Owners and Occupiers Liability for Slip and Fall Injuries

If someone slips/trips and falls in Ontario, injuring themselves while on property owned or occupied by someone else, the injured party may have a claim for their injuries, damages and loss of income sustained in the fall. Liability of an owner or occupier for injuries sustained on it's property is set out in the Occupiers' Liability Act (the OLA) and then clarified by numerous reported Court decisions interpreting the OLA.

The combination of the OLA and Court decisions suggests that to be successful in a lawsuit the injured party need merely prove that the injuries were caused by the failure of the owner/occupier to take reasonable care that the land/premises were reasonably safe for use by persons on the property.

The duty of care is set by using an "objective" test of reasonable. The practical result of the use of the words "reasonable" and " objective" allows the courts to assess each case differently to make findings fact specific to the circumstances of each individual case, (no two cases are the same).

There are of course exceptions to the general duty. Claims against Municipalities have a different standard of duty and a very short 10 day notice period (subject to a reasonable excuse extension). This will be the topic of a future article.

There are also cases where a lower standard of care is allowed if the entrant to the property has voluntarily assumed the risks associated with the property. These are the cases where the person signs a type of release/waiver before entering the property. In this case the owner/occupier need only "not create a danger with intent to injure" or not show "reckless disregard to the persons entering the property".

This seems a very high onus to overcome, but fortunately the Courts have consistently found ways to avoid the validity of the release/waiver, allowing parties to be successful if the owner/occupier was at fault.

In order to succeed in a claim, the plaintiff usually has to prove how the incident occurred, how he/she fell or slipped or tripped. However there is a recent Ontario Court of Appeal decision that makes it much easier to succeed.

In the decision in Kamin v Kawartha the plaintiff fell and was badly injured in a parking lot. At trial she could not specifically identify that spot where she fell, nor why or how she fell.

The trial judge dismissed her case but the Court of Appeal allowed it, finding that the parking lot was uneven and unsafe, was poorly inspected and had not been paved for twenty plus years.

Most importantly the Court found that the plaintiff was wearing reasonable footwear, her eyesight was good, the weather conditions were clear, and that there seemed to be no other good reason for the fall. Under these circumstances the Court found that it could draw an adverse inference against the owner/occupier and that the plaintiff fell as a result of the failure of the owner/occupier to comply with the OLA .

In any claim the Court will consider the conduct of the injured party. Usually the Court will find that the injured party is at least partly responsible for the injury, perhaps for wearing the wrong footwear, not looking where they were going, being distracted, carrying items, the weather conditions, and on and on.

If the plaintiff is found partly at fault, the claim is reduced by the percentage of the fault, called contributory negligence. For example if the Court finds the plaintiff 25% at fault, it reduces the overall claim by 25%. The owner/occupier is still responsible for 75 % and most of the legal costs of the plaintiff.

If you have been hurt, don't give up, the Courts are generally sympathetic to injured parties if they know how to properly advance their claims.

The above is not to be considered as legal advice. You should consult your own lawyer.