

## *Failing to Inform Client of Error*

### **GERALD ALAN MAJOR**

Langley, B.C.

Called to the Bar: October 1, 1969

While acting for a plaintiff on a personal injury claim in mid-April 1992, the member received a settlement offer from the Insurance Corporation of B.C. ICBC stipulated that, if the plaintiff were to accept by April 30 a \$5,000 payment into court, ICBC would waive the costs to which it would otherwise be entitled. The plaintiff instructed the member to settle the claim on this basis.

The member asked his secretary to file a notice of acceptance by April 30, 1992, but she inadvertently failed to do so. After discovering this error, the member filed the notice on August 26, 1992. He did not advise his client of the failure to file on time.

In February 1993, ICBC notified the plaintiff that, because the notice of acceptance had not been filed on time, ICBC sought \$1,748.10 in costs from the plaintiff. The plaintiff complained to the Law Society in March, 1993.

The member subsequently paid \$1,748.10 to ICBC in satisfaction of the claim for costs.

On May 1, 1994 the member admitted to a discipline violation for his conduct in failing to advise his client of the late filing of the notice of acceptance. Chapter III, commentary 11, of the CBA *Code of Professional Conduct* sets out guidelines for lawyers in these circumstances.:

“The duty to give honest and candid advice requires the lawyer to inform the client promptly of the facts, but without admitting liability, upon discovering that an error or omission has occurred in a matter for which the lawyer was engaged and that is or may be damaging to the client and cannot readily be rectified. ...At the same time the lawyer should recommend that the client independent legal advice elsewhere about any rights the client may have arising from such error or omission and whether it is appropriate for the lawyer to continue to act in the matter.”

*[See also Chapter 4, Rule 5.1 of the Professional Conduct Handbook , as amended January 7, 1994].*

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