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1. *McCullough v. Roberge*, 2025 BCCRT 1471

Background

The Applicant sought recovery of veterinary expenses after her dog was attacked by the Respondent's three dogs in the Respondent's backyard. The parties' properties were separated by a fence that had broken panels and space underneath it caused by the Respondent's dogs digging. The Applicant alleged that one of the Respondent's dogs pulled her dog through the fence, attacked and injured her dog, and resulted in the Applicant's dog passing away due to infection of the injuries. The Respondent denied responsibility, asserting that their dogs had no history of aggression or biting incidents and that the Applicant's dog entered the yard voluntarily.

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 *scienter*, negligence, and the *Occupiers Liability Act*, RSBC 1996, c 337 ("OLA"). The CRT held that the doctrine of *scienter* did not apply because the Respondent's dogs attacked another dog versus attacking another person. The CRT analyzed occupier's liability and negligence together as both imposed a duty of care on the Respondent to ensure that their dogs did not attack any people or animals. The CRT found no evidence that the Respondent's dogs had a prior history of aggression. The veterinary evidence describing the three dogs as well-mannered and non-aggressive was given significant weight.

However, the CRT found that the Respondent breached the applicable standard of care by allowing three large dogs to roam freely in a yard enclosed by an insufficient fence, contrary to the municipal dog control bylaw. While a breach of a bylaw does not automatically establish negligence, the CRT found it was evidence of the standard of care in the circumstances. The CRT found that by allowing three large dogs to roam in a yard enclosed with an insufficient fence, it was reasonably foreseeable that they could pose a danger to animals entering the yard. The CRT found that the Respondent failed to take reasonable care to ensure that the property of others was safe on their premises. Ultimately, the CRT found that the required standard of care was breached and that the Respondent was negligent.

At the same time, the CRT also found the Applicant negligent. The Applicant was aware of the fence's deficiencies and had previously attempted repairs but nevertheless left her small dog unsupervised and unleashed in her yard.

Conclusion

The CRT found that both parties were negligent and apportioned liability equally between the Applicant and the Respondent. The Respondent was ordered to pay half of the proven veterinary expenses but claims for sentimental or memorial-related costs were dismissed.

2. *Kai v. Organic Learning Academy Inc., 2025 BCCRT 1431*

Background

The Applicant's vehicle was damaged when an overhead garage door descended as he was driving into an underground parking garage operated by a childcare facility (the "Incident"). The Applicant alleged that the door unexpectedly closed while he was entering the garage during child pick-up. The Applicant advanced multiple theories, including alleged changes to door settings without notice, poor garage configuration and visibility, breaches of building codes, fire codes, and zoning bylaws, and improper installation or malfunction of the garage door. The Applicant claimed damages for future insurance premium increases, time off work to deal with the vehicle repair, and emotional stress. The Respondent denied liability, asserting that the garage door was already closing and visible when the applicant drove into it.

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 accepted that the Respondent owed the Applicant a duty of care because they instructed parents to use the parking garage to pick up children and, as an occupier, owed duties under the *OLA*. However, the CRT found that there was no evidence that the garage door's operation had been changed or that any lack of notice caused the Incident. The CRT found that even if the door's settings had changed, drivers retained a duty to keep a proper lookout and avoid visible hazards. Additionally, the CRT rejected claims that the garage's slope, structural beam, or configuration created a visibility hazard, finding the garage to be typical of underground parking facilities.

When assessing the alleged breaches of building, fire, and zoning bylaws, the CRT considered whether any of the alleged breaches constituted negligence in this dispute. However, the CRT ultimately found the allegations to be either unproven or unrelated to the cause of the Incident and therefore did not support a finding of negligence.

Critically, the Tribunal found that allegations regarding improper sensor placement or malfunction required expert evidence as it was a matter outside of ordinary knowledge. The Applicant did not provide expert evidence, but the Respondent did. The Respondent's expert evidence from a door service provider confirmed the garage door and sensors were properly installed and functioning. The CRT concluded the applicant drove into a moving garage door that was visible and therefore was solely responsible for the damage.

Ultimately, the CRT found that the Applicant failed to establish an objectively unreasonable risk of harm under the *OLA* and further failed to prove negligence at common law.

Conclusion

The claim was dismissed.

3. *Begg v. Provincial Rental Housing Corporation, 2025 BCSC 2640*

Background

The Plaintiff was knocked unconscious and suffered serious injuries after falling while climbing the stairs in his apartment unit (the “Incident”). Prior to the Incident, the Plaintiff had been consuming alcohol at a local pub with his girlfriend at the time. The Plaintiff brought a claim in negligence and relied on the *OLA*. He pleaded the Incident occurred due to the negligence of the Defendants and that the Defendants failed to meet the reasonable standard of care in “construction, maintenance, and repair” of the unit. The Plaintiff did not pursue the claim of negligent construction at trial. The Defendants brought a motion to dismiss the claim on a “no evidence” basis.

Facts

The parties agreed that the Plaintiff and his girlfriend attended a pub near his unit, consumed alcohol, and that he fell inside his unit. An ambulance arrived and found him unconscious. The Plaintiff suffered a traumatic brain injury, sinus venous thrombosis, and a displaced clavicle fracture.

At trial, the Plaintiff only called two witnesses, himself and an engineering expert. The Plaintiff had no memory of the fall. He remembered walking home from the pub and then waking up in the hospital. He did not call his girlfriend, the only eyewitness, nor the attending paramedics as witnesses.

The engineering expert, who was qualified in building code compliance and construction-related engineering, inspected the stairs seven years after the Incident. His opinion was that the stairs appeared typical for a building of that age and noted nothing remarkable. He found no obvious tripping hazards in the carpet on the stairs and acknowledged that conditions may have differed at the time of the Incident. The expert did identify certain potential building code non-compliances under the 1975 National Building Code. The expert also opined that the fall likely involved numerous factors such as the rise height, narrowing tread depth, handrail placement and an allegedly improper handrail attachment.

The Plaintiff did not call representatives of the Defendants, did not rely on discovery transcripts, and closed his case after the expert’s testimony.

The Defendants then brought a no-evidence motion arguing that the Plaintiff failed to adduce evidence on two essential elements: breach of the standard of care and causation.

Decision

The Court began by outlining the governing principles for a no-evidence motion under Rule 12-5(4) and (5) of the *Supreme Court Civil Rules*. Citing *Rybakov v. Fraser Health Authority, 2023 BCSC 680* at para. 19, the Court stated that the test is “whether the plaintiff has adduced any evidence upon which a properly instructed trier of fact could find in the plaintiff’s favour”. The Court stated that it could not speculate or guess to fill gaps in the evidence and that if there was no evidence on an essential element, the claim must be dismissed.

The Court assessed the claim under both negligence and under the *OLA*. There was no dispute between the parties that the defendants owed a duty of care. The Court outlined that the Plaintiff

was required at common law to establish a duty of care to conform to a certain standard of care, breach of that duty, and that the breach was a proximate cause of the plaintiff's injuries. The Court also went on to state that the standard of care was that of an "ordinary reasonable and prudent person in the same circumstances." (para.23).

The Court also outlined the duty of care under section 3 of *OLA* and stated that the duty imposed on an occupier "is that the occupier must take reasonable care in the circumstances to make the premises safe" and that the duty "does not require occupiers to ensure that people using the premises will be absolutely safe. Nor is it required to remove every possibility of danger." (para. 25). The Court noted that the fact of an injury does not create a presumption of negligence (para. 27).

When assessing the standard of care and whether it was breached, the Court found that the Plaintiff had failed to prove both the applicable standard of care and any breach by the Defendants. The Court held that although the standard of care is a legal concept, its particulars are factual and must be proven with evidence. The Plaintiff led no expert or other evidence establishing what a reasonable public housing provider would have done regarding inspection, maintenance, or repair of a 50-year-old apartment building. References to the *OLA*, building codes and bylaws did not establish what the Defendants were required to do. The Court held that building codes are not determinative of the standard of care.

Further, the Court found no evidence of a breach of the standard of care, as there was no proof that the stairs posed an objectively unreasonable risk and the mere fact that the Plaintiff fell did not make the stairs dangerous. The Court also noted that there was no evidence of defects such as excessive wear, broken risers, loose handrails, or poor maintenance. Critically, the expert's opinion that the handrail was defective relied on documents that were never properly entered into evidence. The Court held that expert hearsay is admissible only to explain the basis of an opinion, not to prove underlying facts. Without admissible evidence of a hazardous condition, the Court found the Plaintiff failed to prove a breach of duty.

The Court then went on to assess causation. The Court held that even if the Plaintiff had proven the standard of care and a breach, the claim would still have failed for lack of evidence on causation. The Court noted that the Plaintiff could not remember how or where he fell and did not call the only eyewitness, his ex-girlfriend. The Court found that because of this, there was no evidence of where he was on the staircase, the cause of this fall, the mechanism of the fall, or where he was found afterwards. The Court also found that, unlike the other slip-and-fall cases relied upon by the Plaintiff where there were clear hazards directly linked to the fall, there was no evidence connecting any alleged stair defect to the Incident. The Court held that any finding of causation would require impermissible speculation.

The Court emphasized that while causation may sometimes be inferred, this is only done in rare cases and that those circumstances did not apply in this case. The Court further found that the fact of a fall alone did not establish causation and noted that the Plaintiff had used the stairs frequently for years without an issue, and he had been consuming alcohol for several hours before the fall. The Court held that the Plaintiff failed to prove any evidence capable of supporting a reasonable inference that the condition of the stairs caused his injuries.

Conclusion

The Court granted the Defendants' no-evidence motion and dismissed the Plaintiff's claim.

4. *Petrunia v. Pensionfund Realty Limited, 2025 BCSC 2345*

Background

The Plaintiff dislocated his knee after a trip and fall incident in a shopping mall food court that was undergoing renovations. The renovations included replacing the existing flooring. Temporary flooring transitions were in place, and the area remained open to the public with multiple warning signs. The Plaintiff alleged that uneven flooring or taped carpet caused his fall and further argued that the Defendants failed to preserve CCTV footage, warranting an adverse inference for spoliation. The Defendants denied liability and applied for a summary trial, seeking dismissal of the claim on liability.

Facts

The Plaintiff fell near a take-out restaurant in the food court after performing a lunge-like movement (the “Incident”). The CCTV footage showed a forward to backward motion, with a shift of weight onto his left leg and torso rotation, resulting in a loss of balance and a backward fall.

At the time of the Incident, the mall food court was undergoing staged renovations but remained open to the public. As part of the flooring replacement, temporary carpeted plywood transitions were installed to maintain level walking surfaces. The Defendants implemented safety measures including prominent caution signage, regular inspections, and security patrols, all of which were in place at the time of the Incident.

The Plaintiff initially stated that he tripped on construction tape while lunging. He later shifted his explanation to a level change or depression beneath the taped carpet. He acknowledged knowing the food court was under construction and seeing tape on the floor. Photographs showed the taped carpet intact, caution signs nearby, and his footwear in good condition.

Following the fall, the area was inspected by the Defendants’ staff, who found the temporary carpet transitions intact, undamaged, and properly secured, with multiple caution signs nearby. Security attended immediately, observed no hazards or damage, and recorded none in their log.

The Plaintiff argued that additional fencing and signage was installed the following day and this demonstrated that the Defendants recognized a hazard. However, there was evidence that showed that the fencing installed after the fall was for planned construction near the take-out restaurant and was unrelated to the Incident.

The Plaintiff also alleged that the Defendants failed to preserve additional CCTV footage. The Plaintiff’s counsel requested preservation of all food court surveillance shortly after the Incident, and the Defendants acknowledged the request. The evidence showed that although additional cameras had been installed during the renovation, they were not connected or recording at the time. There was only one operational camera that clearly captured the fall and that footage was reviewed the next day, preserved, and produced. Other footage was either unclear or automatically deleted in the ordinary course after three months. The Defendants later confirmed that no other recordings existed.

Decision

The Court assessed the suitability of a summary trial, whether the temporary flooring installed constituted an objectively unreasonable risk of harm and caused the fall, whether the Defendants breached their duty and standard of care under the *OLA*, and whether spoliation was made out to justify an adverse inference.

The Court first considered whether liability could be determined by summary trial. Applying the factors from *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.*, 36 B.C.L.R. (2d) 202 at 214, 1989 CanLII 229 (B.C.C.A.) and guidance from the Supreme Court of Canada in *Hryniak v. Mauldin*, 2014 SCC 7, the Court focused on whether the necessary findings of fact could be made and whether it would be fair to proceed summarily. The Court found that summary determination was appropriate because the evidentiary record was largely objective and document-based and the key issues of unreasonable risk and causation did not depend on credibility assessments of the witnesses. Additionally, the Court found that it would be fair and just to determine liability summarily because the issues of liability and damages were not intertwined and determining liability alone would not create duplication or risk of inconsistent findings in any subsequent quantum hearing.

The Court then considered if the temporary flooring installed in the food court constituted an objectively unreasonable risk of harm to its users and caused the fall. The Court found that based on the evidence, the flooring system was installed and maintained in accordance with a reasonable and industry-standard safety protocol. Additionally, the Court found that the conditions were visible and adequately marked and the Plaintiff's fall was not caused by a latent defect or unsafe surface but rather by his own unexpected movement. The Court noted that the conditions of the food court did not exceed the ordinary risks of daily life that occupiers are not required to eliminate. As a result, the Court found that the temporary flooring did not present an objectively unreasonable risk of harm, nor that it caused the Plaintiff's fall.

The Court went on to consider whether the Defendant breached the duty and standard of care under s. 3 of the *OLA*. The Court noted that the duty of care does not extend to guarantee safety against open and observable transitional surfaces that a patron exercising a modest degree of attention would notice. Further, the Court stated that absent evidence of displacement, damage, or concealment, the transitional surfaces did not, without more, amount to an unreasonable risk. The Court found that the Defendants had not breached their duty under the *OLA*.

Lastly, the Court considered whether spoliation was made out to justify an adverse inference. The Court noted that spoliation is a doctrine engaged only where relevant evidence has been intentionally destroyed in bad faith, in circumstances indicative of fraud, or with an intention to suppress the truth and that it does not occur merely because evidence is destroyed. The Court used the test set out in *2025925 Ontario Inc. v. Maramusche Holdings Inc.*, 2023 ONSC 3041 at para. 250 to determine whether spoliation had occurred in this case. The Court found that the Plaintiff had not established that relevant footage ever existed, nor that it was destroyed or withheld. The Court stated that there was no evidentiary basis to infer intentional destruction of relevant footage, improper curation, or bad faith. Additionally, the Court noted that the Plaintiff did not identify specific prejudice arising from the absence of other footage. The Court found that the objective materials preserved (the recorded CCTV footage, still photographs, and contemporaneous inspection evidence) were sufficient to permit a fair adjudication of the issues. Based on the facts, the Court declined to find spoliation and, consequently, drew no adverse inference against the Defendants.

Overall, the Court found that the food court was reasonably safe for users and that the Defendants did not breach their duty under the *OLA*.

Conclusion

The Court granted the summary trial application and dismissed the Plaintiff's claim with costs.

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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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