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## INSURANCE LAW BULLETIN

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### **OCCUPIERS' LIABILITY ACT – BILL 118 PART TWO: A BRIEF ANALYSIS OF THE REQUIREMENT TO PASS ALONG NOTICE**

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[The information below is provided as a service by Shillington McCall LLP and is not intended to be legal advice. Those seeking additional information on the issues above should contact the firm at (519) 645-7330.]

In our previous bulletin, we discussed that Bill 118, the *Occupiers' Liability Amendment Act*, received royal assent on December 8, 2020. We note that the precise date for when Bill 118 comes into force remains to be proclaimed by the Lieutenant Governor. While the notice requirements discussed below are therefore not yet legally required, it would be prudent to implement systems that provide for timely notice now.

#### **Secondary Notice Requirement**

Bill 118 (<https://www.canlii.org/en/on/laws/stat/rso-1990-c-o2/latest/rso-1990-c-o2.html>) mandates that once an occupier receives notice of personal injury **arising from snow or ice**, they too must **personally serve or** deliver a copy of the notice by **registered mail** to any independent contractor whom they employed to remove snow and ice from the premises at the relevant time as well as to any other occupiers of the premises. Reciprocally, a winter maintenance contractor who receives notice of a snow and ice personal injury claim must serve a copy of the notice on the occupier who employed them.

Notably, the subsections that create this secondary notice obligation do not specify a timeline for the secondary notice to be provided. They are also silent on the consequences, if any, for an occupier or independent contractor who fails to comply. As we noted in our first bulletin on Bill 118, the plaintiff is not barred from adding other parties to the action after their 60-day notice deadline has passed, so long as they have notified one of the relevant parties (the occupier or an independent contractor) within the 60 days.

While we expect future court decisions will eventually clarify the consequences of a failure of occupiers and their winter maintenance contractors to serve each other with copies of the notices they receive, involvement in such litigation is best avoided by ensuring compliance with this new notice requirement at the outset.

It should be noted that the new notice requirements do not apply to the Crown or a municipality in their capacity as an occupier of a public highway or public road (see section 10(2) of the *Occupiers' Liability Act*).

### **How to Effect Service of the Notice**

Service can be effected personally or by registered mail and one would expect registered mail to be the preferred (cost-effective) choice in the vast majority of circumstances. Contracts will often contain a notice provision indicating the mailing address to which notice to each contracting party should be provided. If and when personal service is required, a process server may be used.

We note that the *Rules of Civil Procedure* provide that personal service on a sole proprietorship is made by leaving a copy of the document with the sole proprietor or at the principal place of business. Personal service on a corporation is effected by leaving a copy of the document with an officer, director or agent of the corporation, or a person who appears to be in control or management of the place of business. A process server should know these rules and be able to properly effect personal service.