

COVID-19 presents unique problems to businesses such as restaurants, meetings spaces, or other venues attended by customers, clients, business associates, or members of the public, due to the potential of occupier's liability.

#### COVID-19 AND OCCUPIER'S LIABILITY

Under *The Occupiers' Liability Act, C.C.S.M. c. O8 (OLA)*, an occupier of premises owes a duty to persons entering on the premises to take such reasonable care to ensure that visitors are reasonably safe while on the premises.

While there is not yet any legal precedent regarding COVID-19 and occupier's liability, it could be argued that, if a visitor attends premises, such as a restaurant or another social venue, and contracts COVID-19, an occupier may have breached its duties under the *OLA*. By way of example, in the United States, Princess Cruise Lines has been named in a number of lawsuits that claim the company negligently exposed passengers to COVID-19 on its Grand Princess ship.

How far the occupier's duties extend depends on the specific circumstances of the case. The duty of care that an occupier owes to a patron is one of reasonableness in the circumstances; it's not a standard of perfection. An occupier is not an insurer of all who attend on its premises. What is reasonable in these circumstances remains to be seen but for example, if someone on the premises was known to have contracted the virus, there may be heightened obligations on the occupier. A visitor may claim that it ought to have been reasonably foreseeable to an occupier with that knowledge that they would materially increase the risk of exposure to COVID-19.

That said, such cases will surely be defended on the basis that any such plaintiff voluntarily assumed the risk of contracting COVID-19 and chose to attend the premises in any event. Further, if a patron failed to keep appropriate distance while on the premises or did not diligently wash their hands they may be found to have caused or contributed to their own misfortune. Lastly, in the face of a pandemic, it may be difficult to prove that the virus was contracted from any one source and therefore difficult to establish Causation (i.e. showing a direct link between the occupier's negligence and the injury).

In any event, the take away is that an occupier in control of all or any part of the premises should take all reasonable steps to protect the safety of those entering the building or premises. At this point, appropriate steps might include increasing cleaning frequency, installing hand-sanitizers in the premises, reducing business hours, or closing altogether. Complying with advice given by government and health agencies is also recommended.

Please do not hesitate to contact your relationship partner or lawyer if you have any questions or if we can be of assistance in guiding you through these new challenges.

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*This article represents general information and is not legal advice. Please contact us if you would like legal advice that is tailored to your particular circumstances. We would be happy to help.*