



PROPOSALS FOR AN OCCUPIERS' LIABILITY ACT

**Report to the Attorney General
from the
Law Reform Commission of Saskatchewan**

October, 1980

The Law Reform Commission of Saskatchewan was established by *An Act to Establish a Law Reform Commission* proclaimed in November, 1973, and began functioning in February of 1974.

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The Law Reform Commission Act.

6. The commission shall take and keep under review all the law of the province, including statute law, common law and judicial decisions, with a view to its systematic development and reform, including the codification, elimination of anomalies, repeal of obsolete and unnecessary enactments, . . . and generally the simplification and modernization of the law, . . .

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To The Honourable Roy J. Romanow, Q.C.
Attorney General for Saskatchewan

Dear Mr. Attorney General:

I wish to advise that the occupiers' liability project has now been completed. Tentative Proposals for an Occupiers' Liability Act were released in June of 1980 and no unfavourable comments were received.

The Commission wishes to thank Professor Daniel R. Ish of the College of Law, University of Saskatchewan, for his services as consultant on the project. The Commission also acknowledges the support received from the Law Foundation of Saskatchewan which financed the major portion of the requisite research.

Pursuant to section 9 of *The Law Reform Commission Act*, the Commission now submits this report recommending the enactment of The Occupiers' Liability Act in the form set out therein.

Respectfully submitted this 27th day of October, A.D. 1980.

A large, stylized handwritten signature in black ink, appearing to read "Ronald C.C. Cuning".

Ronald C.C. Cuning, Chairman

A handwritten signature in black ink, appearing to read "George J.D. Taylor".

George J.D. Taylor, Q.C., Commissioner

A large, stylized handwritten signature in black ink, appearing to read "Marjorie A. Gerwing".

Marjorie A. Gerwing, Commissioner

INTRODUCTORY NOTE

This is a final report based on the Commission's "Tentative Proposals for an Occupiers' Liability Act" released in June 1980. The recommendation herein is identical to that in the Tentative Proposals.

INTRODUCTION

The law of occupiers' liability with its emphasis on formal categories and labels has led to capricious results, unrealistic distinctions and a general contortion of articulated rules which govern the area. The categories are inconsistent with the modern tendency in torts law to generalize. The late Dean Wright observed:¹

[C]ategories have a habit of shading one into the other. This is inevitable since categories attempt to confine facts and facts have an annoying habit of resisting confinement. It would seem reasonably obvious to anyone not familiar with this part of the law that what we need are either more categories to fit the facts — which makes categorizing futile since there may not be enough different rules of law to fit each category — or a principle of law as elastic as the facts to which it must apply.

To a large extent, responsibility for injury on dangerous premises has withstood the tendency to measure the existence and scope of duties by ordinary negligence principles, that is, the broad standards of foreseeability of harm and reasonable conduct. However, occupiers' liability law has been influenced by ordinary negligence law and recent cases in the Supreme Court of Canada indicate that it may be on the verge of being subsumed by ordinary negligence law. Whether more satisfactory results would be obtained if ordinary negligence principles applied is an open question, but at least a more rational basis of liability would result.

In recommending the enactment of *The Occupiers' Liability Act* as set out below, an attempt has been made to simplify the law by eliminating formal categories of entrants and replacing those categories with a more elastic principle of law.*

¹ Wright, *Cases on the Law of Torts* (4th ed. 1967) 667.

* NOTE: A detailed study of the law of occupiers' liability in Saskatchewan and other jurisdictions is to be found in the report entitled *Tentative Proposals for an Occupiers' Liability Act* issued by the Law Reform Commission of Saskatchewan in June, 1980.

THE OCCUPIERS' LIABILITY ACT

1. In this Act,
 - (1) "occupier" means
 - (a) a person who is in possession of premises; or
 - (b) 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 the premises, and for the purposes of this Act, there may be more than one occupier of the same premises.
 - (2) "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;
 - (d) railway locomotives, railway cars, vehicles and aircraft.
 - (3) "hunting" shall have the meaning attributed to it in *The Wildlife Act*.
 - (4) "motor vehicle" includes motor cars, locomobiles, power units, motorcycles, pedal bicycles with motor attachments, snowmobiles, snowplanes, tractors, units formed by attaching power units to semi-trailers and all other self-propelled vehicles.
2. The provisions of this Act apply in place of the rules of the common law for the purpose of determining the care that an occupier is required to show towards persons entering on his premises in respect of dangers to them. Subject to subsection (9) of section 3, the rules of common law are not affected by this Act with respect to property of persons on premises.
3.
 - (1) An occupier of premises owes a duty to take such care as in all circumstances of the case is reasonable to see that any person on the premises will be safe in using the premises.
 - (2) Without restricting the generality of subsection (1), in determining whether the duty of care under subsection (1) has been discharged consideration shall be given to
 - (a) the gravity and likelihood of the probable injury;
 - (b) the circumstances of the entry onto the premises;
 - (c) the nature of the premises;
 - (d) the knowledge which the occupier has or ought to have of the likelihood of persons or property being on the premises;
 - (e) the age of the person entering the premises;
 - (f) the ability of the person entering the premises to appreciate the danger;
 - (g) the burden on the occupier of eliminating the danger or protecting the person entering the premises from the danger as compared to the risk of the danger to the person.
 - (3) The duty of care referred to in subsection (1) applies in relation to
 - (a) the condition of the premises; or
 - (b) the activities on the premises; or
 - (c) the conduct of third parties on the premises.
 - (4) Notwithstanding subsection (1), an occupier has no duty of care to a person in respect of risks willingly accepted by that person as his own risks.
 - (5) The knowledge of any person of dangers on the premises, whether because of a warning given by the occupier or otherwise, shall not alone absolve the occupier from discharging his duty under this Act towards that person.

- (6) For the purposes of subsection (4), a person who is on premises with the intention of committing, or in the commission of, a criminal act shall be deemed to have willingly assumed all risks except the risk of dangers created and acts done by the occupier with the intent of doing harm or damage to persons or property or with reckless disregard of the presence of the person or his property.
 - (7) Notwithstanding subsection (6), nothing in this Act shall be construed so as to affect the law with respect to self defence, defence of others and defence of property.
 - (8) For the purposes of subsection (4), a person who, in the course of hunting, or driving or riding on or in a motor vehicle or being towed by a motor vehicle, enters or uses the premises unconnected with any business or social purpose with respect to the occupier or any other person usually on the premises, shall be deemed to have willingly assumed all risks except the risk of dangers created by the occupier with the intent of doing harm or damage to persons or property and the risk of damage from acts of the occupier done with reckless disregard of the presence of the person or his property.*
 - (9) Where in addition to amounts recoverable for personal injury by any person by virtue of this Act, property damage has been caused to that person by the same act that caused the personal injury, such property damage may be recoverable.
4. (1) (a) Subject to subparagraphs (b) and (c) and subsection (2), insofar as the law permits, the duty of care of an occupier under this Act may be extended, restricted, modified, or excluded by express agreement, stipulation or notice.
- (b) No restriction, modification, or exclusion of the occupier's duty of care is effective unless reasonable steps were taken to bring it to the attention of the person affected thereby.
 - (c) No restriction, modification or exclusion of the occupier's duty of care contained in any agreement, notice or stipulation permitted by subparagraph (a) shall be valid and binding against any person unless in all the circumstances of the case it is reasonable. Circumstances to be considered in determining the reasonableness of the restriction, modification or exclusion of liability shall include (but without limiting consideration of other facts)
 - (i) the relationship between the occupier and the person affected;
 - (ii) the injury suffered and the hazard causing it;
 - (iii) the scope of the purported limitation of liability;
 - (iv) the steps taken to bring it to the attention of the person affected thereby.
- (2) (a) Subparagraph (1) (a) does not apply to restrictions, modifications, or exclusions of the occupier's duty of care in an express agreement, stipulation, or notice with respect to a person who is empowered or permitted by law to enter or use the premises without the permission of the occupier. Persons entering or using the premises solely under an easement or right-of-way created by law shall not be deemed to fall within the terms of this subparagraph.
- (b) Conditions contained in notices and in tickets, programmes and similar documents of admission which restrict, modify or exclude the occupier's duty of care to the extent that the breach of that duty results in death or injury are null and void.
- (3) This section applies to express agreements and stipulations entered into or made before or after this Act comes into force.
5. (1) Notwithstanding subsection (1) of section 3, where injury is caused by the negligence of an independent contractor engaged by the occupier, the occupier is not on that account liable under this Act if, in all the circumstances the occupier exercised reasonable care in the

* NOTE: If this subsection is enacted, then section 34 of *The Snowmobile Act*, R.S.S. 1978, c. S-52 and section 39 of *The Wildlife Act*, R.S.S. 1978, c. W-13.1 should be repealed.

- selection of the independent contractor.
- (2) Notwithstanding subsection (1), the occupier shall owe a duty under subsection (1) of section 3 where he knows or if he ought in all the circumstances to have known of a dangerous situation created on the premises by an independent contractor.
 - (3) Subsection (1) shall not be construed as restricting or excluding the liability of an occupier for the negligence of his independent contractor imposed by another Act.
 - (4) Where there is injury under the circumstances set out in subsection (1), and there is more than one occupier of the premises, each occupier is entitled to rely on the provisions of subsection (1).
6. (1) Where premises are occupied or used by virtue of a tenancy under which a landlord is responsible for the maintenance or repair of the premises, it is the duty of the landlord to show towards any person (whether or not entering the premises) who might reasonably be expected to be affected by defects in the state of the premises the same duty of care in respect of risks arising from such defects as is required by virtue of this Act to be shown by an occupier of premises towards such persons entering or using such premises.
 - (2) The landlord's duty under subsection (1) is owed if the landlord knows (whether as a result of being notified by the tenant or otherwise) or if he ought in all the circumstances to have known of the defect which causes injury to person or property.
 - (3) Where premises are occupied by virtue of a subtenancy, subsection (1) applies to any landlord who is responsible for the maintenance or repair of the premises comprised in the subtenancy.
 - (4) Nothing in this section shall be construed as relieving a landlord of any duty he may have apart from this section.
 - (5) For the purposes of this section, obligations imposed by any enactment in respect of a tenancy shall be deemed to be imposed by the tenancy, and "tenancy" includes a statutory tenancy, an implied tenancy, and any contract conferring the right of occupation, and "landlord" shall be construed accordingly.
 - (6) This section applies to tenancies created before or after the commencement of this section.
7. *The Contributory Negligence Act* applies to this Act.
8. (1) Except as otherwise provided in subsection (2), the Crown in right of the Province is bound by this Act, and *The Proceedings Against the Crown Act* applies. To the extent permitted by federal law, the Crown in right of Canada is bound by this Act.
 - (2) Notwithstanding subsection (1) of section 8, this Act does not apply to the Crown in right of the Province or in right of Canada or to a municipality where the Crown or the municipality is the occupier of a public highway or public road.
9. (1) This Act does not apply to or affect
 - (a) the liability of an employer in respect of his duties to his employee; or
 - (b) the liability of any person by virtue of a contract for the hire of, or for the carriage for reward of persons or property in, any vehicle, vessel, aircraft, or other means of transport; or
 - (c) the liability of any person under *The Hotel Keepers Act*; or
 - (d) the liability of any person by virtue of a contract of bailment.
 - (2) Nothing in this Act relieves an occupier of premises of any higher standard of care which is imposed upon him by virtue of an enactment or rule of law imposing special standards of care on particular classes of persons.
10. Subject to subsections 4(3) and 6(6), this Act applies only in respect of a cause of action arising after this Act comes into force.

NOTES TO THE ACT

1. Introduction

The provisions of the Act in a very general way follow existing and proposed occupiers' liability legislation. The Uniform Law Conference's *Occupiers' Liability Act*, which has been adopted in British Columbia, has been used as a model for this Act; however, several provisions are modelled on other legislation or proposals and several provisions are unique to this Act.²

2. Definitions

The definition of "occupier" copies the Uniform Act. (Section 1(1)). In addition to covering situations where the defendant is in actual possession of premises at the time of potential liability, the definition covers the situation where he is absent but has some measure of control over the premises. The provision that there may be more than one occupier recognizes that in areas such as apartment buildings, shopping plazas and places where an independent contractor is performing work, there may in fact be more than one potential defendant responsible for conditions on the premises.

The definition of "premises" also copies the Uniform Act. (Section 1(2)). The broadness of the definition attempts to ensure that all premises to which common law occupiers' liability law applies will be covered. If it is too narrow in scope, the definition may result in liability in certain situations being determined by the "old law"; or because section 2 abrogates the common law with regard to personal injury, a too narrow definition of "premises" may leave certain situations ungoverned by any law.

Unlike the Alberta Act which excludes from the definition of "premises" aircraft, motor vehicles or other vehicles or vessels, section 1(2) covers them. Because the common law has applied occupiers' liability principles to certain vehicles, to exclude them from the operation of the statute may result in a partial resurrection of the common law which would not be desirable. Conflicts with laws which may impose a higher standard of care than imposed on the occupier under the Act is avoided by a general provision. (Section 9(2)).

3. Abrogation of the Common Law

Section 2 makes clear that the Act supplants the common law principles of occupiers' liability with regard to personal injury. To the extent that the common law is unaffected by the Act, specific provision is made in section 2 and section 9. Section 2 makes clear that the rules of the common law are not affected by this Act with respect to property on premises.

4. Occupier's Duty

The Act states that the occupier owes a duty of reasonable care to all entrants. (Section 3(1)). No distinction is made with regard to various classes or categories of entrants — indeed the primary purpose of the Act is to abolish such distinctions — including trespassers.

The encompassing of the duty under one "common duty" does not necessarily mean that all entrants, whatever their purpose, will be treated alike. In making the determination of whether the standard of care has been met in a particular case, "all the circumstances of the case" must be taken into account. The net effect is that under the Act occupiers' liability cases will be treated like ordinary negligence cases and a myriad of factors must be assessed to determine whether liability will ensue as opposed to the application of a fairly rigid rule as existed in the common law. In addition to the general provision requiring that all circumstances be weighed, the Act requires that certain specific factors must be considered. (Section 3(2)). There is no parallel provision to section 3(2) in existing legislation; however, the courts have often enunciated such factors in arriving at their conclusions. It is helpful to include such a provision in the Act as the effect will be to focus the courts on some of the

² See Appendix.

more relevant factors that should be considered. By applying the guidelines contained in section 3(2) one can readily appreciate, for instance, that a trespasser on farm property in Saskatchewan would not necessarily be accorded the same treatment under the law as a person who has been invited onto someone's premises. Thus although the Act provides for what has been called a "common duty of care" owed to all entrants, that does not mean that all entrants will be accorded the same rights in relation to occupiers. The generalized duty will allow the court to weigh all the pertinent factors in assessing liability without getting into rigid formulas. It is hoped that the overall result will be more just treatment for occupiers and entrants alike than was accorded them under the common law occupiers' liability regime.

It is the intent of the Act that only personal injury damages and property damage collateral to that personal injury shall be covered by the Act. (Section 3(1) and 3(9)). Other property damage shall continue to be governed by the existing common law rules of occupiers' liability law.

5. Activities on Premises and Conduct of Third Parties

Like the Uniform Act, section 3(3) makes clear that the duties of care referred to in section 3(1) apply to activities on the premises as well as static conditions and to acts of third parties which the occupier can control.

6. Voluntary Assumption of Risk

The Act restates the common law rule that an occupier has no duty to an entrant with respect to risks which the entrant has voluntarily assumed on his own. (Section 3(4)).

The Act makes clear that knowledge by an entrant of a danger does not in itself absolve the occupier from discharging his duty. (Section 3(5)). Although this is likely the position under the common law by virtue of a relatively recent Supreme Court of Canada decision,³ the Act puts the matter beyond doubt. The effect of the provision is to have the knowledge of the entrant treated as one factor in determining whether the defences of contributory negligence or voluntary assumption of risk apply. In Canada only the Alberta Act and the Nova Scotia draft contain similar provisions.

Where a person enters premises for criminal purposes, section 3(6) deems him to have assumed his own risk and the occupier is thus relieved of liability. This provision is based on a section in the draft act contained in the 1979 Ontario Discussion Paper. It is premised on the view that criminal trespassers do not deserve any more than minimal protection. The relief from liability does not extend so far as to protect an occupier who creates dangers that are deliberately intended to cause harm or acts in reckless disregard of the entrant's presence. Thus occupiers are deterred from committing criminal acts themselves by setting traps that could cause injury or death. However, section 3(7) makes clear that the existing law of self defence, defence of others and defence of property shall not be affected.

Section 3(8) provides that persons who enter premises by means of a motor vehicle or in the course of hunting and who enter premises for a purpose unconnected with the occupier shall be deemed within certain limitations to have assumed the risk of injury. The provision imposes a lesser standard of care on the occupier; the lesser standard requires the occupier not to deliberately or recklessly do something which may cause harm to the entrant.

Although the provision applies to all premises, it is designed in specific recognition of the particular difficulty that farm owners in Saskatchewan may have because of the large tracts of land that are involved.

Section 3(8), for example, would apply to a snowmobile rider or motorcycle rider who is using

³ *Mitchell v. C.N.R.*, (1974), 46 D.L.R. (3d) 363; also see *Campbell v. Royal Bank of Canada*, [1964] S.C.R. 85.

property for purely recreational purposes. It would not apply to social guests or canvassers calling on the inhabitants of the premises. If section 3(8) is passed into law, section 34 of *The Snowmobile Act* should be repealed since the net effect is similar except that section 3(8) covers all motor vehicles and is not limited to snowmobiles. Also section 39 of *The Wildlife Act* should be repealed if section 3(8) is passed into law since section 3(8) includes hunters within its ambit.

Section 3(9) allows for recovery of property damage in addition to recovery for personal injury where the property damage was caused by the same act that caused personal injury.

7. Restriction, Modification and Exclusion of the Occupier's Duty

Subject to some substantial limitations, section 4 provides that the duty of care of an occupier under the Act may be extended, restricted, modified or excluded by express agreement, stipulation or notice. Section 4 has been adopted with some changes from the Nova Scotia proposals.

The limitation on the right to vary the statutory duty can be classified under the following headings:

- (1) Notice Requirement; (Section 4(1)(b)).
- (2) Reasonableness Requirement; (Section 4(1)(c)).
- (3) Entrants as of Right Exclusion; (Section 4(2)(a)).
- (4) Unnegotiated "agreement" Limitation; (Section 4(2)(b)).

(1) Notice Requirement

Any modification of the statutory duty is only effective if reasonable steps have been taken to bring it to the attention of the persons it affects. (Section 4(1)(b)). All the existing and proposed Canadian legislation contain such a provision.

(2) Reasonableness Requirement

The Act contains a clause requiring all modifications and exclusion provisions to meet a test of reasonableness. (Section 4(1)(c)). Under the present law provisions excluding or limiting liability are applied unless notice of them has not been brought to the attention of the entrant or the terms of the exclusion or limitation are not sufficient to cover the situation. The Act requires consideration of other factors as well.

The net effect of the reasonableness provision is to almost totally move the question of liability into ordinary negligence law with potentially little consideration being given to an existing contract. This represents a significant departure from the common law and recognizes that the imposition of obligations by the law on occupiers and entrants transcends the law of contract. The Nova Scotia Study Paper gives the following rationalization for a similar provision:

The present subsection requires consideration of other factors as well. For example, if a parking lot has notices reading "Not responsible for any damage", that notice, even if sufficiently brought to the attention of the entrant, may be considered unreasonable. Compare the following two cases. In the first, a motorist leaves the key in his car on the occupier's parking lot at the lot attendant's request. The lot attendant decided to go home for lunch, and the car is stolen. In the second case, the key is left with the attendant, but thieves break into the locked car and steal the motorist's camera. The attendant is at his post but makes no attempt to survey the lot. The exculpatory notice would be reasonable under all the circumstances in the second case but not the first. In the first case the motorist has been requested to keep the car unlocked and has been given no warning that the attendant will not remain at his post to control the entrance and egress of cars. In the second, the notice is sufficient to warn the motorist that the attendant will not necessarily be watching the car for thieves. The subsection would permit the court to look at the overall fairness of the exculpatory notices and contractual terms in the light of the entire situation, without attempting to evade the issue by, for example, reclassifying a license as a bailment. Compare

Bata v. City Parking Canada Ltd. (1973), 2 O.R. (2d) 446; 43 D.L.R. (3d) 190 (Ont. C.A.) (motorist parking his car on lot was "licensee" and liability of lot owners could be limited by notice), with *Heffron v. Imperial Parking Co.* (1974), 46 D.L.R. (3d) 642 (Ont. C.A.) (car parking on lot was "bailment", not "licence", and despite exculpatory notice failure to return car was "fundamental breach" of bailment).

(3) Entrants as of Right Exclusion

The Act provides that persons who are entitled to enter without the permission of the occupier, such as policemen or firemen in certain circumstances, shall not be bound by limitations on liability even though the occupier followed normal notice procedures. (Section 4(2)(a)). The Act prevents an occupier from requiring such persons, by appropriate notices, to enter premises at their own risk even though he cannot refuse to admit them because they are there under colour of right.

(4) Unnegotiated "agreement" Limitation

Under the common law, liability for any damage may be eliminated through notice of contract. Although the courts sometimes have not been sympathetic to such exclusions of liability, there are recent examples of liability being effectively excluded for both property damage and personal injury. The Act provides that exclusions of liability in notices and documents are void insofar as they exclude liability for death or injury. (Section 4(2)(b)). With regard to property damage the law is left unchanged. The provision in the Act does not prevent an occupier and an entrant from negotiating a contract which limits or excludes liability for death or personal injury, it only applies to notices and documents of admission. Although the latter are technically contracts, they are often unnegotiated "agreements" and the Act treats them like notices with respect to the matter of the entrant's actual and knowing acceptance of the risk of death or personal injury.

8. Application of Section 4

The Act provides that section 4 affect contracts which may have been entered into before the Act is adopted. (Section 4(3)). There appears to be no reason why contracts which may have been entered into in the past and which may run for an extensive period of time should escape the application of the law.

9. Liability for Acts of Independent Contractors

The Act provides that an occupier shall not be liable for damage caused by the negligence of an independent contractor where the occupier exercised reasonable care in the selection. (Section 5(1)). Section 5(2) however, still renders the occupier subject to the common duty of care owed to an entrant where he has met the requirements of section 5(1) but has knowledge of a situation created by an independent contractor which is dangerous. In such a situation he must take reasonable steps to protect the entrant, that is, he is subject to the common duty of section 3(1).

10. Landlord and Tenant Situations

The Act reverses the common law rule that the lessor of premises is under no liability to any person lawfully on the premises, other than a tenant, for damages caused by the breach of the lessor's covenant to repair. (Section 6(1)). The Act, following the Nova Scotia draft, goes further than other Canadian provisions in making clear that an entrant can sue a landlord even though the landlord has not had notice of the defect and a reasonable time in which to make it safe. (Section 6(2)). At common law before a tenant can sue for injury resulting from a breach of covenant, reasonable notice has to be given the landlord. Other Canadian reformulations of occupiers' liability law, with the exception of Nova Scotia, make the basis for determination of the landlord's liability to an entrant whether the landlord would be liable to the occupier-tenant. The Act does not make the entrant's right to recover contingent upon the occupier-tenant's rights. By making the landlord liable when he knows or ought to know that the premises are defective (Section 6(2)), it is clear the landlord will be liable even though reasonable notice of the defect is not given to him. Without such a provision there

is some doubt whether the landlord would be liable to an entrant in absence of notice to repair from the tenant. Such a provision may give the non-tenant greater rights against the landlord than the tenant has against the landlord because the reasonable notice requirement does not apply before a non-tenant entrant can recover from the landlord. However, in Saskatchewan this anomaly only applies to non-residential tenancies since the statutory conditions contained in *The Residential Tenancies Act* appear to give the tenant rights similar to those given to other entrants in the present draft Act. With regard to non-residential tenancies this anomaly may be justified on the basis that the tenant is at least more likely to be aware of defects than is the entrant and the present draft Act is not designed to reform the law of landlord and tenant.

11. Contributory Negligence

The Contributory Negligence Act, which provides for contribution among tortfeasors where there is more than one tortfeasor and which provides for apportionment where the plaintiff is partially at fault for his own injury, is applicable to cases falling under the Act. (Section 7).

12. Crown Liability

The Act shall bind the Crown in right of the province and *The Proceedings Against the Crown Act* shall apply to cases under the Act as it does to common law negligence. (Section 8(1)).

The Crown in right of Canada would not be bound under the Act to the extent that it increases the liability of the Crown as occupier over what it would have been under the law in effect when the federal *Crown Liability Act* became effective. If Parliament should elect to make the present Act applicable to the Crown in right of Canada, the second sentence of section 8(1) states the provincial intention that the present Act apply to the Crown.

Section 8(2) renders the Act inapplicable to the Crown or a municipality where either are the occupier of a public highway or road. Liability of the provincial Crown, a rural municipality or an urban municipality for injury arising from a defective highway or road is the subject of specific provisions in *The Highways Act*, *The Rural Municipality Act* and *The Urban Municipality Act* respectively.

13. Preservation of Higher Duties

The Act provides generally that it is not intended to disturb rules of law which impose a higher standard of care upon an occupier in his capacities other than occupier (Section 9(2)). It also specifically refers to rules that are not to be disturbed, they are: common law rules of master and servant, bailment, common carriers and rental of means of transportation, and to situations falling under *The Hotel Keepers Act*. (Section 9(1)).

14. Application of Act

Like the Uniform Act, the Act provides that it shall apply only to causes of action arising after the Act becomes effective with two exceptions. (Section 10). The exceptions refer to the subsections that provide that the Act does affect agreements, stipulations and tenancies entered into prior to the effective date of the Act. (Sections 4(3) and 6(6)).

APPENDIX

Bibliography of Existing and Proposed Commonwealth Legislation Relating to Occupiers' Liability

1. *The Occupiers' Liability Act*, 1957, 5 & 6 Eliz. 2, c.31 (England).
2. *The Occupiers' Liability Act* (Northern Ireland), 1957, 5 & 6 Eliz. 2, c.25.
3. *The Occupiers' Liability Act* (Scotland), 1960, 8 & 9 Eliz. 2, c.30.
4. *The Occupiers' Liability Act*, 1962 (New Zealand).
5. The New South Wales Law Reform Commission, "Working Paper on Occupiers' Liability" (1969).
6. The New Zealand Torts and General Law Committee, "Report on Occupiers' Liability to Trespassers" (1970).
7. *The Defective Premises Act*, 1972, c.35 (England).
8. *The Uniform Occupiers' Liability Act*, Conference of Commissioners on Uniformity of Legislation in Canada (1973).
9. The Law Commission, Working Paper No. 52, "Liability for Damages or Injury to Trespassers and Related Questions of Occupiers' Liability" (1973) (England).
10. *The Occupiers' Liability Act*, S.A. 1973, c.79 (Alberta).
11. *The Occupiers' Liability Act*, S.B.C. 1974, c.60 (British Columbia).
12. Nova Scotia Law Reform Advisory Commission, "A Study Paper: Occupiers' Liability Law" (1976) by Michael Terry Hertz.
13. The Ontario Law Reform Commission, "Report on Occupiers' Liability" (1972).
14. Ontario Ministry of the Attorney General, "Discussion Paper on Occupiers' Liability and Trespass to Property" (1979).