

THE LAWYER'S DAILY

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Personal Injury

Bill 118: Slip and fall incident? You won't be able to sue | Jasmine Daya

By Jasmine Daya



Jasmine Daya

(January 5, 2021, 9:12 AM EST) -- When an individual contacts my firm, it's usually because they have been injured through no fault of their own and they are at a point when they need legal advice. Generally, my client's first inclination is not to sue, it is to recover from injury. When they contact my firm, it's usually because the recovery was not as easy or as fast as they had anticipated and often, they have no choice financially but to sue.

There is a cost to being injured as a result of the inability to work and/or the cost of rehabilitation among other real costs that arise. Although the \$45 ambulance invoice my clients receive in the mail after being discharged from the hospital following an incident usually doesn't cause much concern, it's the ongoing costs that start causing fear, stress and anxiety.

Clients' costs may include prescription medication, physiotherapy, chiropractic treatment, retraining and time off work, among other things. As the costs mount, the call to my firm is made.

Unfortunately, focusing on recovery and rehabilitation is not the only issue that slip and fall accident victims must now be forced to think about. Bill 118, also known as the *Occupier's Liability Amendment Claim*, states that if you fall due to snow or ice and become injured due to someone else's negligence, you need to make the occupier and independent contractor aware of your intention to sue in writing *within 60 days* or you will not be able to successfully sue.

Note that according to the *Limitations Act* in Ontario, you have two years to sue for personal injury but if you haven't provided notice within 60 days, you won't be able to sue successfully.

In claims against municipalities, the notice period is 10 days. For example, if you slip and fall due to the City of Toronto's failure to address slippery conditions on a sidewalk, you must notify the city within 10 days of your intention to sue. The notice must include enough information about the location of the incident and your injuries to enable the city to investigate the matter.

Failure to provide notice within the 10-day period or failure to provide notice with particulars could result in your inability to successfully sue a municipality. Although unfair given that you in fact have two years to sue under the *Limitations Act*, I always felt that it was OK because it is the public's money that is set aside to cover personal injury claims.

The Bill 118 situation is very different. It's not the public's money, it's insurance company money. The intention

of Bill 118 is to keep insurance premiums down, as supposedly it had become extremely challenging for winter maintenance companies to obtain reasonable insurance rates supposedly due to the cost of claims. On the flip side, if the independent contractors were doing their jobs properly, there would not be any claims.

I cannot eradicate Bill 118 but what I can do is increase awareness of its existence as of December 2020 and advise the public of the 60-day written notice requirement. When a client calls me six months after a slip and fall incident needing my help, it's going to be difficult for me to tell that individual, who cannot put food on the table for his children because he cannot work due to injury arising from a fall in an icy parking lot, that "I'm sorry but there is nothing I can do to assist."

Jasmine Daya is managing lawyer at [Jasmine Daya & Co.](#), a personal injury firm that specializes in club assaults, cyberbullying, claims involving minors and elder abuse. She can be reached at jasmine@jdlawyers.ca.

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