Blaney McMurtry LLP

PUBLICATION

Court of Appeal Affirms the Crown's 10 Day Notice Provision

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The *Proceedings Against the Crown Act* ("*PACA*") requires that 10 days' notice be provided to the Crown where the action involves occupier's liability, failing which, the claim is a nullity. Courts have been critical of the 10 day *PACA* notice and have been loath to apply it.

The recent decision of the Court of Appeal in *Daoust-Crochetiere v. Ontario (Natural Resources)* signals a welcome change in the Court's perspective. In that decision, the Plaintiff fractured his ankle while on Crown land - a boat launch at Wasaga Beach Provincial Park. The incident occurred on June 13, 2010. The Plaintiff did not provide the Crown with notice until October 27, 2010 - well beyond the 10 day notice period.

The Crown moved on February 28, 2014 to have the action summarily dismissed for failure to provide 10 days notice. Blaney's lawyers Sheldon Inkol and Thomasina Dumonceau represented the Crown.

The motion judge granted summary judgment and dismissed the Plaintiff's action. In turn, the motion judge denied the Plaintiff leave to amend his claim to plead a cause of action in contract as the basic two-year limitation period had expired.

The Plaintiff appealed and argued that the dismissal be set aside based on, amongst other things, discoverability, unfairness and the application of maritime law. The Court of Appeal dismissed the Plaintiff's appeal.

The Court of Appeal held that purpose of the 10 day notice provision under *PACA* is to "target occupiers' liability with a special and strict notice requirement," which would not be achieved by the interpretation proposed by the appellant. In turn, the Court refused to allow the Plaintiff to amend his claim to assert a new cause of action. By doing so, the Court effectively precluded the Plaintiff from recasting his action to circumvent the 10 day notice provision, thereby, preserving the integrity of the 10 day notice requirement and the essential nature of the action which was one grounded in occupier's liability.

The Court of Appeal's decision leaves no room for doubt that the "special and strict" notice requirements under *PACA* remain in full force and effect.