

# LawTalk

21 November 2014 • 855

## MENTAL ILLNESS IN THE LEGAL PROFESSION



NEW ZEALAND  
LAW SOCIETY

NZLS EST 1869



## MENTAL ILLNESS IN THE LEGAL PROFESSION

When it comes to mental illness, including depression and anxiety disorders, lawyers suffer more than their fair share.

Although this has not been studied much in New Zealand, overseas research indicates that lawyers have among the highest rates of depression and suicide in any occupation.

Anecdotally, it is clear this could be the case in this country also. LawTalk journalists SASHA BORISSENKO and ELLIOT SIM spoke to practitioners and health professionals about the issue and what support is currently available.

# DEALING WITH MENTAL ILLNESS

BY SASHA BORISSENKO

**IN 2009 POLICE RECOVERED THE BODY OF MISSING** Christchurch lawyer Jonathan McCarthy. The death was treated as a suicide. The 50-year-old was reported missing after failing to turn up to represent a client in the Kaikoura District Court.

His mother, Mary McCarthy, told *The Press* in 2010 that her son had always done things with “an intensity”. He seemed happy and had plenty of friends but no-one in the family had any idea of what must have been going on inside his head.

The death of top defence lawyer Greg King came as a shock in November 2012. In a report by Coroner Garry Evans in 2013, Mr King described himself as “exhausted, unwell, disillusioned, depressed and haunted,” in his suicide note.

His widow, Catherine Milnes-King, said Mr King was depressed but too proud to discuss it with anyone and he had a “massive breakdown” at the end of the Ewen Macdonald murder trial. Coroner Evans said it was sad that Mr King was unable to bring himself to report his depression, and that he would have been able to seek help from his GP or the New Zealand Law Society.

“There can be no doubt that the relentless pressures of his criminal practice, together with the other influences, pressures and concerns recorded in these findings, crowded out the time needed by him to look after his own health and ultimately weighed so heavily upon his mind that he suffered a major collapse under pressure and, in his very depressed state, saw the only way out as being to end his life.”

This year, an Auckland lawyer was formally censured after falsifying trust account records and abandoning responsibility of the trust account for several months while suffering mental illness.

“This was a sad and somewhat unusual case in that

it was the first time that the defence was advanced that the practitioner, at the time the alleged offending occurred, was suffering from an undiagnosed mental illness, namely bi-polar disorder,” Judge Dale Clarkson said in the decision.

**JAMES (NOT HIS REAL NAME), FIRST BECAME** concerned for his mental health after having regular periods of unusual ups and downs during his law studies. While he sought help initially, he largely “wanted to shrug it off as much as possible as a minor trait and learn to cope”, he says.

Despite years of resilience, it came to a head earlier this year when he entered a severe episode of mania which saw him having extreme energy despite failing to sleep for days.

“At first it was a feeling of euphoria but quickly progressed over the course of a few days into delusional thinking until I had lost touch with reality.”

Following a period of isolation in hospital and being in a deeply depressed state for three months, with the help of medication, insight

and a diagnosis of Bipolar Type 1, James is on the mend.

He has finished his legal professionals course and fully intends to disclose his experiences to the Law Society to meet the “fit and proper person” requirement. He hopes to be practising law in the near future.

James says the biggest problem with the profession is the promotion of the concept of “resilience” as the front-line of mental health awareness materials.

“Resilience may be a psychological term and useful concept but it seems to have been adopted primarily by Human Resources/Marketers for larger firms as the way to say: ‘Know that we care. Here are tips to exercise more, drink less coffee and get a good sleep so you can keep working hard.’

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"The concept has taken on corporate jargon status. Resilience is a very individualistic approach that skims the surface.

"There is the risk it can project blame onto the person experiencing the illness that they simply aren't strong enough. While it is very true there are all sorts of habits and things to keep up good health and build up resilience, it's the reality a lot of mental health issues do not 'bounce back' quickly," James says.

**LAW SOCIETY PRACTICE APPROVAL COMMITTEE** secretary Sarah Inder says there are a number of times during a lawyer's career when mental illness should be declared if it may impact on the lawyer's ability to practise law.

It may be at admission through the certificate of character application process, annual declarations for the renewal of practising certificates or applications to practise on own account, for example. In addition in the complaints process, lawyers may respond to a complaint citing significant medical or mental health difficulties that have been undiagnosed.

"For one reason or another there are a variety of reasons why someone might not want to come forward, despite Law Society attempts to try to dramatically reduce the stigma around mental illness," she says.

"Each matter is treated individually in a sensitive manner and on the specific facts and circumstances."

In the application for a certificate of character for admission for example, the candidate must provide medical evidence and demonstrate that they have insight, awareness and support mechanisms in place to manage the illness so that it doesn't affect their work. They need to inform their employers and their referees of the situation.

"This is not always easy but it is necessary as it safeguards both the lawyer and the consumer," she says.

While the Law Society aims to encourage more people coming forward if they are struggling, it is only a concern for the Law Society if the mental illness in question may affect the lawyer's ability to do their work and therefore be a risk for the consumer, she says.

In other cases where there is no risk to the consumer the lawyer would still be encouraged to seek help from their local branch and from Practising Well.

"The Law Society is always forward looking in assessing such matters and encourages lawyers to put support mechanisms in place to prevent relapses and to enable a lawyer to continue to practise well."

#### THE LAW SOCIETY'S NATIONAL COMPLAINTS

Manager Paul Byers deals with inquiries from lawyers, colleagues, or members of the public that may cover a range of issues including concerns around mental illness. In some cases, mental illness might be a contributing factor to explain certain conduct, he says.

While his role is limited insofar as he is not a health professional, Mr Byers says he is sometimes the friend, the regulator or the general voice of the Law Society. But role clarification is important as it provides good boundaries for the person seeking assistance and the person trying to help.

In his experience "the scariest moment for a professional often is reaching out to that first person and admitting things aren't going well", he says.

Being sometimes the first point of contact, Mr Byers says he tries to respect the moment by just listening before later offering avenues for further assistance.

But "a one size fits all" description of mental illness is too sweeping, and it has to be dealt with on a case-by-case basis, he says.

"Remember mental illness is first and foremost just that – an illness. And like any illness, depending on its gravity, it need not prevent a lawyer from leading full and productive professional life."

The nature of the law puts strain on practitioners so many will experience some form of mental illness

through their careers, he says.

"Lawyers are often under enormous stress with very high workloads in highly charged emotional situations.

"Lawyers often deal with harrowing cases and have to balance client expectations with those legal remedies that are actually available, for example. [In addition, there are] the pressures of daily life and crises that arise in a lawyer's personal sphere from time to time.

"Such stress built into the role of a lawyer means legal professionals should constantly look after and not take their mental health for granted."

Along with seeking the support of family, friends, medical professionals and colleagues, Mr Byers says routines should be put in place to fall back on when life becomes unbalanced or when an event is particularly stressful.

"I try to put into action that somewhat hackneyed phrase that is often easily said but hard to put into practice 'work-life balance'."

**NIGEL HAMPTON QC IS OF THE OPINION THERE IS** more understanding and accommodation within the

## MENTAL ILLNESS CAN BEFALL ANYONE, PARTICULARLY ANYONE WORKING IN A STRESSFUL PROFESSION



Basel, Switzerland / Flickr user 'Transformer18'

profession over the 50 or so years he has worked as a general and criminal litigator.

"When I started out everyone kept to themselves and tried to deal with their own problems. There is greater recognition now about the stresses and strains of practice and the need to take steps when – or, hopefully, before – things go wrong.

"Mental illness can befall anyone, particularly anyone working in a stressful profession.

"Litigation is especially stressful, and I believe carries more stress than even fellow practitioners realise. Certainly the general public has no real comprehension of the strains, which I do think are as acute, if not more so, than fall on those in other professions.

"You have got to appreciate that the nature, the character, of a person doing litigation work is going to be somewhat extroverted and so that person is likely to be subject to mood swings. Mood swings will

naturally contain 'down' periods and such downs are not a long step from depression, which may in some circumstances and with certain personalities, lead to clinical depression."

The thought that any stigma about mental illness in lawyers should attach to those suffering such problems is abhorrent to his way of thinking, and wrong, and "collegiality and understanding is and should be a cornerstone of any profession".

In his experience of dealing with mental illness among his colleagues, Mr Hampton has seen such from time to time and has been asked, formally and informally, to step in to help over the years.

"You have to come to the realisation that you cannot deal with it all yourself, that there is a need to get external help, and that there is a willingness in your colleagues to proffer such." ■

# IT'S A STRESSFUL PROFESSION

By ELLIOT SIM

**LAWYERS HAVE A HIGHER RATE OF PHYSICAL ILLNESS** such as heart disease and psychological illnesses like depression, anxiety and substance abuse according to international research.

One study suggests that this begins in law school, psychologist and managing director of Umbrella Health and Resilience Gaynor Parkin says. In their 2009 paper *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology*, Todd and Elizabeth Peterson point out that before they entered law school, students in the United States showed no signs of elevated psychological distress compared to the general population. However after just one year of legal study more than 50% of students met the criteria for depression.

"Other studies have found higher rates of anxiety and depression in the legal profession versus other professional services," Ms Parkin says. "It raises the question: is there something about legal training or going into the legal profession that seems to make people more vulnerable to mental health issues?"

Ms Parkin says there is some international research to show that lawyers are over represented in mental health issues, but that "there hasn't been any specific research in the New Zealand context".

She says that anecdotally and through her work as a psychologist there are reports of higher rates of mental health issues in the legal profession, which could be attributed to a number of factors.

"Is it that people who are, perhaps, more vulnerable to mental health difficulties are drawn to legal work? Or is it something about the training and legal work that creates more vulnerability?"

The 2009 US research suggests, she says, that it is the training that shapes people's world view.

"Certainly in my experience, what I've heard lawyers describing to me is that part of being a good lawyer is that you look for the worst case scenario and you look for risk. That means you're going to look at the world with a somewhat pessimistic lens. While that's an incredibly useful skill in your legal work it's not so useful when it comes to life."

The trick is finding a way to turn that world view off when you leave the office and have a different view about life in general, according to Ms Parkin.

"And of course that is easier said than done," she says, as billable hours and the nature of the lawyer/client relationship means lawyers tend to work long hours.

"The sorts of recovery strategies that we would encourage people to use in terms of exercising, sleeping well and having a balanced life; often people aren't doing those things because they're

working long hours," she says.

There isn't any meaningful research on certain lawyer personality types being predisposed to mental illness, according to Ms Parkin.

"Anecdotally, lawyers tend to be high achievers. They also tend to set high standards for themselves and are, perhaps, perfectionists in how they approach their work and their life. Those perfectionist patterns – again while being useful in a work context – they're not always useful in a life context."

Ms Parkin says the lack of research on New Zealand lawyer's mental health "is a bit of problem", and that it could be due to a number of reasons.

"It's probably because in order to do that research you would need to get lawyers to agree to be part of

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research, and with time pressures that's going to be tricky. I think with this kind of research sometimes there's a bit of fear that if we do this research and find that it's a particular problem then it's 'what are we going to do about it?' And it's also 'who is going to pay for that research?'"

The profession's general view on mental illness could also be a factor, she says.

"Certainly with some of the groups I've worked with – and it's not unique to lawyers – but I think there's still a stigma in that it's not okay to say that you're feeling stressed or anxious or overwhelmed by things.

"There's still that idea that if you're a competent

person you will just suck it up and keep on going ... Hopefully that's an attitude that's changing, but I think again that pressure to perform can override people's willingness to say that 'I'm struggling'."

Ms Parkin says the Mental Health Foundation is trying to debunk some of those myths by making it more acceptable for people to talk about mental health issues, but that a "lawyer specific" initiative is needed for the profession.

"Ideally a body like the Law Society would pick that up and drive a co-ordinated approach," she says.

The Law Society's Practising Well initiatives have served to draw attention to these issues and are set out in more detail below.

## LAW SOCIETY INITIATIVES

### Practising Well

Law Society initiatives to assist lawyers facing issues related to depression and mental health come under its Practising Well programme.

Practising Well aims to provide a starting point for any lawyer who is concerned about their own welfare or that of their colleague. The focus is on getting lawyers "practising well". (It has a section on the *my.lawsociety* website, at <http://my.lawsociety.org.nz/practising-well>.) Some of the useful Practising Well initiatives are:

- work/life balance;
- problem clients, files, judges or other counsel;
- office management;
- ethical issues;
- health and state of mind;
- using an alternate/attorney; and
- where to next in my career?

More information as well as a list of all members of the National Friends Panel is available on the website. Any questions can be directed to [practisingwell@lawsociety.org.nz](mailto:practisingwell@lawsociety.org.nz) or phone 04 472 7837.

#### NATIONAL FRIENDS PANEL

The National Friends Panel is a New Zealand Law Society service. The Panel is made up of New Zealand lawyers who are willing to be contacted on a confidential basis by fellow lawyers with questions or concerns relating to practice issues.

National Friends Panel members will listen to you on a confidential basis. They may be able to draw on their own experience to suggest a way to approach the issues which are troubling you, or they may be able to refer you to someone else.

Contact with any member of the panel is totally confidential. Pressures discussed include:

- workplace issues (such as bullying, communication, workload, career advancement or other employment-related matters);
- financial problems (personal or firm-related);
- partnership issues;
- tax problems;
- trust account problems;

#### LOCUM PANEL

The Law Society's Locum Panel is an online database of lawyers who are available to work as locums. A locum lawyer works for a short, usually fixed, term. Locums provide cover in situations such as the absence of staff or where the principal in a small or sole practice may need a break for recreational or health reasons.

The Locum Panel section of <http://my.lawsociety.org.nz/practising-well> lists information about lawyers who act as locums and all listed locums are required to certify the validity of information on their qualifications and experience.

This information shows the following:

- locations where the locum is available for work;
- year of admission;
- whether able to practise on own account;
- whether qualified trust account supervisor; and
- phone and email contact details.

The Law Society Locum Panel is a referral service only,



## STUDYING LAW LEADS TO STRESS

**OVER 60% OF NEW ZEALAND LAW STUDENTS BELIEVE** their studies have resulted in high stress levels, according to a New Zealand Law Students' Association (NZLSA) national survey conducted in June 2013.

880 law students from each of the country's six law schools participated in the mental wellness survey.

The purpose of the project was to gain a picture of law students' mental health to determine whether any issues existed and, if so, how NZLSA should act in response.

When participants were asked whether they had a high level of stress as a student, 63.5% of respondents said they had high levels of stress mainly from being a student, 23% attributed stress to areas of life other than being a student, and 13.5% said they didn't feel stress. 40% said legal study was a direct cause, with a further 55% saying it was at least a moderate cause.

Students were asked to identify why they thought studying law was particularly stressful. They were given a range of options and could select more than one or none of the options. The factors students selected in the highest numbers were:

- high expectations for top grades (selected by 89% of students);
- the pressures of finding a job after law school (selected by 70% of students);
- the number of readings (selected by 63% of students);
- the amount of time that had to be dedicated to study (selected by 56% of students); and
- the pressures exerted by other law students (selected by 51% of students).

By contrast, only a quarter of students selected the number of examinations as a stressful factor of legal study, and only 18% said the number of papers required was stressful.

The results showed a quarter of the students surveyed developed a clinical mental health disorder since starting at university.

Of those, one in six affected students believe their law studies were a direct cause of their illness, and a further half of affected students cite being a law student as a contributing factor. The disorders recorded include depression, anxiety, eating disorders and obsessive-compulsive disorder (OCD). The survey results are available at [www.nzlsa.co.nz](http://www.nzlsa.co.nz).

aimed at assisting lawyers who need locums to locate them. The parties are expected to make their own arrangements for remuneration, accommodation, office support, professional indemnity insurance, etc.

If you would like to register for the New Zealand Law Society's Locum Panel, please complete the registration form and email to [practisingwell@lawsociety.org.nz](mailto:practisingwell@lawsociety.org.nz). Upon submission the Law Society will check the form with the supplied referees. If everything is acceptable your details will be listed.

For more information email [practisingwell@lawsociety.org.nz](mailto:practisingwell@lawsociety.org.nz).

### LIFELINE COUNSELLING

Lifeline Counselling has a team of qualified professional counsellors experienced in working with clients across a broad range of issues. Their confidential service can help with day-to-day issues such as stress, anxiety, burnout, depression, relationship issues, grief, trauma and addiction. All counsellors are qualified to Masters level and are members of the New Zealand Association of Counsellors.

Law Society members and families receive a discounted rate of \$110 based on a normal 60 minute session.

Currently this face-to-face service is only available in Auckland, Whangarei and Hamilton, however Skype Face-to-Face counselling is available throughout New Zealand. Contact Lifeline Counselling on [face2face@lifeline.org.nz](mailto:face2face@lifeline.org.nz) or phone 09 909 8750.

## Stepping Up

A wealth of information that assists lawyers to run a practice is provided to those who undertake the three-day course *Stepping Up – foundation for practising on own account*.

This course is a major building block in the Law Society's competence and professional development programme.

The covers a range of areas of vital importance to running a legal business, including planning, marketing, financial management, leadership, risk management and professional conduct.

Those who complete the course will:

- be better able to run the business of a law practice;
- be qualified to assume responsibility for the obligations of the practice;
- understand and be able to more confidently apply the relevant Rules of Conduct and Client Care; and
- understand the principles and rules of trust accounting.

More information on *Stepping Up* is at [www.lawsociety.org.nz/for-lawyers/legal-practice/practising-on-own-account/stepping-up-course](http://www.lawsociety.org.nz/for-lawyers/legal-practice/practising-on-own-account/stepping-up-course).



# 24%

162 people responded to a Law Society survey question via *LawPoints* issue 200. The question asked: As a lawyer, what is your biggest concern (what keeps you awake at night)? Of those who responded, 24% said **workload was the greatest stressor** followed by the 16% who said **the possibility of making mistakes** weighed on their minds. 9% were feeling the **effects of the changes to the Family Court** and 10% of respondents were worried about practice performance and their careers respectively.

# 40%

Before entering law school in the United States 4% of students suffered from depression, a figure expected from any normal population. During the first year of law school, about 20% of the students developed depression. **By the third year of law school, 40% of the law students had developed statistically significant levels of depressive symptoms.**

(Benjamin, Kazniak, Sales and Shanfield, "The role of legal education in producing psychological distress among law students and lawyers.")

# 3.6x

United States lawyers lead the nation with the highest incidence of depression, which they suffer at a rate **3.6 times higher than occupations generally.**

(John Hopkins University study of more than 100 occupations - Eaton, Anthony, Mandel and Garrison, "Occupations and the prevalence of major depressive disorder.")

# 1996

In 1996, lawyers overtook dentists as the **profession with the highest suicide rate** in the United States.

(Greiner "What about me?" Texas Bar Journal).

# 1 in 5

Studies conducted in numerous jurisdictions have pegged the rate of alcoholism in the legal profession at between 15% and 24%. **Roughly 1 in 5 lawyers is addicted to alcohol.** In general, the alcoholism rate in a company is 10%.

(Canadian Bar Association, "Drug, Alcohol Abuse and Addiction in the Legal Profession.")