

Friday, February 05, 2010

Slip and Fall on City Property – Act Quickly if You Are Hurt

If you hurt yourself on City property, which most commonly is a slip and fall on ice, snow or an uneven sidewalk, then you have 10 days to notify the City in writing of your incident - **s. 44(10) of the Municipal Act**.

Most people do not know that they have 10 days to notify the City of their accident.

NOTE: if you are hurt and seek medical treatment (whether you are hospitalized or attending at your family doctor's clinic), the 10 day period still applies unless you fall under a narrow exception of circumstances.

In the usual case, if you fail to notify the City in 10 days, what happens? Are you still allowed to make a claim against the City?

In the recent case of **Langille v. City of Toronto** (2010 Ontario Superior Court of Justice), **a summary judgment motion under the new Ontario Rules of Civil Procedure** was brought by the City to dismiss, at an early stage, the plaintiff's lawsuit.

The facts of this case:

- the plaintiff slipped on City property on March 1, 2004;
- the plaintiff apparently "visited" the City's offices (details not given) presumably in relation to this issue, on March 8, 2004 – this was not found by the Court on the summary judgment motion to have constituted notice to the City;
- also on March 8, 2004, the plaintiff consulted and apparently retained a paralegal, affiliated with a law firm, who indicated that their normal practice would have been to send a notice letter that day. The City denies receipt of same and the paralegal was unable to produce a confirmation that the letter was sent; and
- The lawsuit itself was started on May 27, 2004 – at which time the City responded by alleging that no written notice was given, to which the plaintiff's representatives appear not to have responded.

It was held by the Court that there was no notice given during the 10 day period.

Further, the Court found that there was prejudice to the City, in this specific situation, arising from the failure to give proper notice. Specifically, there was a liability witness according to the plaintiff and the notice given three months after the fall (i.e. when the Statement of Claim was issued on May 27, 2004) was found to be insufficient because:

Based on the evidence of the claims adjuster and the Field Investigator, I conclude that had timely notice been given, the opportunity to fully investigate would have been taken by them. The question is not how much prejudice the City has suffered but whether it has suffered prejudice. In my view these lost opportunities together with the diminished recall of those involved amount to prejudice.

Gregory Chang
Bougadis, Chang LLP
55 Adelaide Street East, Suite 300
Toronto, Ontario M5C 1K6
www.bcbarristers.com