

How to Sustain the Unustainable - Coping With a Blizzard of Demands

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Introduction

Despite the long hours and relatively high rates of burn out within the legal profession, there is often still a lack of support for in house lawyers working under extreme pressure. Individuals can feel isolated and unsupported and despite the emergence of mental health programmes, much of the pastoral care seems to exist only after the event. Many countries face high inflation and weak economic growth. Many companies will face tighter profit margins and the inevitable large restructuring projects that follow will place great demands on in house teams. Those teams might already have suffered headcount reduction and remaining lawyers will be expected to absorb the new demands. This paper considers coping strategies that have been used by lawyers, with a particular emphasis on physical and mental health; psychology and management tools. Medical studies on the effects of stress are reviewed in the context of in house legal teams and practical suggestions are given on how effectively lawyers can adapt their working habits and environments to cope with the elevated stress levels.

Ultimately, the best way to cope with unreasonable levels of working stress and hours that run into weekends and holidays is to avoid the situation. This might mean taking radical action. In 2023, New Zealand Prime Minister, Jacinda Arden, admitted she no longer had “enough in the tank” to lead her nation and resigned. For in house lawyers, a realistic assessment of whether you are in a position to carry on, or even take on more demands, is not only wise it is essential. You owe it to your employer, to your colleagues and, most importantly, to your loved ones. It is not suggested that lawyers resign but lawyers must take responsibility for their work lifestyle to prevent burn out.

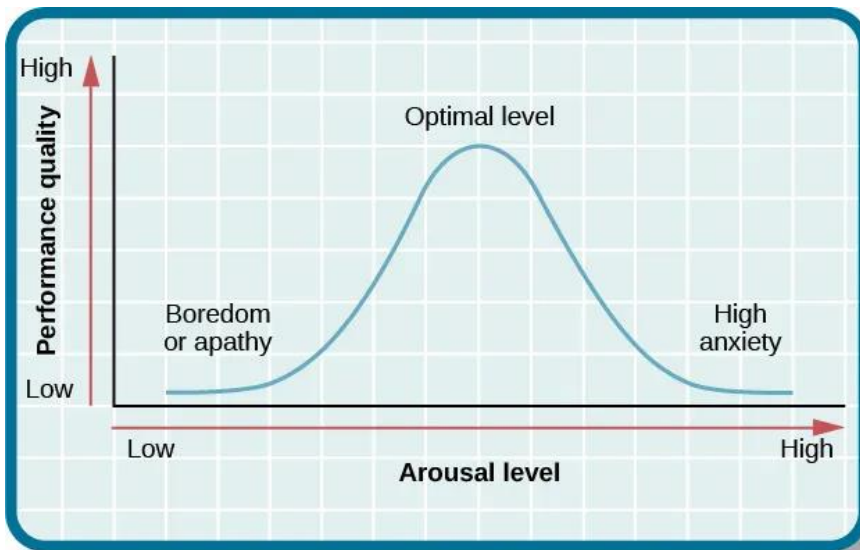
This paper has been written to equip lawyers with a toolkit to draw from in times of extreme and prolonged pressure. The field of study of how stress affects physiology and psychology is vast and therefore only a few key messages are provided here. Some of those messages are already heavily discussed in society but there are others which are less well known. The measures suggested are ones that the author has found personally helpful. Therefore, some methods may be more pertinent to some lawyers than to others and that is why a range of suggestions have been included.

Effects of stress on the body and on work performance

Despite their best efforts, General Counsel might find themselves and their teams caught within a perfect storm where demands outstrip resources, and the only way to achieve critical objectives within tight timescales is to work longer hours as efficiently and as effectively as possible. Inevitably, the stress this creates affects human physiology and psychology.

The Yerkes- Dodson Law [1] states there is a relationship between stress and performance, and that there is an optimal point corresponding to the level of stress versus the level of performance. This means that a certain amount of stress helps lawyers perform well and be

productive, but in extreme situations with either very high levels of stress and/or prolonged stress, performance drops materially. The research also shows that certain tasks are better undertaken during different stress levels. Difficult or complex tasks are more productively undertaken whilst least stressed, whereas simple tasks could readily be undertaken whilst levels of stress are high. Although the Yerkes-Dodson Law has drawn criticism recently for a “poor original experiment design”, General Counsel can decide for themselves whether the conclusions drawn from the research can validly be applied to them and their teams. An obvious conclusion would be to save the complex tasks for a calm time of day when it is easier to think clearly and be more creative. Each of us has a preferred time of day depending on our body clocks. A more important lesson is not to reach the tipping point where legal teams are over worked for prolonged periods and become less and less productive no matter how hard they are pushed or incentivised. The key point for General Counsel is not only to work hard but also to work smart and to deliver adequate resources to improve performance.



Nickerson, 2021

When considering how to cope with high levels of stress it is essential to recognise what happens if you do not learn how to cope. According to the World Health Organisation [2], burnout is characterised as 'a syndrome conceptualised as resulting from chronic workplace stress that has not been successfully managed'. It is characterized by three dimensions:-

1. Feelings of energy depletion or exhaustion;
2. Increased mental distance from one's job, or feelings of negativity or cynicism related to one's job; and
3. Reduced professional efficacy.

Professor Christina Maslach at the University of California, one of three authors of the Maslach Burnout Inventory [3], thinks burnout is the responsibility of an organisation not an individual. She rates the top five reasons for burnout as:-

1. Unfair treatment at work;
2. Unmanageable workload;
3. Lack of role clarity;
4. Lack of communication and support from their manager;
5. Unreasonable time pressure.

In organisations where working culture is an issue, General Counsel can remedy many of these items and 'be the change' they want to see in others. An interesting theory [4] notes that satisfaction does not diminish as dissatisfaction increases. In fact, they are independent of each other. Satisfaction commonly occurs with challenging work; recognition of achievements; responsibility; the opportunity to do something meaningful; involvement in decision making; and a sense of importance to the organisation. Areas where dissatisfaction commonly occurs include salary; work conditions; company policy and administration; supervision; working relationships; status and security. Therefore, an example of how General Counsel can decrease dissatisfaction is to review their team's working conditions. Do they have the tools they need to do their job? For example, would a printer closer to an employee's work station make a difference to their day when they work in the company secretarial team and often need to print confidential information. Or would an iPad be better if most of the Board are viewing papers solely via digital board books on their iPads? How about a promotion to management grade for a busy lawyer embedded in an operating unit in Asia who is bright and articulate but needs formal recognition in front of local management?

1. Managing the working environment

1.1 Resource management

General Counsel will try to appropriately manage their resources to ensure flexibility within their teams and absorb fluctuating levels of demand. If those resources are not sufficient then at the project planning stage they will budget to recruit new lawyers for the life of the project. The cost of additional headcount can be allocated to the project rather than the company's legal budget. Another option that might be available to multi-national companies (MNCs), is to increase legal capacity within low cost jurisdictions. Mid ranking lawyers can be particularly helpful and very cost efficient compared to most western jurisdictions. Furthermore, taking the UK and the USA as an example, jurisdictions like India, Bangladesh and Pakistan, offer common law trained lawyers who might already have worked within western MNCs who have operations within those jurisdictions. The combination of low cost and relevant experience produce a proposition worth exploring. Another way to reduce pressure on the legal team (who are often expected to manage large projects) is to retain a professional project manager. It is not unusual to find these managers already employed within the company and they can be tasked with running M&A projects or to prepare a listed company's annual report, working alongside the legal team. The next suggestion won't be popular with General Counsel and sometimes won't be possible. If resources and budget are not available then a careful conversation about the project timing might be wise. If other factors, together with timing, accumulate at an early stage then delay might become the obvious conclusion for the company's management team.

1.2 Managing colleagues

Communication styles

Another area which changes under stress is communication style. Most people notice when someone is "having a bad day", but the effects and how that person reacts vary depending on the person. The most common psychometric tests for use in business environments measure psychological preferences for how people perceive the world and make decisions. Often these tests group people into types of personality. There are common themes in many of these type based indicator tests which assess personalities. The best known personality assessment is the MBTI instrument distributed by Myers-Briggs [5]. Most of these tests (including MBTI) state that different types of personality will behave differently when experiencing significant stress. To an extent, this can be cross referenced against other studies on personality types. For example, the more dominant MBTI personality types like ENTJs are more likely to be classed as 'Type A' personality types [6]. These people are highly competitive and time urgent and can often be hostile and aggressive. Contrast these

against types who are naturally more relaxed, patient and easy going like INFPs who are more likely to be classed as ‘Type B’ personalities. Type A personalities are significant in the context of stress management because they often occupy positions of seniority. Therefore knowing how to navigate them is important and can save significant anxiety. Most type based personality tests give advice on how to do this. A snapshot is given below for how to manage different types of personality whilst they are under pressure [7]. The snapshot can be used to recognise colleagues (including team members) and approach them appropriately whilst you or they are reacting to the effects of stress.

Dominant ‘Type A’ personalities (who are competitive, strong willed, and demanding): Under pressure expect them to be aggressive, controlling, driving, overbearing and intolerant. Therefore be bright, be brief and be gone! Focus on their goals. Be careful of their impatience and don’t interrupt them. Be direct and to the point. Expect yes and no answers. Make sure they feel in control and make sure you demonstrate early success in given tasks.

Highly sociable, sales type personalities (who are dynamic, demonstrative, enthusiastic, and persuasive): Under pressure expect them to be hasty, indiscreet, manic, irritable and demanding. Therefore, don’t hold things back, conduct general high level discussions (but don’t go into detail) and brainstorm ideas, then agree specifics and help them rationalise the situation, whilst allowing for emotional outbursts.

Caring, emotionally intelligent personalities (who are encouraging, open, patient, relaxed, and selfless): Under pressure expect them to be silent, stubborn, reliant, and over-cautious. Therefore, be supportive, allow time for them to think, ask them how they feel, and be calm in your approach.

Detail orientated, analytical personalities (who are formal, questioning, precise, and cautious): Under pressure expect them to be reserved, indecisive, suspicious, cold and reserved and to nit-pick. Therefore, be structured with your conversation, be clear and logical, one question at a time, don’t be flippant, be prepared to use external evidence to make your point. Let them analyse the facts and don’t push for answers too quickly.

Type based tests give an indication for how to approach colleagues (senior or junior) under stress and adjusting your approach helps them to be more productive. It might not be possible to formally test stakeholders (because they are not legal team members) but based on existing knowledge of their personalities, it might be possible to get an approximate view of their personality type. The more familiar a General Counsel and their team become with these personality tests the easier it is to gauge stakeholders. In fact, most teams will do this already even without knowledge of type based tests but to a more basic level. They might create basic “Dos and Don’ts” when speaking to a senior stakeholder (e.g. the CEO) based on previous interactions. The type based tests take this a stage further.

Mental health

Many of the points already raised will help manage mental as well as physical health because the two are inextricably linked. In addition, there are a number of simple but effective habits that can support lawyers’ mental health during periods that are already placing a huge burden upon them. In the UK, Barclays’ in house team together with law firms Addleshaw Goddard and Pinsent Masons, created the Mindful Business Charter [8]. The charter recognises that “stress impacts health, it costs lives, and it makes us and our businesses less productive” and that “much of the stress is caused by the way we work and interact with each other; the unconscious, unnecessary and often unnoticed impact we have”. The charter aims to raise awareness and reduce those negative impacts. By signing up to the charter organisations commit to drive forward actions and changes which are necessary to support the charter’s objectives. These are:-

- *Openness & Respect:* Within this objective is a focus on preferred communication methods. A point arising here is that some lawyers might call their teams late into the evening or send emails that indicate an urgency, even when the content of those calls or emails are actually not urgent.
- *Smart meetings and communications:* This focuses on who needs to attend meetings, how efficiently can meetings be run and whether physical attendance is required. It's hardly a surprise that managers in one survey reported 83% of the meetings on their calendars were unproductive, or that US-based professionals rated meetings as the "number one office productivity killer" [9]. Too many meetings can be highly stressful and tiring, and both productivity and quality take a hit when lawyers tune out, become demotivated, and lose valuable heads-down work time. Thought is also given to over use of email and avoiding copying in people who don't need to see the email.
- *Respecting rest periods:* If lawyers have to work outside core working hours then allow them the option of when to do the work (early morning or evening/weekend). When sending emails outside core hours then consider putting a timer on them so that the email arrives during core hours. Include working hours availability in people's signatures. Understand that people might not want to check email on holiday and General Counsel should role model that behaviour themselves. Otherwise, team members might feel alarmed if they see the team leader working through their holidays. Given that holidays are vital to prevent burnout it is important that lawyers do not find themselves caught in a vicious cycle that doesn't allow them to relax. Lawyers need to be able to replace work with an activity they enjoy and learn practices for intentional recovery like yoga [10], meditation or exercise.
- *Mindful delegation:* Senior lawyers might not realise how stressful it is for junior lawyers to receive inadequate instructions. These could be given over the phone in between meetings by breathless General Counsel who quickly recite them, don't really have time for questions and who are then surprised when a different product from the one they expected arrives in their inbox. For junior lawyers, that process from beginning to end is unpleasant. Therefore, respecting the need to provide sufficient context and information for a piece of work, ideally explaining the purpose and the ultimate recipient, is essential. It is often helpful if this is done by email. Agreeing a deadline rather than imposing it, is also helpful and it is important that lawyers are able to call out where deadlines are unrealistic.

The Mindful Business Charter provides a toolkit to help further their objectives. Although many of the points it focusses on seem small, the cumulative effect is significant and if legal teams don't get the small things right there is little hope for them successfully to tackle deeper cultural issues. Quite often the hardest thing to do is to recognise that there are cultural issues. The charter helps legal teams take the first steps in the journey to make that change.

2.0 Managing yourself

2.1 Traditional solutions

It is common for individuals under pressure to use stimulants. These include (but are not limited to) caffeine, nicotine and refined carbohydrates (sugar). Eating sugar, for example, releases opioids and dopamine into the body. In nature, when a beneficial behaviour causes an excess release of dopamine, a pleasurable "high" is felt and there is often a desire to re-experience it and so repeat the behaviour [11]. However, eating sugar isn't a beneficial

behaviour [12]. Whereas sugar is helpful in providing energy whilst exercising, the immediate rush of energy whilst working (late at night for example) is fleeting. The brief energy boost is quickly followed by a sharp drop in blood sugar (sometimes referred to as a “crash”). Having regular blood sugar swings leads to material fluctuations in energy levels at a time when most lawyers want to maintain steady constant levels. In fact, studies have found that consuming refined carbohydrates lowered alertness for 60 minutes and increased fatigue within 30 minutes [13]. Clearly, a lowered state of alertness is not a luxury that lawyers can afford during peak times of workflow (and work demands might remain high for months). Later in this paper, suggestions are given on diet and what categories of food are likely to be helpful in times of pressure.

There are many research studies explaining the effects of caffeine, nicotine, and illegal drugs like cocaine, amphetamines and micro doses of hallucinogens like LSD. During sustained periods of great pressure, it is not recommended that any of these are used as a stimulant. Admittedly, there are recent studies showing positive effects from caffeine (for example lowering blood pressure [14]). These studies do not show the effects of high caffeine consumption during times of great pressure at work. It is important to understand what effects caffeine has on stress hormones and whether it increases those hormone levels unhelpfully. One study [15] suggests caffeine consumption may be associated with stress, anxiety, and depression. Therefore, although some lawyers benefit from using legal stimulants like caffeine and nicotine whilst experiencing normal workloads, there are other more sustainable and healthy ways to manage energy levels during times of abnormally high workloads.

2.1 Sustainable solutions

Exercise

Studies have shown that exercise (a beneficial behaviour) increases dopamine levels in the brain which decrease stress and even relieve depression [16]. Exercise naturally regulates the hormonal imbalances that working long hours under pressure is likely to cause. Unlike artificial stimulants, the accumulation of exercise enhances the body’s natural ability to withstand demanding environments. The environment created by the pressure of a challenging legal project or an under resourced legal team, is precisely what these hormones can insulate lawyers against. Exercise includes many forms of movement such as cycling to work; walking/running to work (or part of the distance), and use of a gym near to work or home. Besides dopamine, the hormones released during exercise include:-

- *Serotonin*: Which can positively impact wakefulness, mood, social behaviour, appetite, digestion, and memory.
- *Testosterone*: Which is responsible for muscle/bone size and strength and libido and in people born as female is thought to have an effect on ovarian function [17]. In all sexes, stress lowers testosterone levels which can lead to irritability, poor concentration and depression.
- *Oestrogen*: A point directly relevant to pressure at work is that symptoms of menopause are partly driven by an imbalance in hormones. Stress aggravates the imbalance. Exercise can help redress this and boosts oestrogen levels.

Exercising late at night can help lawyers remain alert and awake without needing caffeine. A short break that is taken to do press ups (or another easy to perform exercise like use of an abdominal roller or home weights) should produce enough hormones to stay awake longer and be more alert.

Daylight increases hormone levels (serotonin) and time spent with friends and loved ones releases another hormone, oxytocin. Oxytocin can induce anti-stress like effects such as reduction in blood pressure and also reduction in the stress hormone, cortisol. Cortisol is the “fight or flight” hormone and it performs an essential function to enhance human

performance in times of need. However, it must be switched off to allow the body's systems to resume their normal activities. Long term activation of the hormone creates digestive problems, anxiety, depression, headaches, sleep problems, weight gain and memory and concentration impairment together with a higher risk of heart disease and stroke. As well as switching off cortisol, oxytocin increases various types of positive social interaction and promotes healing and growth [18]. Another activity that releases significant amounts of oxytocin and dopamine is sex [19]. These anti stress effects that result from physical exercise also include enhanced social interaction. Taken together it is easy to see how exercise helps lawyers who are suffering from high levels of stress, to be far more resilient than they usually would be.

Gut microbiota

It is especially important during times of high stress to look after microbes in the gut. These microbes can enhance physiology, increase stamina and also resistance to stress. The microbes are assisted through diet. The effect of refined carbohydrate on the body has already been considered but what foods should we focus on during periods of high stress? In her book *10% Human* [20], Dr Alanna Collen notes that for every human cell in the body there are nine symbiotic microbes hitching a ride. Bacteria, fungi, viruses and parasites contribute to the healthy functioning of the human body. They are linked with a host of functions from digestion to mental health, and connections have been found between microbes in the gut and functions of the brain [21]. An imbalance of gut microbes (i.e. when there are more harmful microbes than beneficial ones) has been shown to cause inflammation linked to several mental illnesses including anxiety and depression. Stress can reshape the gut bacteria's composition through stress hormones (which include cortisol). In turn, the gut bacteria release toxins and neurohormones that can alter behaviour and mood [20]. According to Professor Tim Spector at Kings College London [23], the key to keeping gut microbes happy and healthy is eating as many plants as possible as well as fermented foods. These include nuts, seeds, pulses, whole grains, fruits and vegetables – on top of starchy staples such as potatoes or rice. Diversity cultivates a healthy microbiome. Kefir (fermented milk) in particular is cheap and easy to make. Spector compares the bacteria, fungi, and viruses in our guts to a chemical plant. By itself, the human body produces roughly 20 gut hormones or chemicals. But with help from these microbes, thousands of additional hormones and chemicals are produced. Some of those hormones include brain chemicals such as serotonin. Therefore eating something similar to a Mediterranean diet – one high in fruits, vegetables, and whole grains, and which has less meat and dairy products than a typical western diet – can increase gut microbiota and in turn improve resistance to stress. The emphasis is not on calorie control but merely changing what is eaten to include nutritionally dense foods (not to be confused with calorically dense foods high in calories). Therefore, if lawyers want to focus on their gut microbiota then there is no need for them to go hungry but merely to think more carefully when they shop for food.

Music

Another way to work in harmony with the body to enhance performance is through music. Studies have shown [24] that there are changes in bioelectrical brainwave activity whilst listening to music. Different types of brainwave indicate different states of the brain. For example, very low delta frequencies (1-4Hz) are dominant during deep sleep. The Theta rhythm (4-8 Hz) is often observed during low levels of alertness and during mental calculations, use of working memory, error processing and meditation. Alpha rhythms (8-13 Hz) occur during either the awake-resting state or during concentration. Beta rhythms (>13 Hz) are usually associated with increased alertness. They occur during the awake-state and can be caused by stress, strong emotions and tension.

Brain waves can be altered by auditory stimuli. Neurologist Oliver Sacks noted that “our auditory systems [and] our nervous systems are tuned for music. Perhaps we are a musical species no less than a linguistic one”. Music that is personally liked by individuals enhances brain activity generally but especially across Beta and Alpha bandwidths. Lawyers might need to work late at night or perform detail orientated tasks involving mental calculations during stressful times when their brain rhythms are operating at unhelpfully high frequencies. To appropriately perform the tasks, their brains need to be operating in a different frequency. Could music help change the brain frequency? Music therapy has been used in psychiatry to increase Alpha rhythms and reduce Beta activity in psychiatric patients. The purpose is to help patients enter a state of tranquillity or to distract them from unpleasant feelings. This has allowed patient anxiety levels to drop [25]. Use of music is not uncommon in the medical profession. It has been found that surgeons’ task performance can significantly be improved by music and music is commonly played in operating theatres [26]. Music diminishes stress of the surgical team and also the patient’s anxiety before surgery. The type of music can influence the surgical task performance both positively and negatively. The distracting effect of loud or high-beats per minute (which can produce stress hormones like cortisol) is thought to be less helpful than calmer tunes. However, those effects may well be a result of the personal music preference of the surgeon. People differ in their sensitivity to music. Those who find themselves listening to music regularly might benefit more from using music at certain times of day to help them focus on certain tasks. For those who are less interested in music, music might be processed as unwanted noise. Noise raises blood pressure and exacerbates depression and anxiety. Therefore music might have the opposite effect on one lawyer than it does on another. For lawyers who enjoy music, it is recommended to try a selection of tunes when working to see if they enhance concentration. This is especially true for lawyers working late at night where music might revive an increasingly hazy and sleepy individual.

Avoiding self-sabotage

Self-sabotage is a pattern of thoughts and behaviours that people engage in, often without knowing, that create obstacles to achieving goals. Actions that are taken in the middle of a highly stressful project or late at night that seem necessary and sensible might later be considered as unnecessary or even unhelpful. However, Shirani Pathak a psychotherapist from California, notes that the behaviour is “actually a protective mechanism created by your psyche in order to keep you safe from any potential danger or harm. What’s familiar to us is what our psyche considers safe.”, “When we’re wading out into unfamiliar waters because we’re looking to make a change, it can trigger all of the alarm bells in our internal system that tell us: Danger! Danger!”. Pathak adds, “Then, our brains send the command for us to engage in a familiar behaviour to bring us back into familiar waters.” Therefore, actions are taken with the aim of preservation but which might actually make the situation more challenging.

Self-sabotaging behaviour varies from person to person and varies depending on personality type. Examples include, procrastination, substance abuse, interpersonal strife and doing far more than needs to be done in a project. The behaviour is typically counterintuitive because it is an emotional and not a logical behaviour. Fear typically motivates self-sabotage behaviour and can manifest itself in, for example, unhealthy perfectionism (which is not unusual in senior lawyers). A severe inner critic can lead to unproductive behaviour due to a lawyer’s brain searching for potential problems to address so that they are protected from danger or criticism. Clearly, part of a lawyer’s job is to notice problems but not to the extent that they spend all their time searching for issues and not making progress or decisions. This behaviour might be responsible for what some people call ‘analysis paralysis’.

In times of high stress watch out for team members or even yourself, becoming hyper vigilant in your search for danger. Be careful of clinging to old problems and conjuring up new ones as way to prevent mental harm or damage to self-esteem. Signs that you might be self-sabotaging include you (i) dwell on your mistakes (ii) are intensely fearful of criticism (iii) identify with your negative beliefs (iv) refuse to seek help or support (v) make excuses for your behaviour (vi) do not set boundaries (with self and others) (vii) fail to appropriately communicate your expectations (viii) second guess yourself (ix) consistently prioritise others' needs over your own or your team's.

To avoid these negative behaviours try to (i) not depend on how other people define success unless the definitions are agreed as part of a formal goal setting process and goals must be specific, measurable, achievable, realistic, targets (ii) when goal setting make sure the goal is not an imposition – legal teams will benefit greatly if the General Counsel challenges unrealistic impositions (iii) pay attention to your own needs, mental health is just as important as physical health (iv) accept that you might be bad at something and recognise that less senior team members might be better (v) get comfortable with validating and satisfying yourself on your progress without the need for continual praise and affirmation from others – always be your biggest admirer and supporter (vi) as legal management consultant and champion of in house lawyers, Paul Gilbert says in the title of his latest book, “You are the architect of your future, not the tenant of your past” – don't cling to past poor decisions and let them negatively affect your future decision making (v) take action now rather than waiting for circumstances to maybe change in your favour – successful counsel create opportunities, they don't hope for the ideal moment (vi) know that perfection is the enemy of good enough (vii) prioritise your loved ones regardless of the work responsibilities you have because you will never get back lost time and loved ones can help with the essential recovery from stress.

Conclusion

It is in every in house lawyer's interest to do what is possible and realistic, and never to allow themselves to be put in a situation that endangers their mental and physical health. The price of costs saved in under resourcing a legal team should not be paid by the lawyers. Most companies would not expect them to pay this price. However, most companies do expect lawyers to manage their resources and themselves in the most efficient and effective way until additional resources are provided or until a temporary blip in demand passes. If those heightened demands are longer term then lawyers should consider whether it is possible in the long term to meet those demands. There should be no reason in a well-run team for lawyers to feel isolated or unsupported and there are numerous coping strategies which help minimise the negative effects of high levels of stress. The list of measures given in this paper will benefit some lawyers more than others and will be a matter of personal preference. The most important point is that lawyers to take back control of a situation which might have been thrust upon them. By actively managing the situation it immediately becomes more bearable. The aim should be to emerge on the other side stronger, wiser and more accomplished. Willa Cather, in the Song of the Lark, understood this when she wrote, “There are some things you learn best in calm, and some in storm”.

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Coats is the world's leading industrial thread company. Headquartered in the UK, they have a workforce of 17,000 in some 50 countries, across six continents around the world. They provide complementary and value-adding products, services and software solutions to the apparel and footwear industries. They also operate in areas like personal protection, telecoms, energy, transportation, and household and recreation. Every three hours Coats makes enough thread to go the moon and back.

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