

## Renewed Recommendations for Revision of Section 50-e of the General Municipal Law

Patrick Falvey

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## CURRENT LEGISLATION

RENEWED RECOMMENDATIONS FOR REVISION OF SECTION 50-E OF THE GENERAL MUNICIPAL LAW.<sup>1</sup>—The Judicial Council of New York has repeatedly recommended that Section 50-e of the General Municipal Law be amended.<sup>2</sup> The theme of this treatment is that these recommendations are soundly conceived.

### I. *The Genesis of the Section*

It is a comparatively recent innovation in the law that a public corporation may be liable for the torts of its officers and employees, when the act it has authorized is done pursuant to a governmental function as distinguished from a proprietary function of the corporation.<sup>3</sup> This imputation of liability has flowed from two principal sources, the enactment of specific statutes<sup>4</sup> relating to liability for specific acts or omissions, and from the construction given to the absolute waiver by the State of New York of its time honored immunity from tort liability.<sup>5</sup>

However, there has arisen a qualification to this liability in the form of the rule that, as a condition precedent to the liability of a public corporation in tort, it must be given timely notice of the claim.<sup>6</sup> The details attending the fulfillment of this substantive requirement were the subject matter of particularly local legislative enactments in which each municipality prescribed the form this notice must take and the manner and time in which it must be given.<sup>7</sup> Thus, a claimant was confronted by a formidable mass of municipal ordinances which were both highly technical and greatly diversified; further, he had to comply with all of the requirements of the applicable provision with technical perfection for the courts had enunciated the doctrine that anything short of strict compliance did not constitute the notice required to be given as a condition precedent to suit on the

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<sup>1</sup> Laws of N. Y. 1945, c. 694, § 1.

<sup>2</sup> 15 REP. JUDICIAL COUNCIL 86 (1949); 14 REP. JUDICIAL COUNCIL 73 (1948); 13 REP. JUDICIAL COUNCIL 34 (1947); 12 REP. JUDICIAL COUNCIL 59 (1946).

<sup>3</sup> *Bernardine v. City of New York*, 294 N. Y. 361, 62 N. E. 2d 604 (1945).

<sup>4</sup> N. Y. GEN. MUNIC. LAW §§ 50-a-50-d.

<sup>5</sup> *Bernardine v. City of New York*, 294 N. Y. 361, 62 N. E. 2d 604 (1945) (construing the effect of Court of Claims Act § 8 as impliedly waiving the tort immunity of municipalities).

<sup>6</sup> *Derlicka v. Leo*, 281 N. Y. 266, 22 N. E. 2d 367 (1939).

<sup>7</sup> See 10 REP. JUDICIAL COUNCIL 292-296 (1944).

claim.<sup>8</sup> The result was the metamorphosis of purely procedural requirements into substantive barriers to honest claims.

The Judicial Council recognized the problem, and proposed legislation which would effect uniform provisions concerning the notice requirement and also provide ameliorative methods for obviating the inequities which so often resulted from the courts' application of the existing system.<sup>9</sup> A draft was submitted which was bitterly opposed by corporation counsels and officers' associations. The present statute is the result of a compromise.<sup>10</sup>

## II. *The Efficacy of the Statute*

Has the statute, as enacted and applied by the courts, effected any substantial advancement in this field of law?

Subdivision one of 50-e has undeniably effected uniformity in respect to the time within which the notice of claim must be given to the public corporation, for it prescribes that the notice shall be given within ninety days after the claim arises and shall comply with the other provisions of the section. However, the Judicial Council proposed a ninety-day period in the belief that this would be a reasonable period and that any shorter space of time would merely serve to frustrate honest claimants without conferring any real benefit on the municipality since this lengthened period would permit the corporation to make a more thorough investigation of the merits of the claim.<sup>11</sup> The courts have rigidly applied the provision holding that they have no inherent power to extend the period except in the instances specifically set forth in Section 50-e.<sup>12</sup> In the light of this construction and the inequities it produced, the legislature in the last session adopted the repeated recommendation of the Judicial Council and has extended the period to ninety days.<sup>13</sup>

Subdivision two<sup>14</sup> provides for the content and form of the

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<sup>8</sup> *Johannes v. City of New York*, 257 App. Div. 197, 12 N. Y. S. 2d 430 (3d Dep't 1939), *aff'd mem.*, 281 N. Y. 825, 24 N. E. 2d 489 (1939); *Purdy v. City of New York*, 193 N. Y. 521, 86 N. E. 2d 560 (1908) (action was dismissed because the plaintiff in his notice of claim served on the city failed to designate the place of the accident); *Winter v. City of Niagara Falls*, 190 N. Y. 198, 82 N. E. 1101 (1907).

<sup>9</sup> 10 REP. JUDICIAL COUNCIL 265-296 (1944).

<sup>10</sup> 11 REP. JUDICIAL COUNCIL 51-52 (1944).

<sup>11</sup> 10 REP. JUDICIAL COUNCIL 269 (1944).

<sup>12</sup> *Fullam v. Westchester County Playland Commission*, 273 App. Div. 1011, 78 N. Y. S. 2d 837 (2d Dep't 1948); *Matter of Franco v. The City of New York*, 270 App. Div. 1050, 63 N. Y. S. 2d 291 (2d Dep't 1946).

<sup>13</sup> *Laws of N. Y. 1950*, c. 481, § 1. This became law on April 5, 1950, effective Sept. 1, 1950.

<sup>14</sup> N. Y. GEN. MUNIC. LAW 50-e(2): "The notice shall be in writing, sworn to by the claimant or on his behalf, and shall set forth: (1) the name and post office address of the claimant, and that of his attorney, if any; (2) the nature of the claim; (3) the time when, the place where, and the manner in which the claim arose; and (4) the items of damage or injuries claimed to have been sustained so far as then practicable."

notice and in substance embodies the original recommendation of the Judicial Council.<sup>15</sup> The notice of claim must, as in theory it should, apprise the public corporation of the material facts concerning the claim.

Subdivision three prescribes the manner in which the notice of claim must be served, *viz.*, by personal delivery to or by registered mail upon a person designated by law as a person to whom a summons in an action in the Supreme Court issued against a public corporation may be delivered. The draft of the Judicial Council specified service by personal delivery upon such a person.<sup>16</sup> This subdivision is efficacious in that it prescribes a rather simple method of service, yet also provides assurance that the notice of claim will actually be received by the public corporation. It is most important to note that the function of the prescribed mode of service is to assure that the notice will be received.

Subdivision five<sup>17</sup> must be read in connection with subdivision one for it permits the court, in its discretion, to grant an application for leave to file a notice of claim within a reasonable time after the prescribed period has expired, if it is shown that the notice could not have been filed within that period because of infancy, physical disability, incompetency or because the claimant has died before the expiration of that period. This follows the proposed section one of the Judicial Council's draft,<sup>18</sup> but the discretion of the court is notably restricted for the latter part of the subdivision requires that any such application be made within one year after the happening of the event on which the claim is based, and before any action is brought on the claim.

The courts have delimited the privilege accorded infants by subdivision five by invoking the rule that it can be exercised only by infants of tender years.<sup>19</sup> Thus, the courts have read into the statute the common law Doctrine of the Immature Infant.<sup>20</sup> This construc-

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<sup>15</sup> 10 REP. JUDICIAL COUNCIL 266 (1944).

<sup>16</sup> *Ibid.*

<sup>17</sup> N. Y. GEN. MUNIC. LAW 50-e(5): "Where the Claimant is an infant, or is mentally or physically incapacitated, and by reason of such disability fails to serve a notice of claim as provided in the foregoing subdivisions of this section within the time limited therefor, or where a person is entitled to make a claim dies before the expiration of the time limited for service of the notice, the court, in its discretion may grant leave to serve the notice of claim within a reasonable time after the expiration of the period specified in subdivision one.

"Application for such leave must be made within the period of one year after the happening of the event upon which the claim is based and shall be made prior to the commencement of an action to enforce the claim."

<sup>18</sup> 10 REP. JUDICIAL COUNCIL 266 (1944).

<sup>19</sup> *Matter of Nori v. The City of New York*, 274 App. Div. 545, 85 N. Y. S. 2d 131 (2d Dep't 1948). *Matter of Witherspoon v. The City of New York*, 193 Misc. 730, 85 N. Y. S. 2d 443 (Sup. Ct. 1948).

<sup>20</sup> *See* *Murphy v. The Village of Fort Edward*, 213 N. Y. 397, 107 N. E. 716 (1915).

tion is not too harsh for it was the announced purpose of the Judicial Council, in proposing a provision similar to subdivision five, to codify the applicable decisional law.<sup>21</sup> Furthermore, it can be reconciled with the language of the statute for it is clearly stated that leave to file a late notice will be given where the infant has failed to file within the prescribed period, "by reason of such disability," and it is unreasonable to attribute the failure of a twenty-year-old claimant to file within the ninety-day period to his legal infancy.<sup>22</sup>

The limitation in the subdivision that the application thereunder must be made within one year of the event upon which the claim is based has been literally applied by the courts,<sup>23</sup> on the theory that the discretion granted by the statute expires when that period elapses. Arrayed against the weight of authority on this point are two decisions<sup>24</sup> of inferior courts, which hold that the inherent power of the courts to afford relief to infants of tender years is not circumscribed by this provision and that the one-year period is not in the nature of a statute of limitations running during infancy. This view is least likely to effect inequitable results, for where the claimant is an infant of tender years and the application under subdivision five is not made within that period, if the limitation is strictly enforced the claim will be barred due to the laches of the infant's parent or guardian. Further, where the claimant is rendered incompetent as a result of the accident and the committee is not appointed within one year of the accident, the claim of the incompetent will be barred by the united operation of this limitation, if strictly enforced, and by subdivision one.<sup>25</sup> A provision that the disabled person may give the notice within a reasonable time after the disability ceases, is eminently more liberal and practically in keeping with the remedial tenor of the subdivision.<sup>26</sup>

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<sup>21</sup> 10 REP. JUDICIAL COUNCIL 269 (1944).

<sup>22</sup> *Matter of Nori v. The City of New York*, 274 App. Div. 545, 85 N. Y. S. 2d 132 (2d Dep't 1948).

<sup>23</sup> *Matter of Chavers v. The City of Mt. Vernon*, 276 App. Div. 855, N. Y. S. 2d (2d Dep't 1949); *Matter of Ennis v. The City of Peekskill*, 276 App. Div. 779, N. Y. S. 2d (2d Dep't 1949); *Matter of Martin v. School Board of Union Free School District, Long Beach*, 275 App. Div. 1042, N. Y. S. 2d (2d Dep't 1949); *Matter of Moore v. The City of New York*, 195 Misc. 976, 82 N. Y. S. 2d 275 (Sup. Ct. 1948); *Matter of Ferris v. Board of Education of the Town of Roxbury*, 195 Misc. 871, 92 N. Y. S. 2d 884 (Dela. Cty. Ct. 1949).

<sup>24</sup> *Matter of Curtin v. The City of New York*, 196 Misc. 587 (Sup. Ct. Kings 1949) (here the court states that to abide by that technical provision would effect a perversion of justice); *Matter of Hector v. The City of New York*, 193 Misc. 727, 85 N. Y. S. 2d 440 (Sup. Ct. 1948) (the court states that the law does not require a man to do what he cannot possibly do).

<sup>25</sup> See *Matter of Moore v. The City of New York*, 195 Misc. 976, 82 N. Y. S. 2d 275 (Sup. Ct. 1948).

<sup>26</sup> See analogous provision recommended by the Judicial Council, 10 REP. JUDICIAL COUNCIL 266 (1944).

The power of the courts to grant leave to file a late notice of claim when the claimant has died before the expiration of the time prescribed by subdivision one, has been restricted to the situation encompassed by the language of the statute.<sup>27</sup> This is illustrated by the holding that leave will be granted to file a late notice in respect to the claim for conscious pain and suffering of the deceased,<sup>28</sup> but no such extension will be granted in respect to the claim for wrongful death.<sup>29</sup> The administrator is held to strict compliance with subdivision one in respect to the latter claim and must serve the notice of claim within ninety days of the date of his appointment.<sup>30</sup>

When an application is made for leave to file a late notice of claim on the ground of the physical incapacity of the claimant, the courts have sedulously insisted upon proof that the failure to file within the time delimited by the express provision of subdivision one was due to the alleged physical incapacity.<sup>31</sup> The determination of the merit of the particular application depends on the court's interpretation of physical incapacity as intended by the statute, and the resolution of the issue of fact as to whether that condition existed. The manner in which these applications have been handled cogently illustrates the judicial attitude that Section 50-e is to be strictly construed.<sup>32</sup> A foremost expression of this attitude is to be found in *Matter of Haas v. Incorporated Village of Cedarhurst*,<sup>33</sup> wherein the claimant fell on the sidewalk and sustained a fractured hip. She was hospitalized for quite some time, due partially to the fact that she was an eighty-year-old woman. She failed to serve notice of claim within sixty days after the accident but applied for leave to file a late notice, on the ground of physical incapacity. Her application was denied on the ground that there was no showing that she was so incapacitated that the notice of claim, sworn to by her or by someone in her behalf, could not have been filed within the prescribed period.

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<sup>27</sup> *Matter of Raymond v. The City of New York*, 194 Misc. 686, 88 N. Y. S. 2d 73 (Sup. Ct. 1949); *Matter of Mulligan v. County of Westchester*, 272 App. Div. 927, 71 N. Y. S. 2d 152 (2d Dep't 1947); *Matter of Hackling v. Board of Education of the Vestal School District #1*, 187 Misc. 52, 61 N. Y. S. 2d 724 (Sup. Ct. 1946).

<sup>28</sup> *Ibid.*

<sup>29</sup> *Matter of Mulligan v. The City of New York*, 273 App. Div. 152, 75 N. Y. S. 2d 28 (1st Dep't 1947).

<sup>30</sup> *Matter of Hackling v. Board of Education of the Vestal School District #1*, 187 Misc. 52, 61 N. Y. S. 2d 724 (Sup. Ct. 1946).

<sup>31</sup> *Matter of Aurricchio v. City*, 272 App. Div. 1047, 74 N. Y. S. 2d 765 (2d Dep't 1947), *aff'd mem.*, 299 N. Y. 607, 83 N. E. 2d 176 (1949); *Matter of Assimenios v. The City of New York*, 274 App. Div. 938, 83 N. Y. S. 2d 724 (2d Dep't 1948); *Matter of Franco v. City of New York*, 270 App. Div. 1050, 63 N. Y. S. 2d 291 (2d Dep't 1946).

<sup>32</sup> *Matter of Rudolph v. City of New York*, 191 Misc. 947, 77 N. Y. S. 2d 788 (Sup. Ct. 1947); *Meadows v. Village of Mineola*, 190 Misc. 815, 72 N. Y. S. 2d 368 (Sup. Ct. 1947).

<sup>33</sup> 275 App. Div. 1031, 74 N. Y. S. 2d 72 (2d Dep't 1948), *aff'd mem.*, 298 N. Y. 757, 83 N. E. 2d 156 (1948).

In contrast to this holding, the courts generally have been more liberal in their application of this phase of subdivision five.<sup>34</sup> This insistence by the courts that the application be made within a reasonable time after the disability ceases, as well as within one year of the happening of the event, is not unreasonable.<sup>35</sup>

Subdivision six<sup>36</sup> of Section 50-e is perhaps the most important part of the statute for it was conceived as embodying the ameliorative aspects of the legislation. It was intended to afford a means of obviating the inequities attendant upon the application of the old system.<sup>37</sup> In general, it provides a method of enabling the correction of inconsequential and non-prejudicial errors of claimants in attempting to comply with the technical phases of the statute. However, the scope of the discretion accorded the courts to correct such minor defects is limited in two respects. The first of these is that the application for leave to amend must be made before the trial of an action or hearing on a special proceeding to which the provisions of the statute are applicable.<sup>38</sup> By virtue of a recent amendment Section 50-e, subdivision 6, may now be implemented at or before the trial, and if it is made before trial it shall be made by motion on affidavits.<sup>39</sup> This eliminates the need of implementing the adjournment procedure necessitated by the former requirement that the application thereunder had to be made before the trial of an action. The other limitation to the power of the courts to implement subdivision six is a much more imposing barrier to the honest but understandably remiss claimant, for the subdivision expressly places beyond the realm of correctable defects those pertaining to the time or manner of the service of the notice of claim.<sup>40</sup>

The courts have adhered to the letter of the subdivision rather than its remedial tenor. This is unmistakably exhibited in the de-

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<sup>34</sup> Cf. *Matter of Bogle v. City of New York*, 299 N. Y. 620, 86 N. E. 2d 179 (1949); *Cohen v. City of New York*, — Misc. —, 90 N. Y. S. 2d 884 (Sup. Ct. 1949); *Matter of Williams v. City of Albany*, 193 Misc. 1037, 85 N. Y. S. 2d 799 (Sup. Ct. 1949); *Matter of Brunstein v. City of New York*, 272 App. Div. 1060, 74 N. Y. S. 2d 381 (2d Dep't 1947); *Matter of Greenfield v. City of New York*, 186 Misc. 903, 60 N. Y. S. 2d 333 (Sup. Ct. 1946).

<sup>35</sup> *Matter of Ruskin v. City of New York*, 271 App. Div. 934, 67 N. Y. S. 2d 597 (2d Dep't 1947). *Accord*: *Matter of Russel v. Board of Education of Union School Dist.*, 274 App. Div. 841, 83 N. Y. S. 2d 224 (4th Dep't 1948).

<sup>36</sup> N. Y. GEN. MUNIC. LAW § 50-e(6): "At or before the trial of an action or the hearing on a special proceeding to which the provisions of this section are applicable, a mistake, omission, irregularity or defect made in good faith in the notice of claim required to be served by this section, not pertaining to the manner or time of service thereof may be corrected, supplied or disregarded as the case may be, in the discretion of the court, provided it shall appear that the other party was not prejudiced thereby. Application for such relief, if made before trial, shall be by motion, on affidavits." This subdivision was amended April 5, 1950. See note 13 *supra*.

<sup>37</sup> See note 8 *supra*.

<sup>38</sup> See note 36 *supra*.

<sup>39</sup> Laws of N. Y. 1950, c. 481, § 1.

<sup>40</sup> See note 36 *supra*.

cision in the case of *Teresta v. The City of New York*,<sup>41</sup> wherein the plaintiff, within the time specified in subdivision one, sent a letter by ordinary mail to the Comptroller, purporting to constitute a notice of claim. The Comptroller examined the plaintiff at a hearing and the claim was denied. The plaintiff then seasonably instituted suit. The Supreme Court at Special Term dismissed his complaint on the merits on the ground that he had failed to give the city notice of claim which is a condition precedent to his right to sue the city. The letter sent to the Comptroller was held insufficient as a notice of claim because it was sent by ordinary mail whereas the statute specifically prescribes registered mail as the mode of service. Thus, this defect in the manner of the service of the notice of claim was destructive of whatever substantive rights the plaintiff had, although the city had had actual notice of the claim, which is the end sought to be assured by the prescription of the use of a particular mode of service. The court also stated that the requirements of Section 50-e cannot be waived by any city official and therefore the examination of the plaintiff by the Comptroller was immaterial.<sup>42</sup> The court proceeded well within the statutory schemata for herein the defect pertained to the manner of service, which is not a correctable defect, and further no application for leave to amend had been made before the trial. Thus, if the section is to be literally applied the defect was not amendable, yet the decision is a fair comment on the hopeless inadequacy of the subdivision. However, it is not illustrative of an unusual attitude, for it follows earlier and more authoritative decisions.<sup>43</sup>

The subdivision has been implemented in other instances with salutary effect: the misdescription of the place of the accident has been corrected;<sup>44</sup> the insertion of the wrong number of the trolley involved in an accident has been amended;<sup>45</sup> and it has been held that the failure to insert the date of the accident was no reason for dismissing the complaint of the claimant on the merits.<sup>46</sup> However, the courts also have ruled that a notice of claim which has not been sworn to is insufficient in law,<sup>47</sup> and that a notice of claim not served

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<sup>41</sup> — Misc. —, 90 N. Y. S. 2d 372 (Sup. Ct. 1949).

<sup>42</sup> *Accord*: *Matter of Fabricant v. City of New York*, 298 N. Y. 818, 83 N. E. 2d 862 (1949), *affirming* 273 App. Div. 1016, 75 N. Y. S. 2d 277 (2d Dep't 1948); *Matter of Ostrow v. City of New York*, 191 Misc. 240, 77 N. Y. S. 2d 463 (Sup. Ct. 1947).

<sup>43</sup> *Matter of Weigand v. City of New York*, 273 App. Div. 1025, 79 N. Y. S. 916 (2d Dep't 1948), *affirming* 81 N. Y. S. 2d 812 (Sup. Ct. 1948).

<sup>44</sup> *Matter of Ostrow v. City of New York*, 191 Misc. 240, 77 N. Y. S. 2d 463 (Sup. Ct. 1947).

<sup>45</sup> *Matter of Turner v. City of New York*, 188 Misc. 1012, 61 N. Y. S. 2d 199 (City Ct. 1945).

<sup>46</sup> *Bernstein's Duck Farm v. Town of Brookhaven*, 71 N. Y. S. 2d 311 (Sup. Ct. 1947).

<sup>47</sup> *Lightboro Realty Corp. v. City of New York*, 192 Misc. 947, 81 N. Y. S. 2d 465 (Sup. Ct. App. Term 1948).



personally or by registered mail is not in compliance with Section 50-e and could not be amended thereunder.<sup>48</sup> The mere statement of these holdings is destructive of any suggestion that the General Municipal Law has effectually remedied the inequities prevalent under the prior system. The insistence by the courts on absolute literal compliance with Section 50-e does not seem to be in full accord with the remedial nature of the statute.<sup>49</sup>

The original proposal of the Judicial Council embodied a provision which was truly ameliorative in that it provided that no notice of claim should be deemed insufficient because of any irregularity, etc., in the content of the notice, or in the manner in which it was served, provided that there was no intention to mislead the other party, and that in fact that party was not misled thereby.<sup>50</sup> Another of its provisions stated that the courts could grant leave to a claimant to file a late notice of claim wherein he showed a reasonable excuse for failing to serve it within the prescribed period, if the other party had actual notice of the facts and would not be prejudiced by the grant of leave to serve the tardy notice.<sup>51</sup> The sympathetic operation of these provisions would assuredly prevent the result of the *Teresta* case.

The fact that these provisions are not embodied in the present statute does not mean that the courts are powerless to relieve against such inequitable results. In *Fleischer Engineering and Construction Company v. The United States*,<sup>52</sup> the late Chief Justice Hughes, in applying the provisions of a similar federal notice of claims statute, stated: "It is unreasonable to suppose that Congress (in enacting the remedial notice statute) intended to insist upon an idle form."<sup>53</sup> The Court's decision in that case was that the failure of the claimant to serve the notice of claim by registered mail, the prescribed mode, was not destructive of his substantive rights since the Government had actual notice. It is submitted that this construction is the proper interpretation of the technical aspects of notice of claim statutes; that our courts are attributing to the legislature the intent to insist upon an idle form.

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<sup>48</sup> *City of Broome v. Binghamton Taxicab Co.*, 190 Misc. 925, 75 N. Y. S. 2d 423 (Sup. Ct. 1947); *Matter of Halloran v. Board of Education of City of New York*, 271 App. Div. 830, 65 N. Y. S. 2d 569 (2d Dep't 1946).

<sup>49</sup> See *Matter of Miller v. City of New York*, 187 Misc. 926, 63 N. Y. S. 2d 44 (City Ct. 1946) (the court states that subdivision 6 was enacted to prevent miscarriages of justice and that it should be liberally construed).

<sup>50</sup> 10 REP. JUDICIAL COUNCIL 266 (1944). Note that this recommendation preserves the rule that the moving party on an application for leave to amend a notice claim must show that the error was made in good faith and that its correction will cause no prejudice to the adverse party. *Matter of Feldman v. City of New York*, 192 Misc. 136, 79 N. Y. S. 2d 284 (City Ct. 1948).

<sup>51</sup> 10 REP. JUDICIAL COUNCIL 266 (1944).

<sup>52</sup> 311 U. S. 81 (1940).

<sup>53</sup> *Id.* at 83.

### III. Conclusion

The decisions of the courts in interpreting and applying General Municipal Law Section 50-e illustrated that in this area of the law, we are approaching the periphery of the realm of law wherein the technicality is preeminent. This is regrettable in the light of the fact that municipalities are projecting themselves into more and more fields<sup>54</sup> formerly peopled by individuals and private corporations, whose responsibility to respond in tort is not so protected by the encrustation of technical requirements which are utilized by municipalities to frustrate substantive rights. It is true that the treasuries of municipalities must be protected against the importunities of fraudulent and sleeping claimants, yet this end may be attained without concomitantly frustrating the rights of honest, but humanly remiss, claimants. The original draft of the Judicial Council proffered a system by which that end could be attained and rights preserved. A necessary preliminary to the adoption of such a system is the institution, by the bench and the bar, of an educational campaign dedicated to the appraisal of the public and the Legislature of the inadequacies of the present statute. In the interim, we can hope for the adoption of the renewed recommendations of the Judicial Council, which would serve to some extent to alleviate the inequities still pervading this area of the law.<sup>55</sup>

PATRICK FALVEY.

A PROPOSED REFORM IN THE LAW AFFECTING SHAREHOLDERS' DERIVATIVE ACTIONS.—That New York legislation has become a model for many states is due to a great extent to the salutary efforts of its Law Revision Commission and Judicial Council which study

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<sup>54</sup> Note that in the case of an adult claimant, N. Y. GEN. MUNIC. LAW § 50-e does not apply in respect to a claim against the New York Housing Authority, *Matter of Kaufman v. New York Housing Authority*, 188 Misc. 877, 67 N. Y. S. 2d 174 (Sup. Ct. 1946), *aff'd*, 272 App. Div. 829, 70 N. Y. S. 2d 329 (2d Dep't 1947). However, in the case of an infant claimant, subdivision six thereof has been implemented to amend the unverified notice of claim served upon the New York Housing Authority, *Matter of Belardinelli v. New York Housing Authority*, 187 Misc. 920, 67 N. Y. S. 2d 94 (Sup. Ct. 1946). It is not necessary to expatiate upon the statement that the number of claims against the City of New York based on tort will increase appreciably due to the city's absorption of the subway system.

<sup>55</sup> 15 REP. JUDICIAL COUNCIL 76 (1949). Note that these renewed recommendations are a reiteration of those made in 12 REP. JUDICIAL COUNCIL 59-60 (1946) which pertained only to extending the period to ninety days and to the removal of the prerequisite to relief under subdivision six, that the application be made before trial, etc. It is hoped that the scope of the recommendations will be enlarged in the future to include proposals for the revision of the present statute by which it would approach the liberality of the original draft proffered by the Judicial Council.