ALEXANDER HOLBURN

ISSUE 1 | JANUARY - MARCH 2026

E-NEWSLETTER

SUBSCRIBE TO RECEIVE FUTURE UPDATES HERE.

In This Issue:

1. *Stamatopoulos et al* v. Pspib Agincourt Inc. et al, 2026 ONSC 1380 (CanLII)

On October 21, 2022, the plaintiff, Angelikis Stamatopoulos (the "Plaintiff"), was shopping at a Scarborough Wal-Mart when she slipped and fell, fracturing her hip. Together with her husband (since deceased), she sued for damages.

The defendants brought a motion for summary judgment arguing that they were not liable for the Plaintiff's fall or her subsequent injuries. The defendants argued that CCTV footage of the incident established that the Plaintiff fell over another patron's wheeled basket, and not as a result of anything the defendants did, or failed to do. The Plaintiff resisted the motion on the basis of the argument that the case was not amenable to summary judgment as (1) the defendants had not put their best foot forward; (2) whether the defendants' acts or omissions created a hazard was a triable issue; and (3) there were significant issues of credibility that only a trial judge could assess.

Ultimately, the Court found that there was no genuine issue for trial because, on the balance of probabilities, the defendants were not responsible for the loss. The motion was therefore granted and the action was dismissed.

The Fall

The Plaintiff, along with her husband, had attended at the Wal-Mart to shop. The loss occurred in Aisle 5. At the time, the entrance to the aisle was partially blocked by a shopping cart that was being used by a Wal-Mart employee to restock shelves. The shopping cart was stopped perpendicular to Aisle 5, causing the entrance to be narrowed from 137 cm to 95 cm wide. CCTV footage showed several people, including the plaintiff's husband, entering Aisle 5 by going past the cart. The Plaintiff entered the aisle from the left, followed closely by another patron pulling a wheeled basket. The footage shows that the Plaintiff tripped, and fell diagonally. As she did so, she reached out and grabbed on to a Wal-Mart employee, who subsequently fell to the ground with her.

Allegations Made As Against The Defendants

The Plaintiff alleged that the defendants (1) failed to take reasonable steps to ensure that she was safe upon the premises; (2) created a situation of danger for users of the premises; and (3) created a situation of danger and emergency from which the Plaintiff could not extricate herself, despite all reasonable care and diligence. Allegations of deficient floor conditions had been advanced in the Statement of Claim, but were effectively withdrawn by the Plaintiff in the course of her examination for discovery.

The Analysis of the Court

The Court was tasked with determining whether there was a genuine issue for trial under the *Occupiers Liability Act* (the "*Act*"). Its analysis focused on sections 3(1) and 4(1) of the *Act*, which included consideration of the following principles:

(a) An occupier of a premises owes a duty to take such care in all the circumstances to see that persons entering the premises are reasonably safe: *Lavoie v. Rainbow Centre Mall* 2021 ONSC 4166;

(b) The standard of care is reasonableness, not perfection or unrealistic or impractical precautions: *Kerr v. Loblaws Inc.,* 2017 ONCA 371 (Ont. C.A.).

(c) The moving party must "pinpoint some act or failure on the part of the occupier that caused the plaintiff's injury": *Nandlal v. Toronto Transit Commission,* 2014 ONSC 4760 (Ont. S.C.J.) at para.8.

(d) The duty of care must not be confused with a presumption of negligence: *Gohm v. York,* 2013 ONSC 7118, 2013 CarswellOnt 15704 (Ont. S.C.J.), at para. 20.

(e) The Act does not impose strict liability: *George v. Covent Garden Market Corporation,* 2007 ONSC 29276, [2007] O.J. No. 2903 (Ont. S.C.J.), at para. 35.

(f) The occupier is not under the duty to remove every possible danger: *Hamilton v. Ontario Corporation #2000533 o/a Toronto Community Housing Corporation,* 2017 ONSC 5467 at para. 32; or to "sanitize their environment to…negate all risk": *Miltenberg v. Metro Inc.,* 2012 ONSC 1063, at para 32.

(g) In assessing liability, a measure of "common sense" should apply: *Miltenberg, ibid* at paras 39-40.

(h) There is no duty to warn of an obvious and self-evident danger: *Winters v. Haldimand (County),* 2015 ONCA 98, 2015, at para 16.

(i) Where the defendant is a grocer or similar retailer, it may be liable for injuries that result from creating a limited space for customers circulating with shopping carts, given the reasonable foreseeability that someone could be hurt as a result: *LeClerc v. Westfair Foods Ltd.,* 1999 CarswellMan 381 at para 26.

In determining the issue, the Court relied on the evidence submitted, an expert report, and the CCTV footage. In doing so, it found no genuine issue for trial on the following basis:

1. The position of the shopping cart did not create a hazard in that it only slightly protruded into the aisle (42 cm). The cart had only been in the position for 30 seconds prior to the loss occurring, and it was clear to the naked eye that there was sufficient room for people to enter the aisle despite the cart's presence.

2. The CCTV footage showed that there was enough room for more than one person to enter the aisle.

3. The Plaintiff fell after she tripped over a wheeled basket being steered by another patron who entered the aisle immediately behind her.

4. The Plaintiff never came into contact with the shopping cart.

5. The cart was stationary at the time that the Plaintiff entered into the aisle.

6. While there was congestion in the area where the fall occurred, the Court was not convinced that the shopping cart was the cause of the congestion.

7. It could not be expected that, while there were patrons in the Wal-Mart, that Wal-Mart employees should not be moving with them, and certainly not with shopping carts. The implication did not accord with common sense, would amount to a demand for perfection, and far exceeded the standard required under the *Act*.

The Court further rejected the Plaintiff's arguments that (1) the defendants had not put their "best foot forward" by failing to provide Affidavits from certain Wal-Mart employees; (2) that their expert had not addressed whether the physical situation in the aisle allowed for multiple persons to enter without risking contact with each other; and (3) that there were credibility issues that could only be determined by the trial judge. The Court was not persuaded that any of the issues raised were significant enough to find that the Plaintiff had a real chance of success at trial.

While the defendants owed a duty of care to take reasonable precautions to make its premises safe for Plaintiff and other patrons, there was no evidence that on October 31, 2022, they had failed to do just that. Having reviewed the record, the Court was satisfied that what befell the Plaintiff "was an awful but unforeseeable accident" that did not involve the defendants and against which the defendants could not have taken reasonable precautions. Consequently, the defendants did not breach the *Act.*

Summary judgment was granted and the case was dismissed.

2. *Pederson* v. *Forget,* 2026 ONCA 118 (CanLII)

The appellant, Janet Pederson (the "Appellant"), suffered injuries when she slipped on stairs in a home owned by the respondents, Michel and Annie Forget (the "Respondents"). The fall occurred on March 25, 2015. In the underlying matter, the Appellant claimed damages for personal injuries, past and future income loss, and future care. The action proceeded to trial with a jury. Liability was hotly contested.

The Appellant alleged that the top step of the Respondents' wooden staircase was slippery, causing her to fall. The Respondents denied negligence and asserted that the stairs were in a reasonably safe condition and that the fall was not attributable to any "problem" with the stairs.

At trial, each party presented expert engineering evidence on the slip resistance of the stairs after the application of various cleaning products. The Appellant called expert engineer Gord Jenish ("Jenish") and the Respondents called expert Andrew Huntley ("Huntley"). The trial Judge determined that Jenish could not testify regarding the results and conclusions set out in the first report that he delivered, but that he was permitted to testify about his testing and the results contained in his three subsequent reports.

The jury ultimately returned a verdict in the favour of the Respondent homeowners, finding that they were not negligent. The Appellant appealed the decision on the basis that the trial Judge erred in not permitting Jenish to provide evidence on his first report.

Background Facts

The Appellant, an insurance adjuster, attended at the Respondents' home to obtain a statement. She removed her shoes once inside the home. After the statement was obtained, she began to descend the stairs to leave. After placing her foot on the top step, she fell down the stairs, landing on her back. Following the fall, the Appellant will say that she overheard the Respondents speaking in French to one another, during the course of which they stated that their cleaning lady had recently been at the house and that she had applied "Pledge" to the stairs. She asked the Respondents to explain in English what had occurred, and advised that they repeated the same information in English. While the Respondents admitted that they spoke about the fact that the Appellant had fallen, they denied that they advised that the stairs had recently been cleaned. The Respondents denied that they employed a cleaning lady. They further denied that the stairs were cleaned with Pledge, advising instead that they were cleaned, two days prior, with Vim – a product intended for use on wooden floors and stairs.

Expert Evidence

Each expert conducted slip resistance testing. Jenish prepared four reports. In the first report, Jenish used the stairs in his own home and tested them under five conditions – dry; wet from tap water; after the application of Pledge Clean – a hardwood cleaner; after the application of Pledge Beautify – a furniture spray; and after the application of Vim – a wood floor cleaner. He measured

the slip resistance before and after the application of the products[1]. In the second report, he undertook the same testing at the Respondents' home. In his third report – due to "unusual results" from the Pledge Beautify product from the testing at the Respondents' home, Jenish performed additional testing on the stairs in his own home.

The Respondents opposed the qualification of Jenish as an expert to provide evidence about the slip resistance of surfaces on the basis that (1) he did not possess the necessary qualifications; and (2) that he was biased in favour of the Appellant. After a two day voir dire, the trial Judge determined that Jenish had the requisite expertise and rejected the argument that he was biased. The trial Judge did not, however, permit the findings in his first report to be put before the Court noting that the testing was not reliable due to the differences between the test that he performed in his house and the actual evidence concerning the stairs in the Respondents' home.

Issue on Appeal

The Appellant submitted that the trial Judge erred in excluding Jenish's first report and the findings of his testing discussed therein, resulting in a miscarriage of justice requiring a new trial. The Court of Appeal disagreed with this assertion, on the following grounds:

1. The Court rejected that the trial Judge failed to properly follow the test for an admission of an expert as articulated in *White Burgess Langille Inman* v. *Abbott and Haliburton Co.*, 2015 SCC 23, [2015] 2 S.C.R. 182. The trial Judge had properly exercised their role as gatekeeper under the second part of the test in balancing the risks and benefits of allowing expert evidence to be heard, in ruling that Jenish's first report was not admissible.

2. The Court rejected the submission of the Appellant that the trial Judge failed to consider the effect of precluding Jenish from testifying about his first test results and how they supported the allegation that "tampering" occurred. The trial Judge was not obligated to address any allegations of tampering in their determination of Jenish's qualification as an expert. Any such allegations were factual determinations that were distinct from the qualification of Jenish as an expert.

3. In determining whether a miscarriage of justice had taken place due to evidence being improperly excluded, and whether a new trial would be warranted, the question before the Court was whether the excluded evidence would "have made a difference to the outcome," so that its exclusion caused a miscarriage of justice. In the case at hand, Jenish's second round of testing in the Respondents' home found that the stairs were less slippery following the application of Pledge Beautify – an oily product. Jenish found that this did not make sense and concluded that there had been testing interference by the

[1] It is noted that Jenish tested on a hardwood landing, not on stairs; he used a different dilution of Vim than that used by Ms. Forget; he waited only 30 minutes before retesting when Ms. Forget testified the stairs had been cleaned 2 days prior to the fall; and he did not conduct the testing using a nylon stocking or ladies' dress sock, which is what Pederson was wearing at the time of her fall.

Respondents. However, because he was not permitted to discuss the results in his first report, the Appellant argued that the tampering issue and its potential effect on the credibility of the Respondents was not before the Court. The Appellant argued that, consequently, the jury was left with an incorrect assumption of the evidence that resulted in trial unfairness. As the jury had to find whether the state of the stairs breached the *Occupiers Liability Act*, credibility of the Appellant and Respondents was key.

The Court of Appeal found that there was ample evidence outside of the expert evidence upon which the jury could have concluded that the stairs were reasonably safe at the time of the fall. The evidence precluded by the trial Judge did not prevent the Appellant from advancing the theory that the stairs were interfered with during testing. Of note, Jenish testified that he believed that the test surface had been interfered with given the testing results; Ms. Forget was cross-examined on the issue; and the jury charge addressed the question of interference. The admission of Jenish's first report would not have made a difference to the outcome of the case.

The appeal was dismissed, with costs.

SHARE THIS NEWSLETTER:

ABOUT THE AUTHOR

JENNIFER HUNEAULT

PARTNER

EMAIL jhuneault@ahbl.ca

TEL 416 639 9054

Toronto

V-Card

Jennifer is a Partner in Alexander Holburn's Toronto Office, and is a member of the firm's Insurance Group. She defends matters relating to complex personal injury, occupier's liability, CGL claims, municipal liability, professional negligence, D&O claims, product liability and recall, property claims, and subrogated claims. Jennifer also handles coverage disputes and fraudulent claims. She works for insurers, and private clients alike. Jennifer is committed to working with her clients in a collaborative approach to develop a litigation strategy that is mindful of their goals, and needs, as an organization. She is client focused and customer service driven, and is dedicated to understanding her clients' business objectives, in an aim to not only deliver high quality work, but also an exceptional client experience. Jennifer has completed a certificate in Risk Management and holds a Canadian Risk Management Designation. As a value-added service to her clients, she can provide advice on risk mitigation and financing, and strategies to reduce claims.

ABOUT ALEXANDER HOLBURN BEAUDIN + LANG LLP

Alexander Holburn is a leading full-service, Canadian law firm with offices in Vancouver, Kelowna and Toronto, Canada. We have operated in British Columbia for 50 years and opened our Ontario office in 2019, followed by our Kelowna office in 2023. With over 100 lawyers, we provide a full spectrum of litigation, insurance, business, and personal law services for clients based in Canada, the United States, and Europe.

At Alexander Holburn, high-quality work is our baseline. We are dedicated to providing pre-eminent legal services to clients by forming strategic, service-oriented business partnerships. We are also equally committed to delivering exceptional customer service to our clients, which begins with taking the time to get to know our clients' needs, and the environments they work and operate in. We not only want to be your advocate, but we also want to be your trusted advisor.

Alexander Holburn lawyers are repeatedly recognized in *Best Lawyers in Canada*, the *Canadian Legal Lexpert Directory*, *Benchmark Litigation*, and *Who's Who Legal*. In addition to providing outstanding legal services, we aim to be thought leaders who can add insight beyond the individual mandates we receive.