

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

Plaintiff

-and-

Defendant

STATEMENT OF DEFENCE OF THE DEFENDANT,

1. The Defendant, _____ (hereinafter referred to as the "Defendant"), admits none of the allegations in the Statement of Claim, unless hereinafter expressly admitted.
2. The Defendant specifically denies that the Plaintiff is entitled to the relief sought in paragraph 1 of the Statement of Claim.
3. At all material times, the Defendant was the occupier of the premises located at _____, in the City of _____, Province of _____ (hereinafter the "Premises").
4. The Defendant denies that the incident at issue in the Statement of Claim took place in the manner as described by the Plaintiff, and puts the Plaintiff to the strict proof thereof.
5. In the alternative, the Defendant states that the incident and alleged subsequent injuries sustained by the Plaintiff, which are not admitted but specifically denied, did not occur as a result of any negligence, want of care, or breach of any statute, regulation, standard or code on the part of the Defendant, or anyone for whom it is responsible in law, and puts the Plaintiff to the strict proof to the contrary in this regard.

6. At all material times, the Defendant fulfilled its duty of care under the *Occupiers' Liability Act*, RSO 1990, c. O.2 (hereinafter the "*Act*") by taking such care as in all the circumstances was reasonable to see that persons entering the Premises were reasonably safe while there.

7. In particular, the Defendant states that it discharged any alleged duty of care owed to the Plaintiff by, *inter alia*, having in place a system of regular inspection and maintenance of the area in which the alleged incident occurred. Such a system was being employed on the day of the alleged incident.

8. At all material times, the agents, employees, and servants of the Defendant conducted themselves in a prudent and cautious manner with respect to the Premises in full conformity with their legal obligations.

9. The Defendant states that the alleged incident and alleged subsequent injuries, which are not admitted but specifically denied, were caused by the Plaintiff herself, owing to a failure to take due care for her own safety. This negligence caused or contributed to the Plaintiff's losses, if any, the particulars of which include, but are not limited to, as follows:

- a. she failed to keep a proper lookout for her own safety;
- b. she was not paying due attention in the circumstances and/or was preoccupied and/or failed to keep a proper lookout as to where she was walking;
- c. she was not reasonably alert to the conditions which then and there existed;
- d. she failed to take appropriate steps in the circumstances;
- e. she failed to have proper regard for the surface on which she was walking;
- f. she failed to wear appropriate footwear in all the circumstances;
- g. her ability to walk safely was impaired by reason of injury, illness, fatigue, alcohol, medication, or a combination thereof;

- h. she was lacking the visual acuity necessary to see where she was stepping at the time of the alleged incident;
 - i. such further and other particulars as to the negligence of the Plaintiff as become known and this Honourable Court may permit.
- 10. The Defendant specifically denies that the Plaintiff has sustained injuries as alleged in the Statement of Claim and puts the Plaintiff to the strict proof thereof.
- 11. The Defendant states that if the Plaintiff sustained the injuries as alleged in the Statement of Claim, which is not admitted but specifically denied, said injuries pre-date the incident or are as a result of pre-existing conditions or conditions which have no causal connection with the alleged incident mentioned in the Statement of Claim, or, in the alternative, were caused by subsequent accidents and/or incidents in which the Plaintiff has been involved.
- 12. The Defendant denies that the incident in question caused, aggravated, influenced or otherwise contributed to these pre-existing injuries, illnesses, or diseases, and puts the Plaintiff to the strict proof thereof.
- 13. The Defendant specifically denies that the Plaintiff has been or will be physically unable to enjoy activities as she did prior to the incident, and puts the Plaintiff to the strict proof thereof.
- 14. The Defendant denies that the Plaintiff has required or will require the treatment and costs or special expenses as referred to in the Statement of Claim, and puts the Plaintiff to the strict proof thereof.
- 15. The Defendant denies that the Plaintiff has incurred any special damages, any out-of-pocket expenses, or loss of income and future income and/or loss of earning capacity, and puts the Plaintiff to the strict proof thereof.
- 16. The Defendant states that, if the Plaintiff incurred the damages and losses as alleged in the Statement of Claim, which is not admitted but specifically denied, such damages and losses are excessive and remote, and puts the Plaintiff to the strict proof thereof.

17. The Defendant denies that there is any claim on behalf of the Ministry of Health and Long Term Care or for insured services under the *Health Insurance Act*, RSO 1990, c H.6, and puts the Plaintiff to the strict proof thereof.
18. The Defendant states that the Plaintiff has failed to mitigate any damages by not undertaking recommended medical, therapeutic, or other modalities of treatment and/or retraining.
19. The Defendant states that the Plaintiff has failed to provide sufficient and timely medical and other documentation that would permit it to assess the Plaintiff's claim. The Defendant therefore states that the Plaintiff is not entitled to any prejudgment interest pursuant to the *Courts of Justice Act*, RSO 1990, c C.43.
20. The Defendant pleads entitlement to the benefits of all income or payments received by or available to the Plaintiff under the laws of any jurisdiction, including but not limited to all payments received for loss of income from employment, wage, or salary continuation plans, to the extent of the payments made or available thereunder to the Plaintiff. In this regard, the Defendant pleads that any judgment rendered herein be reduced to the extent of the payments made or available to the Plaintiff thereunder.
21. The Defendant states that if it is found at the trial of this action that the Plaintiff is entitled to any damages, that same be reduced to the extent of the contributory negligence found on the part of the Plaintiff.
22. Without admitting any liability whatsoever, the Defendant pleads and relies on the *Negligence Act*, RSO 1990, c N-2, as amended; the *Occupiers' Liability Act*, RSO 1990, c O.2, and the regulations thereunder, as amended; the *Insurance Act*, RSO 1990, c I.8, as amended; and, the *Courts of Justice Act*, RSO 1990, c C.43.
23. Wherefore, the Defendant requests that this action be dismissed with costs on a substantial indemnity basis.

Court File No. 1

Dated:

Tel:

Fax:

Lawyers for the Defendant,

TO:

Tel:

Fax:

Lawyers for the Plaintiff,

Court File No.

- and -

Plaintiff

Defendant

**ONTARIO
SUPERIOR COURT OF
JUSTICE**

Proceeding Commenced at

**STATEMENT OF DEFENCE OF
THE DEFENDANT.**

Tel.:
Fax:

Lawyers for the Defendant