

10 D Weisbrot & K Breen, see note 3 above. 11 AB Kachalia et al, 'Beyond negligence: avoidability and medical injury compensation' (2008) 66 *Social Science & Medicine*, 387-402. 12 A Corbett 'Regulating compensation for injuries associated with medical error', (2006) 28 *University of Sydney Law Review*, 259-96. See, also, T Cockburn and W Madden, 'Establishing causation in difficult cases: Can material contribution bridge the gap?', *Precedent*, issue 105, July/August 2011, pp24-8. 13 H Johansson 'The Swedish system for compensation of patient injuries', (2010) 115(2) *Upsala Journal of Medical Sciences* 88-90. 14 K Wallis & S Dovey, 'No-fault compensation for treatment injury in New Zealand: identifying threats to patient safety in primary care', (2011) 20 *British Medical Journal Quality & Safety* 587-91. 15 J Rait, see note 3 above. 16 Australian Institute of Health and Welfare (2012), *Public and private sector medical indemnity claims in Australia 2009-10. Safety and quality of health care series No. 12*. Cat. No. HSE 120, Canberra: AIHW. 17 SK Bell, PB Smulowitz, AC Woodward et al, 'Disclosure,

apology, and offer programs: stakeholders' views of barriers to and strategies for broad implementation' (2012), 90 *Milbank Q*, 682-705. 18 JM Gilmour, *Patient safety, medical error and tort law: An international comparison (final report)*, (2006), Toronto, Ontario, Canada: Osgoode Hall Law School, York University.

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# Who's really doing the ambulance-chasing?

LEXANECITY

By Lexi Legis

**T**ell me... if you are in a social setting talking to another lawyer who works in the corporate world, do you admit you are a personal injury lawyer? Or do you say something more vague and general like, "I specialise in civil litigation"? Or a new one I heard the other day: "I'm a human rights lawyer"? I must confess, I used to. I was completely sick of other lawyers who live in the world of the six-minute unit, and who regularly wine and dine their clients on their corporate credit cards, calling me an 'ambulance-chaser'. Now I'm proud to say I am a personal injury lawyer and quickly explain to those other lawyers how rewarding my work is. It is about helping people when they are at their most vulnerable. That feeling of knowing that your client sees you as their lawyer, psychologist, financial planner, marriage counsellor, and confidante; all wrapped into one. There is no better feeling than achieving a great result for a person whose life has been devastated by injury, and literally seeing the relief and feeling of financial strain lift from their shoulders. I always wish I could wave my magic wand and heal them. I can't, but at least knowing that they will be able to pay for much-needed treatment or care, or respite for a tired spouse who spends their day changing their partner's colostomy bag, is a great feeling. I am sure my friend who is a GST specialist cannot describe the same feeling on sending an advice to a company about their GST liability.

Another thing that really irks me because of the inequality between different areas of law is the advertising restrictions on personal injury law. Why should a family lawyer be able to advertise and offer their assistance to 'ditch the bitch', and a criminal lawyer can advertise they can 'get you off', but I can't advertise that people whose livelihoods have been taken away by injury, negligently caused by someone else, have a lawful right to claim for their losses? For example, one of the most long-standing 'special categories' of duty owed to

other members of the public is the duty owed to another road-user. If you are injured by the negligence of another driver, you have only six months to lodge a claim form on the insurer of the other vehicle, which is strictly enforced. But how do most members of the public know this? 'Late claims' take up so much time and valuable resources (payable by the community through our green slips). Why not just allow personal injury lawyers to advise the community of their rights and any time limits and reduce this expense? I cannot see any legitimate and justified reason why personal injury is the only area of law that cannot be advertised to the public.

Anyway, back to meeting other lawyers in social settings. I often go on to ask whether they charge their corporate clients for every minute of time spent talking to them, emailing them or quickly perusing a one-line email from them. "Absolutely," they respond. They wouldn't dream of doing a second of work 'pro-bono'. I then explain to them the concept of no-win, no-fee. "So you mean you can act for a client for years and they lose their case and you get paid nothing? You don't send them a monthly bill?" "Yep," I respond, "and not only that but I write off the tens of thousands of dollars I've spent on reports and court-filing fees in bringing their claim." Suddenly, the level of respect rises a little. Having gained their attention, I then briefly tell some stories of complex litigated matters; juicy cross-examination; and the different damages regimes, procedural requirements and causes of actions we need to be alive to, to really give a flavour of how complex and interesting personal injury law is. Suddenly, their work reviewing contracts seems a little dull.

Admittedly, when personal injury claims are legislated out of existence I may have to start thinking about other areas but, right now, there is no other area of law I would want to specialise in, despite the constant challenges the government throws my way. ■