

Mitigating Risk

A flawed risk management program can have costly consequences

By Jennifer Woznesensky and Kim Yee

A recent BC court decision underscores why it is important for retailers to have a sound risk management program in place. In *Harrison v. Loblaw's Inc.*, 2018 BCSC 575, a judge awarded the plaintiff more than \$750,000.00 in damages for injuries she sustained as a result of a slip and fall in a Loblaw's store. This decision highlights the trend towards high damage awards in BC. It also underscores several important points with respect to the prevention of such accidents, and also the investigation and defence of claims when they do arise.

The plaintiff was shopping when she slipped on a pool of liquid laundry detergent. She struck her forehead on an end cap display and fell backwards, striking the back of her head on the floor. The fall occurred somewhere near the boundary between the grocery and front end areas of the store. The precise location of the fall was a significant issue at trial, as each of the areas in question had a separate sweep log. The defendant put only the front end sweep log into evidence. This proved a major problem because store employees were unable to identify the precise boundary between the areas. The defendant also failed to call a key witness – the employee who performed the sweep of the front end area.

The judge accepted that the defendant's maintenance and inspection policies were reasonable. However, the defendant was held liable because there was insufficient evidence to establish that the defendant's policies were actually being followed on the day in question.

The court was also critical of the fact that the store manager did not adhere to the store's own protocol with respect to customer incidents. The manager failed to properly fill out the incident report form and document relevant evidence, failed to preserve copies of the front end sweep log, failed to take photos and statements from employees, and failed to preserve the staff schedule.

In summary, the following are important takeaways for retailers:

- Evidence from employees who are involved in performing and recording floor inspections around the time of an accident should be preserved;
- Precise boundaries between various areas of a store should be documented

in a diagram, and employees should be trained to identify the different areas with precision. There should be no ambiguity with respect to which floor log applies;

- When a customer incident occurs, sweep logs for the area of the store involved should be preserved. When an incident occurs near the border between two or more areas of a store, it is especially important to preserve sweep logs for all areas;
- The staff schedule or other documentation that establishes which employees were working on the day of an incident should be preserved;
- Contemporaneous statements should be obtained from witnesses, and evidence such as diagrams, photos and/or videos should also be obtained;
- The employees responsible for dealing with customer incidents should be well trained and informed with respect to the store's protocol. A sound policy can work against a retailer if it is not followed after an accident. ■



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