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Trauma-informed Lawyering in the Context of Civil Claims for Sexual Violence

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Civil claims for compensation are increasingly being used to expose high profile defendants and institutions for perpetrating and enabling sexual violence, and to provide financial recognition and redress for harm. Much like the criminal and other legal processes, the civil process is designed to question, challenge and undermine testimonies and credibility, which risks retraumatizing survivors. Re-traumatization will likely depend on whether their lawyer is trauma-informed in their practice – that is, working in ways which recognise and address trauma and its impacts. However, this is a relatively new area of practice and a niche area typically situated within personal injury. We interviewed thirteen personal injury lawyers from small, medium and large international firms working in this area about their knowledge of sexual violence and trauma, and their experiences and practices representing sexual violence survivors.

Politics and principles of trauma-informed lawyering

Taking a trauma-informed approach to legal work does not guarantee sexual violence and its impacts will be appropriately addressed. Trauma-informed practices can medicalise and individualise what is a social and political problem by focusing only on individual healing. To what extent a trauma-informed approach eschews or addresses structural underpinnings of violence depends on the key principles which are delineated and how they are translated into practice. We draw out seven key principles from the literature on trauma-informed practices which should be applied in the context of law and sexual violence. We analyse the interviews (using pseudonyms for interviewees) in relation to these principles to explore trauma-informed work in sexual violence civil claims.

1. recognizing the impact of violence and trauma;
2. building positive relationships;
3. ensuring safety, trust and transparency;
4. minimizing re-traumatization;
5. promoting empowerment, voice and choice;
6. attending to cultural, historical and gender dimensions;
7. minimizing vicarious trauma

1. Recognizing the impact of violence and trauma

James: "I don't profess to understand it, and I don't profess to know well how to deal with it ...I will simply just try and be as nice and polite and advise about the legal process."

The majority of our participants – but not all – showed a good understanding of sexual violence and the gendered power dynamics. They tended to be less aware of the social, political and structural dimensions of trauma. Seven lawyers used the phrase "learning on the job" and said more knowledge, training and support networks outside their team are needed.

2. Building positive relationships

Building positive relationships are a part of all lawyering, but most of the lawyers said that it was different in sexual violence cases because more time and personal contact was needed. Many recognised the impact violence and trauma could have on their clients. They showed patience, restraint from judgement, respect, understanding, and provided boundaries and predictability. Training, support and recognition of additional work these cases take is required.

3. Ensuring safety, trust and transparency

Many of the lawyers emphasised the need to earn trust and recognised that this can take more time and work with survivors who have had trust abused. For this reason, Derek said, “I shouldn’t expect because of what my job is that I deserve respect straight away”.

Five of the lawyers emphasised being transparent with clients about the limits of the civil process – that what it is likely to get them is financial compensation, very occasionally an apology, and rarely a sense of justice.

4. Minimizing re-traumatization

The lawyers all seemed aware of the risks of re-traumatisation, but many were unsure of how to minimise it. Two were not clear whether this is part of their role.

5. Promoting empowerment, voice and choice

Mia: “It’s not just giving the standard black and white legal advice ... It’s taking more of a tailored approach in terms of what the client sees is justice and what they want the outcome to be.”

A few of the lawyers did highlight that they tried to support survivors in ways which are empowering and offer space for survivors to speak and be heard. However, two highlighted that the legal process and system is structured in such a way that it is difficult to provide much choice.

6. Attending to cultural, historical and gender dimensions of trauma

Often trauma was talked about in an individualising way with little recognition of the social and political dimensions to trauma. For example, over half of the lawyers emphasised that compensation can provide money for counselling to heal the trauma. While many of the lawyers talked about gender, they did not talk about historical and other contexts and politics of sexual violence and trauma.

7. Minimizing vicarious trauma

The majority of our participants recognised that the work did or could have an impact on them. Most said their firms provided counselling and that their colleagues were very supportive. However, most also complained that there isn’t enough knowledge about or support for vicarious trauma.

Good practice

Emailing to arrange a call rather than calling unexpectedly to ensure their client is in a physically safe space and is mentally prepared for the conversation.

Good practice

Minimising the number of times a client has to repeat their story of abuse (for example, by relying on the psychiatrist report instead)

Good practice

Specialist training from external provider

Mark relevant files as ‘graphic’; password protect graphic files preventing accidental or illicit access

Conclusion

To some extent, lawyers representing sexual violence survivors in civil compensation claims are applying aspects of a trauma-informed approach. There is some recognition of the gender dimensions of sexual violence, but little recognition or resistance to the politics of trauma. While there are some examples of good practice from the lawyers which should be shared, there is a lack of specific knowledge and training. For sexual violence work in particular, training must situate trauma within social structures of oppression: lawyers' reflective practices must not only consider justice for individual clients – which is an impoverished approach for social and political harms – but recognise the limitations and potential of law and legal processes to empower survivors and to be used for social justice.

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