

Exercising discretion in the context of dependent employment: assessing the impact of workload on the rule of law

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Faced with growing pressures for accountability and increasing complexity of legal work, the international legal community has focused attention on support for the rule of law. Taking a workplace perspective, this study develops and tests an individual-level measure of support for the rule of law in the context of the Canadian public sector. Results from a national survey of government-employed lawyers reveal that increasing work demands have a detrimental effect on perceived ability to uphold the rule of law in the daily execution of work tasks. This negative pressure is moderated by social support in the workplace, with diminishing effect. Lawyers in criminal law practice appear more negatively affected by work demands than those in civil or common law practices.

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INTRODUCTION

Canadian government lawyers, those public prosecutors and civil lawyers employed by provincial and federal governments, feel increasing pressures from workload demands.¹ Lawyers themselves have expressed a concern that this pressure may affect their ability to fulfil their job requirements, meet their professional obligations and protect the rule of law.² Previous research has shown that working conditions have an impact on employee stress levels, which in turn impact job performance. Rhode indicates that there are significant organisational impacts of elevated stress levels

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1. Canadian Association of Crown Counsel Comment on Quebec Prosecutors' Strike (2011), available at <http://www.cacc-acje.ca/en/index.php/front> (accessed 25 April 2012); A Chung 'Quebec forces prosecutors back to work' (2011) Toronto Star electronic, available at <http://www.thestar.com/news/canada/article/942795--quebec-forces-prosecutors-back-to-work> (accessed 16 June 2016).

2. S Campbell *Continental Drift in the Legal Profession: The Struggle for Collective Bargaining by Nova Scotia's Crown Prosecutors* (Halifax, NS: Saint Mary's University, 2010).

among lawyers.³ However, studies of stress at work seldom directly examine the implications for the rule of law.⁴ The negative effect of stress can be mitigated by the presence of workplace supports. Drawing upon established measures of job demands, job control and workplace support, this study explores the relationships between features of government lawyers' workplaces and an important work outcome: support for the rule of law. This study builds on earlier work that examines the implications of dependent employment for a range of professionals in different national contexts.⁵ The relationship between workload pressure and professional discretion measured as decision making latitude is reflected in an important outcome of the justice system: perceived support for the rule of law. This paper reports findings from a national study of Canadian government lawyers and contributes to the literature with a measure for the rule of law at the individual worker level and the impact of workload pressure on this measure.

This research is important from a social as well as a theoretical perspective. The work experiences of government lawyers are of interest because these workers are uniquely placed. They work closely on the development of the law and at the same time are charged with upholding the law. They are also the guardians of the public interest in the application of the law in accordance with societal norms and values. The legal literature defines the rule of law in the context of nation states and relates it to some extent to the actions of individuals. However, there is a notable research gap regarding the work context of individual employees whose role it is to support and administer significant aspects of legal system, thereby upholding the rule of law.

Dodek argues that government lawyers have a higher order of duty and ethical demands than private-sector lawyers as a result of their placement at the heart of society's legal framework.⁶ In Canada, legal professionals employed in the public sector form the single largest group of practicing lawyers, collectively larger than the biggest law firm.⁷ These employees fall into two broad groups: state prosecutors and civil-side lawyers. Civil-side lawyers – or, broadly speaking, solicitors – encompass a wide range of advisory, legislative and administrative law functions in government departments as well as arm's-length agencies and tribunals. Both groups are present in the federal government and in each of the ten provincial governments, although the laws that preoccupy their work vary. The Canadian province of Quebec follows a civil code while the balance of the country follows common law, and law schools

3. DL Rhode *In the Interests of Justice: Reforming the Legal Profession* (Oxford: Oxford University Press, 2000).

4. AH de Lange et al 'The very best of the millennium: longitudinal research and the Demand–Control–(Support) model' (2003) 8 *J Occup Health Psychol* 282–305.

5. Campbell, above n 2; S Campbell and L Haiven 'Struggles on the frontier of professional control: leading cases from Canada' (2012) 33 *Econ & Ind Democracy* 669–689; S Campbell et al 'The impact of occupational community on the quality of internal control' (2015) *J Bus Ethics* DOI:10.1007/s10551-015-2624-2; S Ackroyd and D Muzio 'The reconstructed professional firm: explaining change in English legal practices' (2007) 28 *Org Stud* 729–747; D Muzio and S Ackroyd 'Change in the legal profession: professional agency and the legal labour process' in S Ackroyd, D Muzio and J-F Chalal *Redirections in the Study of Expert Labour: Established Professions and New Expert Occupations* (Basingstoke: Palgrave, 2008).

6. A Dodek 'Lawyering at the intersection of public law and legal ethics: government lawyers as custodians of the rule of law' (2010) 33 *Dalhousie L J* 1–53.

7. *Ibid.*

typically train in one or the other tradition.⁸ However, all law students train and are admitted to practice with without specialisation in criminal or civil law.⁹ These employed professionals form a significant component of the legal institutions in Canada.

As a result of the complex organisational and legal environment that surrounds government lawyers, loyalties and obligations to the profession and to the employer often come into conflict, policy protecting professional autonomy is often contradictory,¹⁰ and the volume and complexity of criminal law, policy and legislative decision making has steadily increased.¹¹ This work environment has not been systematically studied; nor have the implications for the protection of the public safety and the rule of law. This latter concern has been at the forefront of recent labour action in the province of Quebec, where crown prosecutors went on strike in February 2011 over salary and working conditions,¹² and in Manitoba, where a study of working conditions was commissioned by the lawyers' member association.¹³ In the broader public sector in Canada, the Registered Nurses Association of Ontario sponsored a recent initiative to identify health and safety best practices, which resulted in a publication specifically targeting workload.¹⁴ There are clearly public policy implications stemming from workload issues in the public sector noted both in theory and in practice.¹⁵

This paper is organised in the following way: a literature review linking professional workers, the rule of law and the research on job demands frames the basis for this study. The methodology section follows, with a description of the instruments used and the manner in which data was collected. The analysis of this data and a discussion of the findings follow, and the paper concludes with implications and considerations for future research.

LITERATURE REVIEW

Research into workload and the rule of law presents an important theoretical development; study of the work environment for government lawyers brings

8. The University of Ottawa, in the nation's capital, McGill University in Montreal and l'Université de Sherbrooke offer the opportunity to complete degrees in both legal systems; Osgoode Law School in Toronto partners with l'Université de Montréal to provide students in each school the option of additional course work to qualify in both systems; the University of Windsor partners with a US law school or an American law degree.

9. For the purposes of this study, notaries in the province of Quebec are included within the civil-side group.

10. A Dodek 'Lawyers, guns and money: lawyers and power in Canadian society' (2010), available at SSRN: <http://ssrn.com/abstract=1656475> or 10.2139/ssrn.1656475 (both accessed 16 June 2016).

11. I Gomme and M Hall (1995) 'Prosecutors at work: role overload and strain' (1995) 23 J Crim Just 191–200; J. Hamilton 'Prosecutorial independence and accountability' (2011) UNIDEM Campus Trieste Seminar, Trieste, Italy.

12. Chung, above n 1.

13. G Hannon, General Counsel, Manitoba Justice, personal communication (2012).

14. Registered Nurses Association of Ontario *Workplace Health, Safety, and Well-Being of the Nurse, Healthy Work Environments Best Practice Guidelines* (Toronto: Registered Nurses Association of Ontario, 2008).

15. M Lipsky *Street Level Bureaucracy: The Dilemmas of Individuals in Public Service* (New York: Russell Sage Foundation, 1980).

together two streams of theory – that of the sociology of professions¹⁶ and the organisational psychology research into work environment and job demands.¹⁷ The foregoing organisational psychology literature explores the relationship between job demands, decision latitude, decision authority, workplace supports and various measures of stress. The Demand–Control–Support (DCS) model¹⁸ posits that high workloads cause stress, yet this stress can be mitigated through greater decision latitude and authority. The sociology of professions literature emphasises the high level of autonomy and discretion of professionals,¹⁹ and the high level of control they exert within and beyond their workplaces.²⁰ Professionals who are employed in large organisations, however, experience discretion and control that reflect on both literatures in their struggle to reconcile different forms of workplace control.²¹ Drawing these two theoretical streams together provides a more meaningful model of contemporary public-sector professional workplace demands and outcomes, in a world of changing definitions of profession and work.²² This approach has been applied in the teaching profession,²³ management consultancy and project management, for example.²⁴

One of the primary tenets of professional work is the exercise of discretion and the application of tacit knowledge in this regard. Existing research indicates the unique concern for, and importance placed on, the application of professional discretion in

16. G Larkin *Occupational Monopoly and Modern Medicine* (London: Tavistock, 1983); E Freidson *Professional Powers: A Study of the Institutionalization of Formal Knowledge* (Chicago: University of Chicago Press, 1986); F Parkin *Marxism and Class Theory: A Bourgeois Critique* (New York: Columbia University Press, 1979); A Witz *Professions and Patriarchy* (London: Routledge, 1992).

17. R Karasek 'Job demands, job decision latitude, and mental strain: Implications for job redesign' (1979) 24 *Admin Sci Q* 2285–2308. See also: de Lange et al, above n 4; J de Jonge and W Schaufeli 'Job characteristics and employee well-being: a test of Warr's Vitamin Model in health care workers using structural equation modelling' (2008) 19 *J Org Behav* 387–407; D Holman and T Wall 'Work characteristics, learning-related outcomes, and strain: a test of competing direct effects, mediated, and moderated models' (2002) 7 *J Occup Health Psychol* 283–301; T Beehr et al 'Back to basics: re-examination of Demand–Control theory of occupational stress' (2001) 15 *Work & Stress* 115–130.

18. Karasek, above n 17; C Verhoeven et al 'The job Demand–Control–Social Support model and wellness/health outcomes: a European study' (2003) 18 *Psychol & Health* 421–440.

19. Freidson, above n 16.

20. A Abbott *The System of Professions: An Essay on the Division of Expert Labor* (Chicago: The University of Chicago Press, 1988); Witz, above n 16.

21. S Campbell 'Erosion and renewal of professional powers in public sector employment: the role of occupational community' (2014) 69 *Relations Industrielles/Industrial Relations* 159–185; D Muzio and D Hodgson *Towards Organisational Professionalism: New Patterns of Professionalisation in UK Expert Labour* International Labour Process Conference, Dublin, Ireland (2008).

22. R Bucher and A Strauss 'Professions in process' (1961) 66 *Am J Sociol* 325–334.

23. G Pomaki and T Anagnostopoulou 'A test and extension of the demand/control/social support model: prediction of wellness/health outcomes in Greek teachers' (2003) 18(4) *Psychol & Health* 537–550.

24. D Muzio et al 'Towards corporate professionalization: the case of project management, management consultancy and executive search' (2011) 59 *Current Sociol* 443–464.

the legal workplace.²⁵ Often, the discussion of discretion is based on individual considerations, or else on systemic characteristics of organisations,²⁶ with particular attention, in Dodek's work,²⁷ on the power and privilege associated with the lawyer's social position. There is little literature, however, on the subject of public-sector lawyers' workload and their exercise of discretion. As a result, there is little examination of the relationship between workload and lawyers' perceived obligations regarding the rule of law; what little does exist focuses primarily on state prosecutors and there is almost nothing written about civil-side lawyers in this regard.

Lawyers' work is by definition somewhat more autonomous than that of many other occupations. As a self-regulated profession, lawyers enjoy significant autonomy in their work to provide opinions and advice and make decisions based on the expertise they develop through intensive academic training and socialisation to professional norms,²⁸ and which is nurtured in mentor relationships within the bounds of the profession itself.²⁹ In situations of dependent employment, the organisation demands and availability of resources may affect how government lawyers exercise their professional discretion in the conduct of their jobs. Lipsky³⁰ showed that workload pressures can lead to the bureaucratisation of decision making, reducing the use of professional discretion. The implications for inhibition of legal professional discretion have been detailed by Gershowitz and Killinger,³¹ who examine prosecutors in the USA. The rights of the accused and victims of crime may be at risk through lapses in disclosure, errors in dismissals, failure to refer to special courts, and the conviction of the innocent where there is insufficient investigation of innocence. In civil law, the duty to protect the rule of law may also be impacted if professional discretion is adversely suppressed. Making the law, promoting decision making based on the rule of law and administering public affairs in a 'fair and lawful' manner³² may potentially all be affected by the interaction of workload and professional discretion. There is some evidence that workloads are onerous in some areas of government legal work,³³ but this data needs to be updated. From the civil and administrative law perspective, authors have drawn on both legal and sociological literature³⁴ to explore the notion of discretion in

25. Campbell and Haiven, above n 5; Rhode, above n 3; R Manrique 'Autonomy and the rule of law' (2007) 20 *Ratio Juris* 280–301; G Cartier 'Administrative discretion as dialogue: a response to John Willis' (2005) 55 *U Toronto L J* 629–656; M Rosenberg 'The Attorney General and the prosecution function on the twenty-first century' (2009) 2 *Queen's L J* 813–862; L Sossin 'From neutrality to compassion: the place of civil service values and legal norms in the exercise of administrative discretion' (2005) 55 *U Toronto L J* 427–447.

26. T Hickman, L Poitras and G Evans *The Report of the Royal Commission on the Donald Marshall, Jr., Prosecution* (Halifax, NS: Nova Scotia Department of Justice, 1989).

27. Dodek, above nn 7, 11.

28. E Krause *Death of the Guilds: Professions, States, and the Advance of Capitalism, 1930 to the Present* (New Haven, CT: Yale University Press, 1996).

29. Campbell, above n 2.

30. Lipskey, above 15.

31. A Gershowitz and L Killinger 'The state (never) rests: how excessive prosecutor caseloads harm criminal defendants' (2011) 105 *Nw U L Rev*, available at SSRN: <http://ssrn.com/abstract=1583462> (accessed 16 June 2016).

32. Nova Scotia Department of Justice *Legal Services* (2011), available at http://www.gov.ns.ca/just/legal_services/ (accessed 10 December 2011).

33. Gomme and Hall, above n 11.

34. Sossin, above n 25; T Evans and J Harris 'Street-level bureaucracy, social work, and the (exaggerated) death of discretion' (2004) 34 *Br J Soc Work* 871–895; L Sossin 'Discretion unbound: reconciling the Charter and soft law' (2002) 45 *Can Pub Admin* 465–490.

public-service professional work. The challenge before us is to explain the relationship between workload pressures and the exercise of discretion to a measure of support for the rule of law. Karasek and Theorell's³⁵ model of job Demand–Control–Support (DCS) provides a framework to accomplish this.

Job demands and job control are factors that contribute to workplace strain³⁶ and strain affects workers' ability to function effectively. The job DCS model,³⁷ which is extensively validated,³⁸ illustrates that the strain of job demands can be lessened when employee autonomy or control over decision making is high. Professionals typically demonstrate high levels of job demands and also high levels of decision latitude and autonomy in their work. Job control, manifest as decision latitude, offsets the negative strain impact of high job demands. The presence of workplace support mechanisms contributes further to relieving work strain. Variations on the model have refined its application across a large number of occupations and work sites.³⁹ The presence of work-related stress can impact individual and organisation performance, and specifically the application of professional discretion: 'Competence in judgment is always compromised under stress.'⁴⁰ When discretion is reduced, strain will develop. The DCS model in fact indicates the worst of both worlds, as it were, where lawyers' sense of professionalism is tied to autonomy and discretionary decision making, and this discretion is at risk in dependent employment at the same time that workloads are increasing. In the case of government lawyers, one consequence of heavy job demands may be an adverse impact on the exercise of professional discretion, which in turn may impact the rule of law. The DCS model allows an examination of the relationship between the demands of public-sector legal work, the degree of autonomy in decision making experienced by these workers and their perceived support for the rule of law.

The principal organisation outcome of concern in this study is perceived support for the rule of law: treatment of all persons in society equally in terms of the law's application, the respect of parties' rights and the processes leading to decisions that affect citizens.⁴¹ In Canada, we understand the rule of law as the notion that no one is above the law and that the law applies equally to all.⁴² The rule of law, in an Anglocentric context, is principally concerned with the systems and structures that protect individual liberty.⁴³ To date, measures of the rule of law

35. R Karasek and T Theorell *Healthy Work: Stress, Productivity, and the Reconstruction of Working Life* (New York: Basic Books, 1990).

36. Karasek, above n 17.

37. Karasek and Theorell, above n 35; J Johnson 'Control, collectivity and the psychosocial work environment' in S Sauter, J Hurrell and E Hall (eds) *Job Control and Worker Health* (Chichester: Wiley, 1989) 55–74.

38. See de Lange et al, above n 17 for a review.

39. De Jonge and Schaufeli, above n 17; Verhoeven et al, above n 18.

40. K Kowalski-Trakofler, C Vaught and T Scharf 'Judgment and decision making under stress: an overview for emergency managers' (2003) 1 Int'l J Emergency Mgmt 278–289 at 282.

41. Y Dandurand 'The role of prosecutors in promoting and strengthening the rule of law' (2007) 47 Crime L & Soc Change 247–259.

42. Dodek, above n 10.

43. T Bingham *The Rule of Law* (London: Penguin, 2010); P Hogg and C Zwibel 'The rule of law in the Supreme Court of Canada' (2005) 55 U Toronto L J 715–732.

have been principally concerned with defining the construct at the level of the nation state,⁴⁴ resulting in the World Justice Project Rule of Law Index, for example, where the discussion is based on notions of good governance.⁴⁵ A recent study of performance measures for prosecutors,⁴⁶ however, provides some insight into how a measure of support for the rule of law might be developed at the workplace level. Thus, how closely the rule of law is respected or upheld can be operationalised as an organisation outcome. As a result, we can examine the work conditions facing government lawyers in order to assess the implications for the rule of law. By examining working conditions and their impact on behaviour, we can develop an appreciation for how the rule of law is protected as lawyers exercise their professional discretion in the execution of their duties. Griffin outlines the conditions necessary for the exercise of professional discretion as being a combination of characteristics of the institution and individual values.⁴⁷ Griffin does not, however, address workload specifically for its impact on discretion. Hamilton also notes that there is little literature on the work process of lawyers and rule of law in practice.⁴⁸ In summary, the legal scholarly literature on the rule of law is strongly theoretical, focused on the nation state, with little to no attention paid to the worker at the heart of daily operations and the way in which decision making achieves societal outcomes that preserve the rule of law.

The preceding discussion leads to the following research question:

Do government lawyers' working conditions have an impact on their perceived ability to uphold the rule of law?

The literature on the DCS model traditionally uses measures of health outcomes as dependent variables, often cardiac health and measures of psychological strain. This study expands the applicability of the DCS model by using a sociological construct as a dependent variable. I will show, below, how the DCS instrument is valid in the selected study context, and how it does provide an important insight into workplace outcomes, namely perceived support for the rule of law.

As noted above, the DCS model is relevant across a range of occupations, including legal and public-sector work. As increasing job demands are a critical complaint of public-sector lawyers, the DCS model is a good starting point to examine the implications for job demands on this specific type of worker. Other aspects of the

44. S Voight 'How to measure the rule of law' (2009), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1420287 (accessed 16 June 2016); P Albers *How To Measure the Rule of Law: A Comparison of Three Studies* Presentation at annual conference of Hague Institute for the Internationalisation of Law 'The Law of the Future' (25–27 October 2007), available at <http://www.coe.int/t/dghl/cooperation/cepej/events/OnEnParle/Albers251007.pdf> (accessed 16 June 2016); J Parsons et al *Developing Indicators to Measure the Rule of Law: A Global Approach, A Report to the World Justice Project* (Altus Global Alliance/Vera Institute of Justice, 2008), available at http://www.altus.org/pdf/dimrol_en.pdf (accessed 16 June 2016).

45. S Skaaning 'Measuring the rule of law' (2012) 63 *Pol Res Q* 449–460.

46. M Nugent-Borakove, L Budzilowicz and G Rainville *Performance Measures for Prosecutors: Findings from the Application of Performance Measures in Two Prosecutors' Offices* (Alexandria, VA: American Prosecutors Research Institute, 2007), available at http://www.ndaa.org/pdf/performance_measures_findings_07.pdf (accessed 16 June 2016).

47. L Griffin 'The prudent prosecutor' (2001) 14 *Geo J Legal Ethics* 259–307.

48. J Hamilton 'Prosecutorial independence and accountability' (2011) UNIDEM Campus Trieste Seminar, Trieste, Italy.

DCS model are present in the government workplace. There is strong evidence of workplace support and collegiality among prosecutors, for example.⁴⁹ The presence of a collective bargaining agent is another feature of government lawyers' workplaces that may impact on the support dimension of the model.

The application of the DCS model should reveal that decision latitude (discretion over decision making) and social support moderate the negative effect of high levels of job demands for public-sector lawyers. The highest levels of decision latitude reported using the DCS instrument are found among professionals, and especially among those practicing law.⁵⁰ Professional work reflects high values on psychological demands, but this is tempered by high decision latitude. The nature of dependent employment may alter the effect of decision latitude on job demands, however, constraining participants' ability to fully control their work. Concerns raised by participants in the exploratory phase of this research indicate that this may be true.

METHODOLOGY

The answer to the study's research question is explored using the job DCS model based on the Job Content Questionnaire (JCQ).⁵¹ Permission to use the JCQ was obtained from Robert Karasek, through the JCQ Centre at the University of Massachusetts Lowell. The DCS instrument was used in its original form in English, and in its recommended French-language form, also from the JCQ Centre. The French-language version of the instrument was tested and minor grammatical corrections were made prior to launching the full survey. All items are measured on a four-point Likert-type scale, with job demands comprised of five psychological effort measures, decision latitude comprised of nine skill and autonomy items, and social support comprised of eight items, four of which address peers in the workplace while four others deal with one's supervisor. Items are grouped and coded according to the Job Content Questionnaire and Users' Guide.⁵²

An existing detailed study of government lawyers' workload⁵³ provided a framework for developing appropriate language to introduce the job demands and job control scales as recommended by Taris et al.,⁵⁴ so that these reflect the workload and exercise of professional discretion in government legal work. Measures of specific job outcomes, tailored to public-sector workers, were collected and compared with the DCS instrument and found to be well correlated, providing additional support for the use of the DCS instrument in this context (see Table 2 below).

The dependent variable, a measure of the rule of law, was developed and validated by an expert panel of lawyers in Canada. The author conducted a series of face-to-face and

49. Campbell, above n 21.

50. R Karasek *Job Content Instrument: Questionnaire and Users' Guide Revision 1.1* (Los Angeles, CA: University of Southern California, 1985).

51. Ibid.

52. Ibid.

53. Institut de la statistique du Québec *Study on the Compensation and Workload of Crown Prosecutors in Canada* (Quebec: Government of Quebec, 2002).

54. TW Taris et al 'Learning new behaviour patterns: a longitudinal test of Karasek's active learning hypothesis among Dutch teachers' (2003) 17(1) *Work & Stress* 1–20.

Table 1: Demographics

	<i>N</i>	Percentage	
Criminal	552	35.90	
Civil	985	64.10	
Married	727	55.80	
Living with partner	261	20.00	
Separated	35	2.70	
Divorced	67	5.10	
Widowed	3	0.20	
Single	206	16.10	
Male	613	46.30	
Female	712	53.70	
Provincial	1103	72.10	
Federal	426	27.90	
Has mentor	725	54.50	
Does not have mentor	606	45.50	
Has annual performance review	1208	89.20	
Does not have performance review	146	10.80	
	Mean	SE	SD
Age	44	0.0	10
Private-sector experience	5.9	0.2	5.9
Hours of work per week	43	0	8
Years at the Bar	16.06	0.26	9.45

telephone interviews with 19 lawyers⁵⁵ from provincial and federal public service, including the Supreme Court of Canada, lawyers in private practice and academia, in front-line and management roles, and from criminal and civil practices. Guiding questions for these interviews were developed in part from an earlier study of working conditions in the public sector,⁵⁶ as well as from the literature. Interviews were conducted in English and in French and lasted between 45 minutes and 2 hours. The study included five law professors from three Canadian universities, interviewed specifically in their capacity as instructors and researchers. Several of the other participants also teach on a casual basis but their contribution to the study is based upon their role as legal practitioners. Some of the participants also held office in their respective member associations. Participants were asked for their definition of the rule of law in the employment context and for examples and applications of the construct in operational terms. Panel members were further asked to describe what upholding the rule of law meant in the context of their work, and to comment on the scale items for their completeness and accuracy. The interviews were recorded and field notes were transcribed. Analysis of this data revealed six general statements that held meaning and relevance across the range of

55. McCracken recommends eight interviews [G McCracken *The Long Interview* (Newbury Park, CA: SAGE Publications, 1988) and Lincoln and Guba [Y Lincoln and E Guba *Naturalistic Inquiry* (Newbury Park, CA: SAGE Publications, 1985) p 234] suggest that a sample of a dozen interviews 'will exhaust most available information'. I contacted participants as they became available to me, or as they were recommended by existing study participants. I continued until I reached a saturation point and no new themes, concepts or issues emerged.

56. Campbell, above 2.

participants' experiences (eg 'In my current work circumstances I am able to: uphold due process, protect fundamental rights, etc.'). A seventh item measuring overall support for the rule of law was also included in the survey for comparative analysis and as a measure with the specific wording 'rule of law' (ie 'In my current work circumstances I am able to work in a manner that upholds the rule of law').

DATA COLLECTION

Two versions (English and French) of an Internet-based survey were administered to all members of provincial and federal government lawyers associations across Canada. In several jurisdictions, lawyers have achieved collective bargaining and thus the associations did not include management lawyers. In a limited number of instances, management-level lawyers participated in the survey. The survey was administered online between May 2012 and October 2012. Distribution was arranged through each of the member associations in the Canadian Association of Crown Counsel. Each association sent a mass email to all members containing a direct link to the survey. In three provinces, distribution could not be arranged through the employer-provided email lists or the lists were incomplete, and surveys were distributed either by hand or through individual email. In one province, a flyer was prepared containing the description and Internet link, which was handed out to participants in the annual member conference.

RESULTS AND ANALYSIS

Sample profile

A total of 1567 participants completed the survey out of an estimated population of 7448, giving a participation rate of 21%. After data cleaning and elimination of outliers, the data were examined for multicollinearity and normal distribution and were found to be satisfactory: 1537 participants provided sufficient data on the key variables to warrant further analysis.

The sample may slightly over-represent at the provincial level (72% of respondents compared to 63.7% of the population). The survey collected information on province of employment, which refers to the location where work is done, and is not a direct indication of the employer; that is, a lawyer may be a federal government employee, working in the province of Alberta, and will have answered 'Federal' on the employer question and 'Alberta' on the province of employment question. Data are only available by province for provincially employed lawyers; federal data are aggregated (2700 federal employees); thus only a general comment is possible with regard to national distribution.

The sample distribution across jurisdictions closely matches the population distribution with three exceptions. The provinces of Alberta and Manitoba appear to be over-represented in the sample compared to the provincial numbers present (12.7% vs 6.9% and 6.4 vs 2.1%, respectively), which may reflect responses from federal employees in those provinces. These differences may also be attributed to the challenges in contacting association executives, difficulties obtaining up-to-date email lists, and the status of collective bargaining at the time the survey was distributed. The province of Quebec appears to be under-represented (23.9% vs 33% of the population). In this case, the official translation of the instrument provided from its licensor contained errors and created confusion in the first wave of respondents, an issue that was remedied, but that may have impacted response rates. No adjustments have been made to weight the sample.

Table 1 presents the demographic profile of the sample. Over 30 different job categories were identified by respondents. These included a range of agencies, tribunals

Table 2: Correlations

	Rule of Law Scale	DL	JD	SS	Age	Years at the Bar	K6
Rule of Law Scale	1 1422						
DL	N 0.310** 1344	1 1366					
JD	N -0.240** 1340	0.072** 1343	1 1363				
SS	N 0.255** 1330	0.392** 1333	-0.152** 1330	1 1353			
Age	N -0.069* 1261	0.054 1263	-0.034 1259	-0.122** 1260	1 1283		
Years at the Bar	N -0.035 1278	0.073** 1279	-0.055 1277	-0.100** 1276	0.904** 1278	1 1301	
K6 Well-being	N -0.035 1278	0.288** 1335	-0.345** 1333	-0.100** 1276	0.904** 1278	0.107** 1271	1 1376

**Correlation is significant at the 0.01 level (two-tailed).

*Correlation is significant at the 0.05 level (two-tailed).

and government departments, as well as arm's-length public-sector bodies where lawyers provide a range of advisory services. In a limited number of instances (10%), participants indicated that they conducted civil litigation; however, exploratory research indicated that this does not necessarily involve regular courtroom work. The job categories were regrouped into two for further analysis, corresponding to the organisation of government: criminal and civil practice. The average respondent is 44 years of age, with 16 years at the Bar, more than likely is married or living with a partner,⁵⁷ works 43 hours a week and is twice as likely to practice civil law as criminal law. Slightly more than half (53.7%) of respondents are female⁵⁸ and 54.5% indicate that they have a mentor either within or beyond their place of employment. On average, respondents have almost 6 years of private-sector legal experience in addition to their government work. Over 89% report that they have some form of an annual performance review.

The survey posed questions regarding psychological strain for validation purposes, including a measure of overall stress and a scale for psychological well-being. The well-being scale is the six-item Kessler Psychological Distress Scale (K6),⁵⁹ and includes general statements about the frequency with which participants feel various indicators of malaise/well-being. The well-being scale was included to support criterion validity for the DCS instrument in this sample (see Table 2). The DCS model is a significant predictor of well-being, as expected.⁶⁰

The Rule of Law Scale

Principal component analysis was conducted on the six items for the rule of law. Table 3 summarises these results.⁶¹ Scale inter-item reliability is sound, reflected in Cronbach's coefficient alpha of 0.83 ($N = 1426$), confirming that all six elements of the Rule of Law Scale, shown in abbreviated form in Table 3, successfully factor into one component that measures a single construct. Furthermore, this scale correlates highly (0.772, $p < 0.001$) with the single-item measure asking participants how well they feel able to uphold the rule of law, providing support for construct validity; the new scale appears to measure what it sets out to measure. With this support for the created scale, Rule of

57. National data on marital status for 2012 reveals that rates of divorce and separation in the sample are consistent with national averages. A greater proportion of the national population (40.5%) report being single for this same period, a fact that may be explained by age and socio-economic difference in the sample compared to the Canadian population in general. Statistics Canada, CANSIM, table 051-0042, available at <http://www.statcan.gc.ca/tables-tableaux/sum-som/i01/cst01/famil01-eng.htm> (accessed 16 June 2016).

58. These statistics correspond to national data reported by the Federation of Law Societies of Canada, which show that women make up 53% of practicing members exempted from insurance – a group comprised of public-sector employed lawyers and in-house counsel. Federation of Law Societies of Canada, 'Membership (2014 statistical report)', available at <http://docs.flsc.ca/2014-Statistics.pdf> (accessed 27 September 2016).

59. R Kessler et al *Short Screening Scales to Monitor Population Prevalences and Trends in Non-specific Psychological Distress* (Cambridge: Cambridge University Press, 2002).

60. A summary of this analysis is not included, for brevity, but is available upon request.

61. The Keyser–Meyer–Olkin measure of sampling adequacy was 0.842, indicating that the data are suitable for this type of analysis. In addition, Bartlett's test of sphericity was significant ($p < 0.001$), indicating sufficient correlation between the items to proceed with analysis. Using a retention criterion of eigenvalues greater than one, a single-factor solution presents the clearest extraction, accounting for 55% of the total variance.

Table 3: The Rule of Law Scale

Component	Initial eigenvalues			Community	Component loading
	Total	% of variance	Cumulative %		
Effective administration of justice	3.306	55.096	55.096	0.566	0.753
Timely administration of justice	0.876	14.594	69.689	0.395	0.628
Work to achieve open government	0.577	9.609	79.299	0.538	0.734
Uphold due process	0.441	7.356	86.654	0.647	0.805
Government respects limit of the law	0.411	6.850	93.504	0.573	0.757
Protect fundamental rights	0.390	6.496	100.000	0.586	0.766

Law, the balance of the analysis proceeds to explore the relationship between job demands and this dependent variable.

The DCS measures

The DCS measures are reported in Table 4. The values from this study correspond to the aggregate values reported for legal professionals from previous studies using the same DCS instrument.⁶² A relationship exists between each of the DCS variables and our dependent variable, Rule of Law, in the direction predicted by the literature. Job demands have a negative impact on Rule of Law, as expected, while decision latitude and social support are positively related to the dependent variable. Age is also negatively correlated with the dependent variable, support for the rule of law. There is a slight tendency for provincial lawyers ($M=35.22$, $SD=6.1$) to report higher levels of job demands than their federal counterparts ($M=33.89$, $SD=5.437$) in an independent-sample t -test ($t(719)=3.852$, $p < 0.01$). Respondents with mentors evaluate their capacity to uphold the rule of law more favourably than those without this type of support ($t(1230)=4.386$, $p < 0.001$).

Legal work in the Canadian public sector is organised into two distinct divisions, criminal and civil, with (usually) two different organisation structures, reporting mechanisms and ministerial accountability.⁶³ Lawyers themselves are organised into separate civil and criminal member associations, and thus the data was examined for differences between criminal and civil participants. Only job demands showed any significant difference between the two categories, with criminal lawyers ($M=36.81$, $SD=6.21$) reporting a slightly higher level of job demands than civil lawyers ($M=33.73$, $SD=5.54$) in an independent-samples t -test ($t(966)=9.189$, $p < 0.001$).

62. Karasek, above n 50.

63. At the federal level and in some provinces, prosecution services do not fall under the Attorney General, but under a Director of Public Prosecutions, accountable to the Legislature.

Table 4: DCS measures

	N	Data from this study		National aggregate data from the Karasek Job Content and Questionnaire Users' Guide	
		Mean	SD	Mean	SD
Decision latitude	1366	71.24	8.889	72.6	9.38
Job demands	1363	34.87	5.983	34.8	7.69
Social support	1353	24.38	4.208	24.2	4.47

The data were then examined to test Karasek’s model of the moderating effects of decision latitude and social support on the relationship between job demands and the rule of law. Simple regression analysis demonstrates a significant negative impact of job demands on support for the rule of law,⁶⁴ as shown in Table 5. Analysis was extended to explore the moderation effect of decision latitude and social support on the regression result. Our premise is that decision latitude is high among autonomous professions despite their dependent employment status, and that this latitude will offset the impact of high job demands. The social support in the workplace will also have a moderating effect on the relationship between job demands and the Rule of Law measure. Results of moderation analysis,⁶⁵ including both decision latitude and social support as moderators, reveals that only social support has a statistically significant impact on the relationship between job demands and support for the rule of law.⁶⁶ The interaction effect for decision latitude and job demands does not impact on the model, as shown in Table 6. Furthermore, social support demonstrates a diminishing impact on the model for higher levels of job demands; as job demands rise, social support contributes a declining moderating effect on the dependent variable, as shown by the converging lines in Figure 1.

As noted above, lawyers in criminal law positions report higher job demands than their counterparts in civil practice. When entered as a control variable, type of work did not alter the impact of social support on the relationship between job demands and the rule of law. However, a second analysis of the DCS model, including type of work as a moderating variable, reveals an interaction effect between job demands and type of work that is statistically significant and, furthermore, the model is improved with the inclusion of type of work as a moderator,⁶⁷ as shown in Table 7. This study concludes that job demands have a negative impact on public-sector lawyers’ ability to uphold the rule of law in the course of their daily work, and that this effect is particularly pronounced for lawyers practicing criminal law.

64. $F(1,1338) = 81.47, p < 0.001, R^2 \text{ adj} = 0.06$.

65. A Hayes *Introduction to Mediation, Moderation, and Conditional Process Analysis* (New York: The Guilford Press, 2013).

66. $F(3,1305) = 54.2, p < 0.001, R^2 = 0.11$.

67. $F(5,1303) = 36.4371, p < 0.001, R^2 = 0.35, \text{interaction coefficient} = 0.1017, p = 0.0085$.

Table 5: Rule of Law simple regression coefficients¹

Model	Unstandardised coefficients		Standardised coefficients, β	<i>t</i>	Significance
	<i>B</i>	SE			
1 (Constant)	31.620	0.672		47.060	0.000
JD	-0.171	0.019	-0.240	-9.026	0.000

¹Dependent variable: the Rule of Law Scale.

Table 6: Moderation analysis

Outcome: Rule of Law Model Summary						
R	R-sq	MSE	F	df1	df2	p
.4244	.1802	14.9058	56.5159	5.0000	1286.0000	.0000
Model						
	coeff	se	t	p	LLCI	ULCI
constant	10.4387	5.2202	1.9997	.0457	.1977	20.6797
DL	.1510	.0776	1.9473	.0517	-.0011	.3032
JD	.0725	.1445	.5014	.6162	-.2110	.3559
int_1	-.0004	.0022	-.2042	.8383	-.0047	.0038
SS	.4334	.1610	2.6926	.0072	.1176	.7492
int_2	-.0089	.0044	-2.0186	.0437	-.0175	-.0003
Interactions:						
int_1	Job Demands	X	Decision Latitude			
int_2	Job Demands	X	Social Support			
R-square increase due to interaction(s):						
	R2-chng	F	df1	df2	p	
int_1	.0000	.0417	1.0000	1286.0000	.8383	
int_2	.0026	4.0747	1.0000	1286.0000	.0437	
Both	.0036	2.7910	2.0000	1286.0000	.0617	

Level of confidence for all confidence intervals in output: 95.00

DISCUSSION

Some of the factors that may account for work demands include work complexity and work interference. This study included measures of these factors and participants provided additional insight into their working conditions in the open comments section of the survey. Comments fell into two broad groupings: lack of resources and structural concerns. The great majority of comments discussed lack of adequate resources; insufficient technology, administrative staff and opportunities for skills development were recurring issues. In this category, the dominant concerns were inadequate staffing levels in the face of overwhelming case-loads and insufficient work time to complete legal analysis to the desired standard. To a much lesser extent, comments reflected structural problems with human resource policy and management direction, including interference from policy makers and political levels of government. Participants did

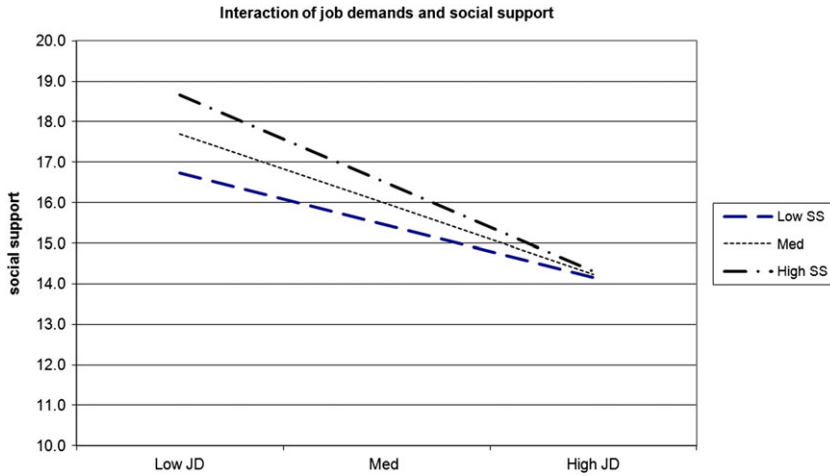


Figure 1: The interaction of job demands and social support. [Colour figure can be viewed at wileyonlinelibrary.com]

mention in two instances the stress of public service conducted in the public eye and vicarious trauma in criminal law.

Although some amount of stress or job strain has been demonstrated to produce positive work outcomes in studies that compare a number of different occupations in

Table 7: Moderation with criminal versus civil

Outcome: Rule of Law Model Summary						
R	R-sq	MSE	F	df1	df2	p
.3502	.1227	15.9568	36.4371	5.0000	1303.0000	.0000
Model						
	coeff	se	t	p	LLCI	ULCI
constant	25.3357	4.3139	5.8731	.0000	16.8728	33.7986
SS	.5367	.1476	3.6376	.0003	.2473	.8262
JD	-.1164	.1163	-1.0011	.3170	-.3445	.1117
int_1	-.0086	.0040	-2.1293	.0334	-.0165	-.0007
CrimCiv	-4.3880	1.3931	-3.1498	.0017	-7.1210	-1.6550
int_2	.1017	.0386	2.6337	.0085	.0259	.1775
Interactions:						
Interaction 1	Job Demands	X	Social Support			
interaction 2	Job Demands	X	Criminal or Civil			
R-square increase due to interaction(s):						
	R2-chng	F	df1	df2	p	
int_1	.0031	4.5337	1.0000	1303.0000	.0334	
int_2	.0047	6.9364	1.0000	1303.0000	.0085	
Both	.0077	5.7234	2.0000	1303.0000	.0034	

Level of confidence for all confidence intervals in output: 95.00

a single work setting,⁶⁸ it has also been found that for very high levels of job demands, the production of high levels of strain results in diminishing levels of performance.⁶⁹ In this particular study, the subjects are performing in roles with some of the highest levels of job demands noted in the literature, and while their heightened levels of job control enhance the feeling of challenge and of satisfaction at work, it is reasonable to conclude that a point exists beyond which job demands have a negative effect on work outcomes, and in this specific case, the perceived support for the rule of law. The nature of the work that lawyers do cannot be changed in the short term, but the power of organised representation was evident in comments that described negotiated changes that had greatly improved morale and working conditions for some participants; for example, '6 months ago, prior to the implementation of [specific workplace changes] I would have answered very differently'.

The implications of the findings

The preceding test of the DCS model for public-sector lawyers is of interest in itself for the demonstrated impact of job demands on the perceived ability to uphold the rule of law, one of the principal outcomes of these workers' job roles. The lack of effect of decision latitude on the main relationship is in keeping with the high degree of professional discretion and latitude inherent in legal work, and reflects an interesting development in the use of the DCS model among legal professionals. The role of social support, measured as peer and supervisor support in the workplace, moderates the impact of job demands on the participants' perception of their ability to uphold the rule of law in the course of their work, but when extended to the maximum of the job demands scale reported by participants, we see that the effect of social support is reduced to nil (Figure 1).

The situation reflected in exploratory interviews and in earlier published work is one of increasing complexity of files as well as increasing demands for accountability, and to a lesser extent policy direction, from senior civil servants. In this environment, it is thus not surprising that government lawyers across Canada have sought collective bargaining. Most jurisdictions have granted statutory or voluntary recognition to associations of government lawyers for the purposes of bargaining terms and conditions of employment. This is a notable achievement for several reasons. Historically, lawyers employed in the civil service have been denied collective bargaining rights as exclusions under public-sector bargaining statutes. The profession itself, steeped as it is in privilege, prestige and notions of independence, has also traditionally been conservative in outlook and opposed to collective action. A landmark case at the Supreme Court of Canada, *BC Health Services*,⁷⁰ however, established collective bargaining as a right under the Canadian Charter of Rights and Freedoms, which was instrumental in confirming the practice of bargaining for those provinces where it

68. W Boswell, J Olson-Buchanan and M LePine 'Relations between stress and work outcomes: The role of felt challenge, job control, and psychological strain' (2004) 64 *J Vocat Behav* 165–181.

69. De Jong and Schaufeli, above n 17; P Warr 'Decision latitude, job demands, and employee well-being' (1990) 4 *Work & Stress* 285–294.

70. *Health Services and Support – Facilities Subsector Bargaining Association v British Columbia*, 2007 Supreme Court of Canada, 27 SCR.

was established and paved the way for rapid progress into those jurisdictions where the struggle for rights fell short of full bargaining.⁷¹

Earlier research reveals that mentorship plays an important role in the socialisation of new career lawyers, with direct positive impact on their learning curve in the first years of practice.⁷² Despite the existence of human resource practices such as performance appraisal and mentoring in the workplace, public-sector employers should be concerned with the fundamental relationship between the demands of the job and the ability of workers to uphold the tenets of the rule of law. At this time, in the Canadian context, it is thus not surprising that an alternative to organisation support for workers has emerged. Some form of union with the power to negotiate working conditions appears to be necessary to cope with the rising demands of legal work in the public sector.

The preponderance of criminal lawyers are employed at the provincial level (468 vs 82). Provincial governments vary in size and resources, while the statutes, human behaviour and complexity of work are more consistent across the country; greater variations exist between urban and rural settings than between provinces. The impact of increasing complexity results in increased psychological demands of the job, and as these levels increase, even the mitigating effect of social support at work cannot improve the deleterious effect on support for the rule of law. Public-sector lawyers have felt this strain and increasingly, over the past two decades, have turned to collective bargaining as a means to exert control over work conditions. Given the slow pace of change through collective bargaining, and negative consequences for the rule of law reported here, provincial and federal public services would be well placed to examine the factors contributing to rising job demands.

Limitations

Although there is a risk of self-report bias in this approach, the DCS model has been consistently tested in this manner; and with a well-constructed sample of sufficient size, the effects of such a bias were minimised. Data from a single point in time are unable to determine the direction of causality between the key variables as well; however, the sample size and breadth indicate strong potential for further study.

Further research

Some interesting differences in the way hours of work were reported in Quebec compared to the rest of the sample, and variations in collective agreements across jurisdictions, may provide further insight into provincial variations. The study included a single measure of collective bargaining representation and did not reveal any significant relationship with the DCS model, nor with the Rule of Law Scale. The measure is probably not sensitive enough to capture the complex dynamic of workplaces with collective representation. Membership in a group for the purposes of collective representation and negotiation over work conditions is an important source of social support and, given the results of the analysis of social support and job demands, this remains an area for further investigation. Further analysis, perhaps in the form of case studies, would provide insight into the role and operation of mentorship in the public sector as a form of social support in the workplace; similarly, such an

71. Campbell and Haiven, above n 5.

72. Campbell, above n 2.

approach might reveal nuances in the experiences of women lawyers and racialised lawyers in the public sector. Comparative studies across other nation states would also be of interest; in particular, in combination with the national measures of the rule of law now available. Finally, participants were not asked to describe their workload in terms of litigation work and time spent in court or tribunal hearings. This is a dimension that might provide further distinctions within the population of government lawyers.

CONCLUSIONS

The study contributes to the literature with an exploration of workload and the exercise of discretion in the legal profession. The development of a measure for support for the rule of law in individual workplaces opens the field for additional investigation and for comparative studies. The findings reported here may have implications for industrial relations, public policy, job design, general management in public-sector workplaces and for legal scholarship on the protection of the rule of law. Lawyers in this study unanimously cast the rule of law in a positive light, emphasising that its protection is a positive outcome of their work. Dodek, however, notes the potential negative implications of supporting ‘stability and integrity of the system of government’⁷³ as the exclusion of minorities and marginalised groups in society. The author goes on to note the increasing complexity of legal proceedings and the key role of lawyers in supporting access to justice for those subjects of the law. He compares this service with lawyers’ power to regulate and to influence the administration of the legal system. With a measure for the rule of law within workplaces, taken at the individual-lawyer level, a broader study of the justice system may now be in order.

More lawyers are not necessarily the answer to increasing work demands. Gershowitz and Killinger outline the drawbacks to this solution, naming political manipulation, stagnant workloads and the pursuit of greater numbers of cases.⁷⁴ Lawyers are not often viewed with sympathy. They are, as a rule, quite handsomely rewarded for their work in comparison with many members of society. Although workloads are high and hours long, the public perception of the legal profession is one of high-powered and highly paid elite professionals. Complaints of excessive workload demands typically receive little attention and less support. This study points to the possible implications of increasing workload demands on a broader social construct – support for the rule of law. Using well-established psychometric measures and introducing a measure of the rule of law at the individual level, this study broadens the discussion of rule of law and positions the working conditions of public-sector lawyers in a socially relevant framework.

73. Dodek, above n 6.

74. Gershowitz and Killinger, above n 31.