

Hurt? Notify The City Of Your Injury Claim Immediately... Or Risk the Loss of Your Right to Sue

The Issue

- You lose your right to sue a city / municipality if you fail to notify them very quickly of your injury.
- If you fail to notify within 10 days, then do you have a “reasonable excuse” for being late?
- What is a “reasonable excuse”?

The *Municipal Act* requires that written notice must be provided to the municipality by registered mail **within 10 days of an accident**; failing which a person cannot commence a lawsuit.

Sections 44(10) and 44(12) of the [**Municipal Act**](#) read as follows:

s. 44(10) - No action shall be brought for the recovery of damages under subsection (2) unless, **within 10 days after the occurrence of the injury**, written notice of the claim and the injury complained of has been served upon or sent by registered mail to, the clerk of the municipality...(bold added)

s. 44(12) - Failure to give notice or insufficiency of the notice is not a bar to the action if a judge finds that there is a **reasonable excuse** for the want or the insufficiency of the notice and that the municipality is not prejudiced in its defence. (bold added)

Why This Matters

The purpose behind this limitation period is that a municipality has a timely opportunity to investigate the circumstances of an accident. This is especially important where the allegation is

that the roadway or sidewalk was not properly maintained. For example, that ice and snow was not cleared away in a timely manner or that foliage prevented motorists from seeing signage.

Unfortunately, the vast majority of the public, especially new immigrants or visitors, are unaware that these provisions of *Municipal Act* require them to provide written notice to a municipality within 10 days of the occurrence of an accident. Failure to provide notice could therefore result in them being unable to recover for personal injuries to damage to their property, which was caused by the negligence of a municipality.

It is therefore essential that injured parties seek advice from a lawyer as soon after an accident as possible in order to comply with such notice provisions.

The Details

In the recent case of [**Allen v. The Corporation of the County of Prince Edward, 2012 ONSC 3870 \(CanLII\)**](#), the Superior Court of Justice of Ontario considered the case where a man who was involved in a single car accident sustained serious personal injuries and also extensive property damage.

The plaintiff did not provide any notice to the County that it was being sued for improper road design and road maintenance, before it was served with the Statement of Claim almost 2 years after the accident.

The municipality in this case, brought a motion for summary judgment to dismiss the plaintiff's case. The municipality claimed that it was prevented, by the passage of time, from being able to investigate the circumstances of the accident.

In deciding the motion, the court followed the Ontario Court of Appeal's view expressed in [**Crinson v. Toronto \(City\)**](#), 2010 ONCA 44 (CanLII) that **a plaintiff should have the benefit of a broad and liberal interpretation of "reasonable excuse"**.

The Court repeated the approach which courts have taken in deciding summary judgment motions ie. that summary judgment should not be granted where the court has not been able to have a full appreciation of the evidence and issues required to make a final finding.

The Court allowed the plaintiff's claim to continue against the County – i.e. the plaintiff did have a “reasonable excuse” – based on the following factors:

- The court felt that the timing of when the plaintiff had the material knowledge to realize that he had a potential claim against the county (“discoverability”) was also an issue and that these types of “discoverability” issues were generally not appropriate to be decided on summary judgment motions.
- The county was unable to prove that it was prejudiced due to an inability to conduct a timely investigation of the accident (although it could possibly due so at trial).
- Another key factor, although not decisive factor, in the court's decision to dismiss the county's motion was that the plaintiff sustained severe injuries including a traumatic brain injury and was hospitalized for 60 days following the accident.

For further information on collection issues, see our previous blogs:

- [**Slip and Fall on City Property – Act Quickly if You Are Hurt**](#)
- [**Slip and Fall on Ice > 5 Months to Notify City is Reasonable**](#)