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

Marika: Both Feet in the Water

On a beautiful day in August 2016, Marika takes advantage of her last vacation days to breathe in the salty river air. Marika, who is on vacation at the family cottage in Charlevoix, decides, with her childhood friend Sophie, that they will take a cruise the next day to admire the whales.

The next morning, equipped with their binoculars, the two friends board the boat that will take them to see the majestic marine mammals. After they have been sailing for a while, Sophie goes to the bathroom and stumbles on a portable gas tank that has been left on the deck. Stretched out on the floor, she immediately feels intense pain radiating from her leg. Given the seriousness of the injury, the captain decides to turn back. Sophie is quickly brought to the hospital, where the doctor diagnoses a fractured ankle. When leaving the hospital, Sophie is angry and tells Marika that the owner of the boat was negligent in leaving a gas tank on the deck. Given that she is a gym teacher, her injury risks delaying her return to school and she will suffer a loss of income. Marika therefore suggests that her friend sue the owner of the boat and offers to take care of it personally. After all, she has already handled a personal injury case where she sued a school for injuries sustained by a child. She tells herself that this file is similar and that the past few months have prepared her well to handle this new file. She therefore informs Sophie of the need to obtain an expert report on her incapacity due to her fracture in order to determine the damages that can be claimed. She reassures her friend by mentioning that, in any event, they have plenty of time to obtain this expert report. For her part, Marika will quickly send a formal notice to the owner of the boat to see if a settlement is possible.

A week later, Marika returns to work and proudly announces to M^e Pagé that she has found a new client for the firm and explains the recent mishap. M^e Pagé reminds her to note the file in the firm's register of prescription periods. As usual, he reiterates that he is available to answer any questions in this new case. Marika therefore asks her assistant to note August 19, 2019 as the prescription date in the register. She then sends the formal notice to the owner of the boat. The latter's insurer quickly contacts her. It requests Sophie's medical file and states that no compensation will be possible without an expert report. Marika, who wants to avoid having her friend incur costs, decides to wait until the latter is evaluated before taking any new steps vis-à-vis the insurer.

In the meantime, Sophie suffers several complications and her ankle is not healing as expected. She requires several surgeries to correct the situation. It is not until September 2018 that Marika finally sends the insurer an expert report on her friend's temporary total disability and permanent partial disability.

The insurer promptly contacts Marika to inform her that it will not follow up on the claim for compensation, because the recourse is prescribed. In particular, it refers her to the two-year prescription period provided for in the *Marine Liability Act*¹ as well as in section 16 of the *1974 Athens Convention*.

After several hours of searching the case law, Marika realizes that her friend's recourse is indeed prescribed. In desperation, she informs M^e Pagé of the situation, thinking that he will be able to get her out of this mess. Unfortunately for her, M^e Pagé, who is none too happy, confirms her greatest fears.

Marika therefore resolves to call her friend to give her the bad news. After several minutes, the conversation fizzles out. Sophie hangs up, stating that she has just lost a friend. Marika, who is in a pitiful state, because all she wanted to do was help, fills out her Declaration of the insured, which she sends to the Insurance Fund.

What you should remember: Missing a prescription deadline is without a doubt one of the worst nightmares for a lawyer. Here, Marika fell victim to certain traps of the practice: representing one of her good friends led her to take on a case for which she did not have the expertise. Wanting to save her friend money, she also failed to do certain checks. She assumed that the prescription period was the general three-year period provided for in article 2925 of the *Civil Code of Québec*. Also, it is worth remembering that the applicable law and the prescription period related thereto must absolutely be verified and confirmed each time a file is opened. In closing, there are risks in representing a family member or friend (phantom client), especially since our experience at the Insurance Fund shows that they will not hesitate to sue you if you make a mistake or omit something in their file.

So think twice before accepting such a mandate!

¹ S.C. 2001, c. 6.