

Killing Ourselves
Depression as an Institutional, Workplace and Professionalism Problem

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I. Introduction

The advent and persistence of the economic recession has ushered in a stressful, harsh and anxious reality for the legal profession. Whatever the factors that contribute to this reality may be – from the shortage of articling placements for law students, to the rising number of billable hours – there is certainty to the fact that as a collective, the profession is confronting a period of unhappy, and resultantly unhealthy times. In law, the culture of endurance and workaholicism is celebrated, and the need for greater “flexibility” and “balance” is discussed and often dismissed as irreconcilable goals. With the timeliness of the economic recession and its effects on our Canadian workforce and students, it is important to recognize the personal toll to pursuing and practising law. In this essay, it is suggested that depression is not a personal failure and most certainly, not a moral weakness; depression is an institutional, workplace and professionalism problem. The illness is created and reinforced by shared environments, but through collective intervention and action, the profession can move closer to preventing or mitigating depression.

Mental illness within the profession is not a new problem. Lawyers are consistent and frequent “winners” of undesirable honorifics such as the “most depressed workers” or “most prone to succeeding in committing suicide.”¹ However, the undercurrent of unhappiness and anxiety should not be ignored or hidden away by “the many rueful jokes often told by lawyers about lawyers.”²

This paper’s begins with an analysis on the Law Society of Upper Canada’s (“LSUC”) *Rules of Professional Conduct* (“Rules”) as the *Rules* relate to depression or a related term or phrase such as “mental instability.” Part III of this paper is devoted to discussing the science of

¹ Patrick J. Schiltz, “On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession” (1999) 52 Vand L Rev 880.

² Martin E P Seligman et al, “Why Lawyers are Unhappy” (2001) 23 Cardozo L Rev 52 [Seligman, “Unhappy”].

depression, including a survey explanation on how lawyers fare in comparison to the general population. Part IV examines the role of the institutional agent, in particular law schools, to creating and reinforcing an environment that exposes individuals to developing depression. This section includes suggestions for preventative strategies that are effective, yet also practical. Part V analyzes similar issues as they relate to law firms, including a “business case” for why mental illness does have an impact, particularly in dollar terms, on a firm’s business. Lastly, Part VI is devoted to examining depression as a professionalism challenge.

II. Rules of Professional Conduct – How Depression is Viewed

A. The Law Society of Upper Canada “Rules of Professional Conduct”

In the LSUC’s *Rules*, mental illness is indirectly addressed under Rule 2.01 dealing with “competence.” Although the provision does not directly refer to mental illness or a related term, the provision is relevant considering the rule deals with aspects related to functioning, which may be impaired if an individual suffers from depression.³ Under the rule:

“**Competent lawyer**” means a lawyer who has and applies **relevant skills, attributes, and values** in a manner appropriate to each matter undertaken on behalf of a client including
[...]
(e) performing all functions **conscientiously, diligently, and in a timely and cost-effective manner,**
(f) applying **intellectual capacity**, judgment, and deliberation to all functions,
(g) complying **in letter and in spirit** with the Rules of Professional Conduct,
(h) **recognizing limitations** in one’s ability to handle a matter or some aspect of it, and taking steps accordingly to ensure that client is appropriately served,
(i) **managing one’s practice effectively,**
(j) pursuing **appropriate professional development** to maintain and enhance legal knowledge and skills, and
(k) **adapting to changing** professional requirements, standards, techniques, and practices.⁴
(*Emphasis Added*)

³ The Law Society of Upper Canada, *Rules of Professional Conduct*, Toronto: Law Society of Upper Canada, 2010, Rule 2.01. See also American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders: DSM-IV-TR* (Washington: American Psychiatric Association, 2000) at 345.

⁴ Law Society of Upper Canada, *supra* note 3.

Under Rule 2.01's commentary, lawyers are to be self-aware of problems, including an obligation to be "alert to recognize[ing] any lack of competence for a particular task and the disservice that would be done to the client by undertaking that task."⁵

Rule 6.01 (3) (d) of the *Rules* does directly addresses mental illness. This rule creates a positive obligation on other lawyers to report the "mental instability" of another lawyer:

A lawyer shall report to the Society, unless to do so would be unlawful or would involve a breach of solicitor-client privilege,
[...]
(d) the mental instability of a licensee of such a serious nature that the licensee's clients are likely to be severely prejudiced, and
(e) any other situation where a licensee's clients are likely to be severely prejudiced.⁶
(*Emphasis Added*)

The commentary from this rule does reference Ontario Lawyers' Assistance Program ("OLAP"), a LSUC funded program devoted to assisting lawyers with mental health problems. Lawyers are further recommended in the commentary to seek assistance based on instances of improper conduct that may arise from emotional, mental, or family disturbances.⁷

B. Interpreting the Rules and Commentary

When interpreting the *Rules* and related commentary, it is not directly apparent as to who has the obligation to acknowledge a mental illness or health problem. Based on the provisional language from the applicable rules, and the content from the related commentary, there is greater evidence to suggest that the individual lawyer has the obligation to recognize a problem.

Rule 6.01 (3)(d) creates a positive obligation on others to report a lawyer suffering from "mental instability." Yet, the provisional language implies that this option should be taken only

⁵ *Ibid.*

⁶ *Ibid* at Rule 6.01.

⁷ *Ibid.*

as a “last resort,” and that the standard for reporting must be of “serious nature that licensee’s clients are likely to be severely prejudiced.”⁸ Comparatively, the commentary for Rule 6.01 (3)(d) and Rule 2.01 detail an obligation on the affected lawyer to seek assistance or acknowledgment of a problem. This means an individual lawyer has a positive obligation to make a subjective evaluation to determine personal competency and possible presence of illness.

By making mental health detection a subjectively evaluated obligation, the *Rules* create a risk of making depression an abstract problem. Those who are not affected are intuitively in a passive position towards risk detection. This example is illustrated in a passage from a Kansas Bar Association self-test, which examined attitudes toward depression and obligations to report:

It had been a good week for your clients. First, the judge granted summary judgment to one client, based on the opposing lawyer’s failure to respond to your request for admissions... But [the] situation [never] felt quite right.

You had been in the opposing lawyer’s office shortly after filing the summary-judgment motion. He said that he had been depressed for months since his wife had left him. You noticed a stack of unopened mail on his desk and piles of disorganized papers throughout the office. You expressed sympathy, but said that your client’s interests – make that your *biggest* client’s interest – had to come first.⁹

Few lawyers are likely to take action against the affected lawyer because the situation “does not feel quite right.”¹⁰ This means, a lawyer’s condition remains unreported or not addressed by fellow colleagues.¹¹ Combined with the high standard for reporting, where the threshold is “mental *instability*,” the *Rules* offer limited opportunity for intervention. Effectively, the *Rules* promote the common belief that mental illness is an individual problem. Furthermore, the LSUC

⁸ *Ibid.*

⁹ Page Thead Pulliam, “Lawyer Depression: Taking a Closer Look at First-Time Ethics Offenders” (2008) 32 J Legal Prof 302.

¹⁰ *Ibid* at 303.

¹¹ *Ibid.*

Rules and commentaries assume that an affected lawyer has the capacity and ability to recognize a problem. As it will be later discussed, this is not always possible due to cognitive distortion.

III. The Psychology of Depression and Stress

A. Science of Depression

Depression, clinically known as major depressive disorder (“MDD”), significantly disturbs a person’s “entire psycho-biologic system, including the way the individual thinks, feels, and behaves, as well as his vegetative body functions.”¹² The disease is classified as a mood disorder under the main tool used for identifying and treating those with depression, the American Psychiatric Association’s *Diagnostic and Statistical Manual of Mental Disorders*.¹³ A depressed individual is more likely to ruminate over thoughts and feelings of worthlessness, inappropriate guilt or regret, helplessness, hopelessness and hatred. Other symptoms include insomnia, poor concentration and memory, withdrawal from social situations and thoughts of death or suicide.¹⁴

Approximately 20% of the entire legal profession suffers from clinically significant levels of substance abuse, depression, anxiety or some other form of psychopathology.¹⁵ In the often-cited 1990 research from Johns Hopkins University, approximately 3% to 5% of the general population suffers from MDD. Lawyers have statistically significant elevations of MDD, with lawyers suffering at a rate of 3.6 times higher than non-lawyers who share key

¹² Phyllis W. Beck & David Burns, “Anxiety and Depression in Law Students: Cognitive Intervention” (1979-80) 30 *J Legal Educ* 274.

¹³ American Psychiatric Association, *supra* note 3 at 345.

¹⁴ *Ibid* at 349.

¹⁵ John Starzynski, “Battling Addiction in the Workplace.” *The Lawyers Weekly* (4 March 2011).

socioeconomic traits.¹⁶ OLAP reported in their 2010 annual report that 42% of their total calls were related to mental health issues, which included depression, bipolar disorder and anxiety¹⁷

B. Challenges to Identifying Signs of Depression

Depression is easily concealed and has uneasily identified symptoms.¹⁸ The most significant challenge for the legal profession and law schools is identifying those affected. The first challenge is recognizing that those affected prefer to remain silent. Like alcoholism, depression is viewed commonly as a “moral weakness.”¹⁹ In adopting this prevailing view, the legal community has been slow to recognize depression as a legitimate disease that requires attention.²⁰ Professor Jennifer Jolly-Ryan of Northern Kentucky University argues that law remains the last workplace where mental health is still viewed with discrimination and stigma:

[i]ronically, the very people who are in the best position to increase the number of lawyers who intimately understand the discrimination and health care laws in our society impose some of the highest hurdles to employment and educational opportunities. Lawyers stigmatize and often decline to hire other lawyers unless they have a clean mental health history – free of disabilities, disorders, and illnesses.²¹

Depression has the effect of making symptoms seem normal and even desirable. This means an affected lawyer may not recognize the symptoms of depression. In a process referred to as cognitive distortion, “an individual interprets stimuli that are neutral or mildly negative in an unrealistically bleak fashion. This erroneous or inaccurate interpretation causes the individual to feel sad, hopeless and anxious.”²² These symptoms are often mistakenly passed off as regular

¹⁶ Schiltz, *supra* note 1 at 874.

¹⁷ Ontario Lawyers’ Assistance Program, Annual Report, “2010 Annual Report” (2010) <http://olap.ca/ANNUAL%20REPORT5202010_V2.pdf>.

¹⁸ Pulliam, *supra* note 9 at 299.

¹⁹ Todd Goren and Bethany Smith, “Depression as a Mitigating Factor in Lawyer Discipline” (2000-2001) 14 *Geo J Legal Ethics* 1082.

²⁰ *Ibid.*

²¹ Jennifer Jolly-Ryan, “The Last Taboo: Breaking Law Students with Mental Illnesses and Disabilities Out of the Stigma Straitjacket” (2010) 79 *UMKC L Rev* 123.

²² Beck, *supra* note 12 at 273.

signs of stress.²³ The depressed individual confuses the symptoms of depression – negative or critical judgments about themselves – with their own identity.²⁴

In addition to a negative self-view, depression causes an increased pessimistic view of the world. Pessimism is defined by a tendency to interpret the causes of negative events in stable, global and internal ways.²⁵ They view the world from a prudent perspective that requires caution, skepticism and higher sense of “reality-appreciation.”²⁶ Pessimism is a highly desirable and adaptive trait for lawyers because of an ability to conceive problems in any given situation. However, pessimism is a problem trait because it cannot be easily turned off.

Resultantly, depression symptoms are not only difficult to identify, but can be considered normal and even beneficial. However, as the science of depression suggests, depression is most certainly not a personal failure. The illness is the result of a number of complex, inter-related biological and environmental conditions.

IV. Law Schools – The First Line of Defense

A. Personality Traits as a Risk Factor Depression

The most common explanation for the poor health of lawyers is the suggestion that the law profession draws its members from a subset of unhealthy and unhappy people. However, this explanation over simplifies the problem by underestimating the collective forces to creating, or at the very least, contributing to maladaptive behavioural patterns which lead to depression. It is not enough to suggest that the demand of the law program is the causal factor for depression, since the problem appears unique to law school. One study showed that law students, when compared to medical students, had higher levels of stress and stress symptoms despite the similarly

²³ Donalee Moulton, “Understanding Burnout and Fixing It”, *The Bottom Line* (April 2011)

²⁴ *Beck, supra* note 12 at 275.

²⁵ Seligman, “Unhappy”, *supra* note 2 at 55.

²⁶ *Ibid* at 56.

demanding programs.²⁷ While the notion that law draws the unhealthy may explain *part* of the problem, there is no denying that students are very much creatures of their collective environment, which in some cases is neither happy or healthy.

1. Pessimistic Explanatory Style

While pessimism is a symptom of depression, the trait is not in itself dysfunctional. The problem with pessimism is its pervasiveness in the legal profession and the consequent mental health effects. We can attribute this to the fact that those with pessimistic personalities are drawn to the profession, and because pessimism is *taught* in law school through a process known as Pessimistic Explanatory Style (“PES”). As discussed in the previous section, pessimists view bad events as pervasive, permanent and uncontrollable. Comparatively, optimistic counterparts view the world as local, temporary and changeable.²⁸

Pessimists actually do better at law. They not only outperform their optimistic peers, but they outperform in measurements of achievement, such as grade point average.²⁹ Legal educators recognize that skepticism becomes a virtue and have tried to incorporate this specific form of thinking to the law school curriculum. Students are graded and taught to “see every conceivable snare and catastrophe that might occur in any transaction.”³⁰ Since the trait cannot be “turned off,” the compartmentalization between work thought patterns and private life thought patterns is often difficult to separate.³¹ For students who are not as able to develop this skill, the initial

²⁷ Todd David Peterson and Elizabeth Waters Peterson, “Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology” (2009) 2 Yale Journal of Health Policy, Law and Ethics 365

²⁸ Martin E. P. Seligman, *Authentic Happiness: Using the New Positive Psychology to Realize Your Potential for Lasting Fulfillment* (New York: The Free Press, 2002) at 178 [Seligman, “Authentic”].

²⁹ Seligman, “Unhappy”, *supra* note 2 at 56.

³⁰ Veronica Henderson, “Building on Strong Foundations: Rethinking Legal Education with a View to Improving Curricular Quality 29 Dalhousie L J 496.

³¹ *Ibid.*

enthusiasm of law school is often supplanted by feelings of depression, which disturbingly persists throughout law school.³²

2. The Role of Self-Esteem

Lack of self-esteem is another theory suggested as a cause for depression. Students prior to law school have a history of receiving concrete forms of validation for their achievements that is most commonly in the form of grades or awards. After internalizing these positive emotions, students begin and continue to invest time and effort to be acknowledged. However, a “perfection/failure” trap is created by the time students enter law school.³³ The mandatory “B” curve in law school triggers these issues and the high competition for jobs exacerbates them. Professor Gerald Hess, founder and co-director for the Institute for Law Teaching and Learning, stated that grades and class rank serve as a “significant gatekeeper to the reward system during and after law school – law review membership, research or teacher-assistant positions, internships and jobs.”³⁴ Competition creates stress, fear, anxiety and “a profound loss of self-esteem.”³⁵ Such environment fosters an unhealthy psyche that encourages depression as students feel inadequate and incapable.

B. Creating and Reinforcing an Unhappy Environment - The Undermining Effect

Law students remain vulnerable to developing depression during law school, even where there is no evidence to suggest a pre-existing risk. In a seminal motivational study by Professor Kennon M. Sheldon and author Lawrence S. Krieger, pre-law students reported that they felt happier, healthier and had more intrinsic pro-social values. At the end of their first year in law school the same students reported large reductions of life satisfaction and overall social well

³² *Ibid.*

³³ Rachel Long, “Reasons Why Attorneys and Other High Achievers Might Suffer from Depression” Online: Lawyers With Depression <<http://www.lawyerswithdepression.com/lawyersssodepressed.asp>>.

³⁴ Peterson, *supra* note 28 at 380.

³⁵ *Ibid.*

being.³⁶ Students reported large increases in depression and other illnesses such as anxiety. This statistical shift has been referred to as the “undermining effect,” where initial positive emotions are eroded or usurped.³⁷ Gradually, superficial awards and extrinsic values define law school success and worth.³⁸ The Honorable Judge Patrick Schiltz of the U.S. District Court makes the argument that by coveting image-based awards, such as prestige and status, young law students are setting the foundation for later discontent as associates.³⁹ This means how we teach and train law students invariably impacts the profession as a whole.

C. Intervention and Action Required to Prevent Depression

1. Developing and Encouraging Learned Optimism

There are practical based solutions available to law schools to addressing and preventing depression. For the pessimism problem, the immediate antidote is to inject optimism in the law school curriculum. Optimism is the ability to dispute recurrent catastrophic thoughts effectively, and much like pessimism, this trait can be learned through a process known as the “disputing technique.”⁴⁰ The goal is to teach law students and lawyers the ability to control negative emotions by identifying negative thoughts and then reinterpret them as though a friend had spoken them.⁴¹ By reinterpreting who is speaking, the depressed individual is more likely to use skills such as positive reinforcement and encouragement.

³⁶ Kennon M. Sheldon & Lawrence S. Krieger, “Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values and Well-Being” (2004) 22 Behav Sci & L 263.

³⁷ *Ibid* at 272.

³⁸ *Ibid*.

³⁹ Schiltz, *supra* note 1 at 921.

⁴⁰ Seligman, “Unhappy”, *supra* note 1 at 58.

⁴¹ *Ibid*.

2. The Role of the Faculty Friend

When students do experience an emotional crisis, they often turn to a member of the administration, known as a “faculty-friend.” The challenge for law schools is training ill prepared faculty-friends to responding to an emotional crisis.⁴² Commonly, staff members report feelings of discomfort and inadequacy when approached by a student with an emotional problem. The instinct is to divest from the situation by referring the student to professional help.⁴³ While the faculty-friend may genuinely feel that this is the best solution, the student mistakenly interprets the recommendation as disinterest. The faculty-friend’s response can be harmful since the student feels ignored and discouraged after soliciting help.⁴⁴ Studies suggest that this result is counterproductive since untrained faculty-friends provide helpful therapeutic intervention and can produce the same results as professional forms of help.⁴⁵

Instead, a faculty-friend should determine the nature and intensity of the student’s emotional problem.⁴⁶ Much like working with a client, the role of the faculty-friend is to identify the kind of problem (depression, anxiety, and stress), and then establish the severity. In some cases, it is important to recognize that the faculty-friend may not be helpful. Depending on the severity of the mood problem, professional help may be the most appropriate decision. However, the faculty-friend as a person of authority must convey this conclusion with sincerity rather than divest from the situation.⁴⁷ For law schools, training faculty-friends is an effective, standardized and practical solution to addressing student depression.

⁴² Beck, *supra* note 12 at 271.

⁴³ Peterson, *supra* note 28 at 360.

⁴⁴ Beck, *supra* note 12 at 271.

⁴⁵ *Ibid.*

⁴⁶ *Ibid* at 278.

⁴⁷ *Ibid.*

V. Practising Law – Breaking the Culture of Endurance and Workaholism

A. The Business Case for Addressing Depression

Self-reports of depression from lawyers range from 3.5% to 37%, depending on measurements used.⁴⁸ Beyond just mere statistics, lawyers and firms need to recognize that depression is a business problem in spite of prevailing views that mental illness is a personal one. The illness has the effect of limiting a lawyer's ability to distribute its most valuable asset – talent and knowledge.

This position has been supported by the LSUC, most evidently in the LSUC's *Practice Management Guidelines*, where the directive states that lawyers, with their talent and knowledge, determine the “quantity and quality of legal service” as a representative of the firm. Meaning, the preservation, enhancement, and investment in lawyers' well being is a “necessary component of a risk management plan and a key factor in the business success of a law practice.”⁴⁹

Well being does have a dollar term impact on a firm's business. In a 2006 study titled “Flexibility in Canadian Law Firms,” it was found that the average cost of an associate's departure is \$315,000.⁵⁰ More alarming, is the costs associated with stress-related problems. It is estimated that about 20% of a firm's payroll is devoted to resources to address absenteeism, employee turnover, disability leaves, counseling, medical costs and accidents.⁵¹ These totals do not account for costs associated with conduct related to negligence or other forms of liabilities related to delivering client services. A prudent business should recognize that the culture of

⁴⁸ Amiram Elwork, *Stress Management for Lawyers: How to Increase Personal & Professional Satisfaction in the Law* (North Wales: Vorkell Group, 2007) at 235.

⁴⁹ The Law Society of Upper Canada, *Practice Management Guidelines*, Toronto: Law Society of Upper Canada, 2010, ch. 8.4.

⁵⁰ Catalyst, *The Catalyst Series on Flexibility in Canadian Law Firms*, “Beyond Reasonable Doubt: Building the Case for Flexibility” (2005) <<http://www.catalyst.org/publication/38/beyond-a-reasonable-doubt-building-the-business-case-for-flexibility>>.

⁵¹ Donaless Moulton, “Destressing your law office in these stressful times.” *The Lawyers Weekly* (29 January 2010).

silence and fear is not only problematic for the individual lawyer, but has the effect of putting the firm in a vulnerable business position. To mitigate this risk, the firm should identify risk factors.

B. Risk Factors for Depression in the Practice of Law

1. Internalizing law as a win-loss game

The adversarial process, which is the system of Canadian law, is a classic example of a zero-sum game: one side's gain occurs with the other side's loss.⁵² Disputes are fuelled by negative emotions like anger, anxiety, and sadness.⁵³ In a job where zero-sum situations are pervasive, negative emotions become part of the job itself creating a protracted period of exposure to the development of depression or other associated illnesses.

Lawyers complain that the success of a lawyer is based on the number of hours billed, which is often correlated based on successes in “winning” the game.⁵⁴ To succeed, lawyers are more adversarial when dealing with other lawyers, which in turn, spurs issues related to incivility and isolation from others.⁵⁵ However, this responsive behaviour does not serve an effective purpose because it is a “single-minded drive towards winning the competition ... [which] will make [...] young lawyers not only less useful citizens ... but also less good as lawyers, less sympathetic to other people's troubles, and less valuable to their clients.”⁵⁶ This means, law firms gain little value in using negative emotions to deliver client services. This suggestion is part of a subset of evidence that proves, if proof was needed, that workplace environment does play a role in contributing to depression.

⁵² Seligman, “Unhappy”, *supra* note 2 at 60.

⁵³ Seligman, “Authentic”, *supra* note 29 at 178.

⁵⁴ Schiltz, *supra* note 1 at 888.

⁵⁵ Seligman, “Unhappy”, *supra* note 2 at 60.

⁵⁶ *Ibid* at 61.

C. Creating and Reinforcing an Unhappy Environment – Low Decision Latitude

The lack of decision-making latitude by lawyers practising in large firms is often cited as a source for unhappiness. Decision latitude refers to the number of choices one has or, believes one has.⁵⁷ In recent years, young associates are confronting a situation of low decision latitude, where they have little control over work, limited contact with superiors, and limited client contact.⁵⁸ More often, high-pressure demand combined with low decision latitude, creates a risk of depression, poor morale and poor physical health.⁵⁹ In the case of large private firms, the response has been address associate dissatisfaction through compensation of wages or “retention bonuses.”⁶⁰ Yet, the problem with dissatisfaction does not appear to be inadequate compensation, since money has little effect to the underlying issue of control and decision-making. The health effects for those working in a high-pressure and low control environment are not surprising – there are higher rates of both heart disease and divorce.⁶¹ This fact is not lost on young associates, with nearly 62% of females and 47% of males suggesting that they would leave their firm in five years or less.⁶² A loss of control, like job dissatisfaction to which are closely related, demonstrates the relationship between well being and cost to a firm’s business. This scenario is particularly true when a firm needs to account for the cost of associate departure.

⁵⁷ *Ibid* at 56.

⁵⁸ *Ibid* at 61.

⁵⁹ *Ibid*.

⁶⁰ Seligman, “Unhappy”, *supra* note 2 at 57.

⁶¹ *Ibid*.

⁶² Catalyst, *supra* note 51.

D. Intervention and Action Required to Prevent Depression

1. Encouraging Cooperative Litigation

A growing number of law schools and law firms are now recognizing alternative models to litigation; in particular, using dispute resolution forums such as mediation and arbitration. This is part of a recognition that more collaborative or non-zero-sum situations are better for business and health.⁶³ After all, most lawyers are not litigators.⁶⁴ In scenarios where the engagement is not a zero-sum scenario, alternative dispute resolution should be encouraged. Instead of behaving as an untrammelled advocate, the lawyer's role is to encourage "normative-order" by serving as a lawyer-statesman in deal making.⁶⁵ Evidence suggests that positive emotions from "cooperative" alternatives to litigation solicit feelings of joy, amusement, and interest.

2. Increase Sense of Control

Law firms should consider solutions that offer lawyers more personal control in day-to-day work.⁶⁶ The most effective and practical way to address low morale or depression is to build greater intrinsic value, rather than provide just extrinsic rewards. Client contact, mentorship and a voice in management are more effective in conveying value and worth than large bonuses or expensive dinners.⁶⁷ To achieve this solution, firms should learn and recognize associates' strength and use that knowledge to shape a work environment.⁶⁸ Prevention strategies in the law firm context often relate to matters that first emerge in a law school. In cases where there is low decision latitude, self-esteem and the "undermining effect" emerge during the practice of law. This is further evidence that prevention strategies need to occur on a continuum basis.

⁶³ Seligman, "Unhappy", *supra* note 2 at 60.

⁶⁴ *Ibid* at 63.

⁶⁵ *Ibid*.

⁶⁶ *Ibid* at 58.

⁶⁷ *Ibid*.

⁶⁸ *Ibid* at 60.

VI. Depression as a Professionalism Challenge

A. The Effect of Depression on Our Current System

In our analysis thus far, the focus has been primarily on the various risk factors to suggest causes or conditions that reinforce depression. The remaining part of this paper takes a survey examination on why depression is a professionalism challenge as much as a law school and law firm problem.

For the profession, our current model has the effect of attracting a greater number of disciplinary problems with statistics suggesting that 40% to 75% of disciplinary actions are against lawyers who are chemically dependent or mentally ill.⁶⁹ More worrisome is the suggestion that the deteriorating mental health of lawyers could affect the self-regulation of lawyers in Canada. John Sopinka, former Justice of the Supreme Court of Canada, suggested that our current model restrains the profession's ability to grow. He states that signs of this impending problem include a lack of tolerance for pro bono and community work, limited time to train and develop young lawyers, no time to read outside the law, and increases in disciplinary problems.⁷⁰ Justice Sopinka's argument is alarming, but valid, considering this paper's analysis on the systemic and continuum nature of risk scenarios that cause or encourage depression.

B. Ethic Offenders and Discipline

An untreated lawyer is more dangerous to the public than someone who has recognized a problem and sought professional help.⁷¹ Organizers, coordinators, funding bodies and directors from Lawyers Assistance Programs across Canada have in recent years examined the link between mental illness and disciplinary proceedings. The "Ontario Report," revealed that drugs,

⁶⁹ Craig Cormack, "Lawyers turn to meditation to fight stress and improve performance." *Canadian Lawyer Magazine* (March 2009).

⁷⁰ Unknown, "Stop whining about hard work, Greenspan tells lawyers." *The Lawyers Weekly* (6 September 1991).

⁷¹ Pulliam, *supra* note 9 at 293.

alcohol, or “psychiatric” illness was present in nearly 50% of the 172 cases categorized as serious disciplinary proceedings.⁷² Their findings are based on examining the LSUC’s Discipline Digest between the periods of 1992-1995. The table results have been reproduced in this paper as an appendix.⁷³

The report does reflect an ongoing criticism that regulators and law societies often view and address all forms of mental illness as one large issue rather than recognize the differences between the various forms of illness.⁷⁴ This means the data lacks specificity as to whether the disciplined lawyers were affected by the illness of depression per se.

C. Challenges Related to Discipline – Depression as a Mitigating Factor

The issue of whether mental illness should be accepted as a mitigating factor has been a contentious matter for the profession. This debate is more developed in the United States, but in Ontario, depression is generally accepted as a mitigating factor in disciplinary cases as evident in the Ontario Report. There is disagreement over discipline for “middle range” misconduct complaints, or permitted-to-resign and suspension cases.⁷⁵ One specific point of disagreement is whether suspension is appropriate given that, by the time lawyers have reached the stage of a serious disciplinary hearing they have already “gone too far in the system” to warrant leniency.⁷⁶ To allow lawyers to otherwise return to the profession would be violation to the public duty owed by regulatory agencies. There remains no consensus to this issue, but the debate does demonstrate the complexity of the issue and unenviable position of professional regulators in addressing mental illness.

⁷² Canadian Bar Association, “Addiction and Psychiatric Impairment of Lawyers and Judges” <http://www.lpac.ca/main/Courses_01/alcohol_03.aspx>.

⁷³ *Ibid.*

⁷⁴ Pulliam, *supra* note 9 at 299.

⁷⁵ Canadian Bar Association, *supra* note 102.

⁷⁶ *Goren*, *supra* note 28 at 1097.

D. The Next Step for Regulators

The next step for regulators is to consider how to reverse the current trend so that mental illness is not overly represented in disciplinary cases. Currently, it is not foreseeable that the LSUC will create a working group aimed at specifically addressing the issue of depression. The *Rules* as they relate to depression, are likely to remain the same.

Governor David Johnston spoke to the Canadian Bar Association about his vision for the profession by 2017.⁷⁷ He spoke about the possibility of forced government regulation and the factors that would bring about that result. Johnston referred to the importance of maintaining the public's trust. As our study has attempted to demonstrate, once a lawyer has been disciplined trust with the public is invariably broken. The affected lawyer is likely not honest with themselves, their firm or professional colleagues. If the profession is to truly accept Governor General Johnston's speech about the risk of losing self-regulation, then we need to examine the root of what is causing the disproportionate number of disciplinary cases involving mental illness and a task force would be a place to start.

VI. CONCLUSION

In this essay, it is suggested that depression is not a personal failure and most certainly, not a moral weakness; depression is an institutional, workplace and professionalism problem. The illness is created and reinforced by occupational hazards and shared environments. This essay has outlined the science of depression and why the illness is not the result of a personal weakness, but a combination of biological, workplace, professional and environmental factors. Also outlined is the role of law schools in creating an environment that reinforces or causes symptoms of depression. Similarly, this analysis was conducted with regards to law firms.

⁷⁷ David Johnston, "Canadian Bar Association's Canadian Legal Conference – The Legal Profession in a Smart and Caring Nation: A Vision for 2017", (Speech delivered at the Canadian Bar Association's Canadian Legal Conference (2011) in Halifax, 14 August 2011), [<http://www.gg.ca/document.aspx?id=14195>]

Lastly, this paper examined how mental illness is disproportionately represented in disciplinary cases, making depression a professional issue. This paper suggests that to effectively implement any of the preventative strategies that has been suggested, the profession needs to accept the fact that depression is an endemic hazard of our profession and will likely occur in a large number of lawyers in the lifespan of their legal careers. This writer remains optimistic that in the face of the economic recession and with the risk of losing self-regulation, the time is now to reexamine how the profession addresses the problem of depression.

APPENDIX

Table 1: Categories of Disciplinary Disposition

Category of Disposition	Cases
1. Disbarment	29
2. Permitted to Resign	25
3. Suspension: 12 months or longer	16
4. Other	102
Total	172

Table 2: Rates of Lawyer Impairment

	Cases	Alcohol/Drugs	Psychiatric	Total	Percentage
1. Disbarment	29	2	2	4	14%
2. Permitted to Resign	25	6	6	12	48%
3. Lengthy Suspension	16	1	7	8	50%
4. Other	102	1	14	15	15%

From Canadian Bar Association “Addiction and Psychiatric Impairment of Lawyers and Judges”

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