

**SUPERIOR COURT OF JUSTICE
ONTARIO**

BETWEEN: CATHERINE GRIFFIN ROBERTS, Plaintiff
AND: BAY AND COLLEGE PHYSIOTHERAPY & REHAB., VIOLETTA SOFFE
and ONTARIO MASSAGE THERAPIST ASSOCIATION, Defendants
HEARD: March 25, 2011
BEFORE: K.W. Whitaker J.
COUNSEL: *Fawad Siddiqui* for the Plaintiff
Fraser Gow for the Defendant, Bay and College Physiotherapy & Rehab

ENDORSEMENT

[1] This is a motion for summary judgment brought by the defendant Bay and College Physiotherapy & Rehab ("CP"), resisted by the Plaintiff Ms. Catherine Griffin Roberts.

[2] Ms. Roberts claims to have been injured when she fell from a massage table during a session with the Defendant massage therapist Ms. Violetta Soffe. This occurred in premises owned and operated by CP.

[3] I have been advised that the other Defendants take no position on the motion and for this reason chose not to appear.

[4] The issue between the parties on this motion is whether a trial is required to determine if CP can avoid liability by virtue of section 6(1) of the *Occupiers' Liability Act*, R.S.O. 1990, c. 0.2, s.6:

Liability where independent contractor

6.(1) Where damage to any person or his or her property is caused by the negligence of an independent contractor employed by the occupier, the occupier is not on that account liable if in all the circumstances the occupier had acted reasonably in entrusting the work to the independent contractor, if the occupier had taken such steps, if any, as the occupier reasonably ought in order to be satisfied that the contractor was competent and that the work had been properly done, and if it was reasonable that the work performed by the independent contractor should have been undertaken.

[5] At the outset of his submissions, counsel for Ms. Roberts conceded that Ms. Soffe was an independent contractor and that two of the three requirements in section 6.1 have been satisfied.

