

JUDGING STRESS

The pattern of judicial stress is different from the stress within the broader legal profession. Carly Schrever outlines the findings of her three reports on stress in the Victorian judiciary.

In 2015, when I embarked on my doctoral research on judicial stress and wellbeing, the topic was almost never discussed. I had worked with the Victorian judiciary for more than a decade – first as a judge’s associate in the Supreme Court and then in the education team at the Judicial College of Victoria – and had seen first-hand how judicial officers grappled with the many and complex demands of the role, while also managing the personal challenges of dispensing justice. I had become deeply curious about the human experience of fulfilling what could be thought of as the super-human function of passing judgment, and drawn to understand how judicial officers manage to stay connected to themselves and their meaning and purpose over the course of their often long judicial careers.

The impetus for the research arose from a conversation I had with the former County Court Chief Judge Michael Rozenes. He was aware of the large and growing body of research revealing high rates of psychological ill-health within the legal profession, and was also acutely conscious of the increasingly demanding nature of judicial work in his Court. He had, for some years, observed senior judges choosing to leave the Court when they reached the minimum, rather than statutory, retirement age, and sensed that, for many, their decision proceeded from exhaustion, burnout and the cumulative impact of stress on the bench. He encouraged me to undertake research that could provide insight into the nature, prevalence, severity and sources of work-related stress among the judiciary, and provide a basis for appropriate interventions by the courts. This ultimately led to a PhD through the University of Melbourne (School of Psychological Sciences), in which 152 judicial officers from five Australian courts participated – all completing a survey measuring judicial stress, and 60 going on to participate in in-depth interviews. The data was collected between July 2016 and July 2017.

The full findings of the research will ultimately be published across three large reports. The first was published in 2019 (First Report: Schrever, Hulbert, and Sourdin 2019), and looked at whether judicial officers are stressed, compared to lawyers and the general population. The second, published in early 2021 (Second Report: Schrever, Hulbert, and Sourdin, 2021), looked at which judicial officers are most stressed, and why. The third, to be published soon, will explore the perceived sources and impacts of judicial stress, and ideas for court responses. Here, the key findings of the first two reports are summarised and themes to be covered in the third report previewed.

Are judicial officers stressed?

So, are judicial officers stressed? According to the findings of the First Report, the short answer is yes, compared to the general population, but not as much as the rest of the legal profession. Key findings of the First Report were:

- On a standardised measure of “non-specific psychological distress”, 52.9 per cent scored in the moderate to very high ranges (compared with 32.8 per cent of the general population, and 62.6 per cent of solicitors, and 68.5 per cent of law students: Schrever, Hulbert, and Sourdin 2019, 155);

- Three-quarters (75.2 per cent) of judicial officers had scores on at least one of the three burnout factors (exhaustion, cynicism and reduced professional efficacy) that indicated some level of burnout risk – only one-quarter (24.8 per cent) scored in the low-risk range on all three burnout factors (Schrever, Hulbert, and Sourdin 2019, 162);
- The overwhelming majority (83.6 per cent) of judicial officers reported experiencing the negative effects of secondary traumatic stress in the one week prior to completing the survey, and almost one-third (30.4 per cent) scored within the range for which formal assessment for post-traumatic stress disorder (PTSD) may be warranted (Schrever, Hulbert, and Sourdin 2019, 159-161);
- Despite this, judicial officers reported levels of mental health concerns were comparatively low – their rates of “moderate to severe” depressive and anxious symptoms were dramatically lower (approximately one third) than those of lawyers, and slightly lower also than those suggested for the general population (Schrever, Hulbert, and Sourdin 2019, 156-157);
- In addition, 62 per cent reported finding judicial office a little or much less stressful than their previous careers (Schrever, Hulbert, and Sourdin 2019, 154), and 76 per cent reported experiencing personal wellbeing and satisfaction related to their work most or almost all the time (Schrever, Hulbert, and Sourdin 2019, 153-154). In a nutshell, the First Report revealed that the pattern of judicial stress is different from the stress within the broader legal profession. It showed that judicial officers have a stress problem – manifesting as elevated levels of psychological distress, burnout and secondary trauma – but, unlike the rest of the legal profession for which the reported rates of anxiety and depression are consistently and alarmingly high, this stress problem has not so far led to a widespread mental health problem among the Australian judiciary.

Which judicial officers are most stressed, and why?

Having established that judicial officers are stressed, the Second Report looked at the occupational and demographic drivers of judicial stress. Key findings of the Second Report were:

- Judicial stress across the jurisdictions was predicted by the extent to which judicial officers’ basic psychological needs of autonomy, competence and relatedness were satisfied within their working environments. Relatedness satisfaction (ie, the number and quality of authentic and trusting collegial relationships a judicial officer experiences) was the best predictor of judicial wellbeing (Schrever, Hulbert, and Sourdin 2021, 17-18).
- The only demographic factor that was robustly associated with levels of judicial stress was jurisdiction: judicial officers in the high-volume, lower courts (ie, magistrates) were significantly more stressed across a range of measures than those in the higher courts (ie, judges). The greatest disparity was in levels of burnout exhaustion. There were no differences in judicial stress levels according to age, gender, seniority, geographical location or even area of legal practice (Schrever, Hulbert, and Sourdin 2021, 17-22).
- The higher stress experienced by lower-court judicial officers was almost entirely explained by their lower levels of basic

psychological needs satisfaction – especially autonomy and relatedness (Schrever, Hulbert, and Sourdin 2021, 22).

The First Report revealed a judiciary not yet in a mental health crisis, but under considerable stress. The Second Report showed unequivocally that it is judicial officers in the high-volume, lower courts that experience the most stress, and this appears to be due to fewer opportunities for autonomy and relatedness within those courts.

Among the questions that remain, perhaps most pressing are: how does stress impact judicial officers and their work, and what can be done about it? These are the questions that will be explored in the Third Report, which brings together the experiences and ideas expressed by judges and magistrates in their interviews.

What are the experiences and impacts of judicial stress, and how could courts respond?

Sixty judicial officers spoke passionately and candidly about the human dimension of judging – the sources of stress, the sources of satisfaction, their strategies for coping, and their ideas for how courts could better support judicial wellbeing. Their accounts were detailed, thoughtful and at times deeply moving – describing in 60 different ways the rigours of reconciling the ideals of judicial office with the human reality. Six overarching themes emerged from their words, which will be described in detail in the forthcoming Third Report:

Workload is an issue for almost everyone: At every level of the court hierarchy, judicial officers described their workloads as relentless and unsustainable, whether due to crushing daily lists and frantic courtroom environments in the lower courts, or the scale and complexity of trials and the ceaseless build-up of reserve decisions in the higher courts.

Most judicial officers feel the sources of stress are increasing: Due to dramatic up-ticks in case-loads, the pace of legislative change, case complexity, electronic evidence, and self-represented parties, as well as a growing climate of hostility towards the courts reflected in tabloid media commentary and occasional attacks from the executive arm of government.

Stressors of injustice are felt most keenly: Both the pain of not seeing justice done in their courtrooms, and more personal feelings of injustice when the demands of the job are coupled with experiences of inequity or unfairness.

Discussing stress and seeking support remains somewhat stigmatised: Many judicial officers expressed concern that sharing experiences of stress with colleagues or participating in wellbeing initiatives might be equated with weakness or unfit.

Alongside stress, there is a deep sense of job satisfaction:

Despite speaking frankly about the many pressures of the role, which at times can be overwhelming, almost all judicial officers also spoke of loving their job, and the privilege and professional pride they derive from it.

Judicial officers sourcing the most enjoyment from the role are those who prioritise their own wellbeing: A sizeable minority of judicial officers had developed deliberate practices and strategies to proactively manage stress, in most cases stemming a conscious respect for the emotional dimension of the work and sober awareness of its capacity to impact wellbeing – and these were the people who spoke most enthusiastically about their work.

There were also dozens of well-considered ideas for organisational and systemic responses to judicial stress, which clustered around ways to better manage workflow and to promote engagement in proactive wellbeing initiatives.

Conclusion

In summary, this research has established judicial officers are stressed – especially those in the lower courts – and there are a number of systemic and workplace drivers of judicial stress. In addition, it suggests the demands faced by judicial officers are steadily increasing, and that this is taking a toll. But it also indicates that, so far, judicial officers are generally managing to cope with the stress they confront, and that the meaning and satisfaction they derive from their important work is a key protective factor for their occupational wellbeing. Together, this research provides the basis for beginning an evidence-based conversation on judicial stress in Australia. In many Australian jurisdictions this kind of conversation is already well underway, and underpinning structural and systemic changes to support judicial wellbeing. ■

Carly Schrever is a lawyer, psychologist and award-winning empirical researcher. She undertook Australia's first empirical study measuring stress and wellbeing among judges and magistrates. She is judicial wellbeing adviser at the Judicial College of Victoria.

References

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