

The *Occupiers' Liability Act* and You: Partners in Safety



Agenda

- (1) Overview of *Occupiers' Liability Act*
- (2) Treatment of Different Types of Municipal Property under the *Occupiers' Liability Act*
- (3) Interplay between *Occupiers' Liability Act* and the *Municipal Government Act*
- (4) Takeaways
- (5) Questions



Part 1: The Occupiers' Liability Act ("OLA")



General Duty under the *OLA*

- Section 5 of the *OLA* requires the occupier of premises to:

...to take such care as in all the circumstances of the case is reasonable to see that [visitors] will be reasonably safe in using the premises for the purposes for which [they are] invited or permitted by the occupier to be there

Premises & Occupiers under the *OLA*

- “Premises” under the *OLA* means any property in Alberta unless specifically exempted
- All premises, with some exceptions we will discuss later, have an occupier
- Occupier is person/organization who either has either:
 - Physical possession of premises; or
 - Responsibility for, and control over, premises and the persons allowed to enter
- Can be multiple occupiers
 - For example: landlord and tenant of a building can both be occupiers depending on the circumstances of situation and the terms of the lease

Reasonable Care under the *OLA (Pt. 1)*

- Occupier must take reasonable care in respect of:
 - Condition of the premises
 - Activities on the premises
 - Conduct of third parties on the premises
- What constitutes reasonable care depends greatly on the nature of the premises and for what they are being used
- For example, a municipality is required to take much greater care of a busy place like the entrance to City Hall as opposed to a forested area on the edge of town



Reasonable Care under the *OLA (Pt. 2)*

- An occupier does not have a duty to remove all risks, only to take reasonable care to allow for safe use of the premises for their intended purpose. This is illustrated in the following cases:
 - In *Hall-Thomsen v Drader*, the plaintiff was helping the defendant property owners move a BBQ which fell on his arm and severely injured it. No liability, since no evidence the defendants failed in their duty to keep the property reasonably safe
 - In *Hache v West Edmonton Mall Property Inc.*, the plaintiff jumped off the wall of a concrete car ramp in the West Edmonton Mall parking lot. The Mall was found not liable, partially because the plaintiff was not using the ramp (or the wall) for its intended purpose



Differing Standards (Pt. 1)

- Not all visitors are treated alike under the *OLA*
- Occupiers do not owe a duty to adult trespassers to keep premises safe. The only duty is not to recklessly or deliberately harm them
 - For example: in *Bird v. Holbrook (1828)* a property owner set up a spring-loaded gun in his garden to prevent trespassers from stealing his tulips. The gun injured the plaintiff, who was awarded damages
- Early take-away: don't do that

Differing Standards (Pt. 2)

- No duty owed to child trespassers unless the occupier knows (or has reason to know) that a child is present and that the condition of the premises puts them in danger
- If occupier an occupier knows children will be present and there is a hazardous condition, they owe a duty to take reasonable steps to protect children from that hazardous condition
- This duty tends to be interpreted broadly by the courts
 - So, in *Houle v. Calgary (City)*, the court found the City negligent for having uninsulated high voltage lines behind a fence that had been modified in a way that made it easy for children to climb

Defences to Liability Under the *OLA* (Pt. 1)

- Visitors can waive right to sue for breach of *OLA*, but this has to be 100% clear and must be brought to the visitor's attention
- A waiver typically needs to be signed and written in clear language, ideally with bold or coloured font stating that legal rights are being waived
- Waivers not binding on minors, but you can have their parents sign assumptions of liability, which make the parents responsible for paying any damages awarded against the municipality

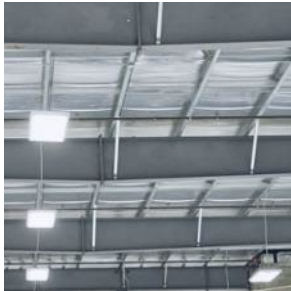
Defences to Liability Under the *OLA* (Pt. 2)

- No duty of care owed “in respect of risks willingly accepted by the visitor”
- Really high bar to prove risk willingly accepted, but is possible
 - For example, in *Allen v Radej*, the 46-year-old plaintiff, who was, in his own words, “three-quarters pissed” and “pretty drunk”, climbed a tree at the defendants’ farm then fell and broke his back
 - Court found that the plaintiff, being an adult, knew the risks of climbing a tree while intoxicated and willingly accepted them

Defences to Liability Under the *OLA* (Pt. 3)

- No liability due to negligence of independent contractor if:
 - Occupier exercised reasonable care in selecting the contractor; and
 - It was reasonable in all the circumstances that the work performed by the independent contractor should have been undertaken
- Can be a good defence in slip and fall and construction site cases as long as the contractor is reputable
- Signs or warnings on their own will only satisfy the duty of care if “in all the circumstances the warning is enough to enable the visitor to be reasonably safe”

Part 2: Municipal Property under the *OLA*



What Property is Covered by the *OLA*?

- All municipal property, and structures of any kind on that property, are covered unless the *OLA* says they aren't
- Ships, railway cars, transmission lines, and residential trailers are covered, while aircraft, motor vehicles (except trailers), portable equipment, and portable derricks are not covered
- “highways” owned or controlled by municipal government are not covered
- *OLA* does not define the term “highway”, so a bit unclear what it means, but safe to assume that roads are not covered by the *OLA*. Sidewalks may not be covered either, but that is still a grey area



Specific Types of Property

- Some types of municipal property have a different standard of care under the *OLA*
- If a visitor uses the following types of property for recreational purposes without paying, then the only duty is not to deliberately or recklessly harm them:
 - Golf courses when not open for playing
 - Rural premises that are vacant or undeveloped
 - Rural premises that are forested or wilderness areas
 - Utility rights of way (not including structures)
 - Marked recreational trails



Part 3: Interplay between the *OLA* and the *MGA*



MGA Defences (Pt. 1)

- There are a number of defences in the *MGA* that apply to claims under the *OLA*
- For example, municipalities cannot be liable for damage caused by (*MGA* section 533):
 - (a) ...the presence, absence or type of any wall, fence, guardrail, railing, curb, pavement markings, traffic control device, illumination device or barrier adjacent to or in, along or on a road, or
 - (b) ...any construction, obstruction or erection or any situation, arrangement or disposition of any earth, rock, tree or other material or thing adjacent to or in, along or on a road that is not on the travelled portion of the road.



MGA Defences (Pt. 2)

- Municipalities are also not liable for damages resulting from (*MGA* section 530):
 - (a) a system of inspection, or the manner in which inspections are to be performed, or the frequency, infrequency or absence of inspections, and
 - (b) a system of maintenance, or the manner in which maintenance is to be performed, or the frequency, infrequency or absence of maintenance.

MGA Defences (Pt. 3)

- No liability for system of inspection and maintenance does not mean that a municipality can just decide not to inspect or maintain property, since it still has a duty to maintain property in a state of repair
- So, if the municipality knows (or really should have known) about a state of disrepair, then it will be liable for damages
- If the municipality didn't know about a state of disrepair because of how their systems of inspection or maintenance were designed, then no liability

MGA Defences (Pt. 4)

- Some defences in the MGA only apply to certain types of property, for example section 532(6) says a municipality is only liable for a state of disrepair to a “public place” if it was aware, or should have been aware of that disrepair
 - “Public place” is not defined, but basically means somewhere anyone can go without permission or for pay
 - So section 532(6) applies to parks, but not to municipal offices or public works operations

Part 4: Takeaways

- If you use waivers, have them reviewed by a lawyer
- Have warning signs be as specific as possible, especially for any unexpected hazards
- Do not do anything to deliberately harm trespassers
- If you have free recreational trails, make sure they are well marked
- Assess whether children could easily enter into hazardous areas

Questions?





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