

Personal Injury

My view from 'the dark side' of personal injury law | Sandra Kovacs

By **Sandra Kovacs**



Sandra Kovacs

(April 24, 2017, 8:27 AM EDT) -- For the first decade of my legal career I was an insurance defence litigator. Firmly entrenched in that practice, I will reluctantly admit that my then-impression of the opposing counsel who worked for injured plaintiffs, with notable exceptions, was clichéd.

It was convenient for me in my role to blindly accept society's long tradition of labelling plaintiffs' personal injury lawyers as stereotypical "ambulance chasers"; to presume these were lawyers who solicited and advanced exaggerated claims on behalf of their clients in order to increase settlement values and also contingency fees, making them less worthy of my respect than other lawyers in our professional community.

But last year, after acting as defence counsel in a bodily injury trial, my opposing counsel's firm offered me a job. My first reaction was to dismiss the offer as fanciful. How could I possibly walk away from being a proud member of the defence bar to become an "ambulance chaser?"

What I immediately appreciated, however, is that this job offer came from a firm of lawyers whom I came to respect during our trial for their skilled advocacy and civility in the courtroom; this was a firm that had the courage and the skillset to go to trial when necessary. Also, with insurance companies' increasing pressure on their defence service providers to reduce rates, the move seemed to make even greater sense. And so I leapt.

Despite the resulting jokes from my defence bar colleagues and former clients about Darth Vader and "the dark side," I haven't regretted my decision for one moment. Because now, six months in, I have come to realize that my aforementioned impression was not at all accurate.

Since joining the plaintiffs' bar I have experienced genuine fulfilment as a lawyer. I have had the privilege of working to resolve claims for truly vulnerable clients who, absent the availability of a contingency fee arrangement, could never have afforded access to justice. I have worked for the young, the old, the mentally ill, the physically disabled — many of whom are left destitute as a result of a tortious act that any of us could have fallen victim to but for simple fortuity. These clients have sincerely appreciated the assistance I have been able to offer them.

I have learned that the work of a plaintiff's personal injury lawyer is not an easy payday. Personal injury advocacy involves long hours of dedication, and sincere compassion for the client's circumstances tempered with emotional resilience. At our firm we believe that effective advocacy requires us to get to know our clients — we earn their trust, we learn their secrets, we interview their families and their co-workers about the private details of their lives — this is at once both a rewarding and a challenging experience.

A good personal injury lawyer also has to have the ability to tolerate a significant degree of risk particularly where liability is in dispute;

yes, contingency fees can be financially lucrative, but that upside is moderated by the risk of no fee whatsoever in the event of a loss, and more importantly the pressure and stress of how that loss might impact the client can be agonizing.

In many instances, clients' injuries have resulted in significant suffering and losses, changing the courses of their lives forever. There is no amount of money that can put a permanently injured person back into the position they would have been in had they not been the victim of tortious conduct. But it is my job to try to do just that, as best I can. This endeavour does not require me to advance a frivolous or inflated claim: it requires me to be a skilful advocate, to advance the claim that most accurately reflects the client's loss, both past and prospective.

At no time have I had the sense that any client was advancing a fraudulent claim. The usual debate with the defence is not *whether* a plaintiff is injured at all, but instead how the plaintiff's injuries might affect his or her *future*, in terms of the income loss resulting or the future care required. An assessment of either of these heads of damages requires some crystal ball gazing and consequently it is not surprising there is room for dispute about the reasonable value of any claim.

When a plaintiff's lawyer advocates for an award that reflects a real and substantial possibility of a more significant future loss, this does not render that lawyer unethical, exploitative or dishonest — traits that are commonly conjured by use of the disparaging term "ambulance chaser." Rather, a plaintiff's personal injury lawyer who advances the most significant claim possible for his or her injured client, supported by expert and lay evidence that the lawyer has worked hard to gather together, is an admirable advocate who should be afforded the same esteem as any other respected lawyer.

Sandra Kovacs is a plaintiff's personal injury lawyer with KazLaw and a committed volunteer to the local legal community in Vancouver, most recently serving as president of the Lawyers' Inn Society.

© 2017, The Lawyer's Daily. All rights reserved.