

TRAUMA-INFORMED LAWYERING IN THE STUDENT LEGAL CLINIC SETTING: INCREASING COMPETENCE IN TRAUMA INFORMED PRACTICE

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Introduction

Research in clinical law,² critical legal studies,³ and therapeutic jurisprudence⁴ has spotlighted serious challenges that clients face when they encounter the law, particularly when they have experienced previous trauma. Lawyers who fail to recognize and effectively respond to clients' trauma may struggle to communicate, interpret narrative, and build trust – all of which are foundational to the lawyer-client relationship. Trauma is common across human experience, with more than 70% of the general population reporting at least one traumatic life experience and 30% reporting

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² See for example: Sarah Buhler, "'Don't Want to Get Exposed': Law's Violence and Access to Justice" (2017) 26:1 J L & Soc Pol'y 68.; Sarah Buhler, Sarah Marsden & Gemma Smyth, *Clinical Law: Practice, Theory, and Social Justice Advocacy* (Toronto: Emond, 2016).; Stephen Wexler, "Practicing Law for Poor People" (1970) 79:6 Yale LJ 1049.; Austin Sarat, "'The Law is All Over': Power, Resistance and the Legal Consciousness of the Welfare Poor" (1990) 2:2 Yale JL & Human 343.

³ See for example Patricia J Williams, *The Alchemy of Race and Rights* (Cambridge, Mass: Harvard University Press, 1991); Derrick A Bell, *Race, Racism, and American Law*, 5th ed (New York: Aspen Publishers, 2005); Patricia Monture-Angus, *Thunder in my Soul* (Halifax, NS: Fernwood Publishing, 1995).

⁴ See for example, David B. Wexler and Bruce J. Winick, *Essays in Therapeutic Jurisprudence* (Durham, NC: Carolina Academic Press, 1991).

four or more.⁵ Although trauma is not a unique experience, it is experienced more often, and with greater impact, by people who are marginalized within dominant power structures. This makes trauma particularly relevant for lawyers who work with populations that are systematically marginalized, often in intersecting ways – as is the case for many clients who seek support from student legal aid clinics.⁶

Drawing on a growing body of research on trauma informed approaches in lawyering, psychology, and pedagogy, the co-authors – two legal clinicians/academics and a social psychologist – developed and evaluated a trauma informed educational Module for law students working in clinical law settings with clients experiencing low income. The impetus for this project was the observation that law students struggled to comprehend how their clients' thoughts and behaviours could be psychosocial manifestations of trauma, and adapt their legal practice accordingly. To address this, we approached this work using the neurobiology of trauma as the pedagogical frame. Our goal in using this framework was to provide a pathway to understanding trauma that was grounded in the hard sciences. We hoped that the relative indisputability of

⁵ Corina Benjet et al, "The Epidemiology of Traumatic Event Exposure Worldwide: Results from the World Mental Health Survey Consortium" (2016) 46:2 *Psychological Medicine* 327.

⁶ Student legal aid clinics provide legal services in legal areas that disproportionately impact people living in poverty. Students are supervised by practicing lawyers and typically work in clinics for pay or credit. In the model we are most familiar with, the clinic experience is accompanied by a class or other teaching and learning space that allows for substantive education on legal and client-facing issues as well as space for reflection and critical dialogue. The clinics in this survey represent client in the following legal areas: immigration and refugee, social benefits, criminal, and employment.

basic brain functioning would offer an alternative narrative for clients' sometimes confusing, challenging, and even self-defeating behaviours, thereby lessening victim blaming.⁷ We also attempted to avoid a purely deficit-based approach to legal practice in which clients' trauma experiences result in "problem" behaviours; rather, we reframed these experiences as useful coping mechanisms that can require different approaches to lawyering. Due to the realities of legal clinic schedules, the Module is short and targeted for implementation in the context of students' immediate needs. Using open questions alongside a scenario, we evaluated this Module through a pre and post-test analysis to assess how students interpreted client behaviour before and after receiving trauma informed training. Before explaining the results of our analysis, we review the background to our work, including the relevant literature and theory that influenced this project. Although we had quite a specific goal in mind, the results of this project demonstrate the potential wide-ranging benefits of trauma informed lawyering, and support its place as a central component of legal clinic training and practice.

⁷ These two examples are associated with trauma behaviours noted in M Lynne Jenkins, "Teaching Law Students: Lessening the Potential Effects of Vicarious Trauma" (2013) 37:1 *Man LJ* 383 at 407. See also Lynette Parker, "Increasing Law Students' Effectiveness when Representing Traumatized Clients: A Case Study of the Katherine & George Alexander Community Law Center" (2007) 21 *Geo Immigr LJ* 163 at 170, where the author notes that: "This avoidance [of trauma experiences] translates into missed appointments, chronic lateness, failure to produce requested documents, and avoidance of the law student's questions." Jean Koh Peters and Susan J Bryant, "Five Habits for Cross-Cultural Lawyering" in Kimberly Barret and William George, eds, *Race, Culture, Psychology and Law*, (Thousand Oaks, CA: Sage Publications Inc., 2005)

Why Neurobiology in the Context of Trauma Training?

We believe that what differentiates our approach to trauma informed lawyering is less about the method of delivery, and more about our decision to use the neurobiology of trauma as the theoretical and practical framework. We have personally found great insight and benefit in using the neurobiology of trauma in both clinical practice and in supporting survivors of sexual assault.

Our previous experiences and education taught us that neurobiology has much to offer when it comes to interpreting challenging and confusing behaviour. For example, it reveals that our bodily responses to trauma are often inverse to our expectations about what should happen when trauma occurs. We hypothesized that perhaps a neurobiological framework could have the same effect in a clinical legal context.

We had two primary goals in teaching the neurobiology of trauma. The first was to explain, in simple terms, the brain structures and neurochemicals that are active during traumatic events. The second was to explain the subsequent effect these have on cognitive functioning both during and after a traumatic event. For example, we sought to address the interplay between our brains and memory when we experience

trauma, given the degree to which client success is often determined by perceptions of recall accuracy and credibility. As Lynette Parker notes,

[c]lients who have experienced trauma also have difficulty during trial preparation, exhibiting patterns of forgetfulness and avoidance. For example, the client may have difficulty remembering specific facts or incidents, either because he has blocked the events or because discussing the events forces him to re-live the traumatic experiences, which the client wants to avoid.⁸

Memory, particularly in the context of trauma, is complicated and can contravene our common-sense expectations – for example, we often expect that intense traumatic memories will be deeply encoded and easy to recall. Although this is possible, it is often not the case. Even at the best of times, regardless of whether a client has experienced significant trauma, memory is highly susceptible to influence. It can be affected by a confluence of factors, including the passage of time, and literature shows that consistency in recall and accuracy of recall are not necessarily correlated.⁹ For

⁸ Parker, *ibid* at 171.

⁹ Aileen Oeberst, “If Anything Else Comes to Mind... Better Keep it to Yourself? Delayed Recall is Discrediting – Unjustifiably” (2012) 36:4 L & Human Behaviour 266.; William J Friedman, “Memory for the Time of Past Events” (1993) 113:1 Psychological Bulletin 44.; Hilary Evans Cameron summarizes this research thus: “‘The consistent finding’, across all of the research to date, ‘is that after about 2 weeks, individuals have difficulty accurately dating their past experiences, suggesting that date of occurrence information is typically not retained in memory’ – and our trouble only increases as time passes ” in “Refugee Status Determinations and the Limits of Memory” (2010) 22:4 Intl J Refugee L 469 at 471.

people who are already psychologically vulnerable, the effects are even more marked.¹⁰ Hilary Evans Cameron provides a helpful review of literature on memory for survivors of natural atrocities, genocide, and other traumatic events.¹¹ She cites concentration camp survivors who were unable to accurately date when they were imprisoned, or even the season.¹² Memory is also susceptible to frequency bias. If we can remember an event, we tend to report that it happened frequently, and humans often confuse how frequently an event happened with how frequently they thought about it.¹³ Recall of event duration is also usually inaccurate, depending on the context.¹⁴

For lawyers, the implications of memory research are troubling as so much of legal practice relies on the perceived accuracy of recall. Psychological research has shown that the stories we are most likely to believe are the ones that are presented as clear, consistent, and chronological – and yet, ironically, this is at odds with the actual encoding of traumatic memory in the brain. The encoding of traumatic memories is

¹⁰ Dr Juliet Cohen, "Errors of Recall and Credibility: Can Omissions and Discrepancies in Successive Statements Reasonably be Said to Undermine Credibility of Testimony?" (2001) 69 *Medio-Legal Journal* 25-34.

¹¹ Michael C Hansen, "January 1986 Northeastern Ohio Earthquake", *Ohio Geology Newsletter* (Summer 1986) 2-5.; Sven-Åke Christianson & Birgitta Hübnette, "Hands Up! A Study of Witnesses' Emotional Reactions and Memories Associated with Bank Robberies" (1993) 7:5 *Applied Cognitive Psychology* 365.

¹² Willem A Wagenaar and Jop Groeneweg, "The Memory of Concentration Camp Survivors" (1990) 4:2 *Applied Cognitive Psychology* 77.

¹³ Gillian Cohen and Rosalind Java, "Memory for Medical History: Accuracy of Recall" (1995) 9:4 *Applied Cognitive Psychology* 273.

¹⁴ Christopher DB Burt, "Reconstruction of the Duration of Autobiographical Events" (1992) 20:2 *Memory and Cognition* 124.

fragmented and disorganized, particularly in the immediate aftermath of an event.¹⁵ The science of traumatic memory is contrary to the beliefs and expectations of inexperienced lawyers and students, who are likely to read confusion, and lack of clarity or linear thought as indicators of disingenuous behaviour or unreliability.¹⁶ We recognize that most lawyers do not have an extensive background in biology and a neurobiological framework has the potential to be abstract and overwhelming. We do believe, however, that when presented simply and tied to concrete examples it has the potential to challenge firmly held, stigmatizing beliefs about trauma survivors and their “problematic” behaviour, for example, when a client changes their story on the witness stand.

The definition of trauma that we used in the Module was influenced by working definitions that have been adopted by other legal clinics, as well as critical literature on the topic. Sarah Katz and Deeya Halder defined both trauma and traumatic event as follows:

¹⁵ Jessica D Payne et al, “The Biopsychology of Trauma and Memory” in Daniel Reisberg & Paula Hertel, eds, *Series in Affective Science: Memory and Emotion* (New York: Oxford University Press, 2004) 76. See for example Joyce W Lacy & Craig EL Stark, “The Neuroscience of Memory: Implications for the Courtroom” (2013) 14:9 *Nature Reviews* 649.

¹⁶ See for example Jean R Sternlight & Jennifer Robbennolt, “Good Lawyers Should Be Good Psychologists: Insights for Interviewing and Counseling Clients” (2008) 23 *Ohio St J Disp Resol* 437. The authors review common misconceptions that lawyers have about their clients premised on faulty assumptions about memory, perception, decision-making, and communication and review basic psychological principles relating to all of these phenomena.

[a]n event is defined as traumatic when it renders an individual's internal and external resources inadequate, making effective coping impossible. A traumatic experience occurs when an individual subjectively experiences a threat to life, bodily integrity or sanity.¹⁷

Judith Lewis Herman emphasizes the relational elements of trauma, writing that "traumatic events overwhelm the ordinary systems of care that give people a sense of control, connection, and meaning."¹⁸ Trauma is both an experience and an ensuing, ongoing response to that experience. Psychologist Bonnie Burstow has addressed the complexity and depth of this response, describing it as "[a] concrete physical, cognitive, affective, and spiritual response by individuals and communities to events and situations that are objectively traumatizing."¹⁹ What is experienced as trauma, and the effect that it has on our bodies and behaviours, may be influenced by the developmental age of the victim, personal characteristics, and situated contextual factors including social, familial, economic, political, and other circumstances. Trauma is not necessarily exclusive to a single isolated event, but can also develop as a consequence of daily experiences of racism, sexism, homophobia, transphobia,

¹⁷ Sarah Katz & Deeya Haldar, "The Pedagogy of Trauma informed Lawyering" (2016) 22 *Clinical L Rev* 359 at 364.

¹⁸ Judith Lewis Herman, *Trauma and Recovery: The Aftermath of Violence – from Domestic Abuse to Political Terror* (New York: Basic Books, 1992) at 33.

¹⁹ Bonnie Burstow, "Toward a Radical Understanding of Trauma and Trauma Work" (2003) 9:11 *Violence Against Women* 1293 at 1304.

ableism, and poverty. In this sense, trauma and traumatic events can include insidious experiences of systemic inequities including:

...the daily awareness of the possibility of rape or assault, the daily struggles to stretch insufficient wages so that the family eats, encountering yet another building that is not wheelchair accessible, and seeing once again in people's eyes that they do not find you fully human.²⁰

Trauma is inherently political as it occurs within circumstances that are inextricable from the political mediation of the contexts that propagate trauma. Consequently, understanding the ways in which insidious trauma can work to produce traumatic stress requires an understanding of intersectionality and intersectional subordination.²¹ Kimberly Crenshaw describes intersectional subordination as something that: "need not be intentionally produced; in fact, it is frequently the consequence of the imposition of one burden that interacts with pre-existing vulnerabilities to create yet another dimension of disempowerment."²² This concept of intersectionality is important in thinking about definitions of trauma, defining what constitutes a traumatic event, insidious trauma, and trauma informed approaches.

²⁰ *Ibid* at 1308.

²¹ Kimberly Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color" (1991) 43:6, *Stanford L Rev* 1241.

²² *Ibid* at 1249.

Truly understanding trauma and the experience of trauma requires us to consider the specific life circumstances of the person subjected to it.

In legal aid clinics where experiences of marginalization and oppression are inevitable, this is of particular importance. In fact, Sara Gold argues that lawyers working with people experiencing poverty “should presumptively adopt a trauma informed practice approach regardless of the subject matter of the representation.”²³

Legal aid clinics work with people in areas of law including criminal, social benefits, residential tenancies, criminal injuries, family, employment, human rights, and immigration and refugee.²⁴ Common to all clients is the lived experience of poverty. Because of the intersectional nature of poverty, higher than average groups of clients are racialized, Indigenous, sole support mothers, live with a disability, and/or have experienced abuse in many forms.²⁵ Some have experienced homelessness or are precariously or inappropriately housed. Many are over-policed. The evident disparities and disempowerment experienced by legal clinic clientele due to trauma can confound and frustrate students, which makes key tenets of lawyer-client relationship building such as trust, empathy, and understanding difficult to establish.

²³ Sara Gold, “Trauma: What Lurks Beneath the Surface” (2018) 24 *Clinical L Rev* 201 at 201.

²⁴ Here we are referencing Legal aid clinics in Ontario, the context within which two of the authors have worked.

²⁵ See for example: Canada, *Stop Family Violence: Breaking the Links Between Poverty and Violence Against Women*, prepared by Jane Gurr et al., (Ottawa: Public Health Agency of Canada, 2008) online: <https://www.canada.ca/en/public-health/services/health-promotion/stop-family-violence/prevention-resource-centre/women/violence-against-women-resource-guide/reality-poverty-violence.html>.

Our work was informed by other clinics that have introduced trauma informed practices. Lynne Jenkins, for example, described her experience introducing training on vicarious trauma to law students at the Barbra Schlifer Clinic in Toronto, Canada, a legal aid clinic specializing in violence against women.²⁶ We also learned from the Katharine and George Alexander Community Law Centre (KGACLC) which has experimented with and tested a wide range of approaches to trauma informed lawyering.²⁷

Theory and approaches to trauma in psychology are vast and we cannot hope to meaningfully engage all of this literature. Therefore, we relied on a “harm reduction” approach to client engagement in which we employed well-established findings in psychology to minimize harm to clients. Our goal was twofold. First, we aimed to reduce the likelihood that student lawyers will blame future clients for the behaviours they exhibit, and, second, we aimed to reduce the likelihood that they will contribute to client revictimization. We also drew from positive psychology, which emphasizes the value of strengths-based approaches. We have found fault with methods that rely upon purely deficit-based approaches to working with clients, which we believe can lead to its own form of paternalistic treatment. In our Module we emphasized that clients and communities who have experienced trauma are able to meaningfully

²⁶ Jenkins, *supra* note 8.

²⁷ Parker, *supra* note 7.

engage with supports and should be recognized for their resiliency. After all, if they have made it to your office, they have survived.

Our work was informed by a particular approach to lawyering – namely, an anti-oppressive approach to practice that recognizes the individual and structural barriers inherent in systems of colonialism, patriarchy, racism, sexism, heterosexism, cisnormativity, ableism, classism, and ageism. We also attempted to construct a training curriculum with critical theory woven throughout. For example, we incorporated materials on institutions-as-trauma including residential schools and government income maintenance programs, immigration and other legal systems in which constant surveillance, scrutiny, and bureaucracy act as forms of trauma.

Trauma Informed Approaches

Trauma informed approaches are those that consider the potential breadth of a client's experience and its differential effects on their behaviour. Trauma informed approaches also urge lawyers to pay attention to their own experiences of trauma, be it direct or vicarious, as it relates to their client work. Katz and Halder write that

[t]he hallmarks of trauma informed practice are when the practitioner, here a law student, puts the realities of clients' trauma experience at the forefront in engaging

with clients and adjusts the practice approach by the individual client's trauma experience. Trauma informed practice also encompasses the practitioner employing modes of self-care to counterbalance the effect the client's trauma experience may have on the practitioner.²⁸

Becoming trauma informed means understanding how trauma occurs and its consequences, as well as being educated about the political context in which it has arisen. It means "...[b]eing educated about the impact of interpersonal and political violence and victimization on an individual's life and development."²⁹ This means understanding the ways that gender, ability, class, sexual orientation, and racism, might intersect with trauma and how it is experienced and interpreted. In addition to the lawyer-client interaction, a trauma informed approach to client services "...acknowledges the prevalence and impact of trauma and attempts to create a sense of safety for all participants, whether or not they have a trauma-related diagnosis."³⁰ There are multiple ways trauma might manifest in the relationship between the client and the legal organization as a whole. Ideally, a trauma informed approach must be undertaken holistically in order to try to ensure that everyone is working to create a safe atmosphere and do no further harm to clients.

²⁸ Katz & Halder, *supra* note 17 at 361.

²⁹ *Ibid* at 369.

³⁰ *Ibid.*, citing Substance Abuse and Mental Health Services Administration, *Essential Components of Trauma informed Judicial Practice* (2013), online: SAMHSA <https://www.nasmhpd.org/sites/default/files/JudgesEssentials_5%201%202013finaldraft.pdf>

Methods

We piloted the Module on three occasions in three locations (Toronto and Windsor, Ontario, and Saskatoon, Saskatchewan). Participants at each location were law students in legal clinics. On each occasion we invited attendees to participate in the evaluation, which involved the completion of pre and post-test qualitative surveys comprised of open-ended questions, as well as a scenario analysis. We treated the responses to the qualitative survey as formative feedback and refined the Module after each presentation.

The overarching goal of the Module was to increase competence in trauma informed practice and subsequently decrease the likelihood that student lawyers would, in the future, compound the existing trauma of their clients. This outcome, however, is methodologically challenging to measure. Consequently, we made the decision to evaluate shifts in students' beliefs and knowledge as a proxy for potential outcomes. Specifically, we compared pre and post-test evaluations for an increased ability to identify client behaviours that may be indicative of prior traumatic experience. We also evaluated students' ability to identify incidents and social structures that may exacerbate traumatic experiences.³¹

³¹ These goals are not dissimilar to the goals listed in Jenkins' article, "(1) to teach law students to identify clients who have been victims of trauma; (2) to provide students with techniques for effectively representing these clients; and (3) to teach students the concept of vicarious trauma and techniques for self-care." Jenkins, *supra* note 8 at 181.

The purpose of the pre-test³² was to provide us with a base understanding of students' experiences with clients to date, and to examine the apriori explanations they offered for client behaviour. We asked participants to provide examples of client interactions they found challenging and to reflect upon the source of these challenges. The questions were designed to assess whether students relied upon client-blaming narratives to explain client behaviour, as we hypothesized they would. Participants were also asked to identify their own feelings and thoughts in response to their perceptions of client behaviour. Finally, we asked participants to consider a hypothetical scenario with a client and offer an interpretation of the client's behaviour and suggestions for how they would respond to this specific situation.

In the post-test survey we assessed the participants' overall perceptions of the training and, specifically, whether they perceived it to be an effective tool for understanding client behaviour. We also assessed whether the training was effective in teaching them to identify indicators of trauma and strategies for working with clients who have experienced trauma. We asked them to respond a second time to the hypothetical scenario from the pre-test. This allowed us to compare responses and determine whether the Module was effective in providing students with a trauma informed analysis of client behaviour and strategies for working with clients. Additionally, we asked questions that were intended to draw out students' feelings about working with

³² See Appendix A.

clients who have experienced trauma, as well as questions about managing potential for vicarious trauma.

Participants were informed of the training and research by email and were contacted by a research assistant with an invitation to participate. It was explained that attendance at the training was mandatory, but participation in the research was voluntary. Participants were provided with a link to the online pre-test evaluation, which they were required to complete prior to the beginning of the training session. Following the training, the research assistant administered the post-test. Participants who brought their laptops had the option of completing it online or they could complete a paper version.

We have chosen to report the findings from two of the three sites. We excluded the data from the first administration of the Module due to a low response rate and poorly detailed responses. The first time we delivered this training we asked participants to complete the pre-test survey online, in advance of the training, and many forgot to do it. Following the training they were eager to take their short lunch break and rushed through their responses. Subsequently, we adjusted the procedures and built in time at the beginning and end of the training to complete the evaluations and provided lunch. In total, the responses of 19 participants from two sites were included in the analysis.

Analysis

Responses to the qualitative survey and scenario analysis were subjected to both experiential and critical thematic analysis.³³ Experiential research takes the reported experiences and observations of the participant at face value and prioritizes their interpretation of events. For example, when we asked participants to identify challenging client behavior we were prioritizing their subjective experience of ‘challenging’ behaviour. We also analyzed the data critically, however, by interrogating the underlying meaning and assumptions in the responses. Further, we looked for a shift in participants’ responses from pre to post-test and found an increase in their own critical analysis of their experiences with clients, which was consistent with the goals of the Module.

Each of the three authors participated in the analysis. We followed the principles of thematic analysis which guide the researcher to become intimately familiar with the data. In the process of reading and re-reading we began coding the data by noting recurring observations and patterns that we subsequently organized into themes. Once we had completed our individual analyses, we compared our findings and organized our themes. From this, we collectively determined the most salient themes and assigned labels to describe the them. Major themes identified include the

³³ Virginia Braun and Victoria Clarke, “Using thematic analysis in psychology” (2006) 3:2 *Qualitative Research in Psychology* 77.

following: shifting from emotion-driven, hesitant responses [to clients] to confident, strategic responses; increased empathy and perspective taking vis a vis neurobiology; and concern for how to implement trauma informed practice given the practical constraints of most clinic settings.

Pre-test Findings

The pre-test findings confirmed that students experienced many encounters with their clients to be frustrating. Frustration arose from multiple sources including: the client not being forthcoming with information; client anger with the legal system and the legal process; clients' unrealistic and unmanageable expectations; a lack of trust in the law student; clients missing multiple meetings and not prioritizing their legal matter; and a general lack of cooperation. The students attributed their frustration to the behaviour of the client, as opposed to stemming from their approach to working with the client. In other words, students engaged in what can be described as "client-blaming" in their description of their own frustrations with the encounter. Encapsulating all of these themes, two students remarked as follows:

[c]lient would not follow procedures and became frustrated when they did not attain the results they were looking for.³⁴

³⁴ Pre-Test Survey at 5.

[c]lient was very rude and did not appreciate the time the lawyers and students were putting into their file. She wanted to be treated as if she was the only client to the clinic and was frustrated that her turn around rate on her matter was not within a day or two (but rather was taking weeks – this was a complicated matter).³⁵

The student participants' responses suggested that they struggled to empathize with the clients' perspectives and offer non-blaming explanations for frustrating client behaviours. The student participants demonstrated a consistent presumption that clients should be able to behave reasonably, rationally, and comprehend bureaucratic delays and limitations. It was evident that the students had expectations about what constituted reasonable client behaviour. For example, clients were often deemed unreasonable if they engaged in behaviour or sought remedies that were not aligned with what the student lawyer believed to be the best course of action. One student described their experience working with client settlements as,

I had some clients who frustrated me because their egos got in the way of finding a solution. Their pride and need to "win" the dispute made it impossible to reach a settlement, even if the settlement was in the client's best interest. ³⁶

³⁵ Pre-Test Survey at 5.

³⁶ Pre-Test Survey at 18.

When clients failed to act in the expected ways, students also attributed the behaviour to the difficult nature of the client. In the example above the student determined that the clients' actions were self-defeating and attributed them to the client's ego.

The student lawyers frequently failed to recognize the inaccessibility of legal procedures as being relevant in their client interactions. When asked about interactions with clients that evoked frustration one student complained of a client, "not understanding the limits of the law and not willing to compromise expectations."³⁷ The majority of students did not reflect on their own part in the lawyer-client relationship, nor the role of the legal system. Interestingly, in analyzing the problems described by students the researchers found many possible explanations for client behaviours besides trauma. Nonetheless, trauma informed training was ultimately still useful in combating biases and assumptions regarding clients' behaviour beyond those traditionally attributable to trauma.

The student lawyers also demonstrated a tendency to perceive their clients as disingenuous and this perception took multiple forms. Assessment of client credibility was imbued with insinuations and explicit suggestions that the client was lying, not being forthcoming, or changing their story. Responses focused again on the client and

³⁷ Pre-Test Survey at 18.

their motivations for lying or not telling the whole truth. One student remarked that they interpreted a client to be disingenuous when,

a client [was] just telling me what I want to hear... not the truth... [it] frustrated [me] because they are hurting themselves in the long run and wasting my time.³⁸

In this vein, when the students were unable to glean linear stories from their clients, or received accounts that contained internal contradictions, they often questioned the credibility of the client rather than reflecting upon the context and their relationship with the client. One student commented,

[o]ften times I had to take down details of events that happened. When the details start to contradict too much or have too many holes, that's when I start questioning the client's claims.³⁹

While research participants did not commonly describe their clients as "lying" to them (indeed, some were at pains to avoid this term), they provided considerable detail illustrating the perception that the client exaggerated, embellished, or provided

³⁸ Pre-Test Survey at 19.

³⁹ Pre-Test Survey at 19.

inconsistent accounts in order to gain a particular outcome. As one student remarked, “I’ve never felt that clients were lying, but somewhat exaggerating or embellishing their stories to gain refugee status.”⁴⁰

Students also interpreted the client as being disingenuous when the client focused on “non-legal” issues and attributed the inability of the client to ‘focus’ on the client’s ulterior motive. Students had difficulty conceptualizing the relevance and breadth of the “non-legal” elements that pervade the lawyer-client relationship and are essential to their role in supporting clients. As one student described:

where after [a] year of service and no progress, it seemed the client was simply interested in socializing or looking for an outlet to share their troubles, rather than seek the services we provided. [I] felt a bit trapped, as we could not dismiss the client outright, yet we weren’t able to fully commit to a resolution because there was little we could do to resolve it.⁴¹

As this quote indicates, students grappled with the divide between what they perceived as legally relevant and what was relevant to the client. The relevance of

⁴⁰ Pre-Test Survey at 22.

⁴¹ Pre-Test Survey at 19.

building rapport and trust was often absent from student descriptions of encounters with clients that were outside the scope of “legal” support. Another example being a student describing a frustrating encounter as follows:

[t]he client was very agitated, and the information he shared that was not related to his case was concerning. At the beginning I felt very overwhelmed by the client. [N]ot sure how to react o[r] take the information that he shared about other individuals that had nothing to do with his case.⁴²

Student lawyers seemed to expect that clients would have the capacity to discern what was “legally” relevant and what was a “non-legal” issue. The student lawyers were left exasperated when clients would not adhere to this distinction and would seek support for issues that the students perceived as being beyond the scope of assistance they could provide. The student lawyers struggled to comprehend the multi-faceted nature of their role in supporting and referring clients.

To better assess the pre-training attitudes and thought processes of students regarding their client interactions, we provided a hypothetical scenario describing a client, Aisha, (outlined in full in Appendix B) who engages in behaviours that could be

⁴² Pre-Test Survey at 6.

perceived as frustrating, confusing, or unusual. In responding to the scenario, the student lawyers demonstrated some empathy for the Aisha's circumstances, but the focus of the frustration was still directed towards her. The students generally recognized that Aisha was in distress but were less clear about the source of the distress and what to do about it. Some participants felt the best approach was to emphasize to Aisha why they were questioning her, in hopes of greater cooperation. Students described feeling frustrated, fearful, concerned, and nervous in their evaluation of the hypothetical encounter with Aisha.

The pre-test responses to the hypothetical scenario and open-ended questions indicated that students often felt unsure about how to respond to a client's behaviour. Many students felt at a loss about the role of emotion in their client encounters – both their own emotions and those of the client. One respondent noted that “[t]he biggest red flag is when a person is questioned about a detail or problem and all of their responses are about emotions and not the facts.”⁴³ The student here dichotomizes emotion and legal facts, not understanding that the two may be interrelated and, indeed, a source of useful information rather than a ‘red flag’. The pre-tests further highlighted ways in which student lawyers misunderstand clients’ emotional responses to serious trauma. They were often unsure of how to respond when a client

⁴³ Pre-Test Survey at 19.

exhibited an unexpected or seemingly unsuitable response to serious trauma – such as laughing, being quiet, or having a neutral expression.

The data suggested that the students felt ill-equipped to manage their own emotional responses to client trauma, and to set appropriate boundaries. One student remarked that “I have often wanted to cry and did everything to hold it back because it did not feel appropriate.”⁴⁴ The student lawyers revealed that they did not feel equipped to respond to appropriately respond to client disclosures of trauma, which exacerbated the struggle to manage their own potential vicarious trauma. A need for an increase in proper training was a resounding theme across student responses, noted by one student as follows:

[c]ertainly, clients have had to recount [past] incidences of their own violence against others, or the feeling of having their children threatened with sexual violence. The emotions these stories provoke in my clients are incredibly difficult to respond to appropriately for me given my obvious youth and lack of proper training.⁴⁵

⁴⁴ Pre-Test Survey at 20.

⁴⁵ Pre-Test Survey at 20.

The pre-test findings highlighted that 'client blaming' behaviour was central to students' interpretations of difficult client interactions and that students often felt ill-equipped in their ability to adequately respond to clients' needs. The need for trauma informed training in law clinic settings was undeniably evident from student's pre-test evaluations. The researchers hypothesized that using evidence-based trauma informed training could begin to fill this need and would provide students with alternative explanations that would increase empathy and understanding. Beyond building law students' capacity to understand the impacts of trauma, the training Module was developed to provide tangible strategies for supporting clients through the legal process with sensitivity to manifestations of trauma and the skills to manage potential impacts of vicarious trauma.

Post-test Findings

Our post-test findings indicated that research participants overwhelmingly felt that the training Module was effective, and indicated willingness to implement trauma informed practice in their work. Most students found that the Module was a valuable supplement to their work and that the tips and strategies discussed were relevant and helpful. Many students commented on the usefulness of the neurobiological framework of the training. They also noted the value of the discussions around client interviewing and that the emphasis on being attentive to the

individual experience of the client was helpful. In relation to the usefulness of the training one student indicated the importance of:

[b]eing able to identify barriers to collecting information (i.e. recall and memory issues, certain behaviours) and working with clients to overcome those barriers so that they can tell their story.⁴⁶

The post-test findings highlighted a number of common themes including: a complete shift from a client-blaming approach to an inward focus on making adjustments to the method of lawyering. The student lawyers identified specific strategies that they felt would help them cope with client trauma and be more effective in their practice. These included rapport building, grounding, breathing, and drawing the client in, which reflected a substantial shift in how the student lawyers focused their attention and perceived the task at hand. The students focused less on “what needs to get done”, including obtaining an “accurate set of facts”, and instead focused on seeing each client as an individual whom they needed to work with and support in order to build and maintain a working lawyer-client relationship. There was less of a dichotomy present in separating ‘legal’ and ‘non-legal’ issues and more of a recognition that providing support to a legal client is a holistic and incremental process.

⁴⁶ Post-Test Survey at 6.

The student lawyers also showed an increase in their own sense of efficacy, or belief that they have the capacity to appropriately respond to clients. The ability to understand encounters with clients and to employ strategies to foster the lawyer-client relationship enabled what one student described as a “sense of empowerment to deal with clients who have experienced trauma.”⁴⁷ Another respondent remarked that,

[t]oday’s session made me understand that a behaviour that I may not consider it to be ‘normal’ may have a root cause, and a specific reason as to why a client is acting in a certain way.⁴⁸

Students were able to situate themselves in a way that opened them up to understanding client perspectives and barriers. We believe that by giving students the capacity to identify barriers and potential setbacks that arise as a consequence of client trauma, their potential frustration can be reduced and understanding and compassion can be increased. Students were encouraged to consider reframing the questions they posed to clients, to reduce the perception of judgement, and to be more attentive to possible signs of trauma from client interactions. The neurobiological approach

⁴⁷ Post-Test Survey at 6.

⁴⁸ Post-Test Survey at 8.

appeared to be helpful in terms of understanding trauma but also as a mechanism for employing empathy instead of client blaming:

[u]nderstanding where my clients are coming from when they are expressing feelings that seem 'irrational' or overwhelming to me. I thought this was hugely helpful and that I can hopefully be a better support/listener than I have been in the past. I really really appreciated the session...⁴⁹

A trauma informed approach helped to contextualize multiple forms of client behaviour from emotional responses to clients missing appointments:

[l]earning strategies to ensure that clients feel that meeting with you is a safe space. I particularly enjoyed learning about the idea that if a client has difficulty showing up for appointments it might be because of something here making them feel unsafe as that idea had never occurred to me.⁵⁰

⁴⁹ Post-Test Survey at 6.

⁵⁰ Post-Test Survey at 4.

By contextualizing client behaviours as potential responses to trauma, students were more open to different interpretations of why a client may act or engage in particular ways.

I think I understand better why my clients have strong emotional reactions, difficulty remembering, and are really quick to perceive threats from things like discrepancies in paperwork.⁵¹

The sense of empowerment that resonated with many post-test responses did not solely relate to the client but was also explicit in reference to the student's own sense of well-being and self-care. Many of the student lawyers noted how their own state of well-being has the potential to directly affect their relationships and interactions with clients. One student, when asked what they found most helpful about the training, remarked that:

[d]iscussing different techniques and methods to use when faced with difficult situations and clients. Also the whole piece on self-care and understanding the impact

⁵¹ Post-Test Survey at 10.

the client stories can have on us, and in order to serve them well, you need to make sure that you are in a good mental space.⁵²

In the pre-test students expressed feeling ill-equipped and felt that they lacked the proper training to navigate certain difficulties with clients. The training provided students with introductory tools and strategies needed to help them gain competence and the confidence to effectively communicate with and support clients. Students described the expectation of an increased ability to manage highly emotional responses from clients, as well as their own emotions.

When asked about whether the training helped students understand 'difficult' client behaviours students said: "Yes. I think I have a far better understanding and can be less unintentionally judgmental of my clients."⁵³ The training helped students become more reflexive in how they may interpret or respond to a client. Another student said that "the discussion of so-called 'unusual' behaviours (i.e. laughing discussing trauma) was better explained",⁵⁴ which highlights the important piece of how the training helped ground the unexpected responses and affect trauma can illicit that are contrary to what might be expected. It may reduce students' feelings that the client is

⁵² Post-Test Survey at 4.

⁵³ Post-Test Survey at 9.

⁵⁴ Post-Test Survey at 9.

lying or being disingenuous and instead frame a possibly unexpected or inappropriate response as linked to the experience of trauma.

Students were also asked to identify anticipated challenges to a trauma informed approach. Students identified time constraints and structural and systemic barriers as presenting challenges to effective interviewing, to properly undertaking training and research, and to establishing a trusting relationship with clients. In terms of structural barriers and systemic constraints, students identified the role of the lawyer within the traditional legal framework as being a barrier to effectively implementing trauma informed practices. Two students also identified the supervision provided by lawyers in the clinic setting as a barrier. One noted:

[r]eflecting on my past practice, the factor that impeded some of the strategies was that the team, in particular long-tenured staff, were showing signs of vicarious trauma, such as indifference and dismissal of signs of trauma in clients. Therefore, it was more difficult to make the structural changes needed so clients felt better...⁵⁵

In the reassessment of the post-test scenario involving Aisha, participants focused much more on rapport and trust building, validating feelings (both their own and

⁵⁵ Post-Test Survey at 8.

those of the client) and employing trauma informed strategies when faced with highly emotional situations. One student reassessed Aisha as follows:

[s]he seems mistrustful of the situation and in distress - in addition to the factors she is dealing with: possibly, violence, discrimination, disability, addiction, other forms of victimization.⁵⁶

The post-test responses showed more patience and attentiveness to the time it would take to build a supportive relationship and were less concerned with keeping conversations narrowly focused on what they perceived as the relevant 'legal' issues. Students were more ready to empathize with the stress that clients experience as they navigate bureaucratic legal processes and indicated greater willingness to take the time to explain things or reschedule appointments at the client's convenience. Finally, many students expressed a desire for more experience with hands-on and interactive training exercises to continue their learning of practical trauma informed methods to client interactions. In short, the Module was successful in its stated goals.

⁵⁶ Post-Test Survey at 16.

Limitations and Challenges

There were several limitations in evaluating the effectiveness and conclusiveness of our findings. There were some responses that indicated that the student lawyer did not learn anything from the training – for example, there was no shift in their responses from the pre to the post-test. However, in these cases it appeared that the students had pre-existing knowledge and experience with the topics we discussed; indeed, some of these students showed higher levels of compassion and empathy in their pre-test responses.

We experienced several challenges in designing this Module. The first, and perhaps most obvious, is the limitation of time. Given the complexity of this subject area, a full semester course would be an ideal format for preparing students to effectively work with clients. Alternatively, some combination of a course with practical supports from lawyers and psychologists would be beneficial (see the KGACLC example, above). However, we were also quite practical in our approach, understanding that the intensity of clinic programs often only allows for shorter engagements. We also aimed to create a Module that could be replicated fairly easily term-after-term, without a large expenditure of resources.

As noted previously, in developing the Module we were guided by Katz and Haldar's⁵⁷ work on trauma informed lawyering, which emphasizes the importance of understanding and preventing vicarious trauma. We addressed this topic at the end of the Module and included a self-assessment tool adapted for lawyers and discussed how to identify and manage vicarious trauma. However, this was one of the most challenging sections to meaningfully address, particularly because many legal environments are not supportive of self-care and wellness. We were also attuned to critical perspectives on wellness, especially the important role that systems and structures can play in either supporting or undermining wellness. In their examination of the role of systems in building resilience, Jessica Shaw and co-authors outline why focusing on the individual as opposed to systemic and structural considerations is misguided. They note that "...by maintaining a heavy focus on the individual, researchers, practitioners, and policy makers miss the systemic causes of the problem and forgo the ability to develop effective solutions."⁵⁸ We did not do service to this topic, and this remains an area of development for future iterations of the Module.

In reflecting on and improving the Module, we have re-engaged with discourses of decolonization that focus on decolonization and reconciliation as being anti-violence

⁵⁷ Katz & Haldar, *supra* note 17.

⁵⁸ Jessica Shaw et al, "Beyond Resilience: Why We Need to Look at Systems Too" (2016) 6:1 *Psychology of Violence* 34 at 36.

work.⁵⁹ Trauma informed approaches are necessarily rooted in notions of decolonization as anti-violence work and relationship building.⁶⁰ Moving forward, the Module could be more explicitly framed as a practice of relationship building and as a method of decolonizing, drawing on Indigenous scholarship in these areas to strengthen the theoretical framing of the work. Although we sought to provide an intersectional analysis of trauma there was only limited influence of this approach in the post-test findings. Thoughtfully addressing the role of structural oppression should be an ongoing task for legal educators and perhaps speaks to our need for lengthier or repeated Modules.

Most importantly, we could not assess whether the students' learning translated into actual changes in practice. The shift in identifying behavioural manifestations of trauma and developing more empathetic and compassionate attitudes towards client interactions will hopefully guide the clinical practice of our student participants. However, a more extensive and longitudinal evaluation method of post-training application is needed. Additionally, we had no control group. While we suspect that

⁵⁹ Jeffery G Hewitt, "Decolonizing and Indigenizing Your Research" (Lecture delivered at the Faculty Writing Retreat, University of Windsor, 29 August 2018), [unpublished].

⁶⁰ See for example: Jeffery G Hewitt, "Land Acknowledgment, Scripting and Julius Caesar" (2019) 88:1 SCLR 27; National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, Volume 1a, online: https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1a-1.pdf; Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Ottawa: TRC, 2015).

the neurobiological framing was largely responsible for the shifts evident in the post-test data, our research did not measure the neurobiological approach as compared to other approaches to teaching students about trauma. Further research in this area would be useful.

For researchers and clinicians interested in this project, we recommend that the participants have at least some amount of legal practice experience with clients before taking this Module. We have presented this Module to students with no client-facing experience, and have observed that there is a marked difference between students who can draw on personal experiences and struggles (the “disorienting moment”⁶¹) with clients before taking the Module. We strongly believe that the ability to reflect on previous experience is key to successful learning in this context. This format also provided us with a ready-made “community of practice” when presenting this Module – a group of learners who worked together previously and would return to that environment afterwards. This practice context meant we had learners who were more easily able to connect with one another and engage in a horizontal pedagogical design, where students engaged both with the instructor and with one another. Students were also able to immediately apply what they learned in practice, which we heard informally was of great benefit. Again, this warrants further empirical

⁶¹ Fran Quigley, “Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics” (1995-1996) 2:1 *Clinical L Rev* 27.

examination.

Conclusion

Engaging law students in trauma informed lawyering is a means of fostering a more productive lawyer-client relationship and, at minimum, is an educational approach that attempts to do no further harm. Drawing on neurobiology to explain brain functioning and responses to trauma allowed law students to connect with the material in a manner that our prior approaches did not achieve. The use of pre-test and post-test surveys allowed us to analyze the effectiveness of the Module and we conclude that the creation and implementation of the Module for training law students achieved our primary goals. Students' ability to identify indicators of trauma in their work with clients increased, as did their ability to adjust their responses to what they previously experienced as 'difficult' client behaviour. Students also appeared better prepared to understand and implement approaches that might assist in building trust with clients. Students were less likely to demonstrate client blaming attitudes and beliefs and were more adept at understanding their interactions with clients. As well, we were able to offer the students a framework for conceptualizing the social and political structures that produce trauma, and to locate trauma as both individual and structural. Lastly, we saw growth in the ability of students to employ empathy instead of blame. With many students commenting positively on the impact that the neurobiological approach had on their thinking, we conclude that this

approach was an effective mechanism for introducing trauma informed practice. While trauma informed training is not a panacea, our research indicates that even a truncated, three-hour training on trauma drawing on neurobiology has the potential to counter and disrupt client-blaming attitudes.

As experiential learning is becoming an increasingly important aspect of law school education, more work needs to be done to prepare students to do client-facing work. We hope to develop further educational opportunities – whether through short trainings or through deep curricular reform – to better equip law students to build healthy relationships. Such training will not only foster more productive lawyer-client relationships, but it will hopefully promote healthy professional identity development. While this particular Module was focused specifically on students in a legal clinic context, it is equally applicable to the many lawyers practicing in areas with clients who have experienced trauma. We hope this approach is more widely employed for the benefit of clients and lawyers alike.

Appendix A: Survey Instrument for Students

Pre-Test Survey

Please indicate the appropriate response:

1. What is your year in law school?

1 2 3 Other: _____

2. Do you have previous experience working in a legal clinic?

Yes No

If *yes*, how many semesters of previous clinic experience do you have?

1 2 3

Please indicate if your previous clinic experience was as an employee, volunteer, or for course credit: _____

3. Prior to this term, have you had previous experience working with clients as a student lawyer?

Yes No

4. How would you describe your level of experience with legal practice?

None Novice Some Significant

5. This semester, how many clients have you worked with to date?

6. On a scale of 1-10, with 1 being 'Not At All', how familiar are you with trauma informed practice?

1 2 3 4 5 6 7 8 9 10

7. Have you ever had interactions with clients that left you feeling frustrated? Can you describe an example?

8. Have you ever interpreted a client's behaviour as being problematic or disingenuous? If so, can you describe an example? How did the interaction make you feel?

9. Have you ever been left feeling like you do not know how to respond to a client's behaviour or emotions? If so, can you describe an example?

10. Have you ever felt as though a client was lying to you? If so, explain why?

Post-Test Questions

1. On a scale of 1 to 10, how effective do you feel today's training was?

1 2 3 4 5 6 7 8 9 10

2. What about the training do you think will be most helpful in your clinical practice?

3. On a scale of 1 to 10, with 1 being not at all motivated, how motivated are you to implement trauma informed strategies in your clinical practice?

1 2 3 4 5 6 7 8 9 10

4. What challenges might prevent you from implementing trauma informed strategies in your practice?

5. Did this training help you to understand so called “difficult” client behaviours?

6. Have you developed any different interpretations of your client’s behaviours?

7. Do you feel more able to identify potential trauma behaviours?

8. Has the training helped you to identify strategies to better work with clients who have experienced trauma behaviours? If so, can you describe any strategies that you might employ moving forward?

9. Is there anything that could be done to improve this training?

APPENDIX B

Pre- and Post-Test Scenario

Please re-read the following scenario and reflect on what you learned during the training. Please respond to the questions and provide as much detail as possible.

Aisha is scheduled to attend her first appointment with you. From your intake information, you know she identifies as female, her first language is Arabic, she is in receipt of social entitlements (disability), and she is 30 years old. She said she needed help with Criminal Injuries Compensation (Ontario)/ Compensation for Victims of Crime (Saskatchewan).

Aisha is two hours late. On the phone, she had said she wanted help because she wants to claim compensation because she was a victim of a crime. When she comes in, you ask her to sign a retainer. She stares at you. You can't tell if she understands what you are saying. You ask if she might need an interpreter. She refuses.

When you start asking questions about the reasons why she is applying for compensation, her hands begin to shake visibly. She won't look at you directly. She

shifts in her chair often , slurs her words and you think you catch a smell of alcohol on her breath. Yet, she is clear when you ask her more general questions such as her address and contact information. When you ask her questions about the reason she is seeing a lawyer, she says she has a lot of back pain and says she doesn't remember much about the event itself. After 30 minutes, she stands up angrily and says "These questions are ridiculous. Why are you making a bit deal about this anyway?" and stands up to leave.

1. What is your assessment of Aisha's situation?
2. Describe how you would respond to Aisha in this situation?
3. Are there specific strategies that you would use to respond to Aisha?
4. What emotions do you feel when you imagine being in this scenario?