Occupiers Beware: Keep an Eye on Your Contractors

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Can occupiers of premises be found liable when an accident is caused by the negligence of an independent contractor?

The answer is “yes”. A recent court decision shows that occupiers cannot turn a blind eye when relying on a contractor.

Occupiers often retain contractors to perform certain services, such as snow and ice removal. In some circumstances, occupiers can insulate themselves from liability when they retain a contractor, based on section 6(1) of the *Occupiers’ Liability Act*. In order to do so, the following requirements must be met:

- The occupier must act reasonably in entrusting the contractor to perform the work.
- The occupier must take reasonable steps to be satisfied that the contractor is competent.
- The occupier must take reasonable steps to ensure the work performed by the contractor was properly done.
- It must be reasonable for the contractor to undertake the work.

In *Labelle et al v. Canada Border Services Agency et al*, 2019 ONSC 3467, the plaintiff, like many Canadians, went to the United States for a shopping trip. On her return trip, she went to pay duty in a Canada Border Service Agency (“CBSA”) customs office.

Although paying duty can be a painful experience, things got worse. The plaintiff slipped and fell on ice after exiting the customs office, and sustained shoulder and leg injuries. She sued CBSA and others.

The customs office was located on land owned by the co-defendant, Abitibi Consolidated Inc. (“Abitibi”). By statute, Abitibi was considered to be the contractor responsible for the maintenance of the customs facility, including snow and ice removal.

CBSA brought a summary judgment motion, arguing that it was not liable. CBSA stated that it met its duty of care by entrusting maintenance and repair work to Abitibi. Moreover, CBSA indicated that it ensured the customs facility was properly maintained.

CBSA pointed out that Abitibi employees were on site on a daily basis. Further, CBSA stated that it regularly monitored whether Abitibi was properly maintaining the facility. In addition, if a CBSA employee had concerns about the safety of the facility, he or she would alert a supervisor.

Justice Nieckarz dismissed CBSA's motion, indicating that the matter has to proceed to trial. She stated that CBSA relied largely on Abitibi to do what it was supposed to do, but did not ensure that the work was, in fact, being properly performed.

In reaching this determination, Justice Nieckarz pointed to a number of issues, including:

- It was unclear whether Abitibi had any system in place for monitoring the condition of the parking lot, particularly during the winter months.
- CBSA did not have a protocol for monitoring the work of Abitibi.
- CBSA never asked Abitibi for logs or diaries to confirm what Abitibi did to inspect, maintain, and repair the premises.
- Although CBSA relied on an informal lookout system from its employees, the employees were not obligated to keep a lookout as part of their job duties, and there were no records to show when or how often the employees reported unsafe conditions.

The lesson from this case is that occupiers cannot take a hands-off approach when relying on a contractor.

Along with ensuring the contractor is competent, occupiers must take steps to be satisfied that the contractor is appropriately carrying out its duties.

This can include checking on whether the contractor has proper policies in place, inspecting the work of the contractor, and requiring the contractor to provide logs or diaries of its work.

Without proactive protocols, occupiers may not be able to rely on section 6(1) of the *Occupiers' Liability Act* and may face a finding of liability.

That being said, there are usually indemnification and hold harmless provisions in agreements between occupiers and contractors. Even if an occupier is found to be liable to a plaintiff, the contractor will be required to indemnify the occupier if the contractor did not comply with its contractual responsibilities.