

# Behemoth B.C. Case Delivers a Blizzard of Professional Negligence Findings

Breach of Contract | British Columbia | Litigation & Dispute Resolution | Negligence

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In *Blizzard Uranium Corp. v Nathanson, Schachter & Thompson LLP*, 2026 BCSC 466, the Supreme Court of British Columbia found a lawyer liable for negligence, breach of fiduciary duty, and breach of contract arising from a pleading error in a complex commercial litigation matter.

The court described the error as “perhaps one step up from a typographical error”. However, this error led to a hard-fought proceeding that spanned over 10 years, consumed 44 days of trial, and produced over 900 pages of legal argument.

## **Background & the Pleading Error**

When British Columbia banned uranium exploration in 2008, a mineral exploration company, Boss Power Corp. (Boss), which owned a large uranium deposit, sued the province for expropriation of their interests. On the eve of trial, the parties struck a \$30 million settlement requiring Boss to surrender its uranium claims and mining rights.

Before the terms of the settlement could be completed, a newly discovered pleading error derailed its implementation.

In a pleading, Boss's lawyer had mistakenly included a group of uranium mining claims known as the “B Claims”, which were owned by a non-party (Beruschi) in with claims beneficially owned by Boss. One paragraph identified the claims included in the lawsuit, while the subsequent paragraph stated that Boss had an equitable interest in all claims identified in the prior paragraph. When the lawyer amended the first paragraph to add the B Claims but left the subsequent paragraph unchanged, the overall pleading incorrectly suggested that Boss held an interest in those claims.

The mistake was carried forward into the proposed settlement with the Province. As a result, Boss was unable to transfer all of the claims required under the settlement agreement. Consequently, the Boss plaintiffs were, in the trial judge's words, “not going to see a penny of their magnificent \$30 million settlement” until the dispute over the B Claims was resolved.

After the error came to light, the lawyer continued to act for Boss in an effort to preserve the settlement, including by negotiating with the non-party Beruschi despite the conflict of interest created by the circumstances.

To facilitate a resolution, Boss was divided into two entities: the continuing Boss corporation and Blizzard Finance Corp., a newly created company controlled by the Beruschi group. Blizzard Finance subsequently sued the lawyer and his firm for professional negligence, breach of fiduciary duty, and breach of contract.

## **Professional Negligence**

A professional negligence claim requires a plaintiff to establish that the lawyer owed them a duty of care, breached the applicable standard of care, and caused them damages, in fact and in law.

The trial judge noted that the law of negligence accepts that professionals may make minor errors or errors in judgment that cause unfortunate results, without breaching the standard of care (citing *Formosa v. Persaud*, 2020 ONCA 368 at paragraph 11).

Here the error was potentially a minor drafting issue. The lawyer failed to recognize that a change to one part of the pleading required a corresponding amendment elsewhere.

Nevertheless, this constituted negligence because a reasonably competent lawyer would have reviewed the pleading as a whole and identified and corrected the inconsistency. The lawyer already had information in his file indicating that Boss did not beneficially own the B Claims but failed to recall it when drafting the pleading. Even if the error could have been corrected, the court observed that the possibility of correction does not eliminate responsibility for an uncorrected error, which went undetected for 23 months.

### **Breach of Fiduciary Duty**

The trial judge also found that, after discovering the pleading error, the lawyer breached his fiduciary duty by failing to provide the clients with a full and candid explanation of the error and by continuing to act despite the resulting conflict of interest.

Although the clients retained other counsel, the lawyer remained involved in the matter while he never clearly explained the error. He also failed to obtain the clients' informed consent to his continued involvement despite the conflict.

The trial judge concluded that this conduct breached the lawyer's fiduciary duty of loyalty. Rather than candidly acknowledging the error and its implications, the lawyer appeared to minimize his own responsibility. This breach caused additional losses, in the trial judge's view, as the clients took an unnecessarily aggressive negotiating stance, which prolonged the dispute, increased legal costs, and deterred acceptance of earlier, lower settlement offers.

While the judge found no malicious intent, attributing the conduct instead to a common human tendency to downplay one's own mistakes, the absence of bad faith did not preclude a finding of breach of fiduciary duty.

### **Breach of Contract**

The trial judge held that because the retainer between the lawyer and his clients contained no special terms, the contractual duty of care was the same as the tort duty of care described in *Central Trust Co. v. Rafuse*, [1986] 2 SCR 147. The applicable standard remained that of a reasonably competent lawyer.

The trial judge also found a separate breach of the contractual duty of honest performance. As set out in *C.M. Callow Inc. v. Zollinger*, 2020 SCC 45, contracting parties must not knowingly mislead one another through statements, omissions, half-truths, or silence. The lawyer breached that duty by failing to fully disclose the error and continuing to act despite the conflict of interest.

### **Contributory responsibility of the clients**

Contributory negligence may limit a plaintiff's recovery where the plaintiff's own conduct contributed to the loss.

The lawyer argued that the clients had opportunities to identify and correct the error themselves. The trial judge rejected this position as the clients had only been asked to generally confirm the accuracy of the pleading and were not directed to the error. Client approval of a pleading or settlement does not excuse a lawyer's failure to meet the required standard of care.

Nevertheless, the trial judge found that the clients were 50% contributorily negligent. The lawyer had repeatedly asked the clients to verify the accuracy of the pleading and, given their access to relevant information and specialized knowledge, the clients were well placed to identify the error before the settlement was finalized. The trial judge concluded that the clients could not depend solely on their lawyer to protect their interests: "For an existential issue for the Clients such as the Settlement, more was required."

### **Conclusion & Takeaways**

In the result, damages were awarded of approximately \$4 million.



Although the plaintiffs succeeded in negligence, breach of contract, and breach of fiduciary duty, the court did not permit double recovery. Instead, the trial judge assessed the plaintiffs' likely position had the pleading error not occurred and concluded that the parties would probably still have reached a settlement, but at a lower amount that reflected the existence of the B Claims. The Court reasoned that approximately \$2 million would have been paid to Beruschi as the beneficial owner of the disputed B Claims, in any event. The damages award therefore reflected the additional losses caused by the lawyer's negligence and subsequent conduct, rather than the entirety of the settlement amount ultimately paid to resolve the dispute.

The decision underscores that even seemingly minor drafting errors can have significant downstream consequences and may expose a lawyer to liability. At the same time, sophisticated clients are not passive participants and may bear some responsibility to protect their own interests, especially in matters of exceptional importance. Just as importantly, the decision reinforces the high standard expected when mistakes occur. Lawyers must promptly disclose errors that create a conflict between their own interests and those of their clients. A PDF version is available to download [here](#).

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