



## **Occupiers Liability Act – Frequently Asked Questions:**

### **What is the *Occupiers Liability Act*?**

The *Occupiers Liability Act*, R.S.B.C. 1996, c. 377 (the “OLA”) is a provincial statute (law) in British Columbia that was first enacted in 1974. The OLA has been amended twice since – once in 1979 and again in 1998. The OLA defines two separate “duties of care” applicable to occupiers of premises and sets out when each of these duties may apply to occupiers depending on the activity being undertaken, the premises on which they are taken, and other case-specific circumstances.

### **Why was the OLA amended in 1998?**

The rationale for the 1998 amendment of the OLA came in part from recommendations of the Law Reform Commission of British Columbia, which proposed that a relaxed duty of care apply to “gratuitous recreational entrants on land not specifically designated by the occupier for recreational use”\*. The amendments in 1998 were largely aimed at “encouraging outdoor recreation and development of the Province’s recreational potential...”\* and a desire on behalf of recreation umbrella groups for participants to “willingly assume risks of hazard on lands and waters they cross in return for being allowed greater access”.

### **What is an “occupier” under the OLA?**

Under the OLA, an “occupier” is “a person who (a) is in physical possession of premises, or (b) has responsibility for, and control over, the condition of premises, the activities conducted on those premises and the persons allowed to enter those premises, and, for [the OLA], there may be more than one occupier of the same premises”.

### **What are “premises” under the OLA?**

According to the OLA, “premises includes: (a) land and structures or either of them, excepting portable structures and equipment other than those described in paragraph (c), (b) ships and vessels, (c) trailers and portable structures designed or used for a residence, business or shelter, and (d) railway locomotives, railway cars, vehicles and aircraft while not in operation”.

### **What are the two “duties of care” in the OLA?**

Section 3 of the OLA sets out the two duties of care that apply to occupiers of premises.

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The standard duty of care is set out in section 3(1) of the OLA, which states that “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”.

A reduced duty of care is set out in section 3(3) of the OLA, which states that “[d]espite subsection (1), an occupier has no duty of care to a person in respect to risks willingly assumed by that person other than a duty not to (a) create a danger with intent to do harm to the person or damage to the person’s property, or (b) act with reckless disregard to the safety of the person or the integrity of the person’s property.”

#### **When does the reduced duty of care apply under the OLA?**

The reduced duty of care set out in section 3(3) of the OLA applies to a particular person in respect of, and only in respect of, those risks which such person has willingly assumed. Conversely, the reduced duty of care under the OLA will not apply to a person in respect of risks that were not willingly assumed by such person. Determining whether risks have been willingly assumed by a person requires knowledge and consideration of the circumstances that pertain to the relevant person and the premises at issue.

Section 3(3.2) of the OLA provides that a “person who enters any of the categories of premises described in subsection 3(3.3) of the OLA is deemed to have willingly assumed all risks and the occupier of those premises is subject only to the reduced duty of care set out in subsection 3(3) of the OLA if: (a) the person who enters such premises is trespassing, or (b) the entry is for the purpose of a recreational activity and (i) the occupier receives no payment or other consideration for the entry or activity of the person, other than a payment or other consideration from a government, a government agency or a non-profit recreational club or association, and (ii) the occupier is not providing the person with living accommodation on those premises”. Section 3(3.3) of the OLA lists the categories of premises that may be subject to subsection 3(3.2) of the OLA.

In addition, subsection 3(3.1) of the OLA provides that “a person who is trespassing on premises while committing, or with the intention of committing, a criminal act is deemed to have willingly assumed all risks and the occupier of those premises is subject only to the reduced duty of care set out in subsection 3(3) of the OLA”.

#### **When does the standard duty of care apply under the OLA?**

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Under the OLA, the standard duty of care applies to all situations in which the reduced duty of care does not.

**Are the duties of care set out in the OLA the only duties or standards that could apply to an occupier?**

No, subsection 3(4) of the OLA provides that nothing in section 3 of the OLA “relieves an occupier of premises of a duty to exercise, in a particular case, a higher standard of care which, in that case, is incumbent on the person because of an enactment or rule of law imposing special standards of care on particular classes of person”.

**What categories of premises may be subject to subsection 3(3.2) of the OLA?**

As noted above, subsection 3(3.1) of the OLA only applies to the categories of premises described in subsection 3(3.3) of the OLA. Such categories of premises are as follows: (a) premises used primarily for agricultural purposes; (b) rural premises that are: (i) used for forestry or range purposes, (ii) vacant or undeveloped premises, (iii) forested or wilderness premises, or (iv) private roads reasonably marked as private roads; (c) recreational trails reasonably marked as recreational trails; (d) utility rights of way and corridors excluding structures located on them.

**Does the OLA apply on private land, provincial crown land and within municipalities and regional districts?**

Yes, the OLA applies in all of those locations, however sections 8(2) and (3) of the OLA provides exceptions relating to various levels of government and certain types of highways and roads.

Citation:

*\* The British Columbia Parks and Recreation Association (“BCRPA”) Regional Parks Workshop. May 11, 2010. Regional District Parks Pre-Symposium Workshop Risk Management and Natural Area / Green Space Parks – Amendments to the Occupiers Liability Act.*

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