

1973 Bill 59

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Second Session, 17th Legislature, 21 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

**BILL 59**

**The Occupiers' Liability Act**

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**MR. GHITTER**

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**First Reading** .....

**Second Reading** .....

**Third Reading** .....

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*Bill 59*  
*Mr. Ghitter*

## **BILL 59**

1973

### **THE OCCUPIERS' LIABILITY ACT**

*(Assented to , 1973)*

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

**1.** In this Act,

- (a) "common duty of care" means the duty of care of an occupier of premises to his visitors provided for in section 5;
- (b) "entrant as of right" means a person who is empowered or permitted by law to enter premises without the permission of the occupier of those premises;
- (c) "occupier" means
  - (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, the activities conducted on those premises and the persons allowed to enter those premises,and for the purposes of this Act, there may be more than one occupier of the same premises;
- (d) "premises" includes
  - (i) staging, scaffolding and similar structures erected on land whether affixed to the land or not,
  - (ii) poles, standards, pylons and wires used for the purpose of transmission of electric power or communications or transportation of pas-

## Explanatory Notes

General. This Bill deals with the reform of the common law rules relating to the liability of an occupier of premises to persons who enter his premises. The Bill reflects generally the recommendations of the Alberta Institute of Law Research and Reform in its Report No. 3 on Occupiers' Liability. References in the explanatory notes to Recommendations are to the numbered recommendations in Part XVI of the Report.

An occupier of land owes a duty of care to people entering the land. However the duty depends on the category of the entrant. These categories are hard to apply and the various duties are hard to apply. In some respects the law imposes too low a duty.

In general this Bill follows the English Occupiers' Liability Act, 1957, which did away with all categories of entrant except that of trespasser and created a common duty of care. These changes greatly simplified the law in England and the Act has worked well.

In recent years there has been considerable movement toward a similar legislation in Canada. The recommendations of the Institute of Law Research and Reform were the first thorough-going proposals in Canada. This Bill embodies them. It goes further than the English Act in that it creates a duty of care toward the child trespasser, where the occupier knows that children are about.

This provision fills the greatest gap in the English Act. It would have been possible to go further and to wipe out the categories altogether. This is what the Scottish Act does, and the Uniformity Conference recently adopted that principle. The present Bill takes the middle course between the English Act and the Scottish Act.

**I. Definitions.** See Report Chapters III, VI (4), pp. 48-50 and Chapter XIII and Recommendations Nos. 2, 3, 4 and 16.

As to "occupier", Recommendation No. 2 reads:

2. That "Occupier" should be defined to include not only a person who is in possession of premises but also to include a person who though not in possession in the strict sense, has a substantial degree of control; and that the proposed Act should make clear that there may be more than one occupier.

Subclause (ii) is a variation of the Recommendation.

As to "premises", Recommendation No. 16 reads:

16. (1) That the rules recommended in relation to an occupier of premises and entrants on the premises should regulate the obligations of the person who is in possession of or has a substantial degree of control over (a) staging, scaffolding and structures erected on land, whether fixtures or not, (b) poles, standards, pylons and wires such as those used for the carriage of electricity or telegraph or telephone signals or for the transportation of passengers, whether or not used in conjunction with the supporting land, (c) railway trains, railway cars and ships, (d) trailers which are used as portable buildings, that is to say, for residences, shelters or offices, whether or not their occupiers are occupiers of the land upon which such trailers are temporarily located.

(2) That the rules should not regulate the obligations of a person in his capacity of occupier of an aircraft or a motor vehicle or any vehicle or thing other than those mentioned above, and in particular of portable derricks and other equipment, and, except as provided, should not extend beyond real property and things which are used as part of or in conjunction with real property.

As to "visitor", Recommendations 3 and 4 read:

3. That visitor should be defined as:

(1) A person whose presence on premises is not unlawful.

(2) A person whose presence on premises has become unlawful and who is taking reasonable steps to leave those premises.

4. That entrants as of right should be included in the category of visitors.

sengers, whether or not they are used in conjunction with the supporting land,

(iii) railway locomotives and railway cars,

(iv) ships, and

(v) trailers used for, or designed for use as, residences, shelters or offices,

but does not include aircraft, motor vehicles or other vehicles or vessels except those mentioned in subclauses (iii) and (iv) or any portable derrick or other equipment or movable things except those mentioned in subclauses (i) and (v);

(e) "visitor" means

(i) an entrant as of right, or

(ii) a person who is lawfully present on premises by virtue of an express or implied term of a contract, or

(iii) any other person whose presence on premises is lawful, or

(iv) a person whose presence on premises becomes unlawful after his entry on those premises and who is taking reasonable steps to leave those premises.

#### **Application of Act**

**2.** This Act applies only in cases where the cause of action arose after the coming into force of this Act.

**3.** This Act does not apply to or affect the liability of an employer in respect of his duties to his employees.

**4. (1)** This Act does not apply to highways (other than leased road allowances)

(a) where a Minister of the Crown in right of Alberta has the administration of, or the management, direction and control of, the highway, or

(b) where the Crown in right of Canada has the administration and control of the highway, or

(c) where a municipal corporation has the management, direction and control of the highway.

**(2)** This Act does not apply to private streets as defined in *The Private Streets Act*.

**2. Application of Act to future cases.**

**3. Act does not affect master and servant liabilities. See Report Chapter V (1) and Recommendation No. 9 which reads:**

9. That nothing in the proposed statute should derogate from the special rights and liabilities incident to the master-servant relationship.

**4. Exclusions of public highways and private streets. See Report pp. 16-22 and Recommendations Nos. 19 and 20 which read:**

19. That the proposed Act should be expressed not to apply to highways; and highways for this purpose means roads under the management direction and control of the Crown in right of Alberta and Canada and of a municipal authority and does not include roadways and parking areas on private property such as shopping centres or parking garages.

20. That the Act should not apply to streets under the Private Streets Act or to Forestry Roads, but should apply to rights of entry under the Right of Entry Arbitration Act and to the rights of the Alberta Government Telephones Commission under s. 18 of the Telephones Act.

### **Liability of Occupier to Visitors**

**5.** An occupier of premises owes a duty to every visitor on his premises to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there or is permitted by law to be there.

- 6.** The common duty of care applies in relation to
- (a) the condition of the premises,
  - (b) activities on the premises, and
  - (c) the conduct of third parties on the premises.

**7.** An occupier is not under an obligation to discharge the common duty of care to a visitor in respect of risks willingly accepted by the visitor as his.

**8.** (1) The liability of an occupier under this Act may be extended, restricted, modified or excluded by express agreement or express notice but no restriction, modification or exclusion of that liability is effective unless reasonable steps were taken to bring it to the attention of the visitor.

(2) This section does not apply with respect to a visitor who is an entrant as of right.

**9.** A warning, without more, shall not be treated as absolving an occupier from discharging the common duty of care to his visitor unless in all the circumstances the warning is enough to enable the visitor to be reasonably safe.

**10.** Where an occupier of premises is bound by a contract to permit strangers to the contract to enter or use the premises, the liability of the occupier under this Act to a stranger to the contract may not be enlarged, restricted or excluded by that contract.

**11.** (1) An occupier is not liable under this Act where the damage is due to the negligence of an independent contractor engaged by the occupier if

- (a) the occupier exercised reasonable care in the selection and supervision of the independent contractor, and
- (b) it was reasonable in all the circumstances that the work that the independent contractor was engaged to do should have been undertaken.

**5. Statement of the common duty of care.** See Recommendations Nos. 1 and 8 which read:

1. That the occupier of premises should owe to all visitors the same duty of care; and that the common duty of care should be a duty to take such care as in all the circumstances of the case is reasonable to see that a visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier or is permitted by law to be there; and this duty should apply to the condition of the premises, activities on the premises and the conduct of third parties.

8. That where persons enter or use any premises in exercise of a right conferred by contract with an occupier of premises, the duty he owes them insofar as the duty depends on a term to be implied in the contract by reason of its conferring that right, should be the common duty of care.

**6. Application of common duty of care.** See Report pp. 48-50 and Recommendation No. 1 quoted in Note 5 above.

**7. The defence of voluntary assumption of risk is preserved.** See Report pp. 26 and 27 and Recommendation No. 6 which reads:

6. That an occupier should not be under an obligation of care to a visitor in respect of risks willingly accepted as his by the visitor (the question of whether a risk was so accepted to be decided on the same principles as in other cases in which one person owes a duty of care to another).

**8. Extension, restriction, modification or exclusion of liability.** See Report Chapter XI and Recommendation No. 10 which reads:

10. That liability may be extended, restricted, modified or excluded by express agreement or express stipulation, and reasonable steps must be taken to bring to the attention of visitors any restriction, modification or exclusion of liability.

**9. Effect of warning.** See Report pp. 25 and 26 and Recommendation No. 5, which reads:

5. That a warning should not be treated without more as absolving the occupier from liability, unless in all the circumstances it is enough to enable the visitor to be reasonably safe.

**10. Entrants who are strangers to a contract are not affected by, and cannot take the benefit of, that contract.** See Report Chapter XII and Recommendation No. 11 which reads:

11. That liability of an occupier under the Act to third parties to a contract or tenancy should not be excluded by any provision of the contract or tenancy to which they were not privy.

**11. Occupier's liability for the negligence of an independent contractor.** See Report Chapter X and Recommendation No. 12 which reads:

12. That where damage to a visitor is due to the negligence of an independent contractor employed by an occupier, the occupier should not on that account be answerable for the damage if he has exercised whatever care is reasonable in the selection and supervision of the independent contractor, provided that the immunity from liability should exist only if it is reasonable in all the circumstances that the work for which the independent contractor is employed should be undertaken; provided that this recommendation should not affect any statutory provision whereby an occupier is liable for the negligence of an independent contractor.

(2) Subsection (1) does not operate to abrogate or restrict the liability of an occupier for the negligence of his independent contractor imposed by any other Act.

#### **Liability of Occupier to Trespassers**

**12.** (1) Subject to subsection (2) and to section 13, an occupier does not owe a duty of care to a trespasser on his premises.

(2) An occupier is liable to a trespasser for damages for death or of injury to the trespasser that results from the occupier's wilful or reckless conduct.

**13.**(1) Where an occupier knows or has reason to know

- (a) that a child trespasser is on his premises, and
- (b) that the condition of, or activities on, the premises create a danger of death or serious bodily harm to that child,

the occupier owes a duty to that child to take such care as in all the circumstances of the case is reasonable to see that the child will be reasonably safe from that danger.

(2) In determining whether the duty of care under subsection (1) has been discharged consideration shall be given to

- (a) the age of the child,
- (b) the ability of the child to appreciate the danger, and
- (c) the burden on the occupier of eliminating the danger or protecting the child from the danger as compared to the risk of the danger to the child.

(3) For the purposes of subsection (1), the occupier has reason to know that child trespassers are on his premises if he has knowledge of facts from which a reasonable man would infer that children are present or that their presence is so probable that the occupier should conduct himself on the assumption that they are present.

#### **General**

**14.** (1) Subject to subsections (2) to (4), the liability of an occupier under this Act to a visitor or trespasser extends to destruction or loss of, or damage to, property brought on to the occupier's premises by the visitor or trespasser, as the case may be, whether or not it is owned by the visitor or trespasser or by any other person.



**12. Liability of an occupier toward trespassers.** See Report pp. 50, 51 and Recommendation No. 13 which reads:

13. That the liability of occupiers to trespassers should be for wilful or reckless conduct, subject to the special provision for child trespassers.

**13. Child trespassers.** See Report pp. 51 - 55 and Chapter VIII and Recommendations Nos. 14 and 15 which read:

14. That where an occupier knows or has reason to know that there are trespassing children on his premises and that conditions or activities on the premises create a danger of death or serious bodily harm to those children, the occupier should be under the common duty of care toward them; in determining whether the duty has been discharged consideration should be given to the youth of the children and their inability to appreciate the risk and also to the burden of eliminating the danger or protecting the children as compared to the risk to them.

15. That the proposed Act should contain no provision comparable to England's s. 2(3)(a) and that it should contain no definition of child.

**14. Application of Act to liability in respect of personal property brought on to premises.** See Report Chapter XIV and Recommendation Nos. 17 and 18 which read:

17. (a) That where an entrant brings personal property on to premises and there is no bailment the common duty of care should be extended to that person's property,
- (b) that the duty should apply in case of total destruction or loss of property in the case of damage to property,
- (c) that nothing in the Act should affect whatever duty of care there may be with respect to loss by theft,
- (d) that where the property is that of a third party he should be entitled to claim, but that his claim should be subject to any defence available to the occupier against the entrant, and
- (e) that the provisions of the Act should apply to the property of trespassers as well as to that of visitors.

18. That the Act should not affect the obligations imposed on a person by or by virtue of any contract of carriage, any bailment or the Innkeepers' Act.

(2) An occupier is not liable under this Act in respect of a loss of or damage to property of any person resulting by reason of the act of a third party.

(3) Where a person in an action under this Act claims damages in respect of the destruction or loss of, or damage to, property of which he is the owner and which was brought on to the occupier's premises by some other person either as a visitor or trespasser on those premises, the occupier is entitled to raise any defence to the claim that he would be entitled to raise if the claimant were the visitor or trespasser, as the case may be.

(4) This Act does not apply to or affect any liability of an occupier of premises in respect of personal property arising by virtue of

- (a) a contract of carriage, or
- (b) a bailment, or
- (c) *The Innkeepers Act*.

**15.** (1) Where the occupier does not discharge the common duty of care to a visitor and the visitor suffers damage partly as a result of the fault of the occupier and partly as a result of his own fault, *The Contributory Negligence Act* applies.

(2) Where an occupier is liable under section 12, subsection (2) or section 13, and the trespasser or child trespasser, as the case may be, suffers damage partly as a result of the fault of the occupier and partly as a result of his own fault, *The Contributory Negligence Act* applies.

(3) Where in any action brought under this Act two or more occupiers of the same premises are each found to be at fault, *The Tortfeasors Act* applies.

**16.** The Crown in right of Alberta is bound by this Act.

**17.** This Act comes into force on January 1, 1974.

**15.** Application of The Contributory Negligence Act and The Tort-Feasors Act. See Report pp. 27 to 29 and Recommendation No. 7 which reads:

7. That where the occupier fails or neglects to discharge the common duty of care to a visitor and the visitor suffers damage as a result partly of that fault and partly of his own fault the provisions of the Contributory Negligence Act should apply; and the latter Act should apply as between a trespasser and occupier in a proper case; and where there are two or more occupiers each at fault the provisions of the Tortfeasors Act should apply.

**16.** Application of Act to the Crown in right of Alberta. See Report Chapter XV and Recommendation No. 22 and 23 which read:

22. That the Act should apply to the Crown in right of Alberta.

23. That the Government of Alberta request the Government of Canada to propose to Parliament an amendment to the Crown Liability Act whereby the Alberta Occupiers' Liability Act shall apply to petitions against the Crown in right of Canada under the Crown Liability Act (Canada).