

Annual Tristan Jepson Memorial Foundation Lecture, Melbourne 2015
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Inspiring Change: Creating a healthy workplace

Introduction

- 1 Good evening. I would like to begin by acknowledging the traditional custodians of the lands on which we meet today. I offer my respects to their elders past and present and extend that respect to those with Aboriginal and Torres Strait Islander heritage here today.
- 2 It is Mental Health Week, and this event tonight is one of many events taking place throughout Australia this week.
- 3 Members of the judiciary, members of the profession, law students and other supporters, I am honoured to speak at the first annual lecture of the Tristan Jepson Memorial Foundation to be presented in Melbourne. Thank you to Marie and her team for giving me this opportunity.
- 4 Our topic tonight – ‘Inspiring Change: Creating a Healthy Workplace’ - brings to mind Marie herself. I’m not sure if she would describe herself as a change leader, but she is. I first met Marie in February this year, under a large tree on the ANU campus where a group of attendees from the Wellness Network for Law forum had gathered for dinner. I was immediately struck by her warmth and authenticity. It made me think of Margaret Mead’s wise words:

Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has.

- 5 Nearly half of all Australian adults will experience a mental health condition at some point in their life.¹ This means that in the next 12 months, close to one in two of us here

* Associate Justice at the Supreme Court of Victoria. I would like to thank my Associate, Adam Gleeson, for his research assistance.

¹ Approximately 45 per cent of Australians between the ages of 16 and 85 years old will experience a mental health condition at some point in their life: ABS 2007 National Survey of Mental Health and Wellbeing: Summary of Results, Table 1, 23 October 2008, cited in PWC ‘*Creating a mentally health workplace – Return on Investment Analysis*’, Final Report (2014). During this article, reference will be made to much research. It is not possible in this speech to give a detailed description of it all. The

tonight is likely to experience a mental health condition.²

6 Tonight I will be focus on creating a mentally healthy workplace. I will adopt the description used in a 2014 report for the National Mental Health Commission:

A mentally healthy workplace can be conceptualised as one in which risk factors are acknowledged and appropriate action taken to minimise their potential negative impact on an individual's mental health. At the same time protective or resilience factors are fostered and maximised. Mental health in the workplace is multifaceted and each workplace will have different risk and protective factors for mental health.³

7 The legal profession is not immune from mental illness.⁴ In fact, research indicates that law students and lawyers have elevated levels of psychological distress.

8 I feel a sense of urgency about the need to address mental illness in the legal profession. Behind the statistics on the psychological distress are real people.

9 Organisations such as the Tristan Jepson Memorial Foundation have done vital work in raising awareness of mental illness, especially among the legal profession. However, now that we have succeeded at putting mental health on the agenda, what's next?

10 At the Wellness Network for Law forum in February this year, the founder of the forum, Associate Professor Rachael Field, issued a call for action. She said that we have enough

omission of details is no reflection of the quality of the research or researchers, but simply a reflection of the length of my speech.

² During any 12 month period, one in 5 Australians will experience a mental health condition: Ibid. This speech adopts the World Health Organisation definition of 'mental health' as 'a state of well-being in which every individual realises his or her own potential, can cope with the normal stresses of life, can work productively and fruitfully and is able to make a contribution to her or his community.' World Health Organisation 'What is mental health?' (2007) cited in Dr Samuel B Harvey et al 'Developing a mentally healthy workplace: A review of the literature' A report for the National Mental Health Commission and the Mentally Healthy Workplace Alliance (2014) 13 <https://www.headsup.org.au/docs/default-source/resources/developing-a-mentally-healthy-workplace_final-november-2014.pdf?sfvrsn=8>.

³ Ibid 12.

⁴ In this speech, I will the description used recently by the Victorian Equal Opportunity and Human Rights Commission: 'Mental illness refers to a group of illnesses. There are three main categories of mental illness: Mood disorders (such as depression, postnatal depression and bipolar disorder); Anxiety disorders (such as phobias, panic attacks, social and general anxiety and obsessive compulsive disorders); and Psychotic disorders (such as schizophrenia and some forms of bipolar disorder).' See, Victorian Equal Opportunity and Human Rights Commission, 'Guideline: Mental Illness. Complying with the Equal Opportunity Act 2010 in Employment' (2014) 5.

information about the causes of psychological distress, we need to act. Associate Professor Field said that in order to get to the true heart of justice we need to be a profession that gets on top of these issues. She suggested that ethics needs to be our bedrock – fundamental to what we do and to our professional identity. Associate Professor Field said, most importantly, we need to consider the ethics of care if we are truly to be - as members of the legal profession - a *helping* profession.⁵

- 11 Like Associate Professor Field, I urge you tonight to take action. It is imperative that the legal profession take immediate steps to create a mentally healthy workplace. Half-measures are not enough. I call upon our profession to take a leadership position in relation to this issue. I invite the profession to take an ethical approach to this issue.
- 12 In order to demonstrate how this approach could work in practice, I will discuss two areas in which we can apply an ethical framework to create a mentally healthy workplace. These areas are sustainable lawyering and fostering connections. I will conclude with an answer to the question recently posed to me by some of the volunteer lawyers at the Tristan Jepson Memorial Foundation: “How do we make change happen”?

Taking an ethical approach

- 13 First, let me explain the ethical approach I am inviting our profession to take. Professors Christine Parker and Adrian Evans from Monash University describe ethics in the following way.

Ethics is concerned with deciding what is the good or right thing to do – the right or wrong action; and with the moral evaluation of our own and others’ characters and actions – what does it mean to be a good person? In deciding what to do and how to be, ethics requires that we look for coherent reasons for our actions and character... It asks us to examine the competing interests and principles at stake in each situation and have reasons as to why one should triumph over the other, or how they can be

⁵ Wellness Network for Law Forum, Australian National University, 5-6 February 2015.

reconciled.⁶

14 We can start by asking ourselves: What are my values? Why do I want to be a lawyer? What type of lawyer am I?⁷

15 An ethical approach offers the legal profession some much-needed optimism. As Professor Parker explains:

... Legal ethics literature sees the lawyer's role as something to be proud of, not primarily because it is personally fulfilling or economically rewarding, but because the legal professional uses his or her personal skills to contribute to the advancement of law and justice. Legal professionals have a specific responsibility to make the law work as both a public good and in individual clients' lives to help people live together.⁸

16 Personally, this approach gels with me. For myself, and for many of the law students and young lawyers I engage with, the reason for going to law school is a noble one: to make the world a better place.

17 How can we apply our personal ethics, our values, to the organisations in which we work? How do we do this in a manner that is consistent with our professional ethical obligations?

18 Many organisations already have public statements of their values. These are also referred to as a 'mission statement, 'vision' or 'charter'. Taking an ethical approach for these organisations should not be a huge leap forward. The challenge is applying these ethics.

19 I want to share an example with you from my time as a law firm partner. When my former business partner, and I, were establishing our law firm ten years ago, we started

⁶ Christine Parker and Adrian Evans, *Inside Lawyers' Ethics* (Cambridge University Press, 2nd ed, 2014) 4-5.

⁷ Dr Colin James suggested legal ethics begin with personal ethics and posed questions along these lines at the Wellness Network for Law Forum, *ibid.* He and Dr Justine Rogers drew a link between wellbeing and ethics, focusing on law students.

⁸ Christine Parker, 'The 'Moral Panic' Over Psychological Wellbeing in the Legal Profession' (2015) 37(3) *University of New South Wales Law Journal* 1103 at 1132.

off by brainstorming and listing our values. One of those values was collaboration. We wanted to establish a highly collaborative environment where we – and our staff – could flourish. This meant that, right from the start of the firm, we began sharing information with each other and then, as we grew, with our staff. In particular, we adopted a highly collaborative approach to servicing clients. This approach was consistent with our professional ethical obligations regarding our duties to our clients. Our clients would meet at least two people from our firm. Because of the collaborative nature of the firm, there was a seamless transition between different practitioners. If one lawyer was not available, then a client could speak with another lawyer without incurring the time, cost and frustration of getting the other lawyer up to speed. We received wonderful feedback from clients about this.

20 Applying a collaborative approach was also good for our wellbeing. Many of you know the value of de-briefing. Working collaboratively meant that de-briefing was built-in to our system. Working collaboratively also permitted our team to work part-work or take extended holidays as another lawyer was always on hand to look after our clients. I should add that I think it also promoted better advice and strategy for our clients: two heads are better than one.

21 I will now discuss how we can take an ethical approach to our careers.

Sustainable Lawyering

22 As some of you know, I am a passionate advocate of sustainable lawyering. By that I mean working in a manner that is conducive to wellbeing so that lawyers may have long, healthy and rewarding careers.

23 Let's look at this issue through an ethical lens and identify wellbeing as an important value: How do we create a mentally healthy workplace? What are the risks and how do we take steps to prevent them from arising in the first place?

From individual to organisation

24 The focus on risk and prevention in the legal profession to date has largely focused on individual resilience. Whilst this is important, I suggest that this focus has sidelined the

important *structural* issues that we need to address. To be clear, I am not suggesting that we retreat from our individual responsibility for our personal wellbeing, nor am I suggesting that we back away from supporting important programs that focus on individuals, such as counselling and mindfulness training. What I am suggesting though, is that in conjunction with these strategies, it is critical that we address the structural issues that are creating risks in our workplaces.

25 By acknowledging the structural issues, it moves us from thinking about this issue as a solely personal one to a social one.⁹

Creating a mentally healthy workplace

26 A recent report by the National Mental Health Commission identifies the *structural* factors that contribute to a mentally healthy workplace.¹⁰

27 I will drill down into a few of these factors now and focus on those aspects I see as particularly relevant to the legal profession today.

28 My reference to 'research' will be from the 2014 report of the National Mental Health Commission on developing a mentally healthy workplace.

29 Firstly, let me start with job design.

Job Design - and the need for feedback, autonomy and variety

30 Jobs that have high demands, such as time pressure, with low control, that is, low decision-making authority, can be described as 'high-strain' jobs.¹¹ There is strong evidence of the connection between high strain jobs and mental illness.¹² Many jobs in the legal profession fall into this category at one stage or another. You may be a solicitor who has built your practice on the basis of your relationship with a difficult client, who requires work to be done in very tight time-frames. You may be a barrister with an

⁹ For an interesting discussion on moving the topic beyond a personal one, focusing on law students, see: Paula Baron, 'A Dangerous Cult: response to 'The Effect of the Market on Legal Education' 23(2) *Legal Education Review* 274 at 282.

¹⁰ Harvey et al above n 2.

¹¹ Ibid 14.

¹² Ibid 14.

impending trial who is finding it difficult to obtain the instructions required to prepare for that trial.

31 Research suggests that if people in high-strain jobs are given the right kind of support, then it reduces the adverse impact on their wellbeing and fosters sustainable lawyering.¹³ It also equips people to deal with change,¹⁴ which is inevitable in today's legal workplaces.

32 The National Mental Health Commission report notes that "job resources such as providing appropriate high-quality feedback, variety, and learning opportunities have been found to be positively associated with work engagement – a state of work-related well-being characterised by vigour, dedication and absorption."¹⁵

33 We need to provide people with informal and timely feedback. Many workplaces in the legal profession have performance reviews or appraisals for their staff. These might consist of annual or quarterly appraisals to provide their lawyers and graduates with continuous and regular feedback. However, recent thinking from leading human resources professionals suggests that formalised periodic appraisals are on the way out. They are being replaced with a more collaborative approach in the form of regular, informal conversations about work. This allows a feedback process more akin to encouragement and guidance and demonstrates that employees' ongoing growth and development is valued. It also promotes responsibility and accountability. Regular good feedback helps sustain people.

34 Another solution offered by research is to design roles that give people the opportunity to undertake a variety of tasks and work with a level of autonomy.¹⁶

35 In legal workplaces, task variety and autonomy can be promoted in collaborative teams where people can allocate different types of work within their teams. This also has the advantage of giving people the opportunity to improve their skills and build

¹³ Ibid 14
¹⁴ Ibid 14
¹⁵ Ibid14-15
¹⁶ Ibid 15.

relationships with colleagues. Perhaps you are thinking that this is counter-intuitive to specialisation, but it need not be. If we take workplace law for example, people may rotate tasks between providing advice, delivering training to clients, representing clients in litigious matters and conducting workplace investigations. This all involves workplace law but is a diverse range of tasks.

36 Other ways of promoting skill variety and autonomy include providing secondment opportunities, and giving people a chance to act in a higher position when appropriate. These opportunities can be stimulating as they may lead to the development of new relationships with colleagues and clients.

37 Participation in pro bono legal work, or volunteering, also promotes skill variety and autonomy because people experience work in different areas and with different clients. Personally, I have always found this very stimulating and deeply satisfying work, even if challenging at times.

Management Training

38 Research also suggests that management and leadership training is important in creating a mentally healthy workplace.¹⁷ Lawyers often become managers due to their technical expertise. It is unrealistic to expect they will absorb management skills by osmosis. Delivering training to partners at law firms, my experience is that most are grateful to have the opportunity to grow.

Flexibility

39 Research indicates that one way to minimise mental harm is to encourage flexibility in relation to work hours.¹⁸ Flexibility has a positive correlation with wellbeing.¹⁹

40 I want to delve more deeply into flexibility as a solution and how it can be implemented in the legal profession.

¹⁷ Ibid 29, 34-36.

¹⁸ Ibid 29, 32-33.

¹⁹ See, eg, Harvey et al above n 2 at 32.

41 Law firms have traditionally resisted calls for flexibility on the basis that they would lose clients. The Victorian Women Lawyers Association ('VWL') has done a number of reports on flexibility over the years which show that this claim is false.²⁰ Other researchers concur. The University of NSW Business School states, "... Australian research reveals that when it's well managed, flexibility and other work-life support practices can also boost critical business drivers such as customer satisfaction".²¹ This research by Professor Julie Cugin and others concludes that: "One of the main effects of well-supported flexibility is the sense of reciprocity triggered among employees, which in turn leads to greater effort to meet the needs of customers."²²

42 The legal profession is well behind its clients in the area of flexibility. By way of comparison, Telstra's policy 'All Roles Flex' takes the approach of providing flexibility provisions in all new job advertisements. Other organisations have recently adopted this approach including ANZ, Westpac, the ASX and PWC.

43 So, why, given all this research, and when it is so essential to sustainable lawyering, has the legal profession been so slow to embrace flexibility? I think the answer may be that many people have a conscious or unconscious bias against people working flexibly, believing that those who work anything other than full-time do not take their work seriously. There is evidence of this conscious and unconscious bias.²³ It is particularly savage against men who wish to work flexibly.²⁴

44 In the wake of such bias, when I was on the Law Institute of Victoria Council, we began profiling a lawyer working flexibly every month in the *Law Institute Journal*. These profiles demonstrated a diverse range of people, men and women, young and old,

²⁰ These publications are on the VWL website

<http://www.vwl.asn.au/index.php?page=publications&sub=vwl_pub>

²¹ University of NSW Business School, 'Flexibility Dividend: Why supported employees increase customer satisfaction' 11 June 2014 < <https://www.businessthink.unsw.edu.au/Pages/Flexibility-dividend-Why-supported-employees-increase-customer-satisfaction.aspx>>.

²² Ibid

²³ Law Council of Australia, 'National Attrition and Re-engagement Study Report' (2014) 76 <http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/NARS%20Report_WEB.pdf>

('NARS Report'). I attended an informative and thought-provoking workshop in 2014 on 'Implicit Thinking'. I wish to acknowledge Dr Jennifer Whelan of Psynapse, who delivered it.

²⁴ See, for instance, Annabel Crabb, *The Wife Drought* (Random House, 2014) 249 - 302 and also Sheryl Sandberg, *Lean In* (WH Allen, 2013) 114.

working flexibly for a range of reasons from childcare to artistic and sporting pursuits. Many of these lawyers indicated that the ability to work flexibly had helped sustain them and kept them in the legal profession.

45 For myself, flexibility has been the key to remaining in the profession. I worked four days a week from the time I was a second year solicitor for most all my career, until my recent appointment to the bench. It never hampered my career. In fact, it made me extremely organised and efficient during work hours!

46 For those of us in leadership positions who are working flexibly, we need to publicise this as much as possible. It should not be hidden from others for fear of being seen as somehow less than those who work in a more traditional way. The more we talk about flexibility, the more we will normalise it as just another workplace option.

47 If you need practical information about implementing flexibility, or how to request flexibility, I encourage you to visit the VWL website, where they have many useful resources and research on flexibility. Earlier this year, VWL published 'Flexible Work Protocols: A Best Practice Guide for Productive and Engaged Legal Workplaces.' Whether you are the manager considering the request, or the employee seeking the request, know that you do not need to reinvent the wheel.

Organisational Justice

48 Our relationships with our colleagues affect our wellbeing. On the one hand, healthy support from colleagues, including managers, can make a positive difference to our wellbeing.²⁵

49 On the other hand, interpersonal conflict is commonly reported as a cause of workplace stress.²⁶ Interpersonal conflict can be between peers or between an employee and their manager. Causes vary from miscommunication through to bullying and other unethical conduct.

²⁵ Harvey et al above n 2 at 17.

²⁶ Ibid 18.

50 Research establishes that an effective intervention against interpersonal conflict is to enhance organisational justice.²⁷ Low levels of justice increase the risk of mental health problems.²⁸ Workplaces with low levels of justice lack effective systems for employees to raise concerns or complaints and do not address issues in an effective timely manner.

51 Enhancing organisational justice involves having policies in place that clarify what behaviour is appropriate in the workplace, and what is not. This includes policies on workplace bullying.²⁹ It should also include policies on equal opportunity and the prevention of sexual harassment. These policies need to be implemented through training and ongoing refresher courses. Most critically, they must be applied when there is a complaint or inappropriate behaviour.

52 Research indicates that unethical behaviour such as sexual harassment and workplace bullying still exists in the legal profession.³⁰ Two years ago, the Victorian Equal Opportunity and Human Rights Commission reported that almost one-in-four women lawyers it surveyed said that they had experienced sexual harassment whilst working as a lawyer or legal trainee in Victoria. A national report last year made a similar finding.³¹ The Victorian data indicates that sexual harassment overwhelmingly occurs within the first 12 months of being in the workplace.³² In the vast majority of cases, the harasser held a more senior position, and in half of the cases, there was more than one harasser.³³

53 These types of behaviour are not just unhealthy, they are unethical and unsustainable. Recently, and for the first time, the legal profession has expressly recognised this type of

²⁷ Ibid 29, 34-36.

²⁸ Ibid 21.

²⁹ Ibid 34.

³⁰ See, eg, NARS report above n 23. See also Victorian Equal Opportunity and Human Rights Commission, *'Changing the rules – the experience of female lawyers in Victoria'* (2012); Dr Christopher Kendall for Law Society of Western Australia, *'Report on Psychological Distress and Depression in the Legal Profession'* (2011) Report for Law Society of Western Australia; Maryam Omari. *'Towards Dignity and Respect at Work: An Exploration of Work Behaviours in a Professional Environment'* (2010) A report for the Law Society of Western Australia and Edith Cowan University.

³¹ NARS Report above n 23.

³² Victorian Equal Opportunity and Human Rights Commission, *'Changing the rules – the experience of female lawyers in Victoria'* (2012) 4. Survey respondents reported 63% of sexual harassment incidents occurred within the first 12 months of being in the workplace.

³³ Ibid 4. In almost 80% of cases, the harasser was in a more senior position in the organisation.

conduct as unprofessional conduct that may give rise to disciplinary action.³⁴ Rule 42 of the Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 provides that a solicitor must not, in the course of practice, engage in conduct that constitutes unlawful discrimination, sexual harassment, or workplace bullying.

Conclusion on sustainable lawyering

54 The phrase 'toughen up princess!' has gained some traction in legal circles. It is not helpful. In the context of legal education, Dr Colin James has written that it is not 'a matter of getting lawyers to toughen up, as if resilience in legal practice involves being insensitive. On the contrary, sensitive legal practice may be ideal because the self-aware lawyer... will know how to self-protect, how to respond to unreasonable demands or implied expectations from the workplace culture, managing partners or clients.'

55 Anyone can suffer mental distress as a result of the conditions of their work, conditions over which employers can have significant control while employees may have very little.³⁵ We need to move beyond the misconception that all mental distress is self-driven and occurs in isolation from the environment.

56 Some people here tonight may unfortunately be working in organisations with little autonomy and limited acknowledgment. However, you may be able to speak out and change your situation within the organisation. This will take courage. You will need to weigh the risks and be realistic about whether the change you want to see will occur. You may feel that there is no point, and you are in an organisation that will not value your wellbeing. In that situation, as one of my wise friends says, 'If circumstances are not encouraging, move on.' It is important to respect yourself and your own wellbeing.

57 When I was a law student, about 20 years ago, I recall the women's officers at the Law Students Society gathering information from each law firm for a booklet about the number of female partners, whether they had equal opportunity policies and other such information. These were the days where at least one medium sized firm did not have

³⁴ *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*, r 2.3

³⁵ Martin Shain, 'Psychological Safety at Work: Emergence of a Corporate and Social Agenda in Canada' (2012) 11(3) *International Journal of Mental Health Promotion* 42, 47.

any female partners. We used this booklet to inform our career choices. I am aware that the job market for graduates is a lot tougher these days. But it always helps to be informed. Do you have information about the billable hours required by each firm, whether they vary with the fluctuating Australian dollar, whether they have policies on wellbeing, whether they offer flexible equity partnership, and if so, how many partners have taken it up?

58 Before I move onto the next section, I want to answer a question that I have recently been asked. It is: 'Why have I always been so passionate about work and wellbeing?' I suppose there are a few reasons, but one of the main ones is from my childhood. My uncle was a solicitor, a partner in a very busy suburban practice. As a young teenager, I would sometimes go in and assist him. He was very encouraging of my interest in the law. I would file the loose-leaves. He would often sit at his desk reading briefs and smoking his pipe! Towards the end of the Summer holidays, I would occasionally go into the office with him. He would upturn the Santa sack full of mail and we would sit there together going through hundreds of letters. These were the days before email and fax! I would open the envelopes and put them into various piles for him.

59 And then one day, my uncle was gone. He was 43 years old when he died of a massive stroke. I'm not sure whether it was due to his workload, but his death left my aunt a widow and their five children without a father. Perhaps if more enlightened attitudes to work-life balance had existed then, perhaps if there was more of a sustainable-lawyering discourse at the time, my uncle may have lived longer. Our topic tonight is truly about a life and death issue.

Fostering connection

60 Building connection with other people is vital to our wellbeing. Looking through the lens of ethics, we might ask, 'Do our personal and professional ethics promote connection?'

61 One important value our profession holds dear is collegiality. This value is conducive to wellbeing because it fosters mutually supportive relationships.

62 In his book 'Flourish', Professor Martin Seligman outlines the five pillars of wellbeing. They are: positive emotion (of which happiness and life satisfaction are aspects), engagement, relationships, meaning and achievement. He says:

...well-being cannot exist just in your own head: well-being is a combination of feeling good as well as actually having meaning, good relationships, and accomplishment...³⁶

63 Author David Rock, whose work draws on neuroscience, has commented:

In the 1960s, Abraham Maslow developed a now famous 'hierarchy of needs', which shows that humans have an order in which their needs have to be met, starting with physical survival and moving up the ladder all the way to self-actualization. Social needs sit in the middle. But Maslow may have been wrong. Many studies are now showing that the brain interacts with social needs using the same networks as it uses for basic survival. Being hungry and being ostracized activate similar threat and pain responses, using the same networks.³⁷

64 Rock goes onto say:

Being connected to others in a positive way, feeling a sense of relatedness, is a basic need for human beings, similar to eating and drinking.³⁸

65 While it can be relatively easy to build connections with people who are similar to us, there is another challenge in all this, and that is: how do we build connections with colleagues who seem to be different to us? Professors Christakis and Fowler describe this:

Humans deliberately make and remake their social networks all the time. The primary example of this is *homophily*, the conscious or unconscious tendency to associate with people who resemble us . . . the truth is that we seek out people who

³⁶ Martin Seligman, *Flourish* (Simon & Schuster, 2011).

³⁷ David Rock, *Your Brain at Work* (2009) 158-159.

³⁸ Ibid 164.

share our interests, histories, and dreams. Birds of a feather flock together.³⁹

66 So, for our wellbeing, workplaces need to foster work practices that give people the opportunity to connect and work with others. Workplaces need to have diversity policies that encourage collaboration between diverse groups of people. There are already organisations, particularly those with global operations, doing that.⁴⁰ It is good for people, and good for innovation and productivity.

67 On a personal level, we need to interrogate ourselves about our unconscious biases. By that, I mean stop and ask ourselves whether the decision that we are making about connecting with someone – or not – may be based on a desire to be with people like us. If you have responsibility for hiring employees, engaging contractors such as barristers, creating teams, or managing people: your personal decisions will have a ripple effect on the connections that are created both within your organisation and with external stakeholders, including clients.

68 We need to foster and build connections horizontally and vertically. By horizontally, I mean between peers. By vertically, I mean between senior and junior people.

69 The Law Institute of Victoria and VWL both have mentor programs. Many law firms have both buddy and mentor programs. Typically, a law graduate is ‘buddied up with’ a lawyer who joined the firm 1-2 years previously. The idea behind the pairing is that the buddy can relate to the experience of the law graduate, having recently gone through the process themselves. It also allows the new graduate to make friends at work, which we know is crucial to feeling accepted, and valued. The role of the buddy is to be a source of advice and guidance, particularly on matters which a graduate may be too embarrassed to ask a more senior lawyer. The mentor, by comparison, will typically be a more senior lawyer who can be a source of work, and generally look out for the graduate lawyer’s wellbeing.

³⁹ Nicholas A Christakis & James H Fowler ‘Connected’ (Little Brown & Company, 2009) 17. See also Mahzarin R Banaji & Anthony G Greenwald, *Blindspot* (Delacorte Press, 2013).

⁴⁰ See, for instance, examples discussed by Professor R Moss Kanter, *Supercorp: How Vanguard Companies Create Innovation, Profits, Growth, and Social Good* (Crown Business, 2009) chapter 7.

70 These ways of fostering connection don't just occur in law firms. The Victorian Bar has a long history of mentoring too, with baby barristers beginning by reading, literally sharing a room, with their mentor. The barristers that I speak with who seem the happiest are those who work in chambers marked by a high degree of collaboration.

71 Informal mentoring is also invaluable. I remember, with deep gratitude, two of my teachers at Melbourne Law School. I had no legal scholars in my family. I was astonished when my lecturer suggested that I try and publish legal research I had written for her class. I did not think my writing was good enough to be published in a law journal. I am grateful that my lecturer made that suggestion. It led to my first publication and gave me an enormous confidence boost.

72 On a person-to-person level, you may wonder what you can do to foster collaboration and build connections. Look around and ask yourself "Who is not connected here?" One of the best things I have learned from my friends in the LGBTI community is the importance of reaching out. Reach out and give a hand to someone who is not connected, or not as well connected. You will learn so much more than remaining in your comfort zone. Start by extending your hand to someone coming up behind you. There is always someone behind you. If you are a law student, put your hand out to a first year. If you are a first year, put your hand out to a secondary school student thinking of studying law, or a student from another faculty thinking of transferring into law school.

How do we make change happen?

73 If we value our wellbeing, and that of our colleagues, we must take steps to make changes directed towards creating healthy workplaces

74 Some of you here tonight will be experienced change managers and know there has been a great deal of research in this regard. One of the seminal texts in this area is "Leading Change" by Professor John Kotter.⁴¹ He outlines an 8 step process for creating major change in an organisation. I want to illustrate the steps with an example. These

⁴¹ John Kotter, *Leading Change* (Harvard Business Review Press, 2012).

steps are:

- (a) First, establish a sense of urgency

In 1996, I joined a mid-size law firm as an articulated clerk. There was discussion among women lawyers and clerks about the lack of female partners, and the lack of flexible working options. Having a child was seen as a career-limiting move. There were several senior women at the firm, on the cusp of partnership, who wished to start families.

- (b) Second, create a guiding coalition to work together as a team to lead change

We decided that the women lawyers of the firm should get together to discuss what could be done regarding flexible work practices. I volunteered to send out an email to all the female lawyers and clerks in the firm inviting them to an offsite meeting. I knew that I had the support of a number of influential female senior associates to send the email out. But part of me did wonder if I could be sacked! Given the support of the group, and their knowledge of those leading the firm, I thought the risk of that was probably minimal. I sent the email out. Every women lawyer in the firm attended the meeting.

- (c) Step 3: develop a vision and strategy to direct the change effort and to achieve the vision

After a series of meetings, we drafted an equal opportunity policy. We then approached the managing partner regarding its adoption. He seemed very supportive. We were encouraged in our goals. Next we divided up all the partners (almost all of whom were men) and allocated at least one woman lawyer to each partner to lobby them to adopt the EO policy at the upcoming partners meeting. I believe it was adopted unanimously. Never underestimate the power of influence.

- (d) Step 4: communicate the change vision and strategies, including role modelling the expected behaviour

We had input into rolling out the policy by providing training on it. Within a year there were several new female partners including a few who were - and this was ground breaking news at the time - pregnant.

- (e) Step 5: empower broad-based action, including encouraging non-traditional ideas, activities and actions

We did not confine the operation of the policy to lawyers. It was rolled out across the firm so that everyone could take advantage of it. Whilst we had expected young mothers to take up flexibility, the big surprise was the partners transitioning to retirement who wished to take it up.

- (f) Step 6: generate short-term wins, including planning for visible improvements in performance, and recognising and rewarding those people who make the wins possible

The adoption of the EO policy led to other initiatives by the firm, including regular women's networking events.

- (g) Step 7: consolidate gains and producing more change

Female clients were invited to networking events and they became very popular.

- (h) And the final step, step 8: anchor new approaches in the culture

A number of us subsequently went on to provide annual training on the policy to partners and staff. We also provided similar training to clients who adopted their own EO policies.

Call to action

75 Everyone can contribute to creating a mentally healthy workplace.

As an individual

76 As an individual, ask yourself, what can I do? This might be as simple as saying 'How

are you?' next time you see a colleague rather than the common greeting between lawyers of 'Are you busy?' It might be asking someone 'R U OK?' and then listening, really listening and caring about their response.⁴² It might be creating a mentoring relationship. It might be considering how you are measuring work performance and output in your organisation. We are all interconnected.

77 If you have not done so already, perhaps it is time to reflect and ask yourself whether you are building positive connections or negative ones. Perhaps it is time to reflect on our unconscious biases, to pause and ask oneself: am I making that decision because I only want to connect with people like myself?

78 Most importantly, take care of yourself. For any of you who are not feeling well, know that help exists. If you are a law student, approach your university's counselling service. If you are a barrister, approach the Victorian Bar Counselling Service. If you are a Law Institute member, approach the Vic Lawyers Health Service. If you don't have access to these services, other options include contacting your GP or Lifeline.

79 There is also the peer support group for lawyers living with mental health challenges called Pleading Insanity. Their next meetings in Melbourne are at 6pm on 27 October and 17 November. For more information, email pleadingsanityvictoria@gmail.com.

At organisational level

80 I have spoken about some of the actions that can be taken and I reiterate my view expressed earlier. Significant and effective change must be initiated and maintained at the organisational level if we are to create and maintain healthier workplaces. In 2011, the Tristan Jepson Memorial Foundation developed the Psychological Wellbeing: Best Practice Guidelines for the Legal Profession. These guidelines have been widely accepted, with over 80 Australian signatories already, including law firms and other organisations such as Telstra. The guidelines are available on the TJMF website. They are an excellent resource and contain practical steps for implementing change to create a mentally healthy workplace. There are references to many of the ideas I have discussed

⁴² R U OK is a not for profit organisation: see www.ruok.org.au

in the guidelines. The Foundation has a forum for sharing information about the implementation of the guidelines. If your organisation has not signed up to the guidelines, I urge you to consider doing so. I also encourage you to listen to the 2014 Tristan Jepson Memorial lecture given by the Hon Justice Virginia Bell. Her Honour gave an insightful speech which discussed the guidelines and their history.

81 Additional information and resources are available on the websites of the Wellbeing and the Law Foundation, the Law Institute of Victoria, the Victorian Bar, and both the federal and State human rights' commissions. I also note that the September 2015 edition of the *Law Institute Journal* is a special issue devoted to mental health.

82 Beyond the legal profession, other useful resources include the National Mental Health Commission, Vic Health, R U OK, Suicide Prevention Australia, Beyond Blue, the Black Dog Institute and SANE.

83 In early 2016, the Judicial College of Victoria will launch Australia's first dedicated judicial wellbeing website.⁴³ The Supporting Judicial Resilience Program has been piloted at the County Court and, subject to the outcome, it is likely to be embedded in the judicial wellbeing program across the County Court so that every judge participates in it every six months.⁴⁴

84 I am delighted tonight to announce that the Supreme Court of Victoria will shortly be a signatory to the Tristan Jepson Memorial Foundation guidelines.

As a profession

85 This is a journey the whole legal profession needs to undertake together.

86 I would like our profession to lead the change in creating mentally healthy workplaces. We are uniquely placed to lead this change. We are experts in ethics. Our values can drive this change. We are experts at problem-solving. We understand how to balance competing values and negotiate solutions. We also understand the need to make

⁴³ Carly Schrever, '*Judging Stress*', September 2015 89 (9) LIJ 29.

⁴⁴ Judge Felicity Hampel, '*From Stress to Resilience*' September 2015 89 (9) LIJ 33.

evidence based decisions.

87 Applying an ethical approach, creating mentally healthy workplaces is consistent with the values many lawyers hold dear, including collegiality. We must care for one another - as well as our clients and the broader community.

88 Thank-you.