

IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice Marc M. Monnin
Mr. Justice Christopher J. Mainella
Madam Justice Karen I. Simonsen

BETWEEN:

<i>KIM NGUYEN</i>)	
)	
(<i>Plaintiff</i>) <i>Respondent</i>)	
- and -)	<i>J. W. Feldschmid</i>
)	<i>for the Appellant</i>
<i>THE CITY OF WINNIPEG</i>)	<i>W. M. Onchulenko</i>
)	<i>for the Respondent</i>
(<i>Defendant</i>) <i>Appellant</i>)	
- and -)	<i>Appeal heard and</i>
)	<i>Decision pronounced:</i>
)	<i>January 18, 2023</i>
<i>ST. JAMES-ASSINIBOIA SCHOOL</i>)	
<i>DIVISION NO. 2</i>)	
)	
(<i>Defendant</i>))	

MAINELLA JA (for the Court):

[1] The defendant, the City of Winnipeg (the City), unsuccessfully moved for summary judgment dismissing the plaintiff's action against it by reason of her failure to provide timely notice as required by section 491(a) of *The City of Winnipeg Charter*, SM 2002, c 39 (the *Charter*). The City appeals.

[2] By way of background, on July 10, 2017, the plaintiff slipped and fell on a staircase inside a public library operated by the City. As a result of

the injuries the plaintiff suffered, she commenced an action against the City and the other defendant on June 28, 2019.

[3] Section 491(a) of the *Charter* (separate and apart from section 491(b)) creates a limitation period as it provides that no action may be commenced against the City for loss or damage arising from failure to maintain or keep in repair a public facility unless the claimant serves the city clerk with notice of the claim or action complained of within seven days after the happening of the alleged event giving rise to the loss or damage. We agree with the motion judge that the relevant inquiry in applying section 491(a) is as set out in Ian MacFee Rogers, *Law of Canadian Municipal Corporations*, 2nd ed (Toronto: Thomson Reuters, 2023) (loose-leaf updated 2023, release 1), ch 32, pt II (at section 32:26):

. . . Generally speaking, a notice is good if it gives enough information to enable the municipality to investigate the claim, that is, if it accomplishes the object of the [*Charter*]. . . . It is a question of fact in every case having regard to all the circumstances where the notice given was a “substantial notice of what has occurred” so that inquiries might be made. . . .

...

[footnotes omitted]

[4] The motion judge was satisfied that, although the plaintiff did not send a letter and complete the form the City has created for claims against it regarding the slip-and-fall incident to the city clerk until June 2018, sufficient notice to the City about the slip-and-fall incident was given for the purposes of section 491(a) of the *Charter* because library staff documented the particulars of the slip-and-fall incident (based on their observations and interviewing the plaintiff), in detail, on the day it occurred and the written

report prepared was immediately disseminated to senior staff in the administration of the public library via the City's internal computer system.

[5] The motion judge properly took a common-sense approach, as opposed to construing the requirements of section 491(a) of the *Charter* with extreme strictness, as that section stipulates little as to the form of the notice. In our view, there is evidence to support his finding that the City had fair and reasonable notice of the complaint relied on by the plaintiff within the limitation period to enable the City to make an investigation. That is all that is required (see *Ivison v Winnipeg (City)*, 1906 CarswellMan 107 at paras 9-10, 29-30 (CA)). The City has not persuaded us that the motion judge made a material error as to the law or the facts, or that his decision is so clearly wrong as to be unjust (see *Bibeau et al v Chartier et al*, 2022 MBCA 2 at para 50).

[6] In light of our decision, it is unnecessary to comment on the alternative conclusions of the motion judge that, in any event, he would excuse the plaintiff from the requirements of timely notice under the *Charter* (see section 492(2)) or provide her with relief from forfeiture of her action (see section 35 of *The Court of King's Bench Act*, CCSM c C280).

[7] In the result, the appeal is dismissed with costs.

Mainella JA

Monnin JA

Simonsen JA