

BERNARD SIMPSON

(Vancouver)

Called to the Bar October 1, 1967

The member acted for Mr. and Mrs. M, plaintiffs in an action arising out of a motor vehicle accident. The complainant acted for defendant T. The trial commenced, and the plaintiff's case was completed, but the trial was adjourned for presentation of the defendant's case.

The plaintiffs' sole source of income was as directors and shareholders of a company they operated. The member, realizing that a claim for lost income might well require the company be named as plaintiff, began a second action against T, showing the company as plaintiff.

The member applied in chambers for an order for substitutional service, and for an order that an independent medical opinion obtained by ICBC in the first action be produced. The member made no reference to the first action in his pleadings, and gave no notice to the defendant's counsel or to ICBC of the new action of his Chambers application.

The complainant learned of the member's Chambers application through the medical doctor whose records were sought to be produced, and attended at the hearing. The Chambers Judge questioned whether the corporate plaintiff could have a legal interest in medical records, whereupon the member, agreeing with the Judge, withdrew the application as it related to the production of the medical legal report. Notwithstanding the member's withdrawal, defence counsel objected to the procedure.

The member admitted that, while he felt technically he was not obliged to serve the material, due to an over-zealous pursuit of the objectives of his client and regrettable continuing animosity between counsel, he was guilty of professional misconduct by reason of his failing to serve on the other member the Notice of Motion and supporting affidavit for substituted service, and for the production of medical records when he knew that the information and the material was of importance to the other member and his client in a separate continuing proceeding.

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