

“You’re not digging ditches but you’re emotionally stuffed”

New Zealand defence lawyers’ experiences of working with emotion in the criminal justice system

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The criminal law: A “peculiar paradox of unemotional emotionality”

- Criminal law viewed as necessarily dispassionate and impartial (Kadowaki, 2015; Kim, 2021; Maroney, 2011)
- Reason and emotion often cast as opposites
- Legal professionals engage in complex emotional work with conflicting demands (Harris, 2002; Flowers, 2019; Roach Anleu & Mack, 2015)
- Tensions can arise between person feelings and professional display rules (Carline et al., 2020; Roach Anleu & Mack, 2005, 2021)
- Emotional labour can result in burnout, negative wellbeing, and vicarious trauma (Hochschild, 1983; Spencer et al., 2021)

The criminal law: A “peculiar paradox of unemotional emotionality”

- Recent scholarship challenged law’s unemotional self-image (Carline et al., 2024)
- Emotions not fully acknowledged or incorporated within professional values (Jones, 2023)
- Legal professionals increased risk of wellbeing issues (Hasnain et al., 2010; Levin & Greisberg, 2003; Vrkleviski & Franklin, 2008)
- Defence lawyers face unique challenges and engage in high levels of and complex forms of emotional labour (Flower, 2019; Harris, 2002)

RESEARCH QUESTIONS

What are defence lawyers' experiences of working with emotion?

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

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

METHOD

- 14 New Zealand defence lawyers
 - 10 male, 4 female
 - 9 Pākehā, 5 Māori & Pākehā
 - Recruited from PDS, Chambers, and Barrister Sole
 - Range of provider approved level
 - Range of time working in CJS
- Interviews: 45 mins to 182 mins ($M = 90$ mins)
- Data analysed using reflexive thematic analysis (Braun & Clarke, 2006, 2019)

RESULTS

Industry expectations vs. the reality of the role

Managing emotions in the moment

Personal conflict of working in a broken criminal justice system

Factors that help and hinder wellbeing in emotion work

Industry expectations vs. the reality of the role

- Industry belief - no place for emotions in the law
- Emotional displays = incompetence
- Pressure to maintain a cool “poker face”
- Emotions can cloud objectivity

“You’re going to see people on a daily basis who are doing horrible things to each other, you have to be able to weather that...or you should go into conveyancing or trusts”

“... I won’t share the emotional side because I am worried...if I show some vulnerability, it could potentially be conveyed as weakness and incompetence.”

Industry expectations vs. the reality of the role

- BUT empathy needed to be a good defence lawyer
- Challenges managing conflicting display rules
- Complexities of clients' lives can blur boundaries
- Use of compartmentalisation to maintain objectivity

“We want our defence lawyer’s as almost inhumane robots, yet we’re doing a very human job and dealing with people’s problems all 24/7”

“You’ve got to be empathetic to a certain degree, but you can’t ... you’re not there to be your client’s friend or confidant”

Managing emotions in the moment

- Emotions experienced across sources and contexts
- Juxtaposition between ‘sterile’ courthouse and emotions within
- Judges as ‘tone-setters’

“That juxtaposition between people, who are feeling these really volatile emotions at any moment versus this very bland, sterile courtroom”

You know a lot has to do with the Judge who's presiding. Because their temperament, their mood, their personality can affect the whole thing. So, if you've got a really angry, bored Judge who just wants to create havoc, it can create chaos all around you.”

Managing emotions in the moment

- Managing emotions of self and others
- PTM requires emotional labour
- Clinical approach used to manage emotional reactions
- Challenge managing hostility from public and social circles

I think the more common thing to happen would be to read the transcript of a person who's describing quite a violent sexual episode, but when we're reading this, we're not reading for the content – we're reading for the issues in it”

“You should see some of the emails I get ah ‘you obviously don’t have any daughters’ – I’ve got three daughters. Um, ‘you deserve to be raped yourself’, you know stuff like this”

Personal conflict of working in a 'broken' criminal justice system

- Frustration with systemic injustices
- Feeling the weight of responsibility for clients
- Extension of role into 'social worker' or 'counsellor'
- Positive impacts = job satisfaction

"But I think the trauma that comes through the court process for me is just almost just like re-opening a wound each time, when people come back and then their name still misspelled or mispronounced"

"... it can be incredibly draining to be in that social worker, facilitator role"

Factors that help and hinder wellbeing in emotion work

- Lack of training/preparedness for emotion aspects of role
- Personal vulnerabilities make emotion work more difficult
- Challenges balancing workload and self-care
- Alcohol sometimes a coping strategy

“The amount of work I have can impact [my sleep] where I will wake up at 3 o’clock in the morning and go ‘oh my god, I didn’t do this’”

“... my husband’s great but he doesn’t really understand what it’s like, and I don’t think you do unless you’re doing it.”

Factors that help and hinder wellbeing in emotion work

- Time and financial barriers to existing professional supports
- Some support services seen as too specific or lacking specialist knowledge
- Colleagues understand but fear of perceptions
- Personal support systems can feel conditional

“They’re the only ones who understand it, and everyone will empathise with you because they’ve been through exactly the same thing”

“If I show too much emotion about certain things, my worry is how’s that going to be perceived by that person and would they think I was competent to do the work that they were trying to potentially give to me.”

CONCLUSIONS

- Defence lawyers experience and manage an emotionally demanding role
- Lack of preparation to manage emotional demands of the role
- Juxtaposition of court environment and emotion work at hand
- Range of complex and context dependent strategies used to manage emotions
- Professional culture and lack of accessible services inhibit support seeking

IMPLICATIONS

- Important to recognise inherent emotionality of the criminal justice system
- Consider emotional, cultural, and human-service skills needed to navigate role
- Embed accessible support at a local and profession level
- Provide public education around the role of defence lawyers



Thank you!

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