Court emphasizes systems of maintenance in occupiers' liability claims

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On April 8, 2022, the Ontario Superior Court of Justice released its decision in *Martin v. AGO et al*, 2022 ONSC 1923. This decision is a helpful refresher on occupiers' liability claims in Ontario, with a particular focus on what steps an occupier and/or its contractors can take to meet the standard of care pursuant to section 3(1) of the *Occupiers' Liability Act*.

Background

The plaintiff, a criminal defence lawyer, attended the John Sopinka Courthouse in Hamilton around 11:30 AM on July 14, 2015, slipping on a "small amount of water" and tearing his hamstring in a main public hallway. The quantum of damages was agreed upon in advance of trial, but liability and contributory negligence remained at issue. The defendants by the time of trial were the owner and property manager of the courthouse, along with a building maintenance company, which had been contracted to provide janitorial services.

The parties submitted an extensive statement of facts at trial, aided by the existence of CCTV footage depicting the fall. Notably, it was agreed that it had rained on the morning of the fall, and the water that caused the fall had accumulated from the wet umbrella of a courthouse visitor.

The trial decision

The court dismissed the plaintiff's claim, finding that the defendants had met the standard of care set out at section 3(1) of the *Occupiers' Liability Act*, namely "to take such care as in all the circumstances of the case is reasonable to see that persons entering on the premises… are reasonably safe while on the premises."

The court found that mats had been placed on the date of loss inside all three entrances to the courthouse, such that no one could enter without walking over one of them. In addition, six wet floor signs were placed throughout the premises, including one that was visible to the plaintiff as he traversed the hallway where he eventually fell. Finally, the contractor's site staff included a full-time day porter whose duties included at least

four floor inspections per day on each of the courthouse's seven public floors, along with a work order system of responding to complaints. On this basis, the court held that the defendants had provided a robust system of inspection and maintenance that met the standard of care in the circumstances, which is not a standard of perfection.

Moreover, the court found that the water on which the plaintiff slipped was approximately the amount that would be generated by a single ice cube. The court noted that the amount was "not perceptible" by at least six people. Accordingly, the plaintiff failed to establish that "but for" the defendants adopting a more vigilant system of surveillance, the accident would have been prevented. Finally, the court would have assessed the plaintiff with 30 per cent contributory negligence if successful, due to the worn out soles of his shoes.

Commentary

This decision highlights the centrality of systems of maintenance and inspection for occupiers of premises and their contractors. While fact-driven, the decision also reminds plaintiffs that they are not automatically entitled to compensation simply because they are injured on someone else's property, as occupiers are not insurers for slip-and-falls.

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