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Risk Prevention Department

Guyline LeBrun, Lawyer
Claims Prevention
Coordinator

Judith Guérin,
Risk prevention analyst
and lawyer

Marika: The Adventures of a Young Lawyer Like No Other!

Marika and beating the clock to setting down for trial and judgment

Marika, a young lawyer who was recently sworn in, practises in the firm of MDS Lawyers Inc., a three-lawyer firm located in a suburb of Québec City. She was hired by the firm after working there as a student and articling there. Working at the firm is the fulfilment of a childhood dream. After watching the movie Erin Brockovich, at the age of 14, Marika decided she wanted to be a lawyer. With her Michael Kors shoes on, she feels ready to meet all the challenges of the profession ... but not without a hitch!

One beautiful Monday morning, M^e Pagé, a senior lawyer, walks into her office. He's a little overexcited, which is not surprising, since he's just had his fifth cup of coffee of the day. He is confident in his young protégé and entrusts her with the first file she will be able to take charge of on her own. Of course, he mentions that he is available if she has questions or wants to discuss strategy. The file involves a hidden defect and the client wants to sue the sellers. Marika meets with the client and collects the necessary evidence. She then institutes proceedings and negotiates the protocol. However, she fails to note in her agenda the deadline for setting down the case for trial and judgment.

Marika is busy with the vagaries of daily practice and forgets about her latent defect file until she receives a *Request for setting down for judgment on a presumed discontinuance regarding legal costs*. She is horrified to realize that the deadline for setting down for trial and judgment expired 8 months ago. Marika, who is anxious, but believes in her abilities, decides to prepare an *Application to be relieved from the consequences of the failure to file the request for setting down for trial and judgment*. She doesn't think it's necessary to advise M^e Pagé or her client, because, after all, what judge would refuse an initial request to be relieved from the failure to set down the case for trial and judgment within the prescribed deadline! Her request, therefore, alleges that she was overloaded with work, that the file is complex and that she failed to write the deadline in her agenda. She notifies her *Application to be relieved from the consequences of the failure to file the request for setting down for trial and judgment* and sends opposing counsel a draft protocol. She then leaves the office and heads to the new trendy bar in the area to meet her friends for their famous girls' night out.

The next day, she notices a voice mail opposing counsel has left for her. He informs her that he intends to vigorously challenge the *Application to be relieved from the consequences of the failure to file the request for setting down for trial and judgment*. Marika calls him right away to find out his reasons for contesting. He explains that her *Application to be relieved from the consequences of the failure to file the request for setting down for trial and judgment* does not mention that it was impossible for the client to act nor does it contain an affidavit. Marika argues that form should not prevail over substance and, given their disagreement, she ends the conversation, being of the view that her colleague is stubborn and litigious.

On the day of presentation of the *Application to be relieved from the consequences of the failure to file the request for setting down for trial and judgment*, Marika goes to court with only one decision in hand, *Cité de Pont Viau c. Gauthier Mfg. Ltd.* After a few minutes of oral submissions, the judge interrupts Marika. Just as her colleague did a few days earlier, he points out that her application does not allege any impossibility to act on the part of the client and is not accompanied by the applicant's affidavit demonstrating her diligence in managing the file. He therefore decides to dismiss the application.

Marika, who is stunned and ashamed, no longer has a choice! When M^e Pagé returns from a day in court, she informs him of the situation. He is less than pleased and, in turn, informs the client. Since the matter is not prescribed, the decision is made to reinstitute the proceedings at the firm's expense. After several exchanges with the other party, the file is ultimately settled to the satisfaction of both parties.

What you should remember: The failure to act within specific time limits is a major source of malpractice proceedings. Lawyers must therefore keep an updated system allowing them to remember the deadlines they have to meet. It's important to remember that an *Application to be relieved from the consequences of the failure to file the request for setting down for trial and judgment* must allege the plaintiff's inability to act and be supported by an affidavit from the lawyer (if the omission is attributable to the lawyer) and an affidavit from the party demonstrating that it was impossible to act and that the party was diligent with respect to procedural deadlines. Indeed, here at the Insurance Fund, we have noted the dismissal of such applications on these grounds. Lastly, we remind you that you must inform the Insurance Fund as soon as you notice your failure to set down a case for trial and judgment.

Lawyers: On your mark, get set, grab your agendas!