



Personal Injury

Are businesses liable when Pokemon GO players sustain injuries?



Business owners who allow Pokemon GO enthusiasts to enter their property in search of virtual treasures may be putting themselves at risk, says Windsor personal injury lawyer [Gino Paciocco](#).

“Business and property owners have to be careful,” he tells [AdvocateDaily.com](#). “The *Occupiers' Liability Act* states that the premises have to be reasonably safe. If someone has a phone in their face and you allow them onto your property where they sustain an injury, you may be

liable.”

Paciocco, a partner with [Paciocco & Mellow](#), says some business owners don't fully understand their obligation to ensure their property is safe, and for them, the new augmented reality craze is a curve ball.

“They think because there are more people coming onto their property, it's good for business, but if a person is hurt on an uneven tile on your property, you're exposed to liability,” he says.

Pokemon GO is a smartphone-based augmented reality game that encourages players to hunt for virtual treasure in the real world. Since its release earlier this summer, more than 15 million gamers have downloaded the app.

Game aficionados claim they're getting more exercise and learning about historical landmarks — incorporated into the game as "Pokestops" — but there have been reports of players wandering across the U.S. border, being struck by cars, drowning, veering off roadways, being shot at while being mistaken for intruders, and even discovering dead bodies while searching for Pokemon, says the [Ontario Trial Lawyers Association](#) blog.

In Alberta, a [class-action lawsuit](#) has been filed against the creator of Pokemon GO on behalf of a Calgary property owner who claims she's suffering from an invasion of privacy.

While it's unclear how the civil courts will deal with any liabilities attached to injuries or property damage, Paciocco says business owners don't need new legislation to remind them of their existing responsibilities.

“If you consent to people coming onto your property, whether that's for legitimate business or to play Pokemon GO, you're exposing yourself to risk,” he says. “Business owners need to be aware of that and educate their employees to ensure they're mitigating their risk.”

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Whether game creator, Niantic, can be held responsible for the conduct of players or injuries suffered as a result of playing the game remains to be seen. Users must agree with disclaimers before they start the game, but those disclaimers don't apply to people who are hurt in the process of someone else's game playing, Paciocco points out.

"They're still open to liability from people who haven't read or agreed to the disclaimers because they're not participating in the game," he says. "If you break your wrist because an inattentive Pokemon GO player knocks you over, that's not your fault."

Paciocco suggests the "rubber is going to hit the road" for Pokemon GO players when one becomes injured during the course of play, and files a lawsuit claiming the other party is responsible.

"Let's say you're jaywalking while playing your game and get hit by a car," he explains. "The person who hits you may be liable, but you may also bear a high level of contributory negligence because the rules of the road dictate that you have to keep a proper lookout."

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