

## **Poorly Maintained Road Caused Your Car Accident? Notify the City Immediately...To Protect Your Right to Sue**

### ***The Issue***

- A poorly maintained road – like a pothole, poor lighting, unmarked curves – leads to your car accident
- You are badly hurt and then sue to claim damages for your losses
- You do not give the municipality, who you allege maintained the road badly, with early notice of your accident, injury and losses
- You instead wait almost two years to sue, then serve your Statement of Claim upon the municipality
- Are you allowed to maintain your claim, when the [Municipal Act, 2001 S.O. 2001, c.25](#), indicates that you have to give notice to the City within 10 days after your accident?

Further to our [August 30, 2012 blog about a car accident involving alleged negligence by a city](#), we discussed the requirements around providing notice to the City within 10 days of the incident and initiating a lawsuit within a 2 year limitation.

### ***Why This Matters***

- Most people do not know you have to give notice to a City (if you allege they did something improperly which contributed to your accident) within 10 days of your accident.
- Most people do not know how to give notice to the City, in any event

- Injured people who do not give proper, quick notice will then face a defence seeking to dismiss/end their lawsuit, for failing to comply with the notice requirements

In the case that one fails to meet these deadlines there are still options available. Pursuant to s. 44(12) of the *Municipal Act*, 2001 S.O. 2001, c.25, in order to defend a late Notice to the City, and as affirmed in the case [\*\*Allen v. The Corporation of the County of Prince Edward, 2012 ONSC 3870 \(CanLII\)\*\*](#), we are required to answer two questions:

- Did the plaintiff have a reasonable excuse?
- Has the City (Defendant) been prejudiced at all by the delay?

### ***The Details***

Further to the recent case, [\*\*Argue v. Tay \(Township\), 2012 ONSC 4622 \(CanLII\)\*\*](#), when answering each of the above-mentioned questions, we need to consider the following factors:

#### **A) Did the plaintiff have a reasonable reason/excuse for the delay?**

##### **> The Test: [\*Crinson v. Toronto\*](#)**

- What was the seriousness of the injury?
- What was the duration of the plaintiffs stay in hospital?
- What was the nature and amount of medications the Plaintiff was prescribed and taking?
- Was there subsequent therapy which the plaintiff required?
- What was the impact on the Plaintiff's career and mental health?
- Did the plaintiff have a lack of knowledge that notice was required?
- What is the length of delay?

Overall, one quickly sees that the focus of the Court is on the physical and mental abilities of the plaintiff for providing notice to the City and usually do not simply take into consideration the plaintiff's lack of awareness of the notice or legal procedures.

**B) Is the City (Defendant) prejudiced by the delay?****> The Test: [Fremeau v. Toronto \(City\), 2009 CanLII 49543 \(ON SC\)](#)**

- Whether the Municipality had a timely opportunity to investigate the scene and circumstances of the accident?
- The only way one can prove the City was not prejudiced by the delay is to establish that the City had taken steps to investigate the accident, OR
- If the City has not received a notice from the Plaintiff, whether the Plaintiff himself/herself conducted an investigation by obtaining photographs or measurements showing the road surface at the time of the accident, or locating any witnesses.

In *Argue v. Tay (Township)*, the Plaintiff's vehicle hit a pot hole, left the roadway and rolled over into a ditch. Written Notice was not provided to the Defendant, The Corporation of the Township of Tay, until 23 months after.

In order to defend that the Defendant was not prejudiced, the Plaintiff argued that the Township of Tay had received actual notice of the accident because not only had the fire Department obtained firsthand knowledge of the dangerous conditions of the road while at the scene, but they also received a copy of the Motor Vehicle Accident Report which had clearly set out the cause of the accident as being due to "poor road conditions". Therefore, the Township of Tay had reasonable opportunity to inspect the loss location on or about the time that the accident occurred. Further, any prejudice the Township of Tay alleged resulted from the Township's own actions or inactions.

The Defendant, the Township of Tay, argued that the road materially changed during the two year period between when the accident happened and when notice was given, and the Defendant, had no opportunity to complete its investigation with respect to the accident.

In response to determining **whether the Plaintiff had a reasonable excuse**:

- The trial judge noted that the Plaintiff was discharged from hospital on the same day of the accident and returned to work within 2 weeks.
- She only sustained soft tissue injuries.

- She knew that she had been injured in the accident.
- She knew that Elliott Sideroad was a Township of Tay road and she believed that the condition of the road had caused her accident as she mentioned in her examination for discovery.
- She presumed that the Township of Tay was responsible for road maintenance and the condition of the road.
- Therefore, her injuries did not prevent her from notifying the Township of Tay within 10 days of accident.

In order to determine **whether the defendant was prejudiced by the delay:**

- The trial judge noted that neither the Plaintiff nor the agents from the fire department made any investigation efforts with respect to the status of the road.
- There is no record in the possession of the Township of Tay, including the Fire Department records, and the motor vehicle accident report completed by the O.P.P. which would have given the Township of Tay notice of the plaintiff's injuries or her intent to make a claim.

**Conclusion:**

- In the end the trial judge ruled that the Plaintiff did not meet the requirements of either test and therefore her claim was dismissed.
- One can quickly see the importance of meeting both time limitations; however, **in some cases alternate avenues still exist but only if the surrounding circumstances are found to be reasonable!**

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