JUDICIAL WELLNESS: VICARIOUS TRAUMA AND SECONDARY TRAUMATIC STRESS IN JUDGES

(Editor’s Note: For the past number of years I have been working on an article the topic of vicarious trauma in judges, and reading the very interesting studies and articles written on the subject. The concept for the article was originally intended as a guide to new judges on how to keep your head when all about you are losing theirs and blaming it on you. But as I got further along in my career, I realized that the person who most needed this message was yours truly. I hope there is something in this lengthy article that may be of some benefit to you, no matter what stage of your judicial career you are at.)

Contents:

1. Introduction: Some Personal Observations on Judicial Wellness

The subject of wellness within the legal profession is one in which I have been keenly interested from early on in my career. As a very new lawyer I was fortunate to have the influence of more seasoned members of the profession who were able to offer me personal guidance in addressing some behaviors and habits which, if left unaddressed, would have meant a very different and less enjoyable career path than the one I have been fortunate enough to follow. This in turn led to involvement with the Lawyers Concerned for Lawyers Program in Saskatchewan and the Lawyers Assistance Program in British Columbia. I have served as a peer volunteer with both organizations and have also served as a member of the board of directors of each of these bodies, including as a member of the founding board of the former.

In February of 2003 I became a judge of the Provincial Court of British Columbia. I had always imagined that becoming a (continued on next page)
judge would mean reduced levels of stress compared with those faced by members of the bar. Judges didn’t get stress, they caused it, or so I had believed. I was reminded what a friend of mine from Saskatchewan had said when he was applying to become a member of the bench: “If you’re going to be in the circus, you may as well be the ringmaster.” This made sense to me. No demanding clients, no concerns about billings or billable hours, no keeping up with Law Society rules and requirements, no worries about being sued, no lost sleep over whether or not a limitation period had been missed, no office or staff to manage; it sounded like Utopia.

I soon learned that judges have their own unique stresses and challenges, different from those faced by members of the bar. I learned this early on when I went for a congratulatory supper with an old friend and in the middle of the meal, my friend’s wife suddenly chose me as the focal point for every grievance she had with the criminal justice system as she went on a raging tirade against every lenient sentence ever imposed by every lenient judge in the country. Judges, I learned, ranked in public esteem somewhere around used car salesmen and lawyers (but mercifully ahead of politicians.) I soon learned not to discuss what I did for a living outside of legal circles because it seemed that everyone had some resentment, real or imagined, against the public justice system, which they were only too happy to vent if and when they had the opportunity for social interaction with a real judge.

I had witnessed colleagues who had made decisions which ran afoul of prevailing public sentiments in the media and the scorn that was heaped upon them from the community. In some cases I witnessed these judges being vilified on editorial pages and in radio and television reports. Sometimes reporters would try to ambush them as they left their parking lot, or worse, at the judge’s home. The experience of one British Columbia superior court judge and the public response to the judge’s decision in a notorious child pornography case is one of the best examples of the ugly side of media targeting and a profile of a very courageous jurist. When I had my own first experience with rendering a decision found unpopular in the media, it made me reluctant to ever open another newspaper. It didn’t seem to lessen the shock when one editorial writer who had excoriated me for a sentence I had imposed concluded her column by acknowledging that she hadn’t actually seen the reasons for my decision.

As a new judge I adopted a policy of putting up walls between work and home. I would never bring work home. If I had to work on a judgement I would do so at my office, never at my home. I also followed the habit suggested to me by a senior provincial court judge, who suggested shredding my notes on a matter once I was finished with it. My wise colleague told me that second-guessing the decisions of the day was a fool’s errand, and if I ever needed to revisit the matter, an audio recording of the actual proceeding could always be accessed. I followed that advice for some time. Over time however I would find myself lying in bed at night, trying to go to sleep, but instead replaying the worst scenes from my workday over and over in my mind. I had expected this to be something that newer judges might do, while more experienced judges would know better. Instead the reverse appeared to be the case for me.

One of the first things that every new judge has to do is to get fitted by a tailor for his or her robes and other judicial attire. The tailor I saw was a well-known and very experienced Vancouver tailor who for decades provided judicial attire for the judges of all levels of court in this province. When I was being measured, he said “I’m going to add a few inches to the waist of the pants. Every new judge gains fifteen pounds the first year.” Not me, I insisted. I had just completed my fourteenth marathon and there was no way that was going to happen to me. Fortunately for me, he ignored my insisting that I was different from all of the other judges he had dealt with over his lengthy career. It was a good thing too. He was right, I was wrong. I have heard the same thing from almost every other judge and I wondered why this was so. What was it about becoming a judge that caused us to jeopardize our health in this manner?

For a number of years I represented the Provincial Court of British Columbia on the board of directors of the Judges Counselling Program, which for Canadian judges is a sort of national equivalent to the lawyers’ assistance programs. In such capacity I
learned that stress manifests itself among judges in many of the same ways it does among lawyers and likely in the same ways as it does among much of the general population. What was unique for judges however was a strong reluctance to acknowledge that stress, for fear that doing so might somehow undermine public confidence in the Canadian judicial system. Denial and an unwillingness to seek help were endemic among judges. For example, at one judges’ conference I mentioned to a judge from another province that I was on the board of directors of an organization (the Judges Counselling Program) concerned about judicial wellness. The judge quickly responded by informing me that he had no problems that required counselling or assistance, but that if he did, he would prefer to be provided with written information about the problem and self-treat rather than actually have to talk to someone about the problem. For him, having to admit a problem to another person was more of a stigma than the actual problem itself.

All of this has fed my interest in the field of judicial wellness. Like many small groups who face unique tasks that members of the general public are unfamiliar with, judges face unique stressors. In my time as a member of my court, I have come to feel close to my colleagues and concerned for their welfare. They are good people trying to bring order amid chaos and dysfunction. They become overly concerned with making life better for others, which can often result in their overlooking their own well-being. Because they are people that I care about, I am keenly interested in helping them to face these challenges, and in the process to help myself.

2. Defining Vicarious Trauma

In the course of receiving reports about health and wellness issues confronting members of the judiciary I learned about the concept of vicarious trauma, sometimes also called secondary traumatic stress or compassion fatigue. This is a condition often experienced by persons in the helping professions (such as health care professionals, police officers, firefighters and others) who acquire their own unhealthy symptoms as the result of having to encounter the negative experiences of others. The authors of an excellent paper on vicarious trauma in Judges define it as follows:

“Vicarious trauma refers to the experience of a helping professional personally developing and reporting their own trauma symptoms as a result of responding to victims of trauma.”

In another very informative paper prepared for the Legal Profession Assistance Conference of the Canadian Bar Association, Donald C. Murray Q.C. and Johnette M. Royer offer the following definition:

“It appears to be best understood as an effect. The effect is a disruption of an ordinary level of the psychological and emotional functioning of a helping professional. The disruption has a negative effect on the professional’s competence in performing professional tasks. This disruption seems to be caused by a professionally obligated involvement with traumatic events, or a professionally obligated close contact with persons who have been involved with traumatic events.”

In their excellent 2016 book on meditation for lawyers, entitled “The Anxious Lawyer”, the authors ably summarize how lawyers take on the suffering of their clients, to the lawyer’s detriment. They write at page 79:

“As lawyers, we’re constant witnesses to human suffering. In many ways, the practice of law is very intimate. Our clients share their deepest, darkest secrets, and we’re the keeper of these secrets. Holding other people’s secrets can take a toll on us. As one woman who does child advocacy work shared, there are certain things you hear or see that you can never un-see or un-learn. Despite this, we are not taught tools for handling the trauma of witnessing the pain of others. We’re often told we shouldn’t bring our emotions or feelings into any case and there is no room for it in any professional context. It we cannot have a healthy outlet or a (continued on next page)
way of processing our emotions and caring for ourselves, it is any surprise that as a group we disproportionately use substances to dull the pain?"

These comments about bearing witness to the pain of others, and to things we hear or see that we “can never un-see or un-learn” apply to judges as well. More specific to judges, I find the following definition from Judge Michael Town, Circuit Court Judge for the State of Hawaii, to be particularly helpful and accurate:

“Compassion fatigue in judges is the result of vicariously becoming worn down from hearing and deciding cases where people have been physically and emotionally injured, hospitalized and at times killed. These are litigants who suffer on our watch, so to speak. These cases have a way of creeping into our lives and this is only natural if the judge cares about and is engaged in his or her work. For most judges, the volume and nature of the cases can be overwhelming at times. Indeed, one tough case with a bad outcome can be devastating.”

Those who have studied this issue have noted that it has become increasingly more relevant and prevalent among judges. Criminal and family court cases bring with them exposure to the worst aspects of human behaviour and cruelty. For example, judges who sit on the court I belong to can expect to be confronted with several cases involving fatalities each year. Criminal dockets contain numerous allegations of serious violent offences including aggravated assault, assaults causing bodily harm, assaults with weapons, sexual assaults, domestic violence and cruelty to animals.

Offences involving child victims are particularly distressing and every judge who is a member of the court that I belong to can expect to hear a significant number of hearings involving child sexual abuse, sexual touching, invitation to sexual touching, sexual exploitation and child pornography cases. The latter are especially emotionally painful, knowing that somewhere a helpless infant has been degraded, abused and objectified, made to feel powerless in such a dehumanizing manner. The victimization of children and other sexual assault victims is compounded when they are required to re-enact their hurt through testimony and undergo cross-examination which, while legally permissible and sometimes required in an adversarial system of checks and balances, can also be very degrading to the witness, often resulting in a type of re-victimization.

Family cases also contain many distressing aspects. Child protection cases, by definition, involve some instances of harmful conduct against children who require the protection of the state. Custody and access battles generally contain significant dysfunctional aspects of harm to vulnerable family members.

There is little wonder that a steady diet of hearing about this unseemly side of human behaviour would have adverse effects on judges. As the authors of one article have stated, “Judges’ dockets have changed dramatically in a short period of time and will continue to change as society tries to hold itself accountable for families, children, and communities in distress by placing more responsibility on the judiciary.”

Judges with administrative responsibilities also face difficulties in attempting to manage the behaviour of difficult colleagues (often a futile pursuit) and to do more with less, as resources and budgets fail to keep pace with demand. For many American judges, they must take on their responsibilities compensated with low judicial salaries that have not been increased in many years. Many of these judges must also manage budgets that are inadequate for their expectations.

Isolation is a common stressor for many judges, especially for those who live in smaller communities, leading to a “fish bowl” existence. Regardless of the
size of the community or chambers, isolation is an occupational hazard for judges. As the Honourable Judge Gerald Lebovitz, a Supreme Court Justice in New York County writes:

“Many judges suffer from isolation. The burden of judicial decision-making is heavy. Judges must make these decisions alone. Loneliness plagues judges who are isolated due to their position in society. After taking the bench, judges often lose contact with friends, family, and peers.”

According to two sources cited by Judge Lebovitz, female judges report a greater level of isolation than their male counterparts. The study cited reports that, among 500 judges surveyed, 73% of female judges reported experiencing compassion fatigue and symptoms of depression, as compared with 54% of the male participants in the survey. Levels were higher in new judges who were female.

In many jurisdictions, high on the list of concerns for many judges is the threat of interference with the judge’s personal safety or the safety of the judge’s family. The tragic examples of the deaths of the husband and mother of U.S. District Judge Joan Lefkow in Chicago in 2005, the fatal shooting of Judge Rowland Barnes in Atlanta in 2005, the 2006 wounding of Nevada Family Court Judge Chuck Weller, the fatal shooting of Arizona District Court Judge John Roll in 2011, or the 2015 shooting of Texas District Judge Julie Kocurek of Austin outside of her home are all chilling reminders of the levels to which some disgruntled or mentally unstable litigants will go to as a means of expressing their displeasure with judicial decision-making.

There has been slowness in recognizing judges as persons who may be vulnerable to vicarious trauma and compassion fatigue. Judges do not have the same immediate exposure to the graphic nature of trauma such as front-line workers like police officers, ambulance attendants, nurses, social workers and others. The reality is that judges and lawyers are increasingly provided with traumatic imagery such as crime-scene photographs, recorded 911 calls, video evidence, graphic medical reports with photographs of recent injuries, autopsy reports, photographs and videotapes in child abuse and child pornography prosecutions, and an array of other evidence which would shock normal sensitivities. In cases where there has been a fatality, the courtroom is often filled with grieving family and relatives whose pain for their loss is on display and who view the judge as the public face of a system that is inadequate to respond to an injustice which has resulted in their loss.

The judge’s problem is compounded by a duty to remain objective and dispassionate, performing judicial duties while being forced to suppress natural human emotions for fear of being accused of bias.

3. Manifestations of Vicarious Trauma in Judges

The scientific literature suggests that vicarious trauma manifests itself in a number of ways. Symptoms are often categorized into the following groups:

1. Behavioral symptoms: Examples of this are sleep disturbances, nightmares, changes in appetite, nervousness, forgetfulness, negative coping behaviours such as smoking, drinking, or gambling, with or without addition, irritability towards others, or becoming withdrawn.

2. Physical symptoms: For example panic symptoms such sweating, rapid heartbeat, difficulty breathing, dizziness, presence of aches and pains, a decreased energy level, or a weakened immune system with accompanying increased susceptibility of illness.

3. Cognitive symptoms: These may include minimization of the subject’s vicarious trauma, lowered self-esteem, increased self-doubt, trouble with concentration, confusion, disorientation, perfectionism, racing thoughts, a loss of interest in previously enjoyed activities, repetitive images of the trauma, and thoughts of harming oneself or others.

(continued on next page)
**Vicarious Trauma (contd.)**

4. **Emotional symptoms:** These include feeling helpless or powerless, guilt, numbness, oversensitivity, emotional unpredictability, fear, anxiety, loss of empathy, increased intolerance, sadness or depression.

5. **Social symptoms:** These may manifest themselves by withdrawal and isolation, loneliness, irritability and intolerance of others, distrust, projection of blame and rage, decreased interest in intimacy, or changes in parenting style. A helpful summary of the many manifestations of vicarious trauma among judges and lawyers is found in an excellent article in the February 2015 edition of Canadian Lawyer magazine by Donalee Moulton, entitled “Vicarious Trauma: The Cumulative Effects of Caring”. The author writes:

> “Withdrawal is one of the common symptoms of vicarious trauma. Other symptoms include difficulty solving problems, a sense of being disconnected from work and home, and feelings of powerlessness. In response, lawyers and judges may take on greater responsibility, work longer hours, and attempt to exert greater control over others. They may also become more distant and withdrawn, more cynical, and even more accident prone. It is not unusual for victims of vicarious trauma to develop chronic health problems. Sleep is also disturbed, notes [Dr. Isaiah] Zimmerman, who has conducted interviews with more than 55 Canadian judges on the issue of vicarious trauma. ‘It impinges upon their consciousness. They can’t get rid of it.’”

The author goes on to note that “isolation only increases the potential for developing vicarious trauma.

6. **Bullying behaviour:** This may be situational, caused by a bad day, or it may be a pattern of a judge who takes advantage of the power imbalance between himself or herself and the lawyers or litigants. (Fortunately, this type of behaviour appears to be less frequent than in past eras).

7. **“Judgeitis”:** Counsel will often refer to a judge who has drifted into the realm of unpredictable behaviour as having “judgeitis”. In John Mortimer’s 2006 work about his fictional alter-ego the criminal barrister Horace Rumpole entitled “Rumpole and the Reign of Terror”, Rumpole explains what judgeitis is to his wife Hilda in this extract from Hilda’s memoirs:

> “Another annoying thing. Rumpole told me that he was offered a ‘circus judgeship’. The offer came through a Q.C. called Peter Plaistow, who is apparently very close to the Prime Minister and who comes across so well when he talks about politics on television. Well a circuit judge may not be the grandest job in the land. Rumpole would only get to be called ‘Your Honour’ and not ‘My Lord’, like a High Court Judge. But in my opinion, Rumpole ought to be quite flattered to be called ‘Your Honour’, and it would provide him with a safe job and pension for us when he retired. ‘Why not take it,’ I put it to him quite tactfully, ‘and spare yourself all this anxiety about losing or winning cases?’

> “I don’t want to do it,’ he said. And when I asked him why ever not, he said, ‘I might develop “judgeitis”’.

> “Of course I asked him what that was.

> “A ridiculous inflation of self-importance, with increased intolerance; a fatal tendency to suck up to
juries, to interfere with cross-examinations by defending counsel; and doing your best to find all the customers in the dock guilty.”

Judge Gerald Lebovits writes:

“Judges who experience judgeitis become overly absorbed in their professional role, lose some of their former identity, and become ‘unable to relate as a peer to most people.’ The power trip of judgeitis can build up a judge’s façade of infallibility that can trickle into the courtroom and the judge’s personal life. New judges are especially susceptible to judgeitis. Culture shock accompanies the first months after judges are appointed or elected. Their once-private life is now public. The learning curve is steep. It’s quite intimidating.”

In a study of judges conducted in 2003, the results of that study disclosed that 63% of those judges surveyed reported experiencing at least one (or more) symptoms of vicarious trauma, with female judges being more likely than their male counterparts to report the presence of these symptoms. The study also found a significant difference with those judges having less than seven years of experience and those having more.

Intuitively, one might suspect that with experience comes the ability to cope with stressful situations and therefore symptoms of vicarious trauma may be expected to subside. The study found the reverse to be true, with judges with seven or more years on the bench being more likely to report the presence of one or more symptoms, as well as being more likely to report a significantly greater number of symptoms. The most common symptoms experienced were sleep disturbances, intolerance of others, and physical complaints in the short term, and sleep disturbances, depression and a sense of isolation in the long term.

These manifestations have been recognized more openly in recent times than they have in the past. But the factors that cause these symptoms continue to grow. Carol Baird-Ellan, former Chief Judge of the British Columbia Provincial Court made the following observation in August of 2017:

“Apart from traumatic material, judges’ workload has been steadily increasing over the years, and that has caused an increasing stress level. Administrators and governments are always keen to achieve court efficiency (as are judges) but often the political initiatives that derive from those sentiments result in case overloads, briefcases bulging with reserved decisions, delays in decision delivery, and eventually, burn-out. That is another large topic - how we can best achieve efficiency without burning out our judges, which I will leave for another day, but it certainly contributes to the need for support and counseling from time to time.”

4. Addressing the Problem: Coping Strategies
(a) Maintaining a Healthy Work/Life Balance

In various studies and in the literature that has been referred to in this article, judges have been asked to identify strategies that help them to cope with the effects of vicarious trauma. A common theme in many of these strategies is the idea of maintaining a healthy work-life balance. “Balance” in this context often sounds like a meaningless buzzword, without a clear picture of what it involves. It is based on the idea that judges should not be defined as people by their occupation. The job of being a judge is only one aspect of the judge’s identity. Judges are also spouses, parents, grandparents, children, friends, lovers, neighbours, students, athletes, coaches, mentors, musicians, hobbyists, nerds (with interests other than law), church members, authors (of non-law related subjects), humorists, travelers, and so much more.

For those judges participating in these studies who were able to identify a coping strategy that worked for them in combatting (continued on next page)
Vicarious Trauma (Contd).

the effects of vicarious trauma, that strategy often included their participation in an activity that was not law related, and in which the judge was able to leave his or her work at work. Interestingly, these studies do not disclose any material difference in this respect between male and female judges.

(b) Physical Fitness

Physical fitness seems to cure a multitude of ills, and it is often identified as a means of maintaining the type of balance which will combat job stress. It is also beneficial in improving the quality of sleep, lowering blood pressure and addressing other health-related concerns that exacerbate or are exacerbated by work stresses.

(c) Laughter

Many of the participants in the 2003 study identified laughter as a helpful coping strategy. The benefits of laughter have been identified as assisting in relieving physical tension and stress, boosting the immune system, aiding in the release of endorphins, improving the function of blood vessels and increasing blood flow, which can help protect against heart attack and other cardiovascular problems. One caution contained within literature on vicarious trauma is that “gallows humour” increases the likelihood of experiencing the negative effects of vicarious trauma. Gallows humour is defined as humor about very unpleasant, serious, or painful circumstances.

(d) Family Activities

Many judges surveyed in the 2003 study suggested that family activities (not involving discussion about work) were a good method of decreasing work stress. One of the helpful practical suggestions emerging from the survey was for the judge to have a regular “date night” with his or her spouse.

(e) Meditation and Mindfulness Practices

Another positive strategy often employed to combat work stress is the practice of meditation. A recent publication specifically dedicated to teaching lawyers how to apply the practices of mindfulness in their lives is a book by lawyers Jeena Cho and Karen Gifford entitled “The Anxious Lawyer: An Eight Week Guide to a Joyful and Satisfying Law Practice Through Mindfulness and Meditation”. To those skeptical about meditation, let me simply say, “don’t knock it until you’ve tried it.” Yet another technique to increase one’s happiness level is the practice of writing a daily “gratitude list”, in which one makes a list each day of five to ten things to be grateful for in one’s life.

(f) Judges’ Counseling Programs and Peer Support Programs

Perhaps the greatest resource available to judges struggling with work stress is the availability of counselling programs especially tailored for judges, such as the Judges Counselling Program. Established in 1995, this program provides current and retired federally and provincially appointed Judges, Justices of the Peace, Masters, Prothonotaries and their families in Canada with access to a confidential counselling service. Counselling is available to address problems such as alcohol and substance abuse, burnout, financial stress, bereavement, emotional problems, relationship problems, child and elder care issues, nutrition and healthy eating, smoking cessation and many other types of issues. Information for assistance can be found on the program’s website at http://www.jcp.ca/ or by calling 1-866-872-6336.

Most states and provinces have lawyers and judges assistance programs which offer a multitude of counselling and other services designed to address work stress and its
multitude of symptoms. For example, in our jurisdiction, the Lawyers Assistance Program of British Columbia (LAPBC) also makes its program available to current and former judges as well as their families. LAPBC provides confidential outreach, education, support and referrals to judges, lawyers, articling students, paralegals, legal assistants, support staff and other members of the legal community. Perhaps the most important adjective in that sentence is “confidential”, something which cannot be overstressed. Areas in which help is provided by this program include alcohol and drug abuse, anxiety and depression, career and work issues, codependence, family issues, health and medical issues, legal and financial issues, gambling, relationship issues and stress in general. This program can be accessed through its website at http://lapbc.com/ or by calling 1-888-685-2171 toll free or 604-685-2171 in the greater Vancouver area.

The Judicial Wellness Committee of the American Judges Association (AJA) is another source for directing its members to counselling programs available to judges throughout the United States and Canada. The AJA is also very diligent about including a wellness segment in all of its education conferences.

(g) On-the-job Strategies

When it comes to coping strategies while the judge is on the job, I was interested to learn that many of the most recommended strategies were ones that my senior colleagues had recommended to me when I was a new judge. These included strategies designed to help the judge to not dwell on decisions once made. The advice that I had been given about not hanging on to my old notes immediately came to mind. Maintaining a separation between work and home is also seen as a good coping strategy.

Good judges are diligent and hard-working, and being a judge is not a “nine to five” clock-punching career. This diligence will often require working after sitting hours during the evenings and on weekends. Going to one’s office to work on judgments rather than bringing them home can help in maintaining a psychological separation of work and life and condition one to a mindset where, when a judge is at home, he or she is not stressing about work. This type of separation is not always possible, such as in the case of judges who live in a different community that they work in, necessitating a commute if they wish to return to the office to write a judgement. For these judges, alternative strategies include either going to the nearest court house to work there (something done by many lower mainland judges on my court who live in Vancouver), or designating a work area in their home, such as a basement office. The idea is that work is confined to that small area, and outside of that area, the home is a work-free zone.

One colleague of mine is a “morning person” and has been for all of his professional life. His habit is to get into his office very early, in order to plan and organize his day and head off any stresses. Another judge I have had the pleasure of working with, who is very highly respected and is an example of an exemplary judge, has for years arrived at the court house he is working at just a few minutes before court starts. This works for him and works very well. I conclude from these experiences that finding a rhythm that helps alleviate work stress can be a personal strategy. It seems that Polonius was correct when he recommended to Hamlet “to thine own self be true.”

Collegiality is a good way to deal with the feeling of being alone in confronting judicial challenges and stresses. I have found it is beneficial to talk to a colleague, preferably one who is more experienced, who has “been there, done that”. Often the more seasoned colleague may have good practical advice to share, but even when this is not the case, sometimes just being able to expose our fears to the light of day by speaking them can diminish the power they have over us, or give us the ability to see them as they really are and not as they have morphed within our imaginations.

It can help if judges have someone on their bench, or within the profession, as part of a confidential check-in regime, not for the purposes of gossip or complaint, but to “be real” with about the stresses in our lives. For many years I would get together once a week with my (continued on next page)
Vicarious Trauma (contd.)
friend and colleague, the late Judge Russ MacKay, who was once the first staff counsellor of the Lawyers Assistance Program of BC. In our regular get-togethers, “fine” was not considered an acceptable answer to the question “how are you?” It was a beneficial opportunity for both of us to, as youth like to say, “call each other on our stuff.” (I suspect it was more beneficial for me that my Zen-like friend. I miss him terribly.)

This strategy accords with advice given by John Starzynski, a volunteer with the Ontario Lawyers Assistance Program, and past president of the Mood Disorders Society of Canada (in the previously quoted article in Canadian Lawyer magazine.) In his words, “You need to have a close friend or confidant, someone who will be unconditionally supportive, but will be honest with you. If you isolate yourself, you don’t have perspective.”

On our court, a frequent occurrence is for a judge confronted with a legal or practical problem to send an “email to all” directed to all 150 plus members of the court, succinctly stating the concern and seeking helpful advice. Parties are not named in the email, but a perplexing and often unique legal issue is neatly framed and sent out among the collective wisdom of the court. This is usually met with a series of helpful suggestions and advice. It has been proven time and time again that all of us are more clever than any of us, and it demonstrates the strength that lies within (and the comfort that comes from) collective wisdom. This practice is especially helpful for those who sit in a “one judge town” with no colleagues in the office to bounce ideas off of.

I offer a caveat for those judges called upon for advice from other judges, particularly from newer judges. Be a listener. Many of us (I include myself in this) have the tendency to meet a colleague’s problem with a response akin to “That’s nothing! Let me tell you about the problem I faced one time.” As may be suspected, that’s not very helpful and can cause the colleague to feel undervalued and unimportant. We must fight this urge and stifle that type of response in order to make the colleague who has raised the problem feel valued and listened to. (This habit comes in handy when hearing from litigants too!)

Frequently judges go out for lunch together and this can be a way of de-stressing. In my experience, new judges want to talk about whatever trial they happen to be hearing at the moment, while older judges prefer a “no shop talk” rule for lunch. I fall in the latter category on both counts. I say this for two reasons. Firstly, allowing work to invade personal time increases the potential for vicarious trauma. It inserts those disagreeable people into the judge’s mind and thoughts even when they’re not present. (People in 12-step programs refer to this as letting the other person “live rent-free in your head.”) Talk of some sort of case involving man’s inhumanity to man may trigger a memory of some similar unpleasant memory that a colleague may not be keen on recalling at the moment. Secondly, I have often been among judges in a public restaurant who loudly discuss the details of some matter before them, oblivious to whoever else might be in the restaurant. It is awkward to have to be someone else’s conversation police, and far better to get into the habit of leaving case-specific discussion at the court house.
Often judges will be asked to perform ceremonial duties on their own time, outside of normal sitting hours. This may include speaking to students, swearing in or affirming municipal councils, school boards or police officers, or speaking at legal education events. In my experience, many judges do not like to volunteer for these duties, seeing it as an infringement of their free time. I take an opposite point of view. While my daily duties generally expose me to examples of unhealthy behaviours (e.g. crimes involving victims, mean-spirited parental battles that treat children as possessions to be won, rather than fragile humans to be nurtured), it is a pleasant change to see a young police officer excited about the start of a new career, or concerned and caring citizens beginning a public duty with the betterment of their community in mind. I find it a pleasure to have a front row seat to this type of positive energy while wearing my work uniform.

Our court offers the opportunity to travel outside of the district that I normally sit in. Travel can often be accompanied by its own unique stressors, which may include long drives (often in winter driving conditions), trying to get to sleep in strange hotels, or living on restaurant food. Judges are not uniform in how they view travel. For some it piles on more anxiety. For others, it is in keeping with the old adage “a change is as good as a rest.” Personally, I fall in the second group. As I write this, I have just returned from sitting in the fortieth different court location in my province. I find the travel a pleasant change. It is often the opportunity to see some amazing scenery, to meet interesting people, and to learn a fresh approach to a common problem. In communities where resources may not be as plentiful as in larger centers, resourcefulness and ingenuity often flourishes. What I am constantly amazed at is the excellent abilities, work ethic, kindness and compassion of the individuals who work in court registries, as sheriffs (the title of those who keep our courts and our judges safe), as lawyers, as probation officers, as police officers in different settings, as employees of recovery homes and treatment centers, as AA and NA sponsors, as members of local restorative justice committees, and in many other capacities. They are a constant reminder that we are fortunate to be part of a helping profession.

Judge Gerald Lebovits offers a number of other helpful practical strategies for stress management techniques that judges can utilize. These include the following:

1. Eating a healthy, but light, lunch.
2. When feeling agitated or overwhelmed, get up and go for a walk.
3. Utilize allotted vacation time.
4. Secure a support network of colleagues who face similar stresses.
5. Attend events such as judges’ conferences and judicial education programs.
6. Participate in mentoring programs, whether as mentor or mentee.
7. Employ systems for legal research and precedents, and utilize those which are already available.
8. Delegate functions that can properly be delegated.
9. Address communications such as email promptly, but think twice before pressing “send” on an email that may seem intemperate, harsh or injudicious.
10. Remember that the perfect is the enemy of the good. Don’t overstress when writing decisions.
11. Don’t be afraid to say no to optional requests, when feeling overburdened.
12. Don’t stress about the possibility of being appealed. Just decide the case.
13. Study and follow ethical canons.
14. Stay out of political drama.

(Concluding on next page)
Vicarious Trauma (Continued)

15. Take advantage of legal education opportunities.

5. Conclusions

Every study on vicarious trauma in judges seems to come to the same conclusion: there is a need for greater awareness of this issue on the part of judges, and in particular, a need for greater self-awareness. While the problem has been studied more intensively in the case of first responders such as police officers, social workers and fire-fighters, and to a lesser extent in the case of lawyers, studies seem to have only scratched the surface when it comes to judges. Authors Jared Chamberlain and James T. Richardson in their chapter entitled “Judicial Stress: A Topic in Need of Research” (from the book “Stress, Trauma and Wellbeing in the Legal System”) note that this is an issue of great concern, calling for more research. They write:

“Converging evidence also suggests that judges are susceptible to STS [secondary traumatic stress] as judges express empathy and compassion for courtroom actors who often experience negative events. Finally, judges appear to be at risk for occupational burnout: They encounter workplace conflict, unprepared courtroom actors, and an overload of responsibility. Although these stressors are not unique to those in the judicial profession, they are especially important to understand and account for because of the instrumental role judges play in the justice system.”

It is important for judges to have an awareness of how a daily diet of exposure to the worst in human behaviour can affect their well-being, before the secondary problems that flow from this condition present themselves. No matter what stage in his or her career that a judge may be at, it is always the right time to consider such things as how healthy work/life boundaries can be set, how unhealthy on-the-job behaviours and habits can be addressed and eliminated, and generally how to avoid letting the job of judging have a negative impact on one’s life.

It should always be kept in mind what a tremendous privilege appointment to the bench is. There are many rewards, not the least of which is the daily opportunity to make a positive difference in the lives of so many people.

There is so much to be grateful for. When stressors are properly managed and a healthy work-life balance is accomplished, being a judge can be, in the words of Judge Wilfred Klinger, “the best job in the world.”

(KDS)

6. Bibliography

Peter Jaffe Ph. D., Claire Crooks Ph. D., Billie-Lee Dunford Jackson Ph. D. and Judge Michael Town, “Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice”, Fall 2003, Juvenile and Family Court Journal, page 2


Judge Mary M. Schroeder “Judging With a Difference” published in 2002 at 14 Yale Journal of Law and Feminism, 255 at page 260

Donalee Moulton, entitled “Vicarious Trauma: The Cumulative Effects of Caring” February 2015 edition of Canadian Lawyer Magazine at page 25


“Stress, Trauma and Wellbeing in the Legal System”, Oxford University Press, 2013 (edited by Monica K. Miller and Brian H. Bornstein)