

Slip And Fall Accidents In BC - What Does It Take For A Successful Lawsuit?

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When you slip and fall and get injured on someone else's property are you entitled to compensation? The answer is not necessarily.

Injury in a slip and fall accident is only half of the equation. The other half is fault. The 'occupier' of the property (or another defendant who owes you a duty of care) needs to be at fault for the slip and fall otherwise no successful claim for compensation can be brought. Reasons for judgement were released today by the BC Supreme Court, New Westminster Registry, dealing with this area of the law.

In today's case ([Schray v. Jim Pattison Industries Ltd.](#)) the Plaintiff fell (apparently on water) at a Save on Foods Grocery Store which was owned and operated by the Defendant. The Plaintiff sued for her injuries alleging that the Defendant was at fault. The Defendant brought a motion under Rule 18-A of the BC Supreme Court Rules to dismiss the case. Madam Justice Arnold-Bailey denied the Defendant's motion finding that the case was not suitable for summary dismissal. Before reaching this conclusion, however, the Court summarized some of the legal principles behind a successful slip and fall lawsuit. I reproduce these here for your convenience:

[21] I agree that the prior summary trial judge set out the correct law in the previous application at paras. 5-10, as follows:

[5] The duties of an occupier are set out in s. 3 of the Occupier's Liability Act:

3(1) An occupier of premises owes a duty to take that care that in all the circumstances of the case is reasonable to see that a person, and the person's property, on the premises, and property on the premises of a person, whether or not that person personally enters on the premises, will be reasonably safe in using the premises.

(2) The duty of care referred to in subsection (1) applies in relation to the

(a) condition of the premises,

- (b) activities on the premises, or
- (c) conduct of third parties on the premises.

[6] The Act does not create a presumption of negligence against an occupier whenever a person is injured on the premises. To establish liability, a plaintiff must point to “some act (or some failure to act) on the part of the occupier which caused the [plaintiff’s] injury”: *Bauman v. Stein* (1991), 78 D.L.R. (4th) 118 at 127 (B.C.C.A.).

[7] A similar test applies under the common law.

[8] An occupier’s duty of care does not require the occupier to remove every possibility of danger. The test is one of reasonableness, not perfection. Thus, an occupier may avoid liability if it establishes that it had in place a reasonable system of inspection: *Carlson v. Canada Safeway Ltd.* (1983), 47 B.C.L.R. 252 (C.A.).

[9] The plaintiff also bears the burden of proving that the hazard in question caused the injury: *Keraiff v. Grunerud* (1990), 43 B.C.L.R. (2d) 228, 67 D.L.R. (4th) 475 (C.A.).

[10] An occupier’s duty under the Act in relation to slips and falls in grocery stores was described as follows by Trainor J. in *Rees v. B.C. Place* (25 November 1986), Vancouver C850843 (B.C.S.C.) (quoted with approval by Hutcheon J.A. in *Coulson v. Canada Safeway Ltd.* (1988), 32 B.C.L.R. (2d) 212 at 214, [1989] 2 W.W.R. 264 (C.A.)):

The proceedings are brought under the Occupier’s Liability Act and that Act provides that an occupier has a duty to take that care that is reasonable in all the circumstances of the case to see that a person, in using the premises, will be reasonably safe.

The first requirement to satisfy that obligation is to take the kind of steps that were taken by the Defendants here to put into place a system to safeguard against dangerous substances being allowed to remain on the surface of the concourse. And then secondly to be sure that there was compliance by the people who were carrying out that responsibility with the system in place.

The bottom line is that the issue of fault is key. When considering whether to sue for a slip and fall injury thought should be put to the issue of what the defendant did wrong to cause the incident or should have done to prevent it.

In my continued efforts to cross-reference the current BC Rules of Court with the soon to be in force [New BC Supreme Court Civil Rules](#) I will point out that Rule 18-A is kept intact under the new Rules and is reproduced almost identically at Rule 9-7 “Summary Trial”.