



PLEASE NOTE

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CHAPTER O-2
OCCUPIERS' LIABILITY ACT

- 1.** In this Act Interpretation
- (a) “occupier” includes occupier
- (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 or the activities there carried on, or control over persons allowed to enter the premises, notwithstanding that there is more than one occupier of the same premises;
- (b) “premises” means lands and structures, or either of them, and includes trailers and portable structures designed or used for residence, business or shelter. 1984, c.28, s.1. premises
- 2.** Subject to section 8, the provisions of this Act apply in place of the rules of the common law that determine the care that the occupier of premises at common law is required to show for the purpose of determining his liability in law in respect of dangers to persons entering on the premises or the property brought on the premises by those persons. 1984, c.28, s.2. Common law duty of care superseded
- 3.** (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 persons entering on the premises, and the property brought on the premises by those persons, are reasonably safe while on the premises. Occupier's duty
- (2) The duty of care provided for in subsection (1) applies whether the danger is caused by the condition of the premises or by an activity carried on on the premises. Idem
- (3) The duty of care provided for in subsection (1) applies except in so far as the occupier of premises is free to and does restrict, modify or exclude his duty. 1984, c.28, s.3. Idem
- 4.** (1) The duty of care provided for in subsection 3(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 to not create a danger with the deliberate intent of doing harm or damage to the person or his property and to not act with reckless disregard of the presence of the person or his property. Risks willingly assumed

- Criminal activity (2) A person who is on premises with the intention of committing, or in the commission of, a criminal act shall be deemed to have willingly assumed all risks and is subject to the duty of care set out in subsection (1).
- Trespass and permitted recreational activity (3) A person who enters premises described in subsection (4) shall be deemed to have willingly assumed all risks and is subject to the duty of care set out in subsection (1)
- (a) where the entry is prohibited under the *Trespass to Property Act* R.S.P.E.I. 1988, Cap. T-6;
 - (b) where the occupier has posted no notice in respect of entry and has not otherwise expressly permitted entry; or
 - (c) where the entry is for the purpose of a recreational activity and,
 - (i) no fee is paid for the entry or activity of the person, other than a benefit or payment received from a government or government agency or a non-profit recreation club or association, and
 - (ii) the person is not being provided with living accommodation by the occupier.
- Premises referred to in subsection (3) (4) The premises referred to in subsection (3) are
- (a) a rural premises that is
 - (i) used for agricultural purposes, including land under cultivation, orchards, pastures, woodlots and farm ponds,
 - (ii) vacant or undeveloped premises,
 - (iii) forested or wilderness premises;
 - (b) golf courses when not open for playing;
 - (c) utility rights-of-way and corridors, excluding structures located thereon;
 - (d) unopened road allowances;
 - (e) private roads reasonably marked by notice as such; and
 - (f) recreational trails reasonably marked by notice as such. 1984, c.28, s.4.
- Restriction of duty or liability **5.** (1) The duty of an occupier under this Act, or his liability for breach thereof, shall not be restricted or excluded by the provisions of any contract to which the person to whom the duty is owed is not a party, whether or not the occupier is bound by the contract to permit such person to enter or use the premises.
- Extension of liability by contract (2) A contract shall not by virtue of this Act have the effect, unless it expressly so provides, of making an occupier who has taken reasonable care liable to any person not a party to the contract for dangers due to the faulty execution of any work of construction, maintenance or repair, or other like operation by persons other than himself, his servants, and persons acting under his direction and control.

(3) Where an occupier is free to restrict, modify or exclude his duty of care or his liability for breach thereof, he shall take reasonable steps to bring such restriction, modification or exclusion to the attention of the person to whom the duty is owed. 1984, c.28, s.5.

Reasonable steps to inform

6. (1) Where damage to any person or his property is caused by the negligence of an independent contractor employed by the occupier, the occupier is not on that account liable if in all the circumstances he has acted reasonably in entrusting the work to the independent contractor, if he had taken such steps, if any, as he reasonably ought in order to satisfy himself that the contractor was competent and that the work had been properly done, and if it was reasonable that the work performed by the independent contractor should have been undertaken.

Liability where independent contractor

(2) Where there is more than one occupier of premises, any benefit accruing by reason of subsection (1) to the occupier who employed the independent contractor shall accrue to all occupiers of the premises.

Idem

(3) Nothing in this section affects any duty of the occupier that is non-delegable at common law or affects any provision in any other Act that provides that an occupier is liable for the negligence of an independent contractor. 1984, c.28, s.6.

Where duty is non-delegable

7. (1) Where premises are occupied or used by virtue of a tenancy under which the landlord is responsible for the maintenance or repair of the premises, it is the duty of the landlord to show towards any person or the property brought on the premises by those persons, the same duty of care in respect of dangers arising from any failure on his part in carrying out his responsibility as is required by this Act to be shown by an occupier of the premises.

Obligations of landlord as occupier

(2) For the purposes of this section, a landlord shall not be deemed to have made default in carrying out any obligation to a person unless his default is such as to be actionable at the suit of the person entitled to possession of the premises.

Idem

(3) This section applies to all tenancies whether created before or after the commencement of this Act. 1984, c.28, s.7.

Application of section

8. (1) Nothing in this Act relieves an occupier of premises in any particular case from any higher liability or any duty to show a higher standard of care that in that case is incumbent on him by virtue of any enactment or rule of law imposing special liability or standards of care on particular classes of persons.

Preservation of higher obligations

Master and servant relationships	(2) Nothing in this Act shall be construed to affect the rights, duties and liabilities resulting from a master and servant relationship where it exists.
Application of Contributory Negligence Act	(3) The provisions of the <i>Contributory Negligence Act</i> R.S.P.E.I. 1988, Cap. C-21 apply with respect to causes of action to which this Act applies. 1984, c.28, s.8.
Act binds Crown	9. (1) Subject to subsection (2), this Act binds the Crown.
Exception	(2) This Act does not apply to the Crown or to any municipal corporation, where the Crown or the municipal corporation is an occupier of a public highway or a public road. 1984, c.28, s.9.
Application of Act	10. This Act does not affect rights and liabilities of persons in respect of causes of action arising before the date on which it comes into force. 1984, c.28, s.10.