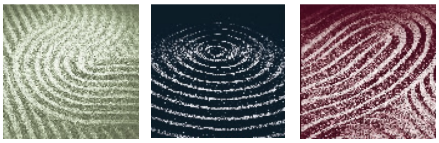

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Occupier's v. Contractor's Liability In Slip and Fall Cases

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As another winter slowly draws to a close, slip and fall claims seem to be becoming more and more frequent. These include claims involving ice and snow on sidewalks, parking lots and stairways as well as wet and slippery interior floors and carpets. This brief article touches on the interplay with respect to the liability exposures of both owners and contractors.

The primary duty falls to the owner/occupier of the premises, under Section 3 of the *Occupier's Liability Act*, to take reasonable care "to see that persons entering on the premises … are reasonably safe".

It is immediately evident from this provision that occupiers are not insurers liable for any damages suffered by anyone who falls down. Occupiers are not to be held to a standard of perfection. They are not required to maintain constant surveillance or remove every possible danger.

Also, there is certainly strong case law supporting the argument for contributory negligence on the part of the Plaintiff to keep a proper lookout and take special care while stepping on sidewalks and parking lots in winter seasons as "snow is a fact of life during Canadian winters."

The *Occupier's Liability Act* affords the owner/occupier the opportunity to push some liability exposure down to a contractor under Section 6 of the *Act.* This section essentially says that the occupier is not liable for the contractor's negligence if the occupier has taken reasonable steps to satisfy itself that "the contractor was competent and that the work has been properly done".

As can be seen from my paraphrasing and brief quote from Section 6, there still appears to be two affirmative duties on the part of the owner/occupier before this Section can provide complete protection. Owners/occupiers have to lead evidence that they have done some reasonable due diligence by making inquiries about the contractor's competence. Importantly, on a day-to-day basis, they most certainly must have a system in place for keeping an eye on the contractor's work and checking to make sure that the work is being performed and contractual terms are being fulfilled.

Depending upon their level of sophistication, many contracts will include indemnity/hold harmless provisions. Generally speaking, such provisions only afford protection to the owner/occupier vis-à-vis potential liability exposure flowing from the contractor's negligence. The owner/occupier would still have potential liability exposure flowing from the affirmative duty imposed by Section 3, as tempered by Section 6, as discussed above.

With the above principals as a framework, each one of these cases will be decided on its own facts, with particular reference to the specificity versus vagueness of the contractual terms, the clarity of instructions given to the contractor and the evidence of supervision and monitoring of conditions. The court will obviously favour a regimented system of regular monitoring as opposed to an *ad hoc* basis. The preparation of Log Sheets by the person doing the maintenance can be very helpful evidence. What is required is evidence of sufficient observations and action throughout business hours to prevent dangerous situations from being created and prolonged.

Apportionment of liability obviously depends upon the factual circumstances of each case and while it might be generally asserted that the contractor may have a higher exposure in many cases, it will be a rare situation where an owner/occupier can escape liability completely.

These brief comments were drawn from more extensive research into various owner/ contractor scenarios, which can be made available upon request.

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