



ONTARIO OCCUPIERS' UPDATE

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In This Issue:

1. **Court Considers Sections 3(1) and 3(2) of the *Occupiers' Liability Act* In Class Action Certification Motion**

Morrison v. Hatts Off Inc. et al., 2026 ONSC 4216 2

2. **Court Approves Motion For Settlement In A Trip And Fall Action Involving A Person Under Disability But Sends Warning To Plaintiff's Counsel On Fairness Of Contingency Fees**

Abbas Sharifzadeh v. The Corporation of The City of Toronto, 2026 ONSC 4325.....4

3. **Plaintiff Granted Leave To Add Defendants In Occupiers' Liability Action After Expiration Of Limitation Period**

Lutchin v. Whitaker, 2026 ONSC 4366.....5

1. *Morrison v. Hatts Off Inc. et al.*, 2026 ONCA 4216

The plaintiff, Jamar Morrison (the “Plaintiff”), sought to certify a class proceeding on behalf of children who received residential care from the defendants Hatts Off Inc., Naylor Nine Holdings Limited, Gordon Naylor, Bronwyn Naylor, Aladine Hanna, and Hatts Off Specialized Services Inc. (the “Defendants”).

The Plaintiff alleged systemic failures to implement and enforce protective policies and procedures to protect the proposed class members from harm. The failures allegedly resulted in under qualified, poorly trained, and poorly supervised staff that led to poor overall conditions in the homes which included the overuse of restraints, the failure to provide reasonable nutrition, and the treatment of children in a degrading matter. The Plaintiff further alleged that the Defendants misappropriated funds for the care of the children entrusted to them.

The Plaintiff advanced the claims on the basis of negligence and vicarious liability, occupiers' liability, and on the basis of fiduciary duty.

The Defendants opposed the certification on the basis that liability, causation, and damages require individualized inquiries, the proposed common issues were not truly common, and that no class-wide methodology exists.

The judgment contains an in-depth analysis of the test to certify a class under the *Class Proceedings Act, 1992*, in addition to other evidentiary issues which will not be addressed in this summary.

Relevant to the consideration of occupiers' liability concerns, the Court considered whether claims made under the *Occupiers' Liability Act, RSO 1990, c O. 2* (the “OLA”) were sufficiently plead against the named alleged occupiers, and whether said claims were duplicative.

The Occupiers' Liability Claims

The Plaintiff plead liability against the defendants Hatts Off Inc., Naylor Nine Holdings Limited, and Aladine Hanna further to a statutory duty of care originating under the OLA. The Court considered section 1 of the OLA, namely, the definition of an “occupier”; along with sections 3(1) and 3(2) of the OLA, relating to an occupiers' duty of care.

The defendants submitted that the Plaintiff's OLA claim was not viable and should be struck for three reasons:

1. Merely owning a property does not give rise to a duty of care under the legislation, rather, there must be responsibility for or control of the premises;
2. The OLA's focus is the existence of hazards on the property, not the assessment of whether services provided at a certain location are negligent; and

3. The OLA claim is duplicative of the claim asserted in negligence, and therefore should be struck.

In considering the defendants' assertions, the Court opined as follows:

1. It was agreed that merely owning a property does not give rise to a duty of care under the legislation. However, by virtue of ss. 1(b) of the OLA, a landlord may nonetheless be an occupier under the legislation if it is a "person who has responsibility for and control over the condition of premises or the activities carried on, or control over persons allowed to enter the premises".
2. By virtue of ss. 3(2) of the OLA, the Court was not satisfied that the legislation addresses only hazards on the property and not the assessment of whether services provided at a particular location are negligent. The subsection specifically includes "an activity carried on the premises". In the case at hand, the failure to implement policies that would ensure that the class members were reasonably safe on the premises, and the allegations that the defendants knew or ought to have known that the children in care would suffer immediate and long-term damage because of the alleged failures, while novel, contained elements of a cause of action recognized in law and that were a reasonably logical extension of established law.
3. While the claims of negligence and breach of the OLA may be based on overlapping allegations, as are the Plaintiff's negligence and breach of fiduciary duty claims, the overlapping allegations do not mean that the claims should be struck.

For the reasons above, the Court certified that the occupiers' liability causes of action satisfied the cause of action criterion under the *Class Proceedings Act, 1992*.

Disposition

The Court ultimately granted the certification motion, certifying 10 of 11 proposed common issues.

2. *Abbas Sharifzadeh, represented by his Litigation Guardian, Azardokht Nejad et al. v. The Corporation of the City of Toronto*, 2026 ONSC 4325

Plaintiff's counsel brought a motion for Court approval of settlement under Rule 7 of the *Rules of Civil Procedure*, further to an action that arose out of a trip and fall accident that occurred on October 3, 2020. The 76 year old plaintiff, Abbas Sharifzadeh (the "Plaintiff"), is a person under disability.

Damages

As a result of the trip and fall on October 3, 2020, the Plaintiff sustained a nasal fracture; two broken teeth; and soft tissue injuries to the shoulders, neck, and back. The assessment of damages was complicated by the Plaintiff's preexisting cervical stenosis and cognitive decline, assessed to be chronic macroangiopathic disease.

The proposed settlement amount was \$280,000 all inclusive.

The Retainer Agreement

As part of the proposed settlement, the Plaintiff initially, and subsequent to becoming a person under disability, agreed to the contingent Retainer Agreement which provided for "33% of all amounts recovered". The Court expressed concerns with Plaintiff's counsel request for \$73,885.27 in fees.

The Court considered the test under Rule 7.08, which requires approval of the terms of the settlement to be in the best interest of the person under disability. Additionally, it considered the test applicable to enforcement of a contingent fee retainer, which is, first, to assess the fairness of the agreement as of the date it was entered into; and second, to assess the reasonableness of the agreement as of the date of the hearing (*Henricks-Hunter v. 814888 Ontario Inc. (Phoenix Concert Theatre)*, 2012 ONCA 496).

The Court found that the contingent fee Retainer Agreement was reasonable when it was entered into, but the contingent fee charged was not reasonable as of the hearing. The Court had concerns with counsel's pre-bill, specifically there being 12 law clerks involved in the case. The Court further considered the need to ensure access to justice for injured persons under disability.

The Court ultimately approved the settlement amount, but reduced counsel's fees to \$65,000.

3. *Lutchin v. Whitaker*, 2026 ONSC 4366

The Plaintiffs, owners of a registered quarter horse that was boarded at Woodview Stables in Burlington, commenced an action arising out of an alleged injury caused to their horse on July 17, 2022. The Plaintiffs entered into a Horse Boarding Agreement that indicated that Donna Whitaker o/a Woodview stables was the stable operator/Landlord. As a result, the action was commenced against the Defendant, Donna Whitaker o/a Woodview Stables ("Donna"), only. In the course of examinations for discovery, the Plaintiffs argued that they first learned the property was jointly owned by Jeffrey and Lori Ann Whitaker.

The Plaintiffs brought a motion to amend their Statement of Claim to add Jeffrey and Lori Ann Whitaker ("Jeffrey" and "Lori Ann") as defendants to the action. The Plaintiffs framed the motion as a request for leave to correct a misnomer, arguing that they had always intended to claim against all of the owners and occupiers of the property. Donna opposed the motion on the basis that the limitation period had long expired, and that the addition of the proposed defendants did not equate to a "misnomer". Of note, Jeffrey and Lori Ann did not respond to the motion.

Limitation Period

In carrying out its analysis, the Court reminded us that a misnomer can be corrected even after the limitation period has expired.

In addressing the limitation period argument, the Court considered sections 21(1) and (2) of the *Limitation Act*, 2002, which provide that if a limitation period in respect of a claim against a person has expired, the claim shall not be pursued by adding the person as a party to any existing proceeding. However, s. 21(1) does not prevent the correction of a misnaming or misdescription of a party. Additionally, it considered the decision in *Stechyshyn v Domljanovic*, 2015 ONCA 889, which found that a plaintiff need not establish due diligence in identifying the true defendant within the limitation period as long as the true defendant would know on reading the Statement of Claim that they were the intended defendant.

Claim provided to Insurer within Limitation Period

In the case at hand, Donna held a policy of insurance in respect of the business operations of the stables. A separate policy of insurance was in place for the property, under which Jeffrey was a named insured. The Statement of Claim was provided to the property insurer, who then responded to the Plaintiffs by letter dated April 11, 2024.

The Court followed the decision in *Loy-English v. The Ottawa Hospital et. al*, 2019 ONSC 6075, which held that notice may be sufficient if the claim against an unknown party has been brought to the attention of the named defendant, employer, organization or insurer. In the case at hand, the Court was satisfied that the property insurer was aware of the Plaintiffs' claim less than two years after the injury to the horse and would have been able to preserve evidence and investigate the claim.

Correcting Misnomer

The Court then gave consideration the application of Rule 5.04(2), which provides that a plaintiff may bring a motion to correct the name of a party incorrectly named on such terms as are just. The Court noted that a misnomer motion can be brought at any stage of the proceeding, and that relief is not to be granted where prejudice would result that could not be compensated for by costs or an adjournment.

The Court provided a summary of case law for correcting misnomer, advising that a Statement of Claim will be viewed as reflecting a correctible misnomer in respect of a defendant where it is apparent that (1) a plaintiff intended to name the defendant, and (2) that the intended defendant knew it was the intended doefendant in relation to the plaintiff. The Court noted that as part of its assessment, a Statement of Claim should be given a "fair reading" to determine whether the person said to have been identified by the pseudonym or fictional name would have known upon receiving the claim that the "litigation finger" was pointed at them.

The lack of generic parties such as John Doe listed in the Statement of Claim was not fatal to the misnomer motion. The Court took a liberal interpretation of the Rules, remarking that the analysis should not be one of "looking for traps, tricks, or loopholes".

The Court ultimately found that by a review of the Statement of Claim, Jeffrey and Lori Ann would be able to recognize that the claim sought recovery against the owners of the property, not just Donna as the operator, noting that the Statement of Claim included allegations of breaches of the *Occupiers' Liability Act*, R.S.O. 1990, c. O2 and specific breaches regarding the care of the property and keeping it in a safe condition.

Leave was granted and the Plaintiffs were permitted to add Jeffery and Lori Ann as defendants to the action.

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ABOUT ALEXANDER HOLBURN BEAUDIN + LANG LLP

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