Occupiers' Liability Amendment Act receives Royal Assent in Ontario

29 décembre 2020

The amendment came into force on January 29, 2021.

On December 8, 2020, Bill 118 (*Occupiers' Liability Amendment Act,* 2020) (Bill 118) received Royal Assent. Bill 118 amends the Occupiers' Liability Act to state no action shall be brought for the recovery of damages for personal injury caused by snow or ice against an occupier (or an independent contractor employed by the occupier to remove snow or ice), unless written notice of the claim is served within 60 days after the occurrence of the injury.

The notice requirements are as follows:

- Written notice of the claim must be provided within 60 days of the injury to at least one of the following individuals:
    - An occupier; or
    - An independent contractor employed by the occupier to remove snow or ice.
- Notice must include the date, time and location of the slip and fall incident;
- Notice must be personally served or sent by registered mail to an occupier and/or independent contractor employed by the occupier to remove snow and/or ice from the premises during the relevant time.

Importantly, injured parties are not barred from commencing an action against an occupier and/or independent contractor who was not provided with a notice within 60 days, as long as proper notice was provided to at least one of the occupiers or any independent contractors within that period.

Once an occupier receives notice, they are required to personally serve or deliver a copy of the notice by registered mail to any other occupiers of the premises and/or any independent contractors employed to remove snow/ice from the premises. Similarly, once an independent contractor receives notice, they are required to personally serve or deliver by registered mail a copy of the notice to the occupier that hired them to perform snow/ice removal from the premises at the relevant time. The subsections creating these obligations to forward notice of a claim to other occupiers or contractors do not specify a period to do so. Similarly, these subsections do not include any consequence

for an occupier or independent contractor's failure to forward along any notice that they receive.

The practical implication of this notice requirement is that it will allow a better opportunity to investigate the incident, including staff and witness interviews and preservation of any activity logs and surveillance footage.

Failure to give the required notice does not apply to situations involving death, or if there is a "reasonable excuse" for not having provided notice and there is no prejudice to the defendant. The court will be required to exercise judicial discretion on what constitutes a reasonable excuse and prejudice.

A previous version of Bill 118 had provided for a 10-day notice period, akin to the notice provisions in the *Municipal Act* and *City of Toronto Act*. However, the notice period was significantly extended to 60 days in the version which received Royal Assent.

The potential difficulties injured parties may face in attempting to identify and provide notice to all possible occupiers and/or independent contractors is likely reflected in the extended notice period and the lack of a requirement to provide notice to all possible occupiers and/or independent contractors.

These changes will have implications for actions commenced as a result of slip and falls involving ice or snow occurring on or after January 29, 2021.

For any questions regarding Bill 118, please reach out to any of the key contacts below.

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