

A qualitative examination of the experiences of defence lawyers in working with emotion in the criminal law

Emotions are embedded throughout the criminal justice system, and as a result, criminal justice actors are constantly engaging with emotional materials (e.g., 111 calls, victim impact statements) and emotional individuals. This includes defence lawyers who act on behalf of defendants. While interacting with all these emotional materials, defence lawyers must continue to adhere to the professional standards of remaining unbiased and advocating for their client's interests. Research in other helping professions (including nurses, therapists, and social workers) has identified this emotion work can lead to a risk of developing burnout and vicarious trauma. However, the lived experiences and impacts in the legal profession, particularly of defence lawyers, have been largely overlooked and under-researched. This study aimed to qualitatively examine the lived experiences of defence lawyers working with emotions in the criminal law. The overarching research question for the research was:

What are defence lawyers' experiences of working with emotion?

Two additional sub-questions further guided analysis:

I. What types of emotional labour do defence lawyers engage in when working with emotions in their role?

II. What factors help or hinder defence lawyers when working with emotions?

Fourteen defence lawyers participated in an audio-recorded semi-structured interview either on Zoom or in-person. Interviews were approximately 90 minutes in duration. Data was analysed using reflexive thematic analysis (Braun & Clarke, 2006; 2013) to identify patterns across participants' experiences. Four themes were developed that described defence lawyers' experiences of working with emotion in the criminal law. The findings are summarised below.

Theme 1: Industry expectations versus the reality of the role

This theme outlined the conflicting display rules that defence lawyers perceived in their work. Defence lawyers reported an industry belief that there is *no place for emotions in the law*. Those who could not meet this expectation felt that it impacted their ability to do their job, as they lost objectivity and thus failed to meet their obligations to their clients. In

addition to this, defence lawyers feared that if they showed emotion, they would be viewed as incompetent by other legal practitioners and may be overlooked for future work. This fostered a culture of feeling pressured to maintain a cool “*poker face*” among defence lawyers. Despite these industry expectations of remaining unemotional, defence lawyers found they needed empathy and its related emotions while working with their clients. This enabled the development of a trusting relationship with their clients, which they viewed as necessary to ensure the best possible outcome. As a result, defence lawyers found themselves in a role with conflicting display rules, leaving them feeling they must constantly monitor and adapt their performances to switch between these emotion spaces.

Theme 2: Managing emotions in the moment

Defence lawyers reported that emotions were experienced from various sources (i.e., from Judges, clients, and the courtroom), and they needed to manage these emotions quickly and appropriately. Defence lawyers described needing to ensure that they use the right strategy for this emotional management based on their environment and whose emotions they are trying to manage. Alongside this emotion management, defence lawyers also reported needing to monitor their own emotions in the situation and consciously making sure they do not interfere with their work. Working across these different emotional spaces often left defence lawyers feeling drained. On top of this, defence lawyers reported that the materials they review (e.g., victim impact statements, graphic images) can create intense emotional reactions (e.g., disgust, sadness, and anger). They described having to actively manage their emotions while working with these materials by adopting a clinical approach and focusing on the legal aspects of the material to protect their own wellbeing. Finally, defence lawyers reported experiencing hostility from the public and sometimes family and friends. Due to the nature of their work, defence lawyers reported that they are often villainised by both the public and people in their social circles. This can be distressing and leave defence lawyers feeling isolated. Strategies such as cognitive reframing were reported to help ensure this hostility did not impact defence lawyers’ self-identity negatively.

Theme 3: Personal conflict of working in a broken criminal justice system

Witnessing daily injustices towards their clients was reported by defence lawyers to leave them feeling distressed and powerless. Their role is to help others; however, defence lawyers perceived the justice system often appeared ‘*rigged*’ against their clients. Being a part of this unjust system frustrated defence lawyers, particularly Māori lawyers who witnessed the

colonial system's continued traumatising of their clients. In addition, defence lawyers reported constantly working beyond the legal bounds of their role, such as providing emotional support and helping clients navigate social services. As a result, they often described feeling drained and overwhelmed by having to provide 'social work' services beyond their capability. However, while this was viewed as a burden, it was also described as a motivator to stay in the role due to the tangible difference they can make to people's lives in a critical and stressful time.

Theme 4: Factors that help and hinder wellbeing in emotion work

Defence lawyers reported that, like other helping professions, having *personal connections* to cases could make it more difficult to engage with emotional materials. This was because it was difficult for them to put their emotions aside and continue to work effectively and therefore the strain of the emotion work was often exacerbated during these cases. With this knowledge and awareness of the job's impact on their wellbeing, defence lawyers reported that *scheduling self-care* practices into their routine were critical to managing their wellbeing. Finally, defence lawyers reported that they have *limited conditional support*. For instance, defence lawyers found their personal support systems and the professional help they could access generally do not understand the complexities of their role and thus cannot effectively support them. Comparatively, while colleagues understand the nature of the role, defence lawyers reported not being able to trust just any colleague, as some colleagues may use this vulnerability against them in future job opportunities. This left defence lawyers feeling wary which compounded the feeling that there is no appropriate support for them.

Conclusion

This study aimed to examine the experiences of New Zealand defence lawyers in working with emotion in the criminal law. It is hoped that by understanding the lived experiences of defence lawyers, relevant and appropriate support can be provided to help support them with managing the complexities of working in the emotional context of the criminal justice system. Presently, defence lawyers feel unprepared to handle the emotional intricacies of the role. Legal education in emotional literacy and the provision of tailored training and support services for defence lawyers throughout their careers may be beneficial. Defence lawyers provide an essential service in the criminal justice system; supporting their wellbeing benefits both the defence lawyers and their clients as well as the wider criminal justice system and the society it serves.