BC Injury Claims And The Local Government Act

Limitation periods can be complex. Typically if a person is injured through the negligence of another in British Columbia a 2 year limitation period applies to bring a claim for damages in Court. However, there are numerous exceptions and restrictions to this general rule and one restriction is contained in the Local Government Act.

If you are injured and can bring a claim against a municipality you will lose your right to make your claim unless you comply with s. 286 of the local government act which provides as follows:

Immunity Unless Notice Given To Municipality After Damage

(1) A municipality is in no case liable for damages unless notice in writing, setting out the time, place, and manner in which the damage has been sustained, is delivered to the municipality within 2 months from the date on which the damage was sustained.

(2) In case of the death of a person injured, the failure to give notice required by this section is not a bar to the maintenance of the action.

(3) Failure to give the notice or its insufficiency is not a bar to the maintenance of an action if the court before whom it is tried, or, in case of appeal, the Court of Appeal, believes

(a) there was reasonable excuse, and

(b) the defendant has not been prejudiced in its defence by the failure or insufficiency.

This limitation arises in many different cases including BC Car Crash cases. For example, if you are injured by a Municipal worker in the course of his employment or someone driving a Municipal owned vehicle at the time of a crash this limitation can be triggered. This obscure and very short limitation has been the death of many personal injury claims over the years and reasons for judgment were released today by the BC Suprene Court showing this 'immunity' in action.

In today's case (Persall v. Bond) the Plaintiff was injured in a 2006 motor vehicle collision. The Plaintiff brought a claim against the City of Surrey claiming that "*the City failed to design, inspect and maintain the Intersection properly*".

The Plaintiff did not give the City written Notice in 2 months as required by the Local Government Act. The City of Surrey brought an application to dismiss the Plaintiff's claim against them for this failure and this motion was granted.

In granting the motion Madam Justice Dickson summarized and applied the law as follows:

[16] When notice is not given to a municipality within two months in accordance with the statutory obligation, the onus is on the plaintiff to prove a reasonable excuse: Keen v. City of Surrey, 2004 BCSC 1161, ¶ 17.

[17] What may constitute a reasonable excuse will depend on the circumstances of each case. Courts in British Columbia have taken various factors into account in assessing whether a plaintiff has a reasonable excuse for providing late notice. They include:

a) The plaintiff's knowledge of the statutory obligation to provide notice;

b) Actions or representations by the local government which have the effect of lulling the plaintiff into a false sense of security;

c) The plaintiff's awareness of his/her injuries and awareness of the seriousness of his/her injuries;

d) The plaintiff's awareness of the involvement of the local government in the matter giving rise to the litigation; and

e) The plaintiff's capacity to provide notice.

Griffiths v. New Westminster (City of), 2001 BCSC 1516
Keen v. City of Surrey, supra
Teller v. Sunshine Coast (Regional District of), 1990 CanLII 2131 (B.C.C.A.)

[18] In Keen, Burnyeat J. held that ignorance of the law alone will not constitute a reasonable excuse for failure to provide timely notice pursuant to s. 286 of the Act. Rather, it is but one of the factors to be taken into account: Teller.

[19] When a plaintiff acts through a solicitor, responsibility for providing a municipality with timely notice of a damages claim is shared. In Horie v. Nelson (1987) Can LII 2508 (B.C.C.A.), a majority of the British Columbia Court of Appeal held that a solicitor's negligent failure to deliver timely notice does not necessarily constitute a reasonable excuse. In response to an argument that the appellants relied on their solicitor to deliver notice, but the solicitor inexplicably failed to do so, MacDonald J.A. stated:

[18] ... That approach can only help the appellants if they can put forward their own reasonable conduct and dissociate themselves from the failure of their solicitor.

[19] I agree with Locke J. when he said in the course of his reasons [p. 112]: "I am driven further by the wording of the section of our statute to hold that the responsibility for delivering the notice is collective in that, if the notice is not delivered, it does not matter by whose hand the failure occurred". The section requires reasonable excuse for "failure to give the notice". That means that when a party acts through a solicitor the conduct of both must be examined to determine whether there was reasonable excuse for failure to give the notice.

[20] In my opinion the judge was correct in his conclusion. I would dismiss the appeal.

[20] When a plaintiff is able to establish a reasonable excuse for failing to provide timely notice, the Court must go on to consider whether the municipality has nevertheless been prejudiced in its defence. If so, the action against it cannot be maintained despite the existence of a reasonable excuse.

[21] The onus is on the municipality to prove it has suffered prejudice as a result of receiving delayed notice. Prejudice may be presumed on the basis of inordinate delay. In such circumstances, however, it is open to the plaintiff to rebut the presumption of prejudice: Griffiths.

[22] In most cases, the issue of prejudice cannot be determined until the end of the trial. This is so because whether a defendant has, in fact, been prejudiced will depend on the allegations pursued by the plaintiff at trial and the conclusions the Court is asked to draw: Teller.

DISCUSSION

[23] The City submits that Mr. Persall has not provided an excuse, reasonable or otherwise, for his failure to provide timely notice of his damages claim to the municipality. It argues that knowledge of the statutory obligation should be imputed to Mr. Persall, given his failure expressly to deny it, and presumed of his previous solicitors. Taking into account Mr. Persall's apparent ability to instruct counsel from the outset despite his injuries, in the City's submission there is no basis for a finding of reasonable excuse.

[24] The City also submits that it has been demonstrably prejudiced by the long delay in notification. The Intersection's condition at the time of the Accident is presently unknown and would likely have been easier to ascertain had timely notice been received. In addition, the 18-month delay at issue is excessive and inordinate. In these circumstances, prejudice should be presumed.

[25] Mr. Persall responds that his serious injuries, together with his reasonable conduct in leaving the matter of notification to his solicitors, constitute a reasonable excuse. He submits the Court should infer he was personally unaware of the notification requirement and unable fully to instruct counsel until he was released from GF Strong in January, 2008. He emphasises that notice was provided shortly after his present solicitors were retained, but concedes his previous solicitors' failure to provide timely notice is unexplained. In the event a reasonable excuse is found, he submits the issue of prejudice should be determined at trial as evidence of the Intersection's condition at the relevant time may well come to light.

[26] I accept that Mr. Persall's discovery evidence as to his knowledge of the statutory notice requirement is less than crystal clear. I am nonetheless satisfied that an absence of personal knowledge can be reasonably inferred and conclude he was personally unaware. This does not, however, constitute a reasonable excuse, given Mr. Persall's demonstrated capacity to instruct counsel within weeks of the Accident and his previous solicitors' unexplained failure to notify the City of his damages claim.

[27] It is not difficult to posit various explanations for the failure of Mr. Persall's previous solicitors to provide the City with written notice of his damages. One is that they formed the view the City would not be held liable and chose consciously not to notify. Another is that they were unaware of, or insufficiently attentive to, the statutory notice obligation. In the absence of evidence on the point, however, a factual conclusion simply cannot be reached.

[28] As stated by MacDonald J.A. in Horie, when a plaintiff acts through a solicitor responsibility for delivering notice of damages in accordance with the Act is collective. Accordingly, the Court must examine the conduct of both to determine whether there was a reasonable excuse for late notification. In my view, the reason is obvious. A plaintiff will not be excused from the statutory notification obligation merely because he or she retains a new solicitor who adopts a new approach to a potential claim for damages against a municipality. Were it otherwise, the Legislature's decision to impose a short limitation period for such claims would be easily overcome.

[29] In this case, I am satisfied that Mr. Persall acted through his previous solicitors from no later than October 10, 2006 in connection with the Accident. I am unable to reach a conclusion, however, as to why those solicitors did not provide the City with written notice of his damages as required by the Act. That being so, I am unable to determine whether Mr. Persall does or does not have a reasonable excuse for his failure to comply with his statutory obligation to provide timely notice to the City. The onus is on Mr. Persall to establish a reasonable excuse. The onus has not been met.

[30] If I am wrong and Mr. Persall does have a reasonable excuse as a result of his injuries and the unexplained inaction of his previous solicitors, I agree with him that the issue of prejudice cannot be determined until the end of the trial.