

Our Not so Just Justice System

by Brenda Barringer

One of my favourite quotes, commonly attributed to Sir Edmund Burke says, "All that is necessary for the triumph of evil is that good men do nothing."

This I believe and this is why I attempt to shed a bit of light on the justice system as regards personal injury lawsuits.

Having been through litigation twice now, I am convinced there is no justice in the justice system.

In some places in the world a life is taken and the perpetrator will die; a life for a life. In other places they are put in prison for a lifetime sentence, usually 25 years, so not really a lifetime. Sometimes they receive a lifetime sentence with no parole.

Whatever the sentence handed down, is justice really served?

Can a life be brought back from the dead?

Can catastrophic injuries be undone?

Can families of victims ever believe that justice will be served by the decision of a jury?

I believe not and this is backed up by lawyers, one of whom heard it from one of our own judges.

It seems I am in good company.

One definition of Compensation, which is what happens in litigation, is the act or state of compensating, by making up for someone's loss, damage, or injury by giving the injured party an appropriate benefit. Some of those benefits are compensation for lost wages, money for ongoing therapies, for pain and suffering for injuries which may last the rest of your life.

However, I want to share one example of how our justice system fails us and is in fact an injustice.

Should your legal matter go the distance and you find yourself sitting in court in a trial, this one little detail could completely derail the process.

If anyone hints at or outright tells the jury that the person being sued is protected by insurance that the monies settled on does not come out of the defendants pocket, a mistrial can result. It is a cardinal sin to mention it's their insurance that pays the settlement.

However, in personal injury cases, the Judge knows the insurance company pays the judgment, so do the lawyers and now, so do you.

I don't know about you, but this presents a huge justice issue for me.

If you the public are the prospective jurors, don't you need to know this so you won't feel sorry for the one who caused the injury?

Some already do understand, but in my opinion this is something they all need to know going into trial so they can be objective about the whole process.

Gavin Cosgrove, of Bergeron Clifford LLP in Kingston, once said, "Juries are given significant power and insufficient information".

So, to find out more, I did a bit of digging, asked a few questions and discovered it comes down to something called "a rule of evidence".

Dermot P. Nolan, Nolan, Ciarlo LLP from Hamilton says, "The rules of evidence are established by legislation ... and by caselaw (judicial precedent). They govern what evidence can be given. The principal rule governing evidence is that it must be relevant to the issues in dispute."

Well, who decides what is relevant? No surprise there! It's our court system.

The courts believe that, whether a Defendant (the one at fault) has insurance or not isn't relevant to the issue of whether he or she is liable to the Plaintiff (the injured party). Lawyers, but certainly not the insurance lawyers, believe the existence, or non-existence of insurance is highly relevant and the jury should know about it.

The insurance industry has been able to influence legislators over and over to protect the bottom line of Insurers. Thus, behind our politicians are insurance companies who pull the strings. Our politicians are mere puppets who make legislation in favour of Corporate Insurance and against us, the very people who vote them in believing they will look after us with fairness, with justice.

Politicians of all parties over the years have passed legislation which restricts the rights of people who have been injured by others. Why? Simple, so insurance companies won't have to pay as much in claims. They pressure politicians into believing higher settlements mean higher premiums. And, if they don't have to pay as much, they can keep premiums down.

Evidence shows this to be faulty thinking as our premiums continue to rise.

In general, people who have paid their insurance premiums faithfully, find out that after injury the protection they thought they had is not adequate and that it really hasn't been about keeping our premiums low at all.

Oh no, the issue at hand is far more insidious. It's about how our rights are restricted in the mistaken belief that this is how to keep rates low when it's all about paying out as little in settlement as possible.

It's the old adage, 'you can't fight city hall'. It's a fight between multi-billion dollar corporate insurance against small-town injured Ontarians. It's about how the insurance companies use our politicians to get what they want. Premiums will still go up even though settlements are generally less than what true justice would demand.

It's the same old story. The rich get richer and the poor continue to have their rights restricted, all the while getting a poor return for their premiums and their belief that politicians are working to protect them. This has nothing to do with justice. It has to do with the bottom line of insurance companies; to make more money off the backs of the insured.

I don't know about you, but I'm thinking Robin Hood right about now!

To add insult to injury, pun intended, in a car crash scenario, there is another truth which is withheld from jurors. In fact most people don't know this.

As well as cheating the injured party out of a fair settlement, the Insurance Act gives the multi-billion insurance corporation a "deductible" of \$37,983.33 (2018), right off the top of your judgment for pain and suffering. Every January this amount is increased due to 'inflation'.

Your Governments way of saying Happy New Year!

Another thought to ponder, we all know that if we claim for damage to our vehicle we pay the insurance company a 'deductible' of usually \$500 or \$1000.

However, when 'damage' is claimed to an injured person's body, the insurance company takes a deductible of just under \$38,000. Again, money which is, in most cases, sorely needed for treatment for pain and suffering.

Cosgrove pointed out this huge discrepancy saying rather pointedly, "\$1000 bucks on the Honda, \$38,000 on the human".

Personally speaking, I find this offensive.

So, if a jury believes they are being generous in giving the plaintiff \$50,000 for pain and suffering, most don't know the victim will actually get less than \$13,000.

Most lawyer fees are 30% of settlement which means the Plaintiff ends up with around \$8400 but as insurers will generally make a contribution to legal fees, this dollar figure can end up being more. However, there is no set amount an insurer will contribute.

Go back to compensation benefits which are awarded for pain and suffering. Just how far does that \$8400 stretch?

Lest you believe 30% is too much for legal fees, with the above figure of \$13,000, the law firm has **earned** only \$3600 for hours of work, while the insurance company **takes** their deductible just shy of \$38,000 for doing nothing but taking your premiums month after month.

Our trial system is intended to dispense justice. Rather, it dispenses favours to those insurance corporations who have manipulated our politicians into developing legislation which protects them, not us.

Our politicians hear over and over about high premiums, that constituents need them to keep their rates low. This is the loudest voice right now and politicians believe that to keep rates low they must defer to what the insurance industry dictates.

However, Nolan further says, "The only people who can change this and stand up to the insurance companies are the politicians and they won't do it because they are afraid the insurance companies will fail (which they won't) and jobs will be lost and that insurance premiums will go up, which they will because the insurers always use increased premiums as a threat to bend politicians to their will".

What a sad commentary on our justice system. What we need is a modern day William Wilberforce!

Lest you think I hold lawyers at fault for settlements received, nothing could be further from the truth.

Our lawyers work with their hands tied behind their backs within very small parameters. These restrictions are set by our elected government officials in

cahoots with insurance companies against the very ones they are elected to represent and help.

This is where lawyers like Cosgrove and Nolan excel.

They are good men doing something to right the wrongs in our justice system.

“All that is necessary for the triumph of evil is that good men do nothing”

I encourage you to write letters to your politicians, tell your friends, your family. I believe we can be a louder voice if we take courage in hand and make this known to everyone.

Ask questions, probe for truth.

Take a stand for justice.

Take a stand against this ‘evil’ which has triumphed for decades.

Do something, don’t do nothing.

“All that is necessary for the triumph of evil is that good men do nothing”

(Dollar figures are not specific as each case is unique)