

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:)
)
POYSER, David) *Stoykov, K.* for the Plaintiff
)
)
Plaintiff)
)
- and -)
)
)
PEEL HOUSING CORPORATION) *Regan, J. and Habib, M.* for the
) Defendant
)
Defendant)
) **HEARD:** August 6, 2025
)
)

REASONS FOR DECISION

(Motion to Set Aside Verdict of the Jury)

EMERY J.

[1] David Poyser was injured on February 3, 2015 when he slipped and fell on the mid-floor landing of a staircase between floors at 12 New Haven Manor in Mississauga, Ontario. 12 New Haven Manor is one in a series of apartment buildings owned by the defendant Peel Housing Corporation (“Peel”).

[2] Mr. Poyser brought an action against Peel under the *Occupiers’ Liability Act*, RSO 1990, c O.2 seeking general damages, loss of income and other

relief caused by the fall. The action was tried with a jury for 10 days between May 20 and June 3, 2025.

[3] After hearing the closing submissions of counsel and receiving my Charge on the 10th day, the jury returned a verdict within three hours in which they found Peel to have no liability for Mr. Poyser's fall. After the jury was discharged, Peel made a motion to convert the jury's verdict to judgment to have the action dismissed, with costs. Peel has now brought that motion formally. Peel also requests an order that Mr. Poyser or the Preszler law firm that represents him produce for inspection any applicable insurance policy under which an insurer may be liable to satisfy all or part of a costs judgment under Rules 30.02(3) and 31.06(4).

[4] In response, Mr. Stoykov, counsel for Mr. Poyser, requested an adjournment to bring a cross-motion to set aside the jury's verdict. That motion has now been brought on the basis that the findings of the jury were not supported by the evidence or in law.

The Evidence at Trial

[5] David Poyser was 67 years old at the time of the incident. Mr. Poyser testified that he would customarily walk down the staircase on either end of the apartment building to exit the building as there were no elevators. At around 4 p.m. on the day in question, he was taking the stairs from the third floor where he shared an apartment with his fiancée. He is a financial advisor and was on his way to meet a client.

[6] Mr. Poyser testified that he slipped and fell on a slippery substance he believed to be water on the surface of the mid-floor landing. He states that he fell first on his rear end and then caught his foot in the splindles of the staircase handrail which sent him headfirst down the remaining stairs to the second floor.

[7] It was Mr. Poyser's evidence that he saw a pool of water on the mid-floor landing after the fall when he was helped up to his apartment by his fiancée and another resident. His son Trevor also testified that he saw that the landing was wet when he assisted his father down the stairs to go to the hospital that evening.

[8] The jury was told that Peel had a duty under s. 3(1) of the *Occupiers' Liability Act* as the owner and landlord to inspect and detect conditions at 12 New Haven Manor that may be hazardous. Under that duty, Peel was required to take reasonable steps to make the premises reasonably safe for users, including its tenants.

[9] In the case for the defence, the jury heard the evidence of Dominic Reale about the protocols Peel followed to take those steps. Mr. Reale was the property manager for buildings in that complex owned by Peel, including 12 New Haven Manor. Mr. Reale described the records Peel required its own employees to keep from inspections. Those records were marked collectively as Exhibit "7".

[10] The jury also heard the evidence of Mike Petras, the superintendent of 12 New Haven Manor in February 2015. Mr. Petras was asked about the time he conducted his daily inspection of the premises including of the staircases at 12 New Haven Manor on February 3, 2015. He answered that the only document he could point to with a time reference was the inspection report for the building's boiler room marked as Exhibit "8". This report showed that he inspected the boiler room at around 10:50 that morning.

[11] The only evidence the jury heard of how the fall happened is the account given by Mr. Poyser. He was wearing running shoes on his feet as he was intending to drive to his appointment. He described how he was holding the interior handrail of the staircase as he made his way down the stairs from

his third-floor apartment. He states that he lost his footing because he slipped on a puddle of water that had pooled on the landing.

[12] The jury was instructed in the charge that it was up to them to assess the credibility of Mr. Poyser on his evidence. They were the triers of fact and they would have to determine whether Mr. Poyser slipped on water or any other slippery substance on the mid-floor landing, or if he fell for any other reason.

[13] The jury was also instructed to apportion the fault for this fall between Mr. Poyser and Peel if they felt it necessary. This instruction could apply if they found that Mr. Poyser was not taking care as he descended the staircase, or that he slipped because of the footwear he had on or for some other reason. In terms of deciding whether there was a causal link between Peel's breach of its duty and Mr. Poyser's fall, the jury was told it was their role to weigh the evidence and determine if Mr. Poyser would not have been hurt that day but for Peel's breach of duty.

[14] Peel took no issue with the fact that Mr. Poyser suffered an injury because of a fall in the stairwell of his apartment building on February 3, 2015. There is no dispute that he sustained a fracture to the left fibula connected to his left ankle, and that he tore the rotator cuff of his right shoulder. The fact that he was taken immediately to Brampton Civic Hospital and examined there by a doctor was also not challenged.

Motion to set aside jury verdict

[15] Mr. Poyser brought a formal cross-motion to set aside the jury's verdict after sufficient time had been given for both sides to file a record and factums. I heard the cross-motion on August 6, 2025, and reserved judgment.

Questions for the Jury

[16] There were 12 questions put to the jury. All questions for the jury were agreed upon by counsel for the parties at a pre-Charge meeting on June 2, 2025 and marked as Exhibit H. The questions the jury was asked to answer addressed issues of both liability and damages.

[17] The first question put to the jury was as follows:

1. On February 3, 2015, was there water, a slippery substance, or any other hazard on the stairwell between the second and third floors that made the area unsafe for use?

[18] The jury answered “No” to this question. The jury did not answer questions 2 and 3 because they were contingent on an affirmative answer to question 1.

[19] The next question the jury answered was question 4:

4. Did Mr. Poyser fail to take reasonable care for his own safety at the time of the fall, and did his failure cause or contribute to the incident?

[20] The jury answered “Yes” to this question but declined to answer question 5 that asked them to apportion responsibility between the parties for the fall.

[21] The jury was then asked questions 6 and 7 with respect to general damages for pain, suffering and loss of enjoyment of life they would award to Mr. Poyser regardless of responsibility for the fall:

6. Has the plaintiff suffered pain and suffering as a result of the fall?

7. If "Yes", what amount of money fairly compensates the plaintiff for pain and suffering?

[22] The jury answered these questions with "Yes" to question 6 and "Zero" to question 7.

[23] Questions 8 to 12 related to the jury's assessment, if any, of past wages, past care and out of pocket expenses Mr. Poyser had claimed from this fall.

Legal Basis for the Motion

[24] Mr. Poyser brings his motion under Rule 52.08(1) to set aside the verdict of the jury. The rule provides that, where the jury answers some but not all the questions directed to it or gives conflicting answers so that judgment cannot be granted on its findings, the trial judge may direct that the action be retried with another jury.

[25] Rule 52.08(1) also provides that where there is no evidence on which judgment for the plaintiff could be based or where for any other reason the plaintiff is not entitled to judgment, the judge shall dismiss the action.

[26] In the alternative, Mr. Poyser seeks an Order setting aside the verdict on common law principles. The basic principles for setting aside a civil jury verdict allow for a trial judge to refuse to enter judgment on a jury verdict if the judge concludes that either:

- a. There is no evidence on which the jury could have come to its conclusion; or
- b. Where the jury's decision has no foundation in law.

[27] These principles emanate from the decision of the Supreme Court in *Canadian National Railways v. Lancia*, 1949 S.C.R. 177 at pages 191-192 and are restated in *Hill v. Church of Scientology of Toronto* (1992), 7)R.(3d) (Gen. Div.), affirmed at [1994] SCCA No. 288. The Court's responsibility to refuse judgment on a jury verdict was summarized by Carruthers J. as the trial judge in *Hill v. Church of Scientology of Toronto* as follows:

“a trial judge may refuse to accept the verdict of a jury only when she or he considers that there is no evidence to support the findings of the jury, or where the jury gives an answer to a question which it cannot in law provide a foundation for a judgment.”

[28] A jury is responsible for making findings of fact at a trial. However, it is the function of the court to determine whether there is any evidence to support those findings: *McLean v. Knox*, 2011 ONSC 7298. In that case, Smith J. recounted the narrow grounds at common law under which a trial judge may refuse to enter a judgment in accordance with a jury verdict. He set out the holding of Stewart J. in *Fasfous v. Provigo Distribution Inc.*, [2005] O.J. No. 4668 at para. 14 with approval:

14. Accordingly, the trial judge must enter judgment consistent with the jury's findings, unless the verdict is without legal foundation or utterly devoid of evidentiary support.

[29] Smith J. further elaborated that the phrase “no evidence to support” the jury's verdict describes the same circumstances as being “utterly devoid of evidentiary support”: *McLean v. Knox*, at para. 15.

Positions of the parties

[30] Mr. Stoykov submits that the jury answered the question put to it without applying the instructions they were given in the Charge, and without regard to the evidence of Mr. Poyser. He argues that the findings of the jury

were unsupported by the evidence and that it was unreasonable for the jury to have reached its verdict on the evidence given at trial.

[31] On the issue of liability, Mr. Stoykov argues that the jury disregarded the evidence given by Mr. Poyser about observing a pool of water on the landing between the second and third floors of the staircase after the fall. He also submits they improperly disregarded the testimony of his son Trevor Poyser who observed that the landing was wet when he attended later that day. He submits there was no evidence for the jury to answer “No” to question 1 as there was evidence for them to reach a different conclusion.

[32] On the issue of damages, Mr. Poyser submits that the jury did not follow my instructions to assess his damages for pain and suffering without regard to any finding of liability for the slip and fall. That question, to which the jury answered “Zero”, can be found at para. 71 of the written text of the Charge.

[33] In contrast, the defendant submits that the jury considered all the evidence and reached a conclusion that there was no water, slippery substance or any other hazard on the landing that made the area unsafe for use. This was a finding of fact the jury was entitled to make. They were also entitled as the triers of fact to make their own assessments of Mr. Poyser’s credibility as a witness and of any other witness he called to prove his case.

Discussion

The Liability Questions

[34] As noted above, Mr. Poyser brings this motion under Rule 52.08(1) as the statutory basis for the relief he seeks. However, the nature of the verdict he seeks to set aside does not fit squarely within those circumstances the rule is designed to address.

[35] The jury in this case did not disagree or make no finding on which judgment can be granted. It is clear from the jury's answers to question 1 that they found there was no water, slippery substance or other hazard on the landing that made the area unsafe for users of the building.

[36] The court has the power under Rule 52.08(1) to dismiss the action where there is no evidence on which judgment for the plaintiff could be based, or for any other reason the plaintiff is not entitled to judgement. However, this provision generally applies to those circumstances where the jury returns a verdict in favour of the plaintiff despite the evidence heard at trial and the defence moves to have the action dismissed. That is not the case here.

[37] Mr. Stoykov made his submissions with a focus on the common law principles to set aside a jury verdict, primarily on the basis that the findings of the jury were inconsistent with the evidence given at trial. Mr. Stoykov argued the motion on the ground that there was no evidence on which the jury could have come to its conclusion. He submits that there was evidence for the jury to find in Mr. Poyser's favour on liability. It is this ground I have considered to be the core submission he makes on Mr. Poyser's behalf.

[38] The jury had an evidentiary basis to make findings behind their answers to questions 1 and 4 on the balance of probabilities. The evidence given at trial included the following:

- a. Mr. Poyser was wearing footwear known as runners shown in the photographs under tab 1 of the Joint Document Brief marked as Exhibit "1". These photographs show significant wear on those runners, with little tread left on the soles.

- b. Photographs were not taken on the day of the fall to show any pooling of water or another slippery substance on the subject landing that allegedly caused Mr. Poyser to fall. This is surprising in that he says he saw water or another substance on the way up to his apartment after the fall, and when his son attended to help him down the stairs to visit the hospital. Rather, the photographs of the landing shown in the first three pages under tab 2 were taken two days later and show no water or other substance present.
- c. The photograph of the landing and the interior handrail assembly, with the fulcrum where Mr. Poyser would have turned, are shown on the fourth page of the photographs shown under tab 2. This photograph, taken on February 1, 2026 and marked as Exhibit "A" on Mr. Poyser's examination for discovery on June 1, 2017, depicts a circle drawn by him on landing where he states the water or other substance had pooled. The balance of the photographs attached under tab 2 were also taken prior to trial in February 2026 and purport to show the landing and staircase in which the interior handrail and spindles are shown for context.
- d. The Weather History for Brampton from Environment Canada for February 3, 2015 marked attached under tab 3 does not necessarily show the amount of precipitation for that day. It shows a temperature range of -3/-7 C with snow flurries in the forecast, and otherwise partly sunny.

[39] The jury was entitled to take these exhibits into consideration when they concluded there was no evidence of water, slippery substance or other hazard on the landing that afternoon to make the area unsafe for use. They were entitled to assess the credibility of Mr. Poyser's evidence against the

objective evidence they heard and what is shown in the exhibits that went into the jury room with them.

[40] This is not a case where there was undisputed evidence that was inconsistent with the finding of a jury as in *Teskey v. Toronto Transit Commission*, 2003 CanLII 12871. There, it was held that it is permissible for a trial judge to interfere with a jury verdict where there is undisputed evidence that is not based on credibility. Here, the jury simply found there was no evidence on which to find that Peel had breached its duty of care. See also *Salter v. Hirst*, 2011 ONCA 609, in which the Court of Appeal upheld the order of the trial judge who had overturned the jury verdict for the plaintiff in a medical case where there was a lack of evidence to find negligence against the defendant and no causation had been proven.

[41] The jury's answer to question 1, together with their answer to question 4 where they found that Mr. Poyser had failed to take reasonable care for his own safety amounted to a factual finding on the balance of probabilities that Mr. Poyser was injured that day for reasons unrelated to Peel. As a result, there was no finding on which to base a verdict for liability against Peel for not taking reasonable steps to make the premises safe for users under the *Occupier's Liability Act*.

[42] The nature of a motion to set aside a jury finding on the evidence is different than an appeal of findings made that are unreasonable or unjust. The Divisional Court in *Campbell v. Wolczak*, 2003 CanLII 34594 set out the test for the appellate review of a verdict given by a civil jury. Quoting from the decision of the Court of Appeal in *Burlie v. Chesson*, 2001 CanLII 24095, the Court held that:

[10] Counsel advised us that in this case all sides served a jury notice. Counsel for the appellant did not argue that this assessment was

not open to the jury on this record. One of the central issues before the jury was credibility. In the decision of *Burlie v. Chesson* [2001 CanLII 24095 \(ON CA\)](#), [2001] O.J. No. 1960, the Court of Appeal for Ontario, when dealing with an appeal from a jury's verdict said:

[7] "The principles governing appellant review of a jury verdict are well established. The verdict of a jury will not be set aside as against the weight of the evidence unless it is so plainly unreasonable and unjust as to satisfy the court that no jury reviewing the evidence as a whole and acting judicially could have reached it: *McCannell v. McLean*, [1937 CanLII 1 \(SCC\)](#), [1937] S.C.R. 341 at 343."

Madam Justice Charron went on to say:

"The test, rather, is based on an examination of whether the evidence so preponderates against the verdict as to show that it was unreasonable and unjust."

[43] This statement of the law is consistent with the statement of law made by the Court of Appeal in *Lang v. McKenna*, [2000] O.J. No. 2983 where the Court held "the unreasonable or perverse verdict is an appellate court issue, not an issue to be dealt with by the trial judge."

[44] The basis of a trial judge to intervene with a jury verdict is therefore limited. In para. 9 of his factum, Mr. Stoykov summarizes the extent of that role from *Campbell v. Wolczak* as follows:

6. The role of the Trial Judge to interfere with a jury verdict is limited to circumstances where the jury's finding was unsupported at law or there is no evidence on which the jury could have relied on to come to their conclusion. It is not the role of the Trial Judge to weigh evidence or determine if the jury decision was perverse or unreasonable. Those are questions for the Court of Appeal.

[45] In law, any submission that Mr. Stoykov is making for Mr. Poyser that the answers of the jury to the questions on liability were perverse in that they were unreasonable or unjust is properly the subject of an appeal, not a motion to set aside the verdict.

The Questions on Damages

[46] Mr. Poyser submits that it is obvious from the jury's answer to question 1 that the jury did not follow my final instructions. He argues that their failure to do so meant the jury did not consider all the evidence they heard at trial.

[47] The jury answered questions 6 and 7 even though I instructed them to assess damages as though Peel Housing Corp was 100% at fault. Those instructions were contained in para. 71 of the Charge that was distributed in print form at the time I instructed the jury in court:

71. I turn now to the issue of damages. Damages simply means monetary or financial compensation for the loss caused by the wrongful conduct of another. You are required to assess these damages on the basis that you find the defendant fully responsible. That is, even if you absolve Peel Housing Corporation completely or find it only partially responsible, it is nevertheless your duty to assess the damages as though the defendant had been found fully at fault. In the event you should find the defendant partially at fault only, do not proportionately reduce the quantum of the plaintiff's damages. I repeat, you are to assess the damages as if the defendant was 100 percent responsible.

[48] Had I reached a different conclusion that there was evidence to support Mr. Poyser's motion to set aside the verdict, I find the jury did not follow my instructions in the Charge to assess his general damages. They had the evidence of Mr. Poyser himself, the clinical notes and records of his physician Dr. Song and his successors in practice who had treated Mr. Poyser, and evidence from Complete Rehab where he had received physiotherapy. The jury also heard the opinion evidence of Dr. Sagar Desai, an expert who was qualified to give opinion evidence in the field of orthopaedic surgery with a focus on trauma. Dr. Desai was called to provide an assessment of Mr. Poyser's injuries based on his expertise.

[49] The jury was clearly instructed to assess those damages as though Peel was found at fault. They did not do so. This failure to follow my instructions was an error on the jury's part.

[50] While the jury did not answer all 12 questions, the questions that were not answered were contingent on a finding of liability in Mr. Poyser's favour. These findings are not grounds on which the court may direct the action be retried with another jury.

Motion to Dismiss Action and to Produce Insurance Policy

[51] Section 108 (5)(b) of the *Courts of Justice Act* provides that judgment may be entered in accordance with the verdict or the answers to the questions put to the jury.

[52] There is no impediment to grant Peel's motion to dismiss the action in accordance with the answers to the questions returned by the jury under s. 108(5)(b). The motion for judgment is granted.

[53] The defendant's motion for production of an insurance policy under which an insurer may be liable to satisfy all or part of any costs order is also granted. Rule 30.02(3) is expansive enough to cover any policy purchased or provided by a law firm to clients who are found liable for costs.

[54] In *Snagg v. Makhoul*, 2024 ONSC 3735, Roger J. was deciding a defendant's motion where the plaintiffs in that case had refused to answer questions about an insurance policy purchased by their law firm that could satisfy any part of a costs judgment against them, even though the policy had been written in the name of the law firm and no specific client. He held that Rules 30.02(3) and 31.06(4) were applicable and applied to "any insurance policy" under which an insurer may be liable for the adverse costs of a party. Roger J. found nothing in those rules that limited the disclosure obligation only

to policies in the name of the party to the action, or policies that were in the possession, control or power of that party.

[55] Counsel for Peel states that the Preszler law firm has provided a copy of the insurance policy that provides blanket adverse costs coverage to its clients, but that the copy of the policy provided is heavily redacted. Mr. Stoykov advised the court on the motion that the policy purchased by the firm provides coverage for a \$10,000 limit per claim, with a supplementary limit of \$50,000 and an aggregate of \$300,000, presumably on an annual basis. The schedule showing these coverages was never provided with the policy.

[56] In keeping with the rationale and result in *Snagg v. Makhoul*, I order Mr. Poyser and the Preszler law firm as his counsel to produce an unredacted copy of the insurance policy for adverse costs coverage available to Mr. Poyser as a client, together with any and all schedules and endorsements. As privilege was not argued by Mr. Stoykov over production of this policy as discussed in *Snagg*, I have ordered production of the policy in its entirety.

Conclusion

[57] The cross-motion of the plaintiff David Poyser to set aside the verdict of the jury is dismissed.

[58] The motion of the defendant Peel Housing Corp. for judgment based on that verdict is granted. The action is dismissed.

[59] An Order shall go requiring the Preszler law firm to produce an unredacted copy of it's insurance policy for adverse costs coverage available to Mr. Poyser as a client of the firm, together with all schedules and endorsements, within 14 days of this Order.

[60] Now that the motions have been determined, the parties are encouraged to resolve the issue of costs of the trial and this motion. If they cannot settle those costs between them by February 13, 2026, Peel may file submissions by February 27, 2026. Mr. Poyser shall then have until March 13, 2026 to file responding submissions. No submissions in reply shall be permitted. Each set of submissions shall be limited to three pages, not including any offer to settle or bill of costs.

[61] All submissions on costs may be emailed to my attention at scj.csj.general.brampton@ontario.ca.



Released: January 30, 2026

Emery, J.

CITATION: POYSER v. PEEL HOUSING CORPORATION, 2026 ONSC 601
COURT FILE NO.: CV-16-122-00

DATE: 2026 01 30

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