



**Waiver Waver: Effective
Use and Reliance in the
Provision of Public
Programs and under the
*Occupiers' Liability Act
and Consumer
Protection Act***

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**SPIAO Conference
May 28, 2018
1:15 to 2:30 a.m.
Muskoka, Ontario**

OVERVIEW



1. Wording, Format and Presentation of Waivers
2. Challenges to Waivers
3. Enforcing Waivers re: Minors
4. Case Study: *Schnarr v. Blue Mountain Resorts Ltd.*, 2018 ONCA 313



Occupiers' Liability Act

- Occupier's duty
 - 3 (1) 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.

Occupiers' Liability Act (cont'd)

- Duty in s. 3(1) may be restricted, limited or extinguished
 - 3 (3) The duty of care provided for in subsection (1) applies except in so far as the **occupier of premises is free to and does restrict, modify or exclude the occupier's duty.**
- A properly drafted waiver can serve as full defence to a tort claim
 - (*Dyck v Manitoba Snowmobile Association Inc.* [1985] 1 SCR 589)

1. Wording and Format of Waivers

- Contractual principles govern the interpretation of waivers
- The party relying on the waiver has the onus of proving its validity
 - *Gallant v. Fanshawe College of Applied Arts & Technology*, [2009] O.J. No. 3977.
- If there is any ambiguity with respect to the waiver, the ambiguity is resolved against the party who drafted it (usually the party relying on it)
 - *Reid Crowther & Partners Ltd. v. Simcoe & Erie General Insurance Co.*, [1993] 1 S.C.R. 252.
- If the ambiguity cannot be resolved, then the waiver is deemed ineffective and cannot be enforced
 - *Huber v. Conquest Tours (Toronto) Ltd.*, [1990] O.J. No. 1623.

1. Wording and Format of Waivers (cont'd)

- Characteristics of waivers accepted by the courts:
 - ✓ Legible font size, bold or capitalized key words, clarity, and easy to read;
 - ✓ Specific warning of waiver's purpose → that the participant will be giving up his or her right to sue;
 - ✓ Inclusion of the word “negligence” and detailed description of the kind of conduct amounting to negligence that is intended to be covered by the waiver;

1. Wording and Format of Waivers (cont'd)

- ✓ Description of all the parties intended to be included in the waiver;
- ✓ Space for participant to sign and/or initial.
- ✓ Onerous provisions
 - Specific attention provided for (i.e. larger font, bolded font and/or highlighted in bright colours)

1. Presentation of Waivers

- *Occupiers' Liability Act:*
 - 5(3) Where an occupier is free to restrict, modify or exclude the occupier's duty of care or the occupier's liability for breach thereof, **the occupier shall take reasonable steps to bring such restriction, modification or exclusion to the attention of the person to whom the duty is owed.**
- Test → objective; reasonableness of steps to give notice is a factual analysis based on all relevant circumstances

1. Presentation of Waivers

- Factors typically considered in determining whether reasonable notice was given (non-exhaustive list):
 - Presenting and executing waiver PRIOR to payment or registration;
 - Time available for reading and understanding waiver;

1. Presentation of Waivers (cont'd)

- Participant having signed similar releases on other occasions;
- Posted signs with exclusionary language (not required but their presence could assist an occupier in meeting obligation to provide notice); and
- Occupiers' usual practice of handling waivers/releases.

2. Challenges to Signed Waivers

- Non est factum (fundamental mistake)
- Misrepresentation regarding the nature and scope of the waiver

2. Challenges to Signed Waivers

- Unconscionability
 - Party claiming unconscionability must establish two elements:
 - 1) Inequality in the position of the parties arising out of some factor such as ignorance, need or distress of the weaker, which leaves [the participant] in the power of the strong; and
 - 2) Substantial unfairness in the bargain created by the stronger person.
 - Upon proof of both elements, onus shifts to the stronger party to prove the bargain was fair, just and reasonable

3. Enforcing Waivers signed on behalf of Minors

- Enforceability of waivers vis-à-vis minors is different in each province
- British Columbia
 - *Infants Act*, R.S.B.C. 1996, c. 223 → precludes a parent or guardian from waiving an infant's legal rights
 - Waivers signed by parents on behalf of minors **are not** enforceable (*Wong v. Lok's Martial Arts Centre Inc.*, 2009 BCSC 1385)
 - Indemnity agreements executed by parents in favour of occupiers used to circumvent inability to enforce a waiver against a minor

3. Enforcing Waivers signed on behalf of Minors

- Ontario
 - No equivalent or similar statute to BC's *Infants Act*
 - The issue has not yet been definitively adjudicated in this province

3. Enforcing Waivers signed on behalf of Minors

- *Stevens v. Howitt*, [1969] 1 O.R. 761 (Ontario Supreme Court [High Court of Justice]).
 - In obiter, court suggested that a parent executing an indemnity agreement on behalf of a minor is “contrary to the procedures set up in our Courts for the protection of infants”
 - However, this case is dated and has not been followed by any other courts in Ontario



4. *Schnarr v. Blue Mountain Resorts Ltd.*, 2018 ONCA 313

- Two appeals were heard together
- *Schnarr v. Blue Mountain Resorts Ltd.*
 - Appeal by Blue Mountain
- *Woodhouse v. Snow Valley Resorts*
 - Appeal by Plaintiff Woodhouse
 - Cross-appeal by Snow Valley

4. *Schnarr v. Blue Mountain Resorts Ltd.*, 2018 ONCA 313

- Both appeals raised the question of whether the *Occupiers' Liability Act (OLA)* or the *Consumer Protection Act (CPA)* governed the relationship between a ski resort and its patrons wherein the patrons executed waivers of liability
- It was not in dispute that the Defendants (ski resorts) were “suppliers” and the Plaintiffs were “consumers” within the meaning of the *Consumer Protection Act*

Facts: *Schnarr v. Blue Mountain Resorts Ltd.*



**RELEASE OF LIABILITY AGREEMENT, WAIVER OF CLAIMS,
ASSUMPTION OF RISKS AND INDEMNITY AGREEMENT**
BY SIGNING THIS DOCUMENT YOU WILL WAIVE
CERTAIN LEGAL RIGHTS, INCLUDING THE RIGHT TO SUE
PLEASE READ CAREFULLY!

Initial

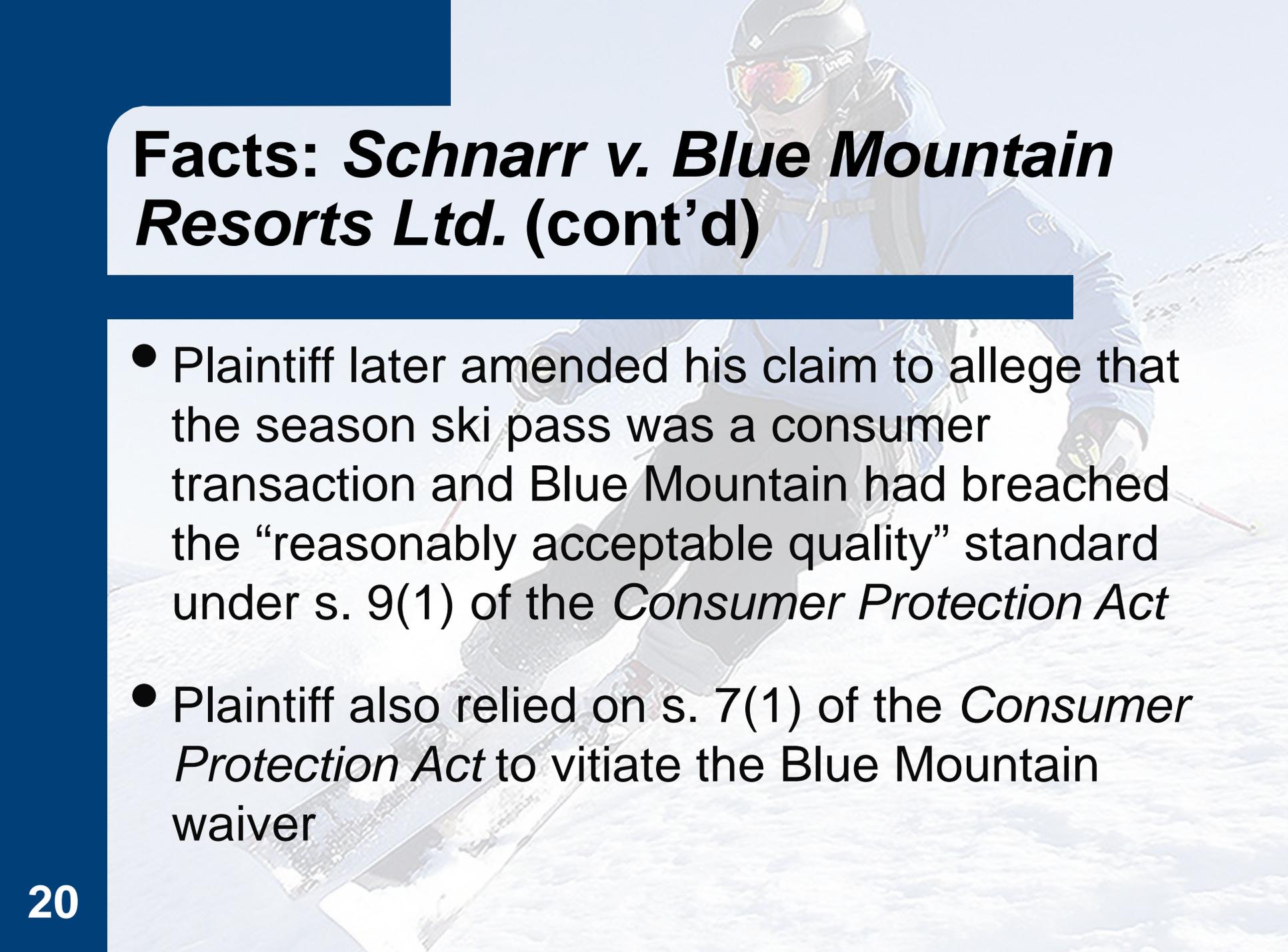
RELEASE OF LIABILITY, WAIVER OF CLAIMS AND INDEMNITY AGREEMENT

6. In consideration of the Releasees accepting my application to participate in Filming and permitting my use of their property, premises, parking and other facilities and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, I hereby agree:

- a) **TO WAIVE ANY AND ALL CLAIMS** that I have or may in the future have against THE RELEASEES, and **TO RELEASE THE RELEASEES** from any and all liability for any loss, damage, injury including death, or expense that I may suffer, or that my next of kin may suffer, either directly or indirectly, as a result of my participation in Filming and my use of the premises and facilities, **DUE TO ANY CAUSE WHATSOEVER, INCLUDING NEGLIGENCE, BREACH OF CONTRACT, OR BREACH OF ANY STATUTORY OR OTHER DUTY OF CARE, INCLUDING ANY DUTY OF CARE OWED UNDER THE OCCUPIERS' LIABILITY ACT, R.S.O. 1990, c.O.2, ON THE PART OF THE RELEASEES, AND INCLUDING THE FAILURE ON THE PART OF THE RELEASEES TO SAFEGUARD OR PROTECT ME FROM THE RISKS DANGERS AND HAZARDS OF FILMING;**

Facts: *Schnarr v. Blue Mountain Resorts Ltd.* (cont'd)

- As part of the purchase of a season ski pass from Blue Mountain's website, the Plaintiff Schnarr executed a Waiver of Liability
- Mr. Schnarr subsequently injured himself while skiing down a ski run when he lost control and struck a tree
- He commenced an action in negligence against Blue Mountain for a total of \$300,000.00

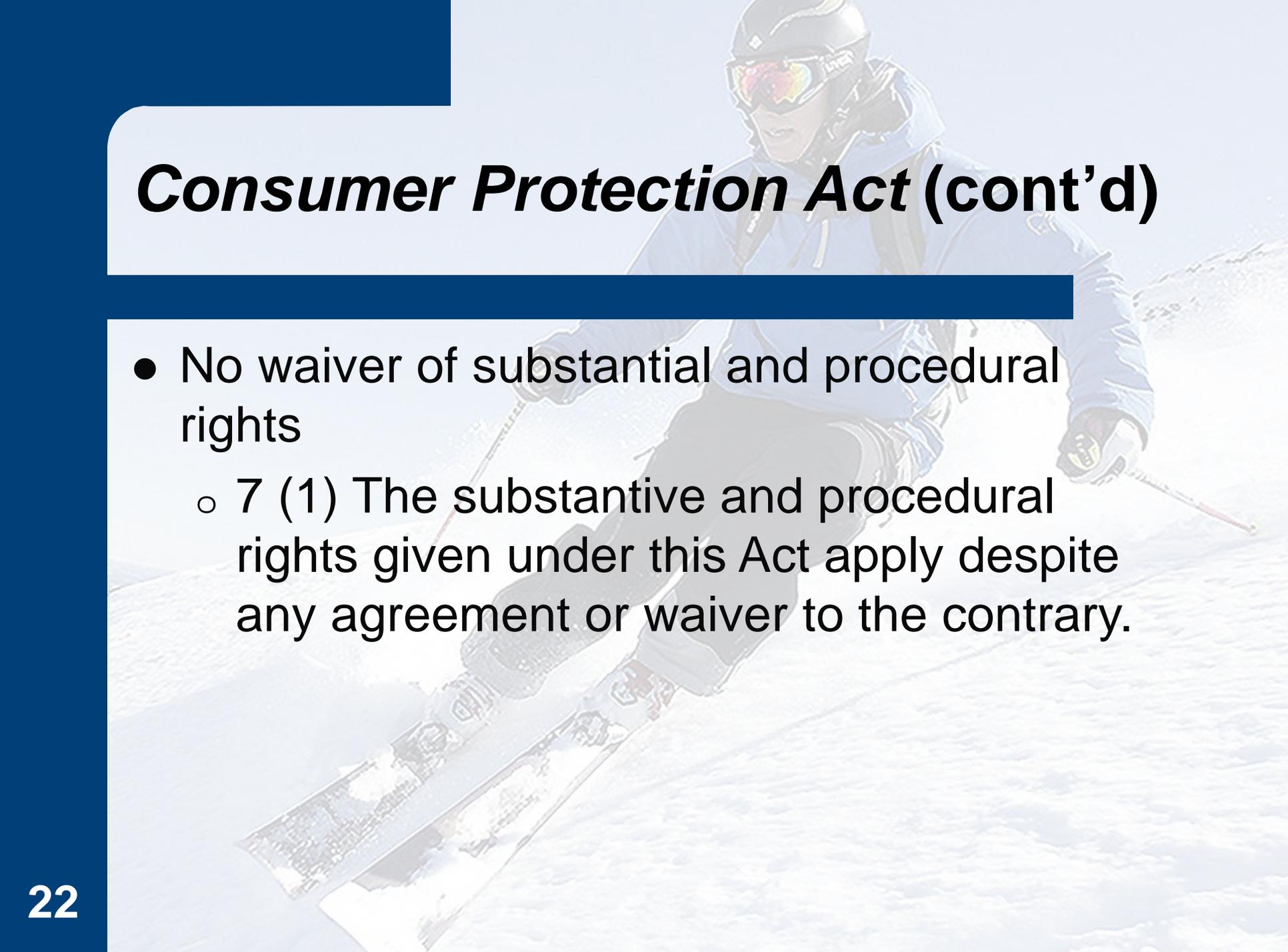


Facts: *Schnarr v. Blue Mountain Resorts Ltd.* (cont'd)

- Plaintiff later amended his claim to allege that the season ski pass was a consumer transaction and Blue Mountain had breached the “reasonably acceptable quality” standard under s. 9(1) of the *Consumer Protection Act*
- Plaintiff also relied on s. 7(1) of the *Consumer Protection Act* to vitiate the Blue Mountain waiver

Consumer Protection Act

- Quality of services
 - 9 (1) The supplier is deemed to warrant that the services supplied under a consumer agreement are of a **reasonably acceptable quality**.
 - 9 (3) Any term or acknowledgement, whether part of the consumer agreement or not, that purports to negate or vary any implied condition or warranty under the Sale of Goods Act or any deemed condition or warranty under this Act is void.



Consumer Protection Act (cont'd)

- No waiver of substantial and procedural rights
 - 7 (1) The substantive and procedural rights given under this Act apply despite any agreement or waiver to the contrary.

Facts: *Schnarr v. Blue Mountain Resorts Ltd.* (cont'd)

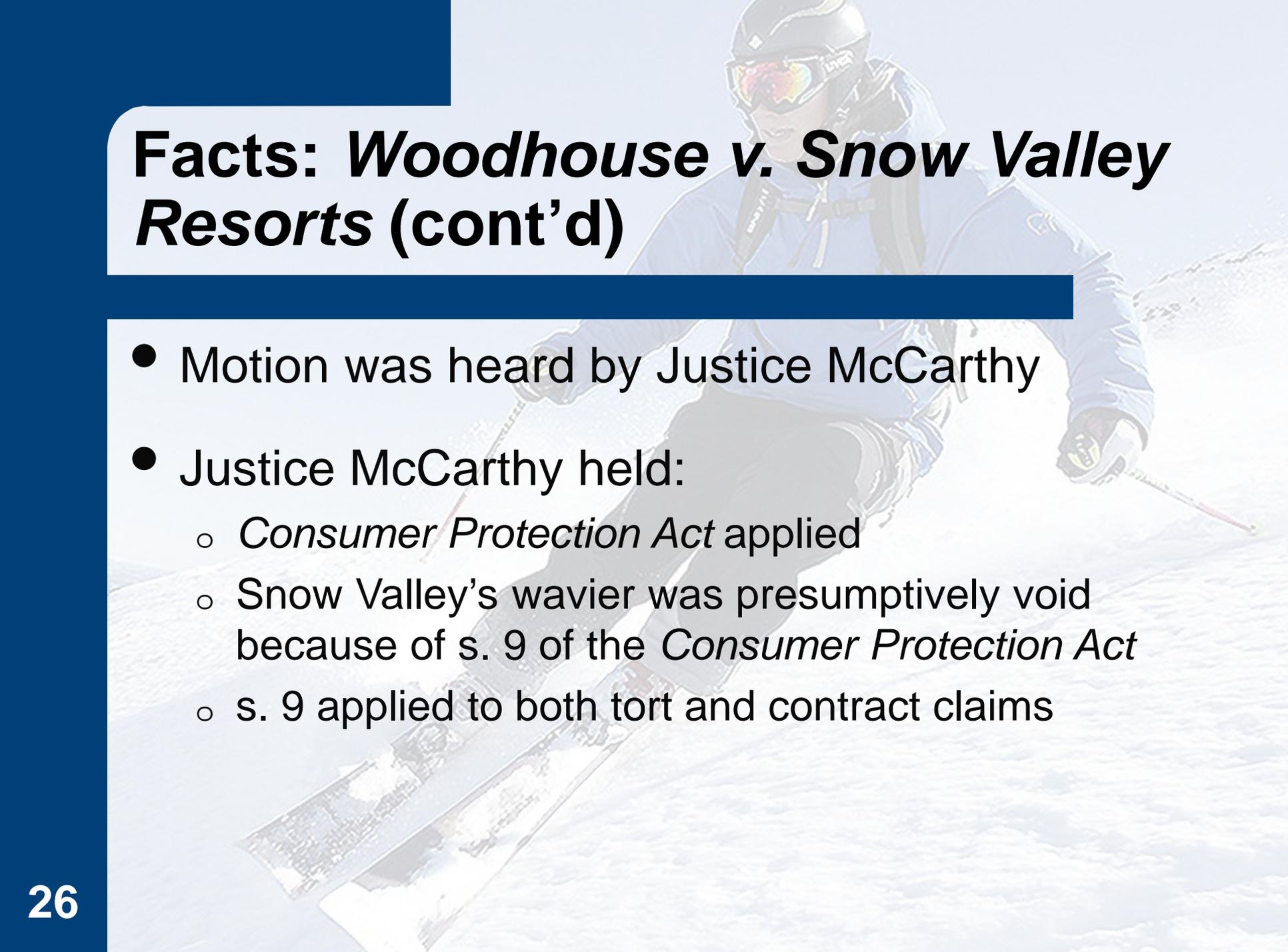
- Due to the novel issue of law raised, the trial judge (Justice Tzimas) recommended that the case should first proceed by way of a rule 21.01(1)(a) motion to determine the question of law regarding the interplay of *Occupiers' Liability Act* and *Consumer Protection Act*

Facts: *Schnarr v. Blue Mountain Resorts Ltd.* (cont'd)

- At the motion, Justice Tzimas held:
 - No conflict between the *Occupiers' Liability Act* and *Consumer Protection Act*; the two could be read harmoniously
 - Plaintiff would be allowed to advance two distinct causes of action: one for negligence and the second for breach of warranty
 - The negligence claim would be subject to a waiver BUT the breach of warranty claim would not be subject to a waiver as it would be void and severed by the *Consumer Protection Act*
 - By operation of ss. 7(1), 9(1) and 9(3) of the *Consumer Protection Act*, a defendant could not disclaim liability for any breach of the deemed warranty to provide services of a “reasonably acceptable quality”

Facts: *Woodhouse v. Snow Valley Resorts*

- Similar facts to Blue Mountain
- Plaintiff Woodhouse purchased a beginner ski package from Snow Valley, which contained a lift ticket, equipment rental and a lesson
- Ms. Woodhouse was also required to execute a Rental Agreement and Release of Liability when she purchased the package
- Additionally, the lift ticket contained a Release of Liability
- Ms. Woodhouse allegedly sustained injuries while using a tow rope
- She commenced an action in negligence but the parties eventually agreed to bring a r. 22 special case motion raising various questions of law, all relating to the applicability of the *Consumer Protection Act*

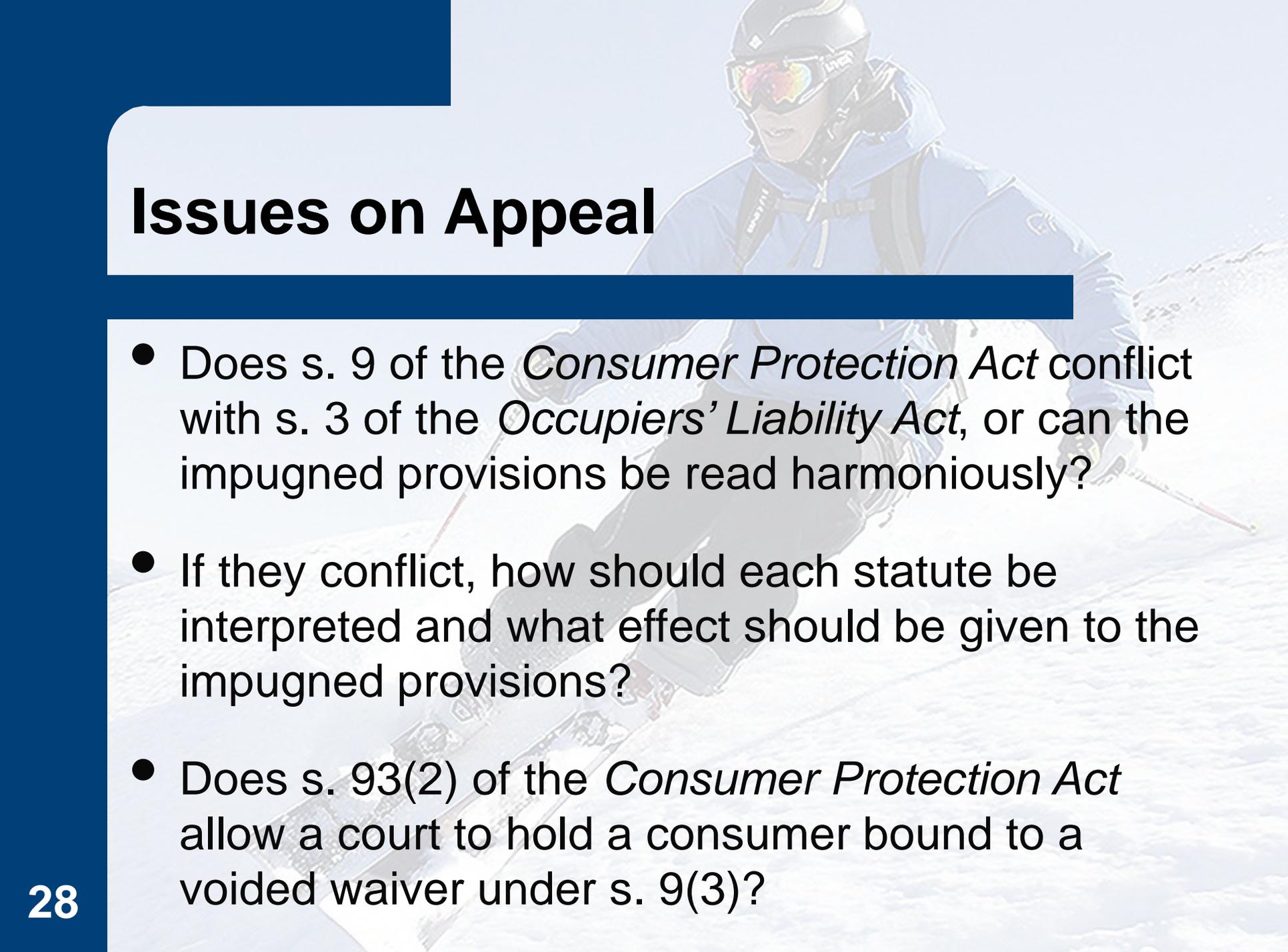


Facts: *Woodhouse v. Snow Valley Resorts* (cont'd)

- Motion was heard by Justice McCarthy
- Justice McCarthy held:
 - *Consumer Protection Act* applied
 - Snow Valley's waiver was presumptively void because of s. 9 of the *Consumer Protection Act*
 - s. 9 applied to both tort and contract claims

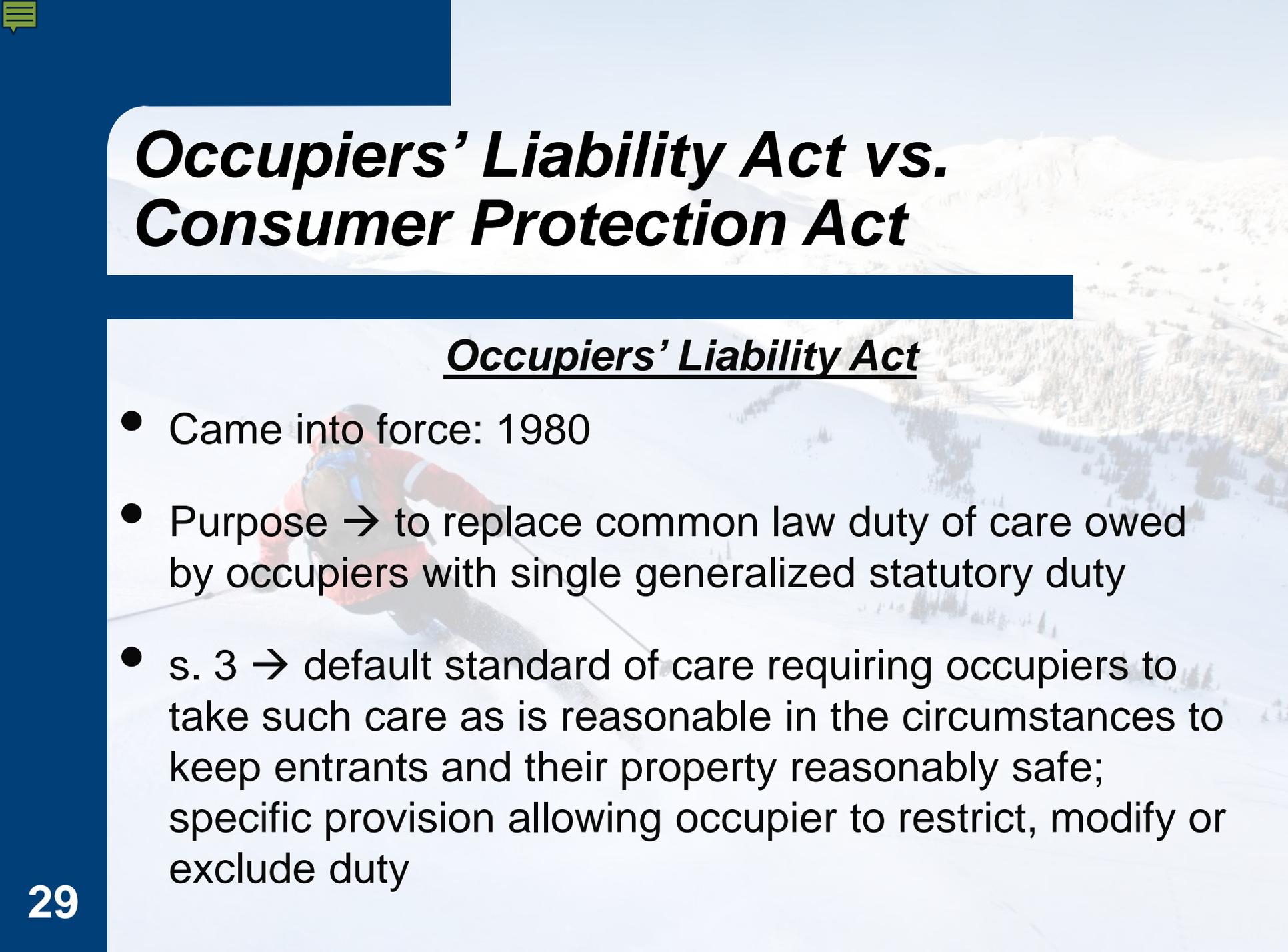
Facts: *Woodhouse v. Snow Valley Resorts* (cont'd)

- However, the court could nonetheless order that Ms. Woodhouse was bound by the Snow Valley waiver as per s. 93(2) of the *Consumer Protection Act*
- s. 93(2)
 - Despite subsection (1), a court may order that a consumer is bound by all or a portion or portions of a consumer agreement, even if the agreement has not been made in accordance with this Act or the regulations, if the court determines that it would be inequitable in the circumstances for the consumer not to be bound.



Issues on Appeal

- Does s. 9 of the *Consumer Protection Act* conflict with s. 3 of the *Occupiers' Liability Act*, or can the impugned provisions be read harmoniously?
- If they conflict, how should each statute be interpreted and what effect should be given to the impugned provisions?
- Does s. 93(2) of the *Consumer Protection Act* allow a court to hold a consumer bound to a voided waiver under s. 9(3)?



Occupiers' Liability Act vs. Consumer Protection Act

Occupiers' Liability Act

- Came into force: 1980
- Purpose → to replace common law duty of care owed by occupiers with single generalized statutory duty
- s. 3 → default standard of care requiring occupiers to take such care as is reasonable in the circumstances to keep entrants and their property reasonably safe; specific provision allowing occupier to restrict, modify or exclude duty

Occupiers' Liability Act vs. Consumer Protection Act

Occupiers' Liability Act

- s. 4 → lower standard of care for risks willingly assumed
 - Rationale for including s. 4 was to encourage private landowners to voluntarily make their property available for recreational activities by limiting their liability
- s. 9 → *Occupiers' Liability Act* preserves situations where higher standard of care may apply:
 - Innkeepers (*Inkeepers Act*);
 - Common carriers;
 - Bailees

Occupiers' Liability Act vs. Consumer Protection Act

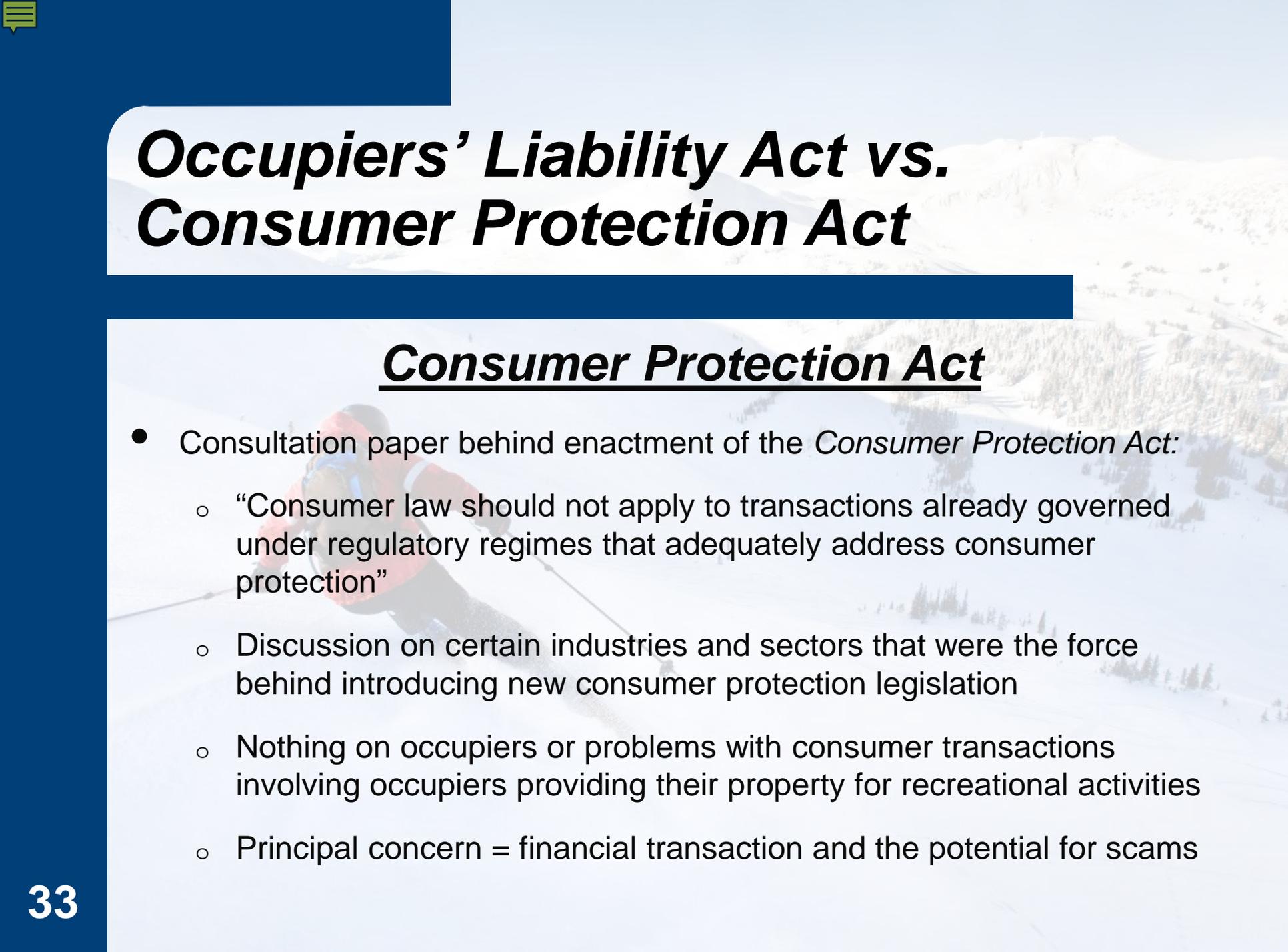
Consumer Protection Act

- Came into force: 2002
- Purpose → modernize consumer law in Ontario and consolidate the previous statutes that related to consumer protection
- s. 9 → the supplier is deemed to warrant that the services supplied under a consumer agreement are of a **reasonably acceptable quality**

Occupiers' Liability Act vs. Consumer Protection Act

Consumer Protection Act

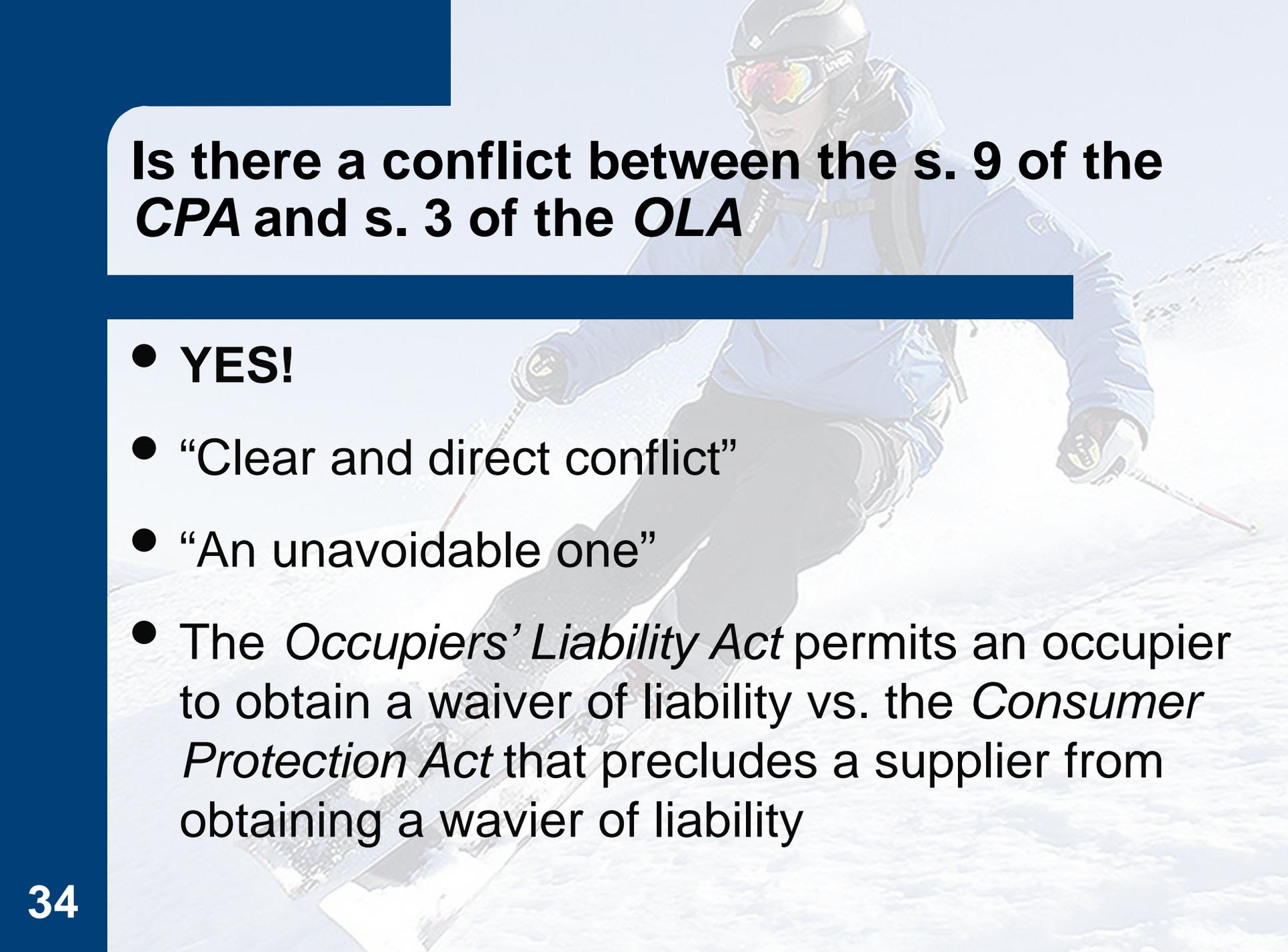
- s. 7 → the substantive and procedural rights given under the *Consumer Protection Act* apply despite any agreement or waiver to the contrary
- s. 2(2) → express exemption of certain statutes; *Occupiers' Liability Act* is not one of them



Occupiers' Liability Act vs. Consumer Protection Act

Consumer Protection Act

- Consultation paper behind enactment of the *Consumer Protection Act*:
 - “Consumer law should not apply to transactions already governed under regulatory regimes that adequately address consumer protection”
 - Discussion on certain industries and sectors that were the force behind introducing new consumer protection legislation
 - Nothing on occupiers or problems with consumer transactions involving occupiers providing their property for recreational activities
 - Principal concern = financial transaction and the potential for scams

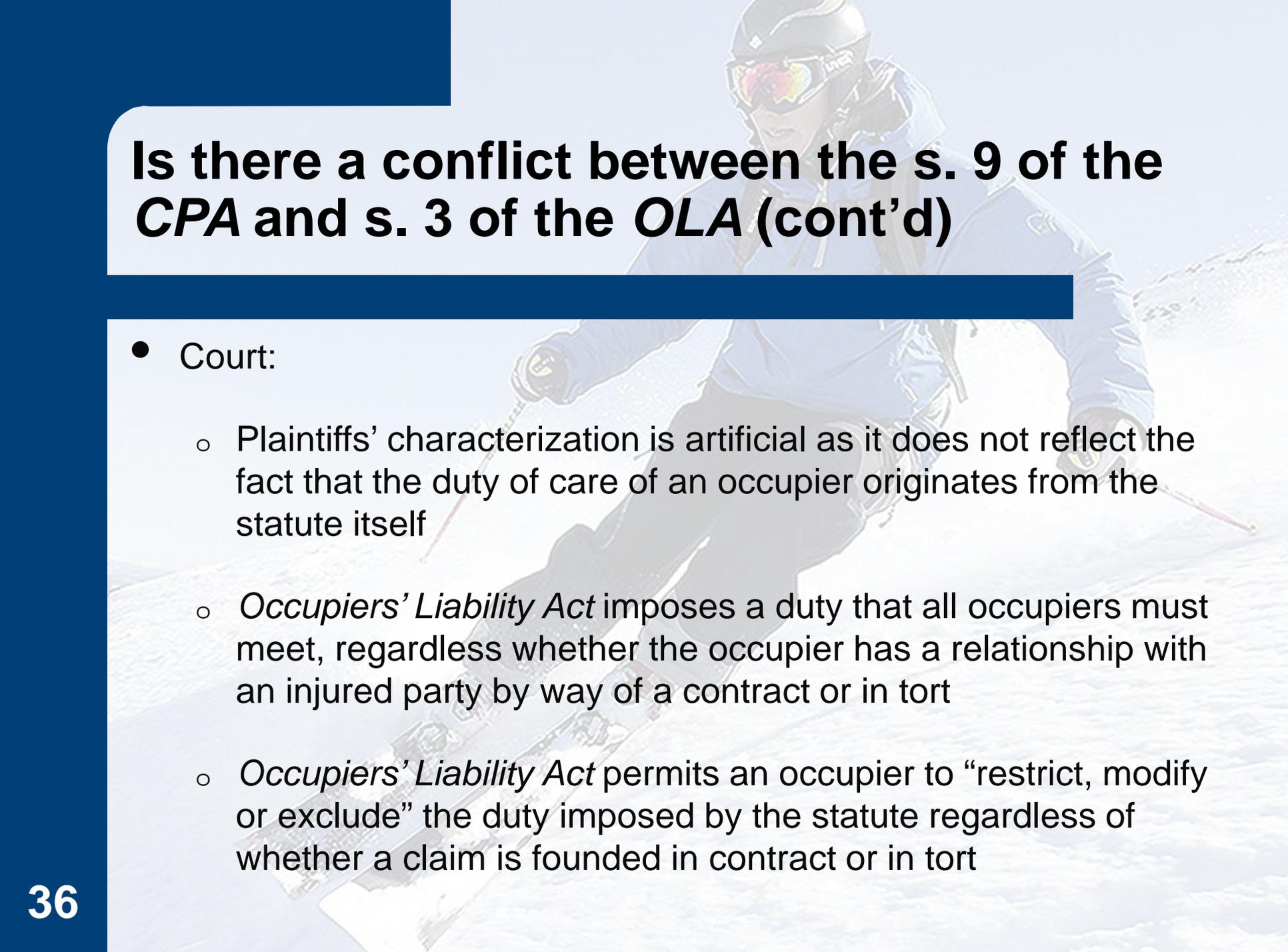


Is there a conflict between the s. 9 of the *CPA* and s. 3 of the *OLA*

- **YES!**
- “Clear and direct conflict”
- “An unavoidable one”
- The *Occupiers’ Liability Act* permits an occupier to obtain a waiver of liability vs. the *Consumer Protection Act* that precludes a supplier from obtaining a waiver of liability

Is there a conflict between the s. 9 of the *CPA* and s. 3 of the *OLA* (cont'd)

- Plaintiffs contend that the *Occupiers' Liability Act* deals with tort liability and the *Consumer Protection Act* deals with contractual liability – they advance their claims in contract, thus, waiver is not applicable



Is there a conflict between the s. 9 of the *CPA* and s. 3 of the *OLA* (cont'd)

- Court:
 - Plaintiffs' characterization is artificial as it does not reflect the fact that the duty of care of an occupier originates from the statute itself
 - *Occupiers' Liability Act* imposes a duty that all occupiers must meet, regardless whether the occupier has a relationship with an injured party by way of a contract or in tort
 - *Occupiers' Liability Act* permits an occupier to “restrict, modify or exclude” the duty imposed by the statute regardless of whether a claim is founded in contract or in tort

Which statute takes precedence?

- Principles to consider:
 1. Where a **class of things** is modified by general wording that expands the class, the general wording is usually restricted to things of the same type as the listed items (*eiusdem generis*);
 2. When one or more things of a class are **expressly mentioned**, others of the same class are excluded (*expression unius est exclusion alterius*);
 3. The **exhaustive** doctrine;
 4. The provisions of a **general statute must yield to those of a special one** (*generalia specialibus non derogant*); and
 5. The **absurdity** doctrine

1. Class of Things

- s. 9 of *Occupiers' Liability Act* = higher standard of care for innkeepers, common carriers and bailees

1. Class of Things (cont'd)

- Court:
 - “the type of situations that would impose a “special liability or standards of care” on occupiers under s. 9(1) should be read *eiusdem generis* and be restricted to situations that are similar to the enumerated examples”
 - In Ontario, courts have imposed a higher standard of care on occupiers who are squarely analogous to the enumerated class in s. 9(1)
 - The application of any special liabilities or higher standards imposed by the *Consumer Protection Act* were not meant to be preserved by s. 9(1) of the *Occupiers' Liability Act*

2. Express Mention

- Interpretive rule → the express mention of one thing means the implied exclusion of another **is rebuttable**

2. Express Mention (cont'd)

- Court:
 - No evidence before the Court that the Legislature turned its mind to the interplay of the two statutes when they were drafted
 - No basis to expect express reference to the *Occupiers' Liability Act* in s. 2(2) (exemptions) of the *Consumer Protection Act*
 - No basis to infer that the Legislature intended the *Consumer Protection Act* to supersede the *Occupiers' Liability Act*

3. Exhaustiveness

- Purpose of *Occupiers' Liability Act* → replace common law occupiers' duty with a single, unified statutory duty
- *Occupiers' Liability Act* intended to be an exhaustive scheme in relation to the liability of occupiers to entrants on their premises following from the maintenance or care of the premises

3. Exhaustiveness (cont'd)

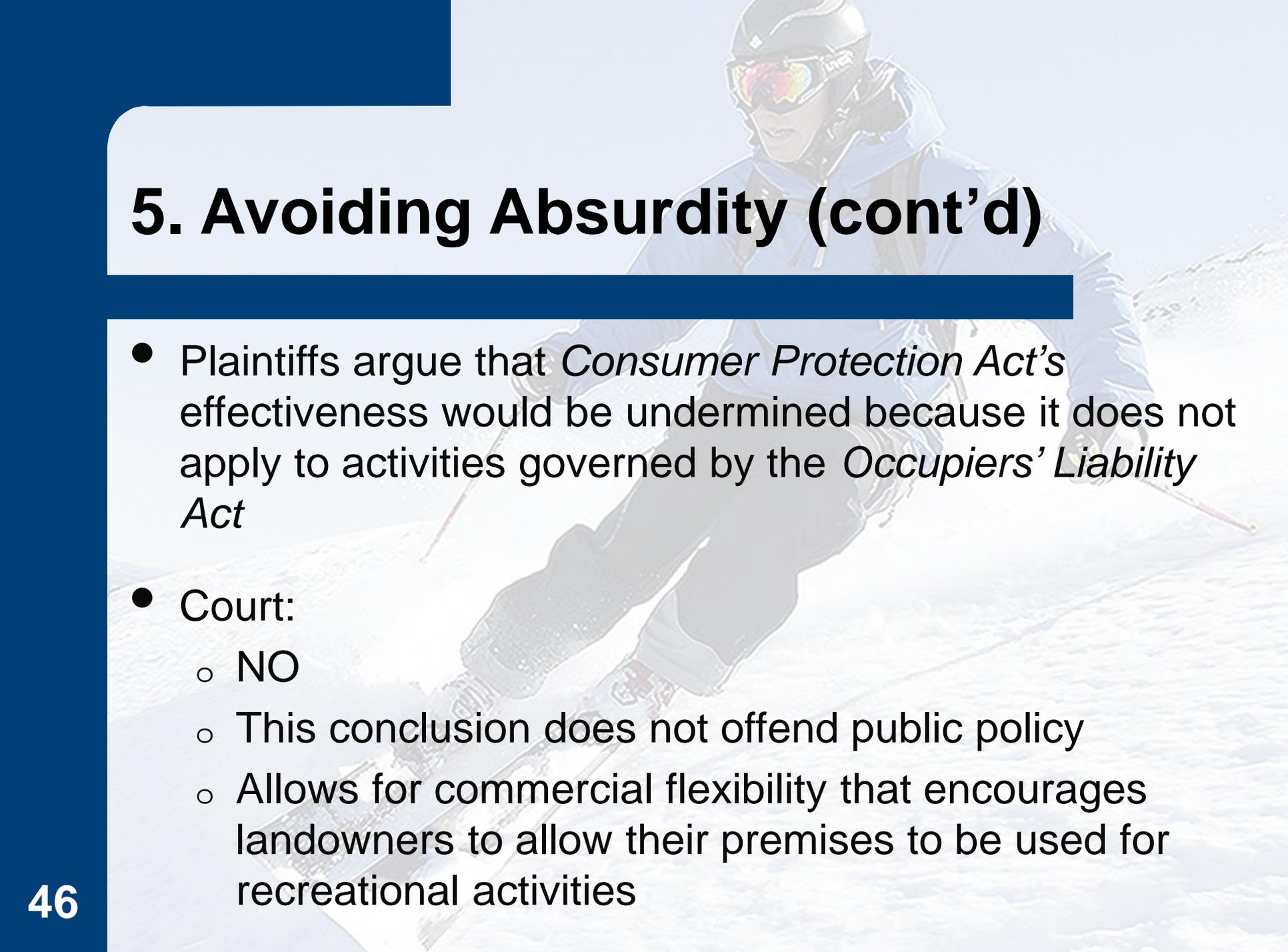
- *Occupiers' Liability Act's* purpose would be undermined if *Consumer Protection Act* were allowed to reintroduce a new contractual duty that subjects occupiers to an obligation to warrant that their premises are of a "reasonably acceptable quality"
- The fact that the *Consumer Protection Act* undermines the "very purpose" of the *Occupiers' Liability Act* militates towards a finding that the *Occupiers' Liability Act* supersedes the *Consumer Protection Act*

4. Specific overrules General

- *Occupiers' Liability Act* deals more directly with the core issue → ability of occupiers of premises to obtain waivers of liability and activities on premises, including operation of recreation activities on premises
- *Consumer Protection Act* deals more generally with all forms of consumer transactions
- This approach recognizes that *Occupiers' Liability Act* carves out an exception for consumer transactions that relate to activities covered by the *Occupiers' Liability Act* from the application of the *Consumer Protection Act*

5. Avoiding Absurdity

- One of the purpose of the *Occupiers' Liability Act* → to protect occupiers who voluntarily permit their premises to be used by members of the public
- Court:
 - Lower court's decision defeats this purpose
 - That decision is inconsistent with Legislature's recent enactment of the *Ontario Trails Act* in 2016
 - The purpose of that *Act* is to amend the *OLA* to protect occupiers who permit their premises to be used by members of the public as it relates to recreational trails including hiking, portaging or snowmobiling trails
 - It would be absurd that all of this would be rendered of no force because of the *Consumer Protection Act*



5. Avoiding Absurdity (cont'd)

- Plaintiffs argue that *Consumer Protection Act's* effectiveness would be undermined because it does not apply to activities governed by the *Occupiers' Liability Act*
- Court:
 - NO
 - This conclusion does not offend public policy
 - Allows for commercial flexibility that encourages landowners to allow their premises to be used for recreational activities

5. Avoiding Absurdity (cont'd)

- “The principle is of great importance in preserving a sphere of individual liberty and commercial flexibility. Thus if a person wishes to engage in a dangerous sport, the person may stipulate in advance that he or she waives any right of action against the persons who operates facility”

(BG Checo International Ltd. v. British Columbia Hydro and Power Authority, [1993] 1 SCR 12; Dyck v. Manitoba Snowmobile Association Inc., [1985] 1. S.C.R. 589)

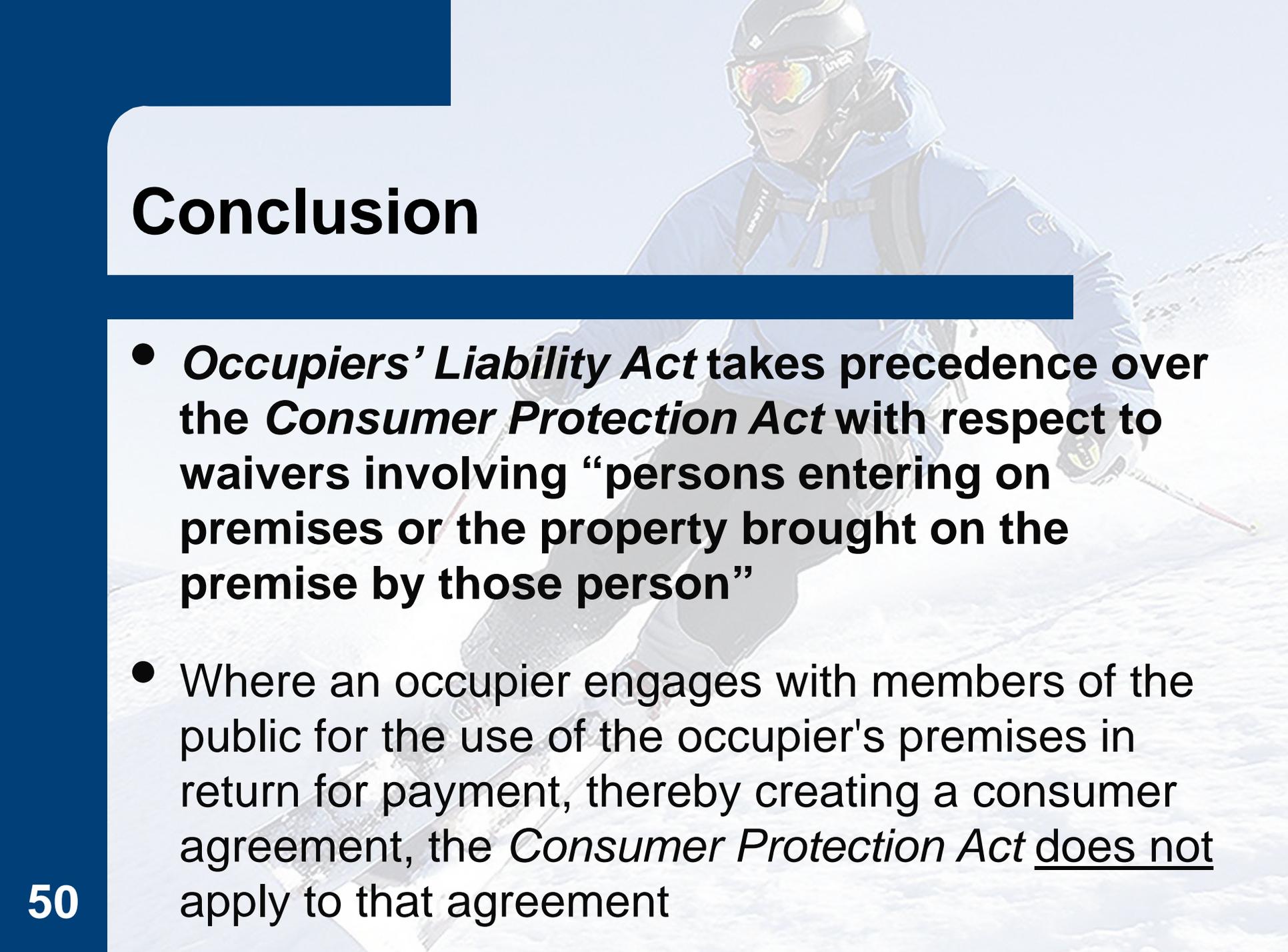
5. Avoiding Absurdity (cont'd)

- Plaintiffs contend that conclusion is contrary to the principle that consumer protection legislation should be interpreted generously

5. Avoiding Absurdity (cont'd)

- Court:
 - NO
 - Principle that the legislation should be interpreted generously only applies to legislation that operates validly; it DOES NOT apply to expand the jurisdiction of the *Consumer Protection Act*
 - Conclusion is consistent with principle that broad language in legislation may be given a restricted interpretation where necessary in order to avoid an absurdity

Conclusion



- ***Occupiers' Liability Act* takes precedence over the *Consumer Protection Act* with respect to waivers involving “persons entering on premises or the property brought on the premise by those person”**
- Where an occupier engages with members of the public for the use of the occupier's premises in return for payment, thereby creating a consumer agreement, the *Consumer Protection Act* does not apply to that agreement

Conclusion (cont'd)

- Where parties who are occupiers engage with members of the public and create consumer transactions that do not relate to “persons entering on premises or the property brought on the premise by those person”, then the *Consumer Protection Act* would still apply to those consumer transactions

Does s. 93(2) of the *CPA* allow a court to hold a consumer bound to a voided waiver?

- Question addressed only for the sake of completeness
- ANSWER → NO - s. 93(2) cannot be used to give effect to a waiver that is voided by s. 9(3)
- The section is not intended to permit the court to hold a consumer to a consumer agreement that violates one of the basic tenets of the *Consumer Protection Act*
- The purpose behind s. 93(2) is to avoid situations where a consumer who has received the benefit of a consumer agreement, attempts to retain those benefits without performing his or her side of the agreement because of a technical breach of the *Consumer Protection Act*

Importance of *Schnarr*

- Justice Tzima and Justice McCarthy's decisions had the impact of rendering waivers hollow
- *Schnarr* confirms that waivers are valid and are effective defences as long as the activity falls under the *Occupiers' Liability Act*
- Expressly affirms that the *Occupiers' Liability Act* allows for the restriction, modification or exclusion of the statutory duty under s. 3(1)

DRAFTING THE PERFECT SPIAO MOUNTAIN BIKE WAIVER

RELEASE OF LIABILITY, ASSUMPTION OF RISKS, WAIVER OF CLAIMS AND INDEMNITY AGREEMENT

Warning: By signing this document, you will waive certain legal rights, including the right to sue. PLEASE READ CAREFULLY.

INITIAL HERE

1. Place title of waiver document and sentence explaining purpose of the document at the top

2. Bigger font size than rest of the document (size 16+)

3. Use of colours alerts readers to what's in the box

4. "Please Read Carefully" is recommended because it alerts readers to the importance of the contents in the document

5. Provides assurance that the participant read the title

DRAFTING THE PERFECT SPIAO WAIVER

TO: [OCCUPIER'S NAME] and its directors, officers, employees, instructors, guides, agents, representatives, independent contractors, subcontractors, suppliers, hosts, volunteers, successors and assigns.

6. Name all the parties intended to be covered by the waiver, especially those wherein the occupier could be responsible at law for their negligence/fault (i.e. through vicarious liability)

DRAFTING THE PERFECT WAIVER

Assumption of Risks: *Description of the kind of conduct amounting to negligence that would be covered by the waiver...or* **NEGLIGENCE ON THE PART OF RELEASEES, INCLUDING THE FAILURE OF THE RELEASEES TO TAKE REASONABLE STEPS TO SAFEGUARD OR PROTECT ME FROM THE RISKS, DANGERS AND HAZARDS OF [ACTIVITY]... I AM AWARE OF THE RISKS, DANGERS AND HAZARDS ASSOCIATED WITH [ACTIVITY] AND I FREELY ACCEPT AND FULLY ASSUME ALL SUCH RISKS, DANGERS AND HAZARDS AND THE POSSIBILITY OF PERSONAL INJURY, DEATH, PROPERTY DAMAGE OR LOSS RESULTING THEREFROM.**

7. Paragraph wherein the participant acknowledges the risks, dangers and hazards involved with the activit(ies) undertaken on the premises

8. Include “catch-all” phrase in bold/capital/both. Phrase is intended to cover all other conduct amounting to **negligence** that were not included in the first part of the paragraph

DRAFTING THE PERFECT WAIVER

TO WAIVE ANY AND ALL CLAIMS that I have or may have in the future, against **THE RELEASEES** and **TO RELEASE THE RELEASEES** from any and all liability for any loss, damage, expense or injury including death that I may suffer, or that my next of kin may suffer, resulting from my participation in [activity] **DUE TO ANY CAUSE WHATSOEVER, INCLUDING NEGLIGENCE, BREACH OF CONTRACT, OR BREACH OF ANY STATUTORY OR OTHER DUTY OF CARE, INCLUDING ANY DUTY OF CARE OWED UNDER ANY APPLICABLE OCCUPIERS' LIABILITY LEGISLATION ON THE PART OF THE RELEASEES, AND ALSO INCLUDING THE FAILURE ON THE PART OF THE RELEASEES TO TAKE REASONABLE STEPS TO SAFEGUARD OR PROTECT ME FROM THE RISKS, DANGERS AND HAZARDS REFERRED ABOVE.**

9. Paragraph wherein participant agrees to waive any and all claims (common law liability, contractual breach or statutory breach) against the occupier arising from activities undertaken on the occupier's property

10. Note the use of colours and bold/capital to alert readers of the paragraph's importance

DRAFTING THE PERFECT WAIVER

Indemnity and Hold Harmless Clause

A. Waivers for Adults

I AGREE TO INDEMNIFY AND HOLD HARMLESS THE RELEASEES and each of them, from any and all liability from property damage and personal injury to any third party resulting from my use of the [*premises*]; and that; this Release of Liability shall be effective and binding upon my heirs, next of kins, executors, administrators, and assigns may have against the Releasees.

DRAFTING THE PERFECT WAIVER

B. Waivers for Minors

I AGREE TO INDEMNIFY AND HOLD HARMLESS THE RELEASEES and each of them, from any litigation expense, legal fees, liability, damage, award or costs, of any form or type whatsoever, they may incur due to any claim made by my minor against them or any one of them whether the claim is based on the negligence or the gross negligence of the Releasees or otherwise.

11. Recall that a waiver signed by a parent on behalf of a minor may not be effective (still undecided in Ontario). For added protection, include an indemnity clause against the parent for any claims made by the minor.

DRAFTING THE PERFECT WAIVER

I HAVE READ AND UNDERSTAND THIS RELEASE AGREEMENT AND I AM AWARE THAT BY SIGNING THIS AGREEMENT I AM WAIVING CERTAIN LEGAL RIGHTS WHICH I OR MY HEIRS, NEXT OF KIN, EXECUTORS, ADMINISTRATORS, ASSIGNS AND REPRESENTATIVES MAY HAVE AGAINST THE RELEASEES.

_____	_____	__/__/__
Print Name	Signature	Current Date
	(Parent Signature for Participants under 18)	
_____	_____	__/__/__
Guardian Name	Signature	

12. Paragraph mitigating against any argument that participant did not read the waiver document prior to signing

13. Waiver should be short (one page in length) and easy to read

QUESTIONS

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