



# Positioning the Win:

*From Intake to the Courthouse Steps*

Friday 25 April 2014

Vancouver BC

## Navigating the Client through Litigation Landmines

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### **Introduction**

Any life event that causes unusual physical or psychological distress can be regarded as traumatic. Emotional and psychological trauma is the result of extraordinary stressful events that shatters a person's sense of safety and security. This typically results in feelings of helplessness and sense of being exposed and vulnerable. Often clients have not grasped this about their recovery and do not understand the effects of their traumatic experiences and the extent of its influence on their behaviour and responses. How lawyers and their staff navigate clients in returning to their emotional mind fields will determine how re-victimized they feel by the actual traumatic event and by the legal process itself. There are a few things that lawyers can do, to help minimize the emotional stress of their clients. Doing so will assist clients in feeling safer, more trusting of the process and of legal counsel. In order for you as the lawyer to connect with your client you must gain awareness about how you yourself are affected by the events and challenges your client faces. Gaining awareness of your own feelings, response and reactions will assist you in securing a trusting bond with your client. Elbers, van Wees, Akkermans, Cuijpers and Bruinvels (2012) assert through the results of their qualitative research on, "Exploring Lawyer–Client Interaction" that empathy, timely communication, expertise and a lawyer's creative capacity to independently pursue facts helps stabilize clients and secure clearer directives from them.

### **Lawyers Commitment to Self-Care**

One way of positioning your clients to win is for you to be invested in your own self-care and that of your team. Self-care is a high priority in mental health professions, social workers and in the medical profession but, it is considered a sign of "weakness" in the legal profession (Doucet, 2014). It is highly unlikely that you can listen to the trauma suffered by your clients on a daily

basis and not be affected by it in some way. Stress, vicarious trauma, secondary trauma, compassion fatigue and burnout are according to Doucet, "occupational" hazards of the legal profession (2014, p.5) and is the result of the cumulative effect of prolonged exposure to trauma. Though the responses and reactions are unique to each person and may vary from lawyer to lawyer, it is a reality that must be contemplated in the vital work carried out by lawyers.

Stress is subjective. Typically, the basis of stress is when individuals feel like the demands on them are disproportionate to their personal, professional and social resources. Doucet (2014) posits that burnout is, "an emotional and personal depletion that arises out of feelings of stress" (p.6). The signs of burnout are seen in the increasing loss of idealism, energy and purpose (Eldwhich as cited by Doucet, 2014).

Doucet (2014) states that, "Studies have shown that the legal profession has one of the highest rates of mental health and addiction issues. The culture of the profession is adversarial and competitive, also perpetuating the idea that lawyers give advice but they themselves do not require it "(p.19-20). If you are a lawyer who cares, then you are vulnerable to vicarious trauma. This will have bearing on your professional capacity and how you function and cope in your personal life Figley (n.d) as cited by Doucet, who calls this the, "cost of caring" (2014, p.8).

**Symptoms of Secondary Traumatic Stress**

<b>Hypervigilance</b>	<b>Hopelessness</b>	<b>Disconnection</b>	<b>Inability to embrace complexity</b>
<b>Avoidance</b>	<b>Guilt</b>	<b>Poor Boundaries</b>	<b>Physical Ailments</b>
<b>Survival coping</b>	<b>Anger &amp; Cynicism</b>	<b>Loss of Creativity</b>	<b>Foreboding</b>
<b>Social Withdrawal</b>	<b>Sleeplessness</b>	<b>Irritable</b>	<b>Diminished Self-Care</b>
<b>Chronic Exhaustion</b>	<b>Insensitivity</b>	<b>Client Avoidance</b>	
<b>Fear</b>	<b>Illness</b>	<b>Inability to Listen</b>	

Trauma disrupts the thinking, feeling and physical processes of individuals with pervasive and long lasting consequences. This can be marked by hypersensitivity and reactivity with very little provocation or distrust, emotional disconnect, hardness, anger and aggression (Bremner, 2006). As such, it is imperative that the lawyer navigates his own trauma induced emotional landmines to ensure that what he says and does carries limited trigger value for the client.

### **Effective Self-Care Tips**

- Take stock of what is on your plate – carry out a non-judgmental inventory to determine areas of overload.
- Start a compilation of self-care ideas that are affordable and easy to do – enlist family and friends. You may see things you have not considered
- Find time for yourself every day – stop working through lunch.
- Delegate – ask for help at work and at home.
- Have a transition plan from work to home – use your time waiting in traffic or walking home to detach from work life.
- Learn to say no, more often and define your boundaries.
- Assess and monitor your trauma inputs - pictures you see (client related), trauma related stories you hear and movies you watch. Note the way you start your day by monitoring radio shows and the news you listen to.
- Learn more about compassion fatigue and vicarious trauma – monitor your stress symptoms.
- Consider establishing a relationship with a counsellor, leadership/personal coach or a senior person within your profession who has gained mastery in managing stress and who has effective systems in place to mitigate the effects of secondary trauma.

- Find simple ways to cultivate joy such as watching the stars for 20 minutes, taking a bath or savouring a good meal. Slow down.

### **Separating the Trauma from the Client**

Separating a person from his behaviour serves to preserve the human value of the person while addressing his behaviour. Conversely, when you speak of your client's injuries and trauma as separate from the client, you are likely to disempower and disrespect them further and cause them to become distrusting of you and tentative about the legal process. You can position your client to win by finding ways to validate their emotional and physical struggle and empower them throughout the decision making process.

Work to inject a statement of acknowledgment and validation from intake such as, "We understand that the collision has been a difficult experience for you and that your quality of life has changed significantly. This must be quite a frustrating and uncertain time in your life. We aim to represent you to the best of our ability and get you the best possible results". Insert an empathetic response into all written communication and verbal interaction. This communicates to your client that we see you, and that you are not just a legal matter.

One client I interviewed told me that the legal process was very unfamiliar and scary to him. Having little understanding of the law left him feeling more powerless and frustrated. Trust does not come easy to him but he felt that he had no choice but to trust his lawyer. Again, he felt he was taking a risk and felt vulnerable. He had to work to challenge his personal limitations, which added to his discomfort. His lawyer was able to earn and maintain his trust even when they encountered complications during his case. The ongoing assurance by his lawyer and the legal team helped the client endure the many months where "nothing moved" and helped him to remain hopeful (Male Client interviewed, 2014).

## **Understanding Trauma**

In order to grasp just how debilitating trauma can be for your client it is important for you to understand the nature of trauma. It is to those who suffer from the effects of it earth shattering, life changing and crushing of all their hopes and dreams. One client I recently worked with feels like her life has been stolen. She struggles to come to terms with the ongoing loss of capacity in the work she loves to do, and has been doing for 26 years. She has lost friendships as she repeatedly refuses social invitations because she is severely limited by the pain from her injuries. Her work ethic is strong. She goes to work puts on a brave front all day but is incapacitated the minute she walks through the doors of her home as she can finally surrender to the pain and tension she has been holding together all day. She described hiding in the cloakroom with the lights off trying to find some relief from the excruciating migraine she had fought all day and spoke of how she feared being caught by her boss. She would rather suffer at work than go home sick because she is tired of asking for concessions with regard to her injuries. She struggles with feelings of guilt because her colleagues have to pick up her slack at work and she has to be dependent on them to assist her with weight bearing tasks that she was accustomed to doing on her own. Her world has been shattered and re-organized in a way that is unfamiliar to her. The only constant in her life now is her pain (Female client interviewed, 2014).

A key component of trauma is a persistent feeling of powerlessness. This powerlessness stems from the experience of having factors change outside of a person's control. It is important that you and your legal team find ways and take every opportunity to allow the client to feel like they are involved in the decision making process in small and large decisions. As their lawyer, you must discern how to keep your clients informed without overwhelming them. Lawyers are experts in the field of law but clients are the experts on their own lives. Ensure that your client understands

the Mediation and Discovery procedures and is adequately prepared for them. Another way of empowering your client is to have a person on the legal team orient the client to the court process. Arrange for the client to be taken to the courtroom so that they are familiar with what a courtroom feels and looks like. These efforts will work to moderate the sense of powerlessness traumatized clients feel.

Traumatic experiences shake the foundations individual's beliefs about safety, and shatters assumptions of trust. Delays in legal proceedings are understandable and acceptable and anticipated by lawyers and their teams in the justice process. To traumatized clients however, it screams injustice, feeds their distrust, and may result in them disengaging in their own process to the point of becoming non-compliant. These are sure signs that your client is feeling unsafe. Be proactive about acknowledging what the delays may be communicating to the client and give them examples of how delays are to be expected in the justice system, as courts face their own challenges with the shortage of judges as one example.

### **Trigger Points that Re-traumatize via Recollection**

- Driving past the site and/or similar terrain, e.g. icy roads, drop-offs, etc. (MVA).
- Having to testify and recount the event is a form of re-traumatization; being challenged under cross-exam could be very emotionally taxing, leading to overload, and breakdown on the stand.
- Every repetition of the story invites re-traumatization, especially early on, following the traumatic event.
- Invisible are the sensory triggers that can be very powerful in an event-flashback; things such as smells, images and sounds



- Employers pushing people hard to get clients back to work is a form of re-traumatization
- If the trauma is an assault, fear of being alone, fear of situations, fear of locations (e.g. parks, e.g. parkades) or any setting similar to where the individual experienced trauma.
- Injury and the associated pain serve as constant reminders of the event.
- If the collision occurred while it was snowing, raining, a sunny day a dull day – driving to an appointment

The number of times a client is expected to relive and recount the accident may vary from case to case. The more catastrophic and longer term the injuries, the more they have to recount it. From current treaters to new treaters, each time they go to an IME or a DME, mediation, discoveries, every appointment with you their lawyer and the multiple times they have to answer questions of family, friends, acquaintances, employers and work colleagues, puts them head on in the path on ongoing re-traumatization.

### **The Brain and Trauma**

Having an understanding of how trauma alters the chemistry of the brain, will give lawyers and their teams, insight into the behaviours of clients and how to mitigate these consequences in a way that will allow for effective engagement of clients throughout their legal journey. (You will find many resources online with some reflected in the reference portion of this paper.)

Another client I interviewed recently described the extreme anxiety she endured prior to seeing her lawyer. Despite being prepared for Discovery by her legal team, the client felt that the atmosphere of the room was quite hostile and she felt alone. She felt intimidated; she could not think clearly (forgot the instruction from her lawyer) and fought a migraine the entire time. She found the whole process very intrusive and felt violated having to describe very personal details of

her life, which she felt, was unrelated to the collision. She described feeling more traumatized by the Discovery than the actual collision (Female client interviewed, 2014).

Exposing individuals to their fears or previous traumas without them first learning the accompanying coping techniques such as relaxation, imagery, self-soothing and grounding techniques is more likely to result in an individual being re-traumatized by the unsupported and unguided exposure to their traumatic experiences.

Exposure therapy is typically conducted within a psychotherapeutic relationship with a trained therapist experienced with the techniques to assist clients to face their fears through imagery, talk therapy as well as in vivo exposure, which is direct contact with one's fears, for example, getting into a vehicle after being in a car wreck. Exposure to a client's trauma outside of skilled and appropriate psychological support may be detrimental to a client and may interfere with legal outcomes because the client is destabilized.

### **Conclusion**

Actively addressing the negative influence of trauma creates a space for healthy and constructive legal practice. The success and well-being of lawyers, clients, and their cases depends in part on the lawyer's ability to skillfully negotiate the pressures on themselves and their clients. Trauma can be so damaging to clients that it negatively influences their relationship with their lawyer. Lawyers can feel worn down by the pressures of working with clients with challenging life situations and behaviors. Lawyers should look at their support groups and find those outlets to diffuse and debrief with to alleviate the effects of secondary trauma. In every case, lawyers must consider the psychological tools they should give to their clients. Serious consideration must be given to referring clients to counsellors for the purposes of collaborating with counsellors to ensure that clients are properly prepared to navigate through their litigation landmines.

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