

Risk Management Considerations for Organizations Supporting Individuals with Special Needs

OASIS Conference

May, 2014

Agenda

1. Risk Management & the Legal Environment
2. Claim Studies
3. Premise Risks: What do our Inspectors Commonly See?
4. The Claims Process & Documentation

Risk Management & the Legal Environment



Risk Management

The process making and carrying out decisions that will minimize the adverse effects of accidental losses upon an organization

**Imagining the worst case scenario
before it happens**

The Risk Management Process

1. Identify & analyze
2. Formulate options
3. Select the best technique
4. Implement the plan
5. Monitor & modify

The Goal of Risk Management

- Minimize the Risk





"We've considered every potential risk except the risks of avoiding all risks."

How Does Liability Arise?

When a law/ statute is broken

When a contract is breached or violated

When an act or omission causes injury or damage to another person

Negligence

- The failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation

To establish a common law cause of action for negligence, a plaintiff must prove that the:

1. Defendant owed him or her a duty of care
2. Defendant breached that duty
3. Plaintiff suffered damage resulting from the breach

Occupier's Liability

Occupier's have a responsibility for people on their premises

In Canada, this principle is found both in legislation & the common law

The standard of care that is imposed on an organization is governed by the Occupiers Liability Act, RSO 1990, which requires the entity to see that a person will be reasonably safe in using the premises. Section 3(1) states that:

“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”.

As an occupier, you must take reasonable steps to prevent foreseeable incidents from occurring

Who is an 'occupier'?

Anyone who has control of a premises and the power to admit or exclude others

Joint & Several Liability

A common law principle, also legislated in most provinces

It directs that a person injured by two or more wrongdoers may collect their full damage award from one of the wrongdoers

Negligence Act, RSO 1990, CHAPTER N.1

“Section 1: Where damages have been caused or contributed to by the fault or neglect of two or more persons, the court shall determine the degree in which each of such persons is at fault or negligent, and, where two or more persons are found at fault or negligent, they are jointly and severally liable to the person suffering loss or damage for such fault or negligence, but as between themselves, in the absence of any contract express or implied, each is liable to make contribution and indemnify each other in the degree in which they are respectively found to be at fault or negligent.”

Vicarious Liability

- Organizations involved in the provision of care geared towards children are susceptible to allegations of vicarious liability for sexual assault or abuse
- Some controversy about an organization being held vicariously liable for acts of abuse committed by its employees, since such acts are clearly not sanctioned and are outside the scope of their duties and employment

- *P.A.B. v. Curry*, [1997] S.C.J. No. 35
- *G.T. v. Griffiths*, [1999] S.C.J. No.36
- An organization is vicariously liable for an employee's acts, whether sanctioned or not, if the organization introduced or created the risk or opportunity for the abuse to occur

Times Have Changed

1. New Activities being Developed
2. Participants
3. Resources
4. Public Attitude
5. Court Awards
6. Joint & Several Liability
7. Ministry of Labour Requirements
8. Cyber Threats
9. Vicarious Liability
10. Volunteers

What do Courts Consider?

- Was the danger foreseeable?
- Did the organization follow accepted standards of practice?
- Was there an inspection system?
- How long did the hazard exist?

Judgment Trends

- Escalating judgments
- Increasing future care costs
- Plaintiff's seeking damage awards for loss of companionship and dual income potential

Claim Studies



Daycare Toys

- A 5 year old was playing on a trike built for ages 1 to 3
- The handle bars came off and the boy injured his lip
- Toys were not inspected
- Parents were not notified until they picked up their child

Sandbox Maintenance Claim

- A mother brought her 3 month old baby to the park and sat her in the sandbox
- The baby started to cry
- When the mother lifted the baby out of the sand, there was a needle sticking into the babies rear end

Wessell v. Kinsmen Club of Sault Ste. Marie

- A 15 year old boy was swimming at an outdoor recreation area
- While the boy was attempting to swim ashore from an unanchored raft, he nearly drowned
- He died of his injuries 4 days later

Whiting v. Boys and Girls Club Services of Greater Victoria, 2011 BCSC

- What was the nature of the employment arrangement?
- What is reasonable notice?
- Does the employee have to mitigate their damages?

LTC Facility & a Non-Verbal Resident

- PSW bathing patient
- Bottles in the bathroom were not properly labeled
- Used bath tub disinfectant instead of soap
- Resident suffered chemical burns and had to spend 3 months in the ICU

Premise Risks: What do our Inspectors Commonly See?



Risk Areas

- entrances/exits
- washrooms
- parking lots
- stairs
- floors
- electrical
- life safety
- ramps
- programs/rentals
- roof
- residents rooms
- common areas

Common Hazards

- lack of or an inadequate snow & ice removal from sidewalks & parking lots
- slippery floors – particularly entranceways
- uneven surfaces on sidewalks, parking lots, worn/raised tiles on floor surfaces
- debris not removed
- lighting
- missing handrails; uneven handrails

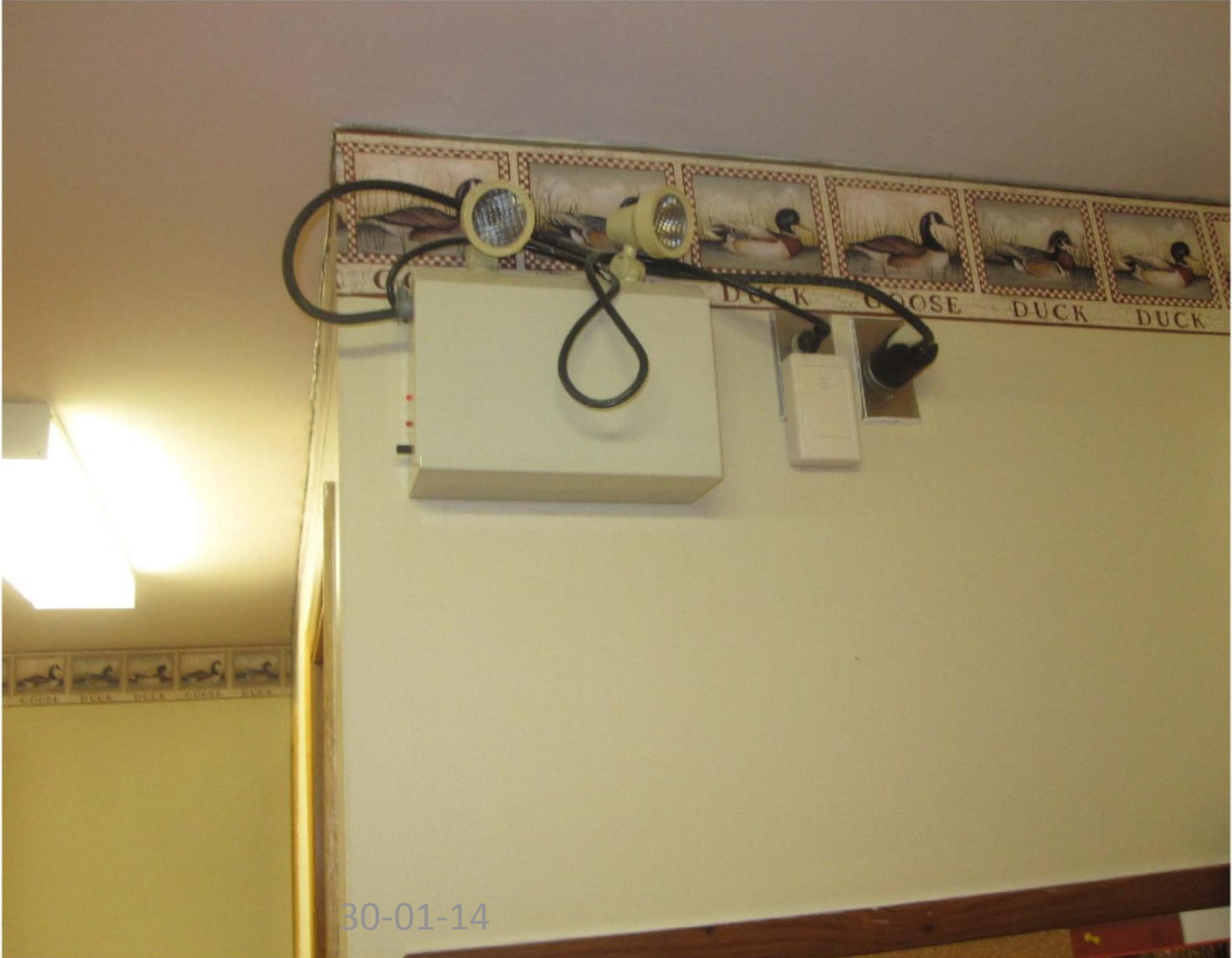
- poor maintenance/housekeeping
- thaw/freeze areas
- blocked aisles & doors
- uneven stairs/missing treads
- exit signs
- fire doors held open

Broken terrazzo at the fire exit creates a dangerous trip hazard. As this is, in an emergency, a major egress point from the building, we recommend immediate repairs.



30-01-14

During our inspection, we noted the emergency light was not working properly. We recommend that a procedure be in place for the weekly inspection and testing of all emergency lights in City facilities. This will ensure proper performance in the event of an emergency.



All exits and access to exits must be maintained free of obstructions, which may impede emergency evacuation procedures. Storage of any kind is not allowed in aisles, passageways, stairwells, or vestibules that form part of the exits.



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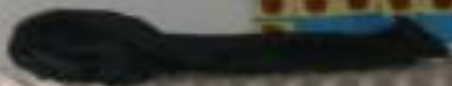


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EXIT

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