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LAWYERS' MENTAL HEALTH: IT'S TIME TO "WALK THE WALK"

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I. Introduction – A lot of talk about Lawyers' Mental Health

The occurrence of mental illness and addictions in the legal profession are not new phenomena. In fact, a 2012 survey of lawyer wellness issues conducted by Ipsos Read on behalf of the Canadian Bar Association indicated that 50% of lawyers, judges and law students surveyed stated they had experienced significant stress/burnout, 48% had experienced anxiety and 25% had suffered from depression.1 In a 2021 paper entitled, "Stress, drink, leave: An examination of gender specific risk factors for mental health problems and attrition among licensed attorneys", Anker and Krill noted that approximately half of the practising US lawyers surveyed reported symptoms of depression and anxiety.2 These issues likely start in law school, where rates of

depression, anxiety and excess drinking are notably high.³

Unfortunately, these statistics are not surprising. Lawyers often deal with clients at the crossroads of some of the most difficult situations in their lives. They work long hours and struggle to balance work and family life. In addition, the legal system itself is often adversarial in nature, placing lawyers at the forefront of intense exchanges between clients, judges, and other lawyers. The legal profession contains significant pressures related to strict deadlines, competition, and a culture of trying to always appear "strong". Some have referred to this as a "gladiator mindset." While lawyers' assistance programs that provide confidential counselling for lawyers have been an important resource to the profession for many years, bar associations and law societies have only recently begun additional proactive steps to deal with what some might call the "elephant in the legal profession," being mental illness.

Over the past several years, many bar associations have developed programs to deal with mental health in the legal profession. For example, the Canadian Bar Association created a well-being subcommittee in 1989 that works with provincial Lawyers' Assistance Programs to provide expertise and guidance regarding mental health challenges in the legal profession.5 Lawyers have started talking more about their own personal mental health struggles. For example, the Canadian Bar Association well-beina subcommittee presents an Award of Excellence each year to "recognize and celebrate someone who

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En bref ...

Dans sa publication intitulée « LAWYER'S MENTAL HEALTH: IT'S TIME TO "WALK THE WALK" », l'avocat Timothy T. Culbert étudie la question de la santé mentale dans la profession juridique en citant des statistiques alarmantes qui révèlent un niveau gravement élevé de stress, d'anxiété, de dépression et d'épuisement professionnel parmi les juristes. Me Culbert reconnaît les efforts déployés par les personnes, les associations de barreaux et les ordres professionnels face aux préoccupations en matière de santé mentale. Il évoque également le récent rapport de l'Université Sherbrooke qui examine en profondeur les questions relatives à la santé mentale dans le domaine juridique et affirme que même si la prise de conscience a progressé, des actions plus tangibles sont nécessaires. En outre, il met l'accent sur la grande importance du mentorat, notamment par des professionnels de droit qui partagent ouvertement leurs luttes en matière de santé mentale.

has displayed knowledge, compassion and dedication to making the lives of lawyers better and more fulfilling."

While we have come a long way as a profession in talking about mental health, we still have a long way to go. A recent study from Sherbrooke University in Québec, Canada "paints of sobering picture" about the state of mental health in the legal profession.6

In this paper I argue that it is time to not only "talk the talk", but to "walk the walk," by taking measurable actions to improve mental health in the legal profession. The Sherbrooke study represents an important first step in dealing with mental health in the legal profession, but requires further action by individual lawyers, bar associations and law societies. Through analysis of the Sherbrooke report, I argue that one of the most important ways to improve mental health in legal profession is through mentorship and role modelling. One of the keys to improve mental health in the profession is to empower mentors as role models in the form of lawyers and judges who are willing to talk openly about their struggles and successes dealing with their mental health, while still being valuable contributors to the profession. In this regard, I will first analyze the Sherbrooke report and some of its key findings. Second, I will provide some examples of legal professionals who are leading the way by speaking openly about their own challenges and mentoring others to do so as well. Finally, I will conclude that while the profession has made several key strides in dealing with the mental health "elephant in the room," we have a long way to go in dealing with these issues.

II. Sherbrooke research report

Under Principal Investigator, Prof. CRHA, Nathalie Cadieux, Ph.D.. researchers at the Universite de Sherbrook recently released a report entitled. Towards a Healthy Sustainable Practice of Law In Canada, Phase I - 2020-2022 - Research Report.7 This report was the result of a partnership between the Universite de Sherbrooke, the Federation of Law Societies of Canada and the Canada Bar Association. It is the first comprehensive study in Canada on health issues among legal professionals (hereafter the "Sherbrooke Report").

7,305 participants responded questions regarding mental health. Notably, 2,805 (approximately 40%) of the participants were from the Province of Ontario. 1,380 Quebec residents responded; 806 Alberta residents; and 770 British Columbia residents responded to questions.

I outline some of the key findings herein below. While I have attempted to summarize some of the key findings of this report, I note that there are many areas and topics that have not been discussed. At 380 pages in total, the full Report may be time consuming for most practitioners to review. However, there is a helpful Executive Summary available for review as well.8 I submit the findings in the Report (as summarized in the Executive Summary) are extremely important for the legal profession. Most importantly, law societies, bar associations and members of the profession should focus on creating actionable items to implement to improve the mental health of legal professionals. My concern is that these types of reports are written, receive initial attention, but

then seem to fade into the background. For example, one could argue that this is what occurred with the "McKee report" following its release in 20099 or with the appointment of a Mental Health Advocate in New Brunswick. 10

Psychological Distress

59.4% of respondents to the Sherbrooke Report stated that they had some psychological distress, with 20.6% of the respondents indicating "very high levels" and 36.9% indicating "high levels" of psychological distress. The authors note that articling students make up the highest proportion of legal professionals indicating that they experienced "very high" levels of psychological distress.

Depressive Symptoms, Anxiety and Suicidal Thoughts

At page 35, the Sherbrooke Report notes that legal professionals living with a disabilities experience the highest rates of combined depressive and anxiety symptoms at 50.1% and 49.6%, respectively. 36.4% of legal professionals with less than 10 years of professional experience reported depressive symptoms; comparably, 45.2% of legal professionals with less than 15 years experience reported symptoms of anxiety. 24% of 5,836 legal professionals responding to a particular question indicated that they had experienced suicidal thoughts since they started professional legal practice. In this regard, the authors note as follows:

Let us note that 24.1% of professionals Canadian legal have had suicidal thoughts since beginning their professional practice, a remarkably high proportion. But other studies of regulated professional groups comparable statistics show for example, 19% of Canadian physicians will experience suicidal thoughts during their lifetime. It should also be noted that a study conducted in the United States among 12,825 lawyers in 19 states shows that 11.5% of them have had suicidal thoughts during their careers (Krill et al., 2016). The issue does not seem to be unique to Canada, but the figures do highlight the extent of the phenomenon here.11

Burnout in the Legal Profession

At page 47, the authors note that 55.9% of the legal professionals surveyed stated that they had experienced "burnout," which is defined by the authors as "the degree to of physical and psychological fatigue and exhaustion that is perceived by the person as related to [their] work." Of the total of 5,975 respondents to questions related to burnout, 67% of legal professionals between the ages of 31 and 35 indicated they had experienced burnout.

Notably, 53.2% of respondents stated that they had felt the need to seek professional help because of psychological health problems but did not do so. 66% of participants who indicated they had suicidal thoughts since beginning their practice stated they had not sought help of a professional.

Billable Hours

In section 2.2.3 of the Sherbrooke Report, the authors analyze billable hour targets and their impact on the mental health of legal professionals. Not surprisingly, the responses to survey questions reveal that there is a positive correlation between increased billable hour targets and the presence of poor mental health indicators. For example, at page 106, the authors of this report state as follows:

• 68.1% of legal professionals who

have to bill more than 1,800 hours per year experience psychological distress;

- 71.1% are affected by high levels of burnout:
- more than 30% experience moderate to severe depressive symptoms; and
- 37.0% are affected by anxiety symptoms of sufficient concern for them to seek medical attention¹²

Additional Areas covered in the Sherbrooke Report

It is important to note that there are several areas the Sherbrooke Report covers that this paper will not discuss. For example, the Sherbrooke Report analyzes wellness from an individual perspective in section 2.4. This section includes an analysis of wellness from a gender perspective; from Indigenous perspective; from the perspective of different ethnic perspectives; from LGTBQ perspectives; alcohol and drug use as a profession. The report also discusses the impact of the Covid-19 pandemic on professionals' mental health.

III. Mentoring as key strategy to improve lawyers' mental health

Stigma and fear of Retribution

Several important findings are contained in section 2.5.1 in the Sherbrooke Report. In this section, the authors deal with stigmatization of mental health in the legal profession. The authors note that there is a significant gap between what respondents thought about themselves and what they perceived members of the profession would think about them if they knew they had struggled with their mental health. Some important statements are as follows:

- Figure 1 shows an average difference of 40.7% between personal stigma and perceived stigma for all statements.
- more than half of the participating legal professionals (53.8%) believe

that members of their profession think that people with mental health issues are weak.

- 43.3% of participating professionals with mental health issues say they feel alienated due to their mental health issues.
- 52.8% of legal professionals who have or have had mental health issues feel inferior to their colleagues who have not;

In this regard, the authors state as follows at page 72:

Support from colleagues and the consistency of one's values with those of the work environment also appear to be associated with positive health outcomes, particularly in reducing psychological distress and depressive symptoms.¹³

The Executive Summary to the Sherbrooke Report sets out ten key recommendations, which are further discussed in an additional report entitled, Final Recommendations.¹⁴ These recommendations are as follows:

- 1. Improve preparation of future professionals and provide them support to deal with psychological health issues;
- 2. Improve supports and guidance available at entry to the profession;
- 3. Improve continuing professional development (CPD);
- 4. Where relevant, evaluate the implementation of alternative work organization models that limit the impact of certain risk factors on the health;
- 5. Implement actions aimed at destigmatizing mental health issues in the legal profession;
- 6. Improve access to health and wellness support resources and break down barriers that limit access to these resources:
- 7. Promote diversity in the profession and revise practices, policies and procedures that may include or create discriminatory biases;
- 8. Consider the psychological health of legal professionals as integral to legal

practice and the justice system;

- Develop a culture of measurement;
- 10. Foster a better work-life balance in the legal profession

(emphasis added)

The recommendations following the full Sherbrooke report expand on each of the suggested recommendations. I argue that mentorship that specifically involves lawyers and other legal professionals with experience dealing with mental health challenges could assist with at least 4 of the above-noted 10 recommendations, and potentially more.

Mentoring and the Sherbrooke Report

Section 2.2 of the final recommendations to the Sherbrooke report states as follows:

2.2 PROMOTE MENTORING FOR THOSE ENTERING THE **PROFESSION**

The second avenue to facilitate entry into the profession is to promote mentoring for those entering the profession. Mentoring is a valuable training method for developing skills that are essential for maintaining one's health. It is important to support legal professionals at the beginning of their careers and to protect their mental health given its impact on commitment and intention to leave the profession. Mentoring allows for informal discussions between mentor and mentee so that the latter learns from the former's experience and is better equipped to deal with the ups and downs of legal practice.

Section 5.2 the final recommendations states as follows:

5.2 DEVELOPAMENTAL HEALTH **AWARENESS** CAMPAIGN/ **ACTIVITIES**

Key stakeholders (including the Federation of Law Societies of Canada, law societies, the Canadian Bar Association and legal workplaces), should consider developing an awareness campaign and activities to break down taboos and deconstruct the stereotype of the lawyer as a superhero.

More specifically, this awareness campaign and these activities would have the followina objectives: humanize the legal profession: remove barriers preventing professionals from seeking help; highlight obstacles to mental health in the current professional culture; and start a conversation on suicide prevention among legal professionals.

These recommendations are certainly laudable and desirable. There are several professionals and organizations that are already leading the way in teaching the profession how to implement same. Indeed, one could argue that while it is important to develop specific programs to deal with the issues set out in the full report, legal professionals can take individual and combined actions that would have a huge ripple effect on the profession.

Examples of Mentoring focused on Mental Health in the Legal Profession

The recommendations following the Sherbrooke Report appear to focus on mentoring and mental health campaigns as two separate activities. I would suggest that while it is important to implement the recommendations in sections 2.2 and 5.5. one way to accomplish goals contained in both recommendations is to have legal mentors available with lived experience dealing with mental health difficulties as well as experience in dayto-day legal practice. Many authors have noted that persons with lived experience with mental health conditions have been involved in various leadership roles related to advocacy, service delivery and development of mental health programs.15

Daniel Lukasik - New York State -Judicial Wellness Coordinator and Creator of Lawyers with Depression Website

One example of a lawyer who continues to act as a mentor to other lawyers, judges and law students is Daniel ("Dan") Lukasik. Mr. Lukasik founded the website "Lawyers With Depression" over 12 years ago to assist lawyers, law students and judges deal with stress, anxiety and depression.¹⁶ This website contains vast resources for legal professionals dealing with mental illness, including blog posts, links to podcasts, videos and links to other sites dealing with similar topics. Since creating this award-winning site, Mr. Lukasik has given presentations to law firms, law schools and other lawyers organizations across the United States. In addition, after practising law for many years, Mr. Lukasik became employed as a "Judicial Wellness Coordinator" for New York State. In this role, Mr. Lukasik provides training and mentoring to judges and other employees in the New York judicial system on mental health.

One could envision a "judicial wellness coordinator" role in Canadian jurisdictions as well. Of course, this person would not be responsible nor trained to provide therapy to others but would be a valuable resource to link colleagues to lawyers' assistance programs, additional resources and potentially other lawyers who experience similar challenges. The New Brunswick Branch of the Canadian Bar Association is creating a similar program already with Ambassadors as conduits to the provincial Lawyers Assistance Program.

Judges leading the way

Judges in Canada are also leading the way in talking more openly about mental illness. For example, Justice George R. Strathy, retired Chief Justice of Ontario, has written several excellent articles about mental health and the legal profession. In "The Litigator and Mental Health," Justice Strathy asks the following key questions:

I begin with a question: Why is it that we never talk about mental health and litigation in

the same conversation? I think it's partly because mental health, like physical health, is common to everyone. We don't think of mental health as something we all experience. Instead, we think mental health means mental illness or poor mental health, and that both undermine one's ability to be a litigator.

Mental illness is stigmatized by our society and by our profession. Stereotypical thinking about mental health in the legal profession associates poor mental health or illness with an inability to control emotions or thoughts, a lack of judgment, the inability to work hard or withstand pressure, and unreliability.

By contrast, the stereotypical barrister is held in high esteem: a fearless gladiator, wielding razor-sharp intellectual broadsword. Always in control of their emotions. Erudite and articulate. Powering through long hours of work with pride and not breaking a sweat under pressure. Sometimes wounded, but never defeated. Suffering in silence and quietly bandaging their own wounds, ready to fight another day. And able to "play hard" as well as "work hard".

The grip of these two myths on our profession - that mental health is something that affects others, not us, and the gladiator litigator myth - means that we rarely discuss mental health in the same conversation as litigation because we believe one precludes the other. For too long, members of our profession have been beholden to the idea that our experiences in navigating mental health challenges, whatever they may be, are incongruous with a successful career in litigation. We have internalized the myth that only the invincible are successful. We need to call out these myths not only because they are false, but also because they send the wrong message about who "belongs" in litigation. And because they cause

terrible suffering for those who believe that they cannot or do not measure up to the gladiator ideal.17

Strathy outlines four recommendations on dealing with mental health in the legal profession:

- 1. Create an environment in which mental health can be discussed openly and safely;
- 2. Get serious about mentoring
- 3. Give lawyers an opportunity to disconnect
- 4. Let go of the Gladiator¹⁸

Regarding #2 above, Strathy states that "As barristers, members of a profession, we have a duty to mentor and train those who follow in our footsteps. And we have a duty to do that at every opportunity."19 What better way to "mentor and train those who follow in our footsteps" than to add elements of humility and humanity into the conversation by stating that "it's okay to struggle sometimes;" or to state "I have been through something life this before as well and here's what I did." This is likely what Strathy is referring to when he says that: "Because we as lawyers seldom talk candidly about these physiological responses or acknowledge they are a normal response to the stress of performing, we perpetuate the myth of the gladiator litigator."20 (emphasis added) The Lincoln Alexander School of Law in Toronto, Ontario recently created "The Honourable George R. Strathy Award" to recognize law students who have contributed to the health and wellness and a sense of belonging in the Lincoln Alexander Law community. These types of awards provide excellent incentives for future lawyers to step up and take health and wellness the profession seriously.

Justice Michele Hollins, Justice of the Court of Queen's Bench of Alberta, has also been instrumental in talking about mental health in the legal profession. A former Canadian Bar Association President, Justice Hollins has raised awareness around lawyers' mental health and has mentioned her own challenges in the past.21

Lawyers Depression Project

Another interesting way that lawyers are dealing with mental health in the profession is through an online peer support group called "Lawyers Depression Project."22 This group, which was founded by lawyers, meets bi-monthly to discuss issues related to mental health and to provide peer support to lawyers, paralegals and law students struggling with mental health challenges. Some of the topics listed on this group's website are: Candid explorations of health and mental health experiences, Impacts on legal practice in various contexts and seniority levels, Tools for effective management and work-life balance, Personal dynamics of self-care, life design, family, roles and more. These regular discussions are confidential and help individual lawyers deal with mental health challenges but also they may provide an excellent source of education between lawyers, who can then provide more informed information to the profession as a whole.

IV. Conclusions - Time to "walk the walk" and implement strategies from law school through to practice

In this paper I have discussed the importance of the recent Sherbrooke Report to the legal profession in Canada. I have argued that this report is an excellent first step in dealing with the mental health problem in the profession but that more needs to be done to change the startling statistics set out therein. I have argued that mentorship and particularly mentorship on dealing with mental health is extremely important for the profession; this is a key way that lawyers and other legal professionals can move from theory to implementation of programs designed to mitigate the mental health difficulties experience by members of our profession. I argue that specific mentoring related to mental health from members of the profession helps to reduce the stigma surrounding mental illness and ties into sections 2.2 and 5.2 of the recommendations to

the Sherbrooke report. I have provided several examples of legal professionals who are leading the way in mentoring others in the profession. These are by no means the only examples of legal professionals "walking the walk" by opening up about the mental health "elephant in the room." However, these examples provide some hope to the profession that members are not afraid to speak more openly about their challenges. These conversations and initiatives should provide inspiration to others to talk more openly about their own personal struggles and lead to a happier and healthier profession.

The Law Society and Bar Associations in New Brunswick have done an excellent job at promoting courses and training sessions related to mental health. However, to really make an impact on the profession, I argue that individuals must begin speaking more openly and publicly about their personal struggles and mentoring other members of the profession on good mental health practices. Only then will we see a significant decline in many of the statistics discussed in the Sherbrooke Report.

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