ALEXANDER HOLBURN

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E-NEWSLETTER

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In This Issue:

1. *Sawatzky v. St. Johns Street Liquor Store Ltd.*, 2025 BCSC 1962

Background

The Plaintiff tripped and fell over a cord/cable cover while attending a liquor store to buy a bottle of wine. She brought a personal injury claim pursuant to the *Occupiers Liability Act* ("*OLA*") against the store, which proceeded to trial. The Plaintiff closed her case, at which point the Defendant brought a rare "no evidence" application seeking dismissal of the Plaintiff's action pursuant to Rule 12-5(4) of the *Supreme Court Civil Rules.* "No evidence" applications are difficult to win, given they effectively require that the Court find there to be a complete absence of evidence in support of the Plaintiff's claim.

Facts

The Plaintiff stopped at the Defendant liquor store to purchase a bottle of wine for dinner. She was wearing flip-flop sandals and testified that the store seemed very dark. She recalled picking up a one-and-a-half litre bottle of wine and then tripping. She believed she tripped on her right foot. The bottle of wine smashed on the floor and her left knee was bleeding.

It was only when the Plaintiff got back up that she saw what she had tripped over: a yellow and black cover placed over a cord. The Plaintiff testified that she had been to the liquor store three or four times before, maybe a year or two before her fall. She said she had never seen the cord cover before. She did not know which foot contacted the cord cover, as she acknowledged she was not looking at the ground but was following the clerk.

Only a small portion of the cord cover was visible on the available surveillance footage. The depth and height of the cord cover was not ascertainable. However, the yellow and black of the cord cover was clearly visible and clearly contrasted with the brown floor. Additionally, the footage showed the Plaintiff approaching and stepping over the cord cover prior to the trip without any difficulty. Finally, evidence was provided that the cord cover had been in place for about three or more years, with no evidence of any other trips or falls.

Decision

The Court provided that on this "no evidence" application it must answer the following question: whether there was evidence from which a reasonable trier of fact could conclude that the installation of the cord cover amounted to or created an unreasonable risk of harm. To answer this question, the Court had to assess: whether there was evidence of a recognizable risk of injury, the gravity of any risk, the ease or difficulty with which the risk could be avoided, and the burden or cost of eliminating the risk: *Agar v. Weber*, 2014 BCCA 297, at para. 57.

The Court found the evidence that the cord cover had been in place for years, with no evidence of any other trips or falls, to be particularly compelling evidence that the cord cover did not pose an unreasonable risk of harm. The cord itself may have been a hazard, and in fact was the reason for the cord cover. An uncovered or unsecured cord could move and buckle to form loops that could rise above the floor. However, there was no evidence that the height and thickness of the cord itself created a risk of tripping and injury. The cord cover at its leading edge was three millimetres high, thinner than a cable. It was also manufactured to be highly visible and was designed to stay put.

The Court noted that the Plaintiff called no expert evidence regarding whether or not cords or cord

covers created a risk of injury. There was evidence available from the contractor who installed the cord cover that they were available on the marketplace. However, he had built this one to his own specifications because he wanted to reduce the slope of the cord cover so it was not a "speed bump."

There was no evidence tendered about industry practice in dealing with electrical cords. It was clear from the Plaintiff's expert engineer that cord covers were not regulated under the Building Code. However, the leading edge of the cord cover was less than the maximum allowable abrupt edge of a door threshold, and the slope of the cord cover did not exceed the maximum allowable ramp or slope. By analogy, there was nothing about the cord cover that brought it into clear conflict with the Building Code. While the mere breach of the Building Code would have on its own been an insufficient basis upon which to establish negligence (see *Tavra v. Metro Vancouver Housing Corporation*, 2020 BCSC 105, at para. 31), compliance with the Code, even by analogy, was an additional consideration in determining whether there was any evidence that the Cord Cover posed an unreasonable risk of harm.

Overall, the Court concluded that the cord cover did not amount to or create an unreasonable risk of harm.

Conclusion

The Court granted the Defendant's "no evidence" motion and dismissed the Plaintiff's claim with costs.

2. *Stoeff v. Stephenson*, 2025 BCSC 1689

Background

In prior reasons for judgment, reviewed in our 2025 Q2 *OLA* update, the Court allowed the summary trial application brought by the Defendants Stephenson and Prakash dismissing the Plaintiff's claim.

The Defendants Stephenson and Prakash then sought an order for double costs from the date of their first offer to waive costs in return for a dismissal on a "BC Ferries basis" (i.e., a term that requires the plaintiff to abandon all claims for damages which are attributable to the settling defendants, with any damages attributable to the non-settling defendant being adjusted accordingly – also known as a "Pierringer agreement"). This first offer was issued on August 8, 2023, with a deadline for acceptance on August 22, 2023 (the "First Offer").

Alternatively, the Defendants Stephenson and Prakash sought double costs from November 8, 2024, the date they issued a second offer to waive costs on behalf of themselves and the co-Defendant Music Heals (the "Second Offer").

The Defendant Music Heals also sought double costs, as well as special costs.

Decision re. Defendants Stephenson and Prakash

The Court considered the applicability of *Riley v. Riley*, 2010 BCSC 822, which stood for the proposition that a "walk away" offer, or an offer to waive costs, can be the sort of settlement offer that entitles a defendant to double costs.

The Plaintiff argued that *Riley* had been overtaken by more recent jurisprudence. The Court concluded that it had not, and rather the task of the Court was to consider whether, in the circumstances of the particular case, a walk away offer could be considered a true compromise and incentive to settle,

Ultimately, the Court held that the First Offer was a genuine compromise and incentive to settle. The Court relied on the claim's relative lack of complexity and that the dismissal of the claim was primarily decided on the Plaintiff's own evidence, all of which was elicited at the Plaintiff's examination for discovery on May 26, 2023, and which was further set-out in some detail in the First Offer. The Court concluded that the Defendants Stephenson and Prakash were entitled to regular costs until the date of the First Offer, and double costs thereafter.

Decision re. Defendant Music Heals

The Defendant Music Heals made an offer in October 2023 to accept $1,000 in costs, with the Plaintiff dismissing her claim against them. In the Court's view, this offer should have been accepted by the Plaintiff, for the same reason set out above in relation to the First Offer. However, the Plaintiff then offered on December 11, 2024 to dismiss her claim against the Defendant Music Heals in exchange for a waiver of costs. Therefore, the Court awarded double costs to the Defendant Music Heals, however only for the period between their October 2023 offer and the Plaintiff's December 11, 2024 offer. The Defendant Music Heals was entitled to regular costs up the October 2023 offer, and after December 11, 2024.

The Defendant Music Heals also sought special costs on the basis that the Plaintiff displayed

"reckless indifference" by not recognizing early on that its claim against the Defendant Music Heals was manifestly deficient. The Defendant Music Heals placed considerable emphasis on an admission by the Defendants Stephenson and Prakash that they were an occupier under the *Occupiers Liability Act*. The Defendant Music Heals argued that the Plaintiff ought to have abandoned its claim against it immediately. However, the Court found this admission was made on a "without-prejudice" basis and on a conditional basis, and therefore could not be relied on by the Plaintiff. The Court declined to award special costs.

Conclusion

The Court concluded that the Defendants Stephenson and Prakash were entitled to regular costs until the date of the First Offer, and double costs thereafter.

The co-Defendant Music Heals was entitled to double costs from October 4, 2023 to December 11, 2024, and regular costs before and after that period. The Court declined to award special costs to the co-Defendant Music Heals.

3. *Heydary v. Morguard Corporation Morguard*, 2025 BCCRT 1311

Background

The Applicant parked her car at a mall. She left her doors unlocked and items were stolen from her car. She said the Respondent did not provide proper security camera coverage for the mall parking lot.

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 considered the Respondent's liability under negligence and pursuant to the *Occupiers Liability Act*.

The CRT found that the Respondent did owe a duty of care to its customers. However, the Applicant provided no evidence regarding the applicable standard of care. Nevertheless, the CRT found that having active security patrols and some camera coverage were reasonable deterrents against crime. A mall owner is not required to protect against all acts of crime on its property. Therefore, the CRT found that the Applicant had not proven that the Respondent breached its duty of care. There was no evidence the Respondent was negligent.

Additionally, the Applicant faced a causation problem. She did not prove that she suffered a loss as a result of any breach. Her claim was in relation to the lack of video evidence to assist with the police investigation. She did not establish that the video footage would guarantee the police would be able to identify and apprehend the thief, or recover stolen property. She did not say what damage she had suffered because video evidence was not available.

With respect to the *OLA*, the CRT noted that section 3(3) says an occupier has no duty of care to a person who willingly assumes a risk. The CRT found that the Applicant was able to see the Respondent's signs limiting its liability, and despite these signs, she assumed the risk of leaving her car in the parking lot. Leaving her car unlocked was the primary reason her items were stolen, not the lack of security cameras in the parking lot. Therefore, the Respondent was not liable pursuant to the *OLA*.

Conclusion

The claim was dismissed.

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Patrick Bruce is a Partner in the firm's Insurance group. He has been recognized as *Best Lawyers in Canada*: Insurance Law for 2025–2026. 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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