

In What Circumstances Does an Occupier of Land Have a Duty to Warn About Hidden Dangers?

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In a decision released last week, the Court of Appeal revisited s. 3 of the *Occupier's Liability Act* (the "**OLA**"), which reads as follows:

"3. An occupier of premises owes a duty to take such care as in all the circumstances of the case is reasonable to see that persons entering on the premises, and the property brought on the premises by those persons are reasonably safe while on the premises."

In *T.C.O. Agromart Ltd. v. Sutton Farms (Nacona) Ltd.*, [2026 ONCA 371](#), T.C.O. Agromart's employee, Mr. Denyes, was driving a crop sprayer across a farm bridge to access the crop fields on the other side when the bridge gave way and the sprayer fell off the bridge, landing in the river. Mr. Denyes escaped without serious injuries, but the sprayer was badly damaged. T.C.O. Agromart's insurer advanced a subrogated claim against the bridge owner, Sutton Farms.

The bridge was built some 45 years before the accident. It was 16-foot wide. However, the steel beams supporting the bridge were only 10-foot wide and were placed in the centre of the bridge. As a result, the outer three feet on either side of the bridge were completely unsupported by the steel beams below.

The trial judge dismissed the action ([2025 ONSC 1996](#)) for two main reasons: lack of causation and lack of foreseeability. Mr. Denyes knew and understood that it was important to drive the sprayer down the centre of the bridge, as a matter of "common sense". The trial judge held that it would have made no difference if Sutton Farms had put a sign warning the driver of the risk of failing to stay in the centre of the bridge, since Mr. Denyes already knew he had to stay in the centre of the bridge. The trial judge also held that the accident was not foreseeable, since an accident had never happened in nearly 45 years of regular and often heavy use of the bridge.

The Court of Appeal entirely disagreed and reversed the trial decision. In particular, the Court of Appeal noted the following:

- When considering if the bridge owner breached its duty of care, the analysis must be on the conduct of the bridge owner and what duty he or she owes to all users of the bridge, and not just to one particular injured victim.
- A warning to stay in the centre of the bridge was insufficient. It was necessary to disclose the hidden danger that lurked beneath: the fact that outer three feet on either side of the bridge were completely unsupported. Absent this warning, T.C.O. Agromart and its employees could not make an informed decision about whether to accept the risks of crossing the bridge with the sprayer. Before the accident, Mr. Dneyes had not seen what was under the bridge and had not known how the wooden planks were supported.
- The accident was reasonably foreseeable and was in fact foreseen. Indeed, because the owner of the property and his family were aware of the hidden overhang and the associated risks, they elected to use an alternative public bridge when they used wide equipment.
- It was foreseeable that one driving heavy farm equipment might veer slightly to the left or the right onto the unsupported overhang, risking an accident. The fact that there had been no such previous incidents on the bridge does not negate the

foreseeability of the risk, nor the occupier's duty to warn.

There is no duty on the occupier to warn of obvious and self-evident dangers on their premises. However, there is certainly a duty to warn of dangers that are not plain and obvious. If a hidden danger was not disclosed and caused the loss, the fact that the injured party suspected the danger as a matter of common sense may not allow the occupier to escape liability.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

The WeirFoulds [Subrogation & Recovery Practice Group](#) specializes in large, complex subrogation matters, and prosecutes cases all over Canada, including Quebec. For more information on this topic or for any related inquiries, please reach out to [Raj Datt](#), Chair & Partner, or [Marie-Pier Nadeau](#), Partner.

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