

## Practical Pain Management for Lawyers Exposed to Vicarious Trauma

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Any life event that causes unusual physical or psychological distress can be regarded as traumatic. These may be single events such as assaults - with or without weapons, and with or without angry threats - that occur between strangers as well as between intimate partners. Trauma may come from continuing events, such as those that involve the sexual misuse or neglect of children. Trauma may leave few physical signs, as with emotional intimidation; or it may involve the loss of lives.

Litigation is by nature a high stress occupation, demanding a high level of intellectual and emotional engagement from the contesting lawyers. Adding the burden of inherently distressing content to that litigation can impair a lawyer's functioning in both obvious and subtle ways. This is vicarious trauma. Vicarious trauma afflicts helping professionals who are obligated to provide services to a clientele whose lives have been disrupted by traumatic events. Criminal law and family law counsel are regularly obligated to engage with and then manage the impact of this kind of traumatic material in litigation. It is by fulfilling this professional obligation that lawyers can become vicariously traumatized by the same material that damaged their clients.

Lawyers whose behaviour has been infected by vicarious trauma demonstrate a fairly consistent constellation of behaviours and attitudes<sup>2</sup>. These symptoms span the categories of job performance, morale, interpersonal functioning, and self-expressing behaviour. Major symptoms include the avoidance and decrease in quality and quantity of job task performance, sometimes coupled with an apparent pursuit of perfection; decreased confidence and interest in the accomplishment of job tasks, a negative and detached attitude towards fundamental work requirements; reduced ability to communicate and work with colleagues; absenteeism, irritability, and exhaustion.

What makes the experience of trauma vicarious is the lawyer's obligation to immerse himself in the subject's traumatic material, and as a professional, to provide some controlled, positive outcome to the management of that traumatic material. Even if the lawyer is successful in producing a desired result – such as a Crown attorney securing a conviction for a brutal sexual assault – the lawyer does so knowing that the historical harm continues to remain in the victim's life. The lawyer's ability as a helping

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<sup>2</sup> A full treatment of the issues involved in the definition, symptomatology, and treatment of vicarious trauma may be read in Murray, Donald, and Royer, Johnette; *Vicarious Traumatization: The Corrosive Consequences of Law Practise for Criminal Justice and Family Law Practitioners*, 2003

professional to “fix” the harm in these kinds of cases is quite limited most of the time. Even the litigation “winners” will be afflicted by vicarious trauma.

The problems lawyers experience as a result of vicarious trauma do not depend so much on how horrible the traumatic material appears to be. Vicarious traumatization emerges as the effect of the process of managing through traumatic material over time. The condition is not the product of a single moment of confrontation with a sudden traumatic event. However, although no one is immune, neither are helping professionals helpless in the face of the traumatic experience. Any problems experienced in a lawyer’s practise and personal life because of vicarious trauma betray that lawyer’s failure – and the failure of that lawyer’s colleagues - to properly manage the personal impact of the traumatic material.

The purpose of this paper is provide an outline of the types of practical steps that lawyers should take on their own to dissipate the most seriously disabling effects of vicarious trauma. These steps should permit a lawyer to avoid serious degradation of his litigation skills during or after a particular difficult trial or series of trials. More important, these initiatives should contribute to the lawyer’s ability to consistently enjoy personal growth, to obtain task satisfaction, and to provide caring, sensitive, and responsive litigation services to her clients, even while struggling with traumatic material. These are strategies intended to maintain lawyers as competent, helping professionals.

There are two branches to effective pain management in this area. There are things a lawyer and her colleagues can do together. There are other things more appropriately done by the lawyer alone. I will deal first with the things that a lawyer can do about this kind of pain in conjunction with her colleagues.

A successful law practise will establish the following three kinds of initiatives as automatic, pre-emptive responses to the threats posed by their clients’ traumatic material:

### *Vents*

The primary way for a lawyer to dissipate the impact of traumatic material is to find an opportunity to disgorge that material in a safe and accepting environment. This means that a lawyer should make an opportunity to express in words to others (1) what is personally and professionally disturbing about the traumatic material; (2) how the person senses the material is affecting him and his practise; and (3) how the person intends to respond to these personal and professional effects.

This kind of opportunity is seen as essential in team health care practices<sup>3</sup>. Since vicarious trauma affects personal reactions to others, and professional service delivery,

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<sup>3</sup> Munroe, James F., et al., “Preventing Compassion Fatigue: A Team Treatment Model”, in Figley, Charles R., ed.; *Compassion Fatigue*, Brunner/Mazel, Publishers (New York:1995), at pp.209ff

these teams have recognized that every team member's reactions are legitimate and should be recognized and validated. By having each team member express any concerns in a supportive environment, and with an attitude that the speaker and his fellow-practitioners intend to do something about those concerns, there is no sense that the affliction betrays some professional weakness or lack of competence.

Unfortunately, lawyers, litigators, and the legal profession in general, tend to reward silence by lawyers about *how their work affects them*. Lawyers tend not to be rewarded with increased responsibility, and workload, and money, when they dare to express the thought that the problems that have shattered their clients' lives have also unsettled them. Without a vent, lawyers managing traumatic material in litigation will tend instead to internalize the inevitable human distress of traumatic material. The emotional distress will likely fester unacknowledged until it has made the lawyer disconnected from his professional empathic role, and dissatisfied with the litigated solution to his client's problem. He will assess his professional involvement in the case as having solved very, very little.

So it is important to take the opportunity to talk to others about what is troubling, how it seems to be affecting the lawyer's professional approach, and how to eradicate or blunt any continuing effect that the material is threatening to have on the lawyer's practise.

***Re-locators: people who can share the understanding/experience and give regained perspective***

Part of any communication about how a client's traumatic material is affecting the lawyer involves the affected lawyer giving voice to the pains, consequences, and coping strategies that he believes have been generated by his contact with that material. However, in order to complete the *communication*, the lawyer needs his voice to be heard and reflected by others who have shared similar experiences. Simply talking to the taxi driver or hairdresser doesn't carry the same benefit. Besides, confidentiality obligations would prevent that.

This process of speaking, and then hearing a true, confirming response from a peer, is what keeps any care provider from wandering off into the wilderness of solitude. The danger of solitude at such a time is that on his own, the lawyer may begin to self-blame. The lawyer may begin to believe that his inability to solve the client's traumatic problem is due to some fault or failure on his part. He begins to be seduced into thinking that perhaps if only he was a little more perfect, he could have produced better results – even when any reasonable lawyer might see that such a better result was always impossible.

Speaking a concern, and then hearing a supportive response from a fellow professional, provides the affected lawyer with a sense that there is a collegial or familial understanding about how his work burdens him. He is reaffirmed in the belief that he remains part of a professional community that shares an appreciation of the unique demands and stresses of that lawyer's kind of practise. Peers can effectively remind the

lawyer that the impacts he feels from the traumatic material are not so unusual. The lawyer can be heartened by hearing other lawyers affirm that they too often feel the same debilitating effects on their sense of competence in relation to the same kind of cases.

A tangible result of supportive, collegial feedback is that the suffering lawyer can also be reminded that it is often sufficient to provide “good enough” service; that it is unnecessary to become distraught about the failure to deliver some ideal level of service – *because even perfect service can’t change the harm caused by the traumatic material*. The experience of colleagues also reminds the lawyer that he is not obligated in his professional capacity to take ownership of or responsibility for the effects of the traumatic material in doing his work.

Therefore, by speaking out about his own burden, and then hearing about how the same burden has weighed on his colleagues, a lawyer is able to re-locate himself within the mainstream of his legal community, and within the mainstream of how legal services are appropriately provided to clients who have suffered horrible life circumstances. This re-establishes the essential grounding every lawyer needs in order to continue to function effectively.

***Remind yourself of the value that you are working to achieve***

Each lawyer should have some sense of avocation, some overarching career purpose. If she doesn’t, then there are less stressful ways to earn better livings. Whether it is an abstract sense of doing justice, or a more concrete belief that her legal skills are sufficiently desirable that they can be sold to clients for value, each lawyer should be able to approach each workday with a sense that she is spending her own short lifetime this way for a positive reason. The question asked is, why is she a lawyer?

The mundane repetitiveness and the relentless demands of legal practise, which often involve a lawyer being a servant to client-defined imperatives, or partner-imposed billing targets, or court-imposed obligations, can cause a lawyer to lose any sense of real control over her day, her life, and her career. By responding to the client or partner or court demands, the personal aspirations and needs of a lawyer are regularly de-prioritized. Any personal, psychic fulfillment to be expected from lawyering may rapidly disappear from the scale.

While it is difficult for lawyers to privilege their own psychological needs in the course of acting as a servant and service provider to others, the problem is compounded when the lawyer encounters traumatic material in the course of practise. Not only do the lawyer’s psychological needs matter less, but the work itself becomes damaging to the lawyer’s own psychological equilibrium.

Late in the morning of a day spent defending a crack addicted offender who has choked and robbed an elderly grandmother in a public park, the public defender may legitimately gaze off into the distance and wonder whether this was what she dreamed of doing when

applying to attend law school. Feeling that she has to do it in order to earn the money to pay her assistant, and maybe some of the rent, exacerbates the lawyer's concern about her life choices.

It is when faced with these kinds of crises that a lawyer must be able to return to some fundamental articulation of her core value – not only as a lawyer, but also as a member of the community and as a person. It is by articulating her core value, and being able to re-measure herself against it, that a lawyer should be able to remind herself that she is not only serving her legal role, but also serving her own personal growth needs.

This public defender may define her work, perhaps, as facilitating the maintenance of a just and compassionate society. Adopting this self-definition, the lawyer is able to buttress her sense of personal self-worth even while struggling with bad facts. The fact that she can perform her role consistently, and well, despite the traumatic material through which she must negotiate, becomes for her a source of pride. Articulating her value allows her to maintain self-esteem, instead of allowing the minutiae of her work to be a cause for self-loathing.

*These first three strategies have been focused on practise behaviours. The strategies which follow are more personal, and best pursued by the lawyer on her own. These strategies tend to point the lawyer outwards, away from her legal practise, in hopes that her experience of life as a more rounded and complete human being will leave her less vulnerable to the effects of vicarious trauma.*

### ***Maintain alternative intellectual pursuits***

Daily legal work is intellectually demanding in terms of time, attention, and mental effort. We have also trained hard to think like lawyers. Because of that it is difficult for some lawyers to accept that thinking through a problem like a lawyer is not always useful for a client – particularly a client disturbed by traumatic material. It can also be paralyzing for the lawyer.

If the lawyer's only intellectual focus is "the law", there can be a tendency for the lawyer to persistently and desperately look for answers about the harms of traumatic material in the places where he is familiar with looking – such as the law reports. He will find none. This devoted lawyer who limits himself to looking for legal answers to the problems posed by traumatic material will often be dogged in his quest. He will give the impression of pursuing perfection. Yet he is engaged in a doomed, fruitless search. Finding no satisfying answer for the client's problem in the law, the dogged "perfectionist" may eventually withdraw, become uncommunicative, and attempt to avoid further work on the problem.

When this happens, it is the realization of a real risk in dealing with any traumatic material: that the traumatic material will overwhelm the lawyer – just as it has overwhelmed the client. The traumatic material is utterly outside his client's usual

frames of reference for human interaction. It should be recognized as also utterly outside the lawyer's own usual frame of reference for solving legal problems.

One antidote for this kind of behaviour is for a lawyer to use her considerable mental skills to think and to learn about different, non-legal things. Even if the lawyer accustomed to analyzing appellate case law takes some time to analyze baseball statistics and probabilities, that simple intellectual diversion should maintain the lawyer's ability to escape from predictable but less productive thinking patterns.

Thinking about alternate ways of arriving at solutions to non-legal problems, and engaging in thinking which does not carry the constant anxiety of unhappy consequences, are two things that lawyers should practise. This kind of alternative thinking can prevent the mind from falling into the traditional legal rut: a belief that there is only one way to think, that there is only one right answer to a legal problem, or that there are only two classes of information – the relevant and the irrelevant.

Alternative intellectual pursuits thus have two values: they develop a lawyer's mental capacity to think in multiple ways, and they serve as a reminder to lawyers that there are different, non-legal ways to understand the world. With both of these values being served, the shattering effects of traumatic material can be significantly lessened. The effort required to engage with traumatic material, and to empathize with its casualties, becomes less strange and less disconcerting. Having a different way to think and to understand better equips the lawyer to step outside of his own head in order to deal effectively with experiences that are strikingly different and abnormal.

### ***Engage in a creative intellectual activity***

Traumatic material can have a deadening effect on a person's spirit. Often the experience of trauma is associated with having to confront the dehumanizing behaviour of one human being toward another. In war crimes, and in urban gang violence, this becomes magnified into the dehumanizing of groups of people by other groups. The experience of that kind of trauma, even vicariously, seems beyond comprehension. It is certainly beyond any easy words. If that uncommon kind of trauma experience is to find an outlet, it may require an unconventional outlet.

When confronted and then immersed in traumatic material, lawyers and other helping professionals may not fully understand the extent of its impact upon them. While they may be able to articulate the impacts that they perceive intellectually, lawyers who are affected may not have as firm a grip on how the traumatic material has affected their ability to feel, and to express their feelings. That is why therapists dealing with those who are vicariously traumatized encourage their clients to paint, to sculpt, to sing, to dance, to make films, to write poems and to tell stories.

It is through this intuitive, subconscious, creative kind of expression that the deepest wounds of vicarious traumatization can be exposed. Those wounds can be exposed, and

the harm expressed, without the lawyer needing to be consciously aware that a wound even existed. The kind of creative pursuits identified above can unlock this kind of expression.

For those who have no established creative habit, several exercises have been developed that can be used in a therapy context to bleed out portions of the traumatic harm, though these are not as effective as ongoing coping strategies<sup>4</sup>. Such repair-oriented exercises are less capable of being incorporated consistently into a lawyer's practise of daily self-management than, for example, a regular avocation to painting or writing poetry would be.

### ***Get physical and keep physical***

Those who have been traumatized often feel disconnected from their bodies – either because their body was the vehicle of the abuse, or because it was the potential target of intimidating, threatened harm. Their recovery will involve a process of reconnecting their bodies to a positive, healthy concept of who they are<sup>5</sup>.

Some of the specific symptoms which afflict the vicariously traumatized include lack of energy, sleeplessness, hypervigilance, respiratory stress, and a sense of exhaustion. These are physiological responses which betray anxiety. These are generally the physiological responses which our bodies display when confronted with overwhelming feelings of grief and of fear. The same responses emerge as an expression of the desire to avoid the uncomfortable content of traumatic material.

Vicarious trauma effectively chills lawyers with a realization of the capacity of their own bodies to create and to suffer harm. This can, just as with trauma victims, estrange a lawyer from her own body. Recovery from this condition requires the care-provider to use her body in a positive, healthy way. Because of the insidious and debilitating physical consequences that unchallenged vicarious traumatization can have, it is particularly important for lawyers who routinely confront traumatic material in their work to develop and to maintain a consistent physical exercise routine.

Just as it takes practise to become an effective litigator, it takes physiological and emotional practise to control or to manage the body's physiological responses. Performance athletes understand and train specifically for this so that the anxieties of competition can be managed. Lawyers who litigate must learn to do the same.

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<sup>4</sup> e.g., Saakvitne, Karen W., and Pearlman, Laurie A.; *Transforming the Pain*, W.W. Norton & Company (New York: 1996), at pp.108ff

<sup>5</sup> e.g., Pearlman, Laurie A., "Self-Care for Trauma Therapists: Ameliorating Vicarious Traumatization", in Stamm, B. Hundall, ed.; *Secondary Traumatic Stress: Self-Care Issues for Clinicians, Researchers & Educators*, Sidran Press (Baltimore:1999), at pp.54

The potential benefits of a consistent physical exercise routine – whether golf or ballroom dancing or cycling, lawn bowling or rowing or swimming - include the following: a) a consistent time during the day or during the week when the mind's attention is focused away from the traumatic material; b) the continual self-generation of a standard of physical accomplishment – the target scores or reps involved in the fitness routine chosen provide an integral gauge of achievement for constant self-assessment; c) a release of the debilitating physiological cramps associated with anxiety while generating natural body chemicals associated with improved mood; and, d) re-connecting with one's own body as part of renewing an understanding of the physical person being a positive part of one's whole being.

***Maintain a connection with a community that is separate from your career***

One of the features of the lawyer's role with clients which puts her at risk of vicarious traumatization is the fact that she is professionally required to be empathic, responsible, and "in charge" as the care provider. These are all things that come from or out of the lawyer as a person because of her professional role. These obligations are also the burden that a lawyer, like a therapist or doctor, often carries as an integral part of her profession.

A lawyer needs time out to rest from these obligations of being a care provider. Lawyers dealing with traumatic material need to be able to participate in communities where they do not necessarily perform any responsible role. Lawyers need the opportunity to participate in communities where they are able to receive nurturing and care from others rather than being expected to continue to be givers.

Taking on the role of being a mere participant in something gives a lawyer that kind of opportunity. Whether this means that the lawyer participates in a book group or a model train group, joins a bowling league or attends square dancing evenings, or is a member of a cooking and travel group, does not matter. In any of these kinds of endeavours, the lawyer is part of something where her status as a lawyer, and where her work obligations, are largely irrelevant and unimportant to her qualification to participate in the group.

A lawyer is able to enjoy the replenishing benefit of being able to rely upon others, and to regenerate a connectedness with others, through these kinds of groups. The restorative effect of such participation comes from both the irrelevance of the lawyer's professional status, and the fact that the relationships between the lawyer and other members of the group do not exist because of some traumatic crisis. These kinds of activities give a lawyer the space to function and to re-acquaint with herself as a person distinct from her professional role.

***Liberate your choices***

Earlier in this paper we discussed the importance of lawyers reminding themselves of the fundamental value of the work that they provide on behalf of clients. This is important

because in the course of the repetitive and sometimes mundane tasks that we must perform as lawyers managing the consequences of a traumatic event, we can lose sight of the value that we are serving by participating in the legal process.

Even if we are able to remind ourselves of the value that we do contribute to the process on behalf of our clients, that value in a particular case or series of cases may be small in absolute terms. In order to sufficiently feed our needs to be involved and contributing members of society, it is often necessary to also involve ourselves in doing good outside the framework of our practices. By being a volunteer at the grassroots level of a non-adversarial organization such as a recreational children's sports team, or as a packer at a food bank, or by organizing refreshments for a social group, we can put ourselves in a position to experience doing positive good work, and obtaining some immediate acknowledgment and recognition for that good work.

The lawyer who places himself at a front-line volunteer position in any helping organization will be satisfying a need that all of us have – no matter how self-effacing we may be in public – to provide good for others. The advantage this provides to the lawyer whose workday efforts involve attempting to assist clients through cases involving traumatic material, is that the lawyer has an alternate source for community affirmation in his life. By engaging in community volunteerism, a lawyer will be liberating himself from a dependency on the traumatic problem. The lawyer will not need to depend on his ability to solve the insoluble to provide himself with a positive sense of human worth.

If a lawyer has no alternate source for developing pride and satisfaction in his life, that will be when a lawyer will start to become obsessive about his clients' traumatic material, and dubious about his own competence to make a difference on behalf of a client.

### ***Vary your work diet***

A very practical strategy to prevent lawyers from being overwhelmed by traumatic material in their practises is to vary the work diet. If a lawyer is not always working with a traumatized clientele, and if a lawyer is able to do enabling legal work (such as wills and adoptions and home purchases and business incorporations), the special burdens of cases dealing with traumatic events are separated, and the impacts on the lawyer are moderated.

This kind of strategy serves the same objectives discussed earlier about finding volunteer work which permits a fairly quick and obvious boost to the lawyer's sense of being able to provide help and value in his community. By having a work diet that includes both emotionally difficult and emotionally uplifting casework, the lawyer will be able to use his workday to create an improved sense of self-worth.

A third benefit of varying the work diet is that it forces the lawyer to develop comparative perspectives on repetitive problems. One of the tragedies of burnout in a care provider such as a lawyer is that repetitive and constant service of a particular kind,

producing fairly predictable results, can cause a lawyer to lose an appreciation for the uniqueness of each individual client's experience. With vicarious traumatization, the risk is similar – too steady a diet of child sexual abuse cases, for example, could lead to the lawyer focusing exclusively on the issue of “what actually happened” instead of on the issue of “what harm did you experience”?

By dealing with some clients who have not been traumatized, the lawyer can be reminded that not everyone coming into his office has some negative pathology to overcome. He may then be better able to return to the clients who are traumatized with a clearer vision, and more motivation, about how to help them get through their individual, difficult, and agonizing journeys. This should also remind the lawyer that eventually even his traumatized clients will recover. He will learn again that there can be an end point to the worst effects of trauma.

### ***Find a spiritual home***

Confronting and successfully challenging the horrors brought into a lawyer's life by traumatized clients requires resources which go beyond the intellectual and the physical. Without a spiritual grounding, it can be difficult for a lawyer to maintain a moral grounding in terms of the service values that she brings to the legal process. Without a spiritual context to the lawyer's thinking, it may also become impossible for her to care or empathize about the client's personal harm and experience of recovery. That is why it becomes important for lawyers to recruit a spiritual element to their self-management. By doing so, the lawyer's professional work of helping a traumatized client can be elevated into a joint spiritual journey through a time of crisis.

A robust sense of spirituality also adds something critical to the lawyer's approach to any traumatic crisis situation. Spirituality is the resource which provides the kind of confidence and assurance that is the unfailing companion of a lawyer's competence. A lawyer's knowledge that he has the ability to effectively address the unknown in any problem is achievable when the lawyer accepts the idea that her work is not hers alone. Her work in compassionately assisting others through trouble becomes an important gift from one human being to another. It is the kind of work that a creator or higher power would expect us to do, and will help us to do.

### ***Conclusion***

In this paper I have provided a group of strategies that may be able to help lawyers manage, in a practical way, the pain that they will suffer when providing assistance to those whose traumatic experiences have legal implications. How particular lawyers manage this kind of work, and how successfully they manage it, will depend on their unique abilities and their commitment to remaining well for their clients. Some may combine strategies that I have separated. Others may find some suggested strategies impracticable.

This group of strategies is not a checklist against which anyone should expect to measure themselves. They are a group of strategies that should help lawyers do better work for their traumatized clients for a longer period of time, and without damaging themselves permanently in the process. But everyone should take the initiative to do something.

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