



Précis Paper

Vicarious Trauma in the Legal Profession

A discussion on the personal, professional and social effects of vicarious trauma, its prevalence in the legal profession and how to recognise and manage its effects.

Discussion Includes

- History
- Effects of vicarious trauma
- Vicarious trauma in the legal profession
- Preventing and controlling vicarious trauma
- Australia's position in relation to other countries
- Formal initiatives
- Takeaways for practitioners

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Vicarious Trauma in the Legal Profession

1. In this edition of BenchTV, Robyn Bradey (Mental Health Accredited Counsellor - Sydney) and Ian Benson (Solicitor – AR Conolly and Company, Sydney) discuss the personal, professional and social effects of vicarious trauma, its prevalence in the legal profession and how to recognise and manage its effects.

History

1. Vicarious trauma is the trauma received from other people's trauma.
2. This was first recognised in World War 2 by Victor Frankl in a study of Holocaust survivors. In his study he observed that some of the researchers who took the survivor's stories ended up with worse trauma symptoms than the Holocaust survivors themselves.
3. There was not much interest in vicarious trauma until the Vietnam War period where Post Traumatic Stress Disorder became a diagnosis and the persons working with the veterans began to have trauma symptoms.
4. Vicarious trauma has become a point of interest in the law over the past 5 years but more particularly in the past couple of years.

Effects of vicarious trauma

5. People experiencing vicarious trauma may develop hyper-arousal symptoms or conversely, hypo-arousal symptoms.
6. Hyper-arousal symptoms are symptoms in which a lawyer can develop a fight/fright/flight reaction and may over-react to things, get angry, get distressed, be easily startled by things that would not usually bother them and/or have intrusive symptoms such as nightmares.
7. Hypo-arousal symptoms may cause lawyers to withdraw, want to sleep more often than usual, avoid difficult matters, avoid people who want to talk about the difficult matters and isolate themselves.
8. The lawyer's mindset may also change as a result of vicarious trauma. They may become more protective or conversely, engage in risk-taking behaviours such as gambling.

Vicarious trauma in the legal profession

9. A recent example of vicarious trauma in the legal profession is of Magistrate Heilpern, who suffered from post-traumatic stress disorder listening to child abuse cases on the bench.

10. Many immigration lawyers who have to take stories from people fleeing persecution find these stories overwhelming and intruding into their dreams.
11. One reason for the increasing prevalence of legal professionals developing vicarious trauma is the fact that the nature of evidence has changed. Therefore, many lawyers are now seeing real time crimes and distress on film footage. The volume of these cases coming through the courts has also dramatically increased.
12. For example, the Royal Commission into child abuse has seen a dramatic rise in multiple victim child abuse cases coming through the court.
13. Lawyers are told that they need to be neutral, independent and unflappable; that showing any distress will be viewed as losing objective.
14. Lawyers are also high achievers generally are not well educated in psychological distress and tend to blame themselves or minimise it or try to cover it.

Preventing and controlling vicarious trauma

15. Education is the key to preventing and managing vicarious trauma. Lawyers need to know that vicarious trauma exists.
16. Basic training at university and the college of law so that people know what it is and recognise the symptoms.
17. Lawyers need to also have the tools to have a conversation about it if they become worried about a colleague.
18. They also need knowledge of where to go to gain assistance.
19. Currently, it tends to be the agencies dealing with immigration and child protection that are taking the lead in this area.
20. There also needs to be wellbeing programs available to lawyers all the time. This will ensure that their resilience is being worked on and their learning strategies such as mindfulness and it becomes part of the culture of the workplace for it to be ok to talk about being distressed by work.
21. In regard to the treatment of vicarious trauma, most people would go to a talk-therapy with a trauma counsellor, in particular one who is trauma informed and brain-based therapists that actually understand the brain mechanisms of vicarious trauma.
22. There are also non-talk therapies available, such as eye movement re-processing desensitisation therapy which involves a person discussing their distress and following the movements of the therapist's fingers and it is a process which gets the distressing memories relocated in the brain.
23. These therapies should be supported by physical therapies, that is through exercise and stretching movements, which break up the chemicals in the body and work the trauma out of people.
24. Social work, psychology and a variety of other helping professions have a compulsory process for all practitioners which is called 'professional supervision' and involves

meeting with another senior colleague on a regular basis and be checked for their wellbeing and decision-making process

25. It is a professional obligation in these professions and it may be important in the future to extend such obligations to the legal profession.

Australia's position in relation to other countries

26. Australia was one of the leading countries to start the discussion on lawyer's mental health.
27. The UK Bar has recently come on board and they have a wellbeing portal online with an entire section on vicarious trauma.
28. The US legal societies and their bench have started the movement in this area also.
29. Further, NSW is in the process of having a fairly major review about how to approach lawyer's mental health.
30. In Australia, the incidence of depression and anxiety in the general population is 1 in 5 and the incidence for lawyers is 1 in 3.
31. Post-traumatic stress disorder is often co-morbid with depression and anxiety.
32. In NSW most solicitors are sole practitioners or in a small firm, so isolation is a big issue which is not adequately addressed currently.

Formal initiatives

33. There is a wellbeing program run through the law society.
34. Further, there are agencies such as the Australian Federal Police and the Commonwealth Director of Public Prosecutions and the state prosecutions agencies have all moved very quickly to enact wellbeing policies in their workplaces.
35. The college of law has put a resilience program together available to all lawyers as part of their continued development.

Takeaways for practitioners

36. Practitioners need to learn that they are not invulnerable and that there is no shame in reacting appropriately as a human being in response to the distress of any matters they are involved in.
37. Practitioners should get a good GP that they can see regularly and who can notice any signs of changes.
38. They should also use the resources that are available, such as the law society website and the UK Bar 'Wellbeing at the Bar' website.
39. Practitioners need to view mental health issues and vicarious trauma as a real risk of their practice and not as a personal failing.

40. They also need to need to learn how to have conversations with each other and listen to partners and friends.
41. Further, if practitioners notice that they are isolating themselves, just barely getting through the things they need to do and not seeing friends, these might be major indicators that they need some assistance.
42. Practitioners need to get themselves educated
43. The main areas for practitioners to work on is to ensure they exercise every day to break up the chemicals, resisting the urge to isolate themselves and to follow up with counselling if there are particular triggers.
44. The legal profession needs to understand that they are doing a difficult job, often with distressed clients and that the expectation which has been put on legal profession up until now to work dispassionately and objectively, is not reflective of 'real life'.
45. Currently, 70% of new legal practitioners are leaving legal profession within 5 years, in part due to vicarious trauma and the fact that vicarious trauma often makes lawyers treat each other poorly.
46. There is a fallacy that objectivity is achievable and/or desirable when it is actually more desirable for a lawyer to acknowledge their emotions without becoming overwhelmed by them.
47. If practitioners acknowledge the distress that their clients are in, they can step into their advocacy role better. This is because understanding distress is the best way to portray it to a court.
48. Whilst we can't stop the nature of the work from being distressing, we can ameliorate it a lot by making workplaces a safer place to be.
49. If the relationships in all parts of a lawyer's workplace, including the court are cordial and respectful and safe, then the material has much less impact.
50. If those places are combative and uncivil and impolite, then the material becomes more distressing as lawyers are already in a distressed mindset.

BIOGRAPHY

Robyn Bradey

Mental Health Accredited Counsellor - Sydney

Robyn is a leading Australian Mental Health Accredited Social Worker and an internationally renowned consultant with over 37 years' experience. She is currently the Mental Health Consultant and trainer for the Law Society of NSW, Legal Aid, the Office of the Director of Public Prosecutions, the Commonwealth Director of Public Prosecutions, tribunals and Ombudsmen and law firms. Robyn specialises in educating professionals to communicate and effectively deal with situations relating to mental health issues.

Ian Benson

Solicitor – AR Conolly and Company

Ian Benson is a solicitor at AR Conolly and Company and holds a First-Class Honours degree in Law and a Bachelor of Science. He also has a Graduate Diploma in Mathematical Studies.