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Case of Note: Court of Appeal Decision in *Crinson v. City of Toronto*

The Ontario Court of Appeal has just released its decision in *Crinson v. City of Toronto*. In *Crinson*, the Plaintiff failed to give notice under s.44(10) of the *Municipal Act, 2001*. The trial judge in *Crinson* held that the test for "reasonable excuse" under s.44(12) was whether or not the Plaintiff was so incapacitated that he could not make arrangements to provide the City with notice within 10 days, as required under s.44.(10) of the Act..

The CA held that this was incorrect, and that the test of "reasonable excuse" is broader. The CA cited with approval the decision in *Cena v. Oakville*, 2009, 56 M.P.L.R. (4th) 11 (Ont.S.C.), where the court held that a plaintiff should be given a broad and liberal interpretation of "reasonable excuse". This is because even if a "reasonable excuse" is proven, under s.44(12) the Plaintiff's action will still be barred if prejudice to the defendant arises from the late notice.

The CA held that "all of the circumstances of a case" should be considered, in determining whether a reasonable excuse has been provided, including whether or not the Plaintiff knew of the notice requirement.

The CA held that because the Defendant in *Crinson* did not argue prejudice flowing from the late notice, it would only look at the evidence of "reasonable excuse", in considering s.44(12). The CA in *Crinson* does not consider the caselaw which has previously held that failure to give timely notice gives rise to deemed prejudice. Hopefully this will not result in Plaintiffs now arguing that the legal burden to disprove prejudice has somehow been lifted or shifted.

Because the Defendant did not call evidence to contradict the Plaintiff's evidence of "reasonable excuse", nor cross-examine upon it, the CA accepted the Plaintiff's evidence and set aside the trial judge's decision. The Plaintiff's evidence was that he was in great pain, on painkillers and depressed and upset following the accident, and so worried about his job and his health that he did not turn his mind to the notice requirement, or know about it, until he was told about it by a lawyer who contacted him.