

Sometimes, All You Have To Do Is Care: The Ontario Court of Appeal Considers the Standard of Care in The Context of Contractual Duties and Industry Practice

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Determining the appropriate standard of care in product liability actions based on negligence, will often determine the outcome of a case. The issue of standard of care was recently considered by the Ontario Court of Appeal in the context of contractual duties and industry practices.¹

Background of the Claim

In *Mabe Canada Inc. v. United Floor Ltd.*, the appellant sustained damages when a drainage pipe, running underneath a floor installed by the respondent, was punctured and caused a flood in the appellant's warehouse. The appellant's claim was dismissed by the trial judge, who found that although the respondent damaged the drainage pipe by puncturing it with a stake, the respondent met the standard of care.

The contract between the parties required the respondent to notify the builder of the warehouse in writing if the subsurface conditions differed from those in the contract. The trial judge accepted expert evidence that the respondent had no reason to foresee that the pipe would be installed at a shallow depth and that it had no obligation to do more than to determine the location of the drainage pipe. None of the building drawings showed a drainage pipe in the location where the damaged pipe was found. As a result, the respondent's duty to notify the builder did not arise, and the trial judge concluded that it did not breach the standard of care. The Appellate Court upheld this decision.

Key Take-Away Principles

In product liability claims, defendant manufacturers commonly rely on the defence of conformity with standard industry practice when faced with an allegation that it breached the standard of care. Standard industry practice will be determined as negligent only where the practice does not conform with basic care – or in the words of the Supreme Court of Canada, “that which is easily understood by the ordinary person who has no expertise in the practices of the industry.”²

This will not necessarily insulate a manufacturer from a finding of negligence. However, as indicated by this decision, while contractual duties may modify the standard of care in some circumstances, courts will first look at standard industry practices and potential foreseeability of the alleged damage, before determining

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whether or not such duties were triggered.

¹ *Mabe Canada Inc. v. United Floor Ltd.* 2017 ONCA 879.

² *Neuzen v. Korn*, [1995] 3 S.C.R. 674.

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