



Vicarious trauma: the cumulative effects of caring

Cover Story

By Donalee Moulton, Canadian Lawyer Magazine, February 2, 2015

Over an 11-week period, five lawyers from Borden Ladner Gervais LLP frequently found themselves sitting in a Montreal courtroom listening as the horrors of Concordia University student Lin Jun’s murder were recounted in grisly detail. They also watched as those horrors unfolded on screen in a video made by convicted murderer Luka Rocco Magnotta. When not sitting in court as counsel to the Lin family, the BLG team were meeting to review evidence — including the video — and discuss the case in detail. “It was hard to acknowledge this was real. We’re used to seeing violence on TV, but we know it’s fake. You need to reconcile that one human being did this to another,” says Amélie Gouin, an associate in BLG’s corporate commercial litigation group in Montreal.

For many lawyers and judges (as well as jurors, courtroom personnel, and others), the violent, disturbing reality they witness inside and outside the courtroom as part of their profession can become debilitating. It can become vicarious trauma.

Vicarious trauma, also called compassion fatigue, is a form of post-traumatic stress disorder. “You can suffer from PTSD if you experience a life-threatening event or you are exposed to a life-threatening event. You end up with the same symptoms,” says Peter Jaffe, a psychologist and professor in the Faculty of Education at Western University in London, Ont.

The seeds of vicarious trauma are sown as legal professionals start to relive the experience of helping clients and the evidence involved in a case or cases. In doing so, they may become overwhelmed, isolated, distant, anxious, and more. “As a helping professional, you become a reservoir of other people’s trauma — first-person accounts, crime scenes, autopsies. Pretty soon you start to have the same PTSD your clients have. Feelings get transferred,” Jaffe notes.

Vicarious trauma can hit after one case or after years of handling or overseeing disturbing cases. Regardless of the timeframe, the process is the same for lawyers and judges. “They have recurring images and second thoughts. . . . The fact that human beings can do some terrible

things hits them very hard,” explains Dr. Isaiah Zimmerman, a clinical psychologist based in San Francisco and Arlington, Va., who has worked with judges suffering from vicarious trauma.

Former Ontario Superior Court Chief Justice Patrick LeSage knows this first hand. After presiding over the Paul Bernardo trial, which at the times was the most graphically horrific trial in Canadian history, he suffered the signs of vicarious trauma. “I didn’t expect that the visual depiction of crime would be so traumatic,” LeSage told *The Globe and Mail* in 2002. “It was like being hit with a sledge hammer. It was a very traumatic experience to watch a crime being committed, particularly against wonderful, young children.”

LeSage is not alone in his response to what he witnessed in the courtroom. Donald Murray, a criminal lawyer with Sealy Cornish Coulthard in Dartmouth, N.S., has been writing and presenting about vicarious trauma for more than a decade. His interest was initially sparked when he saw colleagues drift away from their litigation practice. “People affected withdrew or shifted their practice. A lot of fairly senior lawyers were saying, ‘I just don’t want to go to court anymore.’”

Withdrawal is one of the common symptoms of vicarious trauma. Other symptoms include difficulties solving problems, a sense of being disconnected from work and home, and feelings of powerlessness. In response, lawyers and judges may take on greater responsibility, work longer hours, and attempt to exert greater control over others. They may also become more distant and withdrawn, more cynical, and even more accident prone. It is not unusual for victims of vicarious trauma to develop chronic health problems. Sleep is also disturbed, notes Zimmerman, who has conducted interviews with more than 55 Canadian judges on the issue of vicarious trauma. “It impinges upon their consciousness. They can’t get rid of it.”

Vicarious trauma prevents individuals struggling to move on from regaining their former sense of self. The condition can also affect an individual’s ability to effectively practise law or sit on the bench. “You become a perfectionist. You start not meeting your own expectations,” notes Murray. “That’s part of the retreat. ‘If I can’t do it perfectly, I won’t do it at all, and I resent your asking.’”

In some cases, lawyers and judges simply can’t go on. LeSage has publicly said he decided to remove himself from further related hearings after Bernardo was convicted of the first-degree murders of two young women. “I concluded that I was not physically and mentally able to conduct the dangerous-offender hearing,” he said in a newspaper interview.

It isn’t just exposure to disturbing issues and images that make judges and lawyers — particularly those practising family and criminal law — develop vicarious trauma. The close relationship with clients, the bonds of trust that develop, and the desire to do the best possible job for those clients are all important factors. “[T]he empathy that is so critical to working with traumatized people also increases the likelihood of vicarious traumatization,” Jaffe wrote in an article he co-authored for the *Juvenile and Family Court Journal*.

Ironically, it is the fierce desire to help that can make lawyers helpless. Family lawyers are vulnerable in this regard, notes John Starzynski, a volunteer with the Ontario Lawyers' Assistance Program in Kitchener, Ont. "Family lawyers often pick this area because they want to do good. They really feel for their clients, which is part of the problem." Getting close to clients and handling difficult cases is a double-edged sword for family lawyers. "This is a difficult practice. It is draining," says Rachel Baron, a family lawyer and mediator in Toronto.

Fortunately, there are steps lawyers and judges can take to help prevent vicarious trauma and address symptoms should they emerge. Distance is important. "We are faced with difficult cases all the time. You have to be objective. You can't hold on to these issues," says Baron. "The ones who survive in this practice are the ones who do not become too emotional but are able to advocate on behalf of their clients. Sometimes clients don't like that. They feel like you're a surgeon, very cold and clinical."

Developing a thick second skin may be personal, but it should not be a singular experience. Indeed, isolation only increases the potential for developing vicarious trauma. For the four young BLG lawyers who got together before the Magnotta trial and watched what has been widely dubbed "the murder video," there was strength in numbers. "We were afraid this would be traumatic, but because we knew we were there on a mission, we weren't. Watching these images was necessary for us, the judge, the jury. This helped us," says associate Jean-Philippe Herbert.

In fact, says Zimmerman, "the most effective stress reducer is collegial discussion." He recommends people find what he calls a buddy judge or lawyer "someone who will listen and you can have a cup of coffee with during the trial." Over that coffee, judges and lawyers will have time for personal and emotional reflection.

For that discussion to be successful, the buddy needs to meet three key criteria, says Zimmerman. First, they must be available — in person, by phone, via Skype. It doesn't matter the medium, just that the person can be there when needed. Second, personality is paramount. Someone who is prone to preach or who rushes in with solutions is out. Finally, the buddy must be the supreme confidant. Absolute confidentiality is necessary both for code of conduct reasons and for personal peace of mind.

It is helpful to discuss issues and personal responses to those issues with a colleague because confidentiality can be maintained. But for many lawyers and judges, stepping outside the workplace to share their problems — without breaking privilege — is beneficial. "You need to have a close friend or confidant, someone who will be unconditionally supportive, but will be honest with you. If you isolate yourself, you don't have a perspective," says Starzynski, a past president of the Mood Disorders Society of Canada.

Balance in the broadest sense is also essential. At work, diversity will help legal professionals avoid the onset of vicarious trauma. "Don't give yourself a steady diet of problems you can't solve," advises Murray. "If you're a Crown attorney that is doing a lot of sexual assaults for four

months, you may need to do break and enters for four months.” For judges, diversity may be more difficult to come by but it is worth the inquiry. “Talk to the presiding judge or chief judge to remove yourself from the exposure,” says Zimmerman.

Lawyers and judges can also tip the scales in favour of a healthy mindset by finding some good in a world that can be filled with malevolence. “Other parts of your life need to let you find beauty and hope. You need to do good in some way. This allows you to see a problem and contribute to the solution in a positive way,” says Murray.

The BLG team, none of whom are suffering from vicarious trauma, found solace in the fact their contribution to the case was pro bono. “That gave us a sense we were doing this for a good cause. We could see how it was helping Mr. Lin,” says Gouin. “It makes us feel like we’re giving back.” In the aftermath of the trial, BLG created a secure web site to collect donations towards The Lin Jun Family Trust to support the three members of the Lin family. “All donations collected will help them rebuild their lives,” the firm said in a release, adding that, “In a gesture of solidarity with the members of the Lin family, BLG also encourages donors to send them a message.”

A little personal pampering is also advisable. “Get away on a holiday,” says Starzynski. “Leave your phone at home, your computer. Leave the office behind.”

And regardless of whether you’re in the office, at the beach, or savouring a cuppa joe with a close colleague, find time to physically release the stress of the job. Being active is important. Murray is a competitive figure skater; Gouin does crossfit; Herbert regularly hits the gym. Indeed, given the choice between an extra hour of sleep or an hour in the gym, he picks the latter. “It’s how you keep feeling good about what you do in a demanding job,” he says.

The physical activity doesn’t have to be rigorous or expensive, but it does have to be regular. Walking, for example, will take you outside the office and provide a fresh-air perspective to problems. “The minute I started articling, I started exercising,” says Baron. “There is nothing better for blowing off steam.”

Therapy is another positive option, even for lawyers and judges who are feeling fine. If your work brings you in close contact with the ugliness of the human condition, this can be an important preventive measure. “For high-risk lawyers, have a professional counsellor even if you feel okay. You never know when you’re not going to feel okay,” says Starzynski.

Law firms, justice departments, and the judiciary have a role to play as organizations in building supportive cultures for the legal professionals in their ranks. The first step is acknowledging vicarious trauma is an issue. “You have to name the problem. It has to be on the agenda,” says Jaffe, director emeritus for the Centre for Children and Families in the Justice System (London Family Court Clinic).

In a culture that often promotes strong, silent types, such open acknowledgement can be difficult. “There is a perception, we should be able to cope with this,” says Murray.

In a presentation he gave to the Nunavut branch of the Canadian Bar Association, Murray noted: “[L]awyers, 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.”

In addition, when lawyers and judges are immersed in a case, they are concentrating on the law, legal procedures, and strategy. “You’re focused on one side of your brain,” says Jaffe. “The feelings side of your brain is less engaged.”

When the case is over, or after many cases have ended, vicarious trauma may set in. For some lawyers, Murray notes, particularly those in larger firms, their ability to do the job may be questioned if they open up about having problems. At the very least, they may be concerned their competency will be questioned. It’s the stigma of having a mental health issue. Firms, courts, and justice departments need to make it clear they don’t buy into the stereotypes and healthy lawyers are a top priority.

Perception and stigma have worked together to downplay vicarious trauma in the legal profession. Daniel Walker, a family lawyer with Coady Filliter in Halifax, for example, was not familiar with the term before Canadian Lawyer approached him for comment. “I certainly have never heard of vicarious trauma or any form of PTSD affecting family lawyers as a consequence of what they are exposed to in their files,” he says.

Slowly the profession is turning its attention to this particular form of post-traumatic stress disorder. Many experts feel the judiciary is further ahead than law societies and the private bar. The National Judicial Institute, for example, has conducted sessions in some of its programs geared to exploring the challenges judges face after daily exposure to traumatic events and materials in their courtrooms, and is providing some strategies for dealing with the effects these events and materials may cause.

It is difficult to assess the prevalence of vicarious trauma in the legal profession and whether it is increasing. A study published by Jaffe and his colleagues in 2003 investigated symptoms of vicarious trauma, coping strategies, and prevention suggestions in 105 judges who completed a survey.

The majority of judges (63 per cent) reported one or more short- or long-term symptoms they identified as a work-related vicarious trauma experience. Female judges reported more symptoms, as did judges with seven or more years of experience. In addition, female judges were more likely to report internalizing their difficulties, such as becoming depressed, losing their

appetite, or suffering fatigue, while judges with more experience reported higher levels of externalizing or hostility symptoms including intolerance for others, anger, and frustration.

A study published in the *Pace Law Review*, “Vicarious trauma in attorneys,” assessed the presence of what the authors called secondary trauma responses and symptoms of burnout in lawyers working with victims of domestic violence and criminal defendants. Compared with mental health providers and social services workers, the researchers found the lawyers surveyed demonstrated significantly higher levels of vicarious trauma. This difference appeared related to the lawyers’ higher caseloads and lack of supervision around trauma and its effects.

Another reason legal professionals may be at higher risk for vicarious trauma is related to resilience. In her presentation to the 2013 Association for Continuing Legal Education annual meeting, Kathryn Story stated that lawyers as a group are less resilient than most other professionals. In the U.S., they have the highest rate of major depressive disorders among professionals, higher rates of substance abuse, and suffer up to 15 times the normal rate of clinical distress (anxiety, depression, phobias). They also have higher levels of skepticism and pessimism, are more likely to be risk averse, prize independence more, and have lower levels of trust.

The legal profession’s vulnerability to vicarious trauma may be growing. There are increasing concerns that in a social media world, which encourages documenting every detail of a person’s life, the images, incidents, and issues facing lawyers and judges are getting disturbingly more graphic. In the courtroom, in the office, in trial preparation, it is less and less about what someone said or even what they saw. More and more, it is about detailed and visual forensic evidence, crime scene photos, video clips, and other unthinkable images.

Such secondary exposure is significant, notes Jaffe. “The more real it is, the harder it is to protect yourself.”