

The Mental Health Crisis in Law School:  
Improving Law Student Health Through  
Wellbeing-Focused and Trauma-Informed Legal Education

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University of Saskatchewan  
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Treaty 6 Territory & the Homeland of the Métis

By:

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## Abstract

**Note to reader:** This thesis will explore sensitive matters that may trigger some readers. The article examines aspects of child physical abuse, child neglect, and suicidality. If you are contemplating suicide or are experiencing emotional distress, please get in touch with your local Lawyer Assistance Program.

There are few studies on law students' psychological distress in Canada. As such, this thesis examines the studies on law students' psychological distress conducted in the United States, Australia, and the United Kingdom. These countries were selected because they are all common law jurisdictions with a legal history from the same source and similar approaches to common law legal education. Law students across these jurisdictions have many shared and similar experiences, such as fierce competition and heavy workloads. Further still, in the respective jurisdictions, common law legal education is characterized by similar attitudes, practices, and beliefs, which affect mental health and wellbeing, such as the devaluation of emotion.

A review of the research on law students and legal professionals' psychological distress suggests that psychological distress likely follows graduates into their professional lives. Only recently have studies been conducted on legal professional distress in Canada. Due to the scarcity of Canadian studies and the similarities across jurisdictions, this thesis also examined legal professional psychological distress studies conducted in the United States, Australia, and the United Kingdom.

Although research on law student wellbeing desperately needs to be more thoroughly conducted in Canada, the findings from Canada and the other jurisdictions provide strong evidence that it is likely that Canadian law students also experience psychological distress at levels exceeding that of the general population and students in most other disciplines. Further, the studies conducted on legal professionals' psychological distress, including a recent Canadian study, provide strong evidence that psychological distress continues into professional life and exceeds that of the general population and most other professions. Wellbeing, mental health, the relevance of emotion, and the significant impact trauma has on wellbeing will be explained and defined to provide a foundation for the thesis.

Further, the studies also disclose the normalization of substance use among law students and legal professionals, which can contribute to mental health problems and conditions. Finally, while few studies have been conducted on marginalized law students and legal professionals' psychological distress, they, alongside the social determinants of health, do provide strong evidence that it is likely that marginalized law students and legal professionals in Canada experience psychological distress at a disproportionate rate. The wellbeing of marginalized law students and legal professionals should be of the utmost concern, given that all law schools, law societies and bar associations value diversity and inclusion but have yet to achieve such.

This thesis also delineates the other factors detrimental to wellbeing including trauma, chronic or prolonged stress, isolation, loneliness, substance use, extrinsic motivation, stigma, discrimination, and racism. The shared experiences, attitudes, practices, and beliefs (also known as the "culture" of law) in the United States, Australia, the United Kingdom, and Canada are

compared to the factors detrimental to wellbeing. Exposure to trauma, fierce competition, and heavy workloads, resulting in chronic and prolonged stress, the prioritization of money, power, status, appearance (i.e., extrinsic motivation), lack of diversity, the prevalence of substance use, and the devaluation of emotion are all shared experiences, attitudes, practices, and beliefs. These common aspects of legal education are also identified as being potentially harmful to mental health and wellbeing. The factors detrimental to wellbeing are compared to the shared experiences, attitudes, practices, and beliefs to provide law schools “targets” to address the mental health crisis within the law.

This thesis argues that law schools should improve the wellbeing of their students for four reasons. First, law students are at “high risk” of trauma, psychological distress, and substance use, as evidenced by the studies reviewed. Early intervention is vital to addressing health issues, and law schools provide the perfect forum for providing such education. Second, based on the studies on legal professional distress, it appears that psychological distress does not dissipate upon graduation. Psychological distress can affect cognition, thus affecting competence. All accredited law schools are the gateway into the profession of law in the United States, Australia, the United Kingdom, and Canada. All have prescribed learning outcomes.

Third, mental health and wellbeing affect ethical decision-making and judgement. Finally, law schools, bar associations, and law societies in all compared jurisdictions prioritize diversity and inclusion, acting in the public interest, enhancing access to justice, and reflecting the diversity of society. The studies on law students and legal professionals’ psychological distress provide strong evidence that marginalized students and legal professionals experience higher rates of psychological distress than their colleagues. Diversity and inclusion will not be realized if marginalized law students are experiencing such alarming rates of distress. Improving the wellbeing of marginalized students would likely lead to retaining such students within the profession and, therefore, enhance diversity and inclusion within the profession of law. Additionally, law schools could improve their reputation and funding by graduating students who experience more life and career satisfaction.

A wellbeing-focused approach to legal education integrating trauma-informed approaches offers a promising method for addressing the mental health crisis in law schools. A wellbeing-informed approach is flexible and could be adapted to different law schools. It provides a way to facilitate self-awareness, inclusion and diversity, substance use awareness, emotional literacy, self-care, and improved competence. Courses on trauma-informed lawyering, mindfulness, emotional intelligence, and cognitive behaviour have been successful in some other law schools. A wellbeing-focused and trauma-informed approach to legal education could provide law schools with a means to prepare students for law’s emotional and psychological demands.

## Acknowledgements

One only writes a work like this after undergoing radical changes in how one perceives the world. This author has been lucky, blessed and is grateful for the experiences that led here good and bad. With them, this work was done. That being said, this author truly hopes that this work will help prevent further harm when such harm, while devastating, is also preventable. Maya Angelou has been attributed for saying, “[d]o the best you can until you know better. Then when you know better, do better.”

I express my deepest gratitude to my thesis advisor, Doug Surtees, for his unwavering guidance, valuable insights, and continuous support throughout this research. His expertise and encouragement have been instrumental in shaping the direction and quality of this work.

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My gratitude goes to my husband Timothy, daughter Belle, family, and friends, for their untiring support, understanding, and encouragement throughout this challenging journey. Their belief in me has been a constant source of motivation.

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# Chapter 1: An Introduction to the Mental Health Crisis & The Gravity of the Situation in Law

Globally, there is a mental health crisis.<sup>1</sup> “Mental health conditions” have been steadily increasing in prevalence over the past few decades, with marginalized and young people disproportionately affected.<sup>2</sup> While the mental health crisis is widespread, it is a particularly

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<sup>1</sup> See generally: Bridget M. Kuehn, “WHO: Pandemic Sparked a Push for Global Mental Health Transformation” (2022) 328:1 JAMA 5–7; Milton L. Wainberg et al., “Challenges and Opportunities in Global Mental Health: A Research-to-Practice Perspective” (2017) 19:5 Curr Psychiatry Rep 28–28; Ron Carucci, “What Organizations Can Do To Solve The World’s Mental Health Crisis,” online: *Forbes* <<https://www.forbes.com/sites/roncarucci/2022/07/13/what-organizations-can-do-to-solve-the-worlds-mental-health-crisis/>>; “We Are Living Through A Global Mental Health Crisis’: UN Chief,” (18 June 2022), online: *NDTV* <<https://www.ndtv.com/world-news/we-are-living-through-a-global-mental-health-crisis-un-chief-3077916>>; World Health Organization, ed, *World Mental Health Report: Transforming Mental Health for All* (Geneva: World Health Organization, 2022).

<sup>2</sup> Certified professionals diagnose “Mental Health Conditions” with reference to the American Psychiatric Association, *The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR)*, 5th ed (USA: American Psychiatric Association, 2022). Also see: American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 5th ed (USA: American Psychiatric Association, 2013) [DSM V]. Also, see generally: “Mental Health” online: *World Health Organization* <<https://www.who.int/health-topics/mental-health>>. This thesis adopts the definition of “marginalization” or “marginalized” as outlined by Baah, Teitelman & Riegel, who write on page 16 that “marginalization occurs when people are excluded based on social identities such as race, gender, sexuality, and social class as well as the inequitable distribution of social, economic, physical, and psychological resources.” See: Foster Osei Baah, Anne M. Teitelman & Barbara Riegel, “Marginalization: Conceptualizing Patient Vulnerabilities in the Framework of Social Determinants of Health-An Integrative Review” (2019) 26:1 Nurs Inq e12268 at 16–17. There is a mental health crisis among university students and young adults. In the United States, see: Sarah Lipson et al., “Trends in College Student Mental Health and Help-Seeking by Race/Ethnicity: Findings from the National Healthy Minds Study, 2013–2021” (2022) 306 Journal of Affective Disorders 138–147. Also see generally: Emily P. Terlizzi & Jeannine S. Schiller, *Mental Health Treatment Among Adults Aged 18–44: United States, 2019–2021* (National Center for Health Statistics, 2022) DOI: 10.15620/cdc.120293; Zara Abrams, “Student Mental Health is in Crisis. Campuses are Rethinking their Approach,” (1 October 2022), online: *American Psychological Association* <<https://www.apa.org/monitor/2022/10/mental-health-campus-care>>. In Australia, see: Vivienne Browne & Jonathan Munro, “The Mental Health of Australian University Students” (2017) 50 Journal of the Australian and New Zealand Student Services Association 51–62. Also see generally: Margaret Anne Carter et al., “Australian University Students and Mental Health: Viewpoints from the Literature” (2017) 3:3 International Journal of Innovation. In the UK, see: Craig Thorley, *Not by Degrees: Improving Mental Health in the UK’s Universities* (Institute for Public Policy Research, 2017); Joe Lewis & Paul Bolton, *Student Mental Health in England: Statistics, Policy, and Guidance* (House of Commons Library, 2023). Also see generally: Fiona Campbell et al., “Factors that Influence Mental Health of University and College Students in the UK: A Systematic Review” (2022) 22:1 BMC Public Health 1778. In Canada, see: Canadian Alliance of Student Associations (CASA), *The New Abnormal: Student Mental Health Two Years Into COVID-19* (Canadian Alliance of Student Associations (CASA), 2022); American College Health Association, *American College Health Association-National College Health Assessment II: Canadian Reference Group Data Report Spring 2019*, (Silver Spring, MD: American College Health Association, 2019). Also see generally: Brooke Linden & Heather Stuart, “Post-Secondary Stress and Mental Well-Being: A Scoping Review of the Academic Literature” (2020) 39:1 Canadian Journal of Community Mental Health 1–32; Fares Alghoul, “Most Canadian Post-Secondary Students are Grappling with Mental Health Challenges Two Years After the Start of COVID-19,” *Toronto Star* (26 September 2022), online: <<https://www.thestar.com/news/gta/2022/09/26/most-canadian-post-secondary-students-are-grappling-with-mental-health-challenges-two-years-after-the-start-of-covid-19.html>>; Véronique Drolet & Grace

grave issue within legal education and the legal profession. Numerous studies in the United States, Australia, the United Kingdom, and Canada reveal that law students experience higher rates of “psychological distress” than the general population and students in most other programs.<sup>3</sup> When students enter law school, studies from the United States and Australia have

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Sarabia, *The Mental Health Resources Gap on Canadian University Campuses - A Guide for Student Life Administrators* (McGill University, 2020); Adam Miller, “2 Years into the Pandemic, Canada’s Mental-Health System is at a Crisis Point,” (12 March 2022), online: *CBC News* <<https://www.cbc.ca/news/health/canada-mental-health-crisis-covid-19-pandemic-1.6382378>>. The “social determinants of health” refer to marginalized folks experiencing more health issues than non-marginalized. See generally: Public Health Agency of Canada, “Social Determinants of Health and Health Inequalities,” (1 June 2023), online: Government of Canada <<https://www.canada.ca/en/public-health/services/health-promotion/population-health/what-determines-health.html>>; “Social Determinants of Health: Definition, Influence, Outcomes,” (29 April 2021), online: *Medical News Today* <<https://www.medicalnewstoday.com/articles/social-determinants-of-health>>; World Health Organization, *A Conceptual Framework for Action on the Social Determinants of Health: Debates, Policy & Practice, Case Studies*. (Geneva: World Health Organization, 2010); “Mental Health Disparities: Diverse Populations,” online: *American Psychiatric Association* <<https://www.psychiatry.org:443/psychiatrists/diversity/education/mental-health-facts>>; “Prioritizing Minority Mental Health | Health Equity Features | CDC,” (7 March 2023), online: *Centers for Disease Control and Prevention* <<https://www.cdc.gov/healthequity/features/minority-mental-health/index.html>>; Melissa Moyser, *The Mental Health of Population Groups Designated as Visible Minorities in Canada During the COVID-19 Pandemic* (Statistics Canada, 2020); Sarah E. Nelson & Kathi Wilson, “The Mental Health of Indigenous Peoples in Canada: A Critical Review of Research” (2017) 176 *Social Science & Medicine* 93–112; Cindy Jardine & Laurie-Ann Lines, “Social and Structural Determinants of Indigenous Health” in H. Exner-Pirot, B. Norbye & L. Butler, eds, (University of Saskatchewan, 2018) Chapter 12. Available from: [openpress.usask.ca/northernhealthcare](http://openpress.usask.ca/northernhealthcare); Mauricio Lima Barreto, “Health Inequalities: A Global Perspective” (2017) 22:7 *Ciência & saúde coletiva* 2097–2108; Margaret M. Barry, “Addressing the Determinants of Positive Mental Health: Concepts, Evidence and Practice” (2009) 11:3 *International Journal of Mental Health Promotion* 4–17; Vikram Patel et al., “Mental Disorders: Equity and Social Determinants” in *Mental Disorders: Equity and Social Determinants* (Geneva: World Health Organization, 2010) 115; National Collaborating Centre for Determinants of Health, *Let’s Talk Racism & Health Equity* (Rev. ed.), (Antigonish, NS: National Collaborating Centre for Determinants of Health, St. Francis Xavier University, 2018); Thomas G. McGuire & Jeanne Jeanne Miranda, “Racial and Ethnic Disparities in Mental Health Care: Evidence and Policy Implications” (2008) 27:2 *Health Affairs* (Project Hope) 393–403; Paul J. Kim, “Social Determinants of Health Inequities in Indigenous Canadians Through a Life Course Approach to Colonialism and the Residential School System” (2019) 3:1 *Health Equity* 378–381; Karina Czyzewski, “Colonialism as a Broader Social Determinant of Health” (2011) 2:1 *International Indigenous Policy Journal*; David R. Williams & Onisha S. Etkins, “Racism and Mental Health” (2021) 20:2 *World Psychiatry* 194–195; Kimberly Matheson, et al., “Traumatic Experiences, Perceived Discrimination, and Psychological Distress Among Members of Various Socially Marginalized Groups” (2019) 10 *Frontiers in Psychology*, online: <<https://www.frontiersin.org/articles/10.3389/fpsyg.2019.00416>>.

<sup>3</sup> “Psychological distress” is defined by N. Cadieux et al., *Research Report (Preliminary Version): Towards a Healthy and Sustainable Practice of Law in Canada. National Study on the Psychological Health Determinants of Legal Professionals in Canada, Phase I (2020-2022)* (Université de Sherbrooke, Business School, 2022) at 27 as “[a]n unpleasant subjective state that combines a set of physical, psychological and behavioral symptoms which cannot be attributed to a specific pathology or disease. These symptoms, such as fatigue, irritability, concentration problems, anxiety or insomnia, are sometimes similar to depression and sometimes to exhaustion.” The definition used in this report is the definition adopted in this thesis unless otherwise defined in the studies reviewed. For example the studies reviewed use many different psychometric measurements including: the Sarason-Mandler Scale of General Anxiety, Omnibus Personality Inventory (OPI), Law Student Inquiry (LSI), Brief Symptom Inventory (BSI), Beck Depression Inventory, Beck Depression Inventory-II, Multiple Affect Adjective Checklist (MAACL), Hassle Scale, Hopkins Symptom Checklist and Symptom Questionnaire, Center for Epidemiologic Studies-Depression scale (CES-D), Positive and Negative Affect Schedule (PANAS), Positive and Negative Affect Scale—

Extended Version (PANAS-X), Satisfaction with Life Scale (SWLS), Depression, Anxiety, and Stress Scales 21 (DASS21), Outcome Questionnaire (OQ-45), Social Readjustment Rating Scale (SRRS), Patient Health Questionnaire-2 (PHQ-2), Kessler-6, Kessler Psychological Distress Scale (K-10), Physical and Psychological Wellbeing Scale (SPHERE), Personal Health Questionnaire (PHQ-9), Rational-Experiential Inventory (REI), Ryff's Psychological Wellbeing Scale, Perceived Stress Scale and Law Student Perceived Stress Scale (LSPSS), State-Trait Anxiety Inventory, Brief Emotional Experience Scale (BEES), Brief Physical Experience Scale (BEEPS), 12-item General Health Questionnaire (GHQ), Hospital Anxiety and Depression Scale (HADS), Warwick-Edinburgh Mental Well-being Scale, Derogatis Stress Profile (DSP). Various measures were also used to measure substance use, including the CORE Alcohol and Drug Survey (CORE), CAGE questionnaire, and Alcohol Use Disorders Identification Test (AUDIT). The following measures were used to measure eating disorders: the SCOFF questionnaire, The Eating Motivation Survey (TEMS). The following measure was used to measure obsession compulsion disorder: Leyton Obsessional Inventory (LOI). This thesis evaluated the available studies in the United States, Australia, the United Kingdom, and Canada. Law students have been found to experience higher rates of psychological distress than the general population in the United States. See: Stephen B. Shanfield & Andrew H. Benjamin, "Psychiatric Distress in Law Students" (1985) 35:1 *Journal of Legal Education* 65–75 at 72; G. Benjamin et al., "The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers" (1986) 1986:2 *American Bar Foundation Research Journal* 225 at 241, 246; Alan Reifman, Daniel N. McIntosh & Phoebe C. 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Leahy et al., "Distress Levels and Self-Reported Treatment Rates for Medicine, Law, Psychology and Mechanical Engineering Tertiary Students: Cross-Sectional Study" (2010) 44:7 at 613; Molly Townes O'Brien, Stephen Tang & Kath Hall, "No Time to Lose: Negative Impact on Law Student Wellbeing May Begin in Year One" (2011) 2:2 *The International Journal of the First Year in Higher Education* 49 at 53; Molly Townes O'Brien, Stephen Tang & Kath Hall, "Changing our Thinking: Empirical Research on Law Student Wellbeing, Thinking Styles and the Law Curriculum" (2011) 21:1/2 *Legal Education Review* 149–182 at 159-160 [O'Brien, Tang & Hall 2011 Changing our Thinking]; Natalie Skead & Shane L. Rogers, "Stress, Anxiety and Depression in Law Students: How Student Behaviours Affect Student Wellbeing" (2014) 40:2 *Monash University Law Review* 564–587 at 572; Adele Bergin & Kenneth Pakenham, "Law Student Stress: Relationships Between Academic Demands, Social Isolation, Career Pressure, Study/Life Imbalance and Adjustment Outcomes in Law Students" (2015) 22:3 *Psychiatry, Psychology and Law* 388–406 at 401; Natalie K. Skead, Shane L. Rogers & Jerome Doraisamy, "Looking Beyond the Mirror: Psychological Distress; Disordered Eating, Weight and Shape Concerns; and Maladaptive Eating Habits in Lawyers and Law Students." (2018) 61 *International Journal of Law and Psychiatry* 90–102 at 93; Natalie K. Skead, Shane L. Rogers, & W. Rupert Johnson, "The Role of Place, People and Perception in Law Student Well-being" (2020) 73 *International Journal of Law and Psychiatry* 101631-101631 at 290 at 351. Law students have been found to experience higher rates of psychological distress than the general population in the United Kingdom. See: E.G. Lewis & J.M. Cardwell, "A Comparative Study of Mental Health and Wellbeing among UK Students on Professional Degree Programmes" (2019) 43:9 *Journal of Further and Higher Education* 1226–238. In Canada, see: K. F. Helmers et al., "Stress and Depressed Mood in Medical Students, Law Students, and Graduate Students at McGill University" (1997) 72:8 *Academic Medicine: Journal of the Association of American Medical Colleges* 708–714. Also, two out of three McGill Law students were found to experience "psychological health challenges" and "[h]alf identifi[ed] their experience at McGill Law" as harming their well-being. See: McGill University Faculty of Law, *McGill University Faculty of Law Student Psychological Study*, (Montreal, Canada: McGill University Faculty of Law, 2017) at 1 [McGill 2017]. Law students have higher rates of psychological distress than students in other faculties in the United States. See: Shanfield & Benjamin, *ibid* at 69; Robert Kellner, Roger J. Wiggins & Dorothy Pathak, "Distress in Medical and Law Students" (1986) 27:3 *Comprehensive Psychiatry* 220–223 at 221; Organ, Jaffe & Bender, *ibid* at 136-137. Also see: Michael D. Harries, Suck Won Kim & Jon E. Grant, "A Comparative Study of Obsessionality in Medical Students, Law Students, and Controls" (2017) 88:3 *Psychiatr Q* 603–610. Law students have higher rates of psychological distress than students in other faculties in Australia. See: Kelk et al., *ibid* at 12; Leahy et al., *ibid* at 611; Natalie K. Skead & Shane L. Rogers, "Do Law Students Stand Apart from Other University Students in Their Quest for Mental Health: A Comparative Study on

disclosed that students have wellbeing comparable to the general population.<sup>4</sup> In all the compared jurisdictions, except the United Kingdom, studies have also shown that increases in student psychological distress coincide with commencing law school.<sup>5</sup>

Legal professionals, internationally, have been found to have worse mental health than the general population.<sup>6</sup> Studies conducted in the United States, Australia, the United Kingdom, and Canada have also found that legal professionals experience psychological distress at rates exceeding that of the general population.<sup>7</sup> The psychological distress experienced by legal professionals also exceeds that of other occupations in the United States, the United Kingdom

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Wellbeing and Associated Behaviours in Law and Psychology Students” (2015) 42–43 *International Journal of Law and Psychiatry* 81–90 at 82. But see: Wendy Larcombe, Sue Finch & Rachel Sore, “Who’s Distressed? Not only Law Students: Psychological Distress Levels in University Students Across Diverse Fields of Study” (2015) 37:2 *Sydney Law Review*, 243–273 at 265. Law students experience higher rates of psychological distress than students in other faculties in the United Kingdom. See: Paul Bogowicz et al., “Alcohol and Other Substance Use Among Medical and Law Students at a UK University: A Cross-Sectional Questionnaire Survey” (2018) 94:1109 *Postgraduate Medical Journal* 131; Lewis & Cardwell, *ibid.* Law students have been found to experience higher rates of psychological distress than students in other faculties in Canada. See: Helmers et al., *ibid.*

<sup>4</sup> In the United States see: Benjamin et al., *ibid.*; Reifman, McIntosh & Ellsworth, *ibid.*; K.M. Sheldon & L.S. Krieger, “Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being” (2004) 22:2 *Behav Sci Law* 261–286 [Sheldon & Krieger 2004] at 270–271. In Australia, see: O’Brien, Tang & Hall 2011 *Changing our Thinking*, *ibid.* at 159, 162. To the author’s knowledge, no studies have been published on pre-law student wellbeing in the United Kingdom or Canada.

<sup>5</sup> In the United States, see: Mary E. Pritchard & Daniel N. McIntosh, “What Predicts Adjustment Among Law Students? A Longitudinal Panel Study” (2003) 143:6 *J SOC PSYCHOL* 727–745 at 739 states: “the results contribute to the growing evidence that it is something about the law school experience that causes distress rather than the law students being atypical before entering law school.” Also see: Krystia Reed et al., “Problem Signs in Law School: Fostering Attorney Well-Being Early in Professional Training” (2016) 47 *International Journal of Law and Psychiatry*, 47–49 at 48. In Australia, see: Anthony Lester, Lloyd England & Natalia Antolak-Saper, “Health and Wellbeing in the First Year: The Law School Experience” (2011) 36:1 *Alternative Law Journal* 49. In Canada, see: McGill 2017, *supra* note 3. No empirical longitudinal studies on law student distress have been conducted in the UK.

<sup>6</sup> See: International Bar Association, *Mental Wellbeing in the Legal Profession: A Global Study* (International Bar Association, 2021).

<sup>7</sup> In the United States, see: Connie J. A. Beck, Bruce D. Sales & G Andrew Benjamin, “Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers” (1995) 10:1 *Journal of Law and Health* 1–60; Patrick R. Krill, Ryan Johnson & Linda Albert, “The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys” (2016) 10:1 *Journal of Addiction Medicine* 46 at 50–51. But see: Yair Listokin & Raymond Noonan, “Measuring Lawyer Well-Being Systematically: Evidence from the National Health Interview Survey” (2021) 18:1 *J EMPIR LEGAL STUD* 4–46. In Australia, see: Kelk et al., *supra* note 3; Adele J. Bergin & Nerina L. Jimmieson, “Australian Lawyer Well-being: Workplace Demands, Resources and the Impact of Time-billing Targets” (2014) 21:3 *Psychiatry, Psychology and Law* 427–441 at 434; Janet Chan, Suzanne Poynton & Jasmine Bruce, “Lawyering Stress and Work Culture: An Australian Study” (2014) 37:3 *NSW Law J* 1062–1102; Skead, Rogers & Doraisamy, *supra* note 3. In the United Kingdom, see: Lucinda Soon et al., “The Effects of Basic Psychological Needs Satisfaction and Mindfulness on Solicitors’ Well-Being” (2022) 29:2 *International Journal of the Legal Profession* 143–158. In Canada, see: Cadieux et al. 2022, *supra* note 3 at 27, 30. Also see: Nathalie Cadieux et al., *Research Report: A Study of the Determinants of Mental Health in the Workplace Among Quebec Lawyers-Phase II- 2017-2019*, (Canada: Universite’ De Sherbrooke, Business School, 2020).

and Canada.<sup>8</sup> Further, studies indicate that psychological distress does not dissipate significantly for decades after graduation.<sup>9</sup> These studies imply that law is a “high-risk” profession with an elevated chance of psychological distress. Significantly, the studies on law students and legal professionals’ psychological distress provide strong evidence that marginalized students and legal professionals experience higher rates of psychological distress than their colleagues.<sup>10</sup>

What explains these high levels of psychological distress among law students and legal professionals? Multiple factors are at play.<sup>11</sup> This thesis delineates the factors detrimental to wellbeing, including lack of nutrition, sleep or exercise, trauma, chronic stress, isolation, stigma, discrimination, racism, substance use, and extrinsic motivation. Exposure to trauma, fierce

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<sup>8</sup> In the United States, see: Eaton et al., *ibid*; Thiese et al., *ibid*. No studies have been conducted in Australia which compare the psychological distress of legal professionals to other professions. The Law Society, however, was quoted as stating that “[l]awyers consistently rate in the top two occupations with the highest prevalence of mental health problems.” See: Georgia Neaverson, “How are our Lawyers? Mental Health in the Legal Industry”, (6 March 2021), online: *Australasian Lawyer* <<https://www.thelawyermag.com/au/news/general/how-are-our-lawyers-mental-health-in-the-legal-industry/248491>>. However, studies have found that legal professionals experience higher rates of psychological distress than the general population. See: Kelk et al., *supra* note 3; Skead, Rogers & Doraisamy, *supra* note 3. See Soon et al., *ibid* in the United Kingdom. In Canada, see: Cadieux et al., 2022 *ibid* at 3. Also see: Faguy Yves, “Higher Prevalence of Distress and Depression in Law,” (27 October 2022), online: *The Canadian Bar Association National* <<https://nationalmagazine.ca/en-ca/articles/the-practice/workplace/2022/higher-prevalence-of-distress-and-depression-in-legal-profession>>.

<sup>9</sup> See: Benjamin et al., *supra* note 3; Beck, Sales & Benjamin, *supra* note 7; Cadieux et al. 2022, *supra* note 3.

<sup>10</sup> Internationally, marginalized legal professionals have been found to have poorer wellbeing than their colleagues. See: International Bar Association, *supra* note 6 at 40. Marginalized American law students have been found to experience higher rates of psychological distress than their colleagues. See: Jessie Agatstein et al., *Falling Through the Cracks: A Report on Mental Health at Yale Law School*, (New Haven, Connecticut: Yale Law School Mental Health Alliance, 2014). Marginalized American legal professionals experience higher rates of psychological distress than their colleagues. See: Robert L. Nelson et al., “Perceiving Discrimination: Race, Gender, and Sexual Orientation in the Legal Workplace” (2019) 44:4 *Law & Social Inquiry* 1051–1082; Kevin Cokley et al., “Lawyering While Black: Perceived Stress as a Mediator of Impostor Feelings, Race-Related Stress and Mental Health Among Black Attorneys” (2022) 48:2 *Journal of Black Psychology* 206–232. In the United States, women have been found to be more likely to develop alcohol use problems. See: Justin Anker & Patrick R. Krill, “Stress, Drink, Leave: An Examination of Gender-Specific Risk Factors for Mental Health Problems and Attrition Among Licensed Attorneys” (2021) 16:5 *PLOS ONE* e0250563. In Australia, women law students and legal professionals reported higher psychological distress than men. See: Kelk et al., *supra* note 3 at 11. Marginalized Canadian legal professionals experience higher rates of psychological distress than their colleagues. See: Cadieux et al., 2022 *supra* note 3. There are no studies regarding the wellbeing of marginalized legal professionals in the United Kingdom, but see generally: Kieran Pender, *Us Too? Bullying and Sexual Harassment in the Legal Profession*, (London, UK: International Bar Association, 2019).

<sup>11</sup> The legal community has largely referred to the “culture” of law as contributing to declines in wellbeing. See: Chan, Poynton & Bruce, *supra* note 7; Bree Buchanan & James C. Coyle, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, (USA: American Bar Association National Task Force on Lawyer Well-Being, 2017) at 36; Brook Greenberg & Michelle Stanford, “Second Interim Report of the Mental Health Task Force: For Presentation at the January 31, 2020, Benchers Meeting” (2019) 21 at 4; Ipsos Reid, *Survey of Lawyers on Wellness Issues* (Ottawa, Canada: Canadian Bar Association, 2012) at 4.

competition, heavy workloads, lack of diversity, the prevalence of substance use, and the devaluation of emotion are all factors that impact wellbeing. When one is overly motivated by money, image, and power (i.e., extrinsic motivation), wellbeing also declines.

This thesis argues that law schools must seek to improve the wellbeing of their students for four reasons. First, law students are at “high risk” of trauma, psychological distress, and substance use, as evidenced by the studies to be reviewed. Second, psychological distress can affect cognition, thus affecting competence. Based on the studies on professional distress, it appears that psychological distress does not dissipate upon graduation.

Third, mental health and wellbeing affect ethical decision-making and judgment, a critical competency in the legal profession. Fourth, diversity and inclusion will not be realized if marginalized law students are experiencing alarming rates of distress. Law schools, bar associations and law societies in all compared jurisdictions are committed to diversity and inclusion. Improving the wellbeing of marginalized students may increase retention of such students within the profession and, therefore, enhance diversity and inclusion within the profession of law. Additionally, law schools could improve their reputation and funding by graduating students who experience more life and career satisfaction.

A wellbeing-focused and trauma-informed approach to legal education offers a promising approach to addressing the mental health crisis in law schools. A wellbeing-focused and trauma-informed approach is flexible and could be adapted to different law schools. It provides a way to facilitate self-awareness, inclusion and diversity, substance use awareness, emotional literacy and intelligence, self-care, and improved competence. Courses on trauma-informed lawyering, mindfulness, emotional intelligence, and cognitive behaviour have been successful in some other law schools. They could provide law schools with a means to prepare students for law’s emotional and psychological demands.

This thesis examines the mental health crisis in law schools. It makes a case that there is an urgent need to improve law students’ mental health through wellbeing-focused and trauma-informed approaches to legal education. It does so first by setting out definitions of “wellbeing,”

“mental health,” and “emotion” in Chapter 2 of this work. Chapter 2.5 explains “trauma” apart from the other factors which are detrimental to wellbeing, because trauma is the factor most detrimental to wellbeing and the most prevalent.<sup>12</sup> As Chapter 2 shows, mental health is essential for health.<sup>13</sup> Achieving health is not possible without mental health and mental health is part of wellbeing.<sup>14</sup>

Chapter 2.2 defines “wellbeing” as a subjective experience of overall health, including physical, emotional, intellectual, social, and spiritual health, with a sense of hope about the future enabling people to “connect, function, cope and thrive.”<sup>15</sup> Wellbeing includes at least five aspects of the

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<sup>12</sup> Trauma is the factor most detrimental to wellbeing. See: Vincent J. Felitti et al., "Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults" (1998) 14:4 *American Journal of Preventive Medicine* 245–258, online: <<https://linkinghub.elsevier.com/retrieve/pii/S0749379798000178>>. Trauma is prevalent worldwide. See: K. C. Koenen et al., “Posttraumatic Stress Disorder in the World Mental Health Surveys” (2017) 47:13 *Psychol Med* 2260–2274; Ronald C. Kessler et al., "Trauma and PTSD in the WHO World Mental Health Surveys" (2017) 8:sup5 *Eur J Psychotraumatol* 1353383. Trauma is prevalent in the United States. See: “Childhood Trauma is a Public Health Issue, CDC declares,” (11 November 2019), online: *Advisory Board* <<https://www.advisory.com/daily-briefing/2019/11/11/childhood-trauma>>; Melissa T. Merrick et al., “Prevalence of Adverse Childhood Experiences From the 2011–2014 Behavioral Risk Factor Surveillance System in 23 States” (2018) 172:11 *JAMA Pediatrics* 1038–1044. Trauma is prevalent in Australia. See: Katherine L. Mills et al., "Assessing the Prevalence of Trauma Exposure in Epidemiological Surveys" (2011) 45:5 *AUST NZ J PSYCHIAT* 407–415. Trauma is prevalent in Canada. See: Divya Joshi et al., “Prevalence of Adverse Childhood Experiences Among Individuals Aged 45 to 85 years: A Cross-Sectional Analysis of the Canadian Longitudinal Study on Aging” (2021) 9:1 *CMAJ* E158; Michael Van Ameringen et al., “Post-Traumatic Stress Disorder in Canada” (2008) 14:3 *CNS Neurosci Ther* 171–181; Ioanna Heidinger, “Profile of Canadians who Experienced Victimization during Childhood, 2018,” (12 December 2022), online: *Statistics Canada* <<https://www150.statcan.gc.ca/n1/pub/85-002-x/2022001/article/00016-eng.htm>>. Some traumas, like “adverse childhood experiences,” are preventable. See: “Preventing Adverse Childhood Experiences,” (23 August 2021), online: *Centers for Disease Control and Prevention* <<https://www.cdc.gov/vitalsigns/aces/index.html>>; Christopher M. Jones, Melissa T. Merrick & Debra E. Houry, “Identifying and Preventing Adverse Childhood Experiences: Implications for Clinical Practice” (2020) 323:1 *JAMA* 25–26. For an article that argues that improving law student and lawyer wellbeing can be achieved through law school education and practices to deal with “adverse childhood experiences,” see: Karen Oehme & Nat Stern, “Improving Lawyers’ Health by Addressing the Impact of Adverse Childhood Experiences” (2019) 53:4 *University of Richmond Law Review* 1311. Also see generally: Public Safety Canada, *Supporting Canada’s Public Safety Personnel: An Action Plan on Post-Traumatic Stress Injuries* (Government of Canada, 2019).

<sup>13</sup> See: *Constitution of the World Health Organization* (2006). This thesis adopts the definition of wellbeing as outlined in the *Constitution of the World Health Organization* (2006) and means “a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity.” Dr. Tedros Adhanom Ghebreyesus, the Director-General of the World Health Organization, recently wrote, “[u]ltimately, there is no health without mental health.” *World Mental Health Report*, *supra* note 1 at vi. “Wellbeing” is synonymous with health.

<sup>14</sup> See: *World Mental Health Report*, *ibid* at vi.

<sup>15</sup> There is no universally accepted definition of “wellbeing.” See: Rachel Dodge et al., “The Challenge of Defining Wellbeing” (2012) 2:3 *International Journal of Wellbeing* 222–235. Mental health influences wellbeing. See: *World Mental Health Report*, *ibid* at 13. Martin Seligman, known as the “Father of Positive Psychology” and a past president of the American Psychological Association, has dedicated his life to studying wellbeing and has proposed that wellbeing is enhanced through experiences of “Positive Emotion, Engagement, Relationships, Meaning and

human experience, including: intellectual, spiritual, physical, social, and emotional.<sup>16</sup> All aspects are intricately interconnected because each aspect can affect the others.

Chapter 2.3 defines “mental health” as an individual’s subjective experiences, thoughts, and emotions, which affects a person’s behaviour, including their ability to manage their thoughts, reactions and emotions, their ability to cope with everyday stresses, work, learn, and realize their

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Accomplishment (PERMA).” See: Martin E. P. Seligman, *Flourish: A Visionary New Understanding of Happiness and Well-Being*, 1st ed. (New York: Free Press, 2011) at 16-18. “Flourishing” and “thriving” are often used interchangeably. Both refer to the ability of a person to reach their full potential. The American Bar Association defined “wellbeing” on page 9 of *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* as “a continuous process toward thriving across all life dimensions.” See: Buchanan & Coyle, *supra* note 11 at p. 9. Seligman explains what “that wellbeing is flourishing” in *Flourish* on page 13, where he writes that he “used to think that the topic of positive psychology was happiness, that the gold standard for measuring happiness was life satisfaction, and that the goal of positive psychology was to increase life satisfaction. I now think that the topic of positive psychology is well-being, that the gold standard for measuring well-being is flourishing, and that the goal of positive psychology is to increase flourishing. This theory, which I call well-being theory, is very different from authentic happiness theory, and the difference requires explanation.” Hope is essential for flourishing and wellbeing. See: Seligman, Martin E P, *The Hope Circuit: A Psychologist’s Journey from Helplessness to Optimism* (New York, NY: Hachette Book Group, 2018). Subjective wellbeing is often referred to as “happiness.” See: Ed Diener, Christie Napa Scollon & Richard E. Lucas, “The Evolving Concept of Subjective Well-Being: The Multifaceted Nature of Happiness” in Ed Diener, ed, *Assessing Well-Being: The Collected Works of Ed Diener* (Dordrecht: Springer Netherlands, 2009) 67. Subjective wellbeing reflects an overall evaluation of a person’s life quality from her or his own perspective. See: Ed Diener, Richard E. Lucas & Shigehiro Oishi, “Advances and Open Questions in the Science of Subjective Well-Being” (2018) 4:1 COLLABRA-PSYCHOL, Art. 15. Also see generally: “Well-Being Concepts | HRQOL | CDC,” (5 November 2018), online: *Centers for Disease Control and Prevention* <<https://www.cdc.gov/hrqol/wellbeing.htm>>; Daniel Kahneman, Ed Diener & Norbert Schwartz, eds, *Well-Being: The Foundations of Hedonic Psychology* (New York: Russell Sage Foundation, 2003); Ed Diener, ed, *The Science of Well-Being: The Collected Works of Ed Diener*, 1st ed. (Social Indicators Research Ser., 37., 2009). Thriving entails achievement and “being all one can be” (also referred to as “self-actualization”). See: A. H. Maslow, “A Theory of Human Motivation” (1943) 50:4 Psychological Review 370–396; Scott Barry Kaufman, *Transcend: The New Science of Self-Actualization* (United States of America: TarcherPerigee Book, 2021). Also see generally: Viktor E. Frankl, *Man’s Search for Meaning* (Boston: Beacon Press, 2006); Brené Brown, *Daring Greatly: How the Courage to Be Vulnerable Transforms the Way We Live Love, Parent and Lead* (New York: Avery an imprint of Penguin Random House, 2012); Mihaly Csikszentmihalyi, *Flow: The Psychology of Optimal Experience*, 1st ed. (New York: Harper & Row, 1990); Carol S., Dweck, *Mindset: The New Psychology of Success* (USA: Ballantine Books, 2016); Gretchen Rubin, *The Happiness Project* (Canada: Collins, 2009). “Hope plays an important role in promoting psychological health.” See: Jenny Y. Lee & Matthew W. Gallagher, “Hope and Well-Being” in *The Oxford Handbook of Hope* (United States of America: Oxford University Press, 2018) 287. Also see: Tracey Williams, “Hope” (2020) 30:6 Journal of Perioperative Practice 151–151. “Hope” improved wellbeing among college students during the pandemic. See: Emel Genç & Gökmen Arslan, “Optimism and Dispositional Hope to Promote College Students’ Subjective Well-being in the Context of the COVID-19 Pandemic” (2021) 5:2 Journal of Positive School Psychology 87–96. Culture affects wellbeing. See: Ed Diener, ed, *Culture and Well-Being: The Collected Works of Ed Diener*, 1st ed. (Social Indicators Research Ser., 38. Web., 2009). Lawyers have the same mental health and wellbeing needs as everyone else. See: Lawrence S. Krieger & Kennon M. Sheldon, “What Makes Lawyers Happy? A Data-Driven Prescription to Redefine Professional Success” (2015) 83:2 George Washington Law Review 554–627.

<sup>16</sup> *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* also cited “occupational.” See generally: Buchanan & Coyle, *ibid*. However, because this thesis addresses law student wellbeing and because law students are not yet in the “occupation,” the “occupational” domain was omitted for brevity.



potential and maintain healthy relationships.<sup>17</sup> Chapter 2.3 will distinguish “mental health” from a “mental health condition” and a “mental health problem” and outline how mental health affects wellbeing. Chapter 2.4 defines “emotion” as a complex psychological and physiological response to stimuli.<sup>18</sup> Chapter 2.4 will outline the significance of emotion in decision-making,

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<sup>17</sup> Mental health is often used interchangeably with “psychological health.” Mental health and mental health problems are “subjective.” See: James J. Gross, Helen Uusberg & Andero Uusberg, “Mental Illness and Well-Being: An Affect Regulation Perspective” (2019) 18:2 WORLD PSYCHIATRY 130–139; Vincent Taschereau-Dumouchel et al., “Putting the ‘Mental’ Back in ‘Mental Disorders’: A Perspective from Research on Fear and Anxiety” (2022) 27:3 Mol Psychiatry 1322–1330. “Mental health is all about how people think, feel, and behave.” See: Adam Felman & Rachel Ann Tee-Melegrito, “Mental Health: Definition, Common Disorders, Early Signs, and More,” (23 December 2022), online: *Medical News Today* <<https://www.medicalnewstoday.com/articles/154543>>. The World Health Organization recently wrote “Mental health is an integral part of our general health and well-being and a basic human right. Having good mental health means we are better able to connect, function, cope and thrive. Mental health exists on a complex continuum, with experiences ranging from an optimal state of well-being to debilitating states of great suffering and emotional pain.” See: World Mental Health Report, *supra* note 1 at xiv. On page 15 of the World Mental Health Report, they write “mental health exists on a complex continuum with experiences ranging from an optimal state of well-being to debilitating states of great suffering and emotional pain.” Galderisi et al. described “mental health” as “a dynamic state of internal equilibrium which enables individuals to use their abilities in harmony with universal values of society. Basic cognitive and social skills; ability to recognize, express and modulate one’s own emotions, as well as empathize with others; flexibility and ability to cope with adverse life events and function in social roles; and harmonious relationship between body and mind represent important components of mental health which contribute, to varying degrees, to the state of internal equilibrium.” See: Silvana Galderisi et al., “Toward a New Definition of Mental Health” (2015) 14:2 WORLD PSYCHIATRY 231–233 at 231–323. Also see generally: Gerben J. Westerhof & Corey L. M. Keyes, “Mental Illness and Mental Health: The Two Continua Model Across the Lifespan” (2010) 17:2 Journal of Adult Development 110–119; “What is Mental Health?,” (2 February 2023), online: *Substance Abuse and Mental Health Services Administration* <<https://www.samhsa.gov/mental-health>>; “About Mental Health,” (28 April 2023), online: *Centers for Disease Control and Prevention* <<https://www.cdc.gov/mentalhealth/learn/index.htm>>; Public Health Agency of Canada, “About Mental Health” (26 June 2015), online: *aem* <<https://www.canada.ca/en/public-health/services/about-mental-health.html>>; “Mental Health,” (17 June 2022), online: *World Health Organization* <<https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response>>. Social connection and belonging are vital for mental health. See generally: Laura D. Kubzansky, Elissa S. Epel & Richard J. Davidson, “Prosociality Should Be a Public Health Priority” (2023) *Nature Human Behaviour*, online: <<https://doi.org/10.1038/s41562-023-01717-3>>. One of the purposes of human lives is to achieve and “be all one can be” (also referred to as “self-actualization”). See: Maslow, *supra* note 15. Also see generally: Frankl, *supra* note 15; Brown 2012, *supra* note 15; Csikszentmihalyi, *supra* note 15; Dweck, *supra* note 15; Rubin, *supra* note 15. There are many ways to improve mental health.

<sup>18</sup> Defining “emotion” is challenging and contested; no consensus exists. See generally: Andrea Scarantino, “How to Define Emotions Scientifically” (2012) 4:4 *Emotion Review* 358–368; James A. Russell, “Introduction to Special Section: On Defining Emotion” (2012) 4:4 *Emotion Review* 337–337; Thomas Dixon, “‘Emotion’: One Word, Many Concepts” (2012) 4:4 *Emotion Review* 387–388; Maria Gendron, “Defining Emotion: A Brief History” (2010) 2:4 *Emotion Review* 371–372; Raul Berrios, “What Is Complex/Emotional About Emotional Complexity?” (2019) 10 *Frontiers in Psychology*, online: <<https://www.frontiersin.org/articles/10.3389/fpsyg.2019.01606>>. In this thesis, the term ‘emotions’ includes the entire range of human emotions that may be experienced per its common usages in the relevant literature. See generally: Peter Goldie, *The Emotions: A Philosophical Exploration* (Oxford, 2002; online edn, Oxford Academic, 1 Nov. 2003), <<https://doi-org.cyber.usask.ca/10.1093/0199253048.001.0001>>, accessed 24 July 2023. Also, see generally: Ralph Adolphs, “Emotion” (2010) 20:13 *Current Biology* R549–R552. The term ‘emotion’ will be used to denote a particular “emotional episode” (e.g., love, hope, sadness) appropriate to the context of its usage. See: Keith Oatley, *Understanding Emotions*, 2nd ed. / Keith Oatley, Dacher Keltner, Jennifer M. Jenkins. ed (Malden, MA: Oxford: Blackwell Pub., 2006). “Emotional” refers to the presence or application of emotion within a specific situation or

social connection, self-awareness, and understanding and addressing wellbeing and mental health.<sup>19</sup>

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experience. See generally: Lisa Feldman Barrett et al., “Knowing What You’re Feeling and Knowing What to Do About It: Mapping the Relation between Emotion Differentiation and Emotion Regulation” (2001) 15:6 *Cognition and Emotion* 713–724; Goran Šimić et al., “Understanding Emotions: Origins and Roles of the Amygdala” (2021) 11:6 *BIOMOLECULES* 823; Hyisung Hwang & David Matsumoto, “11.2 Functions of Emotions” in Jorden A. Cummings & Lee Sanders, eds, *Introduction to Psychology* (University of Saskatchewan, 2019); Jonathan R. Zadra, & Gerald L. Clore, “Emotion and Perception: The Role of Affective Information” (2011) 2:6 *WIREs COGN SCI* 676–685; Erika H. Siegel et al., “Seeing What You Feel: Affect Drives Visual Perception of Structurally Neutral Faces” (2018) 29:4 *PSYCHOL SCI* 496–503. Also, see generally: Lisa Feldman Barrett, *How Emotions Are Made: The Secret Life of the Brain* (USA: First Mariner Books, 2018); Paula M. Niedenthal & Adrienne Wood, “Does Emotion Influence Visual Perception? Depends on How You Look at it” (2019) 33:1 *COGNITION EMOTION* 77–84; Carroll E. Izard, “Emotion Theory and Research: Highlights, Unanswered Questions, and Emerging Issues” (2009) 60:1 *ANNU REV PSYCHOL* 1–25. Emotion is subjective and influences wellbeing. See: Ed Diener, Shigehiro Oishi & Richard E. Lucas, “Personality, Culture, and Subjective Well-Being: Emotional and Cognitive Evaluations of Life” (2003) 54:1 *Annu Rev Psychol* 403–425. One can only express one’s inner world as well as one’s language will provide. That is why a language for emotion is necessary. See generally: Brené Brown, *Atlas of the Heart: Mapping Meaningful Connection and the Language of Human Experience* (New York: Random House, 2021).

<sup>19</sup> Emotion affects decision-making, learning & memory. See: Ronda Muir, *Beyond Smart Lawyering with Emotional Intelligence* (Chicago: American Bar Association, 2017); Steven Friedland, “Fire and Ice: Reframing Emotion and Cognition in Law” (2019) 54:1001 101-147, Wake Forest L R, online: <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3386184](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3386184)>; Kristen Konrad Tiscione, “Feelthinking like a Lawyer: The Role of Emotion in Legal Reasoning and Decision-Making” (2019) 54:4 Wake Forest L Rev 1159–1196. See: Debra S. Austin, “Windmills of Your Mind: Understanding the Neurobiology of Emotion” (2019) 54 Wake Forest Law Review 931 [Austin 2019]. Austin describes how “lawyers can cultivate neuro-intelligence” and “describes the importance of developing mental strength”. Her article “challenges lawyers to enhance their understanding of the role emotion plays in the irrelationships with colleagues, clients, employees, and constituents.” Also see: Antonio R. Damasio, *Descartes’ Error: Emotion, Reason, and the Human Brain* (New York: New York: G.P. Putnam, 1994); Hilary Brown, “The Role of Emotion in Decision-Making” (2011) 13:4 *The Journal of Adult Protection* 194–202; Gerald L. Clore & Jeffrey R. Huntsinger, “How Emotions Inform Judgment and Regulate Thought” (2007) 11:9 *Trends in Cognitive Sciences* 393–399; Chai M. Tyng et al., “The Influences of Emotion on Learning and Memory” (2017) 8 *Frontiers in Psychology*, online: <https://www.frontiersin.org/articles/10.3389/fpsyg.2017.01454>; Mark Fenton-O’Creevy et al., “Thinking, Feeling and Deciding: The Influence of Emotions on the Decision Making and Performance of Traders” (2011) 32:8 *Journal of Organizational Behavior* 1044–1061; Margaret Hopkins & R. Deepa, “The Impact of Emotional Intelligence on Ethical Judgment” (2018) 37:6 *Journal of Management Development* 503–511; Elizabeth A. Phelps, Karolina M. Lempert & Peter Sokol-Hessner, “Emotion and Decision Making: Multiple Modulatory Neural Circuits” (2014) 37:1 *Annual Review of Neuroscience* 263–287; Sarah N. Garfinkel et al., “Anger in Brain and Body: The Neural and Physiological Perturbation of Decision-Making by Emotion” (2016) 11:1 *Social Cognitive and Affective Neuroscience* 150–158; Nadine Jung et al., “How Emotions affect Logical Reasoning: Evidence from Experiments with Mood-Manipulated Participants, Spider Phobics, and People with Exam Anxiety” (2014) 5 *Frontiers in Psychology* 570; Gabriele Lakomski & Colin W. Evers, “Passionate Rationalism: The Role of Emotion in Decision Making” (2010) 48:4 *Journal of Educational Administration* 438–450; Heather C. Lench, Sarah A. Flores & Shane W. Bench, “Discrete Emotions Predict Changes in Cognition, Judgment, Experience, Behavior, and Physiology: A Meta-Analysis of Experimental Emotion Elicitations” (2011) 137:5 *PSYCHOL BULL* 834–855; Nasir Naqvi, Baba Shiv & Antoine Bechara, “The Role of Emotion in Decision Making: A Cognitive Neuroscience Perspective” (2006) 15:5 *CURR DIR PSYCHOL SCI* 260–264; Jennifer S. Lerner et al., “Emotion and Decision Making” (2015) 66:1 *Annual Review of Psychology* 799–823; Paul Slovic, “Rational Actors and Rational Fools: The Influence of Affect on Judgment and Decision-Making” (2000) 6:1 *Roger Williams University Law Review* 163; Carolyn Côté-Lussier & Jean-Denis David, “Intuitive Anger in the Context of Crime and Punishment” (2023) 29:5 *PSYCHOL CRIME LAW* 465–487. Many scholars have advocated for the integration of emotion into legal education. See: John E. Montgomery, “Incorporating Emotional Intelligence Concepts into Legal Education: Strengthening the

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As mentioned, Chapter 2.5 will discuss trauma, which is the factor most detrimental to wellbeing. Wellbeing plummets most notably with experiences of adverse childhood experiences and trauma, which are alarmingly prevalent among the general population.<sup>20</sup> Law students and legal professionals more than likely arrive at law school with trauma and are further exposed to trauma through their education and profession.<sup>21</sup>

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Adam Lueke & Bryan Gibson, “Mindfulness Meditation Reduces Implicit Age and Race Bias: The Role of Reduced Automaticity of Responding” (2015) 6:3 *Social Psychological and Personality Science* 284–291; Yoon Kang, Jeremy R. Gray & John F. Dovidio, “The Nondiscriminating Heart: Lovingkindness Meditation Training Decreases Implicit Intergroup Bias.” (2014) 143:3 *Journal of Experimental Psychology: General* 1306; Alexander J. Stell & Tom Farsides, “Brief Loving-Kindness Meditation Reduces Racial Bias, Mediated by Positive Other-Regarding Emotions” (2016) 40 *Motivation and Emotion* 140–147. Concerning how to foster self-awareness and mindfulness in legal education, see: Carwina Weng, “Multicultural Lawyering: Teaching Psychology to Develop Cultural Self-Awareness” (2005) 11 *Articles by Maurer Faculty* 823; Antoinette Sedillo Lopez, “Making and Breaking Habits: Teaching (and Learning) Cultural Context, Self-Awareness, and Intercultural Communication through Case Supervision in a Client-Service Legal Clinic New Directions in Clinical Legal Education” (2008) 28 *Wash U J L & Pol’y* 37–68; Paula Ioanide, “Negotiating Privileged Students’ Affective Resistance: Why a Pedagogy of Emotional Engagement is Necessary” in KW Crenshaw, ed, *Seeing Race Again: Countering Colorblindness Across the Disciplines* (Web.: University of California Press, 2019) 327; Augustus A. White et al., “Self-Awareness and Cultural Identity as an Effort to Reduce Bias in Medicine” (2018) 5:1 *J Racial and Ethnic Health Disparities* 34–49. Also, see generally: Eric A. Salzen, “Emotion and Self-Awareness” (1998) 57:3 *Applied Animal Behaviour Science* 299–313; Paul J. Silvia, “Self-Awareness and Emotional Intensity” (2002) 16:2 *COGNITION EMOTION* 195–216; Terry A. Maroney, “Emotional Regulation and Judicial Behavior” (2011) 99:6 *CALIF LAW REV* 1485–1555; Tristan McIntosh, Alison L. Antes, & James M. DuBois, “Navigating Complex, Ethical Problems in Professional Life: A Guide to Teaching SMART Strategies for Decision-Making” (2021) 19:2 *Journal of Academic Ethics* 139; Vago & David, *ibid*; Tasha Eurich, “What Self-Awareness Really Is (and How to Cultivate It)” (2018) *Harvard Business Review*.

<sup>20</sup> See generally: Oehme & Stern, *supra* note 12; Joshi et al., *supra* note 12; Merrick et al., *supra* note 12; Jones, Merrick & Houry, *supra* note 12; Advisory Board, *supra* note 12.

<sup>21</sup> See generally: David Jaffe, Katherine Bender & Jerome M. Organ, “‘It is Okay to Not Be Okay’: The 2021 Survey of Law Student Well-Being” (2022) 91:2 *The Bar Examiner* 8; Natalie Netzel, “Trauma-Informed (As A Matter of) Course” (2023) 31 *Am UJ Gender Soc Pol’y & L* 383; Sarah Katz, “We Need to Talk about Trauma: Integrating Trauma-Informed Practice into the Family Law Classroom” (2022) 60:4 *Family Court Review* 757–776; Oehme & Stern, *ibid*; Patricia Weir et al., “A Diary Study of Australian Lawyers Working with Traumatic Material” (2022) 29:4 *Psychiatry, Psychology, and Law* 610–630; Patricia Weir, Liz Jones & Nicola Sheeran, “Australian Lawyers’ Experience of Exposure to Traumatic Material: A Qualitative Study” (2021) 28:3 *Psychiatry, Psychology, and Law* 363–38; Grace Maguire & Mitchell K. Byrne, “The Law Is Not as Blind as It Seems: Relative Rates of Vicarious Trauma among Lawyers and Mental Health Professionals” (2017) 24:2 *PSYCHIAT PSYCHOL LAW* 233–243; Marie-Eve Leclerc, Jo-Anne Wemmers & Alain Brunet, “The Unseen Cost of Justice: Post-Traumatic Stress Symptoms in Canadian Lawyers” (2020) 26:1 *Psychology, Crime & Law* 1–21; Marie-Jeanne Léonard, Daniel Saumier & Alain Brunet, “When the Lawyer Becomes Traumatized: A Scoping Review” (2020) 10:3 *Sage Open* 215824402095703; “New Post-Traumatic Stress Disorders Study Findings Recently Were Published by Researchers at University of Quebec Montreal (When the Lawyer Becomes Traumatized: A Scoping Review),” *Mental Health Weekly Digest* (28 September 2020) 437; Colin James, “Towards Trauma-Informed Legal Practice: A Review” (2020) 27:2 *Psychiat Psychol Law* 275–299.

Categorizing, dichotomizing, or objectifying trauma fails to capture its essence accurately. Trauma is a psychological, emotional, and sometimes physical “response” to an event or circumstance beyond one’s ability to cope.<sup>22</sup> Trauma is a profoundly subjective experience that involves pain, stress, anxiety, avoidance, fear, vulnerability, anguish, hopelessness, despair, sadness, grief, shame, anger and being overwhelmed, resulting from event(s) or circumstance(s) that ultimately cause harm to an individual’s wellbeing and mental health.<sup>23</sup> Trauma has been included in Chapter 2 to highlight its pivotal relationship with mental health and wellbeing, as well as its prevalence.

Chapter 3 will outline significant similarities regarding the experiences, practices, attitudes, and beliefs in accredited common law legal education in the United States, Australia, England, Wales, and Canada.<sup>24</sup> These commonalities include a colonial origin and the traditional belief that law is neutral, objective, and rational, and emotions are irrelevant.<sup>25</sup> An unrelenting work

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<sup>22</sup> See: Sarah Katz, “The Trauma-Informed Law Classroom: Incorporating Principles of Trauma-Informed Practice into the Pandemic Age Law School Classroom” (2020) 25:17 UC Davis Social Justice Law Review, online: <<https://papers.ssrn.com/abstract=3810982>>. Also see: US Department of Veteran Affairs, “Common Reactions After Trauma,” online: US Department of Veteran Affairs <[https://www.ptsd.va.gov/understand/isitptsd/common\\_reactions.asp](https://www.ptsd.va.gov/understand/isitptsd/common_reactions.asp)>; SAMHSA’s Trauma and Justice Strategic Initiative, *SAMHSA’s Concept of Trauma and Guidance for a Trauma-Informed Approach* (U.S. Department of Health and Human Services, 2014; Center for Substance Abuse Treatment (US), “Chapter 3: Understanding the Impact of Trauma” in *Trauma-Informed Care in Behavioral Health Services* (Rockville, MD: Substance Abuse and Mental Health Services Administration (US), 2014). Post-traumatic stress disorder (PTSD) is assessed by way of the diagnostic criteria. See: DSM-V, *supra* note 2; DSM-5-TR, *supra* note 2. Also see generally: Matthew J. Friedman, “PTSD History and Overview,” online: *US Department of Veteran Affairs* <[https://www.ptsd.va.gov/professional/treat/essentials/history\\_ptsd.asp](https://www.ptsd.va.gov/professional/treat/essentials/history_ptsd.asp)>.

<sup>23</sup> See generally: Bruce D. Perry & Oprah Winfrey, *What Happened to You?: Conversations on Trauma, Resilience, and Healing* (New York: Flatiron Books, 2021); Friedman US Department of Veteran Affairs, *ibid* note 22; “What is Emotional Trauma,” online: The Jed Foundation <<https://jedfoundation.org/resource/understanding-emotional-trauma/>>; Center for Substance Abuse Treatment (US) *Trauma-Informed Care in Behavioral Health Services*, “Trauma Awareness” in *Trauma-Informed Care in Behavioral Health Services* (Rockville, MD: Substance Abuse and Mental Health Services Administration (US), 2014) Chapter 2; Center for Substance Abuse Treatment (US) Chapter 3, *ibid*. Regarding language for emotion see: Brown 2021, *supra* note 18.

<sup>24</sup> The focus of this thesis is specifically on common law education. Because the United Kingdom includes England and Wales, Scotland, and Northern Ireland, as well as numerous smaller islands, Chapter 3 examines England and Wales for brevity.

<sup>25</sup> Common law legal education emerged from the Inns of Court in London in the late 1200s. See generally: Joshua Krook, “A Brief History of Legal Education: A Battle Between Law as a Science and Law as a Liberal Art” (2017) 17 *Legal History* 30; Linda Martin, “From Apprenticeship to Law School: A Social History of Legal Education in Nineteenth Century New South Wales” (1986) 9:2 *University of New South Wales Law Journal* 143; Victor Allen Edgeloe, “The Adelaide Law School: 1883-1983. (Australia)” (1983) 9:1 *Adelaide Law Review* 1–42. Regarding colonialism, see generally: Evelyn Nakano Glenn, “Settler Colonialism as Structure” (2015) 1:1 *Sociology of Race and Ethnicity* (Thousand Oaks, Calif) 52–72. In the United States, see: Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (USA: Liveright Publishing Corp, 2017). In Australia, see: Margaret Joan Beazley, “Australia’s Legal History and Colonial Legacy” (2020) 48:1 *International*

ethic and impeccable evaluations are required for admission into law school in all jurisdictions.<sup>26</sup> Once admitted to law school, students often discover that common law legal education is a test

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Journal of Legal Information 6–16. In the UK, see: Foluke Adebisi, “Should We Rethink the Purposes of the Law School? A Case for Decolonial Thought in Legal Pedagogy” (2021) 2:3 ac 428–449 [Adebisi 2021]; Foluke Adebisi, “Decolonising the Law School: Presences, Absences, Silences... and Hope” (2020) 54:4 null 471–474 [Adebisi, 2020]. Adebisi, 2020 wrote on pages 439–440 that “legal ontology and epistemology systematically (re)produce coloniality and its attendant injustice(s)” and require “taking decolonial approaches require[ing] legal academics to continuously commit to communicate democratically across epistemological worlds without valorizing or universalizing Euro-American legal thought. Decolonial thought does not mean replacement but, instead, seeks ways to bring about new worlds of thinking and being that are inclusive of plural systems of [legal] thought and do not reproduce the harms of coloniality, which include racial, class and gender injustice, as well as the resulting global poverty and climate emergencies.” In Canada, see: Constance Backhouse, *Colour Coded: A Legal History of Racism in Canada; 1900 - 1950*, repr. Ed. (Toronto: Univ. of Toronto Press, 2010); W. Wesley Pue, *Lawyers’ Empire: Legal Professions and Cultural Authority, 1780–1950* (Vancouver, BC: UBC Press, 2016); Library and Archives Canada, *Report of the Royal Commission on Aboriginal Peoples*, (Canada, 1996) [RCAP 1996]; Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada*, Open WorldCat (2015) [TRC Report]; Truth and Reconciliation & Commission of Canada, *Truth and Reconciliation Commission of Canada: Calls to Action*, (Winnipeg, Manitoba: Truth and Reconciliation Commission of Canada, 2015) [TRC Calls]; National Inquiry into Missing and Murdered Indigenous Women and Girls (Canada) et al., *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, (Canada), Open WorldCat (National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019) [MMIWG]. Regarding the traditional belief that law is neutral, objective, rational and emotionally irrelevant, in the United States, see: Karl N. Llewellyn, *The Bramble Bush: On Our Law and its Study* (New York: Oceana Publications, 1951) at 101; L. Danielle Tully, “The Cultural (Re)Turn: The Case for Teaching Culturally Responsive Lawyering” (2020) 16:2 Stan J CR & CL 201–258; Muir, *supra* note 19; Friedland, *supra* note 19; Montgomery, *supra* note 19; Douglas, *supra* note 19; Tiscione, *supra* note 19; Alena M. Allen, “The Emotional Woman” (2021) 99:4 North Carolina Law Review 1027; Maroney 2011, *supra* note 19. In Australia, see: Renata Grossi, “Understanding Law and Emotion” (2015) 7:1 Emotion Review 55–60; Merridee L. Bailey & Kimberley-Joy Knight, “Writing Histories of Law and Emotion” (2017) 38:2 J LEGAL HIST 117–129. In England & Wales, see: Jones 2018, *supra* note 19; Jones Law School 2020, *supra* note 19; Adebisi 2020, *ibid*; Adebisi 2021, *ibid*; Anthony Bradney, “Elite Values in Twenty-First Century, United Kingdom Law Schools” (2008) 42:3 Law Teacher 291–301. In Canada, see: Richard F. Devlin, “Mapping Legal Theory” (1994) 32:3 ALR 602; Pue 2016, *ibid*; Mark Witten, “Rationalist Influences in the Adjudication of Religious Freedoms in Canada Discussion Pieces” (2012) 32 Windsor Rev Legal & Soc Issues 91–122. Also, see generally: Côté-Lussier & David, *supra* note 19 at 469–470 wherein they write that “[t]he pervading idea that criminalized peoples are ‘evildoers’ is therefore in line with fundamental dimensions that universally guide social interactions and intergroup relations, and likely contributes to strong emotions of anger.” The study discusses the consequences of not acknowledging that bias and “investigates the etiology of anger in punitive decision-making.”

<sup>26</sup> In the United States, see: Karly S. Ford, Kelly Rosinger & Junghee Choi, “A Product of Prestige?: ‘Race Unknown’ and Competitive Admissions in the United States” (2022) 20:5 Policy Futures in Education 640–645 at 643; William C. Kidder, “The Struggle for Access from Sweatt to Grutter: A History of African American, Latino, and American Indian Law School Admissions, 1950–2000” (2003) 19 Harvard Blackletter Law Journal 1–42; James C. Hathaway, “The Mythical Meritocracy of Law School Admissions” (1984) 34:1 Journal of Legal Education 86–96. Also, see generally: Sandra R. Klein, “Legal Education in the United States and England: A Comparative Analysis” (1991) 13 Loy LA Int’l & Comp L Rev 601; Kristen Holmquist et al., “Measuring Merit: The Shultz-Zedeck Research on Law School Admissions” (2014) 63:4 Journal of Legal Education 565. In Australia, see generally: Murray Hawkins, “Australian Legal Education and Bar Admissions” (2008) The Bar Examiner at 13; Judy Allen & Paula Baron, “Buttercup Goes to Law School: Student Wellbeing in Stressed Law Schools (Australia)” (2004) 29:6 Alternative Law Journal 285. (215) at 287. In England & Wales, see: Anna K. Zimdars, “The Competition for Pupillages at the Bar of England and Wales (2000–2004)1” (2011) 38:4 Journal of Law and Society 575–603; Anna Mountford Zimdars, *Meritocracy and the University* (Bloomsbury, 2016). Also, see generally: Phil Harris & Sarah Beinart, “The Survey of Law Schools in the United Kingdom” (2005) 39:3 Law Tchr

of cognitive endurance with a gruelling number of hours dedicated to studying law.<sup>27</sup> Accredited law schools are the “gateway to the profession” with prescribed learning outcomes including ethics and all value diversity<sup>28</sup> This thesis will explore how these commonalities also interact with and impact law student wellness.

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299–366. In Canada, see generally: Dawna Tong & W. Wesley Pue, “The Best and the Brightest: Canadian Law School Admissions” (1999) 37:4 Osgoode Hall LJ 843; Sarah Kriekle, “Gatekeeping Admissions: Access to Justice and Inclusive Admissions Processes,” 2022 31 Dalhousie Journal of Legal Studies 85, 2022 CanLIIDocs 4268, <<https://canlii.ca/t/7n10g>>, retrieved on 2023-03-17. Also see generally: Michael A. Bailey, Jeffrey S. Rosenthal & Albert H. Yoon, “Grades and Incentives: Assessing Competing Grade Point Average Measures and Postgraduate Outcomes” (2016) 41:9 STUD HIGH EDUC 1548–1562; Alvin Esau, “Competition, Cooperation or Cartel: A National Law School Accreditation Process for Canada?” (2000) 23:1 Dal LJ 183; Susan Boyd, “Corporatism and Legal Education in Canada” (2005) 14:2 Social & Legal Studies 287–297; Simon Marginson, “Dynamics of National and Global Competition in Higher Education” (2006) 52:1 HIGH EDUC 1–39.

<sup>27</sup> In the United States, see: Sheldon & Krieger 2004, *supra* note 4 at 262; Pritchard & McIntosh, *supra* note 5 at 729; Andrea M. Flynn, Yan Li & Bernadette Sánchez, “Law School Stress: Moving from Narratives to Measurement” (2017) 56:2 Washburn Law Journal 259 at 262. Also, see generally: Debra S. Austin, “Killing Them Softly: Neuroscience Reveals How Brain Cells Die from Law School Stress and How Neural Self-Hacking Can Optimize Cognitive Performance” (2013) 59:4 Loyola Law Review 791; Elizabeth Mertz, *The Language of Law School: Learning to “Think Like a Lawyer”* (New York, NY: Oxford University Press, 2007); William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law*. (San Francisco, CA: Jossey-Bass, 2007). In Australia, see: Bergin & Pakenham, *supra* note 3 at 400; Allen & Baron, *ibid*; Massimiliano Tani & Prue Vines, “Law Students’ Attitudes to Education: Pointers to Depression in the Legal Academy and the Profession?” (2009) 19:1 Legal Education Review 3–39 at 6; Helen Stallman, “A Qualitative Evaluation of Perceptions of the Role of Competition in the Success and Distress of Law Students” (2012) 31:6 HIGH EDUC RES DEV 891–904. In the United Kingdom, see: Jones Law School 2020, *supra* note 19 at 131; Lara Dresser, “Promoting Psychological Health in Law Students” (2005) 24:1–2 Legal Reference Services Quarterly 41–72. Also, see generally: Andrew Boon & Julian Webb, “Legal Education and Training in England and Wales: Back to the Future?” (2008) 58:1 Journal of Legal Education 79–121. Also, see generally: Colin James et al., “Student Wellbeing through Teacher Wellbeing: A Study with Law Teachers in the UK and Australia” (2019) 10:3 Student Success 76–83; Dr. Colin G. James, Caroline Strevens & Rachael Field, “Law Teachers Speak Out: What do Law Schools Need to Change (2020). Wellbeing in a Changing World: The Impact of Technology and Innovation on the Legal Profession,” Intersentia (2020), ANU College of Law Research Paper No. 20. 26, Available at SSRN: <<https://ssrn.com/abstract=3387167>>. In Canada, see: Maureen F. Fitzgerald, “Rite of Passage: The Impact of Teaching Methods on First Year Law Students” (2008) 42:1 The Law Teacher 60–84 at 70–72; McGill, *supra* note 3.

<sup>28</sup> Most law schools are accredited by a law society, bar association, or college of deans. This thesis examines accredited law schools, providing common law legal education for national applicants. In the United States, see: American Bar Association: Legal Education and Admissions to the Bar, 2022–2023 *ABA Standards and Rules of Procedure for Approval of Law Schools* (American Bar Association: Legal Education and Admissions to the Bar, 2022) [ABA Standards]. Also see generally: American Bar Association, *Model Rules of Professional Conduct* (2020) [ABA Model Code]. In Australia, see: CALD, Australian Law School Standards (CALD, 2020) [CALD]. Also see generally: Law Council of Australia, *Australian Solicitors Conduct Rules* (Law Council of Australia, 2015) [AU Solicitor Rules]; *Legal Profession Uniform Conduct (Barristers) Rules 2015 - NSW Legislation* (2015) [AU Barrister Uniform Rules]. In England and Wales see: Bar Standards Board regulating Barristers & Solicitors Regulation Authority, *Academic Stage Handbook* (2014) [Academic Stage Handbook]; Bar Standards Board, *Memorandum of Understanding between The Bar Standards Board and The Council of the Inns of Court and The Honourable Society of The Inner Temple and The Honourable Society of The Middle Temple and The Honourable Society of Gray’s Inn And The Honourable Society of Lincoln’s Inn* (Bar Standards Board, 2019); Law Society and the General Council of the Bar, “Joint Statement on the Academic Stage of Training,” (September 2021), online: *Solicitor Regulation Authority* <<https://www.sra.org.uk/become-solicitor/legal-practice-course-route/qualifying-law-degree-common-professional-examination/academic-stage-joint-statement-bsb-law-society/>> [Joint Statement]. Also

A central contribution of this thesis is its comprehensive compilation of studies on law students' and legal professionals' psychological distress. Chapters 4 and 5 outline the studies on law students and legal professional distress in the United States, Australia, the United Kingdom, and Canada. These studies and their findings underscore the urgent need to address law student wellbeing as part of legal education.

Psychology, medicine, and neuroscience have determined what experiences, practices, attitudes, and beliefs harm and improve mental health and wellbeing.<sup>29</sup> Psychological health and safety manuals, guidelines, and reports are now widely available and inform the recommendations made in this work.<sup>30</sup> Chapter 6 outlines additional factors, aside from trauma and a lack of

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see generally: "SRA Code of Conduct for Solicitors, RELs and RFLs," (25 November 2019), online: *Solicitor Regulation Authority* <<https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/>> [SRA Solicitor Code]; Bar Standards Board, *The BSB Handbook* (Bar Standards Board, 2020) [BSB Handbook]; *Legal Services Act 2007, UK RS2023, c29* [UK Legal Services Act]; *Equality Act 2010, UK c. 15*. Also see: BSB, "Equality and Diversity," online: *Bar Standards Board* <<https://www.barstandardsboard.org.uk/about-us/equality-and-diversity.html>>. In Canada, see: Federation of Law Societies of Canada, *Federation of Law Societies of Canada: National Requirement*, (Federation of Law Societies of Canada, 2018) [CDA Nat'l Rqmt.]. Also see generally: Federation of Law Societies of Canada, *Model Code of Professional Conduct* (Federation of Law Societies of Canada, 2022) [CDA Model Code]. In Australia and the United Kingdom there is government regulation. In Australia see: Australian Learning and Teaching Council, *Learning and Teaching Academic Standards Project: Bachelor of Laws* (Australian Learning and Teaching Council, 2010) [AU Threshold Learning Outcomes]. In the United Kingdom see: Quality Assurance Agency for UK Higher Education (QAA), *Subject Benchmark Statement: Law* (QAA, 2019) [UK QAA 2019]; Quality Assurance Agency for UK Higher Education (QAA), *Subject Benchmark Statement: Law* (QAA, 2023) [UK QAA 2023].

<sup>29</sup> See generally: Christopher Peterson & Martin E. P. Seligman, *Character Strengths, and Virtues: A Handbook and Classification* (USA: Oxford University Press, Incorporated, 2004); Rick Hanson & Richard Mendius, *Buddha's Brain: The Practical Neuroscience of Happiness, Love & Wisdom* (Oakland, CA: New Harbinger Publications Inc., 2009); Rick Hanson, *Hardwiring Happiness: The New Brain Science of Contentment, Calm and Confidence* (New York: Harmony Books, 2013). Also, see generally: Margaret L. Kern & Daniel S. Bowling, "Character Strengths and Academic Performance in Law Students" (2015) 55 *Journal of Research in Personality* 25–29.

<sup>30</sup> See generally: Canadian Standards Association & Mental Health Commission of Canada, *National Standard of Canada CSA Z2003:20: Mental Health and Well-Being for Post-Secondary Students* (CSA Group 2020) [CSA 2020]; Canadian Standards Association & Bureau de normalisation de Quebec, *Psychological Health and Safety in the Workplace — Prevention, Promotion, and Guidance to Staged Implementation (CAN/CSA-Z1003-13/BNQ 9700-803/2013 National Standard of Canada)* (Canadian Standards Association, 2013); Merv Gilbert & Dan Bilsker, *Psychological Health & Safety: An Action Guide for Employers* (Mental Health Commission of Canada and the Centre for Applied Research in Mental Health & Addiction, 2012); Canadian Centre for Occupational Health and Safety Government of Canada, "Mental Health-Psychosocial Risk Factors in the Workplace : OSH Answers," (13 November 2019), online: <<http://www.ccohs.ca/>>; "Psychological Health & Safety Standards Training | CMHA National," online: *CMHA National* <<https://cmha.ca/what-we-do/national-programs/workplace-mental-health/psychological-health-safety-training/>>; Garen Staglin, "National Standards for Mental Health In The Workplace: A Catalyst For Commitment," (26 January 2021), online: *Forbes* <<https://www.forbes.com/sites/onemind/2021/01/26/national-standards-for-mental-health-in-the-workplace-a-catalyst-for-commitment/>>; Lord Dennis Stevenson & Paul Farmer, *How to Implement the Thriving at Work Mental Health Standards in your Workplace* (Mind: for Better Mental Health, 2017); State of California, "Workplace Mental Health," online: *Mental Health Services Oversight & Accountability Commission (MHSOAC)* <<https://mhsoac.ca.gov/initiatives/workplace-mental-health/>>; Jill Collins, *Assembling the Pieces: An*



understanding the significance of emotions, that are detrimental to wellbeing. The other factors that are known to be detrimental to wellbeing are a lack of nutrition, sleep, and exercise, chronic or prolonged stress, isolation, loneliness, substance use, stigmas, discrimination, and racism.<sup>31</sup>

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<sup>31</sup> Concerning the detrimental effect of “chronic stress,” see generally: R. Sapolsky, “Why Stress is Bad for Your Brain” (1996) 273:5276 *Science* (American Association for the Advancement of Science) 749–750; Agnese Mariotti, “The Effects of Chronic Stress on Health: New Insights into the Molecular Mechanisms of Brain-Body Communication” (2015) 1:3 *Future Science OA* FSO23–FSO23. Also see: Austin 2013, *supra* note 27 at 791 for “a ground-breaking synthesis on the neuroscience of achieving optimal cognitive fitness for all law students, law professors, and lawyers.” Austin argues in her paper on page 792: “Neural self-hacking is likely to be the newest fitness movement. Law schools and law firms that want to support robust cognitive performance for their constituents will follow the lead of companies like Google and create achievement cultures designed to optimize cognitive wellness and limit sources of stress. In doing so, they will curate desirable learning and working environments by enhancing the formation of more complete and competent lawyers.” Concerning the necessity of “sleep,” the benefits of getting enough sleep and the consequences of not getting enough sleep, see generally: P. Afonso, M. Fonseca & J. F. Pires, “Impact of Working Hours on Sleep and Mental Health” (2017) 67:5 *Occupational Medicine* 377–382; K. Ahrberg et al., “The Interaction between Sleep Quality and Academic Performance” (2012) 46:12 *Journal of Psychiatric Research* 1618–1622; D. F. Dinges et al., “Cumulative Sleepiness, Mood Disturbance, and Psychomotor Vigilance Performance Decrements During a Week of Sleep Restricted to 4-5 hours per Night” (1997) 20:4 *Sleep* 267; David R. Hillman & Leon C. Lack, “Public Health Implications of Sleep Loss: The Community Burden” (2013) 199:8 *Medical Journal of Australia* S7–S10; R. Leproult et al., “Sleep Loss Results in an Elevation of Cortisol Levels the Next Evening.” (1997) 20:10 *Sleep* 865–870. Also see generally: Sue K. Adams et al., “Healthy Sleep Leads to Improved Nutrition and Exercise in College Females” (2020) 35:2 *Topics in Clinical Nutrition* 135–143; Statistics Canada Government of Canada, “Duration and Quality of Sleep among Canadians Aged 18 to 79,” (20 September 2017), online: <<https://www150.statcan.gc.ca/n1/pub/82-003-x/2017009/article/54857-eng.htm>>; Arianna Huffington, *The Sleep Revolution: Transforming your Life, One Night at a Time* (New York: Harmony Books, 2016); Robert Glatter MD, “It Pays to Get Your Zzz’s: Why Companies Are Paying Employees To Sleep,” online: *Forbes* <<https://www.forbes.com/sites/robertglatter/2019/06/28/it-pays-to-get-your-zss-why-companies-are-paying-employees-to-sleep/>>; Robert Stickgold, “Sleep-Dependent Memory Consolidation” (2005) 437:7063 *Nature* 1272; Wagner Ullrich et al., “Sleep Inspires Insight” (2004) 427:6972 *Nature* 352; Matthew P. Walker & Robert Stickgold, “It’s Practice, with Sleep, that Makes Perfect: Implications of Sleep-Dependent Learning and Plasticity for Skill Performance” (2005) 24:2 *Clinics in Sports Medicine* 301–317; Matthew P. Walker et al., “Practice with Sleep Makes Perfect: Sleep-Dependent Motor Skill Learning” (2002) 35:4 *Neuron* 205–211. Concerning the necessity of “exercise,” the benefits of exercising, and the consequences of a lack of exercise, see generally: A. Deslandes et al., “Exercise and Mental Health: Many Reasons to Move” (2009) 59:4 *Neuropsychobiology* 191–198; Kirk Erickson et al., “Exercise Training Increases Size of Hippocampus and Improves Memory” (2011) 108:7 *Proceedings of the National Academy of Sciences, USA* 3017–3022; Charles H. Hillman, Kirk Erickson, & Arthur F. Kramer, “Be Smart, Exercise your Heart: Exercise Effects on Brain and Cognition” (2008) 9:1 *Nature Reviews Neuroscience* 58; Georgia Stathopoulou et al., “Exercise Interventions for Mental Health: A Quantitative and Qualitative Review” (2006) 13:2 *Clinical Psychology: Science and Practice* 179–193. Also see: Natalie K. Skead & Shane L. Rogers, “Running to Well-being: A Comparative Study on the Impact of Exercise on the Physical and Mental Health of Law and Psychology Students” (2016) 49 *International Journal of Law and Psychiatry* 66–74. Skead & Rogers conducted a study exploring the impact of exercise on law students’ mental health. Exercise significantly improved wellbeing among law students in Australia. The abstract describes their study: “This article reports evidence of a negative association between exercise and psychological distress in 206 law and psychology students. Compared to psychology students, the law students not only reported greater

psychological distress, but, in addition, there was a stronger association between their levels of distress and their levels of exercise. Based on the results of this study, we suggest a simple yet effective way law schools might support the mental health of their students.” Concerning the detrimental effects of loneliness and “isolation,” see generally: Geoff MacDonald & Mark R. Leary, “Why Does Social Exclusion Hurt? The Relationship Between Social and Physical Pain” (2005) 131:2 PSYCHOL BULL 202–223; Vivek H. Murthy, “Opinion | Surgeon General: We Have Become a Lonely Nation. It’s Time to Fix That,” *The New York Times* (30 April 2023), online: <<https://www.nytimes.com/2023/04/30/opinion/loneliness-epidemic-america.html>>; Dr. Vivek H. Murthy, *Our Epidemic of Loneliness and Isolation: The U.S. Surgeon General’s Advisory on the Healing Effects of Social Connection and Community*, (USA: U.S. Surgeon General’s Advisory, 2023); Kubzansky, Epel & Davidson, *supra* note 17. 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Bender & Rachael Barrett, “Reducing the Stigma: The Deadly Effect of Untreated Mental Illness and New Strategies for Changing Outcomes in Law Students” (2015) 41:3 William Mitchell Law Review 918; Jennifer Jolly-Ryan, “The Last Taboo: Breaking Law Students with Mental Illnesses and Disabilities out of the Stigma Straitjacket” (2010) 79:1 UMKC Law Review 123–1612; Organ, Jaffe, & Bender, *supra* note 3; Stephanie Nemeth, “Addressing the Elephant in the Legal Profession: The Lawyer’s Struggle with Mental Health,” (9 July 2019), online: *Saskatchewan Law Review* <<https://sasklawreview.ca/comment/addressing-the-elephant-in-the-legal-profession-the-lawyers-struggle-with-mental-health-.php>>; Cristin Schmitz, “SCC’s Gascon Encourages Lawyers and Judges to Talk Openly about Anxiety, Depression,” (22 October 2019), online: *The Lawyer’s Daily* <<https://www.thelawyersdaily.ca/articles/16078/scc-s-gascon-encourages-lawyers-and-judges-to-talk-openly-about-anxiety-depression>>. Bullying exists within law schools and the legal profession. See: Kaitlin M. Boyle & Ashleigh E. McKinzie, “The Prevalence and Psychological Cost of Interpersonal Violence in Graduate and Law School” (2021) 36:13–14 Journal of Interpersonal Violence 6319–6350; Kaitlin M. Boyle et al., “Microaggressions and Mental Health at the Intersections of Race, Gender, and Sexual Orientation in Graduate and Law School” (2022) 15:2 Journal of Women and Gender in Higher Education 157–180 at 157; Pender, *supra* note 10; Suzanne Le Mire, “Addressing Bullying in the Australian Legal Profession” (2015) 18:1 Legal Ethics 69–72; Maryam Omari & Megan Paull, “‘Shut up and Bill’: Workplace Bullying Challenges for the Legal Profession” (2013) 20:2 International Journal of the Legal Profession 141–160; Margaret Thornton, “Squeezing the Life out of Lawyers: Legal Practice in the Market Embrace” (2016) 25:4 Griffith Law Review 471–491; Abby Young-Powell, “‘I was sworn at and told I was useless’: Law’s Problem with Bullying at Work,” *The Guardian* (15 May 2019), online: <<https://www.theguardian.com/law/2019/may/15/i-was-sworn-at-and-told-i-was-useless-laws-problem-with-bullying-at-work>>; Aiden Machab, “B.C. Articling Student Fired, Sues Acumen Law and Wins,” online: *Canadian Lawyer* (26 August 2019), online: <<https://www.canadianlawyermag.com/resources/legal-education/b.c.-articling-student-fired-sues-acumen-law-and-wins/302713>>; David J. Parnell & Patrick J. McKenna, “Bullying, Lack of Respect, Me First, Law Firms Suffer the Behaviour they Tolerate,” (21 October 2016), online: *Legal Business World Publications* <https://www.legalbusinessworld.com/single-post/2016/10/21/Bullying>; Ali A. Sidiq, *Law Society of*

Further, being driven solely by money, image, and power (i.e., being extrinsically motivated) has been linked to declines in wellbeing.<sup>32</sup>

Chapter 6 brings the scientific research on mental health and wellbeing into the conversation with the studies on law student and legal professional wellbeing. As noted, Chapter 3 examines the shared experiences, attitudes, beliefs and practices within law schools and the legal profession in the United States, Australia, England and Wales, and Canada; Chapter 6 brings research about wellbeing into the conversation with the existing practices in legal education. For example, intense competition and workload are typical in all examined jurisdictions and may result in chronic or prolonged stress and time pressure.<sup>33</sup> Time pressure and stress may result in sacrificing nutrition, sleep, exercise, or social interaction to meet the demands of law school and the legal profession.

Being primarily motivated by money, power, and image (i.e., extrinsic motivation) detrimentally affects wellbeing. Extrinsic motivation will be discussed through a review of studies on law

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*Upper Canada: Summary of Articling Experience Survey Results* (Research & Evaluation Consulting Inc., 2017); “Tackling Bullying at the Bar: The Bar Council’s Approach,” (12 October 2022), online: *The Bar Council* <<https://www.barcouncil.org.uk/resource/tackling-bullying-at-the-bar.html>> at 20 wherein the survey of articling students in Canada revealed that “just over one-fifth of respondents (21%) faced comments or conduct related to personal characteristics that was unwelcomed” and “just over one-sixth of respondents (17%) felt they received different or unequal treatment related to their personal characteristics.” Regarding discrimination among law students, see: Agatstein et al., *supra* note 10. Regarding discrimination among legal professionals, see: Nelson et al. 2019, *supra* note 10; Cokley et al., *supra* note 10.

<sup>32</sup> Extrinsic motives include power, status, appearance, and money. People who are extrinsically motivated can be driven by guilt, fear, shame or because they think that “others” want them to pursue such action. Intrinsic motivation is when people feel that their efforts matter and they gain satisfaction from working towards something. Intrinsic motives are autonomy, purpose, and mastery. See: Sheldon & Krieger 2004, *supra* note 4 at 273–274, 282. Krieger & Sheldon have identified a correlation between extrinsic motivation and declines in wellbeing among law students. Also see: Lawrence S. Krieger & Kennon M. Sheldon, “Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory” (2007) 33:6 *Personality & Social Psychology Bulletin* 883–897; Also see: Tim Kasser, “Materialistic Values and Goals” (2016) 67:1 *Annual Review of Psychology* 489–514; Tim Kasser, ed., “Psychological Needs” in *The High Price of Materialism* (The MIT Press, 2002) Chapter 3; Tim Kasser, “The Science of Values in the Culture of Consumption” in *Positive Psychology in Practice* (John Wiley & Sons, Ltd, 2015) 81; Helga Dittmar & Amy Isham, “Materialistic Value Orientation and Wellbeing” (2022) 46 *Current Opinion in Psychology* 101337; L. J. Shrum, Lan Nguyen Chaplin & Tina M. Lowrey, “Psychological Causes, Correlates, and Consequences of Materialism” (2022) 5:1 *Consumer Psychology Review* 69–86.

<sup>33</sup> See: Bergin & Pakenham, *supra* note 3; Sheldon & Krieger 2004, *supra* note 4; Pritchard & McIntosh, *supra* note 5; Tani & Vines, *supra* note 27; Fitzgerald, *supra* note 27; Austin 2013, *supra* note 27; Kathryn M. Young, “Understanding the Social and Cognitive Process in Law School that Creates Unhealthy Lawyers” (2021) 89:6 *Fordham Law Review* 22.

students and legal professionals' motivation.<sup>34</sup> Substance use is exceedingly prolific in law schools and the legal profession.<sup>35</sup> As noted above, studies reveal that law students and legal professionals are at high risk of substance misuse.<sup>36</sup> Further, recent studies have found that women legal professionals are at higher risk than their male counterparts for substance misuse.<sup>37</sup> The impact of substance use as both a symptom and underlying factor of the mental health crisis in law is also discussed in Chapter 6.

Chapter 6 also examines stigma, discrimination and racism as underlying factors that create mental health problems in law schools and the profession. As noted, marginalized law students and legal professionals disproportionately experience psychological distress.<sup>38</sup> Stigmas, discrimination, and racism harm the wellbeing of marginalized law students and legal professionals.<sup>39</sup> In all compared jurisdictions, colonialism played a central role in establishing

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<sup>34</sup> See: Sheldon & Krieger 2004, *supra* note 4; Krieger & Sheldon 2007, *supra* note 32; Skead, Rogers & Doraisamy, *supra* note 3; Jonathan Koltai, Scott Schieman & Ronit Dinovitzer, "The Status-Health Paradox: Organizational Context, Stress Exposure, and Well-being in the Legal Profession" (2018) 59:1 Journal of Health and Social Behavior 20–37.

<sup>35</sup> Law student substance use is prevalent. In the United States, see: AALS Report *supra* note 31 at 42, 43, 45; Organ, Jaffe, & Bender, *supra* note 3 at 127; Reed et al., *supra* note 8 at 152; Jaffe, Bender, & Organ, *supra* note 3 at 16. To the author's knowledge, no studies have evaluated Australian law student substance use but see generally: Engs & Mulqueeny, *supra* note 31; Doraisamy, *supra* note 31; Allman, *supra* note 31; Ferguson, *supra* note 31. In the United Kingdom, see: Bogowicz et al., *supra* note 3 at 134. In Canada, see: McGill, *supra* note 3 at 8. Legal professional's substance use is prevalent. In the United States, see: Benjamin, Darling, & Sales, *supra* note 7; Krill, Johnson, & Albert, *supra* note 7; Krill, *supra* note 31; Anker & Krill, *supra* note 10; Listokin & Noonan, *supra* note 7. Also see: Buchanan & Coyle, *supra* note 11; Sahadi, *supra* note 31; Zimmerman, *supra* note 31. In Australia, see: Bergin & Jimmieson, *supra* note 7; Chan, Poynton & Bruce, *supra* note 7. Generally, see Goodliffe & Brooke, *supra* note 31 in the United Kingdom. Although no studies on legal professional substance use have been conducted in the UK, given the prevalence of substance use among law students in the United Kingdom, the results would likely be similar for legal professionals. See: Bogowicz et al., *supra* note 3. Also, see generally: Ames, *supra* note 31; Aldridge, *supra* note 31; *Counsel Magazine*, *supra* note 31; Matthews-King, *supra* note 31; Office of National Statistics, *supra* note 31; Banerji, *supra* note 31; The Law Society, Junior Lawyers Division, *supra* note 31. In Canada, see: Cadieux et al., 2022 *supra* note 3. Also, see generally: Olijnyk, *supra* note 31; Olijnyk, *supra* note 31; Faguy, *supra* note 31. Concerning substance use and professional identity, see: Kiepek & Beagan, *supra* note 31. Also, see generally: Amaro et al., *supra* note 31.

<sup>36</sup> *Ibid.*

<sup>37</sup> In the United States see: Krill, Johnson, & Albert, *supra* note 7; Anker & Krill, *supra* note 10. In Canada, see: Cadieux et al., 2022 *supra* note 3.

<sup>38</sup> Regarding law students, see: Agatstein et al., *supra* note 10. Regarding legal professionals, see: Nelson et al. 2019, *supra* note 10; Anker & Krill, *supra* note 12; Cokley et al., *supra* note 10; Kelk et al., *supra* note 3; Cadieux et al., 2020 *supra* note 7; Cadieux et al., 2022 *supra* note 3; International Bar Association, *supra* note 6. Also, see regarding continued inequality in law: Pender, *supra* note 10.

<sup>39</sup> See generally: International Bar Association, *ibid.* Also see generally regarding the wellbeing of marginalized peoples: Ali Murad Büyüm et al., "Decolonising Global Health: If Not Now, When?" (2020) 5:8 BMJ Global Health e003394; Angela P. Harris & Aysha Pamukcu, "The Civil Rights of Health: A New Approach to Challenging Structural Inequality" (2020) 67 UCLA L Rev 758; Yael Cannon & Nicole Tuchinda, "Critical Perspectives to Advance Educational Equity and Health Justice" (2022) 50:4 Journal of Law, Medicine & Ethics 776–790. Also see:

each country's laws.<sup>40</sup> Colonial beliefs, attitudes and practices are embedded within law schools and the legal profession, enabling the perpetuation of stigmas, discrimination and racism.<sup>41</sup>

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Ren Dongning, Eric D. Wesselmann & Kipling D. Williams, "Hurt People Hurt People: Ostracism and Aggression" (2018) 19 *Current Opinion in Psychology* 34-38; Nicole Legate et al., "Hurting You Hurts Me Too: The Psychological Costs of Complying with Ostracism" (2013) 24:4 *Psychol Sci* 583-588.

<sup>40</sup> In the United States, see: Rothstein, *supra* note 25; Krook, *supra* note 25; Madina Agénor et al., "Developing a Database of Structural Racism-Related State Laws for Health Equity Research and Practice in the United States" (2021) 136:4 *Public Health Reports* 428-440. In Australia, see: Beazley, *supra* note 25; Edgeloe, *supra* note 25. In the United Kingdom, see: Martin, *supra* note 25. In Canada, see: Backhouse, *supra* note 25; Pue 2016, *supra* note 25. Also see: Glenn, *supra* note 25.

<sup>41</sup> In the United States see: Erika K. Wilson, "The Legal Foundations of White Supremacy" (2018) 11:2 *DePaul J Soc Just* 1-14; Roy L. Brooks, "Anti-Minority Mindset in the Law School Personnel Process: Toward an Understanding of Racial Mindsets" (1987) 5:1 *Law & Ineq* 1-32; Cheryl I. Harris, "Whiteness as Property" (1993) 106:8 *Harvard LR* 1707-1791; Bree Picower, "The Unexamined Whiteness of Teaching: How White Teachers Maintain and Enact Dominant Racial Ideologies" (2009) 12:2 *Race Ethnicity and Education* 197-215; Jane W. Coplin & John E. Williams, "Women Law Students' Descriptions of Self and the Ideal Lawyer" (1978) 2:4 *Psychology of Women Quarterly* 323-333; Sue Winkle Williams & John C. McCullers, "Personal Factors Related to Typicalness of Career and Success in Active Professional Women" (1983) 7:4 *Psychology of Women Quarterly* 343-357; Meera Deo, *Unequal Profession: Race and Gender in Legal Academia*, Race and Gender in Legal Academia (Stanford University Press, 2019); Carrie Yang Costello, *Professional Identity Crisis: Race, Class, Gender and Success at Professional Schools*, 1st ed. (Nashville, Tenn.: Vanderbilt University Press, 2005); Robert D. Liebenberg & Stephanie A. Scharf, *Walking Out the Door: The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice*, (USA: American Bar Association, 2019); Joyce Sterling & Linda Chanow, *In Their Own Words: Experienced Women Lawyers Explain Why They Are Leaving Their Law Firms and the Profession*, (USA: American Bar Association, 2021); Osamudia James, "Superior Status: Relational Obstacles in the Law to Racial Justice and LGBTQ Equality" (2022) 63:1 *BC L Rev* 199-254; Adebisi 2021, *supra* note 25; Adebisi 2020, *supra* note 25. In Australia, see: Eddie Cubillo, "Indigenous Programs at Law Schools: Indigenous Law Students Feel the Absence of Their Voices in Building the Culture of the Profession" (2022) 96:7 *Law Institute Journal* 30; Margaret Thornton, "Technocentrism in the Law School: Why the Gender and Colour of Law Remain the Same Commentary" (1998) 36:2 *Osgoode Hall L J* 369-398; Nicole Watson, "Indigenous People in Legal Education: Staring into a Mirror Without Reflection." (2004) 6:8 *Indigenous Law Bulletin* 4-7; Phil Falk, "Law School and the Indigenous Student Experience: [Paper in Special Focus Edition: Racism in Legal Education. (A version of this paper was presented at the Indigenous Legal Education Seminar, University of NSW 15 November 2004).]" (2004) 6:8 *Indigenous Law Bulletin* 8-15; Gawaian Bodkin-Andrews & Bronwyn Carlson, "The Legacy of Racism and Indigenous Australian Identity within Education" (2016) 19:4 *Race Ethnicity and Education* 784-807; João L. Bastos, Catherine E. Harnois & Yin C Paradies, "Health Care Barriers, Racism, and Intersectionality in Australia" (2018) 199 *Social Science & Medicine* 209-218; Chris Cunneen, "Institutional Racism and (in)justice: Australia in the 21st Century" (2019) 1:1 *DCJ* 29-51; Richard Collier, "'Love Law, Love Life': Neoliberalism, Wellbeing and Gender in the Legal Profession—The Case of Law School" (2014) 17:2 *Legal Ethics* 202-230; Angela Ragusa & Philip Groves, "Gendered Meritocracy? Women Senior Counsels in Australia's Legal Profession" (2012) 1 *Australian Journal of Gender and Law*; Margaret Thornton, "Hypercompetitiveness or a Balanced Life? Gendered Discourses in the Globalisation of Australian Law Firms" (2014) 17:2 *Legal Ethics* 153-176. In England & Wales, see: Pender, *supra* note 10; Hilary Sommerlad, "'A Pit to Put Women In': Professionalism, Work Intensification, Sexualisation and Work-Life Balance in the Legal Profession in England and Wales" (2016) 23:1 *International Journal of the Legal Profession* 61-82; Bar Standards Board (BSB), *Diversity at the Bar 2021: A Summary of the Latest Available Diversity Data for the Bar*, (UK: Bar Standards Board, 2022); Hilary Sommerlad et al, *Diversity in the Legal Profession in England and Wales: A Qualitative Study of Barriers and Individual Choices* (University of Westminster Law Press, 2010); Hilary Sommerlad, "Women Solicitors in a Fractured Profession: Intersections of Gender and Professionalism in England and Wales" (2002) 9:3 *International Journal of the Legal Profession* 213-234. In Canada see: Cadieux et al., 2022 *supra* note 3; Pue 2016, *supra* note 25. Also see: Glenn, *supra* note 25; Jaime Lavallee, "How to Be Biased in the Classroom: Kwayeskastasowin - Setting Things Right?" (2022) 48:3 *Mitchell Hamline Law Review Article* 3; Constance Backhouse, "We Don't Hire a Woman Here: Claire l'Heureux-Dube and the Career Prospects for Early Female Law Graduates from Laval University"

Further still, emotion is primarily ignored, set aside, misunderstood, or devalued within each country's legal education and profession.<sup>42</sup> Emotion affects judgment, decision-making, social connection, learning, and cognition.<sup>43</sup> It is also fundamental in understanding and improving mental health and wellbeing.

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(2013) 39:2 Queen's LJ 355–390; Frances Henry, “Indigenous Faculty at Canadian Universities: Their Stories” (2012) 44:1 Canadian Ethnic Studies 101–132; Andrew MA Allen, “Negotiating University Teaching in Canada using Critical Race Theory: Having to Continually Prove Oneself in Academia” in *Diversity and Triumphs of Navigating the Terrain of Academe* (Emerald Publishing Limited, 2019) 107; Kerry A Bailey, “Racism within the Canadian University: Indigenous Students' Experiences” (2016) 39:7 Ethnic and Racial Studies 1261; Scott Franks, “Some Reflections of a Métis Law Student and Assistant Professor on Indigenous Legal Education in Canada” (2022) 48:3 Mitchell Hamline Law Review Article 2; RCAP 1996, *supra* note 25; TRC Report, *supra* note 25; MMIWG, *supra* note 25; Hadiya Roderique, “Power, Privilege and the Inequalities in the Legal Profession: Unpacking Hegemonic Masculinity in the Culture of Private Practice” (2018) Canadian Centre for Diversity and Inclusion [www.ccdi.ca](http://www.ccdi.ca) 20; Beth Bilson, “Sisters in Law are Doing it for Themselves,” (24 August 2023), online: The Canadian Bar Association National <<https://www.nationalmagazine.ca/en-ca/articles/law/opinion/2023/sisters-in-law-are-doing-it-for-themselves>>. Also see generally: Victor Garrido Delgado, “A Decade of Stagnation: New UNDP Data Shows Gender Biases Remain Entrenched | United Nations Development Programme,” (12 June 2023), online: UNDP <<https://www.undp.org/press-releases/decade-stagnation-new-undp-data-shows-gender-biases-remain-entrenched>>.

<sup>42</sup> In the United States see: Llewellyn, *supra* note 25; Tully, *supra* note 25; Muir, *supra* note 19; Friedland, *supra* note 19; Montgomery, *supra* note 19; Douglas, *supra* note 19; Tiscione, *supra* note 19; Allen 2021, *supra* note 25; Terry A. Maroney, “Law and Emotion: A Proposed Taxonomy of an Emerging Field” (2006) 30:2 Law and Human Behavior 119–142; Katz 2022, *supra* note 21 at 759 Katz writes : “Both legal education and the legal profession have a fairly terrible track record when it comes to addressing painful emotions. One of the foundational myths of traditional legal education is that emotion has little to do with law.” In Australia, see: Grossi, *supra* note 25; Bailey & Knight, *supra* note 25. In England & Wales, see: Jones Law School 2020, *supra* note 19; Adebisi 2020, *supra* note 25; Bradney, *supra* note 25. In Canada, see: Devlin, *supra* note 25; Pue 2016, *supra* note 25; Witten, *supra* note 25. Also, see generally: Côté-Lussier & David, *supra* note 19.

<sup>43</sup> See: Austin 2019, *supra* note 19; Muir, *supra* note 19; Friedland, *supra* note 19; Tiscione, *supra* note 19; Damasio, *supra* note 19; Brown 2011, *supra* note 19; Clore & Huntsinger, *supra* note 19; “Tyng et al., *supra* note 19; Fenton-O’Creevy et al., *supra* note 19; Hopkins & Deepa, *supra* note 19; Phelps, Lempert & Sokol-Hessner, *supra* note 19; Garfinkel et al., *supra* note 19; Jung et al., *supra* note 19; Lakomski & Evers, *supra* note 19; Lench, Flores & Bench, *supra* note 19; Naqvi, Shiv & Bechara, *supra* note 19; Lerner et al., *supra* note 19; Slovic, *supra* note 19; Côté-Lussier & David, *supra* note 19; Erbas et al. *supra* note 19; Eslinger et al., *supra* note 19; Barsade, *supra* note 19; Chartrand & Bargh, *supra* note 19; David J. Llewellyn et al., “Cognitive Function and Psychological Well-Being: Findings from a Population-based Cohort” (2008) 37:6 Age Ageing 685–689; Alexandra Martins, Nelson Ramalho & Estelle Morin, “A Comprehensive Meta-Analysis of the Relationship between Emotional Intelligence and Health” (2010) 49:6 PERS INDIV DIFFER 554–564; Uğur Akpur, “A Systematic Review and Meta-Analysis on the Relationship between Emotional Intelligence and Academic Achievement” (2020) 20:4 Educational Sciences: Theory & Practice 51–64; Anne Miles et al., “Improving Cognitive Skills for People with Mental Illness to Increase Vocational and Psychosocial Outcomes: The Employ Your Mind Program” (2021) 8:3 J Psychosoc Rehabil Ment Health 287–297; Jenny Gu et al., “How Do Mindfulness-Based Cognitive Therapy and Mindfulness-Based Stress Reduction Improve Mental Health and Wellbeing? A Systematic Review and Meta-Analysis of Mediation Studies” (2015) 37 Clinical Psychology Review 1–12; Jarrett A. Green & Rebecca Simon, “Self-Mastery: The Pathway to Peak Performance and Well-being in the Law” (2019) 48 Southwestern Law Review 207–240.



Chapter 7 outlines the case for why law schools should improve the wellbeing of their students. Law schools must address the health crisis among law students to provide early intervention to prevent long-term consequences. Certainly, law schools should not produce graduates who are less healthy than when they started. Although there are many reasons to improve law student wellbeing, Chapter 7 provides four reasons law schools should prioritize law student wellbeing.

First, law schools should improve students' wellbeing because evidence suggests that early intervention is essential. Law students and legal professionals are at a high risk of trauma, psychological distress, and substance misuse. Law schools are aware of this risk. When law schools take steps to improve students' well-being, law students' and legal professionals' wellbeing should improve. Law schools can no longer be "wilfully blind."<sup>44</sup>

Second, all accredited law schools in the United States, Australia, the United Kingdom, and Canada must prepare students for entry to a bar or law society admission program.<sup>45</sup> Mental health conditions and psychological distress can affect cognition and competence.<sup>46</sup> Practising law, including articling, entails possessing vital skills such as critical thinking skills to solve problems and to make informed decisions regarding complex legal issues.<sup>47</sup> Cognitive health is

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<sup>44</sup> For the Canadian legal definition of "wilful blindness," see *Wescom Solutions Inc. v. Minetto*, 2019 ONCA 251 (CanLII), <<https://canlii.ca/t/hzgj5>>, retrieved on 2023-05-25. Although this thesis will not directly address the potential liability of law schools for the psychological distress or suicide of their students, see generally Shailaja Nadarajah, "Student Suicide On-Campus: Tort Liability of Canadian Universities and Determining a Duty of Care" (2021) 26 Appeal: Review of Current Law and Law Reform 97. Regarding suicidal ideation among American law students see: Doraisamy, *supra* note 35. Regarding suicidal ideation among the American legal professionals, see: Patrick R. Krill et al., "Stressed, Lonely, and Overcommitted: Predictors of Lawyer Suicide Risk" (2023) 11:4 Healthcare 536. The College of Law could also face liability according to section 24 of *The Saskatchewan Human Rights Code, 2018*. The Saskatchewan Human Rights Commission has the legal authority and legislated mandate to address systemic discrimination: "The commission shall promote and pursue measures to prevent and address systemic patterns of discrimination." See: *The Saskatchewan Human Rights Code, 2018*, SS 2018, c S-24.2, <<https://canlii.ca/t/563h0>> retrieved on 2023-11-17, s. 24. The Saskatchewan Human Rights Commission recently investigated systemic discrimination at the College of Medicine at the University of Saskatchewan. See: Saskatchewan Human Rights Commission, *The Case for a Restorative Response to Perceptions of Systemic Inequity at the University of Saskatchewan College of Medicine: A Systemic Investigation Summary Report* (Saskatchewan Human Rights Commission, 2023); *Saskatchewan Human Rights Regulations, 2018*, RRS c S-24.2 Reg 1, <<https://canlii.ca/t/53g4k>> retrieved on 2023-11-17 at 30.

<sup>45</sup> In the United States, see: ABA Standards, *supra* note 28, s 303(a)(1). In Australia, see: CALD, *supra* note 28, s 2.3.3 (a); AU Threshold Learning Outcomes, *supra* note 28 at 10, 14-16, TLO 2. In England and Wales, see: UK QAA 2019, *supra* note 28, s 2.4.iii. In Canada, see: CDA Nat'l Rqmt., *supra* note 28, s C., C.1.4. Also see generally: Kriekle, *supra* note 26.

<sup>46</sup> See generally: Austin 2013, *supra* note 27; Austin 2019, *supra* note 19; Austin 2015, *supra* note 31.

<sup>47</sup> See generally: ABA Standards, *supra* note 28; CALD, *supra* note 28; AU Threshold Learning Outcomes, *supra* note 28; Academic Stage Handbook, *supra* note 28; CDA Nat'l Rqmt., *supra* note 28.

improved through improved wellbeing, and studies have shown that cognition is improved when one is healthy.<sup>48</sup>

Third, studies have shown how ethical decision-making and judgment are impacted by emotion and that emotional literacy and intelligence could improve decision-making and judgment.<sup>49</sup> The work of Antonio Damasio, a neuroscientist who removed the “emotional brain” of a lawyer, will help explain how emotion affects judgment.<sup>50</sup> Fourth, social connection and belonging enhance wellbeing.<sup>51</sup> Enhancing social connection and belonging could help facilitate diversity and inclusion, an objective of all law societies, bar associations and accredited law schools in the

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<sup>48</sup> See generally: Friedland, *supra* note 19; Barrett et al., *supra* note 19; Hillman, Erickson & Kramer, *supra* note 31; Adam Moore & Peter Malinowski, “Meditation, Mindfulness and Cognitive Flexibility” (2009) 18:1 CONSCIOUS COGN 176–186; Luiz Pessoa, “Cognition and Emotion” (2009) 4:1 Scholarpedia 4567; Peter Salovey & John D. Mayer, “Emotional Intelligence” (1990) 9:3 Imagination, Cognition and Personality 185–211; Fadel Zeidan et al., “Mindfulness Meditation Improves Cognition: Evidence of Brief Mental Training” (2010) 19:2 CONSCIOUS COGN 597–605. Concerning improved cognition, see generally: Llewellyn et al., *supra* note 43; Martins, Ramalho & Morin, *supra* note 43; Akpur, *supra* note 43; Miles et al., *supra* note 43; Gu et al., *supra* note 43. Also see generally: Green & Simon, *supra* note 43.

<sup>49</sup> See generally: Tiscione, *supra* note 19; Kennon Sheldon & Lawrence Krieger, “Walking the Talk: Value Importance, Value Enactment, and Well-Being” (2014) 38:5 Motivation and Emotion 609–619; Lawrence S. Krieger, “The Most Ethical of People, The Least Ethical of People: Proposing Self-Determination Theory to Measure Professional Character Formation” (2011) 8:2 University of St Thomas Law Journal Article 5; James Moliterno & John Keyser, “Why Lawyers Do What They Do (When Behaving Ethically)” (2014) 4:1 St Marys J Leg Malpract Ethics 40; Muir, *supra* note 19; Huang 2015, *supra* note 19; Catherine Gage O’Grady, “Behavioral Legal Ethics, Decision Making, and the New Attorney’s Unique Professional Perspective” (2015) 15 Nevada Law Journal 671; Lawrence S. Krieger, “The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness” (2005) 11:2 Clinical L Rev 425. Also see generally: Paula Baron, “The Elephant in the Room? Lawyer Wellbeing and the Impact of Unethical Behaviours” (2015) 41:1 The Australian Feminist Law Journal 87–119; Paula Baron & Lillian Corbin, “Lawyers, Mental Illness, Admission and Misconduct” (2019) 22:1–2 Legal Ethics (Oxford, England) 28–48.

<sup>50</sup> See: Damasio, *supra* note 19. Also, see generally: Muir, *supra* note 19; Anne Brafford, *Positive Professionals: Creating High-Performing Firms through The Science of Engagement* (United States: American Bar Association, 2017); Brown 2011, *supra* note 19; Antonio R. Damasio, B. J. Everitt & D. Bishop, “The Somatic Marker Hypothesis and the Possible Functions of the Prefrontal Cortex [and Discussion]” (1996) 351:1346 PHILOS T R SOC B 1413–1420; Kylie Rochford et al., “Ethical Leadership as a Balance Between Opposing Neural Networks” (2017) 144:4 J Bus Ethics 755–770; Phelps, Lempert & Sokol-Hessner, *supra* note 19; Lerner et al., *supra* note 19; Vivian Giang, “The Myth of Rational Decision-Making,” (6 July 2015), online: *Fast Company* <<https://www.fastcompany.com/3047924/the-myth-of-rational-decision-making>>.

<sup>51</sup> See generally: Matthew D. Lieberman, *Social: Why our Brains are Wired to Connect*. (New York, NY, US: Crown Publishers/Random House, 2013); Simon N. Young, “The Neurobiology of Human Social Behaviour: An Important but Neglected Topic” (2008) 33:5 J Psychiatry Neurosci 391–392; “Are Friends the Key to Happiness?” online: *US News & World Report* <<https://health.usnews.com/health-care/patient-advice/articles/2018-07-27/are-friends-the-key-to-happiness>>; Liz Mineo, “Over nearly 80 years, Harvard study has been showing how to live a healthy and happy life,” (11 April 2017), online: *Harvard Gazette* <<https://news.harvard.edu/gazette/story/2017/04/over-nearly-80-years-harvard-study-has-been-showing-how-to-live-a-healthy-and-happy-life/>>; “Harvard Second Generation Study,” online: Harvard Second Generation Study <<https://www.adultdevelopmentstudy.org>>.

United States, Australia, the United Kingdom, and Canada.<sup>52</sup> Additionally, law school graduates with more satisfying careers may entail future alumni support, contributions, and an improved reputation for the law school.

Law schools must address the mental health crisis among law students to prevent long-term consequences and provide a support system for students. As outlined above, Chapter 6 outlines the factors that harm wellbeing, which are brought into the conversation by discussing the shared experiences, attitudes, practices, and beliefs within law schools and the legal profession outlined in Chapter 3. Chapters 3 and 6 provide law schools “targets” for intervention in addressing the mental health crisis within the law by outlining the potential harm of these factors and correlating experiences, practices, attitudes, and beliefs. Although there are many creative ways to address law student wellbeing, Chapter 8 argues that a wellbeing-focused and trauma-informed approach to legal education offers a promising method for addressing the mental health

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<sup>52</sup> In the United States, see: ABA Standards, *supra* note 28, s 303 (a)(1), 303 (c)1–2, Interpretation 303-6. Also see: ABA Model Code, *supra* note 28, r 8.4(g). In Australia, see: CALD, *supra* note 28, s 2.3.3 (a), 2.3.3 (d). AU Threshold Learning Outcomes, *supra* note 28 at 10. For solicitors in Australia, see: AU Solicitor Rules, *supra* note 28 s. 42. For barristers in Australia, see: Barrister Uniform Rules, *supra* note 28 s. 123. Also see: *Legal Profession Act 2006*, ACT RS2022, c A2022-14. In England and Wales, see: UK QAA 2019, *supra* note 28, s 2.4.iii. For barristers in the UK, see: BSB Handbook, *supra* note 28, Core Duty 8, Rule C12. For solicitors in the UK, see: SRA Solicitor Code, *supra* note 28, s. 1.1 Also see: UK Legal Services Act, *supra* note 28, s 1; Equality Act, *supra* note 28. Also see generally: The Bar Council, *supra* note 31. In Canada, see: Federation of Law Societies Nat’l Rqmt, *supra* note 28, s 2, 3.2.a. Section 2 states that “[t]he applicant must have demonstrated an awareness and understanding of the ethical dimensions of the practice of law in Canada and an ability to identify and address ethical dilemmas in a legal context. Section 2.1.a.7. states that the applicant must have knowledge of “the importance and value of serving and promoting the public interest in the administration of justice.” Section 3.2.a states that “[t]he applicant must have an understanding of the core principles of public law in Canada, including, a. the constitutional law of Canada, including federalism and the distribution of legislative powers, the Charter of Rights and Freedoms, human rights principles and the rights of Aboriginal peoples of Canada.” Also see: Federation of Law Societies, Model Code, *supra* note 28, r 6.3. Rule 6.3 states that “[a] lawyer must not directly or indirectly discriminate against a colleague, employee, client or any other person.” Also see generally: Board of Governors and University Council, *Equity, Diversity, and Inclusion Policy* (University of Saskatchewan, 2020).

crisis in law schools.<sup>53</sup> There are now trauma-informed approaches to care, education and medicine.<sup>54</sup>

A wellbeing-focused and trauma-informed approach to education seeks to improve students' wellbeing by prioritizing student mental health and conducting a "cost and benefit analysis" of beliefs, attitudes, pedagogy, and practices of the law school. The approach includes, among other things, deciding if existing beliefs, attitudes, pedagogy, and practices are detrimental to wellbeing, and if so, does the benefit of such an approach outweigh the cost to a student's wellbeing? Trauma-informed education creates a community of safety, trust, and respect where students feel supported and comfortable sharing their experiences.<sup>55</sup> This approach, integrating

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<sup>53</sup> See: Myrna Lynne McCallum, "The Duty to Do Better: Trauma-Informed Lawyering" in Kathryn M Campbell & Stephanie Wellman, eds, *Justice, Indigenous Peoples, and Canada: A History of Courage and Resilience* (New York: NY: Routledge, 2024) 281; Emma Jones & Caroline Strevens, "Legal Education for Wellbeing: Design, Delivery and Evaluation" (2022) 56:1 *The Law Teacher* 1-4. Also see trauma-informed education in law: Oehme & Stern, *supra* note 12; Graham Ferris, "Law-Students Wellbeing and Vulnerability" (2022) 56:1 *Law Teacher* 5-19; Golden Eagle Rising Society, "Trauma-Informed Toolkit for Legal Professionals | Initiatives and Actions | Golden Eagle Rising Society | Protecting and Enhancing Indigenous Lives," (29 December 2020), online: *Golden Eagle Rising Society* <<https://www.goldeneaglerising.org:443/initiatives-and-actions/trauma-informed-toolkit-for-legal-professionals/>>; McCallum, Myrna, "Trauma Shock and Wellness in Law Students, Lawyers & Judges: An Interview with Professor Sarah Katz." (26 June 2020) online *The Trauma-Informed Lawyer*: <<https://thetraumainformedlawyer.simplecast.com/episodes/trauma-shock-and-wellness-in-law-students-lawyers-judges-an-interview-with-professor-sarah-katz>>; James 2020, *supra* note 21; Sarah Katz & Deeya Haldar, "The Pedagogy of Trauma-Informed Lawyering" (2015) 22:2 *Clinical L Rev* 359-394; Katz 2020, *supra* note 22; Katz 2022, *supra* note 21; Claudia Pena, "Trauma Abounds: A Case for Trauma-Informed Lawyering" (2019) 26:1 *UCLA Women's LJ* 7-16; Melanie Randall & Lori Haskell, "Trauma-Informed Approaches to Law: Why Restorative Justice Must Understand Trauma and Psychological Coping" (2013) 36:2 *Dal LJ* 501; Brenda Karyee Yuen, *Trauma-Informed Lawyering: Practicing Emotional Acknowledgment* University of Saskatchewan, 2023) [unpublished]. Also see generally: Janice Carello, & Lisa D. Butler, "Potentially Perilous Pedagogies: Teaching Trauma Is Not the Same as Trauma-Informed Teaching" (2014) 15:2 *J TRAUMA DISSOCIATIO* 153-168.

<sup>54</sup> See generally trauma-informed education in Medicine: Lama Mouneimne, "Realize, Recognize, Respond: The Building of Trauma-Informed Care in Medicine" (2022) 89:S *University of Western Ontario Medical Journal*; Taylor Brown, et al., "Trauma-Informed Medical Education (TIME): Advancing Curricular Content and Educational Context" (2021) 96:5 *ACAD MED* 661-667; Sarah Berman, et al., "Roadmap for Trauma-Informed Medical Education: Introducing an Essential Competency Set" (2023) *Publish Ahead of Print Academic Medicine*; Emily Hollis, et al., "Implementation of a Trauma-Informed Care Elective in Medical Education" (2022) 2:1 *Carolina Journal of Interdisciplinary Medicine*; Deepa Ramadurai et al., "Feasibility and Impact of Trauma-Informed Care Training in Internal Medicine Residency: A Pilot Study" (2022) 14:2 *Curēus* (Palo Alto, CA) e22368-e22368; Heather Forkey, et al., "Pediatric Approach to Trauma Treatment and Resilience—A Novel Relationship-Based Curriculum and Approach to Train Pediatric Professionals to Provide Trauma-Informed Care" (2022) 22:2 *ACAD PEDIATR* 342-34; "Trauma-Informed Care: Better Care for Everyone," online: *Canadian Medical Association* <<https://www.cma.ca/physician-wellness-hub/resources/policies-and-best-practices/trauma-informed-care-better>>; Courtney N. Baker, et al., "Development and Psychometric Evaluation of the Attitudes Related to Trauma-Informed Care (ARTIC) Scale" (2016) 8:1 *School Mental Health* 61-76

<sup>55</sup> See: McCallum 2024, *supra* note 53; Robey B. Champine et al, "'What Does it Mean to be Trauma-Informed?': A Mixed-Methods Study of a Trauma-Informed Community Initiative" (2022) 31:2 *Journal of Child and Family Studies* 459-472; Carello & Butler, *supra* note 53.

trauma-informed methodology, may help facilitate self-awareness, inclusion and diversity, substance-use awareness, emotional literacy, self-care, and improved competence and decision-making.<sup>56</sup> Finally, one of the critical benefits of wellbeing-focused and trauma-informed education is that it entails faculty and staff education and commitment.<sup>57</sup> Faculty and staff can “lead by example.” In this way, wellbeing can become integrated into the curriculum in every class and infused within the school environment.

The mental health crisis in law schools has reached an unprecedented level, and law schools must implement change to enhance wellbeing and competence. Law schools must address the mental health crisis among law students to prevent long-term consequences and to help students thrive. Law schools should not produce graduates who are less healthy than when they started law school. This thesis will now discuss wellbeing, mental health, the significance of emotion and the impact of trauma to provide a foundation for the rest of the thesis after a review of the methodology undertaken in this work.

## Chapter 1.1. Methodology

The origin of this thesis is rooted in the author’s lived experience as a law student, a lawyer, a mother, a sister, a daughter, and a human being. In 2017, research regarding the factors beneficial and detrimental to wellbeing began primarily because of the authors’ declining health. The author’s approach at that time was to conceptualize what was “scientifically known” to improve human wellbeing, particularly mental health. The author also started counselling through the Lawyer Assistance Program offered by the Law Society of British Columbia and was fortunate to work with Bena Stock, a counsellor who had been a litigator for 25 years.<sup>58</sup> Bena’s insights and advice proved invaluable to the birth of this thesis.

Initially, the author drew on psychology, neuroscience, and medicine methodologies. However, data collection became more creative as the author combined perspectives and insights from these various fields and research traditions, creating an interdisciplinary approach. In 2018, the

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<sup>56</sup> See: Ramadurai et al., *supra* note 54.

<sup>57</sup> See: Carello & Butler, *supra* note 53.

<sup>58</sup> See: “The Lawyer Mindset,” online: <<https://www.thelawyermindset.com/>>.

author took a course titled “The Science of Well-being” taught by Laura Santos and offered at Yale through Coursera.<sup>59</sup> Further, the author implemented and tested many recommendations and practices recommended in the Science of Well-being course and experienced positive results. Philosophical and spiritual understandings of the “good life” were explored and contributed to a more holistic understanding of wellbeing.<sup>60</sup>

Based on the research on the factors contributing to wellbeing (or illness) and the positive results experienced by the author of this thesis, the author enrolled in the Master of Laws program at the University of Saskatchewan in the fall of 2019. Enrolling in the program was undertaken initially to investigate law students’ and lawyers’ wellbeing and provide recommendations to improve such. The research aimed to assess, critique, and synthesize the literature on law student and legal professional wellbeing in a way that would enable new theoretical frameworks and perspectives to emerge to improve overall health in the legal community. Although there was much anecdotal information regarding the high rates of distress, mental health problems, unhappiness and dissatisfaction among law students and lawyers, had any scientific studies been conducted?

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<sup>59</sup> See: “The Science of Well-Being,” online: Coursera <[https://www.coursera.org/learn/the-science-of-well-being?ranMID=40328&ranEAID=TnL5HPStwNw&ranSiteID=TnL5HPStwNw-A.Gvi3kYpzd360qRuemisg&siteID=TnL5HPStwNw-A.Gvi3kYpzd360qRuemisg&utm\\_content=10&utm\\_medium=partners&utm\\_source=linkshare&utm\\_campaign=TnL5HPStwNw](https://www.coursera.org/learn/the-science-of-well-being?ranMID=40328&ranEAID=TnL5HPStwNw&ranSiteID=TnL5HPStwNw-A.Gvi3kYpzd360qRuemisg&siteID=TnL5HPStwNw-A.Gvi3kYpzd360qRuemisg&utm_content=10&utm_medium=partners&utm_source=linkshare&utm_campaign=TnL5HPStwNw)>. Also see: Bruce Hood, Sarah Jelbert & Laurie R. Santos, “Benefits of a Psychoeducational Happiness Course on University Student Mental Well-being Both Before and During a COVID-19 Lockdown,” (2021) 8 Health Psychology Open, online: <<https://doaj.org/article/cb486ab4001546278c3db2c02efdebab>>; Martin E. P. Seligman, *Authentic Happiness: Using the New Positive Psychology to Realize Your Potential for Lasting Fulfillment* (New York, NY: Atria Paperback, 2002); Seligman 2011, *supra* note 15; Hanson, *supra* note 29; Hanson & Mendius, *supra* note 29; Daniel Gilbert, *Stumbling on Happiness* (Canada: Vintage Canada, 2007); Alex Korb, *The Upward Spiral: Using Neuroscience to Reverse the Course of Depression, One Small Change at a Time* (Oakland, CA: New Harbinger Publications, Inc., 2015); Barbara L. Fredrickson, *Positivity: Discover the Upward Spiral That Will Change Your Life* (New York: Harmony Books, 2009); Csikszentmihalyi, *supra* note 15; Dweck, *supra* note 15.

<sup>60</sup> See: Eckhart Tolle, *A New Earth: Awakening to Your Life’s Purpose* (Camberwell, Vic.: Penguin Group, 2005); Eckhart Tolle, *The Power of Now: A Guide to Spiritual Enlightenment* (Novato, CA: Namaste Publishing and New World Library, 2004); Dalai Lama & Desmond Tutu, *The Book of Joy: Lasting Happiness in a Changing World* (Canada: Viking, a division of Penguin Random House Canada Ltd., 2016); Brené Brown, *Braving the Wilderness: The Quest for True Belonging and the Courage to Stand Alone* (New York: Random House, 2017) [Brown Braving 2017]; Brené Brown, *Dare to Lead: Brave Work, Tough Conversations, Whole Hearts* (New York: Random House, 2018); Brené Brown, *Rising Strong: How the Ability to Reset Transforms the Way we Live, Love, Parent and Lead* (New York: Random House, 2017) [Brown Rising 2017]; Brené Brown, *The Gifts of Imperfection: Let Go of Who you Think You’re Supposed to Be and Embrace Who You Are* (USA: Hazelden Publishing, 2010); Frankl, *supra* note 15. Also see: Susan Cain, *Quiet: The Power of Introverts in a World that Can’t Stop Talking* (New York, NY: Random House Inc., 2012).

A long, continuous, and exhaustive search for studies or surveys researching the levels of wellbeing among law students in Canada was undertaken. The primary criterion was that the study concerned Canadian law students in Canada. The search included academic journals, reports, book chapters, theses, dissertations, and gray literature published in English. The databases included USearch, Google Scholar, and CANLII. Some key terms utilized included but were not limited to Canad\* law student OR Canad\* legal education AND health OR mental health OR wellbeing OR well-being OR well being OR psychological distress OR distress OR unhapp\*. General searches on Google were also conducted, seeking “studies or surveys on Canadian law student mental health OR wellbeing OR distress.”

Only three studies/surveys examined the mental health of law students at Canadian universities.<sup>61</sup> However, the broad search for studies or surveys on Canadian law students’ mental health, wellbeing, or distress retrieved many studies conducted in the United States and a significant study undertaken in Australia titled the *Courting the Blues Report*.<sup>62</sup> The author also began researching the wellbeing of law students and legal professionals in the United Kingdom to determine if any studies or surveys had been undertaken.<sup>63</sup> As such, the studies conducted in the United States, Australia and the United Kingdom were perceived as potentially relevant to law and mental health because they all come from common law jurisdictions. They were saved in a Zotero library and categorized according to the jurisdiction, as law students, or as legal professional studies.

Next, and mainly because the studies conducted in the United States indicated a continuation of psychological distress in the legal professional lives of law school graduates, the author undertook research into the levels of psychological distress among lawyers in Canada with

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<sup>61</sup> See: Helmers et al., *supra* note 3; Ipsos Reid, *supra* note 11; McGill 2017 *supra* note 3.

<sup>62</sup> In the United States, see: Benjamin et al., *supra* note 3; Jolly-Ryan, *supra* note 31; Lawrence S. Krieger, “Institutional Denial about the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking The Silence. (The Law School Experience)” (2002) 52:1 2 Journal of Legal Education 129; Todd David Peterson & Elizabeth Waters Peterson, “Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology” (2009) 9:2 Yale Journal of Health Policy, Law, and Ethics 357; Sheldon & Krieger 2004 *supra* note 4. In Australia, see: Kelk et al., *supra* note 3.

<sup>63</sup> See: Bogowicz et al., *supra* note 3; C. Strevens & C. Wilson, “Law Student Wellbeing in the UK: A Call for Curriculum Intervention” (2016) 11:1 Journal of Commonwealth Law and Legal Education 44–56.

criteria like that utilized in the search for studies regarding law student distress.<sup>64</sup> Due to the lack of research on legal professionals' psychological distress in Canada, the author again examined studies published in the United States, Australia and the United Kingdom as potentially relevant.<sup>65</sup> In comparing the studies and surveys on law students and legal professionals' wellbeing, the author observed that the psychological distress of law students and legal professionals was higher than that of people in the general population, students in most other programs, and people in other occupations. As such, research on the general population's wellbeing and mental health was undertaken.

Terminology of terms such as and related to mental health, wellbeing, and psychological distress was also undertaken. The author also noticed numerous calls for "cultural change" to improve the wellbeing of law students and legal professionals across the literature reviewed.<sup>66</sup> The author

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<sup>64</sup> Studies indicate that psychological distress does not dissipate significantly for decades after graduation. In the United States see: Benjamin et al., *supra* note 3; Beck, Sales & Benjamin, *supra* note 7. The only study on Canadian legal professional wellbeing then was Ipsos Reid, *supra* note 11.

<sup>65</sup> At the time, the Cadieux et al., 2022 *supra* note 3 study had not yet been published; however, the Cadieux et al., (Quebec), *supra* note 7 study of Quebec legal professionals revealed concerning rates of psychological distress. In the United States, see: Eaton et al., *supra* note 7; Laura Gatland, "Dangerous Dedication: Studies Suggest Long Hours, Productivity Pressures can Cause Serious Health Problems and a Higher Suicide Rate for Attorneys" (1997) 83:12 ABA Journal 28–30; Krill 2018, *supra* note 31; Krill, Johnson & Albert, *supra* note 7; Jerome M. Organ, "What Do We Know About the Satisfaction/Dissatisfaction of Lawyers? A Meta-Analysis of Research on Lawyer Satisfaction and Well-Being" (2011) 8 U St Thomas LJ 225; Reed et al., *supra* note 8; Laura Rothstein, "Law Students and Lawyers with Mental Health and Substance Abuse Problems: Protecting the Public and the Individual. (Symposium: Lawyers with Disabilities)" (2008) 69:3 University of Pittsburgh Law Review 531–566; Buchanan & Coyle, *supra* note 11. In Australia, see: Paula Baron, "Althusser's Mirror: Lawyer Distress and the Process of Interpellation" (2015) 24:2 Griffith Law Review 157–180; Paula Baron, "Sleight of Hand: Lawyer Distress and the Attribution of Responsibility" (2014) 23:2 Griffith Law Review 261–284; Bergin & Jimmieson, *supra* note 7; Adele J. Bergin & Nerina L. Jimmieson, "Explaining Psychological Distress in the Legal Profession: The Role of Overcommitment" (2013) 20:2 INT J STRESS MANAGE 134–161; Chan, Poynton & Bruce, *supra* note 7; Thornton 2016, *supra* note 31; Dr. Christopher Kendall, *Report on Psychological Distress and Depression in the Legal Profession*, (The Council of the Law Society of Western Australia, 2011). In the United Kingdom, see: Richard Collier, "Wellbeing in the Legal Profession: Reflections on Recent Developments (or, what do we talk about, when we talk about wellbeing?)" (2016) 23:1 International Journal of the Legal Profession 41–60; Colin James, "Lawyer Dissatisfaction, Emotional Intelligence and Clinical Legal Education" (2008) 18:1 Legal Education Review 123–137; Sommerlad 2002, *supra* note 41; Sommerlad 2010, *supra* note 41; Sommerlad 2016, *supra* note 41; Ames, *supra* note 31; Richard Collier, Anxiety and Wellbeing Amongst Junior Lawyers: A Research Study (Anxiety UK's Katharine And Harold Fisher Anxiety Research Fund, 2019); Rachel Spearing, "Wellbeing at the Bar," (June 2015), online: Counsel Magazine <<https://counselmagazine.co.uk/articles/wellbeing-the-bar>>; The Law Society of England & Wales, *Resilience and Wellbeing Survey 2019: Survey Report: Junior Lawyers Division* (The Law Society of England & Wales, 2019); The Positive Group, *Wellbeing at the Bar: A Resilience Framework Assessment*, (UK: Bar Council, 2015).

<sup>66</sup> In the United States, see: Buchanan & Coyle, *supra* note 11. In Australia, see: Chan, Poynton & Bruce, *supra* note 7; Janet Chan, "Conceptualising Legal Culture and Lawyering Stress" (2014) 21:2 International Journal of the Legal Profession 213–232. In the United Kingdom see: The Law Society of England & Wales, *ibid*; Elizabeth Rimmer, "We Need to Change the Culture," (13 May 2019), online: *Law Gazette*



took Legal Jurisprudence with Lucinda Vandervort and prepared a paper concerning the “culture of law.”<sup>67</sup> The concept and definition of culture were researched in this course, and the author gained a greater understanding of the external or environmental factors that may affect wellbeing and mental health. The calls for cultural change and literature regarding the concept and definitions of “culture” were deemed potentially relevant to this thesis’s development, and the literature was saved in a Zotero library.<sup>68</sup>

In 2019, the author conducted independent research with Doug Surtees and prepared a paper arguing that improving lawyers’ wellbeing would improve their productivity.<sup>69</sup> This research informed Chapter 7 of this thesis which argues that law schools should improve the health of their students to improve their competence. In 2020, the author took Legal Ethics with Sarah Buhler and prepared a paper arguing that understanding the significance of emotion in decision-making and judgment improves ethical decision-making.<sup>70</sup> For the Legal Ethics course, the author also taught a class and reviewed the studies on law students’ psychological distress and what the author learnt from the Science of Well-being course she took in 2018.

In the summer of 2021, the author was a teaching assistant for the University of Saskatchewan College of Law’s answer to the Truth and Reconciliation Commission’s Call to Action 28 for a course titled “Kwayeskastasowin.”<sup>71</sup> In the winter of 2022, the author was a sessional lecturer for

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<<https://www.lawgazette.co.uk/practice-points/we-need-to-change-the-culture/5070245.article>>. In Canada, see: Greenberg & Stanford, *supra* note 11; Ipsos Reid, *supra* note 11; Canadian Centre for Diversity and Inclusion, *supra* note 41.

<sup>67</sup> See: Toni Rempel, *Lawyer Culture’s Contribution to the Mental Health Crisis*. Law 828 Major Paper for Professor Vandervort. (unpublished, 2019).

<sup>68</sup> In the United States, see: Buchanan & Coyle, *supra* note 11 at 36. Also see: Schmitz, *supra* note 2. In Australia see: Chan, Poynton & Bruce, *supra* note 7; Cubillo, *supra* note 41; Chan, *supra* note 66; Dr. Jacoba Brasch QC, *The Call for Change-Law, Culture, Diversity, Voice* (Breakfast, Perth., 2021). In the UK, see: The Law Society (UK) 2021, *supra* note 68; The Law Society (UK) 2022, *supra* note 68; Rimmer, *supra* note 66; “Call for Law Firms to Address Cultures that Damage Mental Health,” (10 May 2022), online: *People in Law* <<https://peopleinlaw.co.uk/call-for-law-firms-to-address-cultures-that-damage-mental-health/>>. In Canada, see: Greenberg & Stanford, *supra* note 11 at 4; Ipsos Reid, *supra* note 11 at 4; Roderique, *supra* note 41. Also, see generally: Elizabeth A. Canning et al., “Cultures of Genius at Work: Organizational Mindsets Predict Cultural Norms, Trust, and Commitment” (2019) *Personality and Social Psychology Bulletin* 014616721987247 at 626.

<sup>69</sup> See: Toni Rempel, *A Happy Lawyer is A Productive Lawyer*. IDR Major Paper: Professor Surtees (unpublished, 2019).

<sup>70</sup> See: Toni Rempel, *Mindful Legal Education: Authenticity, Emotional Awareness and Ethical Lawyering*. Legal Ethics & Professional Responsibility: Professor Sarah Buhler (unpublished, 2020).

<sup>71</sup> Kwayeskastasowin means “setting things right” in Cree. Also see: Calls to Action, *supra* note 25; TRC Report, *supra* note 25.

the course and developed the curriculum with Lawren Trotchie. During this time, the author became more conscious of attitudes, practices, beliefs, and epistemologies that contributed to racism, discrimination and stigma within the law and observed correlations between Canada's colonial history, trauma, isolation, academic expectations, and workload to the experiences of law students' psychological distress.

In comparing the studies from all jurisdictions, the author observed almost a complete absence of research regarding the wellbeing of marginalized law students and legal professionals in the United States, Australia, Canada, and the United Kingdom.<sup>72</sup> Knowing that diversity and inclusion are values of law schools and law societies in Canada, the author of this thesis decided to examine the culture of law school through an examination of the shared experiences, practices, beliefs and attitudes of students across the United States, Australia, Canada, and the United Kingdom. The research began with a review of the history of legal education, accreditation, pedagogy, and practice. However, the author soon discovered that the United Kingdom includes many countries, including England, Wales, Scotland, Northern Ireland, and many small islands. As such, the author focused first on pedagogy and practices within law schools in England and Wales, compared to the United States, Australia, and Canada. This research narrowed the scope of the research to accredited common law education for national applicants and included the historical development of legal education within each country.

The research into the pedagogy and practice at accredited law schools for national applicants teaching common law in the United States, Australia, England, Wales, and Canada revealed some shared experiences, attitudes, practices, and beliefs that, when compared to the factors detrimental to wellbeing the author thought, maybe significant in determining why law students and legal professionals experience such high levels of psychological distress. The author thought

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<sup>72</sup> In the United States regarding marginalized law students see: Agatstein et al., *supra* note 10. Marginalized legal professionals have been found to have poorer wellbeing than their colleagues. See: International Bar Association, *supra* note 6 at 40. In the United States, see: Nelson et al., *supra* note 10; Cokley et al., *supra* note 10. Also see: Anker & Krill, *supra* note 10. In Canada, see: Cadieux et al., 2022 *supra* note 3. In Australia, women law students and legal professionals reported higher psychological distress than men see, Kelk et al., *supra* note 3 at 11. There are no studies regarding the wellbeing of marginalized legal professionals in the United Kingdom, but see generally: Pender, *supra* note 10.

these shared experiences, attitudes, practices, and beliefs may be the “culture” that the literature noted above advocated needs to change.

The general aim of the data analysis was to critically analyze and examine the literature on the history, pedagogy, epistemology, and practices of legal education in these jurisdictions and assess the dominant experiences of law students, in conjunction with the attitudes and beliefs conveyed and taught in law school which may contribute to declining wellbeing. This analysis examined the studies on law students’ and legal professionals’ psychological distress, which also spoke to and analyzed causation for distress in conjunction with what is known to harm wellbeing through psychology, medicine, and neuroscience.

In 2022, the author began working on two projects: one researching the efficacy of forensic risk assessment of Indigenous offenders in Canada with Dr. Raven Sinclair and another concerning Indigenous-specific racism in Canadian universities with Dr. Amada LaValle. During this research, the author learned more about psychometric scales, systemic racism, and epistemology. Based on the above research, the author began to see “the big picture” and conducted further research on what is known to harm wellbeing and compared that to the shared experiences, practices, attitudes, and beliefs in law.

The author then began to formulate an argument to convince law schools that law student wellbeing must be a priority. The argument included defining key terms and outlining the relevance of the studies from other jurisdictions based on shared experiences, practices, attitudes, and beliefs. Further, the author wanted to reveal the findings of the studies on law students’ psychological distress and the fact that psychological distress continues into the legal professional lives of graduates, profoundly affecting the individual, their family, friends, colleagues, clients, and society. The author conducted in-depth research into how improved wellbeing and health improve competence and how emotion affects decision-making and judgement. Finally, noting the few studies on marginalized law students’ wellbeing and the experiences of trauma and social determinants of health of marginalized peoples, law schools could potentially improve diversity and inclusion within the profession by improving the

wellbeing of marginalized law students and providing trauma-informed legal education and lawyering skills.

The recommendations in this thesis were derived mainly from the research on the factors that improve and hinder wellbeing, the recommendations made in the studies on law students and legal professionals' psychological distress, and the shared experiences, practices, attitudes, and beliefs within the law. The recommendations made in this thesis are derived from a review of psychological safety in the workplace, mental health guidelines, and recommendations made by mental health organizations, law societies, bar associations, accreditation authorities, and other experts in wellbeing and trauma across jurisdictions. Prominent umbrella themes that encompass many different innovations that can be integrated into law schools depending on the needs and environment of the law school were identified and developed into the author's recommendation that Canadian law schools implement wellbeing-focused and trauma-informed legal education.

## Chapter 2: The Relevance of Emotion & the Impact of Trauma on Mental Health & Wellbeing

### 2.1. Introduction

This chapter seeks to explain mental health as part of overall wellbeing and health, both strongly influenced by emotion. Chapter 2.2 will explain and define “wellbeing.” Chapter 2.3 will explain and define “mental health.” Chapter 2.4 will outline the relevance of emotion and provide a definition. Chapter 2.5 will explain the impact and widespread nature of trauma on wellbeing and mental health. The literature regarding wellbeing, mental health, emotion, and trauma is vast and is spread across multiple disciplines. Further, and most problematic for the law (as will be discussed below), is that wellbeing, mental health, emotion, and trauma are subjective experiences.<sup>73</sup>

Integral to understanding overall health and wellbeing is recognizing mental health and emotion as fundamental components.<sup>74</sup> A holistic wellbeing approach that integrates physical, mental, and social health requires a more comprehensive understanding of individuals, their challenges, and their unique circumstances.<sup>75</sup> By highlighting mental health and understanding that it is an inseparable part of overall health, institutions, workplaces, and organizations can create a

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<sup>73</sup> Because wellbeing is subjective, it is often referred to as “subjective wellbeing” and “psychological wellbeing.” See generally: Kirti V. Das et al., “Understanding Subjective Well-Being: Perspectives from Psychology and Public Health” (2020) 41:1 Public Health Reviews 25; Carol D. Ryff, “Psychological Well-Being Revisited: Advances in Science and Practice” (2013) 83:1 Psychotherapy and Psychosomatics 10–28; Carol D. Ryff, “Psychological Well-Being Revisited: Advances in the Science and Practice of Eudaimonia” (2014) 83:1 Psychoth Psychosom 10–28; Ed Diener, ed, *Assessing Well-Being: The Collected Works of Ed Diener*, 1st ed (Social Indicators Research Ser., 39. Web., 2009); Ed Diener, “Subjective Well-Being: Three Decades of Progress” (1999) 125:2 Psychological Bulletin 276–302. Subjective wellbeing can be categorized into three categories life satisfaction (evaluating wellbeing), hedonic wellbeing (emotional experience), and eudemonic wellbeing (a sense of purpose and meaning in life).” See: Andrew Steptoe, Angus Deaton & Arthur A. Stone, “Subjective Wellbeing, Health, and Ageing” (2015) 385:9968 The Lancet 640–648 at 640. Regarding trauma see generally: Jaffe, Bender & Organ, *supra* note 21; Oehme & Stern, *supra* note 12.

<sup>74</sup> See generally: World Mental Health Report, *supra* note 1; Barry, *supra* note 2; Ville Lehtinen et al., “The Intrinsic Value of Mental Health” in Helen Herrman, Shekhar Saxena & Rob Moodie, eds, *Promoting Mental Health: Concepts, Emerging Evidence, Practice: Report of the World Health Organization, Department of Mental Health and Substance Abuse in collaboration with the Victorian Health Promotion Foundation and the University of Melbourne* (Geneva: World Health Organization, 2005) 46; Sanne M.A. Lamers et al., “Evaluating the Psychometric Properties of the Mental Health Continuum-Short Form (MHC-SF)” (2011) 67:1 Journal of Clinical Psychology 99–110.

<sup>75</sup> See generally: Michael Pennock & Karma Ura, “Gross National Happiness as a Framework for Health Impact Assessment” (2011) 31:1 Environmental Impact Assessment Review 61–65.

healthier, more supportive and sustainable environment that values the wellbeing of all their members.<sup>76</sup>

This thesis defines wellbeing as a subjective experience of overall health, including physical, emotional, intellectual, social, and spiritual health, with a sense of hope about the future, enabling people to “connect, function, cope and thrive.”<sup>77</sup> Wellbeing includes at least five aspects of the human experience, including physical, emotional, intellectual, social, and spiritual.<sup>78</sup> All aspects are intricately interconnected.<sup>79</sup>

Chapter 2.3 defines mental health as an integral component of an individual’s overall wellbeing and refers explicitly to an individual’s psychological, emotional, and social stability.<sup>80</sup>

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<sup>76</sup> See generally: Patrizio Paoletti, Michele Pellegrino & Tal D. Ben-Soussan, “A Three-Fold Integrated Perspective on Healthy Development: An Opinion Paper” (2023) 13:6 Brain Sciences; Lana Ruvo Grasser & Hilary Marusak, “Strong Mind, Strong Body: The Promise of Mind–Body Interventions to Address Growing Mental Health Needs Among Youth” (2023) Mental Health Science, online: <<https://doi.org/10.1002/mhs2.16>>; Kimberley Holmes, “Neuroscience, Mindfulness and Holistic Wellness Reflections on Interconnectivity in Teaching and Learning” (2019) 50:3 Interchange 445–460.

<sup>77</sup> As previously mentioned, there is no universally accepted definition of “wellbeing.” See: Dodge et al., *supra* note 15. Mental health influences wellbeing. See: World Mental Health Report, *supra* note 1 at 13. Also see: Seligman 2011, *supra* note 15; Buchanan & Coyle, *supra* note 11 at p. 9. Subjective wellbeing is often referred to as “happiness.” See: Diener, Scollon & Lucas, *supra* note 15. Subjective wellbeing reflects an overall evaluation of a person’s life quality from her or his perspective. See: Diener, Lucas & Oishi, *supra* note 15. Also see generally: Centers for Disease Control and Prevention, *supra* note 15; Kahneman, Diener & Schwartz, *supra* note 15. Thriving entails achievement and “being all one can be” (also referred to as “self-actualization”). See: Maslow, *supra* note 15. Also see generally: Frankl, *supra* note 15; Brown, *supra* note 15; Csikszentmihalyi, *supra* note 15; Rubin, *supra* note 15. Hope is essential for flourishing and wellbeing. See: Lee & Gallagher, *supra* note 15, Seligman 2018, *supra* note 15; Williams, *supra* note 15. “Hope” improved wellbeing among college students during the pandemic. See: Genç & Arslan, *supra* note 15. Culture affects wellbeing. See: Diener (Culture), *supra* note 15. Lawyers have the same mental health and wellbeing needs as everyone else. See: Krieger & Sheldon 2015, *supra* note 15.

<sup>78</sup> See: Buchanan & Coyle, *ibid*.

<sup>79</sup> See generally: Debra Umberson & Jennifer Karas Montez, “Social Relationships and Health: A Flashpoint for Health Policy” (2010) 51:1\_suppl J Health Soc Behav S54–S66; Chris Naylor et al., *Bringing Together Physical and Mental Health a New Frontier for Integrated Care*, (London: The King’s Fund, 2016); Brooke Allemang et al., “‘They go Hand in Hand’: A Patient-Oriented, Qualitative Descriptive Study on the Interconnectedness Between Chronic Health and Mental Health Conditions in Transition-Age Youth” (2023) 23:1 BMC Health Services Research 2.

<sup>80</sup> Mental health is often used interchangeably with “psychological health. Mental health and mental health problems are “subjective.” See: Gross, Uusberg & Uusberg, *supra* note 17; Taschereau-Dumouchel et al., *supra* note 17. “Mental health is all about how people think, feel, and behave.” See: Felman & Tee-Melegrito, *supra* note 17; Also see: World Mental Health Report, *supra* note 1; Galderisi et al., *supra* note 17. Also see generally: Westerhof & Keyes, *supra* note 17; Substance Abuse and Mental Health Services Administration, *supra* note 17; Public Health Agency of Canada, *supra* note 17; World Health Organization, *supra* note 17. Social connection and belonging are vital for mental health. See generally: Kubzansky, Epel & Davidson, *supra* note 17. One of the purposes of human lives is to achieve and “be all one can be” (also referred to as “self-actualization”). See: Maslow, *supra* note 15. Also see generally: Frankl, *supra* note 15; Brown, *supra* note 15; Csikszentmihalyi, *supra* note 15; Dweck, *supra* note 15; Rubin, *supra* note 15. There are many ways to improve mental health.

Essentially, mental health pertains to the condition of a person's mind and how it affects their thoughts, behaviour, and attitudes.<sup>81</sup> Mental health encompasses a broad scope of experiences, including a person's ability to manage their thoughts, reactions and emotions, cope with everyday stresses, work, learn, and realize their potential while maintaining healthy relationships.<sup>82</sup>

Chapter 2.3 will distinguish mental health from a mental health disorder or illness (referred to as a "mental health condition"). To summarize, a "mental health condition" is a clinical term for a diagnosed condition that refers to a wide range of disorders that can affect a person's mental and emotional functioning over a prolonged period.<sup>83</sup> Likewise, Chapter 2.3 will explain how a "mental health problem" is different from "mental health" and a "mental health condition." A "mental health problem" can be experienced by a person without a formal diagnosis. A mental health problem is indicative of a person being off their baseline.<sup>84</sup>

Chapter 2.4 will outline how emotions are a vital component of human existence, significantly influencing wellbeing and mental health.<sup>85</sup> Emotions encompass a vast array of feelings experienced by individuals in response to various stimuli or situations.<sup>86</sup> Emotions often manifest

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<sup>81</sup> *Ibid.*

<sup>82</sup> See generally: Felman & Tee-Melegrito, *ibid*; Galderisi et al., *ibid*; World Mental Health Report, *ibid*.

<sup>83</sup> There is no single, universally accepted definition of "mental disorder." There are cultural, social, economic, and legal influences on how mental disorders are contextualized. See generally: Jamie Walvisch, "Defining 'Mental Disorder' in Legal Contexts" (2017) 52 Int J Law Psychiat 7–18.

<sup>84</sup> In this thesis "baseline" refers to "hedonic adaptation." Hedonic adaptation is the scientifically observed tendency of humans to maintain an equilibrium of happiness despite major positive or negative events or life changes. Moving off baseline can happen with tragedy, illness, stress, victory, and accomplishment. Because of this, happiness levels can change but often return to a relatively stable level. See: S. Lyubomirsky, "Hedonic Adaptation to Positive and Negative Experiences" in Susan Folkman *the Oxford Handbook of Stress, Health, and Coping* (Oxford University Press: 2012). Online: <<http://sonjalyubomirsky.com/files/2012/09/Lyubomirsky-2011-1.pdf>>; Kennon M. Sheldon & Sonja Lyubomirsky, "The Challenge of Staying Happier: Testing the Hedonic Adaptation Prevention Model," (2012) 38:5 Pers Soc Psychol Bull 670; Liam Graham & Andrew J. Oswald, "Hedonic Capital, Adaptation and Resilience" (2010) 76:2 J Econ Behav Organ 372; Philip Brickman, Dan Coates & Ronnie Janoff-Bulman, "Lottery Winners and Accident Victims: Is Happiness Relative?" (1978) 36:8 J Pers Soc Psychol 917; Mental Health Commission of Canada, *Mental Health First Aid* (Mental Health Commission of Canada, 2017).

<sup>85</sup> See generally: Gross, Uusberg & Uusberg, *supra* note 17; Goldie, *supra* note 18; Brown 2021, *supra* note 18; Oatley, *supra* note 18.

<sup>86</sup> Defining "emotion" is challenging and contested; no consensus exists. See generally: Scarantino, *supra* note 18; Dixon, *supra* note 18; Gendron, *supra* note 18; Berrios, *supra* note 18; Goldie, *supra* note 18; Adolphs, *supra* note 18; Oatley, *supra* note 18; Barrett et al., *supra* note 18; Šimić et al., *supra* note 18; Hwang & Matsumoto, *supra* note 18; Zadra & Clore, *supra* note 18; Siegel et al., *supra* note 18. Also, see generally: Barrett 2018, *supra* note 18; Niedenthal & Wood, *supra* note 18; Izard, *supra* note 18.

as distinct states, such as happiness, sadness, fear, anger, and surprise, each characterized by unique features and physiological responses.<sup>87</sup> However, emotions are far from mere fleeting sensations; they represent fundamental aspects of human nature that have evolved to serve essential purposes.<sup>88</sup> One critical role emotion plays is in their ability to shape decision-making processes.<sup>89</sup> Emotion also serves as a mechanism to communicate and connect with others.<sup>90</sup> Further, emotion plays a pivotal role in self-awareness and introspection.<sup>91</sup>

Finally, Chapter 2.5. outlines the problematic nature of categorizing, dichotomizing, and objectively assessing trauma. Instead, a nuanced and holistic understanding of trauma is outlined. Trauma is a subjective experience that encompasses not only the immediate harm caused but also the long-lasting psychological and emotional wounds that may result from event(s) or circumstance(s).<sup>92</sup> Trauma is a deeply personal journey through pain, often involving hopelessness.<sup>93</sup> Fear, anger, shame, and loss are common feelings throughout the journey. Emotion is deeply entwined in any understanding of trauma, and a language for emotion is necessary.<sup>94</sup> Trauma is addressed in Chapter 2 apart from the other factors detrimental to

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<sup>87</sup> See generally: Adolphs, *ibid*.

<sup>88</sup> *Ibid*.

<sup>89</sup> Emotion affects decision-making, learning & memory. See: Muir, *supra* note 19; Friedland, *supra* note 19; Tiscione, *supra* note 19; Austin, *supra* note 19. Also see: Damasio, *supra* note 19; Brown 2013, *supra* note 19; Clore & Huntsinger, *supra* note 19; Tyng et al., *supra* note 19; Fenton-O'Creevy et al., *supra* note 19; Hopkins & Deepa, *supra* note 19; Phelps, Lempert & Sokol-Hessner, *supra* note 19; Garfinkel et al., *supra* note 19; Jung et al., *supra* note 19; Lakomski & Evers, *supra* note 19; Lench, Flores & Bench, *supra* note 19; Naqvi, Shiv & Bechara, *supra* note 19; Lerner et al., *supra* note 19; Slovic, *supra* note 19; Côté-Lussier & David, *supra* note 19.

<sup>90</sup> Emotion helps humans establish social connections and a sense of belonging. See: Erbas et al., *supra* note 19; Eslinger et al., *supra* note 19; Barsade, *supra* note 19; Chartrand & Bargh, *supra* note 19; Lindquist, Satpute & Gendron, *supra* note 19.

<sup>91</sup> Mindfulness assists with emotional and self-awareness. See: Hamilton, Kitzman & Guyotte, *supra* note 19. Also see generally: Vago & David, *supra* note 19. For mindfulness in legal education, see: James 2011, *supra* note 19; Jacobowitz & Rogers, *supra* note 19; Rogers, *supra* note 19; Martin 2014, *supra* note 19; Scott, *supra* note 19; Reuben, *supra* note 19; Huang 2013, *supra* note 19; Huang 2015, *supra* note 19; Brostoff, *supra* note 19; Western Law, *supra* note 19. The wellbeing of law students and lawyers has been improved with mindfulness. See: Nielsen & Minda, *supra* note 19; Reuben & Sheldon, *supra* note 19; Rosky et al., *supra* note 19; Appleby & Bourke, *supra* note 19. Also see generally: Gerdy, *supra* note 19. Self-awareness and mindfulness can reduce bias. See: Lueke & Gibson, *supra* note 19; Kang, Gray & Dovidio, *supra* note 19; Stell & Farsides, *supra* note 19. Also see generally: Weng, *supra* note 19; Lopez, *supra* note 19; Ioanide, *supra* note 19; White et al., *supra* note 19; Salzen, *supra* note 19; Silvia, *supra* note 19; Maroney 2011, *supra* note 19; McIntosh, Antes & DuBois, *supra* note 19; Vago & David, *supra* note 19; Eurich, *supra* note 19.

<sup>92</sup> See generally: SAMHSA, *supra* note 22 at 7.

<sup>93</sup> Hope is essential for wellbeing. See: Seligman 2018, *supra* note 15.

<sup>94</sup> There is “evidence from developmental and cognitive science to reveal that language scaffolds concept knowledge in humans, helping humans to acquire abstract concepts such as emotion categories across the lifespan. Critically, language later helps individuals use concepts to make meaning of on-going sensory perceptions.” See: Kristen A. Lindquist, Jennifer K. MacCormack & Holly Shablack, “The Role of Language in Emotion: Predictions from



wellbeing because it is the most prevalent and harmful to mental health and wellbeing.<sup>95</sup> This thesis will now turn to Chapter 2.2 to explain and define wellbeing.

## 2.2. Wellbeing

In today's fast-paced and highly demanding world, the concept of wellbeing has gained significant prominence, with individuals and society prioritizing their physical and mental health more than ever.<sup>96</sup> Wellbeing can be described as a state of complete physical, mental, and social

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Psychological Constructionism" (2015) 6 Front Psychol 444 at 1. Also see: Lindquist, Satpute & Gendron, *supra* note 19.

<sup>95</sup> Trauma is prevalent and an emerging public health issue. See: Oehme & Stern, *supra* note 12; Joshi et al., *supra* note 12; Merrick et al., *supra* note 12; Advisory Board, *supra* note 12; Koenen et al., *supra* note 12; Ameringen et al., write that "[P]ost-Traumatic Stress Disorder (PTSD) has become a global health issue, with prevalence rates ranging from 1.3% to 37.4%." See: Ameringen et al., *supra* note 12 at 171. In Canada, "[a]lmost three-quarters (72%) of Canadians experienced at least one instance of child maltreatment, that is experienced childhood victimization, harsh parenting or witnessed violence during childhood." See: Heidinger, *supra* note 12. Also see generally: "Trauma and Violence," (14 January 2019), online: *Substance Abuse and Mental Health Services Administration (SAMHSA)* <<https://www.samhsa.gov/trauma-violence>>. Regarding prevention, see generally: Jones, Merrick & Houry, *supra* note 12; "Fast Facts: Preventing Adverse Childhood Experiences | Violence Prevention|Injury Center|CDC," (5 September 2023), online: *Centers for Disease Control and Prevention* <<https://www.cdc.gov/violenceprevention/aces/fastfact.html>>. Trauma is harmful. See: J. Douglas Bremner, "Traumatic Stress: Effects on the Brain" (2006) 8:4 Dialogues in Clinical Neuroscience 445–461; Ruth A. Lanius, Braeden A. Terpou & Margaret C. McKinnon, "The Sense of Self in the Aftermath of Trauma: Lessons from the Default Mode Network in Posttraumatic Stress Disorder" (2020) 11:1 Eur J Psychotraumatol 1807703–1807703; Christopher Wilson, Kimberly A. Lonsway & Sergeant Joanne Archambault, *Understanding the Neurobiology of Trauma and Implications for Interviewing Victims* (End Violence Against Women International., 2020); Bessel A. van der Kolk, *The Body Keeps Score: Brain, Mind, and Body in the Healing of Trauma*. (United States of America: Penguin Random House LLC, 2014); Bessel van der Kolk, "Posttraumatic Stress Disorder and the Nature of Trauma" (2000) 2:1 Dialogues Clin Neurosci 7–22; "Past Trauma May Haunt your Future Health," (January 2019), online: Harvard Health Publications Harvard Women's Health Watch. Retrieved from: <<http://cyber.usask.ca/login?url=https://www.proquest.com/magazines/past-trauma-may-haunt-your-future-health/docview/2181096570/se-2>>.

<sup>96</sup> The "wellbeing market" has exploded. See generally: Shaun Callaghan et al., "The Future of the \$1.5 Trillion Wellness Market," (8 April 2021), online: <<https://www.mckinsey.com/industries/consumer-packaged-goods/our-insights/feeling-good-the-future-of-the-1-5-trillion-wellness-market>>; "The \$121bn Mental Wellness Market" *Health Club Management: HCM* (10 July 2023), online: <<http://www.healthclubmanagement.co.uk/health-club-management-features/News-report-Mental-health/34704>>. Wellbeing has become of utmost concern with productivity. See generally: Theo van der Voordt & Per Anker Jensen, "The Impact of Healthy Workplaces on Employee Satisfaction, Productivity and Costs" (2021) 25:1 Journal of Corporate Real Estate 29–49; Stephen Bevan & Cary L. Cooper, *The Healthy Workforce: Enhancing Wellbeing and Productivity in the Workers of the Future* (Web.: Emerald Publishing Limited, 2021). However, wellbeing has been accused of being pursued in a racist, homogenous, and capitalistic fashion. See generally: Amina Mire, *Wellness in Whiteness*, S. Bevan & C.L. Cooper, eds (London & New York: Routledge, 2020); CBCNews, "New Documentary Explores the Role of Capitalism, Colonialism in the Wellness Industry | CBC News," (17 September 2022), online: CBC <<https://www.cbc.ca/news/canada/british-columbia/identity-of-wellness-1.6584898>>; Identity of Wellness | Absolutely Canadian | CBC Gem (Canada: CBC, 2022). Between 1999 and 2018, 170,000 journal articles addressed wellbeing were published. See generally: Diener, Lucas & Oishi, *supra* note 15. Wellbeing has also become a concern for governments and public policy. See generally: Vikram Patel, et al., "The Lancet Commission on Global Mental Health and Sustainable Development" (2018) 392:10157 LANCET 1553–1598; Ed Diener & Martin E. P.

health, encompassing an individual's overall happiness and life satisfaction.<sup>97</sup> Dr. Diener, a wellbeing expert, wrote that wellbeing is subjectively judged by “how people evaluate their lives... include[ing] people's emotional reactions to events, their moods, and judgments they form about their life satisfaction, fulfilment, and satisfaction with domains such as marriage and work.”<sup>98</sup>

Wellbeing is a multifaceted phenomenon heavily influenced by various external and internal factors, ranging from social connections and economic status to personal values and

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Seligman, “Beyond Money: Toward an Economy of Well-Being” (2004) 5:1 *Psychological Science in the Public Interest: A Journal of the American Psychological Society* 1–31; Ed Diener & Martin E. P. Seligman, “Beyond Money: Progress on an Economy of Well-Being” (2018) 13:2 *Perspectives on Psychological Science: A Journal of the Association for Psychological Science* 171–175; Derek Bok, *The Politics of Happiness: What Government Can Learn from the New Research on Well-Being* (Princeton, New Jersey: Princeton University Press, 2010); The Global Council for Happiness and Wellbeing, *Global Happiness and Wellbeing Policy Report 2019*, (New York: Sustainable Development Solutions Network, 2019); Felicia A. Huppert & Timothy T. C. So, “Flourishing Across Europe: Application of a New Conceptual Framework for Defining Well-Being” (2013) 110:3 *Soc Indic Res* 837–1246; “National Study of Mental Health and Wellbeing, 2020-21 | Australian Bureau of Statistics,” (22 July 2022), online: *Australian Bureau of Statistics* <<https://www.abs.gov.au/statistics/health/mental-health/national-study-mental-health-and-wellbeing/latest-release>>; “Measures of National Well-being Dashboard,” (12 May 2023), online: *Office of National Statistics* <<https://www.ons.gov.uk/peoplepopulationandcommunity/wellbeing/articles/measuresofnationalwellbeingdashboard/2018-04-25>>; “UK Measures of National Well-being Dashboard - Office for National Statistics,” (11 August 2023), online: *Office for National Statistics* <<https://www.ons.gov.uk/peoplepopulationandcommunity/wellbeing/articles/ukmeasuresofnationalwellbeing/dashboard>>; “Home,” (13 June 2012), online: *Canadian Index of Wellbeing* <<https://uwaterloo.ca/canadian-index-wellbeing/home>>.

<sup>97</sup> This thesis defines wellbeing as a subjective experience of overall health, including physical, emotional, intellectual, social, and spiritual health with a sense of hope about the future, enabling people to “connect, function, cope and thrive.” As previously mentioned, there is no universally accepted definition of “wellbeing.” See: Dodge et al., *supra* note 15. Mental health influences wellbeing. See: World Mental Health Report, *supra* note 1 at 13. Also see: Seligman 2011, *supra* note 15; Buchanan & Coyle, *supra* note 11 at p. 9. Subjective wellbeing is often referred to as “happiness.” See: Diener, Scollon & Lucas, *supra* note 15. Subjective wellbeing reflects an overall evaluation of a person's life quality from her or his perspective. See: Diener, Lucas & Oishi, *supra* note 15. Also see generally: Centers for Disease Control and Prevention, *supra* note 15; Kahneman, Diener & Schwartz, *supra* note 15. Thriving entails achievement and “being all one can be” (also referred to as “self-actualization”). See: Maslow, *supra* note 15. Also see generally: Frankl, *supra* note 15; Brown, *supra* note 15; Csikszentmihalyi, *supra* note 15; Rubin, *supra* note 15. Hope is essential for flourishing and wellbeing. See: Lee & Gallagher, *supra* note 15; Seligman 2018, *supra* note 15; Williams, *supra* note 15. “Hope” improved wellbeing among college students during the pandemic. See: Genç & Arslan, *supra* note 15. Culture affects wellbeing. See: Diener (Culture), *supra* note 15. Lawyers have the same mental health and wellbeing needs as everyone else. See: Krieger & Sheldon 2015, *supra* note 15.

<sup>98</sup> See: Diener, Oishi & Lucas, *supra* note 18 at 404. Ed Diener, Ph. D., was a distinguished professor of psychology at the University of Illinois from 1974 until 2021, when he passed away. Diener was an expert in subjective wellbeing and published over 330 academic articles and chapters, 250 focusing specifically on the psychology of wellbeing. Dr. Diener also co-edited four textbooks on subjective wellbeing. See generally: Kahneman, Diener & Schwartz, *ibid*; Diener 2009, *supra* note 73; Diener (Science), *supra* note 15.

psychological resilience.<sup>99</sup> However, it is essential to recognize that wellbeing is not simply the absence of negative factors; it is a holistic and dynamic concept that goes beyond physical health and happiness.<sup>100</sup> Factors such as financial stability, environmental conditions, and access to education and healthcare all play a crucial role in shaping an individual's wellbeing.<sup>101</sup> Therefore, social factors, policies, and the distribution of resources are vital to ensuring that wellbeing is attainable for all, rather than being a luxury reserved for a privileged few.<sup>102</sup>

The American Bar Association adopted six dimensions of life that influence wellbeing, including occupational, intellectual, spiritual, physical, social, and emotional.<sup>103</sup> However, some literature adds further dimensions, such as financial and environmental.<sup>104</sup> This thesis will briefly review five of the six dimensions of wellbeing outlined by the American Bar Association for brevity because the occupational dimension is more applicable to legal professionals than law students.<sup>105</sup> This thesis addresses the wellbeing of law students specifically. The following paragraphs will begin by outlining physical wellbeing and then emotional, intellectual, social, and spiritual wellbeing.

Physical wellbeing is the foundation upon which all other aspects of wellness are built.<sup>106</sup> Physical wellbeing refers to being in good health, where an individual's body functions

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<sup>99</sup> See generally: "COVID-19 Pandemic Triggers 25% Increase in Prevalence of Anxiety and Depression Worldwide," (2 March 2022), online: *World Health Organization* <<https://www.who.int/news/item/02-03-2022-covid-19-pandemic-triggers-25-increase-in-prevalence-of-anxiety-and-depression-worldwide>>; World Mental Health Report, *supra* note 1; Andrew H. Kemp & Zoe Fisher, "Wellbeing, Whole Health and Societal Transformation: Theoretical Insights and Practical Applications" (2022) 11 *Glob Adv Health Med* 21649561211073076.

<sup>100</sup> See: Kai Ruggeri, et al., "Well-being is More than Happiness and Life Satisfaction: A Multidimensional Analysis of 21 Countries" (2020) 18:1 *Health and Quality of Life Outcomes* 192.

<sup>101</sup> See generally: Medical News Today, *supra* note 2.

<sup>102</sup> See generally: World Health Organization 2010, *supra* note 2; Barreto, *supra* note 2; Barry, *supra* note 2; Patel et al. 2010, *supra* note 2; Patel et al. 2018, *supra* note 96; National Collaborating Centre for Determinants of Health, *supra* note 2.

<sup>103</sup> See: Buchanan & Coyle, *supra* note 11 at 9.

<sup>104</sup> See generally: Debbie L. Stoewen, "Dimensions of Wellness: Change Your Habits, Change Your Life" (2017) 58:8 *Can Vet J* 861–862.

<sup>105</sup> The occupational dimension of wellbeing addresses "cultivating personal satisfaction, growth, and enrichment in work; financial stability." See: Buchanan & Coyle, *supra* note 11 at 9.

<sup>106</sup> See generally: Maslow, *supra* note 15; Bethany Cole, Emma Bailey & Liz Ewins, "Phew! Time to Focus on Physical Health and Wellbeing: Improving the Assessment and Management of Physical Health in an Early Intervention in Psychosis Service" (2021) 7: S1 *BJPsych open* S179–S179; Adams et al., *supra* note 31; Deslandes et al., *supra* note 31; Skead & Rogers 2015, *supra* note 3.

optimally, free from illness and disability.<sup>107</sup> Adequate nutrition, regular exercise, sufficient sleep, and the absence of chronic diseases are all critical components of physical wellbeing.<sup>108</sup> An individual with good physical wellbeing will have improved overall energy levels and enjoy increased productivity, longevity, and vitality.<sup>109</sup> Moreover, physical health directly impacts emotional wellbeing, creating a positive feedback loop.<sup>110</sup>

Emotional wellbeing is closely linked to a person's psychological state and the quality of their thoughts and emotions.<sup>111</sup> Emotional health involves experiencing positive emotions, managing stress effectively, feeling fulfilled and having meaning in life.<sup>112</sup> Wellbeing is enhanced with emotional intelligence, allowing people to recognize, understand, and regulate their emotions appropriately.<sup>113</sup> Individuals possessing emotional intelligence also exhibit high levels of self-

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<sup>107</sup> See: *Constitution of the World Health Organization* (2006), *supra* note 13. The WHO constitution states: "Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."

<sup>108</sup> See generally: "The Connection Between Diet, Exercise, and Sleep," (4 December 2020), online: *Sleep Foundation* <<https://www.sleepfoundation.org/physical-health/diet-exercise-sleep>>; Huffington, *supra* note 31; Ullrich et al., *supra* note 32; Walker et al., *supra* note 31; Walker & Stickgold, *supra* note 31; Glatter, *supra* note 31; Robert Ross, et al., "Canadian 24-Hour Movement Guidelines for Adults aged 18–64 years and Adults aged 65 years or older: An Integration of Physical Activity, Sedentary Behaviour, and Sleep" (2020) 45:10 (Suppl. 2) *Appl Physiol Nutr Metab* S57–S102; "Adults 18–64 – 24-Hour Movement Guidelines," (2021), online: *Canadian Society for Exercise Physiology (CSEP)* <<https://csepguidelines.ca/guidelines/adults-18-64/>>; "Why sleep? - SLEEP ON IT! - Canadian Public Health Campaign on Sleep," online: *SLEEP ON IT!* <<https://sleeponitcanada.ca/all-about-sleep/why-sleep/>>; Chinchin Wang, et al., *Sleep Behaviours Among Canadian Adults: Findings from the 2020 Canadian Community Health Survey Healthy Living Rapid Response Module*, (Ottawa, Canada: Statistics Canada, 2022). Limiting substance use also helps improve physical wellbeing. See generally: Paradis et al., *supra* note 31.

<sup>109</sup> See generally: "Benefits of Physical Activity," (28 June 2023), online: *Centers for Disease Control and Prevention* <<https://www.cdc.gov/physicalactivity/basics/pa-health/index.htm>>; US Department of Health and Human Services, *Physical Activity Guidelines for Americans*, 2nd ed (USA: U.S. Department of Health and Human Services, 2018); Health Canada, "Welcome to Canada's Food Guide," (14 January 2021), online: *Government of Canada* <<https://food-guide.canada.ca/en/>>.

<sup>110</sup> See generally: Julius Ohrmberger, Eleonora Fichera & Matt Sutton, "The Relationship between Physical and Mental Health: A Mediation Analysis" (2017) 195 *Social Science & Medicine* 42–49; Kenneth R. Fox, "The Influence of Physical Activity on Mental Well-Being" (1999) 2:3a *Public Health Nutrition* 411–418. Also see generally: Peggy A. Thoits, "Mechanisms Linking Social Ties and Support to Physical and Mental Health" (2011) 52:2 *J HEALTH SOC BEHAV* 145–161.

<sup>111</sup> "Emotional wellbeing" is also often referred to as "mental wellbeing," "emotional health," "psychological wellbeing," or "psychological health." See generally: Gross, Uusberg & Uusberg, *supra* note 17 at 130 wherein they write, "Mental health crucially depends upon affective states such as emotions, stress responses, impulses, and moods. These states shape how [individuals] think, feel, and behave."

<sup>112</sup> See generally: Barbara L. Fredrickson, "The Role of Positive Emotions in Positive Psychology" (2001) 56:3 *American Psychologist* 218–226; Lahnna I. Catalino & Barbara L. Fredrickson, "A Tuesday in the Life of a Flourisher: The Role of Positive Emotional Reactivity in Optimal Mental Health." (2011) 11:4 *Emotion* 938.

<sup>113</sup> "Emotional intelligence" is understanding, using, and regulating emotions for positive outcomes, relieving stress, and communicating and empathizing with others. See: Daniel Goleman, *Emotional Intelligence: Why it can Matter More than IQ* (New York, NY: Bantam Dell, 1995); Salovey & Mayer, *supra* note 48. Also see: Athanasios S. Drigas & Chara Papoutsis, "A New Layered Model on Emotional Intelligence" (2018) 8:5 *Behavioral Sciences* 45. "Emotional literacy" refers to the ability to name and express feelings and emotions. See: C. Steiner & P. Perry,

esteem and resilience, enabling them to cope with life's challenges and setbacks.<sup>114</sup> Significantly contributing to healthy relationships, emotional wellbeing also enhances productive work environments and a sense of belongingness within communities, thereby enhancing overall quality of life.<sup>115</sup>

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*Achieving Emotional Literacy: A Personal Program to Increase Your Emotional Intelligence* (London: Bloomsbury Pub. Ltd., 2001); Lindquist, MacCormack & Shablack, *supra* note 94. Many scholars have advocated for the integration of emotion into legal education. See: Montgomery, *supra* note 19; Douglas, *supra* note 19; James 2011, *supra* note 19; O'Brien, *supra* note 19; Jones 2018, *supra* note 19; Jones 2020, *supra* note 19; Brown 2013, *supra* note 19; Martin 2014, *supra* note 19; Cullen & Kerin, *supra* note 19; Western Law, *supra* note 19. Also see generally: James 2018, *supra* note 19. Regarding emotional intelligence in legal practice, see: Melita, Norina, "Emotional Intelligence, Distancing, and Learning a New Skill as Strategies to Combat the Deleterious Effects of Emotional Labor on Attorney Wellbeing" (2023) 17 Front Behav Neurosci 1221145; Muir, *supra* note 19; Friedland, *supra* note 19; Tiscione, *supra* note 19; Sheldon & Krieger, *supra* note 19. Also see K. V. Petrides et al., "Trait Emotional Intelligence in Surgeons" (2022) 13 Frontiers in Psychology which compared the emotional intelligence of surgeons and lawyers.

<sup>114</sup> Emotional intelligence has been correlated with achievement and better health. See: Akpur, *supra* note 43; Antonella D'Amico, Alessandro Geraci & Chiara Tarantino, "The Relationship between Perceived Emotional Intelligence, Work Engagement, Job Satisfaction, and Burnout in Italian School Teachers: An Exploratory Study" (2020) 29:1 Psihol teme (Online) 63–84; Mohamed Fteiha & Narmeen Awwad, "Emotional Intelligence and its Relationship with Stress Coping Style" (2020) 7:2 Health Psychology Open 2055102920970416; Nerea Jiménez-Picón et al., "The Relationship between Mindfulness and Emotional Intelligence as a Protective Factor for Healthcare Professionals: Systematic Review" (2021) 18:10 Int J Environ Res Public Health 5491; Leila Karimi et al., "Emotional Intelligence: Predictor of Employees' Wellbeing, Quality of Patient Care, and Psychological Empowerment" (2021) 9:1 BMC Psychology 93–93; B.E. Kok et al., "Corrigendum: How Positive Emotions Build Physical Health: Perceived Positive Social Connections Account for the Upward Spiral Between Positive Emotions and Vagal Tone" (2016) 27:6 Psychological Science 931; Martins, Ramalho & Morin, *supra* note 43; Ghazal Shariatpanahi et al., "The Impact of Emotional Intelligence on Burnout Aspects in Medical Students: Iranian Research" (2022) 2022 Education Research International 5745124; Dorota Daniela Szczygiel, & Moira Mikolajczak, "Emotional Intelligence Buffers the Effects of Negative Emotions on Job Burnout in Nursing" (2018) 9 Frontiers in Psychology 2649; Rubén Trigueros et al., "The Influence of Emotional Intelligence on Resilience, Test Anxiety, Academic Stress and the Mediterranean Diet. A Study with University Students" (2020) 17:6 INT J ENV RES PUB HE 2071; Gerald Matthews, Moshe Zeidner & Richard D. Roberts, "Emotional Intelligence, Health, and Stress" in *The Handbook of Stress and Health* (2017) 312; Jia-Lin Zhao, Xu-Hong Li & John Shields, "Managing Job Burnout: The Effects of Emotion-Regulation Ability, Emotional Labor, and Positive and Negative Affect at Work." (2019) 26:3 International Journal of Stress Management 315–320. Also see: Hamilton, Kitzman & Guyotte, *supra* note 19; Ed Diener, Stuti Thapa & Louis Tay, "Positive Emotions at Work" (2020) 7:1 Annu Rev Organ Psychol Organ Behav 451–477; Pessoa, *supra* note 48; Catalino & Fredrickson, *supra* note 112; Julia K. Boehm & Sonja Lyubomirsky, "Does Happiness Promote Career Success?" (2008) 16:1 Journal of Career Assessment 101–116; Lisa C. Walsh, Julia K. Boehm & Sonja Lyubomirsky, "Does Happiness Promote Career Success? Revisiting the Evidence" (2018) 26:2 Journal of Career Assessment 199–219.

<sup>115</sup> See: Heather Heavin & Michaela Keet, "Client-Centered Communication: How Effective Lawyering Requires Emotional Intelligence, Active Listening, and Client Choice" (2020) 22 Cardozo J Conflict Resol 199; Erbas et al., *supra* note 19; Eslinger et al., *supra* note 19; Barsade, *supra* note 19; Chartrand & Bargh, *supra* note 19; Lindquist, Satpute & Gendron, *supra* note 19. Also see generally: Muir, *supra* note 19; Umberson & Montez, *supra* note 79; Dorit Haim-Litevsky, Reut Komemi & Lena Lipskaya-Velikovsky, "Sense of Belonging, Meaningful Daily Life Participation, and Well-Being: Integrated Investigation" (2023) 20:5 International Journal of Environmental Research and Public Health 4121.

The intellectual dimension of wellbeing involves stimulating the mind and continuously seeking knowledge.<sup>116</sup> It includes engaging in lifelong learning, pursuing intellectual interests, and being open to new ideas and experiences.<sup>117</sup> By nurturing intellect, individuals broaden their perspectives, enhance problem-solving skills, and engage in critical thinking.<sup>118</sup>

Social wellbeing emphasizes the importance of interpersonal relationships and social connections in an individual's life.<sup>119</sup> Humans are innately social beings; forging positive relationships with family, friends, colleagues, and the wider community is fundamental to wellbeing.<sup>120</sup> Social connections provide emotional support, reduce feelings of loneliness and isolation, and offer opportunities for personal growth and self-discovery.<sup>121</sup> Furthermore, social integration promotes a sense of collective responsibility and belongingness, fostering a healthy, harmonious society.<sup>122</sup>

Lastly, the spiritual dimension of wellbeing focuses on finding meaning and purpose in life.<sup>123</sup> Spiritual wellbeing involves exploring one's values, beliefs, and connection to a greater power or purpose.<sup>124</sup> This dimension is highly subjective and can be experienced through religious or

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<sup>116</sup> See: Buchanan & Coyle, *supra* note 11 at 9.

<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid.*

<sup>119</sup> See: Umberson & Montez, *supra* note 79.

<sup>120</sup> See generally: Ferris, *supra* note 53; Lieberman, *supra* note 51; Richard J. Davidson & Bruce S. McEwen, "Social Influences on Neuroplasticity: Stress and Interventions to Promote Well-being" (2012) 15:5 NAT NEUROSCI 689–695; Gareth Cook, "Why We Are Wired to Connect", online: *Scientific American* <<https://www.scientificamerican.com/article/why-we-are-wired-to-connect/>>; Mineo, *supra* note 51; Matthew Solan, "The Secret to Happiness? Here's Some Advice from the Longest-Running Study on Happiness," (5 October 2017), online: *Harvard Health Blog* <<https://www.health.harvard.edu/blog/the-secret-to-happiness-heres-some-advice-from-the-longest-running-study-on-happiness-2017100512543>>; Harvard Study, *supra* note 51. Also see generally: Murthy Advisory, *supra* note 31; Murthy, *supra* note 31; Kubzansky, Epel & Davidson, *supra* note 17.

<sup>121</sup> See: Jessica Martino, Jennifer Pegg & Elizabeth Pegg Frates, "The Connection Prescription: Using the Power of Social Interactions and the Deep Desire for Connectedness to Empower Health and Wellness" (2017) 11:6 American Journal of Lifestyle Medicine 466–475; Haim-Litevsky, Komemi & Lipskaya-Velikovsky, *supra* note 115.

<sup>122</sup> See: Fortuna Procentese, Flora Gatti & Annarita Falanga, "Sense of Responsible Togetherness, Sense of Community and Participation: Looking at the Relationships in a University Campus" (2019) 29:2 Human Affairs (Bratislava, Slovakia) 247–263; Kemp & Fisher, *supra* note 99; A. Quick & S. Abdallah, *Why Personal Wellbeing is Good for the Nation's Health*. (The Centre for Wellbeing, The New Economics Foundation, 2015). Also see generally: Bok, *supra* note 96.

<sup>123</sup> See: Buchanan & Coyle, *supra* note 11 at 9.

<sup>124</sup> See generally: Ahmad Ghaderi, et al., "Explanatory Definition of the Concept of Spiritual Health: A Qualitative Study in Iran" (2018) 11 J Med Ethics Hist Med 3. Also see generally: See: Tolle 2005, *supra* note 60; Tolle 2004, *supra* note 60; Dalai Lama & Tutu, *supra* note 60; Brown 2017, *supra* note 60; Brown 2018, *supra* note 60; Brown 2017, *supra* note 60; Brown 2010, *supra* note 60; Frankl, *supra* note 15. Also see: Cain, *supra* note 60.

philosophical practices.<sup>125</sup> Nurturing the spiritual dimension can give individuals inner peace, purpose, and a greater understanding of oneself and the world.<sup>126</sup>

In conclusion, wellbeing entails overall health. Wellbeing is a multidimensional concept encompassing various aspects of human life. It is a subjective experience of good health, including physical, emotional, intellectual, social, and spiritual health, with a sense of hope about the future, enabling people to “connect, function, cope and thrive.”<sup>127</sup> By attending to physical, emotional, intellectual, social, and spiritual needs, individuals can strive toward optimal wellbeing. Balancing these dimensions can lead to a fulfilling and satisfying life, ensuring overall health and happiness.<sup>128</sup> As individuals, institutions, and societies, it is essential to recognize the multifaceted nature of wellbeing and work towards creating an environment that supports and enhances the overall quality of life. This thesis following outlines mental health as an essential part of wellbeing.

### 2.3. Mental Health

Mental health is an integral component of an individual’s overall wellbeing. It is significant in the expansive realm of health.<sup>129</sup> This domain goes beyond the conventional notion of physical

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<sup>125</sup> See generally: Jesse M. Smith & Caitlin L. Halligan, “Making Meaning without a Maker: Secular Consciousness through Narrative and Cultural Practice” (2021) 82:1 *Sociol Relig* 85–110.

<sup>126</sup> See generally: Agnieszka Bożek, Paweł F. Nowak & Mateusz Blukacz, “The Relationship Between Spirituality, Health-Related Behavior, and Psychological Well-Being” (2020) 11 *Frontiers in Psychology*, online: <<https://www.frontiersin.org/articles/10.3389/fpsyg.2020.01997>>. The US Army has adopted spiritual fitness in its U.S. Army's Comprehensive Soldier Fitness (CSF) program. See generally: Patrick J. Sweeney & Louis W. Fry, “Character Development through Spiritual Leadership” (2012) 64:2 *Consulting Psychology Journal* 89–107; Patrick J. Sweeney, Jeffrey E. Rhodes & Bruce Boling, “Spiritual Fitness: A Key Component of Total Force Fitness” (2012) 3rd quarter 2012:66 *JFQ* 7; “Spiritual Wellness: The Importance of Hope, Connection and Purpose,” (21 October 2019), online: *Military OneSource* <<https://www.militaryonesource.mil/transition-retirement/national-guard-reserves/spiritual-wellness/>>.

<sup>127</sup> See generally: Diener, Scollon & Lucas, *supra* note 15; Diener, Lucas & Oishi, *supra* note 15; Seligman 2011, *supra* note 15; Maslow, *supra* note 15; Seligman 2018, *supra* note 15; Buchanan & Coyle, *supra* note 11.

<sup>128</sup> See: Buchanan & Coyle, *ibid*.

<sup>129</sup> See: Gross, Uusberg & Uusberg, *supra* note 17; Taschereau-Dumouchel et al., *supra* note 17. “Mental health is all about how people think, feel, and behave.” See: Felman & Tee-Melegrito, *supra* note 17; Also see: World Mental Health Report, *supra* note 1; Galderisi et al., *supra* note 17. Also see generally: Westerhof & Keyes, *supra* note 17; Substance Abuse and Mental Health Services Administration, *supra* note 17; Public Health Agency of Canada, *supra* note 17; World Health Organization, *supra* note 17. Social connection and belonging are vital for mental health. See generally: Kubzansky, Epel & Davidson, *supra* note 17. Also see generally: Maslow, *supra* note 15; Frankl, *supra* note 15; Brown, *supra* note 15; Csikszentmihalyi, *supra* note 15; Dweck, *supra* note 15; Rubin, *supra* note 15.

health, encompassing the complex interplay between emotional, psychological, and social factors that shape the human experience.<sup>130</sup> While physical health predominately focuses on diagnosing, treating, and preventing physiological conditions, mental health seeks to understand, support, and enhance human existence's cognitive, emotional, and behavioural facets.<sup>131</sup>

At its core, mental health refers to an individual's psychological, emotional, and social wellbeing.<sup>132</sup> It encompasses effectively managing and responding to life's challenges, maintaining healthy relationships, coping with stress, and achieving fulfillment and purpose.<sup>133</sup> "Mental health" is an individual's subjective experiences, thoughts, and emotions.<sup>134</sup> Mental health affects human behaviour, including the ability to manage thoughts, reactions and emotions, as well as the ability to cope with everyday stresses. Mental health influences how humans work and learn and their ability to realize their potential and maintain healthy

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<sup>130</sup> See: CDC, *supra* note 114.

<sup>131</sup> Positive psychology seeks to improve mental health instead of simply treating mental health conditions. See generally: Joseph Ciarrochi et al., "Contextual Positive Psychology: Policy Recommendations for Implementing Positive Psychology into Schools" (2016) 7 *Frontiers in Psychology* 1561. Also, see generally: Peterson & Seligman, *supra* note 29; Seligman 20202, *supra* note 59; Seligman 2018, *supra* note 15; Katherine Dahlsgaard, Christopher Peterson & Martin E. P. Seligman, "Shared Virtue: The Convergence of Valued Human Strengths Across Culture and History" (2005) 9:3 *Review of General Psychology* 203–213; Ed Diener & Martin EP Seligman, "Very Happy People" (2002) 13:1 *Psychological Science* 81; Martin E. P. Seligman, "Building Resilience" *Harvard Business Review* (1 April 2011), online: <<https://hbr.org/2011/04/building-resilience>>; Martin E. P. Seligman & Mihaly Csikszentmihalyi, "Positive Psychology: An Introduction" in *Flow and the Foundations of Positive Psychology* (Dordrecht: Springer, 2014) 279.

<sup>132</sup> Mental health is often used interchangeably with "psychological health." Mental health and mental health problems are "subjective." See: Gross, Uusberg & Uusberg, *supra* note 17; Taschereau-Dumouchel et al., *supra* note 17. "Mental health is all about how people think, feel, and behave." See: Felman & Tee-Melegrito, *supra* note 17; Also see: World Mental Health Report, *supra* note 1; Galderisi et al., *supra* note 17. Also see generally: Westerhof & Keyes, *supra* note 17; Substance Abuse and Mental Health Services Administration, *supra* note 17; Public Health Agency of Canada, *supra* note 17; World Health Organization, *supra* note 17. Social connection and belonging are vital for mental health. See generally: Kubzansky, Epel & Davidson, *supra* note 17. Also see generally: Maslow, *supra* note 15; Frankl, *supra* note 15; Brown, *supra* note 15; Csikszentmihalyi, *supra* note 15; Dweck, *supra* note 15; Rubin, *supra* note 15.

<sup>133</sup> See generally: Public Health Agency of Canada (2015), *supra* note 114; *Mental Health First Aid*, *supra* note 69; Seligman 2011, *supra* note 15; Corey L. M. Keyes & Jonathan Haidt, *Flourishing: Positive Psychology and the Life Well-Lived*, 1st ed. (Washington, D.C.: American Psychological Association, 2003); Corey L. M. Keyes, Dov Shmotkin & Carol D. Ryff, "Optimizing Wellbeing: The Empirical Encounter of Two Traditions" (2002) 82:6 *J Pers Soc Psychol* 1007; Shelly L. Gable & Jonathan Haidt, "What (and Why) Is Positive Psychology?" (2005) 9:2 *Rev Gen Psychol* 103. Regarding improving students' mental health utilizing positive psychology, see generally: Ashraf Alam, "Positive Psychology Goes to School: Conceptualizing Students' Happiness in 21st Century Schools While 'Minding the Mind!' Are We There Yet? Evidence-Backed, School-Based Positive Psychology Interventions" (2022) 107:1 *ECS Transactions* 11199; Hood, Jelbert & Santos, *supra* note 59.

<sup>134</sup> Although mental health is subjective, treatment has often focused on objective symptoms and "side-lined" subjective reports. However, cognitive neuroscience research may offer "a viable and novel scientific approach that could help achieve a deeper understanding of mental disorders and their treatment." See: Taschereau-Dumouchel, *supra* note 17 at 1322.



relationships.<sup>135</sup> Thus, mental health is not simply the absence of mental illness but the presence of optimal mental wellbeing.<sup>136</sup>

It is important to note that “mental health” is distinguishable from a “mental health condition.” A “mental health condition” is a clinical term for a diagnosed condition that refers to a wide range of disorders that can affect a person’s mental and emotional functioning over a prolonged period.<sup>137</sup> In Canada and the United States, mental health conditions are frequently diagnosed by qualified professionals, using *The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision*, to ascertain whether a person meets the criteria for a diagnosis of a mental health condition.<sup>138</sup> Internationally, professionals also may refer to the *International Classification of Diseases (ICD)*.<sup>139</sup>

However, it is crucial to understand that a person can experience a “mental health problem” without a diagnosis.<sup>140</sup> A mental health problem is an inclusive term that encompasses both mental health conditions and symptoms of mental health conditions, which may not be enough to mandate a diagnosis but may affect the person’s ability to function and is indicative of a person being off their baseline.<sup>141</sup> Further, people suffering from a mental health problem may not seek treatment for a variety of reasons, including stigma, thus avoiding a diagnosis.<sup>142</sup>

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<sup>135</sup> See: Gross, Uusberg & Uusberg, *supra* note 17; Taschereau-Dumouchel et al., *supra* note 17; Felman & Tee-Melegrito, *supra* note 17; World Mental Health Report, *supra* note 1; Galderisi et al., *supra* note 17. Also see generally: Westerhof & Keyes, *supra* note 17; Substance Abuse and Mental Health Services Administration, *supra* note 17; Public Health Agency of Canada, *supra* note 17; World Health Organization, *supra* note 17. Social connection and belonging are vital for mental health. See generally: Kubzansky, Epel & Davidson, *supra* note 17. Also see generally: Maslow, *supra* note 15; Frankl, *supra* note 15; Brown, *supra* note 15; Csikszentmihalyi, *supra* note 15; Dweck, *supra* note 15; Rubin, *supra* note 15.

<sup>136</sup> See: *Constitution of the World Health Organization (2006)*, *supra* note 13; World Mental Health Report, *supra* note 1.

<sup>137</sup> See: *Mental Health First Aid*, *supra* note 69. Also see: DSM-5-TR, *supra* note 2.

<sup>138</sup> See generally: DSM-V, *supra* note 2; DSM-5-TR, *ibid*; *Mental Health First Aid*, *supra* note 69.

<sup>139</sup> “ICD-11,” online: *World Health Organization* <<https://icd.who.int/en>>. Also see generally: Manuella Santos Carneiro Almeida et al., “International Classification of Diseases – 11th Revision: From Design to Implementation” (2020) 54:104 REV SAUDE PUBL 1–5.

<sup>140</sup> See: *Mental Health First Aid*, *supra* note 69.

<sup>141</sup> See generally: Lyubomirsky, *supra* note 84; Sheldon & Lyubomirsky, *supra* note 84; Graham & Oswald, *supra* note 84; Brickman, Coates & Janoff-Bulman, *supra* note 84; *Mental Health First Aid*, *ibid*.

<sup>142</sup> See generally: *Mental Health First Aid*, *ibid*; Kathleen A. Klik, Stacey L. Williams & Katherine J. Reynolds, “Toward Understanding Mental Illness Stigma and Help-Seeking: A Social Identity Perspective” (2019) 222 *Social Science & Medicine* 35–43; Gregor Rafal, Amy Gatto & Rita DeBate, “Mental Health Literacy, Stigma, and Help-Seeking Behaviors Among Male College Students” (2018) 66:4 *Journal of American College Health* 284–291; Jolly-Ryan, *supra* note 31; Nicole Ireland, et al., “Stigma of Depression, Addiction ‘tenfold’ in Legal Profession,

Mental health revolves around intangible and often unseen aspects of human existence, necessitating a distinct evaluation and care approach. Where physical health is often measured and assessed through concrete and objective indicators such as vital signs, laboratory tests, or physical examinations, mental health requires an appraisal of subjective experiences, thoughts, emotions, and behaviours.<sup>143</sup>

Physical and mental health, although different, are intricately interconnected.<sup>144</sup> The symbiotic relationship between the two underscores the necessity of understanding holistic wellbeing.<sup>145</sup> Physical ailments can contribute to mental health problems or conditions, just as mental health problems or conditions might impact physical health.<sup>146</sup> For instance, chronic pain, debilitating physical disabilities, or life-altering diseases can create substantial emotional and psychological burdens on individuals, potentially leading to conditions such as depression, anxiety, or post-traumatic stress disorder. Conversely, mental health difficulties may manifest in physical symptoms.<sup>147</sup> Anxiety, for example, can cause disruptions in sleep patterns, gastrointestinal distress, or heightened blood pressure.<sup>148</sup> It is evident then that physical and mental health must be considered and addressed comprehensively.<sup>149</sup>

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Warns Social Worker,” (26 November 2016), online: *CBC News* <<https://www.cbc.ca/news/health/lawyers-mental-health-addiction-problems-1.3865545>>; Bibelhausen, Bender & Barrett, *supra* note 31; Ashley B. Batastini, Michael E. Lester & R. Alan Thompson, “Mental Illness in the Eyes of the Law: Examining Perceptions of Stigma Among Judges and Attorneys” (2018) 24:7 *Psychology, Crime & Law* 673–686.

<sup>143</sup> See generally: Taschereau-Dumouchel, *supra* note 17. Mental health is often assessed using psychometric scales of subjective experiences. For example, for assessing depression the Hamilton Depression Rating Scale (HAM-D), and Montgomery–Åsberg Depression Rating Scale (MADRS) are frequently used. See generally: Anthony L. Vaccarino et al., “The Depression Inventory Development Scale: Assessment of Psychometric Properties Using Classical and Modern Measurement Theory in a CAN-BIND Trial” (2020) 17:7–9 *Innov Clin Neurosci* 30–40.

<sup>144</sup> See: Allemang et al., *supra* note 79.

<sup>145</sup> See: Naylor et al., *supra* note 79.

<sup>146</sup> Dr. Jon Kabat-Zinn and associates developed the secular Mindfulness-Based Stress Reduction (MBSR) at the University of Massachusetts Medical School in 1979, focusing its application on health and wellbeing. MBSR is utilized with patients facing life-threatening conditions. See: Jon Kabat-Zinn, *Full Catastrophe Living: Using the Wisdom of Your Body and Mind to Face Stress, Pain, and Illness* (New York: Bantam Books Trade Paperbacks, 2013).

<sup>147</sup> See: Georgia F. Spurrier, et al., “Physical Symptoms as Psychiatric Manifestations in Medical Spaces: A Qualitative Study” (2023) 13 *Front Psychiatry* 1074424.

<sup>148</sup> See: *Mental Health First Aid*, *supra* note 69.

<sup>149</sup> See: CCOHS, *supra* note 30; Government of Canada, Canadian Centre for Occupational Health and Safety, “CCOHS: Mental Health - How to Address and Support,” (13 June 2023), online: *Canadian Centre for Occupational Health and Safety* <[https://www.ccohs.ca/oshanswers/psychosocial/mh/mentalhealth\\_address.html](https://www.ccohs.ca/oshanswers/psychosocial/mh/mentalhealth_address.html)>; Ashley Wu, et al., “Organizational Best Practices Supporting Mental Health in the Workplace” (2021) 63:12 *J Occup Environ Med* e925–e931; World Health Organization, *Mental Health Action Plan 2013-2020* (Geneva: World Health Organization, 2013); Rosemary Purcell, Kate Gwyther & Simon M. Rice, “Mental Health In Elite

Moreover, mental health is intimately intertwined with social health.<sup>150</sup> An individual's ability to foster and maintain meaningful relationships, communicate effectively, and establish supportive networks profoundly impacts mental wellbeing and vice versa.<sup>151</sup> The quality of human interactions, experiences of stigma, discrimination or racism and the presence of robust social support systems all wield considerable influence over psychological functioning.<sup>152</sup>

Furthermore, mental health is crucial for productivity, success, and overall quality of life.<sup>153</sup> Mental health shapes cognitive abilities, concentration, memory, and problem-solving skills.<sup>154</sup> A state of positive mental health is instrumental in enabling individuals to fulfill their potential, succeed in educational or professional pursuits, and contribute meaningfully to society.<sup>155</sup>

Recognizing the significance of mental health within the broader context of overall wellbeing is essential. Adopting a holistic approach that integrates physical, mental, and social health allows

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Athletes: Increased Awareness Requires An Early Intervention Framework to Respond to Athlete Needs" (2019) 5:1 Sports Medicine - Open 46.

<sup>150</sup> See: Umberson & Montez, *supra* note 79. Also, see generally: Ella Cohn-Schwartz, "Pathways from Social Activities to Cognitive Functioning: The Role of Physical Activity and Mental Health" (2020) 4:3 Innovation in Aging 1-10.

<sup>151</sup> Neuroscience has revealed that social connection is wired into humans. See: Lieberman, *supra* note 51; Cook, *supra* note 120. In the United States, the Surgeon General has issued an advisory regarding the significance of social connection to health. See: Murthy Advisory, *supra* note 31. A famous Harvard study identified positive relationships as the key to a happy life. Harvard undertook the most extensive study ever, beginning in 1938 with two-hundred and sixty-eight Harvard sophomores, including the then-future President of the US, John F. Kennedy, to examine what leads to a healthy and happy life. The study continues to this day and eventually included one-thousand and three-hundred people, including participants from Boston and the children of the men who were initial participants. The revolutionary finding of the study was that social connection, belonging, and positive relationships are the keys to a happy life. The study revealed that people are happier throughout their lives due to close positive relationships more than money, success, or fame. See: Solan, *supra* note 120; Mineo, *supra* note 51; US News, *supra* note 51; Harvard Study, *supra* note 51. Researchers have further discovered that social connection and a sense of belonging decreased mortality risk. See: Julianne Holt-Lunstad, Timothy B. Smith & J Bradley Layton, "Social Relationships and Mortality Risk: A Meta-Analytic Review" (2010) 7:7 PLoS Medicine 21. Also see: Kubzansky, Epel & Davidson, *supra* note 17.

<sup>152</sup> See: Mika Kivimäki, et al., "Association Between Socioeconomic Status and the Development of Mental and Physical Health Conditions in Adulthood: A Multi-Cohort Study" (2020) 5:3 The Lancet Public Health e140–e149.

<sup>153</sup> See: T. Rajgopal, "Mental Well-Being at the Workplace" (2010) 14:3 Indian Journal of Occupational and Environmental Medicine 63; Boehm & Lyubomirsky, *supra* note 114; Walsh, Boehm & Lyubomirsky, *supra* note 114.

<sup>154</sup> See: Miles et al., *supra* note 43.

<sup>155</sup> See generally: Boehm & Lyubomirsky, *supra* note 114; Walsh, Boehm & Lyubomirsky, *supra* note 114. For a review of the economic consequences of mental health conditions see generally: Raphaëlle Deraspe, "Current Issues in Mental Health in Canada: The Economic Impact of Mental Illness (In Brief) Publication No. 2013-87-E" (2013) Library of Parliament. Also see generally: A. Hajebi et al., "What to Do To Promote Mental Health of the Society" (2013) 42:Supple1 Iran J Public Health 105–112.

for a more comprehensive understanding of individuals, their challenges, and their unique circumstances. By prioritizing mental health and viewing it as an inseparable part of overall health, a healthier and more supportive society that values the wellbeing of all its members can be created. Based on the above, one can appreciate the significant role of emotion in wellbeing and mental health. Chapter 2.4. will explain the relevance of emotion in further detail.

## 2.4. The Relevance of Emotion to Mental Health & Wellbeing

Emotions are integral to human existence and significantly impact mental health and wellbeing.<sup>156</sup> Defined as complex psychological and physiological responses to stimuli, emotions significantly guide thoughts, behaviours, and an individual's overall perception of the world.<sup>157</sup> Understanding this intricate interplay is crucial to comprehending and nurturing positive mental health outcomes.<sup>158</sup> This section aims to delve into the concept of emotion, expound upon the importance of emotions, and highlight the relevance of emotions for mental health and wellbeing.

Emotions encompass a vast array of feelings experienced by individuals in response to various stimuli or situations.<sup>159</sup> Emotions often manifest as distinct states, such as happiness, sadness,

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<sup>156</sup> See: Tiscione, *supra* note 19 at 1176 citing Giulia Enders, *Gut: The Inside Story of Our Body's Most Underrated Organ* (Jane Bilinghurst ed., David Shaw trans., Greystone Books 2015).

<sup>157</sup> As mentioned previously, defining "emotion" is challenging and contested; no consensus exists. See generally: Scarantino, *supra* note 18; Dixon, *supra* note 18; Gendron, *supra* note 18; Berrios, *supra* note 18. 'Emotions' includes the entire range of human emotions that may be experienced per its common usages in the relevant literature. See generally: Goldie, *supra* note 18. Also, see generally: Adolphs, *supra* note 18. 'Emotion' denotes a particular "emotional episode" (e.g., love, hope, sadness) appropriate to the context of its usage. See: Oatley, *supra* note 18. "Emotional" refers to the presence or application of emotion within a specific situation or experience. See generally: Barrett et al., *supra* note 18; Šimić et al., *supra* note 18; Hwang & Matsumoto, *supra* note 18; Zadra & Clore, *supra* note 18; Siegel et al., *supra* note 18. Also, see generally: Barrett 2018, *supra* note 18; Niedenthal & Wood, *supra* note 18; Izard, *supra* note 18.

<sup>158</sup> See generally: Rosemarie Kobau, et al., "Mental Health Promotion in Public Health: Perspectives and Strategies from Positive Psychology" (2011) 101:8 Am J Public Health e1–e9; Sara B. Algoe & Barbara L. Fredrickson, "Emotional Fitness and the Movement of Affective Science from Lab to Field" (2011) 66:1 AM PSYCHOL 35–42; Catalino & Fredrickson, *supra* note 112; Barbara Fredrickson et al., "The Undoing Effect of Positive Emotions" (2000) 24:4 Motivation and Emotion 237–258; Barbara L. Fredrickson, & Thomas Joiner, "Positive Emotions Trigger Upward Spirals toward Emotional Well-being" (2002) 13:2 Psychological Science 172; Barbara L. Fredrickson & Marcial F. Losada, "Positive Affect and the Complex Dynamics of Human Flourishing" (2005) 60:7 American Psychologist 678–686; Kok et al., *supra* note 114; Michele M. Tugade & Barbara L. Fredrickson, "Resilient Individuals Use Positive Emotions to Bounce Back from Negative Emotional Experiences" (2004) 86:2 Journal of Personality and Social Psychology 320–333.

<sup>159</sup> See generally: Scarantino, *supra* note 18; Dixon, *supra* note 18; Gendron, *supra* note 18; Berrios, *supra* note 18. 'Emotions' includes the entire range of human emotions that may be experienced per its common usages in the

fear, anger, and surprise, each characterized by unique features and physiological responses.<sup>160</sup> However, emotions are far from mere fleeting sensations; they represent fundamental aspects of human nature that have evolved to serve essential purposes.<sup>161</sup>

One critical role emotions play is their ability to shape the decision-making process.<sup>162</sup> Through emotions, humans attach personal significance to experiences, value situations and make choices that align with individual values and desires.<sup>163</sup> Feelings of happiness, for instance, are often associated with positive experiences, indicating success, contentment, or enjoyment. Such emotions encourage people to seek out similar situations, fostering growth and enhancing overall mental wellbeing.<sup>164</sup>

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relevant literature. See generally: Goldie, *supra* note 18. Also, see generally: Adolphs, *supra* note 18. ‘Emotion’ denotes a particular “emotional episode” (e.g., love, hope, sadness) appropriate to the context of its usage. See: Oatley, *supra* note 18. “Emotional” refers to the presence or application of emotion within a specific situation or experience. See generally: Barrett et al., *supra* note 18; Šimić et al., *supra* note 18; Hwang & Matsumoto, *supra* note 18; Zadra & Clore, *supra* note 18; Siegel et al., *supra* note 18. Also, see generally: Barrett 2018, *supra* note 18; Niedenthal & Wood, *supra* note 18; Izard, *supra* note 18.

<sup>160</sup> See: Adolphs, *ibid*; Brown 2021, *supra* note 18.

<sup>161</sup> See: Adolphs, *ibid*.

<sup>162</sup> See: Muir, *supra* note 19; Friedland, *supra* note 19; Tiscione, *supra* note 19. Debra Austin is a professor at Sturm College of Law and “teaches Lawyering Process and Professionalism and Well-being Skills for the Effective Lawyer. She received the University of Denver Distinguished Teaching Award in 2019 and the William T. Driscoll Master Educator Award in 2001.” See: “Debra Austin,” online: *Sturm College of Law* <<https://www.law.du.edu/about/people/debra-austin>>; Austin 2019, *supra* note 19. Also see: Damasio, *supra* note 19; Brown 2013, *supra* note 19; Clore & Huntsinger, *supra* note 19; Tyng et al., *supra* note 19; Fenton-O’Creedy et al., *supra* note 19; Hopkins & Deepa, *supra* note 19; Phelps, Lempert & Sokol-Hessner, *supra* note 19; Garfinkel et al., *supra* note 19; Jung et al., *supra* note 19; Lakomski & Evers, *supra* note 19; Lench, Flores & Bench, *supra* note 19; Naqvi, Shiv & Bechara, *supra* note 19; Lerner et al., *supra* note 19; Slovic, *supra* note 19; Côté-Lussier & David, *supra* note 19.

<sup>163</sup> *Ibid*.

<sup>164</sup> See: Barbara L. Fredrickson, “What Good Are Positive Emotions?” (1998) 2:3 *Review of General Psychology* 300–319; Fredrickson 2001, *supra* note 97; Barbara L. Fredrickson, & Christine Branigan, “Positive Emotions Broaden the Scope of Attention and Thought-Action Repertoires” (2005) 19:3 *Cognition and Emotion* 313–332; Fredrickson & Joiner, *supra* note 143; Fredrickson & Losada, *supra* note 158; Tugade & Fredrickson, *supra* note 158; Barbara L. Fredrickson et al., “Open Hearts Build Lives: Positive Emotions, Induced Through Loving-Kindness Meditation, Build Consequential Personal Resources” (2008) 95:5 *Journal of Personality and Social Psychology* 1045–1062. Barbara Fredrickson is a notable researcher, one of the most cited researchers in psychology and the recipient of the 2000 Templeton Positive Psychology Prize from the American Psychology Association for her research on the function of positive emotions. She is most known for her “broaden-and-build theory of positive emotions,” which is foundational within Positive Psychology and explains how positive emotions contribute to resilience, wellbeing, and health. Dr. Fredrickson has published over 100 peer-reviewed articles, book chapters, and several books, including Fredrickson 2009, *supra* note 59.

Further, emotions serve as a mechanism for communicating and connecting with others.<sup>165</sup> Expressing feelings verbally or nonverbally enables individuals to establish connections, empathize, and create supportive relationships.<sup>166</sup> For instance, someone experiencing sadness or grief may benefit significantly from sharing their emotions with a compassionate listener, thus easing the burden and promoting healing.<sup>167</sup> These social connections facilitate a sense of belonging, reduce feelings of isolation, and contribute to improved mental health outcomes.<sup>168</sup>

Emotions also play a pivotal role in self-awareness and introspection.<sup>169</sup> By acknowledging and identifying emotions, individuals gain valuable insight into their inner world.<sup>170</sup> Self-awareness allows one to understand themselves better, identify strengths and weaknesses and engage in personal growth.<sup>171</sup> Self-awareness also helps individuals recognize their own biases.<sup>172</sup>

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<sup>165</sup> See: Erbas et al., *supra* note 19; Eslinger et al., *supra* note 19; Barsade, *supra* note 19; Chartrand & Bargh, *supra* note 19; Lindquist, Satpute & Gendron, *supra* note 19. Also see generally: Muir, *supra* note 19.

<sup>166</sup> Regarding non-verbal communication see generally: Barsade, *ibid*; Chartrand & Bargh, *ibid*; Goleman, *supra* note 113. Also see generally: James 2011, *supra* note 19; Muir, *ibid*; Brené Brown: *Atlas of the Heart: Episode 5: Places We Go with Others -- And the Framework for Meaningful Connection* (HBO Max).

<sup>167</sup> See generally: Joanne Cacciatore et al., “What is Good Grief Support? Exploring the Actors and Actions in Social Support after Traumatic Grief” (2021) 16:5 PLoS One e0252324; Jeff Clyde G. Corpuz, “From Grieving to Healing: Moving Forward a Year after COVID-19” (2021) 43:2 J PUBLIC HEALTH-UK E403–E404.

<sup>168</sup> See: “How Does Social Connectedness Affect Health?” (8 May 2023), online: *Centers for Disease Control and Prevention* <<https://www.cdc.gov/emotional-wellbeing/social-connectedness/affect-health.htm>>; Martino, Pegg & Frates, *supra* note 121; Umberson & Montez, *supra* note 79.

<sup>169</sup> Mindfulness assists with emotional and self-awareness. See: Hamilton, Kitzman & Guyotte, *supra* note 19. Also see generally: Vago & David, *supra* note 19. For mindfulness in legal education, see: James 2011, *supra* note 19; Jacobowitz & Rogers, *supra* note 19; Rogers, *supra* note 19; Martin 2014, *supra* note 19; Scott, *supra* note 19; Reuben, *supra* note 19; Huang 2013, *supra* note 19; Huang 2015, *supra* note 19; Brostoff, *supra* note 19; Western Law, *supra* note 19. The wellbeing of law students and lawyers has been improved with mindfulness. See: Nielsen & Minda, *supra* note 19; Reuben & Sheldon, *supra* note 19; Rosky et al., *supra* note 19; Appleby & Bourke, *supra* note 19. Also see generally: Gerdy, *supra* note 19. Self-awareness and mindfulness can reduce bias. See: Lueke & Gibson, *supra* note 19; Kang, Gray & Dovidio, *supra* note 19; Stell & Farsides, *supra* note 19. Also see generally: Weng, *supra* note 19; Lopez, *supra* note 19; Ioanide, *supra* note 19; White et al., *supra* note 19; Salzen, *supra* note 19; Silvia, *supra* note 19; Maroney 2011, *supra* note 19; McIntosh, Antes & DuBois, *supra* note 19; Vago & David, *supra* note 19; Eurich, *supra* note 19.

<sup>170</sup> See generally: Brown 2021, *supra* note 18; Steiner & Perry, *supra* note 113; Lindquist, MacCormack & Shablack, *supra* note 94; Goleman, *supra* note 113; Salovey & Mayer, *supra* note 48. Also see: Drigas & Papoutsis, *supra* note 113; James 2011, *supra* note 19; Muir, *supra* note 19; Yuen, *supra* note 53.

<sup>171</sup> See generally: Hasan Ugur, Petru-Madalin Constantinescu & Michael J Stevens, “Self-Awareness and Personal Growth: Theory and Application of Bloom’s Taxonomy” (2015) 15:60 Eurasian Journal of Educational Research 89–110; James 2011, *ibid*. Also see generally: Cam Caldwell & Linda A. Hayes, “Self-Efficacy and Self-Awareness: Moral Insights to Increased Leader Effectiveness” (2016) 35:9 The Journal of Management Development 1163–1173; Brown 2018, *supra* note 60.

<sup>172</sup> See: Lueke & Gibson, *supra* note 19; Kang, Gray & Dovidio, *supra* note 19; Stell & Farsides, *supra* note 19. Also see generally: Weng, *supra* note 19; Lopez, *supra* note 19; Ioanide, *supra* note 19; White et al., *supra* note 19; Salzen, *supra* note 19; Silvia, *supra* note 19; Maroney 2011, *supra* note 19; McIntosh, Antes & DuBois, *supra* note 19; Vago & David, *supra* note 19; Eurich, *supra* note 19. Also see generally: Menzies, Felicity, “The SPACE2

Recognizing and effectively managing negative emotions, such as anxiety or anger, can promote emotional resilience and equip individuals with valuable coping mechanisms necessary for maintaining positive mental health.<sup>173</sup>

However, while emotions are an integral part of the human experience, it is essential to recognize that the relationship between emotions and mental health can be complex.<sup>174</sup>

Troublesome emotional states, persistent negative feelings, or difficulties in managing emotions can have a profound impact on an individual's wellbeing and mental health.<sup>175</sup> This may lead to the development or exacerbation of mental health conditions, such as but not limited to, anxiety, depression, or bipolar disorder.<sup>176</sup>

It is vital, therefore, to emphasize the need for emotional regulation, foster emotional intelligence, and develop healthy coping strategies to mitigate the detrimental effects of negative emotions.<sup>177</sup> Mental health professionals often employ various therapeutic interventions, such as

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Model of Mindful Inclusion: Six Proven Strategies for Managing Unconscious Bias,” (16 October 2018), online: *Include-Empower.Com* <<https://cultureplusconsulting.com/2018/10/17/six-proven-strategies-for-managing-unconscious-bias/>>.

<sup>173</sup> See: Tugade & Fredrickson, *supra* note 158.

<sup>174</sup> See: Berrios, *supra* note 18.

<sup>175</sup> See: Angelo Compare et al., “Emotional Regulation and Depression: A Potential Mediator between Heart and Mind” (2014) 2014:2014 Cardiovascular Psychiatry and Neurology 324374–10.

<sup>176</sup> The development of depression has been correlated with rumination and emotion suppression. See generally: Compare et al., *ibid*; Muir, *supra* note 19.

<sup>177</sup> “Emotional regulation” refers to “refers to a brain’s ability to control thoughts, feelings, and actions in service of one’s longer-term goals; the ability to think before acting or speaking; or to act consistent with one’s values and goals.” See: Netzel, *supra* note 21 at 401. Natalie Netzel has her J.D., and M.S.E. in Counseling. She is an Associate Professor, Director of the Clinical Legal Education Program and Education and Advocacy and the Director of the Institute to Transform Child Protection at Mitchell Hamline School of Law. In her article, “Trauma-informed (As a Matter of) Course,” Natalie Netzel examines the intersection of trauma-informed care and legal education. She argues that trauma-informed legal education is essential for producing competent and compassionate lawyers who can effectively represent and advocate for their clients. Netzel critically analyzes how trauma-informed principles can be integrated into the law school curriculum, drawing on various case studies and examples to support her argument. One of the strengths of Netzel’s article is her ability to effectively convey the significance of trauma-informed legal education for both law students and the legal profession. She provides a compelling case for why trauma-informed principles should be integrated into the law school curriculum and offers practical suggestions for achieving this. Netzel explains on page 390 that “a trauma-informed person has an understanding of trauma and how it manifests, when confronted with the potential manifestation of trauma, they move away from guilt, shame, and blame and asks the quintessential trauma-informed question, “what happened to you?”” Learning about emotional regulation can be effectively accomplished through trauma-informed legal education, which will be addressed in Chapter 8. Many scholars have advocated for the integration of emotion into legal education. See: Montgomery, *supra* note 19; Douglas, *supra* note 19; James 2011, *supra* note 19; O’Brien, *supra* note 19; Jones 2018, *supra* note 19; Jones 2020, *supra* note 19; Brown 2013, *supra* note 19; Martin 2014, *supra* note 19; Cullen & Kerin, *supra* note 19; Western Law, *supra* note 19. Also, see generally: James 2018, *supra* note 19. Regarding emotional intelligence

cognitive behavioural therapy or mindfulness practices, to enhance emotional awareness and promote healthier emotional responses.<sup>178</sup>

Additionally, cultivating emotional resilience and equipping individuals with the knowledge and skills to navigate and regulate their emotions can significantly bolster mental health.<sup>179</sup> Pivotal factors in this pursuit include encouraging emotional literacy, intelligence, and regulation, promoting empathy, and fostering a supportive environment that acknowledges and validates emotions.<sup>180</sup>

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in legal practice, see: Melita, *supra* note 113; Muir, *supra* note 19; Friedland, *supra* note 19; Tiscione, *supra* note 19; Sheldon & Krieger, *supra* note 19. Also see: Petrides et al., *supra* note 113 which compared the emotional intelligence of surgeons and lawyers. Emotional intelligence has been correlated with achievement and better health. See: Akpur, *supra* note 43; D'Amico, Geraci & Tarantino, *supra* note 114; Fteiha & Awwad, *supra* note 114; Jiménez-Picón et al., *supra* note 114; Karimi et al., *supra* note 114; Kok et al., *supra* note 114; Martins, Ramalho & Morin, *supra* note 43; Shariatpanahi et al., *supra* note 114; Szczygiel & Mikolajczak, *supra* note 114; Trigueros et al., *supra* note 114; Matthews, Zeidner & Roberts, *supra* note 114; Zhao, Li & Shields, *supra* note 114. Also see: Hamilton, Kitzman & Guyotte, *supra* note 19. Also see generally: Diener, Thapa & Tay, *supra* note 114; Pessoa, *supra* note 48; Catalino, & Fredrickson, *supra* note 112. Regarding emotional intelligence in legal practice, see: Melita, *ibid*; Muir, *ibid*; Friedland, *ibid*; Tiscione, *ibid*; Sheldon & Krieger, *supra* note 49; Heavin & Keet, *supra* note 115. Also see: Petrides et al., *ibid* at 1 whose study concluded that “interventions to optimize the trait EI profiles of surgeons can be helpful in relation to job satisfaction, job performance, and overall psychological wellbeing” and compared surgeons to lawyers and other occupations. In the abstract they write, “Surgeons scored significantly higher on global trait EI than junior military managers, but lower than executives and senior managers, salespeople, and nurses. There were no significant differences vis-à-vis engineers or lawyers.”

<sup>178</sup> See generally: Nathalie Martin, *Lawyering from the Inside Out: Learning Professional Development through Mindfulness and Emotional Intelligence* (Cambridge, UK: Cambridge University Press, 2018); Kirk Warren Brown & Richard M. Ryan, “The Benefits of Being Present: Mindfulness and Its Role in Psychological Well-Being” (2003) 84:4 *Journal of Personality and Social Psychology* 822–848; Hamilton, Kitzman & Guyotte, *ibid*; Silje Endresen Reme et al., “Work-Focused Cognitive–Behavioural Therapy and Individual Job Support to Increase Work Participation in Common Mental Disorders: A Randomised Controlled Multicentre Trial” (2015) 72:10 *Occup Environ Med* 745.

<sup>179</sup> The wellbeing of law students and lawyers has been improved with mindfulness. See: Nielsen & Minda, *supra* note 19; Reuben & Sheldon, *supra* note 19; Rosky et al., *supra* note 19; Appleby & Bourke, *supra* note 19. Also see generally: Gerdy, *supra* note 19. Regarding the integration of emotion into legal education, see: Montgomery, *supra* note 19; Douglas, *supra* note 19; James 2011, *supra* note 19; O'Brien, *supra* note 19; Jones 2018, *supra* note 19; Jones 2020, *supra* note 19; Brown 2013, *supra* note 19; Martin 2014, *supra* note 19; Simmons, *supra* note 19; Western Law, *supra* note 19. Also see generally: James 2018, *supra* note 19; Hood, Jelbert & Santos, *supra* note 118; Tugade & Fredrickson, *supra* note 158; Christian J. Wiedermann et al., “Fortifying the Foundations: A Comprehensive Approach to Enhancing Mental Health Support in Educational Policies Amidst Crises” (2023) 11:10 *Healthcare*. “Emotional fitness” is taught in the United States Army. See: Algoe & Fredrickson, *supra* note 158.

<sup>180</sup> “Emotional literacy” refers to the ability to name and express feelings and emotions. See: Steiner & Perry, *supra* note 113; Lindquist, MacCormack & Shablack, *supra* note 94. Also see generally: Brown 2021, *supra* note 18. “Emotional intelligence” is understanding, using, and regulating emotions for positive outcomes, relieving stress, and communicating and empathizing with others. See: Goleman, *supra* note 113; Salovey & Mayer, *supra* note 48. Also see: Drigas & Papoutsis, *supra* note 113. Emotional intelligence has been correlated with achievement and better health. See: Akpur, *supra* note 43; D'Amico, Geraci & Tarantino, *supra* note 114; Fteiha & Awwad, *supra* note 114; Jiménez-Picón et al., *supra* note 114; Karimi et al., *supra* note 114; Kok et al., *supra* note 114; Martins, Ramalho & Morin, *supra* note 43; Shariatpanahi et al., *supra* note 114; Szczygiel & Mikolajczak, *supra* note 114; Trigueros et al., *supra* note 114; Matthews, Zeidner & Roberts, *supra* note 114; Zhao, Li & Shields, *supra* note 114.



As previously stated, emotions are vital to human existence, significantly influencing mental health and wellbeing. Emotion's role in understanding trauma, mental health, wellbeing, decision-making, social connection, self-awareness, and personal growth is undeniable. However, the intricate relationship between trauma, emotions, and mental health requires careful attention and management. By fostering emotional intelligence, cultivating resilience through positive experiences and skill development, and implementing effective coping mechanisms, individuals can navigate their emotional experiences with an increased understanding of trauma and promote positive mental health outcomes. Lastly, this chapter now turns to the widespread and devastating impact that trauma has on wellbeing and mental health.

## 2.5. Understanding the Detrimental Effects of Trauma on Wellbeing and its Prevalence

*Trauma is to mental health as smoking is to cancer!*<sup>181</sup>

This chapter begins by outlining a nuanced and holistic understanding of trauma as a subjective experience, encompassing the immediate harm caused and the long-lasting psychological and emotional wounds that may result from event(s) or circumstance(s) that are beyond one's ability to cope.<sup>182</sup> It is a deeply personal journey through pain, often involving hopelessness, fear, anger,

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Also see: Hamilton, Kitzman & Guyotte, *supra* note 19. Also see generally: Diener, Thapa & Tay, *supra* note 114; Pessoa, *supra* note 48; Wiedermann et al., *ibid*.

<sup>181</sup> See: Oehme & Stern, *supra* note 12 citing Arielle Levin Becker, The Single Greatest Preventable Cause of Mental Illness, CT MIRROR (Apr. 17, 2013), <https://ctmirror.org/2013/04/17/single-greatest-preventable-cause-mental-illness/> [<https://perma.cc/T433-FF3Q>] (quoting Dr. Steven Sharfstein, former president of the American Psychiatric Association).

<sup>182</sup> See: Netzel, *supra* note 21 at 393 wherein she explained the difference between a “trauma response” and a “potentially traumatic event” (PTE). A PTE is an event that has the potential to cause trauma; however, people are resilient, and different people have different responses to events. Some may be fine, while others will experience a “trauma response,” which is characterized by a “fight, flight, freeze, or fawn reaction.” As Netzel explained, “[p]roblems arise when individuals experience maladaptive trauma responses triggered when no direct harm is present.” Also see generally: US Department of Veteran Affairs, *supra* note 22; SAMHSA, *supra* note 22; Center for Substance Abuse Treatment Chapter 3, *supra* note 22. Post-traumatic stress disorder (PTSD) is assessed through the diagnostic criteria. See: DSM-5-TR, *supra* note 2; DSM-V, *supra* note 2; Friedman US Department of Veteran Affairs, *supra* note 22. Trauma can also be experienced indirectly by experiencing another person's trauma. Netzel, *ibid* defined “vicarious trauma” on page 496 citing Andrew P. Levin et al., Secondary Traumatic Stress in Attorneys and Their Administrative Support Staff Working with Trauma-Exposed Clients, 199 J. Nervous & Mental Disease 946, 946 (2011) as “experienced or realized through imaginative or sympathetic participation in the experience of another.” Further, Netzel explained on page 396 that the “trauma response” of “vicarious trauma” occurs when there are “harmful changes that occur in professionals’ views of themselves, others, and the world, as a result of exposure to their clients’ graphic and/or traumatic material.” Legal professionals will surely experience “compassion fatigue,” “burnout,” “secondary traumatic stress” or “vicarious trauma” during their professional lives. Also see: Léonard, Saumier & Brunet, *supra* note 21; Hallie Neuman Love, “Lawyers Are at Risk for Secondary Traumatic Stress”

shame, and loss.<sup>183</sup> Emotion is deeply entwined in any understanding of trauma, and a language for emotion is necessary.<sup>184</sup> This chapter will also outline how trauma can be devastating to mental health and wellbeing.<sup>185</sup> The effects of trauma will be reviewed; however, these may not include all the possible repercussions as well as potential growth that can result due to trauma.<sup>186</sup>

Trauma is widespread.<sup>187</sup> In terms of law students' exposure to trauma, this chapter will review the only and also the most extensive American study conducted to date that asked law students about trauma.<sup>188</sup> This American study revealed startling rates of trauma among law students, but also that many were motivated to attend law school because of their trauma.<sup>189</sup> Furthermore, once students enter their legal careers, there is plenty of evidence to suggest that legal professionals are at a "high risk" of being exposed to trauma or experiencing trauma

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(2017) 56:7 Bar Bulletin 8–10; Maguire & Byrne, *supra* note 21. Also, see generally: James 2020, *supra* note 21; Golden Eagle, *supra* note 53. Cadieux et al., 2022 *supra* note 3 on page 39, defined the trauma response as "compassion fatigue." Concerning the interchangeability of the terms, Netzel, *ibid* wrote on page 397 that "[u]nderstanding the precise overlap, similarities, and differences of these terms is not necessary for the purpose of this Article, although, personally, I wish the term "compassion fatigue" would be used less often. On its face, it implies fatigue results from compassion, and I fear it discourages the act of fostering compassion. Practitioners of mindfulness might say that practicing compassion (for self and others) is an extremely powerful antidote to protecting against the negative effects of vicarious trauma." This thesis adopts a similar approach as Netzel in adopting the term "trauma response" which differentiates it from the environmental trauma that one may be exposed to that is a "potentially traumatic event." Also see generally: Oehme & Stern, *supra* note 12. Trauma responses, cause a person to "dysregulate." See: Netzel, *ibid* at 407. Netzel poignantly writes on page 406, "[r]egulation is a precursor to reasoning." Also see generally: SAMHSA, *supra* note 22 at 7.

<sup>183</sup> Hope is essential for wellbeing. See: Seligman 2018, *supra* note 15. Brené Brown defines "hopelessness" as "aris[ing] out of a combination of negative life events and negative thought patterns, particularly self-blame and the perceived inability to change our circumstances." See: Brown 2021, *supra* note 18 at 101.

<sup>184</sup> There is "evidence from developmental and cognitive science to reveal that language scaffolds concept knowledge in humans, helping humans to acquire abstract concepts such as emotion categories across the lifespan. Critically, language later helps individuals use concepts to make meaning of on-going sensory perceptions." See: Lindquist, MacCormack & Shablack, *supra* note 94 at 1. Also see: Lindquist, Satpute & Gendron, *supra* note 19.

<sup>185</sup> See generally: Bremner, *supra* note 95; Lanius, Terpou & McKinnon, *supra* note 95; Kolk, *supra* note 95; Kolk, *supra* note 95; Wilson, Lonsway & Archambault, *supra* note 95.

<sup>186</sup> Trauma may increase the vulnerability to developing mental health problems or substance use problems. It can also directly cause post-traumatic stress disorder (PTSD). Some people misuse alcohol, drugs, or self-harm to cope with difficult memories and emotions. See generally: Maté 2018, *supra* note 31; Kolk, *supra* note 95; Kolk, *supra* note 95; Lanius, Terpou & McKinnon, *ibid*; Bremner, *ibid*.

<sup>187</sup> See generally: Oehme & Stern, *supra* note 12; Joshi et al., *supra* note 12; Merrick et al., *supra* note 12; Koenen et al., *supra* note 12; Ameringer et al., *supra* note 12 at 171. In Canada, see: Heidinger, *supra* note 12. Also see generally: "Trauma and Violence," (14 January 2019), online: *Substance Abuse and Mental Health Services Administration (SAMHSA)* <<https://www.samhsa.gov/trauma-violence>>. Regarding prevention, see generally: Jones, Merrick & Houry, *supra* note 12; Advisory Board, *supra* note 12; CDC, *supra* note 14; Fast Facts: CDC, *supra* note 80.

<sup>188</sup> See: Jaffe, Bender & Organ, *supra* note 21.

<sup>189</sup> *Ibid*.

themselves.<sup>190</sup> Moreover, marginalized law students and legal professionals are likely at a higher risk of exposure to trauma than their counterparts.<sup>191</sup>

The most recent study conducted on the psychological distress of Canadian legal professionals wrote that depression and anxiety are exacerbated by trauma.<sup>192</sup> The following section will outline the necessity of understanding emotion for any understanding of trauma, the pervasive nature of trauma, law students' and legal professionals' experience with trauma and the significant impact that trauma has on marginalized peoples. Chapter 2.5.a. will explain in basic terms the neuroscience of trauma, followed by a review of the potential for post-traumatic growth.<sup>193</sup>

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<sup>190</sup> See generally: Oehme & Stern, *supra* note 12; Weir et al., *supra* note 21; Weir, Jones & Sheeran, *supra* note 21; Maguire & Byrne, *supra* note 21; Leclerc, Wemmers & Brunet, *supra* note 21; Léonard, Saumier & Brunet, *supra* note 21; Mental Health Weekly Digest, *supra* note 21; Love, *supra* note 182; Sara E. Gold, "Trauma: What Lurks Beneath the Surface" (2017) 24:2 Clinical L Rev 201–246. Regarding trauma-informed legal practice, see generally: James 2020, *supra* note 21; Katz & Haldar, *supra* note 53; Pena, *supra* note 53; Randall & Haskell, *supra* note 53; Appleby & Bourke, *supra* note 19.

<sup>191</sup> See generally: Matheson et al., *supra* note 2; Julian D. Ford et al., "Social, Cultural, and Other Diversity Issues in the Traumatic Stress Field" in *Posttraumatic Stress Disorder* (2015) 503; Janet Thompson Jackson, "Wellness and Law: Reforming Legal Education to Support Student Wellness" (2021) 65:1 Howard Law Journal 45–101. Also see generally: Williams et al., *supra* note 31; Bailey et al., *supra* note 31; Berger & Saranyai, *supra* note 31; Williams 2018, *supra* note 31; Shonkoff, Slopen & Williams, *supra* note 31.

<sup>192</sup> See: Cadieux et al., 2022 *supra* note 3 at 35, 39, 139, 141, 142, 325. On page 35, in explaining depression and anxiety, Cadieux, N. et al. write, "[d]epression and anxiety are multifactorial disorders, meaning they arise from a complex interaction of several factors, whether biological, psychological or social. It follows that experiencing painful events (e.g., emotional trauma) increases an individual's likelihood of developing depressive and anxiety symptoms." No definition of "emotional trauma" is provided.

<sup>193</sup> See: Netzel, *supra* note 21, does a fantastic job of outlining the strength that can arise after trauma. Netzel writes on page 431, "[a]s a person heals from trauma, they reach the 'reconnection' phase where they" can "create and define a new future self." They gain newfound wisdom as a result of their traumatic experience. "From great suffering comes great strength." Helen Keller has been attributed with saying, "Character cannot be developed in ease and quiet. Only through experience of trial and suffering can the soul be strengthened, ambition inspired, and success achieved." See: "Helen Keller Quotes," online: *BrainyQuote* <[https://www.brainyquote.com/quotes/helen\\_keller\\_101340](https://www.brainyquote.com/quotes/helen_keller_101340)>. Regarding the neuroscience of trauma, see generally: Bremner, *supra* note 95; Lanius, Terpou & McKinnon, *supra* note 95; Wilson, Lonsway & Archambault, *supra* note 95. Regarding post-traumatic growth, see: Charlotte Henson, Didier Truchot & Amy Canevello, "What Promotes Post Traumatic Growth? A Systematic Review" (2021) 5:4 European Journal of Trauma & Dissociation 100195; Kolk, *supra* note 95; Kolk, *supra* note 95.

### 2.5.a. Understanding Trauma & Emotion

Trauma cannot be explained through categorization, dichotomizing, and objectifying.<sup>194</sup>

Categories and definitions of trauma are based on specific criteria or criteria sets, such as those found in diagnostic manuals like the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision* (DSM-5-TR), which are inadequate in fully appreciating the impact trauma has.<sup>195</sup> While frameworks such as those contained in the DSM-5-TR can provide some valuable guidelines for clinicians when diagnosing clients with Post-Traumatic Stress Disorder (PTSD) or other related conditions, they fall short of truly capturing the full range of emotions that a trauma survivor can experience.<sup>196</sup>

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<sup>194</sup> Trauma has been categorized, dichotomized, and objectified, but that is not necessarily helpful to the trauma survivor. See: Netzel, *supra* note 21; Friedman US Department of Veteran Affairs, *supra* note 22; Karen-Inge Karstoft & Chérie Armour, “What We Talk About When We Talk About Trauma: Content Overlap and Heterogeneity in the Assessment of Trauma Exposure” (2023) 36:1 *Journal of Traumatic Stress* 71–82; Angela Sweeney et al., “A Paradigm Shift: Relationships in Trauma-Informed Mental Health Services” (2018) 24:5 *BJPsych advances* 319–333; Center for Substance Abuse Treatment Chapter 2, *supra* note 23. There is no universally accepted definition of “trauma.” Experts tend to define “trauma” based on their clinical experiences. However, the most referenced definition is from the Substance Abuse and Mental Health Services Administration. Trauma has been defined as the “results from an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or life-threatening and that has lasting adverse effects on the individual’s functioning and mental, physical, social, emotional, or spiritual well-being.” See: SAMHSA, *supra* note 22 at 7. “Trauma” is different and separate from a “traumatic event.” A “traumatic event” is experiencing or witnessing a frightening, dangerous, or violent event that threatens one’s life or bodily integrity. See: Netzel, *ibid*; Sarah Peterson, “About Child Trauma,” (22 January 2018), online: *The National Child Traumatic Stress Network* <<https://www.nctsn.org/what-is-child-trauma/about-child-trauma>>. Traumatic experiences can encompass a wide range of events, including but not limited to natural disasters, accidents, violence, abuse, neglect, and combat. Also, see generally: Perry & Winfrey, *supra* note 23.

<sup>195</sup> In 2013 the American Psychiatric Association revised the PTSD diagnostic criteria in the 5<sup>th</sup> edition of its *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5). PTSD was included in a new category in DSM-5, Trauma- and Stressor-Related Disorders. All conditions in this classification require exposure to a traumatic or stressful event as a diagnostic criterion. The DSM-V defines “trauma,” as an aspect of the diagnostic criteria for post-traumatic stress disorder (PTSD), an “actual or threatened death, serious injury, or sexual violence” that has been experienced as either a direct exposure, by witnessing the incident, by learning about the traumatic experience of a relative or close friend, or through indirect exposure to details of the trauma.” For DSM-5 criteria for PTSD, see: US Department of Veterans Affairs, “PTSD and DSM-5,” online: *PTSD and DSM-5* <[https://www.ptsd.va.gov/professional/treat/essentials/dsm5\\_ptsd.asp](https://www.ptsd.va.gov/professional/treat/essentials/dsm5_ptsd.asp)>; DSM-5-TR, *supra* note 2. See generally: Darrel A. Regier, Emily A. Kuhl & David J. Kupfer, “The DSM-5: Classification and Criteria Changes” (2013) 12:2 *World Psychiatry* 92–98; Anushka Pai, Alina M. Suris & Carol S. North, “Posttraumatic Stress Disorder in the DSM-5: Controversy, Change, and Conceptual Considerations” (2017) 7:1 *Behav Sci (Basel)* 7; American Psychiatric Association, *Highlights of Changes from DSM-IV-TR to DSM-5* (American Psychiatric Association). Also see generally: DSM-5-TR, *supra* note 2; DSM-V, *supra* note 2.

<sup>196</sup> See generally: Maté 2018, *supra* note 31; Daniel Maté & Gabor Maté, *The Myth of Normal: Trauma, Illness & Healing in A Toxic Culture* (Canada: Alfred A. Knopf, 2022); Gabor Maté, *When the Body Says No: The Costs of Hidden Stress* (Canada: Vintage Canada, 2012); Perry & Winfrey, *supra* note 23; Kolk 2014, *supra* note 95; Karstoft & Armour, *ibid*; Sweeney et al., *ibid*.

Trauma is a psychological, emotional, and sometimes physical “response” to an event or circumstance which surpasses the boundaries of one’s subjective capacity to cope.<sup>197</sup> Trauma is a profoundly subjective experience that involves pain and stress.<sup>198</sup> Anxiety, avoidance, fear, vulnerability and anguish can be experienced.<sup>199</sup> Other emotions resulting from trauma can

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<sup>197</sup> Sarah Katz is an authority on trauma-informed legal pedagogy. Katz directs and teaches the Family Law Litigation Clinic at Temple Law. Specifically, Katz “researches and writes about trauma-informed legal practice, the child protection system, child custody, intimate partner violence, and other family law topics. Katz also frequently speaks on these topics at scholarly conferences and training for attorneys.” See: “Professor Sarah Katz, Temple Law School,” online: Temple University Beasley School of Law <<https://law.temple.edu/contact/sarah-katz/>>.

In the abstract, Katz writes: “Trauma, simply defined, is an experience which pushes the boundaries of our subjective capacity to cope.” See: Katz 2020, *supra* note 22. This thesis uses the term “trauma response,” which is different from the environmental trauma that one may be exposed to being a “potentially traumatic event.” Natalie Netzel explained the difference between a “trauma response” and a “potentially traumatic event” (PTE). A PTE is an event that has the potential to cause trauma; however, people are resilient, and different people have different responses to events. Some may be fine, while others will experience a “trauma response,” which is characterized by a “fight, flight, freeze, or fawn reaction.” As Netzel explained, “[p]roblems arise when individuals experience maladaptive trauma responses triggered when no direct harm is present.” See: Netzel, *supra* note 21 at 393. Also see generally: US Department of Veteran Affairs, *supra* note 22; SAMHSA, *supra* note 22; Center for Substance Abuse Treatment Chapter 3, *supra* note 22. Post-traumatic stress disorder (PTSD) is assessed through the diagnostic criteria. See: DSM-5-TR, *supra* note 2; DSM-V, *supra* note 2; Friedman US Department of Veteran Affairs, *supra* note 22. Trauma can also be experienced indirectly by experiencing another person’s trauma. Netzel defined “vicarious trauma” as “experienced or realized through imaginative or sympathetic participation in the experience of another.” See: Netzel, *ibid* at 496 citing Andrew P. Levin et al., Secondary Traumatic Stress in Attorneys and Their Administrative Support Staff Working with Trauma-Exposed Clients, 199 J. NERVOUS & MENTAL DISEASE 946, 946 (2011). Legal professionals will surely experience “compassion fatigue,” “burnout,” “secondary traumatic stress” or “vicarious trauma” during their professional lives. Also see: Léonard, Saumier & Brunet, *supra* note 21; Love, *supra* note 182; Maguire & Byrne, *supra* note 21. Also, see generally: James 2020, *supra* note 21; Golden Eagle, *supra* note 53. Cadieux et al., 2022 *supra* note 3 on page 39, defined the trauma response as “compassion fatigue.” Cadieux et al., write: “Compassion fatigue: refers to a phenomenon experienced by those providing care to others. It involves a state of tension and preoccupation with the suffering of those being cared for, to the point of creating traumatic stress for the caregiver (Figley, 2020).” Concerning the interchangeability of the terms, Netzel wrote on page 397 that “[u]nderstanding the precise overlap, similarities, and differences of these terms is not necessary for the purpose of this Article, although, personally, I wish the term “compassion fatigue” would be used less often. On its face, it implies fatigue results from compassion, and I fear it discourages the act of fostering compassion. Practitioners of mindfulness might say that practicing compassion (for self and others) is an extremely powerful antidote to protecting against the negative effects of vicarious trauma.” Also see generally: Oehme & Stern, *supra* note 12.

<sup>198</sup> Brené Brown defines “stressed” as “when we evaluate environmental demands as beyond our ability to cope successfully. This includes elements of unpredictability, uncontrollability, and feeling overloaded.” See: Brown 2021, *supra* note 18 at 5.

<sup>199</sup> “Anguish” is defined as “an almost unbearable and traumatic swirl of shock, incredulity, grief, and powerlessness.” Brené Brown wrote on pages 92-93, “[a]n anguish not only takes away our ability to breathe, feel, and think- it comes from our bones. Anguish often causes us to physically crumble in on ourselves, literally bringing us to our knees or forcing us all the way to the ground. The element of powerlessness is what makes anguish traumatic. We are unable to change, reverse, or negotiate what has happened. And even in those situations where we can temporarily reroute anguish with to-do lists and tasks, it finds its way back to us.” On page 95, Brené Brown wrote, “it’s often hard to find our way back into our bodies after experiencing anguish. This is why so much effective trauma work today is not only about reclaiming our breath, our feelings, and our thinking, but also getting our bones back and returning to our bodies.” See: Brown 2021, *ibid* at 91-93.

include: hopelessness, despair, sadness, grief, shame, anger, and being overwhelmed.<sup>200</sup> The emotions resulting from the event(s) or circumstance(s) can ultimately cause harm to an individual's wellbeing and mental health.<sup>201</sup> A language for emotion is particularly relevant to understanding and communicating experiences of trauma.<sup>202</sup> This understanding of trauma emphasizes its complex nature, which cannot be reduced to simple categories or explanations. Instead, it requires a nuanced understanding that considers the subjective context in which it occurs.

Trauma manifests differently in each person who experiences it due to its highly subjective nature.<sup>203</sup> What may be traumatic for one individual may not necessarily have the same impact

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<sup>200</sup> "Overwhelmed" is "an extreme level of stress, and emotional and or cognitive intensity to the point of feeling unable to function." See: Brown 2021, *ibid* at 6. Netzel refers to "trauma response" on page 407 as a "maladaptive response" which is when a person is not able to emotionally regulate because they have been triggered." On page 402 Netzel explains: "People experiencing dysregulation may be emotionally flooded, reactive, impulsive, hypervigilant, fearful, or angry. They may experience intrusive imagery and affects, racing thoughts, flashbacks, and nightmares. They may exhibit high risk behavior, be cognitively dissociated, or otherwise have an inability to think. Or they may appear collapsed with disabled defensive responses, and/or feel helpless and hopeless. 93 In sum, triggers can cause a person to emotionally dysregulate such that they are well outside of optimal functioning." Netzel writes on page 407: "Trauma responses, which cause a person to dysregulate, can significantly interfere with success in law school. In even more simple terms, a student cannot access the smartest part of their brain when they are dysregulated. A regulated student can learn, a dysregulated student cannot. It follows that professors who are able to recognize dysregulation in their students, make efforts to keep students regulated in their classes, and correct course to help students regulate, will create circumstances for more optimal learning." See: Netzel, *supra* note 21 at 407.

<sup>201</sup> Netzel, *ibid* does an excellent job outlining the different responses (fight, flight, freeze, fawn) to trauma. Netzel writes on page 407: "Fight-or-flight responses are often discussed together because both are involuntary, hyperaroused states which cause a person to act before they think, resulting in an overwhelming tendency to act in response to an alarm. Fight responses are associated with anger. Flight is the overwhelming tendency to flee in response to fear. Freeze responses are mute, terrified, frozen defense states of hypoarousal." On page 408 to 409 Netzel describes the fawn response, "Fawning is a maladaptive "instinctual response associated with a need to avoid conflict and trauma via appeasing behaviors." When a person exhibits a fawn response, they "seek safety by merging with the wishes, needs and demands of others." They may behave "as if they unconsciously believe that the price of admission to any relationship is the forfeiture of all their needs, rights, preferences and boundaries." Fawning is a "maladaptive way of creating safety ... by essentially mirroring the imagined expectations and desires of other people." Netzel explains, "The fawn response often stems from a recognition that appeasing an abuser is one way to prevent abuse." Also see generally: Perry & Winfrey, *supra* note 23; Friedman, *supra* note 22; The Jed Foundation, *supra* note 23; Center for Substance Abuse Treatment (US) Chapter 3, *supra* note 22. Regarding a language for emotion, see: Brown 2021, *ibid*.

<sup>202</sup> See generally: Brigitta Busch & Tim McNamara, "Language and Trauma: An Introduction" (2020) 41:3 Applied Linguistics 323-333; David M. Markowitz, "Psychological Trauma and Emotional Upheaval as Revealed in Academic Writing: The Case of COVID-19" (2022) 36:1 Cognition and Emotion 9-22; Britney M. Wardecker et al., "Emotion Language in Trauma Narratives Is Associated With Better Psychological Adjustment Among Survivors of Childhood Sexual Abuse" (2017) 36:6 Journal of Language and Social Psychology 628-653.

<sup>203</sup> See generally: Center for Substance Abuse Treatment (US) Chapter 3, *supra* note 22; SAMHSA, *supra* note 22.

on another person.<sup>204</sup> Therefore, attempting to categorize or objectify trauma fails to capture its essence accurately.

Dichotomizing trauma into “major” or “minor” events also oversimplifies its complexity and can diminish the survivors experience.<sup>205</sup> Trauma can occur both through a single significant incident, such as physical assault or witnessing violence, or through chronic forms of trauma, such as emotional abuse or neglect over time.<sup>206</sup> Each individual’s response will vary based on unique circumstances and resilience factors.<sup>207</sup>

To fully grasp the concept of trauma, one must acknowledge that trauma does not just arise from certain events or circumstances but can also result from prior dysfunction.<sup>208</sup> Traumatic experiences often arise from a history of dysfunctional relationships or environments that have shaped an individual’s perceptions and reactions to the world around them.<sup>209</sup> Trauma is not solely caused by external events but also by internal factors such as previous experiences and personal vulnerabilities.

Moreover, categorizing trauma dehumanizes individuals who have experienced it by reducing their experiences to mere statistics or clinical terms and objectifying their experience to external judgment as to severity and validity. This approach can cause further harm to the trauma survivor

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<sup>204</sup> See generally: Netzel, *supra* note 21; Center for Substance Abuse Treatment (US) Chapter 3, *ibid*.

<sup>205</sup> See generally: Karstoft & Armour, *supra* note 194; Carello & Butler, *supra* note 53; Jessica Lynn Young, *Exploring How Best to Teach Trauma-Informed Care in Undergraduate Medical Education* University of Calgary, 2023) [unpublished].

<sup>206</sup> See generally: Center for Substance Abuse Treatment (US) Chapter 3, *supra* note 22; Kolk 2000, *supra* note 95.

<sup>207</sup> See generally: Center for Substance Abuse Treatment (US) Chapter 3, *ibid*; Michael Ungar, “Resilience, Trauma, Context, and Culture” (2013) 14:3 Trauma, Violence, & Abuse 255–266; Kimberly Matheson, Ajani Asokumar & Hymie Anisman, “Resilience: Safety in the Aftermath of Traumatic Stressor Experiences” (2020) 14 Frontiers in Behavioral Neuroscience, online: <<https://www.frontiersin.org/articles/10.3389/fnbeh.2020.596919>>.

<sup>208</sup> See generally: Center for Substance Abuse Treatment (US) Chapter 3, *ibid*; Center for Substance Abuse Treatment (US), Chapter 2, *supra* note 23; SAMHSA, *supra* note 22.

<sup>209</sup> See generally: SAMHSA, *supra* note 22; Center for Substance Abuse Treatment Chapter 3, *ibid*; Paola Bozzatello et al., “The Role of Trauma in Early Onset Borderline Personality Disorder: A Biopsychosocial Perspective” (2021) 12 Front Psychiatry 721361–721361. Regarding workplace violence, see: Cadieux et al., 2022 *supra* note 3 at 325, where they write: “Workplace violence can also cause emotional and psychological damage such as fear, sadness, symptoms associated with post-traumatic stress disorder, depressive symptoms, and professional burnout (Lanctôt & Guay, 2014). It can also have an impact on the organization by driving the victim to take a leave of absence or to want to leave the organization or profession. Indeed, experiencing violence at work increases the likelihood that a professional will actually leave their profession (Lanctôt & Guay, 2014).” Also see: Pender, *supra* note 10.

and fails to acknowledge trauma's profound impact on an individual's sense of self, relationships, and overall wellbeing.

## 2.5.b. The Effect of Trauma

Understanding trauma is necessary due to its devastating impact on mental health and wellbeing.<sup>210</sup> The effects of trauma include, but are not limited to: an increased risk of mental health problems or conditions; sleeplessness; disassociation; emotional dysregulation; trouble concentrating; memory problems; rumination or racing thoughts; or distortion of time and space.<sup>211</sup> Furthermore, trauma impacts physical health and can result in chronic health issues and has been identified as a leading cause of cancer, diabetes, heart disease, and death.<sup>212</sup> Trauma may also increase susceptibility to alcohol or drug misuse.<sup>213</sup> Finally, trauma can result in self-harm and even death.<sup>214</sup>

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<sup>210</sup> Trauma is the leading cause of mental health conditions. See: SAMHSA, *supra* note 22; Center for Substance Abuse Treatment (US) Chapter 3, *supra* note 22. Also see generally: Perry & Winfrey, *supra* note 23; Bremner, *supra* note 95; Lanius, Terpou & McKinnon, *supra* note 95; Wilson, Lonsway & Archambault, *supra* note 95; Kolk, *supra* note 80; Kolk, *supra* note 95; Harvard Health, *supra* note 95.

<sup>211</sup> The effects of trauma can include an increased risk of mental health problems or conditions including but not limited to sleeplessness, emotional dysregulation, trouble concentrating, memory problems, rumination or racing thoughts, or distortion of time and space. See: Center for Substance Abuse Treatment (US) Chapter 3, *ibid.* The effects of trauma can include disassociation. See generally: Lanius, Terpou & McKinnon, *supra* note 95. Interestingly, many marginalized law students experience disassociation during their legal education. See: Costello *supra* note 41. Natalie Netzel outlines the “[s]igns and symptoms of adverse effects of vicarious trauma include: feeling helpless and hopeless; a sense that one can never do enough; hyper-vigilance; diminished creativity; inability to embrace complexity; minimizing; chronic exhaustion or physical ailments; inability to listen or deliberate avoidance; dissociative moments; a sense of persecution; guilt; fear; anger and cynicism; inability to empathize/numbness; addictions; and grandiosity (an inflated sense of importance related to one's work).” See: Netzel, *supra* note 21 at 397. Also see generally: Sharon Dolovich, “Making Docile Lawyers: An Essay on the Pacification of Law Students” (1998) 111:7 Harvard Law Review 2044, 63; Prudy Gourguechon, “Gen Z Is Stressing Out: Finding Solutions for Hopelessness and Helplessness,” (30 October 2018), online: *Forbes* <<https://www.forbes.com/sites/prudygourguechon/2018/10/30/gen-z-is-stressing-out-finding-solutions-for-hopelessness-and-helplessness/>>.

<sup>212</sup> See generally: Center for Substance Abuse Treatment (US) Chapter 3, *supra* note 22; Jones, Merrick & Houry, *supra* note 12; Felitti et al., *supra* note 12.

<sup>213</sup> See generally: Maté 2018, *supra* note 31; Maria Isabel Barros Guinle & Rajita Sinha, “The Role of Stress, Trauma, and Negative Affect in Alcohol Misuse and Alcohol Use Disorder in Women” (2020) 40:2 Alcohol Res 05; Moira Haller & Laurie Chassin, “Risk Pathways Among Traumatic Stress, Posttraumatic Stress Disorder Symptoms, and Alcohol and Drug Problems: A Test of Four Hypotheses” (2014) 28:3 Psychology of Addictive Behaviors 841–851; Naomi Breslau, Glenn C. Davis & Lonni R. Schultz, “Posttraumatic Stress Disorder and the Incidence of Nicotine, Alcohol, and Other Drug Disorders in Persons Who Have Experienced Trauma” (2003) 60:3 Archives of General Psychiatry 289–294.

<sup>214</sup> In Canada, see: Cadieux et al., 2022 *supra* note 3 at 39 where the report states: “suicidal ideation arises from multiple factors. Thus, the person experiencing these thoughts is usually exposed to suffering that emerges from a traumatic event or a combination of factors that momentarily generate a sense of hopelessness.” “Traumatic event” is not defined. Also, see generally: Natalia Polskaya & Maria Melnikova, “Dissociation, Trauma and Self-Harm”



### 2.5.c. The Pervasive Nature of Trauma

Understanding trauma is essential because of its pervasiveness.<sup>215</sup> In 2019, the U.S. Centers for Disease Control and Prevention found that sixty percent of American adults reported having at least one “Adverse Childhood Experience,” and almost twenty-five percent reported three or more.<sup>216</sup> In 2021, sixty percent of Canadian adults aged forty-five to eight-five reported exposure to Adverse Childhood Experiences.<sup>217</sup> A recent National Survey of Children’s Health study found that almost fifty percent of children in the United States had at least one significant traumatic experience.<sup>218</sup> Taken together, it is reasonable to conclude that at least one out of two people have experienced trauma.

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(2020) 28 Counseling Psychology and Psychotherapy 25–48; Sharon K. Farber, “Dissociation, Traumatic Attachments, and Self-Harm: Eating Disorders and Self-Mutilation” (2008) 36:1 Clin Soc Work J 63–72.

<sup>215</sup> Exposure to potentially traumatic events is prevalent, while whether a person experiences “trauma” is more difficult to assess objectively. “Trauma is a hidden epidemic and a public health concern in Canada and globally” See: Eunjung Lee et al., “A Trauma-Informed Approach in Canadian Mental Health Policies: A Systematic Mapping Review” (2021) 125:7 Health Policy 899–914 at 899. Also see generally: Young 2023, *supra* note 205; Koenen et al., *supra* note 12; Van Ameringen et al., *supra* note 12; Heidinger, *supra* note 12; Mills et al., *supra* note 12; Kessler et al., *supra* note 12. Further, it is well known that the legal system can be traumatic. See: Netzel, *supra* note 21. Also see, Katz 2020, *supra* note 22. On page 20 Katz writes reflecting on the COVID 19 pandemic, “We no longer have to wonder whether our law students have been exposed to trauma, but rather how our students have been, and will continue to be, impacted by trauma.”

<sup>216</sup> “Adverse Childhood Experiences” are experienced before age eighteen and include experiences of or witnessing violence, abuse, or neglect. They also include environmental factors such as growing up in a home with substance use problems, mental health problems or instability due to separation, divorce, or incarceration of household members. See generally: Jones, Merrick & Houry, *supra* note 12; Fast Facts: CDC, *supra* note 80; Perry & Winfrey, *supra* note 23. “Dr. Perry is an internationally recognized authority on child trauma and the effects of child maltreatment. His work is instrumental in understanding the impact of traumatic experiences and neglect on the neurobiology of the developing brain.” See: Bruce D. Perry, *Maltreatment and the Developing Child: How Early Childhood Experience Shapes Child and Culture* (London, Ontario: The Centre for Children & Families in the Justice System, 2004) at 1. The questionnaire for Adverse Childhood Experiences includes ten questions. As a person’s affirmative responses increase, so does their susceptibility to decreases in wellbeing. See: Felitti et al. *supra* note 12. However, it is essential to recognize that Adverse Childhood experiences may not result in childhood trauma. Childhood trauma is “when children are exposed to events or situations that overwhelm their ability to cope with what they have experienced.” See: Peterson, *supra* note 179. Also see regarding PTSD in children under 6: Center for Substance Abuse Treatment (US), Trauma-Informed Care in Behavioral Health Services, “Exhibit 1.3-4, DSM-5 Diagnostic Criteria for PTSD” in *Trauma-Informed Care in Behavioral Health Services* (Rockville, MD: Substance Abuse and Mental Health Services Administration (US), 2014).

<sup>217</sup> See: Joshi et al., *supra* note 12; Christine Rankin, “3 in 5 Middle-Aged and Older Canadians had ‘Traumatic’ Childhood Experiences: Report | CBC News,” (19 March 2021), online: CBC <<https://www.cbc.ca/news/canada/hamilton/adverse-childhood-experiences-study-1.5956525>>.

<sup>218</sup> See: “NSCH 2011/12: Adverse Family Experiences, Nationwide,” online: *Data Resource Center for Child & Adolescent Health* <<https://www.childhealthdata.org/browse/survey/results?q=2614&r=1>>.

#### 2.5.d. Law Student Trauma

To the author's knowledge, only one study from all compared jurisdictions has asked law students about trauma when assessing psychological distress.<sup>219</sup> David Jaffe, Katherine Bender and Jerome Organ published "*It is Okay to Not Be Okay: The 2021 Survey of Law Student Well-Being*," which included thirty-nine law schools across the United States, with over 5400 respondents, making it the largest survey to date on law student wellbeing.<sup>220</sup> The survey, distributed in the spring of 2021—in addition to asking about psychological distress, substance use, suicidal thoughts, and eating disorders—also asked about trauma.<sup>221</sup> Over eighty percent of respondents reported experiencing at least one traumatic experience, and about seventy percent reported that they had experienced more than one.<sup>222</sup> Furthermore, the 2021 survey found that

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<sup>219</sup> See: Jaffe, Bender & Organ, *supra* note 21.

<sup>220</sup> *Ibid* at 10–11. Demographics of respondents are outlined on p. 12 and included 29% BIPOC (Black, Indigenous, and people of colour); 67.8% White; 3.2% other; 34.5% men; 54.1% women; 0.2% other. "David B. Jaffe is the Associate Dean of Student Affairs at American University Washington College of Law. He oversees all aspects of the Office of Student Affairs, which includes support for JD students from Orientation through academic and personal counseling, organization development, to Commencement. A committed steward of law student wellness, Jaffe serves on the ABA Commission on Lawyer Assistance Programs (CoLAP) as co-chair of the Law School Assistance Committee. In 2015, he received the CoLAP Meritorious Service Award in recognition of his commitment to improving the lives of law students. He received a B.A. from Washington University in St. Louis and his J.D. from American University Washington College of Law." See: "David B. Jaffe," online: *Legal Talk Network* <<https://legaltalknetwork.com/guests/david-b-jaffe/>>. Katherine Bender obtained a Ph.D. in Counseling, Counselor Education & Supervision at Old Dominion University in the summer of 2013, focusing on college student suicide prevention. Katherine Bender joined the Dave Nee Foundation as a Programming Consultant in September 2012 and became the Programming Director in September 2013. In this role, she leads the Uncommon Counsel program and LawLifeline. See: "Katherine Bender Ph.D. Archives," online: *Lawyers with Depression* <<https://www.lawyerswithdepression.com/articles/tag/katherine-bender-ph-d/>>. The David Nee Foundation seeks to eliminate the stigma of mental illness by fostering candid discussions about mental health. Dave founded the foundation following the suicide of a friend during his third year of law school at Fordham." See: DAN, "The Suicide of a Law Student Hits Home," (4 July 2019), online: *Lawyers with Depression* <<https://www.lawyerswithdepression.com/articles/the-suicide-of-a-law-student-hits-home/>>. Jerome M. Organ is a professor and co-director of the Holloran Center for Ethical Leadership in the Professions and currently. See: Carrie Hilger, "Jerry Organ Releases Latest Law Student Wellness Study Results", (19 July 2022), online: *Newsroom | University of St Thomas* <<https://news.stthomas.edu/jerry-organ-releases-latest-law-student-wellness-study-results/>>. Also see: Debra Cassens Weiss, "11% of Law Students had Suicidal Thoughts in the Past Year, Survey Finds; What Can Law Schools Do?" (14 July 2022), online: *ABA Journal* <<https://www.abajournal.com/web/article/11-of-law-students-had-suicidal-thoughts-in-the-past-year-survey-finds-what-can-law-schools-do>>. "The 2021 survey followed up on a study conducted by the same researchers in 2014."

<sup>221</sup> *Ibid*, *supra* note 3 at 9. Also see Netzel, *supra* note 21 who provides a though analysis of the data on trauma in the Jaffe, Bender & Organ study. Notably, Netzel points out on page 385 that "[t]he study also revealed [on page 496] that almost fifty percent of responding students reported an important motivation for attending law school was experiencing a trauma or injustice." Netzel writes: "Students are coming to law school not just in spite of their trauma histories but *because* of their trauma histories."

<sup>222</sup> *Ibid* at 27-28. The researchers asked respondents "whether respondents had experienced trauma in one of fifteen categories, including, for example, natural disaster; accident; assault; sexual assault; serious illness or injury; emotional or physical abuse; etc." "

just over twenty-six percent of respondents would benefit from a Post-Traumatic Stress Disorder evaluation.<sup>223</sup> While law students may be coming to law school with a significant trauma history, and many are motivated to attend law school because of their trauma, graduates are certainly to encounter trauma as legal professionals, to which this thesis now turns.

#### 2.5.e. Legal Professionals are at a “High Risk” of Trauma Exposure

Once law students become lawyers, they are susceptible to health impacts due to exposure to trauma.<sup>224</sup> In 2020, a study investigated the presence and severity of Post-Traumatic Stress Disorder symptomatology among a national cross-sectional sample of practicing Canadian lawyers.<sup>225</sup> The study revealed that “[l]awyers that [are] exposed to trauma in their practice are 2.62 times more likely to meet the probable PTSD diagnostic criteria than their unexposed colleagues.”<sup>226</sup>

Furthermore, women legal professionals may be at a higher risk of trauma. In the most recent study of Canadian legal professionals’ psychological distress, researchers found that “31.0% of

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<sup>223</sup> *Ibid* at 28 states: “Those who answered yes to one or more trauma categories were then asked to complete the PCL-5. The PCL-5 is a self-report instrument used to screen for Post-Traumatic Stress Disorder (PTSD). The PCL-5 consists of twenty items associated with the diagnostic criteria set forth by the Diagnostic and Statistical Manual of Mental Disorders-Fifth Edition (DSM-5) regarding PTSD. Respondents are asked to rate on a Likert scale of zero to five (zero meaning not at all to five meaning extremely) as to how often they have been bothered by a particular symptom of PTSD. Scores of thirty-one to thirty-three represent the most common scoring range used to identify those who may benefit from having a PTSD evaluation.” The scores revealed that “at least 26.3% of those who experienced trauma should be evaluated for PTSD.” Also see: Netzel *supra* note 21.

<sup>224</sup> Concerning Canadian legal professionals, the most recent study found that “26.8% of legal professionals reported experiencing secondary traumatic stress, of which 25.5% were affected by moderate symptoms.” See: N. Cadieux, M. Gingues, E. Morin, J. Cadieux, M.-M. Gouin, O. Caya, P.-L. Fournier, A. B. Camille, (2022). *Targeted Recommendations: Towards a Healthy and Sustainable Practice of Law in Canada. National Study on the Health and Wellness Determinants of Legal Professionals in Canada, Phase I (2020-2022)*. Université de Sherbrooke, Business School. 44 pages. Table 2. Also see: Leclerc, Wemmers & Brunet, *supra* note 21; Léonard, Saumier & Brunet, *supra* note 21. Also, see generally: Oehme & Stern, *supra* note 12 at 1320; Maguire & Byrne, *supra* note 21; Weir et al., *supra* note 21; Weir, Jones & Sheeran, *supra* note 21; James 2020, *supra* note 21; Love, *supra* note 182.

<sup>225</sup> See: Leclerc, Wemmers & Brunet, *ibid* at 7-9. Respondents included 274 women and 202 men. 84.5% were Canadian-born. 88.9% were Caucasian. 59% were lawyers living in Quebec. More than half completed the survey in French. The researchers utilized DSM-5 PTSD symptomatology. The Life Event Checklist for DSM-5 was utilized and is a 17-item self-report measure that assesses lifetime exposure to 16 potentially traumatic events and one residual ‘other event’ category. The PTSD Checklist for DSM-5 was utilized and is a 20-item self-report measure that assesses the DSM-5 symptoms of PTSD in the past 30 days. The Hopkins Symptom Checklist-25 was used as a reliable and valid self-report questionnaire that measures psychological distress via two subscales: anxiety and depression. The World Health Organization – Quality of Life was utilized as a valid and reliable self-report measure of perceived quality of life. See generally: DSM-V, *supra* note 2; DSM-5-TR, *supra* note 2.

<sup>226</sup> See: Leclerc, Wemmers & Brunet, *ibid*.

women legal professionals experienced secondary traumatic stress as compared to 23.5% of men.”<sup>227</sup> Finally, marginalized legal professionals are likely to be at higher risk of trauma, given the social determinants of health.<sup>228</sup> This leads to the likelihood that marginalized women are at even higher risk of trauma, given what is now known about intersectionality.<sup>229</sup> The following section will outline how and why marginalized people are disproportionately affected by trauma, as well as legal professionals’ probability of experiencing trauma in their practice.

#### 2.5.f. Trauma Effects the Marginalized Disproportionately

Future lawyers will likely work with clients who have experienced trauma, given its prevalence. Following the Truth & Reconciliation Commission’s Report in 2015, the legal community is now aware of the “intergenerational trauma” resulting from the attempted genocide of Indigenous peoples on Turtle Island.<sup>230</sup> The Commission resulted from the settlement of a class

<sup>227</sup> See: Cadieux et al., 2022 *supra* note 3 at 141.

<sup>228</sup> *Ibid.* Regarding the Indigenous law student experience, see: Falk, *supra* note 41; Franks, *supra* note 41; Cubillo, *supra* note 41.

<sup>229</sup> See generally: Kimberle Crenshaw, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics” (1989) 1989:1 University of Chicago Legal Forum Article 8. Available at: <<http://chicagounbound.uchicago.edu/uclf/vol1989/iss1/8>>; Devon W. Carbado et al., “Intersectionality: Mapping the Movements of a Theory” (2013) 10:2 Du Bois Review 303–312. Also see: Deo, *supra* note 41; Helgi Maki et al., eds, *Trauma-Informed Law: A Primer for Practicing Lawyers and a Pathway for Resilience and Healing* (USA: ABA Book Publishing, 2023); Bastos, Harnois & Paradies, *supra* note 41; Boyle et al., *supra* note 31; Cannon & Tuchinda, *supra* note 39; T. Elon Dancy & Gaetane Jean-Marie, “Faculty of Color in Higher Education: Exploring the Intersections of Identity, Impostorship, and Internalized Racism” (2014) 22:4 Mentoring & Tutoring: Partnership in Learning 354–372; Sommerlad 2002, *supra* note 41; Women’s Legal Service Victoria, *Gender and Intersectional Inequality: Power and Privilege in Victoria’s Legal and Justice Workforce Starts with Us: Phase Two: Research Report*, (Melbourne, Australia: Women’s Legal Service Victoria, 2022); Michaela M. McGuire & Danielle J Murdoch, “(In)-justice: An Exploration of the Dehumanization, Victimization, Criminalization, and Over-Incarceration of Indigenous Women in Canada” (2022) 24:4 Punishment & Society 529–550; Crenshaw, Kimberlé Williams, *Seeing Race Again : Countering Colorblindness Across the Disciplines* (Berkeley, United States: University of California Press, 2019).

<sup>230</sup> See: TRC Report, *supra* note 25; TRC Calls, *supra* note 25. Regarding “Intergenerational Trauma” see generally: Amy Bombay, Kimberly Matheson & Hymie Anisman, “The Intergenerational Effects of Indian Residential Schools: Implications for the Concept of Historical Trauma” (2014) 51:3 Transcult Psychiatry 320–338; Samuel Perreault, “Victimization of First Nations People, Métis and Inuit in Canada” (2022) Juristat: Canadian Centre for Justice Statistics 1–72; Cheryle Partridge, “Residential Schools: The Intergenerational Impacts on Aboriginal Peoples” (2010) 7 Native Social Work Journal 33–62; Cynthia C. Wesley-Esquimaux & Magdalena Smolewski, *Historic Trauma and Aboriginal Healing* (Ottawa, Canada: Aboriginal Healing Foundation, 2004); Marlene Brant Castellano & Linda Archibald, “Healing Historic Trauma: A Report from The Aboriginal Healing Foundation” (2007) 4 Aboriginal Policy Research Consortium International (APRCI) 25; Piotr Wilk, Alana Maltby & Martin Cooke, “Residential Schools and the Effects on Indigenous Health and Well-Being in Canada—A Scoping Review” (2017) 38:1 Public Health Reviews 8. Regarding “historical trauma,” see generally: Stefanie L. Gillson & David A. Ross, “From Generation to Generation: Rethinking 'Soul Wounds' and Historical Trauma” (2019) 86:7 Biol Psychiatry e19–e20. Trauma-informed lawyering and education have arisen mainly in Canada because of the Truth & Reconciliation 2015 Report and Calls to Action. TRC Report explained the reason for Call to Action 27 and 28 on

action wherein residential school survivors sued the Government of Canada for the harm caused by Residential Schools. As part of the legal profession's duty to the public and competence, future lawyers should be well-versed in trauma, given its pervasiveness and damaging effect. Colin James, a Senior Lecturer at Australian National University, College of Law, wrote, "[l]aw schools have a duty to inform students and help them prepare to cope with trauma in legal practice and the aggravating conditions in some legal workplaces."<sup>231</sup> Understanding trauma is essential for addressing mental health, wellbeing, ethics, diversity, and inclusion.<sup>232</sup> The following section will outline the basics of the neuroscience of trauma.

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page 168: "The criminal prosecution of abusers in residential schools and the subsequent civil lawsuits was a difficult experience for Survivors. The courtroom experience was made worse by the fact that many lawyers did not have adequate cultural, historical, or psychological knowledge to deal with the painful memories that the Survivors were forced to reveal. The lack of sensitivity that lawyers often demonstrated in dealing with residential school Survivors resulted, in some cases, in the Survivors' not receiving appropriate legal services. These experiences prove the need for lawyers to develop a greater understanding of Aboriginal history and culture as well as the multi-faceted legacy of residential schools." Also see generally: Yuen, *supra* note 53; Katz & Haldar, *supra* note 53; Golden Eagle, *supra* note 53; Myrna McCallum, "How We Teach is How They Will Practice: A Conversation with Natalie Netzel." (30 November 2022), online The Trauma-Informed Lawyer:

<<https://thetraumainformedlawyer.simplecast.com/episodes>>. Regarding the "genetic effect" of trauma, see: E. Unternaehrer et al., "Intergenerational Transmission of Well Being—Genetic and Epigenetic Mechanisms" (2017) 41:S1 European Psychiatry S29–S30. Concerning the social determinants of health, see generally: Kim, *supra* note 2; Jardine & Lines, *supra* note 2.

<sup>231</sup> "Legal employers also have a duty to change, to reflect on their goals and methods and to reconsider the human costs of their business plans on clients and staff. A trauma-informed system may not only sustain lawyers working with trauma cases but enhance the workplace atmosphere, and improve the quality, care and efficacy of the legal assistance provided by lawyers in the workplace or WFH." See: Colin James, "Trauma-Informed Legal Education: Rejecting the Stigma in Caring for Self, Client and Workplace" in Emma Jones & Caroline Strevens, eds, *Wellbeing and Transitions in Law: Legal Education and the Legal Profession* (Switzerland: Springer International Publishing, 2023) 253 at 268-269. In all compared countries, law societies and bar associations must act in the "public interest" by way of state, provincial, territorial, or federal legislation. In the United States, state legislation requires the bar associations and the legal profession to act in the public interest. Each state has a version of a state bar act. In the United States, see generally: in California, see: *The State Bar Act*, tit 4, BPC, § 1 (Stats. 1939, ch. 34) at § 6001.1. Also, see generally: Sullivan, *supra* note 27. In Australia, see: Legal Profession Act 2006, *supra* note 52, s 6. Also, see generally: Baron & Corbin, *supra* note 49. In England & Wales, see: UK Legal Services Act, *supra* note 28, s 1. In Canada, see: CDA Nat'l Rqmt., *supra* note 28, s. 2.1.a.7. In Canada, law societies are governed provincially or territorially. In Saskatchewan, see: *Legal Profession Act*, 1990, RSS 2021, c.19 [SK Legal Profession Act], s. 3.1., 3.2. Also, see generally: John Pearson, "Canada's Legal Profession: Self-Regulating in the Public Interest?" (2015) 92:3 Canadian Bar Review 1. For a discussion on the independence of the legal profession in Australia, the UK, and Canada, see generally: Gordon Turriff QC, "The Consumption of Lawyer Independence" (2010) 17:3 International Journal of the Legal Profession 283–305.

<sup>232</sup> See generally: TRC Report, *supra* note 25; TRC Calls, *supra* note 25. Also see generally: Lee et al., *supra* note 215; Terry Mitchell, "Colonial Trauma: Complex, Continuous, Collective, Cumulative and Compounding Effects on the Health of Indigenous Peoples in Canada and Beyond" (2019) 14:2 International Journal of Indigenous Health 74–94; Rachel L. Burrage, Sandra L. Momper & Joseph P. Gone, "Beyond Trauma: Decolonizing Understandings of Loss and Healing in the Indian Residential School system of Canada" (2022) 78:1 Journal of Social Issues 27–52. Also see generally: SAMHSA, *supra* note 22; Oehme & Stern, *supra* note 12.

## 2.5.g. The Neuroscience of Trauma

The neuroscience of trauma offers valuable insights into the complex interplay between traumatic experiences and overall wellbeing. Neuroscientific research has revealed that trauma disrupts various brain regions and neural pathways in emotional regulation, memory processing, and stress response systems.<sup>233</sup> The amygdala, which is responsible for processing emotions, becomes hyperactive, leading to heightened fear and anxiety responses.<sup>234</sup> Meanwhile, the prefrontal cortex, crucial for executive functions such as decision-making and impulse control, becomes impaired, hindering effective emotional regulation and judgment.<sup>235</sup>

These neural alterations contribute to a range of symptoms commonly associated with trauma, such as intrusive memories, exaggerated startle responses, and difficulties in maintaining healthy relationships.<sup>236</sup> Moreover, neuroplasticity, the brain's ability to adapt and change, can be beneficial or detrimental in the aftermath of trauma.<sup>237</sup> While neuroplasticity allows for potential

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<sup>233</sup> See generally: Bremner, *supra* note 95; Jonathan E. Sherin & Charles B. Nemeroff, “Post-Traumatic Stress Disorder: The Neurobiological Impact of Psychological Trauma” (2011) 13:3 *Dialogues Clin Neurosci* 263–278; Lívica Dornela Godoy et al., “A Comprehensive Overview on Stress Neurobiology: Basic Concepts and Clinical Implications” (2018) 12 *Frontiers in Behavioral Neuroscience*, online:

<<https://www.frontiersin.org/articles/10.3389/fnbeh.2018.00127>>; M. Alexandra Kredlow et al., “Prefrontal Cortex, Amygdala, and Threat Processing: Implications for PTSD” (2022) 47:1 *Neuropsychopharmacol* 247–259.

<sup>234</sup> It is fundamental to recognize that trauma is not a weakness but an extraordinary survival mechanism that ensures survival. “Trauma is not a flaw or a weakness. It is a highly effective tool of safety and survival. Trauma is also not an event. Trauma is the body's protective response to an event—or a series of events—that it perceives as potentially dangerous. This perception may be accurate, inaccurate, or entirely imaginary. In the aftermath of highly stressful or traumatic situations, our soul nerve and lizard brain may embed a reflexive trauma response in our bodies. This happens at lightning speed.” See: Katz 2022, *supra* note 21 citing Resmaa Menakem, “My Grandmother’s Hands: Racialized Trauma and the Pathway to Mending Our Hearts and Bodies” (2017). Also see: Kerry J. Ressler, “Amygdala Activity, Fear, and Anxiety: Modulation by Stress” (2010) 67:12 *Biol Psychiatry* 1117–1119 state at 2 “[p]osttraumatic stress disorder (PTSD) appears to combine aspects of both severe stress responsiveness and either enhanced conditioned fear or an inability to extinguish, or inhibit, conditioned fear.”

<sup>235</sup> See: Bremner, *supra* note 95; Kredlow et al., *supra* note 233; Amy F. T. Arnsten et al., “The Effects of Stress Exposure on Prefrontal Cortex: Translating Basic Research into Successful Treatments for Post-Traumatic Stress Disorder” (2014) 1 *Neurobiol Stress* 89–99. Also see generally: Oehme & Stern, *supra* note 12; Austin 2013, *supra* note 27.

<sup>236</sup> See: Center for Substance Abuse Treatment (US) Chapter 3, *supra* note 22; Kolk, *supra* note 95; Kolk, *supra* note 95; Jasmeet Hayes, Michael VanElzakker & Lisa Shin, “Emotion and Cognition Interactions in PTSD: A Review of Neurocognitive and Neuroimaging Studies” (2012) 6 *Frontiers in Integrative Neuroscience*, online: <<https://www.frontiersin.org/articles/10.3389/fnint.2012.00089>>.

<sup>237</sup> Neuroplasticity refers to brain changes that help humans learn and adapt to their environments. However, when humans are placed in very stressful situations, like during traumatic experiences, some brain changes can result in lasting physical and mental health challenges. See generally: Iris-Tatjana Kolassa & Thomas Elbert, “Structural and Functional Neuroplasticity in Relation to Traumatic Stress” (2007) 16:6 *Curr Dir Psychol Sci* 321–325; Neuroscience News, “Adult-Born Neurons Grow More than their Infancy-Born Counterparts,” (22 June 2020), online: *Neuroscience News* <<https://neurosciencenews.com/adult-neuron-growth-16569/>>. Neuroplasticity also

recovery, it also creates a vulnerability to re-traumatization and the development of mental health conditions such as Post-Traumatic Stress Disorder.<sup>238</sup>

Ultimately, the impact of trauma on wellbeing extends beyond the neurological realm, as outlined previously in Chapter 2.5.a. For individuals who have experienced trauma, their overall sense of safety, trust, and self-esteem can be profoundly compromised.<sup>239</sup> Trauma can have many negative consequences, ranging from chronic physical health issues to substance misuse, suicidal ideation and death.<sup>240</sup>

Understanding the neuroscience of trauma is instrumental in wellbeing, self-development, emotional literacy and intelligence, professional and ethical responsibility, empathy, diversity, and inclusion.<sup>241</sup> Creating a wellbeing-informed educational environment and curriculum with a trauma-informed approach could detail how neural pathways are affected by trauma and the interventions that can promote healing, enhance emotional regulation, and rebuild a person's overall sense of wellbeing.<sup>242</sup> Such an understanding is necessary for law students to prepare for

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means that individuals have an opportunity to rewire their minds. See generally: Henson, Truchot & Canevello, *supra* note 193; Hanson 2013, *supra* note 29; Hanson & Mendius *supra* note 29; Davidson & McEwen, *supra* note 120. Also see Rick Hanson & Forest Hanson, *Resilient: How to Grow an Unshakable Core of Calm, Strength, and Happiness* (New York: Harmony Books, 2018). Dr. Rick Hanson is a psychologist whose work includes contemplative neuroscience and positive neuroplasticity. Interestingly, a Canadian neuropsychologist, Donald Hebb (1949), coined the phrase, “neurons that fire together, wire together.” See: Perry & Winfrey, *supra* note 23 at 73; Neuroscience News, “How Neurons That Wire Together Fire Together,” (23 December 2021), online: Neuroscience News <<https://neurosciencenews.com/wire-fire-neurons-19835/>>.

<sup>238</sup> See: Kolk, *supra* note 95; Kolk, *supra* note 95; Jitender Sareen, “Posttraumatic Stress Disorder in Adults: Impact, Comorbidity, Risk Factors, and Treatment” (2014) 59:9 Can J Psychiatry 460–467.

<sup>239</sup> See generally: Lanius, Terpu & McKinnon, *supra* note 95; Center for Substance Abuse Treatment (US) Chapter 3, *supra* note 22; Jones, Merrick & Houry, *supra* note 12; Felitti et al. *supra* note 12. Also, see generally: Christopher Alexandra Maul & Center for Health Care Strategies, *Key Ingredients for Successful Trauma-Informed Care Implementation* (Substance Abuse and Mental Health Services Administration (US), 2016).

<sup>240</sup> See generally: Cadieux et al., 2022 *supra* note 3 at 39; Julian D. Ford et al., “Traumatic Victimization, Posttraumatic Stress Disorder, Suicidal Ideation, and Substance Abuse Risk Among Juvenile Justice-Involved Youth” (2008) 1 Journal of Child & Adolescent Trauma 75–92; Felitti et al. *ibid*.

<sup>241</sup> See generally: Maki et al., *supra* note 229; Brown 2011, *supra* note 19; Katz & Haldar, *supra* note 53; Katz 2020, *supra* note 22; Katz 2022, *supra* note 42; Gemma Smyth, Dusty Johnstone & Jillian Rogin, “Trauma-Informed Lawyering in The Student Legal Clinic Setting: Increasing Competence in Trauma Informed Practice” (2021) 28:1 International Journal of Clinical Legal Education 149–194. Also see: Cadieux et al., Targeted Recommendations, *supra* note 224 wherein the report at table 5 reads: “[t]raining on vicarious trauma serves to raise awareness of this issue and to support professionals who have repeated exposure to traumatic material. It is important that training include a component on the warning signs of secondary trauma (e.g., repeated exposure to high emotional demands) so that professionals can recognize those signs in themselves and their colleagues.” Further, recommendation number 4 notes that “high emotional demands over time lead to many health issues, including compassion fatigue and vicarious trauma.”

<sup>242</sup> *Ibid*.

law practice. While having outlined the potentially devastating effects of trauma, it is vital to understand that post-traumatic growth can also result in healing and wisdom. The following section will explain.

#### 2.5.h. Post-Traumatic Growth

It is essential to understand that trauma is not an insurmountable obstacle; it can lead to post-traumatic growth, a process in which individuals overcome and grow from their trauma.<sup>243</sup> Post-traumatic growth is a transformative journey that can change one's perspective and worldview, offering the potential for resilience, self-discovery, and wisdom as a result of lived experience.<sup>244</sup>

Trauma studies have increasingly emphasized the importance of a person-centred approach that focuses on understanding individuals' unique narratives rather than fitting them into preconceived categories or frameworks.<sup>245</sup> A trauma-informed approach involves acknowledging

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<sup>243</sup> Netzel describes "post-traumatic growth" as "a transformational response to trauma - above and beyond mere resilience as a trauma outcome - and refers to changes in people that go beyond an ability to avoid being harmed by highly stressful circumstances; it involves a movement beyond pre-trauma levels of adaptation." Netzel continues to explain that "[a] trauma-informed approach recognizes the potential growth and wisdom born from trauma as a unique strength some trauma survivors may possess. It goes beyond stigmas often associated with those who have been victimized and takes a strengths-based approach to working with people who have experienced PTEs." The same is true with "vicarious resiliency." See: Netzel *supra* note 21 at 399-400. "The 'key influencing factors on symptoms of psychological trauma and the process to post-traumatic growth' were: 1) significant others, 2) environmental factors, 3) further traumas, 4) internal factors, 5) professional help, and 6) rehabilitation. See: Hulda S. Bryngeirsdottir & Sigridur Halldorsdottir, "The Challenging Journey from Trauma to Post-Traumatic Growth: Lived Experiences of Facilitating and Hindering Factors" (2022) 36:3 Scandinavian Journal of Caring Sciences 752-768; Henson, Truchot & Canevello, *supra* note 193 at 1 write that post-traumatic growth can include improved relationships, new possibilities for one's life, a greater appreciation for life, a greater sense of personal strength, and spiritual development." Henson, Truchot & Canevello at p. 4, 7-9, 16, 18 find that factors promoting post-traumatic growth include: "cognitive engagement," and "cognitive processing," "experience sharing and social support," utilizing "coping strategies," "resilience," and "growth actions." Clare Woodward & Stephen Joseph, "Positive Change Processes and Post-Traumatic Growth in People who have Experienced Childhood Abuse: Understanding Vehicles of Change" (2003) 76:3 Psychology and Psychotherapy: Theory, Research and Practice 267-283 found three domains that related to post-traumatic growth: "inner drive toward growth, vehicles of change, and psychological changes." Also see: Stephen Joseph, David Murphy & Stephen Regel, "An Affective-Cognitive Processing Model of Post-Traumatic Growth" (2012) 19:4 Clinical Psychology & Psychotherapy 316-325 at 322 wherein it states: "Event cognitions are subject to appraisal processes; the nature of which are determined by pre-existing assumptions about the self and the world, emotional states and coping activity." It further reads: "Reflective pondering allows for the person to begin to make meanings of his or her experience and to resolve discrepancies between the new trauma-related information and prior assumptive worlds."

<sup>244</sup> See: Joseph, Murphy & Regel, *ibid*; Henson, Truchot & Canevello, *ibid* at 1 write that post-traumatic growth "can include improved relationships, new possibilities for one's life, a greater appreciation for life, a greater sense of personal strength, and spiritual development."

<sup>245</sup> Instead of asking, "What is wrong with you?" ask, "What happened to you?" See: Perry & Winfrey, *supra* note 23; Karstoft & Armour, *supra* note 194; Sweeney et al., *supra* note 194.



the lived experiences of trauma survivors, including oneself, validating emotions and reactions, and finding meaning and healing in the survivor's way.<sup>246</sup> By recognizing trauma's subjective nature and moving beyond simplistic explanations or classifications, empathy can be exercised towards oneself and those affected by trauma while working towards building healthier communities based on empathy and understanding.<sup>247</sup>

In embracing diverse perspectives, practices, and approaches, post-traumatic growth can lead to meaningful change at individual, institutional, and societal levels.<sup>248</sup> Supporting post-traumatic growth can promote healing, create a more inclusive profession, and ultimately enhance the wellbeing of all legal professionals and their clients.<sup>249</sup> Thus, it is time to acknowledge trauma's significant impact on wellbeing and take proactive steps toward building a wellbeing-focused, trauma-informed legal community.

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<sup>246</sup> *Ibid.* Also see: Center for Substance Abuse Treatment (US), Trauma-Informed Care in Behavioral Health Services, "Trauma-Informed Care: A Sociocultural Perspective" in *Trauma-Informed Care in Behavioral Health Services* (Rockville, MD: Substance Abuse and Mental Health Services Administration (US), 2014) Chapter 1.

<sup>247</sup> See Cadieux et al., 2022 *supra* note 3, who outlines the difference between "empathy" and "compassion" at 138. They write: "As opposed to empathy, compassion increases the activity of brain areas involved in dopaminergic reward and oxytocin-related affiliative processes and enhances positive emotions in response to adverse situations. (Klimecki et al., 2013). Despite the satisfaction derived from compassion, legal professionals may also gradually drain their emotional resources until they experience burnout from this compassion; this applies to 56.2% of participants. In some more extreme cases, exposure to suffering can draw professionals into secondary traumatic stress, whereby they involuntarily and continuously recall the suffering of their clients, even to the point of dreaming about it or experiencing intrusive thoughts. Although less common, this phenomenon still affects 26.8% of the 4,854 participants working with clients. This means that more than one in four legal professionals are exposed to secondary traumatic stress." The researchers note that the secondary traumatic stress in legal professionals is less than that experienced by nurses. Also see generally: Center for Substance Abuse Treatment (US), Chapter 1, *ibid*; Shawn Ginwright, "The Future of Healing: Shifting from Trauma Informed Care to Healing Centered Engagement," (9 December 2020), online: *Medium* <<https://ginwright.medium.com/the-future-of-healing-shifting-from-trauma-informed-care-to-healing-centered-engagement-634f557ce69c>>.

<sup>248</sup> See generally: Joseph, Murphy & Regel, *supra* note 243. Also, regarding the stories one tells oneself and their effect on the self and others: Harold R. Johnson, *The Power of Story: On Truth, the Trickster and New Fictions for A New Era* (Windsor, ON: Biblioasis, 2022).

<sup>249</sup> See generally: James 2020, *supra* note 21; Oehme & Stern, *supra* note 12; McCallum, *supra* note 53; Katz & Haldar, *supra* note 53; Katz 2020, *supra* note 22; Katz 2022, *supra* note 21; Leclerc, Wemmers & Brunet, *supra* note 21; Léonard, Saumier & Brunet, *supra* note 21; Maguire & Byrne, *supra* note 21; Pena, *supra* note 53; Randall & Haskell, *supra* note 53; Smyth, Johnstone & Rogin, *supra* note 241; Weir et al., *supra* note 21; Weir, Jones & Sheeran, *supra* note 21; Cadieux et al., Targeted Recommendations, *supra* note 224. Also, see generally: Kristine Olson, Tait Shanafelt & Steve Southwick, "Pandemic-Driven Posttraumatic Growth for Organizations and Individuals" (2020) 324:18 JAMA 1829–1830. Canada has published a Public Safety plan for traumatic stress injuries for its employees, including a recommendation to "[e]xplore new, innovative, and multidisciplinary treatment options, including Internet-based Cognitive Behavioural Therapy." See: Public Safety Canada, *supra* note 12 at 12. Also see generally: Berman et al., *supra* note 54; Public Health Agency of Canada, *Federal Framework on Posttraumatic Stress Disorder: Recognition, Collaboration and Support* (Government of Canada, 2020); Mental Health Commission of Canada, *Guidelines for Recovery-Oriented Practice: Hope, Dignity. Inclusion.* (Mental Health Commission of Canada., 2015).

## 2.6. Conclusion

In conclusion, wellbeing is a subjective experience of physical, emotional, intellectual, social, and spiritual health with a sense of hope for the future, enabling people to “connect, function, cope and thrive.”<sup>250</sup> Five dimensions of wellbeing were reviewed in this chapter, beginning with the foundation of health physical wellness, followed by emotional, intellectual, social, and spiritual health.<sup>251</sup> Chapter 2.2 outlined that the dimensions of wellbeing are complexly interconnected.<sup>252</sup>

Chapter 2.3 defined “mental health” as an integral component of an individual’s overall wellbeing and refers explicitly to an individual’s psychological, emotional, and social stability, which affects thoughts, behaviour, and attitudes.<sup>253</sup> Experiencing mental health entails effectively managing and responding to life’s challenges, maintaining healthy relationships, coping with stress, and achieving a sense of fulfillment and purpose.<sup>254</sup> Mental health was distinguished from a “mental health condition,” a diagnosed condition that refers to a wide range of disorders that can affect a person’s mental and emotional functioning over a prolonged

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<sup>250</sup> As previously mentioned, there is no universally accepted definition of “wellbeing.” See: Dodge et al., *supra* note 15. Mental health influences wellbeing. See: World Mental Health Report, *supra* note 1 at 13. Also see: Seligman 2011, *supra* note 15; Buchanan & Coyle, *supra* note 11 at p. 9. Subjective wellbeing is often referred to as “happiness.” See: Diener, Scollon & Lucas, *supra* note 15. Subjective wellbeing reflects an overall evaluation of a person’s life quality from her or his own perspective. See: Diener, Lucas & Oishi, *supra* note 15. Also see generally: Centers for Disease Control and Prevention, *supra* note 15; Kahneman, Diener & Schwartz, *supra* note 15. Thriving entails achievement and “being all one can be” (also referred to as “self-actualization”). See: Maslow, *supra* note 15. Also see generally: Frankl, *supra* note 15; Brown, *supra* note 15; Csikszentmihalyi, *supra* note 15; Rubin, *supra* note 15. Hope is essential for flourishing and wellbeing. See: Lee & Gallagher, *supra* note 15, Seligman 2018, *supra* note 15; Williams, *supra* note 15. “Hope” improved wellbeing among college students during the pandemic. See: Genç & Arslan, *supra* note 15. Culture affects wellbeing. See: Diener (Science), *supra* note 15. Lawyers have the same mental health and wellbeing needs as everyone else. See: Krieger & Sheldon 2015, *supra* note 15.

<sup>251</sup> See: Buchanan & Coyle, *ibid*.

<sup>252</sup> See: Umberson & Montez, *supra* note 79; Naylor et al., *supra* note 79; Allemang et al., *supra* note 79.

<sup>253</sup> Mental health is often used interchangeably with “psychological health. Mental health and mental health problems are “subjective.” See: Gross, Uusberg & Uusberg, *supra* note 17; Taschereau-Dumouchel et al., *supra* note 17. “Mental health is all about how people think, feel, and behave.” See: Felman & Tee-Melegrito, *supra* note 17; Also see: World Mental Health Report, *supra* note 1; Galderisi et al., *supra* note 17. Also see generally: Westerhof & Keyes, *supra* note 17; Substance Abuse and Mental Health Services Administration, *supra* note 17; Public Health Agency of Canada, *supra* note 17; World Health Organization, *supra* note 17. Social connection and belonging are vital for mental health. See generally: Kubzansky, Epel & Davidson, *supra* note 17. Also see generally: Maslow, *supra* note 15; Frankl, *supra* note 15; Brown, *supra* note 15; Csikszentmihalyi, *supra* note 15; Dweck, *supra* note 15; Rubin, *supra* note 15.

<sup>254</sup> See: Public Health Agency of Canada, *ibid*; *Mental Health First Aid*, *supra* note 69; Seligman 2011, *supra* note 15; Keyes & Haidt, *supra* note 133; Keyes, Shmotkin & Ryff, *supra* note 133; Gable & Haidt, *supra* note 133.

period.<sup>255</sup> Furthermore, Chapter 2.3 explained how a person may experience a “mental health problem” without an official diagnosis.

Chapter 2.3 outlined how mental and physical health are interconnected.<sup>256</sup> Physical health can affect mental health and the other way around. Mental health affects social connection and belonging, productivity, success, and overall quality of life.<sup>257</sup> Mental health also plays a critical role in shaping cognitive abilities, concentration, memory, and problem-solving skills.<sup>258</sup>

Chapter 2.4 outlined how emotions significantly influence wellbeing and mental health.<sup>259</sup> Defined as complex psychological and physiological responses in response to various stimuli or situations, emotions play a significant role in guiding thoughts, behaviours, and perceptions.<sup>260</sup> Emotion influences decision-making processes and facilitates connection to others, and individuals can develop self-awareness and introspection through acknowledging and identifying emotions.<sup>261</sup> The significant impact of emotion on wellbeing and mental health cannot be overstated.

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<sup>255</sup> See generally: Walvisch, *supra* note 83; DSM-5-TR, *supra* note 2; Almeida et al., *supra* note 139.

<sup>256</sup> See: Allemang et al., *supra* note 79.

<sup>257</sup> Mental health affects social connection and belonging. See: Umberson & Montez, *supra* note 79. Also, see generally: Cohn-Schwartz, *supra* note 150. It also affects productivity, success, and overall quality of life. See: Rajgopal, *supra* note 153; Boehm & Lyubomirsky, *supra* note 114; Walsh, Boehm & Lyubomirsky, *supra* note 114.

<sup>258</sup> See: Miles et al., *supra* note 43.

<sup>259</sup> See generally: Gross, Uusberg & Uusberg, *supra* note 17; Goldie, *supra* note 18; Brown 2021, *supra* note 18; Oatley, *supra* note 18.

<sup>260</sup> See generally: Scarantino, *supra* note 18; Dixon, *supra* note 18; Gendron, *supra* note 18; Berrios, *supra* note 18. ‘Emotions’ includes the entire range of human emotions that may be experienced per its common usages in the relevant literature. See generally: Goldie, *supra* note 18. Also, see generally: Adolphs, *supra* note 18. ‘Emotion’ denotes a particular “emotional episode” (e.g., love, hope, sadness) appropriate to the context of its usage. See: Oatley, *supra* note 18. “Emotional” refers to the presence or application of emotion within a specific situation or experience. See generally: Barrett et al., *supra* note 18; Šimić et al., *supra* note 18; Hwang & Matsumoto, *supra* note 18; Zadra & Clore, *supra* note 18; Siegel et al., *supra* note 18. Also, see generally: Barrett 2018, *supra* note 18; Niedenthal & Wood, *supra* note 18; Izard, *supra* note 18. Emotion affects decision-making, learning & memory. See: Muir, *supra* note 19; Friedland, *supra* note 19; Tiscione, *supra* note 19; Austin 2019, *supra* note 19. Also see: Damasio, *supra* note 19; Brown 2013, *supra* note 19; Clore & Huntsinger, *supra* note 19; Tyng et al., *supra* note 19; Fenton-O’Creevy et al., *supra* note 19; Hopkins & Deepa, *supra* note 19; Phelps, Lempert & Sokol-Hessner, *supra* note 19; Garfinkel et al., *supra* note 19; Jung et al., *supra* note 19; Lakomski & Evers, *supra* note 19; Lench, Flores & Bench, *supra* note 19; Naqvi, Shiv & Bechara, *supra* note 19; Lerner et al., *supra* note 19; Slovic, *supra* note 19; Côté-Lussier & David, *supra* note 19.

<sup>261</sup> See: Muir, *ibid*; Brown 2011, *supra* note 19; Clore & Huntsinger, *ibid*; Fenton-O’Creevy et al., *ibid*; Friedland, *ibid*; Garfinkel et al., *ibid*; Jung et al., *ibid*; Lakomski & Evers, *ibid*; Lench, Flores & Bench, *ibid*; Slovic, *ibid*; Tiscione, *ibid*; Barrett et al., *ibid*. Emotion facilitates connection to others. See: Erbas et al., *supra* note 19; Eslinger et al., *supra* note 19; Barsade, *supra* note 19; Chartrand & Bargh, *supra* note 19; Lindquist, Satpute & Gendron, *supra* note 19. Acknowledging and identifying emotions can hone self-awareness and introspection. See Salzen, *supra* note 19. Also, see generally: Eurich, *supra* note 19.

Chapter 2.5 addressed trauma apart from the other factors detrimental to wellbeing because trauma is the most widespread and detrimental factor affecting mental health. This chapter first outlined how categorizing, dichotomizing or objectifying trauma fails to capture what trauma is accurately. Trauma is defined as a psychological, emotional, and sometimes physical “response” to an event or circumstances beyond what one can cope with.<sup>262</sup> Trauma has been explained as a profoundly subjective experience that involves intense emotion and the experience of feeling overwhelmed, resulting from event(s) or circumstance(s) that ultimately cause harm to an individual’s wellbeing and mental health.<sup>263</sup> Recognizing this subjectivity is crucial in providing practical support and healing for oneself and those who have experienced trauma which can have a crushing effect on mental health and wellbeing.<sup>264</sup> Trauma is a widespread public health issue.

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Chapter 2.5.d. discussed the only study published to date which in assessing law students’ distress also inquired about experiences with trauma.<sup>266</sup> That American study revealed startling rates of trauma among law students as well as trauma being a motivating factor in attending law school.<sup>267</sup> Additionally, there is strong evidence to suggest that once students enter their legal careers, they will be at a high risk of being exposed to or experiencing trauma.<sup>268</sup> Acting in the

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<sup>262</sup> See generally: Katz 2020, *supra* note 22; US Department of Veteran Affairs, *supra* note 22; SAMHSA, *supra* note 22. Trauma is a psychological and emotional response to an event or a series of events that exceeds one's ability to cope or process effectively. See: Center for Substance Abuse Treatment Chapter 2, *supra* note 23; Center for Substance Abuse Treatment (US) Exhibit, *supra* note 216. Post-traumatic stress disorder (PTSD) is assessed through the diagnostic criteria. See: DSM-5-TR, *supra* note 2. Also see generally: Friedman, *supra* note 22.

<sup>263</sup> See generally: Perry & Winfrey, *supra* note 23; Friedman, *supra* note 22; The Jed Foundation, *supra* note 23; Center for Substance Abuse Treatment (US) Chapter 3, *supra* note 22. Regarding a language for emotion, see: Brown 2021, *supra* note 18.

<sup>264</sup> See: SAMHSA, *supra* note 22; Center for Substance Abuse Treatment (US) Chapter 3, *supra* note 22. Also see generally: Perry & Winfrey, *ibid*; Bremner, *supra* note 95; Lanius, Terpou & McKinnon, *supra* note 95; Wilson, Lonsway & Archambault, *supra* note 95; Kolk, *supra* note 95; Kolk, *supra* note 95; Harvard Health, *supra* note 95.

<sup>265</sup> See generally: Young 2023, *supra* note 205; Koenen et al., *supra* note 12; Van Ameringen et al., *supra* note 12; Heidinger, *supra* note 12; Mills et al., *supra* note 12; Kessler et al., *supra* note 12. See: Public Safety Canada, *supra* note 12 at 12. Also see generally: Mental Health Commission of Canada, *supra* note 249.

<sup>266</sup> See: Jaffe, Bender & Organ, *supra* note 21.

<sup>267</sup> *Ibid*.

<sup>268</sup> See generally: Cadieux et al., Targeted Recommendations, *supra* note 224; Leclerc, Wemmers & Brunet, *supra* note 21; Léonard, Saumier & Brunet, *supra* note 21; Oehme & Stern, *supra* note 12; Maguire & Byrne, *supra* note 21; Weir et al., *supra* note 21; Weir, Jones & Sheeran, *supra* note 21; James 2020, *supra* note 21; Love, *supra* note 182; Gold, *supra* note 190.

public interest with competence and in the pursuit of diversity and inclusion requires action and education on wellbeing utilizing a trauma-informed methodology in legal education.<sup>269</sup>

Chapter 2.5.g. explained the neuroscience of trauma in the most basic terms. The neuroscience of trauma revealed that structural changes in the brain can occur, resulting in impairment of decision-making and impulse control and hindering effective emotional regulation.<sup>270</sup> Trauma can also result in numerous negative consequences, including chronic physical health issues, substance abuse, suicidal ideation and death.<sup>271</sup> Neuroplasticity is the brain's ability to adapt and change, which can be beneficial and detrimental in the aftermath of trauma.<sup>272</sup> Chapter 2.5.h. explained how trauma survivors can experience post-traumatic growth, leading to healing, improved wellbeing and wisdom gained through their lived experience. Understanding trauma and the neuroscience of trauma are instrumental in wellbeing, self-development, emotional literacy and intelligence, professional and ethical responsibility, diversity, and inclusion.

Creating a wellbeing-focused educational environment and curriculum that is also trauma-informed could detail how neural pathways are affected by trauma and the interventions that can

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<sup>269</sup> Responding to the Truth & Reconciliation's Call to Action twenty-eight and the objective of diversity and inclusion requires action that recognizes intergenerational trauma, and that racism and discrimination can cause trauma. See: TRC Report, *supra* note 25; TRC Calls, *supra* note 25; McCallum 2024, *supra* note 53. See generally: Matheson et al., *supra* note 2; Ford et al. 2008, *supra* note 240; Jackson, *supra* note 191. Also see generally: Williams et al., *supra* note 31; Bailey et al., *supra* note 31; Berger & Sarneyai, *supra* note 31; Williams, *supra* note 31; Shonkoff, Slopen & Williams, *supra* note 31; Robert J. Miller, "The Doctrine of Discovery: The International Law of Colonialism" (2019) 5:1 The Indigenous Peoples' Journal of Law, Culture & Resistance, online: <<https://escholarship.org/uc/item/3cj6w4mj>>. Also see: "Vatican Formally Rejects 'Doctrine of Discovery' after Indigenous Calls," (30 March 2023), online: *PBS NewsHour* <<https://www.pbs.org/newshour/politics/vatican-formally-rejects-doctrine-of-discovery-after-indigenous-calls>>. Regarding adopting Indigenous ways of knowing within legal education see generally: Honourable Robert J. Bauman, *A Duty to Act: Remarks of the Honourable Robert J. Bauman, Chief Justice of British Columbia* (Vancouver: Court of Appeal for British Columbia, 2021); Scott J. Franks, *Towards Implementing the Truth and Reconciliation Commission's Calls to Action in Law Schools: A Settler Harm Reduction Approach to Racial Sterotyping and Prejudice Against Indigenous Peoples and Indigenous Legal Orders in Canadian Legal Education*. Osgoode Hall Law School York University, 2020) [unpublished]; John Borrows, "Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government John Borrows" in *Aboriginal and Treaty Rights in Canada: Essays on Law, Equity, and Respect for Difference* (Vancouver: UBC Press, 1997) 169.

<sup>270</sup> See: Bremner, *supra* note 95; Kredlow et al., *supra* note 233; Arnsten et al., *supra* note 235. Also see generally: Oehme & Stern, *supra* note 12; Austin 2013, *supra* note 27.

<sup>271</sup> See generally: Center for Substance Abuse Treatment (US) Chapter 3, *supra* note 22; Jones, Merrick & Houry, *supra* note 12; Felitti et al. *supra* note 12; Maté 2018, *supra* note 31; Guinle, Barros & Sinha, *supra* note 213; Haller & Chassin, *supra* note 213; Breslau, Davis & Schultz, *supra* note 213; Cadieux et al., 2022 *supra* note 3; Polskaya & Melnikova, *supra* note 214; Farber, *supra* note 214; Ford 2008 et al., *supra* note 224.

<sup>272</sup> See generally: Kolassa & Elbert, *supra* note 237; Henson, Truchot & Canevello, *supra* note 193; Hanson 2013, *supra* note 29; Hanson & Mendius *supra* note 29; Austin 2013, *supra* note 27.

promote healing, enhance emotional regulation, and facilitate rebuilding a person's overall sense of well-being. This could improve one's wellbeing as well as the wellbeing of those around them. The definitions and concepts set out in this chapter create the foundation for Chapters 4 and 5, which discuss the mental health crisis in law through a cross-jurisdictional examination of studies on law students and legal professionals' distress.

However, before a review of the studies on law students and legal professionals' mental health, Chapter 3 will outline similar experiences, practices, attitudes, and beliefs in law schools in each jurisdiction. Calls for "cultural change" within law schools and the legal profession require a review of the experiences, practices, attitudes, and beliefs shaping the law culture. In 2017, the American Bar Association wrote, "[l]aw schools should develop best practices for creating a culture in which all associated with the school take responsibility for student wellbeing."<sup>273</sup> Australia, the United Kingdom and Canada have also echoed calls for cultural change within the law.<sup>274</sup>

While there is no single, universally accepted definition of "culture," it has been defined as "the shared way of life of a large group of people, where there are many dimensions of diversity (e.g., ethnicity, gender, beliefs)."<sup>275</sup> In *Ewert v. Canada*, Dr. Hart, a psychologist testifying as an expert witness, defined "culture" as:

[a]n inchoate concept consisting of the sum of shared experiences, beliefs, norms, family and relationships, structures, values and so forth. While culture cannot be vigorously defined, it is an indispensable concept. Membership in a culture or cultural subgroup is

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<sup>273</sup> See: Buchanan & Coyle, *supra* note 11 at 36. Also see: Schmitz, *supra* note 2.

<sup>274</sup> In Australia, see: Chan, Poynton & Bruce, *supra* note 7; Cubillo, *supra* note 41; Chan, *supra* note 66; Brasch QC, *supra* note 68. In the United Kingdom, see: The Law Society, Junior Lawyers Division, *supra* note 31; The Law Society (UK) 2021, *supra* note 68; The Law Society (UK) 2022, *supra* note 68; Rimmer, *supra* note 66; People in Law, *supra* note 68. In Canada, see: Greenberg & Stanford, *supra* note 11 at 4; Ipsos Reid, *supra* note 11 at 4; Roderique, *supra* note 41. Also, see generally: Canning et al., *supra* note 68 at 626. Regarding "mindsets" see generally: Dweck, *supra* note 15. Regarding "mindset" and mental health see: Edward Béchar-Torres, "Feeling Inadequate: Reframing the Mindsets of Legal Education to Promote Mental Health" (2021) 44:2 Manitoba Law Journal 66; Brooks et al., *supra* note 41.

<sup>275</sup> See: Stefanie Schmidt, Roxanne Heffernan & Tony Ward, "Why We Cannot Explain Cross-Cultural Differences in Risk Assessment" (2020) 50 Aggression and Violent Behavior 101346–12 at 3 citing Berry, J. W., Poortinga, Y. H., Breugelmans, S. M., Chasiotis, A., & Sam, D. L. (2011). *Cross-Cultural Psychology: Research and Applications* (3rd ed.). Cambridge, New York: Cambridge University Press.

defined and assessed by the subjective participation or adherence of an individual to that culture or cultural subgroup.<sup>276</sup>

For this thesis, “culture” is a group of people’s shared experiences, practices, attitudes, and beliefs. This thesis now examines the shared culture within law schools in the United States, Australia, England and Wales, and Canada. Next, Chapter 4 will outline the studies on law students’ psychological distress, followed by a review of the studies on legal professional’s psychological distress in Chapter 5.

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<sup>276</sup> 2015 FC 1093 (CanLII), <<https://canlii.ca/t/gl9d9>>, retrieved on 2023-09-05 at para. 30.

## Chapter 3: The Shared Experiences, Attitudes, Practices, and Beliefs in Law Schools: The United States, Australia, England & Wales, & Canada

### 3.1 Introduction

This chapter examines the shared experiences, attitudes, practices, and beliefs from four common law jurisdictions. The common law jurisdictions of the United States, Australia, the United Kingdom, and Canada were chosen to assess if law students' psychological distress is experienced similarly in each country due to the lack of studies available in Canada. Canada has only three studies on law student wellbeing. Two of the studies were conducted at only one institution: McGill University.<sup>277</sup> The third Canadian study included law students and legal professionals.<sup>278</sup> Only one of the Canadian studies, published in 1997, utilized any psychometric measurement regarding the psychological distress experienced by law students.<sup>279</sup> This thesis is prepared in Canada and seeks to attract the attention of Canadian law schools despite the comparisons drawn from other jurisdictions.

The focus of this thesis is specifically on common law education at accredited law schools for national applicants.<sup>280</sup> Since the United Kingdom includes England and Wales, Scotland, and Northern Ireland, as well as numerous smaller islands, for brevity, this thesis focuses on the similar experiences, practices, attitudes, and beliefs at common law accredited law schools in England and Wales alone.<sup>281</sup> Similar experiences, practices, attitudes, and beliefs in law schools in the United States, Australia, England, Wales, and Canada are outlined in the following sections.

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<sup>277</sup> See: Helmers et al., *supra* note 3; McGill, *supra* note 3.

<sup>278</sup> See: Ipsos Reid, *supra* note 11.

<sup>279</sup> See: Helmers et al., *supra* note 3. The researchers used the Derogatis Stress Profile (DSP), which measures environmental factors, personality mediators and emotional responses to stress as well as measuring subjective stress. The DSP score demonstrates 11 dimensions: time pressure, driven behaviour, attitude posture (achievement ethic), relaxation potential, role definition, vocational environment, domestic environment, hostility, anxiety, and depression. The DSP is 77 itemized statements rated from 0-4, where "0" means "not true" and "4" means "extremely true."

<sup>280</sup> Most law schools in each of these countries are accredited with mandated learning outcomes and course requirements. In the United States, see: ABA Standards, *supra* note 28. In Australia, see: CALD, *supra* note 28; AU Threshold Learning Outcomes, *supra* note 28. In England & Wales, see: UK QAA 2019, *supra* note 28; UK QAA 2023, *supra* note 28; Academic Stage Handbook, *supra* note 28. In Canada, see: CDA Nat'l Rqmt., *supra* note 28.

<sup>281</sup> See generally: "United Kingdom," online: *Commonwealth* <<https://thecommonwealth.org/our-member-countries/united-kingdom>>.



This thesis argues that the parallels between the experiences, practices, attitudes, and beliefs in these countries establish that, while there are few Canadian studies on law student wellbeing, the results of studies from the United States, Australia and the United Kingdom are likely to be replicated in Canada, if such studies were undertaken.<sup>282</sup> Furthermore, it is more than likely that Canadian law students are at a heightened risk of trauma and psychological distress because of their shared experiences, practices, attitudes, and beliefs. Finally, shared experiences, practices, attitudes, and beliefs are compared to ascertain potential causes for law students' psychological distress and to provide law schools with "targets" for intervention.

The examination reveals some fundamental parallels. All accredited law schools are "gateways to the profession."<sup>283</sup> As such, all law schools and the legal profession value diversity and inclusion.<sup>284</sup> Furthermore, the fact that potential lawyers, regardless of jurisdiction, must

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<sup>282</sup> This thesis advocates for wellbeing-focused, trauma-informed legal education, and as part of wellbeing focused, research on law student wellbeing should be more thoroughly conducted in Canada. The longitudinal study should include prelaw student wellbeing to two years post-graduation. The study should include a large sample size with a minimum of three law schools from western, central, and eastern Canada. Demographics should be taken including sexual and cultural identity. Law students' well-being should be compared to the general population and students in other faculties. Furthermore, psychometric measurement scales should be utilized to assess wellbeing or psychological distress and substance use. Students should be asked about motivations for attending law school and changes in motivation should be assessed pre-law school and throughout the term of legal education. Students should also be asked about substance-use and trauma.

<sup>283</sup> In the United States, see: ABA Standards, *supra* note 28, s 301(a) reads: "A law school shall maintain a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession." In Australia, see: CALD, *supra* note 28, s 2.3.1. reads: "The curriculum includes coverage of all of the academic requirements specified for the purposes of admission to practise as a lawyer in Australia." Also see generally: AU Threshold Learning Outcomes, *supra* note 28. In England & Wales, see: Academic Stage Handbook, *supra* note 28, Appendix 1, s 2.i. reads: "The institution providing the course of study satisfies the professional bodies [Law Society and the Bar Council] that adequate learning resources are provided to support the course of study, the professional bodies having regard to any advice of the Joint Committee on Standards in Legal Education or similar successor body. Also see generally: UK QAA 2019, *supra* note 28; UK QAA 2023, *supra* note 28. However, just recently, in 2021, aspiring solicitors in England and Wales no longer require a law degree. See generally: "Green Light for New Solicitor Exam," (28 October 2020), online: *Solicitors Regulation Authority* <<https://www.sra.org.uk/sra/news/press/2020-press-release-archive/sqe-approved-lsb/>>. In Canada, see: CDA Nat'l Rqmt., *supra* note 28, s C reads: "The Federation will accept an LL.B. or J.D. degree from a Canadian law school as meeting the competency requirements if the law school offers an academic and professional legal education that will prepare the student for entry to a bar admission program and the law school."

<sup>284</sup> In the United States, see: ABA Standards, *ibid* s 303 (a)(1), 303 (c)1–2, Interpretation 303-6. Also, see: ABA Model Code, *supra* note 28 r 8.4(g). In Australia, see: CALD, *ibid*, s 2.3.3 (a), 2.3.3 (d); AU Threshold Learning Outcomes, *ibid* at 10 and Threshold Learning Outcome (TLO) 2. For solicitors in Australia, see: AU Solicitor Rules, *supra* note 28 s. 42. For barristers in Australia, see: AU Barrister Uniform Rules, *supra* note 28 s. 123. In England & Wales, see: UK QAA 2019, *supra* note 28 s 2.4.iii; UK QAA 2023, *supra* note 28 s 1.6-1.8. For barristers in the UK, see: BSB Handbook, *supra* note 28 Core Duty 8. For solicitors in the UK, see: SRA Solicitor Code, *supra* note 28 s 1.1. Also, see: UK Legal Services Act, *supra* note 28 s 1, Equality Act, *supra* note 28. In Canada, see: CDA Nat'l Rqmt., *supra* note 28 s 2, 3.2. a.: CDA Model Code, *supra* note 28, r 6.3.

demonstrate they are of “good character” to be admitted to the relevant bar or law society is not lost in the equation of providing legal education.<sup>285</sup> Finally, legal education certainly does not ignore that each law society or bar association, including its members, must act in the public interest.<sup>286</sup>

Some shared experiences, attitudes, practices, and beliefs may affect the wellbeing of law students and legal professionals. These commonalities include a history involving colonization.<sup>287</sup> As a result of a historical and colonial-based legal structure and deeply entrenched beliefs, marginalized peoples, including women, face stigmas and discrimination, leading to the fact that equality within the profession has yet to be achieved.<sup>288</sup> Furthermore, law

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<sup>285</sup> In the United States, see: ABA Standards, *supra* note 28, s 504. In Australia, see: Legal Profession Act 2006, *supra* note 52, s 11, 22; *Legal Profession Uniform Admission Rules 2015*, ACT, 2015 r 17. In the UK, see: BSB Memorandum, *supra* note 28, schedule 1. In Canada, see generally: SK Legal Profession Act, *supra* note 231. Also, see generally: Alice Woolley, “Tending the Bar: The ‘Good Character’ Requirement for Law Society Admission. (Canada)” (2007) 30:1 Dalhousie Law Journal 27–77.

<sup>286</sup> In the United States, Bar Associations are governed through state legislation. Each state has a version of a state bar act. For example, in California, see: The State Bar Act, *supra* note 231. Also, see generally: Sullivan, *supra* note 27. In Australia, see: Legal Profession Act 2006, *supra* note 52, s 6. In the UK, see: UK Legal Services Act, *supra* note 28, s 1. In Canada, Law Societies are governed provincially or territorially. In Saskatchewan, see: SK Legal Profession Act, *ibid* s. 3.1., 3.2. Also, see generally: Pearson, *supra* note 231.

<sup>287</sup> Colonialism is not only a past event, but it left ruminants of practices, attitudes and beliefs within structures and people. See: Czyzewski, *supra* note 2. Glenn, *supra* note 25; J. Kēhaulani Kauanui, “‘A Structure, not an Event’: Settler Colonialism and Enduring Indigeneity” (2016) 5:1 *Lateral*, online: <<https://csalateral.org/issue/5-1/forum-alt-humanities-settler-colonialism-enduring-indigeneity-kauanui/>>. Colonization occurred in the United States, Canada, and Australia. In the United States, see: Rothstein, *supra* note 25; Krook, *supra* note 25; Agénor et al., *supra* note 40. Also see generally: Jonathan Andrew Perez, “Rioting by a Different Name: The Voice of the Unheard in the Age of George Floyd, and the History of the Laws, Policies, and Legislation of Systemic Racism” (2021) 24:1 *The Journal of Gender, Race, and Justice* 87. In Australia, see: Martin, *supra* note 25; Beazley, *supra* note 25; Edgeloe, *supra* note 25; Cunneen, *supra* note 41; Watson, *supra* note 41. In Canada, see: Miller, *supra* note 269; Backhouse, *supra* note 25; Pue 2016, *supra* note 25. Also see generally: Hon. John McKay, *Systemic Racism in Policing in Canada: Report of the Standing Committee on Public Safety and National Security*, (Ottawa: House of Commons, 43rd Parliament, 2nd Session, 2021); TRC Report, *supra* note 25; TRC Calls, *supra* note 25; MMIWG, *supra* note 25; Roderique, *supra* note 41; Jeffrey S. Denis, *Canada at a Crossroads: Boundaries, Bridges, and Laissez-Faire Racism in Indigenous-Settler Relations* (Toronto: University of Toronto Press, 2020); Government of Canada, “Part I – Systemic Racism and Discrimination in the Defence Team: Origins and Current Reality,” (25 April 2022), online: *Government of Canada* <<https://www.canada.ca/en/department-national-defence/corporate/reports-publications/mnd-advisory-panel-systemic-racism-discrimination-final-report-jan-2022/part-i-systemic-racism.html>>; Brenda L. Gunn & Robin Hall, *Ignored to Death: Systemic Racism in the Canadian Healthcare System: Submission to EMRIP the Study on Health*, (Canada: United Nations, 2016). In the UK, see generally: Adebisi 2021, *supra* note 25; Adebisi 2020, *supra* note 25; Sven Lindqvist, *Exterminate All the Brutes: One Man’s Odyssey into the Heart of Darkness and the Origins of European Genocide*, translated by Joan Tate (New York & London: The New Press, 1996). But see: David Child, “UK Report Denies Systemic Racism, Prompting Angry Backlash,” (31 March 2021), online: Aljazeera <<https://www.aljazeera.com/news/2021/3/31/uk-race-report-says-system-not-rigged-against-minorities>>.

<sup>288</sup> In the United States see: Liebenberg & Scharf, *supra* note 41; Sterling & Chanow, *supra* note 41. In Australia, see: Thornton 1998, *supra* note 41; Collier, *supra* note 41; Ragusa & Groves, *supra* note 41; Thornton 2014 *supra* note 41. In England & Wales, see: Pender, *supra* note 10; Sommerland, *supra* note 41; BSB, *supra* note 41;

schools and the legal profession have a long-held belief that law is neutral, objective and rational, thus making emotion irrelevant to the law.<sup>289</sup> Students in all countries also experience intense competition.<sup>290</sup> The workload at law school and within the legal profession is notorious in all jurisdictions.<sup>291</sup> Notably, law students' mental health and wellbeing have only recently become a concern law schools are beginning to address.<sup>292</sup>

This thesis outlines these countries' analogous experiences, practices, attitudes, and beliefs that may influence wellbeing. The similarities are reviewed in the following sections under three subchapters. Chapter 3.2 outlines the history of colonialization and the devaluation of emotion within the law. Chapter 3.3 outlines the experience of competition and intense workload among law students. Finally, Chapter 3.4 describes law school as the "gateway to the profession," sharing similar core courses and learning outcomes, including ethics, despite geographical location.

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Sommerland et al., *supra* note 41. In Canada, see: Cadieux et al., 2022 *supra* note 3; Roderique, *supra* note 41. Also, see: Backhouse 2013, *supra* note 41; Henry, *supra* note 41; Allen 2021, *supra* note 25; Bailey 2016, *supra* note 41; Franks, *supra* note 41; TRC Report, *supra* note 25; TRC Calls, *supra* note 25; MMIWG, *supra* note 25; Bilson, *supra* note 41.

<sup>289</sup> In the United States, see generally: Llewellyn, *supra* note 25 at 101; Tully, *supra* note 25; Muir, *supra* note 19; Friedland, *supra* note 19; Montgomery, *supra* note 19; Douglas, *supra* note 19; Jones 2018, *supra* note 19; Tiscione, *supra* note 19; Allen 2021, *supra* note 25; Maroney 2006, *supra* note 42. In Australia, see: Grossi, *supra* note 25; Bailey & Knight, *supra* note 25. In England & Wales, see: Jones Law School 2020, *supra* note 19; Adebisi 2020, *supra* note 25; Bradney, *supra* note 25. In Canada, see: Devlin, *supra* note 25; Pue 2016, *supra* note 25; Witten, *supra* note 25.

<sup>290</sup> See generally: Vai Io Lo, "Before Competition and Beyond Complacency - the Internationalisation of Legal Education in Australia" (2012) 22:1 Legal Education Review, online: <<https://ler.scholasticahq.com/article/6255-before-competition-and-beyond-complacency-the-internationalisation-of-legal-education-in-australia>>; Abiel Wong, "Boalt-ing Opportunity: Deconstructing Elite Norms in Law School Admissions Note" (1999) 6:2 Geo J on Poverty L & Pol'y 199–248; Esau, *supra* note 26; Boyd, *supra* note 26; Holmquist et al., *supra* note 26; Tong & Pue, *supra* note 26; Hathaway, *supra* note 26; Kidder, *supra* note 26; Kriekle, *supra* note 26; Stallman, *supra* note 27; Pritchard & McIntosh, *supra* note 5; Bergin & Pakenham, *supra* note 3.

<sup>291</sup> In the United States, see: Sheldon & Krieger 2004, *supra* note 4 at 262; Pritchard & McIntosh, *supra* note 5 at 729; Andrea M. Flynn, Yan Li & Bernadette Sánchez, "The Mental Health Status of Law Students: Implications for College Counselors" (2019) 22:1 Journal of College Counseling 2–12 at 262. Also, see generally: Austin 2013, *supra* note 27, Mertz, *supra* note 27; Sullivan, *supra* note 27; Costello, *supra* note 41; Deo, *supra* note 41. In Australia, see: Bergin & Pakenham, *ibid* at 400; Allen & Baron, *supra* note 26; Tani & Vines, *supra* note 27 at 6; Stallman, *supra* note 27. In England & Wales, see: Jones Law School 2020, *supra* note 19 at 131; Dresser, *supra* note 27. Also, see generally: Boon & Webb, *supra* note 27. Also, see generally: James et al., *supra* note 27; James, Strevens & Field, *supra* note 27. In Canada, see: Fitzgerald, *supra* note 27 at 70–72; McGill, *supra* note 3.

<sup>292</sup> In the United States, see: Buchanan & Coyle, *supra* note 11; Jordana Alter Confino, "Where are We on the Path to Law Student Well-Being?: Report on the ABA CoLAP Law Student Assistance Committee Law School Wellness Survey" (2019) 68:3 Journal of Legal Education 650–715. In Australia, see: AU Threshold Learning Outcomes, *supra* note 28, s 3.2; CALD, *supra* note 28, s 2.9.1. In England & Wales, see: UK QAA 2023, *supra* note 28, s 1.13. In Canada, see: CSA Group 2020, *supra* note 30.

### 3.2. The Experience of Colonization & the Traditional Belief that the Law is Neutral, Objective, and Rational

As mentioned in Chapter 1, the United States, Australia, and Canada inherited their laws, legal pedagogy, and practice from England through colonialism.<sup>293</sup> Colonialism is significant because the legal system was established based on concepts of superiority justified by science and law to obtain resources for settlers.<sup>294</sup> The legacy of colonialism lives on in current laws, policies, and institutions and is often referred to as “structural colonialism.”<sup>295</sup> Structural colonialism perpetuates stigmas as well as discrimination and racist practices, attitudes, and beliefs, which affect wellbeing and will be reviewed further in Chapter 6, addressing the factors detrimental to

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<sup>293</sup> In the United States, see: Rothstein, *supra* note 25; Krook, *supra* note 25; Agénor et al., *supra* note 40; Perez, *supra* note 287. In Australia, see: Martin, *supra* note 25; Beazley, *supra* note 25; Edgeloe, *supra* note 25; Cunneen, *supra* note 41; Watson, *supra* note 41. In the UK, see generally: Lindqvist, *supra* note 287; Adebisi 2021, *supra* note 25; Adebisi 2020, *supra* note 25. But see: Child, *supra* note 287. In Canada, see: Backhouse, *supra* note 25; Pue 2016, *supra* note 25; McKay, *supra* note 287; TRC Report, *supra* note 25; TRC Calls, *supra* note 25; MMIWG, *supra* note 25; Roderique, *supra* note 41; Denis, *supra* note 287; Government of Canada, *supra* note 287. Regarding colonialism see generally: Glenn, *supra* note 25; Miller, *supra* note 269; Kyle Whyte, “Settler Colonialism, Ecology, and Environmental Injustice” (2018) 9:1 Environment and Society 125–144; Michel-Rolph Trouillot, *Silencing the Past: Power and the Production of History* (Boston: Beacon Press, 2015).

<sup>294</sup> In the United States, see: Wilson, *supra* note 41; Harris, *supra* note 41; James, *supra* note 41. In Australia, see: Cubillo, *supra* note 41; Thornton, *supra* note 41; Watson, *supra* note 41; Falk, *supra* note 41; Bodkin-Andrews & Carlson, *supra* note 41; Bastos, Harnois & Paradies, *supra* note 41; Cunneen, *supra* note 41; Ragusa & Groves, *supra* note 41; Thornton 2014, *supra* note 41. In England & Wales, see: Pender, *supra* note 10; Sommerlad et al. 2002, *supra* note 41; Sommerlad et al. 2010, *supra* note 41; Sommerlad 2016, *supra* note 41; BSB, *supra* note 41; Adebisi 2021, *supra* note 25; Adebisi 2020, *supra* note 25. In Canada, see: Miller, *ibid*; Backhouse, *supra* note 25 at 5; Bailey, *supra* note 41; Franks 2022, *supra* note 41; RCAP 1996, *supra* note 25; TRC Report, *supra* note 25; MMIWG, *supra* note 25; Roderique, *supra* note 41; Bilson, *supra* note 41; Lavallee, *supra* note 41; Backhouse 2013, *supra* note 41; Cadieux et al., 2022 *supra* note 3; Pue 2016, *supra* note 25. Also see: Glenn, *supra* note 25; Allen, *supra* note 41. Also see generally: Patrick Wolfe, “Settler Colonialism and the Elimination of the Native” (2006) 8:4 Journal of Genocide Research 387–409; Delgado, *supra* note 41; Lindqvist, *supra* note 287; Adebisi 2021, *supra* note 25; Adebisi 2020, *supra* note 25. But see: Child, *supra* note 287.

<sup>295</sup> This is also referred to as structural or systematic racism. See: Kuanui, *supra* note 287; Government of Canada, *supra* note 287; Gunn & Hall, *supra* note 287. For example, the social determinates of health identified in Jardine & Lines, *supra* note 2, are used by Correctional Services Canada in “actuarial risk assessment inventories” (ARAI) and may explain the disproportionately high incarceration rates for Indigenous offenders. See generally: Joane Martel, Renée Brassard & Mylène Jaccoud, “When Two Worlds Collide: Aboriginal Risk Management in Canadian Corrections” (2011) 51:2 Birt J Criminol 235–255; Patricia Monture-Angus, “Women and Risk: Aboriginal Women, Colonialism, and Correctional Practice” (1999) 19:1/2 Canadian Woman Studies 24; Kelly Hannah-Moffat, “Needle in a Haystack: Logical Parameters of Treatment Based on Actuarial Risk-Needs Assessments” (2015) 14:1 Criminol Public Pol 113–120; Kelly Struthers Montford & Kelly Hannah-Moffat, “The Veneers of Empiricism: Gender, Race and Prison Classification” (2021) 59 Aggression and Violent Behavior 101475; *Corrections and Conditional Release Act*, SC 1992, c 20, <<https://canlii.ca/t/55h6k>> retrieved on 2023-09-13, s. 17.

wellbeing.<sup>296</sup> Another similarity within legal education is the devaluation of emotion, which stems, at least in part, from Descartes's theory of the superiority of reason and objectivity.<sup>297</sup>

Regardless of the various pedagogical practices, all contemporary jurisdictions have traditionally viewed the law as neutral, objective, and rational.<sup>298</sup> A significant aspect of legal education in these countries is the extensive use of caselaw as a teaching tool.<sup>299</sup> The study of precedent and legal reasoning is fundamental to the educational curricula.<sup>300</sup> Regardless of jurisdiction, students analyze judicial decisions intensely, learn to dissect legal arguments and understand the reasoning behind the court's ruling.<sup>301</sup> The emphasis on case law fosters critical thinking, legal analysis, and the ability to apply legal principles to real-world scenarios.<sup>302</sup> As a result, students

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<sup>296</sup> See generally: Diener (Science), *supra* note 15; Bastos, Harnois & Paradies, *supra* note 41; Yin Paradies et al., "Racism as a Determinant of Health: A Systematic Review and Meta-Analysis" (2015) 10:9 PLOS ONE e0138511–e0138511. Also, see generally: Camila A. Kairuz et al., "Impact of Racism and Discrimination on Physical and Mental Health Among Aboriginal and Torres Strait Islander Peoples Living in Australia: A Systematic Scoping Review" (2021) 21:1 BMC Public Health 1–1302; Hon. Dr. ME Turpel-Lafond (Aki-Kwe), *In Plain Sight: Addressing Indigenous-specific Racism and Discrimination in B.C. Health Care* (British Columbia Ministry of Health, 2020).

<sup>297</sup> See: Damasio, *supra* note 19; Jones Law School 2020, *supra* note 19.

<sup>298</sup> In the United States, see: Llewellyn, *supra* note 25; Tully, *supra* note 25; Muir, *supra* note 19; Friedland, *supra* note 19; Montgomery, *supra* note 19; Douglas, *supra* note 19; Jones 2018, *supra* note 19; Tiscione, *supra* note 19; Allen 2021, *supra* note 25; Maroney 2006, *supra* note 42. In Australia, see: Grossi, *supra* note 25; Bailey & Knight, *supra* note 25. Colin James a professor of law at ANU and practicing solicitor in Australia insightfully wrote that "[t]he risk [of trauma and mental health conditions] for some lawyers begins with the fact that they graduate from law school with an entrenched stigma against emotions, an important part of being human." See: James 2023, *supra* note 215 at 255. In England & Wales, see: Jones Law School 2020, *ibid*; Bradney, *supra* note 25. In Canada, see: Devlin, *supra* note 25; Pue 2016, *supra* note 25; Witten, *supra* note 25. Also, see generally: Côté-Lussier & David, *supra* note 19 at 469. Also, see generally: Susan Bartie, "The Lingering Core of Legal Scholarship" (2010) 30:3 Legal studies (Society of Legal Scholars) 345–369.

<sup>299</sup> In the United States, see: Mertz, *supra* note 27; Edwin W. Patterson, "Case Method in American Legal Education: Its Origins and Objectives" (1951) 4:1 J Legal Educ 1–24; Russell L. Weaver, "Langdell's Legacy: Living with the Case Method" (1991) 36 Villanova Law Review 81; Robert Bocking Stevens, *Law School: Legal Education in America from the 1850s to the 1980s*, Studies in Legal History (Chapel Hill: University of North Carolina Press, 1983); Bruce A. Kimball, "The Proliferation of Case Method Teaching in American Law Schools: Mr. Langdell's Emblematic 'Abomination,' 1890-1915" (2006) 46:2 History of Education Quarterly 192–247; Krook, *supra* note 25; Ralph Michael Stein, "The Path of Legal Education from Edward I to Langdell: A History of Insular Reaction" (1981) 57:2 Chicago-Kent Law Review 454. In Australia, see: Edgeloe, *supra* note 25; Martin, *supra* note 25; Wilfrid Prest, "Legal History in Australian Law Schools: 1982 and 2005" (2006) 27:2 Adelaide Law Review, 267–277; Hawkins, *supra* note 26. In England & Wales, see: Harris & Beinart, *supra* note 26; M.H. Hoeflich, "The Americanization of British Legal Education in the Nineteenth Century" (1987) 8:3 Journal of Legal History 244–259; Clive Walker, "Legal Education in England and Wales Symposium" (1993) 72:4 Or L Rev 943–952. In Canada, see generally: Edouard Lambert & Max J. Wasserman, "The Case Method in Canada and the Possibilities of Its Adaptation to the Civil Law" (1929) 39:1 The Yale Law Journal 1; W. Wesley Pue, "Common Law Legal Education in Canada's Age of Light, Soap and Water" (2016) 39:2 Man LJ 205–240.

<sup>300</sup> *Ibid*.

<sup>301</sup> *Ibid*.

<sup>302</sup> *Ibid*.

are usually not taught the significance of emotion in cognition, learning, social connection, mental health, wellbeing, judgement, and decision-making.<sup>303</sup>

Emma Jones, a Senior Lecturer in Law and Teaching Director at The Open University Law School, recently published *Emotions in the Law School: Transforming Legal Education through the Passions*.<sup>304</sup> In this work, Jones outlines the philosophical and historical development of legal education and the perception of emotion within it.<sup>305</sup> Legal education has embodied the tradition of Cartesianism, specifically Cartesian dualism, which is derived from the work of René Descartes (1596-1650).<sup>306</sup> Jones explained that “Cartesian dualism, which distinguishes between reason and emotion, mind and body, objective and subjective, and male and female, separate[s] and dichotomi[zes] these concepts.”<sup>307</sup>

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<sup>303</sup> *Ibid.* Also see: Allen, *supra* note 25; Austin 2019, *supra* note 19; Bailey & Knight, *supra* note 25; Brown 2013, *supra* note 19; Douglas, *supra* note 19; Friedland, *supra* note 19; Heath, Mary et al., “Learning to Feel Like a Lawyer: Law Teachers, Sessional Teaching and Emotional Labour in Legal Education” (2017) UNSW Law Research Paper No. 18-19; UWA School of Law Research Paper No. 2018, Griffith Law Review SSRN: <https://ssrn.com/abstract=3139212> or <http://dx.doi.org/10.2139/ssrn.3139212>.

James 2011, *supra* note 19; James 2008, *supra* note 65; Jones 2018, *supra* note 19; Maroney 2006, *supra* note 42; Martin, 2014, *supra* note 19; Melita, *supra* note 113; O’Grady, *supra* note 49; O’Brien 2014, *supra* note 19; Petrides et al., *supra* note 119; Tiscione, *supra* note 19; Martin 2018, *supra* note 178; Muir *supra* note 19. Also, see generally: Lerner et al., *supra* note 19; Maroney 2011, *supra* note 19; Ioanide, *supra* note 19.

<sup>304</sup> Jones Law School 2020, *ibid.*

<sup>305</sup> *Ibid.*

<sup>306</sup> *Ibid* at 2, 12.

<sup>307</sup> *Ibid* at 12. For example, “trauma” has been explained through Cartesian dualism’s traditional categorization, dichotomizing, and objective methodology. Cartesian dualism is an epistemology (“a way of knowing”) that considers the mind and matter separate. This epistemology dates to the French philosopher René Descartes (1596-1650), who theorized that the mind and body are independent and exist autonomously. See: Florence Thibaut, “The Mind-Body Cartesian Dualism and Psychiatry” (2018) 20:1 Dialogues Clin Neurosci 3. The philosophical background of our modern medical system is often traced back to Descartes’ theory of mind-body dualism. See: Jordyn Correll, “Descartes’ Dualism and Its Influence on Our Medical System” (2022) 6 SUURJ: Seattle University Undergraduate Research Journal Article 11. “Philosophical theory about the nature of human beings has far reaching consequences on our understanding of various issues faced by them. Once taken as self-evident, it becomes the foundation on which knowledge gets built.” See: Neeta Mehta, “Mind-Body Dualism: A Critique from a Health Perspective” (2011) 9:1 Mens Sana Monogr 202–209 at 202. Dr. Gabor Maté is a doctor who has practised in Vancouver’s notorious East Hastings, plagued with homelessness, despair, and hopelessness. Dr. Maté has advocated strongly for a more holistic approach to health care and criminal justice. See: Myrna McCallum, *Trauma & Compassion: My Interview with Gabor Maté*. (1 June 2020) online *The Trauma-Informed Lawyer*: <<https://thetraumaformedlawyer.simplecast.com/episodes/trauma-compassion-my-interview-with-gabor-mate>>. Maté 2018, *supra* note 31; Maté & Maté, *supra* note 196; Maté, *supra* note 196. Also see: Kolk 2014, *supra* note 95. In the prologue on page 19, Kolk writes, “As human beings we belong to an extremely resilient species. Since time immemorial we have rebounded from relentless wars, countless disasters (both natural and man-made), and the violence and betrayal in our own lives. But traumatic experiences do leave traces, whether on a large scale (on our histories and cultures) or close to home, on our families, with dark secrets being imperceptibly passed down through generations. They also leave traces on our minds and emotions, our capacity for joy and intimacy, and even our biology and immune system.” Cartesian dualism differs significantly from an Indigenous worldview encompassing an epistemology of “relatedness” in which all people and the environment are interconnected. See: Fulvio

Furthermore, Jones explains that Cartesian dualism perceives reason as a “higher function of humanity,” while emotions are less revered and akin to animalistic impulses thus requiring control or repression.<sup>308</sup> Jones argues that the notion of reasons’ superiority and the fallibility of emotions has been rooted within law schools, moulded into students, pedagogy, and practices.<sup>309</sup> Jones contends that the priority for law schools has been to highlight the “rigid, analytical, unemotional ability to ‘think like a lawyer’ whilst devaluing the traits and abilities that shape our humanity.”<sup>310</sup> The devaluation of emotion is problematic when considering the relevance of emotion to wellbeing as outlined in Chapter 2.4 and which will be discussed further Chapter 6.

The lack of appreciation for emotion and its significant impact has only recently begun to shift as law students’ wellbeing, or lack thereof, has become a concern for law schools in most jurisdictions.<sup>311</sup> In 2017 the American Bar Association made recommendations to law schools

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Mazzocchi, “A Deeper Meaning of Sustainability: Insights from Indigenous Knowledge” (2020) 7:1 The Anthropocene Review 77–93. Mazzocchi writes regarding Indigenous principles at 77, “[t]hese principles are driven by a sense of intimacy and interconnectedness and draw attention to the importance of giving back to nature.” It is interesting to note here that there has been a call for a “cultural shift” within law toward wellbeing. Social connection and belonging have been established to enhance wellbeing. The Indigenous epistemology of relatedness encompasses social connection and belonging, which directly contrasts Cartesian dualism. Cartesian dualism is the theory that the mind and body are separate, can function alone and independently and where the mind, intellect, and reason is superior to emotion. An epistemology of Cartesian dualism cannot coincide with the values of diversity and inclusion. Gloria Snively & John Corsiglia wrote, “[c]ultural diversity suggests that Western Science and Indigenous Science should be viewed as co-existing or parallel. Westerners freely acknowledge the existence of Indigenous art, music, literature, and drama, and of political and economic systems in Indigenous cultures, but many fail to apprehend and appreciate the concept of Indigenous Science. Thus, when Western Science is taught without acknowledging Indigenous Science, this can be construed as assimilative science education.” See: Gloria Snively & John Corsiglia, “Chapter 6 – Indigenous Science: Proven, Practical and Timeless” in Gloria Snively & Wanosts’a7 Lorna Williams, eds, *Knowing Home: Braiding Indigenous Science with Western Science, Book 1* (Victoria, BC, CDA: University of Victoria, 2016) Chapter 6 at 80. Cartesian dualism is the backbone of legal education, see: Jones 2018, *supra* note 19 at 3, wherein Jones writes that Cartesian dualism includes concepts of superiority and reason being superior to emotion. Also see generally: Vesa Oittinen, “Vygotsky and Spinoza” (2022) 74:3 Studies in East European Thought 359–381 at 359, which is a fascinating article regarding what would have happened during the 1920 and 30 psychology crises if Lev Vygotsky’s philosophical ideas would have supplanted Descartes’ doctrine “built on a dualistic soul versus body premise.”

<sup>308</sup> See: Jones Law School 2020, *ibid* at 3.

<sup>309</sup> *Ibid* at 2–3. Also, see generally: Austin 2019, *supra* note 19; Friedland, *supra* note 19; Mertz, *supra* note 27.

<sup>310</sup> *Ibid* at 2–3. Also, see generally: Mertz, *ibid*; Bartie, *supra* note 298; Martha C. Nussbaum, “Cultivating Humanity in Legal Education” (2003) 70:1 U Chicago Law Rev 265–279; Friedland *ibid*; Muir, *supra* note 19.

<sup>311</sup> In the United States, see: Buchanan & Coyle, *supra* note 11; Confino, *supra* note 292. In Australia, see: Council of Australian Law Deans (CALD), *Promoting Law Student Well-Being Good Practice Guidelines for Law Schools* (Council of Australian Law Deans (CALD), 2013); CALD, *supra* note 28, s 2.9.1; AU Threshold Learning Outcomes, *supra* note 28, TLO 5 & 6. In England & Wales, mental health has been recently recognized. See: UK QAA 2023, *supra* note 28, s 1.13. Although there is no specific mention of law student wellbeing, section 1.13 states, “The central place of law in society means that it has an important role to play in securing sustainable development and the well-being of future generations and such concerns could feature in legal studies.” In Canada,

for the first time to improve the mental health of law students.<sup>312</sup> A recent survey of American law schools demonstrates that some progress is being made and outlines innovative ways law schools have attempted to tackle the mental health crisis.<sup>313</sup>

Likewise, in 2010 student wellbeing and mental health became a significant focus for Australian law schools.<sup>314</sup> The first survey ever conducted on Australian law students and legal professionals' psychological distress, the *Courting the Blues Report*, was published in 2009.<sup>315</sup> Since the report's publication, Australian law schools have adopted "self-management" and "personal and professional development" as learning outcomes.<sup>316</sup>

In England and Wales, effective 2019, law school graduates' learning outcomes include "personal and professional development," "self-aware[ness]," the ability to "acknowledge and correct errors."<sup>317</sup> Also, in 2019, the University Mental Health Charter (UMHC) Programme was developed as a voluntary program that universities may join to receive resources and support in pursuit of their commitment to improving mental health and wellbeing.<sup>318</sup>

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as of 2020, there are voluntary standards that universities can follow to support mental health and wellbeing. See: CSA Group 2020, *supra* note 30.

<sup>312</sup> See: Buchanan & Coyle, *supra* note 11.

<sup>313</sup> See: Confino, *supra* note 292.

<sup>314</sup> See: AU Threshold Learning Outcomes, *supra* note 28, TLO 5 & 6. Page 23 reads, "The TLOs encourage the development of emotional intelligence by attending to both self awareness (TLO 6) and the need to communicate and work with others (TLO 5). In the LTAS project's consultations with the profession, this element of the TLO was acknowledged as critical to professional practice because it incorporates a capacity for resilience through personal awareness and coping skills that might include openness to assistance in times of personal and professional need." CALD, *supra* note 28, s 2.9.1. Section 2.9.1. reads: "The Law School's commitment to sound educational methods and outcomes includes a commitment to, and the adoption of practical measures to promote and support student well-being, with particular reference to mental health and awareness of mental health issues." The explanatory note for section 2.9.1. reads in part: "The Law School's commitment to and adoption of measures to promote and support student well-being should include measures appropriate for students across the range of learning contexts. A student engaged in face-to-face learning will have different needs and require a different approach to a student learning in a virtual setting. The Law School's responsibilities to student pastoral care are likely to be complemented by a centralised student support service, which is a feature common to many universities. It is noted, however, that the most effective responses tend to arise at the School level, and so it is necessary that the Law School retains clear responsibility for student pastoral care. An important consideration in terms of the Law School's pastoral responsibility to students is the diversity among student populations, which may include students who identify as Aboriginal and/or Torres Strait Islander Australians or who come from diverse backgrounds. Issues of well-being and mental health will not arise uniformly among students, and may require an individualised response."

<sup>315</sup> See: Kelk et al., *supra* note 3.

<sup>316</sup> See: AU Threshold Learning Outcomes, *supra* note 28, s 3.2, TLO 6.

<sup>317</sup> See: UK QAA 2019, *supra* note 28, s 2.4. ii., 2.4.xii.

<sup>318</sup> See generally: Gareth Hughes & Leigh Spanner, *The University Mental Health Charter* (Leeds: Student Minds); "University Mental Health Charter," online: *University Mental Health Charter* <<https://universitymentalhealthcharter.org.uk/>>. Also, see generally: Caroline Strevens & Rachael Field, *Educating*



In Canada, universities can implement, and for reasons outlined in Chapter 7 and 8, should implement the voluntarily *National Standard of Canada for Mental Health and Well-being for Post-Secondary Students* (the “Standard”), released in July of 2020. The Standard aims to improve mental health and help universities “strengthen their contributions to the cultural, ecological, social, and economic sustainability of their communities and wider society.”<sup>319</sup>

Regarding, curriculum reflecting a shift towards improving law student wellbeing, to the authors’ knowledge, to date only one accredited law course on mindfulness has been offered at a Canadian law school.<sup>320</sup> “Mindfulness & the Legal Profession” was offered as an accredited course at Western University, taught by Professor Telfer and has been highly successful since

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*for Well-Being in Law: Positive Professional Identities and Practice* (New York: Routledge, 2020); Strevens & Wilson, *supra* note 63.

<sup>319</sup> See: CSA Group 2020, *supra* note 30 at 0.1. On page 2 of “Mental Health and Well-Being for Post-Secondary Students,” a description of the Canadian Standards Association is provided. It reads, “Canadian Standards Association (operating as “CSA group”) developed standards through a consensus standards development process or approved by the Standards Council of Canada. This process brings together volunteers representing varied viewpoints and interests to achieve consensus and develop a standard. Although the CSA Group administers the process and establishes rules to promote fairness and achieving consensus, it does not independently test, evaluate, or verify the content of the standards.” To the author’s knowledge, the University of Ottawa has adopted the standard. See: “National Standard of Canada for Mental Health and Well-Being for Post-Secondary Students,” online: *uOttawa* <<https://www.uottawa.ca/campus-life/health-wellness/national-standard-canada-mental-health-well-being-post-secondary-students>>.

<sup>320</sup> See: Western Law, *supra* note 19; Western Law, “Teaching Fellowship to Promote Mental Health and Mindfulness - Western University,” (20 April 2018), online: *Western Law* <[https://law.uwo.ca/news/2018/teaching\\_fellowship\\_to\\_promote\\_mental\\_health\\_and\\_mindfulness.html](https://law.uwo.ca/news/2018/teaching_fellowship_to_promote_mental_health_and_mindfulness.html)>; University of Manitoba, “The Importance of Mindfulness and Lawyer Well-Being,” online: <<https://news.umanitoba.ca/the-importance-of-mindfulness-and-lawyer-well-being>>.

2017.<sup>321</sup> Despite the lack of accredited courses or mandatory standards in Canada, wellbeing and mental health services and information now populate Canadian law school websites.<sup>322</sup>

Based on the foregoing, mental health has become a drawn the attention of universities and law schools in the past few decades. Work has begun to improve mental health and wellbeing. Unsurprisingly, the workloads and competition fostered in law school contribute, as least in part, to declining wellbeing and mental health problems. The following section explains.

### 3.3. The Law Student Experience of Stress: Intense Workload & Competition

Regardless of jurisdiction, excellent grades are required for law school admission, and competition is intense.<sup>323</sup> Law school demands a tremendous amount of time, commitment, and

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<sup>321</sup> Professor Telfer was kind enough to provide this author with a copy of his syllabus. See: Professor Thomas Telfer, *Mindfulness and the Legal Profession Syllabus*, (Western University, 2019). In an email from Professor Telfer to this author dated March 16, 2020, Professor Telfer advised as follows: “Toni, please find attached my syllabus for Mindfulness and the Legal Profession. The credit course was offered last fall and I intend to offer it again next fall. For the past three years I have also been offering an optional non credit course for 25 first year students. I use the Mindful@Work program developed by Mindfulness Without Borders. I attach a flyer from the program. This year's class filled within 5 minutes. I also attach a book review from the Osgoode Hall Law Journal which might also be of interest. Please let me know the outcome of your research. kind regards Professor Telfer.” Email available upon request to tll086@usask.ca. Further, according to an X post by Wester Law dated January 8, 2024, “Professor @thomasgwelfer has been invited by @DukeLaw to teach an intensive course called Mindfulness & the Legal Profession during the wintersession term. He developed the course during his time as Western Law’s Teaching Fellow & has offered it four times since 2017.” See: Western Law [@westernuLaw], *Professor @thomasgwelfer has been invited by @DukeLaw to teach an intensive course called Mindfulness & the Legal Profession during the wintersession term. He developed the course during his time as Western Law’s Teaching Fellow & has offered it at Western four times since 2017.* <https://t.co/EKrfXBBHuN> (2024).

<sup>322</sup> See: “Academic Success and Personal Wellness,” online: *Faculty of Law* <<https://law.ucalgary.ca/current-students/current-jd-students/academic-success-and-personal-wellness>>; “Mental Health & Wellness,” online: *UAlberta Law* <<https://www.ualberta.ca/law/campus-life/mental-health-and-wellness.html>>; “Student Health and Wellness,” online: *College of Law | University of Saskatchewan* <<https://law.usask.ca/students/jd-students/student-health-and-wellness.php>>; “Student Wellbeing,” online: *Peter A Allard School of Law* <<https://allard.ubc.ca/student-portal/student-wellbeing>>; “Student Wellness and Equity - University of Victoria,” online: *UVic.ca* <<https://www.uvic.ca/law/jd/studentwellnessandequity/index.php>>; “Wellness and Mental Health,” online: *University of Manitoba* <<https://umanitoba.ca/wellness-and-mental-health>>; “Mental Health & Wellness at Windsor Law | Faculty of Law,” online: *University of Windsor, Faculty of Law* <<https://www.uwindsor.ca/law/1148/wellness>>; Sonia Smith, “Guides: Wellness Resources for Law Students,” online: *McGill University* <<https://libraryguides.mcgill.ca/c.php?g=715331&p=5100247>>.

<sup>323</sup> In the United States, see: Ford, Rosinger & Choi, *supra* note 26 at 643; Kidder, *supra* note 26; Hathaway, *supra* note 26. Also, see generally: Klein, *supra* note 26; Holmquist et al., *supra* note 26. In Australia, see: Allen & Baron, *supra* note 26 at 287; Hawkins, *supra* note 26 at 13 states, “[t]o gain admission to a university law program, an applicant who has completed secondary education in Australia would need to be placed approximately in the top 5% of secondary school graduates in terms of academic achievement.” In England & Wales, see: Zimdars, *supra* note 21; Zimdars 2011, *supra* note 26. Also, see generally: Harris & Beinart, *supra* note 26. In Canada, see generally:

effort from students. The workload can be intense, with students juggling a plethora of readings, assignments, and exams. All-nighters and countless hours spent in the library are part and parcel of the law school experience, regardless of the country.

Law school in the compared countries is an exercise of cognitive endurance that requires an ability to sift through voluminous material, and an extraordinary amount of time is dedicated to studying law.<sup>324</sup> Due to the time commitment, students often sacrifice personal care, such as sleep, nutrition, exercise, and social relationships.<sup>325</sup> The burdensome nature of legal education can also result in extreme and chronic stress, which will be discussed in Chapter 6 as a factor detrimental to wellbeing. Finally, law schools in the United States, Australia, England and Wales, and Canada are considered a “gateway to the profession,” which will be examined in the following chapter.

### 3.4. Law School is the “Gateway to the Profession.”

For the most part, legal education is regulated through accreditation in all jurisdictions examined; however, Australia, England, and Wales are required to adhere to national requirements as well.<sup>326</sup> All accreditation agencies base their criteria and accreditation on the ability of the law school to demonstrate its ability to prepare students for law practice; therefore, law school is

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Tong & Pue, *supra* note 26; Kriekle, *supra* note 26. Also, see generally: Bailey, Rosenthal & Yoon, *supra* note 26; Esau, *supra* note 26; Boyd, *supra* note 26; Marginson, *supra* note 26.

<sup>324</sup> In the United States, see: Sheldon & Krieger 2004, *supra* note 4 at 262; Pritchard & McIntosh, *supra* note 5 at 729; Flynn, Li & Sánchez 2017, *supra* note 27 at 274. Also, see generally: Austin 2013, *supra* note 27, Mertz, *supra* note 27; Sullivan, *supra* note 27; Costello, *supra* note 41; Deo, *supra* note 41. In Australia, see: Bergin & Pakenham, *supra* note 3 at 400; Allen & Baron, *supra* note 26; Tani & Vines, *supra* note 27 at 6; Stallman, *supra* note 27. Stallman conducted a qualitative study to explore the impact of competition on law students and law faculty finding that there was a consensus that competition was a major part of being a law student and that competitive behaviours were generally emotionally exhausting, antisocial, or manipulative. Aside from law school being academically demanding, law schools have been accused of utilizing teaching methods that affect student identity. In England & Wales, see: Jones Law School 2020, *supra* note 19 at 131; Dresser, *supra* note 27. Also, see generally: Boon & Webb, *supra* note 27. Also, see generally: James et al., *supra* note 27; James, Strevens & Field, *supra* note 27; Strevens & Rachael Field, *supra* note 318; Strevens & Wilson, *supra* note 63. In Canada, see: Fitzgerald, *supra* note 27 at 70-72; McGill, *supra* note 3.

<sup>325</sup> See: Flynn, Li & Sánchez 2017, *supra* note 27 at 9.

<sup>326</sup> In the United States, see: ABA Standards, *supra* note 28. In Australia, see: CALD, *supra* note 28; AU Threshold Learning Outcomes, *supra* note 28. In England & Wales, see: UK QAA 2019, *supra* note 28; UK QAA 2023, *supra* note 28; Academic Stage Handbook, *supra* note 28. In Canada, see: CDA Nat'l Rqmt., *supra* note 28.

considered a “gateway to the profession.”<sup>327</sup> Law schools serve as the initial training ground for future legal professionals, equipping them with the necessary knowledge and skills to navigate the complex and demanding field of law.

In all jurisdictions, because the aim is to prepare graduates to become lawyers, all law students must take core subjects such as property, torts, contracts, constitutional and criminal law.<sup>328</sup> Despite geographical differences, the pursuit of legal education in these countries follows a similar trajectory, fostering a shared sense of dedication to the law and commitment to justice.

Additionally, law schools in these countries emphasize practical skills alongside theoretical knowledge.<sup>329</sup> While students study foundational legal principles and doctrines, they also develop critical skills necessary for a successful legal career.<sup>330</sup> Mock trials, moot courts, and

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<sup>327</sup> In the United States, see: ABA Standards, *supra* note 28, s 301(a). In Australia, see: CALD, *supra* note 28, s 2.3.1. In England & Wales, see: Academic Stage Handbook, *supra* note 28 at Appendix 1, s 2.i. However, in September 2021, prospective solicitors in England and Wales were no longer required to obtain a law degree. Applicants can become a solicitor by having a degree in any subject and by passing the Solicitors Qualifying Exam (SQE). See generally: “Solicitors Qualifying Examination (SQE),” online: *The Law Society* <<https://www.lawsociety.org.uk/career-advice/becoming-a-solicitor/solicitors-qualifying-examination-sqe/>>. In Canada, see: CDA Nat’l Rqmt., *supra* note 28, s C. Also, see generally: Kriekle, *supra* note 26.

<sup>328</sup> In the United States, see: Sullivan, *supra* note 27 at 3; ABA Standards, *ibid*, s. 302. ABA Standards s 302 reads: “A law school shall establish learning outcomes that shall, at a minimum, include competency in the following: (a) Knowledge and understanding of substantive and procedural law.” In Australia, see: CALD, *supra* note 28 at 14, Standard 2.1, 2.2 and 2.3; AU Threshold Learning Outcomes, *supra* note 28 at s 2.1.3, 4.2, TLO 1. Law courses must facilitate student understanding within the eleven Prescribed Areas of Knowledge (‘Priestley 11’), which an applicant for admission to the Australian legal profession must demonstrate. The “Priestly 11” includes administrative law, civil dispute resolution, company law, contracts, criminal law and procedure, ethics and professional responsibility, equity (including trust), evidence, federal and state constitutional law, property, and torts. In England & Wales, see: Academic Stage Handbook, *ibid* at app 1, sch 2. All approved law schools must teach their students the seven “Foundations of Legal knowledge” (also known as “Foundational Subjects”) The “Foundational Subjects” include public law, constitutional law, administrative law, and human rights; law of the European Union; criminal law, obligations including contract, restitution, and tort; equity and the law of trusts; legal research. In Canada, see: CDA Nat’l Rqmt., *ibid*, s B.3., B.3.3. Section B.3. reads: “The applicant must have undertaken a sufficiently comprehensive program of study to obtain an understanding of the complexity of the law and the interrelationship between different areas of legal knowledge. In the course of this program of study the applicant must have demonstrated a general understanding of the core legal concepts applicable to the practice of law in Canada.” Section B.3.3. reads: “The applicant must demonstrate an understanding of the principles that apply to private relationships, including: a. contracts b. torts c. property law.”

<sup>329</sup> In the United States and Canada see: Heather Gardiner, “Learning by Doing,” (27 February 2012), online: *Canadian Lawyer* <<https://www.canadianlawyermag.com/news/general/learning-by-doing/268508>>. In Australia see: Margaret Thornton, “The Law School, the Market and the New Knowledge Economy” (2007) 17:1/2 Legal Education Review 1–26. In the United Kingdom see: Hugh McFaul, “Does Clinical Legal Education Need Theory?” (2020) 7:2 Asian Journal of Legal Education 152–163.

<sup>330</sup> In the United States, see: ABA Standards, *supra* note 28. In Australia, see: CALD, *supra* note 28; AU Threshold Learning Outcomes, *supra* note 28. In England and Wales, see: Academic Stage Handbook, *supra* note 28; UK QAA 2019, *supra* note 28; UK QAA 2023, *supra* note 28. In Canada, see: CDA Nat’l Rqmt., *supra* note 28.

legal clinics provide opportunities for practical application of legal principles, allowing students to experience the realities of practice.<sup>331</sup> This practical approach aims to equip graduates with the ability to analyze complex legal issues, communicate effectively, and advocate for clients.<sup>332</sup> Learning outcomes are prescribed for accredited law school graduates in each comparable jurisdiction.<sup>333</sup> Analogous learning outcomes include understanding substantive and procedural law, legal analysis and reasoning, legal research, problem-solving, judgment, and written and oral communication.<sup>334</sup>

Law schools in these countries are also committed to fostering a sense of professionalism and ethical responsibility. In the United States, Australia, England, Wales and Canada, professionalism and ethics are required courses.<sup>335</sup> When students enter law school, they are

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<sup>331</sup> In the United States, see: Gold, *supra* note 190; Betty Hung, “Movement Lawyering as Rebellious Lawyering: Advocating with Humility, Love and Courage” (2017) 23:2 Clinical Law Review 663. In Australia, see: Rachel Kessel, “Pracademic Collaboration: Hacking into the Future of Legal Education” (2019) 44:1 Alternative Law Journal 73–75. In England & Wales, see: Irene Antonopoulos & Omar Madhlom, “Promoting International Human Rights Values Through Reflective Practice in Clinical Legal Education: A Perspective from England and Wales” in Enakshi Sengupta & Patrick Blessinger, eds, *International Perspectives in Social Justice Programs at the Institutional and Community Levels* Innovations in Higher Education Teaching and Learning (Emerald Publishing Limited, 2021) 109. In Canada, see: Smyth, Johnstone & Rogin, *supra* note 241; Faisal Bhabha, “Towards a Pedagogy of Diversity in Legal Education” (2015) 25:1 Osgoode Hall Law Journal 59–108

<sup>332</sup> See generally: Edgar S. Cahn & Christine Gray, “Clinical Legal Education: Where Next? Clients as Co-Producers of System Change” (2018) 24 Clinical Law Review 171; Cheryl Green, “Clinics: How to Teach the Art of ‘Lawyering’ – Does it Have a Place in Academia?” (2013) 21 Waikato Law Review 76.

<sup>333</sup> In the United States, see: ABA Standards, *supra* note 28. In Australia, see: CALD, *supra* note 28; AU Threshold Learning Outcomes, *supra* note 28. In England and Wales, see: Academic Stage Handbook, *supra* note 28; UK QAA 2019, *supra* note 28; UK QAA 2023, *supra* note 28. In Canada, see: CDA Nat’l Rqmt., *supra* note 28.

<sup>334</sup> In the United States, see: ABA Standards, *ibid*, s 302. In Australia, see: AU Threshold Learning Outcomes, *ibid*, s 3.2. In England & Wales, see: UK QAA 2019, *ibid*, s 2.4; CDA Nat’l Rqmt., *ibid*, s B-C.

<sup>335</sup> In the United States, see: ABA Standards, *ibid*, s 303(a)(1). Section 303 (a)(1) states that “A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following: (1) one course of at least two credit hours in professional responsibility that includes substantial instruction in rules of professional conduct, and the values and responsibilities of the legal profession and its members.” Also, see: ABA Model Code, *supra* note 28. In Australia, see: CALD, *supra* note 28, s 2.3.3 (a), (d). Section 2.3.3 (a) states that the curriculum should seek to develop “the principles of ethical conduct and the role and responsibility of lawyers, including, for example, their pro bono obligations, and Aboriginal and Torres Strait Islander perspectives on and intersections with the law.” Section 2.3.3 (d) states that the curriculum should seek to develop an “awareness of and commitment to principles of ethical conduct, professional responsibility, and community service.” Also, see: AU Threshold Learning Outcomes, *supra* note 28 at 10. Threshold Learning Outcome #2 at 10 states: “Graduates of the Bachelor of Laws will demonstrate: (a) an understanding of approaches to ethical decision-making, (b) an ability to recognise and reflect upon, and a developing ability to respond to, ethical issues likely to arise in professional contexts, (c) an ability to recognise and reflect upon the professional responsibilities of lawyers in promoting justice and in service to the community, and (d) a developing ability to exercise professional judgement.” For solicitors in Australia, see generally: AU Solicitor Rules, *supra* note 28. For barristers in Australia, see generally: AU Barrister Uniform Rules, *supra* note 28. In England & Wales, see: UK QAA 2019, *supra* note 28, s 2.4.iii. Section 2.4.iii. requires “awareness of principles and values of law and justice, and of ethics.” For barristers in the UK, see: BSB Handbook, *supra* note 28, Part 2. B. For solicitors in the UK, see: SRA Solicitor Code, *supra* note 28. Also, see generally: Roger Burridge

instilled with the importance of upholding the highest standards of integrity.<sup>336</sup> These principles are ingrained through the study of legal ethics and professional responsibility. Students are encouraged to examine their values and beliefs and critically assess the ethical implications of legal decisions.<sup>337</sup> The aim is to produce law school graduates committed to the rule of law and have the ability to appreciate the ethical dimensions of legal practice.<sup>338</sup> In all countries, potential lawyers must demonstrate they are of “good character,” a fact highlighted in their legal education.<sup>339</sup> Another factor emphasized in legal education is that all law societies, bar

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& Julian Webb, “The Values of Common Law Legal Education: Rethinking Rules, Responsibilities, Relationships and Roles in the Law School” (2007) 10:1 *Legal Ethics* 72–97. In Canada, see: CDA Nat’l Rqmt., *supra* note 28, s 2, 3.2.a. Section 2 states that “[t]he applicant must have demonstrated an awareness and understanding of the ethical dimensions of the practice of law in Canada and an ability to identify and address ethical dilemmas in a legal context. Also, see: CDA Model Code, *supra* note 28.

<sup>336</sup> In the United States, see: Sheldon & Krieger, *supra* note 48; Martin 2018, *supra* note 178; Jacobowitz & Rogers, *supra* note 19; Warren Burger, “The Role of the Law School in the Teaching of Legal Ethics and Professional Responsibility. (Symposium: Clinical Legal Education and the Legal Profession)” (1980) 29:3 4 *Cleveland State Law Review* 377–395; Schmitz, Suzanne J, “From My Perspective: Preparing Law Students to Become Professionals: Recommendations for Fostering a Culture of Professionalism in Law School” (2022) 91:4 *The Bar Examiner*, online: <<https://thebarexaminer.ncbex.org/article/winter-2022-2023/from-my-perspective-winter-22/>>. In Australia, see: O’Brien, *supra* note 19; Karina Murray et al., “Reflections on Belonging and a Law Student Pledge” (2022) 19:4 *Journal of University Teaching & Learning Practice Art.* 14. In Canada, see: Alice Woolley, “Legal Education Reform and the Good Lawyer” (2014) 51:4 *Alberta Law Review* 801; Joshua J. A. Henderson & Trevor C. W. Farrow, “The Ethical Development of Law Students: An Empirical Study” (2009) 72:1 *Saskatchewan Law Review* 75–104.

<sup>337</sup> *Ibid.*

<sup>338</sup> *Ibid.*

<sup>339</sup> In the United States, see: ABA Standards, *supra* note 28, s 504. Section 504(b) states that “[t]he law school shall, as soon after matriculation as is practicable, take additional steps to apprise entering students of the importance of determining the applicable character, fitness, and other requirements for admission to the bar in each jurisdiction in which they intend to seek admission to the bar.” A prospective lawyer must demonstrate competency and “character and fitness.” Also, see: American Bar Association, “ABA: Basic Overview: Bar Admission Basic Overview,” (26 June 2018), online: <[https://www.americanbar.org/groups/legal\\_education/resources/bar\\_admissions/basic\\_overview/](https://www.americanbar.org/groups/legal_education/resources/bar_admissions/basic_overview/)>. In Australia, see: Legal Profession Act 2006, *supra* note 52, s 11, 22. Section 22 reads: “(1) In deciding if a person is a fit and proper person to be admitted to the legal profession under this Act, the Supreme Court or admissions board must consider each of the suitability matters in relation to the person to the extent a suitability matter is appropriate. (2) Subsection (1) does not limit the relevant matters that the Supreme Court or admissions board may consider. (3) However, the Supreme Court or admissions board may decide that a person is a fit and proper person to be admitted to the legal profession under this Act despite a suitability matter because of the circumstances relating to the matter.” Also, see: Legal Profession Uniform Admission Rules 2015, *supra* note 285, r 17. Rule 17 (1) states: “An application for a compliance certificate must include a statutory declaration by the applicant disclosing any matter to which a reasonable applicant would consider that the Board might regard as not being favourable to the applicant when considering whether the applicant is currently of good fame and character and a fit and proper person to be admitted to the Australian legal profession.” In England & Wales, see: BSB Memorandum, *supra* note 28, schedule 1. Schedule 1 outlines factors that could result in an individual not being considered fit and proper, including criminal offences, other behaviour (i.e., dishonesty, threatening, violent or harassing behaviour, evidence of discrimination towards others, misuse of position to obtain advantage, misuse of position of trust in relation to a vulnerable person, or other forms of behaviour which demonstrate that applicant cannot be relied upon to discharge their regulatory duties), academic history and regulatory history (i.e., failed to disclose information to a regulatory body when required to do so, or have provided false or misleading information, been refused registration by a

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regulatory body, failed to comply with the reasonable requests of a regulatory body). In Canada, the legal profession is governed provincially. In Saskatchewan, see: SK Legal Profession Act, *supra* note 231, s 24. Also, see generally: Woolley 2007, *supra* note 285. Woolley wrote on pages 28 and 29 that “[t]o be admitted as a member of a provincial law society an individual must demonstrate that she is of “good character.” Or to be more accurate, she must demonstrate an absence of behaviour indicating bad character; such behaviour includes, inter alia, criminal convictions, academic dishonesty and dishonesty towards the law society, as well as a failure to rehabilitate or repent with respect to same.” Also, see generally: “What You Need to Know if You Plan to Practise in BC | The Law Society of British Columbia,” online: <<https://www.lawsociety.bc.ca/becoming-a-lawyer-in-bc/what-you-need-to-know-if-you-plan-to-practise-in-bc/>>; “Law Students – Law Society of Alberta,” online: <<https://www.lawsociety.ab.ca/lawyers-and-students/become-a-lawyer/application-admission/law-students/>>; “Becoming a Lawyer in Saskatchewan,” online: *Law Society of Saskatchewan* <<https://www.lawsociety.sk.ca/for-lawyers-and-students/becoming-a-lawyer-in-saskatchewan/>>; “Articling Students,” online: *The Law Society of Manitoba* <<https://lawsociety.mb.ca/become-a-lawyer/application-and-admission-process/articling-students/>>; “Good Character Requirement | Law Society of Ontario,” online: <<https://lso.ca/becoming-licensed/lawyer-licensing-process/good-character-requirement>>; “Forms and Fees,” online: *The Law Society of Newfoundland and Labrador* <<https://lsnl.ca/admission-to-profession/forms-fees/>>; Law Society of New Brunswick, “Process for Graduates of an Accredited Law School (Common Law),” online: *Law Society of New Brunswick* <<https://lawsociety-barreau.nb.ca/en/becoming-a-lawyer/process-for-graduates-of-an-accredited-law-school-common-law>>. Also, see generally: Alice Woolley, “Can Good Character Be Made Better? Assessing the Federation of Law Societies’ Proposed Reform of the Good Character Requirement for Law Society Admission” (2013) 26:2 Canadian Journal of Administrative Law & Practice 115. The “psychology” of good character is not usually considered by law societies in Canada see: Alice Woolley & Jocelyn Stacey, “The Psychology of Good Character: The Past, Present and Future of Good Character Regulation in Canada” in *Reaffirming Legal Ethics: Taking Stock and New Ideas* (2010) 165. Regarding innovations in the psychology of good character, Katerine Dahlsgaard, Christopher Peterson, and Martin Seligman examined different cultures and religions to create a list of “virtues” commonly shared and highly valued throughout history. The common “virtues” include wisdom & knowledge, courage, transcendence, justice, humanity, and temperance. See: Dahlsgaard, Peterson & Seligman, *supra* note 131. Thereafter, Seligman worked with Christopher Peterson to create a “positive” counterpart to the DSM titled *Character Strengths and Virtues* (CSV). While the DSM focused on ailments, the CSV focuses on how good character can promote wellbeing. The CSV identifies twenty-eight measurable “character strengths” assigned to each “virtue.” Character strengths are innate positive traits that an individual possesses which can be utilized to fulfil virtues for the benefit of oneself as well as others. See: Peterson & Seligman, *supra* note 29. The VIA Institute has made a “Character Strengths Survey” available free online for people to determine their strengths and how to increase them to improve wellbeing. See: “Personality Test, Personality Assessment: VIA Survey,” online: *VIA Institute* <<https://viacharacter.org/survey/account/register>>. Also, see generally: Hadassah Littman-Ovadia et al., “VIA Character Strengths: Theory, Research and Practice” (2021) 12 *Frontiers in Psychology*; Kern & Bowling, *supra* note 29.

associations, and their members must act in the public interest.<sup>340</sup> Diversity and inclusion are objectives of law schools, law societies, and bar associations in all comparative jurisdictions.<sup>341</sup>

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<sup>340</sup> In the United States, see generally: The State Bar Act, *supra* note 231 at § 6001.1. § 6001.1 reads: Protection of the public, which includes support for greater access to, and inclusion in, the legal system, shall be the highest priority for the State Bar of California and the board of trustees in exercising their licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.” Also, see generally: Sullivan, *supra* note 27. In Australia, see: Legal Profession Act 2006, *supra* note 52, s 6. Also, see generally: Baron & Corbin, *supra* note 49. In England & Wales, see: UK Legal Services Act, *supra* note 28, s 1. Section 1 reads: “In this Act a reference to “the regulatory objectives” is a reference to the objectives of—(a) protecting and promoting the public interest; (b) supporting the constitutional principle of the rule of law; (c) improving access to justice; (d) protecting and promoting the interests of consumers; (e) promoting competition in the provision of services within subsection (2); (f) encouraging an independent, strong, diverse and effective legal profession; (g) increasing public understanding of the citizen's legal rights and duties; (h) promoting and maintaining adherence to the professional principles. In Canada, see: CDA Nat'l Rqmt., *supra* note 28, s. 2.1.a.7. Section 2.1.a.7. The applicant must know “the importance and value of serving and promoting the public interest in the administration of justice.” Law Societies are governed provincially or territorially. In Saskatchewan, see: SK Legal Profession Act, *supra* note 231, s. 3.1., 3.2. Also, see generally: Pearson, *supra* note 231. For a discussion on the independence of the legal profession in Australia, the UK, and Canada, see generally: Turriff, *supra* note 231.

<sup>341</sup> In the United States, see: ABA Standards, *supra* note 28, s 303 (a)(1), 303 (c)1–2, Interpretation 303-6. Section 303 (a)(1) states that “A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following: (1) one course of at least two credit hours in professional responsibility that includes substantial instruction in rules of professional conduct, and the values and responsibilities of the legal profession and its members.” Interpretation 303-6 states “[w]ith respect to 303(a)(1), the importance of cross-cultural competency to professionally responsible representation and the obligation of lawyers to promote a justice system that provides equal access and eliminates bias, discrimination, and racism in the law should be among the values and responsibilities of the legal profession to which students are introduced.” Section 303 (c) states: “A law school shall provide education to law students on bias, cross-cultural competency, and racism: (1) at the start of the program of legal education, and (2) at least once again before graduation.” Also, see: ABA Model Code, *supra* note 28, r 8.4(g). Rule 8.4 (g) states that “[i]t is professional misconduct for a lawyer to: (g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.” Also, see generally: The American Association of Law Schools (AALS) Creates Section for Law School Diversity, Equity, Inclusion, and Belonging Professionals,” (27 June 2022), online: *GW Law* <<https://www.law.gwu.edu/american-association-law-schools-aals-creates-section-law-school-diversity-equity-inclusion-and>>; “Diversity, Equity, and Inclusion,” online: *Columbia Law School* <<https://www.law.columbia.edu/community-life/diversity-equity-and-inclusion>>; “Diversity, Equal Opportunity and Affirmative Action,” online: *Association of American Law Schools* <<https://www.aals.org/about/handbook/good-practices/diversity/>>; “Diversity in Law School,” online: *The Law School Admission Council* <<https://www.lsac.org/discover-law/diversity-law-school>>; Stephanie Francis Ward, “Diversity Increases with Law School Deans, According to New AALS Study,” (4 April 2022), online: *ABA Journal* <<https://www.abajournal.com/web/article/diversity-increases-with-law-school-deans-according-to-aals-study>>. In Australia, see: CALD, *supra* note 28, s 2.3.3 (a), 2.3.3 (d). Section 2.3.3 (a) states that the curriculum should seek to develop “the principles of ethical conduct and the role and responsibility of lawyers, including, for example, their pro bono obligations, and Aboriginal and Torres Strait Islander perspectives on and intersections with the law.” Also, see: AU Threshold Learning Outcomes, *supra* note 28 at 10 and Threshold Learning Outcome (TLO) 2. For solicitors in Australia, see generally: AU Solicitor Rules, *supra* note 28, s. 42. Section 42 prohibits a solicitor from engaging in conduct which constitutes discrimination, sexual harassment or workplace bullying within the course of practice. The AU Solicitor Rules were jointly developed by all the state and territory law societies and other constituent professional bodies of the Law Council, as the agreed set of professional conduct rules for all solicitors in Australia. For barristers in Australia, see generally: AU Barrister Uniform Rules, *supra* note 28, s. 123. Section



However, within each respective country equality within the legal profession has yet to be realized.<sup>342</sup>

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123 prohibits a solicitor from engaging in conduct which constitutes discrimination, sexual harassment or workplace bullying within the course of practice. The Australian Bar Association is responsible for developing Legal Profession Conduct Rules and Continuing Professional Development Rules for barristers. Also, see generally: Council of Australian Law Deans, *Working Party on First Peoples Partnership: Terms of Reference* (2020); Mark Israel et al., “Fostering ‘Quiet Inclusion’: Interaction and Diversity in the Australian Law Classroom” (2017) 66:2 *Journal of Legal Education* 332–356; “Diversity and Inclusion”, online: *The Law Society of Western Australia* <<https://www.lawsocietywa.asn.au/law-reform-and-advocacy/diversity-and-inclusion/>>. In England and Wales, see: UK QAA 2019, *supra* note 28, s 2.4.iii. Also, see: UK QAA 2023, *supra* note 28, s 1.6-1.8, which addresses diversity and inclusion directly and was introduced in March 2023. For barristers in the UK, see: BSB Handbook, *supra* note 28, Part 2. B. Part 2. B. outlines the Core Duties of a Barrister. Core Duty 8 states that a barrister “must not discriminate unlawfully against any person.” Rule C12 states that a barrister “must not discriminate unlawfully against, victimise or harass any other person on the grounds of race, colour, ethnic or national origin, nationality, citizenship, sex, gender re-assignment, sexual orientation, marital or civil partnership status, disability, age, religion or belief, or pregnancy and maternity.” For solicitors in the UK, see: SRA Solicitor Code, *supra* note 28, s. 1.1. Section 1.1 of the SRA Solicitor Code states, “[y]ou do not unfairly discriminate by allowing your personal views to affect your professional relationships and the way in which you provide your services.” Also, see: UK Legal Services Act, *supra* note 28, s 1; Equality Act, *supra* note 28. Also, see generally: BSB, *supra* note 28; BSB 2022, *supra* note 41. In Canada, see: CDA Nat’l Rqmt., *supra* note 28, s 2, 3.2.a. Section 3.2.a states that “[t]he applicant must have an understanding of the core principles of public law in Canada, including, a. the constitutional law of Canada, including federalism and the distribution of legislative powers, the Charter of Rights and Freedoms, human rights principles and the rights of Aboriginal peoples of Canada.” Also, see: CDA Model Code, *supra* note 28, r 6.3. Rule 6.3 states, “[a] lawyer must not directly or indirectly discriminate against a colleague, employee, client or any other person.” Also, see generally: University of Saskatchewan, *supra* note 52; Zoe Johansen-Hill, Larissa Meredith-Flister & Coleman Owen, *The Seventh Annual Dean’s Forum on Access to Justice and Dispute Resolution: Diversity and Inclusion in the Legal Profession* (Dean’s Forum on Access to Justice and Dispute Resolution, 2019); Council of Canadian Law Deans, *Statement from the CCLD on Kamloops Discovery* (2021); Bernise Carolino, “Ngai Pindell, Allard Law’s New Dean, is Committed to Anti-racism, Equity, Diversity and Inclusion,” (21 July 2021), online: *Canadian Lawyer* <<https://www.canadianlawyermag.com/resources/legal-education/ngai-pindell-allard-laws-new-dean-is-committed-to-anti-racism-equity-diversity-and-inclusion/358526>>; “Inclusivity and Diversity at the Faculty of Law,” online: *University of Toronto Faculty of Law* <<https://www.law.utoronto.ca/about-law-school/inclusivity-and-diversity-faculty-law>>; “Diversity and Inclusion,” online: *McGill: Faculty of Law* <<https://www.mcgill.ca/law/about/diversity-and-inclusion>>; Bhabha, *supra* note 331.

<sup>342</sup> In the United States see: Brooks et al., *supra* note 41; Coplin & Williams, *supra* note 41; Costello, *supra* note 41; Deo, *supra* note 41; Liebenberg & Scharf, *supra* note 41; Sterling & Chanow, *supra* note 41. Also, see generally: Wilson, *supra* note 41; Harris, *supra* note 41; Picower, *supra* note 41; Williams & McCullers, *supra* note 41; James 2022, *supra* note 41. In Australia, see: Thornton 1998, *supra* note 41; Thornton 2014, *supra* note 41; Watson, *supra* note 41; Falk, *supra* note 41; Bodkin-Andrews & Carlson, *supra* note 41; Cunneen, *supra* note 41; Collier, *supra* note 41; Ragusa & Groves, *supra* note 41. In England & Wales, see: Adebisi 2021, *supra* note 25; Adebisi 2020, *supra* note 25; Pender, *supra* note 10; Sommerland, *supra* note 41; BSB 2022, *supra* note 41; Sommerland et al., *supra* note 41. In Canada see: The Law Society of British Columbia, “Demographics of the Legal Profession,” (2019), online: The Law Society of British Columbia <<https://www.lawsociety.bc.ca/our-initiatives/equity-and-diversity-centre/demographics-of-the-legal-profession/>>; Ashley Moliere, “Law Society of B.C. Data Shows Minorities Under-Represented in Profession,” (16 July 2020), online: *CBC News* <<https://www.cbc.ca/news/canada/british-columbia/bc-law-society-demographics-data-1.5649871>>; Barbra Bailey, “Collecting Demographic Data to Better Understand our Membership and Address Barriers in the Legal Profession,” (15 November 2018), online: <<https://www.lawsociety.sk.ca/lawyers-and-students/collecting-demographic-data-to-better-understand-our-membership-and-address-barriers-in-the-legal-profession-2/>>; Tim Wilbur, “The Diversity Data Gap: Canadian Law Firms’ Reluctance to Gather and Publish May be about to Change,” (12 November 2020), online: *Canadian Lawyer Magazine* <<https://www.canadianlawyermag.com/resources/practice-management/the-diversity-data-gap-canadian-law-firms-reluctance-to-gather-and-publish-may-be-about-to-change/335206>>; Law

### 3.5. Conclusion

Most law schools are accredited with prescribed courses and learning outcomes and are the “gateway to the profession.” The objectives of law schools will be further discussed in Chapter 7, in which this thesis argues that law schools should improve the wellbeing of students. While there are many differences in pedagogy and practice in the United States, Australia, England and Wales, and Canada, there are also some notable similarities in the experiences, practices, attitudes, and beliefs of law schools and law students. Could experiences, practices, attitudes and beliefs constitute culture within law schools and the legal profession?

All these jurisdictions have experienced colonialism and have traditionally conceived of law as ration, neutral and objective, thereby devaluing, demoting, and diminishing the significance of emotion and perhaps humanity. All law students experience competition and a gruelling workload. These experiences, practices, attitudes, and beliefs will be explored in further detail in Chapter 6, which will shed light on how much these can harm wellbeing. This thesis will now examine the studies on law students’ psychological health, beginning with a review of the studies demonstrating that pre-law students possess wellbeing comparable to that of the general population before attending law school.<sup>343</sup>

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Society of Ontario, “Statistical Snapshot of Lawyers in Ontario,” (2021), online: *Law Society of Ontario* <[https://lawsocietyontario.azureedge.net/media/lso/media/lawyers/practice-supports-resources/equity-supports-resources/snapshot-lawyers21\\_eng.pdf](https://lawsocietyontario.azureedge.net/media/lso/media/lawyers/practice-supports-resources/equity-supports-resources/snapshot-lawyers21_eng.pdf)>; Johansen-Hill, Meredith-Flister & Owen, *ibid* at 1 states, “half of law students are female, just over a third of active lawyers are women.” The percentage of Saskatchewan lawyers identifying as Indigenous is significantly lower than that of the overall population and no data is available on how many Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) lawyers there are.” Also, see generally: Sabrina Lyon & Lorne Sossin, “Data and Diversity in the Canadian Justice Community” (2014) SSRN Journal 63; Roderique, *supra* note 41; Franks, *supra* note 41; Lavallee, *supra* note 41; Glenn, *supra* note 25; Backhouse, *supra* note 25; Henry, *supra* note 41; Allen 2019, *supra* note 41; Bailey 2016, *supra* note 41; RCAP 1996, *supra* note 25; TRC Report, *supra* note 25; TRC Calls, *supra* note 25; MMIWG, *supra* note 25; Bilson, *supra* note 41. Also, see generally: Delgado, *supra* note 41.

<sup>343</sup> “Psychological health” is akin to mental health. Psychological health comprises the ability to think, feel, and behave in a manner that enables people to perform effectively in their work environments, their personal lives, and in society at large. See generally: Galderisi et al., *supra* note 17.

## Chapter 4: The Mental Health Crisis in Law Schools: Examining Studies from the United States, Australia, the United Kingdom, & Canada

### 4.1 Introduction

Chapter 4 outlines the findings of the studies on law student wellbeing in the United States, Australia, the United Kingdom, and Canada. As mentioned in Chapter 3, shared experiences, practices, beliefs, and attitudes across jurisdictions may contribute to declining wellbeing among law students. Further, Chapter 3 also outlined the competencies expected of law school graduates. Students entering law school have wellbeing comparable to that of the general population.<sup>344</sup> In all the compared jurisdictions, except the United Kingdom and Canada, studies have shown that student wellbeing declines in correlation with commencing law school.<sup>345</sup>

Even if law students are susceptible to mental health challenges for other reasons, they end the first year of law school significantly more distressed.<sup>346</sup> Studies from all jurisdictions have uncovered a significant amount of data evidencing that law students experience psychological distress at rates exceeding that of the general population.<sup>347</sup> Furthermore, in the jurisdictions

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<sup>344</sup> In the United States, see: Benjamin et al., *supra* note 3 at 246; Reifman, McIntosh, & Ellsworth, *supra* note 3 at 102; Sheldon & Krieger 2004 *supra* note 4 at 270-271 at 270. In Australia, see: O'Brien, Tang & Hall 2011 Changing our Thinking, *supra* note 3 at 159, 162. To the author's knowledge, no published studies have investigated pre-law student wellbeing in the United Kingdom or Canada.

<sup>345</sup> More empirical and longitudinal studies regarding the commencement and degree of psychological distress before students start law school in the United Kingdom and Canada are needed. In other words, to the author's knowledge, there has been no study in the United Kingdom or Canada assessing the wellbeing of students before starting law school or the wellbeing of law students during their legal education. However, such studies have been undertaken in other jurisdictions. In the United States, see: Benjamin et al., *supra* note 3 at 246; Reifman, McIntosh & Ellsworth, *supra* note 3 at 102; Sheldon & Krieger 2004 *supra* note 4 at 270-271 at 270. In Australia, see: O'Brien, Tang & Hall 2011 Changing our Thinking, *ibid* at 159, 162.

<sup>346</sup> See: Susan Daicoff, *Lawyer, Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses* (Washington, D.C.: American Psychological Association, 2004) for a thorough analysis of studies conducted regarding law student personality and its contribution to wellbeing declines. In all the compared jurisdictions, except the United Kingdom, studies have also shown that increases in student psychological distress coincide with commencing law school. In the United States, see: Pritchard & McIntosh, *supra* note 5 at 739; Reed et al., *supra* note 5 at 48. In Australia, see: Lester, England & Antolak-Saper, *supra* note 5. In Canada, see: McGill, *supra* note 3.

<sup>347</sup> In the United States, see: Shanfield & Benjamin, *supra* note 3 at 72; Benjamin et al., *supra* note 3 at 241, 246; Reifman, McIntosh & Ellsworth, *supra* note 3 at 102; Organ, Jaffe & Bender, *supra* note 3 at 136. In Australia, see: Kelk et al., *supra* note 3 at 11-12; Leahy et al., *supra* note 3 at 613; O'Brien, Tang & Hall, *supra* note 3 at 53; O'Brien, Tang & Hall, 2011 Changing our Thinking, *supra* note 3 at 159-160; Skead & Rogers, *supra* note 3 at 572; Bergin & Pakenham, *supra* note 3 at 401; Skead, Rogers & Doraisamy, *supra* note 3 at 93; Skead, Rogers & Johnson, *supra* note 3 at 351. See Lewis & Cardwell, *supra* note 3 in the United Kingdom. In Canada, see: Helmers et al., *supra* note 3; McGill 2017 *supra* note 3.

examined in this work, all but one of the studies expose that law students experience psychological distress at levels exceeding that of students in other programs.<sup>348</sup>

Shockingly, while diversity and inclusion are objectives in all compared countries, studies on the wellbeing of marginalized law students are scarce. Chapter 4.5 will review the only American study that directly examined the experiences of women, people of colour, lesbians, bisexual or gay and poor law students, finding that all suffered disproportionately higher rates of mental health challenges.<sup>349</sup> Chapter 4.6 will outline the studies on substance use among law students.<sup>350</sup>

Due to the lack of empirical and longitudinal studies regarding the continuation of psychological distress after law students graduate, this thesis will examine the studies conducted on legal professional wellbeing in each country in Chapter 5. The studies on legal professional wellbeing in the United States, Australia, the United Kingdom, and Canada divulge that legal professionals in all jurisdictions also experience psychological distress at higher rates than the general population.<sup>351</sup> Internationally, legal professionals have been found to have markedly lower wellbeing scores than the world's general population.<sup>352</sup> Finally, just as law students compared to students in other programs, people in other occupations have been found to have better wellbeing than legal professionals.<sup>353</sup> This thesis will next review the studies that have revealed that law

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<sup>348</sup> In the United States, see: Shanfield & Benjamin, *supra* note 3 at 221; Organ, Jaffe & Bender, *supra* note 3 at 136-137. Also see: Harries, Kim & Grant, *supra* note 3. In Australia, see: Kelk et al., *supra* note 3 at 12; Leahy et al., *supra* note 3 at 611; Skead & Rogers, *supra* note 3 at 82. But see: Larcombe, Finch & Sore, *supra* note 3 at 265. In the United Kingdom, see: Bogowicz et al., *supra* note 3; Lewis & Cardwell, *supra* note 3. In Canada, see: Helmers et al., *supra* note 3.

<sup>349</sup> See: Agatstein et al., *supra* note 10.

<sup>350</sup> Law student substance use is prevalent. In the United States, see: AALS Report *supra* note 31 at 42, 43, 45; Organ, Jaffe, & Bender, *supra* note 3 at 127; Reed et al., *supra* note 8 at 152; Jaffe, Bender, & Organ, *supra* note 21 at 16. To the author's knowledge, no studies have evaluated Australian law student substance use but see generally: Engs & Mulqueeny, *supra* note 31; Doraisamy, *supra* note 31; Allman, *supra* note 31; Ferguson, *supra* note 31. In the United Kingdom, see: Bogowicz et al., *supra* note 3 at 134. In Canada, see: McGill, *supra* note 3 at 8.

<sup>351</sup> Studies conducted in the United States, Australia, the United Kingdom, Canada and internationally have also found that legal professionals experience psychological distress at rates exceeding that of the general population. In the United States, see: Beck, Sales & Benjamin, *supra* note 7; Krill, Johnson & Albert, *supra* note 7 at 50-51. But see: Listokin & Noonan, *supra* note 7. In Australia, see: Kelk et al., *supra* note 3; Bergin & Jimmieson, *supra* note 7 at 434; Chan, Poynton & Bruce, *supra* note 7; Skead, Rogers & Doraisamy, *supra* note 3. In the United Kingdom, see: Soon et al., *supra* note 7. In Canada, see: Cadieux et al. 2022, *supra* note 3 at 27, 30. Also see: Cadieux et al., (Quebec), *supra* note 7. Internationally, see: International Bar Association, *supra* note 6.

<sup>352</sup> See: International Bar Association, *ibid*.

<sup>353</sup> The psychological distress experienced by legal professionals also exceeds that of other occupations in the United States, the United Kingdom and Canada. In the United States, see: Eaton et al., *supra* note 7; Thiese et al., *supra* note 7. No studies have been conducted in Australia which compare the psychological distress of legal professionals

students are no different than the general population in terms of their wellbeing before starting law school.

#### 4.2. Before Starting Law School, Students Possess Wellbeing Comparable to the General Population

Researchers in the United States have conducted the most significant research on law student wellbeing, with studies dating as far back as 1957 and as recently as 2022.<sup>354</sup> Furthermore, the United States has produced the only study to date that examined law student wellbeing before, during, and after law school, finding that pre-law students experience the same level of wellbeing as the general population when starting law school, but that within the first three months, their psychological distress increases (the “Benjamin et al. study”).<sup>355</sup> In 1986, the authors of the Benjamin et al. study wrote that:

Before law school, subjects develop symptom responses similar to the average population. This comparison suggests that prospective law students have not acquired unique or excessive symptoms that set them apart from people in general. During law school, however, symptom levels are elevated significantly when compared with the normal population.<sup>356</sup>

Subsequent studies in the United States and Australia have revealed that pre-law students have levels of wellbeing comparable to the general population before starting law school.<sup>357</sup> Like the

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to other professions. In the United Kingdom, see: Soon et al., *supra* note 8. In Canada, see: Cadieux et al., 2022 *supra* note 3. Also, see generally: Yves, *supra* note 8.

<sup>354</sup> See: Leonard D. Eron & Robert S. Redmount, “The Effect of Legal Education on Attitudes” (1957) 9:4 Journal of Legal Education 431–443. Law students have higher rates of psychological distress than students in other programs. In the United States, see: Shanfield & Benjamin, *supra* note 3 at 221; Organ, Jaffe & Bender, *supra* note 3 at 136-137. Also see: Harries, Kim & Grant, *supra* note 3. In Australia, see: Kelk et al., *supra* note 3 at 12; Leahy et al., *supra* note 3 at 611; Skead & Rogers, *supra* note 3 at 82. But see: Larcombe, Finch & Sore, *supra* note 3 at 265. In the United Kingdom, see: Bogowicz et al., *supra* note 3; Lewis & Cardwell, *supra* note 3. In Canada, see: Helmers et al., *supra* note 3.

<sup>355</sup> See: Benjamin et al., *supra* note 3.

<sup>356</sup> The authors continue, “These symptoms include obsessive-compulsive behavior, interpersonal sensitivity, depression, anxiety, hostility, phobic anxiety, paranoid ideation, and psychoticism (social alienation and isolation). Symptom levels significantly increase for law students during the first to third years of law school. Depending on the symptom, 20-40% of any given class reports significant symptom elevations. Finally, further longitudinal analysis showed that the symptom elevations do not significantly decrease between the spring of the third year and the next two years of law practice as alumni.” See: Benjamin et al., *ibid* at 246.

<sup>357</sup> In the United States, see: Benjamin et al., *ibid* at 246; Reifman, McIntosh, & Ellsworth, *supra* note 3; Sheldon & Krieger 2004, *supra* note 4. In Australia, see: O’Brien, Tang & Hall, 2011 Changing our Thinking *supra* note 3.

1986 Benjamin et al. study, Reifman and colleagues compared American law student depression and symptomology with the general population in 2001 ( the “2001 Reifman et al. study”).<sup>358</sup> They found that law students’ experience with depression before attending law school was comparable to that of the general population, which means that students coming into law school as a group were not any more distressed than others in general.<sup>359</sup>

Building on what appeared to be mounting evidence of students’ average levels of wellbeing before entering law schools, in 2004, Kennon Sheldon, a psychologist, and Lawrence Krieger, a law professor, evaluated the subjective wellbeing of law students at Florida State University ( the “2004 Sheldon & Krieger study”).<sup>360</sup> At the time, Florida State University admitted law students based on undergraduate grades and Law School Admission Test scores, like most law schools.<sup>361</sup>

While the Benjamin 1986 et al. study and the Reifman et al. 2001 study found that before commencing law school, students generally had the same wellbeing as the general population, the 2004 Sheldon & Krieger study found that new law students generally demonstrated even higher levels of wellbeing and life satisfaction than the comparative undergraduate sample.<sup>362</sup> The 1986 Benjamin et al. study, the Reifman et al. 2001 study, and the Sheldon & Krieger 2004 determined that students entering law school generally do not enter law school anymore distressed than the general population.<sup>363</sup>

However, after attending law school and within the first year of legal education, student wellbeing dramatically declines. This is not a mere coincidence. The 2004 Sheldon & Krieger

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<sup>358</sup> See: Reifman, McIntosh, & Ellsworth, *ibid.*

<sup>359</sup> *Ibid* at 100.

<sup>360</sup> See: Sheldon & Krieger 2004, *supra* note 4 at 261, 265, 267-268. Measurement of subjective wellbeing focused on positive affect (happy moods), negative affect (unhappy moods), and overall life satisfaction. For "positive and negative affect," researchers used the 20-item Center for Epidemiological Studies-Depression Scale and the Positive and Negative Affect Schedule (PANAS). Depression was measured (in Aug. 2000 and 2nd survey only), using the Beck Depression Inventory—physical health at times 1, 2, and 3. The first data was gathered during orientation in August 2000 and consisted of 235 first-year law students at Florida State University. Gender was almost equally distributed; most were under 25 and Caucasian. Three subsequent surveys were completed. The second survey data was gathered at the end of the first year in 2001, the 3<sup>rd</sup> in November 2001 and the 4<sup>th</sup> in November 2002. By the fourth survey, participation had depleted to 134 participants from the original cohort.

<sup>361</sup> *Ibid* at 266-267.

<sup>362</sup> *Ibid* note 4 at 270-271. The first-year law school participants were compared to 236 upper-year psychology students at the University of Missouri.

<sup>363</sup> *Ibid.* Also see: Benjamin et al., *supra* note 3; Reifman, McIntosh, & Ellsworth, *supra* note 3.

study “found that students evidenced large declines in positive affect and life satisfaction, and large increases in negative affect, depression, and physical symptomology, from the beginning to the end of their first year of law school.”<sup>364</sup> Furthermore, the wellbeing of law students did not improve during the second or third year of law school.<sup>365</sup>

Similar to the 2004 Sheldon & Krieger study, in Australia, O’Brien, Tang, and Hall published a study in 2011 (“Changing our Thinking study”) with results demonstrating that first-year law students had better wellbeing than other age-matched Australians at the beginning of the year.<sup>366</sup> O’Brien, Tang and Hall wrote that “the beginning-of-year group had a mean score [indicative of psychological distress] which was significantly *below* that of the normative sample,” meaning that law students are not entering law school any more psychologically distressed than the general population.<sup>367</sup>

Based on the forgoing, studies conducted in the United States, and Australia have found that pre-law students have levels of wellbeing comparable to the general population before starting law school.<sup>368</sup> No studies have been conducted on pre-law student wellbeing in the United Kingdom or Canada.<sup>369</sup> However, with the exception of the United Kingdom, studies in all the compared jurisdictions have shown that student wellbeing declines in correlation with commencing law school.<sup>370</sup> Whatever personality traits or genetics pre-law students have when they arrive at law

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<sup>364</sup> See: Sheldon & Krieger 2004 *ibid*, at 280.

<sup>365</sup> *Ibid* at 274. Also see: Nancy J. Soonpaa, “Stress in Law Students: A Comparative Study of First-Year, Second-Year, and Third-Year Students” (2003) 36 Connecticut Law Review 353. The Soonpaa Study found higher psychological distress rates among third-year law students than among first- and second-year law students.

<sup>366</sup> See: O’Brien, Tang, & Hall 2011 Changing our Thinking, *supra* note 3. The study compared law students to Australians aged 18-24. Molly Townes O’Brien is an associate professor in law, Director of Teaching and Learning at the ANU College of Law, and a registered psychologist. Kath Hall is a Senior Lecturer in Law and Director of Student Wellbeing at the ANU College of Law.

<sup>367</sup> *Ibid* at 159. In Canada, a 2017 psychological study of McGill law students revealed that the onset of psychological distress began in law school, and half of those experiencing it attributed it to their legal education. See: McGill, *supra* note 3.

<sup>368</sup> In the United States, see: Benjamin et al., *supra* note 3 at 246; Reifman, McIntosh & Ellsworth, *supra* note 3 at 102; Sheldon & Krieger 2004 *supra* note 4 at 270-271 at 270. In Australia, see: O’Brien, Tang & Hall 2011 Changing our Thinking, *ibid* at 159, 162. To the author’s knowledge, no published studies have investigated pre-law student wellbeing in the United Kingdom or Canada.

<sup>369</sup> Although the McGill 2017 Report found that 49.7% of law students attributed declines in their wellbeing to their legal education, 52.2% opined that the demands of their academic life were not manageable. See: Helmers et al., *supra* note 3 at 4.

<sup>370</sup> In the United States, see: Pritchard & McIntosh, *supra* note 5 at 739; Reed et al., *supra* note 5 at 48. In Australia, see: Lester, England & Antolak-Saper, *supra* note 5. In Canada, see: McGill, *supra* note 3.

school, the 1986 Benjamin study and the 2001 Reifman et al. study provide evidence that students arrive at law school with wellbeing comparable to that of the general population.<sup>371</sup>

A later study uncovered that students may have even better wellbeing than that of the general population before starting law school. The 2004 Sheldon & Krieger study and Changing our Thinking study exposed that, before starting law school, students had even better wellbeing than the general population.<sup>372</sup> Once students start law school, their wellbeing considerably declines. Chapter 4.3 will next outline studies demonstrating that the psychological distress experienced by law students exceeds that of the general population.

#### 4.3. Law Students Experience Psychological Distress at Rates Exceeding that of the General Population

Chapter 4.2 outlined studies finding that students arriving at law school with wellbeing comparable to that of the general population or even better.<sup>373</sup> Chapter 4.3 will outline the studies which found that after starting law school, students psychological distress jumped and quickly surpassed that of the general population.<sup>374</sup> Law students “psychological distress” was compared to the general population for the first time in 1981 by Stephen Shanfield and Andrew Benjamin (the “1985 Shanfield & Benjamin study”).<sup>375</sup>

Shanfield and Benjamin identified that prior studies were inadequate because they had predominately used small sample sizes, anecdotal evidence, examined a limited time frame, and

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<sup>371</sup> See: Benjamin et al., *supra* note 3 at 246; Reifman, McIntosh & Ellsworth, *supra* note 3 at 102.

<sup>372</sup> See: Sheldon & Krieger 2004 *supra* note 4 at 270-271 at 270.

<sup>373</sup> In the United States, see: Benjamin et al., *supra* note 3 at 246; Reifman, McIntosh & Ellsworth, *supra* note 3 at 102; Sheldon & Krieger 2004, *ibid*. In Australia, see: O’Brien, Tang & Hall 2011 Changing our Thinking, *supra* note 3 at 159, 162. To the author’s knowledge, no published studies have investigated pre-law student wellbeing in the United Kingdom or Canada.

<sup>374</sup> In the United States, see: Shanfield & Benjamin, *supra* note 3 at 72; Benjamin et al., *ibid* at 241, 246; Reifman, McIntosh & Ellsworth, *ibid* at 102; Organ, Jaffe & Bender, *supra* note 3 at 136. Law students have been found to experience higher rates of psychological distress than the general population in Australia. See: Kelk et al., *supra* note 3 at 11-12; Leahy et al., *supra* note 3 at 613; O’Brien, Tang & Hall, *supra* note 3 at 53; O’Brien, Tang & Hall, 2011 Changing our Thinking, *ibid* at 159-160; Skead & Rogers, *supra* note 3 at 572; Bergin & Pakenham, *supra* note 3 at 401; Skead, Rogers & Doraisamy, *supra* note 3 at 93; Skead, Rogers & Johnson, *supra* note 3 at 351. In the United Kingdom, see: Lewis & Cardwell, *supra* note 3. In Canada, see generally: McGill 2017 *supra* note 3.

<sup>375</sup> See: Shanfield & Benjamin, *ibid*.



lacked methodology.<sup>376</sup> The 1985 Shanfield & Benjamin study represented all three years of law school and used validated self-report instruments.<sup>377</sup> Shanfield and Benjamin found that “law students ha[d] higher rates of psychiatric distress than ...a contrasting normative population.”<sup>378</sup> Twelve percent of law students scored high enough to be indicative for a diagnosis of depression.<sup>379</sup>

Law student depression and symptomology was again compared to that of the general population in the Benjamin et al. study published in 1986 reviewed in the previous section.<sup>380</sup> That study concluded that while “only 3-9% of individuals in industrial nations suffer from depression,” approximately “17-40% of law students and alumni in our study suffered from depression, while 20-40% of the same subjects suffered from other elevated symptoms.”<sup>381</sup>

The 2001 Reifman et al. study referred to in the previous section, was a longitudinal study of law student depression and affect before and during law school.<sup>382</sup> The researchers collected data from students by way of self-report at the University of Michigan law school to assess changes of psychological distress over time.<sup>383</sup> The 2001 Reifman et al. study found that students’ depression levels elevated after they started law school.<sup>384</sup> By the end of the first and third years

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<sup>376</sup> *Ibid.* When this study was published, G. Andrew H. Benjamin, MA., J.D., was a Doctoral Candidate in Clinical Psychology at the University of Arizona, Tucson, and a Psychology Resident at the Department of Psychiatry and Behavioral Sciences, University of Washington. Stephen B. Shanfield, M.D., was an Associate Professor of Psychiatry, Director of Advanced Psychiatry Residency Training, and Director of Outpatient Psychiatric Services at the University of Arizona College of Medicine, Tucson. Also see: M. Heins, S. N. Fahey, & L. I. Leiden, “Perceived Stress in Medical, Law, and Graduate Students” (1984) 59:3 Academic Medicine 169-179.

<sup>377</sup> *Ibid.* at 69. Student participants completed the Brief Symptom Inventory (BSI) to assess psychiatric distress, the Beck Depression Inventory, and the Multiple Affect Adjective Checklist (MAACL), to survey feeling states.

<sup>378</sup> *Ibid.*

<sup>379</sup> *Ibid.* at 72.

<sup>380</sup> *Ibid.*

<sup>381</sup> *Ibid.* at 247.

<sup>382</sup> See: Reifman, McIntosh, & Ellsworth, *supra* note 3. Depression was measured using the Center for Epidemiologic Studies-Depression scale (CES-D), which assessed general positive and negative mood with the Positive and Negative Affect Schedule (PANAS).

<sup>383</sup> *Ibid.* Three hundred seventy questionnaires were distributed. One hundred seventy-five anonymous responses were received from the orientation of 1<sup>st</sup>-year law school. One hundred thirty-six anonymous responses were received after term one of the first year. Two hundred forty-four anonymous responses were received after completing the first year of law school. Questionnaires were distributed in the last month of students' second law school, and 74 anonymous responses were received. Finally, 118 anonymous responses were received after questionnaires were distributed to the students last month of the third year. Regarding demographics, approximately 55% were male, and 45% were female; 75-80% were white; the average age was 24.

<sup>384</sup> *Ibid.* The study found that at orientation in 1<sup>st</sup> year, approximately 20% could be considered depressed.

of law school, the researchers reported that the student scores were comparable to people going through “major life traumas,” such as marital separation or experiencing the death of a spouse.<sup>385</sup> Trauma was outlined in Chapter 2.5, as well as the potentially shattering effect it can have on mental health and wellbeing.

In 2016, Organ, Jaffe, and Bender published the results of a survey on law student wellbeing titled: “Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns” (the “2016 Organ, Jaffe & Bender study”).<sup>386</sup> The 2016 Organ, Jaffe, & Bender study involved fifteen law schools in the United States and eleven thousand law students.<sup>387</sup> The study found that eighteen percent of respondents would qualify for a diagnosis of depression, being more than twice the rate of Americans diagnosed with depression.<sup>388</sup>

In Australia, the *Courting the Blues Report* disclosed that over thirty-five percent of law students experienced high to very high levels of “psychological distress” compared to thirteen percent of the Australian general population within the same age range.<sup>389</sup> A year later, in 2010, Leahy and colleagues published a study comparing University of Adelaide law students to the general population, finding that their levels of psychological distress once again exceeded those of the general population.<sup>390</sup>

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<sup>385</sup> *Ibid* at 101-102.

<sup>386</sup> See: Organ, Jaffe, & Bender, *supra* note 3.

<sup>387</sup> *Ibid* at 124. 56% of those completing the survey were women, and 44% were men; 69% were white, 7% were Asian, 8% were Black, 5% were Hispanic/Latino, 7% were multi-racial, and 3% were other.

<sup>388</sup> *Ibid* at 136. The survey used the Patient Health Questionnaire-2 (PHQ-2) to screen for depression; “NIMH » Major Depression,” online: <<https://www.nimh.nih.gov/health/statistics/major-depression.shtml>>. The site reports that “[a]n estimated 17.3 million adults in the United States had at least one major depressive episode. This number represented 7.1% of all US adults.”

<sup>389</sup> See: Kelk et al., *supra* note 3 at 11–12. The researchers utilized the Kessler Psychological Distress Scale (K-10) and physical and psychological wellbeing scale (SPHERE) to estimate a respondent's risk of mental illness, including depression and anxiety. Also see: Sharon Medlow, Norm Kelk & Ian Hickie, “Distress and Depression Among Australian Law Students: Incidence, Attitudes and the Role of Universities” (2010) 32:1 Sydney Law Review 113-122 at 117.

<sup>390</sup> Dr. Catherine Leahy is a University of Adelaide, Australia student counsellor. She has a Ph.D. in Medicine/Psychology, a Master of Social Work, and a Diploma in Counselling, Bachelor of Arts, Bachelor of Music. See: Leahy et al., *supra* note 3 at 613. The study utilized the Kessler Measure of Psychological Distress (K10). The study was conducted with respondents including: 471 from all years of medicine, 197 from second- and third-year law, 204 from second- and third-year engineering and 83 from third-year psychology.

In 2011, O'Brien, Tang, and Hall published a preliminary study regarding law student wellbeing in the first year of law school at the Australian National University (the "2011 O'Brien, Tang, and Hall study").<sup>391</sup> The participants included students at the end of their first year of law school in 2009 and students starting law classes in 2010.<sup>392</sup> The results revealed that law students experienced significant higher levels of psychological distress than others in the community.<sup>393</sup> The results also suggested that students starting law school experienced depression at a rate of 11.7 percent, which increased to 31.5 percent by the end of the first year.<sup>394</sup> Furthermore, by the end of the first year, 30.6 percent of participants reported anxiety compared to 25.5 percent at the beginning of the first year.<sup>395</sup>

The Changing our Thinking study previously reviewed in Chapter 4.2, found that despite higher-than-average mental health at the beginning of the term, there was a "substantial jump" between the beginning and the end of the academic year from "lower-than-average" depression symptoms to "higher-than-average" depression symptoms among law students.<sup>396</sup> By the end of the first year of law school, "almost one-third of students were scoring 'moderate,' 'severe' or 'extremely severe'" on the Depression Anxiety Stress Scales.<sup>397</sup> The Changing our Thinking study is consistent with the *Courting the Blues Report*, wherein "35.4 per cent of law students reported high or very high levels of distress levels."<sup>398</sup>

In 2014 Natalie Skead, an associate professor at the faculty of law, and Shane Rogers, a Ph.D. candidate at the University of Western Australia, published an empirical study of law students to

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<sup>391</sup> See: O'Brien, Tang, & Hall, *supra* note 3. The research was conducted at Australian National University (ANU). Researchers utilized that Rational-Experiential Inventory (REI), the Depression Anxiety Stress Scales (DASS-21) for psychological distress and the Satisfaction with Life Scale (SWLS).

<sup>392</sup> *Ibid.* The participants of the first survey in October 2009, approaching the completion of their first year, included 214 (58% female) 1st-year law students. The second survey included 174 (64% female) first-year students in their second week of classes in February 2010. 80% of participants were between 18-19 years old. 20% lived at home with their parents.

<sup>393</sup> *Ibid* at 53.

<sup>394</sup> *Ibid* at 54. The researchers caution, however, that the samples were independent groups, one tested at the end of year one and the other group tested at the beginning of year one and suggest further research.

<sup>395</sup> *Ibid* at 53.

<sup>396</sup> See: O'Brien, Tang & Hall, 2011 Changing Our Thinking *supra* note 3 at 159.

<sup>397</sup> *Ibid* at 159-160. 18.8% of students who had previously been in the 'normal range' were in the 'moderate' category by the end of the first year.

<sup>398</sup> See: Medlow, Kelk & Hickie, *supra* note 389 at 116.

assess their mental health and behaviours (the “2014 Skead & Rogers study”).<sup>399</sup> The 2014 Skead & Rogers study was consistent with other research in Australia and further exposed that law student were distressed. Participants “reported significantly higher levels of anxiety and depression than members of the general Australian population in the same age range.”<sup>400</sup> The researchers further disclosed that almost half, at nearly 45.6 percent, of respondents suffered from anxiety and depression.<sup>401</sup>

In 2015, Adele Bergin and Kenneth Pakenham published a study which evaluated the levels of distress, life satisfaction, and psychological wellbeing of Australian law students (the “2015 Bergin & Pakenham study”).<sup>402</sup> Although the 2015 Bergin & Pakenham study did not compare law students to the general population, like the above-noted studies, they found that “the majority of participants reported Moderate to Extremely Severe levels of depression (52.86%) and anxiety (53.92%).”<sup>403</sup> Moreover, 38.6 percent of participants reported being “dissatisfied” with their lives, indicative of lower satisfaction than that experienced by Australian adults generally.<sup>404</sup> Bergin and Pakenham concluded by writing that “[t]he present study provides

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<sup>399</sup> See: Skead & Rogers, 2014, *supra* note 3. The anonymous survey respondents included two hundred and six UWA LLB and JD students out of 1031, with a twenty percent response rate. Of the two-hundred and six students, 188 were LLB students, and 18 were JD students. The mean age was 22.46 years old, and 72.3 percent were female. The survey was divided into nine sections as follows: Section 1 was general information, including gender and age; Sections 2-6 measured stress, anxiety and depression levels using the Student Life Stress Inventory, the State-Trait Anxiety Inventory and the DASS depression subscale; Sections 7-8, participants were asked to indicate whether they had engaged in activities that were divided into four broad categories: social, leisure, exercise, and work; Section 9 asked participants to indicate the extent to which they felt a sense of belonging with their peers and at university.

<sup>400</sup> *Ibid* at 572. Also see: Kelk et al., *supra* note 3; Wendy Larcombe et al., “Does an Improved Experience of Law School Protect Students Against Depression, Anxiety and Stress? An Empirical Study of Wellbeing and the Law School Experience of LLB and JD Students (Australia)” (2013) 35:2 Sydney Law Review 407.

<sup>401</sup> *Ibid*. The researchers utilized the DASS depression subscale. Of those suffering from anxiety and depression, 6.8% were mild, 20.8% were moderate, 10.2% were severe, and 7.8% were extremely severe. 54.4% were average.

<sup>402</sup> Adele Bergin, School of Psychology, The University of Queensland. Kenneth Pakenham, PhD, is an Emeritus Professor of clinical and health psychology in the School of Psychology at The University of Queensland, Australia. See: Bergin & Pakenham, *supra* note 3. Depression Anxiety Stress Scale, Satisfaction with Life Scale, Ryff’s Psychological Well-Being Scales, Perceived Stress Scale and Law Student Perceived Stress Scale (LSPSS) were utilized. The authors noted on pp. 392-399 that analyses indicated that the LSPSS was psychometrically sound and measured four dimensions of law school stress: academic demands, social isolation, career pressure and study/life imbalance. Causation for law student distress is also reviewed in the study and will be discussed in Chapter 5 of this thesis.

<sup>403</sup> *Ibid* at 399. Six hundred forty-seven university students enrolled in a Bachelor of Laws at one of three southeast Queensland, Australia universities participated. Four hundred eighty-one completed the questionnaire, whereas 166 completed only the LSPSS and Perceived Stress Scale. As such, psychometric analysis of the LSPSS was conducted on the total sample of 647, while subsequent analyses (i.e., the second and third study aims) were conducted on 481 (70.76% females and 29.24% males; mean age of 21.90 years; 22.5 1% in 1<sup>st</sup> year of law school; 22.29% in second; 21.44% in third and 33.76% in the fourth year of law school; 91.01% were full-time) students.

<sup>404</sup> *Ibid* at 401.

further evidence of the alarming levels of psychological distress experienced by Australian law students.”<sup>405</sup>

In 2017 Skead, Rogers, and Doraisamy invited law students and lawyers from across Australia to participate in a study regarding psychological distress, disordered eating, weight, and shape concerns, and compared the cohort against psychology students and the general population (the “2017 Skead et al. study”).<sup>406</sup> The 2017 Skead et al. study found that law students and lawyers “were well above the general population norm for psychological distress.”<sup>407</sup>

Most recently, in 2020, Skead, Rogers, and Johnston examined the levels of psychological distress of law students at two uniquely distinctive law schools in Australia through an online survey administered in 2017 and 2018 (the “2020 Skead et al. study”).<sup>408</sup> Two hundred and

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<sup>405</sup> *Ibid* at 403. Also see: See: Larcombe, Finch, & Sore, *supra* note 3 at 258 wherein that found that law students rated higher in terms of psychological distress in comparison to the age-matched Australian population.

<sup>406</sup> Professor Natalie Skead is Dean of the Law School at the University of Western Australia. Shane Rogers is a lecturer in the psychology discipline within the School of Arts and Humanities, Edith Cowan University. Jerome Doraisamy is a senior writer for Lawyers Weekly and Wellness Daily. Doraisamy is also the author of The Wellness Doctrines book series, an admitted solicitor in Australia, an adjunct lecturer at The University of Western Australia and a board director of Minds Count. See: Skead, Rogers, & Doraisamy, *supra* note 3. Comparative data were collected from 145 psychology students (88% female) recruited from a single Western Australian university and 187 members of the Australian public (70.51% female). 428 (83% female) law students and 148 (75% female) lawyers completed the survey. Participants eating behaviours and concerns were measured using the non-diagnostic EDE-Q, which included questions from The Eating Motivation Survey (TEMS). The Depression, Anxiety and Stress Scales 21-item version (DASS-21), the Brief Emotional Experience Scale (BEES), and the Brief Physical Experience Scale (BEEPS) were used to measure the participants' self-reported levels of psychological and physical distress.

<sup>407</sup> *Ibid* at 93.

<sup>408</sup> Dr. Rupert Johnson is a National Deputy Head of the School of Law and Business at The University of Notre Dame Australia, Fremantle campus. Dr. Johnson is also a barrister and solicitor of the Supreme Court of Western Australia and the High Court of Australia. See: Skead, Rogers & Johnson, *supra* note 3. The study included two Western Australia law schools: The University of Western Australia Law School (UWALS) and Edith Cowan University School of Business and Law (ECUSBL). UWA is the oldest law school (est. 1911), and its standard minimum academic entry requirement for school leavers is an Australian Tertiary Admission Rank (ATAR) of 80. Edith Cowan University (ECU) began offering a Bachelor of Laws (LLB) within the ECUSBL in 2005. ECU was established in 1991, and its standard minimum academic entry requirement for school leavers is an ATAR of 70. ECU allows the online study and has a mixed mode comprising both online and on campus. Admission to the LLB requires a minimum ATAR of 85. The LLB is offered as a four-year full-time course for students without an undergraduate degree or a three-year full-time course for graduates. ECU varies significantly from UWALS, which only offers professional law degrees at a postgraduate master's level since 2013. The Juris Doctor (JD) is a three-year full-time course with primarily face-to-face delivery. All law students at UWA already have, at a minimum, a three-year undergraduate degree. Most JD students enter the JD through an assured pathway for those with a minimum ATAR of 96.

twenty-five law students participated in the study.<sup>409</sup> Consistent with prior research, the 2020 Skead et al. study reflected higher distress in law student participants at both law schools, regardless of the different pedagogical differences, compared to the public.<sup>410</sup>

In the United Kingdom, Lewis and Cardwell used law students as a comparator group in their 2019 published study, finding that law student wellbeing was significantly lower when compared to the age-matched general population (the “Lewis & Cardwell study”).<sup>411</sup> Finally, in 1994, Helmers and colleagues found that Canadian law students “scored worse than the population mean on vocational satisfaction, time pressure, depression, and anxiety.”<sup>412</sup> By all accounts, the studies collectively reveal that law students enter law school with wellbeing comparable to that of the general population; however, their wellbeing declined throughout their legal education,

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<sup>409</sup> *Ibid.* 111 law students from UWALS with an average age of 24.39; 26% male; 74% female; 60% living with parents; 40% living independently. 114 law students from ECUSBL with an average age of 33.4; 32% male; 68% female; 19% living with parents; 81% living independently.

<sup>410</sup> *Ibid.* The Brief Emotional Experience Scale (BEES) measured the participants' emotional well-being.

<sup>411</sup> Dr. Elisa G. Lewis is a senior lecturer in psychology in the School of Applied Sciences and a member of the Lived Experience of Distress, Developmental Cognition, Psychology, and Pedagogy research groups. She joined London South Bank University in 2017 after completing a PhD at the Royal Veterinary College and Birkbeck University of London. Jacqueline M. Cardwell has been at the RVC Veterinary Epidemiology, Economics and Public Health (VEEPH) group since 2018. See: Lewis & Cardwell, *supra* note 3. One thousand seven hundred forty-four respondents from 7 English Universities completed the questionnaire. 80% of respondents were female, and the average age was 21. Most participants (82%) were UK citizens who did not hold a previous degree. Participants were recruited during two different periods: March to August 2013 and October to December 2013. The questionnaire included an assessment of wellbeing using the Warwick-Edinburgh Mental Well-being Scale, an assessment of non-psychotic psychological distress using the General Health Questionnaire, an assessment of depression using the Beck Depression Inventory-II and an assessment of suicidal ideation and suicide attempts using two questions from the Adult Psychiatric Morbidity in England survey. Also see: Emma Jones, Rajvinder Samra & Mathijs Lucassen, “The World at Their Fingertips? The Mental Wellbeing of Online Distance-Based Law Students” (2019) 53:1 *The Law Teacher* 49–69 which was a cross-sectional study of a cohort in their final stage of online distance-based learning for their LLB at Open University in the UK. Jones, Samra, & Lucassen write at 64: “27.6% of respondents would probably benefit from professional help in terms of their mental wellbeing.” Further, at 68 they write, “[t]he results of the DASS-21 indicated that the respondents’ mean levels of stress, anxiety and depression were all higher than those of the general population.”

<sup>412</sup> See: Helmers et al., *supra* note 3 at 710. Respondents included 357 Medical Students (160 men; 149 women; average age 23.5) and 365 law students (158 men; 184 women; average age 24), and 94 graduate students in biochemistry, pharmacology, and physiology (51 men; 35 women; average age 25.9). The researchers used the Derogatis Stress Profile (DSP), which measures environmental factors, personality mediators and emotional responses to stress as well as measuring subjective stress. The DSP score demonstrates 11 dimensions: time pressure, driven behaviour, attitude posture (achievement ethic), relaxation potential, role definition, vocational environment, domestic environment, hostility, anxiety, and depression. The DSP is 77 itemized statements rated from 0-4, where “0” means “not true” and “4” means “extremely true.”

below that experienced by the general population.<sup>413</sup> Next, this thesis examines studies that compare the psychological distress of law students to that of students in other programs.

#### 4.4. Law Students Experience Higher Rates of Psychological Distress than Students in Medicine and Students Other Programs

Many studies have compared law students' mental health and wellbeing to that of students in other programs. All studies in all jurisdictions reviewed, but one, found that law students experience more psychological distress than students in other programs.<sup>414</sup> The 1985 Shanfield and Benjamin study found that law students experience more psychological distress than medical students.<sup>415</sup> Another study published in 1986 found that law students in the United States

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<sup>413</sup> In the United States, see: Benjamin et al., *supra* note 3 at 246; Reifman, McIntosh & Ellsworth, *supra* note 3 at 102; Sheldon & Krieger 2004 *supra* note 4 at 270-271 at 270. In Australia, see: O'Brien, Tang & Hall 2011 Changing our Thinking, *supra* note 3 at 159, 162. To the author's knowledge, no published studies have investigated pre-law student wellbeing in the United Kingdom or Canada. Regarding law students experiencing higher rates of psychological distress than that of the general population in the United States, see: Shanfield & Benjamin, *supra* note 3 at 72; Benjamin et al., *ibid* at 241, 246; Reifman, McIntosh & Ellsworth, *ibid* at 102; Organ, Jaffe & Bender, *supra* note 3 at 136. In Australia, see: Kelk et al., *supra* note 3 at 11-12; Leahy et al., *supra* note 3 at 613; O'Brien, Tang & Hall, *supra* note 3 at 53; O'Brien, Tang & Hall, 2011 Changing our Thinking, *ibid* at 159-160; Skead & Rogers, *supra* note 3 at 572; Bergin & Pakenham, *supra* note 3 at 401; Skead, Rogers & Doraisamy, *supra* note 3 at 93; Skead, Rogers & Johnson, *supra* note 3. See Lewis & Cardwell, *supra* note 3 in the United Kingdom. In Canada, see: Helmers et al., *supra* note 3; McGill 2017 *supra* note 3.

<sup>414</sup> In the United States, see: Shanfield & Benjamin, *supra* note 3 at 221; Organ, Jaffe & Bender, *supra* note 3 at 136-137. Also see: Harries, Kim & Grant, *supra* note 3. In Australia, see: Kelk et al., *supra* note 3 at 12; Leahy et al., *supra* note 3 at 611; Skead & Rogers, *supra* note 3 at 82. But see: Larcombe, Finch & Sore, *supra* note 3 at 265. In the United Kingdom, see: Bogowicz et al., *supra* note 3; Lewis & Cardwell, *ibid*. In Canada, see: Helmers et al., *ibid*. The Larcombe, Finch & Sore study had 4,711 respondents from the University of Melbourne which included: 333 Law students (Juris Doctor ('JD') - Masters only); 485 Engineering students (14% Undergraduates and 86% Masters students); 308 Veterinary Medicine students (24% Undergraduates and 76% Masters students); 1,715 Science students (95% Undergraduates and 5% Masters students); 1,244 Bachelor of Arts (BA) students (Undergraduates only); and 626 Bachelor of Biomedicine students (Undergraduates only). Of the 333 law students 49% were in first year and 63% were female. The study used the 21-item DASS ('DASS-21') as a measure of negative mental health or psychological distress. The study found at 265 that law students may not be at higher risk of experiencing psychological distress when compared with students in other faculties except for medicine and psychology. At 265 the Larcombe, Finch & Sore study stated that at least one in four law students experience "very high levels of psychological distress."

<sup>415</sup> See: Shanfield & Benjamin, *ibid*. 232 law students (150 men and 82 women, and the average age was 26.2) were compared to 236 medical students (190 men and 72 women, and the average age was 25.1) at the University of Arizona using the Brief Symptom Inventory (BSI) to assess psychiatric distress and the Beck Depression Inventory, and the Multiple Affect Adjective Checklist (MAACL), to survey feeling states. Also see: Eron & Redmount, *supra* note 354; Benjamin et al., *supra* note 3 found law students developed significantly more distress than medical students but for somatization and phobic anxiety. But see: Organ, Jaffe & Bender, *supra* note 3, at 136-139 found that law student respondents screened positive for depression slightly more than graduate students, but slightly less than undergraduate students; law students admitted to self-harm less than graduate or undergraduate students but were found to be almost twice as likely to have experienced suicidal thoughts; law students had more anxiety and incidents of eating disorders than undergraduates or graduates. Also see: Harries, Kim & Grant, *supra* note 3 which

experienced more depression, anger-hostility, and obsessive compulsion than medical students (the “Kellner, Wiggins & Pathak study”).<sup>416</sup>

In Australia, the *Courting the Blues Report* compared law students to medical students and found that law students experienced higher rates of “high or very high levels of distress” than medical students.<sup>417</sup> Another study published in 2010 revealed that law students experienced more distress than mechanical engineering, medical, and psychology students (the “2010 Leahy et al. study”).<sup>418</sup> Further, a 2015 study that law students in Australia experienced higher anxiety and depression than psychology students (the “Skead & Rogers 2015 study”).<sup>419</sup>

In the United Kingdom, a 2018 study disclosed that law students fared worse than medical students in terms of anxiety suggestive of an anxiety disorder and depression suggestive of major depression (the “Bogowicz et al. study”).<sup>420</sup> Publishing similar results, a 2019 study also out of

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found that medical students and law students experienced more obsessive than the general population but about different things.

<sup>416</sup> Dr. Robert Kellner was an M.D. at the Department of Psychiatry, School of Medicine at the University of New Mexico. Dorothy Pathak, PhD, has been involved in epidemiological and bio-statistical research for the past 45 years, first at the University of New Mexico and now at Michigan State University. See: Kellner, Wiggins & Pathak, *supra* note 3 at 221. Kellner and Pathak compared 60 medical students to 60 law students at the University of New Mexico to assess distress. The participants included: 30 male first-year medical students, 30 female first-year medical students, 30 male first-year law students and 30 female third-year law students. The average age for medical students was 27, and the average age of law students was 28.70. All students were Caucasian and English-speaking; however, the researchers noted that 11 medical students had Spanish surnames 13 law students had Spanish surnames. The Hopkins Symptom Checklist and the Symptom Questionnaire were utilized and are self-rating scales.

<sup>417</sup> See: Kelk et al., *supra* note 3 at 12.

<sup>418</sup> See: Leahy et al., *supra* note 3 at 611.

<sup>419</sup> See: Skead & Rogers 2015, *supra* note 3 at 82. Participants were from the University of Western Australia and included 188 university students. Half of the sample was second- and third-year undergraduate law students with an average age of 21.47 years and 83% were female. The other half of the sample were second- and third-year undergraduate psychology students with an average age of 20.72 years and 76.6% were female. Anxiety was measured using the State-Trait Anxiety Inventory. Depression was measured using the depression subscale of the Depression, Anxiety and Stress Scale (DASS). Also see: Skead, Rogers & Doraisamy, *supra* note 3 included 428 (83% female) law students and 148 (75% female) lawyers completed the survey. Comparative data was collected from 145 psychology students (88% female) recruited from a single Western Australian university and 187 members of the Australian public (70.51% female). The law student participants were found to experience slightly higher levels of psychological distress compared to the psychology students.

<sup>420</sup> See: Bogowicz et al., *supra* note 3 at 132. In the study, the researchers utilized the Alcohol Use Disorder Identification Test (AUDIT), also predominately used in Canada. Participants were asked about their demographics, mental health, smoking and alcohol and other substance use. The questionnaire included: the Alcohol Use Disorders Identification Test (AUDIT), the General Health Questionnaire (GHQ), and the Hospital Anxiety and Depression Scale (HADS). The percentages of female medical students were 50.9% in 1<sup>st</sup> year, 52.1% 2<sup>nd</sup> year, and 56.9% in 3<sup>rd</sup> year. The percentage of female law students was 61.8% for 1<sup>st</sup> year, 62% 2<sup>nd</sup> year and 78.9% in 3<sup>rd</sup> year. Most participants were White. The percentage of White students was 71.3% 1<sup>st</sup>-year medical students; 75.8% 2<sup>nd</sup>-year



the United Kingdom found that law students experienced significantly higher psychological distress than medical and veterinarian students (the “Lewis & Cardwell study”).<sup>421</sup> Only one study of Canadian law students compared them to students in other programs and it was published 30 years ago. The 1994 study found that McGill law students experienced more stress than medical and graduate students in biochemistry, pharmacology, and physiology.<sup>422</sup>

The only study that contradicts the abovementioned studies is a lone 2015 study out of Australia published by Larcombe, Finch, and Sore, which determined that law students’ psychological distress was like that of students in other faculties, except for students in medicine and psychology.<sup>423</sup> In other words, law students reported more psychological distress than students in medicine and psychology. Therefore, all studies from all jurisdictions have found that law students experience psychological distress at levels above that experienced by students in medicine. Regardless, the Larcombe, Finch, and Sore 2015 Study divulged that at least one in four law students experienced “very high levels of psychological distress.”<sup>424</sup> This thesis now

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medical students; 80.2% 3<sup>rd</sup>-year medical students; 75.7 1<sup>st</sup>-year law students; 89.1% 2<sup>nd</sup>-year law students; 78.4 3<sup>rd</sup>-year law students. The remainder were categorized as “Black,” “Asian,” “Chinese,” “Mixed,” “Other,” or “Not Known.” Over one-third of medical students and about half or more of law students had a Hospital Anxiety and Depression Scale anxiety score suggestive of a possible anxiety disorder. “Over one-tenth of final year medical (first year 7.3%, second year 8.5%, final year 13.0%) and second and final year law students (first year 9.4%, second year 13.5%, final year 10.8%) had a HADS depression score suggestive of significant depression.” Also see: Yvonne Skipper & Michael Fay, “The Relationship Between the Sense of Belonging, Mental Wellbeing and Stress in Students of Law and Psychology in an English University.” (2023) 4:1 European Journal of Legal Education 5–26.

<sup>421</sup> See: Lewis & Cardwell, *supra* note 3.

<sup>422</sup> See: Helmers et al., *supra* note 3 at 714. Respondents included 357 Medical Students (160 men; 149 women; average age 23.5) 365 law students (158 men; 184 women; average age 24) and 94 graduate students in biochemistry, pharmacology, and physiology (51 men; 35 women; average age 25.9). The Derogatis Stress Profile (DSP) was used to measure environmental factors, personality mediators and emotional responses to stress as well as measuring subjective stress.

<sup>423</sup> See: Larcombe, Finch, & Sore, *supra* note 3 at 259. There were 4,711 respondents, including: 333 Law students (Juris Doctor ('JD') - Masters only); 485 Engineering students (14% Undergraduates and 86% Masters students); 308 Veterinary Medicine students (24% Undergraduates and 76% Masters students); 1,715 Science students (95% Undergraduates and 5% Masters students); 1,244 Bachelor of Arts (BA) students (Undergraduates only); and 626 Bachelor of Biomedicine students (Undergraduates only). Of the 333 law students, 49% were in their first year, and 63% were female. At pages 251–252 the study writes, “[t]he survey included the 21-item DASS ('DASS-21') as a measure of negative mental health or psychological distress. The DASS is widely used for research and screening purposes” and contains three independent subscales assessing the severity of symptoms associated with depression, anxiety, and stress, respectively. Depressive symptoms include low mood, pessimism, and an inability to become interested in activities, while anxiety symptoms include fear and a sense of panic or apprehension. Anxiety symptoms are distinguished in the DASS from (unhealthy) stress symptoms such as irritability, intolerance of delays or interruptions, and overreacting or becoming upset quickly. DASS scale scores can be categorized into five severity categories - normal, mild, moderate, severe, and extremely severe. These are not clinical classifications; the categories only indicate the severity of relevant symptoms within a defined timeframe.”

<sup>424</sup> *Ibid* at 265.

turns to the one study published on the psychological distress experienced by marginalized law students.

#### 4.5. Marginalized Law Students' Psychological Distress Is Even Worse & Understudied

The United States is the only jurisdiction where researchers have examined the wellbeing of women, students of colour, and lesbian, gay, bisexual, and low-income law students.<sup>425</sup> The 2014 Yale study, titled *Falling through the Cracks*, assessed the differing experiences of mental health, finding that marginalized law students suffered higher rates of mental health challenges.<sup>426</sup> *Falling through the Cracks* found that seventy percent of respondents reported experiencing “mental health challenges” during law school.<sup>427</sup>

Participants also reported apprehension to seek help because of stigma and feared potential exclusion by bar associations, faculty, peers, and administrators.<sup>428</sup> Unlike the many other studies conducted in the United States, to this author's knowledge *Falling through the Cracks* is the only study to date that has assessed the differing experiences of mental health among women, students of colour, lesbian, gay, and bisexual, and low-income law students.<sup>429</sup>

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<sup>425</sup> Studies regarding the wellbeing or psychological distress of women, people of colour, Indigenous, and LGTQ2S+ law students should be conducted and closely evaluated, given the priority of diversity and inclusion in law schools and the legal profession. Addressing the wellbeing of marginalized law students could improve retention within the profession.

<sup>426</sup> See: Agatstein et al., *supra* note 10. The survey was delivered in May 2014, and 296 students responded from 1L, 2L, and 3L.

<sup>427</sup> *Ibid* at 3. The term “mental health challenges” was defined on p. 13 and referred to a broad range of conditions and experiences, including “anxiety or stress serious enough to cause disruption (e.g., in sleep quality, concentration, memory, or emotional stability), depression, intrusive thoughts, suicidal ideation, survival of sexual abuse or other trauma, substance abuse, eating disorders, and any other mental or psychological condition that may require treatment from a medical professional.” Furthermore, at p. 62, participants totalled 296 students and consisted of 92 1Ls, 93 2Ls, and 97 3Ls, as well as a small number of L.L.M., J.S.D., Ph.D., and Joint Degree students. Demographics were outlined on p. 63-64 and included 55% female, 42% male and 3% undisclosed; 4% Black, 15% Asian, 6% Hispanic and 72% White; 12% declined to state family income, and 20% were between \$50-\$100K; 32% \$100-\$200K; 8% \$200-\$300K.

<sup>428</sup> *Ibid*.

<sup>429</sup> *Ibid* at 4. Although the study indicates that included in demographics on p. 16 were “Native American or Alaskan Native,” the exact percentage was left out of the study.

*Falling through the Cracks* revealed that women were more likely than men to experience mental health challenges.<sup>430</sup> Lesbian, gay, and bisexual respondents reported significantly higher rates of mental health challenges than heterosexual respondents.<sup>431</sup> Furthermore, the study found that respondents of colour were more likely to experience mental health challenges than Caucasian respondents.<sup>432</sup>

Finally, respondents with a family income of less than fifty-thousand dollars per year reported significantly higher mental health challenges than respondents with a family income of more than three-hundred thousand dollars per year.<sup>433</sup> As such, the 2014 Yale study found that while seventy percent of respondents reported mental health challenges overall, women, students of colour, lesbian, gay, and bisexual, and law students with family incomes less than fifty-thousand dollars per year were at higher risk.<sup>434</sup>

To the author's knowledge there are no other published studies in the reviewed jurisdictions that assessed the psychological distress of marginalized law students. This is shocking given, the lack of diversity within law and priority of diversity and inclusion that has been vocalized by law schools, bar associations and law societies. This thesis will now turn to a review of the studies which have examined substance use among law students.

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<sup>430</sup> *Ibid* at 16. 76% of women respondents reported experiencing mental health challenges compared to 61% of men. Also see generally studies finding that women law students experience disproportionate levels of psychological distress: Daniel N. McIntosh et al., "Stress and Health in First-Year Law Students: Women Fare Worse" (1994) 24:16 J Appl Soc Psychol 1474–1497; Larcombe et al., *supra* note 377; Shanfield & Benjamin, *supra* note 3, Helmers, *supra* note 3. *Contra* Leahy et al., *supra* note 3; Pritchard & McIntosh, *supra* note 5.

<sup>431</sup> *Ibid*. 84% of LGB respondents reported experiencing mental health challenges compared to 67% of heterosexual respondents.

<sup>432</sup> *Ibid* at 17. There was no analysis of whether respondents of colour differed regarding mental health challenges. (i.e., Asians experience more mental health challenges than Blacks).

<sup>433</sup> *Ibid* at 17-18. The study found that 84% of respondents with family incomes under \$50,000 experienced mental health challenges compared to 59 % with over \$300,000.

<sup>434</sup> *Ibid*.

## 4.6. Substance Use Among Law Students

Studies in the United States, the United Kingdom and Canada have disclosed that law student substance use is prevalent.<sup>435</sup> All of the studies indicate a pattern of problematic substance use among law students. The detrimental effects of substance use will be reviewed in Chapter 6.

The first large-scale study undertaken to assess law student substance use in the United States was commenced by the American Association of Law Schools in 1994 (the “1994 AALS Report.”)<sup>436</sup> Law students were found to be similar in their usage of substances compared to other college graduates and high school graduates of a similar age (23 to 33); however, there were a couple of notable exceptions.<sup>437</sup>

Law students “showed significantly higher usage rates for alcohol and for psychedelic drugs other than LSD.”<sup>438</sup> Law students also were found to have higher “past-year marijuana use, past-year and past-month tranquilizer use, lifetime and past-year LSD use, past-year use of opiates other than heroin, and past-month barbiturates use” than the comparative groups.<sup>439</sup>

Citing a 1990 study regarding lawyer alcohol use, the Special Committee on Problems of Substance Abuse in Law Schools, wrote, “[t]he seeds of substance abuse by lawyers may be sown in law schools. Students may establish behavior patterns that lead to problems of addiction

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<sup>435</sup> Law student substance use is prevalent. In the United States, see: AALS Report *supra* note 31 at 42, 43, 45; Organ, Jaffe, & Bender, *supra* note 3 at 127; Reed et al., *supra* note 8 at 152; Jaffe, Bender, & Organ, *supra* note 21 at 16. To the author’s knowledge, no studies have evaluated Australian law student substance use but see generally: Engs & Mulqueeny, *supra* note 31; Doraisamy, *supra* note 31; Allman, *supra* note 31; Ferguson, *supra* note 31. In the United Kingdom, see: Bogowicz et al., *supra* note 3 at 134. In Canada, see: McGill, *supra* note 3 at 8.

<sup>436</sup> “In November 1991, a questionnaire on substance use was distributed to all the students of 19 law schools whose combined J.D. student population (13,603) represented 10.6 percent of the total student population of the 176 ABA-approved law schools. The 19 schools were selected so that their total student enrollment was similar to the national J.D. student population in race, gender, law school size, geographic region of school, size of metropolitan area, and public/private nature of the school. Completed questionnaires were returned by 3,388 students.” See: AALS Report, *ibid* at 40.

<sup>437</sup> The 1994 AALS Report revealed that law students used more and more frequently as they proceeded through law school, especially with alcohol. Almost twelve percent of law students reported “abusing” alcohol since they began law school. See: AALS Report, *ibid* at 42-43.

<sup>438</sup> *Ibid* at 41-42. Respondents of the 1994 AALS Report reported that substance use was motivated by a need to “relax.” Also see generally: World Health Organization 2004, *supra* note 31; Frone, *supra* note 31; Maté 2018 *supra* note 31.

<sup>439</sup> *Ibid* at 42.

or impairment after they are practicing lawyers.”<sup>440</sup> The 1994 AALS Report also asked respondents the reason for their use of substances. Half or more reported that they used to “relax,” which may be indicative of self-medication (and poor coping mechanisms) due to stress.<sup>441</sup>

Following the 1994 AALS Report, the 2016 study published by Organ, Jaffe, and Bender involved fifteen law schools and eleven thousand law students, exposing that a quarter of law students misused alcohol.<sup>442</sup> Organ, Jaffe, and Bender found that law students used alcohol more than other graduate students.<sup>443</sup> In the same year, a study found that fifteen percent of American law students thought they may have “a drinking problem” (the 2016 Reed et al., study “).<sup>444</sup> Moreover, eighteen percent reported driving after consuming more alcohol than they should have.<sup>445</sup> Most recently, the “*It is Okay to Not Be Okay: The 2021 Survey of Law Student Well-Being*,” referred to in Chapter 2.5, found that almost twenty-seven percent of respondents would benefit from assessment for “Alcohol Use Disorder.”<sup>446</sup>

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<sup>440</sup> *Ibid* at 36 citing Benjamin, Darling, & Sales, *supra* note 7. The Benjamin, Darling, & Sales study will be reviewed in Chapter 5.

<sup>441</sup> *Ibid* at 45. “[O]ver 62 percent of the respondents who reported that they had used alcohol during the previous year indicated that one reason they drank was “‘to relax or relieve tension’; almost half of those who used marijuana listed relaxation or tension release as one of the reasons they did so.” Also see generally: Austin 2015, *supra* note 31; Kiepek & Beagan, *supra* note 35; L. Lerissa Smith et al., “Exploring the Link Between Substance Use and Mental Health Status: What Can We Learn from the Self-medication Theory?” (2017) 28:2 J Health Care Poor U 113-131; “Canada’s Low-Risk Alcohol Drinking Guidelines [brochure] | Canadian Centre on Substance Use and Addiction,” online: <<https://www.ccsa.ca/canadas-low-risk-alcohol-drinking-guidelines-brochure>>.

<sup>442</sup> See: Organ, Jaffe, & Bender, *supra* note 3 at 145. 56% of those completing the survey were women, and 44% were men; 69% were White, 7% were Asian, 8% were Black, 5% were Hispanic/Latino, 7% were multi-racial, and 3% were Other. This was a cross-sectional survey, taking a snapshot of respondents at one point in time, rather than a longitudinal survey.

<sup>443</sup> *Ibid* at 127.

<sup>444</sup> See: Reed et al., *supra* note 5 at 152. The 2016 Reed study did not compare law students to students in other faculties or the general population; instead, the study assessed substance use throughout the course of law school and published a cross-sectional, longitudinal study from one midwestern law school. Data were collected at three time points: September (the beginning of the school year; time 1), January (the beginning of the second semester; time 2), and May (the end of the year; time 3). At time 1 (September), participants were 103 law students (59% female, 93% White, M age = 26.2; 27.5% of eligible participants) from all three class years (42 1Ls, 35 2Ls, and 26 3Ls). At time 2 (January), participants were 35 first-year law students (50% female, 85% White, M age = 25.6). On 3 (May), participants were 32 first-year law students (62.5% female, 90.6% White, M age = 24.9). The study used the CORE Alcohol and Drug Survey (CORE) is a self-report measure of drug and alcohol use. No differences in alcohol or drug use among classes were reported on the CORE.

<sup>445</sup> See: AALS Report, *supra* note 31. Two participants reported being arrested for driving under the influence in the past year.

<sup>446</sup> See: Jaffe, Bender, & Organ, *supra* note 21 at 16. The study utilized the CAGE questionnaire, a widely used tool to screen for “unhealthy alcohol use.” The study uses the term “alcoholism”; however, there has been a move away from using such terminology, and in fact, the DSM 5<sup>th</sup> ed. uses the term “Alcohol Use Disorder.” This study was

Surprisingly, given the adverse effects of substance use on wellbeing and health, which will be outlined in Chapter 6, Australia has not published a single study to date, to the author's knowledge examining substance use among law students.<sup>447</sup> In the United Kingdom, at 2018 study found that law students were more likely to have an "alcohol use disorder" than medical students, and more likely to use other substances (the "Bogowicz et al. study").<sup>448</sup> In Canada, a 2017 study disclosed that more than half of McGill law students reported using alcohol one to five times per week.<sup>449</sup> To the author's knowledge, the 2017 McGill study on Canadian law student substance use is the only study that is publicly available.

#### 4.7. Conclusion

Students entering law school have wellbeing comparable to the general population in all jurisdictions but for the United Kingdom simply because such research has not, to this author's knowledge, yet been published.<sup>450</sup> Notably, the American 2004 Sheldon & Krieger study and the Australian Changing our Thinking study demonstrated that before starting law school students had higher levels of wellbeing than compared to the general population.<sup>451</sup> In all jurisdictions except the United Kingdom, again because such research has not, to this author's knowledge yet

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compared to the American study published in 2016 by Organ, Jaffe, and Bender, *supra* note 3. Found a slight decline in alcohol use.

<sup>447</sup> The detrimental effects of substance use will be examined in Chapter 6. To the author's knowledge, no studies have evaluated Australian law student substance use. A 1983 article about a survey regarding attitudes towards substances compared law students to police officers in Australia. See: Engs & Mulqueeny, *supra* note 31. Also, see generally: Doraisamy 2023, *supra* note 31; Allman, *supra* note 31; Ferguson, *supra* note 31. The *Courting the Blues Report*, stated on page 40, "[t]his survey was specifically focused on depression and psychological distress. It contained no questions about the use of alcohol or other drugs." The *Courting the Blues Report* did find that almost 50% of law students selected "alcohol abuse" as the main cause of death or disability in Australia. Also, almost 50% of law students opined that becoming dependent on alcohol, drugs, or sedatives was a behaviour or symptom exhibited by people with depression. See: Kelk et al., *supra* note 3 at 18-19.

<sup>448</sup> See: Bogowicz et al., *supra* note 3 at 134. Two-thirds of law students had alcohol use disorders compared to half of the medical students.

<sup>449</sup> See: McGill, *supra* note 3 at 8.

<sup>450</sup> In the United States, see: Benjamin et al., *supra* note 3 at 246; Reifman, McIntosh & Ellsworth, *supra* note 3 at 102; Sheldon & Krieger 2004 *supra* note 4 at 270-271 at 270. In Australia, see: O'Brien, Tang & Hall 2011 Changing our Thinking, *supra* note 3 at 159, 162. To the author's knowledge, no published studies have investigated pre-law student wellbeing in the United Kingdom or Canada.

<sup>451</sup> See: Sheldon & Krieger 2004, *ibid*; O'Brien, Tang & Hall, 2011 Changing our Thinking *supra* note 3.

been published, studies have shown that student wellbeing declines in correlation with commencing law school.<sup>452</sup>

It is alarming that studies in the United States, Australia, the United Kingdom and Canada reveal that law students experience higher rates of psychological distress than the general population considering that the general population has been declared as experiencing a mental health crisis.<sup>453</sup> Studies from those jurisdictions also divulge that law students experience higher rates of distress than students in most other programs and, indeed, students in medicine.<sup>454</sup> Even more stunning is that despite law schools, law societies, and bar associations advocating for diversity and inclusion, only one study has evaluated marginalized law students' wellbeing.<sup>455</sup>

Finally, in all jurisdictions but for Australia, because such studies have yet to be published to this author's knowledge, suggests that there are substance use problems among law students that may underlay the mental health crisis in law schools.<sup>456</sup> All of the studies that have been conducted

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<sup>452</sup> Studies have also shown that increases in student psychological distress coincide with commencing law school in all the compared jurisdictions except the United Kingdom. In the United States, see: Pritchard & McIntosh, *supra* note 5 at 739; Reed et al., *supra* note 5 at 48. In Australia, see Lester, England & Antolak-Saper, *supra* note 5. In Canada, see McGill, *supra* note 3.

<sup>453</sup> In the United States, see: Shanfield & Benjamin, *supra* note 3 at 72; Benjamin et al., *supra* note 3 at 241, 246; Reifman, McIntosh & Ellsworth, *supra* note 3 at 102; Organ, Jaffe & Bender, *supra* note 3 at 136. In Australia, see: Kelk et al., *supra* note 3 at 11-12; Leahy et al., *supra* note 3 at 613; O'Brien, Tang & Hall, *supra* note 3 at 53; O'Brien, Tang & Hall, 2011 Changing our Thinking, *supra* note 3 at 159-160; Skead & Rogers, *supra* note 3 at 572; Bergin & Pakenham, *supra* note 3 at 401; Skead, Rogers & Doraisamy, *supra* note 3 at 93; Skead, Rogers & Johnson, *supra* note 3 at 351. See Lewis & Cardwell, *supra* note 3 in the United Kingdom. In Canada, see: Helmers et al., *supra* note 3; McGill 2017 *supra* note 3.

<sup>454</sup> In the United States, see: Shanfield & Benjamin, *ibid* at 221; Organ, Jaffe & Bender, *supra* note 3 at 136-137. Also see: Harries, Kim & Grant, *supra* note 3. In Australia, see: Kelk et al., *ibid* at 12; Leahy et al., *supra* note 3 at 611; Skead & Rogers, *ibid* at 82. But see: Larcombe, Finch & Sore, *supra* note 3 at 265. In the United Kingdom, see: Bogowicz et al., *supra* note 3; Lewis & Cardwell, *ibid*. In Canada, see: Helmers et al., *ibid*.

<sup>455</sup> Only one study from the United States has examined the wellbeing of marginalized law students. See: Agatstein et al., *supra* note 10. Law schools, law societies, and bar associations are committed to diversity and inclusion in the United States, Australia, the United Kingdom and Canada. In the United States, see: ABA Standards, *supra* note 28, s 303 (a)(1), 303 (c)1-2, Interpretation 303-6. Also, see: ABA Model Code, *supra* note 28 r 8.4(g). In Australia, see: CALD, *supra* note 28, s 2.3.3 (a), 2.3.3 (d); AU Threshold Learning Outcomes, *supra* note 28 at 10 and Threshold Learning Outcome (TLO) 2. For solicitors in Australia, see: AU Solicitor Rules, *supra* note 28 s. 42. For barristers in Australia, see: AU Barrister Uniform Rules, *supra* note 28 s. 123. In England & Wales, see: UK QAA 2019, *supra* note 28 s 2.4.iii; UK QAA 2023, *supra* note 28 s 1.6-1.8. For barristers in the UK, see: BSB Handbook, *supra* note 28 Core Duty 8. For solicitors in the UK, see: SRA Solicitor Code, *supra* note 28 s 1.1. Also, see: UK Legal Services Act, *supra* note 28 s 1, Equality Act, *supra* note 28. In Canada, see: CDA Nat'l Rqmt., *supra* note 28 s 2, 3.2. a; CDA Model Code, *supra* note 28, r 6.3.

<sup>456</sup> In the United States, see: AALS Report *supra* note 31 at 42, 43, 45; Organ, Jaffe & Bender, *supra* note 3 at 127; Reed et al., *supra* note 8 at 152; Jaffe, Bender & Organ, *supra* note 21 at 16. To the author's knowledge, no studies have evaluated Australian law student substance use but see generally: Engs & Mulqueeny, *supra* note 31;

indicate a pattern of problematic substance use among law students but for Canada. The 2017 McGill Study did not compare the substance use of law students to that of the general population.<sup>457</sup> Due to the lack of empirical and longitudinal studies regarding the continuation of psychological distress after law students graduate, this thesis will examine the studies conducted on legal professionals' wellbeing in each country in the following chapter.

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Doraisamy, *supra* note 31; Allman, *supra* note 31; Ferguson, *supra* note 31. In the United Kingdom, see: Bogowicz et al., *supra* note 3 at 134. In Canada, see: McGill, *supra* note 3 at 8.

<sup>457</sup> *Ibid.* In Canada, the McGill 2017 Report read on page 8, "A majority (67.1%) of students consume alcohol between one and five times per week. Almost half of students use alcohol to ease the stress or to get away from negative emotions. For 22% of students, the consumption of alcohol stopped them from doing what they had to do for school. Around a quarter of students admitted using marijuana (28.1%) and tobacco (22%) to ease the stress or to get away from negative emotions. The grand majority of students report they have never used other drugs (i.e., focus drugs: 91.7%; marijuana: 51%; MDMA: 86.6%; Cocaine: 90.8%; Tobacco: 63.7% and other non-prescribed drugs: 95%)."



## Chapter 5: Psychological Distress Continues into Legal Professional Lives: The United States, Australia, the United Kingdom & Canada

### 5.1. Introduction

Does psychological distress continue into the professional lives of law school graduates?

University students, in general, experience elevated rates of psychological distress due to the stressful transition into life away from home and shift into adulthood. Perhaps, law student wellbeing improves after law school? Because the studies in the compared jurisdictions revealed high levels of psychological distress among law students, curiosity entailed exploring if legal professionals also experienced high rates of psychological distress. This chapter seeks to uncover whether psychological distress decreases after law school. If so, when?<sup>458</sup> If not, why not?<sup>459</sup>

This chapter will explore those issues through a review of the studies that suggest psychological distress does not significantly decrease upon the completion of law school, as well as the studies conducted on the levels of psychological distress experienced by legal professionals.<sup>460</sup> A recent Canadian study found that psychological distress subsides, but only decades later, at around age fifty and in the senior years of one's legal career.<sup>461</sup> That is a long time to sustain oneself in misery and an occupation requiring high performance, sound judgement and ethical obligations.

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<sup>458</sup> The 2022 National Study revealed that Canadian legal professionals experience decreased psychological distress later in their careers. See: Cadieux et al., 2022 *supra* note 3 at 173–175.

<sup>459</sup> The causes for legal professionals' psychological distress are not directly within the scope of this thesis; however, perhaps the causes for law students' distress and some of the anecdotal information as to the causes of distress among legal professionals can be derived from the shared experiences, practices attitudes and beliefs reviewed in Chapter 3 and the factors that are detrimental to wellbeing which is reviewed in Chapter 6.

<sup>460</sup> In the United States, see: Beck, Sales & Benjamin, *supra* note 7. Connie Beck, Bruce Sales and Andrew Benjamin further explored the data collected from the 1990 Benjamin Study by considering demographic variables and analyzing different types of distress (i.e., paranoid ideation, anxiety, phobic anxiety, social alienation and isolation, hostility obsessive-compulsiveness) while also collecting further data from eight-hundred and two lawyers in April 1989 (the "1995 Beck Study"). The 1995 Beck study was undertaken in part to determine whether lawyers' high levels of psychological distress remained after practicing law for two years. At page 47 the authors confirmed the continuation of psychological distress after two years of practicing law and wrote, "the current study confirms that for many lawyers psychological distress levels remain high throughout their career span. The study also confirms that these symptoms occur at levels which are clearly beyond what is expected in the general population." In the United States, also see: Krill, Johnson & Albert, *supra* note 7 at 50-51. But see: Listokin & Noonan, *supra* note 7. In Australia, see: Kelk et al., *supra* note 3; Bergin & Jimmieson, *supra* note 7 at 434; Chan, Poynton & Bruce, *supra* note 7; Skead, Rogers & Doraisamy, *supra* note 3. In the United Kingdom, see: Soon et al., *supra* note 7. In Canada, see: Cadieux et al. 2022, *supra* note 3 at 27, 30. Also see: Cadieux et al., (Quebec), *supra* note 7. Internationally, see: International Bar Association, *supra* note 6.

<sup>461</sup> See: Cadieux et al., 2022 *ibid* at 173–175.

Chapter 5.2 will review the studies on legal professionals' psychological distress in the United States, Australia, the United Kingdom, and Canada, which divulge that legal professionals in all jurisdictions experience psychological distress at higher rates than the general population.<sup>462</sup> A recent survey published by the International Bar Association found that legal professionals worldwide have lower wellbeing than the world's general population.<sup>463</sup> An examination of the studies, also discloses that legal professionals experience psychological distress at levels higher than that experienced by people in most other occupations which will be examined in Chapter 5.3.<sup>464</sup>

Further, there is reasonable evidence to infer from the studies published in the United States, Canada and internationally that marginalized legal professionals experience higher levels of psychological distress than their colleagues.<sup>465</sup> The reasons for this may be derived from a thorough and collective examination of Chapter 2.5 on trauma, Chapter 3, which examines the culture within law schools and Chapter 6, which outlines further detriments to wellbeing. The studies on marginalized legal professional's wellbeing will be outlined in Chapter 5.4.

Finally, Chapter 5.5 will review the studies conducted on substance use among legal professionals. As with law students, substance use is normalized and prevalent among legal professionals.<sup>466</sup> This thesis now turns to review the published studies comparing legal professional psychological distress to that of the general population.

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<sup>462</sup> In the United States, see: Beck, Sales & Benjamin, *supra* note 7; Krill, Johnson & Albert, *supra* note 7 at 50-51. But see: Listokin & Noonan, *supra* note 7. In Australia, see: Kelk et al., *supra* note 3; Bergin & Jimmieson, *supra* note 7 at 434; Chan, Poynton & Bruce, *supra* note 7; Skead, Rogers & Doraisamy, *supra* note 3. In the United Kingdom, see: Soon et al., *supra* note 7. In Canada, see: Cadieux et al. 2022, *ibid* at 3, 30. Also see: Cadieux et al., (Quebec), *supra* note 7. Internationally, see: International Bar Association, *supra* note 6.

<sup>463</sup> See: International Bar Association, *ibid*.

<sup>464</sup> In the United States, see: Eaton et al., *supra* note 7; Thiese et al., *supra* note 7. No studies have been conducted in Australia which compare the psychological distress of legal professionals to other professions. In the United Kingdom, see: Soon et al., *supra* note 8. In Canada, see: Cadieux et al., 2022 *supra* note 3. Also, see generally: Yves, *supra* note 8.

<sup>465</sup> In the United States, see: Cokley et al., *supra* note 10; Nelson et al. 2019, *supra* note 10. In Canada, see: Cadieux et al., 2022 *ibid*. Internationally, see: International Bar Association, *supra* note 6.

<sup>466</sup> In the United States, see: Benjamin, Darling, & Sales, *supra* note 7; Krill, Johnson, & Albert, *supra* note 7; Krill, *supra* note 31; Anker & Krill, *supra* note 10; Listokin & Noonan, *supra* note 7. Also see: Buchanan & Coyle, *supra* note 11; Sahadi, *supra* note 31; Zimmerman, *supra* note 31. In Australia, see: Bergin & Jimmieson, *supra* note 7; Chan, Poynton & Bruce, *supra* note 7. Generally, see Goodliffe & Brooke, *supra* note 31 in the United Kingdom. Although studies on legal professional substance use have yet to be conducted in the UK, given the prevalence of substance use among law students in the United Kingdom, the results would likely be similar for legal professionals. See: Bogowicz et al., *supra* note 3. Also, see generally: Ames, *supra* note 31; Aldridge, *supra* note 31; *Counsel*

## 5.2. Legal Professionals Experience Psychological Distress at Rates Exceeding that of the General Population

There is little doubt that the United States has produced an abundance of research finding that legal professionals experience psychological distress at rates exceeding that of the general population.<sup>467</sup> However, this thesis will review the most predominant of those studies for brevity. Only recently have these findings been questioned with the 2021 publication of a study examining the rates of “mental illness” among American attorneys (the “Listokin & Noonan study”).<sup>468</sup> The Listokin & Noonan study found that lawyers are diagnosed with a “mental illness” at a lower rate than that of the general population.<sup>469</sup>

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*Magazine*, *supra* note 31; Matthews-King, *supra* note 31; Office of National Statistics, *supra* note 31; Banerji, *supra* note 31; The Law Society, Junior Lawyers Division, *supra* note 31. In Canada, see: Cadieux et al., 2022 *supra* note 3. Also, see generally: Olijnyk, *supra* note 31; Olijnyk, *supra* note 31; Faguy, *supra* note 31. Concerning substance use and professional identity, see: Kiepek & Beagan, *supra* note 31. Also, see generally: Amaro et al., *supra* note 31.

<sup>467</sup> In the United States, see: Beck, Sales & Benjamin, *supra* note 7; Krill, Johnson & Albert, *supra* note 7 at 50-51. But see: Listokin & Noonan, *supra* note 7.

<sup>468</sup> “Yair Listokin is Deputy Dean and the Shibley Family Fund Professor of Law at Yale Law School. His scholarship studies tax law, corporate law, bankruptcy law, contract law, and the law of central banking. His research emphasizes a macroeconomic perspective that differs dramatically from the microeconomic perspective that dominates law and economics.” See: “Yair Listokin,” (10 May 2023), online: Yale Law School <<https://law.yale.edu/yair-listokin>>. Also see: Listokin & Noonan, *ibid*. Page 10 sets out the methodology: “To estimate the prevalence of mental illness and excessive alcohol use from a random sample of lawyers and compare the results to similarly randomly sampled groups of nonlawyers, we downloaded data from the National Health Interview Survey (NHIS).” On page 13 the authors note that, “NHIS includes data on occupation” and that “[l]awyers constitute well under 1 percent of the U.S. population.” As such, the authors advised that, “[t]o build a reasonably sized sample of lawyers from the NHIS therefore require[d] the use of several years of NHIS data.” The study utilized NHIS data from 2010–2017 and approximately 1,000 lawyers. “Lawyer” was defined “as someone whose detailed occupational classification is ‘lawyers, judges, and related workers’ and who has a doctoral/professional doctoral degree.” Also see generally: Monahan & Swanson, *supra* note 7 at 6. The authors of the Listokin & Noonan study questioned the validity of prior studies conducted, including the 2017 National Task Force on Lawyer Well-Being’s, *The Path to Lawyer Well-Being* which was based on the findings in the 2016 Krill et al. Study. Also see: Buchanan & Coyle, *supra* note 11; Krill, Johnson & Albert, *supra* note 7. The authors state on page 8-9 that while the 2016 Krill et al. Study with provided the basis for *The Path to Well-Being Report* “provides an invaluable resource for the study of lawyer well-being, it is ill-suited for estimating the true prevalence of excessive alcohol use or mental illness within the legal profession. As described above, response bias plagues this study and others like it. Although more than 15 state and county bar associations emailed the survey to their members, only 13,000 people replied, implying a very low response rate. If the lawyers responding to the survey are a random sample of the population of lawyers as a whole, then the low response rate is not a problem. If, however, lawyers suffering from mental illness or excessive alcohol use are more likely (or less likely) to respond to the survey than the typical member of the Bar, then the survey offers a poor gauge of the prevalence of mental illness or excessive alcohol use within the profession.” The author of this thesis suspects that the stigma associated with disclosing mental health problems likely influences this study’s findings.

<sup>469</sup> See: Listokin & Noonan, *ibid*. The authors argued that “mental health and substance abuse among lawyers should be estimated by relying on the ‘Trusted Gold Standard’ of public health data, the Center for Disease Control’s National Health Interview Survey (NHIS).”

In explaining their methodology, the authors explained that “[i]n the NHIS, mental health is measured by the Kessler 6 screening scale (K6) of mental illness and distress” as such, “[p]articipants [were] asked six questions about their mental health and their responses to each question are given a value and then summed.”<sup>470</sup> Listokin and Noonan equated low K6 scores to good mental health, while higher scores were indicative of “mental illness.”<sup>471</sup> The Listokin & Noonan study did not address wellbeing, but instead assessed “mental illness rates.”<sup>472</sup> Further, while the Listokin & Noonan study found lower rates of “mental illness” than that experienced by the general population, contradictorily, they also found that respondent lawyers had alarming rates of substance use, which will be reviewed in Chapter 5.5.<sup>473</sup>

Aside from the studies published in the United States, Australia, the United Kingdom, and Canada, which will be reviewed in the following paragraphs, as mentioned above, lawyers surveyed worldwide reported poorer wellbeing than the world’s general population. In 2020 the International Bar Association surveyed mental wellbeing among the world’s legal professionals and found markedly lower scores than the world’s general population (the “2020 IBA study”).<sup>474</sup>

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<sup>470</sup> *Ibid* at 13.

<sup>471</sup> *Ibid* at 14.

<sup>472</sup> *Ibid*. Also see: Monahan & Swanson, *supra* note 7 which was a small study conducted to determine “career satisfaction” which involved 209 respondents who graduated from the University of Virginia School of Law in 1990. The study found at page 19 that “77.4 percent of all respondents-81.0 percent of the men and 71.8 percent of the women-are either “extremely” or “moderately” satisfied with that decision [to become a lawyer].”

<sup>473</sup> *Ibid* at 6 they wrote: “Lawyers exhibit excess alcohol consumption twice as frequently as others with advanced professional degrees. Moreover, alcohol abuse in the legal profession has been getting worse—increasing dramatically over the last 15 years. This trend seems especially prevalent among lawyers under 40.”

<sup>474</sup> The 2021 Global Survey on page 19 adopted the WHO definition to “mental wellbeing” which is: good mental health being a state where: “[...] every individual realizes his or her own potential, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to her or his community.” On page 30 the survey methodology is explained: “The IBA Survey (July 2020 to December 2020) used the WHO Wellbeing Index (‘WHO-5’), a short (i.e., five-item) self-report measure of current mental wellbeing (over two weeks). “The average overall score of respondents to the IBA Survey of Individuals was 51 per cent.” Further, the 2021 Global Survey states that “The European Quality of Life Survey 2012 applied the WHO-5 measure of mental wellbeing to 34 European countries. Among these countries, the average score of the general population was found to range from 70.1 percent (Denmark) to 53.7 percent (Republic of Serbia).” 3256 completed surveys from 124 jurisdictions, 76% from the regions of Europe and the Asia Pacific; included 54% of respondents between the age of 25 and 39; 56% females, 43% males; 15% self-declared ethnic minority; 3% disAbled; 49% worked in law firms with 0–50 partners; 65% solicitor/attorney, and solicitor/ attorney (partner). See: International Bar Association, *supra* note 6 at 19, 30.

Devastatingly, over a third of legal professionals surveyed reported that they felt that their work negatively affected their mental wellbeing.<sup>475</sup>

Returning to the studies conducted in the United States, one of the earliest studies was a 1990 study, co-authored by Andrew Benjamin, a psychologist and well-recognized scholar on law student and lawyer wellbeing, which revealed that nineteen percent of all Washington lawyers suffered from depression compared to three to nine percent of individuals in “western industrialized countries” (the “1990 Benjamin study”).<sup>476</sup> Five years later, in 1995, Connie Beck, Bruce Sales and Andrew Benjamin published a study which further explored the data collected from the 1990 Benjamin study by considering demographic variables and analyzing different types of distress (i.e., paranoid ideation, anxiety, phobic anxiety, social alienation and isolation, hostility obsessive-compulsiveness) while also collecting further data from eight-hundred and two lawyers in April 1989 (the “1995 Beck study”).<sup>477</sup>

The 1995 Beck study was undertaken in part to determine whether lawyers’ high levels of psychological distress remained after practicing law for two years.<sup>478</sup> The authors confirmed the

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<sup>475</sup> *Ibid* at 11, 32. 35% of respondents indicated that their work had a negative or extremely negative impact on their mental wellbeing.

<sup>476</sup> See: Benjamin, Darling & Sales, *supra* note 7 at 240.

<sup>477</sup> See: Beck, Sales & Benjamin, *supra* note 7 at 12. The new sample consisted of 802 Washington lawyers (See demographics in Table 3-24% were women and 97% of the women were under age 50; 81% of the men were below age 50; 58% of the women were married versus 76% of the men; 93% of the women had practiced 10 years or less, while 93% of the men had practiced 35 years or less; 73% of women had maintained the same job over the last year while 85% of the men stayed at the same position). The Beck 1995 Study analyzed the data from the Benjamin 1990 Study by first comparing lawyers that had practiced for two years in Arizona and Washington. First, to ascertain if the Arizona results are replicated with the Washington sample, the two-year post-graduate Washington lawyer population was compared to the results of the Arizona two-year post-graduate lawyer population. Second, details of the Washington sample were examined with a three-step analysis focusing on: (1) demographic composition and gender differences; (2) a comparison of the Washington lawyer population to the normal population groups for each of the instruments used in the study; and (3) application of sequential canonical analysis to introduce a multivariate model explaining lawyer distress.)

<sup>478</sup> *Ibid* at 11. The causation for such distress and mitigating factors were also reviewed; the factors that are detrimental to wellbeing will be addressed in Chapter 6. Psychological distress was measured using the Brief Symptom Inventory (BSI). The BSI includes nine subscales and a global severity index (GSI). The nine subscales include somatization, obsessive-compulsive behaviour, interpersonal sensitivity, depression, anxiety, hostility, phobic anxiety, paranoid ideation, social alienation, and isolation. The L (Lie) scale from the Minnesota Multiphasic Personality Inventory was used to alert the researchers to any flawed response sets and whether the subjects responded to the questions in a socially desirable manner. Relationship satisfaction was assessed by using a modified version of the Positive Feelings Questionnaire. Perceived stress was measured by using the Perceived Stress Scale (PSS). Anger was assessed using the Brief Anger-Aggression Questionnaire (BAAQ). Social support was assessed using a modified subset of Sarason Social Support Questionnaire questions.

continuation of psychological distress after two years of practicing law. They wrote, “the current study confirms that for many lawyers’ psychological distress levels remain high throughout their career span. The study also confirms that these symptoms occur at levels which are clearly beyond what is expected in the general population.”<sup>479</sup> Sheldon and Krieger later wrote that the Beck 1995 study demonstrated that “two large samples of lawyers manifested clinical levels of depression, anxiety, phobia, and interpersonal sensitivity 5 to 15 times more commonly than the general population.”<sup>480</sup>

In 2016 a study published by Patrick Krill, Ryan Johnston and Linda Albert found that most legal professional respondents reported experiencing “anxiety [the most] (61.1%), followed by depression (45.7%), social anxiety (16.1%), attention deficit hyperactivity disorder (12.5%), panic disorder (8.0%), and bipolar disorder (2.4%)” (the “2016 Krill et al. study”).<sup>481</sup> Sadly and tragically, almost twelve percent reported that during their legal careers, they had contemplated

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<sup>479</sup> *Ibid* at 47.

<sup>480</sup> See: Sheldon & Krieger 2004, *supra* note 4 at 262. Also see: Beck, Sales & Benjamin, *ibid* at 49. Beck and colleagues wrote on page 49: “Statistically, 2.27% of the population is expected to be above the 98% cutoff level of each of the psychological distress symptoms. The percentages of lawyers above this cutoff, ...are quite alarming. Over 30% of the males and 26% of the females are beyond the clinical cutoff for interpersonal sensitivity, 20% of the men and 15% of the women exceed the cutoff for obsessive-compulsiveness, and almost 21% of the men and 16% of the women exceed the cutoff for depression.”

<sup>481</sup> See: Krill, Johnson & Albert, *supra* note 7 at 50. Eleven thousand five hundred sixteen participants (89.8%) completed all questions on the DASS-21. Patrick Krill is the founder of Krill Strategies, a behavioral health consulting firm exclusively for the legal profession. Krill is an attorney and a licensed and board-certified alcohol and drug counselor, author, and the former director of the Hazelden Betty Ford Foundation’s Legal Professionals Program. He’s also co-authored various studies. See generally: Illinois Supreme Court Commission on Professionalism, “Reimagining Law: How to Meet the Needs of a Post-COVID Workforce” (USA: Reimagining Law, June 17, 2021) 9:24, online (video): *YouTube* <<https://youtu.be/iiQIQI-dNw8?si=un-yfWKFUVVphYZw>>; “Patrick Krill,” online: *Krill Strategies* <<https://www.prkrill.com>>. Linda Albert is an employee of the State Bar of Wisconsin and the 2015 recipient of the Fourth Annual Excellence in Legal Community Leadership Award from the Hazelden Betty Ford Foundation. See: “Inside Track: In the Interest of Hope: Linda Albert Wins National Leadership Award for Landmark Lawyer Wellness Study,” (21 October 2015), online: State Bar of Wisconsin <<https://www.wisbar.org/NewsPublications/InsideTrack/Pages/Article.aspx?Volume=7&Issue=20&ArticleID=24402>>.

suicide.<sup>482</sup> However, not surprising given that forty-six percent of lawyers reported experiencing depression during their careers.<sup>483</sup>

The most extensive study regarding the wellbeing of Australian lawyers is the *Courting the Blues Report*, which was reviewed in part in the previous chapter.<sup>484</sup> The *Courting the Blues Report* found that “members of the legal profession exhibit higher levels of psychological distress and depression than do community members of a similar age and sex.”<sup>485</sup> Specifically, just over forty-three percent of barristers and almost sixty-four percent of solicitors reported moderate to very high rates of psychological distress.<sup>486</sup> Such statistics sent a shock wave through the Australian legal community.

Following the *Courting the Blues Report* in 2014, Bergin and Jimmieson published a study examining the psychological distress levels among three hundred eighty-four full-time Australian legal professionals (the “Bergin & Jimmieson study”).<sup>487</sup> The Bergin & Jammieson study revealed that thirty-seven percent of respondents experienced depression in the “moderate to extremely severe range.”<sup>488</sup> Within the same range, respondents reported experiencing anxiety at

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<sup>482</sup> *Ibid*. The Krill Study found that “11.5% of the participants reported suicidal thoughts at some point during their career, 2.9% reported self-injurious behaviors, and 0.7% reported at least 1 prior suicide attempt.” Also see: Krill et al. 2023, *supra* note 44 on page 1 which states “[p]rior estimates suggest that between 10 and 12 percent of lawyers in the U.S. have contemplated suicide, compared to 4.2% of adults  $\geq$  18 years of age in U.S. population.” The Krill et al. 2023 study did not study the rates of but the “predictors of suicidal ideation” among attorneys which will be addressed in Chapter 6 wherein this thesis addresses the factors that are detrimental to wellbeing. Also see generally: Thiese et al., *supra* note 7 regarding suicide.

<sup>483</sup> *Ibid* at 51.

<sup>484</sup> See: Kelk et al., *supra* note 3. There were 2421 Australian legal professionals and 4<sup>th</sup>-year law students who participated. 1680 Australian legal professionals participated in the study. 924 Solicitors (average age 35.6; 65.3 % female; grouped according to appointment from articles to partner/principal) 756 Barristers (average age 47.6; 25.5% female; years in practice ranged from less than one year to greater than ten years) Solicitors were recruited from The Law Society of NSW and the Law Institute of Victoria. The barristers were recruited through the New South Wales Bar Association. The International Depression Literacy Survey, the Kessler Psychological Distress Scale (K-10) and SPHERE were utilized.

<sup>485</sup> *Ibid* at 42. Also see: *Ibid* tbl 10. 43.8% of Barristers (25% of the barrister sample was female) and 63.6% of Solicitors (65% of the participants were female)

<sup>486</sup> *Ibid* at tbl 9. On the Kessler Psychological Distress Scale (K-10).

<sup>487</sup> See: Bergin & Jimmieson, *supra* note 7. The sample consisted of 236 females, 144 males and four unknowns; 378 were working as full-time lawyers and three as trainee lawyers. The average age was 38.14 years. One hundred forty-two worked at small private practices (1-5 lawyers), 85 were from medium private practices (5-20 lawyers), 82 were from large private practices (more than 20 lawyers; three unknown), 29 were from government departments, 21 were in-house counsel, and 22 were considered ‘other’ (e.g., working for a disciplinary body). Respondents had practiced law from 0.5 years to 54 years. The study also examined causation for legal professionals’ psychological distress, which this thesis will address in Chapter 6 in addressing the factors detrimental to wellbeing.

<sup>488</sup> *Ibid* at 434. Depression, anxiety, and stress were assessed with the Depression Anxiety Stress Scale (DASS-21).

a rate of thirty-one percent and stress at a rate of forty-nine percent.<sup>489</sup> Almost nineteen percent of respondents reported depression in the “severe to extremely severe range.”<sup>490</sup>

In the same year, a much larger study was published by the University of New South Wales’s professors, Chan, Poynton and Bruce (the “Chan, Poynton & Bruce study”), involving more than one thousand practising Australian lawyers.<sup>491</sup> The Chan, Poynton & Bruce study found that thirty-two percent of respondents experienced “moderate to extremely severe” symptoms of depression.<sup>492</sup> Within the same range, twenty-eight percent experienced anxiety, and twenty-six percent experienced stress.<sup>493</sup> More concerning and like the 2014 Bergin study, eighteen percent of respondents reported depression in the “severe to extremely severe range.”<sup>494</sup> Within the same range, fifteen percent experienced anxiety, and sixteen percent experienced stress.<sup>495</sup>

As previously referred to in Chapter 4, the Skead et al. 2018 study also assesses psychological distress, disordered eating, weight, and shape concerns of law students and lawyers. It compares them to those experienced by psychology students and the general population.<sup>496</sup> The Skead et al. 2018 study found that law students and lawyers “were well above the general population norm

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<sup>489</sup> *Ibid.*

<sup>490</sup> *Ibid* at tbl 3. 16.5% anxiety, 30.5% stress in the “severe to extremely severe” range.

<sup>491</sup> See: Chan, Poynton & Bruce, *supra* note 7. The study was conducted from 2012-2013. Nine hundred sixty-five respondents were all Australian legal practitioners (749 solicitors; 86% (122) Barristers; 60 % worked at a private law firm; 14% 10% government legal departments, 10% community legal centres, 7% corporate legal departments, 1% other workplaces; 45% worked for large organizations employing 100 employees or more, 28% worked in small workplaces with less than ten employees; 83% worked in a metropolitan area; 14% worked in regional areas; 3% in rural areas; 46% practised law for five years or less; 23% practised for 16 years or more; 66% were female; 84% born in AU; 96% AU citizens; ages ranged from 21-81; 1% Aboriginal or Torres Strait Islander; 19% Chinese, Greek, Italian or other; 59% did not have children;) The survey examined the working conditions, work experience, and health and wellbeing of solicitors and barristers who practise in a variety of settings—utilized the Australian Work and Life Index ('AWALI') to measures how work affects life. It was also the first Australian study to investigate the extent to which stress, anxiety and depression among lawyers are associated with the conditions and culture of legal practice.

<sup>492</sup> *Ibid* at 1080–1081.

<sup>493</sup> *Ibid.* The Depression Anxiety Stress Scales ('DASS') were used.

<sup>494</sup> *Ibid.*

<sup>495</sup> *Ibid.*

<sup>496</sup> See: Skead, Rogers & Doraisamy, *supra* note 3. The study included (83% female) law students and 148 (75% female) lawyers. Comparative data were collected from 145 psychology students (88% female) recruited from a single Western Australian university and 187 members of the Australian public (70.51% female). Participants eating behaviours and concerns were measured using the non-diagnostic EDE-Q, which included questions from The Eating Motivation Survey (TEMS). The Depression, Anxiety and Stress Scales 21-item version (DASS-21), the Brief Emotional Experience Scale (BEES) and the Brief Physical Experience Scale (BEEPS) were used to measure the participants' self-reported levels of psychological and physical distress.



for psychological distress.”<sup>497</sup> Thirty-three percent of lawyer participants fell within the ‘moderate’ to ‘extremely severe’ range for psychological distress compared to twenty-six percent of Australians, again indicating that law students and legal professionals are suffering<sup>498</sup>

In the United Kingdom, Soon and colleagues recently published the first empirical study on the wellbeing of solicitors practising in England and Wales framed by self-determination theory (the “2022 Soon et al. study”).<sup>499</sup> The 2022 Soon et al. study undertook a cross-sectional survey of three hundred and forty trainees and qualified solicitors in England and Wales. It compared their psychological wellbeing to the adult population norms in the United Kingdom.<sup>500</sup> Like the studies from other jurisdictions examined in this work, the 2022 Soon study unsurprisingly revealed that respondents had lower psychological wellbeing than the general population.<sup>501</sup>

Finally, the first national study on legal professional psychological distress in Canada was published in 2022 (the “2022 Canada Report”).<sup>502</sup> Shockingly, more than half of legal professional respondents were found to be experiencing psychological distress, a level that

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<sup>497</sup> *Ibid* at 93.

<sup>498</sup> *Ibid*. There is also a recent study on judges’ psychological distress, however this thesis focuses on student psychological distress and due to length, this study was now included. See: Carly Schrever, Carol Hulbert & Tania Sourdin, “Where Stress Presides: Predictors and Correlates of Stress Among Australian Judges and Magistrates” (2022) 29:2 *Psychiat Psychol Law* 290–322.

<sup>499</sup> See: Soon et al, *supra* note 7 at 146. The 2022 Soon Study utilized the Warwick-Edinburgh Mental Well-Being Scale (WEMWBS) to measure subjective well-being and psychological functioning. The 2022 Soon Study examined the wellbeing of trainees and qualified solicitors practising in England and Wales through the lens of Self-determination Theory utilizing the Basic psychological needs satisfaction scale – work domain (BPNSS-WD). The 2022 Soon Study described self-determination theory (SDT) on page 145: “SDT proposes that autonomy, relatedness, and competence at work are essential for human flourishing, and the deprivation of these factors leads to harmful psychological health outcomes in life and the workplace.” Elaborating on p. 146, they write: “Referring to these factors as basic psychological needs, SDT considers that if any are thwarted or neglected in the workplace, the individual will suffer harm to their cognitive, affective, and motivational states, and will experience diminished psychological well-being; they will not fully function and thrive. Conversely, if all three needs are satisfied, the individual will flourish.” The online survey measured psychological well-being, perceived autonomy, relatedness, competence at work, and mindfulness. Also see generally: Krieger & Sheldon 2015, *supra* note 15.

<sup>500</sup> *Ibid*. Mindfulness was measured using the Five-Facet mindfulness questionnaire (FFMQ-15). Participants were recruited in February and May 2019. Three hundred forty respondents, 75.2% female; 33.9% trainees or solicitors with up to 5 years post-qualification experience (PQE), 39.5% had between 5 and 15 years PQE, 26.3% had over 15 years PQE; 83.5% worked in private practice; 17.4% in small firms of between 1 and 4 partners; 24.8% in medium firms comprising 5–25 partners, and 41.3% in large firms of 26 or more partners; 12.4% worked in-house, and 2.9% were self-employed; 9.1% said they had not undertaken mindfulness training in the past, while 30.3% said they had.

<sup>501</sup> *Ibid* at 149. Comparison to the most recent data available of 6,995 adults in England, extracted from the Health Survey for England 2016.

<sup>502</sup> See: Cadieux et al., 2022 *supra* note 3.

exceeds that experienced by the general population.<sup>503</sup> While it seems clear that law is an unhappy and unhealthy profession compared to the general population, the following section examines studies which have compared legal professionals' psychological distress to people in other occupations, finding much the same.

### 5.3. Legal Professionals Experience Psychological Distress at Rates Exceeding that of People in Other Occupations

Studies from all jurisdictions, except for Australia, disclose that legal professionals experience psychological distress at higher levels than people in other occupations.<sup>504</sup> In Australia, no study has compared the wellbeing of legal professionals with the wellbeing of people in other occupations. The most prominent study comparing legal professions to people in other occupations occurred in the United States in 1990 (the "1990 Eaton study").<sup>505</sup>

The 1990 Eaton study analyzed approximately 11,700 people, categorized into 104 occupations, to assess the prevalence of Major Depressive Disorder, a mental health condition.<sup>506</sup> The researchers found that lawyers had the fifth-highest rate of Major Depressive Disorder among all other occupations examined; however, once adjusted for sociodemographic factors such as gender, age, race, education and employment status, lawyers jumped to the top of the list as having the highest prevalence of Major Depressive Disorder.<sup>507</sup> The 1990 Eaton study found that lawyers are 3.6 times more likely to suffer from Major Depressive Disorder than the rest of the employed population.<sup>508</sup>

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<sup>503</sup> *Ibid* at 27, 30.

<sup>504</sup> The psychological distress experienced by legal professionals also exceeds that of other occupations in the United States, the United Kingdom and Canada. In the United States, see: Eaton et al., *supra* note 7; Thiese et al., *supra* note 7. No studies have been conducted in Australia which compare the psychological distress of legal professionals to other professions. In the United Kingdom, see: Soon et al., *supra* note 8. In Canada, see: Cadieux et al., 2022 *ibid*. Also, see generally: Yves, *supra* note 8.

<sup>505</sup> See: Eaton et al., *ibid*.

<sup>506</sup> *Ibid*. The data for the study were collected during the early 1980s from the five sites for the Epidemiologic Catchment Area (ECA) from people aged 18-64 who reported ever holding a full-time job. The job categories were subsequently coded. The researchers used the *American Psychological Association, Diagnostic and Statistical Manual of Mental Disorders 3<sup>rd</sup> ed. (DSM-3)* to assess Major Depression. For more information regarding Major Depression Disorder, see: Mental Health First Aid, *supra* note 84.

<sup>507</sup> *Ibid* at tbl 1 & note 9 at tbl 3. The occupation with the highest rate of Major Depression Disorder was "Data-entry keyers," followed by "Computer equipment operators," then non-college teachers and counsellors and "typists."

<sup>508</sup> *Ibid* at 1083.

A recent study titled “Depressive Symptoms and Suicidal Ideation Among Lawyers and Other Law Professionals,” published in 2021, also found that American lawyers experienced more depression than the general population.<sup>509</sup> Furthermore, the study revealed that American “[l]awyers were significantly more likely to report suicidal ideation ‘several days’ and ‘more than half the days’ as compared with the general working population.”<sup>510</sup>

To this author’s knowledge, no studies have been published in Australia which compares the wellbeing or psychological distress to that of people on other occupations. The United Kingdom has just recently published its first published study comparing the psychological distress of legal professionals to people in other occupations. In England and Wales, the 2022 Soon study found that solicitor respondents had lower wellbeing than veterinarians and teachers.<sup>511</sup> In Canada, the 2022 Canada Report, as mentioned above, only recently disclosed that more than half of legal professional respondents experienced psychological distress, a level exceeding that not only of the general population but also people in other occupations.<sup>512</sup> This thesis will now turn to the few studies conducted on marginalized legal professionals’ wellbeing, or lack thereof.

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<sup>509</sup> See: Thiese et al., *supra* note 7 at 384-385. The cross-sectional study included 654 law professionals. To measure depression a depression scale, the patient health questionnaire 9 (PHQ-9) was completed and compared with the general working population. At page 384 to 385 the study reported that, “Overall, all law professionals, and lawyers in particular, reported a high frequency of having depressive symptoms, reporting feeling depressive symptoms several days or more often approximately 40% of the time for most questions with 45.7% having some level of depressive symptoms and 17.5% having moderate to severe depressive symptoms. In general, lawyers and law professionals reported more frequent feelings of depression as compared with NHANES general working population.”

<sup>510</sup> *Ibid* at 381. Also see: Krill et al. 2023, *supra* note 44.

<sup>511</sup> See: Soon et al., *supra* note 7. The Soon Study “compared to data from 1,796 UK veterinary surgeons (M = 48.85, t=9.06, p < .001; Bartram et al. 2011) and 555 teachers in England (M = 47.2, t=4.90, p < .001; Kidger et al. 2016).”

<sup>512</sup> The 2022 Canada study revealed that Canadian legal professionals had significantly higher levels of psychological distress than that experienced by the Canadian working population (57.5% compared to 40%) and similarly higher levels of anxiety (35.7%, compared to 13%). See: Cadieux et al., 2022 *supra* note 3 at 30. Also see generally: Faguy, *supra* note 31; Roza Milani, “Canadian Bar Association - Ethics and Wellbeing: How the Elevated Incidence of Mental Illness is Impacting the Profession,” (23 September 2021), online: *The Canadian Bar Association* <<https://www.cba.org/Sections/Health-Law/Articles/2021/Ethics-and-Wellbeing-How-the-elevated-incidence-o>>.

#### 5.4. Marginalized Legal Professionals Experience a Disproportionate Level of Psychological Distress

As previously mentioned, few studies have been conducted on the wellbeing of marginalized legal professionals despite inclusion and diversity being advocated for by law schools, bar associations and law societies and the overwhelming evidence that discrimination and racism detrimentally effects wellbeing, which will be outlined in Chapter 6. Still, the few studies that have been published have unsurprisingly found that marginalized legal professionals experience more psychological distress than their colleagues.<sup>513</sup> In 2019, Nelson and colleagues conducted an empirical analysis in three separate “waves,” compiling self-reports of discrimination from a large national sample of American lawyers and qualitative comments of perceived discrimination in the legal workforce (the “2019 Nelson study”).<sup>514</sup> This study has been included because discrimination experienced by people affects their health and wellbeing.<sup>515</sup> Furthermore, as previously revealed, diversity and inclusion are objectives of all law schools, law societies, and bar associations.<sup>516</sup>

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<sup>513</sup> In the United States, see: Nelson et al. 2019, *supra* note 10; Cokley et al., *supra* note 10. In Canada, see: Cadieux et al., 2022 *supra* note 3.

<sup>514</sup> See: Nelson et al. 2019, *ibid*. The results were based on a nationally representative sample of lawyers who were admitted to the bar in 2000. Demographics are not clearly articulated. The survey was conducted in three waves, 2002–2003, 2007–2008, and 2012–2013. Across three waves of data collection, responses were received from 5,399 attorneys. On page 1057, the 2019 Nelson Study outlined the survey instrument, which was questions posed. “Respondents were asked: “During the last two years, has any of the following ever happened to you in your place of work by virtue of your race, religion, ethnicity, gender, disability, or sexual orientation?” Their answer options in waves 2 and 3 were: “experienced demeaning comments or other types of harassment”; “missed out on a desirable assignment”; “had a client request someone other than you to handle a matter”; “had a colleague or supervisor request someone other than you to handle a matter”; or had “experienced one or more other forms of discrimination” with a “please specify” answer field. The wave one questionnaire did not include the item on supervisors or colleagues requesting someone else on a matter. The composite discrimination variable for each wave is binary and equals one if a respondent answered in the affirmative to any of the four or five answer options.” The 2019 Nelson Study also “asked about specific negative experiences based on ascriptive characteristics.”

<sup>515</sup> *Ibid* at 1052. As mentioned, the detrimental effects of discrimination and racism will be reviewed in Chapter 6.

<sup>516</sup> In the United States, see: ABA Standards, *supra* note 28, s 303 (a)(1), 303 (c)1–2, Interpretation 303-6; ABA Model Code, *supra* note 28 r 8.4(g). In Australia, see: CALD, *supra* note 28, s 2.3.3 (a), 2.3.3 (d); AU Threshold Learning Outcomes, *supra* note 28 at 10 and Threshold Learning Outcome (TLO) 2; AU Solicitor Rules *supra* note 27 s. 42; Barrister Uniform Rules *supra* note 27 s. 123. In England and Wales, see: UK QAA 2019, *supra* note 28, s 2.4.iii.; BSB Handbook *supra* note 28 Core Duty 8 Rule C12; SRA Solicitor Code, *supra* note 27 s 1.1 Also see: UK Legal Services Act, *supra* note 28, s 1, Equality Act, *supra* note 28. In Canada, see: CDA Nat’l Rqmt., *supra* note 28, s 2, 3.2.a; CDA Model Code, *supra* note 16, r 6.3.

In all three waves of the 2019 Nelson study, discrimination continued throughout the respondents' careers at a rate of twenty-five to twenty-six percent.<sup>517</sup> The 2019 Nelson study unearthed that "African Americans report[ed] the most discrimination, followed by Latinos, Asian Americans, Native Americans, Other (mostly multiracial respondents), and whites."<sup>518</sup> Despite race or ethnicity, "women report[ed] higher levels of experiencing discrimination than their male counterparts."<sup>519</sup>

Overall, African American women reported the highest level of perceived discrimination.<sup>520</sup> LGBTQ "men and women reported similar levels of discrimination," and incidentally, LGBTQ women and heterosexual women "reported similar levels of discrimination."<sup>521</sup> Conversely, "LGBTQ men reported almost twice as much discrimination" as heterosexual men.<sup>522</sup> The 2019 Nelson study concluded by writing that:

Women, and especially women of color, men of color, and LGBTQ attorneys are substantially more likely to perceive that they have been the target of biased treatment than their white male counterparts. This pattern holds through all three waves corresponding to different stages of the respondents' careers. And it holds across employment contexts: in the public sector as well as in private practice; and in large organizations and small ones. And it holds despite controlling for a full range of other independent variables that might affect these perceptions.<sup>523</sup>

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<sup>517</sup> See: Nelson et al. 2019, *supra* note 10 at 1058.

<sup>518</sup> *Ibid.* Also see: Bennett Capers, "The Law School as a White Space" (2021) 106:1 Minnesota Law Review 7–57 at 24 and 25 writes: "The findings from a recent survey on diversity and inclusion, conducted by the Law School Survey of Student Engagement [2019], also warrant mention. While 31% of white law students report having a strong sense of belonging at their schools, only 21% of Native American and Black students strongly agreed with the statement that they feel 'part of the community.' Women of color were even less likely to feel part of the law school community. Moreover, while only 9% of white students noted they felt uncomfortable being themselves on campus, the percentages of Black and Latinx students who reported feeling uncomfortable being themselves were 25% and 18% respectively." Also see generally: "Law School Enrollment by Race & Ethnicity," (2022), online: Enjuris <<https://www.enjuris.com/students/law-school-race-2022/>>.

<sup>519</sup> See: Nelson et al. 2019, *supra* note 10.

<sup>520</sup> *Ibid.*

<sup>521</sup> *Ibid.*

<sup>522</sup> *Ibid.*

<sup>523</sup> *Ibid.* at 1074. On page 1074, Nelson et al. suggest that perceived stress is an essential mechanism for understanding why the impostor phenomenon and race-related stress negatively impact the mental health of Black attorneys (however, the sample size was small, with only 142 black participants). Also see: Cokley et al., *supra* note 10.

In 2022, Cokley and colleagues, noted the lack of studies on the wellbeing of people of colour, and conducted a study with 142 American lawyers of African descent to determine if impostor feelings and race-related stress were associated with adverse mental health outcomes, such as depression and anxiety (the “2022 Cokley et al. study”).<sup>524</sup> The 2022 Cokley et al. study pointedly wrote that “the legal profession remains one of the whitest and least racially diverse professions in the nation.”<sup>525</sup> The research unshockingly disclosed a positive correlation between depression and anxiety with impostor feelings and race-related stress.<sup>526</sup>

Furthermore, the 2022 Cokley et al. study found that Black attorneys who reported high levels of depression and anxiety also felt like an imposter and experienced high levels of cultural racism stressors.<sup>527</sup> Cultural racism was defined in the 2022 Cokley et al. study as “the individual and institutional expression of the superiority of one’s cultural heritage over another race.”<sup>528</sup> The 2022 Cokley et al. study did find that as people aged, their feeling of discovered that as age imposter syndrome, depression, and anxiety decreased.<sup>529</sup> Finally, women were found to experience more depression and anxiety than their male counterparts.<sup>530</sup>

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<sup>524</sup> “Kevin Cokley, Ph.D. is a Professor of Counseling Psychology and Faculty Affiliate of the Center for African and African American Studies at the University of Texas-Austin... Dr. Cokley has published over 35 articles and book chapters. His 2004 article published in the *Harvard Educational Review* challenges the notion that African American students are anti-intellectual. He is the Editor-in-Chief of the *Journal of Black Psychology*, and has served on the editorial boards of several journals including the *Cultural Diversity and Ethnic Minority Psychology* journal and the *Journal of Counseling Psychology*. He is the recipient of the 2008 “10 Rising Stars of the Academy” award by *Diverse Issues in Higher Education*, the 2007 Association of Black Psychologists’ Scholarship Award, and the 2004 co-recipient of the Emerging Professional Award given by the Society for the Psychological Study of Ethnic Minority Issues of the American Psychological Association.” See: “Profile for Kevin Cokley, PhD at UT Austin,” online: *The University of Texas at Austin* <<https://liberalarts.utexas.edu/faculty/kc7346>>. Participants were recruited from a list of attorneys. There were 114 (80.3%) females and 25 (17.6%) males, and three did not disclose. All participants identified as Black. The participants included: 127 (90.7%) African American, 8 (5.7%) Afro-Caribbean/West-Indian, 4 (2.9%) African, and 1 (.7%) Latinx/Hispanic American. The participants ranged from ages 27–72, with an average age of 46.77. The participants’ years practicing law were between 1–44 years, averaging 17.81 years. The 2022 Cokley et al. study assessed “impostor feelings” via the Clance Impostor Phenomenon Scale (CIPS) that was designed to identify “feelings of fraudulence and phoniness.” Institutional, individual, and cultural race-related experiences of stress were measured using the Index of Race-Related Stress-B (IRRS-B). Mental health was assessed using the Mental Health Inventory-18 (MHI-18). Perceived stress was assessed using the Perceived Stress Scale-10 (PSS-10). See: Cokley et al., *supra* note 10.

<sup>525</sup> *Ibid* at 207.

<sup>526</sup> *Ibid* at 223.

<sup>527</sup> *Ibid*.

<sup>528</sup> *Ibid* at 209.

<sup>529</sup> *Ibid* at 224.

<sup>530</sup> *Ibid*.

The 2022 Canada Report revealed that the rate of psychological distress among Indigenous legal professionals to be disproportionately high.<sup>531</sup> Furthermore, psychological distress was found to be overly experienced among women.<sup>532</sup> The 2022 Canada Report also determined that those experiencing a disproportionate amount of psychological distress included: women; LGBTQ2S+; those with a disAbility; lawyers between the ages of twenty-six to thirty-five; lawyers in the public or private sector; lawyers with less than ten years of experience; articling students, Ontario paralegals, Quebec notaries; and those residing in Nunavut.<sup>533</sup> Most concerning, almost half of the articling students reported being diagnosed with a mental health condition since commencing their articling.<sup>534</sup>

Women, especially young women, were more likely to experience mental health concerns (i.e., psychological distress, anxiety, depressive symptoms, and burnout) than men.<sup>535</sup> As mentioned above, the 2022 Canada Report found that the rate of psychological distress among Indigenous legal professionals was higher than among Caucasian legal professionals as well as slightly higher than other people of colour.<sup>536</sup> The report also discussed incivility, bullying, and discrimination and the adverse effect that such conduct has on mental health.<sup>537</sup> The 2022

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<sup>531</sup> See: Cadieux et al., 2022 *supra* note 3 at 201.

<sup>532</sup> *Ibid* at 185–187.

<sup>533</sup> *Ibid* at 27, 31, 173–174, 185–187, 230–234, tbl 5. “DisAbility” is used to identify those living with disabilities. The capitalization of “A” indicates the inclusive language of those who have been stigmatized and emphasizes ability. LGBTQ2S+ is defined on page 226 as “Lesbian, Gay, Bisexual, Transgender, Queer, or Two-Spirited. The Government of Canada uses the acronym to refer to the Canadian community.” Women disproportionately experience psychological distress (185–187). LGBTQ2S+ disproportionately experience psychological distress (219–225). Those with a disAbility disproportionately experience psychological distress (230–234). Young and new lawyers disproportionately experience psychological distress (173–174). Lawyers in the public or private sector disproportionately experience psychological distress (tbl 5). Articling students, Ontario paralegals, and Quebec notaries (31). 36% of articling students, 20.2% of lawyers, 23.5% of Quebec notaries and 29.5% of Ontario paralegals were at a “very high” level of psychological distress. Lastly, legal professionals in Nunavut disproportionately experience psychological distress.

<sup>534</sup> *Ibid* at 178. “49.8% of articling students reported having had a mental health diagnosis since starting their practice.” Also see: Macnab, *supra* note 31; Sidiq, *supra* note 31; Simon Lewsen, “The End of Articling” *PrecedentJD Magazine* (Fall 2019) 17; Amy Salyzyn, “At Whose Expense? The Intolerable Human Cost of Articling,” (18 October 2018), online: *SLAW: Canada’s Online Legal Magazine* <<http://www.slaw.ca/2018/10/18/at-whose-expense-the-intolerable-human-cost-of-articling/>>.

<sup>535</sup> *Ibid* at 185–187. Psychological distress in 63.9% of women and 52.2% of men. Anxiety symptoms 42.6% women, 30.2% men, moderate to severe depressive symptoms 31.5% women, 26.2% men, burnout 63.3% women, 49.4% men.

<sup>536</sup> *Ibid* at 201. Psychological distress: 70.3% Indigenous, 57.4% Whites, 67.5% other ethnicities. Moderate to severe depressive symptoms: 41.2% Indigenous, 28.9% White, 37.8% other ethnicities; burnout 66.2% Indigenous, 59.1% White, 64.2% other ethnicities. For all other ethnicities see Graph 1 page 209, Graph 2, 3 page 210.

<sup>537</sup> *Ibid* at 110, 169, 321.

Canada Report wrote that “experiencing incivility is significantly associated with increased psychological distress, depressive symptoms, anxiety, and perceived stress.”<sup>538</sup>

On an international level, the recent global study on mental health in the legal profession completed by the International Bar Association, previously referred to found that legal professionals between the ages of twenty-five and thirty-four, women, people of colour, and disAbled respondents were found most likely “to report experiencing work and health-related issues as a consequence of poor levels of mental wellbeing.”<sup>539</sup> Even more troublesome, the survey disclosed that one out of six disAbled respondents reported thoughts of suicide.<sup>540</sup>

Perceptively, the International Bar Association wrote that “[g]reater levels of difficulties with mental wellbeing may be experienced by participants in the legal profession who are younger, female, from an ethnic minority or disabled. This does not mean that these groups are in some way ‘weaker’, but does suggest a strong inter-relationship between mental wellbeing and issues of equality, diversity and inclusivity.”<sup>541</sup> Stigma, discrimination and racism will be further discussed as harmful to wellbeing in Chapter 6. This thesis now turns to the studies that examine substance use among legal professionals.

## 5.5. Substance Use Among Legal Professionals

Substance use among legal professionals can be problematic given the cognitive and decision-making demands of law. Studies from the United States, Australia, and Canada all demonstrate prolific substance use by legal professionals.<sup>542</sup> To this author’s knowledge, there have been no

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<sup>538</sup> *Ibid* at 320. The 2022 Canada report found that “minorities and more vulnerable groups are generally more exposed to workplace incivility issues. However, being a Quebec notary, being a man or having at least ten years of experience seem to be protective factors against incivility.” Also see tbl 1—the proportion of legal professionals who responded to the discrimination scales according to different profiles.

<sup>539</sup> See: International Bar Association, *supra* note 6 at 40.

<sup>540</sup> *Ibid*.

<sup>541</sup> *Ibid* at 11. Also see Pender, *supra* note 10, which is, to date, the largest-ever international survey on bullying and sexual harassment in the legal profession. 6,980 people from 135 countries participated, Canada being the fourth largest participatory country. On page 32, the report states, “[b]ullying is rampant in the legal profession. Almost half of the respondents to this survey have experienced bullying during their career.” On page 43, the report stated, “[w]hen bullying takes place in legal workplaces, it is rarely reported.” Further, on page 49 the report wrote “[s]exual harassment is also alarmingly commonplace in the legal profession. Sexual harassment disproportionately, but not exclusively, affects female members of the profession.” 37% of female legal professionals reported experiencing sexual harassment during their careers.

<sup>542</sup> In the United States, see: Benjamin, Darling, & Sales, *supra* note 7; Krill, Johnson, & Albert, *supra* note 7; Krill, *supra* note 31; Anker & Krill, *supra* note 10; Listokin & Noonan, *supra* note 7. Also see: Buchanan & Coyle, *supra*



studies published regarding the substance use of English barristers and solicitors in the United Kingdom.<sup>543</sup> This chapter will review the studies in the United States first, then in Australia, and finally, in Canada, revealing that there is certainly a reason for concern.

In 1990, Andrew Benjamin and colleagues published a study, investigating the levels of psychological distress and substance use among lawyers spurring the Association of American Law Schools to investigate substance use among law students, previously mentioned (the “1990 Benjamin study”).<sup>544</sup> Concerning alcohol consumption, the 1990 Benjamin study uncovered that, while about ten percent of all employed persons in the United States misused alcohol, almost double that rate of Washington lawyers, being eighteen percent, misused alcohol.<sup>545</sup> Regarding cocaine use, twenty-six percent of Washington lawyers reported having used cocaine in their lifetime, double that reported by the general population; however, the authors noted that less than one percent reported using enough to indicate cocaine abuse.<sup>546</sup>

In 2016 Patrick Krill and colleagues conducted an empirical study, also mentioned in the previous section. which also assessed substance use among more than 12,000 lawyers across the United States (the “2016 Krill et al. study”).<sup>547</sup> Regarding alcohol use, a little more than 11,000

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note 11; Sahadi, *supra* note 31; Zimmerman, *supra* note 31. In Australia, see: Bergin & Jimmieson, *supra* note 7; Chan, Poynton & Bruce, *supra* note 7. Generally, see Goodliffe & Brooke, *supra* note 31 in the United Kingdom. Despite, no studies regarding the substance use of legal professionals has been done in the United Kingdom, given the prevalence of substance use among law students, it is likely that the results would be like that of legal professionals in the United States, Australia and Canada. See: Bogowicz et al., *supra* note 3. Also, see generally: Ames, *supra* note 31; Aldridge, *supra* note 31; Aldridge, *supra* note 31; Counsel Magazine, *supra* note 31; Matthews-King, *supra* note 31; Office of National Statistics, *supra* note 31; Banerji, *supra* note 31; The Law Society, Junior Lawyers Division, *supra* note 31. In Canada, see: Cadieux et al., 2022 *supra* note 3. Also, see generally: Olijnyk 2021, *supra* note 31; Olijnyk 2023, *supra* note 31; Yves, *supra* note 31. Also see generally: Kiepek & Beagan, *supra* note 31; Amaro et al., *supra* note 31.

<sup>543</sup> Although no studies have been published in journals regarding substance use among legal professionals in the United Kingdom, see generally: Ames, *ibid*; Aldridge, *ibid*; Aldridge, *supra* note 31; Counsel Magazine, *ibid*; Matthews-King, *ibid*; Office of National Statistics, *ibid*; The Law Society Junior Lawyers Division 2020, *supra* note 31; Banerji, *ibid*. For substance use among law students in the UK in Bogowicz et al., *ibid*.

<sup>544</sup> See: Benjamin, Darling, & Sales, *supra* note 7. The researchers had previously surveyed a law school in Arizona (the Benjamin et al. 1986 study). In recommending further research regarding substance use, Benjamin, Darling, & Sales at 243 wrote, “[t]his research is critical since professionals generally agree that substance abuse is a contributing factor in a substantial portion of lawyer disciplinary cases. For example, in 1988, the American Bar Association determined that 27 percent of the discipline cases in the United States involved alcohol abuse.”

<sup>545</sup> *Ibid* at 235, 240. The Michigan Alcoholism Screening Test-Revised (MAST) was utilized with the Washington lawyers.

<sup>546</sup> *Ibid*. The Drug Abuse Screening Test (DAST) assessed cocaine use.

<sup>547</sup> See: Krill, Johnson, & Albert, *supra* note 7. The study was published by the American Bar Association (ABA) Commission on Lawyer Assistance Programs and the Hazelden Betty Ford Foundation. Respondents included

participants completed the survey.<sup>548</sup> Just over twenty percent of all lawyer respondents scored at a level consistent with an alcohol use problem.<sup>549</sup> The study disclosed that, in comparison, the rate of alcohol use among lawyers was almost double that of the general “highly educated workforce.”<sup>550</sup>

Unlike the Benjamin 1990 study, which found that lawyer who had practiced more year used alcohol more, the 2016 Krill et al. study found that lawyers in the earlier years of their careers reported the highest rates of problematic alcohol use.<sup>551</sup> As well, for the first time, women respondents scored higher in terms of problematic alcohol use than men.<sup>552</sup> Most recently and consistent with the 2016 Krill study, the 2021 Anker and Krill study revealed that while thirty percent of American attorney respondents “screened positive for high-risk hazardous drinking,” more women screened positive than men.<sup>553</sup>

Finally, the Listokin & Noonan study, mentioned in the previous section, which found that lawyers had lower levels of “mental illness” than the general population, contradictorily, found that American lawyers demonstrated problematic alcohol use at a rate exceeding that of the general population.<sup>554</sup> Consistent with the findings of the 2016 Krill et al. study, Listokin and Noonan wrote:

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12,825 licensed, employed attorneys who completed surveys assessing alcohol use, drug use, and symptoms of depression, anxiety, and stress. Demographics were: 53.4% men; 46.5% women, 11.9% age 30 or younger; 25.2% 31-40; 21% 41-50; 23.2% 51-60; 16.1% 61-70; 2.7% 71 or older, 91.3% White; 2.6% Hispanic/Latino; 2.5% Black; 1.5% multiracial; 0.7% other; 0.3% Native American. Marital status was also accounted for, as well as children.

<sup>548</sup> *Ibid* at 48. Eleven thousand two hundred seventy-eight completed all ten questions on the Alcohol Use Disorders Identification Test (AUDIT) developed by the World Health Organization (WHO).

<sup>549</sup> *Ibid*. 20.6% of participants scored on AUDIT at a level consistent with problematic drinking.

<sup>550</sup> *Ibid* at 51. The Krill Study reported, “11.8% of a broad, highly educated workforce screened positive on the same measure.”

<sup>551</sup> *Ibid*. The Krill Study reported that “attorneys in the first 10 years of their practice [were] now experiencing the highest rates of problematic use (28.9%), followed by attorneys practicing for 11 to 20 years (20.6%), and continuing to decrease slightly from 21 years or more.”

<sup>552</sup> *Ibid* at 48. 39.5 % of women compared to 33.7% of men.

<sup>553</sup> Justin Anker, Ph.D. is an Associate Professor at the University of Minnesota Medical School. He received his Ph.D. in Cognitive and Biological Psychology from the University of Minnesota. See: “Justin Anker,” online: University of Minnesota Medical School <<https://med.umn.edu/bio/justin-anker>>. See: Anker & Krill, *supra* note 13 at 12. According to the scoring on AUDIT-C, it is interpreted to be within the range of alcohol abuse or possible alcohol dependence.

<sup>554</sup> See: Listokin & Noonan, *supra* note 7.

[c]ompared to their educational peers, lawyers consume alcohol at extraordinary rates. Lawyers exhibit excess alcohol consumption twice as frequently as others with advanced professional degrees. Moreover, alcohol abuse in the legal profession has been getting worse—increasing dramatically over the last 15 years. This trend seems especially prevalent among lawyers under 40.<sup>555</sup>

In 2014, Bergin and Jimmieson examined substance use among 384 full-time Australian legal professionals (the “Bergin & Jimmieson study”).<sup>556</sup> Thirty-five percent of respondents screened positive “for hazardous or harmful drinking.”<sup>557</sup> In the same year, a much larger study was published by University of New South Wales’s professors, Chan, Poynton, and Bruce (the “Chan, Poynton, & Bruce study”), involving more than a thousand practicing Australian lawyers.<sup>558</sup> The Chan, Poynton, & Bruce study revealed that as many as one in three Australian legal professionals could be problem drinkers.<sup>559</sup> Given the high rates of substance use among Australian legal professionals, despite a lack of studies on Australian law student substance use, it is reasonable to believe that if such a study were undertaken, it would reveal harmful substance use among Australian law students.

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<sup>555</sup> *Ibid* at 6. On page 14 the methodology regarding alcohol use is explained as follows: “The key question for measuring excess alcohol consumption in the NHIS asks how many days respondents had five or more drinks in the past year. The CDC considers all respondents with 12 or more such days to exhibit “excessive alcohol consumption.””

<sup>556</sup> See: Bergin & Jimmieson, *supra* note 7. The sample consisted of 236 females, 144 males and four unknown; 378 were working as full-time lawyers and three as trainee lawyers. The average age was 38.14 years. One hundred forty-two worked at small private practices (1-5 lawyers), 85 were from medium private practices (5-20 lawyers), 82 were from large private practices (more than 20 lawyers; three unknown), 29 were from government departments, 21 were in-house counsel, and 22 were considered ‘other’ (e.g., working for a disciplinary body). Respondents had practiced law from 0.5 years to 54 years. The study also examined causation for legal professionals’ psychological distress, which this thesis does not explore.

<sup>557</sup> *Ibid* at 434. Alcohol misuse was assessed using the FAST Screening for Alcohol Misuse test.

<sup>558</sup> *Ibid*. The study was conducted from 2012-2013. Nine hundred sixty-five respondents were all Australian legal practitioners (749 solicitors; 86% (122) Barristers; 60 % worked at a private law firm; 14% 10% government legal departments, 10% community legal centres, 7% corporate legal departments, 1% other workplaces; 45% worked for large organizations employing 100 employees or more, 28% worked in small workplaces with less than ten employees; 83% worked in a metropolitan area; 14% worked in regional areas; 3% in rural areas; 46% practised law for five years or less; 23% practised for 16 years or more; 66% were female; 84% born in AU; 96% AU citizens; ages ranged from 21-81; 1% Aboriginal or Torres Strait Islander; 19% Chinese, Greek, Italian or other; 59% did not have children; The survey examined the working conditions, work experience, and health and wellbeing of solicitors and barristers who practise in a variety of settings—utilized the Australian Work and Life Index (‘AWALI’) to measure how work affects life. It was also the first Australian study to investigate the extent to which stress, anxiety, and depression among lawyers are associated with the conditions and culture of legal practice.

<sup>559</sup> *Ibid* at 1087. Bergin & Jimmieson used the Alcohol Use Disorders Identification Test (‘AUDIT’), of which 32% of respondents were at a medium or high-risk level of alcohol use. They suggested, “that higher use of alcohol was associated with more serious depression, anxiety and stress symptoms and a higher self-reported stress level.”

Similar to the 2016 American Krill et al. study and the 2021 Anker and Krill study, the 2022 Canada Report also found that women were at higher risk for alcohol misuse than men.<sup>560</sup> Regarding potential alcohol misuse, the 2022 Canada Report found that 36.5 percent of men and 42.2 percent of women lawyers were at risk.<sup>561</sup> The 2022 Canada Report further revealed that the risk of alcohol misuse was slightly higher than what was found in the 2016 Krill et al. study.<sup>562</sup> The 2022 Canada Report reads as follows:

In the study conducted by Krill et al. (2016) with over 10,000 lawyers from 19 U.S. states, the researchers found that 20.6% of lawyers in the United States are at risk for substance abuse. This number considers all participants who scored above 8/40 on the AUDIT-10. Using the same threshold, this proportion rises to 22.2% for Canadian lawyers and 21.7% for all legal professionals in Canada (lawyers, Quebec notaries, Ontario paralegals).<sup>563</sup>

The 2022 Canada Report also investigated drug use among legal professionals.<sup>564</sup> Less than a quarter of respondents acknowledged using drugs for non-medical purposes, with cannabis accounting for ninety-five percent of drug use.<sup>565</sup>

## 5.6. Conclusion

Regardless of what kind of psychometric measurement is used or the absence of psychometric measurement, there is significant evidence that psychological distress only dissipates decades after the completion of law school, if at all.<sup>566</sup> In the United States, the Beck 1995 study affirmed

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<sup>560</sup> See: Cadieux et al., 2022 *supra* note 3 at 248.

<sup>561</sup> *Ibid* at 248. Only lawyers were assessed. On page 243, the authors note that the screening tool used to score and report on drinking patterns was the AUDIT-10 (Babor et al., 2001).

<sup>562</sup> *Ibid*. Also, see: Graph 4. To make comparisons with the 2016 Krill study, the 2022 Canada Report translated the findings of the AUDIT-10, which has a threshold being established in the first three questions, into the AUDIT-C, which has a score ranging from 0 to 12. The 2022 Canada Report set a threshold of 5/12 for men and 4/12 for women on the AUDIT-C (Came as the 2016 Krill Study). The methodology of this translation is on page 249.

<sup>563</sup> *Ibid* at 249.

<sup>564</sup> *Ibid*. The DAST-10 scale (Skinner, 1982) was used to assess the risks associated with drug abuse.

<sup>565</sup> *Ibid* at 248. 22.7% of respondents reported using non-prescription drugs. Other drug use reported was: 17.9% cocaine and 10.9% use prescription drugs for non-medical purposes.

<sup>566</sup> *Ibid*. Also see: Beck, Sales, & Benjamin, *supra* note 7. Legal professionals have higher psychological distress than the general population. See: International Bar Association, *supra* note 6. In the United States, see: Benjamin, Darling Sales, *supra* note 7; Eaton et al., *supra* note 7; Beck, Sales & Benjamin, *supra* note 7; Krill, Johnson & Albert, *supra* note 7; Thiese et al., *supra* note 7; But see: Listokin Noonan, *supra* note 7; Monahan & Swanson, *supra* note 7. In Australia, see: Kelk et al., *supra* note 3; Chan, Poynton & Bruce, *supra* note 7; Skead, Rogers & Doraisamy, *supra* note 3. See: Soon et al., *supra* note 7 in the United Kingdom. In Canada, see: Cadieux et al. 2022,

that psychological distress levels remained high throughout many lawyers' careers.<sup>567</sup> In comparison, the 2022 Canada Report revealed that legal professionals experience decreased psychological distress later in their careers at around age 50.<sup>568</sup> In an occupation requiring high performance, sound judgement, and ethical obligations, decades of poor wellbeing and ill-health can seem like an eternity.

Legal professionals, like law students, in all jurisdictions have been found to experience psychological distress at higher rates than the general population.<sup>569</sup> Furthermore, legal professionals reported psychological distress at higher rates than people in other occupations in the United States, the United Kingdom, and Canada.<sup>570</sup> While few studies exist which have examined the psychological distress experienced by marginalized legal professionals, the ones completed in the United States and Canada disclose that women, people of colour, Indigenous, disAbleD, and LGBTQ2S+ legal professionals experience higher rates of psychological distress than their colleagues.<sup>571</sup> Additionally, the 2016 Krill et al. study, the 2021 Anker and Krill study, and the 2022 Canada Report unearthed evidence that women legal professionals are now scoring indicative of problematic alcohol use more so than men.<sup>572</sup>

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*supra* note 3. Also see: Cadieux et al. 2020, *supra* note 7. Legal professionals have higher psychological distress than other occupations. In the United States, see: Eaton et al., *ibid*; Thiese et al., *supra* note 7. But see: Listokin & Noonan, *supra* note 7. No studies have been conducted in Australia which compare the psychological distress of legal professionals to other professions. However, studies have found that legal professionals experience higher rates of psychological distress than the general population. See: Kelk et al., *supra* note 3; Skead, Rogers & Doraisamy, *supra* note 3. In the United Kingdom, see Soon et al., *supra* note 7. In Canada, also see: Cadieux et al., 2022, *ibid*. Also see: Yves, *supra* note 3.

<sup>567</sup> See: Beck, Sales, & Benjamin, *ibid* at 47.

<sup>568</sup> See: Cadieux et al., 2022 *supra* note 3 at 173-174.

<sup>569</sup> In the United States, see: Beck, Sales & Benjamin, *supra* note 7; Krill, Johnson & Albert, *supra* note 7 at 50-51. But see: Listokin & Noonan, *supra* note 7. In Australia, see: Kelk et al., *supra* note 3; Bergin & Jimmieson, *supra* note 7 at 434; Chan, Poynton & Bruce, *supra* note 7; Skead, Rogers & Doraisamy, *supra* note 3. In the United Kingdom, see: Soon et al., *supra* note 7. In Canada, see: Cadieux et al. 2022, *ibid* at 27, 30. Also see: Cadieux et al., (Quebec), *supra* note 7. Internationally, see: International Bar Association, *supra* note 6.

<sup>570</sup> In the United States, see: Eaton et al., *supra* note 7; Thiese et al., *supra* note 7. No studies have been conducted in Australia which compare the psychological distress of legal professionals to other professions. In the United Kingdom, see: Soon et al., *supra* note 8. In Canada, see: Cadieux et al., 2022 *ibid*. Also, see generally: Yves, *supra* note 8.

<sup>571</sup> See: Anker & Krill, *supra* note 10 at 1; Kelk et al., *supra* note 3 tbl 10; Cadieux, et al., 2020 *supra* note 8 at 3, 90-91; Cadieux et al., 2022 *ibid* at 185-187; International Bar Association, *supra* note 6 at 40.

<sup>572</sup> See: Krill, Johnson, & Albert, *supra* note 7 at 48; Anker & Krill, *ibid*; Cadieux et al., 2022 *ibid* at 248. *Contra*: Benjamin, Darling, & Sales, *supra* note 7.

Regarding alcohol use in general, the 2016 Krill study found that just over twenty percent of all lawyer respondents scored at a level consistent with alcohol use problems.<sup>573</sup> The 2022 Canada Report revealed that the risk of alcohol dependency was slightly higher than in the 2016 Krill study.<sup>574</sup> Given the high rate of substance use among Canadian legal professionals disclosed in the 2022 Canada Report, it is reasonable to suspect that Canadian law students would likely be found to have significant rates of harmful substance use, if such a study was undertaken. Most recently, the Listokin & Noonan study revealed that American attorneys misused alcohol at a rate exceeding that of the general population.<sup>575</sup>

In Australia, the Chan, Poynton, & Bruce study revealed that one in three Australian legal professionals could misuse alcohol.<sup>576</sup> Likewise, the Bergin & Jimmieson study found that thirty-five percent of respondents screened positive “for hazardous or harmful drinking.”<sup>577</sup> No studies have been conducted on alcohol use among legal professionals in the United Kingdom; however, based on the studies in the United States, Australia, and Canada, and the Bogowicz study which found high rates of substance use among law students in the United Kingdom, it is more likely than not that legal professionals in the United Kingdom would also have higher rates of alcohol misuse.<sup>578</sup> The next chapter will review the factors that are detrimental to wellbeing, including substance use which will shed light on the problematic nature and concerning levels of substance use among law students and legal professionals.

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<sup>573</sup> *Ibid* at 48.

<sup>574</sup> See: Cadieux et al., 2022, *ibid* at 248.

<sup>575</sup> See: Listokin & Noonan, *supra* note 7.

<sup>576</sup> See: Chan, Poynton, & Bruce, *supra* note 7 at 1087.

<sup>577</sup> See: Bergin & Jimmieson, *supra* note 7 at 434.

<sup>578</sup> See: Bogowicz et al., *supra* note 3. Also see generally: Goodliffe & Brooke, *supra* note 31; Ames, *supra* note 31; Aldridge, *supra* note 31; Aldridge, *supra* note 31; Counsel Magazine, *supra* note 31; Matthews-King, *supra* note 31; Office of National Statistics, *supra* note 31; Banerji, *supra* note 31; The Law Society, Junior Lawyers Division, *supra* note 31.

## Chapter 6: Factors Detrimental to Wellbeing

### 6.1. Introduction

Mental health affects people of every age, gender, and socioeconomic background; however, several factors may impact a person's mental health and wellbeing.<sup>579</sup> Some factors contributing to poor mental health include: trauma (reviewed in Chapter 2.5); social isolation; genetic predispositions; and lifestyle factors, such as a lack of exercise, sleep, poor nutrition and substance use.<sup>580</sup> External factors such as stigma, discrimination, racism, poverty, and other life experiences can also affect mental health.<sup>581</sup>

While there has been debate as to whether unhappy people are attracted to law or whether there is something about legal education and law that makes people unhappy, Chapter 4 revealed that it is very likely law students enter law school with wellbeing comparable to that of the general population.<sup>582</sup> Chapter 4 also disclosed that law students' psychological distress increases once they start their legal education.<sup>583</sup> Furthermore, law students likely experience more distress than students in most other programs and certainly more so than medical students.<sup>584</sup> Chapter 5

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<sup>579</sup> See generally: Patel et al. 2010, *supra* note 2; Patel et al. 2018, *supra* note 96.

<sup>580</sup> See generally: National Research Council (US) and Institute of Medicine (US) Committee on Depression, Parenting Practices, Mary Jane England & Leslie J. Sim, "The Etiology of Depression" in *Depression in Parents, Parenting, and Children: Opportunities to Improve Identification, Treatment, and Prevention* (US: National Academies Press, 2009); Radu V. Saveanu & Charles B. Nemeroff, "Etiology of Depression: Genetic and Environmental Factors" (2012) 35:1 *Psychiatric Clinics* 51-71.

<sup>581</sup> See generally: Barreto, *supra* note 2; Patel et al., *supra* note 2; Williams et al., *supra* note 31; Williams, *supra* note 31; Czyzewski, *supra* note 2; Williams & Etkins, *supra* note 2.

<sup>582</sup> See Daicoff 2004, *supra* note 346, which thoroughly analyzes studies conducted regarding law student and lawyer personality. Also, see generally: M. M. Dammeyer & N. Nunez, "Anxiety and Depression Among Law Students: Current Knowledge and Future Directions" (1999) 23:1 *Law Hum Behav* 55-73; Reifman, McIntosh, & Ellsworth, *supra* note 3; Kelk et al., *supra* note 3; Beck, Sales, & Benjamin, *supra* note 7; Sheldon & Krieger 2004, *supra* note 4; Pritchard & McIntosh, *supra* note 5; Krieger & Sheldon 2007, *supra* note 32; Bergin & Pakenham, *supra* note 3; Flynn, Li, & Sánchez 2017, *supra* note 27. Law students have been found to have levels of wellbeing comparable to the general population before starting law school in the United States and Australia. In the United States, see: Benjamin et al., *supra* note 3 at 246; Reifman, McIntosh & Ellsworth, *supra* note 3 at 102; Sheldon & Krieger 2004 *supra* note 4 at 270-271 at 270. In Australia, see: O'Brien, Tang & Hall 2011 *Changing our Thinking*, *supra* note 3 at 159, 162. To the author's knowledge, no published studies have investigated pre-law student wellbeing in the United Kingdom or Canada.

<sup>583</sup> Studies have also shown that increases in student psychological distress coincide with commencing law school in all the compared jurisdictions except the United Kingdom. In the United States, see Pritchard & McIntosh, *ibid* at 739; Reed et al., *supra* note 5 at 48. In Australia, see Lester, England & Antolak-Saper, *supra* note 5. In Canada, see McGill, *supra* note 3.

<sup>584</sup> In the United States, see: Shanfield & Benjamin, *supra* note 3 at 221; Organ, Jaffe & Bender, *supra* note 3 at 136-137. Also see: Harries, Kim & Grant, *supra* note 3. In Australia, see: Kelk et al., *supra* note 3 at 12; Leahy et

divulged that psychological distress persists after graduation.<sup>585</sup> Legal professionals have largely demonstrated worse wellbeing than the general population.<sup>586</sup> Overwhelmingly, across jurisdictions, people in other occupations enjoy higher levels of wellbeing than legal professionals, except in Australia, where, to this author's knowledge, no published studies have compared the wellbeing of Australian legal professionals to that of people in other occupations.<sup>587</sup>

This chapter outlines the factors detrimental to wellbeing, including stress, isolation, loneliness, stigma, discrimination, racism, and substance use. It explains how being primarily motivated by money, image, and power (i.e., extrinsic motivation) contributes to wellbeing declines. The factors detrimental to wellbeing should be considered alongside and contrasted with the shared experiences, practices, beliefs, and attitudes in law school reviewed in Chapter 3. Law students and legal professionals from all jurisdictions experience stress and isolation due to the heavy workload and intense competition within the law. Furthermore, law students and legal professionals live and work within a culture inherited through a history of colonialism, resulting in systemic racism and discrimination, which stigmatized mental health where emotion has typically been devalued within the law.<sup>588</sup> Additionally, substance use has been conventionally normalized within the legal field.

Chapter 6.2 explains stress and why extreme or prolonged stress can be detrimental to mental health, in addition to outlining the effects of isolation and loneliness on health. Moreover, Chapter 6.2 reviews the 2003 Pritchard study and two stress scales—the *Law Student Perceived*

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al., *supra* note 3 at 611; Skead & Rogers, *supra* note 3 at 82. But see: Larcombe, Finch & Sore, *supra* note 3 at 265. In the United Kingdom, see: Bogowicz et al., *supra* note 3; Lewis & Cardwell, *supra* note 3. In Canada, see: Helmers et al., *supra* note 3.

<sup>585</sup> See: Benjamin et al., *ibid*; Beck, Sales, & Benjamin, *supra* note 7; Cadieux et al. 2022, *supra* note 3.

<sup>586</sup> In the United States, see: Beck, Sales & Benjamin, *ibid*; Krill, Johnson & Albert, *supra* note 7 at 50-51. But see: Listokin & Noonan, *supra* note 7. In Australia, see: Kelk et al., *supra* note 3; Bergin & Jimmieson, *supra* note 7 at 434; Chan, Poynton & Bruce, *supra* note 7; Skead, Rogers & Doraisamy, *supra* note 3. In the United Kingdom, see: Soon et al., *supra* note 7. In Canada, see: Cadieux et al. 2022, *ibid* at 27, 30. Also see: Cadieux et al., (Quebec), *supra* note 7. Internationally, see: International Bar Association, *supra* note 6.

<sup>587</sup> In the United States, see: Eaton et al., *supra* note 7; Thiese et al., *supra* note 7. No studies have been conducted in Australia which compare the psychological distress of legal professionals to other professions. In the United Kingdom, see: Soon et al., *ibid*. In Canada, see: Cadieux et al., 2022 *ibid*. Also, see generally: Yves, *supra* note 8.

<sup>588</sup> See: Czyzewski, *supra* note 2; Glenn, *supra* note 25; Kauanui, *supra* note 287; Kim, *supra* note 2; Mitchell, *supra* note 232; Beazley, *supra* note 25; Perez, *supra* note 287; McKay, *supra* note 287; Government of Canada, *supra* note 287.



*Stress Scale* and the *Law Schools Stressor Measure*—which identified “academic demands” and “isolation” as the primary sources of the law student’s psychological distress.<sup>589</sup> Chapter 6.3 outlines how stigma, discrimination, and racism are detrimental to wellbeing and contribute to the disproportionate rates of psychological distress among marginalized law students and legal professionals.<sup>590</sup>

Chapter 6.4 discusses how substance use contributes to declines in wellbeing. Chapters 4.6 and 5.5 outline the prevalence of substance use among law students and legal professionals. Finally, Chapter 6.5 explains how the sole pursuit of money, image, and power can harm wellbeing. First, this thesis will review the detrimental effects of stress, isolation, and loneliness.

## 6.2. Stress, Isolation, & Loneliness

Stress, isolation, and loneliness are significant factors that harm mental health and wellbeing. In today’s fast-paced and technologically advanced world, individuals are increasingly experiencing high levels of stress and loneliness, leading to severe consequences for their mental health. This sub-chapter first defines “stress,” “loneliness,” and “isolation” and explains how these factors are detrimental to mental health. Second, this sub-chapter reviews the studies assessing stress and isolation among law students.

Stress is a prevalent phenomenon that affects individuals from all walks of life. “Stress” is a physiological and psychological response to stimuli due to pressure.<sup>591</sup> In some circumstances, stress can be beneficial — in 1990 Mihaly Csikszentmihalyi wrote a book, *Flow*, which outlines how stress can enhance or harm performance.<sup>592</sup> Csikszentmihalyi describes “flow” as “being in

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<sup>589</sup> See: Pritchard & McIntosh, *supra* note 5; Bergin & Pakenham, *supra* note 3; Flynn, Li, & Sánchez 2017, *supra* note 27. Also, see generally: Flynn, Li & Sánchez 2019, *supra* note 291.

<sup>590</sup> The studies outlining the disproportionate rates of psychological distress among marginalized law students and legal professionals were reviewed in Chapters 4.5 and 5.4.

<sup>591</sup> See: Gillian Butler, “Definitions of Stress” in *Stress Management in General Practice* (London: Royal College of General Practitioners, 1993), ch. 1.

<sup>592</sup> See: Csikszentmihalyi, *supra* note 15. Mihaly Csikszentmihalyi is a notorious psychologist who was born in Hungary in 1934. As a child during the Second World War, he was put in an Italian prison. It was during his time in prison, and amid the loss of family and friends that he first began to think about his future seminal work regarding the optimal experience. Mihaly Csikszentmihalyi talked about playing chess while in prison and stated in a 1995 interview: “I discovered chess was a miraculous way of entering into a different world where all those things didn’t matter. For hours I’d just focus within a reality that had clear rules and goals.” See: Dava Sobel, *Mihaly*

the zone”; when a person is completely absorbed in the task they are performing and their skills match the challenge and are attainable.<sup>593</sup>

In the “flow” state, an individual does not even notice time pass, particularly when one engages their creative abilities.<sup>594</sup> Csikszentmihalyi wrote, “[t]he best moments usually occur when a person’s body or mind is stretched to its limits in a voluntary effort to accomplish something difficult and worthwhile. Optimal experience is thus something we make happen.”<sup>595</sup> When there is an insufficient challenge, an individual may get bored, or alternatively, if the challenge is too much, anxiety results.<sup>596</sup>

In Chapter 1 of *Stress Management in General Practice*, “stress” is described as follows: “The greater the pressure the more likely that the recipient, whether a person or a load-bearing beam, will succumb. When the (external) stimulus becomes too great, (internal) collapse becomes inevitable.”<sup>597</sup> Stress has also been described as a “physiological phenomenon” that “is fundamental to survival,” but “also strongly related to several brain disorders including, depression, anxiety, post-traumatic stress disorder.”<sup>598</sup> Prolonged or extreme stress can cause health problems, such as “neurological disorders, cardiac problems (including heart attack), gastric ulcers, asthma, diabetes, headaches, accelerated aging and premature death.”<sup>599</sup> Furthermore, stress is a significant factor in the onset of depression.<sup>600</sup>

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*Csikszentmihalyi* (General Media International, Inc., 1995). Also, see generally: Mihaly Csikszentmihalyi & Izabela Lebeda, “A Window into the Bright Side of Psychology: Interview with Mihaly Csikszentmihalyi” (2017) 13:4 Eur J Psychol 810-821.

<sup>593</sup> *Ibid* at 74.

<sup>594</sup> *Ibid*.

<sup>595</sup> *Ibid* at 3.

<sup>596</sup> *Ibid*.

<sup>597</sup> See: Butler, *supra* note 591 at 1.

<sup>598</sup> See: Godoy et al., *supra* note 233 at 1.

<sup>599</sup> See: Naila Rasheed, “Prolonged Stress Leads to Serious Health Problems: Preventive Approaches” (2016) 10:1 Int J Health Sci (Qassim) V-VI at V.

<sup>600</sup> *Ibid*. Also, see: Austin 2013, *supra* note 27. Austin describes in detail how prolonged exposure to stress triggers the release of stress hormones, such as cortisol, which can disrupt the normal functioning of the brain. This disruption can lead to various mental health conditions, including anxiety disorder, depression, and even substance abuse. Stress also weakens the immune system, making individuals more susceptible to physical illness, further exacerbating their mental wellbeing.

Likewise, loneliness and social isolation can be as harmful as smoking and can increase the risk of substance use, obesity, cardiovascular disease, dementia, declines in cognitive functioning, anxiety, and depression.<sup>601</sup> As outlined in Chapter 2, human beings are social creatures, and connection is essential for human wellbeing. Whether individuals feel socially isolated due to physical distance, like that experienced during the COVID-19 pandemic or due to alienation (i.e., stigma, discrimination, or racism), or have a lack of meaningful relationships, individual mental health is at risk. The feeling of loneliness can lead to depressive symptoms, increased anxiety, and a sense of worthlessness.<sup>602</sup> Studies have shown that chronic loneliness is associated with a higher risk of developing mental health conditions, such as depression and cognitive decline.<sup>603</sup>

Stress and loneliness often go hand in hand, intensifying their harmful effects on mental health. For instance, individuals experiencing high stress at work may find socializing and connecting with others challenging, increasing their feelings of loneliness. Similarly, people who are isolated or lonely may lack the support system necessary to cope with stressors effectively, leading to a perpetual cycle of stress and loneliness.

Since there are significant health risks associated with loneliness and social isolation and with increasing experiences of these, the U.S. Surgeon General recently published an *Advisory on the*

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<sup>601</sup> Loneliness is often used interchangeably with social isolation. However, “loneliness” is the subjective experience of being alone while “social isolation” is an objective assessment of being alone. See generally: “Social Isolation and Loneliness,” online: *World Health Organization* <<https://www.who.int/teams/social-determinants-of-health/demographic-change-and-healthy-ageing/social-isolation-and-loneliness>>; Alvin Powell, “How Social Isolation, Loneliness Can Shorten your Life,” (3 October 2023), online: *Harvard Gazette* <<https://news.harvard.edu/gazette/story/2023/10/how-social-isolation-loneliness-can-shorten-your-life/>>; Harry Owen Taylor et al., “The State of Loneliness and Social Isolation Research: Current Knowledge and Future Directions” (2023) 23:1 BMC Public Health 1049. Also, see generally: “Loneliness Poses Health Risks as Deadly as Smoking, U.S. Surgeon General Says,” (2 May 2023), online: *PBS NewsHour* <<https://www.pbs.org/newshour/health/loneliness-poses-health-risks-as-deadly-as-smoking-u-s-surgeon-general-says>>; Lasse Brandt et al., “The Effects of Social Isolation Stress and Discrimination on Mental Health” (2022) 12:1 Transl Psychiat 398-398.

<sup>602</sup> See: Raheel Mushtaq et al., “Relationship Between Loneliness, Psychiatric Disorders and Physical Health? A Review on the Psychological Aspects of Loneliness” (2014) 8:9 J Clin Diagn Res WE01-WE04.

<sup>603</sup> See: Taylor et al. 2023, *supra* note 601; Mushtaq et al. *ibid*.

*Healing Effects of Social Connection and Community*.<sup>604</sup> In Canada, there is also a growing concern over the public health risks posed by loneliness and social isolation.<sup>605</sup>

Next, this chapter will examine studies assessing law students' stress and isolation. Students' stress, loneliness, and isolation have primarily been attributed to academic demands, workload, teaching methods, technology, and competition.<sup>606</sup> The American 2003 Pritchard empirical study was the first longitudinal study to attempt to identify the sources of psychological distress among law students.<sup>607</sup> Fifty-three identified "stressors" were divided into four overarching categories, including: "academic pressure"; "personal time"; "social isolation"; and "perceptions of

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<sup>604</sup> See: Murthy Advisory, *supra* note 31. Also, see: Murthy, *supra* note 31; Kubzansky, Epel & Davidson, *supra* note 17; Amelia Hamfelt & Justyna Krol, *Social Inclusion: The Key Determinant of Mental Wellness* (The Law Foundation of British Columbia, 2019).

<sup>605</sup> See generally: Katie Dangerfield, "The Loneliness Epidemic: How Social Isolation Can Damage our Minds and Bodies," (14 May 2023), online: *Global News-National* <<https://globalnews.ca/news/9684469/loneliness-crisis-canada-covid/>>; Government of Canada, "You are Not Alone," (26 January 2022), online: *Statistics Canada* <<https://www.statcan.gc.ca/o1/en/plus/274-you-are-not-alone>>; Sara Jabakhanji, "Anxiety, Depression, Loneliness at Highest Levels Among Canadians Since Early Pandemic: Survey," (26 January 2022), online: *CBC News* <<https://www.cbc.ca/news/canada/toronto/anxiety-depression-loneliness-study-1.6327708>>; Centre for Addiction and Mental Health, "Anxiety, Feelings of Depression and Loneliness Among Canadians Spikes to Highest Levels Since Spring 2020," (25 January 2022), online: *CAMH* <<https://www.camh.ca/en/camh-news-and-stories/anxiety-depression-loneliness-among-canadians-spikes-to-highest-levels>>; "COVID-19 National Survey Dashboard: What Canadians are Reporting About their Mental Health and Substance Use During the Pandemic," online: *CAMH* <<https://www.camh.ca/en/health-info/mental-health-and-covid-19/covid-19-national-survey>>.

<sup>606</sup> See generally: Pritchard & McIntosh, *supra* note 5; Bergin & Pakenham, *supra* note 3; Flynn, Li, & Sánchez 2017, *supra* note 27; Flynn, Li, & Sánchez 2019, *supra* note 291; Austin 2013, *supra* note 27; Tani & Vines, *supra* note 27; Fitzgerald, *supra* note 27; Jones, Samra, & Lucassen, *supra* note 411; Ruth Ann McKinney, "Depression and Anxiety in Law Students: Are We Part of the Problem and Can We Be Part of the Solution" (2002) 8 *Leg Writing: The J of the Leg Writing Institute* 229; Gerald F. Hess, "Heads and Hearts: The Teaching and Learning Environment in Law School (The Law School Experience)" (2002) 52:1 2 *Journal of Legal Education* 111; Dolovich, *supra* note 211; Gourguechon, *supra* note 211.

<sup>607</sup> See: Pritchard & McIntosh, *supra* note 5 at 728. Pritchard and McIntosh conducted a longitudinal study with first-year law students at the University of Denver. "Wave 1" data was collected from 141 students (44% of the 1<sup>st</sup> year class; 65% women; 35% men) during orientation week and the first week of classes. "Wave 2" data was collected from 89 students (28% of the 1<sup>st</sup> year class; 65% women; 35% men) a month before the end of first-year classes, and in total, 56 students participated in Wave 1 and Wave 2 (18% of the 1<sup>st</sup> year class; 70% women; 30% men). Physical health was assessed by asking students how many days they had experienced various health problems (e.g., cold, flu, shortness of breath) during the last month. For "emotional symptoms," researchers used the 20-item Center for Epidemiological Studies-Depression Scale and the Positive and Negative Affect Schedule (PANAS). For "attitudes," the researchers used a scale they developed called "Attitudes Toward Law School Scale." The researchers used the 28-item Brief COPE Scale for coping style and cognitive appraisals. For "relationships," the Marital Adjustment Test was used. To measure "stress," the study used a modified and extended version of McIntosh et al. (1994), incorporating 53 potential stressors. The 53 stressors were divided into four categories, including "academic pressure," "personal time," "social isolation," and "perceptions of discrimination." Also, see generally: McIntosh et al., *supra* note 406. McIntosh used items adapted from Carrington and Conley (1977), Heins, Fahey, and Henderson (1983), and Reifman, Biernat, and Lang (1991) as well as conducting interviews with upper-year law students, and pretesting items with students from other law schools to refine the measures.

discrimination.”<sup>608</sup> The primary sources of stress that were identified in the 2003 Pritchard study were the “academic environment,” the “lack of personal time,” and “social isolation.”<sup>609</sup>

Since the publication of the 2003 Pritchard study, two psychometrically validated “stress scales” have been developed to specifically measure law student stress, known as the *Law Student Perceived Stress Scale*<sup>610</sup> and the *Law Schools Stressor Measure*.<sup>611</sup> In Australia, the 2015 Bergin & Pakenham study, previously referred to, delineated the sources of increased psychological distress among law students using the *Law Student Perceived Stress Scale*.<sup>612</sup> The *Law Student Perceived Stress Scale* was piloted for validation based on four categories of law school stress, including academic demands, social isolation, career pressure, and study/life imbalance.<sup>613</sup> The Bergin and Pakenham study evaluated law students from three law schools in Queensland, Australia, and revealed that more than half of the students at all law schools were experiencing “moderate to extremely severe” levels of depression and anxiety.<sup>614</sup>

The *Law Student Perceived Stress Scale* was the first scale developed to measure the stress experienced by law students and includes twenty-four items.<sup>615</sup> Four factors “predicted greater

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<sup>608</sup> *Ibid* at 733.

<sup>609</sup> *Ibid* at 740. The Pritchard study found at page 734-735 that as the first year progressed, participants experienced increased negative affect, decreased positive affect, and increased depression. By the end of the first year, twelve percent of law students scored at a rate indicative of depression, and thirty percent reported high levels of dissatisfaction or anxiety.

<sup>610</sup> See: Bergin & Pakenham, *supra* note 3.

<sup>611</sup> See: Flynn, Li, & Sánchez 2017, *supra* note 27. Also, see generally: Flynn, Li, & Sánchez 2019, *supra* note 291.

<sup>612</sup> See: Bergin & Pakenham, *supra* note 3. The 2015 Bergin & Pakenham study evaluated law students from three law schools in Queensland, Australia. Six hundred and forty-seven university students enrolled in a Bachelor of Laws participated. Four hundred and eighty-one completed the questionnaire, whereas 166 completed only the LSPSS and Perceived Stress Scale. As such, psychometric analysis of the LSPSS was conducted on the total sample of 647, while subsequent analyses (i.e., the second and third study aims) were conducted on 481 (70.76% females and 29.24% males; mean age of 21.90 years; 22.5 1% in 1<sup>st</sup> year of law school; 22.29% in second; 21.44% in third and 33.76% in the fourth year of law school; 91.01% were full-time) students.

<sup>613</sup> *Ibid* at 388, 392. The Depression Anxiety Stress Scale, Satisfaction with Life Scale, Ryff's Psychological Well-Being Scales, Perceived Stress Scale and Law Student Perceived Stress Scale (LSPSS) were used. The authors noted on pp. 392-399 that analyses indicated the LSPSS was psychometrically sound and measured four dimensions of law school stress: academic demands; social isolation; career pressure; and study/life imbalance.

<sup>614</sup> *Ibid* at 399. Six hundred and forty-seven university students enrolled in a Bachelor of Laws at one of three southeast Queensland, Australia universities participated. Four hundred and eighty-one completed the questionnaire, whereas 166 completed only the LSPSS and Perceived Stress Scale. As such, psychometric analysis of the LSPSS was conducted on the total sample of 647, while subsequent analyses (i.e., the second and third study aims) were conducted on 481 (70.76% females and 29.24% males; mean age of 21.90 years; 22.5 1% in 1<sup>st</sup> year of law school; 22.29% in second; 21.44% in third and 33.76% in the fourth year of law school; 91.01% were full-time) students.

<sup>615</sup> *Ibid* at 392. The authors write the items were: “derived from a review of commentary by law school scholars, resources created by law student associations, previous research on law student psychological distress, qualitative

depression and anxiety” which were: academic demands; social isolation; career pressure; and study/life imbalance.<sup>616</sup> Academic demands were the leading cause of stress in law school, and uncoincidentally, social isolation was found to be the most harmful to wellbeing and autonomy.<sup>617</sup> Bergin and Pakenham noted that nearly all students cited “academic demands” as “moderately to extremely stressful.”<sup>618</sup>

In 2017, American research psychologists developed the *Law School Stressor Measure* to accurately measure stress based on the primary stressors of law students.<sup>619</sup> The *Law School Stressor Measure* was tested to determine its validity, reliability, and consistency with 316

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research conducted with law students and research comparing stress in law students with other student groups.” Furthermore, the *Law Student Perceived Stress Scale* structure was based on other validated measures used with students in other faculties, such as “the Student Life Stress Inventory-Revised, Higher Education Stress Inventory and Graduate Stress Inventory.”

<sup>616</sup> *Ibid* at 395.

<sup>617</sup> *Ibid* at 398, 400. The author of this thesis has outlined the hours in a week to describe the dilemma that so many students face, especially students who are responsible for the care of others or must work to pay for tuition. There are 168 hours in a week: minus sleep (7 or 8 per night) 56 hours, minus time in classes (assuming classes are only 5 hours a week) 5 hours, minus homework (as a law student, the author spent on average 40 hours a week doing homework but will reduce to 30 hours per week) 30 hours, minus eating (home or out-all meals) 14 hours. That leaves 63 hours remaining in the week. This estimation does not include exercise (which is fundamental to wellbeing), care of children or others, care of pets, paid employment, travel to and from locations, medical appointments, dentist, downtime due to illness, disabilities which require more time, grooming, dressing, laundry, spiritual activities, sports, dishes, cleaning, phone calls, shopping, friends, games, parties, movies, TV, chilling, personally satisfying activities (i.e., volunteer work), extracurricular activities. Furthermore, some courses may need more study time or tutorials.

<sup>618</sup> *Ibid* at 402. Also, see generally: Matthew Lapierre, “New Workloads Causing Anxiety, Despair for Montreal’s University Students,” (4 November 2020), online: *Toronto Star* <<https://www.thestar.com/news/canada/2020/11/04/new-workloads-causing-anxiety-despair-for-montreals-university-students.html>>; Karingada Kochu Therisa Beena & Michael Sony, “Student Workload Assessment for Online Learning: An Empirical Analysis During Covid-19” (2022) 9:1 Cogent Engineering 2010509. The Beena & Sony study is the first study to assess student workload for online learning and can provide institutions a way to measure the student workload for various courses. Also, see: Darlee Gerrard et al., *Are Students Overworked? Understanding the Workload Expectations and Realities of First-Year Engineering* (Columbus, Ohio: American Society for Engineering Education, 2017). The Gerrard et al. study examined first year engineering students at the University of Toronto. The Gerrard abstract reads: “Observations suggest that workload almost doubles within the first three weeks of class and assessments (major and minor) have an amplifying effect especially as they can be inadvertently grouped-together on specific dates. Additionally, there appears to be a link between perceived difficulty and hours spent, with that link aligning better as the courses progress. Furthermore, data also suggests that the first-year design/communication course has a large spike in workload midway through the term, much larger than the increases seen in the heavy-weighted assessments in non-design courses.” The factors to consider for workload included: “Time, Volume, Course and Program Content, Transition, Instruction, Communication, and Expectations.” To the author’s knowledge, there have been no studies assessing the workload of law students except for one from the UK that examines online or distance learning in law school. See generally: Jones, Samra, & Lucassen, *supra* note 411.

<sup>619</sup> See: Flynn, Li, & Sánchez 2017, *supra* note 27. Stressors were based on anecdotal information, interviews with students, and literature on stress.

students from two Midwestern law schools.<sup>620</sup> The researchers found the *Law School Stressor Measure* was valid and reliable.<sup>621</sup>

The *Law School Stressor Measure* includes 52 items sorted into five subscales.<sup>622</sup> As with the *Law Student Perceived Stress Scale*, the primary “stressors” identified in the *Law School Stressor Measure* were excessive workload and lack of social connection, which predicted depression, anxiety, and overall psychological distress.<sup>623</sup> In examining specific “stressors,” “[w]orkload stressors include[d] inadequate time to complete course work and engage in important self-care activities, such as spending time with loved ones, eating a nutritious diet, or getting enough sleep.”<sup>624</sup> Unfortunately, stress, loneliness, and social isolation is prevalent among legal professionals as they are among law students.<sup>625</sup> The following section reviews how stigma, discrimination, and racism detrimentally impact mental health and wellbeing

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<sup>620</sup> *Ibid* at 267-268. Most participants were white/European American (70%) and female (58%). 9% were Asian/Asian American, 8% were Hispanic or Latina/o, 7% were American Indian or other, 6% were African American, and 1% did not report a race/ethnicity. Less than 1% of participants described their gender as other. Participants ranged from 21 to 43 years of age, with a mean age of 26.61. The semester grade point average (GPA) was collected from participants’ transcripts at the end of the semester. The Brief Symptom Inventory (BSI) was used to measure psychological symptoms. Social Readjustment Rating Scale-Revised (SRRS-R) measured general life stressors and established the LSSM’s discriminant validity.

<sup>621</sup> *Ibid* at 273.

<sup>622</sup> See: Flynn, Li, & Sánchez 2019, *supra* note 291 at 6; Also see: *ibid* tbl 2.

<sup>623</sup> *Ibid* at 8.

<sup>624</sup> *Ibid* at 9. Furthermore, the *Law School Stressor Measure* identified “bullying, cheating, and use of licit and illicit substances” as a “peer stressor. Also, see: Flynn, Li, & Sánchez 2017, *supra* note 27. The researchers observed that “[i]nadequate instrumental social support predicted higher levels of depression and overall psychological symptoms.”

<sup>625</sup> This thesis does not examine the causation of lawyers’ psychological distress; however, the primary factors for legal professionals’ stress and isolation are workload and billable hours. In the United States, see: Krill et al. 2023, *supra* note 44; Krieger & Sheldon 2015, *supra* note 15; Ash & Huang, *supra* note 31; Organ 2011, *supra* note 65. In Australia, see: Bergin & Jimmieson, *supra* note 7; Thornton 2016, *supra* note 31; Omari & Paull, *supra* note 31; Schrever, Hulbert, & Sourdin, *supra* note 498; Nora Chlap & Rhonda Brown, “Relationships Between Workplace Characteristics, Psychological Stress, Affective Distress, Burnout and Empathy in Lawyers” (2022) 29:2 International Journal of the Legal Profession 159-180. In the United Kingdom, see: Medlow, Kelk, & Hickie, *supra* note 389; Paul McKeown, “A Broken Profession Both Mentally and Physically: Is Wellbeing the Foundation to a Healthy and Resilient Future?” in Emma Jones & Caroline Strevens, eds., *Wellbeing and Transitions in Law: Legal Education and the Legal Profession* (Cham: Springer International Publishing, 2023). Also, see generally: “Stressed to Impress - Putting the Legal Sector on a Healthier Footing,” (4 April 2023), online: *Law Society of Scotland* <<https://www.lawscot.org.uk/news-and-events/blogs-opinions/stressed-to-impress-putting-the-legal-sector-on-a-healthier-footing/>>; LawCare, *Life in the Law* (LawCare, 2020). In Canada, see: Cadieux et al. 2022, *supra* note 3; Cadieux et al. 2020, *supra* note 7; Koltai, Schieman, & Dinovitzer, *supra* note 34. Also, see generally: Megan Seto, “Killing Ourselves: Depression as an Institutional, Workplace and Professionalism Problem (Canada)” (2012) 2:2 Western Journal of Legal Studies 22; “National - A Wake-Up Call for Law Firms,” (12 December 2022), online: *The Canadian Bar Association* <<https://nationalmagazine.ca/en-ca/articles/legal-market/law-firms/2022/a-wake-up-call-for-law-firms>>; Daniel Fish, “Sky-High Billable-Hour Targets are Rampant in the Legal World,” (16 May 2023), online: *Precedent* <<https://lawandstyle.ca/news/sky-high-billable-hour-targets-are-rampant-throughout-the>

### 6.3. Stigma, Discrimination, & Racism

Stigma, discrimination, and racism are significant social issues that are detrimental to mental health and wellbeing.<sup>626</sup> Being treated poorly and unfairly based on race, ethnic background, or any other uncontrollable characteristic can have profound effects on mental health.<sup>627</sup> This section explains “stigma,” “discrimination,” and “racism” to shed light on the harmful consequences of these factors. Finally, there is a discussion of how these factors manifest in law school and the legal profession, thereby harming mental health and wellbeing.<sup>628</sup>

For this thesis, stigma refers to the negative attitudes and beliefs about people and, in particular, mental health conditions.<sup>629</sup> Despite significant progress in understanding mental health, those who experience mental health issues continue to face stigmatization. Stigma can manifest in various ways, including stereotypes, prejudice, and discrimination.<sup>630</sup> Stigma can lead to isolation, low self-esteem, and a reluctance to seek help.<sup>631</sup> This prejudice denies individuals the right to live a fulfilling life, damages their mental health and wellbeing, and hinders their path to healing.

Racism is another form of discrimination that poses severe threats to mental health and wellbeing.<sup>632</sup> Racism targets individuals based on their racial or ethnic background, exposing

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legal-world/>; Alice Woolley, “Time for Change: Unethical Hourly Billing in the Canadian Profession and What Should be Done About it” (2004) 83:3 Canadian Bar Review 859.

<sup>626</sup> See: Patrick W. Corrigan & Amy C. Watson, “Understanding the Impact of Stigma on People with Mental Illness” (2002) 1:1 World Psychiatry 16-20; Torales et al., *supra* note 31; Williams et al., *supra* note 31; Williams & Etkins, *supra* note 2. Some scholars suggest there are potentially harmful effects for a perpetrator. See: Dongning, Wesselmann & Williams, *supra* note 39; Legate et al., *supra* note 39.

<sup>627</sup> See: Torales et al., *supra* note 31; Williams et al., *supra* note 31; Williams & Etkins, *supra* note 2.

<sup>628</sup> See: Agatstein et al., *supra* note 10; Nelson et al., *supra* note 10; Cokley et al., *supra* note 10; Cadieux et al. 2022, *supra* note 3.

<sup>629</sup> See: Corrigan & Watson, *supra* note 626. Regarding stigma in legal education see: Jolly-Ryan, *supra* note 31; Organ, Jaffe, & Bender, *supra* note 3.

<sup>630</sup> See: Anne L. Stangl et al., “The Health Stigma and Discrimination Framework: A Global, Crosscutting Framework to Inform Research, Intervention Development, and Policy on Health-Related Stigmas” (2019) 17:1 BMC Medicine 31; Committee on the Science of Changing Behavioral Health Social et al., “Understanding Stigma of Mental and Substance Use Disorders” in *Ending Discrimination Against People with Mental and Substance Use Disorders: The Evidence for Stigma Change* (Washington, DC: National Academies Press (US), 2016) Chapter 2; Corrigan & Watson, *ibid*.

<sup>631</sup> See: Patrick W. Corrigan & Deepa Rao, “On the Self-Stigma of Mental Illness: Stages, Disclosure, and Strategies for Change” (2012) 57:8 Can J Psychiatry 464-469; Corrigan & Watson, *ibid*.

<sup>632</sup> “Racism” has no universally accepted definition. See generally: Rodolfo A. Bulatao, Norman B. Anderson, & Ethnicity National Research Council (US) Panel on Race, “Prejudice and Discrimination” in *Understanding Racial*



people to unfair treatment and blatant prejudice.<sup>633</sup> The experience of racism and racial discrimination can lead to chronic stress, increased levels of anxiety, and symptoms of depression.<sup>634</sup> The constant fear of being targeted or judged based on race harms individuals' mental health, hindering their ability to thrive and maintain overall wellbeing.<sup>635</sup>

Discrimination, which can occur due to various factors such as gender, sexual orientation, disAbility, or socioeconomic status, also significantly impacts mental health.<sup>636</sup> Discrimination perpetuates inequality, keeping individuals in marginalized groups from accessing the same opportunities and resources as others.<sup>637</sup> The constant exposure to discrimination erodes self-esteem and intensifies feelings of worthlessness.<sup>638</sup> Moreover, discrimination can lead to the internalization of negative stereotypes, further harming individuals' mental health and creating a cycle of self-deprecation.<sup>639</sup>

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and *Ethnic Differences in Health in Late Life: A Research Agenda* (National Academies Press (US), 2004); Kevin Bales et al., *Dimensions of Racism* (Paris: United Nations, 2003); Bastos, Harnois & Paradies, *supra* note 41; Paradies et al., *supra* note 296; Kairuz et al., *supra* note 296; Shonkoff, Slopen, & Williams, *supra* note 41; Williams et al., *supra* note 31; Williams & Etkins, *supra* note 2; Samantha Loppie, Charlotte Reading, & Sarah de Leeuw, *Indigenous Experiences with Racism and its Impacts* (National Collaborating Centre for Indigenous Health, 2020).

<sup>633</sup> See generally: Bulatao, Anderson, & Ethnicity National Research Council (US) Panel on Race, *ibid*; Bales et al., *ibid*.

<sup>634</sup> See: Williams, *supra* note 31; Pamela J. Sawyer et al., "Discrimination and the Stress Response: Psychological and Physiological Consequences of Anticipating Prejudice in Interethnic Interactions" (2012) 102:5 Am J Public Health 1020-1026; M. Myriah MacIntyre, Manzar Zare, & Monnica T. Williams, "Anxiety-Related Disorders in the Context of Racism" (2023) 25:2 Curr Psychiatry Rep 31-43; Berger & Sarnyai, *supra* note 31.

<sup>635</sup> See: Williams et al., *supra* note 31; Williams & Etkins, *supra* note 2.

<sup>636</sup> See: *The Saskatchewan Human Rights Code*, *supra* note 45 s 2. The "prohibited grounds" for discrimination, are: (a) religion; (b) creed; (c) marital status; (d) family status; (e) sex; (f) sexual orientation; (g) disability; (h) age; (i) colour; (j) ancestry; (k) nationality; (l) place of origin; (m) race or perceived race; (n) receipt of public assistance; (o) gender identity. Also, see generally: "What is Discrimination?" (4 March 2020), online: *Saskatchewan Human Rights Commission* <<https://saskatchewanhumanrights.ca/your-rights/what-is-discrimination/>>; Torales et al., *supra* note 31; Bulatao, Anderson, & Ethnicity National Research Council (US) Panel on Race, *supra* note 615; Janice Du Mont & Tonia Forte, "Perceived Discrimination and Self-Rated Health in Canada: An Exploratory Study" (2016) 16:1 BMC Public Health 742; Elizabeth A. Pascoe & Laura Smart Richman, "Perceived Discrimination and Health: A Meta-Analytic Review" (2009) 135:4 Psychol Bull 531-554; Stangl et al., *supra* note 630.

<sup>637</sup> See: Du Mont & Forte, *ibid*; Pascoe & Richman, *ibid*; Stangl et al., *supra* note 630. See generally: Devah Pager & Hana Shepherd, "The Sociology of Discrimination: Racial Discrimination in Employment, Housing, Credit, and Consumer Markets" (2008) 34 Annu Rev Sociol 181-209; Matheson et al., *supra* note 2; McGuire & Miranda, *supra* note 2; Moyser, *supra* note 3; American Psychiatric Association, *supra* note 2; Centers for Disease Control and Prevention, *supra* note 2; Nelson & Wilson, *supra* note 2; Baah, Teitelman, & Riegel, *supra* note 2.

<sup>638</sup> See generally: Pager & Shepherd, *ibid*; Bulatao, Anderson, & Ethnicity National Research Council (US) Panel on Race, *supra* note 632; Sawyer et al., *supra* note 634; MacIntyre, Zare, & Williams, *supra* note 634; Du Mont & Forte, *ibid*; Pascoe & Richman, *ibid*.

<sup>639</sup> See: Corrigan & Rao, *supra* note 631; Diane M. Quinn, Michelle K. Williams, & Bradley M. Weisz, "From Discrimination to Internalized Mental Illness Stigma: The Mediating Roles of Anticipated Discrimination and Anticipated Stigma" (2015) 38:2 Psychiatr Rehabil J 103-108.

Law schools and the legal profession have long been associated with prestige and intellectual prowess; however, underneath the shiny façade lies a darker truth — stigma. Stigma, defined as a mark of disgrace or discredit, surrounds law school and the legal profession, causing significant harm to individuals and perpetuating inequality within the legal community.<sup>640</sup>

One area where stigma is particularly prevalent is mental health.<sup>641</sup> Law school can be incredibly demanding and competitive, leading to increased stress levels and mental health issues among students. Nevertheless, stigma deters people, especially law students and legal professionals, from seeking help.<sup>642</sup> Students may fear that seeking therapy or acknowledging their struggles could be judged as a sign of weakness, potentially harming their future careers.<sup>643</sup> This stigma not only affects individual students' wellbeing, but also perpetuates a culture of silence and neglect when it comes to mental health within the legal profession.<sup>644</sup>

Another facet of stigma in law school and the legal profession is related to identity. Marginalized groups—such as women, racial or ethnic minorities, those with a disAbility, and members of the LGBTQ2S+ community—often face additional challenges and discrimination.<sup>645</sup> Women, for

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<sup>640</sup> See: Krieger, *supra* note 62; Lawrence S. Krieger, “What We’re Not Telling Law Students - and Lawyers - That They Really Need to Know: Some Thoughts-in-Action Toward Revitalizing the Profession from its Roots” (1998) 13:1 *Journal of Law and Health*; Krieger & Sheldon 2007, *supra* note 32; Krieger & Sheldon 2015, *supra* note 15; Daicoff 2004, *supra* note 346; Jolly-Ryan, *supra* note 31; Organ, Jaffe, & Bender, *supra* note 3. Also, see generally: Brohan & Thornicroft, *supra* note 31; Young 2021, *supra* note 33.

<sup>641</sup> In Australia, see: Kelk, Medlow, & Hickie, *supra* note 389 at 114, which “assess[ed] the mental health literacy, attitudes, personal experiences and behaviours of both law students and practising lawyers.” On page 177, the study found that 39.1% (law students and legal professionals) of “participants reported that they would not seek professional help if they were to experience depression.” However, on page 118, 77.0 % of “participants had received treatment (largely from general practitioners, psychiatrists, psychologists and counsellors). This figure greatly exceeds the percentage of people who have reported receiving help in general community surveys.” In terms of stigma against mental health, the survey revealed on page 119 that 30.6% “of participants thought that their friends might discriminate against them if they experienced depression and 20.4 per cent thought that their family might do so” and furthermore, 66.9% “of participants also thought that it was likely that their employers would be discriminatory and 83.6 per cent of participants expected discrimination from strangers.” Also, see: Leahy et al., *supra* note 3, which reported low rates of help seeking when students are faced with a mental health problem. In Canada, see: Ipsos Reid, *supra* note 11.

<sup>642</sup> See: Jolly-Ryan, *supra* note 31; Organ, Jaffe, & Bender, *supra* note 3; Nemeth, *supra* note 31; Bibelhausen, Bender, & Barrett, *supra* note 31; Schmitz, *supra* note 2.

<sup>643</sup> *Ibid.*

<sup>644</sup> *Ibid.*

<sup>645</sup> In the United States, see: Brooks et al., *supra* note 41; Coplin & Williams, *supra* note 41; Costello, *supra* note 41; Deo, *supra* note 41; Liebenberg & Scharf, *supra* note 41; Sterling & Chanow, *supra* note 41. Also, see generally: Wilson, *supra* note 41; Harris, *supra* note 41; Picower, *supra* note 41; Williams & McCullers, *supra* note 41; James 2022, *supra* note 41. In Australia, see: Thornton 1998, *supra* note 41; Thornton 2014, *supra* note 41; Watson, *supra* note 41; Falk, *supra* note 41; Bodkin-Andrews & Carlson, *supra* note 41; Cunneen, *supra* note 41;

example, may be subject to gender-based stereotypes, leading to assumptions about their competence and dedication. Similarly, racially or ethnically diverse individuals may face prejudice and bias within legal settings.<sup>646</sup> Such stigma hinders individuals' personal and professional development and perpetuates systematic inequalities within the law school and the legal profession.

Furthermore, the legal profession often stigmatizes the idea of work-life balance.<sup>647</sup> Work is often prioritized over personal or family commitments, leading to long hours, burnout, and strained personal relationships. This stigma affects lawyers' wellbeing and effectiveness, as the constant pressure to prioritize work can lead to decreased job satisfaction and compromised mental health.<sup>648</sup>

Stigma, discrimination, and racism can significantly contribute to psychological distress among marginalized law students and legal professionals in various ways.<sup>649</sup> These factors can impact

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Collier, *supra* note 41; Ragusa & Groves, *supra* note 41. In England & Wales, see: Adebisi 2021, *supra* note 25; Adebisi 2020, *supra* note 25; Pender, *supra* note 10; Sommerland, *supra* note 41; Sommerland et al., *supra* note 41. In Canada, see: The Law Society of British Columbia, *supra* note 342; Moliere, *supra* note 342; Johansen-Hill, Meredith-Flister, & Owen, *supra* note 342; Lyon & Sossin, *supra* note 342; Roderique, *supra* note 41; Franks, *supra* note 41; Lavallee, *supra* note 41; Glenn, *supra* note 25; Backhouse, *supra* note 25; Henry, *supra* note 41; Allen 2019, *supra* note 41; Bailey 2016, *supra* note 41; RCAP 1996, *supra* note 25; TRC Report, *supra* note 25; TRC Calls, *supra* note 25; MMIWG, *supra* note 25; Bilson, *supra* note 41.

<sup>646</sup> See: Agatstein et al., *supra* note 10; Nelson et al., *supra* note 10; Cokley et al., *supra* note 10; Cadieux et al. 2022, *supra* note 3.

<sup>647</sup> See: Nemeth, *supra* note 31; Staci Zaretsky, "Biglaw Firm Makes Big Joke Out of Work/Life Balance," (1 April 2015), online: *Above the Law* <<https://abovethelaw.com/2015/04/biglaw-firm-makes-big-joke-out-of-worklife-balance/>>; Nicole Garton-Jones, "The Myth of Work Life Balance in Law," (10 November 2009), online: *Slaw* <<https://www.slaw.ca/2009/11/10/the-myth-of-work-life-balance-in-law/>>; Natalie Mei-Chuen Drew, Doita Datta, & Jill Howieson, "The Holy Grail: Work-Life Balance in the Legal Profession" (2015) 38:1 UNSW Law Journal 288.

<sup>648</sup> *Ibid.*

<sup>649</sup> Regarding American law students, see: Organ, Jaffe, & Bender, *supra* note 3; Bibelhausen, Bender, & Barrett, *supra* note 31; Jolly-Ryan, *supra* note 31; Agatstein et al., *supra* note 10. Regarding American legal professionals, see: Nelson et al., *supra* note 10; Cokley et al., *supra* note 10. Regarding Australian legal professionals, see: Bridget Burton, "Wellness: Mental Illness and Stigma in Legal Practice" (2019) 39:3 *The Proctor* 22–23. Regarding Canadian legal professionals, see: Cadieux et al. 2022, *supra* note 3. Regarding legal professionals internationally, see: International Bar Association, *supra* note 6. Regarding the wellbeing of marginalized peoples and the social determinants of health, see: Czyzewski, *supra* note 2; Kim, *supra* note 2; Mitchell, *supra* note 232; Beazley, *supra* note 25; Perez, *supra* note 287; McKay, *supra* note 287; Government of Canada, *supra* note 287; Jardine & Lines, *supra* note 2; Allana T. Forde et al., "The Weathering Hypothesis as an Explanation for Racial Disparities in Health: A Systematic Review" (2019) 33 *Ann Epidemiol* 1-18.e3; Alisha Haridasani Gupta, "How 'Weathering' Contributes to Racial Health Disparities," *The New York Times* (12 April 2023), online: <<https://www.nytimes.com/2023/04/12/well/live/weathering-health-racism-discrimination.html>>.

psychological wellbeing by activating a negative self-perception.<sup>650</sup> Experiencing stigma, discrimination, or racism can lead to internalizing negative beliefs about oneself.<sup>651</sup> Marginalized individuals may question their abilities, worth, and belonging in the legal field, contributing to low self-esteem and self-doubt.<sup>652</sup> This negative self-perception can lead to psychological distress, such as anxiety and depression.<sup>653</sup>

Another way that stigma, discrimination, and racism can impact wellbeing is through the experience of “impostor syndrome.”<sup>654</sup> Impostor syndrome can reinforce feelings of being an impostor, not belonging or undeserving of success.<sup>655</sup> Marginalized individuals may experience increased stress and anxiety because they feel that their achievements are questioned or attributed solely to affirmative action rather than recognizing their skills and qualifications, leading to constant self-doubt and fear of being exposed.<sup>656</sup>

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<sup>650</sup> See: E. J. R. David, Tiera M. Schroeder & Jessicaanne Fernandez, “Internalized Racism: A Systematic Review of the Psychological Literature on Racism’s most Insidious Consequence” (2019) 75:4 *Journal of Social Issues* 1057–1086; Suzette L. Speight, “Internalized Racism: One More Piece of the Puzzle” (2007) 35:1 *The Counseling Psychologist* 126–134. Also, see generally: Costello, *supra* note 41; Dancy & Gaetane, *supra* note 229.

<sup>651</sup> *Ibid.*

<sup>652</sup> See: David, Schroeder, & Fernandez, *ibid*; Speight, *ibid*; Dancy & Jean-Marie, *ibid*; Capers, *supra* note 518.

<sup>653</sup> See: David, Schroeder, & Fernandez, *ibid*; Speight, *ibid*. Also, see generally: Costello, *supra* note 41; Dancy & Jean-Marie, *supra* note 636.

<sup>654</sup> See: Nelson et al. 2019, *supra* note 10; Cokley et al., *supra* note 10; Lisa M. Jaremka et al., “Common Academic Experiences No One Talks About: Repeated Rejection, Impostor Syndrome, and Burnout” (2020) 15:3 *Perspectives on Psychological Science* 519–543. Also, see generally: Costello, *ibid* at 20-21, which outlines how race, gender, and class influence identity. However, conflict can arise when the identity of the marginalized students’ and the professional identity, largely influenced by colonialism, being modelled and taught are not compatible. Costello writes on page 17 that “one of the characteristics that distinguishes the professions from other occupations is that their members are expected to develop personal identities. Becoming a lawyer becomes part of your self identity. Becoming a lawyer or joining the law profession alters your identity in a deep and enduring way.” On page 44, Costello explains that “professional socialization includes cognitive skills and ideologies but also habitus- tastes, worldviews, postures and emotional orientation. Professors model dress, mannerisms and tastes. Professors model professional roles for students.” On page 33 wherein Costello discusses that when there is a “conflict between professional identity and personal identity (identity dissonance), it can be resolved through the adoption of the professional identity and displacement of conflicting personal identity,” which is what Costello saw the most in her study. Costello writes on page 46-47 that “in the masculine profession of law, the cultural values associated with masculinity and professionalism are congruent: masculinity and professionalism are associated with power, rationality, dominance, aggression and competence.” Also see generally: Strevens & Field, *supra* note 318; Strevens & Wilson, *supra* note 63.

<sup>655</sup> See: Jaremka et al., *ibid*.

<sup>656</sup> See: Nelson et al. 2019, *supra* note 10; Cokley et al., *supra* note 10; Costello, *supra* note 41. Also, see: Melanie Schwartz, “Retaining Our Best: Imposter Syndrome, Cultural Safety, Complex Lives and Indigenous Student Experiences of Law School” (2018) 28:2 *Legal Educ Rev* 1–23.

Additionally, marginalized law students and professionals often face “microaggressions” — subtle, everyday forms of discrimination or racism.<sup>657</sup> This can include derogatory comments, exclusion, or dismissive behaviour.<sup>658</sup> Constant exposure to microaggressions can create a hostile academic environment as well as work environment, leading to emotional distress, anger, and frustration.<sup>659</sup>

Furthermore, stereotype threat, which refers to the fear of confirming negative stereotypes about one’s racial or minority group, can often occur.<sup>660</sup> When individuals are constantly aware of these stereotypes, they may experience increased pressure to disapprove of them, leading to

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<sup>657</sup> Two recent studies examined microaggressions among American law students. See: Boyle & McKinzie, *supra* note 31; Boyle et al., *supra* note 31. Boyle & McKenzie explored the experiences of sexual harassment, sexual assault, and stalking in a sample of 1,149 male and female master’s, doctoral, and law students at a southeastern public university. They found that lesbian, gay, bisexual, transgender, queer, intersex, or asexual (LGBTQ+) women experienced more sexual harassment, and women experienced more coercion and stalking than their colleagues. Boyle & McKinzie also demonstrated the effects of interpersonal violence on depression and anxiety and wrote on page 6319, “A series of multivariate analysis of covariance (MANCOVA) suggests a heightened risk of mental health disturbances among law students, women, and LGBTQ+ students. Importantly, interpersonal violence partially explains these heightened levels of depression and anxiety in these groups.” Following up on the Boyle & McKinzie study, Boyle et al. “explore[d] how marginalization produced by sexism, homonegativity, and racism increase[d] the risk of microaggressions and mental health symptoms in a non-representative sample of 2,051 cisgender graduate and law students enrolled in a predominantly white research university in the southeastern United States.” Boyle et al. found that “[m]icroaggressions produce[d] greater depression and anxiety among members of these [marginalized] groups.” Boyle et al. unsurprisingly also found “that white heterosexual men report significantly fewer types of microaggressions during graduate and law school, especially as compared to women and LGBTQ+ people of color.” See: Boyle et al., *supra* note 31 at 157. Also, see generally: Phoenix R. Crane et al., “Come Out, Get Out: Relations Among Sexual Minority Identification, Microaggressions, and Retention in Higher Education” (2022) 37:9–10 *Journal of Interpersonal Violence* NP8237–NP8248; Rob Eschmann et al., “Context Matters: Differential Effects of Discrimination by Environmental Context on Depressive Symptoms Among College Students of Color” (2021) *Clinical Social Work Journal* 1–14; Agustina Marconi et al., “Examining Racial Microaggressions and Alcohol use Among Marginalized Populations at a Predominately White Institution” (2022) *Journal of American College Health* 1–10; Flavius R. W. Lilly et al., “The Influence of Racial Microaggressions and Social Rank on Risk for Depression Among Minority Graduate and Professional Students” (2018) 52:1 *College Student Journal* 86–104.

<sup>658</sup> *Ibid.*

<sup>659</sup> *Ibid.*

<sup>660</sup> See: Steven J. Spencer, Christine Logel, & Paul G. Davies, “Stereotype Threat” (2016) 67 *Annual Review of Psychology* 415–437. This is a Canadian article that reviews the impact of stereotypes on performance. Also, see: Claude M. Steele, Steven J. Spencer & Joshua Aronson, “Contending with Group Image: The Psychology of Stereotype and Social Identity Threat” in *Advances in Experimental Social Psychology* (Elsevier, 2002) 379; Michael Inzlicht et al., “Lingering Effects: Stereotype Threat Hurts More Than you Think” (2011) 5:1 *Social Issues and Policy Review* 227–256; Douglas S. Massey & Mary J. Fischer, “Stereotype Threat and Academic Performance: New Findings from a Racially Diverse Sample of College Freshmen” (2005) 2:1 *Du bois Review: Social Science Research on Race* 45–67.

heightened stress and performance anxiety.<sup>661</sup> This can negatively impact academic performance, personal development, and psychological wellbeing.<sup>662</sup>

Finally, marginalized students often lack representation and resources within the legal field.<sup>663</sup> Limited access to mentors, role models, and supportive networks can compound the stress and isolation experienced by marginalized law students and legal professionals.<sup>664</sup> This lack of support can contribute to feelings of marginalization, diminished career opportunities, and psychological distress.<sup>665</sup> Experiences of stigma, discrimination, and racism are often ongoing and communitive.<sup>666</sup> Over time, these repeated experiences can lead to a constant state of vigilance and hypervigilance, resulting in chronic stress and exhaustion.<sup>667</sup> This can negatively impact mental health, leading to symptoms of anxiety, depression, and burnout.<sup>668</sup>

There is little doubt that continued efforts toward equality and diversity are necessary within law schools and the legal profession. Chapter 8 will review recommendations to combat stigma,

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<sup>661</sup> *Ibid.*

<sup>662</sup> *Ibid.*

<sup>663</sup> The legal profession still needs to represent marginalized people equally. As such, marginalized legal professionals face challenges unique to that underrepresentation. In the United States, see: Liebenberg & Scharf, *supra* note 41; Costello, *supra* note 41; Deo, *supra* note 41; Sterling & Chanow, *supra* note 41. Also, see generally: Brooks et al., *supra* note 41; Wilson, *supra* note 41; Harris, *supra* note 41; Picower, *supra* note 41; James 2022, *supra* note 41. In Australia, see: Thornton 1998, *supra* note 41; Thornton 2014, *supra* note 41; Collier, *supra* note 41; Watson, *supra* note 41; Falk, *supra* note 41; Bodkin-Andrews & Carlson, *supra* note 41; Cunneen, *supra* note 41; Ragusa & Groves, *supra* note 41. In England & Wales, see: Pender, *supra* note 10; Sommerland, *supra* note 41; BSB, *supra* note 41; Sommerland et al., *supra* note 41. In Canada, see: The Law Society of British Columbia, *supra* note 321; Moliere, *supra* note 342; Bailey 2018, *supra* note 342; Wilbur, *supra* note 342; Law Society of Ontario, *supra* note 342; Johansen-Hill, Meredith-Flister, & Owen, *supra* note 341; Lyon & Sossin, *supra* note 342; Cadieux et al. 2022, *supra* note 3. Also, see: Roderique, *supra* note 41; Backhouse 2013, *supra* note 41; Henry, *supra* note 41; Allen 2021, *supra* note 25; Bailey 2016, *supra* note 41; Franks, *supra* note 41; TRC Report, *supra* note 25; TRC Calls, *supra* note 25; MMIWG, *supra* note 25; Bilson, *supra* note 41; Lavallee, *supra* note 41; Backhouse, *supra* note 25.

<sup>664</sup> See: Suzanne Bouclin, Marginalized Law Students and Mentorship, 2017 48-2 *Ottawa Law Review* 357, 2017 CanLIIDocs 82, <<https://canlii.ca/t/71t>>, retrieved on 2023-11-15; Meghan Dawe, *Stratification in the Canadian Legal Profession: The Role of Social Capital and Social Isolation in Shaping Lawyers' Careers* (University of Toronto, 2018) [unpublished]. Also, see generally: Jackson, *supra* note 191; Janet Thompson Jackson, "Work, Wellness, and Meaning: Reimagining Legal Education and the First 10 Years of Law Practice," (January 2022), online: *NALP PDQ* <[https://www.nalp.org/lawyer\\_wellness\\_article](https://www.nalp.org/lawyer_wellness_article)>; Kelsey C. Thiem & Nilanjana Dasgupta, "From Precollege to Career: Barriers Facing Historically Marginalized Students and Evidence-Based Solutions" (2022) 16:1 *Social Issues and Policy Review* 212–251.

<sup>665</sup> See: Matheson et al., *supra* note 2.

<sup>666</sup> See: Quinn, Williams & Weisz, *supra* note 639; Loppie, Reading & de Leeuw, *supra* note 632.

<sup>667</sup> See: MacIntyre, Zare, & Williams, *supra* note 634; Sawyer et al., *supra* note 634.

<sup>668</sup> See: Cadieux et al., Targeted Recommendations, *supra* note 224; MacIntyre, Zare, & Williams, *ibid*; Sawyer et al., *ibid*.

discrimination, and racism within legal education and the legal profession. The next section will outline how substance use can harm mental health and wellbeing.

#### 6.4. Substance Use

People often use coping mechanisms, such as the consumption of substances, to manage stress and emotional discomfort; however, the misuse of substances, such as alcohol, nicotine, and drugs, has detrimental effects on mental health and wellbeing.<sup>669</sup> Substance use disrupts the delicate balance in human brains and affects relationships, productivity, and quality of life.<sup>670</sup> It is crucial to recognize and address the negative impact of substance use on mental health to foster a healthier law school environment and legal profession.

One of the primary ways that substance use affects mental health is by altering the brain's chemistry.<sup>671</sup> When consumed, substances interfere with the neurotransmitters regulating mood, stress, and reward.<sup>672</sup> This disruption can lead to imbalances, causing feelings of depression, anxiety, and even psychosis.<sup>673</sup> Moreover, substance use can exacerbate pre-existing mental health conditions, making individuals more susceptible to experiencing severe episodes.<sup>674</sup> For instance, individuals with a predisposition to depression may find themselves experiencing deeper lows when abusing substances.

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<sup>669</sup> Substance use is often a coping mechanism for relief from emotional suffering. See: World Health Organization 2004, *supra* note 31; Sinha, *supra* note 31; Maté 2018, *supra* note 31. Also see generally: Frone, *supra* note 31; Sinha, *supra* note 31; Paradis et al., *supra* note 31. Substance use can be harmful. See: UNODC, *supra* note 31; Jane-Llopis & Matytsina, *supra* note 31; Volkow & Blanco, *supra* note 31; Chivero et al., *supra* note 31; Single et al., *supra* note 31. Substance use affects cognition. See: Austin 2015, *supra* note 31; Chivero et al., *supra* note 31; National Institute on Drug Abuse, *supra* note 31; NIH News in Health, *supra* note 31; Olguín et al., *supra* note 31; Paradis et al., *supra* note 31; Substance Abuse and Mental Health Services Administration (US), *supra* note 31; UNODC, *supra* note 31; Watkins, *supra* note 31.

<sup>670</sup> Problematic substance use can harm relationships. See: Lander, Howsare & Byrne, *supra* note 31; SAMSA 2020, *supra* note 31; Daley, *supra* note 31; Health Care Resource Centers Clinical Team, *supra* note 31. Problematic substance use can result in lost productivity. See: Sorge et al., *supra* note 31; Frone, *supra* note 31.

<sup>671</sup> Substance use affects cognition. See: Austin 2015, *supra* note 31; Chivero et al., *supra* note 31; National Institute on Drug Abuse, *supra* note 31; NIH News in Health, *supra* note 31; Olguín et al., *supra* note 31; Paradis et al., *supra* note 31; Substance Abuse and Mental Health Services Administration (US), *supra* note 31; UNODC, *supra* note 31; Watkins, *supra* note 31.

<sup>672</sup> See: World Health Organization 2004, *supra* note 31; Olguín et al., *ibid* note 31.

<sup>673</sup> See: World Health Organization 2004, *ibid* at 10-12; Chivero et al., *supra* note 31.

<sup>674</sup> See: Chivero et al., *ibid*; Substance Abuse and Mental Health Services Administration (US), *supra* note 31; NIH News in Health, *supra* note 31; National Institute on Drug Abuse, *supra* note 31; UNODC, *supra* note 31.

Furthermore, substance use poses a significant threat to personal relationships.<sup>675</sup> Addicted individuals often prioritize their substance use above all else, causing strain on relationships with family, friends, and colleagues.<sup>676</sup> Substance-related behaviour can lead to feelings of mistrust, resentment, and isolation, leading to damaged connections and eventual social withdrawal.<sup>677</sup> This isolation—coupled with the negative impact on mental health—creates a vicious cycle, making it even more challenging for individuals to recover from substance misuse.

The consequences of substance use extend beyond personal relationships. Individuals struggling with substance misuse often experience a decline in productivity and overall functioning.<sup>678</sup> Substance use impairs judgment, focus, and motivation, challenging the ability to fulfill responsibilities.<sup>679</sup> This diminished performance can negatively impact careers, education, and personal achievements, further contributing to anxiety, self-doubt, and low self-esteem.<sup>680</sup> Moreover, individuals grappling with substance misuse may find it challenging to maintain stable employment or pursue educational opportunities due to the disruptive nature of addiction while also contributing to a deep sense of worthlessness and shame that is often reinforced by dated ideas and stigmas regarding addiction.<sup>681</sup>

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<sup>675</sup> See: Lander, Howsare & Byrne, *supra* note 31; SAMSA 2020, *supra* note 31; Daley, *supra* note 31; Health Care Resource Centers Clinical Team, *supra* note 31.

<sup>676</sup> See: SAMSA 2020, *ibid*; Daley, *ibid*.

<sup>677</sup> See: Health Care Resource Centers Clinical Team, *supra* note 31; Daley, *ibid*.

<sup>678</sup> Substance use affects cognition. See: Austin 2015, *supra* note 31; National Institute on Drug Abuse, *supra* note 31; Substance Abuse and Mental Health Services Administration (US), *supra* note 31; NIH News in Health, *supra* note 31; Olguín et al., *supra* note 31; Watkins, *supra* note 31; Paradis et al., *supra* note 31. Problematic substance use can result in lost productivity. See: Sorge et al., *supra* note 31; Frone, *supra* note 31. Also, see: Rothstein, *supra* note 65.

<sup>679</sup> See: Austin 2015, *supra* note 31; National Institute on Drug Abuse, *supra* note 31; Substance Abuse and Mental Health Services Administration (US), *supra* note 31; NIH News in Health, *supra* note 31; Olguín et al., *supra* note 31; Watkins, *supra* note 31; Paradis et al., *supra* note 31.

<sup>680</sup> See: Douglas N. Taylor & Jose Del Pilar, “Self-Esteem, Anxiety, and Drug Use” (1992) 71:3 Psychological reports 896–898; Rodney Skager & Elizabeth Kerst, “Alcohol and Drug Use and Self-Esteem: A Psychological Perspective” in *The Social Importance of Self-Esteem* (University of California Press, 1989) 248; Filiz Ersöğütçü & Sibel Asi Karakaş, “Social Functioning and Self-Esteem of Substance Abuse Patients” (2016) 30:5 Archives of Psychiatric Nursing 587–592. The study “examine[d] the levels of social functioning and self-esteem in individuals diagnosed with substance abuse.” The results revealed that the younger the individual was when they started using substances, the lower the self-esteem. Furthermore, the longer duration of their substance use, the lower social functioning (which was positively correlated with self-esteem). Also, see generally: Sarah Moore, Molly T. Laflin, & David L. Weis, “The Role of Cultural Norms in the Self-Esteem and Drug Use Relationship” (1996) 31:123 Adolescence 523; Stephen J. Bright et al., “What Can We Say About Substance Use? Dominant Discourses and Narratives Emergent from Australian Media” (2008) 16:2 Addiction Research & Theory 135–148.

<sup>681</sup> See: Sorge et al., *supra* note 31; Frone, *supra* note 31. Also see generally: Austin 2015, *supra* note 31; National Institute on Drug Abuse, *supra* note 31; Substance Abuse and Mental Health Services Administration (US), *supra*



Finally, substance use also puts individuals at higher risk of physical health complications, which can further deteriorate mental health and wellbeing.<sup>682</sup> Long-term substance misuse can lead to organ damage, weakened immune systems, and chronic pain, resulting in increased stress and decreased quality of life.<sup>683</sup> As discussed in Chapter 2, mental and physical health are deeply interwoven, making it essential to address both aspects to achieve holistic wellbeing.<sup>684</sup> Recommendations regarding normalizing sobriety within law schools will be discussed in Chapter 8. The following section will outline how being driven by money, image, and power can lead to declining mental health and wellbeing.

### 6.5. The “Wrong” Motivation: Money, Image & Power

Motivation is the psychological basis for any pursuit. “Intrinsic motivation” represents the psychological basis for pursuing “personal growth, connection with others, and helping the community.”<sup>685</sup> “Extrinsic motivation” is the psychological basis for pursuing “money, image, and status.”<sup>686</sup> Extrinsic motivation can also occur when people do things to impress others.<sup>687</sup> People are also extrinsically motivated when they fear “guilt” or “shame” if they do not do what others think they should do.<sup>688</sup> “Extrinsically motivated” people can be at high risk of experiencing wellbeing declines.<sup>689</sup> A large body of literature and studies has examined whether money can buy happiness.<sup>690</sup> It would be fair to assert that a sense of belonging and connection

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note 31; NIH News in Health, *supra* note 31; Olguín et al., *supra* note 31; Watkins, *supra* note 31; Paradis et al., *supra* note 31.

<sup>682</sup> See: United Nations Office on Drugs and Crime (UNODC), *supra* note 31; Jane-Llopis & Matytsina, *supra* note 31; Volkow & Blanco, *supra* note 31; Chivero et al., *supra* note 31; Single et al., *supra* note 31.

<sup>683</sup> See: UNODC, *supra* note 31; Jane-Llopis & Matytsina, *supra* note 31; Volkow & Blanco, *supra* note 31; Chivero et al., *supra* note 31; Single et al., *supra* note 31.

<sup>684</sup> See: Ohrnberger, Fichera, & Sutton, *supra* note 110; Fox, *supra* note 110. Also, see generally: Thoits, *supra* note 110.

<sup>685</sup> See: Kasser 2015 at 32.

<sup>686</sup> *Ibid.* Also, see: Kasser 2002, *supra* note 32; Kasser 2016, *supra* note 32; Sheldon & Krieger, *supra* note 49 at 609, which states that “extrinsic values are not considered negative in themselves, but are thought to become problematic when they become more prominent than intrinsic values in a person’s overall value system.”

<sup>687</sup> See: Sheldon & Krieger 2004, *ibid.* Sheldon and Krieger note that extrinsic motivation can be “good” if a value held by the individual drives it. Also, see: Kasser 2015, *ibid.*

<sup>688</sup> *Ibid.*

<sup>689</sup> *Ibid.*

<sup>690</sup> See generally: Dittmar & Isham, *supra* note 32, which states at 1: “People with a strong materialistic value orientation (MVO) believe that the acquisition of more money and expensive material possessions will improve their wellbeing and social standing. Paradoxically, striving for evermore money and material goods as a means of improving wellbeing often undermines quality of life.” Also, see: Kasser 2015, *supra* note 32; Kasser 2016, *supra* note 32; Tim Kasser & Richard M. Ryan, “A Dark Side of the American Dream: Correlates of Financial Success as

are more fundamental to human wellbeing once one has enough money to feed, shelter and cloth themselves.<sup>691</sup>

What people believe and why they do what they do, affect their mental health and wellbeing. Intrinsically motivated individuals have been found to experience better wellbeing than extrinsically motivated people.<sup>692</sup> Moreover, extrinsic and intrinsic motivation exist cross-culturally.<sup>693</sup> At an institutional level, research has demonstrated that promoting extrinsic goals

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a Central Life Aspiration” (1993) 65:2 *Journal of Personality and Social Psychology* 410–422; Cassie Mogilner, “The Pursuit of Happiness: Time, Money, and Social Connection” (2010) 21:9 *Psychological Science* 1348–1354. Also, see generally: Boehm & Lyubomirsky, *supra* note 114; Diener & Seligman 2018, *supra* note 96; Diener & Seligman 2004, *supra* note 96; Lara Aknin, Elizabeth Dunn, & Michael Norton, “Happiness Runs in a Circular Motion: Evidence for a Positive Feedback Loop between Prosocial Spending and Happiness” (2012) 13:2 *J Happiness Stud* 347–355; Elizabeth W. Dunn, Lara B. Aknin, & Michael I. Norton, “Spending Money on Others Promotes Happiness.” (2008) 319:5870 *Science* (New York, NY) 1687–1688.

<sup>691</sup> See: Kasser 2015, *ibid*. Also, see generally: Liudmila Titova & Kennon M. Sheldon, “Happiness Comes from Trying to Make Others Feel Good, rather than Oneself” (2022) 17:3 *The Journal of Positive Psychology* 341–355.

<sup>692</sup> See Sheldon & Krieger, *supra* note 49 at 613. Sheldon and Krieger conducted a study among psychology students, asking them “to rate how much they act upon various intrinsic and extrinsic values” and how important those different values were to them. The study revealed that “significantly lower depression scores [were] observed in participants who both walked and talked intrinsic (relative to extrinsic) goals.” There were 1992 participants (828 Men, 1,164 Women; 84 % Caucasian) from the University of Missouri. The students had to rank how important the following were to their future aspirations: (1) “projecting an appealing and attractive image”; (2) “achieving affluence and financial success”; (3) “being known and admired by many people”; (4) “helping those who need help”; (5) “having close personal relationships” and “feeling close to various people”; and (6) “attaining self-understanding and personal growth.” The students responded by way of a scale: 1 (not at all) to 3 (somewhat) to 5 (very). Next, participants stated how much/hard they worked on/towards that goal. Participants more strongly endorsed intrinsic values. Women endorsed intrinsic goals more than men. More participants pursued extrinsic values than intrinsic values. The study used the Aspirations Index, Mood and Anxiety Symptoms Questionnaire, and Meaning in Life scale. Also, see: Krieger 2005, *supra* note 49 at 426, wherein Krieger argues “that satisfaction and professional behavior are inseparable manifestations of a well-integrated and well-motivated person; and (2) that depression and unprofessional behavior among law students and lawyers typically proceed from a loss of integrity - a disconnection from intrinsic values and motivations, personal and cultural beliefs, conscience, or other defining parts of their personality and humanity.” Also, see: Kasser 2015, *ibid* at 32, where Kasser writes: “the extent to which people prioritize intrinsic over extrinsic goals has been associated with higher self-reported levels of self-actualization, vitality, life satisfaction, and pleasant affect and with lower self-reported levels of depression, anxiety, and negative affect (see Kasser, 2002b, for a review; see Dittmar, Bond, Hurst, & Kasser, in press, for a meta-analysis). People’s focus on intrinsic relative to extrinsic goals also relates to diary reports of emotional experience (Kasser & Ryan, 1996; Sheldon & Kasser, 1995) and to interviewer assessments of participants’ levels of social functioning, general mental health, and various forms of psychopathology (Cohen & Cohen, 1996; Kasser & Ryan, 1993).” Extrinsic motivation also plays a part in the psychological distress of legal professionals. See: Krieger & Sheldon 2015, *supra* note 234; K. M. Sheldon & L. S. Krieger, “Service Job Lawyers are Happier than Money Job Lawyers, Despite Their Lower Income” (2014) 9 *J Positive Psychol.* 219–226; Koltai, Schieman, & Dinovitzer, *supra* note 34.

<sup>693</sup> See: Kasser 2015, *ibid* at 32, where Kasser states: “Substantial cross-cultural evidence supports the distinction between extrinsic and intrinsic goals. The specific aspirations representing the two types of goals fall on distinct factors in samples of students from Germany (Schmuck, Kasser, & Ryan, 2000), Russia (Ryan et al., 1999), and South Korea (Kim, Kasser, & Lee, 2003), and in samples of adults from the United States (Kasser & Ryan, 1996) and Peru (Guillen-Royo & Kasser, in press). Even more compelling evidence for the distinction between intrinsic and extrinsic aspirations derives from the work of Grouzet et al. (2005), who collected data from undergraduate

within organizations is associated with wellbeing declines.<sup>694</sup> Interestingly, one cannot be simultaneously intrinsically and extrinsically motivated.<sup>695</sup>

Furthermore, if one feels intrinsically motivated but does not act accordingly, they may experience less wellbeing than if they acted in alignment with their intrinsic motivation. Sheldon and Krieger conducted a study among psychology students, asking them “to rate how much they act upon various intrinsic and extrinsic values and how important those different values were to them.”<sup>696</sup> The study revealed that “significantly lower depression scores [were] observed in participants who both walked and talked intrinsic (relative to extrinsic) goals.”<sup>697</sup>

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students in 15 cultures (Australia, Bulgaria, Canada [Quebec], China, Colombia, the Dominican Republic, Egypt, France, Germany, Hong Kong, India, Romania, South Korea, Spain, and the United States). Using statistical techniques such as multidimensional scaling analysis and circular stochastic modeling, Grouzet et al. found evidence for a “circumplex” model of goals, in which intrinsic goals are clustered together (representing the psychological compatibility of caring about personal growth, connections with others, and helping the community) and extrinsic goals are clustered together (representing the psychological compatibility of caring about money, image, and status). Further, Grouzet et al. showed that people experience intrinsic and extrinsic goals as existing in psychological conflict with each other; that is, people find it to be relatively difficult to simultaneously prioritize an intrinsic goal (such as ‘being generous’) and an extrinsic goal (such as ‘accumulating a good deal of money’).”

<sup>694</sup> See: Kasser 2015, *ibid* at 84. Being extrinsically motivated can even contribute to a disregard for the environment. Kasser wrote on page 86: “[A] relatively high focus on extrinsic compared to intrinsic values is associated with holding attitudes and behaving in ways that contribute to environmental degradation.”

<sup>695</sup> *Ibid* at 84. A similar thing happens when humans engage in analytical versus social/emotional reasoning. See: Rochford et al., *supra* note 50, in the abstract where they explain: “when we engage in analytical reasoning (the Task Positive Network), we suppress our ability to engage in socioemotional reasoning (the Default Mode Network) and vice versa.” They recommend “a healthy balance between analytical and socio-emotional reasoning” and “argue that organizational culture often encourages too heavy a reliance on non-emotional forms of reasoning to arrive at moral judgments (i.e. the TPN). As a result, leaders run the risk of suppressing their ability to pay attention to the human side of moral dilemmas and, in doing so, dehumanize colleagues, particularly subordinates, and clients.” Also, see: Brafford, *supra* note 50.

<sup>696</sup> See: Sheldon & Krieger, *supra* note 49. There were 1992 participants (828 Men, 1,164 Women; 84 % Caucasian) from the University of Missouri. The students were asked how important the following were to their future aspirations: (1) “projecting an appealing and attractive image”; (2) “achieving affluence and financial success”; (3) “being known and admired by many people”; (4) “helping those who need help”; (5) “having close personal relationships” and “feeling close to various people”; and (6) “attaining self-understanding and personal growth.” The students responded by way of a scale: 1 (not at all) to 3 (somewhat) to 5 (very). Next, participants advised how much they worked on that goal. Participants more strongly endorsed intrinsic values. Women endorsed intrinsic goals more than men. More participants pursued extrinsic values than intrinsic values. It used the Aspirations Index, Mood and Anxiety Symptoms Questionnaire, and Meaning in Life scale. Also, see: Krieger 2005, *supra* note 49 at 426, wherein Krieger argues: “(1) that satisfaction and professional behavior are inseparable manifestations of a well-integrated and well-motivated person; and (2) that depression and unprofessional behavior among law students and lawyers typically proceed from a loss of integrity - a disconnection from intrinsic values and motivations, personal and cultural beliefs, conscience, or other defining parts of their personality and humanity.”

<sup>697</sup> *Ibid* at 613.

To fully understand extrinsic and intrinsic motivation, this sub-chapter will explain “Self-Determination Theory” and human “Psychological Needs.” Finally, this subchapter will review the 2004 Sheldon & Krieger study. The 2004 Sheldon & Krieger study found that as law students progressed through law school, they became more extrinsically motivated, leading to declining wellbeing.<sup>698</sup> Their subsequent study further evaluated the findings (“the 2007 Krieger & Sheldon study”).<sup>699</sup> What individuals are motivated by, their goals, and why they pursue what they do affect their wellbeing.<sup>700</sup> The 2004 Sheldon & Krieger and the 2007 Krieger & Sheldon studies establish a correlation between legal education and a shift to extrinsic motivation among law students, resulting in declining wellbeing and indicative of an institutional promotion of extrinsic values.<sup>701</sup>

To begin with, self-determination theory will be explained. Self-determination theory contends that wellbeing is correlated with motivation. As mentioned, extrinsically motivated people experience less wellbeing. However, they experience lower levels of well-being because extrinsic goals “are less directly satisfying of fundamental psychological needs.”<sup>702</sup> There are three fundamental psychological needs for humans: “competence” (i.e., self-esteem); “relatedness” (i.e., social connection and belonging); and “autonomy” (i.e., freedom of choice).<sup>703</sup>

“Competence” entails feeling “good at what [you] do or at least [you] can become good at it.”<sup>704</sup> “Relatedness” means having a sense of belonging and connection to others.<sup>705</sup> “Autonomy”

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<sup>698</sup> See: Sheldon & Krieger 2004, *supra* note 4 at 273. Also, see: Kasser 2015, *supra* 32. In Australia, see: Skead, Rogers, & Doraisamy, *supra* note 3, which found that, on page 90, there was a “positive association between psychological distress; disordered eating, weight and shape concerns; and maladaptive eating habits in lawyers and law students.”

<sup>699</sup> See: Krieger & Sheldon 2007, *supra* note 32.

<sup>700</sup> See: Sheldon & Krieger 2004, *supra* note 4 at 273. Also, see: Kasser 2015, *supra* note 32 at 84.

<sup>701</sup> See: Sheldon & Krieger 2004, *ibid*; Krieger & Sheldon 2007, *supra* note 32.

<sup>702</sup> *Ibid* at 263-264

<sup>703</sup> See: Krieger & Sheldon 2007, *supra* note 32 at 885; Kasser 2002, *supra* note 32; Also, see generally: Maslow, *supra* note 15; Kasser 2002, *supra* note 32.

<sup>704</sup> *Ibid* Krieger & Sheldon, 2007, at 885.

<sup>705</sup> *Ibid*. On page 155, Brown writes that “[w]e have to belong to ourselves as much as we need to belong to others. Any belonging that asks us to betray ourselves is not true belonging.” On page 156, Brown writes: “[t]rue belonging is the spiritual practice of believing in and belonging to yourself so deeply that you can share your most authentic self with the world and find sacredness in both being part of something and standing alone in the wilderness. True belonging doesn’t require you to change who you are; it requires you to be who you are.” See: Brown 2021, *supra* note 18. Also, see: Brown 2013, *supra* note 19; Brown & Ryan, *supra* note 178.

includes freedom of choice, meaning one does what they do because they enjoy it or “believe in” it.<sup>706</sup> Motivation improves wellbeing when people are engaged in an activity that meets their psychological needs.<sup>707</sup> However, when a person engages in an activity solely for money, image or power, to impress others, or because of guilt, shame, or fear, they will likely experience declines in wellbeing because their psychological needs are not being met in particular, their sense of “autonomy” is undermined.<sup>708</sup>

Self-determination theory also postulates that environmental factors can enhance the development of positive motivation by meeting the psychological needs of those in the environment.<sup>709</sup> For example, in an academic environment, “autonomy” is supported by providing choices (i.e., evaluation choices), explanations for situations (i.e., why is there a c-curve policy?), and understanding another’s perspective, which is an exercise of empathy.<sup>710</sup> Sheldon and Krieger examined the correlation between wellbeing and motivation among law students in their 2004 publication titled, “Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Wellbeing.”<sup>711</sup> The longitudinal study evaluated changes in law students’ subjective wellbeing, motivation, and values during all three years of law school.<sup>712</sup> As reviewed in Chapter 4.2, the 2004 Sheldon & Krieger study

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<sup>706</sup> *Ibid.*

<sup>707</sup> See: Sheldon & Krieger 2004, *supra* note 4 at 263–264.

<sup>708</sup> *Ibid.*

<sup>709</sup> See: Krieger & Sheldon, 2007, *supra* note 32 at 884.

<sup>710</sup> *Ibid.* Regarding the c-curve, see generally: Lynette Tan Yuen Ling et al., “Students’ Conceptions of Bell Curve Grading Fairness in Relation to Goal Orientation and Motivation” (2020) 14:1 International Journal for the Scholarship of Teaching and Learning. Regarding “empathy,” see: Brown 2021, *supra* note 18 at 121–122. Attributes of “perspective taking” include “empathy” or sharing a perspective with another. On page 121, Brown writes: “[e]mpathy is a tool of compassion. We can respond empathetically only if we are willing to be present to someone’s pain. If we are not willing to do that, it’s not real empathy.” Also, see generally: Gerdy, *supra* note 19; Chalen Westaby & Emma Jones, “Empathy: An Essential Element of Legal Practice or ‘never the twain shall meet’?” (2018) 25:1 International Journal of the Legal Profession 107–124.

<sup>711</sup> See: Sheldon & Krieger 2004, *supra* note 4. Also, see: Tani & Vines, *supra* note 27, who surveyed the 2005 first semester class at the University of New South Wales (UNSW). There were 2528 student respondents. The survey sought to examine students’ attitudes and expectations compared to their experience. The survey revealed extrinsic motivation and lack of autonomy among law students compared to other faculties, such as medicine. On page 3: “Law students reported different reasons for their choice of course, seemed disproportionately concerned about their grades, less interested in teamwork, and had different ideas about employers’ preferences for graduates when compared with students from other disciplines.” Rachel Lauren Abouras identified a similar trend and found that American law students who felt like “law was a calling” experienced better wellbeing. See: Rachel Lauren Abouras, “Called to Counsel: Examining the Links Among Calling, Life Meaning, Life Satisfaction, and Burnout Among Law Students” (2021) 22:3 Journal of College and Character 179–199.

<sup>712</sup> *Ibid* Sheldon & Krieger 2004. The first study began during orientation in August 2000 and consisted of 235 first-year law students at Florida State University. Gender was almost equally distributed; most were under 25 years old

revealed that new law students exhibited wellbeing at levels congruent with and exceeding that of a comparative sample of undergraduates.<sup>713</sup> However, law student wellbeing nosedived by the end of the first year.<sup>714</sup>

Sheldon and Krieger evaluated students at two law schools: Florida State University and a Midwestern law school.<sup>715</sup> Regarding the differences and similarities between the two law schools, both admitted highly qualified candidates with equivalent undergraduate grades and Law School Admission Test scores.<sup>716</sup> Regarding faculty hiring practices, the Midwestern law school emphasized law practice, public service experience, and teaching ability when hiring faculty, while Florida State University emphasized the publication of scholarly work.<sup>717</sup>

Unlike Florida State University, the Midwestern law school provided its faculty teaching skills seminars, had many more faculty members dedicated to practical skills training, and combined skill and theory instructors into one amalgamated faculty.<sup>718</sup> The Midwestern law school had many more practice skills courses and a co-curricular requirement of professional development for students, which tackled issues such as stress and mental health.<sup>719</sup> Florida State University had a mandatory curve, whereas there was a suggested curve at the Midwestern law school.<sup>720</sup>

To assess motivation, the 2004 Sheldon & Krieger study utilized a survey asking students to state five “law school goals” at the beginning and then at the end of the first year of law school.<sup>721</sup> The students were then asked to choose why they have those specific goals from a list of the following four options:

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and Caucasian. Three subsequent surveys with depleting participation to 134 participants by the fourth survey in November 2002. Comparison was done between the first-year law school participants and 236 upper-year psychology students at the University of Missouri. First-year students at a much different American midwestern college had their wellbeing assessed during their first year, with similar results found at Florida State University.

<sup>713</sup> *Ibid* at 270–272.

<sup>714</sup> *Ibid*.

<sup>715</sup> *Ibid*.

<sup>716</sup> See: Krieger & Sheldon, 2007, *supra* note 32 at 886.

<sup>717</sup> *Ibid*.

<sup>718</sup> *Ibid*.

<sup>719</sup> *Ibid*.

<sup>720</sup> *Ibid*.

<sup>721</sup> See: Sheldon & Krieger 2004, *supra* note 4 at 268.

1. “because of the enjoyment and stimulation that this activity provides you”
2. “because you really believe it is an important goal to have”
3. “because others want you to or think you should”
4. “because you would feel ashamed, guilty, or anxious if you didn’t”<sup>722</sup>

The results revealed that law students shifted away from intrinsic motives and values and toward more extrinsic motives and values from the beginning of the first year compared to the end at both law schools, regardless of demographics.<sup>723</sup> Sheldon and Krieger wrote that there was a substantial increase among law students at Florida State University in valuing “appearance” and a substantial decrease in valuing “community contribution.”<sup>724</sup> Conversely, at the Midwestern law school, there was no decrease in “community contribution.”<sup>725</sup>

Furthermore, by the end of the first year, students at Florida State University generally felt like they were in law school not because they wanted to be there but because they needed to “please” or “impress” others.<sup>726</sup> Most notably, between the end of the first year and the middle of the second year, law students at Florida State University had decreased valuing of all types, essentially becoming amoral, which remained after that.<sup>727</sup> Sheldon and Krieger speculated that such a response indicated disengagement and “a general ‘numbing’ of values and emotions by excessively analytical legal processes.”<sup>728</sup>

Krieger and Sheldon followed up their 2004 study with the 2007 Krieger & Sheldon study.<sup>729</sup> The 2007 Krieger & Sheldon study further analyzed the data from the 2004 Sheldon & Krieger study cohort and examined the Midwestern law school students through all three years of law

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<sup>722</sup> *Ibid* at 268–269. To assess the “what” of motivation, the survey also employed the Aspirations Index, a 30-item scale with six subscales: “three extrinsic values (financial success, appealing appearance, and social popularity), and three intrinsic values (emotional intimacy, community contribution, and personal growth).” All four surveys included the Aspirations Index. Furthermore, survey 1 asked students to provide their LSAT scores; in surveys 1 and 2, participants instead stated their career preferences from a list of 15 career choices.

<sup>723</sup> *Ibid* at 273–274, 282.

<sup>724</sup> *Ibid* at 273. Also, see: Skead, Rogers, & Doraisamy, *supra* note 3.

<sup>725</sup> *Ibid* at 282.

<sup>726</sup> *Ibid* at 281. The survey administered at the Midwestern law school used different methodology. Instead of asking what law students’ goals were, the researchers asked the Midwest law students why they decided to attend law school.

<sup>727</sup> *Ibid* at 282.

<sup>728</sup> *Ibid* Also, see: Mertz, *supra* note 27; Sullivan, *supra* note 27; Soonpaa, *supra* note 365. The Soonpaa study found higher psychological distress rates among third-year law students as compared to first- and second-year law students.

<sup>729</sup> See: Krieger & Sheldon, 2007, *supra* note 32.

school.<sup>730</sup> Furthermore, the 2007 Krieger & Sheldon study also assessed psychological need satisfaction, the academic environment, and the causation of psychological distress per self-determination theory.<sup>731</sup>

The 2007 Krieger & Sheldon study revealed that law students from both law schools initially experienced declines in wellbeing and psychological need satisfaction.<sup>732</sup> However, at the Midwestern law school, students felt supported by the faculty.<sup>733</sup> The supported students at the Midwestern law school, experienced improved wellbeing compared to the Florida State University law students by the third year of law school.<sup>734</sup> The improved wellbeing of the Midwestern law school students resulted in better grades, bar exam scores, and intrinsic motivation in seeking employment after graduation than the Florida State University law students demonstrated.<sup>735</sup> It is reasonable to speculate that the students at the Midwestern law school ended up with more satisfying careers. The 2007 Krieger & Sheldon study will be reviewed in further detail in Chapter 7.2.

## 6.6. Conclusion

Chapter 6 explored factors detrimental to wellbeing, including stress, isolation, loneliness, stigma, discrimination, racism, substance use, and extrinsic motivation. In Chapter 6.2, the concept of stress was discussed and emphasized that extreme or prolonged stress can harm mental health. This chapter also highlighted the adverse effects of isolation and loneliness on overall health, pointing to the fundamental need for connection and belonging, as initially highlighted in Chapter 2.

Furthermore, Chapter 6.2 referenced a study conducted by Pritchard in 2003 which examined stress levels among law students and two stress scales: the *Law Student Perceived Stress Scale*

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<sup>730</sup> *Ibid.* The 2004 Sheldon & Krieger study only included the first year from the Midwestern law school.

<sup>731</sup> *Ibid* at 884. Self Determination Theory postulates that the social environment can enhance the development of positive motivation by facilitating autonomy or self-agency by providing choices, explaining situations, and understanding another's perspective (i.e., empathy).

<sup>732</sup> *Ibid.*

<sup>733</sup> *Ibid* at 889.

<sup>734</sup> *Ibid.*

<sup>735</sup> *Ibid* at 889–890.



and the *Law Schools Stressor Measure*. The study identified academic demands and isolation as the main sources of psychological distress among law students.<sup>736</sup> This reinforces the idea that the demands of law school, stress, isolation, and loneliness significantly impact wellbeing. Chapter 6.3 delved into the harmful effects of stigma, discrimination, and racism on individuals' wellbeing, particularly among marginalized law students and legal professionals.<sup>737</sup> These forms of mistreatment contribute to disproportionately higher rates of psychological distress within among marginalized peoples and contribute to the continuation of inequality within the profession of law.

Additionally, Chapter 6.4 discussed how substance use contributes to declines in wellbeing. Previously, Chapters 4.6 and 5.5 highlighted the prevalence of substance use among law students and legal professionals, shedding light on the potentially detrimental impact that substance use has on the overall health of law students and legal professionals. Lastly, Chapter 6.5 explored the concept of extrinsic motivation and its adverse effects on wellbeing by examining self-determination theory and psychological needs. A review of the 2004 Sheldon & Krieger and 2007 Krieger & Sheldon studies demonstrated how being solely driven by money, image, and power can decrease wellbeing. This thesis now turns to Chapter 7, the case for improving student wellbeing in law school.

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<sup>736</sup> See: Pritchard & McIntosh, *supra* note 5; Bergin & Pakenham, *supra* note 3; Flynn, Li, & Sánchez 2017, *supra* note 27. Also, see generally: Flynn, Li, & Sánchez 2019, *supra* note 291.

<sup>737</sup> Chapters 4.5 and 5.4. outlined the disproportionate rates of psychological distress among marginalized law students and legal professionals.

## Chapter 7: The Case for Improving Law Student Wellbeing

### 7.1. Introduction

This chapter will argue that improving the health of law students is the most substantive issue facing law schools today. Law students should not graduate less healthy than when they started. As exposed through a review of the studies on law students and legal professionals' psychological distress, there is little doubt that law students are at a high risk of trauma, psychological distress, and substance use. Chapter 3 outlined the shared experiences, practices, beliefs, and attitudes within legal education—including the experience of colonization, the belief in the neutrality of the law, and the stress and isolation experienced by students. These shared experiences, practices, beliefs, and attitudes contribute to a heightened risk of psychological distress when considering the factors detrimental to wellbeing outlined in Chapters 2.5 and 6.

By prioritizing wellbeing, law schools can improve their students' health-enhancing competence, ethical decision-making and judgment while combating isolation, loneliness, stigma, discrimination, racism, and substance misuse. Further, if law schools prioritize the wellbeing of their students, particularly the wellbeing of marginalized law students, a diverse and inclusive legal community could be nourished.<sup>738</sup> In addition to all the other benefits which may arise from improving the wellbeing of students, law schools, future clients, and society may benefit. It is imperative to produce ethical and competent legal professionals who can act in the public interest by representing the interests of an ever-increasingly diverse population. Law school is the initial training ground for future legal professionals and, therefore, is instrumental in changing the “culture” of law.

Chapter 7.2 argues that law schools must teach their students about mental health and wellbeing because law students are at a high risk of psychological distress, trauma and substance misuse, and early intervention is critical. This chapter will outline how early intervention is vital and has been fundamental in curbing many major health issues. Chapter 7.3 argues that law student competence will improve if law schools invest in the health of their students. The 2007 Krieger

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<sup>738</sup> See generally: Krieger 2005, *supra* note 49; Krieger 2011, *supra* note 49.

& Sheldon study demonstrates that undertaking different teaching methods and pedagogy can enhance competence and career satisfaction.<sup>763</sup> Chapter 7.4 outlines how understanding emotion can improve ethical decision-making and judgement.<sup>739</sup> The work of renowned neuroscientist Antonio Damasio sheds light on this phenomenon and the crucial role of emotion in decision-making.<sup>740</sup>

Chapter 7.5 argues that by prioritizing wellbeing, law societies, bar associations, and accredited law schools can create an environment that promotes positive mental health, reduces isolation, combats stigma, and nurtures a diverse and inclusive legal community. Finally, Chapter 8 concludes and recommends wellbeing-focused, trauma-informed legal education.

## 7.2. Early Intervention: Law Students Are at a “High Risk” of Trauma, Psychological Distress & Substance Misuse

There is a mental health crisis amongst the general population, which disproportionately affects those who are young and marginalized.<sup>741</sup> Despite a crisis among the general population, even more concerning is that law students fare even worse.<sup>742</sup> Law students have been found to have

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<sup>739</sup> See generally: Tiscione, *supra* note 19; Sheldon & Krieger, *supra* note 49; Krieger, *supra* note 49; Moliterno & Keyser, *supra* note 49; Muir, *supra* note 19; Huang 2015, *supra* note 19; Krieger 2005, *supra* note 49. Also, see generally: Baron, *supra* note 49; Baron & Corbin, *supra* note 49.

<sup>740</sup> See: Damasio, *supra* note 19. Also, see generally: Damasio, Everitt, & Bishop, *supra* note 50; Muir, *supra* note 19; Brafford, *supra* note 50; Brown 2011, *supra* note 19; Brown 2013, *supra* note 19; A. Bechara, et al, “Different Contributions of the Human Amygdala and Ventromedial Prefrontal Cortex to Decision-Making.” (1999) 19:13 The Journal of Neuroscience: The Official Journal of the Society for Neuroscience 5473–5481; Rochford et al., *supra* note 50; Phelps, Lempert, & Sokol-Hessner, *supra* note 19; Lerner et al., *supra* note 19; Giang, *supra* note 50; Lakowski & Evers, *supra* note 19; Lench, Flores, & Bench, *supra* note 19; Naqvi, Shiv, & Bechara, *supra* note 19; Slovic, *supra* note 19.

<sup>741</sup> See: Kuehn, *supra* note 1; Wainberg et al., *supra* note 1; Carucci, *supra* note 1; NDTV, *supra* note 1; World Mental Health Report, *supra* note 1. There is a mental health crisis more significant than that even experienced by the general population, among university students, young adults, and marginalized peoples. In the United States, see: Lipson et al., *supra* note 2; Terlizzi & Schiller, *supra* note 2; Abrams, *supra* note 2. In Australia, see: Browne & Munro, *supra* note 2; Carter et al., *supra* note 2. In the UK, see: Thorley, *supra* note 2; Lewis & Bolton, *supra* note 2; Campbell et al., *supra* note 2. In Canada, see: Kim, *supra* note 2; National Collaborating Centre for Determinants of Health, *supra* note 2; Canadian Alliance of Student Associations (CASA), *supra* note 2; Linden & Stuart, *supra* note 2; Alghoul, *supra* note 2; Drolet & Sarabia, *supra* note 2; Miller, *supra* note 2; Centers for Disease Control and Prevention, *supra* note 2; Moyser, *supra* note 2; Nelson & Wilson, *supra* note 2. Globally, see Barreto, *supra* note 2; Barry, *supra* note 2; Patel et al., *supra* note 2; Williams & Etkins, *supra* note 2. Also see generally: Matheson et al., *supra* note 2; Czyzewski, *supra* note 2.

<sup>742</sup> In the United States, see: Shanfield & Benjamin, *supra* note 3 at 72; Benjamin et al., *supra* note 3 at 241, 246; Reifman, McIntosh & Ellsworth, *supra* note 3 at 102; Organ, Jaffe & Bender, *supra* note 3 at 136. In Australia, see: Kelk et al., *supra* note 3 at 11-12; Leahy et al., *supra* note 3 at 613; O’Brien, Tang & Hall, *supra* note 3 at 53; O’Brien, Tang & Hall, 2011 Changing our Thinking, *supra* note 3 at 159-160; Skead & Rogers, *supra* note 3 at 572;

psychological distress exceeding that of students in other programs and, in all cases, more distress than students in medicine in all compared jurisdictions.<sup>743</sup>

Moreover, law students likely enter law school with trauma, given its prevalence and will, without a doubt, encounter trauma in legal practice.<sup>744</sup> Part of preparing law students for the practice of law includes providing education on the devastating effects and prevalence of trauma so that future lawyers can represent clients who have experienced or are experiencing trauma.<sup>745</sup> Further still, evidence suggests that law students are at high risk of substance misuse.<sup>746</sup> Given law is inherently stressful, teaching and modelling effective and healthy coping mechanisms should be part of legal education. The *National Standard for Psychological Health and Safety of Post-Secondary Students – Phase I: Scoping Literature Review* disclosed that: “Several studies have linked students’ stress and distress to negative academic outcomes, such as: reduced academic achievement, challenges with alertness and reduced ability to focus, and student attrition and retention.”<sup>747</sup>

Given the influence legal education has on future legal professional identity, early intervention and education are crucial to curbing the mental health crisis in law schools and the legal

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Bergin & Pakenham, *supra* note 3 at 401; Skead, Rogers & Doraisamy, *supra* note 3 at 93; Skead, Rogers & Johnson, *supra* note 3 at 351. See Lewis & Cardwell, *supra* note 3 in the United Kingdom. In Canada, see: McGill 2017 *supra* note 3.

<sup>743</sup> In the United States, see: Shanfield & Benjamin, *ibid* at 221; Organ, Jaffe & Bender, *ibid* at 136-137. Also see: Harries, Kim & Grant, *supra* note 3. In Australia, see: Kelk et al., *ibid* at 12; Leahy et al., *ibid* at 611; Skead & Rogers, *ibid* at 82. But see: Larcombe, Finch & Sore, *supra* note 3 at 265. In the United Kingdom, see: Bogowicz et al., *supra* note 3; Lewis & Cardwell, *supra* note 3. In Canada, see: Helmers et al., *supra* note 3.

<sup>744</sup> See: Jaffe, Bender, & Organ, *supra* note 21. Regarding Canadian legal professionals, see: Cadieux et al., Targeted Recommendations, *supra* note 224. Also, see: Leclerc, Wemmers, & Brunet, *supra* note 21; Léonard, Saumier, & Brunet, *supra* note 21. Also, see generally: Oehme & Stern, *supra* note 12 at 1320; Maguire & Byrne, *supra* note 21; Weir et al., *supra* note 21; Weir, Jones, & Sheeran, *supra* note 21; James 2020, *supra* note 21; Love, *supra* note 175; Gold, *supra* note 175.

<sup>745</sup> See: Oehme & Stern, *ibid*; Netzel, *supra* note 21; See: Maki et al., *supra* note 229; McCallum 2024, *supra* note 53.

<sup>746</sup> In the United States, see: AALS Report *supra* note 31 at 42, 43, 45; Organ, Jaffe, & Bender, *supra* note 3 at 127; Reed et al., *supra* note 8 at 152; Jaffe, Bender, & Organ, *supra* note 21 at 16. To the author's knowledge, no studies have evaluated Australian law student substance use but see generally: Engs & Mulqueeny, *supra* note 31; Doraisamy, *supra* note 31; Allman, *supra* note 31; Ferguson, *supra* note 31. In the United Kingdom, see: Bogowicz et al., *supra* note 3 at 134. In Canada, see: McGill, *supra* note 3 at 8.

<sup>747</sup> See: B. Linden, S. Grey & H. Stuart, *National Standard for Psychological Health, and Safety of Post-Secondary Students – Phase I: Scoping Literature Review*. (Kingston, ON: Queen's University, 2018) at 10.

profession.<sup>748</sup> Sovinee-Dyroff, an American legal scholar, noted the significant role of legal education in the development of professional identity and the legal profession itself, and recently wrote:

“The practices that govern who is admitted into law school,” and the process of law school itself, “play a decisive role in the composition and performance of the legal profession.” As a result, our professional culture ends up mirroring law school in many ways. It is homogeneous in terms of personalities, encourages hyper-competitiveness, and discourages empathy and other soft skills. At the same time, the instructional and grading methods of law school do not mirror the actual practice of law. Law school may prepare students for the culture of the legal profession, but it does not prepare them for the reality of legal practice.<sup>749</sup>

Likewise, Australian legal scholars have written:

Whether implicitly or explicitly, ‘law schools present and transmit powerful norms of professional conduct.’ The legal profession has historically associated emotion with an absence of objectivity, and consequently, the norms of conduct law schools transmit to students have often included the capacity to create emotional distance... In short, ‘law schools not only attempt to make students “think like a lawyer” but, perhaps more important ... to feel like a lawyer ... teaching that it is right and proper to be controlling, cool, dispassionate, unfeeling, arrogant.’<sup>750</sup>

It is time to change the culture of law and the culture is born within law schools. Early intervention and education have proven successful in several health crises. The anti-smoking campaign reduced smoking in Canada.<sup>751</sup> The AIDS campaign helped restrain the spread of

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<sup>748</sup> See: Oksana Romanov, “Addressing Law’s Mental Health Crisis Early,” (1 May 2023), online: The Canadian Bar Association <<https://www.nationalmagazine.ca/en-ca/articles/the-practice/young-lawyers/2023/addressing-law-s-mental-health-crisis-early>>; Cadieux et al., Targeted Recommendations, *supra* note 224 Recommendation 1 & 7. Recommendation 1 focuses on “improving the preparation of future professionals” and providing them with skills to deal with psychological health issues,” including a theory-practice balance, teaching about mental health issues and emotional intelligence, and instituting mandatory credit courses—recommendation 7 calls for promoting professional diversity and examining practices, policies and procedures that are discriminatory including law schools. Also see: Buchanan & Coyle, *supra* note 11 at 35-40; Strevens & Field, *supra* note 318; Strevens & Wilson, *supra* note 63.

<sup>749</sup> See: C. Sovinee-Dyroff, “Introverted Lawyers: Agents of Change in the Legal Profession” (2023) 36:1 Geo J Legal Ethics 111 at 138 citing Marjorie M. Shultz & Sheldon Zedeck, “Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions,” (2011) 36 L. & SOC. INQUIRY 620 at 621.

<sup>750</sup> See: Heath et al., *supra* note 303 at 1-2 citing Michael Meltsner (1983) ‘Feeling Like a Lawyer’ 33 Journal of Legal Education 624, at 624.

<sup>751</sup> See: CBC News, “Canada’s War on Smoking Turns 50,” (16 June 2013), online: *CBC News* <<https://www.cbc.ca/news/health/canada-s-war-on-smoking-turns-50-1.1303483>>. Also see: Sarah J. Durlin, Lois

AIDS.<sup>752</sup> Just as recovery from many health epidemics has been assisted through early education, so can the mental health crisis in law be assisted through legal education.<sup>753</sup>

Law school is prime ground for modelling and teaching students about mental health because legal education can incorporate wellbeing and trauma-informed knowledge and practices into the curriculum and educational environment. Once students graduate from law school in Canada, many enter an intense articling program and enter the life of a young associate. Research has demonstrated that young lawyers experience a disproportionate level of psychological distress.<sup>754</sup>

Further, the shared experiences of competition and extreme workload remain the same and become even more urgent under the billable hour.<sup>755</sup> As such, it is unlikely that legal professionals have any extra time to dedicate to mental health and wellbeing education after law school until they have no choice. The earlier students learn about mental health, wellbeing, and the relevance of emotion, the more likely they will be able to navigate the tribulations of legal practice.

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Biener & Melanie A. Wakefield, “Effects of Different Types of Antismoking Ads on Reducing Disparities in Smoking Cessation Among Socioeconomic Subgroups. (RESEARCH AND PRACTICE) (Author abstract)” 99:12 *The American Journal of Public Health* 2217.

<sup>752</sup> See: Tim Jonze, “‘It was a life-and-death situation. Wards were full of young men dying’: How we made the Don’t Die of Ignorance Aids campaign”, *The Guardian* (4 September 2017), online: <<https://www.theguardian.com/culture/2017/sep/04/how-we-made-dont-die-of-ignorance-aids-campaign>>; Jon Kelly, “HIV/Aids: Why were the campaigns successful in the West?” *BBC News* (28 November 2011), online: <<https://www.bbc.com/news/magazine-15886670>>.

<sup>753</sup> See: Enahoro Iboi et al., “Impact of Public Health Education Program on the Novel Coronavirus Outbreak in the United States” (2021) 9 *Frontiers in Public Health*, online: <<https://www.frontiersin.org/journals/public-health/articles/10.3389/fpubh.2021.630974>>.

<sup>754</sup> In Canada see: Cadieux et al., 2022 *supra* note 3. Also see: Young-Powell, *supra* note 31; Macnab, *supra* note 31; Parnell & McKenna, *supra* note 31; Sidiq, *supra* note 31; The Bar Council, *supra* note 31; Iain McCowie, “Work-Life Balance, Depression and Young Lawyers” (2009) 29:6 *Proctor* 53–54; Chris Merritt, “Firms Exploiting Young Lawyers: Judge Exclusive Punishing Workloads Add to Depression, Anxiety” (2013) *The Australian* (Canberra, ACT).

<sup>755</sup> In the United States, see: Krill et al. 2023, *supra* note 44; Krieger & Sheldon 2015, *supra* note 15; Ash & Huang, *supra* note 31; Organ 2011, *supra* note 65. In Australia, see: Bergin & Jimmieson, *supra* note 7; Thornton 2016, *supra* note 31; Omari & Paull, *supra* note 31; Schrever, Hulbert, & Sourdin, *supra* note 498; Chlap & Brown, *supra* note 625. In the United Kingdom, see: Medlow, Kelk, & Hickie, *supra* note 389; McKeown, *supra* note 625. Also, see generally: Law Society of Scotland, *supra* note 625; LawCare, *supra* note 625. In Canada, see: Cadieux et al. 2022, *ibid*; Cadieux et al. 2020, *supra* note 7; Koltai, Schieman, & Dinovitzer, *supra* note 34. Also, see generally: Seto, *supra* note 625; The Canadian Bar Association, *supra* note 625; Fish, *supra* note 625; Woolley 2004, *supra* note 625.

### 7.3. Health Improves Competence

Law schools should prioritize and invest in improving the wellbeing of students because this will lead to happier individuals and a more competent legal profession.<sup>756</sup> Law schools' rigorous and demanding nature can significantly and negatively impact students' mental health and wellbeing, often resulting in decreased productivity and effectiveness.<sup>757</sup>

While some argue that psychological distress is inherent in law school and the legal profession, it is crucial to recognize its negative consequences on students' academic performance, personal relationships, careers, competence, decision-making, and overall mental health.<sup>758</sup> Continuous stress is detrimental to cognitive functioning, memory, and decision-making ability—as outlined in Chapter 6.2—compromising the skills demanded by the legal profession.<sup>759</sup>

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<sup>756</sup> The Law Society of British Columbia wrote, “[a]ddressing mental health and substance use issues within the legal profession is a key priority for the Law Society. The Law Society recognizes that lawyers are human beings, each with a unique set of personal and professional experiences, and that their well-being can affect their ability to fulfill their professional responsibilities. Lawyers who are well and thriving are more likely to contribute to the effective delivery of legal services and the public’s positive perception and trust in the legal profession.” See: “Improving Mental Health,” online: *The Law Society of British Columbia* <<https://www.lawsociety.bc.ca/priorities/improving-mental-health/>>. Also, see: Patrick J. Schiltz, On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession, 52 *Vanderbilt Law Review* 871 (1999) available at: <https://scholarship.law.vanderbilt.edu/vlr/vol52/iss4/2>; David Jaffe, Law Schools Should Take on Students’ Mental Health and Substance Use from Day One (May 17, 2023). Your Voice Column, ABA.com May 17, 2023, available at SSRN: <<https://ssrn.com/abstract=4569649>>; Peterson & Peterson, *supra* note 62; Sara K. Rankin, The Fully Formed Lawyer: Why Law Schools Should Require Public Service to Better Prepare Students for Private Practice, 17 *Chap. L. Rev.* 17 (2013). Available at: <<http://digitalcommons.chapman.edu/chapman-law-review/vol17/iss1/2>>; Debra S. Austin, “Positive Legal Education: Flourishing Law Students and Thriving Law Schools” (2018) 77:3 *Maryland Law Review* 649–711; Emma Jones & Caroline Strevens, eds., *Wellbeing and Transitions in Law: Legal Education and the Legal Profession* (Switzerland: Palgrave Macmillan, 2023); Todd David Peterson, “The Moral Obligation of Law Schools to Address Law Student Well-Being: A Review Essay about ‘The Happy Lawyer’” (2016) 30:1 *Notre Dame Journal of Law, Ethics & Public Policy* 67–100; Emma Jane Jones, “The Rule of Lawyers: Applying Therapeutic Jurisprudence at the Intersections of Wellbeing, Disciplinary Proceedings and Professionalism” (2021) 25:1 *European Journal of Current Legal Issues*, online: <<https://webjcli.org/index.php/webjcli/article/view/730>>.

<sup>757</sup> In the United States, see: Pritchard & McIntosh, *supra* note 5; Sheldon & Krieger 2004, *supra* note 4; Krieger & Sheldon 2007, *supra* note 32; Flynn, Li, & Sánchez 2017, *supra* note 27. Also see: Netzel, *supra* note 21. Regarding the legal profession, see: Krill et al. 2023, *supra* note 44. In Australia, see: Skead, Rogers & Johnson, *supra* note 3; Skead & Rogers 2014, *supra* note 3; Lester, England, & Antolak-Saper, *supra* note 5; Tani & Vines, *supra* note 27. Also, see generally: Kelk, Medlow, & Hickie, *supra* note 389; O’Brien, Tang, & Hall, *supra* note 3; O’Brien, Tang & Hall, 2011 Changing our Thinking *supra* note 3; Bergin & Jimmieson, *supra* note 7; Chan, *supra* note 66; Chan, Poynton, & Bruce, *supra* note 7; Kelk et al., *supra* note 3. In the UK, see: Skipper & Fay, *supra* note 420; Jones 2018, *supra* note 19; Jones et al., *supra* note 731. In Canada, see: Helmers et al., *supra* note 3; McGill, *supra* note 3, Fitzgerald, *supra* note 27; Koltai, Schieman, & Dinovitzer, *supra* note 34; Leclerc, Wemmers, & Brunet, *supra* note 21. Also, see generally: Ipsos Reid, *supra* note 11; Linden & Stuart, *supra* note 4.

<sup>758</sup> See generally: Jackson, *supra* note 191; Jackson, *supra* note 665.

<sup>759</sup> See generally: Habib Yaribeygi et al., “The Impact of Stress on Body Function: A Review” (2017) 16 *EXCLI J* 1057–1072.

As outlined in Chapter 3, all accredited law schools in the United States, Australia, the United Kingdom, and Canada must prepare students for entry to a bar or law society admission program.<sup>760</sup> Mental health conditions, psychological distress and substance use can affect cognition and competence.<sup>761</sup> Practising law, including articling, entails possessing vital skills, such as critical thinking skills, to solve problems and to make informed decisions regarding complex legal issues.<sup>762</sup> Cognitive health improves through improved wellbeing.<sup>763</sup> Studies have shown that cognition is improved when one is healthy.<sup>764</sup>

The 2007 Krieger & Sheldon study found that when law students' "psychological needs" were met, they had improved wellbeing and better performance.<sup>765</sup> Krieger and Sheldon followed up their 2004 study with a study published in 2007 titled, "Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory" (the "2007 Krieger & Sheldon study").<sup>766</sup> As mentioned, the 2007 Krieger & Sheldon study further analyzed the data from the previous 2004 study cohort.<sup>767</sup> The 2007 Krieger & Sheldon study also compared psychological need satisfaction, the academic environment, and the causation of

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<sup>760</sup> In the United States, see: ABA Standards, *supra* note 28, s 303(a)(1). In Australia, see: CALD, *supra* note 28, s 2.3.3 (a); AU Threshold Learning Outcomes, *supra* note 28 at 10, 14-16, TLO 2. In England and Wales, see: UK QAA 2019, *supra* note 28, s 2.4.iii. In Canada, see: CDA Nat'l Rqmt., *supra* note 28, s C., C.1.4. Also, see generally: Krieger, *supra* note 26.

<sup>761</sup> See generally: Austin 2013, *supra* note 27; Austin 2019, *supra* note 19. Substance use affects cognition. See: Austin 2015, *supra* note 31; Chivero et al., *supra* note 31; National Institute on Drug Abuse, *supra* note 31; NIH News in Health, *supra* note 31; Olguín et al., *supra* note 31; Paradis et al., *supra* note 31; Substance Abuse and Mental Health Services Administration (US), *supra* note 31; UNODC, *supra* note 31; Watkins, *supra* note 31.

<sup>762</sup> See generally: ABA Standards, *supra* note 28; CALD, *supra* note 28; AU Threshold Learning Outcomes, *supra* note 28; Academic Stage Handbook, *supra* note 28; CDA Nat'l Rqmt., *supra* note 28.

<sup>763</sup> See generally: Friedland, *supra* note 19; Barrett et al., *supra* note 18; Hillman, Erickson, & Kramer, *supra* note 31; Moore & Malinowski, *supra* note 48; Pessoa, *supra* note 48; Salovey & Mayer, *supra* note 48; Zeidan et al., *supra* note 48.

<sup>764</sup> Studies have found improved performance among law students due to increased wellbeing. See: Reuben & Sheldon, *supra* note 19; Green & Simon, *supra* note 43. Also, see generally: Walsh, Boehm, & Lyubomirsky, *supra* note 114; Llewellyn et al., *supra* note 43; Martins, Ramalho, & Morin, *supra* note 43; Akpur, *supra* note 43; Miles et al., *supra* note 43; Gu et al., *supra* note 43.

<sup>765</sup> See: Krieger & Sheldon 2007, *supra* note 32 at 884. Self Determination Theory postulates that the social environment can enhance the development of positive motivation by facilitating autonomy or self-agency by providing choices, explaining situations, and understanding another's perspective (i.e., empathy). Other studies that have found improved performance because of increased well-being among law students also include: Reuben & Sheldon, *supra* note 19; Green & Simon, *supra* note 43; Walsh, Boehm, & Lyubomirsky, *supra* note 114. Also, see generally: Katherine G. McDaniel et al., "Anatomy as a Model Environment for Acquiring Professional Competencies in Medicine: Experiences at Harvard Medical School" (2021) 14:2 ANAT SCI EDUC 241–251.

<sup>766</sup> *Ibid.*

<sup>767</sup> *Ibid.* The 2004 Sheldon & Krieger Study only included the first year from the Midwestern law school.



psychological distress per self-determination theory at both Florida State University and a Midwestern law school.<sup>768</sup>

Both universities admitted highly qualified candidates with equivalent undergraduate grades and Law School Admission Test scores.<sup>769</sup> However, as outlined previously, Florida State University followed a more traditional legal education practice, emphasizing the publication of scholarly work when hiring faculty, and had a mandatory curve.<sup>770</sup>

The Midwestern law school emphasized law practice, public service experience, and demonstrated teaching ability when hiring faculty.<sup>771</sup> There was a suggested curve at the Midwestern law school.<sup>772</sup> Furthermore, the Midwestern law school provided its faculty with teaching skills seminars, had many faculty members dedicated to practical skills training, and combined skill and theory instructors into one amalgamated faculty.<sup>773</sup> Finally, the Midwestern law school provided many practice skills courses to its students and a co-curricular requirement for professional development, which tackled issues like stress and mental health.<sup>774</sup>

The 2007 Krieger & Sheldon study revealed that law students from both law schools initially experienced declines in wellbeing and psychological need satisfaction.<sup>775</sup> However, the faculty supported students at the Midwestern law school, and the students felt that support.<sup>776</sup> Because students' autonomy was supported by the third year of law school, they experienced improved

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<sup>768</sup> *Ibid* at 884.

<sup>769</sup> *Ibid* at 886.

<sup>770</sup> *Ibid*.

<sup>771</sup> *Ibid*.

<sup>772</sup> *Ibid*.

<sup>773</sup> *Ibid*.

<sup>774</sup> *Ibid*.

<sup>775</sup> *Ibid*. The initial surveys collected from LS1 and LS2 are outlined in the 2004 Sheldon & Krieger Study with the expectation that the surveys at LS2 after the first year were newly acquired. LS1 was surveyed four times from fall 2001 to fall 2003; LS2 was surveyed in fall 2002 and last in spring 2005. Participants are the same as outlined in the 2004 Sheldon & Krieger Study. The 2007 Krieger & Sheldon Study includes first-year students at LS1 and LS2 and surveyed throughout their legal education. GPA was collected; subjective well-being was measured via Positive Affect/Negative Affect Scale, Satisfaction with Life Scale, and depression scale via Brief Symptom Inventory. To assess psychological need satisfaction, used the nine items employed by Sheldon et al. (2001) to assess autonomy, competence, and relatedness need satisfaction of "most satisfying events" (three items per need). Self-determined career motivation was measured in the third year of law school by asking students to rate the "reasons" why they chose the job they did after graduation, according to intrinsic or extrinsic motivation structured rating. Perceived autonomy was measured by way of the Learning Climate Questionnaire.

<sup>776</sup> *Ibid* at 889.

wellbeing compared to the Florida State University law students.<sup>777</sup> The improved wellbeing of the Midwestern law school students resulted in better grades and bar exam scores than those at Florida State University.<sup>778</sup> Furthermore, the Midwestern law students were “intrinsically motivated” in their pursuit of employment after graduation, which likely resulted in higher career satisfaction.<sup>779</sup>

The results of the 2007 Krieger & Sheldon study strongly support the proposition that law schools that meet their students’ psychological needs (competence, autonomy, and relatedness) will have students with decreased psychological distress, improved grades, and more satisfying careers, meaning decreased psychological distress as legal professionals.<sup>780</sup> The pedagogical practices of the Midwestern law school may provide a roadmap for decreasing psychological distress among law students.

By acknowledging and addressing the unique stressors of legal education, law schools can create an environment that fosters growth and resilience. Enhancing student wellbeing could result in happier, more resilient individuals equipped to handle the challenges of legal practice.<sup>781</sup> The following section outlines how improving wellbeing may improve ethical decision-making and judgement.

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<sup>777</sup> *Ibid.*

<sup>778</sup> *Ibid* at 889–890.

<sup>779</sup> *Ibid* at 889–890.

<sup>780</sup> *Ibid* at 894.

<sup>781</sup> *Ibid.* Also see: Soon et al., *supra* note 7. Also, see: Reuben & Sheldon, *supra* note 19; Ian Ayres et al., “Anxiety Psychoeducation for Law Students: A Pilot Program” (2017) 67:1 Journal of Legal Education 118–138.

## 7.4. Understanding the Significance of Emotion Can Improve Ethical Decision-Making & Judgment

Chapter 2.4 outlined how emotion is relevant to mental health and wellbeing.<sup>782</sup> This section explains how emotion is also relevant to decision-making and judgment.<sup>783</sup> Emotion plays a crucial role in decision-making, and the work of renowned neuroscientist Antonio Damasio sheds light on this phenomenon.<sup>784</sup> Damasio conducted ground-breaking research on the emotional brain by removing it from a lawyer, providing valuable insight into how emotions affect judgment, which will be reviewed first.<sup>785</sup> His study revealed the lawyer's decision-making abilities were impaired without emotions, demonstrating that emotion is essential in guiding choices.<sup>786</sup>

Furthermore, this section argues that mindfulness, education in emotional literacy, and intelligence not only improve law student wellbeing but would likely improve ethical decision-making and judgment.<sup>787</sup> Since emotion influences decision-making and judgment, legal education must provide a vocabulary for emotion, education about emotion, and emotional intelligence.<sup>788</sup> The traditional belief in the irrelevance of emotion is false.<sup>789</sup> Law schools that

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<sup>782</sup> Emotional intelligence training improved the well-being of medical students. See: Shariatpanahi et al., *supra* note 98 at 1, where they conclude: “Emotional intelligence appeared as a significant factor in protecting medical students against academic burnout, so enhancing emotional intelligence through training may be an essential intervention for reducing burnout.” Emotional intelligence, self-esteem, and resilience have been “correlated significantly and directly with satisfaction of life.” See: Vilca-Pareja et al., *supra* note 98. Also, see generally: Matthews, Zeidner, & Roberts, *supra* note 98.

<sup>783</sup> See: Damasio, *supra* note 19. Also, see: Damasio, Everitt, & Bishop, *supra* note 50; Muir, *supra* note 19; Brafford, *supra* note 50; Brown 2011, *supra* note 19; Brown 2013, *supra* note 19; Bechara et al., *supra* note 742; Rochford et al., *supra* note 50; Phelps, Lempert, & Sokol-Hessner, *supra* note 50; Lerner et al., *supra* note 19; Giang, *supra* note 50; Lakowski & Evers, *supra* note 19; Lench, Flores, & Bench, *supra* note 19; Naqvi, Shiv, & Bechara, *supra* note 19; Slovic, *supra* note 19. Also, see generally: Maroney 2011, *supra* note 19; Westaby & Jones, *supra* note 712; Jones Law School 2020, *supra* note 19; Austin 2019, *supra* note 19; Friedland, *supra* note 19.

<sup>784</sup> *Ibid.*

<sup>785</sup> *Ibid.* Also, see: Muir, *supra* note 19.

<sup>786</sup> *Ibid.*

<sup>787</sup> See: Martin 2018, *supra* note 178; Ayres et al., *supra* note 783; Muir, *supra* note 19; Appleby & Bourke, *supra* note 19; Gerdy, *supra* note 19; Brown 2011, *supra* note 19; Brown 2013, *supra* note 19; James 2011, *supra* note 19. Also, see: Montgomery, *supra* note 19; James 2018, *supra* note 19, which evaluated the emotional intelligence of law students at a Canadian university and found an increase throughout the study; Henderson & Farrow, *supra* note 315.

<sup>788</sup> *Ibid.*

<sup>789</sup> See: Tiscione, *supra* note 19 at 1176, which reviews the work of Giulia Enders, a German internist and gastroenterologist, in her book *Gut: The Inside Story of Our Body's Most Underrated Organ* (Jane Bilinghurst ed., David Shaw trans., Greystone Books 2015). In that work, Enders reveals that she “is skeptical of ‘the view that the brain is the sole and absolute ruler over the body.’” Tiscione summarizes Enders’s work on pages 1176-1177: “In

invest in the wellbeing of their students will not only improve their life satisfaction but may also enhance their decision-making and judgement ability.<sup>790</sup> This chapter explores how wellbeing can improve ethical decision-making and judgement within the profession.

A renowned neuroscientist, Antonio Damasio, found himself amid a compelling case in the 1970s.<sup>791</sup> The subject of this case was a successful New York commercial lawyer, Elliott.<sup>792</sup> Elliott's life dramatically turned when diagnosed with a large brain tumour.<sup>793</sup> Surprisingly, he

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sum, she [Enders] argues that the gut influences our thoughts and feelings (and by extension, our decisions) more than we think. Our language naturally reflects this interaction: we “swallow disappointment,” “digest defeat,” and “get butterflies in our stomach.” As Enders explains, the gut has an extensive nervous system that continually gathers information about how the body is doing and sends that information to the brain. Signals sent to the insular cortex create an overall image of how the body is feeling at any given point in time, including other parts of the brain. The brain and the gut thus play a vital role in the choices that we make both physically (e.g., moving from cold to warm) and mentally (e.g., going from sad to happy). She concludes it “may be time to expand Rene Descartes’ proposition: ‘I feel, then I think, therefore, I am.’” Also, see: Damasio, *supra* note 19; Damasio, Everitt, & Bishop, *supra* note 50; Muir, *supra* note 19; Brafford, *supra* note 50; Brown 2011, *supra* note 19; Brown 2013, *supra* note 119; Bechara et al., *supra* note 742; Phelps, Lempert, & Sokol-Hessner, *supra* note 19 which explains at page 264 that, “[t]he idea that opposing forces of emotion and reason compete in the human mind is prevalent in Western thought, highlighted by a range of scholars including philosophers such as Plato and Kant and the father of psychoanalysis, Sigmund Freud (Peters 1970). The intuitive nature of this distinction is also apparent in the everyday language used when reflecting on decisions as being made with the heart or the head.” However, Lemert & Sokol-Hessner debunk this theory, as neuroscience has revealed that emotion influences decisions. On page 281, they “argue that the repeated reference to dual systems of emotion and reason in research on decision making potentially limits scientific advances by discouraging investigations that capture the detailed and nuanced relationships between unique aspects of affect and choices. Furthermore, it suggests to the layperson and scientists in other disciplines that the intuitive and historical notion of competing forces of emotion and reason is based on scientific fact. Perpetuation of this idea may dampen enthusiasm for efforts to further explore the complex interactions of affect and decision making and may result in the development of potentially misguided or nonoptimal techniques to inhibit emotion in order to promote rational decision making.” Also, see: Lerner et al., *supra* note 19; Giang, *supra* note 50; Lakowski & Evers, *supra* note 19; Lench, Flores, & Bench, *supra* note 19; Naqvi, Shiv, & Bechara, *supra* note 19; Slovic, *supra* note 19; Jones 2018, *supra* note 19. Also, see generally: Maroney 2011, *supra* note 19; Westaby & Jones, *supra* note 712; Jones Law School 2020, *supra* note 19; Austin 2019, *supra* note 19; Friedland, *supra* note 19; Shai Danziger, Jonathan Levav, & Liora Avnaim-Pesso, “Extraneous Factors in Judicial Decisions” (2011) 108:17 Proceedings of the National Academy of Sciences 6889–6892; Ben Bryant, “Judges are More Lenient After Taking a Break, Study Finds,” *The Guardian* (11 April 2011), online: <<https://www.theguardian.com/law/2011/apr/11/judges-lenient-break>>; Kurt Kleiner, “Lunchtime Leniency: Judges’ Rulings Are Harsher When They Are Hungrier”, online: *Scientific American* <<https://www.scientificamerican.com/article/lunchtime-leniency/>>. But see: Andreas Glöckner, “The Irrational Hungry Judge Effect Revisited: Simulations Reveal that the Magnitude of the Effect is Overestimated” (2016) 11:6 Judgment and Decision Making 601–610; Izard, *supra* note 18.

<sup>790</sup> See: Jackson, *supra* note 191; Muir, *supra* note 19; Peterson, *supra* note 758; Duncan, Field, & Streven, *supra* note 727; Schuwerk, *supra* note 727; Krieger 2011, *supra* note 49; Krieger 2005, *supra* note 49; Sheldon & Krieger, *supra* note 49; Rothstein, *supra* note 65.

<sup>791</sup> See: Muir, *supra* note 19 at 49; Damasio, *supra* note 19. Also, see: Damasio, Everitt, & Bishop, *supra* note 50.

<sup>792</sup> See: Damasio, *ibid.*

<sup>793</sup> *Ibid.* Also see: Muir, *supra* note 19.

recovered remarkably well from the surgery, with a favourable prognosis.<sup>794</sup> However, there was one significant consequence — he had lost his ability to access emotion.<sup>795</sup>

Damasio discovered that Elliott's emotional detachment severely affected his decision-making abilities.<sup>796</sup> Elliott became utterly devoid of preferences and aversions, unable to be influenced or guarded by emotion.<sup>797</sup> One would assume this absence of emotion would imbue him with the idealized traits of rationality and logical reasoning, which are highly esteemed in law.<sup>798</sup> However, Elliott's life began to crumble before him.<sup>799</sup> He lost his connections with loved ones, rendering him incapable of sustaining a meaningful relationship with his wife.<sup>800</sup> Moreover, the once-thriving lawyer lost his job and could not make reasonable judgments and decisions without the guiding hand of emotions.<sup>801</sup>

This case reveals an essential truth about human nature — emotion is vital to decision-making.<sup>802</sup> Emotions provide invaluable information about the world, allowing for judgments that align with values, desires, and social norms. They act as a compass guiding choice, enabling humans to navigate the complexities of life. Through emotion, people can connect deeply, empathetically, and emotionally.<sup>803</sup> While the law may idealize logical reasoning, evidence from cases like Elliot shows that emotions play a central role in shaping decisions.<sup>804</sup> Damasio's exploration of this

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<sup>794</sup> *Ibid.* Also, see: Muir, *ibid* at 49-50.

<sup>795</sup> *Ibid.*

<sup>796</sup> *Ibid.*

<sup>797</sup> *Ibid.* Also, see: Muir, *ibid* at 50.

<sup>798</sup> See: Damasio, *ibid.*

<sup>799</sup> *Ibid.*

<sup>800</sup> *Ibid.* Also, see: Muir, *ibid* at 50.

<sup>801</sup> *Ibid.*

<sup>802</sup> *Ibid.*; Lerner et al., *supra* note 19; Muir, *supra* note 19; Brown 2013, *supra* note 19; Brown 2011, *supra* note 19; Clore & Huntsinger, *supra* note 19; Fenton-O'Creevy et al., *supra* note 19; Friedland, *supra* note 19; Garfinkel et al., *supra* note 19; Jung et al., *supra* note 19; Lakomski & Evers, *supra* note 19; Lench, Flores, & Bench, *supra* note 19; Naqvi, Shiv, & Bechara, *supra* note 19; Slovic, *supra* note 19; Tiscione, *supra* note 19; Barrett et al., *supra* note 18. Also, see: Daniel Kahneman, *Thinking, Fast and Slow* (Toronto: Doubleday Canada, 2011).

<sup>803</sup> *Ibid.*

<sup>804</sup> See: Muir, *supra* note 19 at 49-50. A subsequent study by Bechara et al. in 1999 examined “emotionally impaired patients who ha[d] sustained injuries to the ventromedial prefrontal cortex (vmPFC), a key area of the brain for integrating emotion and cognition” and found “neurological impairments [that] reduce both (a) patients' ability to feel emotion and (b) the optimality of the decisions. Even the physiological symptoms of emotions were absent (e.g., sweating when should be nervous).” See: Lerner et al., *supra* note 19 at 802, referring to A. Bechara et al., “Different Contributions of the Human Amygdala and Ventromedial Prefrontal Cortex to Decision-Making,” (1999) 19:13 J Neurosci Off J Soc Neurosci 5473–5481, online: <<http://search.proquest.com/docview/69838966/>>.

unique case is a poignant reminder that an emotionally sterile existence comes at a great cost. Life is fulfilling and meaningful through the interplay between reason and emotion.

Emotions play a crucial role in the human decision-making process.<sup>805</sup> Whether realized or not, emotions greatly influence daily choices.<sup>806</sup> This holds for every profession, including the field of law.<sup>807</sup> Ethical decision-making and judgement are deeply intertwined with emotions. Therefore, law students must develop mindfulness, emotional literacy, and intelligence to enhance their wellbeing and ethical decision-making skills.<sup>808</sup>

“Emotional literacy” entails having a vocabulary for emotion for which one can effectively communicate their internal experience, including how they feel, to others and vice versa.<sup>809</sup>

“Mindfulness” originated in Buddhism and refers to placing one’s attention on the present moment (internal and external experiences) and without judgment.<sup>810</sup> Mindfulness, most importantly, involves developing the ability to notice one’s thoughts and emotions without judgment or attachment.<sup>811</sup> “Emotional intelligence” refers to the ability to recognize and understand one’s emotions and those of others.<sup>812</sup> There are four critical components of

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<sup>805</sup> See: Damasio, *supra* note 19. Also, see: Damasio, Everitt, & Bishop, *supra* note 50; Muir, *supra* note 19; Brafford, *supra* note 50; Brown 2013, *supra* note 19; Brown 2011, *supra* note 19; Bechara et al., *supra* note 742; Rochford et al., *supra* note 50; Phelps, Lempert, & Sokol-Hessner, *supra* note 19; Lerner et al., *supra* note 19; Giang, *supra* note 50; Lakowski & Evers, *supra* note 19; Lench, Flores, & Bench, *supra* note 19; Naqvi, Shiv, & Bechara, *supra* note 19; Slovic, *supra* note 19. Also, see generally: Maroney 2011, *supra* note 19; Westaby & Jones, *supra* note 712; Jones Law School 2020, *supra* note 19; Austin 2019, *supra* note 19; Friedland, *supra* note 19.

<sup>806</sup> *Ibid.*

<sup>807</sup> See: Krieger & Sheldon 2015, *supra* note 234 at 554, where the authors explain the study found that “lawyers are very much like other people. Overall, the data also demonstrate that lawyers are very much like other people, notwithstanding their specialized cognitive training and the common perception that lawyers are different from others in fundamental ways.”

<sup>808</sup> See: Martin 2018, *supra* note 178; Ayres et al., *supra* note 783; Muir, *supra* note 19; Appleby & Bourke, *supra* note 19; Gerdy, *supra* note 19; Brown 2013, *supra* note 19; Brown 2011, *supra* note 19; James 2011, *supra* note 19. Also, see: Montgomery, *supra* note 19; James 2018, *supra* note 19; Jackson, *supra* note 191; Jackson, *supra* note 665; Peterson, *supra* note 758; Duncan, Field, & Strevens, *supra* note 727; Schuwerk, *supra* note 727; Krieger 2005, *supra* note 49; Krieger 2011, *supra* note 49; Sheldon & Krieger, *supra* note 49; Rothstein, *supra* note 65.

<sup>809</sup> “Emotional literacy is the ability to recognize, label, and understand feelings in one’s self and others.” See: Gail E. Joseph & Phillip S. Strain, “Enhancing Emotional Vocabulary in Young Children” (2003) 6:4 *Young Exceptional Children* 18–26 at 18. Also, see: Steiner & Perry, *supra* note 113; Brown 2021, *supra* note 18. Also, see generally: Appleby & Bourke, *ibid*; James 2011, *supra* note 19.

<sup>810</sup> See: Kabat-Zinn, *supra* note 146.

<sup>811</sup> *Ibid.*

<sup>812</sup> See: Goleman, *supra* note 113; Muir, *supra* note 19; Martin 2018, *supra* note 178.

emotional intelligence: (1) “emotional perception”; (2) “emotional empathy”; (3) “emotional understanding”; and (4) “emotional regulation.”<sup>813</sup>

Through mindfulness and emotional literacy, law students can gain insight into their biases and values, allowing them to make more informed and ethical decisions.<sup>814</sup> They can recognize and acknowledge their emotions, resulting in a heightened ability to navigate complex ethical dilemmas that often arise within the legal profession.<sup>815</sup>

Emotional literacy, intelligence, and mindfulness training can also give law students the skills to manage emotions in high-pressure situations effectively.<sup>816</sup> Being calm, rational, and empathetic when faced with challenging circumstances is crucial for ethical decisions.<sup>817</sup> By honing

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<sup>813</sup> See: Muir, *supra* note 19 at 3.

<sup>814</sup> See: Martin 2018, *supra* note 178; James 2018, *supra* note 19; James 2011, *supra* note 19; Ayres et al., *supra* note 783; Muir, *supra* note 19; Appleby & Bourke, *supra* note 19; Gerdy, *supra* note 19; Brown 2013, *supra* note 19; Brown 2011, *supra* note 19. Also, see: Montgomery, *supra* note 19; Jackson, *supra* note 191; Jackson, *supra* note 665; Peterson, *supra* note 758; Duncan, Field, & Strevens, *supra* note 727; Schuwerk, *supra* note 727; Krieger 2005, *supra* note 49; Krieger 2011, *supra* note 49; Krieger, *supra* note 49; Sheldon & Krieger, *supra* note 49; Rothstein, *supra* note 65. Also, see: Akpur, *supra* note 43. Also see generally: Menzies, *supra* note 172.

<sup>815</sup> *Ibid.*

<sup>816</sup> See: Melita, *supra* note 113. Also, see generally: Jiménez-Picón et al., *supra* note 114; Fteiha & Awwad, Emotional intelligence correlates with achievement and better health. See: Akpur, *supra* note 43; D’Amico, Geraci & Tarantino, *supra* note 114; Fteiha & Awwad, *supra* note 114; Jiménez-Picón et al., *supra* note 114; Karimi et al., *supra* note 114; Kok et al., *supra* note 114; Martins, Ramalho & Morin, *supra* note 43; Shariatpanahi et al., *supra* note 114; Szczygiel & Mikolajczak, *supra* note 114; Trigueros et al., *supra* note 114; Matthews, Zeidner & Roberts, *supra* note 114; Zhao, Li & Shields, *supra* note 114. Also see: Hamilton, Kitzman & Guyotte, *supra* note 19. Also see generally: Diener, Thapa & Tay, *supra* note 114; Pessoa, *supra* note 48; Catalino & Fredrickson, *supra* note 112; Mohamed Fteiha, & Narmeen Awwad, “Emotional Intelligence and its Relationship with Stress Coping Style” (2020) 7:2 Health Psychology Open 2055102920970416; Matthews, Zeidner, & Roberts, *supra* note 98; James 2011, *supra* note 19; Steiner & Perry, *supra* note 113; Yuen, *supra* note 53; Western Law 2017, *supra* note 19; Western Law 2018, *supra* note 320; Akpur, *supra* note 43; Austin 2019, *supra* note 19; Barrett et al., *supra* note 18; Barsade, *supra* note 19; Brown 2013, *supra* note 19; Brown 2011, *supra* note 19; Catalino & Fredrickson, *supra* note 112; Clore & Huntsinger, *supra* note 19; Douglas, *supra* note 19; Dresser, *supra* note 27; Fenton-O’Creevy et al., *supra* note 19; Fredrickson et al. 2000, *supra* note 158; Fredrickson & Branigan, *supra* note 164; Fredrickson & Joiner, *supra* note 158; Fredrickson & Losada, *supra* note 158; Friedland, *supra* note 19; Garfinkel et al., *supra* note 19; Grossi, *supra* note 25; Hamilton, Kitzman, & Guyotte, *supra* note 19; James 2011, *supra* note 19; James 2018, *supra* note 19; James 2020, *supra* note 21; Jones 2018, *supra* note 19; Jung et al., *supra* note 19; Karimi et al., *supra* note 98; Kok et al., *supra* note 114; Lakomski & Evers, *supra* note 19; Lench, Flores, & Bench, *supra* note 19; Lerner et al., *supra* note 19; Maroney 2011, *supra* note 19; Martin 2014, *supra* note 19; Martins, Ramalho, & Morin, *supra* note 43; Montgomery note 19; Lindquist, MacCormack, & Shablack, *supra* note 94; Naqvi, Shiv, & Bechara, *supra* note 19; O’Brien, *supra* note 19; Pessoa, *supra* note 48; Salovey & Mayer, *supra* note 48; Sheldon & Krieger, *ibid*; Szczygiel, Daniela, & Mikolajczak, *supra* note 162; Tugade & Fredrickson, *supra* note 158; Tyng et al., *supra* note 19; Vilca-Pareja et al., *supra* note 98; Matthews, Zeidner, & Roberts, *supra* note 98; Damasio, *supra* note 19; Goleman, *supra* note 113.

<sup>817</sup> “Stress, negative emotions, or intense emotions left unregulated or unacknowledged have been shown to lessen the cognitive resources needed for effective professional decision-making. When cognitive resources are depleted, reasoning is impaired and individuals tend to make hasty, biased decisions. Professional decision-making strategies

mindfulness and emotional intelligence, law students can cultivate the capacity to consider the needs and perspectives of others, leading to more fair and just outcomes.<sup>818</sup>

Furthermore, emotional literacy, intelligence, and mindfulness training can promote self-reflection and self-regulation, enabling law students to evaluate and reassess their decision-making process continuously.<sup>819</sup> This self-awareness can enhance their ability to identify and correct biases or prejudices that may cloud their judgment.<sup>820</sup> Law students can develop a solid

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can help counteract these effects.” See: McIntosh, Antes & DuBois, *supra* note 19 at 5. On page 6, the SMART strategies include: (1) Seeking help; (2) Managing emotions; (3) Anticipating consequences; (4) Recognizing rules and context; and (5) Testing assumptions and motives. Also see generally: Menzies, *supra* note 172.

<sup>818</sup> See: Westaby & Jones, *supra* note 712; Gerdy, *supra* note 19; Heavin & Keet, *supra* note 115. Also, see: Chlap & Brown, *supra* note 625 at 159, which found that “psychological stress and burnout in lawyers was related to greater work-stress and a lack of perceived organisational support, and in turn, psychological stress and burnout were associated with low empathy in lawyers. Results suggest that stressful and unsupportive workplaces may contribute to stress, affective distress and burnout in lawyers that may have implications for lawyer client interactions.”

<sup>819</sup> “Central to autonomous self-regulation is the capacity to reflectively consider one’s behavior and its congruency with one’s personal values and needs. The enhanced attention and awareness of mindfulness promotes such ability. This awakened state also allows consciousness to acquire a clarity and freshness that act as liberating agents of automatic responses, and brings people to reflect upon the “why” of actions, hence fostering more self-endorsed behavior. Finally, it appears that mindfulness can function as an antidote against external and internal controlling forces that frequently undermine the selection and enactment of more volitional behaviors.” See: Patricia P. Schultz, & Richard M. Ryan, “The ‘Why,’ ‘What,’ and ‘How’ of Healthy Self-Regulation: Mindfulness and Well-Being from a Self-Determination Theory Perspective” in Brian D. Ostafin, Michael D. Robinson, & Brian P. Meier, eds., *Handbook of Mindfulness and Self-Regulation* (New York: Springer, 2015) 81 at 94. Also, see: Hopkins & Deepa, *supra* note 19; Martin 2018, *supra* note 178; Montgomery, *supra* note 19; Douglas, *supra* note 19; James 2011, *supra* note 19; Muir, *supra* note 19; Martin 2014, *supra* note 19 writes at 15: “By improving state of mind, clarity of thinking, and efficiency, mindfulness can arguably help lawyers experience less stress and more career satisfaction. Mindfulness also may help lawyers provide better and more efficient services to clients through better listening and negotiation skills, and it may also help reduce the number and severity of lawyer mistakes. Perhaps more obviously, mindfulness tools can improve conflict resolution, foster ethical behavior, and avoid the negative emotions that sometimes get in the way of producing the best possible result for a client.” Also, see generally: Danziger, Levav, & Avnaim-Pesso, *supra* note 791; Bryant, *supra* note 791; Kleiner, *supra* note 791. But see: Glöckner, *supra* note 791.

<sup>820</sup> A 2011 study illuminated that judges have emotions and that it effects their decision-making ability. For example, see: Maroney 2011, *supra* note 19 writes at page 1488 that, “[t]he idea that a good judge is able to insulate her decision making from any emotional influence is deeply rooted in European Enlightenment notions of rationality and objectivity, to which emotion was thought to be opposed.” Maroney at 1490 “proposes a model for emotional regulation on the bench” that goes beyond the usual blanket denial and includes emotional intelligence.” Also see: Muir, *supra* note 19; Friedland, *supra* note 19; Tiscione, *supra* note 19; Sheldon & Krieger 2014, *supra* note 49: Value Importance, Value Enactment, and Well-Being” (2014) 38:5 Motivation and Emotion 609–619; Austin 2019, *supra* note 19; Jacobowitz & Rogers, *supra* note 19; Martin 2014, *supra* note 19; Reuben, *supra* note 19; Huang 2015, *supra* note 19. Self-awareness and mindfulness can reduce bias. See: Lueke & Gibson, *supra* note 19; Kang, Gray & Dovidio, *supra* note 19; Stell & Farsides, *supra* note 19. Also see generally: Weng, *supra* note 19; Lopez, *supra* note 19; Ioanide, *supra* note 19; White et al., *supra* note 19; Salzen, *supra* note 19; Silvia, *supra* note 19; Maroney 2011, *supra* note 19; McIntosh, Antes & DuBois, *supra* note 19; Vago & David, *supra* note 19; Eurich, *supra* note 19.



ethical foundation to build their professional careers through this introspection.<sup>821</sup> Investing in student wellbeing is an ethical responsibility and a strategic choice that will likely yield competent and successful legal professionals. This thesis now turns to how improving the wellbeing of law students could likely improve diversity and inclusion within the profession.

## 7.5. Improving the Wellbeing of Marginalized Law Students Can Improve Diversity & Inclusion Within the Profession of Law

Both law schools and the profession are dedicated to diversity and inclusion.<sup>822</sup> Despite this commitment, marginalized law students experience higher rates of psychological distress and

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<sup>821</sup> There have been successful endeavours in legal education regarding, emotional literacy, intelligence, and mindfulness. See: Reuben & Sheldon, *supra* note 19 at 242-243 write that they “conducted an empirical study of forty-seven first year, first semester law students at the University of Missouri School of Law during the 2013 and 2014 academic years to see what kind of impact, if any, mindfulness training might have on their stress, focus, well-being, and academic performance. We conducted the training during the eight weeks leading up to first semester exams. The results were positive and significant: students who chose to take the training had reason to do so because they were psychologically less healthy at the beginning of the training in September than those who did not choose to take the training. As a result, their scores improved radically since they were less stressed, more focused, and happier heading into exams than when they started the training in the middle of the first semester.’ Moreover, when compared to the control group, their scores improved during the training while the control group’s did not.” Also, see: Rosky et al., *supra* note 19, which was a study that found students who took the “Mindful Lawyering” 13-week course had improved well-being. Also, see: Appleby & Bourke, *supra* note 19, which evaluated measures taken at an Australian law college with overall promise. Also, see generally: Martin 2013, *supra* note 19; Reuben, *supra* note 19; Gerdy, *supra* note 19; Lehtinen et al., *supra* note 74; Montgomery, *supra* note 19; Green & Simon, *supra* note 43; James 2011, *supra* note 19; Douglas, *supra* note 19; Brown 2013, *supra* note 19; Brown & Ryan, *supra* note 178; O’Grady, *supra* note 49.

<sup>822</sup> In the United States, see: ABA Standards, *supra* note 28, s 303 (a)(1), 303 (c)1–2. Section 303 (a)(1) states that “A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following: (1) one course of at least two credit hours in professional responsibility that includes substantial instruction in rules of professional conduct, and the values and responsibilities of the legal profession and its members.” Interpretation 303-6 states: “[w]ith respect to 303(a)(1), the importance of cross-cultural competency to professionally responsible representation and the obligation of lawyers to promote a justice system that provides equal access and eliminates bias, discrimination, and racism in the law should be among the values and responsibilities of the legal profession to which students are introduced.” Section 303 (c) states: “A law school shall provide education to law students on bias, cross-cultural competency, and racism: (1) at the start of the program of legal education, and (2) at least once again before graduation.” Interpretation 303-6 states, “the importance of cross-cultural competency to professionally responsible representation and the obligation of lawyers to promote a justice system that provides equal access and eliminates bias, discrimination, and racism in the law should be among the values and responsibilities of the legal profession to which students are introduced.” Also, see: ABA Model Code, *supra* note 28 r 8.4(g). Rule 8.4 (g) states that “[i]t is professional misconduct for a lawyer to: (g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.” In Australia, see: CALD, *supra* note 28, s 2.3.3 (a), 2.3.3 (d). Section 2.3.3 (a) states the curriculum should seek to develop “the principles of ethical conduct and the role and responsibility of lawyers, including, for example, their pro bono obligations, and Aboriginal and Torres Strait Islander perspectives on and intersections with the law.” Section 2.3.3 (d) states the curriculum should seek to develop an “awareness of and

trauma than their colleagues. Law schools in Canada that improve the wellbeing of marginalized students will actively take steps toward improving diversity and inclusion within the profession and acting on the Truth and Reconciliations' Calls to Action.<sup>823</sup>

Pursuing diversity and inclusion has become a key objective for law societies, bar associations, and accredited law schools in the United States, Australia, the United Kingdom, and Canada.<sup>824</sup> These organizations recognize the importance of fostering a sense of social connection and

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commitment to principles of ethical conduct, professional responsibility, and community service.” Also, see: AU Threshold Learning Outcomes, *supra* note 28 at 10. Threshold Learning Outcome #2 at 10 states: “Graduates of the Bachelor of Laws will demonstrate: (a) an understanding of approaches to ethical decision-making, (b) an ability to recognise and reflect upon, and a developing ability to respond to, ethical issues likely to arise in professional contexts, (c) an ability to recognise and reflect upon the professional responsibilities of lawyers in promoting justice and in service to the community, and (d) a developing ability to exercise professional judgement.” For solicitors in Australia, see: AU Solicitor Rules, *supra* note 27, s. 42. Section 42 prohibits a solicitor from engaging in conduct which constitutes discrimination, sexual harassment, or workplace bullying within the course of practice. For barristers in Australia, see: AU Barrister Uniform Rules, *supra* note 27, s. 123. Section 123 prohibits a solicitor from engaging in conduct which constitutes discrimination, sexual harassment, or workplace bullying within the course of practice. Also, see: Legal Profession Act 2006, *supra* note 52, s. 6. Section 6 reads: “The purposes of this Act are as follows: (a) to provide for the regulation of legal practice in the ACT in the interests of the administration of justice and for the protection of consumers of the services of the legal profession and the public generally.” In the UK, see: UK QAA 2019, *supra* note 28, s. 2.4.iii. Section 2.4.iii. requires “awareness of principles and values of law and justice, and of ethics.” For barristers in the UK, see: BSB Handbook, *supra* note 28 at Part 2. B., which outlines the Core Duties of a Barrister. Core Duty 8 states that a barrister “must not discriminate unlawfully against any person.” Rule C12 states that a barrister “must not discriminate unlawfully against, victimise or harass any other person on the grounds of race, colour, ethnic or national origin, nationality, citizenship, sex, gender re-assignment, sexual orientation, marital or civil partnership status, disability, age, religion or belief, or pregnancy and maternity.” For solicitors in the UK, see: SRA Solicitor Code, *supra* note 27, s. 1.1. Section 1.1 of the SRA Solicitor Code states that “[y]ou do not unfairly discriminate by allowing your personal views to affect your professional relationships and the way in which you provide your services.” Also, see: UK Legal Services Act, *supra* note 28; Equality Act, *supra* note 28. In Canada, see: CDA Nat’l Rqmt., *supra* note 28, s. 2, 3.2.a. Section 2 states that “[t]he applicant must have demonstrated an awareness and understanding of the ethical dimensions of the practice of law in Canada and an ability to identify and address ethical dilemmas in a legal context.” Section 2.1.a.7. states the applicant must have knowledge of “the importance and value of serving and promoting the public interest in the administration of justice.” Section 3.2.a states that “[t]he applicant must have an understanding of the core principles of public law in Canada, including, a. the constitutional law of Canada, including federalism and the distribution of legislative powers, the Charter of Rights and Freedoms, human rights principles and the rights of Aboriginal peoples of Canada.” Also, see: CDA Model Code, *supra* note 16, r. 6.3. Rule 6.3 states that “[a] lawyer must not directly or indirectly discriminate against a colleague, employee, client or any other person.” Also, see: TRC Report, *supra* note 25; TRC Calls, *supra* note 25.

<sup>823</sup> See: CDA Nat’l Rqmt., *supra* note 28, s. 2, 3.2.a; CDA Model Code, *supra* note 28, r. 6.3; TRC Report, *supra* note 25; TRC Calls, *supra* note 25.

<sup>824</sup> In the United States, see: ABA Standards, *supra* note 28, s. 303 (a)(1), 303 (c)1–2, Interpretation 303-6; ABA Model Code, *supra* note 28, r. 8.4(g). In Australia, see: CALD, *supra* note 28, s. 2.3.3 (a), 2.3.3 (d); AU Threshold Learning Outcomes, *supra* note 28 at 10. For solicitors in Australia, see: AU Solicitor Rules, *supra* note 28 s. 42. For barristers in Australia, see: Barrister Uniform Rules, *supra* note 28 s. 123. Also, see: Legal Profession Act 2006, *supra* note 52. In England and Wales, see: UK QAA 2019, *supra* note 28, s. 2.4.iii; UK QAA 2023, *supra* note 27. For barristers in the UK, see: BSB Handbook, *supra* note 28, Core Duty 8, Rule C12. For solicitors in the UK, see: SRA Solicitor Code, *supra* note 28, s. 1.1. Also, see: UK Legal Services Act, *supra* note 28, s. 1; Equality Act, *supra* note 28. In Canada, see: CDA Nat’l Rqmt., *supra* note 28, s. 2, 3.2.a; CDA Model Code, *supra* note 28, r. 6.3.

belonging within the legal profession to enhance overall wellbeing. This chapter explores how social connection and belonging can contribute to wellbeing and facilitate diversity and inclusion within these jurisdictions.

Social connection is a fundamental aspect of human nature that plays a crucial role in wellbeing, as reviewed in Chapter 2.2.<sup>825</sup> It encompasses a broad range of relationships, including personal friendships, professional networks, and community involvement. These connections give individuals a sense of belonging, support, and social validation, promoting positive mental health and reducing the risk of loneliness and isolation.

Regarding the legal profession, social connection and belonging are particularly important due to the inherent demands and pressures of the field. Law students and practitioners face high stress levels, long working hours, and intense competition. In such an environment, fostering solid social connections can protect against burnout, excessive stress, and mental health issues. Research has consistently shown that individuals who feel connected to and supported by their peers are more resilient, motivated, and satisfied with their professional lives.<sup>826</sup>

Moreover, social connection and belonging can contribute to diversity and inclusion initiatives.<sup>827</sup> By fostering a sense of belonging within the law school and legal community, organizations can create an environment where individuals from diverse backgrounds feel welcome and valued.<sup>828</sup> This, in turn, promotes meaningful participation and the inclusion of underrepresented groups, leading to a more diverse profession. When individuals feel connected

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<sup>825</sup> See generally: Lieberman, *supra* note 51; Young *supra* note 51; Davidson & Mcewen, *supra* note 120; Cook, *supra* note 120; Mineo, *supra* note 51; Solan, *supra* note 120; Harvard Study, *supra* note 51. Also, see generally: Murthy Advisory, *supra* note 31; Murthy, *supra* note 31; Kubzansky, Epel & Davidson, *supra* note 17; Holt-Lunstad, Smith, & Layton, *supra* note 151.

<sup>826</sup> *Ibid.*

<sup>827</sup> See generally: Capers, *supra* note 518; Adam Peck, David M. Rosch, & D. M. De Sawal, “Student Belonging: A Critical Pillar in the Scholarship of Diversity, Equity, and Inclusion in Campus Activities” (2022) 4:1 Journal of Campus Activities Practice and Scholarship 5–11. Also, see: CDA Nat’l Rqmt., *supra* note 28, s 2, 3.2.a; CDA Model Code, *supra* note 28, r 6.3; TRC Report, *supra* note 25; TRC Calls, *supra* note 25; SK Legal Profession Act, *supra* note 231.

<sup>828</sup> See generally: Elana Curtis et al., “Why Cultural Safety Rather than Cultural Competency is Required to Achieve Health Equity: A Literature review and Recommended Definition” (2019) 18:1 International Journal for Equity in Health 174; Franks, *supra* note 269.

and accepted, they are more likely to share their unique perspectives, experiences, and insights, enriching the legal field and challenging existing norms and biases.

Social connection and belonging are vital elements, enhancing the wellbeing of the legal profession and achieving diversity and inclusion objectives. By prioritizing these aspects, law societies, bar associations, and accredited law schools can create an environment that promotes positive mental health, reduces isolation, combats stigma, and nurtures a diverse and inclusive legal community. Ultimately, a profession that prioritizes social connection and belonging thrives, making it imperative for law schools to invest in these initiatives.

## 7.6. Conclusion

The case for improving law student wellbeing is a pressing and imperative one. Law students are at high risk of trauma, psychological distress and substance use, and the culture within legal education—including the experience of colonization, the belief in the neutrality of the law, and the stress and isolation experienced by students—all contribute to this heightened risk. It is imperative to produce ethical and competent legal professionals.

By prioritizing wellbeing, law schools can improve their students' quality of life and career satisfaction and contribute to improving diversity and inclusion within the profession. It enhances ethical decision-making and judgment, promotes a positive mental health environment, combats isolation and stigma, and nurtures a diverse and inclusive legal community.<sup>829</sup> In addition to all the other benefits that may arise from improving the wellbeing of law students, law schools' reputations may be enhanced, leading to increased funding opportunities and the engagement of alumni who share their expertise.

Law schools have long been known for producing successful and accomplished graduates. However, more is needed for these graduates than to simply obtain gainful employment. Their level of satisfaction in their careers plays a crucial role in the reputation and future success of the law school. When law school graduates have more satisfying careers, it benefits the individual,

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<sup>829</sup> See generally: Krieger 2005, *supra* note 49; Krieger 2011, *supra* note 49.

increases alumni support and contributions, and improves the law school's reputation. Further improving the wellbeing of law students will assist them in their future careers as legal professionals by providing them with skills to communicate and understand their clients' needs, thus improving their ability to act in the public interest.

Considering the evidence presented in this thesis, addressing mental health within legal education is urgent. The following and final chapter argues that law schools must implement wellbeing-focused and trauma-informed legal education to create an environment that supports the mental health of its students. This approach will benefit the individual students and the legal profession, thereby ensuring the future success and sustainability of the legal profession in Canada.

## Chapter 8: Conclusion & Recommendations: Wellbeing-Focused & Trauma-Informed Legal Education

### 8.1. Conclusion

Soul-tormenting emotions such as anguish, hopelessness, despair, sadness, guilt, shame, dread, confusion, dissonance, and loneliness are spreading like wildfire worldwide, affecting the young and marginalized most.<sup>830</sup> Human beings are becoming more and more overwhelmed and experiencing alarmingly high rates of “extreme stress and an emotional and/or cognitive intensity to the point of feeling unable to function.”<sup>831</sup> Further, there is a loneliness epidemic sweeping across the continents.<sup>832</sup> The inability to function optimally reduces productivity, imagination, innovation, performance, creativity, judgment, and engagement, which is ultimately why mental health has become a worldwide crisis.<sup>833</sup>

Despite the worldwide mental health crisis disproportionately inflicting its suffering on the young and marginalized and knowing that law students experience rates of distress exceeding that of the general population, only three studies have ever been published assessing law

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<sup>830</sup> See: Carucci, *supra* note 1; Kuehn, *supra* note 1; Gourguechon, *supra* note 211; Wainberg et al., *supra* note 1; NDTV, *supra* note 1; World Mental Health Report, *supra* note 1. There is a mental health crisis more significant than that even experienced by the general population, among university students, young adults, and marginalized peoples. In the United States, see: Lipson et al., *supra* note 2; Terlizzi & Schiller, *supra* note 2; Abrams, *supra* note 2. In Australia, see: Browne & Munro, *supra* note 2; Carter et al., *supra* note 2. In the UK, see: Thorley, *supra* note 2; Lewis & Bolton, *supra* note 2; Campbell et al., *supra* note 2. In Canada, see: Kim, *supra* note 2; National Collaborating Centre for Determinants of Health, *supra* note 2; Canadian Alliance of Student Associations (CASA), *supra* note 2; Linden & Stuart, *supra* note 2; Alghoul, *supra* note 2; Drolet & Sarabia, *supra* note 2; Miller, *supra* note 2; Centers for Disease Control and Prevention, *supra* note 2; Moyser, *supra* note 2; Nelson & Wilson, *supra* note 2. Globally, see Barreto, *supra* note 2; Barry, *supra* note 2; Patel et al., *supra* note 2; Williams & Etkins, *supra* note 2. Also see generally: Matheson et al., *supra* note 2; Czyzewski, *supra* note 2.

<sup>831</sup> See: Brown 2021, *supra* note 18 at 6; Gabour Mate, Myth of Normal

<sup>832</sup> See generally: Lieberman, *supra* note 51; Young *supra* note 51; Davidson & McEwen, *supra* note 120; Cook, *supra* note 120; Mineo, *supra* note 51; Solan, *supra* note 120; Harvard Study, *supra* note 51. Also, see generally: Murthy Advisory, *supra* note 31; Murthy, *supra* note 31; Kubzansky, Epel & Davidson, *supra* note 17; Holt-Lunstad, Smith, & Layton, *supra* note 151; “Social Isolation and Loneliness,” online: *World Health Organization* <<https://www.who.int/teams/social-determinants-of-health/demographic-change-and-healthy-ageing/social-isolation-and-loneliness>>; Powell, *supra* note 601; Taylor et al. 2023, *supra* note 601; Also, see generally: PBS NewsHour, *supra* note 601; Brandt et al., *supra* note 601; Mushtaq et al., *supra* note 602; Dangerfield, *supra* note 605; Jabakhanji, *supra* note 605; CAMH, *supra* note 605; CAMH, *supra* note 605.

<sup>833</sup> See generally: Gatland, *supra* note 65; Rajgopal, *supra* note 153; Boehm & Lyubomirsky, *supra* note 114; Walsh, Boehm & Lyubomirsky, *supra* note 114; Yaribeygi et al., *supra* note 761. Also see generally: Theo van der Voordt, & Per Anker Jensen, “The Impact of Healthy Workplaces on Employee Satisfaction, Productivity and Costs” (2021) 25:1 Journal of Corporate Real Estate 29–49; Bevan & Cooper, *supra* note 96; Callaghan et al., *supra* note 96; Health Club Management: HCM, *supra* note 96; Rempel, *supra* note 69.

students' psychological distress in Canada.<sup>834</sup> In 1997, "law students scored worse than the population mean on vocational satisfaction, time pressure, depression, and anxiety."<sup>835</sup> In 2012, of the 14,863 law students, lawyers, and judges who were Canadian Bar Association members, ninety-four percent experienced stress and burnout compared to twenty-two point-seven percent of all Canadians.<sup>836</sup> Further, sixty-eight percent reported anxiety.<sup>837</sup> In 2017, two out of three McGill law students reported "psychological health challenges" and "[h]alf identif[ied] their experience at McGill Law" as harming their wellbeing.<sup>838</sup>

Furthermore, the studies reviewed in this thesis disclosed that law students experience higher levels of psychological distress than students in other university programs.<sup>839</sup> Given that marginalized people, in general, experience higher rates of psychological distress than the general population, it is reasonable to conclude that marginalized law students are not immune to that disproportionately harmful experience.<sup>840</sup> Despite the potential harm and suffering that can

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<sup>834</sup> In Canada, only three published studies on law student psychological distress or wellbeing exist. See: Helmers et al., *supra* note 3, Ipsos Reid, *supra* note 11; McGill, *supra* note 3. Law students have been found to experience higher rates of psychological distress than the general population in the United States. See: Shanfield & Benjamin, *supra* note 3 at 72; Benjamin et al., *supra* note 3 at 241, 246; Reifman, McIntosh & Ellsworth, *supra* note 3 at 102; Organ, Jaffe & Bender, *supra* note 3 at 136. Law students have been found to experience higher rates of psychological distress than the general population in Australia. See: Kelk et al., *supra* note 3 at 11-12; Leahy et al., *supra* note 3 at 613; O'Brien, Tang & Hall, *supra* note 3 at 53; O'Brien, Tang & Hall, 2011 Changing our Thinking, *supra* note 3 at 159-160; Skead & Rogers, *supra* note 3 at 572; Bergin & Pakenham, *supra* note 3 at 401; Skead, Rogers & Doraisamy, *supra* note 3 at 93; Skead, Rogers & Johnson, *supra* note 3 at 351. In the United Kingdom, see: Lewis & Cardwell, *supra* note 3. In Canada, see: Helmers et al., *supra* note 3; McGill 2017 *supra* note 3.

<sup>835</sup> See: Helmers et al., *ibid* at 710.

<sup>836</sup> See: Ipso Reid, *supra* note 11; Government of Canada, Statistics Canada, "Perceived Life Stress, 2012," (17 June 2013), online: *Statistics Canada* <<https://www150.statcan.gc.ca/n1/pub/82-625-x/2013001/article/11842-eng.htm>>.

<sup>837</sup> *Ibid*.

<sup>838</sup> See: McGill, 2017 *supra* note 3 at 1.

<sup>839</sup> In the United States, see: Shanfield & Benjamin, *supra* note 3 at 221; Organ, Jaffe & Bender, *supra* note 3 at 136-137. Also see: Harries, Kim & Grant, *supra* note 3. In Australia, see: Kelk et al., *supra* note 3 at 12; Leahy et al., *supra* note 3 at 611; Skead & Rogers, *supra* note 3 at 82. But see: Larcombe, Finch & Sore, *supra* note 3 at 265. In the United Kingdom, see: Bogowicz et al., *supra* note 3; Lewis & Cardwell, *supra* note 3. In Canada, see: Helmers et al., *supra* note 3.

<sup>840</sup> Marginalized law students experience higher rates of psychological distress in the United States: Agatstein et al., *supra* note 10. Marginalized peoples experience higher levels of health issues due to the social determinants of health, which are directly related to the racism, discrimination and stigmas encountered by colonial structures that remain entrenched within society. See: Bastos, Harnois & Paradies, *supra* note 41; Paradies et al., *supra* note 296; Kim, *supra* note 2; Czyzewski, *supra* note 2; Kairuz et al., *supra* note 296. Also see generally: Public Health Agency of Canada, *supra* note 2; Medical News Today, *supra* note 2; World Health Organization, *supra* note 2; American Psychiatric Association, *supra* note 2; Centers for Disease Control and Prevention, *supra* note 2; Moyser, *supra* note 2; Nelson & Wilson, *supra* note 2; Barreto, *supra* note 2; Barry, *supra* note 2; Patel et al., *supra* note 2; National Collaborating Centre for Determinants of Health, *supra* note 2; McGuire & Miranda, *supra* note 2; Williams & Etkins, *supra* note 2.

result from such high levels of psychological distress, even more, concerning is that for law students, the suffering appears to remain throughout their professional lives, at least until they reach their senior years of practice.<sup>841</sup>

Studies expose that the disproportionately high levels of distress experienced by law students do not significantly subside.<sup>842</sup> Lawyers worldwide experience lower levels of wellbeing than the world's general population.<sup>843</sup> American, Australian, British and Canadian legal professionals experience levels of psychological distress exceeding those of the general population and people in other occupations.<sup>844</sup> Marginalized legal professionals have reported rates of psychological distress higher than people working in other professions and occupations.<sup>845</sup>

Trauma, being the most detrimental factor to mental health, inflicts its suffering on law students and legal professionals with no less wrath than it inflicts on the general population.<sup>846</sup> Of interest

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<sup>841</sup> In Canada, see: Cadieux et al. 2022, *supra* note 3. Also see generally: DAN, *supra* note 220; Krill et al. 2023, *supra* note 44; Thiese et al., *supra* note 7; Krill, Johnson & Albert, *supra* note 7; Polskaya & Melnikova, *supra* note 214.

<sup>842</sup> In the United States, see: Benjamin et al., *supra* note 3; Beck, Sales & Benjamin, *supra* note 7. In Canada, see: Cadieux et al. 2022, *ibid*.

<sup>843</sup> See: International Bar Association, *supra* note 6.

<sup>844</sup> In the United States, see: Beck, Sales & Benjamin, *supra* note 7; Krill, Johnson & Albert, *supra* note 7 at 50-51. But see: Listokin & Noonan, *supra* note 7. In Australia, see: Kelk et al., *supra* note 3; Bergin & Jimmieson, *supra* note 7 at 434; Chan, Poynton & Bruce, *supra* note 7; Skead, Rogers & Doraisamy, *supra* note 3. In the United Kingdom, see: Soon et al., *supra* note 7. In Canada, see: Cadieux et al. 2022, *supra* note 3 at 27, 30. Also see: Cadieux et al., (Quebec), *supra* note 7. The psychological distress experienced by legal professionals also exceeds that of other occupations in the United States, the United Kingdom and Canada. In the United States, see: Eaton et al., *supra* note 7; Thiese et al., *supra* note 7. No studies have been conducted in Australia which compare the psychological distress of legal professionals to other professions. See: Soon et al., *supra* note 8 in the United Kingdom. In Canada, see: Cadieux et al., 2022, *ibid*. Also, see generally: Yves, *supra* note 8.

<sup>845</sup> Marginalized legal professionals have been found to have poorer wellbeing than their colleagues. See: International Bar Association, *supra* note 6 at 40. In the United States, see: Nelson et al., *supra* note 10; Cokley et al., *supra* note 10. Also see: Anker & Krill, *supra* note 10. In Canada, see: Cadieux et al., 2022 *ibid*. In Australia, women law students and legal professionals reported higher psychological distress than men see, Kelk et al., *ibid* at 11. There are no studies regarding the wellbeing of marginalized legal professionals in the United Kingdom, but see generally: Pender, *supra* note 10.

<sup>846</sup> Trauma is the leading cause of health conditions. See: Felitti et al. *supra* note 12; SAMHSA, *supra* note 80; Center for Substance Abuse Treatment (US) Chapter 3, *supra* note 22. Also see generally: Perry & Winfrey, *supra* note 23; Bremner, *supra* note 80; Lanius, Terpou & McKinnon, *supra* note 80; Wilson, Lonsway & Archambault, *supra* note 80; Kolk, *supra* note 80; Kolk, *supra* note 80; Harvard Health, *supra* note 80; Maté 2018, *supra* note 31; Polskaya & Melnikova, *supra* note 214; Farber, *supra* note 214. Exposure to potentially traumatic events is prevalent, see: Lee et al., *supra* note 215. Also see generally: Young 2023, *supra* note 190; Koenen et al., *supra* note 12; Van Ameringen et al., *supra* note 12; Heidinger, *supra* note 12; Mills et al., *supra* note 12; Kessler et al., *supra* note 12. For the only study that asked law students about trauma, see: Jaffe, Bender & Organ, *supra* note 21. Concerning legal professional trauma, see: Cadieux, et al. Targeted Recommendations 2022, *supra* note 224 table 2. Also see: Leclerc, Wemmers & Brunet, *supra* note 21; Léonard, Saumier & Brunet, *supra* note 21. Also, see



was the most recent American study on law student wellbeing.<sup>847</sup> It disclosed that “[a]lmost 50% reported that having experienced a trauma or injustice was important in their motivation for attending law school.”<sup>848</sup> Unsurprisingly, those within the legal community encounter trauma with frequency.<sup>849</sup> It is hardly a secret that the justice system is plagued with trauma.<sup>850</sup> To deal with the extreme levels of psychological distress and trauma experienced by so many law students and legal professionals, substances are utilized with alarming frequency.<sup>851</sup> Despite the impact on individuals, their families, friends, colleagues, their community, their profession, their competence, and their judgement, the legal community has not acted sufficiently or urgently

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generally: Oehme & Stern, *supra* note 12 at 1320; Maguire & Byrne, *supra* note 21; Weir et al., *supra* note 21; Weir, Jones & Sheeran, *supra* note 21; James 2020, *supra* note 21; Love, *supra* note 175. It is well known that the legal system can be traumatic. See: Netzel, *supra* note 21; Katz 2020, *supra* note 22; TRC Report, *supra* note 25; TRC Calls, *supra* note 25; Myrna McCallum, *The Trauma-Informed Lawyer* podcast, online: < <https://www.myrnamccallum.co/podcast>>; McCallum, *supra* note 53; McCallum, *supra* note 230; Maki et al., eds, *supra* note 229. Also see: D. J. Jones, “Universal Precautions: A Methodology for Trauma-Informed Justice: This article is related directly to the 6th International Law Enforcement & Public Health (LEPH) Virtual Conference in March 2021.” (2021) 6:6 Journal of Community Safety and Well-Being, 160 [Jones Trauma-Informed]; D. J. Jones, “Compassion as a Leadership Competency in Justice.” (2021) 6:6 Journal of Community Safety and Well-Being 160. Also see: TRC Report, *supra* note 25; TRC Calls, *supra* note 25. Also see generally: Lee et al., *supra* note 200; Mitchell, *supra* note 232; Burrage, Momper & Gone, *supra* note 232; SAMHSA, *supra* note 22; Oehme & Stern, *supra* note 12.

<sup>847</sup> *Ibid* Jaffe, Bender & Organ at 55.

<sup>848</sup> *Ibid*.

<sup>849</sup> See: Cadieux, et al. Targeted Recommendations 2022, *supra* note 224 at Table 2; Leclerc, Wemmers & Brunet, *supra* note 21; Léonard, Saumier & Brunet, *supra* note 21; Oehme & Stern, *supra* note 12 at 1320; Maguire & Byrne, *supra* note 21; Weir et al., *supra* note 21; Weir, Jones & Sheeran, *supra* note 21; James 2020, *supra* note 21; Love, *supra* note 175.

<sup>850</sup> It is well known that the legal system can be traumatic. See: Netzel, *supra* note 21; Katz 2020, *supra* note 22; TRC Report, *supra* note 25; TRC Calls, *supra* note 25; McCallum, *supra* note 849; McCallum, *supra* note 53; Maki et al., eds, *supra* note 229. Also see: Jones Trauma-Informed, *supra* note 849.

<sup>851</sup> In the United States concerning law students, see: AALS Report *supra* note 31 at 42, 43, 45; Organ, Jaffe, & Bender, *supra* note 3 at 127; Reed et al., *supra* note 8 at 152; Jaffe, Bender, & Organ, *supra* note 21 at 16. To the author’s knowledge, no studies have evaluated Australian law student substance use but see generally: Engs & Mulqueeney, *supra* note 31; Doraisamy, *supra* note 31; Allman, *supra* note 31; Ferguson, *supra* note 31. In the United Kingdom, concerning law students, see: Bogowicz et al., *supra* note 3 at 134. In Canada, concerning law students, see: McGill, *supra* note 3 at 8. Legal professional’s substance use is prevalent. In the United States, see: Benjamin, Darling, & Sales, *supra* note 7; Krill, Johnson, & Albert, *supra* note 7; Krill, *supra* note 31; Anker & Krill, *supra* note 10; Listokin & Noonan, *supra* note 7. Also see: Buchanan & Coyle, *supra* note 11; Sahadi, *supra* note 31; Zimmerman, *supra* note 31. In Australia, see: Bergin & Jimmieson, *supra* note 7; Chan, Poynton & Bruce, *supra* note 7. Generally, see Goodliffe & Brooke, *supra* note 31 in the United Kingdom. Although no studies on legal professional substance use have been conducted in the UK, given the prevalence of substance use among law students in the United Kingdom, the results would likely be similar for legal professionals. See: Bogowicz et al., *supra* note 3. Also, see generally: Ames, *supra* note 31; Aldridge, *supra* note 31; Counsel Magazine, *supra* note 31; Matthews-King, *supra* note 31; Office of National Statistics, *supra* note 31; Banerji, *supra* note 31; The Law Society, Junior Lawyers Division, *supra* note 31. In Canada, see: Cadieux et al., 2022 *supra* note 3. Also, see generally: Olijnyk, *supra* note 31; Olijnyk, *supra* note 31; Faguy, *supra* note 31. Concerning substance use and professional identity, see: Kiepek & Beagan, *supra* note 31. Also, see generally: Amaro et al., *supra* note 31.

enough to address the severity of the mental health crisis in law schools and among legal professionals.

What is contributing to these alarming statistics among law students and lawyers? The culture of law has been frequently identified as a contributing factor.<sup>852</sup> The culture of law was defined in this thesis as the shared experiences, practices, attitudes and beliefs within the law school and the legal profession.<sup>853</sup> All are common law jurisdictions with a shared legal origin based on colonialism.<sup>854</sup> The history and remnants of colonialism enable and contribute to existing stigmas, discrimination, racism, and lack of diversity within the profession.<sup>855</sup> Isolation, loneliness, malnutrition, and lack of exercise and sleep can quickly arise from experiences of extreme or chronic stress, fierce competition and heavy workloads.

Furthermore, the law has traditionally been conceived of as neutral, objective, and rational, thus devaluing emotion's significant role in competence, decision-making, social connection or client relationships, bias, mental health, and wellbeing.<sup>856</sup> Not acknowledging, learning, and

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<sup>852</sup> In the United States, see: See: Buchanan & Coyle, *supra* note 11 at 36. Also see: Schmitz, *supra* note 2. "In Australia see: Chan, Poynton & Bruce, *supra* note 7; Cubillo, *supra* note 41; Chan, *supra* note 66; Brasch QC, *supra* note 68. In the United Kingdom see: The Law Society, Junior Lawyers Division, *supra* note 31; The Law Society (UK), *supra* note 68; Rimmer, *supra* note 66; People in Law, *supra* note 68. In Canada, see: Greenberg & Stanford, *supra* note 11 at 4; Ipsos Reid, *supra* note 11 at 4; Roderique, *supra* note 41. Also, see generally: Canning et al., *supra* note 68 at 626. A study found that "[e]mployees who perceived their organization to endorse a fixed (vs. growth) mindset reported that their company's culture was characterized by less collaboration, innovation, and integrity, and they reported less organizational trust and commitment. These findings suggest that organizational mindset shapes organizational culture."

<sup>853</sup> See: Schmidt, Heffernan & Ward, *supra* note 275; Ewert, *supra* note 276.

<sup>854</sup> In the United States, see: Rothstein, *supra* note 25; Krook, *supra* note 25; Agénor et al., *supra* note 40; Perez, *supra* note 287. In Australia, see: Martin, *supra* note 25; Beazley, *supra* note 25; Edgeloe, *supra* note 25; Cunneen, *supra* note 41; Watson, *supra* note 41. In the UK, see generally: Lindqvist, *supra* note 287; Adebisi 2021, *supra* note 25; Adebisi 2020, *supra* note 25. But see: Child, *supra* note 287. In Canada, see: Backhouse, *supra* note 25; Pue 2016, *supra* note 25; McKay, *supra* note 287; Miller, *supra* note 269; TRC Report, *supra* note 25; TRC Calls, *supra* note 25; MMIWG, *supra* note 25; Roderique, *supra* note 41; Denis, *supra* note 287; Bauman, *supra* note 269; Franks, *supra* note 269; Borrows, *supra* note 269. Regarding colonialism see generally: Glenn, *supra* note 25; Trouillot, *supra* note 293.

<sup>855</sup> See: Czyzewski, *supra* note 2; Glenn, *supra* note 25; Kauanui, *supra* note 287. Colonization occurred in the United States, Canada, and Australia. In the United States, see: Rothstein, *supra* note 25; Krook, *supra* note 25; Agénor et al., *supra* note 40. Also see generally: Perez, *supra* note 287. In Australia, see: Martin, *supra* note 25; Beazley, *supra* note 25; Edgeloe, *supra* note 25; Cunneen, *supra* note 41; Watson, *supra* note 41. In Canada, see: Miller, *ibid*; Backhouse, *supra* note 25; Pue 2016, *supra* note 25. Also see generally: McKay, *supra* note 287; TRC Report, *supra* note 25; TRC Calls, *supra* note 25; MMIWG, *supra* note 25; Roderique, *supra* note 41; Denis, *supra* note 287; Government of Canada, *supra* note 287; Gunn & Hall, *supra* note 287. In the UK, see generally: Adebisi 2021, *supra* note 25; Adebisi 2020, *supra* note 25; Lindqvist, *supra* note 287. But see: Child, *supra* note 287.

<sup>856</sup> Emotion affects decision-making, learning & memory. See: Damasio, *supra* note 19; Muir, *supra* note 19; Friedland, *supra* note 19; Tiscione, *supra* note 19; O'Grady, *supra* note 49; Austin 2019, *supra* note 19. Also see:

understanding emotion fosters a culture of silence and stigma.<sup>857</sup> Emotions and the inability to express, be open about, understand, re-evaluate, and accept them contribute to people being stuck in emotional worlds plagued with anguish, hopelessness, despair, sadness, guilt, shame, dread, confusion, dissonance, and loneliness. Emotions can be loud, disturbing, beautiful, and terrifying and are enormous in making significant life decisions, such as who to marry, to have children, and what to do or pursue.

The emotions of anguish, hopelessness, dissonance, despair, sadness, guilt, shame, dread, confusion, and loneliness are some of the overwhelming and enduring emotions people may experience when their mental health is in jeopardy and their wellbeing is compromised.<sup>858</sup> Emotions evolved for survival purposes, and the significance of emotions to being human was explained by Daniel Gilbert, a Harvard psychologist, in his book, *Stumbling on Happiness*. Gilbert wrote:

War, peace, art, money, marriage, birth, death, disease, religion-these are all a few of the Really Big Topics over which oceans of blood and ink have been spilled, but they are really big topics for one reason alone: Each is a powerful source of human emotion.<sup>859</sup>

Hopelessness and loneliness are spreading like a plague worldwide. Being overwhelmed and stressed results in impaired cognitive functioning or inability to function optimally. Further, the justice system is saturated with high-level emotion.<sup>860</sup> Yet legal education has yet to integrate

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Brown 2013, *supra* note 19; Clore & Huntsinger, *supra* note 19; Tyng et al., *supra* note 19; Fenton-O’Creivy et al., *supra* note 19; Hopkins & Deepa, *supra* note 19; Phelps, Lempert & Sokol-Hessner, *supra* note 19; Garfinkel et al., *supra* note 19; Jung et al., *supra* note 19; Lakomski & Evers, *supra* note 19; Lench, Flores & Bench, *supra* note 19; Naqvi, Shiv & Bechara, *supra* note 19; Lerner et al., *supra* note 19; Slovic, *supra* note 19; Côté-Lussier & David, *supra* note 19. Emotions serve as a mechanism to communicate and connect with others. See: Erbas et al., *supra* note 19; Eslinger et al., *supra* note 19; Barsade, *supra* note 19; Chartrand & Bargh, *supra* note 19; Lindquist, Satpute & Gendron, *supra* note 19; Muir, *ibid*. Regarding non-verbal communication, see generally: Barsade, *ibid*; Chartrand & Bargh, *ibid*; Goleman, *supra* note 98.

<sup>857</sup> See: Organ, Jaffe, & Bender, *supra* note 3; Jolly-Ryan, *supra* note 31. Also see generally: Burton, *supra* note 650. Regarding Canadian legal professionals; Committee on the Science of Changing Behavioral Health Social et al., *supra* note 630; Corrigan & Watson, *supra* note 626; Corrigan & Rao, *supra* note 631; Quinn, Williams, & Weisz, *supra* note 639; James, *supra* note 231.

<sup>858</sup> See: Brown 2021, *supra* note 18.

<sup>859</sup> See: Gilbert, *supra* note 59 at 78. Recognizing that trauma is not a weakness but an extraordinary survival mechanism that ensures survival is fundamental. See: Katz 2022, *supra* note 21 citing Menakem; Kerry J. Ressler, “Amygdala Activity, Fear, and Anxiety: Modulation by Stress” (2010) 67:12 Biol Psychiatry 1117–1119.

<sup>860</sup> See: Netzel, *supra* note 21; Katz 2020, *supra* note 22; TRC Report, *supra* note 25; TRC Calls, *supra* note 25; McCallum, *supra* note 849; McCallum, *supra* note 53; Maki et al., *supra* note 229. Also see: Jones Trauma-

emotion's relevance to competence, decision-making, social connection or client relationships, racism, discrimination, bias, mental health, and wellbeing.

Legal education and the profession need to question some traditional practices, attitudes and beliefs that still infiltrate the halls of law school classrooms, courtrooms, and justice.<sup>861</sup> Mental health is a fundamental component of wellbeing and overall health.<sup>862</sup> The Director-General of the World Health Organization, Dr. Tedros Adhanom Ghebreyesus, recently wrote, “[u]ltimately, there is no health without mental health.”<sup>863</sup> Wellbeing, mental health, and the appreciation of emotion are essential for individual health, their ability to connect with others, and their competence and ability to make decisions and sound judgements.

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Informed, *supra* note 849; Jones Leadership, *supra* note 849; Jones Law School 2020, *supra* note 19; Friedland, *supra* note 19; Muir, *supra* note 19.

<sup>861</sup> Emma Jones and colleagues identified that wealth and superiority underlay core beliefs held about those who belong in law. In their book *Mental Health and Wellbeing in the Legal Profession*, Emma Jones and colleagues identified beliefs used to justify the suffering of law students and lawyers by identifying themes from comments on a 2019 blog on lawyer wellbeing in the United Kingdom. They found that the comments reflected the belief or the myth that future lawyers, have agreed to exchange their wellbeing for the future attainment of money, image, and power they will gain from the profession. Jones and colleagues' question that belief by pointed out that that may have been true once, but not anymore. They ask, even if that is true, are law students “sufficiently informed” to enter a long-term binding agreement to exchange their health for wealth? Do students appreciate what the legal profession entails when they enter the gateways of the profession? Further, Jones and colleagues wrote at 11 that this belief or folklore is logically deficient: “It underestimates the significant financial, practical and emotional investment many lawyers have made in education, training and work to reach their current level. This huge overall investment, together with the expectations of their friends and their families, can combine to make the idea of a career change seem at the best unrealistic, at worst a form of failure.” The comments from the blog also revealed the belief that lawyers must have mental fortitude that immunizes them from all factors detrimental to wellbeing. If they don't, they don't belong. Emma Jones and colleagues wrote on page 13: “It seems unrealistic to think that the legal profession could ever consist of such an exclusive club of Teflon-like individuals, impervious to issues such as poor wellbeing and mental ill-health.” They go on to question the extent to which such a category of individuals would reflect the diversity of contemporary society, what understanding they would have of those experiencing trauma and challenges, and what level of skill and experience they would demonstrate in regulating their own emotions to enable them to deal effectively with the human aspects of legal processes and procedures. See: Emma Jones et al., *Mental Health and Wellbeing in the Legal Profession* (Bristol: Bristol University Press, 2020) at 11 -13 citing Jones, Emma et al., “The Legal Profession has A Mental Health Problem – Which is an Issue for Everyone,” (18 April 2019), online: *The Conversation* <<http://theconversation.com/the-legal-profession-has-a-mental-health-problem-which-is-an-issue-for-everyone-113224>>. Also see generally: Dittmar & Isham, *supra* note 32; Kasser 2015, *supra* note 32; Kasser 2016, *supra* note 32; Kasser & Ryan, *supra* note 691; Mogilner, *supra* note 691; Boehm & Lyubomirsky, *supra* note 114; Diener & Seligman 2018, *supra* note 96; Diener & Seligman 2004, *supra* note 96; Aknin, Dunn & Norton, *supra* note 691; Dunn, Aknin & Norton, *supra* note 691; Titova & Sheldon, *supra* note 692.

<sup>862</sup> See generally: *World Mental Health Report*, *supra* note 1; Barry, *supra* note 2; Lehtinen et al., *supra* note 74; Lamers et al., *supra* note 74.

<sup>863</sup> See: *World Mental Health Report*, *supra* note 1 at vi.

Law school is the gateway to the profession.<sup>864</sup> Law students are clearly at “high risk” of psychological distress, trauma, and substance misuse. Early intervention and education are a crucial step in addressing health issues. Psychological distress can affect cognition, thus affecting competence.<sup>865</sup> The case of the lawyer named Elliot illustrated that emotion is essential to decision-making.<sup>866</sup> Diversity and inclusion will only be realized if law schools work toward the elimination of racism, discrimination, and stigmas which negatively affect marginalized law students.

Education on trauma and trauma-informed lawyering skills is essential to help students not only understand and heal themselves but also work with colleagues, deal with clients, and work within the justice system.<sup>867</sup> A wellbeing-focused approach to legal education integrating trauma-informed approaches offers a promising method for addressing the mental health crisis in law schools and within the profession. A wellbeing-informed approach is flexible and could be adapted to the different unique circumstances of law schools; however, it must include the following:

1. Research into levels of psychological distress among law students.
2. College, faculty and staff wellbeing and mental health.
3. Prioritization of health and wellbeing in the evaluation of practices.
4. Trauma-informed lawyering skills.
5. Development of self-awareness and self-reflection.
6. Substance use education and the normalization of sobriety.
7. Supportive environment and areas to enhance wellbeing.

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<sup>864</sup> In the United States, see: ABA Standards, *supra* note 28, s 301(a). In Australia, see: CALD, *supra* note 28, s 2.3.1. In England & Wales, see: Academic Stage Handbook, *supra* note 28 at Appendix 1, s 2.i.

<sup>865</sup> See: The Law Society of British Columbia, *supra* note 758. Also, see: Schiltz, *supra* note 758; Peterson & Peterson, *supra* note 62; Rankin, *supra* note 758; Austin 2018, *supra* note 758; Jones & Strevens 2023, *supra* note 758; Jones & Strevens 2022, *supra* note 53.

<sup>866</sup> See: Damasio, *supra* note 19. Also, see generally: Damasio, Everitt, & Bishop, *supra* note 50; Muir, *supra* note 19; Brafford, *supra* note 50; Brown 2011, *supra* note 19; Brown 2013, *supra* note 19; Bechara et al., *supra* note 742; Rochford et al., *supra* note 50; Phelps, Lempert, & Sokol-Hessner, *supra* note 19; Lerner et al., *supra* note 19; Giang, *supra* note 50; Lakomski & Evers, *supra* note 19; Lench, Flores, & Bench, *supra* note 19; Naqvi, Shiv, & Bechara, *supra* note 19; Slovic, *supra* note 19.

<sup>867</sup> See: James, *supra* note 231 at 268-269; TRC Report, *supra* note 25; TRC Calls, *supra* note 25; Yuen, *supra* note 53; Katz & Haldar, *supra* note 53; Golden Eagle, *supra* note 53; McCallum, *supra* note 230; Oehme & Stern, *supra* note 12; Netzel, *supra* note 21; Maki et al., *supra* note 229; McCallum 2024, *supra* note 53.

## 8. Audits, evaluation, performance measures & corrective action.

A wellbeing-focused and trauma-informed approach to legal education could provide law schools with a means to prepare students for the emotional and psychological demands of law practice and contribute to achieving change within the legal culture and diversity within the profession. Such an approach to legal education necessarily entails research and study regarding the levels of psychological distress experienced by Canadian law students, which the following section addresses.

### 8.2. Research On Canadian Law Student Psychological Distress

This thesis focuses on Canada, so recommendations regarding further research are directed to Canadian law schools. Research on law student psychological distress has yet to be thoroughly investigated in Canada. When such research is undertaken, it should examine the wellbeing of women, people of colour, Indigenous, low-income, LGBTQ2S+, and law students living with disAbility or low income. The intersectionality of these factors could also be examined.<sup>868</sup> Studies into the psychological experiences of marginalized law students could provide insight into how to become a more diverse and inclusive profession by asking respondents what could be improved and what affects their mental health negatively.

Furthermore, studies such as the 1986 Benjamin et al. study, where psychological distress was examined before, during, and for a period after graduation, should be undertaken in Canada.<sup>869</sup> Law school students should be compared to students in other programs. The psychological wellbeing of Canadian law students should be contrasted to that of the general population. Further, such a Canadian study should use validated psychometric measures. The cohort should be large and diverse.

Law students should also be asked about their motivation for attending law school and their experiences with trauma, as the most recent American study.<sup>870</sup> Such a Canadian study should

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<sup>868</sup> See: Crenshaw, *supra* note 229.

<sup>869</sup> See: Benjamin et al., *supra* note 3.

<sup>870</sup> See: Jaffe, Bender, & Organ, *supra* note 21.

ask law students about their experiences in law school to canvas causation and determine “risk and protective” factors. Finally, implemented mental health enhancement strategies should be assessed to determine efficiency. Huang recommended that “law professors and lawyers should team up with neuroscientists and psychologists to conduct multi-methods waitlist controlled research studies involving law students, lawyers, and law professors to determine if practicing mindfulness improves legal decision-making, ethics, and leadership.”<sup>871</sup>

Law schools could also assess students’ wellbeing within their respective colleges. Law colleges could utilize the law students’ stress scales outlined in Chapter 6.2 to assess the levels of psychological distress experienced by their students.<sup>872</sup> Law schools could administer the scales at pivotal times during student legal education, such as at orientation, after term one of the first year, at the end of the first year and throughout the second and third years. Law schools could also follow up with their graduates for a period after graduation. Law schools could ask about trauma, motivating factors for attending law school, and motivation generally, as per the Sheldon & Krieger 2004 study.<sup>873</sup>

Substance use should be assessed by law schools using validated scales.<sup>874</sup> Questions regarding self-harm and suicidal idealization must be approached compassionately but should be included in questions posed to respondents. Further, law schools should pay particular attention to their marginalized students’ experiences during their legal education, including psychological distress and canvassing for thoughts on improving diversity and inclusion within the law school and the profession. Law schools should not only ask these questions but “hear” the answers and adjust their practices, attitudes, and beliefs accordingly.

Finally, faculty and staff should be surveyed on their mental health because the wellbeing of the staff and faculty inevitably influences student wellbeing and the culture within the law school.<sup>875</sup>

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<sup>871</sup> See: Huang 2015, *supra* note 19 at 64.

<sup>872</sup> See: Pritchard & McIntosh, *supra* note 5; Bergin & Pakenham, *supra* note 3; Flynn, Li, & Sánchez 2017, *supra* note 27. Also, see generally: Flynn, Li, & Sánchez 2019, *supra* note 291.

<sup>873</sup> See: Sheldon & Krieger 2004, *supra* note 4.

<sup>874</sup> Various measures were used to measure substance use, in the study’s reviewed including the CORE Alcohol and Drug Survey (CORE), CAGE questionnaire, and Alcohol Use Disorders Identification Test (AUDIT).

<sup>875</sup> See: Sarah Harding et al., “Is Teachers’ Mental Health and Wellbeing Associated with Students’ Mental Health and Wellbeing?” (2019) 242 *Journal of affective disorders* 180–187; Eva Oberle et al., “Do Students Notice Stress in

The following section addresses how law schools can enhance faculty and staff mental health, as it inevitably influences the wellbeing of law students.<sup>876</sup>

### 8.3. Leading by Example: Law School Faculty & Staff Wellbeing

One of the critical components of wellbeing-focused and trauma-informed education is that it necessitates faculty and staff wellbeing and good mental health. Although the culture of law is not solely responsible for the rates of psychological distress experienced by law students and legal professionals, some aspects of law school's experience, practices, attitudes, and beliefs likely contribute. These affect law students, faculty, and staff, particularly marginalized people.<sup>877</sup> Law schools must work to facilitate and prioritize their staff and faculty's mental health and well-being. Faculty and staff can then model healthy living authentically. In this way, wellbeing can become integrated into every class and infused within the law school environment.

There is momentum at universities in Canada towards improving mental health.<sup>878</sup> Further, the law is evolving around psychological health and safety, and there is an emerging duty not to

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Teachers? Associations Between Classroom Teacher Burnout and Students' Perceptions of Teacher Social-Emotional Competence" (2020) 57:11 *Psychology in the Schools* 1741–1756; Barsade, *supra* note 19; Chartrand & Bargh, *supra* note 19.

<sup>876</sup> See: Dancy & Jean-Marie, *supra* note 229; Henry, *supra* note 41; Lavalley, *supra* note 41; Allen, *supra* note 41; Franks, *supra* note 41. Also see: Heath et al., *supra* note 303.

<sup>877</sup> Faculty wellbeing is not good either. See: Raheleh Salimzadeh, Nathan C. Hall & Alenoush Saroyan, "Stress, Emotion Regulation, and Well-Being among Canadian Faculty Members in Research-Intensive Universities" (2020) 9:12 *Social Sciences* 227; Jacqueline M. Smith et al., "Exploring Mental Health and Well-Being Among University Faculty Members: A Qualitative Study" (2022) 60:11 *Journal of Psychosocial Nursing and Mental Health Services* 17–25. Concerning marginalized faculty, see generally: Roy L. Brooks, "Life After Tenure: Can Minority Law Professors Avoid the Clyde Ferguson Syndrome?" (1986) 20: *Spring University of San Francisco Law Review* 419; Deo, *supra* note 41; Meera E. Deo, "The Ugly Truth about Legal Academia" (2015) 80:3 *Brooklyn Law Review* 943; Nicholson W. Price, Keerthana Nunna & Jonathan Tietz, "Hierarchy, Race & Gender in Legal Scholarly Networks" (2023) 75 *University of Michigan Law School* 71–136; Dancy & Jean-Marie, *supra* note 229; Jennifer C. Davis et al., "Are We Failing Female and Racialized Academics? A Canadian National Survey Examining the Impacts of the COVID-19 Pandemic on Tenure and Tenure-Track Faculty" (2022) 29:3 *Gender, Work & Organization* 703–722.

<sup>878</sup> For example, the University of Saskatchewan has posted a general wellness strategy defined as a healthy mind (social, emotional, and intellectual), healthy body (nutrition, rest, substance use, physical activity), and healthy life (volunteerism, environment, finances, safety and care, sexual health, and spirituality). Promotion activities include ensuring a supportive foundation at the level of university life, fostering a healthy culture and environment, and raising awareness about healthy behaviours. For prevention, there is a focus on identifying risk, early identification, and the development of resilience and self-management competencies. Finally, there is a focus on providing services, training, and critical support concerning intervention. See: "USask Wellness Strategy - Wellness - For Staff and Faculty," online: *University of Saskatchewan* <<https://wellness.usask.ca/usask-wellness-strategy.php>>. Also see:



harm employees psychologically.<sup>879</sup> Dr. Martin Shain, an expert in law and social science who holds appointments in the departments of public health at the University of Toronto and Simon Fraser University, worked closely with the Mental Health Commission of Canada and published *Tracking the Perfect Legal Storm: Converging Systems Create Mounting Pressure to Create the Psychologically Safe Workplace* in May 2010 and *Weathering the Perfect Legal Storm: A Bird's Eye View* in 2013.<sup>880</sup>

Dr. Shain argued in 2010 that Canada was experiencing an emerging legal duty to provide and maintain a psychologically safe workplace arising from labour relations, human rights, employment law, occupational health and safety, workers' compensation, and tort law.<sup>881</sup> Potential employer liability for employee psychological harm resulted in Canada introducing the voluntary *National Standard of Canada on Psychological Health and Safety in the Workplace* in 2013 (referred to as “Healthy Workplaces”), the first globally.<sup>882</sup>

Healthy Workplaces is a set of voluntary guidelines, tools and resources intended to guide organizations in promoting mental health and preventing psychological harm at work.<sup>883</sup> The purpose is to promote the psychological health of employees due to workplace factors.<sup>884</sup> Healthy Workplaces identified thirteen psychological health and safety factors affecting employee mental health.<sup>885</sup> The factors are:

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“Discrimination and Harassment Prevention – Wellness,” online: *University of Saskatchewan* <<https://wellness.usask.ca/safety/discrimination-harassment.php>>.

<sup>879</sup> See: Martin Shain, *Tracking the Perfect Legal Storm: Converging Systems Create Mounting Pressure to Create the Psychologically Safe Workplace* (Canada: Mental Health Commission of Canada, 2010); Martin Shain, *Weathering the Perfect Legal Storm: A Bird's Eye View*, (Canada: Great-West Life Centre for Mental Health in the Workplace, 2013).

<sup>880</sup> *Ibid.*

<sup>881</sup> *Ibid.*

<sup>882</sup> See: CSA 2020, *supra* note 30. Also see: Gilbert & Bilsker, *supra* note 30; Canadian Centre for Occupational Health and Safety Government of Canada, *supra* note 30; CMHA National, *supra* note 30; Collins, *supra* note 30; Staglin, *supra* note 30; Canadian Standards Association & Bureau de normalisation de Quebec, *supra* note 30.

<sup>883</sup> See: Canadian Standards Association & Bureau de normalisation de Quebec, *ibid.* Also see generally: “Guarding Minds at Work,” online: *Guarding Minds at Work* <<https://www.guardingmindsatwork.ca/>>.

<sup>884</sup> See: The Mental Health Commission of Canada, “13 Factors: Addressing Mental Health in the Workplace,” online: *Mental Health Commission of Canada* <<https://mentalhealthcommission.ca/13-factors-addressing-mental-health-in-the-workplace/>>. Also see: “Online Training in Workplace Psychological Health and Safety,” online: *Mental Health Commission of Canada* <<https://mentalhealthcommission.ca/training/online-training-in-psychological-health-and-safety/>>; “Leadership Training | Mindful Employer Canada,” online: *Mindful Employer Canada* <<https://www.mindfulemployer.ca/>>.

<sup>885</sup> See: The Mental Health Commission of Canada, *ibid.*

1. Organizational Culture.<sup>886</sup>
2. Psychological and Social Support.<sup>887</sup>
3. Clear Leadership & Expectations.<sup>888</sup>
4. Civility & Respect.<sup>889</sup>

<sup>886</sup> “Organizational culture is described as a pattern of basic assumptions invented, discovered, or developed by a given group. These assumptions are a mix of values, beliefs, meanings, and expectations that group members share as behavioural and problem-solving cues. The critical task is to support all leaders in determining which of these assumptions enhances and which could damage psychological health and safety among the organizations workforce. Researchers Kelloway and Barling have said that virtually every outcome variable in occupational health psychology is empirically related to organizational leadership. When an organization has a psychologically safe culture, employee well-being, job satisfaction, and organizational commitment are all improved.” See: Canada Life, “Organizational Culture,” online: *Workplace Strategies for Mental Health WSMH* <<https://www.workplacestrategiesformentalhealth.com/resources/organizational-culture>>.

<sup>887</sup> Psychological and social support is part of all supportive social interactions available at work, either with co-employees or supervisors. It refers to the degree of social and emotional integration and trust among co-employees and supervisors. It also refers to the level of help and assistance others provide when performing tasks. Equally important are the employees’ perceptions and awareness of organizational support. When employees perceive organizational support, they believe their organization values their contributions, is committed to ensuring their psychological wellbeing and provides meaningful support if it is compromised. See: Margret Owens, “Psychological and Social Support,” online: *WorkSafe Saskatchewan* <<https://www.worksafesask.ca/resources/psych-health-safety-resource-centre/workplace-psychological-health-and-safety/psychological-and-social-support/>>. Also see: “have THAT talk”, (29 March 2022), online: *Ottawa Public Health* <<https://www.ottawapublichealth.ca/en/public-health-services/have-that-talk.aspx>>.

<sup>888</sup> Clear leadership and expectations are present in an environment where effective leadership provides sufficient support that helps employees know what to do, explains how their work contributes to the organization and discusses the nature and expected outcomes of impending changes. There are many types of leadership, each of which impacts psychological safety and health in different ways. The most widely accepted categorizations of leadership are instrumental, transactional, and transformational. Of these, transformational leadership is considered the most powerful. Instrumental leadership focuses primarily on producing outcomes, with little attention paid to the “big picture,” the psychosocial dynamics within the organization, and, unfortunately, the individual employees. Transformational leaders are seen as change agents who motivate followers to do more than expected. They are concerned with long-term objectives and transmit a sense of mission, vision, and purpose. They have charisma, consider their employees, stimulate intellectual capabilities in others, and inspire employees. See: *Learn about the National Standard – Clear Leadership and Expectations* (Canada: havethattalk-Ottawa Public Health and the Mental Health Commission of Canada, adapted with permission from Mindful Employer Canada., 2016) online YouTube: <<https://www.youtube.com/watch?v=MH3gWoGrfYA&list=PL2NuAPXp8ohZmoVaECI6sRiV9lQ25XkId&index=5>>; “Putting Clear Leadership and Expectations on the Agenda,” online: *Workplace Strategies for Mental Health WSMH* <<https://www.workplacestrategiesformentalhealth.com/resources/putting-clear-leadership-and-expectations-on-the-agenda>>; “For Workplaces,” (8 February 2024), online: *Ottawa Public Health* <<https://www.ottawapublichealth.ca/en/public-health-services/htt-workplaces.aspx>>.

<sup>889</sup> Civility and respect are present in a work environment where employees are respectful and considerate in their interactions with one another and with customers, clients, and the public. Civility and respect are based on showing esteem, care, and consideration for others and acknowledging their dignity. See: *Learn about the National Standard – Civility and Respect* (Canada: havethattalk brought to you by Ottawa Public Health and the Mental Health Commission of Canada, adapted with permission from Mindful Employer Canada., 2016) YouTube: <<https://www.youtube.com/watch?v=dMlcbVOWvQ8&list=PL2NuAPXp8ohZmoVaECI6sRiV9lQ25XkId&index=6>>; Canada Life, “Putting Civility and Respect on the Agenda,” online: *Workplace Strategies for Mental Health WSMH* <<https://www.workplacestrategiesformentalhealth.com/resources/putting-civility-and-respect-on-the-agenda>>; “For Workplaces,” (8 February 2024), online: *Ottawa Public Health* <<https://www.ottawapublichealth.ca/en/public-health-services/htt-workplaces.aspx>>; “Evidence-Based Actions for Civility and Respect,” online: *Workplace Strategies for Mental Health WSMH* <<https://www.workplacestrategiesformentalhealth.com/resources/evidence-based-actions-for-civility-and-respect>>; “Building Civility and Respect into your Organization’s DNA,” (14 June 2023), online: *Mental Health Commission*

5. Psychological Demands.<sup>890</sup>
6. Growth & Development.<sup>891</sup>
7. Recognition & Reward.<sup>892</sup>
8. Involvement & Influence.<sup>893</sup>

of Canada <<https://mentalhealthcommission.ca/resource/building-civility-and-respect-into-your-organizations-dna/>>.

<sup>890</sup> Psychological demands of any job are documented and assessed in conjunction with the job's physical demands. Psychological demands of the job will allow organizations to determine whether any job activity might be a hazard to the employee's health and wellbeing. When hazards are identified, organizations consider ways of minimizing risks associated with identified job hazards through work redesign, analysis of work systems, risk assessment, etc. The assessment of psychological demands should include assessment of time stressors (including time constraints, quotas, deadlines, machine pacing, etc.); breaks and rest periods; incentive systems (production bonuses, piece work, etc.); job monotony and the repetitive nature of some work; and hours of work (overtime requirements, 12 h shifts, shift work, etc.). See: *Learn about the National Standard – Psychological Demands* (Canada: havethattalk brought to you by Ottawa Public Health and the Mental Health Commission of Canada, adapted with permission from Mindful Employer Canada., 2016), YouTube:

[https://www.youtube.com/watch?v=i5xQ0hdaOVg&list=PL2NuAPXp8ohZmoVaEC16sRiV9lQ25XkId&index=7](https://www.youtube.com/watch?v=i5xQ0hdaOVg&list=PL2NuAPXp8ohZmoVaEC16sRiV9lQ25XkId&index=7;); "Putting Psychological Competencies and Demands on the Agenda," online: *Workplace Strategies for Mental Health WSMH* <<https://www.workplacestrategiesformentalhealth.com/resources/putting-psychological-competencies-and-demands-on-the-agenda>>; Ottawa Public Health 8 February 2024, *ibid*; "Psychologically Safe Fairness and Integrity," (31 December 2015), online: *Workplace Strategies for Mental Health WSMH* <<https://www.workplacestrategiesformentalhealth.com/resources/psychologically-safe-fairness-and-integrity>>; "What is the Psychologically Safe Leader Assessment?" (31 December 2015), online: *Workplace Strategies for Mental Health WSMH* <<https://www.workplacestrategiesformentalhealth.com/resources/what-is-the-psychologically-safe-leader-assessment>>; Psychology Foundation of Canada, "Stress Strategies," (2024), online: *Stress Strategies brought to you by the Psychology Foundation of Canada* <<https://www.stressstrategies.ca/>>.

<sup>891</sup> Growth and development are present in a work environment where employees receive encouragement and support in developing their interpersonal, emotional and job skills. Such workplaces provide a range of internal and external opportunities for employees to build their repertoire of competencies, which will help with their current jobs and prepare them for possible future positions. See: *Learn about the National Standard – Growth and Development* (Canada: havethattalk brought to you by Ottawa Public Health and the Mental Health Commission of Canada, adapted with permission from Mindful Employer Canada., 2016) online YouTube:

<https://www.youtube.com/watch?v=1-ayikvxCXE&list=PL2NuAPXp8ohZmoVaEC16sRiV9lQ25XkId&index=8>; "Putting Growth and Development on the Agenda," (31 December 2015), online: *Workplace Strategies for Mental Health WSMH* <<https://www.workplacestrategiesformentalhealth.com/resources/putting-growth-and-development-on-the-agenda>>; Ottawa Public Health 8 February 2024, *ibid*.

<sup>892</sup> Recognition and reward are present in a work environment where there is appropriate acknowledgement and appreciation of employees' efforts in a fair and timely manner. This includes appropriate and regular acknowledgements such as employee or team celebrations, recognition of good performance, and years served and/or milestones reached. See: *Learn about the National Standard – Recognition and Reward* (Canada: havethattalk brought to you by Ottawa Public Health and the Mental Health Commission of Canada, adapted with permission from Mindful Employer Canada., 2016) online YouTube:

<https://www.youtube.com/watch?v=IoL8e44qd4A&list=PL2NuAPXp8ohZmoVaEC16sRiV9lQ25XkId&index=9>; "Putting Recognition and Reward on the Agenda," (31 December 2015), online: *Workplace Strategies for Mental Health WSMH* <<https://www.workplacestrategiesformentalhealth.com/resources/putting-recognition-and-reward-on-the-agenda>>; Ottawa Public Health 8 February 2024, *ibid*.

<sup>893</sup> Involvement and influence are present in a work environment where employees are included in discussions about how their work is done and how important decisions are made. Opportunities for involvement can relate to an employee's specific job, the activities of a team or department or issues involving the organization. See: *Learn about the National Standard – Involvement and Influence*, (Canada: havethattalk brought to you by Ottawa Public Health and the Mental Health Commission of Canada, adapted with permission from Mindful Employer Canada., 2016) online YouTube:

<https://www.youtube.com/watch?v=QhpwGpKjGOk&list=PL2NuAPXp8ohZmoVaEC16sRiV9lQ25XkId&index=10>; "Putting Involvement and Influence on the Agenda," (31 December 2015), online: *Workplace Strategies for*

9. Workload Management.<sup>894</sup>
10. Engagement.<sup>895</sup>
11. Balance.<sup>896</sup>
12. Psychological Protection.<sup>897</sup>

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*Mental Health WSMH* <<https://www.workplacestrategiesformentalhealth.com/resources/putting-involvement-and-influence-on-the-agenda>>; Ottawa Public Health 8 February 2024, *ibid*.

<sup>894</sup> Workload management is present in a work environment where assigned tasks and responsibilities can be accomplished within the time available. This is the risk factor that many working Canadians describe as being the most significant workplace stressor (i.e., having too much to do and not enough time to do it). It has been demonstrated that it is not just the amount of work that makes a difference but also the extent to which employees have the resources (time, equipment, support) to do the work well. See: *Learn about the National Standard – Workload Management*, (Canada: havethattalk brought to you by Ottawa Public Health and the Mental Health Commission of Canada, adapted with permission from Mindful Employer Canada., 2016) online YouTube: <https://www.youtube.com/watch?v=eaNaYw9RjFE&list=PL2NuAPXp8ohZmoVaECI6sRiV9IQ25XkId&index=1>>; “Putting Workload Management on the Agenda,” (31 December 2015), online: *Workplace Strategies for Mental Health WSMH* <<https://www.workplacestrategiesformentalhealth.com/resources/putting-workload-management-on-the-agenda>>; Ottawa Public Health 8 February 2024, *ibid*.

<sup>895</sup> Engagement is present in a work environment where employees enjoy and feel connected to their work and feel motivated to do their job well. Employee engagement can be physical, emotional and/or cognitive. Physical engagement is based on an employee's exertion into his or her job. Physically engaged employees view work as a source of energy. Emotionally engaged employees have a positive job outlook and are passionate about their work. Cognitively engaged employees devote more attention to their work and are absorbed in their jobs. Whatever the source, engaged employees feel connected to their work because they can relate to, and are committed to, their company's overall success and mission. Engagement should be seen because of policies, practices, and procedures for protecting employee psychological health and safety. Engagement is like, but not the same as, job satisfaction, job involvement, organizational commitment, psychological empowerment, and intrinsic motivation. See: *Learn about the National Standard – Engagement*, (Canada: havethattalk brought to you by Ottawa Public Health and the Mental Health Commission of Canada, adapted with permission from Mindful Employer Canada., 2016) online YouTube: <https://www.youtube.com/watch?v=5tAHnv8Iz4o&list=PL2NuAPXp8ohZmoVaECI6sRiV9IQ25XkId&index=12>>; “Putting Engagement on the Agenda,” (31 December 2015), online: *Workplace Strategies for Mental Health WSMH* <<https://www.workplacestrategiesformentalhealth.com/resources/putting-engagement-on-the-agenda>>; “Evidence-Based Actions for Engagement,” (1 December 2020), online: *Workplace Strategies for Mental Health WSMH* <<https://www.workplacestrategiesformentalhealth.com/resources/evidence-based-actions-for-engagement>>.

<sup>896</sup> Balance is present in a work environment where there is acceptance of the need for a sense of harmony between the demands of personal life, family, and work. This factor reflects the fact that everyone has multiple roles: as employees, parents, partners, etc. This complexity of roles enriches and allows fulfillment of individual strengths and responsibilities, but conflicting responsibilities can lead to role conflict or overload. See: *Learn about the National Standard – Balance*, (Canada: havethattalk brought to you by Ottawa Public Health and the Mental Health Commission of Canada, adapted with permission from Mindful Employer Canada., 2016) online YouTube: [https://www.youtube.com/watch?v=n\\_8b2-Dnctw&list=PL2NuAPXp8ohZmoVaECI6sRiV9IQ25XkId&index=13](https://www.youtube.com/watch?v=n_8b2-Dnctw&list=PL2NuAPXp8ohZmoVaECI6sRiV9IQ25XkId&index=13)>; “Putting Balance on the Agenda,” (31 December 2015), online: *Workplace Strategies for Mental Health WSMH* <<https://www.workplacestrategiesformentalhealth.com/resources/putting-balance-on-the-agenda>>; Ottawa Public Health 8 February 2024, *supra* note 892.

<sup>897</sup> Psychological protection is present in a work environment where employees' psychological safety is ensured. Workplace psychological safety is demonstrated when employees can put themselves on the line, ask questions, seek feedback, report mistakes and problems, or propose a new idea without fearing negative consequences to themselves, their job or their career. A psychologically safe and healthy organization actively promotes emotional well-being among employees while taking all reasonable steps to minimize threats to employee mental health. See: *Learn about the National Standard – Psychological Protection*, Canada: havethattalk brought to you by Ottawa Public Health and the Mental Health Commission of Canada, adapted with permission from Mindful Employer Canada., 2016). YouTube: <https://www.youtube.com/watch?v=Y8NQcUYkcWw&list=PL2NuAPXp8ohZmoVaECI6sRiV9IQ25XkId&index=14>>; “Putting Psychological Protection on the Agenda,” (31 December 2015), online: *Workplace Strategies for*

### 13. Protection of Physical Safety.<sup>898</sup>

The 13 psychological health and safety factors can enhance wellbeing while integrating aspects of labour relations, human rights, employment, and tort law and complying with occupational health and safety and workers' compensation.<sup>899</sup>

A wellbeing-focused, trauma-informed law school would implement Healthy Workplaces and provide staff and faculty with trauma education and training to "lead by example" and "model balance." Law schools could offer training and support for law professors and staff to teach them how to recognize and appropriately address student stress and mental health needs and to, at a minimum, not cause harm.<sup>900</sup>

The ability to model the importance of self-care can only be accomplished by providing faculty and staff time to take care of themselves and allowing them to set boundaries that prioritize their wellbeing.<sup>901</sup> This entails law schools managing the expectations and workload of staff and faculty so that they can psychologically detach.<sup>902</sup> Workload management and expectations are essential for marginalized staff and faculty as studies have disclosed that marginalized faculty experience unique challenges and are often asked to take on additional causes or work to

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*Mental Health WSMH* <<https://www.workplacestrategiesformentalhealth.com/resources/putting-psychological-protection-on-the-agenda>>; Ottawa Public Health 8 February 2024, *ibid.*

<sup>898</sup> See: The Mental Health Commission of Canada, *supra* note 887.

<sup>899</sup> *Ibid.*

<sup>900</sup> The Canadian Standards Association stated that, "[i]t is highly recommended that CAN/CSA-Z1003-13/BNQ 9700-803/2013, *Psychological Health and Safety in the Workplace- Prevention, Promotion, and Guidance to Staged Implementation* for staff working with post-secondary institutions is necessary to support an authentic movement for student mental health and well-being." See: CSA Group 2020, *supra* note 30 at 9. Also see: Canadian Standards Association & Bureau de normalisation de Quebec, *supra* note 30. Also see generally: Mental Health Commission of Canada. *Dismantling Structural Stigma in Health Care. An Implementation Guide to Making Real Change for and with People Living with Mental Health Problems or Illnesses and/or Substance Use Concerns.* (Ottawa, Canada: Mental Health Commission of Canada, 2023).

<sup>901</sup> Netzel states that a trauma-informed approach to legal education "recognizes people are best able to engage in self-care only when the systems they are a part of recognize the value and create circumstances that allow for self-care." See: Netzel, *supra* note 21 at 387. Also see: James, Strevens, and Field, *supra* note 27; James et al., *supra* note 27; James 2020, *supra* note 21. "Law school provides a good opportunity for prospective lawyers to develop self-care habits they will need when working with trauma cases in practice. Ideal habits include maintaining adequate diet, sleep, mindfulness, and fitness, which will not only improve their resilience to clients' trauma but also their general wellbeing, self-compassion and efficacy at work." See: James 2023, *supra* note 215 at 267.

<sup>902</sup> See: Maki et al., *supra* note 229; Cadieux et al., 2022 *supra* note 3; Cadieux, et al. Targeted Recommendations 2022, *supra* note 224.

promote diversity.<sup>903</sup> Netzel wrote that a trauma-informed approach to legal education “recognizes people are best able to engage in self-care only when the systems they are a part of recognize the value and create circumstances that allow for self-care.”<sup>904</sup>

Further, faculty and staff can model for law students the necessity of self-care for mental health and wellbeing. James recently wrote that “[l]aw school provides a good opportunity for prospective lawyers to develop self-care habits they will need when working with trauma cases in practice. Ideal habits include maintaining adequate diet, sleep, mindfulness, and fitness, improving their resilience to clients’ trauma and their general wellbeing, self-compassion and efficacy at work.”<sup>905</sup> Law schools need to be wellbeing-focused. Being wellbeing-focused means focusing on the wellbeing of those within the institution, which this thesis will further explain in the following section.

#### 8.4. Implementation & Evaluation of Wellbeing-Focused Legal Education

Emma Jones and Caroline Strevens recently published an editorial titled “Legal Education for Wellbeing: Design, Delivery and Evaluation,” outlining that while universities generally have wellbeing strategies, law schools must also attend acutely to the issue.<sup>906</sup> Jones and Strevens wrote:

[I]t is vital for law schools to adjust to this ‘whole university’ approach in the way they design, deliver and evaluate their teaching, foster learning, interact with their students and facilitate their students’ experience. Whilst mental health, wellbeing and other pastoral services have a crucial role to play in higher education, they are not sufficient on their own. Neither are generic central policies and processes for recognition of wellbeing as a curricular matter. An effective ‘whole university’ approach also requires each individual school and department to consider how to acknowledge the value of wellbeing and integrate it into the curriculum in an evidence-based and sustainable manner appropriate to their discipline.<sup>907</sup>

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<sup>903</sup> See: Dancy & Jean-Marie, *supra* note 229; Henry, *supra* note 41; Lavalley, *supra* note 41; Allen, *supra* note 41; Franks, *supra* note 41. Also see: Heath et al., *supra* note 303.

<sup>904</sup> See: Netzel, *supra* note 21 at 387.

<sup>905</sup> See: James 2022, *supra* note 53 at 267.

<sup>906</sup> *Ibid.*

<sup>907</sup> *Ibid* at 1. Also see: Ferris, *supra* note 53; Skipper & Fay, *supra* note 420; Bergin & Pakenham, *supra* note 3; O’Brien, Tang & Hall, *supra* note 3; Eilidh Cage et al., “Student Mental Health and Transitions into, Through and out of University: Student and Staff Perspectives” (2021) 45:8 Journal of Further and Higher Education 1076–1089.

Law schools can gain guidance by implementing the *National Standard of Canada CSA Z2003:20: Mental Health and Well-Being for Post-Secondary Students* (the “Standard”).<sup>908</sup> The Standard “specifies requirements for post-secondary institutions for the development and implementation of a framework to safeguard, promote and continually improve the mental health and well-being of students.”<sup>909</sup> The Standard defines its “scope” as “provide[ing] a foundation for a socio-ecological framework for the development, implementation, and continuous improvement of policies, programs, environments, and initiatives, including

- a) promotion of student well-being through enhancement or creation of sustainable environments which reduce modifiable stressors or risk factors;
- b) recommendations for a systemic or holistic approach which include[s]
  - i) addressing institutional level activities (e.g., leadership, commitment, confidentiality, and stakeholder participation and engagement);
  - ii) psychosocial factors linked to mental health and well-being;
  - iii) post-secondary environments;
  - iv) literacy, education, and stigma reduction;
  - v) accessibility;
  - vi) early intervention, mental health supports, and suicide prevention; and
  - vii) crisis management and postvention;
- c) articulation of roles and responsibilities;
- d) protective factors to consider; and
- e) indicators to measure success.<sup>910</sup>

The Guiding Principles of the Standard prioritize student mental health and wellbeing in fostering psychologically safe environments that promote equity, diversity, and inclusion while providing evidence-based trauma-informed information that includes lived experiences and other ways of knowing.<sup>911</sup> A law school implementing the Standard would work towards promoting health while reducing harm and facilitating connection through “an ethic of care, compassion, collaboration, and community action.”<sup>912</sup>

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<sup>908</sup> See: CSA Group 2020, *supra* note 30. Also see: Buchanan & Coyle, *supra* note 11; uOttawa, *supra* note 319; Council of Australian Law Deans (CALD), *supra* note 311.

<sup>909</sup> See: CSA Group 2020, *ibid* at s. 1.1.

<sup>910</sup> *Ibid*.

<sup>911</sup> *Ibid* at s. 4.2. a).

<sup>912</sup> *Ibid*, at s. 4.2.

The steps to implementing the Standard in law school would include assessing the current situation (e.g., research into levels of wellbeing/psychological distress among students, student needs related to mental health and wellbeing, and review of curriculum, policies, practices, and pedagogy), ensuring leadership commitment, participation, and engagement, making an action plan based on the guiding principles, implementing the plan, and then evaluating the plan to improve.<sup>913</sup> The Standard recommends increasing competencies and understanding of the social determinants of health, mental health literacy, harm reduction through anti-stigma and mental health awareness, helping behaviour, supports and services, referrals and early crisis intervention.<sup>914</sup>

Improvement can be determined by assessing students' sense of belonging, perceived safety, willingness to seek help, healthy coping mechanisms, and attitudes and behaviours towards substance use and mental health.<sup>915</sup> Improvement can also be determined by assessing faculty and staff's level of mental health literacy, willingness to help students with mental health concerns, and knowledge exchange activities with colleagues.<sup>916</sup> This author would add that improvement could also be assessed through faculty and staff's sense of belonging, perceived safety, willingness to seek help, attitudes and behaviours towards substance use and mental health.

Further improvement can be gained by assessing the level of mental health services and eliminating systematic features that diminish wellbeing.<sup>917</sup> The College of Medicine recently sought the expertise of the Saskatchewan Human Rights Commission to assess systematic racism and discrimination within the college and make recommendations to work toward eliminating racism and discrimination.<sup>918</sup> The recommendations included but were not limited to "[e]nsur[ing] education equity by supporting student diversity," "[r]eview and update curriculum and assessment mechanisms to eliminate discriminatory elements," "[i]mprove the student

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<sup>913</sup> *Ibid*, at s. 5.1.3.

<sup>914</sup> *Ibid*, at s. 5.4.3.2.

<sup>915</sup> *Ibid*, at s. 5.5.2.4. Also see: James, Strevens & Field, *supra* note 27.

<sup>916</sup> *Ibid*, at s. 5.5.2.4.

<sup>917</sup> *Ibid*, at 5.5.2.4. b) v).

<sup>918</sup> See: Saskatchewan Human Rights Commission, *supra* note 44. Also see generally: *The Saskatchewan Human Rights Code*, *supra* note 45, s. 24.



complaint process,” “[a]ddress uneven diversity in faculty and leadership positions,” “[p]ursue constructive relationships with Black, Indigenous, and other physicians,” work towards “[s]trengthen[ing] work culture, build[ing] trust and pursue employee satisfaction,” “implement demographic data collection and data stewardship,” and to “communicate the College’s Policy and Practice on Racism and other forms of discrimination.”<sup>919</sup>

Wellbeing-focused and trauma-informed legal education also means that while promoting mental health and wellbeing, all reasonable steps are taken to reduce or mitigate the adverse effects of the factors known to be detrimental to wellbeing.<sup>920</sup> The factors known to be detrimental to wellbeing are trauma, extreme or prolonged stress, isolation, loneliness, stigma, racism, discrimination, substance use, and extrinsic motivation.<sup>921</sup> This approach also seeks to improve the experiences of marginalized law students by actively taking steps to enhance marginalized student inclusion. It also promotes sobriety at law school and professional events.<sup>922</sup> Sobriety allows students to make the most of their education, enhancing their ability to absorb complex legal concepts and perform effectively in exams and moot court competitions.<sup>923</sup>

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<sup>919</sup> *Ibid.*

<sup>920</sup> Regarding steps to improve law student mental health, see: uOttawa, *supra* note 319; Buchanan & Coyle, *supra* note 11; Council of Australian Law Deans (CALD), *supra* note 311. Also, see generally: CSA 2020 *supra* note 30; Gilbert & Bilsker, *supra* note 30; Canadian Centre for Occupational Health and Safety Government of Canada, *supra* note 30; CMHA National, *supra* note 30; Staglin, *supra* note 30; Stevenson & Farmer, *supra* note 30; Collins, *supra* note 30; Darlee Gerrard et al., *supra* note 618; Beena & Sony, *supra* note 618.

<sup>921</sup> See Chapters 2.5 and 6. In the United States, see: AALS Report *supra* note 31 at 42, 43, 45; Organ, Jaffe, & Bender, *supra* note 3 at 127; Reed et al., *supra* note 8 at 152; Jaffe, Bender, & Organ, *supra* note 21 at 16. To the author’s knowledge, no studies have evaluated Australian law student substance use but see generally: Engs & Mulqueeney, *supra* note 31; Doraisamy, *supra* note 31; Allman, *supra* note 31; Ferguson, *supra* note 31. In the United Kingdom, see: Bogowicz et al., *supra* note 3 at 134. In Canada, see: McGill, *supra* note 3 at 8. Legal professional’s substance use is prevalent. In the United States, see: Benjamin, Darling, & Sales, *supra* note 7; Krill, Johnson, & Albert, *supra* note 7; Krill, *supra* note 31; Anker & Krill, *supra* note 10; Listokin & Noonan, *supra* note 7. Also see: Buchanan & Coyle, *supra* note 11; Sahadi, *supra* note 31; Zimmerman, *supra* note 31. In Australia, see: Bergin & Jimmieson, *supra* note 7; Chan, Poynton & Bruce, *supra* note 7. Generally, see Goodliffe & Brooke, *supra* note 31 in the United Kingdom. Although no studies on legal professional substance use have been conducted in the UK, given the prevalence of substance use among law students in the United Kingdom, the results would likely be similar for legal professionals. See: Bogowicz et al., *supra* note 3. Also, see generally: Ames, *supra* note 31; Aldridge, *supra* note 31; *Counsel Magazine*, *supra* note 31; Matthews-King, *supra* note 31; Office of National Statistics, *supra* note 31; Banerji, *supra* note 31; The Law Society, Junior Lawyers Division, *supra* note 31. In Canada, see: Cadieux et al., 2022 *supra* note 3. Also, see generally: Olijnyk, *supra* note 31; Olijnyk, *supra* note 31; Faguy, *supra* note 31. Concerning substance use and professional identity, see: Kiepek & Beagan, *supra* note 31. Also, see generally: Amaro et al., *supra* note 31.

<sup>922</sup> See generally: Stearns, *supra* note 822; Buchanan & Coyle, *supra* note 11; Austin 2015, *supra* note 31.

<sup>923</sup> Substance use affects cognition. See: Austin 2015, *supra* note 31; Chivero et al., *supra* note 31; National Institute on Drug Abuse, *supra* note 31; NIH News in Health, *supra* note 31; Olguín et al., *supra* note 31; Paradis et al., *supra* note 31; Substance Abuse and Mental Health Services Administration (US), *supra* note 31; UNODC, *supra* note 31; Watkins, *supra* note 31.

Moreover, normalizing sobriety cultivates a more inclusive environment for all students. Some individuals do not drink for personal or religious reasons, and they deserve to feel comfortable and accepted within the law school community. By celebrating sobriety, law schools can promote diversity and ensure everyone can fully participate in networking events, study groups, and social gatherings without feeling left out.<sup>924</sup> A wellbeing-focused and trauma-informed legal education includes establishing and creating a supportive environment within law schools, which is pivotal.<sup>925</sup>

A wellbeing-focused, trauma-informed legal education entails a “risk assessment” of the costs and benefits of existing and new practices and pedagogy concerning healthy academic achievement. Reviewing and limiting student workload to streamline the curriculum and enhance student wellbeing must be part of the wellbeing-focused approach.<sup>926</sup> Guidelines for faculty to

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<sup>924</sup> See generally: MacDonald & Leary, *supra* note 31.

<sup>925</sup> Health enhancement measures at law schools could include exercise facilities, bootcamps, sessions, or classes. In 2015, the Law School at University of Western Australia (UWA) introduced a free weekly one-hour Bootcamp for a Healthy Body and Mind for all law students and staff (Bootcamp). In correlation with the Bootcamp, Skead and Rogers undertook to examine the relationship between emotional and physical distress experienced by law and psychology students and self-reported exercise frequency for a university semester. The study participants included 59 law students from UWA and 76 psychology students from Edith Cowan University (ECU). The results of the study revealed that “students reporting a higher frequency of exercise felt better physically. This positive association strengthened as the frequency and intensity of the exercise increased. In turn, feeling healthier physically was moderately positively associated with feeling healthier emotionally.” The study also found that compared to psychology students, law students reported greater psychological distress as well as a stronger association between distress and exercise for law students. On page 72, “[T]here is an association between exercise and mental well-being generally. Our results suggest that more frequent exercise is associated with a more favourable appraisal of one’s physical well-being, which in-turn is positively associated with one’s emotional well-being.” See: Skead & Rogers 2016, *supra* note 31 at 70-72. “[L]aw schools, law firms, and bar associations should try offering voluntary mindfulness training and supporting mindfulness practice to see if doing so improves legal decision-making, ethics, and leadership.” See: Huang, *supra* note 49 at 64. For other recommendations for law schools, see: Buchanan & Coyle, *supra* note 11; Kelk et al., *supra* note 3 at 43-51. Also, see: Confino, *supra* note 292; Council of Australian Law Deans (CALD), *supra* note 311.

<sup>926</sup> See: Pritchard & McIntosh, *supra* note 5; Bergin & Pakenham, *supra* note 3; Flynn, Li, & Sánchez 2017, *supra* note 27; Flynn, Li, & Sánchez 2019, *supra* note 291. The author of this thesis became aware that since 2003, the required classes of first-year students increased from five credited courses (contracts, criminal law, property, tort law, constitutional law) to eight courses in 2021 (or sooner) with the addition of credited courses, including dispute resolution (full-time for one week with no other classes during that time), legal research and writing (always required but now a credit course and likely more onerous than in 2003) and Kwayeskastasowin (for one term only) at the University of Saskatchewan, College of Law to the mandatory first-year requirements. A reputable professor at the University of Saskatchewan advised the author that while torts, contracts, criminal, constitutional, and property were reduced to 5 credit units with the introduction of Kwayeskastasowin, a corresponding reduction of the material (workload) has not likely occurred. Incoming law students at the University of Saskatchewan now have almost double the number of courses that the author of this thesis had during the first year of law school. Students often attend tutorials and guest speakers. Also, see: “Current Students: Course Information and Program

meet accreditation standards would help achieve this goal. Furthermore, law schools could review and revise their grading practices while also assessing the benefits and detriments of such grading practices.<sup>927</sup> First-year faculty could share a calendar for assignments and tests and meet regularly to discuss classes, concerns, curriculum, grading, and other student matters.

Law schools should incorporate wellbeing as a core component of their curriculum.<sup>928</sup>

Accredited courses on trauma-informed lawyering, mindfulness, emotional intelligence, and

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Requirements,” online: *College of Law | University of Saskatchewan* <<https://law.usask.ca/students/jd-students/current-students.php#Academicregulationsguidelinesandpolicies>>. The author of this thesis suggests using how many hours there are in a week to identify reasonable workloads for students. There are 168 hours in a week: minus sleep (7 or 8 per night) 56 hours, minus time in classes (assuming classes are only 5 hours a week) 5 hours, minus homework (as a law student, the author spent on average 40 hours a week doing homework but will reduce to 30 hours per week) 30 hours, minus eating (home or out-all meals) 14 hours. This leaves 63 hours remaining in the week. This estimation does not include exercise (which is fundamental to wellbeing), care of children or others, care of pets, paid employment, travel to and from locations, medical appointments, dentist, downtime due to illness, disabilities which require more time, grooming, dressing, laundry, spiritual activities, sports, dishes, cleaning, phone calls, shopping, friends, games, parties, movies, TV, chilling, personally satisfying activities (i.e., volunteer work), and/or extracurricular activities. Additionally, some courses may need more study time or tutorials. The author of this thesis has outlined the hours in a week to describe the dilemma that so many students face, especially students who are responsible for the care of others or must work to pay for tuition.

<sup>927</sup> See: Krieger & Sheldon 2007, *supra* note 32.

<sup>928</sup> See: Jones & Stevens, *supra* note 53. Also, see: Confino, *supra* note 292. For mindfulness in legal education and practice resources, see: James 2011, *supra* note 19; Western Law 2017, *supra* note 19; Western Law 2018, *supra* note 320; Huang 2015, *supra* note 19; Jacobowitz & Rogers, *supra* note 19; Nielsen & Minda, *supra* note 19; Riskin, *supra* note 19; Scott, *supra* note 19; Huang 2013, *supra* note 19; Brostoff, *supra* note 19. For studies showing the success of mindfulness in legal education and practice, see: Reuben, *supra* note 19; Reuben & Sheldon, *supra* note 19; Rosky et al., *supra* note 19; Soon et al., *supra* note 7; Simmons, *supra* note 19; Rogers, *supra* note 19. Also, see generally: Western Law 2018, *supra* note 320; Lueke & Gibson, *supra* note 19; Yoona, Gray, & Dovidio, *supra* note 19; Danny Penman, “Mindfulness May Enhance the Performance of US Special Forces,” (11 January 2019), online: *Psychology Today* <<https://www.psychologytoday.com/intl/blog/mindfulness-in-frantic-world/201901/mindfulness-may-enhance-the-performance-us-special-forces>>; Amishi P. Jha et al., “Minds ‘At Attention’: Mindfulness Training Curbs Attentional Lapses in Military Cohorts” (2015) 10:2 PLOS ONE e0116889–e0116889. For emotional intelligence in legal education and practice resources, see: Austin 2019, *supra* note 19; O’Brien, *supra* note 19; Montgomery, *supra* note 19; Brown 2013, *supra* note 19; Douglas, *supra* note 19; Friedland, *supra* note 19; Jones 2018, *supra* note 19; Jones Law School 2020, *supra* note 19; Sheldon & Krieger, *supra* note 49; Tiscione, *supra* note 19. Also, see generally: Damasio, *supra* note 19; Goleman, *supra* note 98; Maroney 2011, *supra* note 19; Alexia Kapralos, “Western Law to Launch Academic Mindfulness Course This Fall,” (16 May 2019), online: *Canadian Lawyer* <<https://www.canadianlawyermag.com/resources/legal-education/western-law-to-launch-academic-mindfulness-course-this-fall/276124>>. For both emotional intelligence/literacy and mindfulness in legal education and practice, see: James 2011, *supra* note 19; Martin, *supra* note 179; Martin 2014, *supra* note 19. Regarding “mindset” in legal education and practice, see: Béchard-Torres, *supra* note 276; Victor D. Quintanilla & Sam Erman, “Mindsets in Legal Education” *Journal of Legal Education* 412–444. Also, see generally: Dweck, *supra* note 15. There have also been suggestions regarding “humanizing” legal education. See: Nussbaum, *supra* note 310; Kinda L. Abdus-Saboor, “Lessons from Pandemic Pedagogy: Humanizing Law School Teaching to Create Equity and Evenness” (2019) 69:3 *Journal of Legal Education* 621–629; Aspasia I. Tsaoussi, “Using Soft Skills Courses to Inspire Law Teachers: A New Methodology for a More Humanistic Legal Education” (2020) 54:1 *Law Teacher* 1–30; Lawrence S. Krieger, “Human Nature as a New Guiding Philosophy for Legal Education and the Profession. (Humanizing Legal Education Symposium)” (2008) 47:2 *Washburn Law Journal* 247–326. For emotional literacy resources, see: Steiner & Perry, *supra* note 98; Brown 2021; *supra* note 18.

cognitive behaviour would teach law students early how to deal with the emotional and psychological demands of the legal profession.<sup>929</sup> Likewise, law schools could encompass stress

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<sup>929</sup> Such courses could be based on proven successful courses in improving student wellbeing. A 2021 study evaluated the effects of a “psychoeducational happiness course” on university students’ wellbeing before and during the COVID-19 lockdown, which raised the levels of mental wellbeing in a relatively cost-effective way for large groups delivered face-to-face and online. The education provided to participants was based on Yale Professor of Psychology Laurie Santo’s top-rated “Science of Well-Being” course. The Science of Well-Being course incorporates evidence-based positive psychology interventions (PPIs), wherein short practices increase wellbeing. The initial psychoeducational happiness course was 12 weeks and began with providing definitions of happiness and wellbeing and explaining mental health deterioration among university students in the UK. The course then explored ‘happiness myths.’ The students learn psychological, genetic, and neuroscience approaches to wellbeing. The course included “gratitude, learned helplessness, PERMA, kindness, sleep, exercise, social connection, meditation and signature strengths.” There was a weekly “Happiness Hub,” wherein the students would discuss the course content and participate in PPIs. The students undertook PPIs, such as performing acts of kindness, establishing social connections, savouring experiences, exercising, sleeping at least seven hours a night, meditating, or writing a letter of gratitude. The course requirement included weekly online journal entries reflecting on PPIs the students had undertaken or their wellbeing in the last week. To “pass” the course, students had to attend the “Happiness Hub” and complete all the required journal entries. The initial course before the COVID-19 lockdown revealed significantly higher mental wellbeing in first-year undergraduates who took the course than a waiting-list control. The results differed during the initial COVID-19 lockdown; however, the shorter four-week online study from May 2020 to June 2020 found wellbeing increases. See: Hood, Jelbert, & Santos, *supra* note 118. Likewise, Green & Simon evaluated the effects of “mindfulness” training on law students, which were found to be “...positive and significant: students who chose to take the training had reason to do so because they were psychologically less healthy at the beginning of the training in September than those who did not choose to take the training. As a result, their scores improved radically since they were less stressed, more focused, and happier heading into exams than when they started the training in the middle of the first semester. Moreover, when compared to the control group, their scores improved during the training while the control group’s did not.” The mindfulness training was based on Kabat-Zinn’s Mindfulness-Based Stress Reduction (MBSR) model. The training was eight weeks long, with one-hour classes and mindfulness practices of 15 minutes daily. See: Green & Simon, *supra* note 43 at 242-243. A psychoeducational program at Stanford and Yale Law Schools has also succeeded. The focus of the psychoeducational program was to examine the effect of such education on law students’ anxiety based on a cognitive-behavioural model. At Stanford and Yale, the program involved two one-hour classes. Both programs were voluntary and not graded. In both programs, the professors attempted to “normalize” anxiety by sharing experiences of anxiety. At Stanford, student anxiety would be induced by providing a scenario. Students wrote their “immediate thoughts with the given scenario.” The students were next asked to write down how they would feel and what they would think after some time had passed. After the class, the students received a handout that outlined the “negative automatic thoughts that support anxiety.” The second class consisted of students sharing their responses from the scenario given in the first class and reviewing automatic negative thoughts, which often include incorrect simplifications of a situation that produce and reinforce anxiety. The course instructors explained common behaviours such as “avoidance” when faced with anxiety and the negative consequences of such behaviour. The professor asked the students to “use their lawyerly analytic skills to challenge their own negative thoughts.” The students shared potential positive ways of dealing with anxiety. Instruction also included describing “perfectionism” and how it exacerbates anxiety. The second class concluded by asking the students to undertake an activity within the following weeks that they felt was anxiety-inducing. At Yale, the initial program had content similar to Stanford’s but via lecture. Class one was called “How to Participate Effectively in Class,” with lunch provided, and class two was held at the professor’s home with dinner provided. The attendees to the program at Stanford reviewed it positively and found it valuable. The students at Yale reported liking the program, and a majority continued to implement strategies to deal with anxiety. As a result, more than half of the students reported less anxiety. See: Ayres et al., *supra* note 783 at 125, 127, 138. Also, see other innovations undertaken in law schools to enhance wellbeing and educate students about mental health: Rosky et al., *supra* note 19; Kern & Bowling, *supra* note 29; Richard E. Redding, “Why it is Essential to Teach about Mental Health Issues in Criminal Law (And A Primer on How to Do It).” *Wash. UJL & Pol’y* 14 (2004): 407; Weng, *supra* note 19; Lopez, *supra* note 19. Also, see: Buchanan & Coyle, *supra* note 11, which includes numerous recommendations for law schools including:

management, positive psychology, self-care, and resilience-building activities, which would equip law students with the necessary tools to care for their wellbeing and to prepare for the profession.<sup>930</sup> Providing credit would legitimize mental health as a priority for law schools.

A wellbeing-focused legal education must encourage self-reflection and self-awareness to develop a trauma-informed approach.<sup>931</sup> Equipping students with interpersonal skills, emotional intelligence, and the ability to recognize and manage their emotional responses will enhance their capacity to navigate challenging situations and handle clients vulnerable to trauma.<sup>932</sup> Self-

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Recommendation 27: Create best practices for detecting and assisting students experiencing psychological distress; Recommendation 28: Assess law school practices and offer faculty education on promoting well-being in the classroom; Recommendation 29: Empower students to help fellow students in need; Recommendation 30: Include well-being topics in courses on professional responsibility; Recommendation 31: Commit resources for on-site professional counselors; Recommendation 32: Facilitate a confidential recovery network; Recommendation 33: Provide education opportunities on topics related to well-being; Recommendation 34: Discourage alcohol-centered social events; and Recommendation 35: Conduct anonymous surveys relating to student well-being. A comprehensive evaluation of wellness initiatives of approximately 50 (103 were asked to participate) law schools in the US in 2018 resulted from these recommendations. Also, see: Confino, *supra* note 292 at 703. On page 703 Confino wrote that many respondent “law schools have made great strides in the areas of health- focused orientation programming, physical well-being offerings, and LAP engagement. Moreover, a handful of schools have emerged as trailblazers in this arena, developing innovative courses and programs designed to promote holistic well-being, and devising creative strategies for engaging all members of the law school community in these endeavors.” Also, see: Catherine Hobbs et al., “Evaluation of a Credit-Bearing Online Administered Happiness Course on Undergraduates’ Mental Well-Being During the COVID-19 Pandemic” (2022) 17:2 PLOS ONE e0263514; Clara Rastelli et al., “The Art of Happiness: An Explorative Study of a Contemplative Program for Subjective Well-Being” (2021) 12 Front Psychol, online: <<https://www.frontiersin.org/articles/10.3389/fpsyg.2021.600982/full>>; Tarli Young et al., “The Impact of a Wellbeing Program Imbedded in University Classes: The Importance of Valuing Happiness, Baseline Wellbeing and Practice Frequency” 47:2 Studies in Higher Education (Dorchester-on-Thames) 751–770. Also, regarding educational strategies instituted on medicine, see: White et al., *supra* note 19.

<sup>930</sup> See: Béchard-Torres, *supra* note 276; Simmons, *supra* note 19; Rosky et al., *supra* note 19; Reuben & Sheldon, *supra* note 19; Ayres et al., *ibid*; Confino, *ibid*; Brittany Stringfellow Otey, “Buffering Burnout: Preparing the Online Generation for the Occupational Hazards of the Legal Profession” (2014) 24:143 Southern California Interdisciplinary Law Journal Available at SSRN: <https://ssrn.com/abstract=2434766>. Consulting with students about how to improve their wellbeing is essential, as is academic staff commitment. See: Denise Meyer & Caroline Strevens, “Is Using the Term Wellbeing with Students a Mistake? Evaluating a Wellbeing Intervention in a UK Law School — Suggestions for Repositioning Strategies to Address the Impact of Deficit-Discourse” (2022) 56:1 Law Teacher 54–66. Regarding legal professional training, see: Nielsen & Minda, *supra* note 19. Also, see generally: Jean R. Sternlight & Jennifer Robbennolt, “Good Lawyers Should be Good Psychologists: Insights for Interviewing and Counseling Clients” (2007) 23 Ohio St J on Disp Resol 437.

<sup>931</sup> See: Myrna McCullum & Coral Lyster, “Chapter 3: Trauma-Informed Practice” in *SHARP Workplaces Reference Manual 2021* (CDA: SHARP, 2020) 14; Justice Institute of British Columbia, “Trauma-Informed Practice (TIP) Foundations Curriculum,” online: *Justice Institute of British Columbia* <<https://www.jibc.ca/trauma-informed-practice-tip-foundations-curriculum>>; James 2020, *supra* note 21; Katz & Haldar, *supra* note 53; Golden Eagle Rising Society, *supra* note 53.

<sup>932</sup> See generally: Muir, *supra* note 19; Brown 2011, *supra* note 19; Katz & Haldar, *supra* note 53; Katz 2020, *supra* note 22; Katz 2022, *supra* note 21; Smyth, Johnstone, & Rogin, *supra* note 241; Cadieux et al., Targeted Recommendations, *supra* note 224. Also, see generally: Maroney 2011, *supra* note 19.

reflection and self-awareness enhance judgment and could foster professional diversity and inclusion.

Self-reflection will help foster ethical lawyering, allowing students to assess their biases and assumptions critically.<sup>933</sup> Encouraging and educating students to develop emotional intelligence and self-awareness could improve their overall wellbeing and enhance their professional competence. This would create a more empathetic and compassionate legal culture, reduce the mental strain associated with the profession, facilitate positive cultural change, and enhance diversity and inclusion.<sup>934</sup>

Access to mental health resources, like counselling services, should be readily available.<sup>935</sup> Law schools should also actively promote connection, belonging, and support to ensure those experiencing trauma, distress, or other difficulties receive the necessary support while also destigmatizing mental health.<sup>936</sup> Further, many students are parents, and the law school could facilitate a daycare so that students could check on their child/ren, enhancing their ability to balance their professional aspirations and family responsibilities while also normalizing such. Plants, yoga rooms, ceremonial spaces and relaxation areas should be readily available.<sup>937</sup>

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<sup>933</sup> See: Hamilton, Kitzman & Guyotte, *supra* note 19. Also see generally: Vago & David, *supra* note 19. For mindfulness in legal education, see: James 2011, *supra* note 19; Jacobowitz & Rogers, *supra* note 19; Rogers, *supra* note 19; Martin 2014, *supra* note 19; Scott, *supra* note 19; Reuben, *supra* note 19; Huang 2013, *supra* note 19; Huang 2015, *supra* note 19; Brostoff, *supra* note 19; Western Law, *supra* note 19. The wellbeing of law students and lawyers has been improved with mindfulness. See: Nielsen & Minda, *supra* note 19; Reuben & Sheldon, *supra* note 19; Rosky et al., *supra* note 19; Appleby & Bourke, *supra* note 19. Also see generally: Gerdy, *supra* note 19. Self-awareness and mindfulness can reduce bias. See: Lueke & Gibson, *supra* note 19; Kang, Gray & Dovidio, *supra* note 19; Stell & Farsides, *supra* note 19. Also see generally: Weng, *supra* note 19; Lopez, *supra* note 19; Ioanide, *supra* note 19; White et al., *supra* note 19; Salzen, *supra* note 19; Silvia, *supra* note 19; Maroney 2011, *supra* note 19; McIntosh, Antes & DuBois, *supra* note 19; Vago & David, *supra* note 19; Eurich, *supra* note 19. Also see generally: Menzies, *supra* note 172.

<sup>934</sup> See: Schwartz, *supra* note 657.

<sup>935</sup> See generally: Buchanan & Coyle, *supra* note 11; Faith Dickerson, "Psychological Counseling for Law Students: One Law School's Experience." *J. Legal Educ.* 37 (1987): 82.

<sup>936</sup> See generally: Murray, *supra* note 315; Peck, Rosch, & De Sawal, *supra* note 830; Skipper & Fay, *supra* note 420; Russell A. McClain, *The Guide to Belonging in Law School* (United States of America: West Academic Publishing, 2020); Laura Riley & Nickey Woods, "More Than Belonging: Tying Diverse Identities to Law School Success" (2022) *The Learning Curve: A Publication of the AALS Section on Academic Support* 18.

<sup>937</sup> Nature and plants have a positive effect on wellbeing. See generally: Peter Wallner et al., "Reloading Pupils' Batteries: Impact of Green Spaces on Cognition and Wellbeing" (2018) 15:6 *International Journal of Environmental Research and Public Health*. Law schools could encourage breaks and offer flexible scheduling. Faculty and staff could create a culture of self-care by encouraging students to take breaks, step away from their work, and engage in activities that promote their wellbeing. Law schools could provide spaces where students can take a study break and focus on relaxation. Flexible scheduling options could help students balance their academic work and other

The Standard includes an “internal audit tool” that can help assess the initial situation and improvements that can be modified to suit the law school’s size, nature, complexity, and needs.<sup>938</sup> Appropriate evaluation would enable law schools to evidence the value of wellbeing-related approaches and initiatives. It would encourage legal educators to become “reflective practitioners” and lead to a continuous improvement cycle within the law school.<sup>939</sup> The next part of wellbeing-focused and trauma-informed legal education is that it must be trauma-informed, to which this thesis will turn.

## 8.5. Implementation of Trauma-Informed Legal Education & Lawyering Skills.

Trauma-informed legal education means providing an environment with psychological safety for its staff, faculty, and students.<sup>940</sup> Central to being trauma-informed is appreciating that the impact of trauma can result in personal growth and wisdom that is unique because of the insights gained through experiencing such.<sup>941</sup> Pointedly, Netzel, wrote:

Instruction on post-traumatic growth goes beyond normalizing trauma in law school for the purpose of facilitating peer support. Done well, it helps students who have experienced trauma view themselves as uniquely situated to contribute to the legal profession. In that vein, trauma-informed pedagogy is more than just an approach that seeks to ameliorate harm. At their best, a trauma-informed professor aims to empower students to make the most of their post-traumatic wisdom and resilience and share that knowledge and power by becoming a trauma-informed lawyer.<sup>942</sup>

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obligations such as work, family, and extracurricular activities. Law schools could provide resources for meditation or mindfulness practices, yoga, scheduling regular breaks during the day, or encouraging students to take time off when needed. Law schools could also provide access to healthy food, promote exercise and sleep, and provide resources regarding stress management. Furthermore, law schools should promote positive relationships by encouraging positive, supportive relationships with peers, faculty, and staff, which can help reduce anxiety and stress. Open communication is facilitated through an “open-door policy,” making faculty and staff available to students to discuss stresses and challenges without judgment or blame.

<sup>938</sup> See: CSA Group 2020, *supra* note 30. Law schools could utilize the *Law Student Perceived Stress Scale (LSPSS)* validated in Bergin & Pakenham, *supra* note 3, and the *Law School Stressor Measure* validated in Flynn, Li, & Sánchez 2017, *supra* note 27.

<sup>939</sup> See: Jones & Strevens, *supra* note 53 at 4.

<sup>940</sup> See: Netzel, *supra* note 21; uOttawa, *supra* note 319. Also see: CSA Group 2020, *supra* note 30; Berman et al., *supra* note 54; Public Health Agency of Canada, *supra* note 249; Mental Health Commission of Canada, *supra* note 249.

<sup>941</sup> *Ibid.* Also see: Bryngeirsdottir & Halldorsdottir, *supra* note 243; Henson, Truchot & Canevello, *supra* note 193; Woodward & Joseph, *supra* note 243; Joseph, Murphy & Regel, *supra* note 243.

<sup>942</sup> See: Netzel, *supra* note 21 at 431.

The usualness and impact of trauma must be understood to de-stigmatize mental health concerns.<sup>943</sup> A wellbeing-focused and trauma-informed legal education also acknowledges that exposure to trauma can profoundly affect individuals' wellbeing, and professional development.<sup>944</sup> Students should be advised that there is a high risk of trauma when becoming a legal professional and provided trauma-informed lawyering skills.<sup>945</sup> It integrates trauma

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<sup>943</sup> The impact of trauma can result in personal growth and wisdom that is unique because of their experience with trauma. Pointedly, Netzel, *supra* note 21 on page 431. "Instruction on post-traumatic growth goes beyond normalizing trauma in law school for the purpose of facilitating peer support. Done well, it helps students who have experienced trauma view themselves as uniquely situated to contribute to the legal profession. In that vein, trauma-informed pedagogy is more than just an approach that seeks to ameliorate harm. At their best, a trauma-informed professor aims to empower students to make the most of their post-traumatic wisdom and resilience and share that knowledge and power by becoming a trauma-informed lawyer." Law students are at risk. See: Jaffe, Bender, & Organ, *supra* note 21. Legal professionals are at risk of experiencing trauma. See generally: Oehme & Stern, *supra* note 12; Weir et al., *supra* note 21; Weir, Jones & Sheeran, *supra* note 21; Maguire & Byrne, *supra* note 21; Leclerc, Wemmers, & Brunet, *supra* note 21; Léonard, Saumier, & Brunet, *supra* note 21; Mental Health Weekly Digest, *supra* note 21; Love, *supra* note 175; Gold, *supra* note 175. Listen to Myrna McCallum, a trailblazing legend in the making with her phenomenal work on trauma-informed lawyering. McCallum hosts "The Trauma-Informed Lawyer" Podcast, which provides information on trauma-informed lawyering. However, McCallum also provides a plethora of information on decolonization and wellbeing. See: McCallum, *supra* note 849. Also see: McCallum, *supra* note 53. McCallum also co-edited a first-of-its-kind and revolutionary book published by the American Bar Association titled, *Trauma-Informed Law: A Primer for Practicing Lawyers and a Pathway for Resilience and Healing*. See: Maki et al., eds, *supra* note 229.

<sup>944</sup> See: Netzel, *ibid*; Oehme & Stern, *supra* note 12; James 2020, *supra* note 21; Katz & Haldar, *supra* note 53; Katz 2020, *supra* note 22; Katz 2022, *supra* note 21; Pena, *supra* note 53; Randall & Haskell, *supra* note 53; Smyth, Johnstone & Rogin, *supra* note 241. Also, see: James et al., *supra* note 27; Williams et al., *supra* note 31; Yuen, *supra* note 53.

<sup>945</sup> An excellent instructional book for Canadian law schools and legal educators to refer to just released in Canada is Maki et al., eds, *ibid*. For resources to learn more about trauma-informed lawyering and legal education, see: Laken Gilbert Albrink, "Trauma-Informed Legal Advocacy" (2023) 13:1 Wake Forest J L & Pol'y 67–102; Cadieux et al., Targeted Recommendations, *supra* note 224; Kimberly Morton Cuthrell, "Trauma-Informed Legal Advocacy: Medicolegal Approaches & Best Practices for Immigration Attorneys" (2023) 20:2 INDJ 62–74; Golden Eagle Rising Society, *supra* note 53; James 2020, *supra* note 21; Kayla Gurski & Tiffany Butler, "Shifting Toward a Trauma-Informed, Holistic Legal Service Model for Survivors of Violence: The Calgary Legal Guidance Family Law Program 1" in Tod Augusta-Scott, Katreena Scott & Leslie M. Tutty, eds., *Innovations in Interventions to Address Intimate Partner Violence: Research and Practice* (New York; London: Routledge, 2017) 139; James 2023, *supra* note 215; Jones Trauma-Informed, *supra* note 849; Justice Institute of British Columbia, *supra* note 934; Katz 2020, *supra* note 22; Katz 2022, *ibid*; Katz & Haldar, *ibid*; Mallika Kaur, "Negotiating Trauma & Teaching Law" (2021) 35:1 Journal of Law and Social Policy 113–119; McCallum 2020, *supra* note 53; McCallum 2022, *supra* note 230; McCullum & Lyster, *supra* note 934; Maki et al., *supra* note 229; Netzel, *supra* note 21; Oehme & Stern, *supra* note 12; Randall & Haskell, *supra* note 53; Smyth, Johnstone & Rogin, *supra* note 241. Also, see generally: Kolk, *supra* note 80; Perry & Winfrey, *supra* note 23. Also, see James et al., *supra* note 27; Williams et al., *supra* note 31; Yuen, *supra* note 53; Zena Olijnyk, "Trauma-Informed Lawyering a Useful Tool in Working with Victims, Survivors," (26 August 2021), online: *Canadian Lawyer Magazine* <<https://www.canadianlawyermag.com/resources/legal-education/trauma-informed-lawyering-a-useful-tool-in-working-with-victims-survivors/359277>>; Florance Hwang, "Justice System Needs More Trauma-Informed Training, says Métis Lawyer", (9 December 2021), online: *CBC News* <<https://www.cbc.ca/amp/1.6276829>>; Nicole C. McKenna & Kristy Holtfreter, "Trauma-Informed Courts: A Review and Integration of Justice Perspectives and Gender Responsiveness" (2021) 30:4 Journal of Aggression, Maltreatment & Trauma 450–470; Randall & Haskell, *supra* note 53; Marie Soueid, Ann Marie Willhoite & Annie E. Sovcik, "The Survivor-Centered Approach to Transitional Justice: Why a Trauma-Informed Handling of Witness Testimony is a Necessary Component" (2017) 50 Geo Wash Int'l L Rev 125; SAMHSA, *supra* note 22.



awareness into the curriculum, enabling students to understand the consequences and implications of trauma for themselves and their clients.<sup>946</sup>

Netzel most recently outlined the “universal tenets of trauma-informed legal education” based on SAMSA’s Concept of Trauma. The universal tenets are: “1. Safety, Psychological Safety, and Physical Safety; 2. Trustworthiness and Transparency; 3. Peer Support; 4. Collaboration and Mutuality; 5. Empowerment, Voice, and Choice; and 5. Recognizing Cultural, Gender, & Historic Issues.”<sup>947</sup> Netzel goes through the tenets of trauma-informed teaching in law school in-depth, guiding how professors can introduce specific concepts into their teaching, such as “Mutual Care,” “Paving the Path,” “Teaching Potentially Traumatic Material,” “Handling Disclosures with Care,” “Recognizing Power Dynamics,” “Maintaining Flexibility,” “Self-Care,” “Boundaries,” “Teaching Post-Traumatic Growth and Wisdom,” “Assessing Student Experience,” “Choice in Engagement,” “Opening the Door to Humanity,” “Practicing Cultural Humility,” and “Teaching Through an Antiracist Lens.”<sup>948</sup> Trauma-informed education creates a community of safety, trust, and respect where students feel supported and comfortable sharing their experiences.<sup>949</sup>

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<sup>946</sup> Trauma-informed practices should be integrated into every component of law school. Netzel *supra* note 21 at 385 outlines “what law professors need to know about trauma, why law professors need to understand trauma, and how to employ a trauma-informed approach in their doctrinal courses as a matter of universal design.” Also see: Katz 2020, *supra* note 53 outlines how to integrate trauma-informed practices in the classroom by fostering a supportive environment, “modelling empathetic responses and self-care” and “setting a tone of mutual respect and support.” Trauma-informed practices can be incorporated into family law. See: Katz 2022, *ibid*. For resources to learn more about trauma-informed lawyering and legal education, see: Albrink, *supra* note 948; Cassie Baudean & Valerie L’Herrou, “Trauma-informed Legal Advocacy for Vulnerable Clients: Children” (2022) 29:3 Sexual Assault/Abuse 33; Cadieux et al., Targeted Recommendations, *supra* note 224; Cuthrell, *supra* note 948; Golden Eagle Rising Society, *supra* note 53; James 2020, *supra* note 21; Gurski & Butler, *supra* note 948; Mary O’Rawe, “Transitioning to an Understanding of the Autonomic Nervous System in Law” in Emma Jones & Caroline Strevens, eds., *Wellbeing and Transitions in Law: Legal Education and the Legal Profession* (Switzerland: Palgrave Macmillan, 2023) 161; James 2023, *supra* note 215; Jones Trauma-Informed, *supra* note 849; Justice Institute of British Columbia, *ibid*; Katz 2020, *supra* note 22; Katz 2022, *ibid*; Katz & Haldar, *ibid*; Kaur, *supra* note 948; McCallum 2020, *supra* note 53; McCallum 2022, *supra* note 230; McCullum & Lyster, *supra* note 934; Maki et al., *supra* note 229; Netzel, *supra* note 21; Oehme & Stern, *supra* note 12; Randall & Haskell, *supra* note 53; Smyth, Johnstone & Rogin, *supra* note 241; Also, see generally: Kolk, *supra* note 80; Perry & Winfrey, *supra* note 23. Also, see James et al., *supra* note 27; Williams et al., *supra* note 31; Yuen, *supra* note 53; Olijnyk, *ibid*; Hwang, *ibid*; McKenna & Holtfreter, *ibid*; Randall & Haskell, *supra* note 53; Soueid, Willhoite & Sovcik, *supra* note 948; SAMHSA, *supra* note 22.

<sup>947</sup> See: Netzel, *supra* note 21.

<sup>948</sup> *Ibid*.

<sup>949</sup> See generally: Tom Brunzell, “Trauma-Aware Practice and Positive Education” in Margaret L. Kern & Michael L. Wehmeyer, eds., *The Palgrave Handbook of Positive Education* (Cham: Springer International Publishing, 2021) 205; Sweetman, *supra* note 952; Norah Sweetman, “What Is a Trauma Informed Classroom? What Are the Benefits and Challenges Involved?” (2022) 7 Frontiers in Education, online:

Trauma-informed legal education is a comprehensive approach that recognizes the widespread impact of trauma and seeks to create a supportive and understanding environment for all individuals, especially those who have experienced trauma, which is, statistically, most people.<sup>950</sup> This approach understands that trauma can significantly affect a person's ability to learn, engage with others, and regulate their emotions.<sup>951</sup> Netzel explained the “trauma-informed approach” to legal education as:

[O]ne that seeks to ameliorate the conditions that trauma created by intentionally creating the safe, stable, predictable conditions that were not present when the trauma occurred. A trauma-informed approach recognizes that trauma responses are maladaptive behaviors and thus, a trauma-informed law professor strives to help law students who may suffer from adverse effects of trauma to have a less reactive stress response system. At their core, trauma-informed professors make every effort to “first, do no harm” and then minimize risk for inadvertent re-traumatization in their courses.<sup>952</sup>

Therefore, trauma-informed education aims to create a school culture that is sensitive to the needs of trauma survivors and helps them feel safe, supported, and empowered.<sup>953</sup> This involves training educators and staff to recognize and respond to signs of trauma, implement trauma-sensitive practices in the classroom, and create a supportive and nurturing school environment.<sup>954</sup>

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<<https://www.frontiersin.org/articles/10.3389/feduc.2022.914448>>; “Trauma-Informed Practice,” online: *Alberta* <<https://www.alberta.ca/trauma-informed-practice>>; Shelley Thomas, Shantel Crosby, & Judi Vanderhaar, “Trauma-Informed Practices in Schools Across Two Decades: An Interdisciplinary Review of Research” (2019) 43 *Review of Research in Education* 422–452.

<sup>950</sup> See: Carello & Butler, *supra* note 53. Also, see: Oehme & Stern, *supra* note 12; James 2020, *supra* note 21; Katz & Haldar, *supra* note 53; Katz 2020, *supra* note 22; Katz 2022, *supra* note 21; Pena, *supra* note 53; Randall & Haskell, *supra* note 53; Smyth, Johnstone, & Rogin, *supra* note 241.

<sup>951</sup> Chapter 2.5. outlined the prevalence and impact of trauma. Exposure to traumatic events is prevalent. See: Lee et al., *supra* note 200; Oehme & Stern, *ibid*; Joshi et al., *supra* note 12; Koenen et al., *supra* note 12; Ameringen et al., *supra* note 12; Heidinger, *supra* note 12; Mills et al., *supra* note 12; Kessler et al., *supra* note 12; Merrick et al., *supra* note 12; Advisory Board, *supra* note 12. Trauma is the leading cause of health conditions. See: Felitti et al., *supra* note 12. Also, see generally: SAMHSA, *supra* note 80; Center for Substance Abuse Treatment (US) Chapter 3, *supra* note 22; Perry & Winfrey, *supra* note 23; Bremner, *supra* note 80; Lanius, Terpou, & McKinnon, *supra* note 80; Wilson, Lonsway, & Archambault, *supra* note 80; Kolk, *supra* note 80; Kolk, *supra* note 80; Harvard Health, *supra* note 80. Also, see generally: Young 2023, *supra* note 190; Koenen et al., *supra* note 12; Van Ameringen et al., *supra* note 12; Heidinger, *supra* note 12; Mills et al., *supra* note 12; Kessler et al., *supra* note 12.

<sup>952</sup> See: Netzel, *supra* note 21 at 390. Also see: James 2023, *supra* note 215 at 268 where he wrote: “A trauma-informed law school would involve all staff becoming familiar with trauma theory and practicing intersectionality with compassion, and minimising stigma with no presumptions about how people should feel about difficulties or stressors (Verma, 2021). All courses would recognise the pervasiveness of trauma, its direct and indirect effects and the capacity for individuals and systems to anticipate and respond with compassionate regard (Dutton et al., 2014).”

<sup>953</sup> See: Carello & Butler, *supra* note 53; Katz 2020, *supra* note 22.

<sup>954</sup> See: Mental Health Commission of Canada, *supra* note 903.

Mental health awareness is essential in reducing the stigma and discrimination associated with mental illness and promoting the importance of seeking help when experiencing psychological discomfort.<sup>955</sup> Students can learn skills to practice law sustainably and provide ethical and competent legal support.

Finally, trauma-informed education involves developing partnerships with mental health professionals, community organizations, and families to provide a network of support for individuals who have experienced trauma. By taking a holistic and empathetic approach, trauma-informed education seeks to not only educate about trauma but also provide the necessary support and resources for individuals to heal and thrive in a school environment.<sup>956</sup>

Wellbeing-focused and trauma-informed legal education is not only a progressive concept but a crucial one, ensuring that law schools enhance student and future legal practitioners' holistic development and resilience. Addressing stigma, discrimination, and racism requires creating inclusive and equitable environments within law schools and legal organizations, promoting a culture of respect and diversity, offering support systems, and actively combating discrimination and racism. Law schools, employers, and the legal community must address stigmas head-on, creating inclusive and supportive environments prioritizing mental health, diversity, and work-life balance.

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<sup>955</sup> See: Graham Thornicroft et al., “Evidence for Effective Interventions to Reduce Mental-Health-Related Stigma and Discrimination” (2016) 387:10023 *Lancet* 1123–1132; Mental Health Commission of Canada, *ibid*. Also, see generally: Jolly-Ryan, *supra* note 31; Brohan & Thornicroft, *supra* note 31; Klik, Williams, & Reynolds, *supra* note 127; Ireland et al., *supra* note 127; Batastini, Lester, & Thompson, *supra* note 127; Bibelhausen, Bender, & Barrett, *supra* note 31.

<sup>956</sup> For resources to learn more about trauma-informed lawyering and legal education, see: Albrink, *supra* note 948; Baudean & L’Herrou, *supra* note 949; Cadieux et al., Targeted Recommendations, *supra* note 224; Cuthrell, *supra* note 948; Golden Eagle Rising Society, *supra* note 53; James 2020, *supra* note 21; Gurski & Butler, *supra* note 948; O’Rawe, *supra* note 949; James 2023, *supra* note 215; Jones Trauma-Informed, *supra* note 849; Justice Institute of British Columbia, *supra* note 934; Katz 2020, *supra* note 22; Katz 2022, *supra* note 21; Katz & Haldar, *supra* note 53; Kaur, *supra* note 948; McCallum 2020, *supra* note 53; McCallum 2022, *supra* note 230; McCullum & Lyster, *supra* note 934; Maki et al., *supra* note 229; Netzel, *supra* note 21; Oehme & Stern, *supra* note 12; Randall & Haskell, *supra* note 53; Smyth, Johnstone & Rogin, *supra* note 241. Also, see generally: Kolk, *supra* note 80; Perry & Winfrey, *supra* note 23. Also, see James et al., *supra* note 27; Williams et al., *supra* note 31; Yuen, *supra* note 53; Olijnyk, *supra* note 948; Hwang, *supra* note 948; McKenna & Holtfreter, *supra* note 948; Randall & Haskell, *supra* note 53; Soueid, Willhoite & Sovcik, *supra* note 948; SAMHSA, *supra* note 22. Also see: Thomas, Crosby, & Vanderhaar, *supra* note 952; Brunzell, *supra* note 952; Sweetman, *supra* note 952.

By integrating trauma awareness, promoting wellbeing, cultivating self-reflection, and offering education in emotion, law schools can prepare students to navigate the complexities of legal practice with empathy, compassion, and ethical consciousness and, simply, how to live sustainably well. Establishing a supportive legal community further secures a healthier, more diverse, and inclusive future for the legal profession; such educational advancement can create a legal landscape that respects the wellbeing of all involved and, in turn, improves the overall outcomes for law students, lawyers and their clients.

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