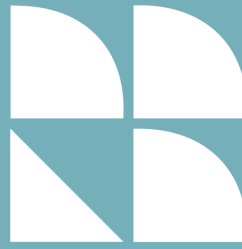


GUIDE TO TRAUMA-INFORMED LEGAL WRITING

FEBRUARY 2025



ABOUT THE BCLI



The British Columbia Law Institute (BCLI) is BC's independent, not-for-profit law reform agency. BCLI engages in scholarly research and analysis to determine pathways for law reform. We bring together the expertise and experience of collaborators to develop just and innovative solutions and increase access to justice in BC.

BCLI carries forward the work of the BC Law Reform Commission which operated until 1997. In 2022, we established our Reconciling Crown Legal Frameworks Program to support the research and innovations required to bring BC's laws into alignment with Indigenous laws as anticipated by BC's *Declaration on the Rights of Indigenous Peoples Act*.

Better laws. Plain and simple.

Our work

REPORTS

Reports recommend specific reforms for legal frameworks based on deep research, expert input, and public engagement.

STUDY PAPERS

Study papers explore and analyze current legal issues and considerations for reform.

PRACTICAL RESOURCES

Practical resources provide public legal information materials and tools for best practices.

Our process

INVESTIGATE

Identify legal issues to determine law reform needs.

RESEARCH, ANALYZE, & ENGAGE

Carry out legal research, analysis, and engagement to recommend reforms.

OUTREACH

Connect to deepen support for law reform needs.



Disclaimer

The information and commentary in this publication is not offered as legal advice. It refers only to the law at the time of publication, and the law may have since changed. BCLI does not undertake to continually update or revise each of its publications to reflect post-publication changes in the law.

The British Columbia Law Institute disclaim any and all responsibility for damage or loss of any nature whatsoever that any person or entity may incur as a result of relying upon information or commentary in this publication.

You should not rely on information in this publication in dealing with an actual legal problem that affects you or anyone else. Instead, you should obtain advice from a qualified legal professional concerning the particular circumstances of your situation.

© 2025 British Columbia Law Institute

The British Columbia Law Institute claims copyright in this publication with the exception of images accessible through Canva. You may copy, download, distribute, display, and otherwise deal freely with this publication, but only if you comply with the following conditions:

You must acknowledge the source of this publication;
You may not modify this publication or any portion of it;
You must not use this publication for any commercial purpose without the prior written permission of the British Columbia Law Institute.

Published in Vancouver on unceded Coast Salish homelands, including the territories of the xʷməθkʷəy̓əm (Musqueam), Skwxwú7mesh (Squamish), and Selilwətaʔ/Selilwitulh (Tsleil-Waututh) Nations.

Foreword

The British Columbia Law Institute has offered the legal profession a remarkable gift with the publication of its *Guide to Trauma-Informed Legal Writing*. This guide not only educates legal professionals and the judiciary about trauma but also encourages us to rethink and reexamine the ways we communicate—both with our clients and with each other. In doing so, it underscores the essential message that it is long overdue for our profession to do better and to cause no further harm.

In recent years, there has been growing interest from courts, counsel, and clients in adopting trauma-informed and trauma-wise approaches to enhance and humanize the delivery of legal services, including legal writing and judgments. The clear, practical information presented in this guide provides a vital starting point for implementing such improvements and approaches within our practice.

When I began the *Trauma-Informed Lawyer* podcast, my hope was that the conversations I had with experts in trauma, healing, and law would spark awareness and compassion among a handful of local lawyers. However, 62 episodes later, I have come to realize that while engaging individual lawyers and judges is important, real transformation requires a collective commitment. It requires reshaping how we educate future lawyers and judges to recognize and address trauma, a far too common experience in our society—including among those we serve and those who make up our profession. Without a concerted effort to provide resources and reports that explain the science, strategies, and benefits of trauma-informed legal practices, we risk perpetuating the inequities and inhumanity within our profession.

BCLI's *Guide to Trauma-Informed Legal Writing* represents a major step forward in the movement toward trauma-informed legal practice. I am honoured to contribute my voice to this essential and timely resource.



Myrna McCallum
North Vancouver, BC
December 18, 2024



Table of Contents

Acknowledgements	6
INTRODUCTION	9
Purpose and approach of this Guide	9
How will this Guide assist you?.....	9
Who is this Guide for?	9
What is the content of this Guide?.....	10
GLOSSARY OF TERMS	11
I. A BRIEF OVERVIEW OF TRAUMA.....	15
What is trauma?	15
Definition of trauma	15
Impacts of trauma	18
Impacts of trauma in legal settings.....	21
What is a trauma-informed approach to law?.....	22
II. THE IMPORTANCE OF TRAUMA-INFORMED LEGAL WRITING	25
Trauma-informed legal writing aligns with ethical obligations	25
Trauma-informed legal writing aligns with truth and reconciliation.....	28
III. BEST PRACTICES FOR TRAUMA-INFORMED LEGAL WRITING	33
Avoid assumptions, biases, and myths.....	34
Use clear and accessible language	35
Use plain language	36
Remove accessibility barriers	38
Be aware of triggers.....	40
Be empathetic and respectful.....	42
Avoid deficit-based language	42
Avoid euphemisms	42
Respect for identity	43
Use first and second person.....	44
Offer support resources and seek feedback.....	45
RESOURCES.....	47




Acknowledgements

The BC Law Institute is grateful for the insights and perspectives of the many individuals who contributed to this Guide.

BCLI wishes to acknowledge Celeste Ann Borja for her work on this project. A sincere thank you to the key informants who provided real-world perspectives for this Guide. BCLI would also like to thank Alanna Carlson (Alanna Carlson Consulting), Derek Geerlof (Independent Investigations Office of BC), Gillian Calder (University of Victoria), Jennifer Khor (Community Legal Assistance Society), River Shannon, Ruby Dhand (Thompson Rivers University), Tina Parbhakar, Tim Richards (University of Victoria), and Michelle Terriss (Thompson Rivers University) for their thoughtful review and comments on earlier drafts of this publication.

BCLI remains grateful for the core support of the Law Foundation of British Columbia and the BC Ministry of the Attorney General for our work.

Lastly, BCLI wishes to express its gratitude to Myrna McCallum, whose impact as a trailblazer in this area has been immense and inspirational. BCLI is honoured that she generously agreed to provide a foreword for this Guide.



This Guide uses examples, words, and references to historical events that may be triggering for some readers. If you are experiencing emotional distress, please see the directory of mental health supports included in the Resources section.





INTRODUCTION

Purpose and approach of this Guide

Legal professionals and justice workers rely on written communication in all aspects of their work, including client relationships, advocacy, conflict resolution, and reporting decisions. Regardless of practice area, we write to, about, and on behalf of people who have experienced trauma.

Individuals who adopt a trauma-informed approach in their writing contribute to a more effective, just, and equitable legal system. Traumatizing practices have long been ingrained in the Canadian legal system. While the system aims to administer justice and uphold the rule of law, it often does so in ways that inflict or exacerbate trauma. This can occur in several ways. The adversarial nature of legal proceedings can foster a hostile environment. Prolonged legal battles and delays in the judicial process can cause anxiety and emotional distress for those involved. The process of drafting affidavits, opinion letters, court submissions, policy papers, and other kinds of documents that communicate information to clients, judges, courts, opposing parties, and the public can be intense, uncomfortable, and at its worst, harmful or abusive for those involved.

How will this Guide assist you?

Trauma-informed legal writing addresses the emotional and psychological impacts of trauma, improves the clarity and accessibility of written work, fosters trust and collaboration, and ultimately supports better outcomes for individuals navigating the legal system. By integrating trauma-informed principles, legal writers can produce documents that are not only legally robust, but also supportive and compassionate towards the needs of those affected by trauma.

Who is this Guide for?

This Guide is meant for anyone working in or around the justice system, including lawyers, judges, tribunal members, paralegals, notaries, policy makers, courthouse staff, legal advocates, and victim support workers. It provides some introductory thoughts on the interchange between law and trauma and why trauma-informed practices are necessary. It also seeks to draw attention to current practical tools and best practices for crafting legal documents that are sensitive to the experiences and needs of those affected by

trauma. This Guide is not a complete study on trauma or trauma-informed lawyering. Rather, it is designed to be a foundational resource that can equip legal professionals with practical strategies and insights for implementing a trauma-informed approach in their legal writing.

What is the content of this Guide?

The Guide is organized under three headings:

1. a brief overview of trauma;
2. the importance of trauma-informed legal writing; and
3. best practices for a trauma-informed approach to legal writing.

The Guide includes a glossary of terms and resources for those who want to learn more about trauma-informed practices. We recognize that the tools to address trauma are constantly evolving and growing. We encourage you to seek out other perspectives and approaches and to initiate and contribute to conversations on this topic.

GLOSSARY OF TERMS

Term	Definition
2SLGBTQIA+	Acronym for Two-Spirit, lesbian, gay, bisexual, transgender, queer, questioning, intersex, asexual, and other sexual and gender diverse people.
Adverse childhood experiences (ACEs)	Potentially traumatic events that occur before the age of 18. ¹ ACEs are categorized into three groups: abuse, neglect, and household challenges. ² The concept of ACEs is based on research conducted by Kaiser Permanente from 1995 to 1997, which concluded that as the number of ACEs experienced by an individual increase, so does that person's risk of negative health and well-being outcomes. ³
Complex posttraumatic stress disorder (CPTSD)	A variant of posttraumatic stress disorder that can result from experiencing chronic or long-term trauma. CPTSD commonly occurs when the harm occurs in childhood and/or is inflicted by a trusted person. ⁴
Lived experience	Knowledge and perspective specific to someone's experiences, which are shaped by personal identities and history (beyond professional or educational experience). ⁵

¹ Center for Disease Control, "Adverse Childhood Experiences (ACEs)" (23 August 2021), online: <cdc.gov/vitalsigns/aces/index.html>.

² Center for Disease Control, "About the CDC-Kaiser ACE Study" (2 April 2021), online: <cdc.gov/violenceprevention/aces/about.html>.

³ Harvard University Center on the Developing Child, "What are ACEs and how do they relate to toxic stress?" (August 2018), online (pdf): <developingchild.harvard.edu/wp-content/uploads/2024/10/ACEsInfographic_080218.pdf>. For discussion of ACE relevance in a legal context, see The Honorable Katherine Lucero & Kathleen West, "Moving Towards a Trauma-Responsive Practice in Treatment Court Teams" (20 December 2017) (Presented at Beyond the Bench Conference, San Diego, California, 20 December 2017) online (pdf): <courts.ca.gov/documents/BTB24-4G-00PPT.pdf>.

⁴ National Health Service, "Complex PTSD - Post-traumatic stress disorder" (13 May 2022), online: <nhs.uk/mental-health/conditions/post-traumatic-stress-disorder-ptsd/complex>. There is some disagreement across the field of psychology on whether CPTSD is a distinct condition and diagnosis.

⁵ Grace Guerrero Ramirez et al, "What is Lived Experience?" (2022), online (pdf): <aspe.hhs.gov/sites/default/files/documents/5840f2f3645ae485c268a2784e1132c5/What-Is-Lived-Experience.pdf>.

Term	Definition
Moral injury	A psychological, behavioural, social, and sometimes spiritual response that can occur in response to acting or witnessing behaviours that contradict deeply held moral beliefs and expectations. ⁶ Moral injury is associated with posttraumatic stress disorder and can worsen its symptoms and outcomes. ⁷
Posttraumatic stress disorder (PTSD)	The psychological reaction to severe emotional trauma. It usually occurs after an extremely stressful event, such as war, a natural disaster, or abuse. Its symptoms include intrusive thoughts such as flashbacks of the traumatic event, avoidance of people or places associated with the trauma, low self-esteem, and irritability or angry outbursts. ⁸
Resilience	The individual's ability to create something positive after experiencing a traumatic event. ⁹ An individual may display resilience in some situations and not in others. ¹⁰
Self-determination	The ability or power to make decisions for yourself without the influence from other people or external demands. ¹¹
Trauma	A psychological (mental or emotional) injury caused by experiences of violence or other threatening events. ¹²
Trauma bonding	<p>An emotional attachment that develops out of a repeated cycle of abuse, devaluation, and conditioning between a perpetrator and a victim/survivor.¹³ It is also often referred to as "trauma-coerced attachment", which "compels the victim to submit to continued exploitation and to protect the perpetrator despite having every reason to do the opposite".¹⁴</p> <p>This term could also refer to bonding with another person experiencing the same traumatic event(s).</p>

⁶ Sonya B Norman & Shira Maguen, "Moral Injury", online: <ptsd.va.gov/professional/treat/cooccurring/moral_injury.asp#:~:text=A%20moral%20injury%20can%20occur,respect%20to%20their%20moral%20beliefs>.

⁷ *Ibid.*

⁸ American Psychiatric Association, "What is posttraumatic stress disorder (PTSD)?" (November 2022), online: <psychiatry.org/patients-families/ptsd/what-is-ptsd>.

⁹ Melanie Randall & Lori Haskell, "Trauma-Informed Approaches to Law: Why Restorative Justice Must Understand Trauma and Psychological Coping" (2013) 36:2 Dal LJ 501 at 509.

¹⁰ Canadian Psychological Association, "Traumatic Stress Section: Facts About Traumatic Stress and PTSD", online: <cpa.ca/sections/traumaticstress/simplefacts>. There is strong commentary on the word "resilient" and its intersection with marginalized peoples. See e.g. Simran Jeet Singh, "Resilient isn't the complement you think it is." (22 March 2023), online: <hbr.org/2023/03/resilient-isnt-the-compliment-you-think-it-is>.

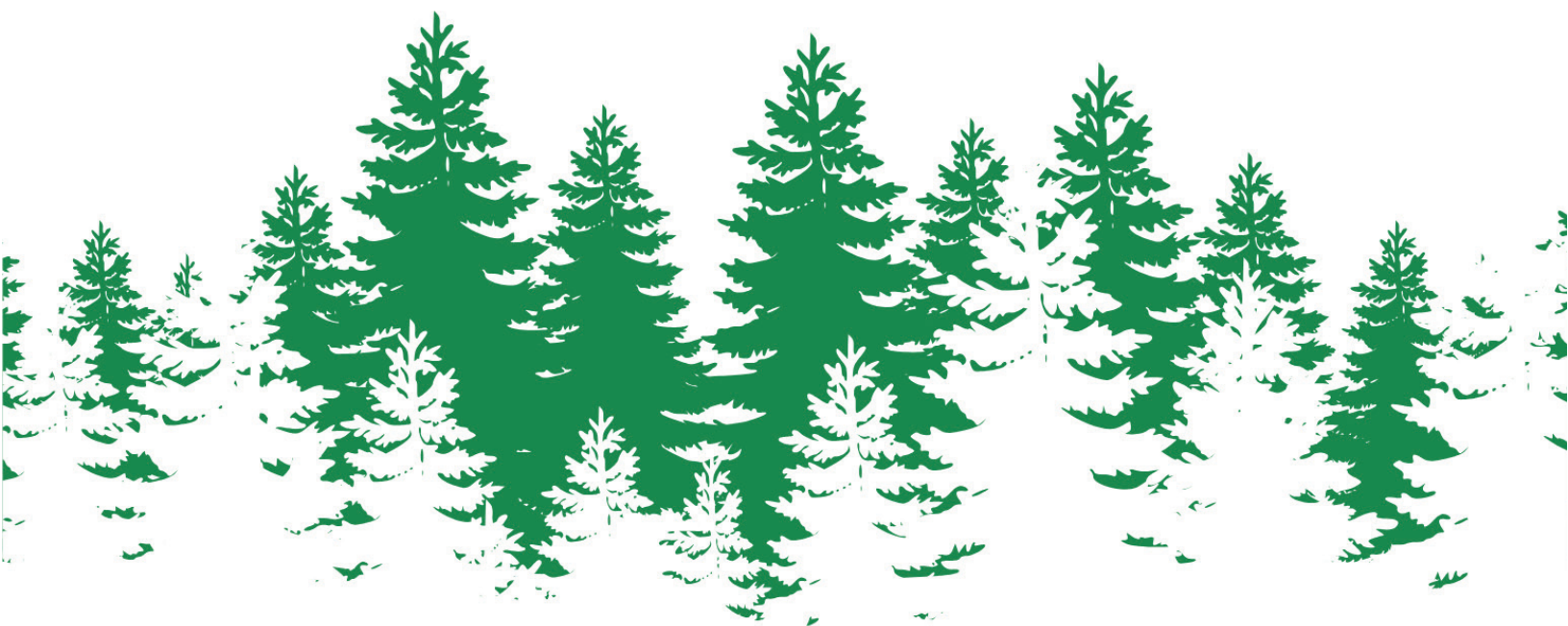
¹¹ Cambridge Dictionary, "self-determination", online: <dictionary.cambridge.org/dictionary/english/self-determination>; American Psychological Association, "self-determination" (19 April 2018), online: <dictionary.apa.org/self-determination>.

¹² Merriam-Webster, "Trauma" (4 August 2024), online: <merriam-webster.com/dictionary/trauma>.

¹³ Centre for Clinical Psychology, "Trauma bonding" (7 February 2023), online: <ccp.net.au/trauma-bonding>.

¹⁴ Government of Canada, "Trauma-coerced attachment" (17 July 2023), online: <justice.gc.ca/eng/rp-pr/jr/tiprhtc-rptctctp/p4.html>.

Term	Definition
Trauma event	An event or situation that overwhelms a person’s capacity to respond or cope effectively.
Trauma trigger or activation	A stimulus that sparks a memory of an unresolved trauma, which causes a person to experience a strong and involuntary fight, flight, freeze, or fawn response. ¹⁵
Vicarious trauma	Trauma that occurs through exposure to stories of violence, difficult or disturbing images. This is an indirect form of trauma which often impacts professionals. It is also referred to as compassion fatigue, secondary traumatic stress, or trauma exposure response. ¹⁶
Universal precautions	The universal application of trauma informed practices. This guards against traumatizing or retraumatizing individuals, without requiring disclosure by an individual or assumptions by a practitioner. ¹⁷



¹⁵ Saskatoon Sexual Assault & Information Center, “Triggers: What are they?” (2024), online: <ssaic.ca/learning-resources/triggers-what-are-they>. Some practitioners have expressed concern about the word “trigger”. See e.g. Will Bratt, “Understanding Trauma and Triggers” (2 May 2018), online: <heartandoaktherapy.com/heart-oak-blog/2018/5/2/understanding-trauma-and-triggers>.

¹⁶ Manitoba Trauma Information and Education Centre, “Vicarious Trauma”, online: <trauma-informed.ca/vicarious-trauma>. See also Vikki Reynolds, “Resisting burnout with justice-doing” (2011) 4 Int J Narrative Therapy & Community Work 27. Reynolds identifies that professionals often experience trauma and burnout from injustice, not from client interactions.

¹⁷ The phrase “universal precautions” is taken from the medical field. See a definition from that setting: Ian M Broussard & Chadi I Kahwaji, “Universal Precautions” (29 July 2023), online: <ncbi.nlm.nih.gov/books/NBK470223>.



I. A BRIEF OVERVIEW OF TRAUMA

What is trauma?

To understand a trauma-informed approach to legal writing, it is necessary to first understand what trauma is and how trauma manifests.

DEFINITION OF TRAUMA

The U.S. Substance Abuse and Mental Health Administration's oft-cited definition of trauma sets out that individual trauma "results from an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or life threatening and that has lasting adverse effects on the individual's functioning and mental, physical, social, emotional, or spiritual well-being."¹⁸

Not every distressing or overwhelming event is traumatic. What makes an event traumatic is if it causes physical, emotional, or spiritual/moral injury to a person that results in lasting effects on that person's functioning and wellbeing.²⁰ Trauma is what happens

*"I would define **trauma** as something that occurs that overwhelms **our capacity to cope**. And when it overwhelms our capacity to cope, then **it causes us a deep psychological injury** . . . that deep psychological injury then **affects our functioning**. And if we don't treat that trauma, then over time, what we develop is coping strategies to function despite our injury. So, we have not healed, we have learned to cope."*

- Interview participant (social worker)¹⁹

¹⁸ Substance Abuse and Mental Health Services Administration, "SAMHSA's Concept of Trauma and Guidance for a Trauma-Informed Approach" (July 2014) at 7, online (pdf): <library.samhsa.gov/sites/default/files/sma14-4884.pdf> [SAMHSA].

¹⁹ The BC Law Institute conducted a series of interviews with social workers, lawyers, and survivors of violence to inform this Guide.

²⁰ SAMHSA, *supra* note 18 at 7. See also Reynolds, *supra* note 16.

inside of us when our nervous system feels overwhelmed and threatened by an event. Unlike a distressing situation or stressful encounter, a traumatic event is “one which is so overwhelming that it diminishes a person’s capacities to cope, as it elicits intense feelings of fear, terror, helplessness, hopelessness, and despair

often subjectively experienced as a threat to the person’s survival.”²¹

There are several types of trauma, which can be identified by the nature, frequency and duration of the traumatic events or circumstances experienced.

Types of Traumas ²²	
Acute Trauma	Trauma that typically arises from a single, unexpected traumatic event (e.g., an accident or injury, a natural disaster, the sudden loss of a loved one, being the victim of a crime).
Chronic or Repetitive Trauma	Trauma that typically arises from repeated or prolonged exposure to traumatic events (e.g., bullying, domestic violence, war or ongoing threat of conflict).
Complex Trauma	Trauma that typically arises from exposure to multiple traumatic events, often of an invasive and interpersonal nature, over prolonged periods of time (e.g., abandonment, neglect, abuse). This type of trauma can sometimes be referred to as “complex developmental trauma” as it typically occurs in early childhood.
Intergenerational Trauma	Trauma experienced by an individual, family, or community that is passed down to the next generation(s). This can also be referred to as “intergenerational injustice”.
Historical Trauma	Intergenerational trauma that arises from trauma experienced by a group, typically one with a history of systemic oppression (e.g., genocide, colonialism, forced relocation, residential school violence).

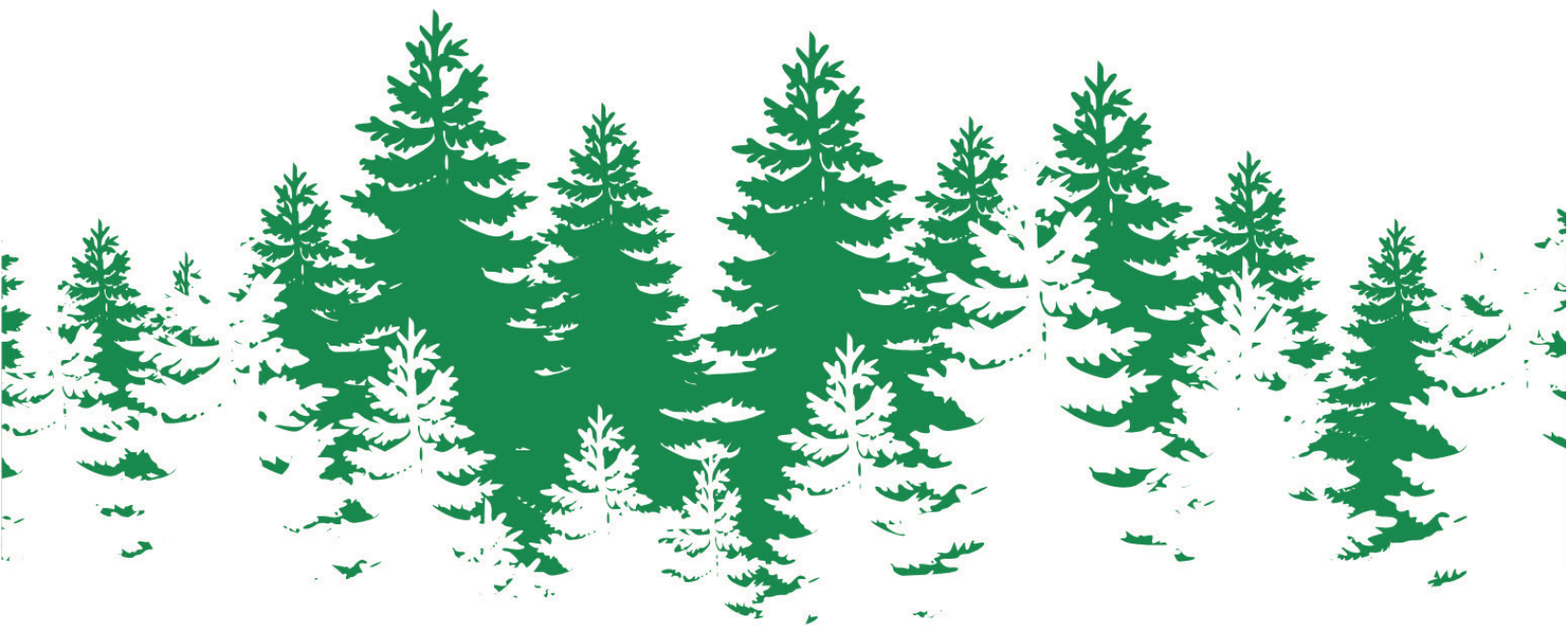
²¹ Randall & Haskell, *supra* note 9 at 507. Randall & Haskell also note that “[t]raumatic events are not necessarily violent, though they always entail the violation of a person’s sense of self and security” (*ibid* at 507).

²² BC Provincial Mental Health and Substance Use Planning Council, “Trauma-Informed Practice Guide” (2013) at 6, online (pdf): <cewh.ca/wp-content/uploads/2012/05/2013_TIP-Guide.pdf> [MHSUS Practice Guide]; The Centre for Addiction and Mental Health, “Trauma”, online: <camh.ca/en/health-info/mental-illness-and-addiction-index/trauma>; The Advocates’ Society, The Indigenous Bar Association & The Law Society of Ontario, “Guide for Lawyers Working with Indigenous Peoples, 1st Supplement” (29 September 2022) at 80, online (pdf): <[lawsocietyontario-dwd0dscmayfwh7bj.a01.azurefd.net/media/Iso/media/lawyers/practice-supports-resources/equity-supports-resources/first-supplement-to-the-guide-for-lawyers-working-with-indigenous-peoples-final-\(english\)_aoda.pdf](http://lawsocietyontario-dwd0dscmayfwh7bj.a01.azurefd.net/media/Iso/media/lawyers/practice-supports-resources/equity-supports-resources/first-supplement-to-the-guide-for-lawyers-working-with-indigenous-peoples-final-(english)_aoda.pdf)> [Guide for Lawyers Working with Indigenous Peoples]; Klinik Community Health Centre, “Trauma-informed: The Trauma Toolkit Second Edition” (2013) at 9, online (pdf): <ctctbay.org/application/files/3615/4160/0382/The_Trauma-Informed_Toolkit_Second_Edition.pdf> [Klinik].

No one is immune to trauma. In Canada, 64.9% of adults have reported experiencing at least one traumatic event.²³ Anyone can experience trauma regardless of gender, socioeconomic background, level of education, religion, culture, sexual orientation, race, abilities, or age. These can also be compounding or intersecting factors. Families and communities can be traumatized by an event happening to one or all members.²⁴ Cultures can be traumatized by attempts at assimilation, colonialization, and genocide (e.g., residential school systems).²⁵ Service providers, such as legal professionals, bring unresolved trauma into their work and can experience vicarious or secondary

trauma caused by repeated exposure to the stories and suffering of clients who have experienced trauma.²⁶

A stressful event may be traumatic for one individual and not for another.²⁷ How a person experiences an event depends on a range of factors, including the person's beliefs and previous experiences, availability of social supports, or the person's developmental stage and psychological makeup.²⁸ For Indigenous peoples and those from equity-seeking communities, legal professionals must consider lived experiences of trauma using an "anti-racist, anti-colonial and intersectional lens."²⁹



²³ Government of Canada, "Posttraumatic stress disorder among adults in Canada" (7 May 2024), online: <health-infobase.canada.ca/ptsd-survey/>. Examples of traumatic events in this study included car accidents, physical assault, and life-threatening illness or injury.

²⁴ Klinic, *supra* note 22 at 12.

²⁵ *Ibid.*

²⁶ *Ibid.* Such exposure includes materials that lawyers are required to read and review. Note that there is disagreement about the idea of vicarious trauma. See the 'Learn More' section at page 24 for more information.

²⁷ Randall & Haskell, *supra* note 9 at 507.

²⁸ SAMHSA, *supra* note 18 at 8..

²⁹ Anita Szigeti and Ruby Dhand, "Foundational Issues in Mental Health Law: Lived Experience, Access to Justice and Intersectionality," in Anita Szigeti and Ruby Dhand, eds, *Law and Mental Health in Canada: Cases and Materials* (Lexis Nexis, 2022) 1 at 12.

IMPACTS OF TRAUMA

Traumatic events are inherently beyond a person's control.³⁰ Therefore, they can elicit feelings of powerlessness, guilt, betrayal, shame, and irrational self-blame.³¹ When these feelings are left unaddressed, they can create lasting adverse effects on a person's functioning and well-being. For example, a person can continue to experience strong and involuntary reactions to a stimulus that would not ordinarily cause that response.³² This is often referred to as a trigger or activation.³³ A trigger can be anything that involuntarily sparks a memory of the unresolved psychological injury caused by a traumatic experience. It can be conscious or subconscious. Some common examples include a place where the traumatic event occurred, certain smells, seeing people associated with the trauma such as perpetrators or witnesses, or reading an article or a book that reminds the person of the traumatic event.³⁴

There are various ways that individuals can respond to traumatic events. Common responses include fight, flight, freeze, or fawn. These responses are automatic reactions of the nervous system, which means individuals have no control over them.³⁵ They are reflexive adaptive coping mechanisms when they occur during a threatening situation. However, they become maladaptive when they occur in response to a non-threatening situation.³⁶

"The way that trauma often shows up is in people's overreactions to their current circumstances. So, if you think about physical trauma, [for example] I was injured, and now I have a back injury. And now when I lift this book, it causes me pain. Now lifting a book should not cause me pain, but because of my old injury it does. When we talk about psychological trauma, it's something similar, I have an old injury, and now doing something that should be within my scope to do causes me pain. And so, then I react out of that pain."

**- Interview participant
(social worker)**

³⁰ Klinic, *supra* note 22 at 9. See also National Institute for the Clinical Application of Behavioral Medicine, "How to Help your Clients Understand Their Window of Tolerance [Infographic]" online: <nicabm.com/trauma-how-to-help-your-clients-understand-their-window-of-tolerance>. The window of tolerance is an excellent concept to understand an individual's range of functioning.

³¹ SAMHSA, *supra* note 18 at 11.

³² *Ibid* at 5.

³³ *Ibid*.

³⁴ *Ibid* at 10.

³⁵ Guide for Lawyers Working with Indigenous Peoples, *supra* note 22 at 32.

³⁶ Natalie Netzel, "Trauma-informed (as a matter of) Course" (2023) 31:3 Am U J Gender Soc Pol'y & L 383 at 401.

Common Presentations of Fight, Flight, Freeze, and Fawn Trauma Responses³⁷



FIGHT

- Combative
- Having outbursts of anger or excessive anger



FREEZE

- Appearing disengaged or dissociated
- Unable to process or remember information



FLIGHT

- Avoidant
- Easily distracted
- Failing to provide necessary requirements or expectations
- Likely misunderstood as lazy or complacent behaviour
- Low participation
- Poor attendance



FAWN³⁸

- Being a people pleaser
- Giving constant praise and compliments
- Inability to identify personal needs
- Inability to decide without other people's input
- Inability to say "no"
- Inability to set boundaries

³⁷ *Ibid* at 409–411.

³⁸ A person in "fawn" often is providing a prosocial response. It can be difficult to identify for this reason. See e.g. Netzel, *ibid* at 408: "People who experience fawn responses may be harder to identify because of their appeasing nature. The fawn response often stems from a recognition that appeasing an abuser is one way to prevent abuse. It may be triggered in response to being involved in relationships with power differentials."

A person can experience long-lasting physical, behavioural, cognitive, and emotional effects when they are constantly in a fight, flight, freeze, or fawn state. A person in one of these states is not able to engage their prefrontal cortex, which is required for

reasoning.³⁹ The chart below lists common responses and lasting adverse effects that people experience when they have unresolved trauma.

Common Reactions to Traumatic Events⁴⁰

Physical	Observable Behaviours
<ul style="list-style-type: none"> Exhaustion General pain and discomfort (e.g., headaches, stomachaches) Easily startled Problems sleeping (e.g., nightmares, insomnia) Tense muscles Dizziness or weakness Elevated blood pressure or heart rate Fast or shallow breathing 	<ul style="list-style-type: none"> Habit changes (e.g., sleeping, eating, hobbies) Decreased self-care (e.g., personal hygiene) Avoidance Dissociation or shutting down Increased use of substances Compulsive behaviours (e.g., shopping, overeating, gambling) Impulsive behaviours (e.g., high risk sexual behaviors) Self-harm Disordered eating
Cognitive	Emotional
<ul style="list-style-type: none"> Difficulty focusing on tasks Flashbacks and unwanted thoughts or memories Impaired decision making Impaired memory (generally or with respect to the traumatic event) Ruminating on or worrying about the traumatic event 	<ul style="list-style-type: none"> Depression (e.g., feelings of helplessness, hopelessness, loss of meaning) Changes in mood or challenges regulating emotions Sense of isolation Loss of self-confidence or sense of self Anger Fear "Survivor guilt" Shame and self-loathing
Social	
<ul style="list-style-type: none"> Challenges trusting or forming relationships Social withdrawal Difficulty behaving appropriately in social situations Use of substances to assist with self-regulation in social situations 	

³⁹ Golden Eagle Rising Society, "Trauma-Informed Legal Practice Toolkit" (September 2020) at 17-23, online (pdf): <goldeneaglerising.org/docuploads/Golden-Eagle-Rising-Society-Trauma-Informed-Toolkit-2021-02-14.pdf> [Golden Eagle].

⁴⁰ MIT Health, "FAQ: Common Reactions to Traumatic Events" online: <health.mit.edu/faqs/mental-health/common-reactions-to-traumatic-events>. See also Laken Gilbert Albrink, "Trauma-Informed Legal Advocacy" (2023) 13:1 Wake Forest J L & Pol'y 67 at 73-78.

IMPACTS OF TRAUMA IN LEGAL SETTINGS

Trauma responses can seriously impact a person's ability to access justice. The chart below presents common examples of trauma responses and translates them to legal

scenarios. These examples are not exclusive to clients, lay witnesses, or accused people. They can also show up for legal counsel, decision-makers and other legal professionals who have lived experience with trauma or have witnessed others' trauma.

A person experiencing...	May present by... ⁴¹
Avoidance	<ul style="list-style-type: none"> • Missing timelines • Not returning emails or phone calls • Missing court dates
Difficulty concentrating	<ul style="list-style-type: none"> • Asking repeated questions • Completing tasks poorly or not at all
Difficulty sleeping	<ul style="list-style-type: none"> • Appearing disinterested • Arriving late to court or meetings
Dissociation	<ul style="list-style-type: none"> • Appearing disinterested or zoned out
Fear	<ul style="list-style-type: none"> • Being avoidant of people, places, or topics related to the trauma • Showing reluctance to provide information or to do what is necessary
Hyperarousal	<ul style="list-style-type: none"> • Appearing easily startled and distracted
Impulsive behaviours	<ul style="list-style-type: none"> • Engaging in behaviours that have short-term benefits, but are harmful in the long term
Underdeveloped social skills	<ul style="list-style-type: none"> • Engaging in behaviours that are inappropriate for the setting, such as in meetings or in court
Memory disturbances	<ul style="list-style-type: none"> • Having challenges with sequences, blending events together, and making inconsistent statements
Shame	<ul style="list-style-type: none"> • Showing reluctance to share important detail • Acting out of a sense that they are not entitled to certain things or that they "deserved" to be treated a certain way • Being less forthcoming about their experience
Skepticism	<ul style="list-style-type: none"> • Demonstrating an unwillingness to trust or engage meaningfully with the process and/or professionals (e.g., social workers, law enforcement)
Trauma bonding with the perpetrator	<ul style="list-style-type: none"> • Demonstrating an unwillingness to cooperate with required procedures • Changing prior statements

⁴¹ *Ibid* at 79–80.

What is a trauma-informed approach to law?

A trauma-informed approach to law applies universal precautions. The legal professional seeks to make every effort to do no further harm by minimizing the risk of re-traumatization of people and communities.⁴² It supports the healing of systemically disadvantaged populations by recognizing the prevalence and impact of trauma and attempting to create a sense of safety for people, whether or not they have experienced a traumatic injury.⁴³

Legal processes are inherently stressful and triggering for many people, especially for individuals who have experienced trauma, often making them feel isolated, revictimized, and marginalized.⁴⁴ Traumatic events can cause people to feel unsafe and powerless. A trauma-informed approach to law is grounded in four key principles:⁴⁵

1. trauma awareness;
2. emphasis on safety and trustworthiness;
3. providing opportunities for choice, collaboration, and connection; and
4. empowering individuals by recognizing and building upon their own strengths and skills.

You do not need to be an expert in mental health to be trauma informed. A trauma-informed approach to law is not designed

to treat symptoms related to experiencing traumatic events. Rather, it enables us to enhance our effectiveness by responding to the physical, emotional, psychological, sociological, and physiological needs of those we interact with.⁴⁶ In relationship to one's clients, for example, this may include:⁴⁷

- patiently repeating information;
- skilfully responding to clients' strong emotions or responses;
- actively listening to clients' stories;
- practicing empathy by validating clients' feelings; and
- offering clients choices.

By integrating thoughtful practices such as these, you can reduce the possibility of re-traumatizing participants in the legal process and ultimately enable better legal outcomes.⁴⁸

Becoming trauma informed requires a shift in perspective.⁴⁹ We must transition from a deficit-based approach to a non-judgmental and compassionate approach. This requires understanding and acknowledging that (1) a person's behaviours or actions may be caused by events or factors outside of their control,⁵⁰ and, (2) we may not be privy to the information necessary to understand what is driving a person's behaviour.

Legal professionals should also attempt to grapple with systemic factors that can cause trauma.⁵¹ For example, where racism or homophobia impact legal decision making.

⁴² Guide for Lawyers Working with Indigenous Peoples, *supra* note 22 at 27.

⁴³ *Ibid.*

⁴⁴ Government of Canada, "Why are we transforming the criminal justice system" (7 July 2021), online: <[justice.gc.ca/eng/cj-jp/tcjs-tsjp/why-pourquoi.html](https://www.justice.gc.ca/eng/cj-jp/tcjs-tsjp/why-pourquoi.html)>. There is considerable discussion about how structures of legal decision making create and contribute to trauma. Trauma free may not be possible, and legal professionals do not choose or create the structures they work within. See the 'Learn More' section at page 24 for more information.

⁴⁵ Golden Eagle, *supra* note 39 at 38.

⁴⁶ Albrink, *supra* note 40 at 69.

⁴⁷ Kayla Gurski & Tiffany Butler, "Shifting Towards a Trauma-informed, Holistic Legal Service Model for Survivors of Violence" in Tod Augusta-Scott, Katreena Scott & Leslie M Tutty, eds, *Innovations in Interventions to Address Intimate Partner Violence* (New York: Routledge, 2017) 139 at 145.

⁴⁸ Golden Eagle, *supra* note 39 at 36.

⁴⁹ MHSUS Practice Guide, *supra* note 22 at 23.

⁵⁰ Angela Harris & Monika Kashyap, "From Trauma to Transformation: Trauma-Informed Pedagogy in Law School" (2023) 27:1 U Pa JL & Soc Change 1 at 18.

⁵¹ Szigeti & Dhand, *supra* note 29 at 12.

A trauma-informed approach is crucial in areas of the law that deal with high prevalence of violence and injury such as criminal, family, child protection, personal injury, human rights, and immigration and refugee claims.⁵² However, it is not and should not be exclusively used in those areas. For instance, there is increasing discussion of the importance of integrating a trauma-informed lens in legal education to account for the traumatic events impacting law students and faculty,⁵³ in law clinics to teach students how to incorporate a trauma-informed lens into legal practice,⁵⁴ and in private law firms and corporations to ensure that standard form documents and retainer agreements reflect transparency (e.g., clear outline of the scope of representation and fees) and that client preferences are respected throughout the representation.⁵⁵

A trauma-informed approach to law:

- recognizes that accessing legal systems can be traumatic and/or retraumatizing for individuals and groups with lived experiences of trauma;
- seeks to find strategies where individuals can feel safe and empowered when they interact with legal systems;⁵⁶
- acknowledges that trauma exists in all legal settings;⁵⁷
- responds by adapting practices based on the lived experiences of individuals navigating legal systems;⁵⁸
- incorporates knowledge of trauma into legal policies, procedures, and settings;⁵⁹ and
- displays thoughtful and non-confrontational approaches with the person at the other side of the communication.

"People are walking around with trauma. Don't assume that because you're communicating to another lawyer that you don't have to be trauma informed. Don't say that because I'm dealing with a civil or a corporate matter, I don't need to be trauma informed. All human beings have trauma. And so . . . that would be the first principle . . . speak to that trauma and spend time creating the environment of safety even in your writing."

- Interview participant (social worker)

⁵² Colin James, "Towards trauma-informed legal practice: a review" (2020) 27:2 Psychiatry, Psychology & L 275 at 276.

⁵³ See e.g. Harris & Kashyap, *supra* note 50. This article expands the meaning and relevance of trauma-informed teaching to include "the traumatic harms inflicted on law students by law school itself – especially on students who are socially stigmatized and structurally disadvantaged" (*ibid* at 4).

⁵⁴ See e.g. Sarah Katz & Deeya Halder, "The Pedagogy of Trauma-Informed Lawyering" (2016) 22:2 Clinical L Rev 359 at 362.

⁵⁵ See e.g. Albrink, *supra* note 40 at 100.

⁵⁶ Gurski & Butler, *supra* note 47 at 145.

⁵⁷ Trauma can occur or be triggered in any setting. For example, a person may find a legal office triggering after numerous negotiations with a violent ex-spouse at that location.

⁵⁸ Individuals without lived experience may struggle to identify problems and limitations in current practice. It is important to gain feedback from those with lived experience to ensure responses are working as intended.

⁵⁹ Katz & Halder, *supra* note 54 at 361; SAMHSA, *supra* note 18 at 9.

Learn More

Trauma and brain science

The following publications provide foundational information regarding trauma and brain science:

- Bessel van der Kolk, *The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma* (New York: Penguin Books, 2015).
- Stephan W Porges, *The Polyvagal Theory: Neurophysiological Foundations of Emotions, Attachment, Communication and Self-Regulation* (New York: WW Norton, 2011).

Vicarious trauma

There is disagreement around the construct of vicarious trauma, including its definition and how it links to or overlaps with other concepts such as secondary traumatic stress, compassion fatigue, and burnout. To explore the discourse on this topic further, consider the following resources:

- Ending Violence Association of BC, “Overview and History of Vicarious Trauma” (2021), online (pdf): <endingviolence.org/wp-content/uploads/2023/06/EVA_MVT_Overview_2021-3.pdf>.
- M Lynne Jenkins, “Teaching Law Students: Lessening the Potential Effects of Vicarious Trauma” (2013) 37:1 Man LJ 383.
- Natalie Netzel, “Trauma-informed (as a matter of) Course” (2023) 31:3 Am U J Gender Soc Pol’y & L 383 at 396.
- Vikki Reynolds, “Resisting burnout with justice-doing” (2011) 4 Int J Narrative Therapy & Community Work 27.

The relationship between trauma and systems and/or institutions

Systems and institutions can perpetuate trauma. The following provide a starting place for further learning:

- Institution betrayal is defined by Freyd as “[i]nstitutions harming those dependent on the institution. Includes the failure to prevent or respond supportively to wrongdoings within the institution when there is a reasonable expectation of protection. The harm of institutional betrayal is both pragmatic and psychological.”⁶⁰
- Trauma from “exposure to traumatic systems” or “situations in which organized systems create trauma, including those designed to mitigate trauma” can be referred to as “system-induced trauma”. System-induced trauma can include systems such as the justice/legal system, the healthcare system, the foster-care system, and the educational system.⁶¹

⁶⁰ Jennifer J Freyd, “Institutional Betrayal and Institutional Courage” (10 March 2024), online: University of Oregon <dynamic.uoregon.edu/jjf/institutionalbetrayal>.

⁶¹ See Lucero & West, *supra* note 3.

II. THE IMPORTANCE OF TRAUMA-INFORMED LEGAL WRITING

This Guide is informed by the belief that trauma-informed legal writing is more effective than traditional legal writing. Trauma-informed legal writing helps reduce confusion and anxiety, and it avoids the risk of causing additional distress. It promotes access to justice by ensuring that legal documents and processes are clear, accessible, and considerate of the reader's needs. It ensures that readers, particularly those unfamiliar with legal terms, can understand their rights, options, and what is happening in their case. Trauma informed legal writing also aligns with obligations held by legal professionals.

Trauma-informed legal writing aligns with ethical obligations

The *Code of Professional Conduct for BC* requires lawyers meet a high standard of professional integrity and skill.⁶²

Lawyers have a duty of advocacy to “raise fearlessly every issue, advance every argument and ask every question, however

distasteful, that the lawyer thinks will help the client's case and to endeavour to obtain for the client the benefit of every remedy and defence authorized by law.”⁶³ Misapplied, this can encourage tactics that may promote the best outcome for our client, regardless of cost to the other party. For example:

- including unnecessary information in materials that seeks to defame or humiliate;⁶⁴
- using wording designed to trigger or provoke a negative response;⁶⁵

⁶² Law Society of British Columbia, “Code of Professional Conduct for British Columbia” (1 January 2013), online (pdf): <lawsociety.bc.ca/Website/media/Shared/docs/publications/mm/BC-Code_2024-03.pdf>[Code]. For example, at 2.2-1, 2.2-2, 3.1, 3.2-1.

⁶³ *Ibid* at 5.1-1.

⁶⁴ See e.g. The Canadian Press, “Lawyer reprimanded for nude photos in custody case” (15 June 2021), online: <cbc.ca/news/canada/edmonton/lawyer-reprimanded-for-nude-photos-in-custody-case-1.6067187>. In this instance, a hearing committee of the Law Society of Alberta found that there were reasonable and probable grounds to believe that a lawyer may have committed a criminal offence after “explicit and nude” photos of a woman were included as part of an affidavit in a custody case. The Law Society of Alberta reprimanded the lawyer for bringing the administration of justice into disrepute and failing to provide competent legal services.

⁶⁵ This may be used as a litigation strategy when cross-examining witnesses.

- refusing to consent to reasonable accommodations for the other party; and
- pursuing claims correlated with violence.⁶⁶

Lawyers have a duty to “carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the professional honourably and with integrity”.⁶⁷ Integrity demands respect for the dignity and needs of all parties. Being trauma informed meets this obligation. Trauma-informed legal writing maintains decorum and meets the best interests of those we serve.

Lawyers must uphold the reputation of the legal profession.⁶⁸ A trauma-informed process can “operate to remove barriers to

just outcomes, and enhance public respect for, and the legitimacy of, the administration of justice.”⁶⁹ The public lose faith in the legal system when actions and decisions are based on myths, assumptions, and misunderstandings rather than facts and evidence. Most lawyers do not receive training in psychology, trauma, or trauma-informed approaches.⁷⁰ Rather, “the legal system is premised on fairly simplistic and highly rationalist assumptions about human psychology and behaviour.”⁷¹ The BC Court of Appeal has recently highlighted that harmful myths can still be found in legal reasoning.⁷² Lawyers must closely examine anything that impairs our impartiality because these directly impact our ability to pursue a fair and just result.⁷³

“If you’re trauma informed in your writing, I think you’re more likely to win . . . When you’re not trauma informed, and I’ve seen lawyers do this all the time, you often make the decision maker mad . . . Lawyers think they need to go for the jugular. And they’re very non-trauma-informed in their writing . . . And I find when you’re not trauma informed, it actually works against you, because a lot of tribunals have been trained in it . . . So to me . . . you’re actually going to get further ahead if you’re trauma informed.”

- Interview participant (lawyer)

⁶⁶ For example, a United Nations Special Rapporteur released a report in 2023 that called on member nations to “legislate to prohibit the use of parental alienation or related pseudo-concepts in family law cases and the use of so-called experts in parental alienation and related pseudo-concepts.” Claims of parental alienation are often used by perpetrators as a shield to family violence claims. See Human Rights Council, *Custody, violence against women and violence against children Report of the Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem*, HCR, 53 Sess, UN Doc A/HRC/53/36 (2023) at 19. A further example is the use of defamation as a shield to claims of family violence. See e.g. Dr. Mandi Gray, “Defamation Law and Gender-Based Violence in Canada: A Primer for Survivors and Service Providers” (October 2024), online (pdf): [GBV Learning Network <gbvlearningnetwork.ca/our-work/briefs/briefpdfs/Brief-44.pdf>](https://gbvlearningnetwork.ca/our-work/briefs/briefpdfs/Brief-44.pdf).

⁶⁷ Code, *supra* note 62 at 2.2-1

⁶⁸ *Ibid* at 2.2-2.

⁶⁹ *S v Ukraine International Airlines JSC*, 2024 ONSC 3303 at para 100.

⁷⁰ Gurski & Butler, *supra* note 47 at 141.

⁷¹ *Ibid*.

⁷² *KMN v SZM*, 2024 BCCA 70. For example, one myth addressed in this case is that family law litigants make false claims of family violence as litigation strategy. See also Jennifer Koshan, “Challenging Myths and Stereotypes in Domestic Violence Cases” (2023) 35:1 Can J Fam L 33.

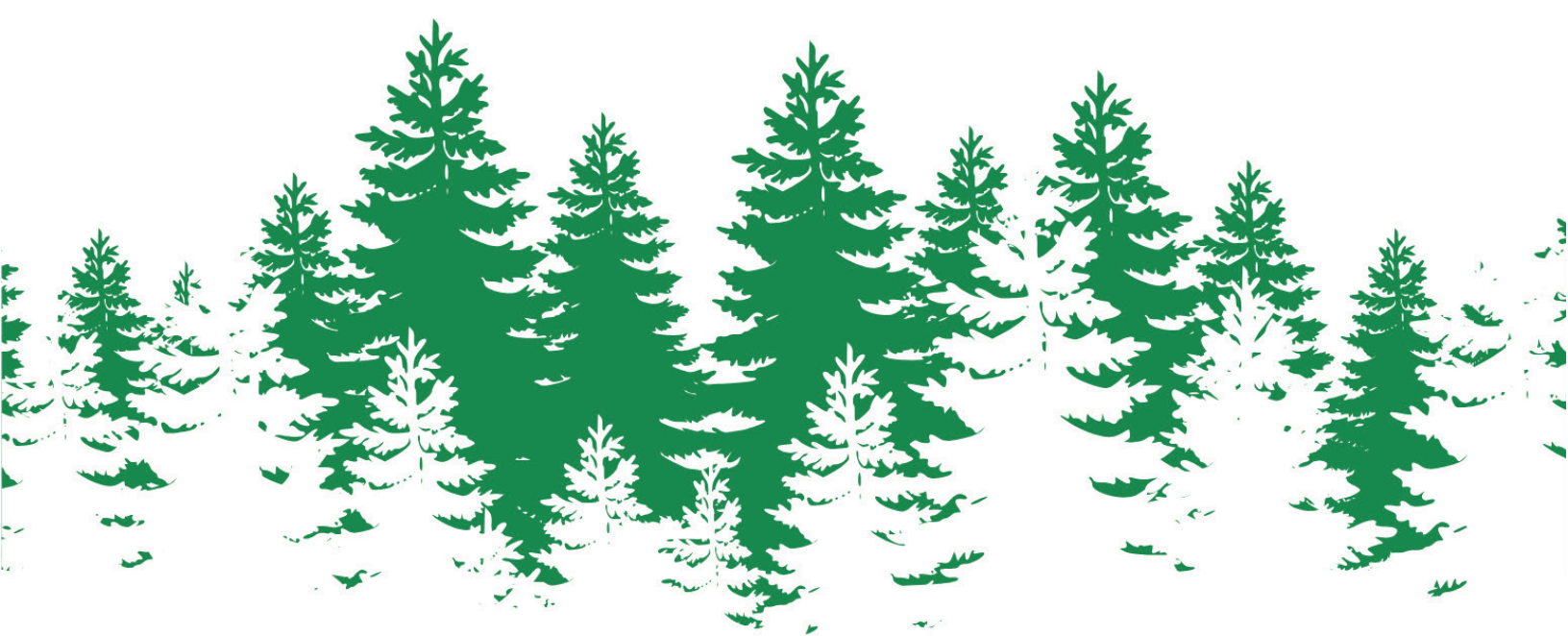
⁷³ See e.g. *KMN v SZM*, *supra* note 72, at para 122: “Whether and the extent to which these myths and stereotypes exist and operate in practice was not a matter raised at the trial or fully argued before us. However, the law is clear that trial judges must assiduously guard against the potential for myths and stereotypes or unfounded or generalized assumptions about human behaviour—in whatever form—to affect their reasoning process. Doing so takes on heightened importance in the context of alleged family violence.”

Engaging in a trauma-informed way is required for competent practice.⁷⁴ A trauma-informed lawyer is more likely to:

- identify behaviours as trauma responses rather than flawed credibility and reliability;
- safely draw out pieces of information important for a person's case;⁷⁵
- facilitate individuals in presenting their best case;⁷⁶
- manage the case appropriately (e.g., requesting testimonial aids);⁷⁷ and
- refer a client to non-legal resources that improve their legal outcomes.⁷⁸

Trauma-informed principles holistically address the needs of clients with trauma, improving the quality of legal services.⁷⁹ It is worth noting that many legal practitioners are already engaging these principles in their practice without specifically identifying their approach as trauma-informed.

Competence also demands personal wellness. Writing that proposes to do no further harm extends to the writer themselves. Trauma-informed legal writing includes having respect and responding to your own needs for self-care and healing, particularly in relation to vicarious trauma.



⁷⁴ Code, *supra* note 62 at 3.1-2.

⁷⁵ Albrink, *supra* note 40 at 81.

⁷⁶ Annie Lemoine, "Good storytelling: a trauma-informed approach to the preparation of domestic violence related asylum claims" (2017) 19:1 Loy J Pub Int L 27. For example: explaining which facts are relevant; what evidence is required to support their claims; how the process works, timelines, and potential roadblocks; what is expected of them generally and for specific steps in the process; where to obtain supports or assistance for problems; elements of the process that may be triggering and how the person can manage this problem.

⁷⁷ Albrink, *supra* note 40 at 73, 78. For example: requesting testimonial aids; obtaining appropriate experts; pleading appropriately or bringing parallel actions in other legal schemes; referring the client to other legal professionals, if required (e.g., families will often have cases in criminal and family court at the same time); incorporating a lens of trauma into the narrative of the case; providing appropriate case law and information to the decision maker.

⁷⁸ For example, a lawyer recognizing substance use as a common trauma response may refer a family law client reporting family violence to appropriate services to allow them to draw the connection between their trauma and their use of substances. The client managing their substances use appropriately can have a significant impact on determinations regarding children.

⁷⁹ Golden Eagle, *supra* note 39 at 24.

Trauma-informed legal writing aligns with truth and reconciliation

"[R]econciliation is a process which is building. It's not a spectator sport. It involves everybody. And everybody is implicated in it, whether you like it or not. You are either for it or you are against it. No neutrality exists here. And when you think about it, you have to understand it. And understanding it is part of the educational process. And understanding the implications it has for you is part of the challenge that we also need to face.

And all of that has to do with knowledge. All of that has to do with dialogue as well, and developing consensus and agreement about where we're going to go as a country . . . We have to talk about what kind of relationship we're going to have going forward. And that means we have to think differently. We have to think better . . ."

- The Honourable Murray Sinclair, senator and chief commissioner of the Truth and Reconciliation Commission, in remarks delivered at the Tommy Douglas Institute at George Brown College in Toronto, Ontario on May 28, 2018.⁸⁰

Becoming trauma-informed and integrating cultural competency in one's practice are active and ongoing processes that are interdependent. Culture informs how individuals perceive, evaluate, and communicate information.⁸¹ Consistent with the spirit of truth and reconciliation, cultural competency provides a framework to build the knowledge, skills, and attitudes needed to provide legal services in a manner that foster safety for Indigenous individuals. Calls to Action 27 and 28 of the Truth and Reconciliation Commission (TRC)'s report

are directions given specifically to the legal community in Canada, addressing the need for competency training for legal professionals in Indigenous cultures, values, and perspectives.⁸² These two calls for training culturally competent lawyers must also be interpreted in the context in which they were made as the TRC's report notes various ways in which Canadian law and the legal system have hindered, not enabled, access to justice for Indigenous peoples.⁸³ It is in response to the TRC's report that the Law Society of British Columbia recognized

⁸⁰ For a transcript of this keynote, see "Transcript: Courage My Friends Podcast Series VII – Episode 5: The Honourable Murray Sinclair 2018 Keynote Address on Indigenous Ways of Knowing", online (pdf): [Rabble.ca <rabble.ca/wp-content/uploads/2024/11/The-Courage-My-Friends-Podcast-Series-7-Episode-5-Transcript.pdf>](https://rabble.ca/wp-content/uploads/2024/11/The-Courage-My-Friends-Podcast-Series-7-Episode-5-Transcript.pdf). For an audio recording of this keynote, see "Senator Murray Sinclair speaks about Truth and Reconciliation" (14 June 2018), online: [Rabble.ca <rabble.ca/podcast/senator-murray-sinclair-speaks-about-truth-and-reconciliation>](https://rabble.ca/podcast/senator-murray-sinclair-speaks-about-truth-and-reconciliation).

⁸¹ L Danielle Tully, "The Cultural (Re)Turn: The Case for Teaching Culturally Responsive Lawyering" (2020) 16 Stanford J Civ Rights & Civ Liberties 201 at 256.

⁸² Government of British Columbia, "Truth and Reconciliation Commission of Canada: Calls to Action" (2015) online (pdf): gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/calls_to_action_english2.pdf.

⁸³ Pooja Parmar, "Reconciliation and Ethical Lawyering: Some Thoughts on Cultural Competence" (2019) 97:3 Can Bar Rev 526 at 530. Parmar's article suggests that a meaningful response to TRC Calls 27 and 28 would be interpreting them "most centrally as a call to the legal profession to be more accountable to those it has not served well. The critical issue then is that of conceiving of competence in ways that centre the idea of accountability" (*ibid* at 549).

that Indigenous intercultural awareness is a core part of lawyer competence and mandated that all practicing lawyers take an Indigenous Intercultural Course.⁸⁴

Another important reference for legal practitioners and justice workers is the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG) Findings and Final Report.⁸⁵ The MMIWG report is organized by 19 themes and contains 231 Calls to Justice, many of which are directed to the legal community or

concern access to justice. It is critical that all legal practitioners and justice workers engage with the findings of the MMIWG report and educate themselves on the violence, inequities, and discrimination that have been and continue to be disproportionately experienced by Indigenous women, girls, and 2SLGBTQQIA+ peoples.⁸⁶

The summary below identifies several critical ways that a trauma-informed approach aligns with the TRC's Calls to Action and the MMIWG Calls for Justice:

	TRC Report	MMIWG Report	Trauma-Informed Approach to Writing
1. Recognition of Historical and Intergenerational Trauma	Addresses the historical and ongoing wrongs perpetrated against Indigenous Peoples caused by colonialism, the residential school system, and the Sixties Scoop.	Sheds light on trauma through the history of genocide and colonial violence against Indigenous women, girls, and 2SLGBTQQIA+ people in Canada.	Recognizes the deep impacts of historical and intergenerational trauma and seeks to incorporate an understanding of trauma into legal writing, ensuring that language and content do not re-traumatize, perpetuate, or worsen existing trauma for Indigenous Peoples and Indigenous women, girls and 2SLGBTQQIA+ people.
2. Cultural Sensitivity and Respect	Advocates for competency training for legal professionals in Indigenous cultures, values, and perspectives.	Highlights the need for culturally appropriate responses to violence and systemic issues.	Adapts legal language and practices that are sensitive and respectful to Indigenous cultural contexts and experiences.

⁸⁴ Law Society of British Columbia, "Indigenous Intercultural Course", online: <lawsociety.bc.ca/for-lawyers/professional-development/indigenous-intercultural-course>.

⁸⁵ National Inquiry into Missing and Murdered Women and Girls, "Calls for Justice" (2 June 2019), online (pdf): <mmiwg-ffada.ca/wp-content/uploads/2019/06/Calls_for_Justice.pdf>.

⁸⁶ *Ibid.*

	TRC Report	MMIWG Report	Trauma-Informed Approach to Writing
3. Holistic Support	Advocates for holistic approaches to healing to address physical, mental, emotional, and spiritual harms caused by the residential school system and its legacy.	Emphasizes the need for holistic and comprehensive support systems that address all aspects of wellbeing for survivors of crime and their families and friends.	Creates legal communications that are empathic and considerate of the whole person, supporting holistic healing and well-being through thoughtful and compassionate language.
4. Empowerment and Self-Determination	Highlights the importance of supporting Indigenous self-determination and governance in areas such as health, education, and legal matters.	Emphasizes the need for cultural safety, which requires the incorporation of services and processes that empower Indigenous communities and individuals.	Supports empowerment by drafting legal writing that is clear, transparent, non-judgmental, and reflective of individuals' experiences and choices and the collective perspectives of Indigenous peoples.
5. Creating Safe and Trusting Environments	Advocates for creating safe and respectful environments for Indigenous Peoples.	Stresses the importance of building trust between Indigenous communities and institutions, especially those involved in justice and health.	Contributes to creating a safer, more trusting environment by avoiding language and practices that could be perceived as hostile or dismissive.
6. Systemic Change and Reform	Advocates for systemic reforms to address inequalities and improve services for Indigenous peoples.	Highlights the need for systemic changes to address the root causes of violence and improving the quality of life of Indigenous women, girls, and 2SLGBTQQIA+ people.	Supports systemic change by encouraging legal practices that are inclusive, respectful, and responsive to the needs of individuals who have experienced trauma, thereby aligning with calls for broader systemic change.

A trauma-informed approach does not require you to know everything about the history, traditions, and practices of any specific culture. Rather, at a basic practical level, a trauma-informed approach involves adopting a curious and humble posture, becoming self-aware of limitations and privileges, being willing to listen and learn, and acting out thoughtful practices.

"Cultural competence addresses the ability of a person to effectively work with and across different groups of people and positions in the role of an expert in another person's culture. Cultural humility is an ongoing process of recognizing that the person in front of you is the expert."

- Myrna McCallum⁸⁷

Culturally responsive lawyering can be defined as "a way of thinking about, interacting with, and practicing law that supports dignity, equity, and systemic transformation".⁸⁸ It is critical that we take meaningful action toward ensuring that the cultures of Indigenous individuals and communities are respected in legal spaces and workspaces and are factored into the delivery of legal services.

Developing the knowledge and skills to provide culturally competent legal services is not easy. However, cultural competency is a foundational praxis for competent legal practitioners and merits particular consideration as a necessary component of a trauma-informed approach.

⁸⁷ Community Legal Assistance Society, "SHARP Workplaces Reference Manual for Lawyers: Advising clients with workplace sexual harassment complaints" (August 2021) at 17, online (pdf):<<https://clasbc.net/wp-content/uploads/2021/11/SHARP-Workplaces-Reference-Manual-for-Lawyers.pdf>>[CLAS]. See Chapter 3, written by Myrna McCallum.

⁸⁸ Tully, *supra* 81 at 207.

Learn More

Trauma-informed practice

There are numerous resources for lawyers to learn more about trauma-informed practice. Below are a few examples, including resources in different mediums.

Publications:

- Department of Justice Canada, “HELP Toolkit: Identifying and Responding to Family Violence for Family Law Legal Advisors” (2021), online (pdf): <www.justice.gc.ca/eng/fl-df/help-aide/docs/help-toolkit.pdf>.
- Golden Eagle Rising Society, “Trauma-Informed Legal Practice Toolkit” (September 2020), online (pdf): <goldeneaglerising.org/docuploads/Golden-Eagle-Rising-Society-Trauma-Informed-Toolkit-2021-02-14.pdf>.
- Klinic Community Health Centre, “Trauma-informed: The Trauma Toolkit Second Edition” (2013), online (pdf): <ctctbay.org/application/files/3615/4160/0382/The_Trauma-Informed_Toolkit_Second_Edition.pdf>.
- The Advocates’ Society, The Indigenous Bar Association & The Law Society of Ontario, “Guide for Lawyers Working with Indigenous Peoples, 1st Supplement” (29 September 2022), online (pdf): <[lawsocietyontario-dwd0dscmayfwh7bj.a01.azurefd.net/media/lso/media/lawyers/practice-supports-resources/equity-supports-resources/first-supplement-to-the-guide-for-lawyers-working-with-indigenous-peoples-final-\(english\)_aoda.pdf](http://lawsocietyontario-dwd0dscmayfwh7bj.a01.azurefd.net/media/lso/media/lawyers/practice-supports-resources/equity-supports-resources/first-supplement-to-the-guide-for-lawyers-working-with-indigenous-peoples-final-(english)_aoda.pdf)>.
- Substance Abuse and Mental Health Services Administration “SAMHSA’s Concept of Trauma and Guidance for a Trauma-Informed Approach” (July 2014), online (pdf): <library.samhsa.gov/sites/default/files/sma14-4884.pdf>.
- Judicial College (UK), “The Equal Treatment Bench Book” (July 2024), online (pdf): <judiciary.uk/wp-content/uploads/2024/07/Equal-Treatment-Bench-Book-July-2024.pdf>.

Courses:

- Justice Institute of British Columbia “Trauma-Informed Practice (TIP) Foundations Curriculum” online:<jibc.ca/trauma-informed-practice-tip-foundations-curriculum>.

Podcasts:

- Myrna McCallum, “The Trauma-Informed Lawyer” online (podcast): <thetraumainformedlawyer.simplecast.com>.

III. BEST PRACTICES FOR TRAUMA-INFORMED LEGAL WRITING

The goal of trauma-informed legal writing is to make written communication more accessible, supportive, and responsive. This section provides recommendations to integrate a trauma-informed lens into your legal writing.

Best Practices for a Trauma-Informed Approach to Legal Writing



Avoid assumptions, biases, and myths

Legal reasoning must be based on facts and evidence. Lawyers must examine and confront unconscious biases that impair our competence and impartiality.



Use clear and accessible language

Avoid legal jargon and complex terms. Write in a plain and accessible way to ensure that your message is easily understood.



Be aware of triggers

Be mindful of language that could trigger a trauma response. This includes avoiding graphic descriptions or terms that might evoke or trigger an emotional response.



Be empathic and respectful

Recognize that your reader may have experienced trauma. Approach your writing with compassion and sensitivity to your reader to avoid triggering or re-traumatizing them. This may require striking a balance between writing simply and not bluntly stating activating facts.



Offer support and seek feedback

Include information on support services, and if possible, seek feedback from trauma-informed professionals to ensure your writing is sensitive and supportive.

Avoid assumptions, biases, and myths

When preparing to write, the first step must be to examine ourselves.⁸⁹ We must consider our own:

- biases, assumptions, and beliefs about people and behaviours;⁹⁰
- lenses (e.g., cultural, sexual orientation, religious views, political views);
- history of trauma and potential to become triggered;
- competence to address the issues before us (e.g., knowledge, lived experience, personal wellness or burnout).⁹¹

This reflection is fundamental to trauma-informed thinking and writing. We must acknowledge that we bring assumptions, lived experience, prejudices, worldviews, and trauma to our written work.⁹² We must guard against allowing these pieces to color our perception of those we serve.

For example, trauma survivors are sometimes perceived as ‘difficult’ clients or litigants because they display behaviours like avoidance, aggression, or zoning out.⁹³ This can provoke various responses in legal actors. We may attribute the person’s behaviours to their character rather than the situation.⁹⁴ This is known as the *Fundamental Attribution Error*.⁹⁵ For example, when the person repeatedly fails to attend court, we might assume they are lazy or ill-prepared. We may fail to consider it is a trauma response.

Being trauma informed requires legal professionals to interrupt assumptions that difficult behaviours are deficits to a person’s character. Rather, we must see these behaviours as what they are – adaptations and coping mechanisms.⁹⁶ Asking the below questions may assist in identifying what an individual needs to navigate and participate in the legal process.

Instead of seeing...	Ask... ⁹⁷
Avoidance	Why does this person feel unsafe to participate?
Aggression	What is this person perceiving as a threat or an attack?
Manipulation	Why does this person feel it is unsafe to be direct?
Dishonesty	What is unsafe about sharing the truth?
Dissociation	What about this situation is making the person feel unsafe to be mentally present?
Negative behaviours	How do these behaviours help this person cope? In what ways are these behaviours serving this person? How might these behaviours be adaptations?

⁸⁹ CLAS, *supra* note 87 at 18.

⁹⁰ *Ibid.*

⁹¹ MHSUS Practice Guide, *supra* note 22 at 19.

⁹² Albrink, *supra* note 40 at 87.

⁹³ MHSUS Practice Guide, *supra* note 22 at 2.

⁹⁴ Patrick Healy, “The fundamental attribution error: what it is and how to avoid it” (8 June 2017), online: <online.hbs.edu/blog/post/the-fundamental-attribution-error>.

⁹⁵ *Ibid.*

⁹⁶ MHSUS Practice Guide, *supra* note 22 at 23.

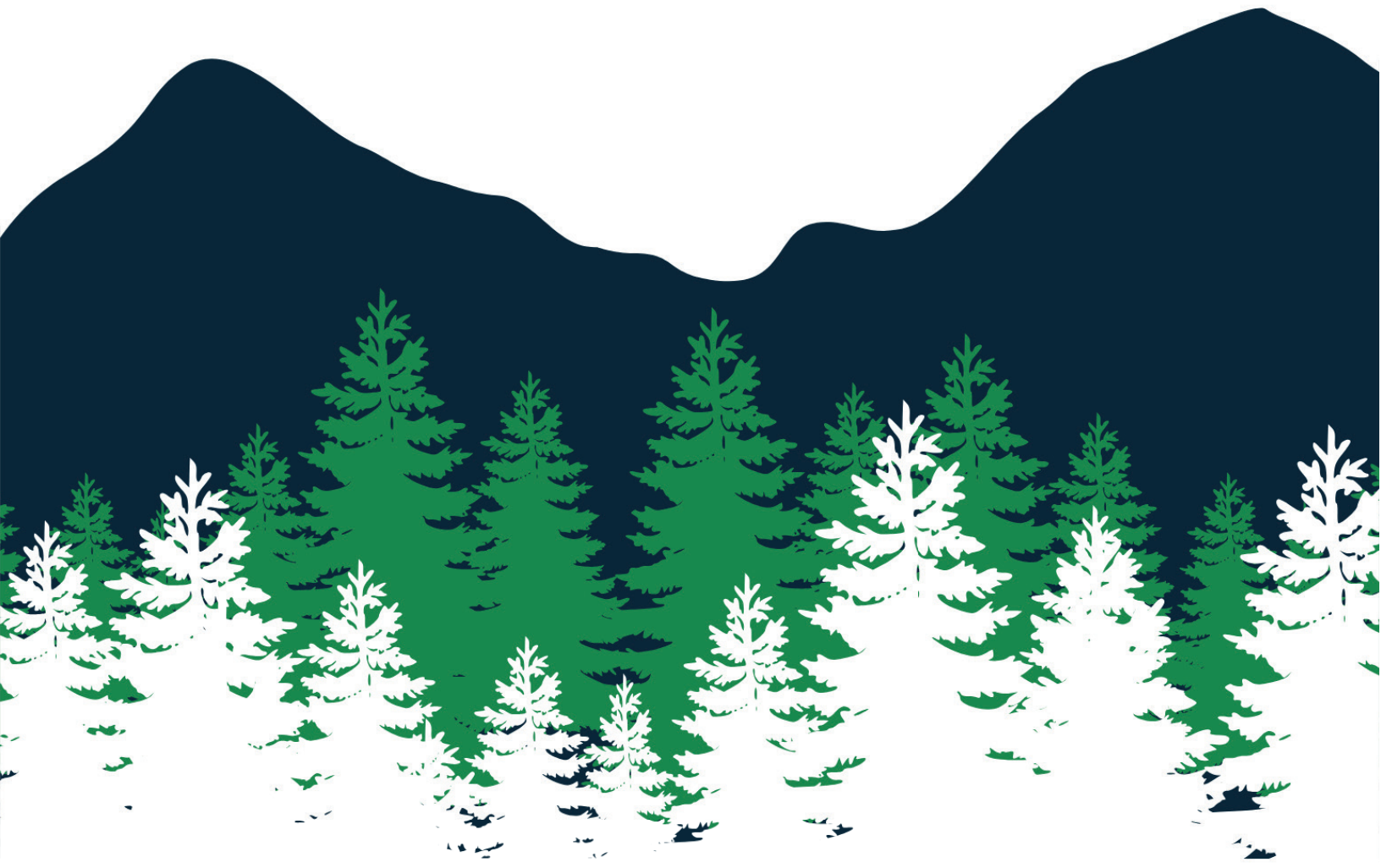
⁹⁷ *Ibid* at 24. See also Albrink, *supra* note 40 at 81.

Use clear and accessible language

A reader experiencing stress, overwhelm, or the effects of trauma may struggle to understand lengthy and complex writing. Consider, for example, the context in which many people receive a legal document:⁹⁸

- a notice of family claim from a violent former partner;
- a subpoena to appear in court;
- a letter from a lawyer demanding action and threatening court;
- a judgment that decides important matters.

As legal professionals, we send and receive these documents routinely. However, we may not consider the impact on the recipient. A person in a fight, flight, freeze, or fawn trauma response is unable to engage their prefrontal cortex, which is required for reasoning and decision-making. Plain language writing is trauma informed because it reduces a person's stress in accessing information.⁹⁹ This supports them in moving out of fight, flight, freeze, or fawn allowing them to move from reacting to reasoning.



⁹⁸ Other examples may include, blanket denial of all claims, repeated refusal to consider reasonable offers to settle, including deceptive or false information in legal documents.

⁹⁹ National Association for Court Management, "Plain Language Guide: How to Incorporate Plain Language into Court Forms, Websites, and Other Materials" (7 January 2019) at 13, online (pdf): <nacmnet.org/wp-content/uploads/NACM-Plain-Language-Guide-20190107.pdf>.

USE PLAIN LANGUAGE

It is important to be concise, specific, and clear so that your audience is more likely to read and understand what you have written. Concise, specific, and clear writing reduces stress from trying to understand complex terms and makes it easier to make informed decisions because information, tasks, and procedures are clearly explained.

Using plain and clear language makes information accessible.¹⁰¹ This approach empowers readers to find, understand, and use the information they need.

While this is not a plain language writing guide, below are a few examples of plain language techniques that are also trauma informed.¹⁰² See the Learn More section at page 46 for more information on plain language writing.

Traditional Language ¹⁰⁰ <i>Instead of writing...</i>	Plain Language <i>Try...</i>
Aforementioned	Previously stated
At this point in time	Now
Bring an action against	Sue
In compliance with your request	As you asked
In the event of	If
In as much as	Since, because
Inter alia	Among other things
Please advise me as to	Please tell me
Please furnish me with information	Please tell me
Prima facie	At first appearance On the face of it It appears
Prior to	Before
Pursuant to the terms of	Under
Subsequent to	After
Thereafter	Later

¹⁰⁰ Canadian Bar Association, “Plain language legal writing”, online: <cba.org/Publications-Resources/CBA-Practice-Link/Young-Lawyers/2014/Plain-Language-Legal-Writing-Part-III-%E2%80%93-Mastering?lang=fr-ca>.

¹⁰¹ *Ibid.*

¹⁰² National Association for Court Management, *supra* note 99 at 15-21.

- Remove unnecessary words.¹⁰³

Instead of:	Try:
Mx Uni has informed me that you owe \$4850 in unpaid bills.	You owe Mx Uni \$4850.

- Use the active voice. Make it clear who is doing what.¹⁰⁴

Instead of:	Try:
Steps have been taken to advance Mx Uni's claim.	Mx Uni is suing you in small claims court.

- Provide the information in different formats (e.g., bulleted lists, visuals, graphics).¹⁰⁵

Instead of:	Try:
You owe \$4850 for various repairs.	You owe \$4850 for the following repairs: <ul style="list-style-type: none"> • New rear bumper and parts: \$2250 • Installation (5 hours): \$800 • Rear brakes and calipers: \$1800

- Focus on practical details. Clearly include any next steps, deadlines, and important details.¹⁰⁶

Instead of:	Try:
Please make a payment within the next thirty business days by certified cheque to my client's business address.	Please pay \$4850 before December 1, 2024. Pay by certified cheque made out to "Good as New Repairs Ltd." Mail or deliver the certified cheque to 123 Smith Street, Kelowna, BC.

- Avoid jargon and technical language if the recipient will not understand it.

Legal jargon and technical terms make it hard for people to understand what is being said. Even those with high literacy and familiarity with a topic can struggle to process information if they are in a trauma response state.¹⁰⁷

Legal professionals often believe that the law requires complicated language. Many legal issues can be addressed competently and clearly using plain language. See, for example, this section of a sentencing judgment written by Justice Nakatsuru of the Ontario Court of Justice.

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid* at 19-21.

¹⁰⁶ *Ibid* at 21.

¹⁰⁷ *Ibid* at 13.

"This case was heard in the Gladue court at Old City Hall in Toronto. Jesse Armitage is a troubled man of Aboriginal heritage who was sentenced by me a number of months ago. At the time I gave my decision, I said that I would draft and release a written decision. This is that decision.

*Before I get to this, I would like to make two short comments. First of all, I want to say something about the style of this decision. For those who have read some of my past judgments, the reader may notice a change. For Jesse Armitage, I have tried to say what I wanted to say in very plain language. **I believe that this is very important for judges to do in every decision.** However, judges often do not do a good job of this. I would describe myself as one of the worst sinners. **As lawyers first and then judges, we get used to using words that are long and complicated.** This only muddies the message we are trying to say. That message is very important when it comes to passing a sentence on an offender. That the message is clear is even more important in the Gladue courtroom."*

- Justice Nakatsuru in *R v Armitage*¹⁰⁸

If it is important to use a legal or technical term, offer explanations and context to help readers understand legal terms and processes. Clearly define the term to ensure that the reader understands. This can reduce confusion and anxiety.

Certain legal issues have a high level of complexity that require specific wording to properly address. Legal writers can address this problem by writing (or otherwise communicating) two versions, one version which contains the detail and technical language necessary to competently address the legal issue, and another version which communicates the practical implications for the client or person(s) impacted.¹⁰⁹

REMOVE ACCESSIBILITY BARRIERS

The accessibility of a document can impact the possibility of a trauma response. In addition to thoughtfully considering your message, be mindful of your medium. For example, discuss with your clients how they prefer to receive information whether by text, phone call, email or physical mail. Discuss with your clients if they want correspondence to be forwarded or copied to a support person. Ask if there is a time of day, or day of the week that would be best for your client to receive correspondence (i.e. when their support person is present).

Be cautious about relying on the use of colour or text differences such as red or

¹⁰⁸ *R v Armitage*, 2015 ONCJ 64 at paras 1-2 [emphasis added].

¹⁰⁹ See e.g., *KK v MM*, 2021 ONSC 3975, a 124-page judgement addressed the complicated legal issues at play in a complex family file. The Court took a special approach to informing the children of the outcome, stating: "I asked the parties to bring both children to the courthouse so that I could speak to them after I delivered my decision. I felt it was important for the children to hear directly from me what their parenting schedule was going to be. I did not want them to interpret the court's order as a "win" or a "loss" for either of their parents, but rather to understand that it represented the court's carefully considered assessment of what is in their best interests, taking into account their views and preferences. If the children were not happy with the outcome of the case, I did not want them to blame either of their parents. I wanted them to understand that the decision was mine. I also wanted to reinforce that their parents are obligated by law to follow the court order (given the chronic breach of court orders in this case). The children's appearance before me, in a court setting, wearing my regalia and with counsel in their robes, would convey the authority of the court." (*ibid* at para 768).

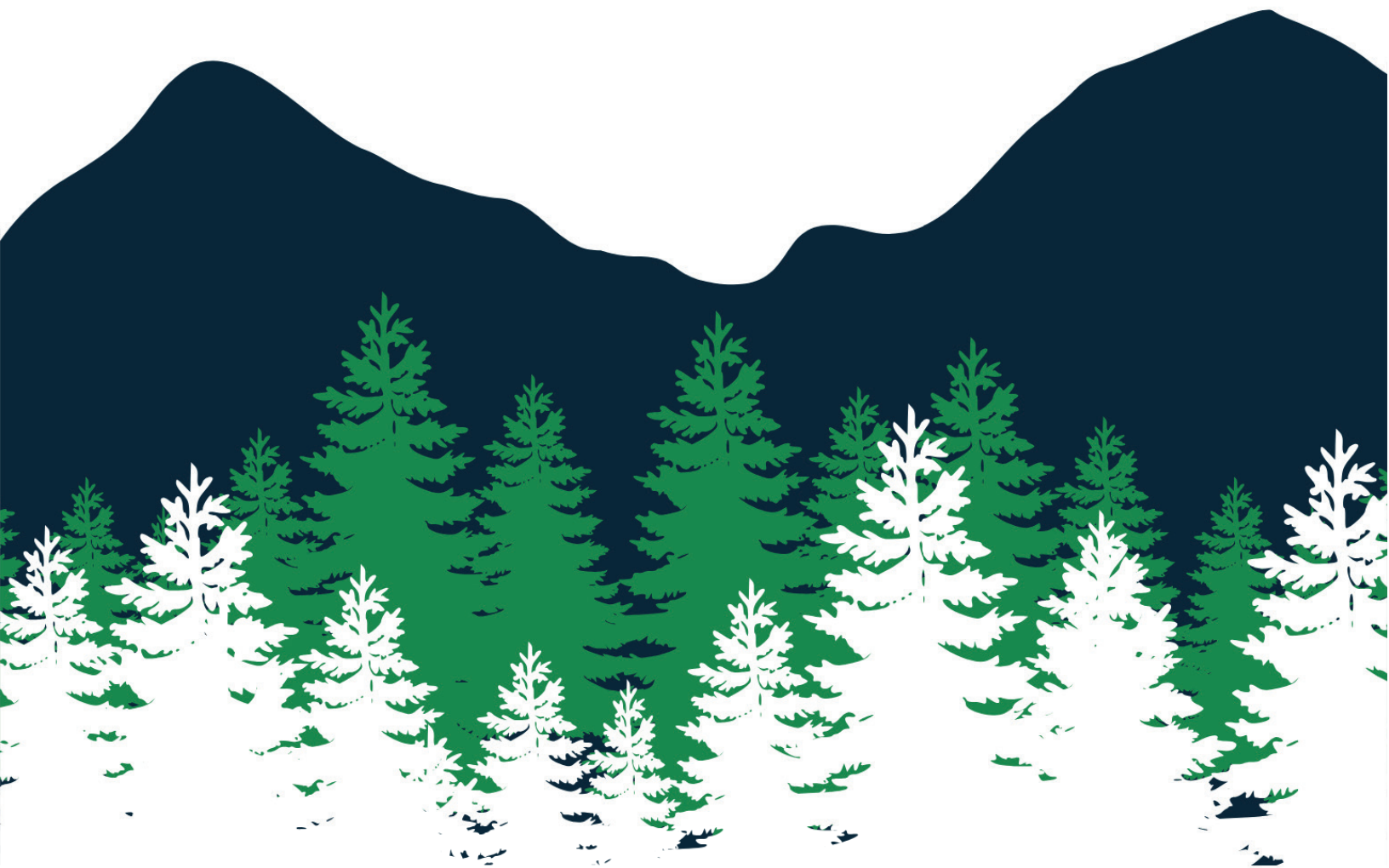
bolded text to convey meaning or importance in your communications.¹¹⁰ The intended meaning may be missed or misunderstood by individuals. Instead, consider indicating to the reader that certain information is important by writing in the text a sentence such as “the following information is important”.¹¹¹

Other strategies to avoid accessibility barriers include:

- using fonts that are easier to read;
- using a font size of 12 points or larger to ensure visibility;
- including a table of contents to assist readers with navigating longer documents with multiple sections;

- sending documents in a format that can be used by screen readers; and
- avoiding the use of tables as a layout component of your communications when writing to individuals who read with assistive technology.

Word processing software (for example, the Accessibility Checker function in Microsoft Office programs) can assist you with checking a document’s accessibility by identifying possible issues for people who have disabilities and suggesting changes. These tools should be used as supports only. You will need to review your document to ensure a suitable level of accessibility.¹¹²



¹¹⁰ National Association for Court Management, *supra* note 99 at 58-59.

¹¹¹ Employment and Social Development Canada, “Annex: Making documents more accessible” (last updated 9 January 2023), online: <canada.ca/en/employment-social-development/programs/accessible-canada-regulations-guidance/alternate-formats/making-documents-more-accessible.html>.

¹¹² *Ibid.*

Be aware of triggers

Descriptions of abuse and violence can be triggering for readers who have had traumatic experiences. They may experience discomfort and terrifying feelings or memories from the past. Be careful when using descriptions of abuse and violence. Always consider:

- Is it necessary to include this information?¹¹³
- If so, is it necessary to add a warning statement?

See another example from Justice Nakatsuru, this time in the context of an Indigenous offender.

“When you pled in front of me, we all agreed that a Gladue Report should be prepared for you. But it was not to be. You could not bring yourself to open up those parts of your past that cast such a shadow on your present. It was too difficult for you. I understand. I believe I have enough information about your [I]ndigenous background to do justice in your case.

I will not detail in my decision the trauma you have suffered. Physical, sexual, and emotional trauma. Even when you were so young. A child. To do so in such a public way as in a judicial decision will not help you heal. *I will say this though. Ms. Hughes testified that in the years she has worked as a Parole Officer she has never met anyone who has faced so much death in her personal life as you. The suicides. The loss. That really struck me. I will also say that you are a Residential School survivor. You are not ready to reveal all that went on. You have just this spring received almost two hundred thousand dollars in compensation. That can only hint at the experience you had to endure. Let me say this about this compensation. You have shown much wisdom and insight about it. When you were offered an inpatient program in Vancouver, you said no. You were concerned that this would not be a good place to be for a serious addict such as yourself. Especially with this money. You have kept the funds safe. You understand that it can help you forge a new life for yourself. And your son. Let me also say this about the compensation. It can never be enough. It cannot fully restore what was lost. But it is recognition of the injustice done to you and other indigenous people in Canada. It recognizes the truth of what was done. It can be part of the reconciliation needed.*

My sentence must denounce your act and deter you and others. It must recognize the fact you are a long-term offender. It must recognize the risk you still pose to the safety of the community. It is a risk of violence. At the same time, I cannot forget your needs. Your need to be rehabilitated. The addictions you have are at the root of some of your problems. But deeper than those addictions, are things from your past you are not yet able to deal with. I believe we all understand that. But left untreated, it does mean that you continue to pose that risk.”

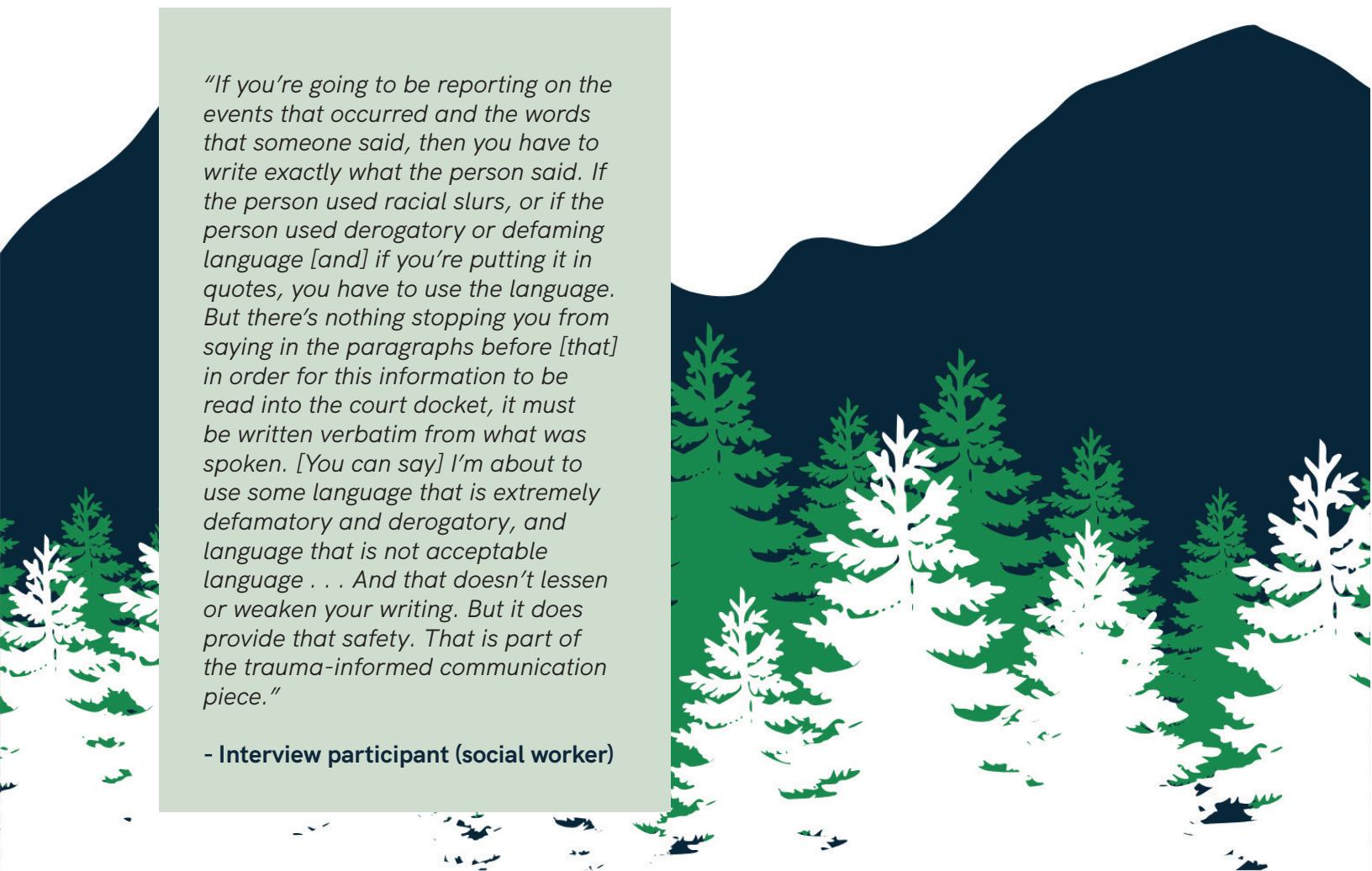
- Justice Nakatsuru in R v Pelletier¹¹⁴

¹¹³ It may also be useful to add the question: “Will this be triggering to this individual?” This information may not always be known to the legal writer.

¹¹⁴ *R v Pelletier*, 2016 ONCJ 628 at paras 8–10 [emphasis added].

In cases where you need to include as much detail as possible about a violent event, include a signpost (e.g., “I am now going to discuss...”) or a warning statement that is visible before accessing the document.¹¹⁵ This can alert the reader that they may need extra support while reading the document or that they should perhaps wait until an appropriate time when they have capacity to read it. If possible, it may be beneficial to provide resources or references to supports a person may access if they are triggered.

Additionally, avoid using everyday phrases that convey violence (e.g., adding insult to injury).¹¹⁶



“If you’re going to be reporting on the events that occurred and the words that someone said, then you have to write exactly what the person said. If the person used racial slurs, or if the person used derogatory or defaming language [and] if you’re putting it in quotes, you have to use the language. But there’s nothing stopping you from saying in the paragraphs before [that] in order for this information to be read into the court docket, it must be written verbatim from what was spoken. [You can say] I’m about to use some language that is extremely defamatory and derogatory, and language that is not acceptable language . . . And that doesn’t lessen or weaken your writing. But it does provide that safety. That is part of the trauma-informed communication piece.”

- Interview participant (social worker)

¹¹⁵ National Center on Domestic Violence, Trauma, and Mental Health, “How You Write Is As Important as What You Say: A Guide to Trauma-Informed Writing” (August 2014) at 4, online (pdf): <ncdvtmh.org/wp-content/uploads/2022/10/NCDVTMH-TI-Writing-Guide-FINAL-Aug27.pdf> [National Center on Domestic Violence, Trauma, and Mental Health]

¹¹⁶ *Ibid.*

Be empathetic and respectful

“Researchers have examined the user experience in the court system and found that the public’s trust in the justice system is driven far more by whether their interaction with the courts was positive or negative, i.e., whether they were treated with respect and felt heard, rather than whether they win or lose.”

- The National Association for Court Management¹¹⁷

AVOID DEFICIT-BASED LANGUAGE

Deficit-based language labels something or someone as a problem. It carries an implicit bias and belief that people are broken and in need of fixing. This concept is connected to the first best practice of avoiding assumptions, biases, and myths.

Deficit-based language can be stigmatizing to individuals by making their behaviours or traits seem inherently abnormal or undesirable. It reinforces negative stereotypes and can lead to more discrimination. As a result, it can bring up feelings of past experiences of abuse, marginalization, or oppression.¹¹⁸

AVOID EUPHEMISMS

Euphemisms allow a writer to avoid statements that are harsh or blunt.¹¹⁹ However, euphemisms underestimate the reader’s ability to comprehend the complexities or realities of the situation. It assumes that the reader needs protection from direct communication.¹²⁰

Euphemisms are ambiguous, which can complicate legal proceedings and undermine the intended legal effect. They are inconsistent with clear, transparent, and inclusive writing.

Instead of saying...	Try...
Collateral damage	Civilian deaths
He is on the streets	He is experiencing homelessness
It fell on deaf ears	The person was not listening
He passed away	He died
She is between jobs	She is unemployed

¹¹⁷ National Association for Court Management, *supra* note 99 at 25.

¹¹⁸ Klinik, *supra* note 22 at 80.

¹¹⁹ National Center on Domestic Violence, Trauma, and Mental Health, *supra* note 115 at 7.

¹²⁰ *Ibid* at 6. There is a tension between avoiding graphic descriptions and avoiding euphemisms. This resource recommends: “We must balance the need to care for our reader’s ability to emotionally access the materials and the need to avoid a patronizing approach that imagines our readers as fragile and in need of our protection from what we are really trying to say.”

RESPECT FOR IDENTITY

Another way to show respect is to use the chosen names of appellant, defendant, witnesses, or anyone you are referring to in your writing. Some may have changed their names (e.g., those who are transgender or those who have safety concerns). Some may have had their names forcibly changed (e.g., residential school survivors whose hereditary names were forcibly changed to anglicized names). The best approach is to always use a person's current or preferred name whenever referring to them.

Use gender-inclusive language that validates and values an individual's choices, identities, and lived experiences. This acknowledges people's right to gender identity and expression.¹²¹ Use and respect others' pronouns even when those pronouns do not fit your expectations based on that person's name or appearance. When you do not know a person's personal pronouns, ask the person or someone who knows them how they would like to be addressed.¹²² Writers may also utilize gender inclusive greetings if an individual's chosen pronouns are unknown.

Gender-inclusive writing can include using the pronouns "they" in place of "she/her" and "he/his", using a number of different pronouns, or changing binary terms to neutral words and phrases.

It is also important to accurately represents a person's story. Describe their own understanding of their experiences and turn it into a narrative, while keeping it genuine and using language, phrasing, and imagery that fit the person's identity, abilities, and needs.¹²⁴ This method ensures that a person's intersectional identities are considered.¹²⁵

Be thoughtful about referring to others using either person-first or identity-first language. Using person-first language emphasizes the person before their status, condition, or disability.¹²⁶

Identity-first language refers to the status, condition or disability first and the person second. For example, person-first language may use the term "a person with a disability" while identity-language would use "a disabled person". Some individuals prefer to be referred to using identity-first

Instead of saying...	Try... ¹²³
Brother or sister	Sibling or family member
Husband or wife	Spouse or partner
John Doe, Jane Doe	Person A, Person B
Man, mankind	Human, humankind
Mother or father	Parent or guardian

¹²¹ British Columbia Law Institute "Gender Diversity in Legal Writing: Pronouns, Honorifics, and Gender-Inclusive Techniques" (2021) at 7, online (pdf): <bcli.org/wp-content/uploads/Gender-Diversity-in-Legal-Writing-1.pdf>.

¹²² *Ibid* at 18, 20.

¹²³ *Ibid*.

¹²⁴ Lemoine, *supra* note 76 at 51.

¹²⁵ MHSUS Practice Guide, *supra* note 22 at 14.

¹²⁶ National Center on Domestic Violence, Trauma, and Mental Health, *supra* note 115 at 6.

language for various reasons, such as to emphasize how society is inaccessible to them or to acknowledge that they accept their disability and not ashamed of it. Other individuals prefer person-first language, as they feel it promotes dignity and respect by recognizing the person and not defining them by one aspect of their experience.¹²⁷ Pay attention to how an individual refers to themselves or review how that person has been referred to by other parties or in previous communications. If unclear, consider adding a footnote or comment in your writing explaining why one style was chosen.¹²⁸

USE FIRST AND SECOND PERSON

Writing in the first and second person facilitates genuine connection and builds rapport with your reader, especially when writing a judgment where decisions are made about them. Although it can be challenging for decision makers, this approach shows respect for the people involved and encourages judges or tribunal members to use language that is sensitive towards vulnerable people.¹²⁹ By focusing on the person, you avoid reducing them to labels, stereotypes, or categories that may have been placed on them.¹³⁰

"My preference is to use identity-first language, but I understand others may prefer person-first language. I call myself a 'neurodivergent woman' or 'neurodivergent lawyer', this being a neutral and non-pathologizing term to describe that I have a brain that diverges from what is considered 'normal'. Sometimes I will use the term 'ADHDer' or 'AuDHDer' to describe myself as well. For me, this acknowledges that I have a neutral attitude about my disability that I was born with, that others see me as different, and that I am not trying to hide from that anymore. I find that this approach also helps others to feel safe and comfortable being themselves around me."

- Alanna Carlson (neurodivergent lawyer and consultant)

¹²⁷ *Ibid.*

¹²⁸ Consider how "language creates power." See: Mental Health Commission of Canada, "Combat Mental Health Stigma Towards People-First Language" (2020), online: <openingminds.org/blogs/combat-mental-health-stigma-with-a-shift-towards-people-first-language>; Canadian Mental Health Association, "Language Matters" (2021), online: <cmha.calgary.ab.ca/blog/language-matters>.

¹²⁹ Provincial Court of BC, "Writing reasons for judgment simply is not easy" (6 September 2015), online: <perma.cc/PE8H-WNYC>.

¹³⁰ Trauma informed legal writing can also decrease the use of stigmatizing language and labels. Szigei & Dhand, *supra* note 29 at 12.

Offer support resources and seek feedback

Finally, consider including support services in your documents whenever you can. This might involve adding information about counselling services or advocacy groups that can offer extra help and reassurance. If possible, it may also be beneficial to understand what supports an individual has access to (e.g., case workers, friends, family).

If possible, seek feedback from people who have experienced trauma or from experts in trauma-informed care.¹³¹ Their insights can help make sure your writing is empathetic, accessible, and supportive.

By providing these resources, you can offer readers not only valuable information but also access to additional support that might be beneficial for them. Feedback from those with lived experience or professionals can help you understand how your writing might impact readers and ensure that it is sensitive to their needs.¹³²

¹³¹ Golden Eagle, *supra* note 39 at 29.

¹³² National Association for Court Management, *supra* note 99 at 23.

Learn More

Plain language

Several resources exist specific to plain language legal writing. The following are a few examples:

- Cheryl Stephens, *Plain Language Legal Writing* (Vancouver: Plain Language Wizardry Books, 2008).
- National Association for Court Management “Plain Language Guide: How to Incorporate Plain Language into Court Forms, Websites, and Other Materials” (7 January 2019), online (pdf): <nacmnet.org/wp-content/uploads/NACM-Plain-Language-Guide-20190107.pdf>.
- Richard C Wydick & Amy E Sloan, *Plain English for Lawyers*, 6th ed (Durham: Carolina Academic Press, LLC, 2019).

Inclusive writing

To learn more about how to make your writing inclusive, consider the following publications:

- British Columbia Law Institute “Gender Diversity in Legal Writing: Pronouns, Honorifics, and Gender-Inclusive Techniques” (2021) online (pdf): <bcli.org/wp-content/uploads/Gender-Diversity-in-Legal-Writing-1.pdf>.
- Law Society of BC, “Guidance for Lawyers on Using Inclusive Language” (June 2024) online (pdf): <lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/InclusiveLanguage.pdf>.
- National Center on Domestic Violence, Trauma, & Mental Health (US), “How You Write Is as Important as What You Say: A Guide to Trauma-Informed Writing” (August 2014), online (pdf): <ncdvtmh.org/wp-content/uploads/2022/10/NCDVTMH-TI-Writing-Guide-FINAL-Aug27.pdf>.



RESOURCES

Call 9-1-1 or a crisis line if you are in a crisis or an emergency, or worried that you or someone else is at risk of harm.

24/7 crisis lines and contact information

- 9-8-8 Suicide Crisis Helpline (call or text to reach a responder)
- 1-800-SUICIDE (1-800-748-2433)
- 310-6789 BC Mental Health Support Line (no area code needed)

24/7 Indigenous crisis support lines

- 1-800-KUU-US17 (1-800-588-8717) KUU-US Crisis Response Line
- 1-855-242-3310 Hope for Wellness (call or chat online at www.hopeforwellness.ca)
- 1-833-MétisBC (1-833-638-4722)

Virtual mental wellness resources

- For a variety of supports for individuals experiencing anxiety, depression or other mental health challenges, see the “Virtual mental health supports” page on the Government of British Columbia’s website (www2.gov.bc.ca/gov/content/health/managing-your-health/mental-health-substance-use/virtual-mental-health-supports).

Mental wellness resources for lawyers and their families

- For a central access point for various supports and tools available to lawyers and their families, visit the “Lawyer Well-Being Hub” on the Law Society website (lawsociety.bc.ca/for-lawyers/lawyer-well-being-hub).
- For 24/7 confidential support, counselling, referrals and peer interventions, get help from Lawyers Assistance Program of British Columbia by calling 604-685-2171 or 1-888-685-2171, or visit their website for more information (www.lapbc.com).



604 822 0142



bcli@bcli.org



bcli.org



1822 East Mall, University of British Columbia
Vancouver, British Columbia V6T 1Z1

The work of the BCLI primarily takes place on the unceded territories of the *xʷməθkʷəy̓əm* (Musqueam Indian Band), *Sḵwxwú7mesh* (Squamish Nation) and *Səlilwətaʔ/Selilwitulh* (Tsleil-Waututh Nation).