

**Tristan Jepson Memorial Fund - Minds Count 2018 Lecture**  
**29 November 2018**  
**Banco Court, Supreme Court of Queensland<sup>1</sup>**

**Introduction**

The land on which this fine court is built was known to the Jagera and Turrbal people as Meanjin. They prospered here for tens of thousands of years before European contact, sometimes holding meetings to discuss ways in which the health of their members could be improved, in essence, much like us this evening. I honour their elders, past and present, and all First Nations people here tonight, as we continue that ancient tradition.

Thank you for inviting me to give this important lecture. I am not proud to confess that until Gareth Beacham QC telephoned and invited me to speak tonight, I did not know who Tristan Jepson was or of the valuable work done by the Tristan Jepson Memorial Fund, now Minds Count. When Gareth enlightened me a little, I was, of course, immediately supportive of an initiative which aimed to educate people about the deleterious effect of mental illness on law students, lawyers and judges and how best to alleviate it. But I was hesitant about my authority and experience to present this lecture. I said I would think about it.

I went to the Minds Count website and learned about Tristan Jepson, a 26 year old talented lawyer, who, as an undergraduate wrote and performed comedy as director of the University of NSW Law Revue. In 2003, Tristan joined the cast of the AFI award nominated sketch comedy TV program, *Big Bite*, which played in prime time on Thursdays on Channel 7 and has since been repeated on Foxtel's Comedy Channel and 7Two. Tristan had enormous potential as a lawyer, performer and human being, but the following year, after struggling with clinical depression for some time, he took his own life. His grief-stricken mother, Marie, with the full support of her husband, Tristan's father, George, determined to forge something positive from this tragedy. Together they established this foundation, to focus on improving mental health in the legal community through various measures, one of which is a series of annual lectures, originally only in New South Wales and sponsored by Tristan's alma mater, UNSW, but now also in other States. I commend QUT for sponsoring this valuable Queensland lecture series.

Another important Minds Count initiative is its Workplace Wellbeing: Best Practice Guidelines, adopted by more than 220 predominantly legal workplaces, throughout Australia and internationally. These guidelines emphasise the protection and promotion of the psychological well-being of all staff through a commitment to active prevention of mental illness and personal safety. They require the prevention of psychological harm through intentional, reckless or negligent acts or omissions. They foster a workplace where staff feel safe to speak up about work or personal concerns without fear of embarrassment, rejection, or punishment. They require employers to strive to create an evidence-based framework for a safe and psychologically healthy workplace. I saw that the Minds Count website has access to a

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<sup>1</sup> The Hon Margaret McMurdo AC

great deal of evidence-based material on how to reduce workplace stress in the legal profession, improving workplace culture, and building resilience and psychological safety. I was so impressed that, in my post judicial role of Chair of Legal Aid Queensland, I passed the information on to CEO, Anthony Reilly and suggested that LAQ should consider signing up. I was thrilled to learn that LAQ was already a signatory and, even more importantly, that it conscientiously sought to implement those guidelines in the workplace.

I realised that, while I could not present a lecture about my personal tale about a battle with mental illness, few of us are more than one degree separated from its dreadful effects. Members of my extended family have battled depression and, decades ago, I lost a dear and talented undergraduate niece to suicide. I knew from my more than 40 years in the legal profession and the judiciary that too many lawyers suffer from depression and anxiety, with students and young lawyers particularly vulnerable. My second associate, talented lawyer and wonderful human being, Julian Wagner, later in his life, like Tristin, suffered from depression and ultimately took his own life. His twin sister, Jacinta, much like Marie and George Jepson, retrieved something positive and worthwhile from the tragedy through the Julian Wagner Memorial Fund, a registered charity which works to end the death penalty throughout the world. This was something about which Julian was passionate.

Another talented young law graduate and PHD candidate who I once appointed as my associate was, at the last minute, unable to take up the position because of her recently diagnosed serious clinical depression.

Over the years, I have observed that lawyers and judges under stress all too often unsuccessfully self-medicate, most commonly with alcohol. From the many legal profession disciplinary cases I dealt with as a court of appeal judge, I learned that untreated mental illness and unsuccessful self-medication with alcohol was a too common causative feature of the professional failings. As a judge, I often spoke to law students, to new practitioners at admission ceremonies, and to established lawyers of the need to keep physically and mentally well, placing it as high as a professional responsibility.

I have addressed judicial officers at the Judicial College of Victoria at a Balancing the Demands of Judicial Life Workshop on the topic, Sources of Stress in Judicial Life.

And personally, I had managed to stay upright while taking on the challenges with Phil, himself a successful lawyer and later judge, of raising four children and juggling a busy trail-blazing career. These challenges included, rising from a relatively junior District Court judge to become the President of the Queensland Court of Appeal, the first woman in Australia to take on such a role. And in 2013 and 2014 when it was reasonable for me to think the challenges were over, I was called on to lead the Supreme Court of Queensland through a sustained double barrel attack on its independence from elements of the government of the day and the Courier Mail, with the attackers unfairly attempting to portray the conflict as a personal one between a knock about bloke and an out of touch, elitist woman judge.

After all this reflection, I decided that perhaps I could make a useful contribution to the vision of Minds Count in presenting this lecture and I happily accepted Gareth's invitation. In speaking tonight, I honour the memory of dear Tristan, the vision of his wonderful parents, Marie and George, and the commendable work of Minds Count.

If you or someone close to you suffers from depression or anxiety, you, they, are not alone. The World Health Organisation reports that between 1990 and 2013 there has been an almost 50 per cent increase in the number of people suffering from depression and or anxiety, from 416 million to 615 million, almost 10 per cent of the world's population. But it is even worse news for Australian lawyers where the figure rises to 30 per cent.

In a joint research project, the World Bank and the World Health Organisation have found that depression and anxiety cost the global economy \$US1 trillion each year and that every \$US1 spent on early treatment such as psycho-social counselling and anti-depressants, leads to a return of \$US4 in improved health and ability to work. It is not rocket science to deduce from this that it makes even more economic sense to prepare lawyers with strategies to keep mentally well as part of their legal education, both at university and beyond, and to create legal workplaces conducive to mental health. More validation, be it needed, for the work of Minds Count and this lecture series. Keeping more legal professionals mentally well will reap huge benefits, not only to the individual, but also to the employer, the client, the legal profession, the justice system and the community.

Tonight I will speak about factors which I consider may help law students, practitioners, academics and judges maintain sound mental health and help ensure they can make their best contribution to their professional work and its vital institutional role in our democracy, protecting the rule of law and delivering quality access to justice to clients. First, I will discuss in a little more detail the TJMF/Minds Count Guidelines for best practice in the workplace. Next, whilst emphasising that I am no expert in mental health, I will discuss ways in which I think individuals may be able to maintain optimal mental health. While recognising that genetics and life experience may play a role in some forms of mental illness, I suggest in this lecture that the best way to stay mentally well is to strive for both a healthy personal lifestyle and a healthy workplace. I will then discuss the Victorian Bar Association's recent health and safety report which revealed that, of the 856 respondents, two thirds of female barristers and 58 per cent of male barristers had been bullied by judicial officers and that this was most significant area in which their working life could improve. This will lead into a discussion of the need for a Judicial Commission, in Queensland and Federally, to deal with complaints, including of bullying, against judicial officers. I will conclude with some brief final observations.

### **The TJMF/Minds Count Guidelines**

There are currently 13 TJMF/Minds Count Guidelines.

1. The first is to provide a workplace with an organisational culture of trust, honesty and fairness, uncontroversial for a legal workplace where high ethical standards should be the norm, you might think. But after the shocking revelations still pouring out of Kenneth Hayne's *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*, nothing can be assumed. The ever-increasing emphasis on running legal practices as businesses, too often to the detriment of legal professional responsibilities, requires that this should be firmly stated as the first guideline. A workplace culture not founded on trust, honesty and fairness will fail its employees, its clients, the justice system and the community which the legal profession is duty bound to serve.
2. The second is a workplace where staff feel supported and are able to obtain psychological and social support when needed. Each workplace can individually assess how best to achieve this in all the applicable circumstances. Every employee should be clearly instructed in what help is available and how to access it if and when required. For some years now, Queensland court staff and judges' associates, who frequently have to confront horrific accounts of base human conduct in the course of their employment, have had confidential counselling available to assist them if and when required. They are informed of this as part of their initial training and the information is also in workplace manuals. Larger workplaces like LAQ and State and Federal departments and agencies have similar arrangements. The Queensland Law Society similarly offers a free confidential counselling service to members through Lawcare, as does the Bar Association of Queensland through Barcare. Employees should know to whom within the workplace they can speak about a problem and where they can access confidential professional assistance.
3. The third is that staff need leadership; they need to know what to do in their work and how their efforts contribute to the overall goals of the organisation. This is facilitated by clear communication at regular organisational meetings. If they feel valued and that their work has meaning, they will have job satisfaction and be prepared to go that extra mile for the employer.
4. The fourth is that staff must be treated with civility and respect. As this is a professional requirement, it is disappointing that it needs to be articulated. But no-one is perfect. Even the best employers can lose their cool under stress. A reminder is prudent. I remember a notorious case where the legal professional misconduct included the senior practitioner's constant bullying of and foul swearing at and in front of his personal staff.
5. The fifth is that staff should feel they have a good job fit. This places responsibility on both employer and employee. If you really want to work in a community legal centre helping the disadvantaged but you are working in a top tier firm's banking and financial services arm and acting for big business, this may not be the workplace for you. Look at your options. Could you change sections and work for the pro bono partner? Or do you need to find a different workplace? And if you dread public speaking and oral advocacy but dream about making lots of money advising clients on complex aspects

of tax planning, you are unlikely to be comfortable rushing to the Magistrate's Court on short notice to do drink driving pleas. The problem may be solved by a change within the workplace or a more significant career move. A caring, responsible employer may need to initiate that discussion, currently known, at least in the ABC, as "external career development opportunities". But think about less drastic changes. Would employees feel a better fit if the workplace built connections with a community legal centre like Caxton, LawRight or WLS? Could you involve staff in your own workplace perpetual charitable foundation? If so, a sub-fund under the umbrella of Queensland Community Foundation may provide a hassle-free low cost option.

6. The sixth is that staff are encouraged and supported to develop personally and professionally, a notion entirely at one with your staff's legal professional development obligations.
7. The seventh is that staff receive appropriate and timely appreciation and recognition for their work. The savvy employer is considerate and will give a day or two off to reconnect with family after a prolonged period of long hours working on a big case or important project; a deserved bonus or pay rise without it being requested; or simply a sincere smile and a heart-felt "thank you" after a job well done.
8. The eighth is to include staff in discussions about decisions concerning them in the workplace. Employees are much more content if they have some control over their working lives, are involved in workplace decisions, and know that their opinion is valued.
9. The ninth is that staff need to be given the time and resources to complete their required work. There is no doubt that the pressure placed on lawyers to compete with others over unrealistic billable hours creates a poisonous workplace. It is a significant contributor to so many young lawyers abandoning the profession; or worse, becoming mentally ill. But it persists in far too many legal practices where the economic, not to mention moral benefits of keeping well-trained, efficient, loyal staff is insufficiently valued. Instead, they prefer to constantly train a new wave of young cannon-fodder who leave, burned out and disillusioned after a few years, a practice which does not make good business sense.
10. The tenth is that staff must feel their work is meaningful. Communicating with staff about how their work helps clients, provides access to the rule of law, and keeps others in employment is a start. Employer and employees working together to support a common charity, particularly a law related one like Women's Legal Service, LawRight or another community legal centre, can help achieve this, perhaps through the firm's own charitable foundation, with staff deciding each year where the income is to be distributed. Again, QCF can provide an effective, hassle free, low cost charitable trust option if that is your inclination.

11. The eleventh is that staff need to be supported in seeking that elusive work life balance, with opportunities for flexible working arrangements to accommodate work, family and personal priorities. Again, this empowers staff by giving them more control over their lives. They will happily work late and start early to assist the boss, if they know they can take time off at a less busy period to keep a medical appointment, have lunch with a friend from interstate, or attend a school assembly. My experience in my almost 19 years of administering the Court of Appeal was that, with very few exceptions, judges and staff responsibly embraced and never abused such flexibility.
12. The twelfth is to create a workplace where it is safe to speak up about problems knowing that appropriate action will be taken. Such a workplace is more likely to be successful as it utilises staff knowledge about what is not working and how it might be fixed or improved.
13. And the final guideline is arguably the most important and fundamental: the workplace must be a safe place for staff. This includes safety from losing litigants, disgruntled former clients, and members of the public, as well as from difficult or manipulative staff members and employers. It also means safety from sexual assault or harassment. It will be achieved in different ways in different workplaces. The sad reality of modern life is that many workplaces now have floors locked off from the public and a reception desk with a duress button or even behind safety screens. But the current commitment to a safe workplace provides a vast improvement since the 1970's when my articulated clerk colleagues recounted horrific tales such as when a male partner in a major law firm threw a heavy 70's style landline telephone at a middle-aged female secretary for some minor alleged work mistake. And I won't start to recount the many shocking tales about sexual assaults and rampant sexual harassment at office Christmas parties in past eras. Thank heavens such behaviour is no longer tolerated in the modern workplace thanks to the #MeToo movement and the expectations and zero tolerance levels of the younger generation of women and men lawyers. The workplace must have firm policies on these issues and a clear complaints mechanism.

### **What can individual lawyers do to maintain their mental health?**

Practicing law, ensuring clients have access to their legal rights, is an important responsibility with significant professional obligations to the client, fellow practitioners, the courts and the community. Lawyers tend to be high-achieving perfectionists. Little wonder that many lawyers have concerning stress levels, which, if not managed, can lead to mental illness. As I mentioned earlier, some lawyers, because of genetics or life experience, are less resilient and more predisposed than others to mental illness. But self-care and a positive attitude can make a difference. Here are my 13 Guidelines to help lawyers maintain their mental health.

1. Eat a healthy diet.
2. Get plenty of sleep. If you have a sleeping disorder, get treatment.

3. Exercise regularly and keep physically fit.
4. Control stress levels through mindful breathing and regular meditation.
5. Find time in your busy lives to do something (at least each week and preferably each day) that brings you joy.
6. Take regular breaks and holidays.
7. Make sure you escape the relentless 24/7 pressure of emails and texts by having regular technology free time, preferably in the hour or two leading up to bedtime.
8. Keep friends and interests outside the law.
9. The practice of law is important but it is not everything. Remember Gemma Smith's artistic reminder on the ceiling of the foyer of this fine building. It is a geometric play on perspectives and a reminder to lawyers, their clients, and court users to keep things in perspective.
10. If work and life is getting on top of you, don't self-medicate with excess alcohol or drugs. Reach out to friends, family or colleagues, or seek professional help.
11. Be kind, compassionate and generous. And if you see a friend or colleague struggling with their own problems, reach out to them; don't be a passive bystander.
12. I once had the privilege of hearing the Dalai Lama speak. I was initially disappointed in what, with his characteristic little laugh, he put forward as the philosophical essence of his address: "everything has a beginning and an end". But over the years I have come to understand the truth and wisdom of those simple words. The bad times will pass and good times will come again. Remembering those wise words that everything has a beginning and an end, has helped me get through nightmare trials and appeals, the writing of many difficult judgments, and countless other professional and personal tribulations.
13. And finally, take control of your life and live it your way. The Brisbane legal profession is blessed with its own happiness guru: solicitor, Clarissa Rayward. I met her after my retirement when she persuaded me, as she has so many others, to be interviewed for her podcast, *Happy Lawyer Happy Life*. Clarissa found the traditional law firm set up was not for her but she was determined to still practice her profession. She set about making a career in the law that allowed her to pursue both professional satisfaction and personal happiness. She and her supportive non-lawyer partner currently juggle the needs of a pre-schooler and breast-feeding a new baby with her partner's career, her busy family law practice in her funky, unconventional office, her famous podcasts, as well as singing, dancing, and directing the odd pantomime (the most recent of which, I might add, featured yours truly as a particularly wicked step-mother). Clarissa would be the first to admit she hasn't got all the answers to that elusive work life balance. But she is

giving it her best shot. And on her terms. As are others, like her friend, 2018 WLAQ woman lawyer of the year, Ann-Marie Rice. I encourage those of you who are not presently finding satisfaction with your professional life to use the flexibility created by IT and some lateral thinking to craft a legal practice that suits your needs and lifestyle, whilst always giving your clients the first rate legal services to which they are entitled. Clarissa has recently written a book, the same title as her podcasts, *Happy Lawyer, Happy Life*. It provides sound advice about finding personal happiness whilst having a satisfying legal career which meets your life needs, and even some easy, healthy recipes. I commend it to you.

## **Judicial Bullying**

Clarissa writes, in passing, of the role other lawyers can play in your life, either in helping and inspiring you, or in making you miserable, for example, when a colleague crosses the line between effective advocacy and heartless bullying. But the Victorian Bar Association's very recent health and safety report clearly demonstrated that it was judicial bullying which was the greatest negative stressor in the lives of its members. And it was at Magistrates and County Court level that the problem was worst. There is no reason to think a similar survey of Queensland barristers would have a significantly different result. I certainly recall many unpleasant moments in court in my long ago years as a barrister, and, consistent with the Victorian survey, generally speaking, my experience then was that the higher the court the more courteous the judge.

Victoria, to its credit, responded swiftly and positively. Chief Justice Anne Ferguson issued the following statement:

“All workplaces should be safe and respectful and our courts are no different.”

Robust and vigorous legal debate is common in the courtroom, but judges across all jurisdictions must always be mindful to treat people with respect and dignity.

Bullying, discrimination and harassment will not be tolerated in our courts. Victorian courts strive to create respectful, welcoming working environments, but we are always on the lookout to see if there is more we can do to ensure the highest standards of judicial conduct. Equipping judicial officers with the skills they need to deal with the complex work they do in an adversarial environment begins from day one on the Bench.

There are many education programs available to judges around appropriate judicial conduct. I have been working with the Judicial College to develop a new stand-alone education program, “Leading the Justice System: The Court as Workplace”. As part of that, judicial officers have been invited to sessions ... to learn more about bullying, judicial conduct and advanced court leadership.



I welcome the “Wellbeing of the Victorian Bar” survey – it provides us with some valuable insights and feedback from barristers about their experience in the courtroom as a workplace. My aim is to ensure that we maintain the qualities and standards expected of all Victorian judicial officers. In doing this, I look forward to using the results from the survey and liaising closely with the Victorian Bar.”

The Victorian Bar now has a judicial conduct policy to define and promote appropriate standards of conduct which members are entitled to expect from judicial officers; to outline grievance mechanisms; and to record complaints. The somewhat nebulous term, “inappropriate judicial conduct”, is defined as behaviour in the capacity as a judicial officer that “could be reasonably expected to intimidate, degrade, humiliate, isolate, alienate, or cause serious offence to a person.” It specifically does not include, without more, “robust courtroom exchanges, testing questions from the bench, the rejection of submissions, the making of adverse rulings, or mere expressions of frustration”. Aggrieved barristers may make a complaint to the Judicial Commission of Victoria, or via Protocols between the Victorian Bar and courts and tribunals. Instead of officially complaining, they may make a report to the Victorian Bar which is used only for reporting purposes; the identity of the aggrieved must be contained in the report but is not made public.

The Victorian Bar also offers support to those who have experienced or witnessed inappropriate judicial conduct through Judicial Conduct advisers (presently respected silks, Jack Rush RFD QC and Fiona McLeod SC) or through the Bar’s confidential independent counselling service.

The Queensland Bar Association does not yet have such a policy but I am confident it will be considered in the future. The importance of the issue cannot be underestimated. Friends and colleagues of young Western Australian woman lawyer, Dragana Nuic, were concerned that the dressing down she received in court from a magistrate just weeks beforehand may have contributed to her 2010 suicide.

A difficulty in adopting an effective policy in Queensland is that, unlike in Victoria and New South Wales, we do not have a judicial complaints commission. Complaints about the conduct of Queensland judicial officers can be made to the head of jurisdiction of the court or tribunal but, even if established, unless the conduct is so egregious as to amount to a criminal offence, corruption under the *Crime and Corruption Act 2001 (Qld)*, or to warrant dismissal by the Governor in Council on the address of the legislative assembly, little can be done beyond the head of jurisdiction privately counselling the errant judicial officer. That is also the only remedy in the Federal jurisdiction.

Of course, most judicial officers, in Queensland and elsewhere, behave courteously in court and abhor the behaviour of those few colleagues who do not. The bullies, however, can cause much unnecessary angst to practitioners, litigants and other court users. There should be a transparent, judge controlled complaints system to deal with judicial bullying allegations and there should be judicial education on the topic.

The peak body representing Australian judicial officers, the Judicial Conference of Australia, reported on this issue almost a decade ago. Whilst acknowledging the absolute need for judicial independence in the protection of the rule of law and that there may be constitutional difficulties under Chapter III of the Federal Constitution in establishing a Federal body, the report recommended “a structured system of dealing with complaints against judicial officers ...based on the NSW Judicial Commission with such modifications as are appropriate for each Australian jurisdiction, given differences in size and financial circumstances”. Victoria has since successfully established its judicial commission to which I referred earlier.

Former Queensland Premier, Campbell Newman, has recently called for the establishment of such a commission in Queensland, claiming that the courts were resistant to it. That claim is wrong. The Queensland Supreme Court has long supported the JCA recommendation to establish a Queensland judicial commission based on the NSW model with necessary adaptations, but successive governments of both political persuasions have not acted. It is time they did. The Commission would not interfere with judicial independence as it would be an independent body employing its own staff and under the control and leadership of the Chief Justice. Importantly, it would have an educative, preventative role as well as a disciplinary role for those rare cases where this was warranted.

## **Conclusion**

I am pleased to be able to conclude on a positive note. At a global level, suicide is down 29 per cent since 2000. We have every reason to believe that medical research will find ways to better prevent and treat all aspects of mental illness, including anxiety and depression. In the meantime, we can all help lower the rate of mental illness and suicide amongst lawyers with healthier workplaces, including in the courts, and healthier selves.

I urge you to:

1. Support TJMF/Minds Count, financially and otherwise.
2. Sign up to the TJMF/Minds Count Guidelines and ensure your workplace lives by them.
3. Commit to a lifestyle which promotes good mental and physical health and encourage friends, family and colleagues to do likewise.
4. Encourage our Queensland professional associations to adopt a policy, as in Victoria, to deal with judicial bullying.
5. And work to establish, both in Queensland and Federally, a judicial commission of the kind recommended by the JCA to deal with complaints of judicial bullying and to educate judicial officers about this and other relevant issues.

Thank you for making time in your busy lives, and at this crazily demanding time of year, to attend this event. I wish you all a rewarding and healthy personal and professional life.