



New 60 Day Notice Requirement in *Occupiers' Liability Act* (Injury from Snow or Ice) Overview

Laurie Murphy, Research Lawyer

Bill 118, *An Act to amend the Occupiers' Liability Act*, received royal assent on December 8, 2020 and came into force on January 29, 2021. The amendment introduces a new 60-day notice requirement for claims for personal injury caused by snow or ice which, if not met, will bar actions unless an exception applies.

The new notice period is found in section 6.1(1) of the [Occupiers' Liability Act, R.S.O. 1990, c. O.2](#) (the "Act") which reads in part:

Notice period – injury from snow, ice

No action shall be brought for the recovery of damages for personal injury caused by snow or ice against [an occupier and/or an independent contractor employed by the occupier to remove snow or ice on the premises] unless, within 60 days after the occurrence of the injury, written notice of the claim ... has been ... served

Prior to this amendment, there was no notice period in the Act and a claimant was only required to bring an action within the two-year limitation period under the *Limitations Act, 2002*. A claimant is now required to both give notice within 60 days and issue a claim within the two-year limitation period under the *Limitations Act, 2002*.

Notice Requirements

Section 6.1(1) and (2) of the Act set out the following notice requirements:

- written notice of the claim must be provided within 60 days of the injury to at least one of the following persons:
 - an occupier
 - an independent contractor employed by the occupier to remove snow or ice on the premises during the relevant period in which the injury occurred
- notice must include the date, time and location of the incident
- notice must be served personally or by registered mail.

The Act then places an obligation on the occupier or independent contractor receiving the notice to serve others. Under section 6.1(3), an occupier that receives notice must serve a copy of the notice on (a) any occupiers of the premises during the relevant time and (b) any independent contractor employed by the occupier to remove snow or ice on the premises during the relevant time. Similarly, under section 6.1(4), an independent contractor that receives notice must serve a copy of the notice on the occupier that employed the independent contractor. Copies of the notice are required to be served personally or by registered mail. There is no specific deadline in the Act for serving the notice on these other occupiers or independent contractors.

The Act confirms in section 6.1(7) that the limitation on bringing actions after the 60-day period no longer applies if proper notice is provided to either an occupier or an independent contractor, "even if the action is to be brought against a person that did not originally receive the notice."

Exceptions to the Notice Requirement

Section 6.1(5) and (6) set out two exceptions to the notice requirement in subsection (1).

- The failure to give notice in accordance with the Act will not bar the action in the case of death of the injured person as a result of the injury.
- The failure to give notice or insufficiency of the notice will not bar the action if a judge finds that there is “reasonable excuse”, and that the defendant is not prejudiced in its defence. The “reasonable excuse” provision is similar to the provisions in section 44(12) of the *Municipal Act, 2001* and section 42(8) of the *City of Toronto Act, 2006* relating to the notice period for incidents on municipal highways (including roads and sidewalks). In that context, the Court of Appeal has held that the words “reasonable excuse” are to be given a broad and liberal interpretation and that the court should consider all the circumstances of the particular case. – *Azzeh v. Legendre*, [2017 ONCA 385](#); *Crinson v. Toronto (City)*, [2010 ONCA 44](#); *Seif v. Toronto (City)*, [2015 ONCA 321](#).

Other Notice Periods

It is important at the outset to identify where the incident occurred to determine whether this new 60-day notice period or other shorter notice periods apply. In addition to the *Occupiers' Liability Act*, notice periods are found in various statutes, including the *Municipal Act, 2001*, the *City of Toronto Act, 2006*, and the *Public Transportation and Highway Improvement Act*. Generally, these other notice periods are 10 days. The [Limitations and Notice Period Chart](#) reviews the notice periods with hyperlinks to the relevant statutes.

It should also be noted that while the *Occupiers' Liability Act* may apply to the Crown subject to the *Crown Liability and Proceedings Act, 2019* (s. 10(1)) or to a municipality depending on the facts, section 10(2) of the *Occupiers' Liability Act* provides that the Act does not apply to the Crown or a municipality where it is an occupier of a public highway or a public road.

Practice Management Tips

- Review the new notice requirements as found at section 6.1 of the [Occupiers' Liability Act](#)
- Familiarize yourself with notice periods in advance and consider the applicability of notice requirements as soon as you accept a new retainer (or even upon contemplating a new retainer). Consult the [practicePRO limitation period resources](#).
- Conduct early investigation to confirm the location of the incident, and the identity and address of an occupier and/or independent contractor for service.

Guard against potential claims arising from serving notice on the wrong occupier or independent contractor based on an inaccurate incident location provided by the client by taking steps such as:

- a) having the client mark where the incident occurred on a map or aerial photo of the incident site (or better yet, attending the incident site with the client);
- b) having the client confirm in writing where the incident occurred and confirming that the client has been advised of the importance of getting this right; and
- c) where in doubt, serving the notice on all nearby occupiers.

- In situations where the exact location of the incident is unclear (e.g., where the incident may be subject to the 10-day notice under the *Municipal Act, 2001* or the 60-day notice under the *Occupiers' Liability Act*), comply with both potential notice periods.
- If the *Occupiers' Liability Act* applies, consider whether the matter involves, or potentially involves, a “personal injury caused by snow or ice” requiring notice under the Act. If the Act has potential application, serve the notice out of an abundance of caution.
- Advise your clients of the notice requirement in writing.
- Diarize the 60-day notice period in your practice management software and tickler systems, allowing sufficient time for personal service or service by registered mail, and diarize the limitation deadline.
- Ensure that your notice contains the required information, and make sure you have correctly identified the person(s) to be served.
- Provide notice as soon as possible within the 60-day notice period. Taking steps right away rather than waiting until the last minute can prevent missed deadlines when unexpected events occur (e.g., client provides the wrong date of injury, administrative or other delays that arise at the last minute and which may be out of your control, discovery within the 60 days that notice was served on the wrong person).
- Retain proof of service of the notice.
- Provide notice to all potential occupiers and independent contractors if possible.
- Advise your occupier and independent contractor clients of the requirements that they serve a copy of the notice received on others. Ideally, this notice should be provided as soon as reasonably practicable.
- Watch for CPD programs discussing the amendment and monitor case law developments on interpreting section 6.1 of the Act.

Avoid miscommunication and protect yourself from possible liability exposure to prospective clients/non-clients in non-retainer situations (where you have been consulted but not retained) by preparing a non-engagement letter. In addition to confirming the non-existence of the retainer, the letter should ideally note:

- the notice period requirement, the specific deadline if known, the potential consequences of non-compliance with the notice period, and the need for urgent action;
- the application of a limitation period, the specific deadline if known, and the consequences of missing a limitation period; and
- any previous verbal warning regarding these matters.

Ideally, confirm acknowledgement of receipt of the letter by using a trackable delivery method such as registered mail, courier, or email with read receipt, or deliver by hand and document receipt.

- If the deadline for serving notice has been missed, serve the notice as soon as possible and advise LAWPRO immediately if you suspect you have made an error.

© 2021 Lawyers' Professional Indemnity Company (LAWPRO). All rights reserved.
® Registered trademark of Lawyers' Professional Indemnity Company