OCCUPIERS' LIABILITY AMENDMENT: ONTARIO SHORTENS NOTICE PERIODS FOR SNOW AND ICE RELATED CLAIMS

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On December 8, 2020, the Ontario provincial government passed Bill 118, which amends the *Occupiers' Liability Act* (the "**Act**") by adding a new section entitled, "Notice Period – Injury from Snow and Ice." Owners and tenants of commercial spaces, condominium corporations, property management companies, insurers, and the like will take special interest.

The amendment addresses claims made for the "recovery of damages for personal injury caused by snow or ice," and requires all would-be claimants to provide 60-day written notice of their claims, shortening the general two year limitation period. The intention may have been to address slip and fall incidents, but the broad language means that other injuries, such as from falling snow or ice, could also be included.

Shorter Notice Periods:

As a result of the amendments, claimants are now required to provide written notice of their claim to property owners, tenants, and/or snow removal companies within 60 days after the occurrence of the injury. The notice must be served personally or sent by registered mail, and it must include the date, time and location of the occurrence.

This notice period was intended to mirror the 10-day notice period already in place to protect municipalities, but it was extended to 60 days after parliamentary debate.

Who is Served:

Importantly, the claimant must serve only one of the occupier or snow removal company in order to comply with the amendment. The Act now also requires occupiers who have been served with such a notice, to serve any other occupiers or snow removal companies with the notice, and vice versa.

Again, the 60-day notice period is met once any of the occupiers or snow removal contractors receive the written notice, "even if the action is to be brought against a person that did not originally receive the notice."[1]

Exceptions:

This section effectively shortens the two-year limitation period to sixty days, which is of great benefit to occupiers. However, the amendments also included two exceptions. Failure to give notice within sixty days will not be a bar to the claim: (1) if the plaintiff dies as a result of the accident;[2] or (2) if a judge finds there is a reasonable excuse for not meeting the 60 days, and the defendant would not be prejudiced in its defence.[3]

Impact on Occupiers:

This significantly shorter notice period should make investigation of claims easier, if claimants comply with the requirements. Stronger investigations could make it easier for occupiers to defend such claims by gathering evidence before it goes stale, memories fade, and/or staff members leave. Occupiers with CCTV cameras may consider retention of footage for 60 days, if possible.

As above, occupiers need to take note of the new requirement that they serve all other occupiers and snow removal companies with any notice received under the Act.

Finally, there is a question as to how much teeth the legislation has, where a plaintiff need only prove that there is a "reasonable excuse" for their failure to comply and that the defendant is not prejudiced in its defence.

The concept of "reasonable excuse" has received some judicial consideration in Ontario in interpreting personal injury claims against municipalities under the Municipal Act, 2001. Courts have frequently emphasized that these words should be given their plain and ordinary meaning, while considering the surrounding circumstances of each particular case.[4]

For example, we can expect that issues surrounding the plaintiff's mental health impacting their ability to launch a claim[5], or delayed knowledge of the extent and severity of their injuries[6] may persuade a judge in extending the 60-day notice period. A plaintiff's ignorance of the notice requirement, on the other hand, is unlikely to be sufficient on its own in establishing a reasonable excuse for missing the required notice period.[7]

The length of the delay will also likely be an important factor in determining prejudice to the defendants' defence.[8] Defendants who have built their incident investigation protocols around the 60 day period may find success in proving prejudice. For example, if all CCTV footage is erased after 60 days, and a claim is made on the seventieth day, it would be arguable that the defendant suffered irreparable prejudice by its inability to review CCTV footage of the alleged fall.

by Rachel Cooper and Donia Hashem

[1][ps2id id='1' target='/] Bill 118 at s. 6.1(7).
[2][ps2id id='2' target='/] Bill 118 at s. 6.1(5).
[3][ps2id id='3' target='/] Bill 118 at s. 6.1(6).

[4][ps2id id='4' target='/] *Crinson v. City of Toronto*, 2010 ONCA 44 [Crinson] at para 22.
[5][ps2id id='5' target='/]. *Crinson* at para 37.
[6][ps2id id='6' target='/] *Seif v. Toronto*, 2015 ONCA 321 [Seif] at para 28.
[7][ps2id id='7' target='/] *Seif* at para 29, citing Argue v. Tay (*Township*), 2013 ONCA 247 at para 47.
[8][ps2id id='8' target='/] *Argue v. Tay (Township)*, 2012 ONSC 4622 at para 51, affirmed 2013 ONCA 247.

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.