Court applies new notice provision to shut down slip-and-fall claim

November 27, 2026

On Nov. 25, 2026, the Ontario Superior Court of Justice released its decision in *Lanzelotti v. McDonald's Restaurants of Canada Limited,* 2026 ONSC 6619. This appears to be the first reported decision applying the new 60-day notice period found at s. 6.1 of the *Occupiers' Liability Act* (OLA). In this case, the Court granted summary judgment against the plaintiff due to his failure to comply with the technical requirements of that provision, illustrating the potential danger of non-compliance for plaintiffs generally.

Background

The plaintiff alleged that on Oct. 20, 2022, he slipped and fell due to ice and snow on a pedestrian walkway outside a McDonald's restaurant, suffering injuries. He claimed he immediately walked back into the restaurant and verbally notified an employee about the incident and sent a notice letter by regular mail on Oct. 31. He later commenced an action for damages against McDonald's as the occupier of the subject premises on Nov. 30, 2023.

The defendant, for its part, claimed that it received no notice of the incident until it was served with the statement of claim, whether via mail or through the employee who was allegedly notified. It further gave evidence that the premises in question featured a CCTV system with coverage of the alleged loss location, but that footage had been automatically overwritten "one to two months" after the incident since no notice had been received. The defendant therefore moved for summary judgment in reliance on the notice requirement for injuries caused by ice or snow as found at 6.1 of the OLA.

The motion decision

The Court dismissed the plaintiff's claim, finding that the plaintiff had not fully complied with the notice formalities at s. 6.1(1) of the OLA, and that he had not met his onus to show that there was a reasonable excuse for the insufficiency of notice **and** that the defendant was not prejudiced in its defence, as per s. 6.1(6) of the OLA. The Court noted that s. 6.1(1) specifically requires notice to be personally served or sent by registered mail, rather than by regular mail as the plaintiff had done.

Regarding the first branch of the test, the Court rejected the plaintiff's argument that delivering the notice by regular mail constituted a "reasonable excuse" for failing to use personal service or registered mail. The Court held that because the defendant never responded to the mailed notice letter, and the plaintiff and his counsel failed to follow up, it was not reasonable for the plaintiff to assume that the notice had come to the defendant's attention.

The Court went on to find that the defendant suffered "irreparable" prejudice because it had overwritten CCTV footage of the incident, which it would not have done had it received timely notice from the plaintiff. The Court referred to jurisprudence under the analogous provision in the *Municipal Act, 2001* for the proposition that verbal notice to an employee is insufficient, particularly in this case, where the plaintiff acknowledged that the person he had notified was not a manager.

Commentary

This decision highlights the danger faced by plaintiffs who allege injuries due to snow and ice but fail to provide the proper form of notice within 60 days under s. 6.1 of the OLA. Particularly where there is evidence that the defendant has suffered real prejudice, occupiers can rely on this provision to dismiss the claim in its entirety.

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