

Occupiers' Liability Act

CHAPTER 27 OF THE ACTS OF 1996

as amended by

2019, c. 9, s. 9



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CHAPTER 27 OF THE ACTS OF 1996
amended 2019, c. 9, s. 9

**An Act Respecting the Liability
of Owners and Other Occupiers
of Land and Other Premises**

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Short title

1 This Act may be cited as the *Occupiers' Liability Act*. 1996, c. 27, s. 1.

Interpretation

2 In this Act,

- (a) “occupier” means an occupier at common law and includes
- (i) a person who is in physical possession of premises, or
 - (ii) a person who has responsibility for, and control over, the condition of premises, the activities conducted on the premises or the persons allowed to enter the premises,

and, for the purpose of this Act, there may be more than one occupier of the same premises;

- (b) “premises” includes
- (i) land and structures, or either of them, except portable structures and equipment,
 - (ii) water,
 - (iii) ships and vessels,

- (iv) notwithstanding subclause (i), trailers and portable structures designed or used for a residence, business or shelter,
- (v) railway cars, vehicles and aircraft, except while in operation. 1996, c. 27, s. 2.

Replacement of common law rules

3 This Act applies in place of the rules of common law for the purpose of determining the duty of care that an occupier of premises owes persons entering on the premises in respect of damages to them or their property. 1996, c. 27, s. 3.

Duties of occupier

4 (1) An occupier of premises owes a duty to take such care as in all the circumstances of the case is reasonable to see that each person entering on the premises and the property brought on the premises by that person are reasonably safe while on the premises.

- (2)** The duty created by subsection (1) applies in respect of
- (a) the condition of the premises;
 - (b) activities on the premises; and
 - (c) the conduct of third parties on the premises.

(3) Without restricting the generality of subsection (1), in determining whether the duty of care created by subsection (1) has been discharged, consideration shall be given to

- (a) the knowledge that the occupier has or ought to have of the likelihood of persons or property being on the premises;
- (b) the circumstances of the entry into the premises;
- (c) the age of the person entering the premises;
- (d) the ability of the person entering the premises to appreciate the danger;
- (e) the effort made by the occupier to give warning of the danger concerned or to discourage persons from incurring the risk; and
- (f) whether the risk is one against which, in all the circumstances of the case, the occupier may reasonably be expected to offer some protection.

(4) Nothing in this Section relieves an occupier of premises of any duty to exercise, in a particular case, a higher standard of care that, in such case, is required of the occupier by virtue of any law imposing special standards of care on particular classes of premises. 1996, c. 27, s. 4.

Willing assumption of risk

5 (1) The duty of care created by subsection 4(1) does not apply in respect of risks willingly assumed by the person who enters on the premises but, in that case, the occupier owes a duty to the person not to create a danger with the deliberate intent of doing harm or damage to the person or property of that person

and not to act with reckless disregard of the presence of the person or property of that person.

(2) A person who is on premises without the permission of the occupier for the purpose of committing an offence against the person or the right of property contrary to the *Criminal Code* (Canada) is deemed to have willingly assumed all risks and the duty of care created by subsection (1) applies.

(3) The question of whether a person is on premises for the purpose set out in subsection (2) shall be determined on a balance of probabilities. 1996, c. 27, s. 5.

Deemed willing assumption of risk

6 (1) This Section applies to

- (a) land used primarily for agricultural or forestry purposes;
- (b) vacant or undeveloped rural land;
- (c) forested or wilderness land;
- (d) recreation facilities when closed for the season;
- (e) utility rights-of-way and corridors, excluding structures located thereon;
- (f) highway reservations under the *Public Highways Act*;
- (g) mines as defined in either the *Metalliferous Mines and Quarries Regulation Act* or the *Coal Mines Regulation Act*, where the harm or damage suffered is not, in whole or in part, the result of non-compliance with a law relating to the security of such mine and the safety of persons and property;
- (h) private roads situated on lands referred to in this subsection;
- (i) private roads to which this Section does not otherwise apply, reasonably marked by notice as private, where persons are physically restricted from access by a gate or other structure; and
- (j) recreational trails reasonably marked by notice as such.

(2) Subject to subsection (3), a person who enters premises described in subsection (1) is deemed to have willingly assumed all the risks and the duty created by subsection 5(1) applies.

(3) This Section does not apply to a person who

- (a) enters premises for a purpose connected with the occupier or any person usually entitled to be on the premises;
- (b) has paid a fee for the entry or activity of the person on premises, other than a benefit or payment received by the occupier of the premises from a government or government agency or a non-profit recreation club or association;

(c) is being provided, in exchange for consideration, with living accommodation by the occupier; or

(d) is authorized or permitted by any law to enter or use the premises, for other than recreational purposes, without the consent or permission of the occupiers. 1996, c. 27, s. 6.

Agreements modifying duties

7 (1) An occupier may, by express agreement, express stipulation or notice,

(a) extend or increase the duty created by subsection 4(1); or

(b) restrict, modify or deny the duty created by subsection 4(1),

subject to any prohibition or limitation imposed by this or any other Act of the Legislature, against or on, the restriction, modification or denial of the duty.

(2) No restriction, modification or denial of the duty pursuant to clause (1)(b), whether by express agreement, express stipulation or notice, is valid or binding against any person unless in all the circumstances of the case it is reasonable and, without limiting the circumstances to be considered in any case, in determining the reasonableness of any restriction, modification or denial of the duty, the circumstances to be considered include

(a) the relationship between the occupier and the person affected by the restriction, modification or denial;

(b) the injury or damage suffered and the hazard causing it;

(c) the scope of the restriction, modification or denial; and

(d) the steps taken to bring the restriction, modification or denial to the attention of the persons affected thereby.

(3) Subject to subsections (4) and (5), where an occupier restricts, modifies or denies the duty created by subsection 4(1), the occupier shall take reasonable steps to bring the restriction, modification or denial to the attention of the person to whom the duty is owed.

(4) An occupier of premises shall not restrict, modify or deny the duty imposed by subsection 4(1) with respect to a person who is empowered or permitted by any law to enter or use the premises without the consent or permission of the occupier.

(5) This Section applies to express agreements, stipulations and notices that are made prior to or after the coming into force of this Act. 1996, c. 27, s. 7.

Independent contractors

8 (1) Notwithstanding subsection 4(1), where damage is caused to persons or property on premises solely by the negligence of an independent contractor engaged by the occupier of the premises, the occupier is not on that account liable pursuant to this Act if, in all the circumstances,

(a) the occupier exercised reasonable care in the selection of the independent contractor; and

(b) it was reasonable that the work that the independent contractor was engaged to do should have been done.

(2) Subsection (1) does not restrict, modify or deny the liability imposed by any other Act of the Legislature on an occupier of premises for the negligence of independent contractors engaged by the occupier.

(3) Where damage is caused to persons or property on premises by the negligence of an independent contractor engaged by an occupier of the premises and there are two or more occupiers of the premises, subsection (1) applies to each of those occupiers. 1996, c. 27, s. 8.

Duties of landlord

9 (1) Where under a lease of premises a landlord is responsible for the maintenance or repair of the premises, the landlord owes the same duty to each person entering on the premises as is owed by the occupier of the premises.

(2) Where premises are sublet, subsection (1) applies to any landlord who is responsible for the maintenance and repair of the premises.

(3) Nothing in this Act relieves a landlord of any duty imposed on landlords by any law.

(4) For the purpose of this Section, obligations imposed on a landlord by any law shall be deemed to be imposed under the lease and "lease" includes any statutory lease or any contract or statutory provision conferring the right of occupation of premises on a person who is not the owner thereof and "landlord" shall be construed accordingly.

(5) This Section applies to leases that are made prior to or after the coming into force of this Act. 1996, c. 27, s. 9.

Application of certain Acts

10 The *Contributory Negligence Act* and the *Tortfeasors Act* apply to and in respect of damages arising from a breach of the duties imposed by this Act. 1996, c. 27, s. 10.

Application of Act to Crown

11 (1) Subject to subsection (2), this Act is binding on Her Majesty in right of the Province and in right of Canada.

(2) This Act does not apply to Her Majesty in right of the Province or in right of Canada as the occupier of

(a) a public highway or a public road;

(b) drainage works; or

(c) a river, stream, watercourse, lake or other body of water except those areas thereof that have been specially developed by Her Majesty for recreational swimming or for the launching and landing of boats. 1996, c. 27, s. 11.

Application of Act to municipalities

12 (1) In this Section,

- (a) "highway" includes any public road or street;
- (b) "municipality" means a regional municipality, incorporated town or a municipality of a county or district.

(2) This Act does not apply to a municipality as the occupier of a highway, public walkway or public sidewalk. 1996, c. 27, s. 12.

Exemption from application of Sections 5 to 9

13 Sections 5 to 9 do not apply to or affect

- (a) the liability or duties of an employer to employees of the employer;
- (b) the liability or duties of any person arising under a contract for the hire of, or for the carriage for reward of persons or property in any vehicle, vessel, aircraft or other means of transportation;
- (c) *repealed 2019, c. 9, s. 9.*
- (d) the liability or duties of any person by virtue of a bailment; or
- (e) the liabilities or duties of any person under the *Trails Act*. 1996, c. 27, s. 13; 2019, c. 9, s. 9.

Causes of action affected by Act

14 For greater certainty, subject to subsections 7(5) and 9(5), this Act applies only in respect of a cause of action arising after the coming into force of this Act. 1996, c. 27, s. 14.

Repeal

15 Chapter 322 of the Revised Statutes, 1989, the *Occupiers of Land Liability Act*, is repealed. 1996, c. 27, s. 15.
