

# ONTARIO SUPERIOR COURT PROVIDES REFRESHER ON OCCUPIERS' LIABILITY CLAIMS IN *MARTIN V. AGO ET AL.*

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In the recent [decision](#) of *Martin v AGO et al.*<sup>[1]</sup>, the Ontario Superior Court dismissed a slip and fall action against the owner, property manager, and building maintenance company on the basis that the defendants met the requisite standard of care required by Section 3(1) of the [Occupiers' Liability Act, R.S.O. 1990, c. O.2](#) (the "**Act**") in implementing a system of inspection and a work order system to ensure reasonable safety of the premises. The decision sheds light on proactive steps that "owners" under the Act can take as a shield against these types of actions.

## **Background**

On July 14, 2015, the plaintiff slipped and fell on a "small amount of water" while walking on the ground floor lobby of the John Sopinka Court House in Hamilton (the "**Court House**"), resulting in personal injury.

Ontario Infrastructure and Land Corporation ("**Owner**") was the owner of the Court House. As is often the case, CBRE Limited ("**Property Manager**") was hired by Ontario Infrastructure to act as the property manager, and had contracted with Bee-Clean Building Maintenance ("**Contractor**") to perform a variety of janitorial services.<sup>[2]</sup>

The plaintiff alleged that the Owner, Property Manager, and Contractor (collectively, the "**Defendants**") jointly and severally breached the standard of care required of them by section 3(1) of the Act, which provides 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".

The plaintiff argued that the defendants' failure to establish a policy of patrolling and cleaning the Court House's public hallways at regular intervals during the day and failure to employ a person whose primary duty was to inspect and clean the floors was the cause of his injury.<sup>[3]</sup> As such, the issues before the Court were whether the defendants breached the standard of care established by the Act or were otherwise liable to the plaintiff and if so, whether the plaintiff was contributorily negligent for his injury.<sup>[4]</sup>

### ***Trial Decision***

The Court dismissed the plaintiff's claim, holding that the defendants complied with the required standard of care by doing the following:

- a. Requiring mats to be placed on the inside of each of the three Court House public entrances so that the public could wipe their feet at the entrances particularly when it was raining;
- b. Adopting a system of inspection and cleaning of public floors by a full-time day porter whose duties included at least four floor inspections per day on each of the Court House's seven public floors, along with a work order system of responding to complaints; and
- c. Installing six wet floor signs across the ground floor on a daily basis.

The Court emphasized that while the Act imposes a positive duty on occupiers to ensure reasonable safety of the premises, the duty is not an absolute one.<sup>[5]</sup> The standard of care for occupiers is one of reasonableness, not one of perfection requiring the elimination of every possible danger, constant surveillance, and instant response.<sup>[6]</sup>

It was noted that even if the Act mandated a system of constant surveillance, it was doubtful that the plaintiff's fall could have been prevented because the volume of the water was very small (equivalent to a melted ice cube or the size of a quarter) and it was not perceptible by at least six people.<sup>[7]</sup> Therefore, the plaintiff failed to establish causation, specifically that his fall would not have occurred "but for" the defendant's breach of the standard of care.

Moreover, the Court stated that even if the defendants were found to be liable, the plaintiff was negligent in wearing shoes with soles worn to the extent of thirty percent. As such, the Court assessed the plaintiff's contributory negligence at 30%.<sup>[8]</sup>

### ***Takeaways***

This decision highlights that occupiers will not be found to be liable for injuries on their premises if they implement and follow a reasonable system of inspection and maintenance. It also serves as a reminder for plaintiffs that occupiers are not "an insurer to all slip and falls"<sup>[9]</sup> whereby liability is assumed for injury on the premises allowing for an automatic entitlement to compensation.

Those involved in property management should take note, however, that the facts of this case were proven primarily because the Court accepted the testimony of the day porter finding her to be a "conscientious and diligent employee" who had the necessary skills to competently inspect the public floors for spills.<sup>[10]</sup> Generally, property owners/contractors should keep meticulous records of their work and duties, including: creating work orders or reports for all steps taken; keeping timesheets and checklists; taking photographs and video footage

of the premises and work at regular intervals; taking detailed incident reports, including photographs of both the premises and the injured party's footwear; following all protocols and reducing all job duties to writing.

It is also important to note that the recent addition of section 6.1(1) to the Act now requires claimants to provide 60-day written notice of their claims, shortening the general two year limitation period (see [prior bulletin](#) for details).

[1][ps2id id='1' target=''] *Martin v. AGO et al*, 2022 ONSC 1923

[2][ps2id id='2' target=''] Ibid at para 4.

[3][ps2id id='3' target=''] Ibid at para 49.

[4][ps2id id='4' target=''] Ibid at para 6.

[5][ps2id id='5' target=''] Ibid at para 43.

[6][ps2id id='6' target=''] Ibid at paras 43, 46 and 54.

[7][ps2id id='7' target=''] Ibid at para 58.

[8][ps2id id='8' target=''] Ibid at paras 63-64.

[9][ps2id id='9' target=''] Ibid at para 58.

[10][ps2id id='10' target=''] Ibid at para 40.

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### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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