

Vicarious trauma in the legal profession

By Kylie Nomchong SC

Robyn Bradey, a mental health accredited counsellor with over 36 years' experience, commenced her seminar at the NSW Bar Association this year with a few simple questions: 'Do you experience teeth grinding...poor sleep...agitation...rumination...hypervigilance...stress...headaches...?'

There was a steady show of hands in response to each question.

Bradey stated that the nature of barristers' work necessitates deep involvement in cases that may disclose violence, injury, destitution, betrayal, dishonesty, greed, danger and damage. Not only do barristers have to listen to clients describe what, for many of them, has been a devastating life experience, but also, barristers must ask those same clients to re-live it over and over again during the trial process by recounting the details to doctors, experts and in court.

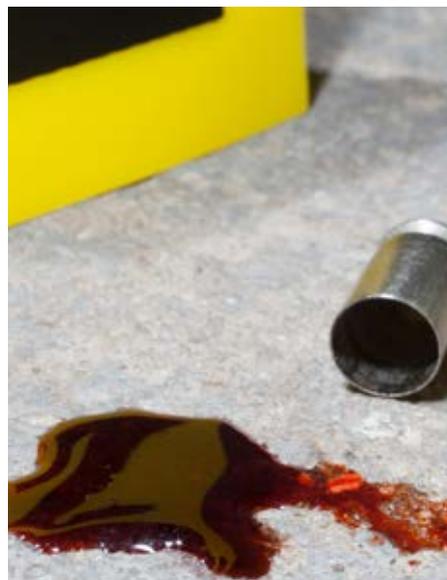
Of course, barristers are affected by that process - sometimes unknowingly, sometimes obviously. Bradey warned: 'Without the emotional reaction to the plight of clients, we would be sociopaths - content to view the suffering of others without feeling'.

What is vicarious trauma?

Being traumatised by what we see and observe is known as vicarious trauma. It relates to the experience of a person empathically engaging with the trauma of another person or group of people. Because of their proximity to people and clients undergoing stressful experiences, the people who are most at risk are therapists, counsellors, emergency workers, police officers, medical professionals and lawyers. Particularly for lawyers who work with trauma survivors, vicarious trauma is an occupational hazard that often cannot be avoided.

Vicarious trauma is now a well-recognised phenomenon. The Bar Association audience at Bradey's seminar was intimately familiar with its tell-tale signs: avoiding certain types of matters or clients, engaging in risk-taking behaviour, insomnia, feeling helpless about work tasks and withdrawing from colleagues, friends and family. Closely mirroring the short-term effects of post-traumatic stress disorder, vicarious trauma can lead to nightmares and intrusive imagery, fear for one's safety or the safety of others (family members in particular), resistance to hearing accounts of traumatic events, irritability and emotional numbness.¹ More troubling and profound long-term effects include changes to the core beliefs of the secondarily exposed person and his or her view of self, others and the world.² As Bradey assured those of us who attended

her seminar, vicarious trauma is an ordinary part of one's emotional life as an individual, as we all possess a degree of personal vulnerability.³ It can be thought of as an advanced 'fight-or-flight' response, where the mere



thought of something traumatic occurring triggers the feeling of it having occurred.⁴ Vicarious trauma is a cumulative reaction to the experience of secondary trauma borne from a range of interactions with trauma victims or exposure to traumatic content over an extended period.⁵

It has implications for the day-to-day functioning and overall wellbeing of trauma-exposed professionals. It can change a person's sense of personal or professional identity, affect his or her confidence and damage his or her relationships with others.⁶ The personal, professional and social effects of vicarious trauma are such that it is important for individuals and workplaces to anticipate the experience of secondary trauma and work to resolve the issues that it can create, in a timely and effective manner. Its real dangers are only now being addressed by the legal profession, which is typically late to integrate wellbeing practices into standard operations.

The exposure of lawyers to vicarious trauma

Vicarious trauma most often occurs through the retelling of a traumatic event by the person that underwent or caused it, or through viewing images of the event or its aftermath. Environmental factors that contribute to the risk of vicarious trauma include the frequency of exposure to traumatised clients, poor systems and procedures for dealing with

trauma in the workplace, a lack of formal training in dealing with trauma survivors,⁷ and most importantly, the inability (or unwillingness) to de-brief about such matters in an emotionally honest manner.

Though lawyers working in non-criminal jurisdictions may interact with traumatised clients, criminal lawyers have been shown to suffer from greater and more pronounced subjective distress, depression and anxiety than other groups of professionals.⁸

But who has the responsibility to deal with the threat of vicarious traumatization in the legal profession? Individual barristers can strive to build resilience and as a profession, we can create a workplace that responds more effectively to the dangers posed by vicarious trauma.

There have been several studies in Australia into the wellbeing of law students and practitioners. The most widely publicised of these was released by the Brain and Mind Research Institute in 2009. After surveying 741 students, 924 solicitors and 756 barristers, the Institute found 31% of solicitors and 16.7% of barristers suffered from high or very high distress levels 'severe enough to warrant clinical assessment,' compared to 13% in the general population.⁹

Regardless of whether this study accurately captures the extent and severity of mental illness in the legal profession, the alarming figures instigated the creation of long overdue initiatives, such as counselling services, mental health policies in disciplinary or regulatory actions and workplace policies for bullying and discrimination.¹⁰ But these undertakings by the legal profession may have omitted to pay sufficient attention to vicarious trauma.

A 2016 study by Mitchell Byrne and Grace Maguire of the University of Wollongong speculated that the lack of support for vicarious trauma in the legal profession has manifested in higher levels of symptoms, particularly depression, anxiety and stress, in comparison to mental health professionals - another professional group that deals systematically with trauma survivors.¹¹

Byrne and Maguire noted that support services for professionals who may be exposed to trauma victims have traditionally been isolated to the 'helping' professions such as mental health workers and social workers. While barristers also constitute a 'helping' profession, there has been limited study and less action taken to address the deficiency in professional support for the legal profession. Thankfully, the study attributed the greater vulnerability of lawyers to organisation and not individual personality characteristics.¹²

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Ways to prevent or control vicarious trauma

Some people are inherently more resilient to secondary trauma due to personal traits, such as conscientiousness, which allow them to overcome feelings of despair or hopelessness that may arise when dealing with a trauma victim.¹³ Others, who are more prone to emotional instability or neuroticism, may struggle to cope with successive cases that centre on traumatic experiences.¹⁴

Members of chambers should be mindful of managing vicarious trauma for themselves, but also in relation to colleagues. Where a colleague appears to be at risk of vicarious trauma, confronting them can worsen the potential effect of the trauma if not approached in a careful and knowledgeable manner. Awareness of the symptoms, effects and manifestations of vicarious trauma is critical to playing a constructive role in its prevention and treatment.

Bradey identified several preliminary methods of dealing with traumatic content, such as marking files with a warning, restricting access to the file and taking scheduled breaks from working. Bradey also counsels in favour of erecting physical boundaries such as not taking traumatic files home or at least designating a specific room for working on those files, so that traumatic content is physically, and, it is to be hoped, also mentally, separate from personal spaces for relaxation, sleep or spending time with family and friends.

Bradey further identifies processes that can be employed in anticipation of matters likely to trigger vicarious trauma, such as effective and continuous mentoring, speaking with colleagues, wellbeing checks administered by

mental health professionals, and managing workloads.

NSW Bar Association initiatives

BarCare is an independent professional counselling service designed to assist members of the New South Wales Bar to manage emotional and stress-related problems, such as marital breakdowns, drug or alcohol dependency and practice pressures. Go to the website at <http://barcare.org>

The Tristan Jepson Memorial Foundation (TJMF) is an independent, volunteer, charitable organisation whose objective is to decrease work-related psychological ill-health in the legal community and to promote workplace psychological health and safety. The TJMF Best Practice Guidelines for the Legal Profession are designed to protect and promote psychological health and safety in the legal workplace. The Guidelines have been endorsed by the NSW Mental Health Commission, which was one of 26 inaugural signatories, as were the College of Law and the university law schools. There are currently over 140 signatories to the TJMF Guidelines including the NSW Bar Association.

The TJMF Guidelines have been modified for use in Chambers and a Mental Health and Wellbeing Policy was developed by 6 St James. Both the Modified TJMF Guidelines and the Mental Health and Wellbeing Policy are available from the Wellbeing Committee of the NSW Bar Association.

The seminar given by Robyn Bradey in March of this year can be viewed at <https://www.nswbar.asn.au/for-members/health-and-wellbeing>

ENDNOTES

- 1 Gillian Iliffe and Lyndall Steed, 'Exploring the Counselor's Experience of Working With Perpetrators and Survivors of Domestic Violence' (2000) 15 *Journal of Interpersonal Violence* 393; Karen Ortlepp and Earle Friedman, 'Prevalence and Correlates of Secondary Traumatic Stress in Workplace Lay Trauma Counselors' (2002) 15(3) *Journal of Traumatic Stress* 213.
- 2 Lisa McCann and Laurie Pearlman, 'Vicarious Traumatization: A Framework for Understanding the Psychological Effects of Working with Victims' (1990) 3(1) *Journal of Traumatic Stress* 131, 132.
- 3 Karen Saakvitne and Laurie Pearlman, *Transforming the Pain: A Workbook on Vicarious Traumatization* (WW Norton & Company, 1996).
- 4 Robyn Bradey, 'Identifying, Mitigating and Managing Vicarious Trauma in Legal Settings: A Manual for Senior Lawyers, Practice Managers, Supervisors and Mentors' (2016).
- 5 Lila Vrkleviski and John Franklin, 'Vicarious Trauma: The Impact on Solicitors of Exposure to Traumatic Material' (2008) 14(1) *Traumatology* 106, 107.
- 6 Saakvitne and Pearlman, above n 5.
- 7 Laura Schauben and Patricia Frazier, 'Vicarious Trauma: The Effects on Female Counsellors of Working with Sexual Violence Survivors' (1995) 19(1) *Psychology of Women Quarterly* 49; Ginny Sprang, Carlton Craig and James Clark, 'Secondary Traumatic Stress and Burnout in Child Welfare Workers: A Comparative Analysis of Occupational Distress Across Professional Groups' (2011) 90(6) *Child Welfare* 149; Grace Maguire and Mitchell Byrne, 'The Law is Not as Blind as it Seems: Relative Rates of Vicarious Trauma Among Lawyers and Mental Health Professionals' (2016) *Psychiatry, Psychology and Law* 1, 2.
- 8 Vrkleviski and Franklin, above n 7.
- 9 Discussed in Adele Bergin and Nerina Jimmieson, 'Australian Lawyer Well-Being: Workplace Demands, Resources and the Impact of Time-Billing Targets' (2014) 21 *Psychiatry, Psychology and Law* 427.
- 10 Christine Parker, 'The "Moral Panic" Over Psychological Wellbeing in the Legal Profession: A Personal or Political Ethical Response?' (2014) 37(3) *UNSW Law Journal* 1103, 1106.
- 11 Maguire and Byrne, above n 9, 7.
- 12 Ibid 8.
- 13 Keren Cohen and Paula Collens, 'The Impact of Trauma Work on Trauma Workers: A Metasynthesis on Vicarious Trauma and Vicarious Post-traumatic Growth' (2013) 5(6) *Psychological Trauma: Theory, Research, Practice, and Policy* 570.
- 14 Maguire and Byrne, above n 9, 8.

The Barristers' Benevolent Association

The Barristers' Benevolent Association of New South Wales was established as a scheme whereby financial assistance may be provided to persons who are (or have been) members of the New South Wales Bar and who have practised predominantly in NSW. There are no fixed circumstances in which such assistance may be provided save for it being directed to 'necessitous and deserving cases'. It provides a fund for those who are suffering from hardship either in the short term or long term.

The funding is an important part of the collegiate life of the bar and how we look after each other.

Case study one

I was in my first few years at the bar when I felt a crushing pain in my chest. I was to begin a two-week trial the following Monday, and wanted to dismiss the pain as an expression of anxiety, or indigestion. Luckily, my partner persuaded me to call an ambulance. I had suffered a major heart attack. I received great care, but I was unable to work for a significant period of time, and a substantial tax bill was due.

A concerned colleague contacted the Bar Association's Benevolent Fund on my behalf. The fund provided an unsecured loan which gave me the breathing space I needed to concentrate on my recovery, and the time I need to return to good health.

Case study two

My eight year old son suffered a catastrophic accident which left him requiring full-time care. As a result, I had to stop work to care for him full-time over several years. As a result, our family went into substantial debt, and were under significant stress.

After several years, I wanted to return to practice but did not have the resources to fund my return. I contacted the Bar Association's Benevolent Fund. The fund agreed to make a short-term contribution to the cost of accommodation in chambers, which was enough to allow me to re-establish myself in practice.

For information on the Barristers' Benevolent Association of New South Wales, go to <https://www.nswbar.asn.au/for-members/benevolent-association>