

HOW TO MANAGE THE DOWNSIDE OF COMPASSION

The work of judges and lawyers can put them at risk of empathy-based stress.

By Sally Ryan and Carly Schrever



“I’m sure I suffer from vicarious trauma, cumulative trauma . . . You hear and see things that most members of the community wouldn’t. I go to a school function and I think how many kids here have been sexually abused or I wonder how many are getting bashed up at home . . . Dads shouldn’t think like that.”

These are the words of a judicial officer interviewed as part of a large-scale study of judicial stress and wellbeing in Australia (Schrever). It is just one of dozens of comments from judges and magistrates in the study that speak to the impact of empathy-based stress in judicial work. Here, we discuss what empathy-based stress is, how it can arise in the work of judges and lawyers, and offer some ideas for how to manage it.

What is empathy-based stress?

Empathy – our ability to understand the experience of others emotionally and cognitively – is at the heart of this framework. Our natural human response that can lead to deep work satisfaction and engagement can also place us at risk of occupational stress.

Empathy-based stress¹ is a broad term to encompass a range of psychological responses to emotional material in our work, including:

- secondary traumatic stress (STS) – the development of PTSD-like symptoms (avoidance, intrusion, arousal) as a result of exposure to information about another’s trauma
- vicarious trauma – a disruption to our core beliefs about ourselves and the world, such as safety and self-agency
- compassion fatigue – a reduction in our interest in and capacity for empathy with others’ pain
- burnout – a three-way combination of deep emotional exhaustion, detachment and reduced role and life fulfilment.

A considerable body of research confirms these experiences are occupational hazards for judges and lawyers. Schrever’s research found around 30 per cent of judicial officers reported symptoms of STS at levels high enough to warrant formal PTSD assessment² – a statistic mirrored in a subsequent study conducted with the NSW judiciary³ and aligning with scores of studies on traumatic stress within the legal profession globally.

In our work with the judiciary and lawyers, we have found the empathy-based stress framework helpful to bring together the human dimension of legal work that can be both intensely satisfying and potentially psychologically distressing. It helps understand intense emotional reactions to hearing victim impact statements and evidence from witnesses, viewing graphic photos and video footage and working in legal settings with highly emotional people over a prolonged period of time. In these situations, the demand on our empathy is heightened alongside a need to perform an intellectually complex work role.

How does empathy-based stress work?

Empathy-based stress involves the interplay of the level of exposure to, and empathic engagement with, traumatic content. Level of exposure is influenced by the severity and frequency of traumatic work content and the availability of structural and psychological

supports. Empathic engagement – the extent to which we understand and identify with what another person has experienced – is affected by our personal history, current life stage and coping styles.

When there is high exposure and high empathic engagement, we risk developing empathy-based stress. If this is combined with insufficient organisational resources and recovery time, we can develop burnout and serious mental health problems such as depression and anxiety.

What does empathy-based stress look like in the legal profession?

We have noticed in our work that empathy-based stress in the legal profession is closely linked to professional identity – particularly, role clarity. When legal professionals slip out of their work role, problems arise. This happens when we relate to a case personally, when we do not have the skills or knowledge to perform our role confidently, or when we are emotionally overwhelmed with workload volume. When this occurs, judicial officers and lawyers tell us of hyperarousal and hypervigilance. Feeling fearful. Difficulty sleeping. Physical fatigue. Emotional exhaustion. Becoming short and terse.

Psychologically, legal professionals can notice themselves identifying with clients or court users and this deepens their empathy response. They can experience intrusive reimagining of traumatic events that happened to someone else, about which they know myriad details. Repeated exposure can lead to changes to core beliefs about themselves, the justice system or the world. This can be insidious. Avoiding particular cases, not wanting to socialise and behaving in ways that are not consistent with their own or the profession’s values are potential behavioural impacts.

The psychological labour of setting aside our emotional response can contribute to a greater risk of empathy-based stress. For judicial officers, this can be a regular challenge in striving to hold and project impartiality. For lawyers, this can look like either over-involvement, in which they can take on undue responsibility for solving all the pain in their clients’ lives, or under-involvement, in which they can become cynical and impatient with the emotional dimension of cases. For leaders, there is an additional layer of empathy for staff, associates and junior lawyers as another potential source of empathy-based stress.

What protects against empathy-based stress?

Many of the risks associated with empathy-based stress have a protective flip side. Prevention and response to empathy-based stress involves understanding this and is the mutual and ongoing responsibility of legal workplaces and individuals. Strategies that assist us to stay in role – such as transition rituals and boundary-setting – are fundamental.

For individuals, knowing and actively managing personal triggers, self-talk and identification with trauma survivors is crucial. Learning strategies to utilise before, during and after the working day can help us to engage with the legal issues without losing professional identity. We can stay in role, even when working with distressing case content, and this is protective.

As reinforced in the recent High Court decision in *Kozarov*,⁴ employers have a positive duty of care in relation to protecting employees from the psychological harm of vicarious trauma. For lawyers, their firms can identify risks and control for them, including managing workflow to allow for regular recovery and varying levels of traumatic content. This requires leadership and ongoing commitment and is critical to help people consistently stay in role. The question of how the *Kozarov* decision might apply to judicial officers and barristers is a live one, however, arguably courts as workplaces bear some responsibility for supporting judicial wellbeing, and possibly also chambers and bar associations for barrister wellbeing.

Empathy with clients and court users who have experienced trauma need not result in empathy-based stress for the legal profession. With workplace risk management, ongoing education, and use of evidence-based strategies that assist judicial officers and legal professionals to stay in role, potentially stressful work can be deeply satisfying and purposeful. As another judicial officer said in Schrever's research:

"It's an emotionally and intellectually challenging role. I feel worried about people, I'm concerned what's going to happen to them, I can be indignant at how violent they are but – even the most violent

family violence offender, I find I still have some empathy for, which is you know – I think that's probably a good thing. Because people are complex, and finding what is allowing them to choose that behaviour, and enabling that behaviour, is what I'm searching for. So, I am still motivated to keep looking and finding and searching and encouraging. So, that's the level of satisfaction I get." ■

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1. Rachel S Rauvola, Dulce M Vega, Kristi N Lavigne, "Compassion fatigue, secondary traumatic stress and vicarious traumatization: A qualitative review and research agenda" (2019) 3 *Occupational Health Science*, 297-336.
2. Carly Schrever, Carol Hulbert and Tania Sourdin, "The Psychological Impact of Judicial Work: Australia's First Empirical Research Measuring Judicial Stress and Wellbeing" (2019) 28(3) *Journal of Judicial Administration* 141-168.
3. K O'Sullivan, J Hunter, RI Kemp and P Vines, "Judicial Work and Traumatic Stress: Vilification, Threats, and Secondary Trauma on the Bench" (2022) 28(4) *Psychology, Public Policy, and Law*, 532-545.
4. *Kozarov v State of Victoria* [2022] HCA 12.

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