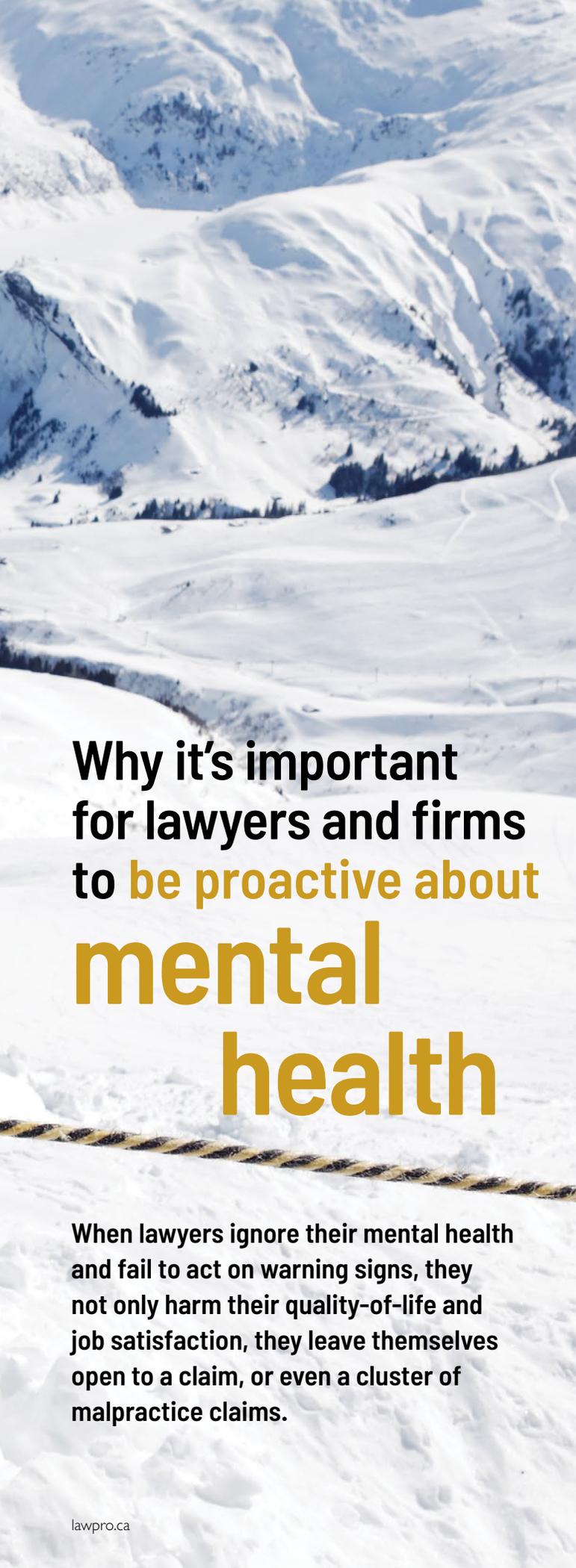




**WARNING
SIGNS:**



Why it's important for lawyers and firms to be proactive about mental health

When lawyers ignore their mental health and fail to act on warning signs, they not only harm their quality-of-life and job satisfaction, they leave themselves open to a claim, or even a cluster of malpractice claims.

It's 10:00 p.m. Do you know where your associates are?

A lawyer's life can be a lonely one. Long hours spent in an office — reviewing documents, drafting letters, researching obscure points of law — can create a sense of isolation, even for lawyers practising in firms. This isolation can be harmful to a lawyer's mental health, and it can also prevent colleagues from realizing a problem exists and stepping in when a lawyer becomes overwhelmed.

Too often, a lawyer overwhelmed with professional and personal stress is left alone while files suffer, tasks remain unaddressed, deadlines are missed, and errors are made. In some cases, the overwhelmed lawyer's health suffers to the point of needing to step away.

When firms discover large clusters of claims

Martine Morin, Unit Director & Counsel with LAWPRO, has encountered situations where firms are forced to report clusters of claims after an overwhelmed colleague has stepped away from the files. She says this often appears to be the result of firms not responding to the needs of their associates. Overwork and lack of support from colleagues can create a snowball effect, where small problems start to multiply and grow, causing anxiety or stress, which in turn causes files to be left unattended.

Morin says that while these clusters of claims do arise in medium and large firms, they occur most often in smaller firms, where lawyers usually work alone on a particular file and therefore are not required to update colleagues on a regular basis. She stresses that firm partners need to remember that they may be responsible for the liability of their associates, and that a lack of oversight can create substantial costs down the road, including deductibles, claim surcharges, and levies.

Morin's advice is to ensure that lawyers are checking-in on each other. Partners, associates, and staff should be prepared to recognize red flags that suggest a lawyer has taken on too much or is otherwise struggling, and offer assistance or take steps to mitigate the stress on the colleague. Red flags can include: regularly failing to return phone calls or emails; leaving files to linger over long periods of time; "freezing" and being unable or unwilling to complete small and simple tasks; regular and unexplained absences; and, changes in personality or mood. Colleagues displaying these sorts of warning signs are often in need of assistance and may need encouragement to seek out wellness resources and speak to outside parties such as Ontario's Member Assistance Program ("MAP").

The dangers of not talking about mental health

One thing that prevents struggling lawyers from seeking assistance or notifying colleagues of problems as they develop is the stigma

surrounding mental illness within the legal profession. Many lawyers will refrain from seeking assistance or even acknowledging a problem because they are concerned about negative repercussions and potential judgment from co-workers and management.

Not just talking the talk

Some firms have made great strides in building a healthy and resilient environment. Many are now encouraging their employees and lawyers to take advantage of services like those offered by the MAP, the LSO, or other organizations (see page 15 for more details).

According to Doron Gold, a senior clinician who has been with the MAP since its creation in 2013, those positive changes need to come from the top: “Once I did a webinar for the Law Society, and one of the questions was from a young lawyer who said ‘our firm has a yoga room, and I’m afraid to use it.’ The question was, ‘so what can the firm do to help with that?’ I said, ‘the managing partner needs to take up yoga.’ You need to have the buy-in from the highest

levels, demonstrating tangibly that it’s not just lip-service—they mean it.”

Supporting mental health supports lawyers’ practices

Encouraging an honest and open approach to communicating about mental health is not just good for peace-of-mind, it’s good for client satisfaction. A positive and supportive working environment that avoids mental health stigma will flag potential health problems before they become file problems and may even prevent health problems from arising in the first place.

If you see a colleague or friend struggling with stress, anxiety, depression, or other mental health problems, it’s important to reach out. The first step to creating a healthier environment for everyone is dismantling the stigma and barriers that entrench isolation and prevent healing. ■

Three things you or your firm can do to help prevent large clusters of claims

- 1 Encourage positive communication about warning signs**
Colleagues and support staff may be best situated to know if certain files are being left to linger or a lawyer is not responding to calls or important correspondence. Building a positive culture that responds to stress and mental health problems without judgment can prevent dangerous silence as claims pile up unbeknownst to colleagues.
- 2 Implement a claims notification policy**
In both smaller and larger firms, management can put a policy in place to be notified whenever a claim is made against an associate or a potential claim is discovered. Inquiries can be made at that time as to whether this claim is symptomatic of larger problems, such as excessive workload or other issues.
- 3 Promote mental health resources for lawyers**
Building a healthy workplace is a team effort. Lawyers, staff, and management can all choose to be open about the importance of mental health. Senior lawyers and management can set an example by taking advantage of lifestyle or health benefits offered by the firm. Even if a firm doesn’t subsidize lifestyle expenses or offer health benefits, lawyers can encourage one another to take advantage of the confidential assistance provided to all Ontario lawyers through the Member Assistance Program. For additional online resources available to Ontario lawyers, see page 15.

Online non-MAP wellness resources for lawyers

Mental Health and Wellness in the Legal Profession: cba.org/CBA-Wellness/Home

An online self-learning program created for lawyers, judges, and law students through a partnership among the Canadian Bar Association, the Mood Disorders Society of Canada, and Bell Let's Talk. It is designed to educate professionals on symptoms, treatment options, and prevention strategies for depression, anxiety, addiction, stress, and other mood disorders. It is accredited in all Canadian jurisdictions for CPD Ethics/Professionalism hours.

Well-Being Toolkit for Lawyers and Legal Employers: americanbar.org

A collection of information and resources compiled by the American Bar Association directed at promoting the well-being and health of lawyers, including an 8-step action plan for legal employers in developing and pursuing a wellness initiative.

Other Law Society of Ontario resources

The Law Society of Ontario provides members with additional assistance and aid that can complement the resources offered by the MAP. For lawyers seeking assistance, the following services are available:

Law Society of Ontario's Coach and Advisor Network (CAN): lsuc.on.ca/coachandadvisor

A mentorship program available to Ontario lawyers and paralegals that addresses short term substantive and procedural legal questions. Members are encouraged to contact the CAN for guidance and advice on resolving issues that arise in their practice. If a lawyer or paralegal is struggling with one or more problem files, the practice advice accessible through the CAN is complementary to the mental health and wellness support accessible through the MAP's peer-support program [see page 10 for more information on the peer support program].

Law Society of Ontario's Discrimination and Harassment Counsel

A confidential service that offers advice and support in circumstances where a lawyer has experienced or witnessed discrimination or harassment on human rights grounds. Support can include reviewing the available legal options or mediating

a resolution. Discrimination violates the Ontario *Human Rights Code*, the Law Society's *Rules of Professional Conduct*, and the Paralegal *Rules of Conduct*, and the Discrimination and Harassment Counsel provides assistance in filing complaints with the Law Society of Ontario or with the Ontario Human Rights Tribunal.

Discrimination includes unwelcome comments or actions that relate to a person's personal characteristics, such as race, gender, sexual orientation, and age. Harassment is a form of discrimination and includes unwelcome comments or behaviour when such conduct might reasonably be expected to cause insecurity, discomfort, offence, or humiliation to another person. Typical examples include name calling, racial slurs and jokes, demands for sexual favours, sexual suggestive comments or gestures, and sexist jokes.

The Discrimination and Harassment Counsel may be reached on a confidential basis at 1-877-790-2200, or email: assistance@dhcounsel.on.ca