



ERRORS

OF OMISSIONS

A periodic update from the Errors and Omissions Department NUMBER 1 OCTOBER 1987

Last year, 1,279 claims were reported to the Errors and Omissions Department.

Unfortunately, based on past history, the number of claims to be dealt with in 1987 will surpass those of previous years unless action is taken to reduce or eliminate the problems which give rise to the claims.

With this new publication, we want to alert you and your staff to some of the specific areas which have occurred in law offices across the province and which have led to large payouts.

The incidents described are based on information in our files.

We encourage you to read this newsletter carefully and to share it with your staff. Only by working together can we reduce the number of claims handled each year through *your* Errors and Omissions Department. Only by working together can we reduce *your* premiums.

What a gas!

In this case, the lawyer acted for the purchaser of a property. The agreement of purchase and sale had been signed before he was retained, but it was clear from the agreement that the purchaser intended to construct a new building on the property because the offer was conditional on the purchaser obtaining a building permit.

A proper search of title was prepared by a clerk in the lawyer's office and the search notes made specific reference to a valid restrictive covenant in a prior deed. The covenant provided that the subject lands "shall not at any time be used for the sale of gasoline."

Although this information was in the file, there was no clear office procedure to relate the information to the agreement of purchase and sale.

Subsequently, the deal closed with the client remaining ignorant of the restrictive covenant.

The purchaser/client then independently obtained site plan approval and proceeded with construction of a gas bar. He spent about \$60,000 in construction costs, most of which related to the installation of gas tanks which were then filled with gasoline.

Two months after the closing, the purchaser/client was contacted by the lawyer for the beneficiary of the restrictive covenant. Construction was brought to a halt.

The purchaser/client attempted to obtain a release of the covenant, but he was unsuccessful. As a result, he incurred additional costs to remove the gasoline, gas tanks and other fixtures so as to restore the land to its original condition in order to resell the property.

Although it is unlikely that the original

sale could have been avoided, given the terms of the agreement of purchase and sale, had the purchaser/client been informed of the restrictive covenant before closing, he could have arranged either an alternative use for the property or he could have arranged to resell the property. In either case, he would have avoided substantial construction and demolition costs.

Significant damages arose from the lawyer's failure to review the search, discuss the search with his clerk or to spend a few extra minutes with his client to determine the intended use of the land.

The case cost *you* \$98,000 + \$6,000 in administrative costs.

A little advice is a dangerous thing!

Over the years, you, through your insurance premiums have paid hundreds of thousands of dollars because Limitation Periods have been missed.

This is how it can happen.

A young woman had received minor injuries in a motor vehicle accident. Approximately two weeks before the two year limitation under *The Highway Traffic Act* was to expire, she made an appointment with a lawyer.

During the initial interview, the lawyer said that he was too busy to take on her case, but in view of the obvious time constraints,

he agreed to issue the Writ to protect her and to write for medical reports. Once that was done, he would meet with her again and recommend other lawyers to her.

The lawyer was diligent and did issue the Writ and wrote for medical reports. He did not receive any.

Several months later he wrote to his client and advised her to contact the doctors immediately. She did nothing. More time passed.

The lawyer wrote one final letter to his client ten months after his initial interview with her, enclosing the police accident report and other documents. Once again, he advised her to retain another lawyer because he was too busy to continue with her file.

The client was under the impression that she could not serve the Writ until she had medical reports. Our member did not advise the client that the Writ had to be served within one year.

The client, obviously a procrastinator, waited a further year before seeing another lawyer. Although aware of the problem, the second lawyer delayed a further four months.

The matter was finally reported to our office. We attempted to repair the matter by bringing a motion for a renewal of the Writ.

The Motion was dismissed. One of the reasons for the dismissal was the unexplained delay in bringing the motion once the error was discovered. We settled this case for \$8,625.
