

# ACHIEVING CHANGE....THE WAY FORWARD

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*Release of the publication 'Courting the Blues' clearly established the concerning prevalence of mental illness in the legal profession and its contributing stressors. It elicited a range of responses within the profession including the Resilience@Law initiative from major firms, the adoption of employee assistance programs (EAPs), incorporated mental health on organisational intranets, and mental health first aid training for human resources staff. University law schools and the College of Law have incorporated resilience as part of their curricula and prioritised student wellbeing. The Tristan Jepson Memorial Foundation (TJMF) has maintained its focus on mental health, prioritising awareness raising and education to all areas of the law, from students to the judiciary.*

*However, the strong, clear message we have received, is that nothing has really changed within the firms. There is a lack of understanding about the serious nature of mental illness amongst management. The confidentiality of EAP programs is often compromised and thus seen to have little value. In short, despite the range of responses to the issue, it seems that in reality nothing has changed in the workplace.*

## I THE FOUNDATION'S CHALLENGE

The TJMF's challenge has always been how to achieve real change in the legal workplace culture. In February 2012 it broadened its focus. The Board decided to support the Foundation in developing a set of workplace standards focused on the workplace concerns identified by lawyers in 'Courting the Blues'.<sup>1</sup> These concerns are: the burden of excessive work demands; meaningless work; the lack of support and encouragement; bullying and sexual harassment; a sense of 'treadmill' work existence; a culture of toughness and the need not to be perceived to be weak or incapable or to be a whinger or complainer; and the pressure of 'billable time' and now 'profit per equity partner' or 'cases processed'.

The idea of workplace standards originated from the health sector where hospitals are accredited according to a set of voluntary standards which are assessed as part of an ongoing improvement process. This accreditation is crucial to the hospital's

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\* This paper was presented as a Keynote address at the second annual *Wellness for Law Forum*, February 2013. The foundation aims to promote psychological health and wellbeing and reduce disability and distress caused by mental ill-health within the legal profession.

<sup>1</sup> Norm Kelk, Georgina Luscombe, Sharon Medlow, and Ian Hickie, *Courting the Blues: Attitudes towards depression in Australian law students and legal practitioners* (Brain & Mind Research Institute Monograph 2009-1).

ability to access funding, recruit quality staff, and develop and maintain its reputation.

The TJMF's challenge was that there was no precedent worldwide for the implementation of workplace standards in the legal context. The question therefore arose: What would these standards look like?

Fortunately, Canada had done some innovative work in the mental health space. They developed the term 'psychological health and safety' so that we were no longer just talking about a few 'impaired lawyers' but now focusing on the legal workplace as it related to the whole profession, including legal and non-legal staff.

Dr Martin Shain and his colleagues have done extensive research on workplace culture and the increase in workplace stress and mental health related claims and its implication for law in Canada.<sup>2</sup> Incorporating scientific literature from the areas of workplace health and safety, law and social science, Shain et al point out that evidence identifies a key set of workplace factors which alone, but more typically in combination, impact psychological safety.<sup>3</sup> Vezina points out that these factors can be conceptualised as human needs that when unmet or thwarted can become risk factors for psychological distress.<sup>4</sup> It must be noted that the workplace in terms of consciousness, is very elastic or subjective, and it is with us all the time. It is no longer simply when we are physically at work. Conditions at work characterised by high demand/high effort and low control/low reward create serious threats to employee health and safety. However the toxic ingredient responsible for most of the damage is unfairness. It is associated with a higher chance of becoming ill and lower chance of recovery. Shain defines fairness as 'keeping promises' and unfairness as 'breaking promises'.<sup>5</sup> The sense of unfairness is thought to arise from the belief that conditions at work come about by the choice of the supervisor or manager and not by chance.

Shain et al point out that the implications of stressful and unsafe working conditions are: a reduced adaptability and ability to cope with change; impaired learning and memory; and increased helplessness, passivity or aggression and conflict.<sup>6</sup> In addition, there is an increase in the rates of heart and circulatory disease, immune function disorders, some cancers, mental disorders and substance

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<sup>2</sup> See for example, Martin Shain, 'Stress and satisfaction,' (1999) 15 (3) *OH & S Canada* 38; Martin Shain, 'The role of the workplace in the production and containment of health costs: the case of stress-related disorders,' (1999) 12 (2) *Leadership in Health Services* 1-7; Martin Shain, 'The fairness connection,' (2000) 16 (4) *OH & S Canada*, 22; and Martin Shain, Ian Arnold, and Kathy GermAnn, 'The road to psychological safety: Legal, scientific, and social foundations for a Canadian national standard on psychological safety in the workplace,' (2012) 32 (2) *Bulletin of Science, Technology & Society* 142-162.

<sup>3</sup> Shain, Arnold, and GermAnn, above n 2.

<sup>4</sup> See Michel Vézina, Renée Bourbonnais, Alain Marchand, and Robert Arcand, 'The association between psychosocial work demands and mental health problems in Quebec: a gender-based analysis,' (2010) 101 (1) *Canadian Journal of Public Health* S23; Michel Vézina, Renée Bourbonnais, Alain Marchand, and Robert Arcand, 'Self-assessment of stress in the workplace: a misleading health indicator', (2010) 12(2) *Perspectives Interdisciplinaires*; and Shain, Arnold, and GermAnn, above n 2.

<sup>5</sup> Shain 1999 'The fairness connection', above n 2.

<sup>6</sup> Shain, Arnold, and GermAnn, above n 2.

abuse. Law and science agree that risks to mental health are more likely to arise and to contribute to a psychologically unsafe workplace when: there are excessive work demands; there is little job control or influence; recognition and acknowledgement are withheld; and there is a lack of fairness and support.

The organisation *GuardingMinds@Work* have identified 13 psychosocial factors assessed to contribute to a psychologically safe work environment. These are:

1. Psychological Support: a work environment where co-workers and supervisors are supportive of employees' psychological and mental health concerns, and respond appropriately as needed.
2. Organisational Culture: a work environment characterized by trust, honesty and fairness.
3. Clear Leadership and Expectations: a work environment where there is effective leadership and support to help employees know what they need to do, how their work contributes to the organisation, and whether there are impending changes.
4. Civility and Respect: a work environment where employees are respectful and considerate in their interactions with one another, as well as with customers, clients and the public.
5. Psychological Competencies and Requirements: a work environment where there is a good fit between employees' interpersonal and emotional competencies and the requirements of the position they hold.
6. Growth and Development: a work environment where employees receive encouragement and support in the development of their interpersonal, emotional and job skills.
7. Recognition and Reward: a work environment where there is appropriate acknowledgement and appreciation of employees' efforts in a fair and timely manner.
8. Involvement and Influence: a work environment where employees are included in discussions about how their work is done and how important decisions are made.
9. Workload Management: a work environment where tasks and responsibilities can be accomplished successfully within the time available.
10. Engagement: a work environment where employees feel connected to their work and motivated to do their job well.
11. Balance: A work environment where there is a recognition of the need for balance between the demands of work, family and personal life.
12. Psychological Protection: a work environment where employees' psychological safety is ensured.

13. Protection of Physical Safety: a work environment where management takes appropriate action to protect the physical safety of employees.

The *National Standard Canada for the Psychological Health and Safety in the Workplace* was released in January 2013 and is a world first.<sup>7</sup> Based on the above 13 psychosocial factors, it provides a simple framework to enable management to respond in a positive structured way to ongoing improvement within their organisations. Their vision for a psychologically healthy and safe workplace is one that actively works to prevent harm to worker psychological health, including negligent, reckless or intentional ways, and promotes psychological wellbeing. Its strategic pillars are the prevention of harm (is it likely to occur?), and the promotion of health and the resolution of incidents or concerns. In all, there are four standards: governance which requires leadership commitment for changes in policy and process; review to identify, assess and manage risk; the implementation of process; and management of the review process through continual review and evaluation.

The standards focus on ongoing improvement and best practice. They are not to be used for 'blame and shame' purposes, but rather, to be seen as a tool and not a rule. They are research based, have created precedent and will inform the law. Implementing the standards is best practice and is positive risk management for organisations, protecting both staff and management. Benefits for implementing the standards include: increased productivity; improved staff retention and recruitment; increased profitability and the promotion of excellence as well as a reduction in the risk of conflict, grievances, staff turnover, injury rates, absenteeism and performance or morale problems. Insurers have also confirmed that implementing the standards will contribute to lower insurance premiums.

Implementing the standards seems to be win-win for everyone! It is, I believe, a way forward to promote cultural change within the profession and promote psychological wellbeing in the legal workplace.

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<sup>7</sup> Mental Health Commission of Canada, *Psychological health and safety in the workplace – Prevention, promotion, and guidance to staged implementation* (CSA 2013) [http://www-es.criq.qc.ca/pls/owa\\_es/ncw\\_enquete\\_publicque.liste\\_promo?p\\_lang=en](http://www-es.criq.qc.ca/pls/owa_es/ncw_enquete_publicque.liste_promo?p_lang=en).