



From Plaintiff to Personal Injury Lawyer: A Former Client's Perspective

BY ELISABETH A. SADOWSKI, MURRAY JAMIESON

In my first year of university, I was involved in a motor vehicle accident on the Lions Gate Bridge. For the next four years, ending in a 10-day trial, I undertook a crash course (pardon the bad pun) in law and medicine. Ultimately, the experience motivated me to practise law, specifically personal injury, and it helped to shape many of my views, as a plaintiff (former client) and now in representing both ICBC and plaintiffs.

As a former plaintiff, I developed a unique insight that later helped me empathize with my clients when I became a personal injury lawyer, as they overcame their own obstacles and difficulties. The legal process, let alone the recovery process, can be overwhelming for even the most knowledgeable of clients.

In my case, despite having a father who was a neurologist for over 40 years and who has been cited in over 300 court and tribunal decisions, I was still at a loss as to how to navigate the legal process as an injured plaintiff. I had no idea what a personal injury lawyer was or how he or she could help me in navigating the process. Through a series of fortunate events, the lawyers that I hired and eventually, the exponentially more that I came across in the years following, helped to shape my future by giving me a front row seat to the litigation process along with inspiring me to pursue law.

IMPORTANT LESSONS FOR PRACTISING PLAINTIFF PERSONAL INJURY LAW THAT I LEARNED AS A CLIENT

- Be prepared to educate your client on what may seem basic and obvious.

At the time of my accident, even though I was from a family of physicians, I knew very little about personal injury law. My only image was of the cheesy, late night American TV commercials for personal injury lawyers. I didn't even know what "personal injury law" was nor did I know what to expect in starting a legal action.

Take time to give your client a rundown of what they can expect from you and what will likely happen in the legal process. Avoid using legalese and don't expect your clients to know anything about policy limits, Part 7 benefits, special damages, or a myriad of other important topics that you should explain to your client.

- Invest money to have a great website; invest time on your lawyer profile/biography.

Before I retained a lawyer, I started with Google and was overwhelmed with the number of almost identical personal injury law firm websites. I ignored the lengthy reasons for judgment on a firm's most recent judgments and went straight to the lawyers' profiles. Most of the firms appeared to have experienced lawyers but I wanted to find out more about the person who might represent me for several years. I was looking for someone I could trust.

When lawyers spend extra time on their profile, explaining their personal philosophies and reasons for practising personal injury law, the prospective client has a better idea of what to expect. Blogs are also a great way to educate clients but don't expect a client to read pages and pages of legalese. Generally, the simpler and more user-friendly websites are the ones which will maintain your prospective client's attention.

• **Make it easy for a client to find your office key contacts.**

After my accident, I was bewildered by the hierarchy of people at my lawyers' office. It was a foreign concept to me. At times, I was getting emails from several different individuals and had no idea what they were responsible for.

Clients should recognize the "key players" in your office and what they do. They need to know who your legal assistant and paralegal are and when to best approach them. Clients might also appreciate being introduced to the associates working on their file – your name might be on the door and some clients might incorrectly assume that you will be the only point of contact. By introducing the client to your associate and your staff, you will be emphasizing the "team approach" in a positive way. Simply letting your client know who they can rely on can avoid a future headache for you, your client, your associates and your staff.

• **Empathize, but don't overdo it.**

As a lawyer, I have found that telling some of my clients that I was also in an accident (particularly one that led to trial) to be effective, but I am always cognizant and cautious in which clients to tell and when I choose to tell them.

Telling your story about an accident that you have been in, and/or a success story of another client, can be an effective way of building trust between you and your client, however, tread lightly. No one wants to hear about you falling on your snowboard and spraining your ankle. The client will be most concerned with their case and what's next. Once you've been retained, the sales pitch is over and the priority should be your client's concerns in helping them navigate the legal process.

• **Remind your clients that their job is to focus on their recovery.**

It might sound like a personal injury lawyer cliché, but when I was a client, this advice was incredibly effective and empowering to me. When my lawyer told me that I could "live my life" and not worry about providing ICBC with regular updates, I had more time to focus on my rehabilitation and recovery.

One of the best ways to reassure your clients and put their minds at ease is to take ownership of their case. Clients often have to commit a lot of time to multiple sessions of physiotherapy, active rehab, massage therapy, and so forth, which affects their lives in many ways especially if they have additional family and/or work responsibilities. A reliable lawyer can have a tremendous impact on the client's emotional well-being.

• **Educate your clients about what is appropriate for social media.**

Social media was an issue that I only first became aware of as a client when I was being prepped for trial. Fortunately, I have always had strict privacy options although I admittedly never had anything of interest on my social media accounts to begin with.

Social media is an important topic to discuss with clients at the very beginning of their case. Undoubtedly, ICBC and/or defence counsel will be searching a client's social media accounts. Clients should not have to live their lives in constant fear of being watched online or from surveillance, but when a legal action begins, both are realistic possibilities. Clients should not have to worry about doing what is good for their case, though doing activities that are against the advice of their physicians would not be a good idea either.

• **Explain the importance and discretion in providing client updates.**

When I was a client, at the start of my case, it was useful to receive examples of what might constitute an appropriate "update" for my lawyer, whether it was something significant or suggestions about what to include in the bimonthly updates for my lawyer's paralegal.

Client updates may be the only way to have your finger on the pulse of your client's current circumstance, especially prior to receiving their employment and medical documentation. Clients,



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however, can easily be confused about what is important for an update. Explaining heads of damage (non-pecuniary, future and past wage loss, future cost of care, specials, etc.) in simple terms is a helpful way to provide your clients with a “road map” of what to include when writing their update.

- **The even greater importance of you responding to your client updates.**

Communication breakdowns are one of the leading sources of discontent between clients and their lawyers, and as a former client, I can certainly understand why communication is so paramount. When I was a client, I frequently received a response from my lawyer after I gave one of my periodic updates. It helped build my respect and trust for my lawyer, and it showed me that my case was being taken seriously and I was not “just another file number.” The trust was a foundation for my belief that if my case went to trial I was being best served with my lawyer at the helm.

Responding to emails can be often time consuming, but most of the time replies do not need to be lengthy. A simple reply or acknowledgement is often simply enough for many clients - depending on the subject matter, of course.

- **Remind clients about the importance of seeing their family doctor.**

Plaintiff personal injury lawyers will often send their clients boilerplate letters reminding them to visit their family doctor every 3 to 4 weeks. As a client, I recall throwing out these reminder letters after receiving the third one. I understood the importance

of going to my doctor given my familial background but I didn't know all of the implications doing so would have on my case.

Instead of just boilerplate letters, taking time to educate your clients about the importance of looking after their health is incredibly valuable. Discussing with your client about their health care providers and ensuring that they see them regularly can be crucial (for example, do they have a regular family doctor or do they rely on walk-in clinics?). Avoid the mitigation argument and open up a dialogue from the beginning about your client's medical care by ensuring that they have access to a reliable family doctor and second, they're following the doctor's recommendations. Remind your client of the importance of following their doctor's recommendations, both to benefit their emotional and physical well-being and to contribute to the success of their case.

- **Avoid telling a client how long it could take or the amount of their projected settlement.**

Four years passed from the time of my accident until my trial and in those years, it was much easier to secure a trial date. My lawyer never specifically told me how long the process might take, but occasionally, when seeing my impatience, he provided me with updates on what his firm was doing to stay on top of my file. The communication alleviated my concerns and I felt better knowing that we were working towards an outcome and the end was in sight.

Most lawyers recognize that estimating the amount of a settlement or a trial outcome is a bad idea. The same also applies to the number of years that it could take to settle. A lot can happen between an accident and a trial date, such as the need for more time, which may not be available right away through the registry. Do not be tempted to raise your client's hopes with promises that may not come true. The legal process can be unpredictable, but if your clients feel to be in capable hands, they'll trust that it takes time to get a fair settlement.

- **Never play up a trial as a distant possibility.**

During my litigation, I recall one of the support staff telling me that my discovery was my only concern and very rarely do cases go to trial. Those words stuck with me. Over time, the possibility

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of going to trial became more and more likely, and fortunately, my lawyer taught me how to embrace the fear as opposed to running away from it.

Depending on the personal injury firm, many advertise that 1% to 10% of their files go to trial. Some clients may respect their firm for going to trial, but for many others, a trial can be a frightening concept. The “plan for the worst, hope for the best” strategy can help your clients, at an early stage, to understand why going to trial may be the best way to get fair compensation. They’ll also be less likely to be blindsided by the concept of a trial as their trial date nears.

- **Be empathetic about your client’s fear of going to trial.**

For trial lawyers, the possibility of going to trial can be exhilarating, but for most clients, the prospect can be terrifying. The unknown, and the idea of being cross-examined, can be scary. I remember the idea of having my parents watch me being cross-examined by defence counsel was particularly unnerving, and since I didn’t want to expose them to any unpleasantness (if it came down to that), I asked that they leave the courtroom. Fortunately, the defence counsel on my case was kind and respectful, but I really had no idea what to expect.

Clients generally have to face a lot of unknowns when going to trial. I had been fearful of testifying in court, but much of that fear was based on not knowing what to expect. Be patient and empathetic to your clients’ concerns. Remind them that, much like their examination for discovery, you are there for them and will object where necessary. Prepping your client will usually help ease some of their anxiety, but some nervousness is normal.

- **The most important lesson of all: Remind your clients to be brutally honest.**

In making the transition to former plaintiff to working on plaintiff files and later, defence, through each step of my litigation and career, the importance of being honest and forthright, as client and counsel, has been reinforced time and time again.

In addition to the ethical considerations, clients need to understand that honesty from day one is the only way to succeed in reaching a fair settlement or trial award. Some clients may unintentionally omit information, or feel that information is not relevant but as their lawyer, your job is to examine all of the evidence and determine its relevance, and they need to know that.

CONCLUSION

Never underestimate the impact that your role as a lawyer may have on your client. Many clients will have never met a lawyer prior to contacting you and the impact that you have on them may be a lasting one. Without my car accident and the subsequent experience in litigation, I would have never become a lawyer, let alone an empathetic one.✓

Elisabeth is an associate lawyer at Murray Jamieson, practising general civil litigation with an emphasis on personal injury litigation. Outside of law, Elisabeth regularly volunteers in the community, including serving on the board of CLICK (Contributing to Lives of Inner City Kids – clicktokids.ca).