

Wine, Wisdom, and Withstanding

Paper Prepared for the FOLA Conference November 8, 2018

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Toronto, Ontario
October 24, 2018

“Victory needs no explanation,

Defeat allows none”

-Warhammer 40,000

“Dawn of War”

Introduction

Ordinarily when I am asked about Bre-X Minerals Ltd. (Bre-X), the questions usually involve the civility issues from my prosecution for misconduct by the Law Society of Upper Canada (LSUC)¹²³⁴⁵, the judicial review issues that arose during the Ontario Securities Commission’s (OSC) attempt to remove the trial judge after day 60 of the trial⁶ or the securities laws issues that arose during the actual Bre-X trial itself⁷. To describe in any real detail the 20 year roller coaster ride that defending John Bernard Felderhof took me on, is far beyond the scope of this small paper. However, remarkably, this is the first time that I have tried to describe the effect that the case has had on me as both a person and a professional. It also discusses more broadly the issues of stress in the legal profession, strategies for dealing with it, and resources that are available to help others navigate the course of similar cases (if any can be said to exist).

¹ *Law Society of Upper Canada v. Joseph Peter Paul Groia*, 2012 ONLSHP 94 [“LSUC Hearing Panel Reasons”]

² *Law Society of Upper Canada v. Joseph Peter Paul Groia*, 2013 ONLSAP 41 [“LSUC Appeal Panel Reasons”]

³ *Joseph Groia v. The Law Society of Upper Canada*, 2015 ONSC 686 [“Divisional Court Reasons”]

⁴ Justice D.M. Brown, *Groia v. The Law Society of Upper Canada*, 2016 ONCA 471 [“ONCA Reasons”]

⁵ *Groia v. Law Society of Upper Canada*, 2018 SCC 27 [“Supreme Court of Canada Reasons”]

⁶ *R. v. Felderhof*, 2002 CanLII 41888 (ON SC) [“Decision of Campbell J.”]

⁷ *R. v. Felderhof*, 2007 ONCJ 245

The Problem of Stress in the Legal Profession

Owen Kelly, in his essay “Coping with Stress and Avoiding Burnout: Techniques for Lawyers,” writes, “the professional and interpersonal environment in which lawyers function appears at times to have been tailored to elicit feelings of distress”⁸. Indeed, many of the qualities that help to make a lawyer successful, such as perfectionism, pessimism, and even paranoia all exacerbate the pressures felt by lawyers and, over an extended period of time, lead to debilitating anxiety and unhealthy coping mechanisms. As I look back on the Bre-X cases (both defending Mr. Felderhof and defending myself) I have come to realise the importance of what Angela Duckworth has called Grit in her remarkable study of successful people⁹. For Duckworth, Grit is about a combination of passion (focussed energy towards a particular goal) and perseverance (the willingness to never never never give up). I highly recommend her book to you.

Practising law, particularly in defending a high profile case like Felderhof, or in a very different way by defending yourself, is as stressful a professional experience that you can imagine; however it pales from the stress that you can encounter in your personal life. Mr. Felderhof had fallen from the very pinnacle of his profession in a few short months as the Bre-X scandal unravelled. He became a pariah on Bay Street and it was also said that I became one by agreeing to defend him. His marriage dissolved and his personal life faltered. Mr. Felderhof would have spent many years in jail had we lost the Bre-X trial. There is no doubt that this high pressure, highly publicized case laid much of the groundwork for how the case was handled or mishandled by all of the lawyers involved.

⁸ “Coping with Stress and Avoiding Burnout: Techniques for Lawyers” by Owen Kelly; *13 October 2009*

⁹ *Grit: The Power of Passion and Perseverance* (2016) by Angela Duckworth

Then the case became personal—and I became the defendant with a regulator that was determined to doggedly argue that my attempts to defend myself were an abuse of process, that the days I spent testifying in my own behalf were a waste of time because I had been a “party in substance” to the Felderhof case and that the “findings” made against me by the Felderhof courts were all that were required to convict me of professional misconduct. The 2 month suspension and the \$250,000 in costs awarded against me did little to reduce the stress of defending myself in the long arduous regulatory and appeal process that followed.

LSO Resources to Deal with Stress

Fortunately I did not do what many lawyers do; develop self-destructive coping mechanisms such as substance abuse or obsessive behaviour. A recent study by the American Bar Association has found that “21 percent of licensed, employed attorneys qualify as problem drinkers, 28 percent struggle with some level of depression and 19 percent demonstrate symptoms of anxiety”¹⁰. From this study and many others, it is clear that the legal profession is in dire need of strategies to keep lawyers healthy and happy.

The LSO has been making great progress in its efforts to help lawyers struggling with mental health and addiction issues. These initiatives are outlined throughout the Mental Health Task Force’s various policy memoranda, so I will mention only the most relevant here: the Client

¹⁰ ABA Study by the Hazelden Bay Ford Foundation; 3 February 2016

Services Centre Supports for Legal Professionals (CSC), the Personal Management Guideline (PMG), and the Member Assistance Program (MAP).

The CSC is “the frontline for providing information to licensees and the general public”¹¹. It functions to provide broad information about stress, anxiety, and substance abuse that can help lawyers and other legal professionals become educated on these issues. It also helps to direct legal professionals towards appropriate resources, such as counselling.

Similar to the CSC, the PMG seeks to educate legal professionals in the challenge of “recognizing the sources and indicia of mental illness and [provide] basic suggestions”¹² on subsequent steps.

MAP is best understood as the program that provides counselling and other personal services. It is a fully confidential service that provides its members with “a comprehensive health risk self-assessment,” “E-counselling,” and “Interactive e-Learning Courses”¹³. The major difference between CSC or PMG and MAP, is that the services provided by MAP are tailored for each individual lawyer to help them overcome personal mental health or addiction challenges, while the CSC and PMG are more generic, one size fits all programs.

Finally, as a pre-emptive rather than a prescriptive measure, the LSO offers Continuing Professional Development Programs (CPD) that “are dedicated to addressing mental health issues including ‘Mental Health in the Workplace: Challenges and Solutions’”¹⁴. This initiative aims to comprehensively tackle mental health issues. It explores how mental illness can disrupt the functional abilities of all of those in the legal profession, as well as strategies for effectively

¹¹ *Mental Health Task Force Memorandum*, dated 3 July 2015; 12

¹² *Ibid*; 14

¹³ *Ibid*; 12

¹⁴ *Ibid*; 16

overcoming barriers to workplace resolutions. This on demand web series is still available for purchase online at <https://store.lso.ca/mental-health-in-the-workplace-challenges-and-solutions>.

There are also mental health resources offered by the CBA and a host of other private and public providers. That is not to say that more cannot be done. From data quoted in the ABA Journal Article noted above, mental health and addiction issues are a systemic problem that must also be tackled by the legal profession as a whole. Eric Sigurdson writes in his article, “The Legal Culture” that “burnout prevention requires both individual and system solutions”¹⁵. He continues, there is a strong business case for legal leadership...to invest in efforts to reduce lawyer burnout and promote engagement—burnout has strong links to lawyer turnover, professional work effort, and client satisfaction and retention”¹⁶.

A large new LSO initiative to tackle mental health and addiction in the legal profession would not only help to better educate lawyers, but would also work to reduce or normalize the stigma surrounding these issues. Many lawyers “mistakenly believe that if you’re vulnerable, you’re weak. There’s [also] this notion of being the rock of Gibraltar for your clients”¹⁷. This leads to lawyers, who are “statistically the professionals most in need of therapy,” to also be “deeply resistant to it”¹⁸. We still believe that seeking help is the equivalent to showing weakness and will subsequently be counterproductive to our careers.

Thankfully a shift in lawyers’ attitudes towards receiving mental health and addiction support is occurring. The LSO’s MAP program has been increasingly accessed by legal professionals over the last couple of years. Its success for engaging Ontario’s highly dispersed

¹⁵ “The Legal Culture: Chronic Stress, Mental Illness and Addiction – Law Firms, Legal Departments, and Eight Organizational Strategies to Avoid Burnout and Promote Engagement” by Eric Sigurdson; 3

¹⁶ *Ibid*; 4

¹⁷ “How Lawyers can Avoid Burnout and Debilitating Anxiety”; 6

¹⁸ *Ibid*; 6

legal profession has not gone unnoticed as the MAP has won a North American award for its efficacy. To be vulnerable is to be human. Just beginning a conversation about these issues and destigmatizing the struggle with mental health and addiction is a major step forward. People in general, but lawyers specifically, need to feel comfortable seeking help without believing that there will be professional repercussions. The LSO goes to great lengths to ensure that any lawyer who uses these mental health resources will be able to do so confidentially and be treated with compassion and respect.

Joe's Stress Strategies

So what path did I follow? In summary I did 4 things that I planned, and I also dealt with one thing that I did not plan. My 4 chosen steps were:

- I) Mindfulness: I followed a modest form of mindfulness—where I struggled to control my thoughts and my responses to the charges against me. It certainly helped that I believed wholeheartedly that I was being treated unfairly. I focused on those things that I could work on and change: I also tried as best I could to not rant and rave about those things beyond my control.

- II) Distraction: When it became clear that I would be waging a long battle with the LSUC, my wife and I decided to start a small estate winery on the Bench in Niagara. Today 6 Mile Cellar is still in business—and still tackling the challenges of farming, making

and selling great wine. The winery and the wine business certainly helped me take my mind off of my LSUC troubles.

III) Fighting Back: My experience is that a great deal of our stress comes from a feeling of helplessness. While mindfulness helps you to try to deal with tolerating those things outside of your control, fighting back allows you to try to change the battleground and regain some of the power over your future. In my case that was running for Bencher and being elected by my colleagues when the score was 19 judges and regulators against me, with none in my favour. The final score in case you didn't know was 24 against and 7 for.

IV) Finding Out Who Your Friends Are: I also took great comfort in the support of many lawyers and I used that support and positive energy to replace some of what I had used up.

The one unplanned stress reliever was to replace LSO stress with real worry. A few years into my LSUC prosecution all 3 members of my immediate family each had separate life threatening illnesses, the last of which was only finally resolved in our favour (we hope) in 2017. I can say without hesitation that the LSUC struggle became small and insignificant when I was spending time at Princess Margaret or St. Michael's Hospital. It is not a technique, however, that I would wish for anyone. When June 1, 2018 came and the SCC decided in my favour I was able to celebrate that result and another cancer free year in the Groia household.

Conclusion

To reiterate an important point we have tried to make throughout this paper, handling mental health and addiction issues is not solely the responsibility of the individual lawyer—one needs to call on the help and support of friends, colleagues and health care professionals. I believe there must be a systemic change in the legal profession if real change is to be effected. While I believe the LSO has done a lot to provide mental health support there is still much more to be done. And at least as it relates to the discipline process, the LSO needs to show a greater awareness of the toll that misconduct charges take on individual lawyers. By my estimate, the total cost of my prosecution for both sides was about \$7,000,000 before you consider the stress and other personal costs that I paid on top of that. I will let others comment on the wisdom of that expenditure. What I would have to say on the subject would fairly and properly be considered uncivil.