

Report from the 2019 Annual Conference

St. John's, Newfoundland & Labrador
October 17 & 18, 2019



The Practice of Well-being: Exploring the Legal Regulator's Role



Conference Summary

The Federation of Law Societies of Canada was joined by law society leaders, members of the legal academy and key stakeholders from the legal profession in St. John's, Newfoundland and Labrador for its 2019 Annual Conference in October. The focus of the Conference was well-being in the legal profession. The Practice of Well-being: Exploring the Legal Regulator's Role surveyed the extent to which legal professionals experience anxiety, depression, addictions and other mental health and wellness challenges. The conference examined resulting harm to the public, colleagues and law society staff, and the role legal regulators can play in responding to these issues. The program featured presentations from a range of perspectives, including personal stories from practitioners who have experienced mental health and addiction challenges first-hand. The issues addressed are of vital importance to law societies given the link between lawyer and Quebec notary competence and well-being.

Troubling Statistics on Well-Being in the Legal Profession

Recent studies in Canada and the United States reveal alarming rates of anxiety, depression, substance use and burnout in the legal profession, with similar results among law students. Bree Buchanan, Senior Advisor at Krill Strategies and Co-Chair of the US National Task Force on Lawyer Well-Being ("Task Force") provided the Conference keynote address. She shared the results of a 2016 survey on lawyer well-being that showed problematic drinking rates of 21% among lawyers surveyed, compared to 6.4% in the general population. Further, 61% of lawyers had experienced anxiety and 46% depression at some point during their career.



Bree Buchanan, Senior Advisor, Krill Strategies
Co-Chair of the U.S. National Task Force on Lawyer Well-Being



Dr. Nathalie Cadieux, Associate Professor, Université de Sherbrooke, Principal Researcher for the Study to determine occupational psychological health among Quebec lawyers.

Dr. Nathalie Cadieux shared the results of her survey on the well-being of Quebec lawyers, conducted between 2014-2016 and 2017-2019. In some practice areas more than 50% of respondents were experiencing psychological distress and almost 30% showed evidence of burnout. These results echoed those of the American study in many respects. Both the Canadian and American studies highlighted that younger members of the profession are at heightened risk of developing substance use, mental health and well-being problems.

Consequences of Illness in the Legal Profession

Members of the profession experiencing well-being challenges may lack motivation, suffer ill physical health, engage in anti-social or self-destructive behaviours, struggle in relationships or experience emotional imbalances, to name a few of the problems they may face. These symptoms can diminish a practitioner's capacity to competently carry out their professional duties, putting clients and the public at risk. Most legal professionals facing well-being challenges need help. However, if the problems aren't recognized early or help is not sought, they can escalate. In the end, law society action may be needed to address conduct or capacity issues. Attendees heard that if not addressed at the individual and systemic levels, wellness challenges within the profession may contribute to the erosion of public confidence in the legal system, in addition to the potential harm to the public and legal professionals themselves.

Causes of Well-being Challenges within the Legal Profession

Dr. Cadieux pointed out that many factors can cause stress at work, or reduce its prevalence. Stressors originate not just from the workplace, but also from society generally, the family and the individual. Therefore, an accurate picture of the mental health of lawyers requires study of all of these factors. The Conference explored the stress factors caused by the nature of legal work and the legal culture in particular.

What is it about legal work that creates the conditions for high levels of stress, mental health and substance use disorders? The speakers asked participants to critically examine the structural and cultural dimensions of professional practice that contribute to well-being problems. They acknowledged the significant pressure to conform to stereotypes within the profession. These pressures often contribute to overwork, neglect of other areas of one's life and poor self-care, and can lead to other more serious well-being issues. We heard that the imposter syndrome (i.e., feelings of chronic self-doubt) is prevalent among legal professionals. This syndrome can lead to loneliness and isolation, another source of distress. The 2016 US survey found that loneliness is a significant problem among lawyers.

The emotional weight of the work – particularly for legal professionals dealing with traumatized groups - was identified as another cause of distress and vicarious trauma. Growing incivility in the profession was also noted as a source of psychological harm and burnout. We also heard that well-



Doron Gold, Staff Clinician at Homwood Health Centre, was on a panel discussing the role law societies can and should play in addressing wellness challenges. He was joined by Sheila Wildeman (right), Associate professor, Schulich School of Law, Dalhousie University, and by Darryl Singer (left) of Diamond & Diamond Lawyers LLP.

being challenges can lead to legal professionals behaving with a lack of civility. Conference presenters said that the hierarchical nature of many legal workplaces and continued resistance to flexible work arrangements and wellness initiatives can perpetuate well-being problems.

Presenters observed that legal practitioners sometimes experience a sense of disconnect between their personal values and their work, which can lead to well-being challenges. This can be more pronounced for those who are members of equity-seeking groups. One presenter spoke of the need to challenge the tendency among legal professionals to assume that the legal system is neutral. Attendees were reminded that the law has been used to oppress Indigenous Peoples. This reality causes unique harm to members of Indigenous communities who are now trying to find their space in the legal profession.

Presenters and participants pointed to a culture of alcohol consumption as a significant factor that undermines well-being. Students often feel pressure to drink at corporate events. Further, students and professionals who don't drink alcohol for cultural or religious reasons may feel that they will never "fit the mould", resulting in additional stress. Alcohol consumption at social events can also lead to harassment and bullying, and hinder efforts to advance equity, diversity and inclusion. Incidents of harassment (including sexual harassment) bullying and discrimination are far too prevalent in the legal profession, attendees learned, and are known to result in serious physical and psychological distress for those who are victimized.

What Law Societies are Doing and Can Do to Promote a Healthier Profession

Promoting wellness is already high on many law society agendas. Work has begun in earnest to develop and improve initiatives that foster well-being among legal practitioners. Conference presentations identified challenges and brought forth possible solutions to further assist law societies and the legal profession in working toward positive changes in health and wellness.

Filling Information Gaps

There is a lack of reliable evidence on the extent of health challenges within the legal profession in Canada, including the risk factors and factors that may encourage well-being. Law societies need data to guide their approaches to intervention. The recent Quebec study is the only in-depth study on lawyer wellness in Canada, although we heard that the law societies of British Columbia and Newfoundland and Labrador are contemplating studies of their own. Conference participants expressed an interest in gathering data on legal professional well-being at the national level.

Addressing Stigma and Enhancing Communication

An added challenge in determining the scope of the well-being problem and providing assistance to those who need it is the high number of cases that go unreported. Studies among law students in the United States confirmed that stigma prevented many students who were aware they suffered from well-being challenges and knew that they needed help, from seeking assistance. They feared that seeking help would threaten their academic status, possibilities for employment and likelihood of being admitted to the bar. Anecdotal evidence suggests that the situation is no different in Canada.

Stigma is often reinforced by the structural elements of legal regulation. Presenters encouraged law societies to drop their fitness to practice questions and eliminate stigmatizing language from legislation, rules, codes of conduct, law society documentation, and in verbal communications with candidates and licensees. Great care is needed to avoid conflating well-being challenges and poor conduct. Law societies were also encouraged to limit the information that goes on a licensee's public record when discipline relates to a well-being issue. Law societies have made great strides in these areas, but more work remains to be done.

Given the challenges stigma poses, it was recommended that law societies do a better job of communicating that they are there to help members facing well-being challenges. Presenters shared that students and legal professionals in distress need to hear that sharing details about their health challenges will not bar them from entering the profession or imperil their current career. Law societies could also reassure students and professionals that any details disclosed to member/lawyer assistance plans will not be shared with the law society. Better communication about available resources and supports, including their confidential nature and how to access them, may go a long way to reducing stigma and fear, and encouraging members of the profession to seek help.

Training and Education

Many law societies already offer well-being programs as CDP or part of their bar admission process. The Law Society of British Columbia has developed training for internal staff, benchers and members of disciplinary panels, as well as providing in-person and on-line CPD programs on well-being. Some conference participants suggested that wellness CPD should be compulsory. The development of educational tools and programs was identified as an area for potential collaboration among law societies and other appropriate organizations.

Tools for staff and boards that must make regulatory decisions were also discussed. A common challenge for discipline staff is that they don't always know when the problematic conduct is the result of a well-being issue. The nature of some conditions compounds the problem. For instance, anxiety may prevent a lawyer from responding to repeated communications, or an addiction may result in a Quebec notary lying about client matters or denying the addiction. Appropriate training for staff, adequate regulatory tools and partnering with mental health professionals were identified as ways to support law societies in fulfilling their public protection mandate.

Encouraging Diversion

Conference goers heard about the Nova Scotia Barristers' Society's diversionary stream designed to support lawyers in distress. All disciplinary files are assessed from a capacity lens and lawyers experiencing well-being challenges are directed to a confidential fitness to practice program. Attendees were reminded that human rights legislation requires that law societies accommodate physical and mental disability up to the point of undue hardship, suggesting that law societies may need to adopt appropriate processes that take health struggles into account. The benefits of alternative processes include reducing stigma, encouraging self-reporting and changing the perception of law societies to that of "partner" instead of "adversary".

Supports for Law Society Staff

Law society frontline staff that assist legal professionals or members of the public in crisis require adequate tools to do their work effectively. They also need supports to avoid burnout and vicarious trauma, and maintain their own well-being. Possible tools include: vexatious complainant policies, a requirement that communication be conducted over e-mail, scheduling calls so they will be time-

limited, screening e-mails to protect staff that may be targeted for abuse, and guarding staff names to reduce the possibility of personal contact or harassment. Some also suggested broadening existing vexatious litigant legislation to apply to communications with law societies. Speakers recommended debriefing sessions and rotating staff out of frontline positions to prevent burn-out. A national mentorship network for frontline law society staff was identified as a possible support.

Other Recommendations

It was suggested that wellness components could be incorporated into the self-assessment tools being developed as an element of entity regulation. Law societies could also create well-being resources for firms and work with them to reduce alcohol consumption at recruiting events. Mindfulness practice is now being offered in law schools in both the US and Canada and could be offered to legal professionals. A peer support system was recommended for those in the recovery process (e.g. support from a legal professional who has been on a similar journey). A reverse mentoring program was suggested, in which junior legal professionals mentor senior ones in developing good well-being practices. Further, the National Discipline Standards might be revised to incorporate elements responsive to well-being concerns.

Conclusion

The presentations and discussions revealed that various organizations and individuals in the legal profession are already fully engaged in the process of creating a culture of well-being. The Conference helped stakeholders to better understand the current well-being landscape and offered some solutions to the challenges facing both legal professionals and legal regulators. The discussions showed that law societies can play a key role in reducing stigma and supporting the creation of a healthier, more resilient legal profession. Opportunities exist for the law societies and the Federation to work together and partner with other legal system stakeholders, where appropriate, to achieve this vital goal.