

Improving wellbeing in the legal profession: a summary of international initiatives

A working paper

Prepared for the Independent Review of the Regulation of Lawyers and Legal Services in Aotearoa New Zealand

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Purpose

This paper provides an overview of some overseas initiatives aimed at improving wellbeing in the legal profession, including addressing bullying and harassment.

Introduction

This is a high-level paper and is not intended to be exhaustive. This paper will not detail all initiatives across the included countries, rather it highlights existing initiatives as illustrative examples. As an example, while most, if not all, law societies will have a work programme related to improving wellbeing within the legal profession, this paper will only set out a selected sample of these. Both grey literature and peer-reviewed sources were included, and no assessments as to the robustness of any research was undertaken.

Findings

Ireland

Law Society of Ireland – Professional Wellbeing Hub

“The Professional Wellbeing Project aims to provide solicitors with practical supports, education, and guidance across three pillars: workplace culture, resilience and wellbeing, and emotional and psychological health.”

This project was launched in 2019 as a result of a report published in 2018 that looked at levels of stress and wellbeing and members’ perceptions of the offered mental health supports.¹ The Professional Wellbeing Hub contains a number of components:

- resources and links to seek help for mental health issues for lawyers themselves, or for helping another lawyer
- resources aimed at employers to improve employee wellbeing, eg Work Positive – a free psychosocial risk management process
- LegalMind – an independent, confidential, low-cost mental health support service
- a professional wellbeing charter for employers to sign up to
- a mental health and wellbeing week campaign

A 2021 research project entitled ‘Dignity Matters’ looked at solicitors’ and trainees’ experience of work environments in Ireland, specifically as it relates to bullying, harassment, and sexual harassment. The Law Society has committed to implementing the report recommendations, which include exploring flexible reporting models, engaging with younger and diverse members of the profession, providing regular and customised training, increasing dialogue and sharing best practice across the legal

¹ <https://www.lawsociety.ie/Solicitors/Representation/wellbeing-hub/about-wellbeing-hub>



professions and other sectors, and emphasising the importance of leadership and ownership of positive workplace behaviours.²

United Kingdom

Law Society of England and Wales – Best Practice Guidance

In 2019, the Law Society of England and Wales has published best practice guidance on safeguarding and promoting wellbeing in the workplace. The guidance covers three areas: support; education and training; and culture. The guidance uses case studies and storyboards to provide practical steps for law firms.³ In addition, the Junior Lawyer Division published a guide to creating a healthy alcohol culture in the workplace in 2020, alongside a ‘booze culture’ campaign.⁴

The Law Society has also published guidance on workplace harassment, with practical steps for law firms to follow to help minimise the chance of harassment occurring along the lines of: leadership; policies; training; data and insights; and culture.⁵ The Law Society also promotes additional resources such as LawCare, an independent, confidential emotional support service.

Bar Council of England and Wales – Wellbeing at the Bar

The representative body for barristers in England and Wales, the Bar Council, supports an initiative called ‘Wellbeing at the Bar’ (the Bar Standards Board also refers to this initiative⁶). This initiative provides a number of supports to barristers in England and Wales, including:⁷

- a confidential 24/7 Assistance Programme
- a certificate of recognition programme for organisations to apply for if they feel they have demonstrated a commitment to wellbeing through a policy, programme or initiative
- resources and links to seek help for mental health issues
- resources for policy and practice in chambers or organisations.

Solicitors Regulation Authority – Multiple initiatives

Workplace Culture Review

The Solicitors Regulation Authority (SRA) conducted a Workplace Culture Thematic review, published in 2022, based on a survey of around 200 solicitors, and stakeholder feedback. Released alongside the review was guidance that sets out what the SRA expects of firms when looking after staff wellbeing.⁸

² <https://www.lawsociety.ie/gazette/top-stories/2021/10-october/law-society-programme-to-tackle-bullying>

³ <https://www.lawsociety.org.uk/topics/hr-and-people-management/supporting-wellbeing-in-the-workplace-guidance-for-best-practice>

⁴ <https://www.lawsociety.org.uk/campaigns/junior-lawyers-division-campaigns/booze-culture>

⁵ <https://www.lawsociety.org.uk/topics/hr-and-people-management/workplace-harassment-guidance-for-employers>

⁶ <https://www.barstandardsboard.org.uk/for-barristers/compliance-with-your-obligations/equality-and-diversity-rules.html>

⁷ <https://www.wellbeingatthebar.org.uk/>

⁸ <https://www.sra.org.uk/sra/news/press/workplace-culture-review/>



“We are now publishing a thematic review on what's happening in the legal workplace, helping firms to consider what more they can do to ensure a positive culture, where solicitors at every level can speak up and the demands of a commercial environment are balanced with wellbeing. We also have new guidance on the risks of failing to support and protect colleagues, setting out clearly what we expect from firms.”

The guidance details when the SRA will take regulatory action, in accordance with their enforcement strategy, for example, a one-off complaint is unlikely to lead to regulatory action. The guidance also provides resources to encourage good practice, for example linking to external supports and internal guidance.⁹

Proposed rule changes on health and fitness to practice

The SRA notes that their current rules are unusual among other regulated professions in England and Wales in that they make no explicit provision for limiting the practice of people whose fitness to practice is affected by health issues. They note as a comparator that the Bar Standards Board's Fitness to Practise Panel process was designed solely to consider concerns that a barrister's ability to perform is impaired due to health issues.¹⁰

In 2022, the SRA consulted on proposed changes to its rules and Codes of Conduct that aim to support its ability to take action to deal with concerns over a solicitor's health that is affecting his or her fitness to practice. The changes make it explicit that fitness to practice means the ability to both perform the work of a solicitor and to meet the obligations of a regulated professional. The proposed rule changes also clarify that the SRA may act to address health issues at any point when they arise.¹¹

Canada

Law Society of British Columbia – Multiple Initiatives

Mental Health Taskforce

The Law Society of British Columbia set up a Mental Health Taskforce in 2018. The Taskforce's mandate is to identify ways to reduce the stigma of mental health issues and develop an integrated mental health review concerning regulatory approaches to discipline and admissions.¹² The 2020 second interim report recommended a number of strategies:¹³

- Improving information sharing with law schools about mental health supports within the profession.
- Improving Benchers orientation materials and expanding mental health-related training for articulated student interviews.
- Hosting a town hall event to discuss mental health within the profession.

⁹ <https://www.sra.org.uk/solicitors/guidance/workplace-environment/>

¹⁰ <https://www.sra.org.uk/sra/consultations/consultation-listing/health-wellbeing-profession/>

¹¹ Ibid

¹² <https://www.lawsociety.bc.ca/our-initiatives/improving-mental-health/>

¹³ <https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/MentalHealthTaskForce-SecondInterimReport2020.pdf>



- Developing guidance on the use of non-stigmatising and non-discriminatory language in all future Law Society publications and communications.
- Conducting a voluntary, confidential member survey exploring mental health and substance use among lawyers.
- Amending Code Rule 7.1-3 (“duty to report”) and the associated commentary to remove stigmatising language.
- Recommending that the medical fitness questions in Schedule A of the Law Society Admission Programme Application Form be removed. If the Law Society is of the view that additional questions should be added in order to fulfil their statutory mandate, the Taskforce recommends that the questions be based on conduct, not condition; avoid stigma and non-evidence-based assumptions; and be created in collaboration with the Taskforce.

Alternative Disciplinary Processes for mental health related conduct

In British Columbia, the Law Society has developed an alternative disciplinary process (ADP) where there is a connection between a health condition and a conduct issue that has resulted in a complaint investigation.¹⁴ The pilot of the programme will be launched September 2022 and runs for three years. At the conclusion of the pilot, a decision will be made as to whether to adopt the process as a permanent regulatory programme.

The pilot came about as part of the Mental Health Taskforce detailed above. The Taskforce noted that mental health and substance abuse can be a contributing factor in some cases of misconduct. The Taskforce stated that traditional approaches to regulation (eg, establish a violation and imposing sanctions) were limited in their ability to tailor the response to address these issues. Also noted was the idea that lawyers may have apprehensions about sharing relevant health information with the Law Society due to their current regulatory framework.¹⁵

The programme is a voluntary, confidential process that customises the regulatory response to a conduct issue. Certain conduct would not be eligible, eg, conduct that would result in a reasonable prospect of disbarment, such as the misappropriation of trust funds. Once a link is established between a health condition and the conduct issue, the ADP counsel will work with the lawyer to negotiate the terms of the consent agreement that will govern the lawyer’s ongoing participation in the process. This is a collaborative process, rather than the Law Society imposing terms.¹⁶

Equity Ombudsperson

The Law Society of British Columbia has an Equity Ombudsperson, who assists lawyers, articulated students, law students and support staff of legal employers with resolving concerns about discrimination and discriminatory harassment.¹⁷ The Ombudsperson can provide advice, discuss options, and can also provide mediation between parties.

¹⁴ <https://www.lawsociety.bc.ca/our-initiatives/improving-mental-health/>

¹⁵ <https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/MentalHealthTaskForce-AlternativeDisplineProcess.pdf>

¹⁶ *ibid*

¹⁷ <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/lawyer-wellness-personal-support/equity-ombudsperson/>



The Law Society of Alberta also has an Equity Ombudsperson. The Law Society notes that talking to the Equity Ombudsperson does not eliminate other options such as filing a formal complaint with the Law Society or the Human Rights Commission. In Alberta, the Equity Ombudsperson also works with law firms to establish workplace policies regarding harassment, parental leave and alternative work schedules and provides educational seminars.¹⁸

Law Society of Ontario – Discrimination and Harassment Counsel

The Law Society of Ontario funds an independent Discrimination and Harassment Counsel (DHC), which provides assistance to anyone who may have experienced or witnessed discrimination or harassment based on human rights grounds by a lawyer. The DHC is a free confidential service for members of the legal profession and the public – it does not share information with the Law Society of Ontario, other than anonymised data.¹⁹ The provision of anonymised data helps the Law Society to better address and direct their efforts.²⁰

The DHC can provide advice on available options, refer people to other resources, and can be a facilitator or mediator between parties. The DHC does not provide legal advice, and does not operate a formal complaints process with investigative powers.²¹

Australia

Law Society of Western Australia – Sexual Harassment Cultural Change Framework

The Law Society of Western Australia launched a cultural change framework for the legal profession, offering resources around four key pillars:²²

1. The evidence – links to reports that show who is most affected by sexual harassment, reporting rates and effects of workplace culture.
2. Behavioural change – links to specific training and education.
3. Systems and procedures – links to resources and tools to help workplaces develop policies and procedures, including communication and promotion, reporting and complaints handling procedures, and implementation and monitoring guidelines.
4. Confidential support – this pillar provides links to confidential support for personal and work-related issues, including LawCare, a Practitioner Advice Referral Service, and Law Society mentoring programmes.

¹⁸ <https://www.lawsociety.ab.ca/lawyers-and-students/equity-ombudsperson/>

¹⁹ <http://www.dhcounsel.on.ca/index.html>

²⁰ <https://www.law.georgetown.edu/legal-ethics-journal/wp-content/uploads/sites/24/2020/08/GT-GJLE200046.pdf>

²¹ <http://www.dhcounsel.on.ca/services.html>

²² <https://www.lawsocietywa.asn.au/change%20the%20culture/>



Victorian Legal Services Board and Commissioner – Operational Wellbeing Project

In 2019, the Victorian Legal Services Board launched a Lawyer Wellbeing Project that aimed to shift the conversation from emphasising personal resilience, to highlighting the systemic drivers of poor wellbeing. As part of that project, the Legal Services Board reflected on the part that it plays in the system and launched the Operational Wellbeing Project in 2020.²³

The project recognised that the people using the Legal Services Board services are diverse and there is a need to be responsive when dealing with users of the service. As a result, and to help protect their staff, the Legal Services Board developed:²⁴

“a best-practice approach to dealing with challenging interactions with lawyers and consumers when handling enquiries and complaints, and when undertaking investigations.”

²³ <https://www.lsb.vic.gov.au/lawyers/practising-law/lawyer-wellbeing/about-wellbeing>

²⁴ *ibid*