



Mental Health Task Force 2018 Mid-Year Report

Brook Greenberg, Chair
Michelle Stanford, Vice Chair
Christopher McPherson, QC
Carolyn Ryan
Derek LaCroix, QC

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Prepared for: Benchers

Prepared by: Alison Luke on behalf of the Mental Health Task Force

Purpose: Information

Introduction

1. Over the last several years, the incidence of mental health and substance use issues within the legal profession has garnered increasing attention. In addition to recent American academic research revealing high rates of depression, anxiety and substance use disorders amongst lawyers, a number of surveys, research papers and media articles have similarly identified these issues as being both significant and pervasive within the Canadian legal profession.
2. Recognizing that the benefits of lawyer wellbeing are compelling, and that the potential impact of unwell lawyers on the public interest can be significant, addressing mental health and substance use within the profession was elevated to an organizational priority for the Law Society in its 2018-2020 Strategic Plan:¹

Supporting and Assisting Lawyers, Articled Students, and Lawyers of other Jurisdictions who are Permitted to Practise Law In British Columbia in Fulfilling their Duties in the Practice of Law

While the public interest is the focus of the work of the Law Society, the public interest is also served where, as relevant, the Law Society can support and assist students and lawyers to meet the standards the Law Society has established. Disciplining those who fail in meeting standards will always be important, but such processes address after-the fact results. On the other hand, providing resources to assist lawyers and students in meeting the standards can lead to better and healthier lawyers and reduce the likelihood of incidents that will lead to a regulatory outcome.

We will improve the mental health of the legal profession by

- Identifying ways to reduce the stigma of mental health issues.
 - Developing an integrated mental health review concerning regulatory approaches to discipline and admissions.
3. In January 2018, the Mental Health Task Force (the “Task Force”) was established to specifically address these strategic priorities. In April, the Benchers approved the Task Force’s Terms of Reference, which define the scope of the Task Force’s duties and responsibilities [see **Appendix A**].

¹ See the Law Society of British Columbia’s 2018-2020 Strategic Plan, online at: https://www.lawsociety.bc.ca/Website/media/Shared/docs/about/StrategicPlan_2018-2020.pdf

4. Pursuant to section 3(b) of its Terms of Reference, the Task Force is required to produce a mid-year report to the Benchers on its activities. This report is therefore intended to serve as an informational update for the Benchers on the Task Force's work since January.
5. To date, the Task Force has primarily been engaged in consulting with the profession, internally within the Law Society and with subject-matter experts.
6. The Task Force expects to be in a position to make a series of initial recommendations addressing various elements of the Task Force's mandate this fall.
7. The Task Force also expects to be in a position to make recommendations with respect to significant policy matters, including a potential "diversion" or alternative discipline approaches by late 2018 or early 2019.

Discussion

8. Over the last six months, the Task Force has made considerable efforts to increase its understanding of mental health and substance use issues within the legal profession.
9. This work has included:
 - a. reviewing relevant reports, articles, studies and other educational materials;
 - b. encouraging the development of a communications strategy aimed at starting a public conversation about mental health and substance use issues affecting lawyers; and
 - c. undertaking extensive consultations with subject-matter experts, stakeholders and Law Society staff.
10. These activities are described in further detail below.

A. Literature review and educational activities

11. The Task Force has reviewed key reports, articles, surveys and studies that focus on mental health and substance use, primarily as these issues relate to lawyers.
12. Among the most influential of these resources is the 2017 Report of the National Task Force on Lawyer Well-Being entitled, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* (the “Report”).²
13. The Report, which has been characterized as “the most ambitious roadmap yet related to the well-being of lawyers,”³ draws on the findings of two recent ground-breaking studies. The first study, commissioned by the American Bar Association Commission on Lawyer Assistance Programs and the Hazelden Betty Ford Foundation, found that of the 13,000 lawyers surveyed, between 21 and 36 percent qualified as problematic users of alcohol, and that approximately 28 percent, 19 percent, and 23 percent were currently struggling with some level of depression, anxiety and stress, respectively. Over 11 percent of respondents reported having suicidal thoughts at some point in their careers.⁴
14. The second study surveyed over 3,300 law students and similarly found concerning levels of depression, anxiety and suicidal thoughts amongst students, as well as high rates of binge drinking.⁵

² The National Task Force was conceptualized and initiated by the American Bar Association Commission on Lawyer Assistance Programs (CoLAP), the National Organization of Bar Counsel (NOBC), and the Association of Professional Responsibility Lawyers (APRL). The National Task Force Report is found online at: <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf>

³ American Bar Association, “Growing concern over well-being of lawyers leads to comprehensive new recommendations” (August 2017) online at: https://www.americanbar.org/news/abanews/aba-news-archives/2017/08/growing_concern_over.html

⁴ P. R. Krill, R. Johnson, & L. Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46 (2016).

⁵ J. M. Organ, D. Jaffe, & K. Bender, *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. LEGAL EDUC. 116 (2016).

15. Based on this data, the Report urges leaders in the legal profession to take action to address both mental health and substance use, and provides a series of recommendations for key stakeholders, including legal regulators.⁶
16. The Report has contributed significantly to the Task Force's understanding of mental health and substance use issues within the profession, as well as the rationale for taking action to address these issues and the range of possible educational and regulatory responses.
17. The Task Force has reviewed the Report's recommendations and has examined how at least some of these proposals could best be adapted and recommended to the Benchers. The Report will continue to serve as an important resource for the Task Force as it develops its first set of recommendations later this year.
18. The Task Force has also familiarized itself with the Law Society of Ontario's Mental Health Strategy,⁷ and has reviewed many of the recommendations therein.
19. Members of the Task Force were invited to review the BC Centre on Substance Use's 16-hour online Addiction Medicine Diploma, which is designed to improve knowledge of substance use and addiction treatment for medical professionals. At least one member of the Task Force has completed the full Diploma program.

B. Communications

20. The Task Force has prioritized working with the Law Society's communications department to develop a strong communications campaign, both to promote the work of the Task Force and to address the stigma associated with mental health and substance use issues.

⁶ Other stakeholders that are prescribed a specific set recommendations include judges, legal employers, law schools, bar associations, lawyers' professional liability carriers and lawyer assistance programs. The recommendations revolve around five central themes: (1) identifying stakeholders and the role each can play in reducing the level of toxicity in the profession, (2) eliminating the stigma associated with help seeking behaviors, (3) emphasizing that well-being is an indispensable part of a lawyer's duty of competence, (4) educating lawyers, judges, and law students on lawyer well-being issues, and (5) taking small, incremental steps to change how law is practiced and how lawyers are regulated to instill greater well-being in the profession.

⁷ Ontario is the only other Canadian law society to strike a task force that exclusively focuses on mental health. In contrast, in the US, over a dozen states have established mental health task forces or commissions.

21. Examples of recent communications initiatives include establishing a mental health page on the Law Society website, creating an email inbox that enables members of the profession and the public to directly contact the Task Force and the publication of an article in the *Benchers' Bulletin*.⁸
22. The Law Society also participated in the Canadian Mental Health Association's Mental Health Week, releasing a series of tweets designed to raise the profile the Task Force, highlight the prevalence of mental health and substance use issues within the profession and promote resources that are currently available to lawyers, including the Lawyers Assistance Program and Lifeworks.

C. Internal consultation

23. The Task Force has consulted extensively with various Law Society departments in order to improve its understanding of how the Law Society currently addresses mental health and substance use issues as part of both its regulatory and education and support functions, and to determine whether improvements can be made through increased resources, education and policy initiatives.
24. Members of the Task Force held meetings with management of the Professional Responsibility Department as well as staff in the Education and Practice Management Department, including Practice Advisors, Practice Standards lawyers and Credentials staff.
25. During these consultation sessions, staff identified the type of education, skills-based training and resources that would enable them to better assist members or applicants living with a mental health condition or a substance use disorder, including applicants and members involved in admissions, practice standards, complaints, investigations and discipline processes.
26. The Task Force has also explored how Benchers and non-Bencher members of various Law Society Committees and hearing panels may benefit from additional training to improve their general awareness and understanding of

⁸ Brook Greenberg, "Mental Health Issues in the Legal Profession" (Spring 2018), *Benchers' Bulletin*, online at: https://www.lawsociety.bc.ca/Website/media/Shared/docs/bulletin/BB_2018-01-Spring.pdf#feature

mental health and substance use disorders, and the relevance of these health issues to their deliberations and decision-making.

27. Collectively, these consultations are expected to inform some of the Task Force's early recommendations on education and training initiatives within the Law Society.

D. External consultation

28. The Task Force has engaged in considerable external consultation with a number of key stakeholders and experts, including BC's law schools and a range of professionals that specialize in mental health and substance use disorders.

Law schools

29. Given their role in developing the next generation of lawyers, BC's law schools were identified as being an important stakeholder that should be consulted in the early stages of the Task Force's work.
30. The law schools were invited to meet with the Task Force to discuss how mental health and substance use issues manifest within the student body, to explore how law school initiatives addressing these issues might intersect with the work of the Task Force and to articulate concerns and challenges in addressing mental health and substance use disorders within the student population.
31. The Dean and Associate Deans of the Allard School of Law and the Associate Dean of UVic Faculty of Law provided the Task Force with a comprehensive overview of their respective wellness initiatives and resources.⁹ The presenters commented on the significant number of students experiencing mental health or substance use issues, and the need to encourage open discussion about these issues as part of ongoing efforts to reduce stigma.

⁹ The Faculty of Law at Thompson Rivers University was contacted on several occasions but decided not to participate in a presentation with the Task Force.

32. During these presentations, the law school representatives raised specific concerns about the manner in which mental health and substance use disorders are addressed in the Law Society's admission process and the problematic focus on alcohol at firm sponsored events.
33. The law school representatives made a number of suggestions as to how the admissions process could be made more transparent, predictable and less stigmatizing for students with mental health or substance use issues.
34. Notably, the law school representatives advised that in their experience, many if not most students decline to make use of education and treatment resources available to them once they discover that the Law Society inquires about health conditions and substance use treatment during the admission process.

Consultations with subject-matter experts

35. The Task Force has also consulted widely with experts on mental health and substance use issues, including academics, lawyers, nurses and doctors.
36. The Task Force has benefited from the insights provided by Orlando DaSilva, who was instrumental in raising the profile of mental health issues within the legal profession during his tenure as the president of the Ontario Branch of the Canadian Bar Association. Mr. DaSilva's extensive personal and professional experiences with mental health issues provided the Task Force with valuable commentary on the types of regulatory and educational strategies that the Task Force might consider in addressing mental health and substance use issues affecting lawyers.
37. Margaret Ostrowski, QC, past president of the CBA-BC Branch, former Chair of the province's Mental Health Review Board and a former practising psychologist, provided the Task Force with materials that focused on the beneficial role that psychologists can play in assisting those living with mental health issues.
38. The Task Force has also forged a strong relationship with experts at the British Columbia Centre on Substance Use ("BCCSU"), a provincially networked organization with a mandate to develop, implement and evaluate

evidence-based approaches to substance use and addiction. Within this framework, BCCSU is also involved in the collaborative development of policies, guidelines and standards.

39. The Task Force and Law Society staff participated in a panel presentation by key staff from BCCSU, which highlighted a number of important issues for the Task Force to consider in formulating its upcoming recommendations.¹⁰
40. As part of this panel, Jonathan Chapnick, an employment and human rights lawyer and senior advisor on mental health in the workplace specifically addressed policy considerations relating to the regulation of lawyers with mental health and substance use disorders [see **Appendix B**].
41. The BCCSU has assisted other regulated professions to develop policies and practices relating to substance use and discipline proceedings within those professions, and has similarly agreed to work with the Task Force to develop policies and a statement of “best practices” for regulators dealing with substance use issues.
42. Upcoming consultations are also scheduled with Dr. Ray Baker and Dr. Paul Sobey, physicians specializing in Occupational Addiction Medicine,¹¹ and representatives from the Canadian Mental Health Association [see **Appendix C**].

Next Steps/Work Plan

43. Over the next several months, the Task Force will review the large body of work described above and formulate its first set of recommendations.

¹⁰ The presentation included contributions from Ms. Cheyenne Johnson, Director of BCCSU's Clinical Activities and Development, Dr. Keith Ahamad, Clinical Researcher and Director of the Addiction Medicine Enhanced Skills Training Program at UBC, Division Lead for Addiction in the Department of Family and Community Medicine at Providence Health Care and Physician Lead at the St. Paul's Hospital Addiction Medicine Consult Service and Dr. Kenneth Tupper, BCCSU's Director of Implementation and Partnerships.

¹¹ Dr. Baker has over 25 years of experience in working with unions, employers and regulatory bodies developing policy, training personnel and performing medical assessments and providing treatment recommendations for thousands of individuals with addictive disorders. Dr. Paul Sobey is an addiction medicine physician and consultant, the current president of the Canadian Society of Addiction Medicine and the lead Physician on the Royal Columbian Hospital Addiction Medicine Service.

44. These initial recommendations will primarily focus on strategies to increase education and awareness of mental health and substance use issues amongst Law Society staff involved in providing practice advice and dealing with lawyers in various Law Society processes, including practice standards and professional regulation. The recommendations will also address training for Bencher and non-Bencher members of Committees and hearing panels.
45. The goal of these recommendations will be to create a strong foundation of knowledge and a robust set of resources that will better able the Law Society to support affected lawyers and protect the public interest.
46. Additional recommendations will focus on consultation with the appropriate Committees to improve the way that the Law Society addresses issues of mental health and substance use in its various processes, including admissions.
47. The initial recommendations report will be presented to the Benchers later this fall, with the goal of providing the Benchers with further policy recommendations in late 2018 or early 2019.