strategy to address these risk areas before the risk becomes a reality is to focus on strengthening management structures and processes.

An example is the Supreme Court Common Law Division's case management reforms. Change was needed in that division because of the growth in the number of cases compounded by the increasing complexity of litigation. About half the cases involve people who want to be compensated for personal injuries. The first reforms were implemented in the Personal Injuries and Dust Diseases lists.

In the past, judges had undertaken routine in-court work to manage cases before trial. The first question we asked was, does that work need to be done? The answer to that question was 'yes'. The second question was, does a judge need to do that work? The answer to that question was 'no.'

A new case management model was developed. It involves specialised teams of judicial officers, lawyers and registry staff working together to ensure that case management functions are performed by the most appropriate members of the team. Among other changes, the case management lawyers now triage matters so that the most appropriate level of judicial officer deals with them.

Judge specialisation and active case management are critical components in helping us to serve the community in the best possible way.

The success of work organisation interventions like this is also felt keenly by our judges. It allows judicial officers to focus more effectively on their primary duties, without untenable workload burdens.

The third strategy: Educate and support.

It is important that we all understand more about wellbeing: that we understand that stress is a human problem; that we learn how to identify when we're struggling, or when someone in our team might be unwell; and what to do about it.

So far as the judiciary is concerned, the Judicial College of Victoria provides resources on judicial wellbeing on its intranet site covering judicial stress, mental health, getting help and wellbeing. The resources include judicial speeches and articles, academic research,



factsheets, checklists, podcasts and videos as well as links to outside organisations and resources. The College also runs programs that touch on or are about judicial wellbeing.

At the Supreme Court, we have conducted mental health first aid training sessions for our managerial staff and judicial leaders – we learnt about how to assist someone who may have or be heading towards a mental health issue and how to start a wellbeing conversation and when to intervene.

All judicial officers have access to a confidential psychological wellbeing service with a 24/7 contact number, telephone and face to face counselling. All judicial officers can access a bi-annual confidential comprehensive medical assessment.

I know that many of these initiatives may seem humdrum to you because they are commonplace in well run workplaces – but they are things that were not commonplace in the court environment until relatively recently.

The fourth strategy: Address unfair criticism.

Another aspect of judicial wellbeing that is a priority for me is the relationship between the media and the courts. The prominence of critical and at times ill-informed media commentary on court proceedings, and judges personally, is of deep concern. It is not surprising to me that this is a cause of judicial stress.

To address it, I am trying to improve public understanding of the work of the courts – what judges do and why we do it – hopefully this will lead to more informed media commentary and reduce the burden on our judges in this respect.

This strategy includes media engagement improvements, and our new podcast series that will be launched in the coming weeks, which we're very excited about. The podcast explains or unravels lesser-known, misunderstood or complex parts of how the Court works. It's called 'Gertie's Law' – after the statue of Justitia that looks over the William Street entrance to the Supreme Court – and it will be available wherever you get your podcasts.

Finally, I am working with the other heads of jurisdiction, both in Australia and internationally, to share our progress and seek advice.

So these are some of the things that are happening at the Supreme Court and similar work is happening at other Victorian courts and VCAT.

I think it's an optimistic picture because we are seeing growing awareness among the judges generally and amazing leadership from a number of judges. You will hear from some of them later today in the panel discussion led by Carly, and from Associate Justice Mary-Jane Ierodiaconou who is very well respected in this space.



The legal profession

The forum today is about wellbeing throughout the legal profession. So I want to leave the judiciary for a moment, and say something more broadly about the profession.

Many of the trends we are observing in terms of stressors for judicial officers are actually common work stressors that affect all types of lawyers.

Job control

A big one is a lack of control over work. Job control is a measure of how much a person feels they are involved in decisions that affect their work, and it is closely linked to the perception of work-life balance.

Research shows that practices that rob lawyers of a sense of autonomy and control over their schedules and lives are especially harmful to their wellbeing and can lead to depression, alcoholism and other psychological disorders.

Achieving control can be very difficult for lawyers, including solicitors and barristers, who work within many externally determined constraints – from clients, courts, colleagues and opposing counsel.

What is recommended is consideration of how long-standing structures and norms might be adapted to enhance lawyers' sense of control.

From my perspective, it's really important to consult everybody working on a project before setting timetables and to be realistic about what can be achieved before a deadline. I include judges in that.

Also be mindful of other people's time when planning your work. This one applies to junior and senior practitioners alike. Everyone's been in the position of receiving work or instructions on a Friday afternoon and knows how frustrating that can be.

Another norm to challenge is the expectation of 24/7 communication. Keeping communication within business hours where possible is part of respecting people's time.

Bullying and Civility

Research shows that a second major cause of stress for lawyers is incivility and, in its extreme form, bullying. The interactions we have at work can either support wellbeing or contribute to poor health. A culture of incivility is proven to deplete energy and motivation, increase burnout, and inflict emotional and physiological damage.

Robust and vigorous legal debate and adversarial exchanges are common for lawyers, but we must always be mindful to treat people with respect and dignity. The courtroom environment is no exception.



I mentioned before that I find it useful to think of courts as workplaces. An extension of this characterisation is the standards of communications and professionalism we can expect.

As part of their training at the Judicial College, judges can take part in sessions to learn more about judicial conduct and improve their court leadership skills. There are also a range of formal and informal processes in place for raising concerns about judicial conduct.

Education about acceptable conduct and standards of professionalism should be implemented in all organisations. These types of practises are starting to become commonplace throughout the profession. However, it is difficult to change culture with rules alone. It is critical that leaders of legal organisations are role models for these standards of professionalism.

Diversity

A final topic I want to touch on is diversity within the legal profession.

There are a number of convincing cases for promoting diversity. One is that it is shown to improve team performance; for instance, study after study shows that a team that is gender and culturally diverse makes better decisions and will generally outperform in every way a team that lacks diversity, particularly in the commercial world, when it comes to client satisfaction.

Diversity is also a wellbeing issue. A significant contributor to wellbeing is a sense of organisational belonging, defined as feeling personally accepted, respected, included, and supported by others.

An indicator of success in professionals is access to senior leaders and manager support. Junior practitioners who feel comfortable with their manager and see their personal values and experiences reflected in the senior members of the organisation are more likely to speak up and make decisions that will advance their careers. Coupled with the improved health outcomes associated with a sense of belonging, these young lawyers are likely to thrive. An organisation which has thriving people is a successful organisation.

The flipside is the experience of those who have a weak sense of belonging, which is associated with depressive symptoms. These people are likely to fall behind.

If we are committed to supporting everyone achieve their full potential, personally and professionally, we have to prioritise inclusive practises.



Conclusion

To, be a good lawyer, you must look after your wellbeing – it might be easy to say, but really these are complex issues.

I have focused today on what we are learning from management theory and health sciences. This interdisciplinary approach is reflected in the Wellness for Law Forum, and represented by the experts from a range of fields presenting over the two days.

It is clear to me that we're making progress – as one project I've been very interested in and have participated in myself, I'm hopeful Carly's research will pave the way for improvements in judicial wellbeing.

I hope those listening today will take away that wellbeing is an area that I'm passionate about. It will continue to be a priority for me and I look forward to seeing what the efforts of everyone involved in the project will produce.

I thank you for being here today, and I ask you to go and be leaders, go and spread the word.