
LIMITING SLIP AND FALL LIABILITY FOR CHARITIES AND NPOs

*By Barry W. Kwasniewski**

A. INTRODUCTION

The winter months in Canada are the high season for slip and fall injuries. Snow and ice on parking lots and sidewalks, and wet floors inside buildings, increase the risks of injuries occurring. Sometimes those injuries result in claims and lawsuits. Charities and not-for-profits which own or lease premises are not immune from such claims, and the liability risks, while heightened during winter, are not limited to this time of the year. In the recent Ontario Court of Appeal decision *Farias v. Peel District School Board*,¹ the Court of Appeal affirmed a trial judgment which found the respondent School Board not liable for injuries suffered by an individual on one of the School Board's properties. The Court held that the School Board had not breached its duty under the *Occupiers' Liability Act* (the "Act")² and that the Appellant was personally responsible for her injuries. This *Charity Law Bulletin* explains the above decision, discusses the Act and suggests ways for charities and not-for-profits to limit their liability risk for slip and fall injuries.

B. THE FACTS

On a summer weekend, Rebecca Farias was walking, in "flip-flop" sandals, on an asphalt walkway on the grounds of a Brampton public school, when she caught her foot in a hole and fell on her knee.³ The school

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¹ *Farias v Peel District School Board*, 2012 ONCA 759.

² *Occupiers' Liability Act*, RSO 1990, c O2.

³ *Farias* at 1-2.

yard was quite large (960,000 square feet) and the hole, located by a sewer grate at the side of a walkway, was small (about the size of a toe box of a running shoe).⁴

The Facilities Manager at the school testified that in the summer the grounds did not get used as much as during the school year (he estimated it at 80% less usage), so the maintenance and inspection program in place only concentrated on the high use areas, such as the climbing areas of the playground. The manager also testified that the custodians did not “inspect the grounds to the same degree” as they did during the school year, and mainly concentrated on the paved areas closer to the school building (whereas the walkway in question received very little travel during the summer).⁵ Given these circumstances, the Court of Appeal upheld the lower court’s judgment, and stated that the School Board had taken reasonable care to ensure the safety of individuals on the school property, that the standard of care was not breached and that Ms. Farias was responsible for her own injury.⁶

C. ONTARIO’S OCCUPIERS’ LIABILITY ACT

The common law duty of care for slip and fall accidents is superseded in Ontario, by the *Occupiers’ Liability Act*.⁷ The Act states that “an occupier of premises owes a duty to take such care as in all the circumstances of the case is reasonable to see that persons entering on the premises, and the property brought on the premises by those persons are reasonably safe while on the premises.”⁸ This duty applies to the condition of the property, as well as to any activity that takes place on the premises.⁹ The duty of care does not apply “in respect of risks willingly assumed by the person who enters on the premises.”¹⁰ In such cases, though, the occupier owes a duty to “not create a danger with the deliberate intent of doing harm or damage to the person or his or her property and to not act with reckless disregard of the presence of the person or his or her property.”¹¹

⁴ *Farias* at 5.

⁵ *Farias* at 6.

⁶ *Farias* at 7.

⁷ *Occupiers’ Liability Act*, *supra* note 2.

⁸ *Ibid* at s 3(1).

⁹ *Ibid* at s 3(2).

¹⁰ *Ibid* at 4(1).

¹¹ *Ibid*.

D. HOW TO REDUCE THE LIABILITY RISK

The duty of care is not absolute, as injuries do not automatically result in liability. The standard of reasonableness that occupiers must adhere to “requires neither perfection nor unrealistic or impractical precautions against known risks,”¹² but occupiers are “duty-bound to take such care as in all of the circumstances of the case is reasonable.”¹³ It is important to note, however, that even if an individual has knowledge about a hazard, this does not release the occupier of their liability under the law.¹⁴

The best method to ensure that reasonable care has been taken is for a charity or not-for-profit to implement reasonable policies and procedures for the inspection and maintenance of their property, and ensure that those policies and procedures are regularly followed. An example for this time of year would be to have a snow shovelling and de-icing schedule in place such that the grounds around the organization’s premises are consistently looked after, so that any foreseeable slip and falls do not take place. Organizations should have set times for these cleanings and inspections to occur, and should have a procedure in place in order to confirm that they are completed properly and on a regular basis. Additional procedures should also be in place when large snow or ice storms are forecast, in order to reduce the chance that a judge or jury might find that the organization breached their duty of care, should an injury occur despite the precautions.

It is also important to maintain an accurate written log book of the dates and times that property maintenance was performed. These log books are important evidence in the defence of any claims. Also, if your organization has a third party performing property maintenance, insist on receiving a copy of its liability insurance certificate. In the event of an accident, its insurer will be required to defend the claim, in addition to the charity or not-for-profit’s own insurer.

¹² *Occupiers’ Liability Act*, *supra* note 2, at 4(1).

¹³ *Ibid.*

¹⁴ See *Waldick v Malcolm*, [1991] 2 S.C.R. 456 at 28.

E. CONCLUSION

Owners and occupiers of premises, including charities and not-for-profits, have a duty of care to volunteers and others permitted on their premises to ensure that the premises are reasonably safe. Having policies and procedures in place to maintain safe premises should be part of an organization's overall risk management plan. Charities and not-for-profits should also remember to maintain adequate liability insurance, so if an incident does occur, the organization will not be facing the prospect of having to defend, and potentially pay, a substantial claim from its own resources.