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

By

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Abstract

This qualitative study investigated New Zealand defence lawyers' experiences working with emotional material in their role. Fourteen defence lawyers across New Zealand participated in semi-structured interviews. Data were analysed using reflexive thematic analysis to identify patterns of experiences across participants. Four themes were identified that related to defence lawyers' experiences of working with emotional material: *industry expectations versus the role reality, managing emotions in the moment, personal conflict of working in a broken criminal justice system*, and *factors that help and hinder wellbeing while working with emotions*. These findings add to the under-researched area of legal professionals' experiences of emotion. They indicate that defence lawyers engage with emotions from different sources, including clients, difficult case material, and other legal professionals. Defence lawyers are required to engage in a range of emotion regulation strategies to manage both their own emotions and those of others to protect their wellbeing. This emotional management must be performed within the expectations and standards of the criminal justice system and the legal profession. The need for further research, policy and practice to support defence lawyers in their role is discussed, specifically about providing education and support services to support their wellbeing.

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Background of the problem

Criminal law is an inherently emotional space (Karstedt, 2002). Due to the nature and seriousness of crime and the impacts of criminal behaviour, emotions come from multiple stakeholders at multiple points in the criminal justice system (Maroney, 2016). Most of the literature to date around emotional experiences in the criminal justice system have typically centred on laypeople entering the criminal justice system (e.g. victims, witnesses) (e.g. Konradi, 2007; Wessel et al., 2006). Where research has examined the experiences of the criminal justice system agents, it has focused predominantly on the frontline or first responder roles such as police, probation, and prison officers (e.g. Basinska et al., 2014; Pogrebin & Poole, 1991; Westaby et al., 2020). However, many professions in the criminal justice system are overlooked. This includes legal professionals, who play a crucial role in ensuring balance and that the criminal justice system is operating fairly and justly for all, including prosecutors who act on behalf of complainants and defence lawyers who advocate for those accused of committing offences. Each have unique positions and challenges while working in the criminal justice system, and faces different emotions throughout their role.

This includes defence lawyers, who are the voice of those accused in the criminal justice system. Defence lawyers must advocate for all clients without prejudice, regardless of their personal feelings about a case, while also engaging with emotional and potentially traumatic materials such as recordings of 111 calls, crime scene photos, and distressed clients and their whānau (Flower, 2019; Weir et al., 2021). While engaging with this emotional content, defence lawyers are expected to put their personal feelings aside and uphold the cultural assumptions that the law is wholly rational and unemotional (Harris, 2002). The emotional labour associated with maintaining a particular outward emotional expression whilst regulating others' emotions has been associated in the wider literature with poor mental wellbeing (e.g. Gray, 2009; Kinman et al., 2011). While not directly examined in

relation to emotional labour, the legal profession has long been linked to poor mental health (e.g. Krill et al., 2016). Lawyers have been found to experience symptoms of depression at two to four times the rate of the general population (e.g. Helm, 2014; Krill et al., 2016). Criminal lawyers, in particular, have been identified as experiencing higher rates of depression, burnout, and vicarious trauma compared to other legal fields (Vrklevski & Franklin, 2008). This is thought to result from their increased working with traumatised individuals compared to different subgroups of legal professionals (James, 2020).

There is a significant and growing interest in the international legal community to understand the unique role of criminal law professionals in working with emotion, identify areas where support may be needed, and improve wellbeing within the profession. However, the experiences of defence lawyers in working with emotional content during their role has yet to be properly investigated. The present study aims to address this gap in the literature by qualitatively examining the experiences of defence lawyers in working with emotion to identify potential educational opportunities and inform the development of tailored interventions which will support lawyers in their work, and improve workplace wellbeing.

Structure of thesis

Chapter 1 of this thesis provides an overview of the New Zealand criminal justice system and the role of criminal defence lawyers within it to clarify their obligations and expectations in working with emotional content. Chapter 2 describes the existing empirical literature regarding emotions and the criminal justice and legal profession. In Chapter 3, the prevailing emotion research and theory is examined, specifically looking at the sociological perspectives of *dirty work* and *emotional labour* and how these connect to psychological concepts such as *emotion regulation*. Chapter 4 details the methodology used in the current research, including a detailed overview of the measures and analysis used. Chapter 5 describes the results of the study. Finally, in Chapter 6, the current study's findings in the

context of the existing literature are discussed. Additionally, the implications of the results for policy and practice are explored, as are the strengths and limitations of the study and directions for future research.

Chapter 1: The New Zealand Criminal Justice System

The present study examines the experiences of practising New Zealand defence lawyers working with emotion. Every country has a unique criminal justice system with different guidelines, expectations, and role definitions of the legal actors. Thus, it is important to outline the structure of the New Zealand criminal justice system and the role of defence lawyers within this to provide context to their role and responsibilities.

The New Zealand criminal justice system uses an adversarial model (Stenning & Hill, 2008) similar to England and Wales. The adversarial model sees two parties, the defence and prosecution, perform roles in opposition to each other. They present their arguments to 'persuade' a Judge or jury of their case through submissions of evidence and legal arguments (Ruru et al., 2016). Criminal lawyers in New Zealand are divided broadly into two categories – prosecutors and defence. Prosecutors are legal practitioners who prosecute accused individuals ('defendants') on behalf of the Police, Crown, and community; defence lawyers advocate and present arguments on the defendant's behalf. While they may perform both roles in the life of their career, at any one time, they will work exclusively with either defendants or complainants. This is different to some other systems: for example, in England and Wales, barristers will typically take both prosecution and defence briefs (Bar Standards Board, 2022). This means that the experience of defence lawyers in New Zealand is distinct from those in many other adversarial systems: a defence lawyer in New Zealand will have a workload wholly centred around working with defendants and may never appear as prosecuting counsel during their career.

An adversarial legal system comes with both strengths and weaknesses. Firstly, it allows both prosecution and defence to present their case compared to an inquisitorial system where they have less control over the case (e.g. determining which witnesses to call) (Ruru et al., 2016; Spencer, 2016; Stenning & Hill, 2008). Additionally, in an adversarial system, the

Judge is an impartial 'referee' to ensure legal procedures are followed and the process remains fair to defendants (Spencer, 2016). On the other hand, an inquisitorial system is viewed more as an 'inquiry' which grants the Judge more power to oversee the process (e.g. Judge actively asks witnesses questions before lawyers) (Adele, 2017; Spencer, 2016). However, there are also some significant weaknesses with the adversarial legal system. For example, the adversarial approach has been criticised for increasing conflict between prosecution and defence (Ruru et al., 2016). This is believed to encourage deception and potentially unethical behaviour (e.g. not disclosing disadvantageous evidence), as the goal is to 'win' (Adele, 2017). In addition, it is more focused on self-interest than the public interest (Adele, 2017). More significantly, in an adversarial system, a defendant is reliant on their lawyer to provide representation for their case in the legal system, meaning that their outcomes are heavily dependent on the capabilities of their lawyer (Ruru et al., 2016). This can create feelings of pressure for the defence lawyer to get the best possible outcome for clients. Additionally, it can create accessibility issues, as someone with a low income cannot afford the same representation as a wealthy person, influencing their outcome (Agmon, 2021). Although inequalities of representation may be mitigated through government-funded legal aid, as in New Zealand (Ministry of Justice [MoJ], 2021b), there are controversies about legal aid provision and access that potentially reduce its effectiveness as a tool of equal access (e.g. there have been reports that there are not enough legal aid providers to cope with the workload) (Hancock, 2021).

Role of the Defence Lawyer

As previously stated, the defence lawyer's role is to advocate and present arguments on behalf of the accused in the criminal justice system (Elliot & Quinn, 2013; Ruru et al., 2016). In New Zealand, criminal offences are classified across four categories (Criminal Procedure Act 2011). Category one offences are classified as the least serious and are

attributed to the lowest penalty of a fine only. Category four offences are the most serious, with offences such as murder. In New Zealand, a defence barrister can advocate across all offences when instructed privately. This means their caseload can be extremely varied, ranging from traffic offences to homicide cases. This is in contrast to prosecutors, where there are *Crown* and *police prosecutors*. The Crown Prosecution Regulations 2013 outline which offences are handled by Crown prosecutors, including all category four offences (including murder, manslaughter, treason*)*, schedule offences, and non-schedule offences where the defendant has opted for a jury trial (Criminal Procedure Act 2011). This means that Crown prosecutors in New Zealand deal with the most serious offences. Whereas, in a private capacity, a defence lawyer of any level can work across all tiers of offences.

In New Zealand, defence lawyers may work at the Public Defence Service [PDS] as employees of the Ministry of Justice (PDS, n.d.). These defence lawyers work solely on legal aid cases and are salaried employees. As of December 2021, a total of 191 defence lawyers work at the PDS across the country (MoJ, 2021c). Alternatively, defence lawyers may be in the private sector. They may be employed at a law firm or acting as a barrister sole. As a barrister sole, they are part of the independent bar. These defence lawyers may be instructed privately or take on legal aid cases. Legal aid is provided to ensure that all people accused in the criminal justice system can receive legal representation (MoJ, 2021b). Legal aid is funded by the government and is available to those who cannot afford private legal rates. This ensures everyone can afford representation and has equal access to justice. A person charged with an offence has their financial circumstance assessed along criteria to see if they are eligible to receive legal aid. Some people approved for legal aid pay for part of the cost, and for some, the entire cost is covered by legal aid. Criminal lawyers in New Zealand must meet certain criteria to provide legal aid in criminal cases (MoJ, 2022b).

There are five approval levels for criminal legal aid. Lawyers can apply to move up the provider approval levels [PAL] by providing evidence of their experience and the cases they have presided over (MoJ, 2021c). Initially, lawyers may start as a *Supervised provider* (MoJ, 2022a). These are lawyers that do not have the required experience to advocate alone for a client. They are supervised at all times by an approved lead provider. The case is assigned to the lead provider who is responsible for all the work completed by the supervised provider and ensuring they are receiving adequate guidance and supervision. This provides them a chance to develop the necessary skills and experiences before they move into the PALs that they can advocate for clients alone. At the end of 2021, there were a total of 247 registered criminal supervised providers (MoJ, 2021c). Of which, 31 were employed at the PDS and 216 were private providers. *PAL 1 lawyers* advocate in Judge-alone trial procedures, any proceeding in the Youth Court and any procedures not prosecuted by the Crown (MoJ, 2022b). At the end of 2021, there were 408 registered criminal PAL 1 lawyers. Of which, 64 were employed at the PDS, and 344 were private providers (MoJ, 2021c). *PAL 2 providers* can advocate during all proceedings listed in PAL 1 and any proceedings that are Crown prosecutions where the person charged may be liable to a penalty of no more than ten years' imprisonment (MoJ, 2022b). At the end of 2021, there were 294 registered criminal PAL 2 lawyers. Of this, 53 were employed at the PDS, and 241 were private providers (MoJ, 2021c). *PAL 3 lawyers* can represent clients in the categories mentioned earlier and any proceedings that if the defendant is convicted, they may face more than ten years imprisonment but is not a PAL 4 case. There were 161 registered criminal PAL 3 lawyers at the end of 2021 (MoJ, 2021c). 18 of these lawyers were employed at the PDS, and 143 were private providers. Finally, *PAL 4 lawyers* can take on legal aid cases where a person is charged with the most serious offences listed in Schedule 1 of the Criminal Procedure Act 2011, including any offence punishable by an indeterminate sentence such as life imprisonment or preventive

detention (MoJ, 2022b). There were a total of 355 registered criminal PAL 4 lawyers at the end of 2021 (MoJ, 2021c). Of which, 25 were employed at the PDS, and 330 were private providers. It is important to note that defence lawyers can privately take on any proceedings level. However, the vast majority of their work is funded by legal aid. For scale, in 2020/21, 68,740 charges went through the courts in New Zealand (MoJ, 2021a) and in the same year, there were 56,753 criminal legal aid grants approved. As defence lawyers move through the PALs in their careers, they take on an increasing case workload that deals with more serious offences with potentially more serious consequences for their clients.

Defence lawyers' obligations and duties are outlined in the Lawyers and Conveyancers Act 2008, which specifies that they must protect their client from conviction as far as is possible without misleading the court (Lawyer and Conveyancers Act 2008). The Lawyers and Conveyancers Act also outlines that defence lawyers must ensure their clients are fully informed of their options and the potential consequences. Once the client gives their instructions, defence lawyers must act per these – even when they disagree or advise against a particular decision. Further to these obligations, the Lawyer and Conveyancers Act specifies expectations around the duty of care to clients while advocating for them. Key expectations include protecting and promoting client interests and acting free from conflict and compromising influences. Further, defence lawyers must represent all clients fairly without discrimination. Alongside these obligations to their client, defence lawyers are also officers of the court and therefore have an overriding duty to the court (Stenning & Hill, 2008). Some of these duties include not undermining the court processes and ensuring they uphold absolute honesty and truth to the court. Having obligations to both their client and the court compels defence lawyers to balance potentially conflicting duties in their role.

The Lawyers and Conveyancers Act 2008 outlines that defence lawyers must get instructions from their clients, which means they must work on a one-on-one basis. This involves

managing client expectations and working with clients and their whānau. Thus, defence lawyers experience the same challenges as other helping professions through developing and maintaining professional relationships with clients. This includes building rapport and trust with their clients and engaging with client emotions throughout a case. This differs from the experience of Crown prosecutors in New Zealand who have legislative obligations (including the Victims' Rights Act 2002; Solicitor-General's Guidelines 2013) to engage and interact with victims one-on-one. Thus, they have some contact with the complainants, but not to the same level as defence lawyers, as ultimately, Crown prosecutors represent the community. This means they do not take their instructions from victims directly (Solicitor-General's Guidelines 2013). In contrast, defence lawyers have frequent contact with their clients as they guide how they want their cases handled.

There are currently no specific guidelines around the cultural competency requirements of lawyers working in New Zealand. However, the Lawyers and Conveyancers Act does specify that all clients should be treated fairly and without discrimination. This is particularly relevant in the criminal field as there is a significant over-representation of Māori and Pacific peoples. For example, between 2997 to 2006, 72% of apprehensions of Māori and 76% of apprehensions of Pacific peoples were resolved by prosecution, compared to only 66% of Pākehā apprehensions (Ministry of Justice, 2009). Additionally, in the 2020/21 year, of all people convicted of an offence, 45% identified as Māori and 10% were Pacific peoples (Ministry of Justice, 2021a). This is compared to 16.5% of the population identifying as Māori, 8.1% as Pacific peoples in the 2018 census (Statistics New Zealand, 2020). Thus, defence lawyers must engage with cultural competence and incorporate and respect their clients' worldviews to maintain a professional relationship.

This highlights the unique factors defence lawyers encounter in their role in the New Zealand criminal justice system. They present legal arguments on behalf of the accused,

providing fair, unbiased representation for all clients. To achieve this, they must develop rapport and work one-on-one with their clients to present the case to the best of their ability.

Chapter 2: Emotions in the Criminal Justice System

Historically, there has been an emphasis on highlighting the law as a rational exercise, which led to some disciplines arguing that there was no space for emotions in the law (e.g. Lange, 2002). This stems back to the belief that the inclusion of emotions interferes and hinders rational judgement (Maroney, 2006). The adversarial legal system should involve impartial decision-makers (e.g., Judge and jury). Thus, it is believed that decision making should be based on the credibility and strength of the evidence from both the prosecution and defence, not based on how decision-makers feel throughout the process (Lange, 2002). Within this perspective, legal practitioners such as lawyers and Judges are expected to uphold this rationality as part of their role (Maroney, 2011). Laypeople (e.g. witnesses, defendants, and complainants) are perceived to be the ones that bring emotion into the courtroom, with legal practitioners viewed as being above this and unable to be swayed from rational thought about the legal arguments (e.g. Maroney, 2006; 2011). However, more recently, it has been acknowledged that *"[e]motion is inherent in all human behaviour and is embedded in social interaction, including the courtroom*" (Roach Anleu et al., 2016, p.69).

This acknowledgement of the emotional nature of the law has led to the development of research examining how emotions present, impact, and are navigated by different actors in the legal system. To date, most of the research in this field has examined the experience of emotions of members of the public that enter the court system; for instance, the experiences of victims (e.g. Doak & Taylor, 2013; Konradi, 2007), witnesses (e.g. Kaufmann et al., 2002; Wessel et al., 2006), and defendants (Doak & Taylor, 2013). In addition, several studies have examined how emotional displays may impact credibility with the jury in the courtroom (e.g. Dahl et al., 2006; Schuller et al., 2010). For instance, in research examining the perceived credibility of victims of rape, mock juries found testimonies less credible when the victim appeared 'unemotional' or emotionally flat (e.g. Menaker & Kramer, 2012; Schuller et al.,

2010). Yet, while these laypeople are allowed, and in some cases expected, to have emotions in the courtroom, there continues to be an insistence that legal practitioners operate from a place of rationality and are not influenced by personal emotions that may create a bias (Bandes, 1999; Flower, 2019). This perception creates a paradoxical 'unemotional emotional' environment for lawyers, where they must meet often-complex *display rules* (i.e. social norms that regulate an individual's expression of emotions) (Flower, 2019; Wettergren & Bergman Blix, 2015).

Despite the insistence that the law and its legal actors are unemotional, emerging research has begun to examine the emotional experiences of legal professionals and their use of emotional displays in the courtroom (e.g. Bergman Blix & Wettergren, 2016; Flower, 2019; Holt, 2015; Roach Anleu & Mack, 2015). This research has highlighted the subtle use of emotions when presenting evidence to emphasise certain facts (Flower, 2018; Bergman Blix & Wettergren, 2016). To date, most of this research has been conducted from a sociological perspective where the influence of the social context and social interactions on emotions are examined and vice versa (Bergman Blix & Wettergren, 2018). Comparatively, psychological research often focuses on the individual, their experiences of emotions, and the mechanisms employed to help people navigate these emotions in the workplace (Thoits, 1995). Therefore, there has been less focus on legal professionals' individual experiences of emotions and how legal actors effectively work with emotions in their roles. The present study attempts to compliment and expand upon these sociological perspectives, and provide an insight into the experiences of defence lawyers.

While there has been little focus on the experiences of criminal lawyers in working with emotion, the experiences of Judges have received some attention. Judges are thought of as the authority and face of the criminal justice system (Mack & Roach Anleu, 2010). As such, Judges feel pressure to uphold the cultural expectations that the law is neutral and

impartial (Mack & Roach Anleu, 2010; Mack et al., 2018). Therefore, they intentionally present displays of impartiality and neutrality to manage these public expectations (Bergman Blix & Wettergren, 2018; Mack & Roach Anleu, 2010). Judges have also reported employing subtle emotional displays (e.g. simply putting a pen down to indicate their irritation) to maintain the order and control over the court and reflect the public's expectations that the Judge presides over the court (Bergman Blix & Wettergren, 2018). However, the judiciary's role is distinctly different from that of a lawyer. While they oversee the courtroom and make legal decisions, they do not work intimately with defendants or complainants. Further, they do not review and work with the emotional content for as long or as intimately as lawyers. Thus, criminal lawyers face different emotional challenges to the judiciary. However, to date, there has not been the same level of investigation into the experiences of criminal lawyers. Nevertheless, the small amount of research that has examined lawyers' experiences of working with emotion suggests that lawyers are engaging in significant emotional work while completing their duties (e.g., Bergman Blix & Wettergren, 2018; Murray & Royer, 2004; Stroebak, 2011; Westaby, 2010). This emotion work includes dealing with the emotions of others (e.g. Westaby, 2010) and their own emotions as they engage with potentially traumatic materials and distressed people (Kim, 2021; Weir et al., 2021).

Criminal lawyers regularly engage with potentially traumatic materials [PTM] (Weir et al., 2021). Sources of PTM can include recordings of 111 calls, victim impact statements, and medical reports that include graphic images. Previous research with both criminal and civil legal practitioners found that feelings of sadness and anger were often experienced by lawyers when reviewing these materials (Weir et al., 2021). This was also found in a study with Crown prosecutors in New Zealand, where participants reported experiencing trauma symptoms from prolonged exposure to these materials (Kim, 2021). In addition, defence lawyers in Sweden reported feeling disgusted when reviewing certain types of case material

(e.g. child pornography) and needing to employ particular strategies to manage their emotions while working with this content (Flower, 2019; 2020). Criminal defence lawyers in New Zealand work with similar materials to other criminal lawyers, but they are also working with a defendant who may be very emotional and upset throughout the court process. However, this unique combination is yet to be examined qualitatively from a psychological perspective. When considering the emotions lawyers encounter from others in their role, existing research with a broad range of lawyers suggest they engage in demanding and complex emotion work (Harris, 2002). They must deftly adapt their emotional responses and displays depending on the setting and the stakeholders present (Flower, 2019; Harris, 2002), spanning both public and private emotion work. For example, in public emotion work, defence lawyers need to strategically present emotional displays of loyalty to their client to influence jury perceptions of the case. However, this display may not extend to private meetings with clients (Flower, 2019; Holt, 2015). Flower (2019) also hints at the conflict of expectations that defence lawyers experience – having to meet the court expectations of subtle emotional displays when clients expect passion and anger from them. This highlights that defence lawyers must remember and work within competing display rules and expectations which may create additional burden and stress on defence lawyers.

These studies provide a preliminary insight into criminal lawyers' experiences of emotions in their work. While Flower (2019) provides an extensive insight into the experiences of defence lawyers. This was completed from a sociological perspective and used a combination of ethnographic observation in the courtroom which is supplemented with interviews with defence lawyers. The present study aims to place the perspectives of defence lawyers as the focus the study, through semi-structured interview, thus the results guided by their own interpretations and perspectives of their work, providing alternative insights.

To conclude, since the initial denial of emotions in the legal profession, emotion research has started to develop. The experiences of laypeople and traditional frontline roles in the criminal justice system have garnered reasonable attention. However, legal professionals and specifically criminal lawyers have received less consideration. The research that has examined the experiences of legal professionals has indicated that they are moving through different spaces that dictate different display rules and that they must adapt their emotional responses and displays according to their audience. However, this limited research into legal professionals' experiences have been grounded in sociological perspectives, and defence lawyers have still been largely overlooked.

Chapter 3: Working with emotions

Emotions

Emotions are a core part of everyday psychological functioning (Mulligan & Scherer, 2012). Exact definitions of emotion are constantly being examined and refined, however, emotions are understood as being made up of three components: the subjective experience, physiological response and the behavioural response. In the context of a work setting, there are three concepts frequently discussed in the psychological and sociological literature: *dirty work, emotional labour,* and *emotion regulation.* Each of these will now be discussed.

Emotional dirty work

Some professions involve work that the rest of the society would prefer to forget, and this experience brings up unique emotional experiences (Hughes, 1958). This type of work is typically termed *dirty work*. The concept of dirt refers to the idea of 'matter out of place', things that do not belong and disrupt order in our society (Douglas, 1966). This separates what is 'clean' and 'worthy' from what is objectionable and should be discarded or brushed away. Many dirty work jobs are essential to ensuring that society and its processes continue functioning well (Mills et al., 2007). For instance, employees working at sewage plants provide a vital role that ensures that our spaces are kept clean and hygienic (Simpson & Simpson, 2018), and psychiatric nurses support vulnerable people with mental illnesses (Halter, 2008; Ross & Goldner, 2009). However, despite their essential part in society, people that work with these dirty elements of society expose themselves to stigma and being '*tainted'* by their work (Hughes, 1962). This *taint* from dirty work can come from four different sources: physical, social, emotional, and moral taint.

Physical taint refers to working with physical forms of '*dirt'*. This includes jobs associated with dirt, death, sewage, or bodily fluids (Ashforth & Kreiner, 1999). Some of the roles associated with physical taint include janitors, funeral directors, butchers (Hughes,

1958; McMurray, 2012; Simpson et al., 2011). *Moral taint* refers to working in spaces thought dubious or sinful – historically used to refer to occupations such as sex work and exotic dancing (Ashforth & Kreiner, 1999; Tyler, 2012). *Social taint* refers to becoming '*dirty'* through working with stigmatised groups in society (Ashforth & Kreiner, 1999). Historically, this has included those caring for people with HIV/AIDS and individuals who have criminally offended (Ashforth & Kreiner, 1999; Stannard, 1973). Finally, *emotional taint* refers to working with difficult emotions that *"threaten the solidarity, self-conception, or preferred orders of a given individual or community"* (McMurray & Ward, 2014, p. 1134). For example, McMurray and Ward (2014) identified that these call takers on support helplines talk to people with chronic loneliness or suicidal thoughts. These are emotions that society is uncomfortable with being vocalised, and callers often contact the support service as a last resort as no one else will listen. All of these aspects of taint can also vary in the levels of *breadth* and *depth (*Kreiner et al., 2006). The depth relates to the intensity of the *dirt* involved and how direct a worker engages with this *dirt.* For instance, a defence lawyer works directly with those accused of criminal offences – increasing the intensity. Whereas *breadth* refers to what proportion of the role involves dirty work – such as a farmer may occasionally interact with dead animals, but a butcher does this daily. This depth and breadth of dirty work roles tend to be higher for roles with multiple sources of taint (Harms, 2011; Kreiner et al., 2006). One such profession is police officers may deal with the physical taint of death and bodily fluids, the social taint of working with marginalised and stigmatised groups, and the emotional taint of working with distressed individuals, both the perpetrators and victims of crime (Harms, 2011).

It is clear that working in the criminal justice system is considered dirty work due to frequent interactions with people who have offended and highly distressed people; thus, engaging in both social and emotional taint. This includes frontline and back-office roles such

as defence lawyers, court registrars, police and court administrators, prison officers, and police officers (e.g., De Camargo, 2019; Lemmergaard & Muhr, 2012; Mawby & Worral, 2013; Mikkelsen, 2021; Wilson-Kovacs et al., 2022). Preliminary research overseas suggests that defence lawyers are also engaged in this essential dirty work (Gunby & Carline, 2020; Rotherick, 2019). They maintain balance in the justice system and hold it accountable while also making sure all aspects are working as they should and representing the accused, individuals who are often distressed and experiencing heightened levels of emotion (Gunby & Carline, 2020). While the roles of balance, accountability, and representation are expected of defence lawyers, the public does not want to think of people defending 'wrongdoers'. Consequently, the public often has disdain for defence lawyers, highlighting the social and emotional taint experienced by this group (Rotherick, 2019).

To date, studies into the experiences of dirty work in the criminal justice system has predominantly focused on prison officers (e.g., Mikkelsen, 2021; Sundt, 2009; Tracy & Scott, 2007) and police officers (e.g., De Camargo, 2019; Spencer et al., 2019; Wilson-Kovacs et al., 2021), with few studies examining the experiences of legal professionals working in the criminal law. The lack of focus on criminal lawyers' experiences of dirty work may reflect the historical assumption that dirty work is carried out by people in lower societal positions – which would not include lawyers (Jervis, 2001). Several investigations have examined the dirty work of lawyers that includes defence lawyers amongst other subgroups (e.g. Bandes, 2006; Drew, 2007; Gunby & Carline, 2020; Haller, 2003; McIntyre, 1987). Drew (2007) describes how criminal lawyers (both prosecution and defence) are morally and socially tainted in their role. As a result of working with stigmatised individuals (i.e. those accused of criminal behaviour) and the ethics of their behaviour (e.g. working to help minimise a sentence guilty of an offence), defence lawyers have report experiencing hostility and suspicion from the public (Bandes, 2006; Rotherick, 2019). Defence lawyers also reported

employing strategies such as distancing themselves from their work and justifying their profession to the public and themselves to manage the social taint experienced due to their work (Rotherick, 2019). These strategies were essential - otherwise, they felt the '*taint'* followed them home and impacted their personal lives as well – leaving them losing sleep or having dreams of their work (Rotherick, 2019).

Interestingly, Gunby & Carline (2020) highlighted that it was not always possible for barristers working on rape cases to distance themselves emotionally from work completely. While distancing themselves was protective for their wellbeing and perceived to help with objectivity, barristers reported that they still needed emotional engagement to convince a jury of their case – leading them to develop '*tempered indifference'.* These preliminary investigations highlight that criminal attorneys appear to be engaging in *social* and *moral* taint aspects. However, the experiences and unique aspects of dirty work that criminal lawyers engage in is yet to be fully explored.

Impacts of dirty work

Research has consistently shown that being involved in dirty work can evoke a range of negative emotions in individuals – including shame, guilt, and embarrassment (e.g. Ashforth & Kreiner, 2002). Additionally, dirty workers can feel as though they are treated as lesser by society due to society questioning why they would want to do this work and making derogatory comments about their professions (Nash, 2016). This reflects how society wants and needs these dirty roles completed and understands their importance – but they do not want to be reminded of their existence (Hughes, 1958). This negative societal response has been associated with eroding self-esteem and a loss of self-confidence in those engaged in dirty work (Bergman & Chalkley, 2007; Kraus, 2010). Therefore, it has been suggested that people have to find ways to re-establish their self-worth and dignity (Deery et al., 2019). Strategies to achieve this balance include *reframing, recalibrating* and *refocusing* the dirty

work (Ashforth & Kreiner, 1999). *Reframing* involves changing the negative meaning attached to a 'dirty' activity. *Recalibrating* refers to changing the evaluative standards used to measure dirty work to amplify the merits of the work. Finally, *refocusing* involves shifting attention onto the positive aspects of the work and overlooking the 'dirty' parts (Ashforth & Kreiner, 1999). Engaging in these strategies is an important process for individuals to maintain a positive identity while working in a dirty role (Deery et al., 2019).

Dirty work has also been linked to burnout symptoms among employees (e.g., Bakker & Heuven, 2006; Perez et al., 2010) due to the chronically high pressure and stress often experienced in these roles (Maslach, 1982). Burnout has often been linked to helping professions, as workers feel the strain of dealing with others' emotions (Jenkins & Baird, 2002). However, in contrast, many dirty work professions also cite feeling pride and personal satisfaction from their work due to the contribution of the role and the benefits it has on society (Burns et al., 2008; Perez et al., 2010). This helps them develop a positive identity, which can help protect their wellbeing while working in *dirty* spaces. This research highlights distinctly negative impacts of engaging in dirty work. However, it can also positively impact people finding meaning and satisfaction in their work.

Research on dirty work in the criminal justice system until this point has focused on the experiences of frontline workers, such as police and probation officers (e.g. Asher, 2014; Burns et al., 2008; Dick, 2005; Harms, 2011; Huey & Broll, 2015). This research has identified these groups are faced with stigma resulting from their work and thus are reluctant to share the impacts of the work with friends and family (e.g. Burns et al., 2008; Perez et al., 2010). In other professions, this reluctance has also been found to extend to reaching out for support services when dirty workers are struggling with the impacts of their work (e.g. Arnold & Barling, 2003). Additionally, these criminal justice agents, such as corrections and police officers, are engaging in the same strategies of reframing, recalibrating, refocusing as

other dirty workers to help them maintain a positive social identity (e.g. De Camargo, 2019, Eriksson, 2021). As previously discussed, the impact of dirty work among legal professionals has yet to be systematically examined. Provisional research suggests criminal barristers engage in these strategies, but it may not be as straightforward as they need to keep some level of emotional engagement (Gunby & Carline, 2020). Further research is still required to understand if defence lawyers are engaging in dirty work that brings up negative emotions and are using emotional management strategies to maintain their wellbeing while working in these spaces.

Managing emotions and wellbeing when doing dirty work

Working in the criminal justice system means that it is inevitable that emotions will arise. This may be emotional displays from others, or personal feelings that arise through the nature of the work. Since these emotions are expected in the field, people that work in this space must have strategies and approaches for managing their own and others' emotions. Key strategies frequently discussed in the literature are *emotional labour* and *emotion regulation*. Each of these will now be discussed as well the impact of emotion work and the regular use of emotional management on the individual.

Emotional labour

Emotional labour refers to the expectations that some professions require of workers to manage their own emotions and the emotions of the public that they work with (Hochschild, 1983). This emotion management is also expected to be done in a way that meets certain display rules. Display rules outline the appropriate emotions and how these should be expressed (Hochschild, 1983). These display rules may be based upon societal, occupational, or organisational norms (Ashforth & Humphrey, 1993). In an occupational context, these display rules may be outlined and imposed by policy, inductions, supervision and work culture (Hochschild, 1983; Rafaeli & Sutton, 1989). Hochschild (1983) identifies

three criteria required for emotional labour to occur. First, the employee must have face-to-face or voice-to-voice contact with clients or members of the public; second, the employee must be required to manage the emotions of both themselves and the people they are working with. This includes managing the emotions' range, intensity, duration, and target. Finally, they must experience having their emotional displays monitored by a supervisor to ensure displays are 'appropriate' (i.e., meet display rules). Historically, the concept of emotional labour was concerned with frontline service workers, including flight attendants and hospitality workers (Hochschild, 1983). Human service professions, including lawyers, were initially overlooked as they did not meet the criteria of having a supervisor directly managing their displays. However, it has subsequently been recognised that other human service professions, including lawyers, have their behaviours and emotional displays monitored by formalised codes of conduct (Harris, 2002; Murray & Royer, 2004).

As discussed in *Chapter 2*, there is a cultural expectation for the law to be impartial and free from emotion. This is formalised by professional guidelines that govern lawyers' emotional displays. In New Zealand, the Lawyer and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 and the court etiquette rules (Courts of New Zealand, 2009) require lawyers to ensure that their emotional displays constantly meet the expectations of the various stakeholders they interact with. In practice, an example of this would be that if a defence lawyer became angry in the courtroom towards a Judge, they must still refrain from using swear words or showing any disrespect towards the Judge. If they are unable to do this and uphold the court etiquette, they could be held in contempt of court and have a complaint made to the standards committee (New Zealand Law Society [NZLS], 2020). Similarly, their emotional displays with clients have regulations too. For example, if a lawyer disrespects their clients, clients can complain to the Lawyers Complaints Service (NZLS, 2020). This

highlights that while not all lawyers have direct managers, their emotional displays are regulated and monitored through professional regulatory bodies.

Hochschild (1983) hypothesised that individuals in the workplace meet expected emotional displays through four proposed mechanisms. First, they may have '*genuine emotional responses',* where their personal feelings match what they outwardly display (Ashforth & Humphrey, 1993). Effort and control must be used to ensure that these outward displays are appropriate in intensity and duration (Harris, 2002). For instance, a lawyer may show empathy and concern for a client upset about a case but must ensure this concern remains within the bounds of professionalism. Second, they may use '*deep acting',* which refers to individuals looking at their personal feelings and attempting to alter them to match what they must present publicly (Hochschild, 1983). For example, a lawyer may put themselves in the shoes of their client who has been assaulted to understand where they are coming from and express that concern and empathy towards the client (Harris, 2002). The third mechanism is '*surface acting'*, when individuals publicly present emotions they do not personally feel (Hochschild, 1983). For instance, a lawyer may hide frustration towards a client when they do not listen to their legal advice and instead show empathy to the client's position and opinions on the case (Kadowaki, 2015). Finally, an individual may use '*detachment'* to remove all emotional engagement with their work (Kadowaki, 2015; Wolkomir & Powers, 2007). An example is when abortion clinic workers remove all emotional detachment from their work when encountering difficult clients. This way, they can perform their required tasks and remain professional in these circumstances (Wolkomir & Powers, 2007). This may be used as a strategy when individuals cannot produce genuine emotional responses or a form of 'acting' (Kadowaki, 2015). However, it has also been observed as a strategy lawyers employ to help ensure professionalism and maintain boundaries around work (e.g., Westaby, 2010). These management approaches require effort,

planning, knowledge, and control from individuals to ensure they are presenting appropriate outward displays (Harris, 2002).

Emotion Regulation

While emotional labour is grounded in sociological theory, psychological research focuses more on the individual and their use of emotion regulation in different social contexts. Emotion regulation refers to an individual's ability to recognise, manage, and respond and monitor experienced personal emotions (Gross, 2001; 2015). The process by which this happens is still debated in the literature. Some theorists argue that emotion manifestation and regulation are interacting processes that occur in parallel and cannot be distinguished from each other (e.g. Campos et al., 2004). Others suggest that emotion generation and regulation are largely separate phenomena (e.g. Garnefski et al., 2001). One of the predominant researchers in the field (Gross, 2015) argues that emotion regulation involves individuals employing a range of strategies to manage their emotions, how they experience these emotions, and how they express these emotions outwardly. This regulation involves changing the actual emotion experienced and the emotions' duration and intensity (Gross, 1998). The emotion regulation process is a part of everyday life and not always actively thought about by individuals. However, in stressful situations, active strategies and conscious emotion regulation may be needed. Conscious emotion regulation and managing the expression of emotions are particularly important skills for those working with the public as they must present the emotions while maintaining display rules (Gross & John, 2003).

There are five commonly research conscious emotion regulation strategies: antecedent and response-focused strategies. Antecedent-focused strategies include *situation selection, situation modification, cognitive change* and *attentional deployment. Situation selection* refers to not allowing oneself to enter certain situations to avoid triggering certain emotional responses (Gross, 2015; Gross & John, 2003), for example, not working with a colleague that

creates frustration when working on a case (Austin & Durr, 2016). *Attentional deployment* involves shifting the attention to an emotional stimulus to change the emotional response (Gross, 2015; Gross & John, 2003). For example, avoiding eye contact with an upset victim in the courtroom as this may trigger emotional responses for the lawyer (Austin & Durr, 2016). *Finally, situation modification* involves changing the emotional triggering situation to produce a different response (Gross, 2015; Gross & John, 2003). For example, a Judge modifying a courtroom set up so that a victim does not have to look at the accused, which helps the victim manage their emotions and reduces the emotional stimulus in the courtroom (Maroney, 2011). In short, antecedent strategies involve modifying the emotions generated in a situation and shifting the emotions experienced. In contrast, response-focused strategies focus on *response modulation.* These strategies occur after a person has experienced emotion and work to change the emotion felt or expressed. For example, a Judge takes deep breaths after hearing an emotional victim statement to minimise their display of sadness (Maroney, 2011).

Due to its focus on controlling the experience and display of emotions, emotional labour has been suggested to be a form of emotion regulation (Grandey, 2000). Grandey (2000; Grandey et al., 2013) integrated previous models of emotional labour with two emotion regulation strategies as outlined by Gross (1998). This model identifies that the types of emotional labour outlined by Hochschild (1983) can be mapped onto emotion regulation strategies to understand what emotional labour strategies are trying to achieve. For instance, as Hochschild (1983) outlined, deep acting involves changing personal feelings to match what is required to be displayed. This is very much in line with Gross' (1998) emotion regulation strategy of *cognitive reappraisal*, which involves changing one's perception of an emotional stimulus so that their emotions shift to something they can manage. Grandey (2000) proposes that this is antecedent focused emotional labour, which attempts to change

how responses to emotional stimuli are experienced. This helps to manage personal emotions while engaging with other people as well. Grandey (2000) suggests that surface acting reflects a response-focused emotion regulation strategy. Surface acting involves producing an emotional display that does not match what is felt internally and suggested by Grandey (2000) to reflect Gross' (1998) explanation of response modulation, changing how experienced emotions are expressed externally. This response-focused emotional labour focuses on the appropriate emotion expected by other people. This approach tries to produce expected emotions to help manage the emotion of others. Grandey & Melloy (2017) acknowledge that the model only accounts for *surface* and *deep acting*. It has not covered the emotional labour concepts of *detachment* and *genuine emotional responses.* This highlights how emotional labour and emotion regulation are interrelated concepts. However, emotional labour considers these within a particular context (e.g. workplace) where certain emotional management skills are demanded of professions at organisational, cultural, and professional levels.

A small body of research has examined the use of emotion regulation strategies in the legal domain, with a particular focus on Judges. Maroney and Gross (2014) identified that Judges may engage with all five emotion-regulation strategies throughout their role, as Gross and John (2003) outlined. Judges engage in situation selection strategies by limiting and choosing the cases they take to minimise the emotional impact they may take (Maroney & Gross, 2014). For instance, they may not wish to preside over family court cases as they may be particularly emotional (Maroney & Gross, 2014; Roach Anleu & Mack, 2005). However, this is not always a feasible strategy for Judges as they cannot pick and choose the cases they are involved in, and there are strict criteria as to which cases they can avoid (Maroney & Gross, 2014). This is comparable to lawyers in New Zealand who are not allowed to be prejudiced towards any clients when taking on cases, as outlined by the Lawyer and

Conveyances Act 2008. While Maroney and Gross (2014) provide an insight into the emotion regulation strategies that Judges engage in, research into the experiences of legal professionals working with emotion more generally is scarce. However, existing research has shown that law students do not feel equipped to handle the emotions in their role (Flower, 2014). This emphasises the need to understand the experiences of criminal lawyers working with emotion to improve legal training and better equip those entering the profession to protect their wellbeing (James, 2011).

Impacts of working with emotional material

While emotion management is critical to certain professions, research has identified that frequent engagement in these processes can impact individuals' wellbeing. However, most research has focused specifically on the impacts of engaging in emotional labour rather than more broadly exploring the experiences of working with and engaging with emotion and emotional material. As noted earlier in this chapter, emotional labour can positively and negatively impact an individual's performance and wellbeing. Several studies have indicated that individuals may feel a sense of fulfilment and increased job satisfaction while working in emotional labour-intensive roles as it often involves helping other people (e.g. Kinman et al., 2011; Wharton, 1993). Further, studies have suggested an increase in effectiveness because people experience an emotional attachment to the role as they have personal emotions tied into their work (Harris, 2002). However, other studies have suggested that emotional labour can have psychological and physical impacts on individuals, leading to higher levels of absenteeism and decreased organisational effectiveness (Ashforth & Humphrey, 1993). Burnout has frequently been identified as a significant outcome for those engaging in high levels of emotional labour in the workplace (e.g. Jeung et al., 2018; Maxwell & Riley, 2017). Burnout refers to a combination of symptoms including exhaustion, cynicism, detachment from the role and reduced effectiveness (Maslach et al., 2001). Additionally, studies have

found links between emotional labour and depression, cardiovascular disease, and suicidal tendencies (Aung & Tewogbola, 2019; Mann, 2007). Although little research has been conducted with legal professionals, Vrklevski and Franklin (2008) argue that the effects of emotional labour may be exacerbated in legal professionals due to client confidentiality, as lawyers are limited with whom they can debrief about emotional materials.

This chapter has outlined existing theories of working with emotion and how individuals manage these in their work. It has presented the sociological perspectives of emotional labour, psychological theory of emotion regulation and how these can be integrated to form a single model explaining emotional management and displays. These theories explain how defence lawyers' experiences can be explored, which is yet to be done thoroughly. This can help inform research questions and analysis to interpret defence lawyers' experiences.

The present study

This introduction has outlined the New Zealand criminal justice system as an adversarial system where defence lawyers advocate for the interests of the accused (Ruru et al., 2016). Previous literature on emotions in the criminal justice system has been limited to date. It has predominantly focused on frontline roles (e.g. De Camargo, 2019;) and laypeople entering the system (e.g. Konradi, 2007). Initial investigations into the experiences of legal professionals highlight they are engaging in complex emotional work with conflicting demands (e.g. Harris, 2002; Flower, 2019; Roach Anleu & Mack, 2015). However, past research has predominantly been conducted from a sociological perspective, and the defence role is still yet to be properly examined.

Defence lawyers have a unique experience compared to prosecutors and Judges. While all three work in a field that involves potentially traumatic material that may trigger emotional responses, defence lawyers have two unique elements to their role. Firstly, they represent a client and work on a much more intimate basis with their client than a prosecutor or a Judge. This advocacy and the pressure of acting as the sole advocate may create a unique sense of burden on defence lawyers. Secondly, defence lawyers engage in emotional '*dirty work' based on the nature of their work.* Flower (2019) identified defence lawyers experience suspicion and contempt from the public due to the nature of their role. Carrying this stigma can cause feelings of shame and embarrassment and erode self-esteem (Ashforth & Kreiner, 1999; Bergman & Chalkley, 2007). As previously discussed, engaging in *dirty work* creates a unique challenge for individuals as they manage their internal emotions about the work they are carrying out and the external emotions that come from working in an interaction-based industry. These elements highlight that defence lawyers' experiences warrant thorough and systematic exploration. They have unique challenges and complexities that may lead to unique experiences compared to other criminal justice professionals.

The current study aims to address this gap in the literature by exploring defence lawyers' experiences of working with emotions in the criminal justice system. It is one of the first studies to do so from a psychological perspective. This will allow an opportunity to explore their experiences through their own interpretations of emotions and their work. A qualitative methodology is used to answer the research questions due to the exploratory nature of the study and the lack of research and theory in the area. It is hoped that the research findings can help us better understand defence lawyers' experiences of working with and managing emotions and facilitate the development of tailored interventions and potential educational opportunities to support lawyers in their work and improve workplace wellbeing. The following research question will be explored:

What are defence lawyers' experiences of working with emotions in the criminal justice system?

It will be guided by two sub-questions:

1. *What types of emotional labour do defence lawyers engage in when working with emotions in their role?*
2. *What factors help or hinder defence lawyers when working with emotions?*

Chapter 4: Method

Research Design

A qualitative methodology was used to examine New Zealand practising defence lawyers' experiences of emotions while working with emotional materials in their role. There is a lack of existing research into the experiences of defence lawyers in dealing with emotions in their work. Thus, an exploratory approach was preferred to develop an in-depth understanding of what types of emotion work defence lawyers are engaging with and how they manage this work.

A qualitative approach was adopted as it is a useful methodology for gathering an in-depth understanding of the experiences and perspectives unique to the sample population (Braun & Clarke, 2013). One of the benefits of qualitative research is that it provides flexibility and responsivity in areas that have been under-researched (Hammarberg et al., 2016). This is an important consideration when there is a lack of existing research to guide analysis. Qualitative research also allows the investigation to be driven by participants' experiences without making any existing presumptions.

The Role of the Qualitative Researcher

Qualitative research requires the researcher to take an active role throughout data collection and analysis (Aspers & Corte, 2019). Therefore, the researcher must be aware and acknowledge how their perspectives, experiences, and assumptions shaped the analysis and results, recognising their centrality to the analytical process (Bradbury-Jones, 2007; Lazard & McAvoy, 2020). The process through which researchers consider and reflect on their role in the research and analysis is known as reflexivity (Berger, 2015; Dodgson, 2019). Without engaging in reflexivity, researchers risk adopting an approach that presumes the analysis is linear and ignores unexpected findings that may be overlooked if the researcher is not actively engaged in reflexivity (Russell & Kelly, 2002).

In this study, reflexivity was engaged in using multiple methods. First, a reflective journal was kept throughout the entire study. Using a reflective journal allows the researcher to consider the choices they have been making all through the study (Ortlipp, 2008). It aids reflection on observations made throughout data collection and analysis, which provides insight and understanding of how their interpretation has shaped the process. Second, reflective supervision was provided by the research supervisors where in-depth discussions were had around my reasoning and analytical decisions, as well as the offering of alternative perspectives on the analysis. This provided triangulation of thinking around the analysis, which helps with providing cross verification and confirmation of the analysis. The following section outlines my positioning in the research and how this influenced the interviews and the analysis process.

Reflexivity Statement

I am a 25-year-old female living in Wellington, Aotearoa, New Zealand. For the last two and half years, I have worked as an emergency communicator at the New Zealand Police. This role has provided me with an insight into the criminal justice system and made me aware that some cases are highly emotional and potentially traumatic. Through this work experience, I have seen colleagues experience intense emotional reactions to some of the calls they have taken. I have also seen colleagues experience mental distress due to the nature of the work. These observations have made me aware of the need to incorporate self-care practices such as frequent exercise. In addition, I developed the skills to recognise when a call has caused me to feel upset or distressed so that I can take some time away from the phones to seek support from my friends and family. These self-care practices are part of my daily life to help ensure my continued wellbeing.

However, my experience and understanding of the criminal justice system is unique to that of defence lawyers, who work in a different part of the system. As an emergency

communicator, I often interact with the victim as the incident occurs or just after. This can involve very intense or raw emotions. However, often my interactions are very brief - I may be on a phone call for five minutes before police arrive. I do not work as intimately with people and do not work on a case for as long as a defence lawyer may do. Although I am on the phone and may hear distress, I do not view evidence such as crime scene photos or autopsy reports. Because of these distinct differences, I have been mindful that my experiences and understanding of the criminal justice system impact how I interpret and understand the data in the study throughout the research process. Thus, I took active steps to ensure that the impact of my personal biases was minimised. For instance, I was careful not to dismiss or minimise defence lawyers' interpretation of their experiences of emotion in the criminal justice system if it was not something that I had personally encountered. This involved setting aside my views and perspectives while listening to their experiences during interviews and throughout the data analysis. This was aided by the regular supervision meetings where my understanding and thinking of analysis and interviews were scrutinised. Additionally, both supervisors provided triangulation of thinking throughout the analysis, which helped to ensure that I adopted an inclusive approach that did not ignore or overlook participants' experiences.

Another aspect I had to consider throughout the study was the emotional labour that I was engaging in as a researcher. Some of the topics discussed might have been highly personal or sensitive to participants; thus, it was important to build rapport and trust. I put my feelings aside throughout interviews to engage in these open and honest conversations with participants. Additionally, some participants became upset during the interviews, and at times I also felt upset and overwhelmed, but it was my responsibility to ensure their wellbeing and provide onward support. So, I had to keep my emotions out of the interview and focus on the participant and their wellbeing. My experience of working as a Police Communicator was

helpful in these times, as I have developed skills managing my emotions when others can become highly distressed and can maintain my role and responsibilities throughout the interaction.

Furthermore, some participants also described graphic details of cases. This was sometimes difficult to listen to during interviews and was not something I was used to from my work at the police. So to ensure that I was coping with the content of the interviews, debriefs were had with my supervisor after each interview. This allowed an opportunity to reflect on the interviews and discuss any points of distress. I consistently reflected on personal emotions that I did experience throughout the data collection and analysis and whether this impacted how I interacted with my results.

Study design

A phenomenologically oriented design was adopted to develop an in-depth understanding of defence lawyers' experiences of emotions while working with potentially traumatic materials in the criminal justice system. Braun and Clarke's (2006, 2013) reflexive thematic analysis (TA) was used to identify common or recurring patterns of meaning (i.e., themes) in the data. Reflexive TA was used as it provides a flexible and responsive analysis that offers rich and detailed descriptions of participants' experiences. The flexibility of reflexive TA allows it to help answer a wide range of research questions across a range of theoretical approaches (Braun & Clarke, 2006, 2013). Additionally, organic and flexible coding means codes can be refined and evolve throughout the analysis process as the researcher becomes further immersed and aware of the data.

Reflexive thematic analysis is a form of 'Big Q' qualitative research, where data collection and analysis are conducted within a qualitative paradigm (Braun & Clarke, 2013). An inductive approach to analysis was used, which means that the data drove the analytic process instead of any pre-existing theoretical assumptions (Braun & Clarke, 2006, 2013;

Braun et al., 2019). This approach was chosen due to the lack of existing research in the area and because it allowed me to explore participants' interpretations of their experiences. Initially, a semantic approach to coding was used. However, it was decided to use latent coding during analysis to capture the underlying meaning of defence lawyers' self-reported experiences. The reasoning for this decision is discussed further in the *Analysis* section. A critical realist epistemological approach was applied to explore defence lawyers' interpretation of their reality in their work (Braun & Clarke, 2013; Madill et al., 2000). Additionally, a contextualist approach informed the analysis, which assumes that defence lawyers' interpretation comes from the context in which it is grounded (Braun & Clarke, 2013; Madill et al., 2000).

Participants

Information power for the study was established using the criteria as described by Malterud et al. (2016). These criteria are the *scope of the study aim, sample specificity, use of an established theory, quality of the dialogue* and *analysis strategy.* The study aimed to understand the experiences of defence lawyers in New Zealand, specifically their experience of working with emotions. The target group was practising defence lawyers in New Zealand; within this, it was considered important to reflect those of various genders and experience levels of private and public practice. As discussed in Chapter 1, defence lawyers at different PAL levels work on different offence types. Thus they are likely to have different experiences based on the materials they will encounter in their work. The number of different criminal PAL lawyers is described in Chapter 1. Beyond approval level, it was difficult to ensure the sample's representativeness. Most registered criminal legal aid providers are private providers – 87% as of the end of 2021 (MoJ, 2021c). The MoJ does not have the demographic details of private providers. This makes it difficult to ensure a representative sample was gathered. Since the study was exploratory, an *established theory* was not used to

guide information power. However, the semi-structured interviews were designed to allow for flexibility in responses and building rapport which meant that rich and *quality* dialogue was elicited from participants. Reflexive thematic analysis (Braun & Clarke, 2006) was used as the *analysis strategy* for the study. This approach allows for a theoretically flexible approach to data analysis and identifying patterns of meaning across participants' accounts. Based on this approach, an initial appraisal was made for a sample of ten to fifteen defence lawyers.

Participants were fourteen practising criminal defence lawyers currently living and working in New Zealand. They were recruited from various firms and practices from across the country; this included the Public Defence Service, barrister sole, and chambers. Nine participants (64.3%) identified as Pākehā, with five participants identifying as Māori and Pākehā (35.7%). The sample age range was between 30 to 67 years (M = 39.6, SD = 11.7). Length of time working in criminal law ranged between 3 to 33 years (M = 12.8, SD = 8.8). Eleven participants were located on the North Island (78.6%), and three were working in the South Island (21.4%). The demographics of the participants are summarised in Table 1. Due to the small number of criminal defence lawyers in New Zealand, participant demographics have been presented in an aggregated format to help ensure confidentiality.

Table 1

Participant Demographics

Demographics	Category	Number	Percentage
Gender	Female	10	71.4
	Male	4	28.6
Age	20-29	0	0
	30-39	10	71.4
	40-49	1	7.1
	50-59	2	14.3
	60-69	1	7.1
Ethnicity	Pākehā	9	64.3
	Māori & Pākehā	5	35.7
Years working in	0-5	2	14.3
Criminal Justice System	6-10	5	35.7
	11-15	3	21.4
	16-20	0	0
	21-25	1	7.1
	26+	2	14.3
Provider Approval	Supervised	0	0
Level	Provider		
	1	1	7.1
	2	6	42.9
	3	3	21.4
	4	4	28.6
Practice Type	Public Defence	5	35.7
	Service		
	Chambers	2	14.3
	Barrister Sole	7	50

Note Participant data has been presented in aggregated form to help protect participant confidentiality. Percentages rounded to one decimal place.

Interview schedule

This project forms part of a larger body of work undertaken to examine criminal legal professionals' experiences working with emotion and potentially traumatic material. A semi-structured interview schedule (Appendix A) was utilised that had been developed as part of a previous master's thesis with Crown prosecutors (Kim, 2021). Several questions were changed, and some were added to make the schedule more relevant to defence lawyers and the specific study of emotions in the criminal justice system. For example, questions were added to ask about their experience working with the defendant's whānau as well as the defendant. These amendments to the interview schedule were developed alongside both supervisors.

The semi-structured interview schedule comprised five sections: demographics, role as a defence lawyer, working with potentially traumatic experiences, working with and dealing with emotions, workplace support and wellbeing. The five sections were ordered in this way to help build rapport with the participants in the first two sections before moving into more personal and potentially emotional sections of the interview schedule (Galletta, 2012). Building this rapport and showing interest in participants' experiences is important to elicit rich narratives throughout the interview. A copy of the interview schedule can be found in Appendix A. The interview schedule comprised open-ended questions and prompts to allow participants to share their in-depth experiences and for the interviewer to follow up on areas of interest in response to participants' answers to initial questions (Galletta, 2012). This approach also allowed the researcher to check their understanding of the topics discussed by participants and for participants to add any comments on the topics that were not covered in the questions.

Procedure

Before starting the research, an ethics amendment was submitted to the Victoria University of Wellington Human Ethics Committee (#28052v4) to add myself to the existing application for the wider project and notify the committee of the changes to the interview schedule. Following the amendment approval, a range of chambers, Public Defence Service offices, and barrister sole that work in the criminal defence space were contacted via email to introduce the project (Appendix B). Firms, chambers, and barristers were selected with support from supervisors who provided a list of PDS offices, chambers, and barristers spread across the North and South Island. This provided a mix of people who would help provide a range of voices from the defence bar in New Zealand and ensure information power in the sample. Emails to chambers and the Public Defence Service advised interested individuals to contact the research team directly to help ensure their confidentiality. Barrister soles were contacted directly. Those who expressed an interest in participating were sent a follow-up email with the information sheet (Appendix C) and consent form (Appendix D) for the project. Once participants returned the signed consent form, an interview was scheduled.

Interviews were either conducted in person (n = 5, 37.5%) or via Zoom (n = 9, 64.3%). Using both these approaches enabled the recruitment of a geographically diverse sample from across New Zealand, allowing participants choice and flexibility around their work and personal schedules, and provided flexibility in the event COVID-19 alert levels changed and in-person interviews were no longer possible. Traditionally, in-person interviews are preferred for research on sensitive topics as it helps build rapport with participants. It allows the researcher to pick up on visual or non-verbal cues, including distress (Opdenakker, 2006; Sturges & Hanrahan, 2004). However, growing evidence suggests that telephone or Zoom interviews elicit comparably rich data compared to in-person interviews (Sturge & Hanrahan, 2004; Vogl, 2013). Participants report feeling more relaxed

and having more privacy during phone interviews (Sturges & Hanrahan, 2004). Researchers can also actively listen to participants during telephone interviews and can identify verbal cues of distress, and provide verbal support (Drabble et al., 2016). To ensure confidentiality while conducting interviews over Zoom, new meeting IDs were created for each interview. Additionally, participants were placed in the Zoom waiting room until the researcher approved them to join the Zoom interview. Once the participant was in the Zoom meeting, the meeting room was locked to ensure no other people could enter the Zoom call.

At the start of the meeting, the information sheet was recapped with participants to remind them of the project's scope, key points around confidentiality, and how the data would be used and stored. It also provided an opportunity for participants to ask any questions before commencing the interview. Participants were asked to confirm consent to participate verbally and for the interview to be audio recorded. They were also reminded that they could end the interview at any time, withdraw from the study completely up to eight weeks after the interview date, and request a copy of the transcript in these eight weeks to identify any sections they wanted to be redacted. This allowed participants to identify and remove any information that would make them identifiable. Interviews ranged between 45 and 182 minutes in length (M = 90.1 minutes).

At the end of the interview, participants were either given or emailed a debrief sheet (Appendix E) that outlined the purpose of the study, provided the contact details for the research team, as well as support services they could contact if the interview topics raised any difficult issues after the interview. This was an important consideration as the schedule included asking questions around defence lawyers working with emotions and potentially traumatic material, which could be highly emotional, and distressing topics for some. To ensure researcher wellbeing, a supervisor was aware of all interview dates and times and

would be available following the interviews to debrief or discuss any difficult topics or distress.

Data Analysis

Interviews were transcribed verbatim, and all identifying information was removed (e.g., names were substituted with a pseudonym and other identifying information was replaced with a vague descriptor - for instance, Wellington would be replaced with [place name]). Following transcription, all transcripts were analysed using reflexive thematic analysis as outlined by Braun & Clarke (2006, 2013). Unlike other forms of thematic analysis, reflexive thematic analysis develops themes from organic, unstructured coding (Braun & Clarke, 2021). Theme development involves considerable interpretation and analysis from the researcher. It aims to construct the patterns of meaning as 'outputs' from the data, as opposed to other forms (such as coding-reliability) that look to coding as a means to evidencing themes (Braun & Clarke, 2021). Such approaches of quality measures in coding (e.g. inter-rater reliability) are not congruent with the epistemological and ontological underpinnings of reflexive thematic analysis (Terry & Braun, 2016). Additionally, unlike coding-reliability approaches, which aim to remove research bias from the coding process, reflexive thematic analysis recognises that codes cannot be separated from the researcher as they are developed through deep engagement with the data by the researcher (Braun & Clarke, 2021). Reflexive thematic analysis involves six phases (Braun & Clarke, 2006; 2013). The term phase is preferred as reflexive thematic analysis is not linear but an iterative process where researchers move back and forth between phases until the analysis is complete (Terry et al., 2017). The six phases involved in the analysis were completed as outlined below.

Data familiarisation

I manually transcribed all interviews as the primary researcher. The transcription process helps with immersion in the data, as transcription is an active process that involves listening and re-writing the interview material (Riessman, 1993). Throughout the transcription process, the transcriber must engage with the audio and listen to the nuances of the conversation; this can result in becoming more conscious and aware of the data, which helps with familiarisation as it is an interpretive practice (Riessman, 1993). Following the transcription of all interviews, each transcript was read several times thoroughly alongside listening to the corresponding audio recording, making observations and initial notes of provisional analytic ideas during this process. These initial notes and analytical observations were then referred to through the rest of the analysis process. During this stage, I noticed that some participants had similar emotions, but these were motivated by very different perspectives of the same processes. For example, some defence lawyers discussed how they found it upsetting when judges yelled at their clients. However, two of the Māori participants identified that they specifically found this upsetting when judges mispronounced their Māori clients' names or dismissed the cultural worldview of their clients. This is a unique emotional experience of these participants, and I wanted to make sure that these perspectives and experiences were represented in the results. Considering this, my supervisors organised cultural supervision with another university staff member. This consultation continued throughout the process, as explained in the later phases. This process of familiarisation enabled me to become deeply immersed in the data.

Generation of initial codes

Initial codes were generated by systematically reading through each transcript. Codes involve assigning descriptive labels to extracts of text that describe experiences relevant to the research question. Codes were made using the 'comment' feature in Microsoft Word - this approach was used rather than working on hard copies as it allowed for easy editing. An

inductive approach to coding was adopted, which entails using the data drives analysis (Terry et al., 2017). Regular feedback was received from supervisors during the coding process to ensure that the code names accurately reflected the data and were relevant to the research question, with refinements made throughout this process. At first, I took a purely semantic approach to code, which involves capturing the data's surface level "explicit meaning" (Terry et al., 2017). However, through regular reflection, supervision and review of the codes, the supervisors and I agreed that a purely semantic approach was missing a lot of the rich data within the transcripts. For example, many participants could not articulate their emotions or describe the experience, but it was clear that they had emotional responses. Previous research has identified that lawyers have lower levels of emotional literacy than other professions (e.g. Krotha & Ruckmani, 2020). Thus, they could not always articulate the emotions they were experiencing while working in the role. Therefore, both supervisors suggested recoding the transcripts using a *semantic* and *latent* approach. *Latent* coding refers to codes that capture the implicit meaning in the data (Terry et al., 2017). This clearly illustrates the coding process was iterative, which involved continued reflection and refinement of coding. Throughout the coding phase of analysis, I also met with my cultural supervisor to discuss certain extracts from the data to determine if my coding names accurately reflected what the participants were referring to and that I was not homogenising their experience or interpreting this through a Western lens.

Generating initial themes

Initial themes were developed in collaboration with both supervisors. All codes and their evidential quotes were printed. Each code was scrutinised. Its meaning and relationship to other codes were considered to put together piles of codes that appeared conceptually related or created "*clusters of meaning"* (Braun et al., 2019; p. 855). This process also helped with further code refinement with any codes that represented the same idea as another code

collapsed and renamed into a singular code. This reflective and iterative process resulted in some codes moving across groupings or being removed completely. Following the grouping of codes, multiple sessions with both supervisors were spent looking at the relationship of different subthemes and considering the underlying meaning. A preliminary set of prototype themes was developed and reviewed in the following phase.

Reviewing themes

This analysis stage involved scrutinising the preliminary prototype themes developed to ensure that they were distinct and there was no overlap across themes and subthemes. Further review was conducted by examining the quotes and codes included in each subtheme to ensure that participants' intended meanings were accurately reflected in the code and theme names. The reflective journal kept throughout the entire procedure was reviewed to see if themes and codes echoed the observations and notes throughout the analysis process. This stage was again completed with the support and collaboration of both supervisors. After a review of the themes and subthemes, it was suggested by one of the supervisors that while the grouping of codes into subthemes seemed reasonable, the subtheme names were too superficial and did not capture the depth of the experience of defence lawyers. Consequently, the grouping and names of the subthemes were reworked to more aptly reflect the participants' experience.

An initial analysis resulted in several subthemes around how personal values such as principles of justice and fairness motivated participants in their roles. However, upon reflection, while these subthemes were particularly unique and interesting perspectives from participants, they were not relevant to the research question and were subsequently excluded from the results. Once all refinements had been made, visual thematic maps were developed to illustrate the relationship between themes and subthemes. The thematic maps are included in the results section of the thesis.

Defining and naming themes

The fifth stage of analysis involved developing labels and descriptions for each theme. Theme names should capture and portray the codes included in each subtheme and theme (Braun & Clarke, 2006, 2013). Theme and subtheme names were developed in collaboration with both supervisors; this was an iterative process that involved coming back at separate times to examine whether the labels accurately captured the codes and the supporting quotes from participants. Additionally, they were scrutinised to ensure themes were thematically distinct. For instance, this reflection and refinement highlighted blurred boundaries between two existing themes. Initially there was a theme labelled "*Engaging in Emotional labour"* which was distinct from the theme "*Negative emotions hit you from all angles".* Through reflection and discussion, it was determined that the themes were not distinct from each other as the process of emotional labour was being discussed throughout the theme of "*Negative emotions hit you from all angles".* As a result, the themes were scrutinised again and reworked to merge the two existing themes to "*Managing emotions in the moment"* to ensure clear boundaries between all themes.

Producing the report

The final stage was to produce a report that described the themes and subthemes developed through the analysis, supported by representative quotes from participants for each code. The report created a coherent narrative that told a story about the themes, meaning, and relationship to the research questions. Throughout this stage, further reflection and refinements occurred, themes and subthemes were again scrutinised to consider if they accurately reflected the content they represented and if there was a coherent and comprehensive flow in the narrative. Again, triangulation of thinking was achieved through revisions and alternative perspectives offered by both supervisors.

Chapter 5: Results

Four themes were developed through analysis describing defence lawyers' experiences of working with emotion in their role. These were named: *industry expectation vs. reality of the role, managing emotions in the moment, personal conflict of working in a broken criminal justice system,* and *factors that help and hinder wellbeing in emotion work*. Table 2 provides a summary of the themes and the corresponding subthemes. Each of these themes will now be described in detail, including supportive quotes. Note that the names used in the below quotations are pseudonyms, and other potential identifiers have been removed to ensure participant confidentiality.

Table 2

Developed Themes and Subthemes

Themes	Subthemes
Industry expectations vs. the reality of the role	1.1 No place for emotions in the law 1.2 Emotion work is a core part of the job that needs to be balanced
Managing emotions in the moment	2.1 The courthouse is an affective space 2.2 Emotionally charged Judges are tone setters 2.3 Intense negative emotions from clients and whānau 2.4 Graphic traumatic materials can be distressing 2.5 Hostility from public
Personal conflict working in a broken criminal justice system	3.1 Frustration with systemic injustices 3.2 Feeling the weight of responsibility for clients
Factors that help and hinder wellbeing in emotion work	4.1 Personal circumstances can worsen wellbeing 4.2 Importance of self-care 4.3 Conditional support systems

Industry expectations vs. the reality of the role

This theme describes the conflicting display rules defence lawyers experience between the expectations set by the legal profession and the reality of working within the criminal justice system. Two subthemes describe this conflict and how defence lawyers manage and respond to this, named: *No place for emotion in the law,* and *Emotion work is a core part of the job that needs to be balanced.*

1.1 No place for emotions in the law

This subtheme outlines how defence lawyers perceive an industry expectation to keep emotions out of legal work. Senior defence lawyers express that having emotional reactions is incompatible with criminal law, suggesting that people who are emotionally affected by the work should consider leaving (and did leave) the role because they are not '*cut out for it'*.

"You're going to see people on a daily basis who are doing horrible things to each other, you have to be able to weather that…or you should go into conveyancing or trusts" – Nicole

Defence lawyers hold this industry perception because they believe emotional displays in the role interfere in two ways. Firstly, it highlights personal weakness. Part of defence lawyers' motivation to present as unemotional is because they fear that if they fail to achieve unemotionality, the defence bar will perceive it as incompetence. This perception causes junior lawyers to feel constant pressure to display unemotionality when working with or around senior counsel. They fear that showing "vulnerabilities" through emotional responses will curtail future career opportunities:

"Maybe I won't share the emotional side because I am worried…if I show some vulnerability, it could potentially go to be conveyed as weakness and incompetence." – Gwen

Participants consider that emotions might interfere with their ability to analyse evidence and with objectivity. Consequently this emotional interference could threaten their client's outcomes.

"If you're too emotionally invested or close to a case you, you can't see, step back and see you know objectively. You can't see the bigger picture objectively." - Leo

Defence lawyers report that allowing this emotional interference would be breaching their obligations and duty of care to their clients. These perceptions of emotions from defence lawyers are how the industry belief is upheld and maintained throughout the profession:

"It's almost like an indulgence that I can't afford to make to be empathetic or that human with my clients because I need to be able to be sure that I can still care for them, especially when they're so dependent on me" - Jennifer

Part of this duty of care is ensuring that clients receive fair representation. In considering this, defence lawyers believe it is not their role to empathise with victims or witnesses. Instead, they argue this division is part of how balance is kept in the criminal justice system – the role of a defence lawyer is solely to represent their client's interests to the full extent. Stepping beyond these bounds and engaging in an emotional response towards a victim is fundamentally betraying their client by failing to provide the best representation:

"You don't get to interact with the victim; you don't get to spend time with them or understand how they're feeling at all. It's not your role, you know, to be there doing that. And, you can't help your client by doing that, so you'd be unethical in a way" – Faith

Interestingly, this expectation of unemotional "rationality" does not just come from the legal profession. The lawyers discuss a public perception that dictates lawyers should never be emotionally affected in their work. Defence lawyers feel pressure to meet these expectations, particularly with their clients. As a result, they take active steps to display this unwavering confidence to clients, that they cannot be faltered. Upholding this expectation of

calmness and rationality for their clients helps alleviate their client's emotions, allowing defence lawyers to build rapport and maintain their client relationship. Adhering to this expectation is important to be an effective advocate as clients are more cooperative when the defence lawyer tries to obtain instructions:

"I think a lot of clients want you to be confident, like really confident. They're unconfident; they're unsettled, they don't know the process – so they want you to be really sort of 'this is what's gonna happen. Like really directive, this is the process, and this is the possible outcomes." – Idina

One female defence lawyer also feels the need to change her appearance to help instil client confidence in her abilities. She feels that as a female lawyer, clients are less confident in her abilities when first meeting her and therefore takes measures to alter her appearance to present a more masculine, unemotional image to clients:

"Like largely I wear men's clothes, no make-up and…some of that is…it's nice to just go into it and be like 'I'm going to be a battle-axe about this" – Angelina

While working with clients, defence lawyers report detaching from their emotions to achieve unemotionality to be able to prioritize their client's outcomes.. This approach to work also protects the defence lawyer by keeping the content and people they encounter at arm's length and prevents them from becoming '*swamped'* with the emotions of others. This eventually facilitates a level of desensitisation:

"If you're going to be constantly responding to stimuli in the professional environment, it's just not going to work cause there's just too much coming in. There's stuff coming in from the client, there's stuff coming in from the Judge, there's stuff coming in from the jury – so the people that you see doing it successfully, they're kind of just completely mindful to everything and they just don't, they don't engage with it except on a professional level … I know it's a cliché but you, you just become completely ((pause)) desensitised to it" - Chad

Defence lawyers experience pressure to actively keep their emotions out of their work to meet the industry and public expectations. They simultaneously take active steps to communicate this '*emotionally cool'* performance to both their clients and other legal practitioners to prove that they are capable of meeting their duties and responsibilities.

1.2 Emotion work is a core part of the job that needs to be balanced

Despite the industry expectation and personal belief of some defence counsel that emotions should be kept out of the law, the reality is that emotions are highly salient in the criminal justice system. Moreover, the human nature aspect of a defence lawyer's role is highlighted by the fact that they work closely with highly vulnerable and stressed individuals at a difficult time in their lives. Balancing unemotionality and humaneness in this context creates an odd juxtaposition for defence lawyers where they feel they have conflicting expectations:

"We want our defence lawyer's utmost inhumane robots, yet we're doing a very human job and dealing with people's problems all 24/7" - Leo

Defence lawyers need to build rapport with their clients to build an effective working relationship, as clients often have to disclose personal details about their lives. They view the ability to be empathetic and compassionate as a central part of the role, to build this rapport with clients. This ironically goes against the industry-based and societal expectation of criminal lawyers as "unemotional" professionals:

"If you're an empathetic person, then you can understand different cultural backgrounds, even if you don't have any prior knowledge of them. You can sit with someone whose been living on the street and has only just managed to come to the court for the first time in months, and you can sit with them and get their instructions without berating them about why they have failed to appear so many times" - Faith

Defence lawyers observe that their ability to empathise with clients grows over their time working in the criminal justice system, understanding how and why people come into contact with the criminal justice system and the factors that contribute to this. This makes it easier for defence lawyers to engage with the empathetic aspects of their work. However, this also requires the lawyers to develop strategies to balance the competing expectations of unemotionality and humanness in their professional roles – i.e. whilst defence lawyers must have empathy for their clients, this needs to be kept within acceptable professional boundaries.

"You've got to be empathetic to a certain degree, but you can't...you're not there to be your client's friend or confidant" - Brad

Participants often describe difficulties in successfully achieving this balance as the boundaries become blurred. Defence lawyers recognise that sometimes they have to help and advise their clients beyond the strict confines of the case because many complexities of clients' lives may be involved in a case (e.g. wanting access to their children, maintaining a relationship with someone they have court conditions to not see). In these situations, defence lawyers have to expand beyond the strict legal confines of a case. However, they need to keep the case as the focus and balance this expansion to ensure they are not moving too far into the social aspects of the role (e.g. becoming a maternal figure to clients). Managing this fine balance can be difficult for defence lawyers, and they are left feeling overwhelmed.

"I feel like a counsellor ((laughs)). I feel like, I do feel like I am taking on their burden" – Gwen

Defence lawyers report that finding the balance is a learning process that comes with experience. Senior defence lawyers note that they had '*got it wrong'* in the past by becoming too emotionally involved in a case. They describe feeling they had lost objectivity and possibly failed to help their client in the long run. To maintain emotional and professional

boundaries, defence lawyers describe compartmentalising, keeping their tasks at the focus and not engaging in emotions beyond what is relevant to the role.:

"You probably have to be able to compartmentalise in terms of; you're a lawyer – you're not a social worker" – Demi

Defence lawyers have to work empathetically alongside their clients. They develop experience and skills to balance this empathy throughout their career without becoming over-involved and crossing professional boundaries. This allows them to build rapport with clients while keeping the case at the centre of their focus.

Managing emotions in the moment

This theme describes how defence lawyers encounter a variety of emotions in the course of their work from different stakeholders. These emotions all need to be managed and regulated by defence lawyers. Five subthemes were identified, describing the most salient sources of these emotions: *The courthouse is an affective space, Emotionally charged Judges are tone setters, Intense negative emotions from clients and their whānau, Graphic traumatic materials can be distressing* and *Hostility from the public.*

2.1 The courthouse as an affective space

Defence lawyers see the interior and exterior of the courthouse as *'clinical', 'sterile'* and *'worse than a hospital'.* They perceive that this design reflects the industry expectation that the law is a rational, unemotional pursuit, with the buildings designed to reinforce this perception on all those who enter. However, the reality is that the courtroom is a space laden with emotions from all the people that engage in the criminal justice process.

"That juxtaposition between like people, who are feeling these really volatile emotions at any moment versus like this very bland, sterile courtroom" - Faith

Defence lawyers recognise these emotions are present because the court building is a source of emotionality for defendants, complainants and whānau. In the courtroom, complainants are made to relive some of the worst moments in their lives, defendants are anxious about how the outcome will impact their lives, and whānau powerlessly watch the events unfold. All these anxieties and unknowns contribute to the atmosphere, and defence lawyers describe this as contributing to a sense of foreboding associated with the courthouse. The atmosphere highlights the importance and seriousness of the work at hand for defence lawyers. Furthermore, it aids their performance by serving as a reminder of their purpose and role within the space (i.e. to help their client through this nerve-wracking process and ensure they get the best possible outcome):

"Everybody still kind of keyed up, you know. There's still that sense of we're here for, to do important work and things have to be decided, you know, and there's still people have to have a degree of tension" - Brad

Defence lawyers describe that the courtroom could shift in any direction, depending on the occupants. For instance, if a defendant becomes agitated in the dock, it can make others (e.g. court staff, prosecutors, Judges) in the courtroom tense or unsettled, as these outbursts are not in line with courtroom etiquette. However, regardless of what is happening in the court building, defence lawyers try to portray a positive demeanour to lift the mood for the court staff and others entering. This attempt to lift the mood also helps defence lawyers to keep their mood lifted and not to get overwhelmed by the emotions of others. Ultimately this helps them keep their purpose and role at the forefront and not become distracted:

"My first thing is to greet people with smiles and see court security and sort of give myself that sort of that boost because when you're going into these situations, all you see is people that are, they look miserable" – Gwen

The courthouse is perceived as a *'miserable'* emotional space for all those who enter, despite its attempts to present itself as a neutral arena. Defence lawyers describe exerting effort to take active steps to lift the mood of themselves and others to avoid being bogged down by the atmosphere and instead focus on the case ahead.

2.2 Emotionally charged Judges are tone setters

Defence lawyers perceive Judges to be the most important actors in setting the emotional tone of the courtroom. Judges have control and authority over a courtroom and make decisions that impact defendants' lives (and their whānau). Participants note the courtroom atmosphere differed significantly based on which Judge was presiding over the proceedings:

"It all depends. You know a lot has to do with the Judge who's presiding. Because their temperament, their mood, their personality can affect the whole thing. So, if you've got a really angry, um, bored Judges who just want to create havoc. It can create chaos all around you." – Em

The typical emotional displays from Judges are anger, usually towards defence counsel and defendants. Seeing clients experience this harsh, *'inhumane'* treatment elicits strong emotional reactions of anger and frustration among defence lawyers. They feel the Judges are violating the values of fairness, justice and equality that underpin the justice system. This is particularly frustrating for defence lawyers as Judges are considered the public face of the criminal justice system; so these violations feel like a degradation of the system values from the top: perpetrated by the very persons who should emulate them.

"People end up in these things through a series of events a lot of which they can't manage at all – and to then treat them like shit in public because you're sitting several rungs higher up than them and are well paid, it's outrageous!" – Nicole

However, defence lawyers report they are not allowed to display their anger at the Judges. They understand that Judges control their courtrooms, which means everyone abides by their rules and must meet the Judge's behavioural expectations. There is a perceived disparity between defence lawyers and Judges regarding what emotional displays are acceptable in the courtroom. Defence lawyers report that Judges demand neutrality from lawyers but have frequent angry outbursts at counsel and defendants. This hypocrisy is infuriating for lawyers as it means Judges' emotional displays must be tolerated and remain unchallenged by defence lawyers. Although there are mechanisms in place, defence lawyers perceive that there is no regulatory or review system for Judges' behaviour. They believe that Judges' displays are not scrutinised in the same way as lawyers are, which adds to their frustration.

"It's revolting, and you know no Judge has a performance review? Never happens, ever…So it's never corrected." - Nicole

Defence lawyers report they try to mitigate the impact of the Judge's tone by warning clients about these outbursts, outlining appropriate responses to a Judge's anger so that clients do not respond inappropriately and exacerbate the Judge's emotions. In addition, defence lawyers describe adapting how they operate in court to avoid aggravating the Judges' outbursts and prevent this anger from being directed towards them and their clients. Mostly, they try to keep the rest of their submissions succinct and try their best to avoid challenging the Judge in an attempt to keep themselves and the client on the Judge's '*good side'* to try to create the best chance of getting the best outcome for their client:

"If the fuse has gone on a particular Judge, I just be really sort of; obviously I need to say – I'm not gonna not say what I need for my client, but I'm going to be more direct, and I'd say bullet pointy than go on and on and on, all repetitive" – Idina

For defence lawyers themselves, they cognitively reframe the situation to help them manage their own emotions in these moments. Defence lawyers work to remind themselves that the anger is not actually about them. This helps them maintain professionalism in the courtroom and not display '*inappropriate'* emotions:

"You just let them get it off their chest. It's fine. I never take it personally; it's got nothing to do with me – it's their bad mood" - Em

Participants describe that interacting with Judges presents a unique set of challenges in their role. Defence lawyers have limited emotional management strategies available to them to manage the Judges' emotions because of the underlying power imbalance in the system. However, these limited strategies must be expertly employed to protect the lawyers and their clients from the wrath of Judges' outbursts.

2.3 Intense negative emotions from client and whānau

Defence lawyers work alongside their clients throughout the entire criminal justice process to advocate and ensure the best outcomes for them. Through these one-on-one interactions, defence lawyers often bear the brunt of a client's emotions. Defence lawyers must actively work to manage emotions from their clients while also keeping in control of their own emotions. This emotion management is a point of stress and frustration for defence lawyers navigating through the criminal proceedings.

Most defence lawyers describe experiencing anger from clients from in-person displays of aggression (e.g. punching walls) to threats towards counsel and their whānau. This anger is often caused by frustration about their circumstances or the processes of the criminal justice system (e.g. being held in remand). At the other end of the spectrum, many clients and their whānau display sadness and fear about their case and the possible outcomes (e.g. imprisonment, losing their career). Defence lawyers describe how they spend an extended period of time with clients and/or their whānau, trying to reassure them and to

reiterate the case's strengths. If defence lawyers do not effectively address their client's emotions, clients are less able to meaningfully contribute during meetings which means there is a higher workload (that is burdensome) for defence lawyers:

"Um, like people who are going to court, who are before the court are often completely shattered by the whole notion that they're even in a courtroom. Like they barely function, you have to steer them all the time – they've no idea about the process, they're terrified of the outcome…they're almost paralysed by fear" – Nicole

Clients' negative emotional displays are often influenced by poor mental health and substance use issues that either pre-existed (and become exacerbated) or commence because of the case (e.g. suicidal or self-injurious thoughts triggered by the prospect of a custodial sentence). As a result, defence lawyers approach these clients with caution and are aware their emotions may be volatile and unpredictable.

"Extreme volatility between anger, frustration, and then like sort of sadness. So if you're meeting someone in the custody cells, and they've been on a big bender, and then they've had a night in the cells, and they're coming off whatever they're on – then you tend to get strong volatility between aggression and sadness" - Faith

When a client is experiencing suicidal thoughts, this creates an extra sense of pressure and responsibility for defence lawyers. This is attributed to working towards an outcome based on their client's instructions (i.e. what the client is hoping for as the outcome of the case), which is not always within their control:

"People will say to you from time to time, 'I will kill myself if this doesn't go my way', and again I think the way I was trained was to not engage with that type of thing. But it would be a lie to say that I can disengage from that cause I really worry about it" - Chad

As mentioned, these negative emotions from clients need to be actively managed to ensure they "*don't interfere with the case".* If defence lawyers do not manage and regulate

their client's emotions, they are often unable to get instructions; meaning they cannot effectively perform their role as an advocate for their clients. Defence lawyers report employing various strategies to manage their client's emotions, including setting boundaries with clients about what behaviour and emotional displays will be tolerated. Alongside this they use de-escalation techniques (e.g. breathing exercises, giving time alone), and strategies to channel their client's emotions so as to refocus them onto the case:

"Clients get, might get really emotional or upset about peripheral issues, or what, you know something a police officer said to them when being arrested or… But mate that's, that's not relevant, just come back, come back, simplistic it down, focus on what's relevant, what's an issue and what do we actually wanna talk about?" – Leo

Furthermore, defence lawyers report that part of their role is to prepare clients for court appearances. This involves outlining the emotional display boundaries for clients ahead of time and explaining the consequences of emotional outbursts in court. Defence lawyers report that they do this preparation ahead of court appearances so that in the courtroom, they do not have to focus too heavily on managing client emotions:

"A lot of it is doing the whole 'you will make it worse for yourself if you spout off…you can talk to me about it afterwards" – Angelina

Throughout these interactions with clients, defence lawyers also experience their own emotions. It is an inevitable part of the role that there will be frustrating clients who are difficult to represent. In such situations, defence lawyers must redirect or suppress their emotions to keep their focus on the case and not become distracted by how they feel about a particular client. However, there are times when defence lawyers become too frustrated or angry to implement these strategies effectively. An example provided is when a difficult client refuses to cooperate or listen to advice, despite the lawyer explaining it in multiple ways to help them understand. Defence lawyers report needing to physically remove

themselves from the situation in such instances to help mask personal feelings that may conflict with professional expectations:

"I might be starting to get a little frustrated. I, I will, I'll just say 'oh look, maybe I'll just give you a moment, and I'll come back, and it gives me the opportunity to go out and take a breather from the situation" – Gwen

Defence lawyers are constantly on edge, as they engage in the dual emotional management of themselves and their clients. This balancing act is crucial for defence lawyers to ensure keeping their client's focus on the case, allowing them to advocate effectively for their clients. However, this also leaves them feeling *'drained'* by the end of a case.

Potentially traumatic material requires emotional labour

A key part of work for defence lawyers is reviewing the evidence relating to a case. A lot of this material can be classified as potentially traumatic, such as witnessing autopsies, reviewing autopsy files, reading victim impact statements, and examining crime scene photographs. This type of material is reviewed closely, intently, and repeatedly throughout a case. Engaging with this material brings up a range of emotional responses for defence lawyers, particularly feelings of sadness and disgust, which often stick with defence lawyers long after they complete the case. However, despite the personal emotions, there is a consensus that the work "*has to be done",* and reviewing potentially traumatic material is a key part of the role to build the best possible case for the client:

"I've still got to do it and um sometimes I get very up- like I just feel like crying even thinking about some of it...((sighs)) it's just there you know" – Nicole

Because there is no way to escape interacting with potentially traumatic material in the role, defence lawyers develop strategies to manage working with these materials so that they do not become emotionally overwhelmed. These strategies include setting time limits for engaging with the material or changing tasks to something positive or unrelated. Defence

lawyers also report it is important to continually monitor their wellbeing to assess whether they are mentally equipped to engage with this type of material. Defence lawyers park this work until a later date if they don't feel they can effectively handle their emotions at that time. This is particularly common when working with sexual offending material involving children:

"There's times that I will put off like watching a DVD interview, or watching something because I'm like 'I am not in a good mental space to deal with this" - Angelina

Defence lawyers also report that they "*switch off"* or "*compartmentalise"* the emotional elements of the materials when they engage with this content. By not focusing on these aspects, defence lawyers do not become overwhelmed by the content, and it allows them to focus on the legal aspects of the case (e.g. inconsistencies in statements, things that contradict their client's account, and evidence that works in the client's favour):

"You're doing a very different exercise when you're looking…I think the more common thing to happen would be to read the transcript of a person who's describing, um, quite a violent sexual episode, but when we're reading this, we're not, we're not reading for the content – we're reading for the issues in it" – Chad

Adopting this "*clinical"* and "*objective"* approach appears to help defence lawyers to keep their emotions separate from the experience and to focus on the job at hand. Many participants report that they would be "*drowning in emotions"* in response to potentially traumatic materials without these strategies.

2.4 Hostility from public

In addition to experiencing negative emotions from stakeholders in the criminal justice system, defence lawyers are also confronted by hostility from the public for performing their role. This includes hostility from total strangers, as well as family and friends. Defence lawyers report being acutely aware that many people do not appreciate their

role and, in some cases, despise them because of their work. This results in defence lawyers feeling isolated, and that only other defence lawyers can understand their struggles. Defence lawyers report that vilification and abuse from the public can be very direct and, at times, very aggressive with several participants disclosing they have received threats via post and email:

"You should see some of the emails I get ah 'you obviously don't have any daughters' – I've got three daughters. Um, 'you deserve to be raped yourself', you know stuff like this, and it's always anonymous" - Nicole

Surprisingly, defence lawyers report that this hostility sometimes stems from within their own social circle. This creates a negative and hostile environment where they feel they cannot reach out to friends and family for emotional support:

"I don't think my friends, or certainly my friends, would have much sympathy for me if I said, 'oh, I was really upset by that', they'll 'well what'd you expect? You're a defence lawyer, what'd you expect you were gonna find?'" - Brad

In trying to make sense of the hostility, defence lawyers are aware that a lot of the public generally hold a very limited understanding of their roles and the criminal justice process. Defence lawyers believe this misunderstanding is the reason for such a high level of mistrust and hostility towards them. This awareness and rationale enables defence lawyers to minimise the impact of these hostile comments and brush them aside.

"I guess most people's public perception is due to, is as defence lawyers we're trying to do every sneaky trick in the book to get someone off at all costs – but that's not right at all." – Leo

Defence lawyers rationalise why they receive hostility from the public and even their own families, and actively engage in strategies to protect their self-identity. However, they

still reported feeling isolated and frustrated that they constantly have to justify the importance and the need for their role to people.

Personal conflict of working in a broken criminal justice system

Defence lawyers are the *interface* between the criminal justice system and defendants. Defence lawyers are passionate about this aspect of navigating their client through the system. However, it can also leave them feeling conflicted as the system is broken and defence lawyers cannot always protect their clients. Two subthemes describe some of the key challenges defence lawyers face – *frustrations with systemic injustices* and *representing clients takes an emotional toll.*

3.1 Frustration with systemic injustices

Witnessing intentional and unintentional injustices towards clients in the criminal justice system is something that defence lawyers report encountering regularly. Inefficiencies of other agents (e.g. prosecutors, police officers-in-charge, registrars) in the criminal justice system can have severe consequences for clients; for instance, delays in a case may result in clients being kept on strict bail conditions or even in remand unnecessarily for an extended period. Seeing clients experience these types of injustice results in feelings of frustration and anger towards the criminal justice system for defence lawyers. They feel that despite all their hard work, they do not have the power to protect their clients from these injustices:

"The actual police officers, when they give you stuff, and they say, 'oh yeah, I've given you full disclosure', and you go through it and go 'well actually you're missing all of this', and it's a case review hearing, and then you have to get it adjourned because you now have to wait for them to do the file properly. So that, that's really annoying" – Kirsten

Defence lawyers also describe the unfair and unjust treatment of their clients by other actors in the criminal justice system, such as Judges and prosecutors, as very upsetting. They struggle to maintain their composure in these situations. These emotions are often the result

of defence lawyers feeling their values of justice are being violated which creates an internal conflict for them. It goes against what they stand for. Defence lawyers report choosing the defence bar because they care about people and want to support them, but these injustices violate that, and defence counsel are unable to do anything about it.

"Like talk to them as a fellow human being, actually look at them, and stop sneering and…I find that traumatising. I feel embarrassed that I'm, yeah, associated with that system." – Nicole

For Māori defence lawyers, these injustices are even more salient. Māori lawyers describe seeing their Māori clients re-traumatised through the court process, through microaggressions such as the mispronunciation of their names by legal actors, or more prominently, having their cultural practices dismissed and ignored by Judges. Seeing these injustices, and knowing they are part of the system that traumatises and disenfranchises their clients is particularly distressing for Māori lawyers:

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

Furthermore, these injustices towards Māori defendants also come from other defence bar members. Many Māori defence lawyers witness a lot of the defence bar lacking cultural competency to work with Māori (and Pasifika) clients. This means they often fail to provide the best representation for their clients, as culturally relevant resolutions are overlooked and do not result in the best possible outcome for the client. Māori defence lawyers report feeling frustrated at a lack of advocacy for Māori defendants due to other lawyers' inability to recognise their unique worldviews and respect their *Tikanga* (Māori word for customs, protocols).

"So, from where I sit, I thought it would be easier than being a prosecutor because also being a Māori prosecutor is like quite a frustrating position to be in. Um, you, cause you tend to just be prosecuting your own people, and they're in really dire straits, and there's not that much you can do, you know, from your side, because the defence bar is overwhelmingly white and uncultured. So, you, you can't, as a prosecutor, you can sort of, massage or encourage defence lawyers to get to a point where they might propose an alternative resolution that's like culturally applicable to their client." – Faith

Despite the frustration that comes with witnessing these injustices, Māori defence lawyers feel that through their work, they can partially protect their clients and provide representation for Te Ao Māori (The Māori world) in the criminal justice system. This was a major motivator for these participants to keep working in the profession. In addition, providing culturally relevant representation for clients was meaningful for clients – which is an additional motivational factor. They felt that providing this service and ensuring that clients felt supported in a culturally responsive way throughout their case was equally important as getting a good outcome:

"Um, we don't; like as a Māori lawyer, you don't necessarily have to be back participating on your marae all the time to feel like you're still participating in your culture. Although there's like heaps of limitations and perversions of the justice system that make it really frustrating. You are still able to like, go into spaces generally professional spaces knowing that you're a Māori criminal defence lawyer and like that means something to most of the people who are there." – Faith

Defence lawyers report that while injustices can be distressing and upsetting, these are also part of the motivation to stay in the role. They balance the conflict they feel about working in this broken system by actively holding the system to account, and preventing these injustices as much as possible for their clients.

3.2 Feeling the weight of responsibility for clients

Defence lawyers influence their client's liberties and future life opportunities in their work. As the only advocate for defendants, their work and efficacy directly impact their client's outcomes. Being aware of this responsibility creates feelings of stress and a sense of burden for defence lawyers, which can take a toll on their physical and emotional wellbeing. Participants find trials particularly stressful because the ritual of the trial heightens the sense of responsibility. Furthermore, defence lawyers cannot control all the variables during trials, such as how the jury perceives the evidence presented. This perceived lack of control adds to the emotional burden felt by defence lawyers.

"It's not a physical job – obviously you're not digging ditches um, but emotionally stuffed, and it can be a day where you're mostly just sitting in a chair, and you come out, and I feel like I've run half a marathon" – Leo

Some of the emotional toll also comes from defence lawyers acting beyond their capacity as a legal professional. As previously identified in subtheme *2.3 Intense negative emotions from clients and whānau,* defence lawyers describe tending to their client's emotional needs to help keep the case on track. They often describe their role as extending to being a "counsellor" or "social worker". This includes regulating clients' emotions and easing their concerns. Engaging like this with multiple clients, and balancing both the client's emotional needs and the facts of the case, creates an emotional toll on defence lawyers as they feel they work beyond the legal bounds of their role.

"Well, as much as I talk a big game about empathy and compassion, um it can be incredibly draining to be in that social worker, facilitator role" – Jennifer

However, taking on all these social aspects of a client's circumstances, and feeling like they are the only support for a client creates a conflict for defence lawyers. Defence lawyers feel that they are not prepared or trained to deal with this aspect of the role. Tending

to these emotional needs is not what they expected to be a part of their role, and they feel a conflict about blurring these boundaries and moving out of the strictly legal role. However, they know that there is often no one who is able to support or guide the client in these other aspects (e.g. organising tenancy issues, or their benefits with WINZ). So, defence lawyers feel the only available option is to advocate for their clients in these aspects as well:

"It's not our job, I'm not a trained social worked...I'm not going to do it as well as a trained social worker, but on the other hand, I'm there. And like, I'm a person who can rock up in a suit, and I have a much easier time dealing with a lot of government agencies" - Angelina

This burden can be significant and is something defence lawyers carry throughout their work. However, the responsibility also provides a sense of motivation that drives their work and keeps them in the role. Reminding themselves of when they have positively impacted clients and have gotten them through a difficult experience gives defence lawyers immense job satisfaction. In addition, it helps them stay motivated in the role when they start to find the burden overwhelming:

"So, from that perspective, it is quite meaningful because in some way you are contributing to, you know, someone's life. Um, and obviously I can see in a tangible way the impact that has for them" – Demi

While defence lawyers feel a conflict about working beyond the legal bounds of their role, they are often the only support for their clients. Defence lawyers focus on the positive impacts they have on their client's lives to help overcome feeling burdened and overwhelmed by this sense of responsibility.

Factors that help and hinder wellbeing in emotion work

Defence lawyers are working in a space that constantly requires adaptive emotional management. Everyday factors aid them in their role or make this emotion work more difficult throughout their career. Three subthemes outline these factors: *personal*

vulnerabilities make emotion work more difficult, the importance of self-care and *conditional support systems.*

4.1 Personal vulnerabilities make emotion work more difficult

While defence lawyers are skilled at managing both their own and others emotions in their role, they describe they were at times unsuccessful because of personal vulnerabilities. Factors outside of their work-life can compromise defence lawyers' capacity to accurately monitor and adapt their emotions and uphold expected emotional displays. A common example of personal vulnerabilities is working on a case of sexual offences against a child as a parent or being a victim of a serious crime. These personal life experiences can make it more difficult to manage and regulate personal emotions, as participants are reminded of similarities between their own experiences and those of the case. This creates feelings of distress and brings back traumatic memories:

"[My colleague], she gets very, very wound up and traumatised and cries and, because she's been…the victim of sexual violence herself"- Em

Some participants also find that being a parent made it difficult to manage their emotions, especially when working with cases involving harm to children. They find it more difficult to successfully compartmentalise their personal life from their work and often find themselves imagining their child as the victim of cases they worked on. This can make the work feel overwhelming and difficult to get through:

"I found that really, looking at the photos of that child, and you can't help but impose your own child on that" – Brad

When people are experiencing emotionally vulnerable times in their life, coping with others' emotions at the same time is particularly challenging. This is because defence lawyers feel that their capacity to manage their own and clients' emotions is reduced during these

emotionally difficult times. Defence lawyers already feel drained at these times, and clients can exacerbate that feeling:

"It's a really tough gig when you're not feeling your well, you've got your own problems in your personal life and all you go into work for eight or nine hours a day, and all you have is these people whinging about like just because they couldn't, didn't go to community work and now they're facing a remand in custody, and they're just whinging at you, and you're like 'mate you're, I just don't care about your problems today'" - Leo

Most participants report that such emotional slip-ups happen throughout their careers. In particular, more frequently earlier on in their careers when they are still developing their skills around that area. However, if a specific case or client becomes too difficult to manage in terms of emotional reactions or connections, defence lawyers report that they can "drop" the client in some cases, and hand over the work to someone equipped to manage the client's and case emotions. This, however, is the last resort option to ensure that they do not act unprofessionally.

4.2 The importance of self-care

Defence lawyers are aware that their work can take a toll on their physical and emotional wellbeing. Consequently, they actively schedule regular self-care practices into their lives. Incorporating these practices means that defence lawyers can develop a buffer against the impacts of stress and burden their work has on their wellbeing. Self-care practices help them to disconnect from their emotionally demanding job, and it allows time for them to recuperate and protect their wellbeing:

"The work and the clients do take a toll, but um it sort of just reinforces why you need to…have space in the day or week where you're not thinking about clients, and you do something for you know self-care" – Idina

Defence lawyers are aware that to set work boundaries to allow time for self-care, they must manage their workload. This is accomplished by monitoring their caseload, and ensuring that they do not take on too many cases and allowing time off after trials that are incredibly complex? because they require immense preparation and mental focus. This is particularly relevant as defence lawyers note there is an almost infinite amount of work in an overburdened criminal justice system. Thus, if they do not actively monitor and manage their workload, defence lawyers report this can lead to acute stress, burnout and serious physical health impacts:

"The amount of work I have can impact where I will wake up at 3 o'clock in the morning and go 'oh my god, I didn't do this' - Kirsten

This knowledge of the importance of developing a healthy work-life balance is predominantly learnt through past failures. Senior defence lawyers are more adept at managing the work-life balance and participants reflect on their experiences when they were junior lawyers and did not handle this appropriately. The impact of these past failures had psychological and physical impacts on their health at the time. These past failures and resulting consequences highlight the importance of self-care practices – whatever they may be. Although the specific individual self-care strategies vary across defence lawyers, examples given were physical exercises such as yoga, team sports and running, meditation, hobbies and spending time with family, friends, and pets. The other common self-care practice is socialising with colleagues in an informal setting with alcohol. Several participants discuss drinking alcohol to connect and debrief with colleagues. The view this as a time to unwind from the stresses of their cases. In contrast, other defence lawyers view alcohol use as a negative coping strategy inherent in the profession:

"Um there's a lot of self-medicating in the law, um it's his-, historically we're big drinkers, um my old boss used to say 'just like vampires to blood, is lawyers to booze' – Leo

Participants that did not engage in the heavy drinking culture see this as a problematic coping approach and that it prevents people from being able to process their emotions healthily:

"Essentially what you're doing is you're storing the stress because you're not resolving it, because you're waiting for this artificial release that never, that never deals with it" - Faith

There is a very clear divide on whether alcohol positively or negatively influences personal wellbeing. However, all defence lawyers agreed that whatever self-care practices work best for a person, it needs to be frequent and regular to protect and maintain their physical and mental wellbeing.

4.3 Conditional Support Systems

While defence lawyers recognise support systems and services available to them, they also experience a range of barriers to help-seeking behaviour. This was because they felt all these support options are filled with limits and conditions.

Defence lawyers find their personal support system – i.e. family, friends and partners –are a good listening ear that provides support, particularly for the emotional aspects of their role. However, this support is limited for two reasons. Firstly, as discussed in subtheme *2.5, Hostility from the public*, sometimes their personal support systems are not receptive when defence lawyers reach out, and the response can be harsh and hostile. Additionally, defence lawyers recognise that most of their personal support systems do not fully understand the role and how emotional and distressing aspects could be. They discuss feeling frustrated talking to people who fail to understand the work and have to constantly explain things to them.

"Even sometimes and my husband's great but he doesn't really understand what it's like, and I don't think you do unless you're doing it." - Idina

While personal support systems, were not always an empathetic ear, participants acknowledge they had access to some professional support in their role. Defence lawyers

employed by the PDS have access to counselling services via the Employee Assistance Programme [EAP]. The New Zealand Law Society offers a limited number (up to six) of paid counselling sessions. However, defence lawyers that have accessed EAP and the Law Society counselling service in the past found that the professionals were not equipped to understand the nature of their work. They felt like the advice given by counsellors was unsuitable to help them resolve issues when they were struggling in their work. Instead, they were basic coping tools (e.g. read a book after work). Because defence lawyers perceive that counsellors do not understand the physical, social and emotional impact of working with trauma, and the nature of their work. Because they found the sessions unhelpful, defence lawyers spoke of their reluctance to reach out again to these services for support. They expect it to be a waste of their time – a precious commodity to defence lawyers:

"I don't like counsellors, I went to one when I worked for PDS, and, and she'd really got my goat, cause the first thing she said to me is 'you must be traumatised by your work' and I said 'no, I'm not' and she said, 'well you must be' and I, I thought surely a counsellor knows not to say what I must be" - Em

There was also some confusion about existing services and their scope – i.e. some participants said they had not accessed support services in their workplace because they thought they were specific to experiences of workplace bullying or sexual misconduct. As a result lawyers did not access these services, because they thought they weren't meant for them:

"I saw a poster today up in the lawyer's room at [place name] court, and it was more saying 'Law Society we can help if you've faced sexual misconduct or bullying', and I was sort of like well ((sighs)) it's yeah, very specific, so I can't talk about anything else?" – Leo

These professional services (i.e. EAP and Law society counselling) also have accessibility issues that make it difficult for defence lawyers to access support. For example,

participants highlight that the number of counselling sessions are limited, and the service is not responsive and adaptable to defence lawyers' schedules. This means defence lawyers do not engage in these services, because it is not practical to their schedule:

"Yeah, and also because my work will change, like, they're like, you can have three sessions, and it's like well I needed to, someone got arrested this morning, I need to change this now – and they're like, well that's your session gone…It's just the timing of being able to attend appointments. It just doesn't fit in with my work schedule" - Angelina

One professional support that defence lawyers found useful was with trauma-informed psychologists, thus providing strategies and tools relevant to them. However, defence lawyers typically fund this themselves to access such support services. Those who work for themselves (e.g. barrister soles) must always fund support services themselves bar three counselling sessions via the Law Society. Comparatively, while those in firms (e.g. PDS or employed barristers) may have access to EAP counselling, they view this service as inadequate and inflexible, so they seek out and pay for effective support services themselves. As a result, ongoing professional support is something they saw as a significant expense for both barrister soles and employed defence lawyers, and this is not a financial burden they can afford to have regularly long-term:

"I mean this is the thing is that when you're employed by somebody you've got EAP and they're really good at 'oh you can go off, and you can do this', but as a barrister, you don't have that, and it then falls on you so then it comes down to 'oh well, do I want to spend on stuff like going to see a counsellor" – Gwen

Looking to other available supports, *collegial support* does not have these financial and time barriers. The defence bar was cited as a *'supportive'* community that '*bands together'*. Defence lawyers heavily rely on this collegial support, as they are *'the only ones who understand'*. Other defence lawyers are acutely aware of the difficulties in the role

because they too have experienced the same hardships that stem from difficult interactions with clients or professional expectations in the role. They do not have to explain and provide background context, which personal and professional support often required. Because of this, collegial support is often the preferred support system for defence lawyers.

"They're the only ones who understand it, and everyone will empathise with you because they've been through exactly the same thing" – Em

Defence lawyers are also able to use black humour with colleagues to help protect their wellbeing in the role. Dark humour is common in most workplaces, and defence lawyers think that this humour help address the pressures and dark parts of the role (e.g. graphic details of sexual abuse or assault on a child) without becoming overwhelmed. However, according to defence, this humour was only limited to those that work in the criminal justice system. Defence lawyers report that they cannot use this humour around their personal or professional support as they did not understand it or found it inappropriate. Defence lawyers note that in the past, they have made black humour jokes around friends and family who work outside the criminal justice system, and they found the joke distressing and told off defence lawyers for being inappropriate. Because of this, they only use this humour among colleagues as a coping mechanism.

"You just sort of have to have a bit of a dark sense of humour because as we say so much around here, you know, 'if you don't laugh, you cry' sort of things" – Mel

While collegial support is an incredibly strong source of support, there is a significant caveat. Defence lawyers only show '*vulnerability'* to a *'trusted few'*. They are not open about their feelings with just anyone; it is with a vetted person they trust will not hold these vulnerable moments against them. This links back to *1.1 No place for emotions in the law*, as defence lawyers are aware that within the legal profession, emotions may be interpreted by

others as "*weakness"* and "*incompetence"* and feel this may lead to them being passed over for future work or promotions:

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

Participants have witnessed other people become a "*joke"* at the defence bar when they have openly disclosed emotional responses to the work. This constant fear and uncertainty about whether a colleague could be trusted means defence lawyers are left with limited pool of trusted collegial support that allows them to show vulnerability and speak about their emotions freely and without fear of prejudice. i.e. go beyond just discussing legal issues with a case and disclosing that they were experiencing emotional impacts from reviewing a case photograph. This means that defence lawyers perceive that any emotional distress and professional support must be kept completely confidential and private, to avoid repercussions on their career.

Personal, collegial and professional support systems are all available to defence lawyers. However, these support systems typically exist with a list of stipulations and conditions for defence lawyers, leaving them feeling like they have a very limited support network and must carry the burden of their work alone.

Chapter 6: Discussion

The present study aimed to explore the experiences of defence lawyers working with emotions in criminal law. Fourteen defence lawyers across New Zealand participated in one-on-one semi-structured interviews, which were analysed using reflexive thematic analysis (Braun & Clarke, 2006, 2013, Braun et al., 2019). As a result, four themes were developed that described patterns in participants' experiences of working with emotion in the criminal law. These were named: *Industry expectations vs. the reality of the role, Managing emotions in the moment, Personal conflict of working in a broken criminal justice system,* and *Factors that help and hinder wellbeing in emotion work.* In the following section, each of the themes will be summarised and discussed in relation to existing literature. This will be followed by a discussion of the study's implications for practice and policy, as well as both strengths and limitations of the study. Finally, recommendations will be made for future research directions.

Summary of Findings

Industry expectations versus the reality of the role

This theme outlined the emotional double standard in display rules that defence lawyers experience in their role. In line with previous research, defence lawyers feel pressure from the industry to keep the law a rational, unemotional dispute (e.g. Flower, 2019; Kim, 2021; Lange, 2002; Maroney, 2011; Roach Anleu et al., 2016). This echoes previous research that highlighted criminal lawyers are dedicated to getting the best outcome for the defendant or complainant and strive for unemotionality to achieve these outcomes for the clients (e.g. Flower, 2019; Kim, 2021). While working to meet these industry expectations, defence lawyers also acknowledged that they need to have empathetic concern and interest with clients. Defence lawyers identified empathy and compassion as critical for developing the

lawyer/client relationship, akin to previous research with attorneys from different legal fields (Westaby, 2014; Westaby, 2010; Melville and Laing, 2007). Defence lawyers need to gain the trust of their clients, and this requires having empathy and an interest in clients (Westaby, 2010). However, this still needs to be done with a level of detachment so as not to become overly involved thus creating a complex space for defence lawyers to navigate where they require emotions, but only to a point. Defence lawyers reported constant pressure to monitor and adapt these dual performances.

These conflicting, complex expectations highlight that defence lawyers operate in spaces with different display rules (Hochschild, 1983). Learning to navigate these contradictory expectations comes with experience to ultimately achieve '*detached concern'* similar to physicians (Westaby, 2010). Alongside this, defence lawyers constantly monitor themselves and situations to ensure they give the correct performance. Failure to produce the correct emotional displays can have negative consequences for defence lawyers. For instance, defence lawyers perceive that failure to maintain an unaffected emotional performance among other legal professionals will hinder their career as they are viewed as incompetent. This mirrors the findings for other criminal lawyers (e.g. Bandes, 2006; Kim, 2021) and law students as they enter the profession (Flower, 2014; Westaby, 2014). Additionally, this culture of being unaffected has been found to foster a reluctance among individuals to share when they have negative emotional responses among frontline roles (e.g. Bell & Eski, 2016; Evans et al., 2013) which can result in them suppressing their negative emotional responses and exacerbate the risk of this impacting their psychological wellbeing (Bell & Eski, 2016; James, 2008).

Managing emotions in the moment

This theme identified a range of sources of negative emotions that defence lawyers encounter, both their own and the emotions of others. These sources of negative emotions

included anger from Judges, a frequently identified aspect in other literature (e.g. Maroney, 2006; Kim, 2021), and anger or sadness from clients and whānau. Central to understanding this theme is that defence lawyers need to manage and regulate these emotional sources. Each emotional source - judges, clients, courtrooms, or potentially traumatic material requires defence lawyers to engage in a vast range of emotional labour and regulation strategies as outlined by Hochschild (1983) and Gross (1998). Often defence lawyers are required to engage different emotional management strategies for various stakeholders simultaneously (e.g. both a judge and a client in the courtroom). Previous legal research has also identified that barristers are engaging with emotions from a range of sources that must be deftly managed appropriately (e.g. Harris, 2002; Flower, 2019). In line with previous research, defence lawyers are often left feeling drained by this complex emotional management (Harris, 2002).

Interestingly, one aspect that has not been discussed broadly in the literature is lawyers' emotion regulation strategies when working with PTM. Previously, attention has typically focused on the possible psychological impact of PTM on lawyers (e.g. Vrklevski & Franklin, 2008). However, the present study has identified that defence lawyers engage in a range of emotion regulation strategies as outlined by Gross & John (2003). For instance, the *attentional deployment* of focusing purely on the legal aspects of a victim statement is used to identify holes in the evidence that advance their client's case. Or, *situation selection* of not engaging with certain materials when they do not feel equipped to cope with any resulting possible emotional responses. These strategies were described as essential to ensure defence lawyers do not become overwhelmed by the high volume of graphic materials. They had witnessed past colleagues fail to implement these emotion regulation tools and become psychologically scarred by the materials. This highlights that the emotion regulation around PTM is an important and salient part of defence lawyers' work. Future research could look to

examine this relationship between PTM and emotions for defence lawyers. This would help to further understand the impact these materials can have, and what skills and strategies are practical for defence lawyers to implement.

Another aspect of the role that caused significant strain for the defence lawyers is the *hostility from the public* they face due to their work. This provides evidence of defence lawyers working with the *taint* of defendants charged with criminal offences. This *moral taint* and subsequent stigmatisation mirrors previous research with criminal justice professions (De Camargo, 2019; Lemmergaard & Muhr, 2012; Mawby & Worral, 2013), including English barristers prosecuting and defending sexual offences (Gunby & Carline, 2020). Another layer of this taint is that defence lawyers are perceived to be on '*the wrong side of the law'*. So while police officers, prosecutors, and prison officers share the same *moral taint*, defence lawyers have a further layer of taint where the public see them as being *'sneaky', 'trying to get criminals off'.* Defence lawyers believe the taint and stigmatisation stems from a lack of understanding about their actual role. Previous research has suggested barristers believe this is exacerbated by television depictions of lawyers (Gunby & Carline, 2020). These explanations and justifications of the *dirty work* of defence lawyers are also in line with previous research that dirty workers *recalibrate* and *refocus* the stigma they receive to help prevent them from feeling personal shame or guilt about their work (e.g. Eriksson, 2021). Despite rationalising this stigma to mitigate its impact on their wellbeing and identity, it still leaves defence lawyers feeling isolated. Similarly, compared to other traditional *dirty* professions (e.g. Arnold & Barling, 2003), defence lawyers felt unable to reach out for support out of fear of the reaction of others. This is a concern as defence lawyers may not reach out when they feel their wellbeing is being negatively impacted And this delay in accessing support may exacerbate any negative wellbeing they are experiencing.

Personal conflict of working in a broken criminal justice system

Defence lawyers are passionate about their work, but they feel conflicted about working in the broken criminal justice system that '*does not provide justice for anyone'*. It leaves them upset, feeling they are a part of this system where they have to watch their clients experience injustices at the hands of the criminal justice system without being able to intervene. These can be direct or inadvertent injustices. This finding is similar to that of therapists and physicians who experience distress when they inadvertently harm the beneficiaries of their work (Grant & Campbell, 2007). Despite all their best efforts, such as making submissions for their clients, they cannot shield their clients from the injustices. This is distressing and frustrating for defence lawyers and highlights their *moral stress,* which is caused when a person cannot act according to their moral sensitivities because of perceived external states (Lützén et al., 2003). This was particularly salient for Māori defence lawyers who witness the continued intergenerational trauma of Māori clients and were powerless to intervene. The conflict of being part of a culturally oppressive system has been discussed in previous research with Māori lawyers (Eruera, 1999). They feel distress working in a space that does not serve the justice interests of Māori. This creates the dilemma of feeling pulled between their role as a defence lawyer and their values. The impacts of moral stress and the resulting feelings of helplessness have been found to increase emotional and physical fatigue and decrease individuals' satisfaction in their work in previous research. (DeTienne et al., 2012).

While these injustices weighed on defence lawyers, they often serve as a motivator to stay in the role. Māori defence lawyers use their position to provide culturally appropriate representation for their clients and actively incorporate Te Ao Māori in the courtroom. Providing this perspective and challenging the current situation gave defence lawyers a sense of purpose. Māori in a range of professions use their voice as a form of challenge and

resistance of the current systems (e.g. Della Valle, 2010; Ratheiser, 2008). However, participants acknowledged that because of this constant conflict, they know they are at risk of burnout and compassion fatigue.

While powerlessly watching injustices, defence lawyers also feel a huge sense of responsibility towards their clients to ensure they get the best possible outcome and protect their liberties. Similar feelings of responsibility can be found in research of prosecutors (Kim, 2021), jurors (Bornstein et al., 2005), and therapists who feel a sense of mission to help clients (Flaskas et al., 2007). These responsibilities can feel like a burden and take an emotional and physical toll as they work beyond the legal bounds (Bandes, 2006). To protect themselves from becoming overwhelmed by this burden, defence lawyers focused on the positive impact they have on their clients' lives and how this buffered against the impact of the negative aspects of the role. This highlights dirty work strategies of *recalibrating* as described by Ashforth & Kreiner (1999) and is in line with other dirty work strategies that help other frontline dirty workers to cope with this emotional work (e.g. Erikkson, 2021; Mikkelsen, 2021). These approaches help to protect self-identity and job satisfaction among professionals.

Factors that help and hinder wellbeing

This theme identified several factors that can both help and hinder wellbeing while doing emotion work. For instance, *personal vulnerabilities can worsen wellbeing.* While *self-care practices* were identified as important to protect wellbeing, interestingly, defence lawyers' *support systems* were perceived as being either protective factors or exacerbations. The *personal vulnerabilities that complicate emotion work* identify that personal trauma can make it more difficult to deal with the emotional aspects of the work. This was particularly the case of PTM that involved abuse towards a child, which appears to be a vulnerability for a range of helping professions, including police officers and criminal lawyers (e.g. Kim, 2021;

Powell et al., 2015; Weir et al., 2020). These professionals report engaging in self-care practices to prevent these vulnerabilities from having severe negative impacts on their wellbeing.

A major way defence lawyers protect and manage their wellbeing is by engaging in black humour with other defence lawyers. Participants reported it was a coping mechanism that helped them address the nature of their work without becoming overwhelmed. It is theorised that this coping mechanism works because it diffuses the sense of hopelessness through humour (van Wormer & Boes, 1997). This is in line with research from a variety of fields, including other legal actors (e.g. Kim, 2021; Weir et al., 2020) and other criminal justice professionals, including police and probation officers (e.g. Conn & Butterfield, 2013). However, this black humour coping mechanism came with an important stipulation, it was only appropriate to use among colleagues. Again, this mirrors research on other criminal justice professions (e.g. Craun & Bourke, 2014). Throughout this theme defence lawyers voiced , that all their support systems had limits and were conditional.

This limited support was also true for defence lawyers when engaging in collegial support. Colleagues were regarded as a major support as they provided a sympathetic ear that understood the pressures of the role. However, defence lawyers were wary of showing vulnerability to certain colleagues for fear of being perceived as weak or incompetent. This ties in with meeting the industry *display rules* of being rational and unaffected by the work. Similarly other criminal justice professions experience the same fears, including prosecutors (Kim, 2021) and police officers (Bell & Eski, 2016). The result of this fear of repercussions leads to defence lawyers being reluctant to reach out to colleagues when they are struggling (Bell & Eski, 2106; Kim, 2021). A work culture where people cannot freely reach out for support can have dangerous implications. It may prevent people from reaching out for

support when they first notice negative symptoms and thereby exacerbate the psychological and emotional issues (James, 2008).

Professional support was equally fraught with limitations and conditions for defence lawyers. Firstly, the availability of support services differed across barrister soles and those that worked in PDS or chambers. This is the same as the experiences of Crown Prosecutors in New Zealand, where access to support services differed drastically across firms (Kim, 2021). However, even where professional support is available, many defence lawyers had not accessed these due to the services lacking *specificity.* They did not feel the current legal counselling services understood their occupational risks and provided only generalised support for handling stress in the workplace. Research suggests that simply providing a support service is not adequate. It needs to be tailored and relevant to its target population to be effective (Phillipson et al., 2016). Providing effective and accessible trauma-informed support is critical to support the emotional and psychological wellbeing of those working with potentially traumatic and emotionally challenging material. This is something that is currently lacking for defence lawyers.

Because of the perceived inadequacy of professional support provided to defence lawyers, they often seek and pay for these services themselves. They prefer to seek treatment from a psychologist to support their wellbeing at work. However, they must fund this themselves, creating barriers to accessing support. Similarly, defence lawyers' *self-care* practices were also individualistic and fell on them to manage. The most important self-care strategy that defence lawyers reported was managing their workload to allow for work-life balance. They recognise there is almost an infinite amount of work, and taking on too much can lead to burnout. This over-working is well documented in the legal profession (Bergin & Jimmison, 2014; James, 2020). Overworking is associated with developing maladaptive coping mechanisms such as drug and alcohol abuse, disconnecting from personal supports,

and poor sleep and diet (Jaffee et al., 2017; Krill et al., 2016). Defence lawyers are well aware of these negative impacts, which drives their motivation to engage in regular self-care practices, particularly managing their schedule to allow for healthy work life balance.

Defence lawyers are well aware of the need to implement self-care strategies working in an emotional and broken system. However, current support services and training are inadequate at support their wellbeing in the role. There are practical interventions that should be implement to support their wellbeing in conducting this emotion work. This will be discussed further in the following section.

Implications for policy and practice

This study provides an in-depth exploration into the under-researched area of defence lawyers' experiences working with emotion. Participants in the present study reported high levels of emotional stress and toll in their work due to managing the emotions of others and interacting with emotional material which permeated their personal lives. Defence lawyers provide an essential service that can directly impact people's outcomes in the criminal justice system. Therefore, the findings from the research have important implications for policy and practice in terms of identifying meaningful ways to support and enhance defence lawyers' wellbeing while doing this emotional 'dirty work'.

Defence lawyers in the present study did not feel that law school prepared them adequately for the emotions they encounter in their work. The law is still not considered a 'helping profession'; as such, 'soft skills' such as people management are not considered important (Montgomery, 2008). Other helping professions, such as nurses and doctors, develop tools and skills to support their work with people throughout their training (Montgomery, 2008). However, this important aspect continues to be overlooked in legal education. Emotional intelligence is characterised by developing awareness of personal emotions and those of others, and learning to modify and influence these emotions (Goleman,

1995). Some of these skills involve working with people who may be distressed or aggressive. Research in helping professions found that being taught de-escalation and communication skills meant that nurses and doctors felt confident and resilient to handle unexpected situations (e.g. Grant & Kinman, 2014). However, lawyers are not specifically taught these approaches, despite working with people who may be highly emotional and desperate. Incorporating these skills into legal education would help prepare defence lawyers to manage clients' emotions effectively while also helping to support and protect their wellbeing (James, 2008). People with increased emotional literacy skills are better at self-identifying their emotions and seeking support for their emotional wellbeing when required (Larcombe, 2016). Previous research has highlighted that increasing emotional literacy benefits clients as they develop a deeper level of trust in the attorney/client relationship (Kelton, 2014). Thus, it benefits future defence lawyers and all their future clients.

One proposal how this emotional literacy training could be incorporated into legal education is by collaborating with other academic departments, such as psychology, to provide lectures and workshops for students (Montgomery, 2008). Additionally, overseas universities have adopted legal clinic opportunities for law students (e.g. Bozin et al., 2020; Hammerslev & Rønning, 2018; Westaby, 2014). which provide real-world examples of working with clients. This approach is beneficial in helping law students recognise the required emotion management skills and practice implementing these with supervision (Montgomery, 2008). There are no formal evaluations that have assessed law school clinic programmes. However, qualitative research asking law students about their experiences have provided positive feedback (Westaby, 2014). They developed an understanding of the complexity of emotional demands and acquired skills and practical experience so as to work towards '*detached concern'* with the guidance of legal supervisors. One interesting legal clinic piloted at the University of Canberra allows law students to work with clients in the

Health-Justice Clinic while supported by senior lawyers and psychologists (Bozin et al., 2020). Students access professional advice from lawyers and develop interpersonal and resilience skills working with a psychologist. Law students involved in the trial reported feeling more confident after working in the clinic and thought the multi-disciplinary approach had helped prepare them to work effectively with the clients. This provides an example of how legal education in New Zealand can be adapted to include a multi-disciplinary approach to ensure that law students are better prepared to enter the workforce. Developing this emotional literacy among law students also helps develop a more holistic, more effective lawyer. Research suggests those with higher emotional intelligence are better at integrating emotions into their thought processes and are less controlled by their emotions (Kelton, 2014).

While incorporating this into university legal education will help develop emotional literacy among new generations of legal practitioners, other approaches are needed to help support and develop emotional literacy skills among those practitioners currently in the workforce. All lawyers engage in a minimum of 10 hours per year of continued professional development (New Zealand Law Society, 2021). This can involve attending courses and presentations. Much like in the law school proposal, providing workshops and classes on emotional intelligence in some of these courses may be an opportunity to help develop emotional literacy skills among practising lawyers. However, simply teaching emotional literacy skills and then leaving it up to defence lawyers to implement these in practice would likely have little impact. People need an opportunity to reflect on their practices, debrief and consider how skills could inform their future practice. This could be achieved with through professional supervision which provides an opportunity to debrief, reflect and explore alternative perspectives or approaches for the future (Berger & Quiros, 2016; Davies, 2015). This would help with implementing and developing these emotional literacy skills. The value

of supervision in other helping professions is highlighted by the fact that practitioners are required to have ongoing supervision throughout their careers, including psychologists (e.g. British Psychology Society, 2017) and social workers (e.g. Social Workers Registration Board, 2019). Formalised professional supervision with a supervisor allows individuals to learn from their practice, to develop skills, knowledge and confidence to implement these emotional management strategies for themselves and their clients to achieve the best possible outcome for them (Davies, 2015). While professional supervision has been found to improve performance metrics (e.g. better adherence to practice models), more importantly it is associated with decreasing psychological distress (Davies, 2015). Additionally, supervision has the added benefits of normalising emotional responses to traumatic materials by providing this safe space for consideration and discussion (e.g. Montgomery, 2008; Wilson et al., 2016).

The importance of self-care practices and providing support services to prevent burnout and maintain wellbeing is well documented in other 'helping' professions (e.g., Hricova et al., 2020). However, as lawyers are not traditionally considered 'helping' professionals, they have not received the same amount of consideration and resourcing. In the present study, defence lawyers identified that the current support services available to them were not appropriate or responsive to their needs. Participants described support services such as EAP and law society as providing only limited sessions, as being inflexible, and lacking profession-specific knowledge among counsellors. These aspects created barriers to accessing support services leaving defence lawyers feeling they have no suitable support options. This highlights why providing an untailored service is a redundancy and does not support the wellbeing of defence lawyers. Consideration should thus be given to adjusting the support services available to defence lawyers. For instance, while defence lawyers at the PDS can access an unlimited number of EAP counselling sessions, all other defence lawyers have

access to only six counselling sessions per year through the NZLS. Increasing this limit so that defence lawyers have the opportunity to fully engage the support they need without feeling they will be left having to fund it themselves after the six sessions. Just as importantly, the support service must be with an appropriate professional. It should provide a non-assuming or non-judgemental service that does not presume to understand their reality. Defence lawyers felt that counsellors at EAP were not always able to provide this service. Providing access to registered psychologists may be a better fit for defence lawyers. They have the professional knowledge working with traumatic materials and the skill set to adequately aid defence lawyers in managing their work and the related stress.

The present study also identified accessibility inequities of support services within the defence bar. While the Ministry of Justice offers support for defence lawyers working at PDS, there is little support for defence lawyers working in private practice (e.g., barrister sole, chambers). The financial burden of paying for this support themselves is not something that all chambers and barrister soles can afford. Thus, increasing independent profession-wide support services for lawyers is important. Another barrier identified by defence lawyers was the need to ensure that support services could be accessed entirely confidentially. While defence lawyers were happy to talk openly about accessing professional support among trusted colleagues, they often did not want it to be widely known in the industry due to how the wider legal culture still views those needing support as weak.

It is impossible to remove the emotional aspects of the criminal justice system because it is inherently emotional (Karstedt, 2002). Consequently, defence lawyers will always have to engage with emotional clients and potentially traumatic materials. However, there must be improvements to the legal education and support services to ensure that defence lawyers feel better equipped and supported to manage the emotional complexities of their role.

Strengths and limitations

This is the first study in New Zealand to qualitatively explore the experiences of defence lawyers working with emotion in criminal law. It provides an in-depth insight into the subjective experiences of defence lawyers in their own words. This was achieved using semi-structured interviews. The use of a semi-structured interview is a key strength of the present study. It enabled the collection of rich interview data related to the research questions while allowing participants the flexibility to talk about issues that they thought were relevant. In addition, this approach facilitates identifying useful and appropriate support services and education/professional development to support and enhance defence lawyers' wellbeing. This study is the first of its kind with defence lawyers. Existing investigations in defence lawyers' experiences of emotion have used a sociological approach and a mixed methodology of ethnographies of courtroom observations supported by interviews with defence lawyers (e.g. Flower, 2019; Holt, 2015).

A limitation of the present study is that the participants' demographics may impact the information power. While there is a range of defence lawyers with different experience levels, across different regions of New Zealand and different work environments (public defence vs. barrister sole vs. chambers), some groups were under-represented in the sample – namely, male, junior and provincial defence lawyers. Most participants were experienced, female, Caucasian defence lawyers in large towns across New Zealand. It is important to consider how this may influence the results.

As of the end of 2021, the proportion of registered criminal legal aid providers at either a supervised provider or PAL 1 was 44.71% of all lawyers registered for criminal legal aid (MoJ, 2021c). Thus in New Zealand, these junior lawyers make up a significant proportion of the workforce, which is not necessarily reflected in the present research. In a similar study with Crown prosecutors, junior staff struggled more with the potentially

traumatic material in their role and described that they aimed to become 'hardened' like senior Crown prosecutors. (Kim, 2021). Due to the very limited number of junior defence lawyers in this study, nuances of different experiences across the defence bar may not have been accurately captured. However, it does provide a valuable starting point for future research. Another demographic consideration is that almost all participants were based in larger cities/towns. Participants in the present study cited the defence bar as a major source of support. There can be as few as two or three defence lawyers in a provincial town. Thus, it is important to highlight that the type and accessibility of support services may differ for different regions. Future research might address these limitations by recruiting these groups into future investigations.

Finally, the nature of the study itself and the focus on PTM may have put people off from participating in the research. The present study is part of a wider research project examining the experiences of legal professionals working with both emotions and potentially traumatic materials in criminal law. The information sheet given to participants in the present study describes the study as looking at their experiences through a lens of working with PTM. This may have put people off for several reasons. For some people, thinking about their experience with PTM may have evoked distressing emotions, and they did not feel comfortable sharing and discussing their viewpoint with a researcher. Another reason someone may have opted out is that they disagreed with using the lens of PTM. During some interviews, several participants mentioned that initially, they weren't interested in participating because they thought the research was going to push a narrative that they were all traumatised. However, they ultimately self-selected into the study to clarify that they do not experience distress or trauma symptoms while working with PTM.

Limitations aside, the present study provides a novel in-depth insight into the experiences of defence lawyers working with emotions and provides a starting point for future research in the area.

Directions for future research

This research has examined the experiences of working with emotion in an overlooked profession. However, other legal fields have also been historically overlooked in research. Participants identified that they had worked in other areas of law and that they had found it very upsetting and at times as stressful as criminal defence work, particularly medical and family law. Future research would benefit from examining the impacts of emotional labour on those working in other fields of law to gain further insights into similarities and differences experienced by different sub-disciplines within the legal field. This is particularly pertinent as some defence lawyers do not work solely in the criminal space. These subgroups are all unique and from vastly different areas of law and can involve different types of engagement with clients and potentially traumatic materials. Developing a deeper understanding of the experiences of legal professionals working across these different spaces will help develop tailored support services and practices across the entire legal profession (James, 2020).

Additionally, the study did find some differences between junior and senior defence lawyers. In the present study, many senior lawyers described being in a '*hardened'* state, and more junior participants also noted that they expected to become inured throughout their careers. In a similar study, junior crown prosecutors described their struggle with the content of their workload as though '*drowning in the deep end'* (Kim, 2021; p. 85). Future research would benefit from adopting a longitudinal approach of the criminal law career-span that may help identify possible risk and protective factors for defence lawyers to understand how the profession develops resilience and emotional management strategies in their role. This could

provide far-reaching insights that could be beneficial in identifying relevant support services and professional development which would support and enhance defence lawyers' wellbeing and at what points intervention would be most effective.

The analysis in this study highlighted that Māori participants outlined how they found working in the criminal justice system, at times, traumatising because of the systemic racism they witness towards their clients. The criminal justice system continues to fail to meet its obligations to Te Tiriti o Waitangi and continues to ignore Māori concepts of justice. Future research should aim to understand the experiences of Māori defence lawyers about their unique experiences of emotions working in the criminal justice system to understand the impacts of this colonisation and systemic racism on their wellbeing. This will help to identify ways that ensure Māori lawyers' voices and perspectives are not 'othered', and they are given the space to meaningfully engage with their identity and represent Te Ao Māori in the criminal justice system. Ultimately, future research should aim to understand their lived experiences and perspectives on how Te Ao Māori can be represented in the criminal justice system to ensure justice and equality for all.

Finally, the present study identified issues around the suitability and accessibility of support services available to defence lawyers. Future research could further evaluate defence lawyers' experiences and perceptions of support services. Developing an in-depth understanding of what defence lawyers want and need from their support services and evaluating how they are currently working for defence lawyers will identify where the gaps currently exist and how they may be addressed alongside understanding the suitability of support services. The current research identified potential accessibility issues between those in the public defence service and barrister soles. Those working in the PDS had access to EAP and professional supervision through their role while it was much more limited for those not working in the PDS. Further research could examine these differences in accessibility and

if this impacts the outcomes of defence lawyers' wellbeing. These additional insights will help further tailor the support services for all defence lawyers working in the criminal justice system.

Conclusion

In exploring the experiences of fourteen New Zealand defence lawyers, the present study has identified that this group are experiencing emotional strain from multiple sources in their role. This comes from working in an industry that expects emotionless rationality from defence lawyers while working with emotional people, emotional materials, witnessing injustices, and experiencing hostility from the public. Defence lawyers have developed strategies and skills to navigate these different experiences with different expectations and required responses. However, all of this can harm defence lawyers' wellbeing through increasing stress and emotional hardening. Defence lawyers identified various factors (e.g., personal, and professional) that helped and hindered their wellbeing while working with emotional material, such as incorporating regular self-care practices and engaging with multiple support systems. However, it was also noted that support systems available to defence lawyers are limited and conditional, which can leave them feeling isolated, and as if there is nowhere to reach out for support.

The present study contributes to the currently limited qualitative research into the experiences of criminal justice actors. Defence lawyers provide an integral service that is important in upholding the integrity and accountability of our criminal justice system. However, the burden of this position and the lack of support is taking a toll on defence lawyers. Therefore, steps must be taken to implement support services for practising defence lawyers, alongside developing emotional literacy skills among legal professionals, to protect and maintain these essential professionals' wellbeing in the criminal justice system.

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Appendices

Appendix A: Interview Schedule

Introduction –

Today I'll be interviewing you regarding your occupation as a defence lawyer. I am wanting to know what occupational issues may arise, specifically relating to your exposure to the traumatic experiences of others or traumatic materials. The interview will take around 45 minutes and will be recorded. The interview is divided into 4 sections and I'll let you know when we're moving onto the next section.

The first section is the demographics section, so I'm going to ask some questions specifically about you.

Section 1: Demographics

1. Age
2. Gender
3. Ethnicity
4. Length of time working in the criminal justice system?
5. Length of service in your current role as a defence lawyer?
6. What type of firm do you currently work in (eg. PDS, barrister sole etc)?
7. Exposure to different types of crime
    a. What percentage of your practice is taken up with criminal defence work? If so, what type of offences?
        i. What courts are you normally in? (district, appeal, high)
    b. Which of these offences do you have the most experience with over the last 12 months?

The next section will move onto your role as a defence lawyer – what the job entails, your qualifications and experiences that have influenced your current role as a defence lawyer. Are you ok to move onto the next section

Section 2: Role as a defence lawyer

8. How would you describe your role as a defence lawyer – i.e. what does a regular day look like?
9. What do you think makes someone a good defence lawyer?
    a. If needed probe – Are there any particular characteristics or traits that you think a person needs to be a good defence lawyer?

10. What personal values do you think are important in a defence lawyer?
11. What motivated you to become a defence lawyer?
    a. Did your personal values play a role in your decision to become a defence lawyer?
12. What did you do prior to becoming a defence lawyer?
    a. Follow up - how did this role differ from being a defence lawyer?
13. What were your expectations of the role of a defence lawyer?
    a. Does it differ from what you expected?
    b. If so, how?
    c. Has your role of a defence lawyer changed over time? If so, in what way?
14. What education and training prepared you for your work?
15. What do you enjoy about your job?
16. What aspects do you not enjoy?
17. What is the most challenging part of the job?
18. Do you view your work as a defence lawyer as meaningful?
    a. If so, in what ways?
19. Has your work as a defence lawyer had any impact (positive or negative) on…
    a. Your personal life? (e.g. your relationships, how you go about your daily life)
    b. Your work?
    c. How you view other people?
    d. How you view the world?
    e. How you feel about yourself?

The next section is going to discuss your exposure to traumatic experiences or materials in your job as a defence lawyer.

Section 3: Working with potentially traumatic experiences/material

20. What does the term "traumatic material" mean to you?

21. Do you think your role involves exposure to traumatic experiences/material of others?
    a. Probe – what sort of traumatic experiences/material are you exposed to in your job?
    b. How do you find working with this material?
    c. Are there any strategies that you use to manage your own personal well-being when working with this material?

22. Prior to working as a defence lawyer, did you have any previous exposure to traumatic experiences/material of others?
    a. If yes – probe for further details (i.e. can you tell me a bit about this?); and ask:
    b. Do you think this previous exposure has impacted you in your current role as a defence lawyer in any way? If so, how?
    c. How did you manage this previous exposure? Any specific strategies? Was it beneficial in protecting your well-being If so, how?
    d. Are these strategies the same or different to what you use now? Why?

23. Have you discussed with others (friends/family/colleagues/health professional) about how you feel after working with traumatic material in your current role as a defence lawyer?
    a. Answer yes – who was this? You don't need to be specific in terms of names e.g. partner, friend, family, colleague, manager is fine.
    b. Answer no – why not? Probe about possible barriers to help seeking behaviour (e.g. are there any barriers to you seeking support?)

24. How would you define "vicarious trauma"?

25. Do you know of any situations where someone may have experienced vicarious trauma as part of their work within the Criminal Justice System?

In the next section, I'll ask you about your experiences with emotion in your workplace, including in court buildings and courtrooms

Section 4: Dealing with emotion at work

26. , In your role, do you encounter other individuals who you would describe as in an emotional state? If so, how often?
    a. If so, what sort of emotions do they exhibit?
    b. If so, what do you do when you encounter this? How do you feel about it?
27. In your role, have you had to help your clients and their whanau manage their emotions?
    a. If so, how do you go about this?
    b. How do you feel about having to help them manage their emotions?
    c. Do you ever find it difficult helping your clients/their whanau manage their emotions? If so, in what ways? How do you manage this?
28. Do you feel you have to manage your personal feelings and emotions in your role?

a. If so, how do you go about this?

29. In your role, do you feel there are certain emotions that you are expected to 'perform'?
    a. How do you know what these expectations are? Who sets these expectations?
    b. Do your personal values impact your ability to perform these expected emotions?
30. Do you have any difficulty in performing those emotions?
    a. Do you ever experience emotional conflict with how you personally feel and the emotions you have to display?
    b. Have your personal values played a role in this conflict?
    c. What strategies do you use if your personal feelings do not match what you have to display outwardly?
31. How would you describe the atmosphere of the court building? To what extent would you describe it as emotional, and if so, what sort of emotions?
    a. Prompt, if needed: To what extent do you feel there are emotional displays/emotional tones within a court building?
32. How would you describe the atmosphere of the courtroom? To what extent would you describe it as emotional, and if so, what sort of emotions?
33. Are there particular practices or factors that, in your opinion, have an impact on that atmosphere of the courtroom, either positively or negatively?
34. Are there things that you consciously do, or avoid doing, in your role to set a tone within the courtroom or court building more generally?

In the last section, I want to talk to you about your own mental and physical well-being and the support services available at your workplace.

Section 5: Workplace support and well-being

35. Has your work as a defence lawyer had an impact on your well-being in a positive/negative way?
    a. Probe – if so, how?
    b. What measures do you take to ensure your own mental and physical well-being?
    c. Are you aware of any support systems that are available in your workplace?
        i. What exactly is available in your firm?
        ii. Do you know of any industry-based support systems?
        iii. Have you or would you consider seeking support from work-based services on managing emotion/stress and/ or dealing with traumatic material? If yes, why? If no, why?

36. How would you describe your work culture?
    a. Do you think your work culture has an impact on your work as a defence lawyer?
    b. Do you think it affects your ability to ask for support?

37. Do you talk about the emotion/stress associated with your work with colleagues?

    a. If you do, is this helpful?
    b. If you do not, why not?

38. If a colleague was experiencing a negative reaction to the traumatic material they were working with, what would you suggest to them?

39. Is there anything else you'd like to add?

40. Do you have any questions you would like to ask me?

Appendix B: Initial Email Invitation

Dear [insert contact's name],

My name is Daniela Ravera, and I am a Forensic Psychology Masters student at Victoria University of Wellington. I am undertaking a research project for my thesis under the supervision of Professor Yvette Tinsley (Professor of Law) and Dr Nichola Tyler (Lecturer in Forensic Psychology). My research aims to explore the experiences of Defence Lawyers in New Zealand of working with traumatised people and potentially traumatic material, the way in which this might impose emotional burdens or labour, and the potential impact of this on personal well-being. I would like to speak with Defence Lawyers who have varying levels of experience in the role. The research involves participating in a semi-structured interview session with myself. The interview will last about 45 minutes and can be conducted telephone/Zoom/in person at a place/time of the individual's convenience.
If you think there are individuals currently working as Defence Lawyers within your firm that might be interested in participating in this study, it would be greatly appreciated if you could forward them the below email and attached information sheet.

Thank you for your time. Please don't hesitate to get in touch through email if you have any further questions.

Warm regards,
Daniela Ravera

Appendix C: Information Sheet

A Qualitative Investigation of the Experiences of Defence Lawyers in Working with Emotion and Potentially Traumatic Material

INFORMATION SHEET FOR PARTICIPANTS

You are being invited to take part in the above research project. Please read this information sheet carefully before deciding whether or not you might like to take part. If you have any questions following reading this, please do not hesitate to ask me.

Who am I?

My name is Daniela Ravera, and I am a current student enrolled in a Master of Science in Forensic Psychology at Victoria University of Wellington. The current project is being undertaken as part of my research thesis.

What is the aim of the project?

This project aims to explore the experiences of Defence Lawyers in working with potentially traumatic material of others and the emotional burden of working in the criminal courts. Very little research has been conducted the specifically explores the experiences of Defence Lawyers of working with potentially traumatic material, how they manage working with such material, their experience of the courtroom as an emotional or affective environment, and if this has any impact on their personal well-being. We hope this research will help us to understand the experiences of Defence Lawyers working with potentially traumatic material and whether additional support is required to support legal professionals in this role.

This research has been approved by the School of Psychology Human Ethics Committee at Victoria University of Wellington 0000028052.

Why have I been asked to take part?

We are asking individuals who are currently employed as Defence Lawyers to take part in the research.

What will I have to do if I agree to take part?

If you agree to take part in the research, we will first ask you to sign a consent form. Following this, we will ask you to take part in a one-off interview with myself and/or one of the research team. The interview can take place either in person at your workplace, at an agreed location at

the University, or via telephone, Skype, Zoom, or Microsoft Teams, depending on what works best for you. The interview will cover questions about yourself, your role as a Defence Lawyer, your experience of working with potentially traumatic material in your job, if this has had any impact on your personal well-being, how you manage working with emotional and potentially traumatic material at work, and workplace support for well-being. The interview will take approximately 45 minutes to one hour. I will audio record the interview with your permission and transcribe this verbatim.

If you wish to take part in the research, please email daniela.ravera@vuw.ac.nz confirming your interest, including your name, the name of your firm and your experience as a Defence Lawyer (in years). Once you have confirmed your interest in participating, I will send you a written consent form to sign prior to the interview and arrange a time/date that suits you to complete the interview.

What are the possible advantages and disadvantages of taking part in this study?
You will receive no direct benefit from taking part in this study, however, your participation may mean that we can better understand the effects of working with emotion and potentially traumatic material for Defence Lawyers and the types of support individuals in this role may benefit from.
The interview will relate to your professional practice, but you will not be asked questions about specific cases. Due to the nature of the topic, the interview may cover sensitive issues that some people may feel uncomfortable discussing. If at any point, you are uncomfortable with the content, please let me know. You can choose to not answer any question or stop the interview at any time, without giving a reason. You also have the right to withdraw from the study without giving a reason by contacting me or another member of the research team at any time, *up until 8 weeks after the interview date*. After this point, it will not be possible to remove your data. If you withdraw, the information you provided will be confidentially destroyed.

What will happen to the information I give?
This research is confidential. This means that the researchers named below will be aware of your identity, but the data you provide will not be shared with anyone outside the research team (except as governed by law), and your identity will not be revealed in any reports, presentations, or public documentation. Confidentiality will be preserved except if you disclose something that causes me to be concerned about a risk of harm to yourself and/or others. In this instance I may have to inform someone or pass this information on to a relevant organisation.

Other steps will also be taken to ensure confidentiality of your data: your interview transcript will be de-identified and your name will be replaced with a pseudonym so that it is not possible to tell who took part in the research, you will not be asked about the specifics of any trials that you have been involved in or are currently involved in, and the consent form that you sign will be stored securely at Victoria University of Wellington separate from any other information that you provide us with.

Anonymised quotes from the interview may be used for the thesis report and for future publications and presentations. You should be aware that in small projects your identity might be obvious to others in your community. However, we will do our utmost to ensure that any potentially identifying information is not included in any quotes used in the project.

Only my supervisors and I will read the notes or transcript of the interview. The audio recordings will be deleted following transcription and the written transcripts will be held for up approximately 5 years post publication. De-identified data from your interview may be analysed by the research team and their co-researchers for further study on the affective courtroom and emotional labour.

What will the project produce?
The data from this project will be analysed and written up for inclusion in a Master of Science thesis. It may also be written up for publication in peer reviewed journals or reports for relevant stakeholders, and presented at conferences, educational or training events. A summary of the findings will also be made available on the research lab website https://ffmhlab.wordpress.com. The research team may also conduct further analysis of the de-identified data collected during this project as part of our ongoing research in this area; to help us further understand the experiences of criminal justice professionals in working with emotion and potentially traumatic material.

If you accept this invitation, what are your rights as a research participant?
You do not have to accept this invitation if you don't want to. If you do decide to participate, you have the right to:

- choose not to answer any question;
- ask for the recorder to be turned off at any time during the interview;
- withdraw from the study during the interview and any time up to 8 weeks following the interview date;
- ask any questions about the study at any time; and
- request a copy of your interview transcript.

Dissemination
If you would like to access the results of the research, please get in contact with the research

team or refer to https://ffmhlab.wordpress.com.

If you have any questions or problems, who can you contact?
If you have any questions, either now or in the future, please feel free to contact either:

Human Ethics Committee information

If you have any concerns about the ethical conduct of the research you may contact the Chair of the Victoria University of Wellington Human Ethics Committee, Dr Judith Loveridge at hec@vuw.ac.nz or 04 463 6028.

Student:
Name: Daniela Ravera
MSc Forensic Psychology Student
Daniela.Ravera@vuw.ac.nz

Supervisor 1:
Dr Nichola Tyler
Lecturer in Forensic Psychology
School of Psychology
Nichola.Tyler@vuw.ac.nz

Supervisor 2:
Professor Yvette Tinsley
Professor of Law
School of Law
Yvette.Tinsley@vuw.ac.nz

Appendix D: Consent Form

A Qualitative Investigation of the Experiences of Defence Lawyers in Working with Emotion and Potentially Traumatic Material

CONSENT TO INTERVIEW

Researchers from the School of Psychology and School of Law, Victoria University of Wellington

Dr Nichola Tyler
Nichola.Tyler@vuw.ac.nz

Professor Yvette Tinsley
Yvette.Tinsley@vuw.ac.nz

Daniela Ravera
Daniela.Ravera@vuw.ac.nz

I have read the Information Sheet and the project has been explained to me. My questions have been answered to my satisfaction and I understand that I can ask further questions at any time.

- I agree to take part in an audio recorded interview.

I understand that:

- I may withdraw from this study at any point up until 8 weeks following the interview.
- The recordings of the interviews and the transcriptions will be held securely and kept confidential to the researcher, the supervisors, and their co-researchers.
- Audio recordings of the interviews will be deleted following transcription.
- The interview transcripts will be held by the research team for approximately 5 years post publication.
- The data I provide will be analysed and reported in a Master of Science thesis report. A summary of the results may also be published on the researchers' website, and the data may also be used in publications in academic journals and/or presented at national and international conferences.
- De-identified quotes from my interview transcript might be used in written reports, publications and/or presentations.

- My name will not be used in any publications and utmost care will be taken not to disclose any information that could identify me.
- I can request a copy of my transcript or a summary of the research findings by contacting a member of the research team.
- The research team and their co-researchers may conduct further analysis of the de-identified data that I provide as part of this study for further research into legal professionals' experiences of the affective courtroom, emotional labour, and working with the traumatic material of others.

Signature of participant: _____

Name of participant: _____

Date: _____

Contact details: _____

Appendix E: Debrief Form

A Qualitative Investigation of the Experiences of Defence lawyers in Working with Emotion and Potentially Traumatic Material

Thank you for participating in this research.

We have asked you to participate in this research because you are currently working as a Defence lawyer in New Zealand.

This research aims to explore defence lawyers' experiences of working with emotion and potentially traumatic material as part of their professional duties; to examine the ways in which you may experience your own or others' emotional reactions and undertake emotional labour; and to explore how this may impact personal well-being. Research has shown that professionals working in the Criminal Justice System are often exposed to potentially traumatic material as part of their role. They also have to manage their own emotion and emotional displays in relation to this. This sustained exposure and emotional management can impact on the well-being of the professional. To date, there has been little research exploring the experiences of defence lawyers in working with potentially traumatic material or their experience of the courtroom as an emotional or affective environment. We hope that the current study will enable us to understand defence lawyers' experiences of working with the traumatic material of others, the emotional burden this imposes, and what types of support might be needed for professionals working in the field.

If any of the responses you have provided have evoked any feelings that you would like to discuss, you might find the following free resources helpful:

- Samaritans 0800 726 666
- Need to talk 1737

Please note that you are free to withdraw your participation up until 8 weeks following your interview date. After this point, it is not possible to remove your data. Once the research has been completed, a summary of the findings will be available for you to access at https://ffmhlab.wordpress.com.

If you have any further questions about our research or your participation, please speak to a member of the research team. Alternatively, if you have any concerns about the ethical conduct of this study, please notify the Chair of the Victoria University of Wellington Human Ethics Committee, Dr Judith Loveridge at hec@vuw.ac.nz or 04 463 6028.

This study would not be possible without your interest and participation, so we would like to thank you again for your time.

Dr Nichola Tyler
Lecturer in Forensic Psychology
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Professor Yvette Tinsley
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Daniela Ravera
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