Challenging the myth of the gladiator-litigator: Judges, lawyers speak out about mental-health issues in the legal profession

By SEAN FINE

Staff

S purred by the pandemic, the legal profession is moving to address the mental health of judges and lawyers, as luminaries such as former Supreme Court justice Clément Gascon and Ontario Chief Justice George Strathy speak in deeply personal terms about the issue.

Mr. Gascon had a well-known episode of mental illness while he was on the country's top court three years ago, disappearing for several hours, and turning up in hospital. He revealed publicly at that time that he had been suffering from anxiety and depression for more than 20 years, and said he had a panic attack.

This spring, in an address to a mental-health summit organized by the Law Society of Ontario, with 5,800 people registered online, he described how the legal world has begun to seek his insight, especially as mental health concerns became prevalent during the pandemic.

"In 2022 - not last year, not two years ago, this year - I have been asked so far to give talks about this issue by the chief justices of the country, by members of the judiciary, by judges of administrative tribunals, by members of law societies in [Ontario] and two others, by private law firms, by a public service group of attorneys, and by a couple of law faculties," he said.

The avalanche of invitations, even from judges' groups, is a sign of change in the legal world. As recently as 2014, when Orlando Da Silva, who suffers from depression, became president of the Ontario Bar Association, no one would be caught dead approaching an information table on counselling services, he says.

"It was just so taboo, the stigma was so great," Mr. Da Silva said.

Studies done since that time show rates of mental illness are much higher in the legal profession than in the general population, Chief Justice Strathy said in a paper posted this spring on the websites of the Court of Appeal, the Law Society of Ontario and the Canadian Judicial Council.

A study begun in 2015 by the Barreau du Québec found that 43 per cent of lawyers participating in the research reported psychological distress. A University of Toronto study found a strong correlation between signs of depression and the fame and money associated with career success in law.

To fight the stigma and encourage the legal community to open up, Mr. Gascon and Chief Justice Strathy are making their messages personal. Chief Justice Strathy has spoken publicly about his mother's decades-long battle with bipolar disorder, and how he blamed her for not overcoming her illness. Mr. Gascon highlighted attitudes toward his wife's multiple sclerosis.

"Yes, she walks in a funny way.

Sometimes she falls - badly. Nobody tells her, 'Can you not walk straight? Why is it that you're falling?' "Mr. Gascon said.

"Why is it that we're having a different reaction because of mental issues -
‘Well, why don’t you deal with it and face it and move to something else?’
Physical illness, mental illness, they all have their attributes. To destigmatize, you have to be able to create an open dialogue.”

Citing his own experience - including five years on the Supreme Court, retiring at age 59 - Mr. Gascon said perfectionism can lead to mental-health problems.

Law "is a profession where you find a lot of high achievers, high performers, persons who tend to be a bit like I am: perfectionist. And perfectionists tend to push the envelope for fear of not being good enough, for fear of disappointing, or the fear of failure sometimes." Chief Justice Strathy is challenging what he sees as the destructive myth of the gladiatorlitigator: fearless, razor-sharp, always in control of their emotions, indefatigable, not breaking a sweat under pressure.

"We have internalized the myth that only the invincible are successful," he said in his paper The Litigator and Mental Health.

In trying to achieve the unattainable, he told The Globe and Mail in an interview, lawyers "submit themselves to stresses that become unbearable." The Chief Justice, who retires at the end of August at age 74, added: "And frankly, the people they work for - as opposed to work with - subject them to ridiculous stresses. And it's got even worse in the pandemic."

For instance, COVID-19 contributed to the loss of boundaries between work and home, and to isolation from friends, family and colleagues, and was itself a major source of stress and anxiety, he said.

Those stresses combined with the pressure to attain large amounts of billable hours, the absence of time for recreation, or family, or catching up, and the need to be always available to clients and employers.

Change, he said, needs to come from the top. He has a range of specific proposals, especially for big law firms: that they have a senior lawyer do a confidential check-up on associates to make sure they have a fair share of work - neither too much nor too little; that they examine targets for billable hours, and include mentoring and other nonbillable activities as deserving of being counted within the target; and that they create a mental-health committee with the authority and resources to change firm culture.

Bay Street has been changing, says Emily Atkinson, the director of legal learning and professional resources at Torys LLP. Several large firms have shared ideas about how to respond to mental-health issues, a process begun after last year's mental-health summit, she said.

Most firms are monitoring workload. Torys uses technology that delays the sending of e-mails to reduce latenight communications. More people are discussing personal challenges and mental-health issues openly.

"Part of what I think has been positive out of all of this is that we are having many, many more of those conversations, and they come much easier," she said. "I think it's led us all to operate differently."

Mr. Da Silva is a wellness mentor-in-residence at five Canadian law schools: the University of British Columbia, University of Ottawa, McGill University, Toronto Metropolitan University and the University of Calgary. Five nights a week, he takes calls from students from six until nine. A common theme is the imposter syndrome: feeling like a fraud, not deserving. He says he can relate to that because his depression manifests itself as a feeling of worthlessness.

Despite the greater openness since 2014, "there's still the prevailing view that to be a lawyer, especially a trial lawyer, you have to be strong. And nothing says weakness and vulnerability more to people in the profession and their clients than the inability to deal with your own depression and anxiety."

Hence, many people remain silent, something he knows about from experience: In 2008, he attempted to take his own life, and didn't tell anyone until 2014. But he works in the public sector now, at the Ontario Ministry of the Attorney-General. "If I had to attract clients, I don't know what success I would have."