

Monday, March 5, 2014

Brampton Sidewalk Slip and Fall - Knee Surgery: Claim Dismissed

A 51 year old electrician recently had his [personal injury lawsuit, against the City of Brampton](#), dismissed on a summary judgment motion that considered the new directions given by the Hryniak decision by the Supreme Court of Canada. The issue was whether the plaintiff's failure to give notice to Brampton, within 10 days of slip and fall, was fatal to his claim against the City. Due to lack of knowledge, this plaintiff did not give notice to the City of Brampton until approximately 18 months post-accident.

He suffered a torn MCL in his left knee requiring arthroscopic surgeries, with a recommendation for total left knee replacement, as a result of slipping and falling on ice and snow on a city sidewalk: ***Hennes v. City of Brampton, 2014 ONSC 1116.***

The problem was that the plaintiff did not know that there was a 10 day requirement to notify the City - which is the requirement for any municipality in Ontario - of the slip and fall. Instead, the plaintiff did not consult a lawyer until about 17 months after the slip and fall, when his treating orthopaedic surgeon recommended a total knee replacement, at which point a Statement of Claim was quickly issued.

Madam Justice Donohue reviewed the plaintiff's medical problems arising from the slip and fall, wherein she found that the plaintiff knew that he had serious problems arising from this slip and fall - being one knee having undergone arthroscopic surgery and the other one receiving a recommendation for arthroscopic surgery - and yet did nothing to further investigate the matter from a legal standpoint.

This is a tough decision for the plaintiff and shows the danger of being uninformed - which is not unreasonable - about the 10 day notice period imposed upon people who slip and fall on municipal property in Ontario.

Readers may also want to review our other blogs on this 'notice period' issue arising in other cases, including our:

- our February 5, 2010 blog on the Langille action involving a slip and fall on a Toronto sidewalk (notice given 3 months post-accident);
- our September 24, 2010 blog on a slip and fall on a Toronto sidewalk (notice given 5 months post-accident);
- August 30, 2012 blog about municipal road design (notice given almost 2 years post-accident); and
- our July 12, 2013 blog on a slip and fall on a Kingston sidewalk (notice given 12 months post-accident).

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