

CHAPTER 3: TRAUMA-INFORMED PRACTICE¹

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A. What Is Trauma?

1. Introduction

Trauma can be defined as any event that “is extremely upsetting, at least temporarily overwhelms the individual’s internal resources, and produces lasting psychological symptoms.”² The definition is broad and subjective because individuals experience trauma in unique ways.

2. The Impact of Trauma

Anyone can be traumatized by any experience, and the severity of a particular incident does not determine its impact on anyone affected by it. Do not make assumptions about how people should react to a trauma. An individual who has been traumatized may experience humiliation, constant fear, shame, and hopelessness, and feel emotionally overwhelmed. They do not need to feel judged for their response or reaction as well.

3. Effects on Memory, Communication Ability, and Behaviour

Changes in a trauma survivor’s brain can have profound effects. Trauma affects the Broca area, the part of the brain responsible for speech. As a result, the survivor may have difficulty talking about the incident(s) that caused the trauma and describing it in any detail.³ The hippocampus can become smaller and its structure disrupted, all of which can affect a survivor’s attention span, learning ability, and memory.⁴ If connectivity in the corpus callosum, which connects the left and right sides of the brain, is affected, the two sides of the brain will not coordinate as effectively as they usually do, which affects complex processing of emotions.⁵

People who have been traumatized can experience extreme swings in emotion and may struggle to regulate their emotions. Changes in the amygdala can make a person more likely to react to triggers, especially emotional ones. Reduced activity in different parts of the cortex frontal lobes can mean a survival response is triggered even in the absence

¹ The materials in this section were adapted from training provided by Myrna McCallum to SHARP Workplaces lawyers in March 2020.

² J.N. Briere and C. Scott, *Principles of Trauma Therapy: A Guide to Symptoms, Evaluation, and Treatment*, 2nd ed. (Thousand Oaks, CA: SAGE Publications, 2015), 10.

³ A.M. Hull, “Neuroimaging findings in post-traumatic stress disorder. Systematic review”, *British Journal of Psychiatry: the journal of mental science* (Aug 2002) 181: 102-10 <https://pubmed.ncbi.nlm.nih.gov/12151279/>

⁴ F.L. Woon, S. Sood, D.W. Hedges, “Hippocampal volume deficits associated with exposure to psychological trauma and posttraumatic stress disorder in adults: a meta-analysis”, *Prog Neuropsychopharmacol Biol Psychiatry* (2010) 34: 1181–1188. <https://doi.org/10.1016/j.pnpbp.2010.06.016>

⁵ K.R. Wilson, D.J. Hansen, M. Li, “The traumatic stress response in child mal-treatment and resultant neuropsychological effects”, *Aggress. Violent Behav.* (2011) 16(2): 87–97. <https://doi.org/10.1016/j.avb.2010.12.007>

of danger. Conversely, if changes occur in the survivor's brain's reward pathways, they will derive less pleasure from formerly enjoyable activities and may appear less motivated in general. As a result, a survivor may appear to be emotionally flat, which can lead to assumptions that they have not been traumatized.

B. Trauma-Informed Engagement

1. What Is a Trauma-Informed Lawyer?

A trauma-informed lawyer is one guided by the principle of doing no harm. They assess their own experiences of and reactions to trauma, and are honest with themselves about it. A trauma-informed lawyer knows about the neurobiological effects of trauma, especially in the context of sexual assault, on speech, memory, and behaviour; can identify traumatic symptoms; and is trained in strategies to adapt their interview approach to accommodate trauma. They also maintain professional boundaries between themselves and the client, leaving traumatic disclosures behind at the end of the day.

2. Trauma-Informed Advocacy

Being trauma-informed means taking an approach that recognizes that gender-based violence, sexual harassment, or assault can be traumatic and have lasting effects.⁶ Provide choices whenever possible, explain the reason behind a process or procedure, ascertain a client's triggers and reduce their exposure to these triggers, and be adaptable in your processes and procedures to best accommodate the client. Be aware of your own trauma and capabilities as an advocate, and practise self-care if you are dealing with other people's trauma.

3. Interview Advice

Treat every client as if they have experienced trauma. Whether they are a complainant, respondent, or witness, a client can find an interview to be a stressful experience with the potential to trigger a traumatic response. Help minimize triggers by examining and adjusting your own behaviours and responses to accommodate a client's experience of trauma. Take a moment to ground yourself before an interview and ensure that you have any potentially helpful tools at hand in the interview room.

Maintain self-awareness during the interview and be aware of the signals you may be giving the client. Pay attention to your body language and the client's body language. Be flexible and be respectful of the client. Keep distraction aids within reach for the client to use if necessary during in-person interviews. Be transparent and clear with the client

⁶ Status of Women Canada Report, *It's Time: Canada's Strategy to Prevent and Address Gender-based Violence: Glossary* (Government of Canada, n.d.), available at https://cfcswc.gc.ca/violence/knowledge-connaissance/GBV_Fact_sheet_6.pdf. See also Ending Violence Association of BC, *Gender-Based Violence, Harassment, and Bullying: Workplace Policy Guidelines for Response and Prevention* (Ending Violence Association of BC, 2019), https://endingviolence.org/wp-content/uploads/2019/09/EVABC_CreatingSaferWorkplacesAndCommunitiesPolicyGuidelines_vF.pdf

about your process and answer their questions as fully as possible. Ask them if you can do anything to make them feel more comfortable—for example, ask if they need to take a break.

Invite the client to make key decisions about the time, place, and manner in which you communicate. Allow them to ask as many questions as they want about what you will do with the information they give you. Let them decide where they sit in relation to you, where you sit (unless this compromises your safety), and when and how often you take breaks. Be patient and let the client answer in their own time. Ask if they want the lights turned up or down. Let them bring a support person to sit in a waiting area or in the interview room, if permissible. (See [Chapter 25: Involving Support People in Legal Relationships](#) for more on this.)

Ask open-ended questions and explain in a non-judgmental way why you need to clarify vague or confusing responses. If something does not make sense to you, preface your specific inquiry with “Help me understand why you chose...” or “I appreciate it’s been a while since...” or “I realize this incident has been hard on you, so take your time in answering my next question...” If the client cannot remember specific details about an incident and there is no direct or corroborative evidence, look at the peripheral details to determine if they support the core complaint of sexual misconduct. If a client has prepared a written statement about the traumatic events, be open to using this and only asking questions to fill in the gaps.

4. Best Practices for a Trauma-Informed Approach

Keep in the mind the following points to help you adopt best practices for a trauma-informed approach:

- Make the client aware of all their options, legal and otherwise.
- Provide appropriate, well-researched referrals to ancillary or wrap-around services such as counselling, community support, or assistance with substance use.
- Demonstrate awareness of complex concerns and take them all into consideration.
- Empower the client to do whatever they choose and refrain from judging.
- Make them aware of any potential legal consequences of their decisions.
- Thank them for sharing their story with you and for showing courage in the face of a difficult situation.
- Be consistent, reliable, and predictable.

C. Cultural Humility, Bias, Intergenerational Trauma, and Stereotypes

1. The Benefits of a Trauma-Informed Approach

A trauma-informed approach can help the client feel in control and therefore safe, builds trust and respect between the lawyer and the client, minimizes the risk of re-

triggering the client, and helps to ensure that when they leave, they are calm, stable, and present in their own body. The client should feel that their personal security and need for support are a priority for the lawyer.

The do-no-harm approach protects you, your clients, and the reputation of your legal practice. It will not only improve the quality of your relationship with your clients and improve your credibility but will also help you identify when you are experiencing vicarious trauma (see [Vicarious Trauma and Vicarious Resilience](#), below).

Several things can undermine a trauma-informed approach: lack of self-awareness about your own trauma and comfort levels, lack of cultural understanding, confusion over the evidentiary standard, investigator bias, impatience, insensitivity, or failure to make trust-building efforts. Be aware of these barriers and work towards avoiding them. Practise self-care and undertake continuing education about trauma-informed practice to stay aware and informed.

2. Understand and Practise Cultural Humility

The foundational principle of cultural humility is relationship building. A relational approach is diametrically opposed to a transactional approach, which is the approach often preferred by lawyers and some advocates.

Cultural humility has been defined as “a process of self-reflection and discovery in order to build honest and trustworthy relationships.”⁷ It is essentially developed by letting go of assumptions about a person based on their culture and creating space for learning who they are as a person. The distinction between cultural humility and cultural competence is subtle yet significant. Cultural competence addresses the ability of a person to effectively work with and across different groups of people and positions in the role of an expert in another person’s culture. Cultural humility is an ongoing process of recognizing that the person in front of you is the expert.

The interpersonal component of cultural humility is also focused on learning ... through listening and partnership building. Cultural humility is a foundation for developing the type of environment that promotes an appreciation for understanding other cultures. Cultural humility combined with crucial conversation skills provides an opportunity to talk about involving intercultural pain, cultural misunderstandings, and the development of cultural understanding. In effect, humility should be a lifelong process as well as a goal.⁸

Tips for practising cultural humility:

- Confront your own biases.

⁷ K.A. Yeager and S. Bauer-Wu, (2013). “Cultural Humility: Essential Foundation for Clinical Researchers,” *Applied Nursing Research* 26, no.4 (2013): 251-56, <https://doi.org/10.1016/j.apnr.2013.06.008>

⁸ V. Hughes et al., “Not Missing the Opportunity: Strategies to Promote Cultural Humility among Future Nursing Faculty,” *Journal of Professional Nursing* 36, no. 1 (January–February 2020): 28-33, <https://www.sciencedirect.com/science/article/pii/S8755722319300869>

- Practise critical self-examination.
- Develop a capacity for empathy and taking a fresh perspective.
- Practise active and mindful listening.
- Develop skills of inquiry and ask open-ended questions.

3. Be Aware of Myths, Stigma, Bias, and Stereotypes

Be fully informed about rape myths, victim blaming, social stigmas, discrimination risks, physical risk factors, retaliation risks, and cultural taboos related to sex, sexual harassment, and sexual assault. Understand safety needs and be aware of the available resources to support clients. SHARP Workplaces staff can help lawyers identify appropriate resources for clients.

Increasing Access for Clients Who Have Mental Health or Substance Abuse Issues

Clients with mental health concerns can face challenges relating to attention and concentration, memory and recall, motivation, social skills, and executive and planning skills. To accommodate such challenges, move slowly and intentionally, remove as many administrative barriers as possible, allow the client to feel heard, manage your time in the best interests of the client, and be flexible within the limits of the services you can provide. Explain your process and the information you need from them, and why you need it, to help them feel included and in control of a potentially intimidating process.

Increasing Access for Clients Who Have Disabilities

Two different lenses can be applied to disability: the medical model and the social model. The medical model frames a person who uses a wheelchair as disabled because their body does not allow them to walk. The social model frames a person who uses a wheelchair as disabled because social structures (stigma, architecture, etc.) present obstacles to the person. Speak directly to your client, not to a companion or interpreter. Offer to shake hands when you are introduced; people with limited hand use can usually shake hands.⁹ Face hard-of-hearing or Deaf clients directly so they can lip-read. Speak in a normal tone of voice. If a client has a visual disability, identify yourself and any others present and tell them if you are leaving the room.¹⁰ Do not offer assistance without asking permission first. If the client accepts the offer of help, ask for instructions on how to proceed. Listen carefully to clients who have difficulty speaking. Do not interrupt. Give them the option of writing, for example, instead of speaking and pay attention to non-verbal responses like a shake of the head. Do not touch a client's mobility aids without their consent.¹¹

⁹ Assuming hand-shaking resumes as a socially acceptable form of greeting post-pandemic.

¹⁰ Disability Alliance BC, *Right to Be Safe: Creating Inclusive Services for Women with Disabilities Experiencing Violence* (Disability Alliance BC, 2016), <https://disabilityalliancebc.org/rtbguideupdate/>

¹¹ Disability Alliance BC, *Right to Be Safe*.

Recognizing the Experience of Indigenous Peoples

In *R. v. Holmes*, 2018 ABQB 916, Justice Langston noted:

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.

Justice Langston went on to acknowledge the unique circumstances of Indigenous Peoples within the context of a justice system that has “over run Indigenous people, Indigenous communities, Indigenous families, Indigenous culture and Indigenous spirituality.”

The recognition offered by Justice Langston is significant for three reasons:

1. It acknowledges the flaws inherent within Canada's legal processes.
2. It validates the harm the justice system does to Indigenous Peoples.
3. It offers an opportunity to do better.

It is important to recognize that the law and the justice system have been, and are, used as a colonial tool because no legal process has likely been designed by Indigenous Peoples for Indigenous Peoples. Consider the perspective of Indigenous Peoples: Given Canada's history of colonialism, are Indigenous Peoples to blame for the poverty in their communities, for example? Cultural humility means being aware of your own ingrained biases.

D. Responding to a Disclosure

When you receive a disclosure from a client regarding sexual harassment, a helpful acronym to remember is **LIVES**:

- Listen,
- Inquire,
- Validate,
- Enhance safety, and
- Support.

Listening means listening actively to verbal and non-verbal cues. Inquiring means phrasing questions as invitations to speak and helping the client to identify and express their needs and concerns. Validating means assuring survivors that they are not to blame and that you will help support them in their next steps. Enhancing safety means assessing the client's safety in the workplace and community, helping them make a safety plan, and ensuring confidentiality. Supporting means focusing on the client's immediate needs such as safety or workplace accommodations and referring them to support resources as needed.

1. Practise Grounding Techniques

Grounding techniques can help a lawyer or their client focus on the present in a calming way. Some simple grounding techniques to share with a client are: Clap or rub your hands together, hear the noise, and feel the sensation in your hands and arms. Take a short walk and notice how each step feels. Look around and notice what is in each direction. Name qualities of large and then small items. Notice your feet and plant them into the ground. Notice the textures of your clothing and the surface of the chair. Take 10 slow breaths and focus your attention on each breath. Say the number as you exhale. Remind yourself of who you are now. Say your name, age, and current location. Say what you are doing in the moment and what you will do next.

2. Recognize Limits to Confidentiality

Trust between a lawyer and their client is essential for an effective solicitor-client relationship. It can be more challenging to develop trust with a client who has experienced trauma and may be distrustful of the system. Lawyers have an ethical duty to maintain confidentiality of client information¹² but some limits apply. If a child needs protection, or you learn about a child being neglected or abused by their parent or caregiver, for example, you have a duty to report the situation except where the information is privileged as a result of the solicitor-client relationship.¹³ This exception does not extend to all confidential information that has been shared with a lawyer. If there is a risk that a survivor or someone else (including those in the workplace) may be at imminent risk of severe injury or death, a lawyer can disclose information. If a court orders a lawyer to release their records to the court, they must comply. In this type of situation, seek guidance from the Law Society or Benchers.

E. Vicarious Trauma and Vicarious Resilience

1. Vicarious Trauma

Vicarious or secondary trauma, also known as compassion fatigue, is not burnout; burnout can be remedied with a vacation. Vicarious trauma can develop slowly over time and arises when a professional becomes preoccupied with the story or history of a client. It can trigger numbness, hyperarousal, or a plethora of other psychological symptoms that have a negative impact on personal and professional relationships. The risk factors include a personal history of trauma, repeated exposure to detailed accounts of sexual and physical assault, witnessing physical injury, and a lack of organizational support.

¹² Law Society of BC, *Code of Professional Conduct for British Columbia*, section 3.3: Confidentiality (Law Society of BC, n.d.), <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/code-of-professional-conduct-for-british-columbia/chapter-3-%E2%80%93-relationship-to-clients/#3.3>

¹³ *Child, Family and Community Service Act*, RSBC 1996, c. 46, s. 14(2).

Before you work with a client who has experienced trauma, assess your own triggers or experiences in the context of the subject matter. If you have unresolved trauma from your childhood but still intend to advocate for the survivor, ensure you have a solid support system, including a therapist. Be honest with yourself about how you cope when triggered, traumatized, or overwhelmed and make a plan. Be confident about establishing your own boundaries and saying that you cannot accept the case or that you need a break, from either the particular case or your work in general. The client should not find themselves trying to take care of you and your needs.

Remind yourself that you are not a therapist or crisis counsellor. Maintain clear boundaries with your client regarding time, space, and the focus of discussion. Explain your role as an advocate and its limitations as often as necessary.

After you have been exposed to a traumatic story or evidence, take time to decompress: wash your hands in very cold water, debrief with a colleague or supervisor, take your pet for a walk in the forest, take a brisk walk alone, or give yourself at least five minutes to intentionally release the information you just learned. Distinguish your experience from the client's. Do not let the traumas of others follow you home. If you do, you could eventually experience anxiety, depression, addictions, or other mental health concerns.

2. Vicarious Resilience

The concept of vicarious resilience was developed by psychotherapists to address the transformation that occurs in clinicians who are regularly exposed to the trauma of others. Vicarious resilience recognizes that the ability to learn how to overcome adversity can be transferred to the helping professional simply by witnessing resilience. It builds on the concept of resiliency in the face of severe trauma and other adversities, and occurs when survivors of trauma survive by adopting coping strategies and using successful adaptive processes.

Useful Resources

Trauma-informed Practice Training:

Golden Eagle Rising Society. *Trauma-Informed Legal Practice Toolkit*, 2020:

<https://www.goldeneaglerising.org/photos/trauma-informed-legal-practice-toolkit>

Justice Institute of BC, Trauma-Informed Practice (TIP) Foundations

Curriculum: <https://www.jibc.ca/trauma-informed-practice-tip>

Martin, Chris (Workplace Equity Educator, Sexual Assault Support Centre of Waterloo Region). *Responding to Sexual Harassment Disclosure* (PLEAC webinar). January 26, 2020.

<https://www.youtube.com/watch?v=qcXG4xaYZAo>

McCallum, Myrna. *The Trauma-informed Lawyer* podcast:

<https://thetraumainformedlawyer.simplecast.com/>

Vicarious Resilience:

Hernández, P., D. Gangsei, and D. Engstrom. "Vicarious Resilience: A New Concept in Work with Those Who Survive Trauma." *Family Process* 46 no. 2(2007): 229-41. <https://doi.org/10.1111/j.1545-5300.2007.00206.x>

Vicarious Trauma:

Srdanovic, Michelle. "Vicarious Traumatization: An Occupational Hazard for Helping Professionals." *Visions Journal* 3, no. 3 (2007): 15–16.

<https://www.heretohelp.bc.ca/visions/trauma-and-victimization-vol3/vicarious-traumatization>