

In Search of Positive Mental Health for Lawyers



Francois Carles



The June 2011 *Brief* edition dealing with depression and mental health concerns in the legal profession was perhaps the scariest and most thought-provoking *Brief* ever. I wish to add some hope to the debate by sharing my positive mental health story and then adding some fresh ideas as to what might be done to address the wider problem in the profession.

A. MY STORY

I suffered a personal crisis as from April 2010 relating to my politician wife's much publicised involvement with Troy Buswell. Every marriage breakdown is traumatic for those involved and can be a contributing factor in lawyers being unable to cope with their work, eg *Legal Practice Board v Lee-Steere* [2010] WASAT 189 in which the practitioner was suspended for three years. In my case, the media frenzy included having the media camped outside our house a number of times and added significant stress to an already difficult personal situation.

I have survived the year since April 2010 unscathed from a mental health point of view, including not missing a single day of work for either mental health reasons or physical sickness such as flu which can often arise from being run down.

I believe that my mental health survival had three components to it:

1. I was already in a good mental health position when the crisis struck.
2. I was immediately aware that I had a significant personal crisis on my hands which could lead to depression or mental health problems and needed to take steps accordingly.
3. In the year following the crisis I took further steps over and above what I would normally do.

Achieving a sound mental health state to begin with

I was admitted in 1989 and worked for a firm for two years before becoming a government lawyer for four years. I have operated my own practice since 1994.

In about my mid-thirties it dawned on me that much of what I did as a lawyer was inherently of a negative nature. Aside from child access disputes and criminal law, neither of which are particularly positive nor part of my practice, a substantial part of legal work essentially boils down to human beings squabbling over money.

There are often elements of incompetence, greed or dishonesty which have led to a legal problem arising in the first place. The client then pays good money for legal advice and is, in many instances, dissatisfied as the lawyer cannot provide a clear answer or solution, eg the law is unclear or there is no way of knowing how the other side will respond.

I was concerned that if legal work was too great a part of my life then I was at risk of becoming a negative person. I decided to restrict the amount of legal work I took on to a reasonable level. In choosing to work less, I realised that I was fortunate to be in a profession that pays well per hour compared to others. Many people would have to work full time to earn what a lawyer can earn working three days a week.

At age 40 I decided to work at home on Fridays to save the commuting time on that day. After one year of doing that, I realised that if I was at home on Fridays, then no-one would actually know whether I was working or not on that day. The following year I started taking Fridays off but still checking and returning phone calls on Fridays. There is a tendency to think that we are indispensable and that everything is urgent. However, in reality, there are very few legal matters which arise on a Friday which are so urgent that they cannot wait until Monday to be dealt with.

I have now been taking Fridays off for six years and know of at least two other practitioners who have been taking one day a week off. I very rarely stay behind in the office after 5.30pm or work on a weekend. If there is a busy period then the additional work can spill over into the Friday.

Working less frees up time. I try to use that time in a positive manner in order to balance the negativity of legal practice. I have been doing art classes on Friday mornings for over two years, usually exercise on a Friday, and also do school drop-offs and pick-ups.

Holidays are important. I have been taking about six weeks a year for several years.

I limit my exposure to the media and not just because they were camped outside my house. I hardly ever read a newspaper or watch television news as all the negativity is hardly conducive to a positive mental state. Indeed, Louise Hay in a "Morning & Evening Meditations" CD strongly advises against reading newspapers in the evening as she believes that negative thoughts will be carried into sleep and mess with the subconscious. There is an obsession in our culture with "being informed" and I can understand that one might feel somewhat silly if people are discussing an event like the Christchurch earthquake and one has no idea that this has even occurred. If I feel a need to be informed, then spending five minutes on a newspaper website and clicking on a few major stories is more than sufficient. In that way, all the petty negative stories can be avoided.

I read positive and inspirational books instead of watching television (see suggested list at the end).¹ Being shouted at by television advertisers is hardly relaxing.

I have for some years been taking a lunchtime nap in the office. I have told the others in the office that I have a half-hour lie down at lunchtime. They may have thought this was a bit strange at first, but got used to the idea fairly quickly. I lie down on the floor and play a relaxation/meditation soundtrack on my iPod which starts by relaxing the feet, then calves, then thighs, etc. This is a wonderful way to clear the head and to make a fresh start for the afternoon. The mind has been likened to a bucket of muddy water being constantly stirred with a stick. Meditation is when you stop stirring - the dirt settles and you get clarity.

I make an effort to socialise with friends as this is both fun and a mentally healthy thing to do. However, in social situations with each other, there is a tendency for lawyers to tell a detailed story about what is happening on one of their files. That is not socialising. In my view, that is having one's work take over one's social life and shows an inability to knock off from work.

Much has been written about the psychological benefits of giving to others. One of the most rewarding things in my life is a now nine-year friendship with a man with severe multiple sclerosis who lives in the quadriplegic centre at Shenton Park. He is unable to do anything apart from watch television or listen to the radio or music, and has no family in Australia. His visits to me by Maxi Taxi are, as far as I know, his only outings from the institution. For a relatively small cost to me of two or three hours every six to eight weeks, there are massive benefits to him. Conversation can be difficult as I can hardly ask him what he has been up to. However, the benefits to me from his visits are quite phenomenal in terms of putting life in perspective. Give me ten marriage breakups any day. There are, of course, plenty of volunteering opportunities in our community, such as visiting elderly people, which would also be very rewarding.

Aside from the psychological benefits, there are two other significant benefits of working less:

- 1) One hidden benefit is that, with our progressive tax system, taking Fridays off effectively means a 20% drop in gross income but probably only a 15% drop in net take-home income. Doing 80% of the work and getting paid 85% of the money is a pretty good deal over and above the psychological benefits.
- 2) Working less also makes a lot of sense from a professional indemnity insurance point of view. If you are juggling less balls then you are less likely to drop one. I feel more in control of my files than I used to, which reduces the fear of making a mistake, which in turn reduces stress and assists with better mental health.

Awareness of a crisis

As human beings we will all have emotional crises a few times in our lives. This might take the form of a relationship breakdown, serious illness or injury to a loved one or to ourselves, the death of a loved one, or a serious financial setback. It is important to realise that a crisis should be taken seriously as one's mental health is more at risk than would ordinarily be the case. If you try to simply get on with life as if nothing has changed, then problems may well arise.

I was fortunate that I recognised immediately that I had a personal crisis on my hands which required extra action.

Extra action following the crisis

1. I did about six sessions of individual counselling and also attended four weekend retreats. I had also participated in group counselling sessions some years ago. I have found group work more beneficial than individual counselling as there is significant comfort in hearing other people talk about their issues and struggles. Hearing other people's stories also gives different insights into your own situation which you may not have thought of yourself.
2. I had a number of massages. This is an excellent way to release stress which gets stored in the body.
3. I attended a number of Buddhism classes. Some of the concepts such as rebirths are well beyond my rational mind and I let those go through the keeper. However, the emphasis on topics such as compassion and kindness was very beneficial indeed.
4. In about July 2010 I booked a trip to Egypt with my eldest daughter for January 2011. This gave me something to look forward to through the second half of 2010 and it was important to have something positive to look forward to. As it turned out, we flew out of Cairo five days before the country erupted in riots.
5. Maintaining a sense of humour is important. It is surprising how many funny moments are to be found even in troubled times if one remains open to the possibility. I was listening to music only a few days after the crisis broke. A particularly tear-jerking song came on and before I knew it I collapsed in a heap of tears, half on the floor and half on the couch. Just at that moment, one of my daughters came in and said, "What are you doing, Dad?" Unsure of how to respond, I looked blankly at her and said, "Um ..." (as one does). She said, "Are you doing yoga?" I could only nod. Even at one of the lowest points of my life I had managed to invent a new yoga pose known as the Whimpering Dog pose.
6. I have taken up yoga again. We do the normal dog pose.
7. In the year following the crisis it was important for me to continually remind myself that it was entirely normal and human to feel emotional pain. If I was not feeling pain then I would be sweeping issues under the carpet and they would come back to bite me at a later stage. Our tendency as human beings is to avoid discomfort and pain at all costs. One part of me knew that there was no option but to go through the pain, while another part of me was wanting the pain to go away. Reconciling the two is a tough juggle, but having an awareness that you're in that position helps. If you're not sure whether your pain is normal healthy grieving or something more serious, then err on the side of caution and talk to a professional such as a counsellor.

B. SUGGESTIONS FOR BETTER MENTAL HEALTH FOR LAWYERS

I would hope that at least one other lawyer can gain some benefit from the above. However, most lawyers are not self-employed as

I am and are either partners in a firm or employed in a firm. I have certain views as to what might need to occur in law firms if the profession is serious about tackling mental health issues.

If the legal profession is experiencing more mental health issues than other professions and occupations, then there must be one or more things about legal practice which is different from other types of work. Aside from deadlines (see below), the difference from other occupations probably comes down to two factors:

1. The negative nature of a lot of legal work (referred to above); and
2. Onerous billing targets (see below).

Working less and using the time freed up in a positive manner will address both of these difficulties and is perhaps the only realistic solution. Support services such as counselling are of some assistance but will, at the end of the day, not be a long term solution if the lawyer is still having to spend long hours doing work that is not particularly positive and having to meet the same onerous billing target.

Meeting and Setting Deadlines

Part of the stress of legal practice comes from the need to meet deadlines. Working less means fewer deadlines to meet and therefore less pressure from deadlines. However, that is not the end of the story.

Some deadlines are set by statute (eg a limitation period) or by statute as interpreted by case law (eg strict 21 day period to apply to set aside a statutory demand). Other deadlines are set by courts in terms of programming orders or by contract (eg time for exercising an option to renew under a lease).

Deadlines of the types referred to above are inflexible and generally cannot be avoided. However, there are other deadlines over which we as lawyers have some control. We can increase or reduce our stress depending on how we manage the setting of the deadline. Consider the following example.

A client wants a written opinion and wants to know how long the opinion will take. The lawyer contemplates his or her existing workload and realistically expects that it should take 10 days. Feeling under pressure from the client and eager to please, Lawyer A gives an estimate of seven days. As often occurs, other work gets in the way and the client telephones on day eight chasing up the opinion. The lawyer is stressed, both at having missed the agreed deadline and at having broken his or her word to the client. The lawyer completes the opinion on day nine with the client not entirely satisfied.

Lawyer B faces the same scenario and, again, believes that 10 days is a realistic timeframe. However, Lawyer B knows from experience that unexpected matters can arise in that 10-day period. To take some pressure off himself or herself, this lawyer explains to the client that the client's matter is an important one which needs to be carefully considered and that a rushed opinion may result in something being missed which would not be in the client's best interests in the long run. This lawyer gives the client a 14-day

estimate and manages to complete the opinion in 11 days. The client is satisfied as the opinion was completed in less than the estimated timeframe.

Interestingly, Lawyer A only took nine days to do the job whereas Lawyer B took 11 days. However, Lawyer B had a less stressful experience and a happier client purely as a result of having better managed the initial setting of the deadline.

Having got himself or herself into the above situation, Lawyer A could also then take steps to minimise the stress as follows. Often, on about day five, he or she will know that the seven-day estimate is unlikely to be met. The tendency is to battle on and try to get the opinion out before the dreaded phone call is received from the client chasing up the opinion. It is far better on about day five to get in first and call the client. If you tell the truth and explain why you will not be able to deliver by day seven, then most clients will appreciate the call and be more than happy to agree an extension of a few days. It is, of course, then important to meet the new deadline in order to maintain credibility.

Billable hours and billing targets

Reference was made in the June 2011 edition of *Brief* to Chief Justice Martin calling on the legal profession to move away from billable hour requirements as, amongst other things, time billing contributed to high levels of depression. He called on the profession to “adopt alternative methods of charging for services rendered”.

I am no fan of billable hours and billing targets. I was most unhappy under those stresses and left the firm I was employed by to take on a government position. However, it should be noted that billable hours in themselves are not inherently a mental health risk. Let’s take two hypothetical lawyers, A and B. Lawyer A spends a leisurely three hours per week in the office and has a billable target of two hours per week. Lawyer B is required to achieve 100

billable hours per week, leaving that lawyer only 68 hours per week to do everything else including sleeping, eating, travelling, etc. The practice of law will cause Lawyer A virtually no stress whatsoever, whereas Lawyer B would be at the other extreme and is likely to suffer serious mental health issues in no time.

I suggest therefore that time billing in itself is not necessarily a mental health problem. The real problem is the number of hours that lawyers are being required to bill and the large monthly billing target in dollar terms.

Even if the profession moves away from billable hours and charges clients by some other means, law firms remain a business. Accordingly, it is difficult to see that law firms can employ lawyers without having a monthly dollar figure billing target for each employed lawyer. If two lawyers work on a file and the client is charged \$10,000 as a fixed fee (rather than time charging the client), then the firm will still need to internally allocate the \$10,000 fee between the two lawyers to be applied towards each lawyer’s monthly billing target.

In the same *Brief* edition, the Young Lawyers Committee referred to “long working hours, billable targets and unrealistic supervisor and client expectations” as being “significant causes of psychological symptoms”.

The fundamental question which the profession needs to address is why lawyers are working long hours with onerous billing targets.

The number of billable hours and dollar billing target per month under which partners and employed solicitors in law firms work are not set by statute. Those matters are entirely a business decision in the hands of the partners (leaving aside publicly listed companies which I understand are now starting to buy legal practices). The income of partners is partly the result of their own personal exertion and partly the result of profits made on the work done by employed solicitors. Partners are entitled to be rewarded

PRACTICAL LEGAL TRAINING

Do you want your graduates to hit the ground running?

Practical Legal Training at The College of Law, WA

The very best practical legal training from the largest provider in Australia is proven to help your graduates be the very best they can be.

Because The College of Law specialises only in legal practice and have the best

and most flexible online PLT programs with the most comprehensive practice papers, it’s the only way to ensure your graduates make a real contribution to your business from day one!

Call Michael Cole on 08 9214 0200.



www.collaw.edu.au/plt

 The College of Law

by way of profit for the business risks they take, including the fact that they become liable if an employed solicitor messes up on a file, as well as for the fact that they are providing jobs. However, if the profession is serious about tackling mental health issues, then perhaps the politically incorrect question needs to be asked: What is a fair reward for a law firm partner?

There are at least two family law cases² in which the husband litigants were partners in large law firms. Those cases indicate that they were earning very substantial incomes indeed. Encouragingly, the June 2011 *Brief* states that five large law firms are part of a depression and anxiety working group and therefore appear to have a willingness to consider these issues.

I'm not sure if the profession is ready for this yet, but to me, true leadership on mental health from a large law firm (which could be followed by other firms) would look something like this:

1. All partners agree to take a 20 or 30 per cent drop in remuneration. If current incomes are anything like those suggested in the family law cases, then such a drop would make a negligible difference to the living standards and financial wellbeing of those partners. Furthermore, each \$1 drop in remuneration is only a 50 cent drop after tax.
2. As a result, the partners themselves could probably work one day less per week.
3. Billing targets for employed solicitors could, as a result, also be reduced by 20 to 30 per cent and those solicitors would need to work less hours for the same pay.
4. Solicitors would have the option of negotiating for 5 or 6 weeks of annual leave instead of 4.
5. The firm could then put out a well-deserved press release (which would hopefully not lead to a flood of new work to undo all that had been achieved).

C. SOME CONCLUDING THOUGHTS

Our culture

We live in a culture (not just lawyers) where money making is equated with success. There is a media fixation with "rich lists" and Australia's richest person. Let's face it, who really cares whether Gina Reinhart has more money than Andrew Forrest or vice versa? Perhaps we each need to reconsider our own personal definitions of success. Is it making as much money as we can? Or is it having a bit less money but less stress and a more balanced life?

Years ago I read a book on fatherhood, whose title I can't recall, which began with something like, "There's rarely a businessman on his deathbed who wishes he had spent more time in the office. Usually the dying wish is that he had spent more time with his family." If one modifies that for a lawyer seeking to define personal success, then perhaps the question is, "Will you, on your deathbed, be wishing you'd spent more time in the office or less?"

Young lawyers

It seems clear from the June 2011 *Brief* that working life is tough for many young lawyers. I once read that most people are underpaid early in their careers and overpaid later in their careers. That is probably true in the legal profession. From that point of view, it's worth hanging in there if you can. Furthermore, as you gain experience you can do things quicker which should mean that you can work less but make the same amount of money. Also, the fear of making a mistake diminishes with experience although the fear probably never disappears altogether.

Being male

Research indicates that "by 2001 four times as many teenage boys were committing suicide than teenage girls" and that "Australian men 75 years and older are five times more likely to commit suicide than women the same age".^{1(e)} Steve Biddulph refers to various statistics such as men making up 80% of the homeless and over 90% of gaol populations before concluding, "Mental health, physical health and mortality - men win the prize in every category. Just being male is the biggest risk factor of all."^{1(f)}

The June 2011 *Brief* tells us, amongst other things, that "lawyers were found to have experienced the highest incidence of depressive symptoms".

If you are a male lawyer, then be warned - both your gender and occupation are risk factors. You need to take your mental health seriously. This is in no way intended to detract from the seriousness of issues faced by female lawyers.

Invitation

Should any member of the profession or other interested person wish to discuss any of these matters further, then I would be more than happy to meet for a non-billable coffee. I can be contacted at the office on (08) 9221 4877 or fcarles@aapt.net.au.

NOTES:

Suggested Reading

1. (a) Richard Carlson, *Don't Sweat the Small Stuff - and it's all small stuff*, Bantam, Milsons Point, NSW, 2002.
 - (b) Mitch Albom, *Tuesdays With Morrie*, Hodder, Sydney, 1998.
 - (c) Randy Pausch, *The Last Lecture*, Hachette Australia, Sydney, 2008. (See also www.TheLastLecture.com)
 - (d) Viktor E Frankl, *Man's Search for Meaning*, Washington Square Press, New York, 1985 (first published 1946).
 - (e) Maggie Hamilton, *What Men Don't Talk About*, Penguin Books, Camberwell, Victoria, 2006. (pp75 & 309 re male suicides)
 - (f) Steve Biddulph, *The New Manhood*, Finch Publishing, Warriewood, NSW, 2010.
 - (g) Ernest Shackleton, *South - The Endurance Expedition to Antarctica*, Text Publishing, Melbourne, 1999.
 - (h) Nigel Marsh, *Fat, Forty and Fired*, Bantam, Milsons Point, NSW, 2005.
2. *Lemnos v Lemnos* [2007] FamCA 1058 and *In the Appeal of Best v Best* (1993) FamCA 107.