

Trauma-Informed
Legal Practice
TOOLKIT

Golden Eagle Rising Society



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This is an educational resource, it is not intended to provide legal advice.

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According to a recent publication, “The Justice Crisis: The Cost and Value of Accessing Law”, by Trevor C.W. Farrow & Lesley A. Jacobs, less than 7% of people use courts to resolve their problems and less than 20% get legal advice; access to justice costs and barriers are higher and more complex for domestic violence survivors; and within Indigenous communities, the justice system has retraumatized and revictimized some, particularly in context of Indian residential school litigation.

This *Toolkit* is dedicated to those who have been retraumatized and revictimized by our legal system. We are working to ensure that our advocacy efforts and legal education centers these voices and experiences. We are committed to doing no further harm.

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Samantha Breslauer (she/her) is a lawyer practicing employment and labour law in Vancouver, B.C. She obtained her Juris Doctor from the University of Ottawa in 2019 and her Master of Social Work from the University of Toronto in 2014. Samantha is actively working to implement trauma-informed principles to every aspect of her practice.

Victoria Craig

Victoria completed her undergraduate degree in Social Work at Western University. She followed her passions for advocacy and imparting change at both the individual and structural levels to the University of Victoria Faculty of Law. In an effort to combine her interests in social work and the law, Victoria is also completing a Master's degree in Public Administration. She began both programs in the Fall of 2019.

Victoria is a strong believer in trauma-informed practice and thinks that the TILP project is a critical step towards providing legal professionals with the skills needed to understand the unique experiences of their clients. She hopes that the TILP project will further support legal professionals to make informed decisions in the best interests of their clients.

Alison Granger-Brown

Alison has a PhD in Human and Organizational Systems, founded on Master's degrees in Leadership and Training, and Human Development.

For the last 20 years she has been specializing in the transformational learning, growth and development of people in provincial and federal prison. Her main area of research has been in Developmental Trauma as related to the lives and experiences of people involved in the justice system.

Kareem Ibrahim

Raised on stolen Algonquin & Anishinaabe territory, Kareem seeks to bring their passion for inclusion and community care to their work within the colonial legal system. Keenly aware of how those who interact with colonial legal systems are often needlessly retraumatized, Kareem is determined to hold their fellow legal professionals to a high standard of equitable service provision through compassion and relationship building. With 1 year of law school at UBC left, Kareem continues to look for ways to bring trauma-informed methods and perspectives into classrooms, workplaces, and courts.

Jessica Magonet

Jessica Magonet is Staff Counsel (Litigation) at the British Columbia Civil Liberties Association. She previously worked as a lawyer at Arvay Finlay LLP and served as a law clerk to the Honourable Justice Karakatsanis at the Supreme Court of Canada. She is a graduate of McGill University's Faculty of Law and is called to the bar in British Columbia and Quebec. Jessica enjoys practicing aikido and writing poetry.

Myrna McCallum

Myrna McCallum is a Métis-Cree mother and grandmother from Treaty Six territory (Green Lake & Waterhen Lake First Nation). She is the host of "The Trauma-Informed Lawyer" Podcast. Myrna acknowledges that it is Indigenous people and survivors of sexual violence who transformed her into the trauma-informed lawyer she is today. She educates via her podcast on trauma-informed lawyering, cultural humility, vicarious trauma + resilience and Indigenous intergenerational trauma. Myrna also educates through keynotes, training sessions and lunch and learn lectures. Most recently, Myrna began offering one-on-one customized trauma-informed lawyering training and coaching sessions for legal professionals. Myrna serves as a subject matter expert and consultant on trauma-informed lawyering, investigations, adjudications and policy development. She practices human rights law, criminal law and conducts workplace investigations into complaints of systemic racism, sexual misconduct, human rights and bullying & harassment. She owns and operates Miyo Pimatisiwin Legal Services in North Vancouver, B.C.

Nazanin Moghadami

Nazanin Moghadami is an Iranian-Canadian settler residing in east Vancouver. She was born and raised in Iran and is half Kurdish and half Kashani. As a young woman, she moved to Vancouver to pursue her education to become a counsellor.

She has a master's degree in Counselling Psychology from Adler university and has been practicing for the past 7 years. Nazanin is a fierce advocate, facilitator and educator working to end gender-based violence. Following a strong Iranian MeToo movement, she started a video series in Farsi providing foundational information on gender-based violence. She is honored to work with Myrna on this project.

River Shannon

River Shannon serves as staff lawyer and legal educator with the YWCA Metro Vancouver, where they provide free legal services to women living in YWCA Housing who have experienced violence from an intimate partner. In their position as legal educator, River also facilitates free workshops for the general public on a broad range of legal issues, advocates for positive change in the community, and supports YWCA outreach and support staff in the Greater Vancouver Area in navigating British Columbia's Courts and Institutions.

River also volunteers as Duty Counsel with the Amici Curiae Friendship Society, where they help folks in the Greater Vancouver Area complete their legal forms.

In their spare time, River likes to meditate, doodle in their sketchbook, and ride their bicycle.

Nisha Sikka

Nisha Sikka is a lawyer at Donovan & Company where she represents First Nation clients on a variety of matters, including consultation and accommodation, governance and specific claims. Nisha is currently working to integrate trauma informed methods and principles into all aspects of her practice. Nisha received her law degree from the University of Alberta in 2015 and was called to the British Columbia Bar in 2016. Nisha holds a Bachelor of Arts (Honours) in Communications and English, along with a Certificate of Liberal Arts from Simon Fraser University. With a passion for volunteering, Nisha is the Legislative Liaison of the CBABC's Aboriginal Law subsection and a member of the Vancouver Writers Festival's Board of Directors. She also volunteers as Duty Counsel at Amici Curiae's free legal clinics.

Hannah van Mook

Hannah grew up in Pemberton, BC and completed her undergraduate education in biopsychology at the University of Victoria. She then continued on to complete a graduate degree in Cognition and Brain Sciences while working at the Centre for Accessible Learning at the University of Victoria. Hannah then followed her interest in broader societal issues and systems to law school, where she volunteers with Pro Bono Students Canada and the UVic Law Wellness Club. In light of her strong belief in the need for increased

mental health services in the legal profession, Hannah is also completing a graduate degree in Counselling Psychology. Hannah is passionate about the TIL project and looks forward to supporting the development of trauma-informed practice in the legal profession.

Angela Wong

Angela Wong is a labour lawyer at the Hospital Employees' Union. Prior to her tenure at HEU, Angela worked as an employment lawyer and a workplace investigator for a boutique employment law firm in Vancouver. As a workplace investigator, Angela conducted investigations on topics ranging from harassment/bullying, discrimination, and sexual harassment. Angela often applied trauma-informed investigation techniques when conducting investigations. She has extensive experience working with vulnerable peoples, stemming from her previous experience as a social justice lawyer for a legal clinic in Toronto and as a researcher for two migrant rights' organizations in Vancouver and Singapore. She earned a law degree from the University of Alberta and a Master's degree in Asia Pacific Policy Studies from the University of British Columbia. •

CHAPTER 1

What is Trauma-Informed Legal Practice?

by Kareem Ibrahim

Trauma-informed practice does not require becoming a health expert, psychologist, or therapist. At the most basic level, becoming trauma-informed means that you are aware of the impact of trauma on the brain and body and that you actively implement strategies to avoid exacerbating trauma-related problems. Trauma-informed practice is important to the practice of law because trauma is common amongst the population that frequently engages with the justice system.

An example of how trauma may impact the lawyer-client relationship can be illustrated throughout the trust building stage of the relationship. Individuals who have experienced trauma may find it difficult to trust others. Even non-violent traumatic events can violate a person's sense of self and security resulting in feelings of helplessness, hopelessness, and despair. These symptoms can undermine a legal practitioner's ability to connect with their clients.

Traumatic incidents can be measured by the severity and nature of the event as experienced by the person exposed to the traumatic event. Incidents that may be traumatic for one person may not be traumatic for another. Traumatic events may have a lasting impact on the individual, which can result in a range of coping

mechanisms. Trauma can be acute (a single traumatic event limited in time), chronic (multiple traumatic events) or complex (history of severe and long-term trauma).

Simple post-traumatic stress results from a one-time traumatic event, such as an assault, whereas complex post-traumatic stress flows from more chronic and protracted traumatic experiences, such as prolonged violence perpetrated by a caregiver. It is not uncommon for someone to experience both types of post-traumatic stress.

When an individual experiences a traumatic event, the body automatically reacts. Reflexive reactions include fight, flight, or freeze because the defence circuitry dominates brain functioning once activated. Freezing occurs when the amygdala detects a threat and signals the brainstem to inhibit movement. The reaction can

... a fundamental principle of the lawyer-client relationship is trust. However, people who have experienced trauma may find it difficult to trust another person.



happen in less than one second because the response is beyond conscious control.

If escape seems impossible, then extreme survival reflexes take over. Responses can include:

Dissociation

- The process where the brain protects overwhelming stimulus by splitting an aspect of the experience away from consciousness. The person become detached from themselves and their emotion, which can cause memory loss

Tonic Immobility

- A state of involuntary paralysis in which the person is unable to move or speak

Collapsed Immobility

- A sudden and drastic drop, in heart rate and blood pressure, such that the person may faint or pass out

Traumatic experiences shape neurological responses and can affect every day functioning. Following a traumatic event, a traumatized person may:

- Re-experience phenomena such as flashback and nightmares of the traumatic event, which may make the traumatized person feel out of control;
- Avoid and numb responses, which refer to a person's attempt to avoid reminders of the traumatic

event including places, people, actions, thoughts or feelings associated with that event.

People who experience these responses may withdraw from their family and friends and lose interest in everyday activities;

- Experience physical hyper-arousal responses which include a sense of being on guard at all time, irritability or sudden anger, difficulty sleeping, lack of concentration, being overly alert, or easily startled;
- Experience affect dysregulation which refers to difficulties in modulating emotion and impulses;
- Change their consciousness which means that a traumatized person can at time detach from the immediate reality by "dissociation";
- Alter their self-perception with feelings of shame, guilt, or exaggerated sense of responsibility;
- Alter their relationships with others including difficulties in establishing and maintaining intimate emotional connections with and trusting others;
- Somatize, which means the manifestation of psychic pain in the body and in physical illness; and

- ix. Feel overwhelmed or hopeless or experience a lost sense of purpose.

Individuals with simple post-traumatic stress are more likely to experience symptoms (i) to (iii), and people with complex post-traumatic stress are more likely to experience symptoms

(iv) to (ix). It is important to remember that these responses are involuntary as trauma lives in our nervous system.

Any individual, family, community, or service provider can experience trauma regardless of gender, socio-economic status, religion, culture, sexual orientations, race, abilities, creed, etc.

Traumatic experiences are more common for youth, the impoverished, racialized, Indigenous and minority groups. Accordingly, practitioners must consider the social context of trauma.

Everyone who works with a traumatized person should attempt to understand the ways in which culture affects an individual who experienced a traumatic event.

Guiding Principles of a Trauma-Informed Approach

A trauma-informed approach to law must be guided by the principle of doing no harm. In order to apply a trauma-informed approach, practitioners must acknowledge the extent of traumatic experiences in the human population and understand the ways

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Empathy, patience, consistency, transparency, and reliability are crucial for establishing a trusting relationship with a client who experienced trauma.

trauma responses affect people's lives, capacities, and abilities to cope with life's challenges.

Becoming trauma-informed requires that legal practitioners undertake training in the neurobiological effects of trauma on speech, memory and behaviour; identify traumatic symptoms when they are present; and adapt their interview approach to accommodate trauma. This does not mean that legal professionals are expected to become therapists, but it does require that they deliver legal services in a way that helps individuals interacting with the justice system feel safe and respected.

You can begin client interviews by asking the opening question: what happened to you? It is important to recognize and promote resilience. Apply a strengths-based approach to working with traumatized people as it can help draw out, identify and build on people's abilities and positive attributes. Empathy, patience, consistency, transparency, and reliability are crucial for establishing a trusting relationship with a client who experienced trauma.

Ultimately, a trauma-informed approach to the practice law can help people who experienced trauma to successfully navigate the justice system; feel in control and safe; minimize the risk of re-traumatization; and hopefully, diffuse the effects of a traumatic incident.

Remember, applying a trauma-informed approach to legal practice begins with you, the legal practitioner- the judge, the legal educator. Critically self-reflect on your relationship to control, trauma, emotional expressions and processes.

Creating a trauma-informed approach to legal practice will require your intentional commitment to do no further harm to those who cross your professional path. •

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CHAPTER 2

Why Create A Trauma-Informed Legal Practice

by Angela Wong

Canadian courts, tribunals, and legal professionals perpetuate harm by contributing to the re-traumatization of justice participants through practices, procedures and policies. From the aggressive and often dehumanizing cross-examination of survivors of sexual violence to the presentation of graphic photo and video evidence in court, there is significant consensus that our legal system is archaic. The design of the system discourages survivors from coming forward and has not kept pace with social change. Harmful policy choices, such as the chronic underfunding of family law legal aid services, have harmful results. Underfunding can impede an individual's ability to leave or stay out of abusive relationships. Furthermore, the legal system forces survivors of abuse to engage directly with their abusers in court despite the availability of other means of acquiring witness testimony.

Contemporary Legal Barriers To Meaningful Participation

Unfortunately, it is difficult to draw empirical conclusions regarding these practices and policies and analyze their overall impact on the legal system due to the number of variables which impact legal services (ex. police conduct, availability of funds and time to pursue a legal claim etc.). Nonetheless, it is important that we, as members of the legal profession, reflect on how we can incorporate human-centered design into our courts, tribunals, and service provision practices - especially considering how undermotivated the legal profession has

proven to be when it comes to undertaking critical self-review for the betterment of society.

It is reasonable to conclude that the legal system is responsible for the fact that the majority (83%) of sexual assaults were not reported to police, according to a study conducted in 2014. Statistics related to sexual violence are helpful benchmarks for assessing the extent to which our legal regime has responded to calls for trauma-informed practices. The highly traumatizing experience of sexual violence has decreased the least over time. Clearly, the legal system needs to be reformed but what should this reform look like?



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It is long overdue that legal professionals in Canada address how they contribute to simple barriers to trauma-informed legal practice.

Human-Centered Design

When assessing best practices in any industry, one must consider the goals and realities of service provision to determine areas for improvement. These assessments must be based on the experiences of the clients we serve. For example, imagine for a moment that every client or court user was asked to complete a satisfaction survey designed to keep judges and lawyers accountable to the public. What responses do you think we would receive as a profession? Despite how obvious a human-centered design may seem, the absence of it in the Canadian legal system ensures the perpetuation of an outdated regimes incompatible with long-available literature on human psychology and trauma.

For any court, law office or law school interested in exploring the possibilities offered by a human-centered design, we suggest that you and your colleagues undertake training in trauma-informed legal practice or trauma-informed judicial practice. Then enlist the services of a mental health professional and trauma-informed trained lawyer who will assist in the development of metrics specific to your roles and responsibilities which will foster accountability and identify areas in need of further development to achieve the outcomes you seek.

Trauma-Insensitive Statutory Interpretation

It is long overdue that legal professionals in Canada address how they contribute to simple barriers to trauma-informed legal practice. For example, how is it that in a relatively recent case from Alberta, a survivor of sexual assault was forced to testify in shackles [on the recommendation of the Crown] and was transported in the same prisoner van with the man who was ultimately convicted of sexually assaulting her? Upon review of the Judge's decision, the Alberta

Judicial Council found no evidence of judicial misconduct, stating that Judge Raymond Bodnarek "intended to serve the objectives of the best administration of justice." The Council found that the Judge appropriately applied s. 545(1)(b) of the Criminal Code, a provision that enables a preliminary inquiry judge to order the detention of a witness who having been sworn, refuses to answer the questions that are put to him without offering a reasonable excuse for his failure or refusal. Interestingly, the victim's refusal to participate in a hearing regarding their own experience of sexual assault was not considered reasonable in the circumstances.

Vicarious Trauma

Effective trauma-informed legal processes must contemplate vicarious trauma. Addressing vicarious trauma should assist professionals with developing tools and reporting trauma symptoms resulting from working with victims of trauma. All legal professionals and those who support them - from clerks, law students, and researchers to lawyers, judges, and administrators - must be equipped to deal with traumatic content and traumatized clients. This Toolkit includes both information on vicarious trauma and a tool for use in everyday practice.

Partial Solution

Trauma-insensitive legal process can lead to the abandonment of active meritorious legal claims or pre-emptive avoidance of the legal system on account of potentially retraumatizing legal processes.

Although solutions to the complex issue of traumatization are wide-ranging and implicate diverse stakeholders, we are confident that this Toolkit can serve as an integral step in the incorporation and proliferation of trauma-informed practices and principles in the Canadian legal system. •

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CHAPTER 3

Trauma & The Brain: What Lawyers & Judges Need To Understand

by Alison Granger-Brown

This chapter provides a brief introduction to neuroscience and trauma in the field of legal advocacy. It also provides a short description of the development of the brain. The final section addresses how damage to brain functioning resulting from trauma can affect the justice system and provides recommendations regarding the implementation of trauma-informed legal practice.

Neuroscience and the Law

Neuroscience was first introduced in the courtroom in North America in the 1990's when an accused entered a not criminally responsible plea for the murder of his wife. The defense presented evidence indicating that the accused had a cyst in the arachnoid space in his brain. These types of cysts are proven to be associated with violence. The accused ultimately plead guilty to the lesser charge of manslaughter because of the neuroscientific evidence presented to the court.

Since then, forensic neuroscientists have been in demand to provide expert testimony on a range of cases including those who suffer head trauma to how violent video games influencing youth behaviour. Presently, researchers are studying early life adversity and its damaging impact on brain development. Organic brain damage, traumatic injury or neurological impairment are

frequently considered in the justice system of the United States. Florida, for example, has determined that the failure to admit neuroscientific evidence in a capital sentencing can be grounds for appeal.

Some questions to consider:

- What is the person's responsibility?
- What was the person's mental state at the time of the offence?
- How competent is the person to stand trial?
- What does this person remember?
- How accurate is the person's memory?
- How can we improve judge and juror decisions?

Thousands of natural experiments with brain tumors, degenerative brain disorders, drug misuse and traumatic brain injury determined that the brain can be changed by any of these or other factors, and including psychological trauma, the

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personality and behaviour is altered. Behaviour can be modified by the subtlest of brain abnormalities, very small changes in the genetic code and via epigenetics, whereby experiences in life can alter the genetic expression. Not only is this a consideration for culpability, but also and most important, it should be a significant consideration for practicing law in a manner that does no further harm and elicits the most valuable information and cooperation from the individual.

Trauma sensitivity is vital if we are to encourage, for example, the reporting of sexual assaults and other crimes whereby the victim is afraid to report due to a fear of re-victimization and re-traumatization. Women who have experienced sexual assault or abuse at home, have stated that being disbelieved by investigators and knowing, that their own memory is incomplete is almost as damaging as the initial assault. Interviewing such women must be conducted in a manner to avoid shutting down their ability to remember whatever they can and support their ability to describe and

explain the events that they can recall. Understanding why and how the brain is so vulnerable to hyper or hypo excitation and what can be done to mediate this potential volatility is fundamental to a trauma-informed justice system

The Brain

The brain is the most complicated organ in the body composed of the most complex material in the universe. The brain develops in utero beginning with the oldest and most primitive brain towards the newest, in evolutionary terms, and also the most sophisticated layer of the brain. It begins with the spinal cord up to the brain stem, up to the cerebellum and on through the limbic brain to the cerebral cortex. In simple terms, the brain is responsible for emotion, perception, behaviour and each person's unique understanding of reality. This first to develop, often referred to as the "reptilian" part of the brain, controls vital functions such as heart rate, blood pressure and involuntary breathing and can keep a body alive in a deep coma, when no other brain function is possible. It also has influence on balance and proprioception

our ability to know where we are in spatial terms. This elementary brain is rigid and compulsive.

Next to develop is the mid-brain, a group of structures also known as the limbic system. There are two of each structure, including but not limited to the hippocampi, the amygdalae and the hypo-thalami. Here all sensory information is initially recorded and then sent out to the cerebral cortex for reaction or cognitive deciphering. It is the seat of working memory, emotion and emotion regulation, including the first step in the stress response system.

Sensory information is initially recorded in the hippocampi and used for working memory and then throughput to other brain regions for long-term memory storage depending on what type of information it might be, such as auditory, visual etc. The hippocampi are smaller in people with Post-Traumatic Stress Disorder (PTSD). A child born to a mother who has been highly stressed during pregnancy will have smaller than normal hippocampi due to high levels of the hormone cortisol. Memory issues may not be resolved

during childhood development or until PTSD has been treated. People experiencing distress often have poor memories of the distressing incident because each hippocampus shrinks when the sympathetic nervous system (stress response system) is triggered. Individuals may also lose memory of an event if they are stressed by questioning, which is commonly demonstrated with test-taking anxiety.

The amygdalae are small almond shaped and sized structures that receive stimulus from all senses as well as visceral inputs. The amygdalae are where we experience emotions, particularly fear and anger. There is a direct link to the pre-frontal cortex for interpretation and reaction to potential threat. The amygdalae are also involved in the ability to feel empathy for another person.

The hypothalami play a crucial role in many important functions, including but not only, the management of sexual behavior and the regulation of emotional responses. The limbic brain is the centre of emotion and the unconscious judgments that we make, that exert such a strong influence on our behaviour.

Another area to mention is Broca's area in the frontal lobe. This area is partially responsible for language and may shut down when a person becomes dysregulated or upset. According to Bessel van der Kolk, brain scans demonstrate that when the people get close to their trauma, the Broca's area shuts down and they

become speechless.

Neural pathways connect the limbic brain to the outermost and last layer of the brain to develop, the cerebral cortex. The cerebral cortex consists of two large hemispheres connected by a thick band of nerve fibres called the corpus callosum. This part of the brain enabled human cultures and societies to evolve. This is where we make creative decisions, have critical evaluations, interpret and find words to decipher the sensory information that has come through the limbic system. The part of this structure called the pre-frontal cortex, just behind the forehead, is the seat of personality and the area of executive functioning, including the important role of impulse control. This part of the brain forms after birth and develops rapidly during the first three years of life, only completing its full development by the mid-twenties.

From this description of a brain, forming over 40 weeks in-utero and then continuing to grow and mature until early adulthood, we can see why trauma and the timing of trauma is important to understand why certain brain functions are overly sensitised, inhibited or have not and will not be able to be achieved. There is a complex and somewhat staged process, with windows of developmental opportunity that once closed cannot be re-opened. The brain develops in a use dependent manner (Perry, 2009), life experiences force certain systems to develop either strongly or not at all.

Trauma in the form of neglect or emotional violence causes damage that can be mapped by scans, just as trauma resulting from a physical injury to the brain as in exposure to teratogens such as alcohol, can be viewed.

Static scans of brain structure have been available for some time, so areas that simply do not grow or tumours that do grow can be seen. Today there are functional images that can be recorded of the brain at work. The technology is still in its infancy but has already changed our understanding of cognition and emotion radically.

Brains undergo a massive reorganization during the adolescent years until the mid- twenties, a remodeling that resembles a system upgrade. The corpus callosum connecting the two hemispheres gain thickness, increase integration and allow for more mature thinking to evolve, especially as the pre-frontal cortex matures. Simply stated, adolescents are not capable of the same higher order thinking as adults.

Further, emotional development seems to be delayed or inhibited by toxic stress and so that full maturity may not occur until later, if at all. The implications of this staged development are that the timing of a traumatic event or prolonged neglect and chronic trauma will impact the brain uniquely and specifically (Perry, 2009), depending on what area or function of the brain was developing at the time. It is vital to understand the neurobiological deviations that result from early

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life trauma causing changes to areas of the brain that mediate mood, anxiety, healthy bonding with other people, and memory. Siegel (2011) describes the damage done to an immature brain through trauma and neglect as interfering with the development of connecting fibers. For example, structures such as the corpus callosum, pre-frontal cortex, and hippocampi show diminished connectivity among adults from lower socioeconomic backgrounds (Evans & Cassells, 2014). This explains some of the potential early life adversity caused by poverty and the toxic stress of life that is insecure and unsafe, and the implications for managing life well.

Although much can be done to recruit other areas of the brain to mitigate the impacts of trauma, intervention cannot fully replace damaged systems of emotional response and cognition; this is the study of neuroplasticity. The brain's development is not reductive, it is integrative, based on both nature and nurture, the two are inseparable. How clients with delayed brain development are supported can nurture growth or inhibit it even further, every interaction is a potential for progress.

Autonomic Nervous System

Clients can be triggered without any immediately noticeable or relatable reason. Individuals can be influenced by past experiences that have become deeply embedded memories at the subconscious level and trigger a

response in the brain without the conscious awareness of the individual. This is known as implicit memory. Overall, data comes directly into the limbic brain. If data that is recognized as a threat or triggers a memory of threat then the hypothalamus will send messengers to the pituitary that then sends messengers to the adrenal glands to release cortisol and epinephrine or adrenaline. These hormones speed up the heart rate, open the airways, dilate the pupils, shut down digestion and shift the circulation away from the peripheral to the large muscle tissue. Cortisol shuts off the hippocampus which decreases the integration of memory and activates salience mode to focus on what is most important in this moment. Simultaneously endorphins released in the brain cause a reduction in the experience of pain.

Psychosocial Outcomes for Traumatized Clients

- Dissociation: A coping strategy when triggered. Not to the full extent as in psychological terms, but often in a loss of connection to the present moment and the current conversation.
- Numbness or pain reduction: Caused by endorphin release in the brain, the natural pain-relieving hormones of the body. A client may not experience the pain normally associated with a traumatic injury.
- Memory: The brain tidies up the data from the day during deep rapid eye movement (REM) sleep. In order to recall any event, we have to reconstruct the experience by retrieving all the various types of data and re-create what we hope is a cohesive report of that earlier moment or event.
- Confabulation: A symptom of a memory disorder from any cause, including FASD, whereby imagined elements and real memories are conflated to attempt to offer a cohesive narrative of an event. It is not conscious or intentionally deceptive.
- Egocentricity: Children believe everything is their fault as they are the centre of the universe.
- Negativity bias: We are naturally primed to scan our world for imminent danger. Therefore, we have a bias to pay particular attention to any potential threat. This is over sensitised in people with a history of abuse.
- Shut down: Parts of the brain will literally go off-line at times of high stress or threat. The hippocampus is one area that is susceptible, and this leads to memory loss or distortion.
- Attachment disorder: Poor or destructive relationship profile



An individual can develop trauma response symptoms if they experience long-term, repetitive, circumstances that exceed our capacity to cope and cause a disruption in emotional functioning.

that can have various styles. The main patterns involve either: Reactive attachment disorder which involves patterns of emotional withdrawal from caregivers. Children with this style do not seek or respond to comfort, even when they're upset. The alternative style of behaviour is Disinhibited social engagement disorder being overly friendly with unknown adults. Children with this style might wander off or approach strangers with no hesitation, and hug or touch unknown adults easily. There is no diagnostic profile in the DSM V for adults, but elements of these behaviours may well be evident much later in life.

- Poor self-esteem
- Learned helplessness: A state that develops when a person has experienced stressful situations repeatedly. They come to believe they have no control and so do not attempt to change a situation even when an opportunity arises.
- Depersonalization: Individuals become detached observers of themselves. Insignificant outsiders looking in, and their reality has become vague, surreal.
- Inability to read social cues.

Trauma

Trauma can be distinguished between large 'T' trauma and small 't' trauma. Large 'T' trauma occurs in a situation where the life or bodily integrity of the individual is threatened. Small 't' trauma occurs when the distressing event is not inherently life or bodily integrity threatening; however, the individual may have felt helpless. Small 't' traumas likely would not lead to the development of PTSD symptoms.

An individual can develop trauma response symptoms if they experience long-term, repetitive, circumstances that exceed our capacity to cope and cause a disruption in emotional functioning, complex PTSD can result. •

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CHAPTER 4

Why Law Schools Must Teach Law Students Trauma-Informed Practice

by Victoria Craig and Hannah van Mook

This section focuses on how trauma-informed legal practice applies in the context of law schools, what is missing, and why further integration is needed. The section concludes with practical tips for law professors to integrate into their courses and classrooms. The authors of this section are law students enrolled in law school at the University of Victoria. We believe that a trauma-informed legal education leads to trauma-informed legal practice. As Hugh Brayne (2000) explained, some learning is too important to be left to learning on the job.

Legal work is inherently relational - one would be hard-pressed to find a lawyer who doesn't interact with other people (Burton, 2004). Angela Olivia Burton (2004) explained that ethical practice involves sensitivity to clients' emotions, personalities, motivations, beliefs and values, which are all areas influenced by trauma. Lawyers who fail to understand the feelings, responses and behaviours of their clients are more likely to interact inappropriately with them (Brayne, 2000). This heightens the risk of re-traumatization of the client and the vicarious traumatization of the lawyer and their colleagues (Burton, 2004). To act ethically, lawyers must practice from a trauma-informed perspective. Essentially, trauma-informed legal practice is ethical practice.

The British Columbia Law Society Code of Professional Conduct (2013)

demands ethical conduct of its members. Chapter 3.1-2 requires that a lawyer be competent in their legal practice. Chapter 3.1-1 defines a competent lawyer as one who "has and applies relevant knowledge, skills and attributes in a manner appropriate to each matter undertaken on behalf of a client ..."

A competent lawyer is expected to be knowledgeable, skilled and capable in the practice of law. Competence is founded in ethical and legal principles. As noted earlier, the practice of law is relational (Burton, 2004). Therefore, lawyers must be ethical in their interactions with clients. The practice of law can only be properly understood in terms of the lawyer's duties to others: clients, legal officials, opposing counsel and their clients, witnesses and even society overall (Cunningham, 2008). Furthermore, to be competent, a lawyer must be trauma-informed.

Legal work is inherently relational - one would be hard-pressed to find a lawyer who doesn't interact with other people.



Jenkins (2013) noted that lawyers are trained not to be emotional in their relationships with their clients. Traditionally the role of lawyers has been one of stoicism, with an exclusive focus on the legal principles and doctrines that are relevant to cases. Initially, the practice of law was taught through an “apprenticeship” model.

From there, the legal profession realized that some topics were too important to be left to learning on the job (Brayne, 2000). Now, law school curriculums lack interpersonal and intrapersonal work.

This effectively desensitizes students to personal and structural concerns of the people they interact with in a professional capacity (Burton, 2004). In the first year of law school, professors tend to control the dialogue in a way that pulls students away from the humanity involved in the cases, focusing instead on substantive and procedural sources of authority (Burton, 2004). This is not inherently problematic on its own, but more interpersonal communication is needed to prepare lawyers for effective future practice. Beyond mooting and oral advocacy, communication skills are rarely expressly taught in law schools.

Indeed, it is undeniable that the legal profession is filled with emotion: business clients stress over mergers and acquisitions, tax clients struggle to meet the demands of collection agencies, Indigenous communities continue to negotiate for recognition, families

break apart when loved ones are sent to prison, and children are thrown into custody battles. Lawyers must have the tools to navigate these difficult conversations with their clients.

This becomes especially critical when considering vicarious trauma. The most effective place for lawyers to receive training on vicarious trauma is in law school. This is echoed by numerous legal academics and professors, including Sternlight and Robbenolt (2015) and Teresa Biviano (2017). It is also supported by recent graduates and practicing lawyers (Biviano, 2017; Sternlight & Robbenolt, 2015). Law schools play an essential role in instilling professional skills and values into future practitioners (Brayne, 2000); it is essential that this includes learning how to have a trauma-informed practice.

Trauma-informed practice skills should be integrated into all courses but may also be well-suited to a more in-depth exploration within the required ethics course. Teaching trauma-informed legal practice in law schools has a practical benefit because all future lawyers must attend law school. Teaching trauma-informed practice in law schools ensures that all practitioners consistently receive this critical training.

Jenkins (2013) argues that “training law students on how to mitigate the effects of vicarious trauma is not only beneficial, it is essential” (p. 401). Law school is where legal professionals develop the analytical skills and

knowledge required to solve their clients’ legal issues. It should also be where law students develop the tools for mitigating the effects of vicarious trauma on themselves and their clients (Jenkins, 2013). In addition to this, Meier (2016) argues that cultivating personal reflection skills and personal awareness are as fundamental for lawyers as learning to draft a brief. Effectively stated by Kronman (as cited in Brayne, 2000): “A lawyer’s professional life begins the day he or she starts law school. It is as students that their professional habits first take shape”. Some learning, including trauma-informed practice, is so essential that it should not be left to learning “on-the-job”. Jenkins (2013) provides us with four goals that trauma-informed education in law school should aim to achieve.

I. Help students develop the skills required to respond to emotions, reactions, and responses of traumatized clients.

In order to respond to trauma, students must first understand what trauma is. Students need to become familiar with the definitions of trauma and understand the impact that trauma has on relevant practice areas (Kraemer & Patten, 2014). Jenkins (2013) introduces students to the Diagnostic and Statistical Manual of Mental Disorders, which outlines a number of signs and symptoms that are consistent with trauma and related psychiatric disorders, such as post-traumatic stress disorder.

Traditionally the role of lawyers has been one of stoicism, with an exclusive focus on the legal principles and doctrines that are relevant to cases.

Knowledge and awareness of trauma and the effect of trauma on clients can increase understanding and patience, and ultimately lead to an overall more positive experience for traumatized clients.

Instructors can teach students the psychology behind trauma, either through stand-alone courses or integration into existing courses (Sternlight & Robbenolt, 2015, & Brayne, 2000). Equipping lawyers with the skills to predict, manage, and use their emotions and the emotions of their clients or adversaries is integral to their legal practice (Sternlight & Robbenolt, 2015). Legal professionals trained to be trauma-informed are able to recognize the signs of trauma in themselves and their clients and respond effectively and appropriately (Jenkins, 2013).

Kraemer and Patten (2014) introduce a number of important steps for creating positive relationships with clients with histories of trauma. The authors reinforce how trauma can impact a client’s ability to process information, which can then influence how clients interpret client-attorney dialogue. Perhaps one of the most critical reasons for lawyers to be trauma-informed is the importance of positive relationships in the lives of traumatized people. Because people with trauma often expect new relationships to reinforce negative experiences from their past, lawyers must be careful not to fuel this expectation. To build positive relationships with their clients, Kraemer and Patten (2014) suggest that lawyers do the following:

- Be transparent. Foster a trusting relationship with clients by being transparent with them.

- Provide a predictable environment. People with trauma often struggle with the unexpected. Keep clients informed on the next steps and likely outcome of their case.
- Allow for client control. Powerlessness is a common feeling amongst people with trauma. Allow clients to voice their opinions and make decisions that are purposeful.
- Be reliable. Follow through with scheduled appointments, promises, etc.
- Be proactively supportive. Anticipate problems that might arise during the time spent with clients and have resources and referrals available as needed.
- Practice patience. People with trauma histories can struggle with trust. Be patient with clients as they become more comfortable with the process.
- Notetaking. Communicate to clients about the purpose of notetaking. Let clients know that they are welcome to read these notes at any time.
- Recap. Summarize sessions with clients. This helps clients feel more familiar with and in control of what is happening in their case.

II. Help students develop coping mechanisms for their own emotions, reactions, and responses.

“Serving a victim of trauma is different than serving another client. [I]t takes a greater amount of understanding and compassion and energy. It is more exhausting and you have to learn to separate your life from events you are learning about.” (Jenkins, 2013, p. 407).

Lawyers must learn how to manage their own emotions when working with clients with trauma. For example, a common behaviour of traumatized clients is missing appointments, which can be irritating and frustrating. Knowledge and awareness of trauma and the effect of trauma on clients can increase understanding and patience, and ultimately lead to an overall more positive experience for traumatized clients.

However, it is also important for lawyers to maintain professional boundaries. While it can be tempting to spend time with clients outside of work hours, this can blur the lines of the professional relationship. Lawyers and other professionals may become emotionally invested in the lives of their clients. Jenkins (2013) discusses how a lack of clearly-defined emotional boundaries can result in job dissatisfaction and a higher turnover rate in the legal profession. Law students must be trained on how to achieve a balance between professional boundaries and the empathy and patience that is required to work with traumatized clients.

Many authors suggest that this can



Experiential learning opportunities should not be limited to hard skills such as interviewing and examination; morals and values should also be addressed.

be achieved through clinical or experiential learning opportunities (Biviano, 2017; Cunningham, 2008; Meier, 2016; Sternlight & Robbennolt, 2015; Brayne, 2000). While the case-law method of teaching is the most common method implemented in law schools, the curriculum should include practice experience (Biviano, 2017). Experiential learning opportunities should not be limited to hard skills such as interviewing and examination; morals and values should also be addressed. Simply discussing values is not sufficient - students should be provided opportunities to explore their personal and professional values with the aid of a practitioner or professor's moral compass (Cunningham, 2008).

Some options for experiential learning within the traditional classroom include:

- Live client simulations can focus on a specific case/fact pattern, or client issues like confidentiality, conflict of interest, division of control, etc.
- Role playing students can act out all characters, not just the lawyer
- Watching videos of client interviews/depositions
- Small group exercises

Experiential opportunities should be followed with a formal debrief to discuss the simulations. Feedback from lawyers with practice experience (including professors) is fundamental to learning from the opportunity (Cunningham, 2008). Additionally, instructors can pair simulations with real-life stories. Students can be asked to compare their choices and actions in the scenario exercise with those of the attorney on the actual case, weighing the pros and

cons of both. Clinical and experiential learning allows students to make mistakes in a controlled environment where they do not face the risk of harming themselves or their clients (Brayne, 2000).

When experiential opportunities are not always feasible, students can be asked to engage in self-reflection papers, journaling assignments, or respond to hypothetical situations (Meier, 2016, Sternlight & Robbennolt, 2015). This type of activity can help students engage more deeply with course content.

"Equipping law students with the tools, supports, and coping strategies to mitigate, manage, and transform vicarious trauma will help to maintain their physical and mental health, in addition to maintaining the improving their competency when delivering service to clients, and ultimately enhance their longevity in the profession." (Jenkins, 2013, p. 418)

III. Develop an action plan for vicarious trauma.

An incorrect approach to trauma-informed practice poses the risk of re-traumatizing students. Sanders (2019) highlights a number of things that should be avoided. This includes fully immersing students in traumatic material as this is ultimately destabilizing and counterproductive. It is also important to keep in mind that the threshold for re-traumatization varies between students. Furthermore, providing adequate notice or "trigger warnings" for students, monitoring student progress, and managing the amount of traumatic material presented in class are all steps that can be taken when educating students on vicarious trauma. Sanders (2019) also presents seven basic principles that educators can follow:

- Prioritize learning and student safety;
- Recognize the vulnerability of students with traumatic histories;
- Be prepared with referrals;
- Recognize that trauma can impact performance even when it is not the focal point at all times;
- Be aware of countertransference and personal reactions to traumatic material;
- Continue to critically evaluate the research on vicarious trauma; and,
- Do not assume that trauma is good or productive.

Basil Alexander, a law professor at the University of New Brunswick, incorporates trauma-informed content in his course on “Legal Ethics and Professional Responsibility”. Included in the class reading list is Françoise Mathieu’s (2007) *Transforming Compassion Fatigue into Compassion Satisfaction*. Mathieu outlines twelve self-care strategies that individuals engaged with traumatic content or clients can practice to mitigate the impacts of vicarious trauma. These strategies can be helpful for both students and practitioners alike. Note that it is important not to force all of these recommendations at once. Individuals should start where it feels easiest and slowly work their way into a routine.

When experiential opportunities are not always feasible, students can be asked to engage in self-reflection papers, journaling assignments, or respond to hypothetical situations.

1. Take inventory of your workload. Consider the things that are more demanding of your time and energy. What stands out? Is something making your plate too full? If possible, make some meaningful changes.
2. Start a self-care idea collection. Ask friends and coworkers what their self-care strategies are. Keep a journal or create a self-care vision board and implement at least three of these once a month.
3. Rebalance. Make some time in your day to sit with yourself. Do something that nourishes you such as taking a bath. If you don’t have much time, put in some headphones and listen to your favourite song, or have your favourite book nearby to read a quick chapter.
4. Delegate tasks. Learn to ask for more help at home or at work. Make a chore board for your family or talk to your partner about the chores that you aren’t able to keep up with. If you live on your own, make a schedule for yourself that breaks your chores up to make them more manageable (and realistic!).
5. Have a transition between work and home. Find a way to transition between your two worlds. Have some comfortable “home” clothes to change into when you

get home. Go for a quick walk around the block, or listen to your favourite podcast on your commute. Find something that helps you transition out of your work environment and into your own space.

6. Learn to say no or yes more often. If you struggle to set limits, take some time to explore this. Identify areas that you should say no more often. If you have stopped saying yes to activities with friends and family, evaluate this as well. Although it might feel exhausting to include social activities in your schedule, they are a critical way for you to stay connected to yourself.
7. Assess your trauma inputs. Evaluate the number of “trauma sources” you expose yourself to throughout the day. These could include the news, difficult conversations with clients, graphic shows, books, or podcasts, etc. Create a “trauma filter” to reduce these inputs. Choose lighthearted entertainment that offsets difficult content from work and catch up on the news over the weekend.
8. Educate yourself on vicarious trauma. Knowledge and awareness are key factors in mitigating the effects of vicarious trauma on your life.

Law students must be made aware of their susceptibility to vicarious trauma and the ways in which effects can be mitigated.

9. Consider joining a peer support group. Check to see if your workplace offers support groups. If not, consider organizing one! Check online as well. Find a community that you can debrief with and who understands your line of work.
10. Attend professional training regularly. Be sure to stay up-to-date on vicarious trauma. Stay competent in this area and learn new skills to manage the effects of vicarious trauma.
11. Consider working with trauma part-time. Although not possible for everyone, studies have shown that one of the best protective factors against vicarious trauma is to work part-time with clients and fill the other time with duties unrelated to trauma.
12. Exercise. Find time in your week to exercise. Create a realistic exercise schedule for yourself, or go for a walk around the block before bed or during your lunch break. Getting outside to exercise is a great way to clear your head and get some healthy endorphins going!

The Law Society of British Columbia’s Mental Health Task Force (2020) recommended that improvements be made to facilitate communication between law schools regarding

supports for students while at law school and within their transition into articles and the early years of their practice. The report acknowledges students need more support, including making them aware of resources available outside of the walls of the law school. Resources outside of the confines of the law school remain available following graduation. The Task Force (2020) recommends that the Law Society consults and collaborates with law schools in British Columbia to improve the exchange of information relating to mental health and substance use disorder support resources within the profession. While we are in full support of this recommendation, the recommendation can be pushed even further. The Law Society should also seek to improve information sharing related to trauma-informed practice and trauma-informed teaching.

IV. Help students recognize how destabilizing the role of a lawyer can be and ways to mitigate the inevitable emotional impacts of the job.

“When we open our hearts to hear someone’s story of devastation and betrayal, our cherished beliefs are challenged and we are changed” (Jenkins, 2013, p. 404). If we give students the tools needed to manage and mitigate vicarious trauma, we must also teach them about the destabilizing effects of vicarious trauma. While

burnout is often discussed as a result of overworking in most professions, countertransference and vicarious trauma are more unique to “helping” professions such as counselling, social work, and law.

Countertransference occurs when a person reacts emotionally to a client’s situation because of similar experiences and can become vicarious trauma. Countertransference can occur even if a person does not have a history of trauma. Discussions with a client might simply bring up subconscious memories of something impactful from the practitioner’s past.

Jenkins (2013) noted that, while burnout is avoidable, vicarious trauma is often inevitable for people who work in helping professions. Furthermore, perfectionists and overachievers, two personalities types common in the legal profession, have a higher likelihood of developing vicarious trauma. Law students must be made aware of their susceptibility to vicarious trauma and the ways in which effects can be mitigated. Jenkins (2013) proposed that the most important and impactful method of mitigating vicarious trauma is to become more knowledgeable and aware of its existence.

If a legal practitioner’s school or workplace does not acknowledge the existence of vicarious trauma or have supports in place to mitigate



More than a quarter of law students have received at least one diagnosis of depression, anxiety, eating disorders, psychosis, personality disorder, and substance abuse disorder (Oehme, 2019).

the impacts of vicarious trauma, the risk of developing vicarious trauma increases. Workplaces have an obligation to protect their employees from harm. Legal professionals must be able to take care of themselves before they can support their clients. Lawyers have a professional responsibility to safeguard their mental health and the mental health of their clients. As Jenkins (2013) stated, "... knowing ourselves is a powerful antidote to vicarious trauma." (p. 416). Developing knowledge and awareness of vicarious trauma and a toolkit for mitigating its effects will lead to more effective lawyering.

Teaching Law from a Trauma-Informed Perspective

In addition to training law students to practice law in a trauma-informed manner, professors must teach from a trauma-informed perspective. More than two-thirds of university-aged students report exposure to a traumatic event (Carello & Butler, 2014). More than a quarter of law students have received at least one diagnosis of depression, anxiety, eating disorders, psychosis, personality disorder, and substance abuse disorder (Oehme, 2019). Students are at a high risk of re-traumatization and vicarious traumatization, even within the walls of the law school. Traumatic materials such as case law and case commentaries are presented directly and indirectly in law school (Carello & Butler, 2014). Higher levels of trauma in students is connected to higher risk of developing serious mental health concerns (Anders et al., 2012; Read et al., 2011; Turner & Butler, 2003; as cited in Carello & Butler, 2014), poor student outcomes including missed classes and dropping out of school (Carello & Butler,

2014), and negative personal/emotional adjustment (Banyard & Cantor, 2004, as cited in Carello & Butler, 2014). Educators need to aim to reduce these risks to students.

A trauma-informed educational approach includes many of the same things noted previously: professors should understand the psychology of trauma and its impact. Professors should also have a plan in place to combat the vicarious trauma that can arise from dealing with traumatized students, as well as engaging with potentially traumatizing case law on a regular basis. Essentially, the basis of teaching from a trauma-informed perspective comes from being trauma-informed.

Scholars and law professors provide additional advice and recommendations on teaching students to be trauma-informed, as well as how to engage with traumatic content in the classroom. As noted above, professors should undergo trauma-informed training themselves (Carello & Butler, 2014). Educators should be aware of and able to recognize the symptoms of vicarious and re-traumatization. Notably, when and if these symptoms arise, the professor must not equate their role as an educator with that of a counsellor or therapist. Professors should prepare to have some conversations about students' experience but should be ready to make referrals to community and campus services and facilitate access to those resources (Carello & Butler, 2014).

Professors may elect to have a psychologist or psychiatrist provide a guest lecture to their class (Kraemer & Patten, 2014). These professionals can likely speak

thoroughly and precisely about the effects of trauma on the brain, methods of communication, behaviour, and memory. Lawyers who practice for a trauma-informed perspective may also be valuable guest lecturers. Experts may be able to provide specific recommendations to students engaging with clients who have trauma histories (Kraemer & Patten, 2014). Students should be informed that trauma presents in many different ways and affects each person uniquely (Kraemer & Patten, 2014).

Practical tips and tricks for engaging with traumatic content in the classroom include:

- Be prepared to offer substantial levels of personal and professional support to students, especially when they are asked to reflect in journal entries or written assignments (Meier, 2016). When students are navigating how to engage with clients with trauma exposure, they will need significant support in how to do so.
- Professors should anticipate this and be prepared to support their students in their professional and personal growth.
- Present content in different ways (Sternlight & Robbennolt, 2015). Most students do not learn best by reading or listening to a lecture. Students should be

provided with opportunities to engage with content multiple times in different ways. Multiple modalities or channels will maximize student understanding.

- Allow and encourage students to respond to course content in multiple ways, including creatively (Meier, 2016; Sternlight & Robbennolt, 2015). Students process content differently. Providing students with the options to reflect in writing or in conversation, in a creative format (or other methods) allows them to pick a means that best suits their learning styles.
- Limit trauma exposure levels. While some trauma exposure in the classroom is necessary and inevitable, it will not always be required for students learning (Carello & Butler, 2014). Be cognizant of when it is and isn't necessary. Full immersion into traumatic material is recognized as destabilizing and counterproductive (Sanders, 2019).
- Provide information on self-care (Carello & Butler, 2014). Note the information provided in this toolkit. If comfortable, share personal strategies and techniques with students.
- Provide students with advance

notice regarding class and reading content so they can prepare in advance.

- Do NOT require personal disclosure of trauma history in the classroom or in assignments (Carello & Butler, 2014). Be prepared for the possibility that disclosure may occur but remain mindful that a legal educator is not, and should not be, a therapist for their students.
- Encourage students to maintain boundaries regarding trauma exposure (Sanders, 2019). Professors should carefully select and pace the amount of traumatic material in the classroom.
- Establish and maintain group norms and ground rules regarding engaging with traumatic content, sharing, and monitoring student well-being (Sanders, 2019).

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CHAPTER 5

The Trauma-Informed Lawyer-Client Relationship

By River Shannon and Jessica Magonet

In a traditional lawyer-client relationship, legal professionals often try to distance themselves from their client by providing legal information and advice from a position of authority. Lawyers tend to focus on the law, its application to the facts, and on the professional skills required to advocate for the client before an adjudicative body. The positioning of the relationship allows clients to be viewed as a passive factor to be considered and accounted for. To put it simply, “the lawyer knows best.”

While this section is specifically focused on trauma and trauma-informed approaches in the lawyer-client relationship, many of the principles discussed apply to other legal professionals (such as paralegals and legal administrative assistants) in their work with clients.

Within this framework, and often subconsciously, we deem survivors of trauma as “difficult clients” or throw our hands up when clients fail to provide us with the clear instructions or documents needed to build a strong case. We sigh and explain to colleagues that a certain client “won’t present well” at trial. We can often miss important pieces of information that might have turned the tide of a difficult matter, only because we did not know how to ask the client. This traditional relationship model is stressful and lonely.

Trauma-Informed practice begins with acknowledging that many clients seeking legal representation have experienced trauma and that their trauma can have a profound impact on that client’s journey through the legal system. By integrating trauma awareness and competency into our practice, we can avoid re-traumatizing clients, help them engage more fully in their case, and ultimately contribute to their safety, recovery, and healing. Even clients who have not had a significant experience of trauma can benefit from a trauma-informed practice.

Committing to a trauma-informed practice will reduce the harm imparted by our legal systems on your clients. But make no mistake - trauma-informed practice is also one of the most powerful and accessible ways to obtain better results in your practice. Adopting trauma-informed principles won’t just make you a more compassionate person - it will make you a more competent lawyer.

In a traditional lawyer-client relationship, legal professionals often try to distance themselves from their client by providing legal information and advice from a position of authority.



Trauma-Informed Strategies In Lawyer-Client Relationships

Let us begin by building the framework. There are four broad categories that can be applied to create and sustain a trauma-informed relationship with our clients. Although distinct, the categories tend to overlap. Together, they offer a framework or lens that can be used to critically examine, improve, and manage our client relationships.

Furthermore, the categories provide practical techniques that can be used to guide our work. The categories include:

- Being trauma aware
- Placing an emphasis on safety and trustworthiness in the relationship
- Providing opportunity for choice, collaboration and connection
- Championing and building the client's own strengths and skills

A Strategy of Trauma Awareness means:

- Understanding what trauma is and how to recognize it
- Appreciating that trauma is everywhere in our society, and that people respond in a variety of ways to trauma
- Knowing that trauma can be personal (related to traumatic experiences in someone's life) or complex (based on factors like their family history, race, gender, or class).

Example: When Jennifer does a new client consultation, she meets her clients in a meeting space with comfortable chairs, and relaxed lighting. She books more time than she thinks she needs, so the client doesn't feel rushed. She makes sure to check in with the client through the consultation, to see how they are feeling about what is being discussed. She does this with every client, knowing everyone can experience trauma.

Placing an Emphasis on Safety and Trustworthiness means:

- Building trust and safety prior to determining the facts of the case. Basically, making time during interactions to build trust and rapport
- Placing the well-being of both the lawyer and the client at the forefront

If we could sum up this strategy in one sentence, it would be "the experience of your client in dealing with you is just as important as providing good legal advice and competent services."

Example: Bill makes a point of reminding his clients that he'll check in with them at every step of their legal matter. He takes time to explain how he is going to bill the client, and how he stores their information. Using the cloud, his clients are able to access their file at any time to review their documents. When Bill works on something, he lets the client know how long it will take and informs them if something is going to be delayed.

Providing Opportunity for Choice, Collaboration and Connection means:

- Looking for opportunities to engage your client in making personal choices about the steps in their case and the delivery of your services
- Making sure your client feels like they have ownership of their legal matter, and that the steps taken reflect their goals

Example: Pippa takes great care to explain the options available to clients at each step. They describe the different kinds of mediation, and possible legal strategies that might help their client succeed in their legal matter. When they give legal advice and suggestions, Pippa always takes time to explain that the final decision always rests with the client, and that they'll do their best whatever the client decides.

A Focus on Strengths-Based Strategies and Skill Building means:

- Helping clients identify sources of strength, support and healthy coping in their lives
- Leveraging client strengths and supports towards managing triggering experiences in the legal process, increasing resilience, and engaging successfully in their case

Example: When Gloria meets a client for the first time, as part of her intake, she makes a list of supports her future client can rely on during the course

Trauma-informed practice can ensure that your client feels heard, supported and empowered even in an unfriendly and frightening legal system.

A trauma-informed lawyer places the client's experience at the center of their practice.

of their legal matter. For example, a client might have a trusted friend or family member who is willing to attend court with her, or who can help her organize important documents. Some of her clients may even have advocates or social workers involved in their matter, and Gloria might be able to leverage these resources to help her client thrive during challenging steps in the legal process.

Why make the move towards trauma-informed practice?

Much of our legal and professional training focuses on knowledge of the law and on managing relationships with adjudicators. In our haste to be good officers of the court, we sometimes forget that we are meant to serve everyday people in some of the most challenging situations they will encounter. Trauma-informed practice can ensure that your client feels heard, supported and empowered even in an unfriendly and frightening legal system.

A trauma-informed lawyer places the client's experience at the center of their practice. This begins with the design of our offices and our intake processes and continues to how we involve the client in trial preparation and drafting.

When not properly addressed, trauma can:

- prevent a client from engaging meaningfully in their legal case;
- cause the client to experience emotional distress when something, consciously or unconsciously, reminds them of a past trauma; and
- make it difficult for the client to share their feelings, instructions or needs with you, or make them shut down or become agitated during vital conversations.

Trauma-informed practice, on the other hand, can:

- build client engagement and trust;
- help you to understand what your client needs from you in order
- to provide the information and instructions necessary for you to do your job; and
- helps you provide your clients with an experience of being listened to and served, regardless of the final outcome of the broader legal process.

Trauma-Informed Best Practices & Tips

Here are some concrete tips you can implement today to improve your client relationships:

Tips to be Trauma Aware:

- Gather knowledge: Understand what trauma is, how it can show up, and how it affects the lawyer-client relationship.
- Take "universal precautions": Assume that any client may have experienced trauma. A trauma-informed practice should be applied to any lawyer-client relationship.
- Provide proactive support: Anticipate and plan for issues that may arise during your representation of a client.
- Work with the client to identify "triggers" and either avoid them or mitigate their impact.
- Be alert for warning signs of trauma for your client, such as physical signs of anxiety.
- Consider your client's needs and how they communicate (such as needing additional time to prepare or needing a follow up email summarizing a telephone conversation).

See Helgi Maki & C. Tess Sheldon, "Trauma-Informed Strategies in Public Interest Litigation: Avoiding Unintended Consequences Through Integrative Legal Perspectives" (2019) 90 S.C.L.R. (2d) 65 - 91.



A trauma-informed practice should be applied to any lawyer-client relationship.

- Be aware of the impact of trauma on the lawyer: In some cases, lawyers may be particularly aware of and empathic towards a client's trauma because it is a trauma that they have also experienced. For example, a lawyer who has experienced gender-based violence may represent other individuals who have as well. We would strongly caution lawyers against revealing their survivor status to their clients. There is a serious risk that doing so may also jeopardize professional distance and appropriate boundaries.

Tips to build Safety and Trustworthiness between you and your client:

- Be fully transparent with clients about their legal case. Be clear about boundaries, expectations, possible outcomes, and what to expect from the relationship
- Preview for the client what is to come, both in the relationship and in the broader legal process
- Always follow through on commitments and appointments. Don't make promises you might break. Tell clients when they can expect to hear from you, how long tasks will take, and if you make a mistake, own it and explain how it occurred
- Be patient with yourself and your client. Legal problems are complex, stressful, and challenging, even under the best of circumstances. Give yourself and your client the space to make mistakes, learn, and grow together over the course of your representation

Some ideas for creating a context of safety and trustworthiness during client interactions:

- Create a welcoming space and intake procedures
- Adapt physical space to be non-threatening
- Offer opportunities to ground the client during stressful discussions
- Provide clear information about procedures and policies
- Create a clear outline for meetings
- Be prepared to assert your boundaries
- Go slow, providing more time than normal if necessary
- Check in with the client about how they are feeling
- Offer the client breaks if they need them
- Tips to create client choice, collaboration and connection
- Give clients choice in decisions that affect them, in a way that is purposeful and goes beyond just your ethical requirements
- Trust your client, let them drive the plan for their success. Listen to them, allow them to be heard
- Try to maximize the number of choices your clients have. Give your clients the choice of where they want to sit for interviews and when they want to take a break. Make processes explicit and transparent for your clients, tell them what's required of them, and ask them

For more information, see Talia Kraemer and Eliza Patten, *Establishing a Trauma-Informed Lawyer-Client Relationship (Part One)* American Bar Association (ABA) Child Law Practice Group 2014.

ahead of time what supports are available to them

- Use Collaborative Language: Use statements that make choices explicit. Check in through discussions and at each step of a legal matter. Use inviting language, rather than directive language

Collaborative communication does not mean allowing the client to drive every aspect of conversation. Sometimes, clients who have experienced trauma (both personal and complex) can have a lot to say once they begin discussing their experiences, and not all of it is relevant to resolving their legal issues.

In these situations, collaborative language and strengths-based communication (detailed below) can help move the conversation in a productive direction, without having the client feel silenced or like their story is unimportant. Lawyers can use tools to help refocus their clients in a respectful manner. For example, you can create an agenda for your client meeting and refer back to it if the conversation gets off track.

Sometimes clients can respond to trauma with anger or lose focus during meetings. Other clients will ignore requests for important information. Collaborative language doesn't mean ignoring these behaviors. In these situations, it can be helpful to remind

the client of why you are there, and why you need something. This is the foundation of a collaborative approach. In a traditional lawyer-client relationship, the lawyer's status as an authority figure makes them an obvious target for anger and frustration. It's hard for a client to direct their anger at you when they feel in charge of (and therefore responsible for) the outcome of their case.

For example, many family lawyers struggle to obtain good financial disclosure from their clients. This is also a step that many clients find frustrating and confusing - and some take out their anger on their lawyer or a paralegal.

In this situation, a family lawyer might say, "I know this is a pain, but you've asked me to help you reduce the amount of child support you are paying. The court needs this information to do that, and the more information you provide, the more convincing you will be. If you want me to file this with the information you've provided, I'll do that - it's your sworn statement - but I just want to make sure you have the chance to make the very strongest case you can."

Of course, sometimes anger and frustration just need to work themselves out, and it may be a good idea to end a meeting or call and wait for the client to cool down. Collaboration never means overlooking your boundaries and well-being.

See: Katherine R Kruse, "Fortress in the Sand: The Plural Values of Client-Centered Representation" (2006) 12:2 Clinical L Rev 369.

Tips for Strengths-Based Strategies

When working with a client who we know has experienced trauma, it can be easy to emphasize the difficulties they are facing. This is a natural, compassionate response when we encounter someone facing significant personal or systemic barriers.

From a trauma-informed perspective, however, this approach can disempower the client, and reinforce feelings of helplessness.

Instead, use the lawyer-client relationship as an opportunity to recognize the client's resilience and to promote healthy and effective coping, self-healing, and self-advocacy skills. As lawyers, we often fail to notice how much insight, courage and strength may have been required for the client to survive their trauma, make it into the office and articulate their case.

Within the lawyer-client relationship, this can mean drawing attention to the client's capacity and strengths during discussions, especially when discussing events or information related to traumatic experiences. Throughout the lawyer-client relationship, identify and record sources of support for the client, such as family, friends, support workers, and the

As lawyers, we often fail to notice how much insight, courage and strength may have been required for the client to survive their trauma, make it into the office and articulate their case.

client's own healthy coping strategies. It can help to ask about these and make a record on the file.

Keep a list of appropriate referrals for clients, and offer these to clients. Offer a grounding and calming presence to a client who is experiencing distress. This will help them to provide you with the information you need and will help them cope with difficult steps in the legal process.

For example:

- Use normalizing language: "It's all right to cry (feel angry, feel afraid)"
- Draw attention to the client's strengths and coping, "It's amazing that you're here telling me this, you are a very courageous person."
- Do not respond to their distress with fear, embarrassment or frustration. Stay present with them
- Strengthen empowerment and collaboration. You can ask: "What do you need right now?" "Should we take a break or continue?" Allow the client to make these choices. Some clients will wish to continue through the distress, and that's okay. Others may need another appointment, that's okay too. •

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Throughout the lawyer-client relationship, identify and record sources of support for the client, such as family, friends, support workers, and the client's own healthy coping strategies.

CHAPTER 6

Trauma-Informed Practice In The Courtroom

by Nisha Sikka & Myrna McCallum

Courtrooms and criminal procedures were not designed to be trauma-informed. quite the opposite, in fact. This chapter explores legal practice in the criminal justice system to identify where trauma-informed approaches can be implemented and how we can reinstate trust in a legal process which, for many, lacks credibility. In this chapter, we primarily focus on sexual offence-related trials because this subject matter is inherently traumatic for both victims and court officials.

Trauma-Informed Judges

I believe that, as members of the judiciary, we should also encourage and participate in continued research in this field should such opportunities arise. By taking the lead in this area, we can hope to develop a trauma-informed approach not only to procedure but also quite possibly to the rules of evidence. For instance, it is conceivable that some of the impacts I have discussed above could be raised within an inquiry into the prejudicial effect of a proposed piece of evidence.

- Justice Band, *R v Marratt*, 2019 ONCJ 618 at para 22

The courts are the main forum through which complainants can seek justice and find resolution. Adopting trauma-informed practice in the judiciary can enhance a complainant's belief in the justice system. Trauma-informed practice decreases the potential for negative and traumatic experiences a complainant may have in court, regardless of the outcome of the case. In other words, if judges are to be effective in their delivery of fairness and justice, they must be mindful of the nature of trauma and take efforts to mitigate the trauma many individuals experience when they enter the courtroom. This practice will assist with a restoration of public confidence in court processes.

Adopting trauma-informed practice in the judiciary can enhance a complainant's belief in the justice system.

Recall the controversy involving former Provincial Court Justice Robin Camp. In 2014, the former justice heard a sexual assault trial in Calgary. In addition to referring to the complainant as the accused several times throughout the trial, former Justice Camp told the complainant that “pain and sex sometimes go together.” He also questioned why she did not keep her “knees together.” Following a hearing into former Justice Camp’s conduct, the Canadian Judicial Council recommended his removal from the bench. Although the Justice initially argued to overturn the ruling, he eventually resigned. His membership to the Law Society of Alberta was also revoked, though it has since been reinstated.

The controversial decision was eventually overturned by Justice Ferrall of the Alberta Court of Appeal, who remarked that former Justice Camp’s decision:

... gave rise to doubts about the trial judge’s understanding of . . . the meaning of consent and restrictions on evidence of the complainant’s sexual activity . . . We are also persuaded that sexual stereotypes and stereotypical myths, which have long since been discredited, may have found their way into the trial judge’s judgment. There were also instances where the trial judge misapprehended the evidence.

Trauma-informed practice decreases the potential for negative and traumatic experiences a complainant may have in court, regardless of the outcome of the case.

In another notable Supreme Court of Canada decision, *R v Barton*, which involved the death of an Indigenous woman, Justice Moldaver criticized the trial judge’s decision to admit the victim’s vagina as evidence to demonstrate the location and severity of the wound that resulted in her death. Justice Moldaver recognized the importance of considering the “biases, prejudices, and stereotypes against Indigenous women and girls.” He stated:

In sum, to better ensure Indigenous women and girls receive the full protection and benefit of the law in sexual assault cases, our criminal justice system should take reasonable steps to address biases, prejudices, and stereotypes against Indigenous women and girls openly, honestly, and without fear. While the type of instruction identified above is by no means a perfect solution to ridding our courts — and Canadian society more broadly — of biases, prejudices, and stereotypes against Indigenous women and girls, it represents a step forward.

Justice Moldaver also addressed the decision by witnesses, counsel and the Court of Appeal to address the complainant as a “Native girl” and a “Native woman” numerous times throughout the hearing and decision:

Being respectful and remaining cognizant of the language used to refer to a person is particularly important in a case like this, where there was no suggestion that Ms. Gladue’s status as an Indigenous woman was somehow relevant to the issues at trial. While there is nothing to suggest that it was anyone’s deliberate intention in this case to invoke the kind of biases and prejudices against Indigenous women discussed above, the language used at trial was nevertheless problematic. At the end of the day, her name was “Ms. Gladue”, not “Native woman”, and there was no reason why the former could not have been used consistently as a simple matter of respect.

In the decision, *R v Marratt*, Justice Band considered the sentence of an individual who pleaded guilty to three offences of child pornography and sexual interference. Justice Band emphasized the responsibilities of the court to reduce the exposure of individuals to sensitive evidence that have the potential to traumatize. The strategies suggested by Justice Band are procedural accommodations that can be implemented by all presiding judges without requiring substantive reforms to the legal system at large.

Justice Band suggested that parties should be canvassed to determine whether evidence can be filed by way

Those seeking protection, justice or safety should not be subjected to further traumatization by lawyers and judges who lack the training to respond in a trauma-informed way.

of a written exhibit and then considered by the judge alone. He noted that there is no requirement or reason for court staff to be exposed to disturbing materials. In cases where this may not be appropriate, the presiding judge should consider whether court staff can be excused during the presentation of the evidence. The hearing of evidence can be organized in such a manner that the court clerk, for example, can mark exhibits at one time, either before or after they are presented.

At minimum, Justice Band recommended that the presiding judge provide a warning with respect to the nature of such materials. That way, victims and court staff can raise their concerns with the judge and members of the public have the opportunity to decide whether to remain in the courtroom. With respect to the staff and witnesses who choose to or are required to remain in the courtroom, the presiding judge should inform them that it is acceptable and perhaps even encouraged to request a break or to seek to be replaced by a colleague.

Broadly and institutionally speaking, Justice Band further recommended that:

... thought should be given to establishing procedures to flag such matters at the pre-trial or scheduling stage in order to allow time for staffing decisions

to be made in a trauma-informed and sensitive way. Likewise, consideration should be given to allocating resources and space where staff can debrief in a timely fashion. The best I could do as a lay person was to have a private conversation with my staff in which I attempted to reinforce some of what I have written here and encourage them to take care of themselves.

The case law cited above serves as a clear indicator that the current practices and procedures do not inspire confidence or credibility in a criminal justice system that was established to uphold the law and serve the public. Victims of sexual violence do not trust judges and lawyers to treat them with respect or dignity because previous court proceedings suggest that respect and dignity are not a guarantee once a victim of sexual violence enters the court room.

The common experiences of Indigenous people in the court room demonstrate how courts perpetuate the traumas many Indigenous victims, offenders and witnesses have experienced because of harmful colonial laws and policies. Although we could highlight many cases to reflect the traumatizing and dehumanizing experiences of Indigenous people in the courts, the words written in a recent Alberta sentencing decision captures it best.

Justice Langston of the Alberta Court of Queen’s Bench recognized that the system he is a part of contributed to the deliberate destruction of Indigenous people. In *R v Holmes*, 2018 ABQB 916, a sentencing decision of an Indigenous woman convicted of manslaughter, Justice Langston stated:

This is an Aboriginal offender. She is in a system which is imposed upon Aboriginal people, and I use that word deliberately. Our history, in relation to Aboriginal people, is one of deliberate destruction. We have systematically destroyed their culture, their way of living. We have done everything we can to take from them their sense of spirituality and identity. I’m not saying anything new. You can look in the volumes of reports and studies that have been done on Aboriginal people for decades. Those reports sit, gathering dust, in libraries and Parliament buildings...Aboriginal people are entitled to a sense of dignity when they come into our courts. They are entitled to a recognition of their history and their culture, and you cannot talk about those two things without a notional recognition of their spirituality...There is a fundamental disconnect between the Aboriginal view of justice and the system that I am part of...

We must do better and we must find a better way forward. Those seeking protection, justice or safety should not be subjected to further



A trauma-informed prosecution embraces and integrates what research is telling us about the impacts of trauma into all aspects of the prosecution.

traumatization by lawyers and judges who lack the training to respond in a trauma-informed way. Those working in courtrooms should not be subjected to vicarious trauma without warning, support, and protection.

While we need trauma-informed courts staffed by judges trained in trauma-informed practice, judges cannot shoulder this responsibility alone. In order to be effective and transformational, trauma-informed training must be undertaken by defence counsel and prosecutors as well. Legal practitioners must commit to assessing progress on a regular basis. Without accountability metrics in place, creating trauma-informed courts will not be successful or sustainable.

Trauma-Informed Prosecutions

A trauma-informed prosecution embraces and integrates what research is telling us about the impacts of trauma into all aspects of the prosecution. This can influence the way Crowns interact with victims, the way Crowns assess reasonable prospect of conviction and public interest, the way Crowns prepare victims and lead evidence in court, and the way Crowns make objections and submissions in these trials.

- Meaghan Cunningham, Regional Sexual Violence Crown (East Region)

Although prosecutors serve public interest and do not represent the individual victims of crime, victims of crime often see prosecutors as their advocates. Vulnerable victims of crime, such as children or victims of sexual violence, often seek safety and support from the prosecutor handling their file.

A prosecuting lawyer must understand the neurobiological effects of trauma because the impact of trauma will likely appear

in vulnerable victims or complainants. Prosecutors must adapt their engagement and litigation approach to minimize the risk of re-traumatization.

Below we have outlined strategies you may implement when engaging with a complainant or witness for the purpose of gathering evidence or information.

A prosecutor is a representative of the justice system. Complainants or witnesses may have little reason to trust you or feel confident in your intentions and abilities because of their past interactions with the justice system. Accordingly, consider engaging in strategies to build the trust of all those involved in gathering evidence to the best of your abilities. Consider that you may need to be more patient, empathetic or flexible than you are normally. If this does not come naturally to you, take the time to obtain the skill-set to ensure effectiveness while doing no further harm to your complainant or witness.

A Note On Cultural Humility

Before taking on the work of prosecuting sexual offences, a prosecutor must understand that regardless of how much reading they have done or how many lectures they have listened to, they are not an expert on sexual violence. The only experts are the survivors themselves. Specifically, prosecutors should be alive to the lived experiences and historical experiences of persons who have been unjustly criminalized or forced into the margins by the justice system. In listening to the lived experiences of Indigenous, racialized, immigrant or refugee, queer and trans people, lawyers will learn about the barriers and challenges members of these groups have experienced when seeking support and advocacy after a sexual assault has taken place.

The lawyer, as a listener, will begin to grasp the systemic inequalities many complainants from these communities have lived with as a result of inherent injustices within the policing, corrections and court systems. When you actively listen, you practice cultural humility. Cultural humility will encourage you to critically examine common unconscious biases which feed myths and stereotypes, question your knowledge sources and open your mind to new perspectives; all of which are the same components underpinning trauma-informed approaches to practice.

Ideally, your initial meeting with your complainant or witness should include an introduction, an explanation about the court process including options available to accommodate specific needs, and an honest conversation about expectations. At this stage of the process, you can determine whether the witness or complainant is emotionally vulnerable or traumatized. Should vulnerability or traumatization be significant, you may decide that it is in their best interests to provide their testimony from outside the courtroom. As such, you would have to make an application to the court pursuant to s.486.2 of the Criminal Code. Alternatively, you may need to involve a support worker as you may learn that non-legal, incidental issues are at play which require the expertise of an entirely different professional.

The goal of the initial meeting is to foster a sense of personal safety and connection while also promoting a sense of safety within the court process itself. Prepare yourself for the possibility that your complainant or witness may need more than one preliminary meeting before you can collect information regarding their experience. Flexibility, adaptability and preparedness are all elements of a trauma-informed approach.

If possible, visit the meeting room in advance of your introductory interview. Examine the layout of the room, the brightness of the lights, the imagery on the walls (or lack thereof), the comfort level of the chairs, and provide some self-soothing or distracting tools such as stress balls or pen paper. Allow the complainant or witness to determine when a break is necessary. Also, consider the precise purpose and time allotted for your initial meeting and do not deviate. Finally, consider the words or phrases you will employ to maintain boundaries and keep your complainant or witness focused.

Remind yourself to have an honest conversation with the complainant or witness at the outset about the limitations of the court process and tell them that the outcome may not satisfy their needs or expectations. Consider preparing a list of referrals to other professionals, in advance of your meeting, such as counselling

services, support groups, spiritual services or other legal service providers who may serve individuals in a way the justice system cannot.

Build relationships with victim support service providers, they are an under-utilized vital resource. Victim support workers are typically familiar with the complainant or witness, their background and their concerns about the court process better than anyone. They may also have details about previous adverse experiences with the courts or court officials which may require additional flexibility and planning. This background information will not only be helpful for you in preparing your case but may also inform your approach in addressing preliminary issues with the court.

A trauma-informed approach should be taken in every prosecutor interview even if the victim, witness or offender (yes, offenders and self-represented litigants are also deserving of a trauma-informed approach) appears unfazed, strong, resilient or indifferent. A lack of emotional expression or appearance of vulnerability can be symptomatic of an individual who is traumatized, emotionally sensitive, and struggling to cope. Do not let appearances deceive you, a strong or resilient projection may not reflect an internal experience. This is especially true for those who show up in a combative way, anger often masks trauma, fear or grief.

Remind yourself to have an honest conversation with the complainant or witness at the outset about the limitations of the court process and tell them that the outcome may not satisfy their needs or expectations.

Build relationships with victim support service providers, they are an under-utilized vital resource.

Finally, encourage the complainant or witness to debrief with their victim support worker following any court appearance as this is an opportune moment to allow them to identify any questions about outcomes or next steps before calling you for follow up.

Best Practice Tips

- Be mindful of how you show up and how you create barriers
- Learn about trauma and its impacts on recall, communication and behavior
- Practice patience and allot time for a slower pace (if required)
- Consult with your client, witness or complainant about their individual needs and preferences so they can make choices about how they will be an active partner or participant
- Be flexible and remember that you are learning from your client, witness or complainant
- Create a trauma-informed litigation strategy which reflects your client/complainants needs •

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CHAPTER 7

Vicarious Trauma & You

by Nazanin Moghadami

According to the Canadian Bar Association, it is a well-known fact that professionals working in a helping capacity can themselves develop their own trauma response as a result of exposure to their clients' traumatizing experiences and life events. For this Toolkit, we try to use non-stigmatizing, non-pathologizing, and non-clinical language pertaining to mental health, trauma and vicarious trauma. This chapter provides general information about vicarious trauma, particularly how it plays out in the legal profession as well as an action plan for lawyers.

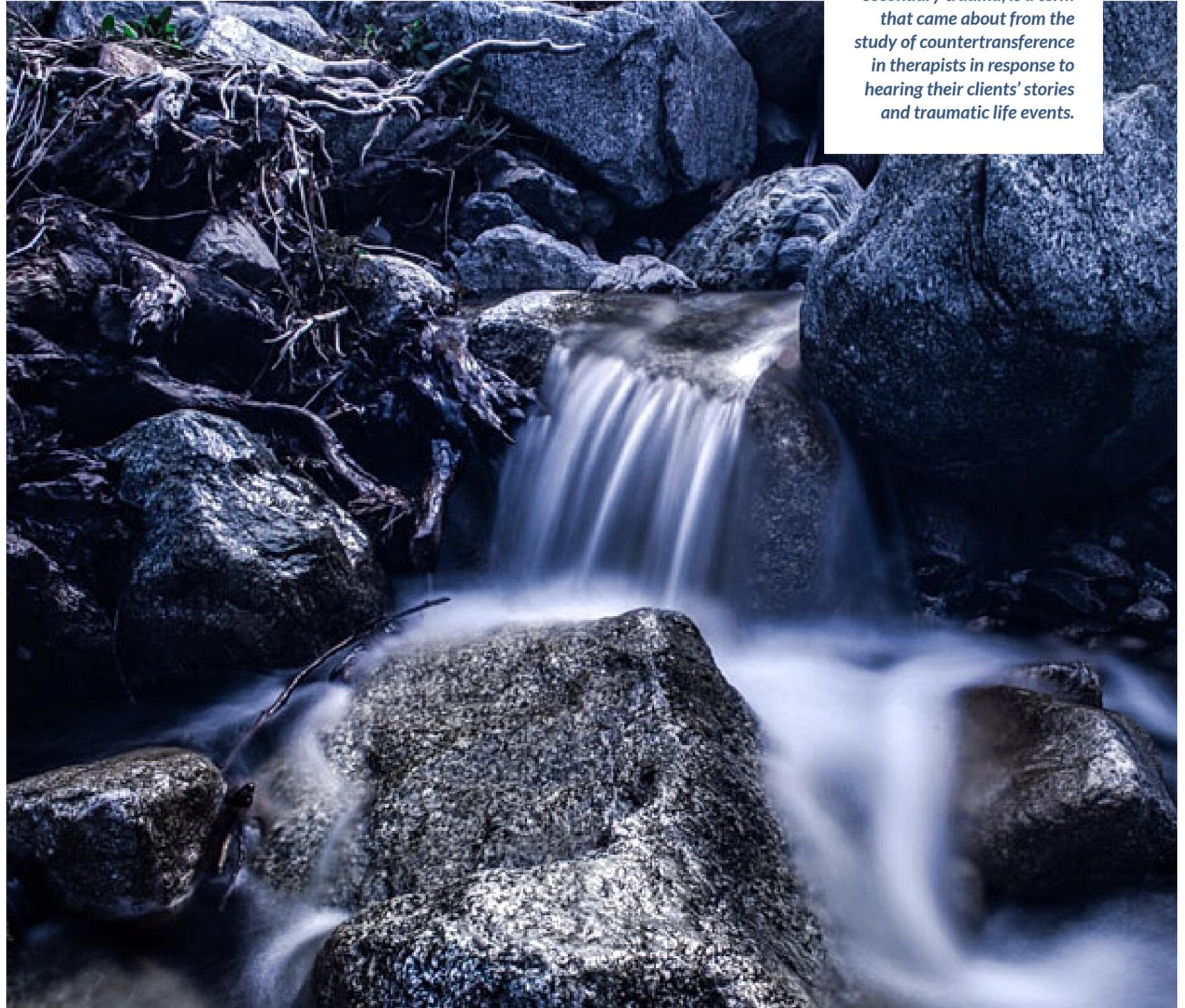
What is Vicarious Trauma?

Vicarious trauma, or secondary trauma, is a term that came about from the study of countertransference in therapists in response to hearing their clients' stories and traumatic life events. In the early 90's, this was discussed mainly in relation to how diagnosis and treatment planning for sexual abuse and incest survivors are influenced by the way in which the therapist is impacted by the clients' stories and experiences.

Nowadays, vicarious trauma is used for the ways in which we are impacted, overwhelmed or traumatized by hearing first-hand accounts of another person's traumatic life event. The way we experience trauma and vicarious trauma is shaped by personal, social and global factors, such as upbringing, personal values, war, economic crisis, or global pandemics. When we are in situations or are exposed to experiences that are too distressing for us, we experience

intolerable upset, sadness, rage, anger, numbness, dissociation, shutdown, or shock. This is when we resort to our automatic survival responses: freeze, flight and fight. To put it simply, vicarious trauma happens when you are 'traumatized' by another person's trauma.

It is worth noting that vicarious trauma, burnout and being emotionally triggered are not the same. Burnout or compassion fatigue is when a person in a helping profession experiences emotional exhaustion, depersonalization, and reduced sense of personal accomplishment generally when the person takes the institutional responsibility on and naturally, doesn't have the power to make any changes. For example, when the workload is disproportionately larger than the person's capacity, or the institution or system is broken and the individual vicarious trauma is also different from being emotionally triggered. Being triggered or activated is when the other person's experience or story resembles



Vicarious trauma, or secondary trauma, is a term that came about from the study of countertransference in therapists in response to hearing their clients' stories and traumatic life events.



Working with distressing, disturbing and traumatizing material and topics can change lawyers; the way they think, feel, treat and relate to their clients, view their role in their work and/or arrange their own value and belief systems.

an experience or story in the professional's life that might still be unresolved or painful for them. For example, a childhood sexual assault case that might resemble what had happened in the lawyer's childhood and that provokes feelings that might cloud the lawyer's judgement or bring up a lot of pain for them. Addressing being triggered can be working with a seasoned counsellor to address the unresolved or provoked memory in the lawyer.

internalizes a sense of responsibility for that (we can see that in advocates working in the field of sexual assault, when they feel burdened and guilty when the legal system, a police officer or prosecutor fails to support victims to the best of their abilities).

Why are Lawyers at Risk?

Lawyers, by the nature of their profession, sometimes meet clients in the darkest and most difficult and complex times of their lives. Often, they need to know particulars and specifics of an incident or a situation to be able to make decisions about a client's case or to prepare them for their legal proceeding. They would need to read the police and forensic reports and examine detailed accounts of their client and what happened. As a result of their work, lawyers, judges, jurors and courtroom personnel are at high risk of experiencing negative psychological responses, including vicarious trauma, secondary traumatic stress, and burnout. (Canadian Law Magazine, February 2015).

Lawyers can experience vicarious trauma

- Hearing detailed recounts of life events and incidents from clients
- Researching and studying comprehensive forensic, medical and crime scene reports

- Bearing emotional aspects of representing victims of violent and heinous crimes
- Learning and being exposed to the worst aspects of humanity and distressing imagery, suffering and cruelty, such as child abuse, human trafficking, torture, etc.
- Navigating legal systems that might not be equipped to address the severity of a situation, crime or an incident

Working with distressing, disturbing and traumatizing material and topics can change lawyers; the way they think, feel, treat and relate to their clients, view their role in their work and/or arrange their own value and belief systems. Some of these changes are positive and desirable, and some are undesirable and unhelpful. Lawyers are also in the position where they represent the clients in the legal system, with sometimes firm limitations put in place by cultural and societal norms. For example, while there might be laws in place to address sexual abuse of a minor, stereotypes, prejudice and discrimination can vastly impact how the laws are applied to a case. This puts the lawyers in a unique and sensitive position where they might carry the weight of the imperfections of the legal system while wanting to protect their clients.

Common Signs and Symptoms of Vicarious Trauma

When the lawyer recognizes that there is a change in their mannerisms, attitudes or thinking styles that cannot be explained by any other factors. This may be the time when they might need to check-in with themselves about vicarious trauma. Below is a list of changes in mannerism and attitude that might point to vicarious trauma:

- Irritability
- Fatigue
- Sleep disturbance
- Substance use
- Relationship breakdown
- Nightmares
- Rapid weight change
- Change in eating habits
- Social isolation
- Fear of being alone
- Distorted sense of safety
- Losing flexibility
- Withdrawal
- Over working
- Being easy to upset and cry
- Anger outburst
- Rage
- Violence
- Persistent feeling of shame or guilt
- Hopelessness
- Impatience
- Hypervigilance and paranoia
- Loss of faith in own work or legal system

Another way a lawyer might be able to recognize if they are experiencing vicarious trauma is to identify when there is a significant shift in their own thinking styles when it comes

Another way a lawyer might be able to recognize if they are experiencing vicarious trauma is to identify when there is a significant shift in their own thinking styles when it comes to treating their clients.

to treating their clients. You can find some examples of thinking styles in the table below. For a more comprehensive way of identifying and addressing vicarious trauma, please refer to the Self-Assessment Tool.

Thinking Styles

- **All or Nothing Thinking:** Or black and white thinking. When things/people/relationships are either all good or all bad, all wrong or all right, all in or all out, with no in-between or grey area.
- **Should-ing or Must-ing:** Putting unreasonable and inflexible demands and rules for yourself or others. For example, “I should never make a mistake”, “I should not let anyone know I’m struggling”.
- **Overgeneralization:** Taking one instance or experience in the past or present and drawing a conclusion for all present and future situations. For example, “None of my cases ever...”, “I always/never...”.
- **Jumping to Conclusion:** We do this by either assuming that we know what a person is thinking (mind reading), or we make predictions about how things are going to end (future reading or fortune telling).
- **Mental Filtering:** This involves a filtering, selective or tunnel vision- focusing on only one part of a situation and ignoring the rest. Usually meaning looking

at the negative ‘evidence’ and dismissing or ignoring the positive part and the ‘whole picture’.

- **Catastrophizing:** This is when we start to ‘snowball’, or ‘overthink’ all the situations that could go wrong and how things are going to be awful, dreadful, or horrible, regardless of the significance of things.
- **Minimizing or Magnifying:** Selectively choosing + or - qualities in self or others and either magnifying them or minimizing them. For example, judging a client as irresponsible if they happen to forget one appointment.
- **Personalization:** Basically, blaming yourself for things going wrong, even when you may be partially responsible or not responsible at all. For example, thinking of a loss in a sexual assault case as a personal failure rather than acknowledging the sexism that might have been at play.

Best Practices & Prevention Strategies

- **Appointment management:** If the lawyer knows that the topic of interview is going to be a distressing one, they can schedule the time so they have some time after to ground themselves, debrief with a colleague or supervisor, or in a way that they can have extra time in case the

client was not ready to close and leave yet.

- **Clarity and transparency with the client:** Sometimes lawyers shy away from acknowledging emotions. It might be helpful to bring up the nature of the appointment and speak with the client openly. An example would be: “We are going to be talking about details of what happened. This can be very upsetting as I might be asking for a lot of specifics. I am doing this not to question your story and experience, but to prepare you for court/ investigation/etc. and/ or help to decide how to manage your case going forward.” This helps the client to stay regulated and within their own window of tolerance and in return for the lawyer to do the same.
- **Offering a break:** Acknowledge the intensity of the topic and offer to take a break (“Let’s take a pause here. You’ve shared a lot of upsetting details. Would you like to drink some water/use the washroom/get some air before we go on?”). The pause can be a useful way to bring both the client and the lawyer to the present and here and now, and for them to both ground themselves.
- **Self-awareness and mindfulness:** Knowing there will be a distressing conversation with a client, the lawyer can start paying attention to their own internal experience. For example, if they are feeling tense or upset or if their heart rate is up when they are with the client.
- **Setting limits and expectations:**

It is important for the lawyer to be aware of their own limits and have clear and realistic professional expectations. Sometimes lawyers need to accept that they are bound by the limitations in the legal and judicial systems in what they can do for a client, regardless of how they feel about the case.

- **Training and capacity building:** The more training and experience a lawyer has in conducting interviews the more skilled they become in protecting themselves from being traumatized by their work.
- **Accepting human emotions:** The more comfortable the lawyer becomes with their own and their clients’ emotions, especially upsetting ones, the easier it becomes for them to avoid being overwhelmed by them. Knowing that having an emotional response in their work can help a lawyer to feel and move on, rather than suppressing or being scared of them.

It is important to understand that their experience of being impacted by their clients or their work can contribute to the lawyer becoming more resilient and competent.

As we discussed, vicarious trauma is a disturbing experience a person has in response to learning about another person’s trauma. Lawyers, similar to many other helping professionals, can be vicariously traumatized by the people they represent and cases they work on. We hope that this Toolkit will assist the next generation of lawyers to be better equipped to adapt to the ever-changing nature of

their jobs and handle complex cases without compromising their mental and psychological health. •

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CHAPTER 8

Where Do We Go From Here?

by Myrna McCallum

This Toolkit has provided you – the law student, the legal educator, the paralegal, the lawyer, the advocate and the judge – with an introduction to trauma and trauma-informed lawyering. Throughout this toolkit, we offered a compelling argument for why legal professionals need education and training on trauma, trauma-informed client engagement, trauma-informed legal practice, trauma-informed courts and vicarious trauma.

The information in this Toolkit is meant to serve as an educational resource you can build upon. Learning and applying transformational, trauma-informed, access to justice approaches is an ongoing process. We all have much more to learn, to write and to share with each other. We can start however, with a commitment to getting informed, educated, trained, and assessed on our new learning.

We hope to see others pick up where this toolkit leaves off by committing individually and organizationally to embracing trauma-informed legal and judicial practice. By seeking out and inviting in trauma-informed lawyers to educate us on how to avoid doing further harm in our antiquated, adversarial systems. We also hope that lawyers and judges keep their colleagues accountable by staying true to trauma-informed conduct, in and out of our courtrooms.

The public deserves outcomes that do no further harm and inspires confidence in a system that is severely lacking. No one should leave our meeting rooms, hearing rooms or court rooms feeling more traumatized, victimized, marginalized or dehumanized than when they entered. We have an

obligation and an opportunity to empower the public when they come to us seeking justice, protection, or resolution. Trauma-informed practice is the only sustainable and practical way forward for the legal profession and it is the only way to promote and prioritize meaningful safety, resilience, healing, and rehabilitation for everyone who finds themselves engaging or working within our legal systems.

Thank you to the BC Law Foundation for the grant which made this challenging work possible. Thank you as well to the law students and lawyers who committed themselves to contributing to this toolkit. A huge thank you to the provincial court judges who provided me with some of their reflections, ideas, and personal experiences. Finally, many thanks to the interested members of the public who provided us with critical input as we shaped this resource.

I personally would like to thank all the survivors of sexual violence and survivors of Indian Residential Schools and their descendants for providing me with a critical and necessary education in trauma, resilience and trauma-informed lawyering that my legal education never did. •

Learning and applying transformational, trauma-informed, access to justice is an ongoing process.





The Self-Assessment Tool is intended to assist you with recognizing signs and symptoms that may be impacting your ability to develop a healthier response to vicarious trauma.

Appendix 1

Vicarious Trauma Self-Assessment Tool

by Nazanin Moghadami

The Self-Assessment Tool is intended to assist you with recognizing signs and symptoms that may be impacting your ability to develop a healthier response to vicarious trauma. Consider each question based upon your experience over the last two weeks. Be mindful that other challenging life events may impact your answers to these questions.

Behavioural

1. Do you avoid situations that remind you of stories you heard at work?
2. Do you notice an increase in your gambling, drug use, cigarette use, or sexual encounters?
3. Have your eating habits changed without an explanation? This can include loss of appetite, overeating, having difficulty keeping food down, indigestion, and/or anxiety or sadness around eating.
4. Have you been losing items?
5. Have you engaged in self-harming behaviour?
6. Do you experience sleep disturbances such as resistance to going to bed, having difficulty falling, remaining sleep, waking up or leaving your bed, sleeping significantly more or less than norm?
7. Do you avoid being alone?
8. Do you experience nightmares?
9. Have you found it difficult to laugh or enjoy your time?
10. Have you experienced suicidal thoughts?
11. Are you seeking violent or disturbing content such as movies, videogames, or books?
12. Are you isolating or avoiding social situations?

Emotional

Have you felt:

13. Sad?
14. Shameful?
15. Anxious?
16. Irritable?
17. Hopeless?
18. Guilty?
19. Powerless?
20. Overwhelmed?
21. Lonely?
22. Isolated?
23. Restless?
24. Discontented?

Spiritual

25. Have you lost faith in humanity?
26. Have you questioned prior religious beliefs?
27. Have you been questioning the meaning of life?
28. Do you feel a sense of emptiness or a lack of purpose?

Interpersonal

29. Do you notice an increased lack of tolerance towards others?
30. Have you experienced a decreased interest in sex or intimacy?
31. Do you experience a lack of empathy?

32. Have you noticed that your parenting style has been impacted?
33. Have you noticed that you are undeservedly blaming others?
34. Have you experienced rage outbursts?
35. Do you find it difficult to trust others?
36. Do you feel as though you are concealing your emotions to protect others in your life?

Intrapersonal

37. Do you find yourself chasing perfection?
38. Do you experience a lack of self-compassion?
39. Do you have recurring and pervasive self-critical thoughts?

Physical

40. Have you been feeling fatigued?
41. Do you notice an increase in your heartrate?
42. Has your immune system been impaired?
43. Do you experience aches and pains?
44. Have you lost or gained a significant amount of weight?

Professional

45. Do you feel worn out because of your work?

46. Have you been unable to stop thinking about a client or a case even when you are not working?
47. Do you feel bogged down by the system?
48. Have you been unable to recount important aspects of your work with trauma victims?
49. Have you felt unsatisfied with your decision to complete this work?
50. Have you experienced diminished concentration on your work?
51. Do you have a negative attitude towards your work?
52. Do you feel trapped by your work?
53. Have you withdrawn from colleagues?
54. Have you noticed an increase in your mistakes?
55. Do you obsess about details?
56. Have you experienced a decrease in the quality or quantity of your work?
57. Do you experience detachment from your work?
58. Have you noticed a change in your work hours?

If you are experiencing vicarious trauma, you can initiate recovery work to mitigate the undesired impacts of vicarious trauma.

Possible Interventions

- Reflect upon your work.
- Can you modify your caseload by taking on a different type of work?
- Can you seek organizational support from your workplace?
- Can you incorporate restful or relaxing activities into your daily schedule?
- Seek informal support. Reduce the stigma associated with discussing mental health.
- Can you discuss your concerns with a colleague or a senior practitioner?
- Engage in activities that invite a sense of joy and control.
- Discuss your symptoms with your family physician. Address physical health concerns associated with vicarious trauma.
- Consult with a mental health practitioner. Ensure that you connect with a practitioner who specializes in your concerns. Seek a trauma-informed professional.
- Create a sustainable and realistic plan for managing your mental health concerns. For example, introduce regular meetings to discuss emotionally complex cases or schedule regular check ins with a mental health practitioner.

- Create a well-being plan and practice. Develop awareness of all aspects of your life, including physical, intellectual/mental, emotional, social, spiritual as well as occupational. (take it easy, probably with a coach so you don't overdo it.)
- Commit to re-assessing your vicarious trauma symptoms on a semi-annual basis.

The Tool was compiled using a variety of publicly available online self-assessment tools. Although it was reviewed by members of the Lawyers Assistance Program, the Tool is not intended to provide any medical advice or act as a means of diagnosing mental illness.●

Appendix 2

Mental Health Resources

The mental health resources below were submitted by legal community members who found them helpful. The list is not exhaustive nor is it reflective of the range of mental health support available to the legal community. The resources are meant to provide legal professionals with additional tools for managing vicarious trauma.

BC**Mental Wellness Publications and Resources (CBABC)**

- https://www.cbabc.org/Publications-and-Resources/Lawyer-Wellness/Mental-Psychological-Wellbeing?_ga=2.224622687.459167668.1601077189-295901898.1599011283
- Collection of interviews, articles, and reports discussing mental health and wellness

Lawyer Wellness and Well-Being Resources (CLEBC)

- <https://www.cle.bc.ca/lawyer-wellness-and-well-being-resources/>
- Collection of courses, articles, presentations, and checklists

BC Lawyers' Assistance Program

- <https://www.lapbc.com/>

AB**Alberta Lawyers' Assistance Program**

- <https://lawyersassist.ca>

Workplace Strategies for Mental Health (Canada Life)

- <https://www.workplacestrategiesformentalhealth.com/>
- Free training and tools, online resources, employee resources

SK**Saskatchewan Lawyers' Assistance Program**

- <https://lawyersconcernedforlawyers.ca/>

MB**Assistance for Lawyers (CBAMB)**

- <https://www.cba-mb.ca/Publications-Resources/Assistance-for-Lawyers>

ON**Mental Health Briefs (OBA)**

- https://www.oba.org/openingremarks/Mental-Health-Briefs?_ga=2.224484191.459167668.1601077189-295901898.1599011283
- Briefs with tips to better understand mental health and resources available to Ontario lawyers

Mental Health Interview Series (OBA)

- https://www.oba.org/openingremarks/Interview-Series?_ga=2.227619672.459167668.1601077189-295901898.1599011283
- Interviews between lawyers and mental health experts

Ontario Lawyers' Assistance Program

- <http://www.olap.ca/mental-health.html>

QC**Work-Life Balance Resources (Bar of Montreal)**

- <https://www.barreaudemontreal.qc.ca/en/avocats/mental-stress>
- Information, support and resources for lawyers in QC

NB**New Brunswick Lawyers' Assistance Program**

- <https://www.cba.org/Sections/Wellness-Subcommittee/Wellness-Programs/New-Brunswick>

NS**Nova Scotia Lawyers' Assistance Program**

- <https://www.cba.org/Sections/Wellness-Subcommittee/Wellness-Programs/Nova-Scotia>

PEI**Prince Edward Island Lawyers' Assistance Program**

- <https://www.cba.org/Sections/Wellness-Subcommittee/Wellness-Programs/Prince-Edward-Island>

NFLD**Newfoundland and Labrador Lawyers' Assistance Program**

- <https://www.cba.org/Sections/Wellness-Subcommittee/Wellness-Programs/Newfoundland-and-Labrador>

NWT**North West Territories Lawyers' Assistance Program**

- <https://www.cba.org/Sections/Wellness-Subcommittee/Wellness-Programs/Northwest-Territories>

YT**Yukon Lawyers' Assistance Program**

- <https://www.cba.org/Sections/Wellness-Subcommittee/Wellness-Programs/Yukon>

NU**Nunavut Lawyers' Assistance Program**

- <https://www.cba.org/Sections/Wellness-Subcommittee/Wellness-Programs/Nunavut>

National**Mental Health and Wellness (Government of Canada)**

- https://www.canada.ca/en/public-health/topics/mental-health-wellness.html?src=diseases_conditions-mental_health_15&medium=banner_en&campaign=topic_footer
- Federal government online resources regarding mental health and wellness

Mental Health Commission of Canada

- <https://www.mentalhealthcommission.ca>
- Resources regarding the development and dissemination of innovative programs and tools to support mental health and wellness

Mental Health 101 (CAMH)

- <https://www.camh.ca/en/health-info/mental-health-101>
- Online tutorials on various mental health topics

Healthy Minds at Work (CCOHS)

- <https://www.ccohs.ca/healthyminds/>
- Online mental health resources for workers and employers

The Trauma Informed Lawyer Podcast

- <https://thetraumainformedlawyer.simplecast.com/>
- Podcast in partnership with the CBA on trauma informed lawyering

Mental Health and Wellness in the Legal Profession

- <https://www.mdcme.ca/courseinfo.asp?id=176>
- Self-directed online learning program aimed at helping legal professionals recognize the signs and symptoms of mental health and addiction issues



Golden Eagle Rising Society was created by Shain Jackson to protect and enhance Indigenous lives using a variety of means. We provide solutions to address the risk factors which contribute to early, untimely or unnecessary loss of life in our Indigenous communities. Critical to Golden Eagle's mandate and success are our volunteers who we refer to as Champions. They are leaders (Business, Cultural, Political, Spiritual, Grass Roots) in their communities. Golden Eagle's Board is comprised of remarkable leaders who along with our network of Champions provide the support needed to conduct our work.



Golden Eagle Rising Society

www.goldeneaglerising.org