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1. *Rahnama v. Loblaws City Market*, 2025 BCCA 176

Background

This is the appellate decision of a trial judgment that was previously reviewed in our 2024 Q4 Occupiers Update.

The underlying facts involved the Plaintiff seeking damages against the Defendant, Loblaws City Market (“Loblaws”), in relation to personal injuries she sustained in a slip and fall on a muffin in the patisserie department. The Plaintiff’s claim against Loblaws was brought under the *Occupiers Liability Act*. Loblaws brought a summary trial successfully seeking a dismissal of the claim based on evidence that it had a reasonable system of maintenance and care in place at the time of the slip and fall.

The Plaintiff appealed, arguing that the judge erred on three grounds:

- a) in the weight given to the sweep logs in light of the absence of other evidence that was in Loblaws control;
- b) by not drawing an adverse inference that the video evidence destroyed by Loblaws was favourable to the appellant’s case; and
- c) by not questioning the credibility of the evidence (the sweep log) that could have been cross-referenced with video evidence.

Ultimately, the Court of Appeal rejected all three grounds, noting that all of the Plaintiff’s arguments were founded upon the judge erring in failing to draw an adverse inference from Loblaws’ failure to collect and adduce further or better evidence. The Court of Appeal held the precedents cited by the Plaintiff in support all turned on their facts, and did not stand for the general proposition that inferences must necessarily be drawn from the loss or destruction of evidence. Furthermore, the question of whether to draw the inferences sought by the Plaintiff were too closely bound up with the fact-finding process to be reviewable on any standard other than the “palpable and overriding” standard.

The Court of Appeal noted that the judge held no adverse inferences should be drawn from Loblaws’ failure to call specific witnesses, as there was ample opportunity for the Plaintiff to obtain and lead their evidence. Additionally, the Court of Appeal addressed the judge’s refusal to draw an adverse inference from the fact that Loblaws did not preserve and could not produce the surveillance footage. The Court of Appeal noted that the evidence indicated:

- it was uncertain if the surveillance camera would have recorded the conditions at the scene of the fall;
- the Plaintiff asked someone to keep the video on the day of her fall, but did not repeat her request for almost two years until the issuance of the Notice of Civil Claim;
- no one looked at the video, therefore it could not be said it was destroyed by a party with actual knowledge of what was recorded;
- the video was overwritten as standard practice 30 days after it was recorded (and was not specifically identified for destruction).

On that basis, the judge was unwilling to draw the adverse inference that because the video evidence was unavailable, the sweep log that Loblaw's relied on in its defense should be considered to be unreliable.

Ultimately, the Court of Appeal could not see any basis to conclude the trial judge's refusal to draw the suggested inferences was based upon any error, palpable or otherwise. The trial judge was alive to the Plaintiff's arguments about the credibility and reliability of Loblaw's evidence, considered those arguments, and simply found them unpersuasive.

Conclusion

The Court of Appeal dismissed the Plaintiff's appeal on all grounds, upholding the summary trial decision.

2. *Stoeff v. Stephenson*, 2025 BCSC 737

Background

The Plaintiff tripped over the handles of a tote bag placed next to a cornhole board, and brought a personal injury claim pursuant to the *Occupier's Liability Act* ("OLA"). The Defendants Stephenson and Prakash brought a summary trial application seeking a dismissal of the Plaintiff's claim.

Facts

The Plaintiff was attending a charitable event put on at the Defendant Stephenson's store. The Defendant Prakash was the owner of the land and building upon which the store operated. The Plaintiff was playing a beanbag toss game known as "cornhole," which involved throwing beanbags into holes cut out in platforms set upon the ground. The Plaintiff was walking from one cornhole platform to another that had the tote bag beside it. The Plaintiff's right foot got caught up in the handles of the bag (which was weighted down with some bean bags at the time), and she fell to the ground.

Decision

The Court held that liability in this matter was suitable for determination on summary trial. Turning to the substantive issue, the Court described the Plaintiff's argument, which relied principally on her biomechanical expert, as being that the placement of the bag in a "busy, highly trafficked area" constituted a tripping hazard which "implied negligence." The Court disagreed, noting that the Plaintiff had played the game twice before without incident. While not determinative, that fact supported the conclusion that the placement of the bag was reasonable and did not constitute a tripping hazard. Most importantly, the bag would have been plainly visible to the Plaintiff throughout her journey from the far platform. In other words, "it was no more a hazard than the platform beside it, which the Plaintiff would have also had to avoid." The Plaintiff's expert opinion did not assist the Plaintiff on this point, as it did not address the indisputable fact that the bag (and its handles) were in plain sight throughout the material time period. Had the plaintiff taken reasonable care, she would have observed the bag and avoided it.

Conclusion

The claim was dismissed.

3. *Li v. 647700 B.C. Ltd.*, 2025 BCCRT 471

Background

In this case, the Applicant said she slipped and fell in the bathtub while staying in the Respondent's motel. The Applicant further blamed the fall on the absence of a safety handlebar and non-slip mat.

Civil Resolution Tribunal ("CRT") Jurisdiction

This case was brought pursuant to the Civil Resolution Tribunal Act. The CRT has jurisdiction over small claims worth \$5,000 or less. The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT most often determines cases based solely on documentary evidence and submissions, as it did in this case.

Decision

The CRT found that the Respondent was the occupier of the motel such that the *Occupiers Liability Act* applied. Therefore, the Respondent had to take all reasonable care in the circumstances to protect the Applicant from an objectively unreasonable risk of harm. The mere fact that the Applicant slipped did not, by itself, mean the Respondent was liable for her injuries.

The Applicant did not argue there was anything wrong with the bathtub itself. She also did not allege there was any unusually slippery substance on it. Instead, she essentially argued that all motels must have non-slip mats available in the room and a grab bar by the bathtub. The Respondent did not dispute that all other rooms on the first floor had a grab bar, but none of the upper floor rooms had one. Additionally, non-slip mats were only available upon request because the Respondent had an issue with thefts.

The CRT relied on a BC Supreme Court decision, *Deroche v. Best Western Coquitlam Inn*, 1999 CanLII 3631, in which the Court found that slipping on a wet floor is a known risk to any adult. The CRT applied the same reasoning, disagreeing with the Applicant that a reasonable motel operator must provide non-slip mats and a grab bar in every room for every stay. The CRT noted that it was generally known that bathtub floors may become slippery, and people should take precautions for their own safety, for example by requesting a non-slip mat or a room with an accessible bathroom.

Conclusion

The claim was dismissed.

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Patrick Bruce is a Partner in the firm's Insurance group. His practice is primarily litigation-based with an emphasis on insurance defence, insurance coverage and alternative dispute resolution. Patrick has experience with technically complex, multi-party personal injury, casualty, and liability claims. He has acted for large global insurers and their insureds across a wide range of industries, including complex personal injury claims, subrogated matters, property damage, construction claims, and other matters. In his capacity as counsel, Patrick's approach is to focus on first understanding his client's unique objectives before recommending a course of action to resolve claims efficiently and creatively. He works closely with his clients throughout the process and is committed to providing a high level of service on all matters.

ABOUT ALEXANDER HOLBURN BEAUDIN + LANG LLP

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