

2 month notice  
6 month limit

Citation:

Date:

Docket: 513153

Registry: Abbotsford

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

PROVINCIAL COURT  
OF BRITISH COLUMBIA  
  
AUG 15 2000  
  
ABBOTSFORD  
SMALL CLAIMS COURT

BETWEEN:

GEORGE AND CHERYL SWEENEY

CLAIMANTS

AND:

BRIAN AND LIZ BREEDVELD AND  
CITY OF ABBOTSFORD

DEFENDANTS

AND:

BRIAN BREEDVELD

THIRD PARTY

REASONS FOR JUDGMENT  
OF THE  
HONOURABLE JUDGE G. S. GILL

Counsel for Claimants:	In Person
Counsel for Defendants:	Les Armistead
Counsel for Defendant:	Jeffrey G. Johnston
Counsel for Third Party:	Les Armistead
Place of Hearing:	Abbotsford, B.C.
Date of Hearing:	July 19, 2000
Date of Judgment:	August 15, 2000

[1] The Defendant, City of Abbotsford makes application at commencement of the hearing for an order dismissing the the claim against it by the claimants George and Cheryl Sweeney.

[2] The municipal Defendant says that the claimants have failed to comply with the provisions of section 285 and 286 of the *Municipal Act*, R.S.B.C. 1996, c.323.

[3] Section 285 provides that any action such as that commenced by the claimants against a municipality must be commenced within 6 months after the cause of action first arose.

[4] Section 286 provides a municipality with immunity from payment of damages to a claimant unless the municipality is provided, within 2 months from the date the damage is sustained, with written notice of the time, place and manner in which the damage is alleged to have been sustained. This particular provision may be waived by the court if satisfied of the existence of reasonable excuse and that the defendant has not been prejudiced by the failure to notify.

[5] At the hearing of this application counsel provided the court with case authorities on the limitation defence. Mr. Sweeney also elected to testify in opposition to the application. I reserved my decision in order that I might better review the authorities.

[6] Upon reviewing the matter I find that while there is insufficient evidence of prejudice to the City by lack of notice, I am nonetheless satisfied that the claimants have failed to comply with the provisions of both sections 285 and 286 of the relevant Act. The claim against the City of Abbotsford is dismissed.



The Honourable Judge G. S. Gill