

# Trauma-Informed Investigations

Dealing with Harassment,  
Bullying, and Sexual Violence  
in the Workplace - Part II

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# Introduction - Welcome to Part II

## RECAP:

- Follow-up from Western University campus sexual assaults

## Why Trauma-Informed Investigations (TII)

- SGBV focus
- Topical - #metoo, social media/social consciousness (intersectionality)
- Legislative compliance - Bill 132, ss.25 and 32 OHSA generally)
- Sound, efficacious business practice

# Presentation Roadmap

1. The Neurobiology of Trauma Response to Traumatic Stimuli
2. Memory
3. Manifestations of Trauma
4. What is Sexual Assault and Sexual Harassment?
5. Mythology Around Sexual Assault/Harassment
6. The Purpose of TIIs
7. Best Practices
8. The Role of TI Workplace Investigators
9. Takeaways and Q&A

# 1. The Neurobiology of Trauma Response to Traumatic Stimuli

Traumatic event → release of chemicals (catecholamines, corticosteroids, oxytocin, endogenous opioids) → interference with brain functioning (the hippocampus + amygdala) → involved with the *encoding* of memory → fight, flight, or freeze (tonic immobility)

# 2. Memory - Overview

**MEMORY (dynamic):** the capacity for storing and retrieving information

- i. Sensory memory
- ii. Short-term memory
- iii. Long-term memory

**2 types of long-term memories:**

- Explicit
- Implicit

**3 processes involved: Encoding - Storage - Recall**

- 1. Encoding
- 2. Storage
- 3. Retrieval

# Implications of Memory Consolidation for TII: Timing of Interviews

Scientific research on memory stabilization through consolidation significantly impacts the timing of interviews with trauma survivors

- A person interviewed shortly after a traumatic event, while still stressed or traumatized, will not be able to retrieve anything encoded to her/his brain
- Two full sleep cycles suggested for the 'episodic' memory circuitry to consolidate information that was encoded at the time of trauma
- During memory consolidation: the brain reorganizes and integrates initially fragile memory traces into long-term storage



# Theory behind TII

1. Trauma can impact recall
2. Recall may improve over time, or not at all
3. Affect when describing or attempting to recall traumatic events may be counter-intuitive, evasive and must be considered
4. Timing of interview - contemplate memory consolidation, potentials for re-traumatizing
5. Enhanced neutrality, non-judgment for TIIs
6. 'Best outcomes'

# 3. Manifestations of Trauma

## In the moment:

1. Fight
2. Flight
3. Freeze (“tonic immobility” - reflexive)

# Manifestations of Trauma con't

## Physical/Physiological/Emotional/Psychological:\*

Angry, fearful, withdrawn, passive, numb, mistrustful, crying, hyperventilating, avoidance, depressed, loss of memory, unresponsiveness, suicidal/ideation, laughing/smiling, insomnia, dissociative, rumination, flashbacks, startle response, involuntary recurrence of persistent thoughts/images, significant mood changes, arousal, reactivity, changes to sleeping patterns / ability to focus...

\*including PTSD symptoms

# Manifestations of Trauma con't

## Triggers:

- Memory-related
- Sensory

# The Balance

Not all inconsistencies and counterintuitive behaviours are necessarily driven by trauma-related hormones or trauma-related memory issues

Some inconsistencies and counterintuitive behaviors may bear on a witness' credibility

## To Succeed:

- Skill (practice, training)**
- + Awareness (emotional literacy, cultural competence)**
- + TIA (implementation, professionalism, buy-in)**

# 4. Sexual Assault and Sexual Harassment Defined

SA - Criminal Code offence - s.271

SH - OHRC:

“Engaging in a course of vexatious comment or conduct that is known or ought to be known to be unwelcome”

Note: OHSA defines ‘workplace violence’ as the “exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker, and also includes... sexual violence.”

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# 5. Mythology Around Sexual Assault/Harassment

- **General**
- **Workplace Dynamics**
- **Canadian Consent Law Prime**

## 6. The Purpose of TII

1. More robust evidentiary portrayal of traumatic event while avoiding frustration and withdrawal from the process
2. Encourage witnesses to share what they're able to recall about their experience
3. No prejudice to Respondent



# What Does “TII” Really Mean, then..?

“Investigators... need to understand the potential effects of trauma so that they can check their personal biases and avoid the uncritical assumption that individuals who report sexual assault are necessarily “lying” if they cannot remember every detail of the incident in a chronological manner. If investigators understand that non-linear or partial recall may be related to potential trauma, they can avoid biased, snap judgments, move forward objectively, and gather information about what the reporting party is able to recall.”

Nolan, J. “Fair, Equitable Trauma-Informed Investigation Training”  
(2019) Holland & Knight

# 7. Best Practices

## Step 1: Investigate!

### Jurisprudence:

- Laskowska v Marineland of Canada Inc., 2005 1:

[51] From that general workplace anti-discrimination clause (s. 5(1)) flows other obligations, such as the “duty to not condone or further a discriminatory act that has already occurred and the duty on an employer to investigate a complaint of discrimination”

- Payne v Otsuka Pharmaceutical Co. (No. 3), (2002), 2002 CanLII 46516 (ON HRT)

### Proposition Distilled:

Duty to investigate + “duty to not condone or further a discriminatory act that has already occurred”

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# Best Practices con't

## Step 2: Implementation

### Procedural Fairness vs. “Prejudice” or “free pass”

Procedural Fairness safeguards: outline the process, manage expectations, clarify mandate if necessary, timelines, confidentiality, resolution process, clarify Investigator’s role

The TIA does not mean substituting trauma theory for evidence, or abdicating a fulsome fact-finding role

# Some Examples:

- “Can you help me understand” (neutral)
- “Please tell me more about that” (elaborate without pressing)
- “Can you describe what else you remember about that day” (could be sensory)
- “Have I missed anything you’d like to add?” (empowering)

# Avoid/Adjust:

- Judgment, victim-blaming, closed-ended questions, anything that may reinforce myths, prejudices or stereotypes
- Dichotomy of PF vs equity/equality
- Reframe: be prepared to abandon chronologies, adjust lines of questions according to witness recall and capacity
- Implicit or other bias
- Expectations of a seamless narrative

# 8. The Role of TI Workplace Investigators

## Principled Approach

- Impartial, (gender) neutral, thorough, preserves the integrity of the investigation / investigative process
- Procedural Fairness “vs” equity and intersectional approach
- Empathy, not sympathy
- Be aware of implicit bias
- No judgment
- Protocols designed to minimise harm, prioritize witness safety & well-being
- Anticipate distress, pay attention to cues
- Be mindful of terminology, allow for a support person
- Build trust and rapport

# Takeaways

## The Purpose of TIIs

- Facilitating information gather in a balanced manner for all individuals
- More fulsome narrative, better outcomes
- Bolstered perception of Investigator/company
- Deconstruction of prejudice and “isms”
- Enhanced cultural competence and critical lens for businesses

# More Questions?

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