

**CBE Liability for Unsafe School Design: Assessing Judicial CPTED Precedent and  
Developing a Systematic Test for *OLA* Adjudication**

*by*

**Austin E. Balzer**

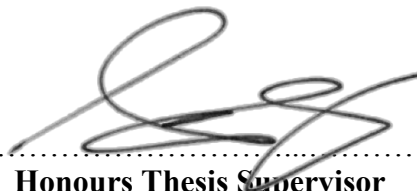
*A thesis submitted in partial fulfillment of  
the requirements for the degree of*

**BACHELOR OF ARTS (HONOURS)**

*in*

**CRIMINAL JUSTICE**

*We accept this thesis as conforming  
to the required standard*



**Honours Thesis Supervisor**  
Kelly W. Sundberg, Ph.D.  
*Associate Professor*

Department of Economics, Justice, and Policy Studies

**MOUNT ROYAL UNIVERSITY**

2025/04/23



© Austin E. Balzer 2025  
Calgary, Alberta, Canada

## **DECLARATION**

To the best of my knowledge and belief, this thesis contains no material previously published by any other person except where due acknowledgement has been made. This thesis contains no material which has been accepted for the award of any other degree or diploma in any university.

This thesis may be made available for loan and limited copying in accordance with the *Copyright Act, RSC 1985, c C-42*.



Austin E. Balzer

2025/04/20

## **Notice One**

Under the *Copyright Act, RSC 1985, c C-42*, this thesis must be used only under the normal conditions of scholarly fair dealing. In particular, no results or conclusions should be extracted from it, nor should it be copied or closely paraphrased in whole or in part without the author's written consent. Proper written acknowledgement should be made for any assistance obtained from this thesis.

## **Notice Two**

I certify that I have made all reasonable efforts to secure copyright permission for third-party content included in this thesis and have not knowingly added copyright content to my work without the owner's permission



Austin E. Balzer

2025/04/20

## ABSTRACT

Viewed through the lens of contemporary criminology, this thesis examines judicial precedent via case studies and content analysis employing Crime Prevention Through Environmental Design (CPTED) principles to aid in adjudicating *Occupiers' Liability Act (OLA)* cases. Specifically, this thesis aimed to develop a systematic test, grounded in court rulings, that could advance the legal interpretation and application of CPTED and identify potential areas of liability for occupants. Namely, an evaluation and comparison of the current security posture of the Calgary Board of Education (CBE) and its potential liability exhibited through CPTED practice within the context of the *OLA*.

The results of this thesis, by synthesizing precedent and displaying sensitivity to contextual contingencies, informed our developed systematic test: *CPTED and OLA Security Assessment Framework (COSAF)*. Developing a systematic test provides consistency for the informant and adjudication among future relevant cases. Additional results provide suggestions for security improvements and areas of liability fostered by the CBE environment. Ultimately, this thesis highlights the necessity for occupiers to consider their CPTED practices on-premises to ensure a common duty of care to all visitors depicted by the *OLA*. Although this thesis answers the initial research question, fulfilling its purpose, the results display the drastic variance that *OLA* decisions involving CPTED practices can have due to contextual differences between each individual case. Future research suggestions argue a need for a more succinct and generally applicable depiction of CPTED theory.

## **ACKNOWLEDGEMENT**

Many people have supported and believed in me to get me to this point. First, I would like to thank all of my family, who have fostered a loving and affirming environment my whole life, and my beautiful fiancée, whose belief in my potential has never wavered. Both of my parents, who have provided me with a devoted upbringing and instilled a strong work ethic and ambition in whatever path I choose. My brother, for being somebody I can look up to, and all of my friends and family who have always shown up for me and provided me with such joy.

I thank Kelly Sundberg, my thesis supervisor, for his guidance and confidence in my abilities. The connections and resources you provided proved invaluable for completing this thesis. I would also like to thank Doug King for the passion you convey while teaching. It has provided me with excitement for learning new legal concepts and a deep interest in the law.

### **Copyright & Licensing**

This work was completed in its entirety by Austin Balzer. It is licensed under a CC BY-SA 4.0 International license.

### **Institutional Repository Statement**

This undergraduate thesis is deposited in the Mount Royal University Institutional Repository for long-term access and preservation. It is made available under the terms of the author's chosen license and is subject to institutional repository policies.

## **TABLE OF CONTENTS**

<b>DECLARATION.....</b>	<b><i>i</i></b>
<b>Notice One.....</b>	<b><i>i</i></b>
<b>Notice Two.....</b>	<b><i>i</i></b>
<b>ABSTRACT.....</b>	<b><i>ii</i></b>
<b>ACKNOWLEDGEMENT.....</b>	<b><i>iii</i></b>
<b>TABLE OF CONTENTS.....</b>	<b><i>iv</i></b>
<b>LIST OF TABLES AND FIGURES.....</b>	<b><i>vii</i></b>
<b>GLOSSARY ACRONYMS.....</b>	<b><i>viii</i></b>
<b>CHAPTER I: INTRODUCTION.....</b>	<b><i>1</i></b>
<b>I-1) Chapter Overview.....</b>	<b><i>1</i></b>
<b>I-2) Background.....</b>	<b><i>2</i></b>
<b>I-3) Research Question.....</b>	<b><i>2</i></b>
<b>I-4) Rationale and Significance.....</b>	<b><i>3</i></b>
<i>I-4-a) Rationale.....</i>	<b><i>3</i></b>
<i>I-4-b) Significance.....</i>	<b><i>3</i></b>
<b>I-5) Scope and Structure.....</b>	<b><i>4</i></b>
<i>I-5-a) Scope.....</i>	<b><i>4</i></b>
<i>I-5-b) Structure.....</i>	<b><i>6</i></b>
<b>I-6) Chapter Summary.....</b>	<b><i>8</i></b>
<b>CHAPTER II: LITERATURE REVIEW.....</b>	<b><i>9</i></b>
<b>II-1) Chapter Overview.....</b>	<b><i>9</i></b>
<b>II-2) CPTED in Schools.....</b>	<b><i>10</i></b>
<i>II-2-a) Identifying Unsafe Locations.....</i>	<b><i>11</i></b>

***CBE Liability for Unsafe School Design: Assessing Judicial CPTED Precedent and Developing a Systematic Test for OLA Adjudication***

II-2-b) <i>Visitor Well-Being and Perceptions of Safety</i> .....	12
II-2-c) <i>School Liability For Visitor Safety</i> .....	13
<b>II-3) Legislation and CBE Standards</b> .....	14
II-3-a) <i>Occupiers' Liability Act</i> .....	14
II-3-b) <i>CBE Standards</i> .....	17
<b>II-4) Jurisprudence</b> .....	18
II-4-a) <i>McAllister v Calgary (City), 2018 ABQB 480</i> .....	18
II-4-b) <i>Tamaka v London Drugs Limited, 2019 BCSC 1182</i> .....	19
II-4-c) <i>Moffitt v TD Canada Trust, 2021 ONSC 6133</i> .....	20
<b>II-5) Chapter Summary</b> .....	21
<b>CHAPTER III: THEORETICAL APPROACH</b> .....	23
<b>III-1) Chapter Overview</b> .....	23
<b>III-2) Overview of Theoretical Approach</b> .....	23
<b>III-3) Rationale for Using the Chosen Theoretical Approach</b> .....	24
<b>III-4) Chapter Summary</b> .....	25
<b>CHAPTER IV: METHODOLOGY AND RESEARCH DESIGN</b> .....	26
<b>IV-1) Chapter Overview</b> .....	26
<b>IV-2) Overview of Case Study and Content Analysis Methodology</b> .....	26
<b>IV-3) Limitations and Challenges</b> .....	27
<b>IV-4) Chapter Summary</b> .....	28
<b>CHAPTER V: DATA ANALYSIS AND RESULTS</b> .....	29
<b>V-1) Chapter Overview</b> .....	29
<b>V-2) Data and Information Analysis</b> .....	29
V-2-a) <i>Collection of Data and Information</i> .....	29

<b>V-3) Results from Analysis</b> .....	31
V-3-a) <i>Implications of McAllister v Calgary (City)</i> .....	31
V-3-b) <i>Implications of Tanaka v London Drugs Limited</i> .....	33
V-3-c) <i>Implications of Moffitt v TD Canada Trust</i> .....	34
V-3-d) <i>Application of Current CBE Security Standards</i> .....	36
<b>V-4) Central Findings from Analysis</b> .....	37
V-4-a) <i>Precedent Informing COSAF</i> .....	37
V-4-b) <i>COSAF Test</i> .....	39
V-4-c) <i>CBE Implication and Application of COSAF</i> .....	40
<b>V-5) Chapter Summary</b> .....	41
<b>CHAPTER VI: DISCUSSION</b> .....	43
<b>VI-1) Chapter Overview</b> .....	43
<b>VI-2) Addressing the Research Question</b> .....	43
<b>VI-3) Relation to Existing Research and Scholarship</b> .....	44
<b>VI-4) Implications</b> .....	44
<b>VI-5) Chapter Summary</b> .....	45
<b>CHAPTER VII: CONCLUSION</b> .....	46
<b>VII-1) Chapter Overview</b> .....	46
<b>VII-2) Key Research Findings</b> .....	46
<b>VII-3) Limitations and Other Considerations</b> .....	47
<b>VII-4) Suggested Future Research</b> .....	48
<b>VII-5) Chapter Summary</b> .....	49
<b>REFERENCES</b> .....	50

## LIST OF TABLES AND FIGURES

<b>Table 1: Acronyms.....</b>	<b>viii</b>
<b>Figure 1: Comparison of CBE Student Enrolment Counts between end-September 2022 and end-September 2023, by division.....</b>	<b>5</b>
<b>Figure 2: CBE Enrolment 2013-2023.....</b>	<b>6</b>



## GLOSSARY ACRONYMS

*Table 1: Acronyms*

CBE	Calgary Board of Education (Canadian)
COSAF	CPTED and <i>OLA</i> Security Assessment Framework (Canadian)
CPS	Calgary Police Service (Canadian)
CPTED	Crime Prevention Through Environmental Design (International)
CRA	Crime Risk Assessment (International)
CSA	CPTED School Assessment (USA)
<i>OLA</i>	<i>Occupiers' Liability Act</i> (Canadian)
SCC	Supreme Court of Canada (Canadian)
US	United States (USA)
VST	Video Surveillance Technology (Canadian)

## **CHAPTER I: INTRODUCTION**

*“The developing body of CPTED concepts has done much to establish the reasonableness of certain crime prevention approaches and, thus, the unreasonableness of property owners who fail to take widely accepted steps” (Gordon & Brill, 1996).*

### **I-1) Chapter Overview**

Benjamin Franklin once said, “An ounce of prevention is worth a pound of cure.” Preventing a disease from ever developing eliminates the need for a cure. With this perspective, crime prevention and deterrence are fundamental to reducing criminal behaviour. Crime Prevention Through Environmental Design (CPTED) is a proactive approach to establishing deterrence through intentional design in a physical area. CPTED identifies locations consistent with the promotion of possible criminal activity and enables their removal and restructuring, ultimately resulting in improved public safety. As displayed in the literature review of this thesis, the evidence for the effectiveness of CPTED and the required principles to adhere to deter criminal behaviour has been well established. For these reasons, CPTED has become a tool to establish guilt in judicial decisions pertaining to an occupier’s liability for visitor safety and well-being.

The primary objective of this thesis is to develop a judicial standardized test for assessing guilt under the *Occupiers’ Liability Act (OLA)* in cases of negligence pertaining to the common duty of care and applying it to the current Calgary Board of Education (CBE) security standards. This will be achieved by integrating the fundamental principles of CPTED, legislation application, judicial precedent, and CBE security policy and practice. Specifically, this paper will examine the liability risks the CBE faces concerning visitor safety by applying the developed standardized test to current security standards and physical school design.

This chapter begins by providing a brief background, covering the key themes identified in the literature review and the methods employed. The research question is clearly stated, followed by a discussion of the rationale and significance. Additionally, the scope and structure of this thesis are laid out. This chapter concludes with a summary of the content presented.

## **I-2) Background**

CPTED has developed into an effective method to demonstrate causation in premises liability cases (Gordon & Brill, 1996). However, its multidisciplinary and evolutionary nature presents a complexity that continues to be refined (Ekblom, 2011). Due to the advancements of CPTED principles presented in scholarly research (Cozens et al., 2023; Cozens & Sun, 2019; Lamoreaux & Sulkowski, 2019; Lee et al., 2023) and its recent judicial considerations in court decisions, there is a need to address the gap relating to the application of CPTED principles within judicial decisions pertaining to the *OLA* and the potential liabilities the CBE could face as a result. Thus, the themes in the literature review will examine CPTED principles and its application to school environments, legislation and CBE security standards, and the relevant jurisprudence. This thesis follows a contemporary criminological qualitative design through a case study and content analysis methodology. Collecting and analyzing the relevant precedent using these methods achieves the development of a systematic test and answers the following question.

## **I-3) Research Question**

*Can a systematic test be established, employing Crime Prevention Through Environmental Design (CPTED) principles found in judicial precedent, to assist in the adjudication of the Occupiers' Liability Act (OLA), and what potential liabilities might the Calgary Board of*

*Education (CBE) face regarding their legislative duty of care when assessed by this court standard?*

#### **I-4) Rationale and Significance**

##### *I-4-a) Rationale*

Understanding liability from a legal perspective is necessary for any responsible risk mitigation. When the risk involves visitors and human safety, prevention measures are paramount. Identifying and applying a systemic test based on judicial precedent is practical for pinpointing liability risks, fostering consistency among judicial decisions, and improving the safety and security of schools in Calgary. The purpose of this thesis is to develop such a test by examining the jurisprudence concerning CPTED-informed *OLA* decisions and presenting the potential liability risks the CBE could face regarding visitor safety. As our ability to uniquely identify environments with negligent security and safety standards increases, understanding evolving liability becomes critical for occupants.

A case study methodology provides an understanding of the current application and influence CPTED has within *OLA* cases. This qualitative approach requires an in-depth analysis to collect and apply the acquired knowledge. A content analysis method identifies necessary precedents and current security standards for the CBE. This approach effectively addresses the research question, enabling a thorough exploration of the multifaceted aspects influencing this topic.

##### *I-4-b) Significance*

Judicial decisions regarding the common duty of care owed to visitors under the *OLA* are beginning to rely on CPTED expert witnesses and principles to inform their decisions (*McAllister v Calgary (City)*, 2018 ABQB 480; *Moffitt v TD Canada Trust*, 2021 ONSC 6133).

***CBE Liability for Unsafe School Design: Assessing Judicial CPTED Precedent and Developing a Systematic Test for OLA Adjudication***

Understanding how these cases are being decided and the rationale used by the court provides legitimate value to comprehending the legal application of CPTED. This thesis presents the state of the current precedent, providing consistency and efficiency in similar future cases. The awareness gained following this thesis may generate further urgency toward implementing and adopting CPTED practices among occupants. This is impactful for the overall purpose of improving safety and security for visitors to CBE schools. Demonstrating evidence for enforced CPTED principles within the courts recognizes CPTED practices as a necessary priority rather than a sufficient condition. This benefits all visitors who attend or are invited to attend public schools in Alberta. A safer environment for our schools brings increased peace of mind to parents, visitors, and our society.

Subjectivity affects the process of legal understanding (Balkin, 1993); this variance in the interpretation of legislation leads to the development of specific legal tests, as seen in *R v Oakes*. [1986] 1 SCR 103 and many others. The purpose of these tests is to inform future decisions based on similar circumstances and legislation, in other words, to set a precedent. Combining and presenting precedents from judicial decisions as a systematic test will improve specific legal understandings of the chosen topic. The results of this study further contextualize CPTED within current legislation. By understanding how CPTED can be enforced and understood in a legal context, researchers, policymakers, and courts will have improved knowledge of how the principles of CPTED can be applied.

## **I-5) Scope and Structure**

### *I-5-a) Scope*

This study explores relevant case law originating from the points made in *McAllister v Calgary (City)* in 2018 and forward. The jurisprudence focuses on applying CPTED principles

***CBE Liability for Unsafe School Design: Assessing Judicial CPTED Precedent and Developing a Systematic Test for OLA Adjudication***

within *OLA* decisions, specifically as they relate to determining a breached duty of care. The cases explored are situated within Canada to maintain consistency with the location of CBE facilities and *OLA* legislation. This scope was selected to provide current and relevant jurisprudence, ensuring a contemporary study that reflects the topic's current state. The scope of considered legislation includes the *Occupiers' Liability Act*, RSA 200, c O-4; the specific sections employed are discussed in the literature review.

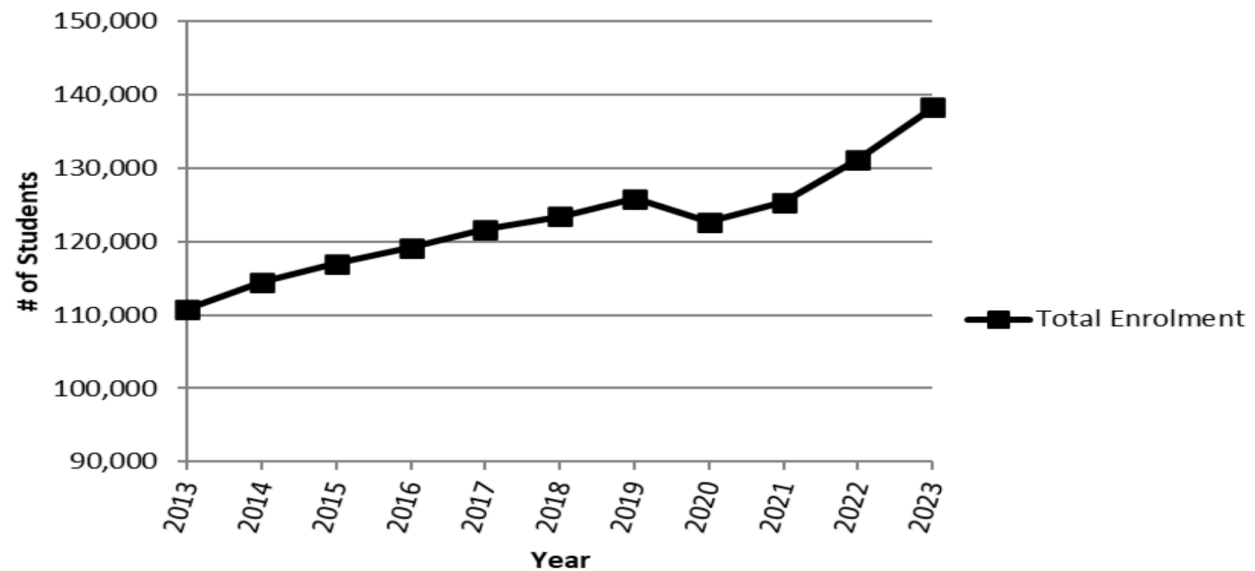
Further, CBE security policies, strategies, and jurisdiction are explored. A limited consideration regarding the Alberta Education Act is addressed where applicable. Literature pertaining to CPTED principles and its application is exhausted, specifically focusing on CPTED in and around schools. The number of students enrolled in CBE facilities and the recent drastic increase in students, as seen by the figures below, are addressed.

***Figure 1: Comparison of CBE Student Enrolment Counts between end-September 2022 and end-September 2023, by division.***

	<b>End-September 2022</b>	<b>End-September 2023</b>	<b>Difference</b>
Pre-Kindergarten	71	37	-34
Kindergarten	9,051	8,972	-79
Grades 1-3	29,757	31,554	1,797
Grades 4-6	28,855	30,577	1,722
Grades 7-9	28,860	29,849	989
Grades 10-12	32,152	34,591	2,439
<b>Sub-Total (Pre-K to GR12)</b>	<b>128,746</b>	<b>135,580</b>	<b>6,834</b>
Self Contained Special Ed.	2,469	2,664	195
<b>Total</b>	<b>131,215</b>	<b>138,244</b>	<b>7,029</b>

*Note.* 2023-2024 School Enrolment Report. Reprinted from <https://cbe.ab.ca/FormsManuals/School-Enrolment-Report-2023-2024.pdf>. Calgary Board of Education.

**Figure 2: CBE Enrolment 2013-2023**



Note. 2023-2024 School Enrolment Report. Reprinted from <https://cbe.ab.ca/FormsManuals/School-Enrolment-Report-2023-2024.pdf>. Calgary Board of Education.

#### *I-5-b) Structure*

This thesis is structured to analyze case law, legislation, CPTED literature, and CBE policy to diligently review the application of CPTED principles in *OLA* cases and apply a developed test based on relevant jurisprudence to assess CBE security liability. The themes listed prove beneficial in developing a data analysis and results chapter within this thesis. The structural framework highlighted will help fulfill the gap in knowledge that the research question aims to address.

The introduction chapter of this thesis provides the background regarding keywords and themes covered in both the literature review and methodology chapters, as well as insights regarding the gap in knowledge. The research question creates a framework for addressing the disclosed knowledge gap, clearly articulating the focus of the thesis. This paper's rationalization,

***CBE Liability for Unsafe School Design: Assessing Judicial CPTED Precedent and Developing a Systematic Test for OLA Adjudication***

significance, and scope are provided to contextualize further and maintain a realistic objective.

Following the introduction chapter, the main themes presented in the literature review cover literature on CPTED and its application to schools, legislation, CBE security policy, and relevant jurisprudence, concluded by a chapter summary of the identified themes.

Next, the theoretical approach used to conduct this study is addressed, providing a rationale for why a contemporary criminological framework was selected. An explanation for the use of a case study methodology and content analysis method is discussed. Techniques used to gather and analyze information are provided, and the possible limitations or challenges are divulged. The methodology framework allows for exhaustive information collection, strengthening the overall findings of the thesis.

An analysis of the gathered judicial precedent is executed, identifying the correlation, differences, and implications of each specific case within the context of the research question. Results of the court rationale and specific arguments informing the development of the systematic test are interpreted, specifying the logic employed in each decision. Following the completion of our systematic test, CBE security standards will be evaluated using the same framework to determine potential liability that could manifest under the *OLA* in similar circumstances. The central findings of this thesis, based on the concluded results, will be presented. This chapter will conclude with a summary of the most important findings.

Chapter VI will entail a discussion connecting the analysis results with the research question and the implications this study has on the contribution to occupants and legal practices. Consideration will also be given to the benefit of this thesis on other fields of study and existing research.



The concluding chapter provides an overview of key findings and possible pathways for future research. It presents how this thesis connected the gap in knowledge between CPTED-informed *OLA* decisions and increasing liability among the CBE and other occupants. It also describes methodological limitations and challenges, and our attempted efforts for mitigation. This chapter finishes with a closure to the research question and the objective of the thesis.

### **I-6) Chapter Summary**

This chapter highlighted this thesis's purpose, identifying the gap in knowledge addressed by the research question. Applying CPTED principles within judicial decisions pertaining to the *OLA* has increased the significance of deriving guilt since 2018. Understanding the rationale behind these decisions demonstrates implications for the CBE regarding their security posture and potential liability. Through a qualitative approach, utilizing a case study methodology and exhausting the relevant literature and CBE policies, this paper aims to develop a systematic test to aid in the adjudication and risk mitigation of CBE school facilities as it relates to the *OLA*. Assessing the current body of knowledge is necessary to comprehend CPTED principles, CBE policy, applied legislation, and the current jurisprudence.

## CHAPTER II: LITERATURE REVIEW

### II-1) Chapter Overview

Research on CPTED has made significant advancements in demonstrating the effectiveness of crime prevention and the necessity of improved environmental security. As a relatively young field of study experiencing rapid growth, several major contributors have shaped and evolved CPTED as it is known today. The initial concept was suggested by Jane Jacobs (1961) in her book *The Death and Life of Great American Cities*, arguing the use of physical environments to reduce crime. The term CPTED was created by C. Ray Jeffery (1971) and further developed alongside the more widely recognized theory of Oscar Newman's Defensible Space (1972). Due to the complexity of the topic and continuous evolution, our understanding of the terminology and application of CPTED is still being refined (Ekblom, 2011). Current research has been largely successful in identifying unsafe spaces, applying improved security through environmental design, and enhancing overall crime prevention in urban environments.

Relevant research promotes CPTED improvement and deterrence enhancement. It continuously examines the effectiveness of real-world applications and the legitimacy of the practice. However, little research exists on the legal implications and liabilities that can be derived from CPTED standards. To bridge this gap, this literature review combines the relevant research with judicial decisions and case law reviews. It is necessary to develop a test, utilizing CPTED principles, to determine the liability of a breached duty of care that the CBE and many other occupants could face under the *Alberta Occupiers' Liability Act*. The first section of this literature review commences with a comprehensive overview of the relevant literature pertaining to CPTED in and around school environments. The second section presents the applicable

legislation specific to this thesis under the *Occupiers' Liability Act* and current *CBE* visitor standards. Finally, this review concludes with the necessary jurisprudence surrounding the subject.

## **II-2) CPTED in Schools**

Current empirical attention on the use of CPTED in K-12 schools is limited, and little scholarship has been written on the topic (Lamoreaux & Sulkowski, 2019). Several scholars have published works discussing/identifying unsafe locations in public areas, university campuses, or communities in proximity to schools (Cozens & Sun, 2019; Fisher, 1995; Lee et al., 2023). However, the realistic application of CPTED practices specific to grade school environments has limited research. The purpose of this paper is to focus on the application of CPTED practices as they relate to legislative liability. Therefore, this section of the literature review prioritizes research discussing application rather than the entailment of the practice itself.

The saturation of relevant literature includes three sub-themes consistent with this research paper. The first includes studies and examples of how the practice of CPTED can identify unsafe locations. Unsafe areas parallel the second sub-theme of visitor well-being and perceptions of safety. Anticipated crime spots are perceived as dangerous and can build fear and reduce visitor well-being (Cozens & Sun, 2019; Lamoreaux & Sulkowski, 2019). The combination of unsafe locations on campus with decreasing visitor well-being leads to the third sub-theme, school liability for visitor safety. With growing unrest regarding school safety originating in the 1970s, universities are subject to an increasing number of negligence lawsuits associated with student crime victims (Fisher, 1995). These themes connect CPTED with legal liability for student/visitor safety and well-being.

*II-2-a) Identifying Unsafe Locations*

CPTED audits are effective tools for identifying unsafe locations in and around any physical environment. The practice employs CPTED principles potentially correlated with crime incidents to inform evidence-based, proactive approaches targeting safety improvements in specified areas (Lee et al., 2023). Generally, scholars agree that the CPTED principles are essential in evaluating any environment. These include surveillance (e.g., natural, number of windows, cameras, lighting, viewpoints), territoriality (e.g., signage, barriers, design delineating between private and public spaces), image/maintenance (e.g., graffiti, litter, clean and cared for), access control/target hardening (e.g., permits, security, locks, alarms), activity support (e.g., legitimate land use, activities, ‘eyes on the street), and geographical juxtaposition (e.g., capacity of specific spaces to influence crime in surrounding areas and vice versa) (Cozens et al., 2023; Cozens & Sun, 2019; Lamoreaux & Sulkowski, 2019; Lee et al., 2023). Although several factors are considered outside the scope of the principles listed during a CPTED audit, these are essential to ensuring consistency throughout the iteration of CPTED audits (Cozens et al., 2023).

The real-world application of CPTED principles still requires continued refinement due to the complexities of the practice and the contextual differences between environments (Ekholm, 2011; Sohn, 2016). However, significant progress is being made as these complexities continue to be researched. For example, Cozens et al. (2023) p.14, utilizing the combined research of CPTED audits, have developed a specific test, scored from one to three (three for total agreement and 1 for disagreement), based on these essential principles. Additionally, there has been a significant progression in evaluating the environmental principles of an individual school. The National Center for Injury Prevention and Control (U.S.). Division of Violence Prevention and Carter & Carter Associates (2017) developed a CPTED School Assessment

(CSA) test, integrating CPTED audits specifically for schools. Research demonstrates that schools with CSA scores reflecting agreement with CPTED principles were associated with higher scores of student-perceived safety and lower scores of student-perceived risk (Vagi et al., 2018).

With continually improving methods to evaluate an area's environmental deterrence, the enforcement of CPTED standards is becoming more proficient. This directly relates to this thesis topic because increasing knowledge and ability to test for crime-risk environments pose a heightened duty of care expected of occupants. Although the effectiveness of CPTED within schools is still being researched and requires time to prove a causal relationship (Shariati & Guerette, 2020), understanding the principles of CPTED and the deficiencies in an environment's deterrence can support negligence claims and, ultimately, increase liability.

### *II-2-b) Visitor Well-Being and Perceptions of Safety*

A significant amount of research demonstrates the correlation between CPTED principles and student/visitor perceived safety (Cozens & Sun, 2019; Lamoreaux & Sulkowski, 2019; Vagi et al., 2018). This correlation is to be expected; if an environment lacks CPTED principles, deterrence is low, criminal activity may rise, and fear of crime will build. Cozens & Sun (2019) demonstrate that perceptions of safety vary, and areas with high levels of prospect (outlook, spacious areas) and low levels of refuge (enclosure, hiding places) result in higher perceived safety. Research illustrates how physical environment elements can influence stress and mental health, and schools adhering to CPTED principles can improve comfort and well-being (Lamoreaux & Sulkowski, 2019). Excessive security features (e.g., metal detectors and security personnel) can have negative student-related effects and increase the likelihood that a student will worry about crime (Lamoreaux & Sulkowski, 2019; Vagi et al., 2018). CPTED allows

***CBE Liability for Unsafe School Design: Assessing Judicial CPTED Precedent and Developing a Systematic Test for OLA Adjudication***

schools to balance safety and security without exhibiting prison-like environments (Lamoreaux & Sulkowski, 2019). High CSA scores measuring school adherence to CPTED principles directly correlate to student-perceived safety (Vagi et al., 2018).

If students perceive risk around their school and have low feelings of safety, research shows that schools often lack CPTED coverage. Therefore, student-perceived safety is very important to determine the overall well-being of students and visitors while on the premises.

*II-2-c) School Liability for Visitor Safety*

An increasing number of student crime victims in the United States (US) has led to lawsuits, resulting in a court-imposed duty of colleges and universities related to victimization: (1) a duty to warn students about known risks and (2) a duty to provide them with adequate security protection (Fisher, 1995). This thesis directly focuses on both, as depicted under the *OLA*. School liability in the US was escalated further with the ‘Clery Act’, which requires colleges and universities to disclose crimes occurring on and around their campus and to establish crime prevention programs for student safety (Fisher, 1995; Shariati & Guerette, 2020). Third-party lawsuits for premises liability often result in CPTED specialists being called upon as expert witnesses where design is implicated as a causal factor (Cozens et al., 2001). Comprehending design as a causal factor leads to further liability; “The developing body of CPTED concepts has done much to establish the reasonableness of certain crime prevention approaches and, thus, the unreasonableness of property owners who fail to take widely accepted steps” (Gordon & Brill, 1996). CPTED helps plaintiffs demonstrate causation in premises liability cases (Gordon & Brill, 1996), heightening the occupants' required duty of care standard.

Much of the literature focuses on school liability for visitor safety pertaining to the US. When synthesizing US precedent and law, it is important to exhibit caution when applying

***CBE Liability for Unsafe School Design: Assessing Judicial CPTED Precedent and Developing a Systematic Test for OLA Adjudication***

similar arguments to the Canadian context. However, because the US has experienced significantly more criminal activity within their school system, many of its legal responses demonstrate precocity compared to Canadian advancements. Therefore, the decisions pertaining to the legal liability of schools in the US are relevant when considering a similar duty of care among Canadian schools.

### **II-3) Legislation and CBE Standards**

This section explores the key legal and policy frameworks related to the safety and security of the CBE educational premises. Specifically, Alberta's *Occupiers' Liability Act* highlights relevant sections applicable to this thesis. The *OLA* outlines the legal duty of care occupants owe to visitors on the premises. Second, other applicable legislation contributes to the legal framework governing school safety and security. This includes privacy & safety policy, building codes, and the Education Act. Finally, the CBE standards will be examined. These standards reflect the practical implementation of legal obligations and the CBE's commitment to fostering safe and secure educational settings.

#### *II-3-a) Occupiers' Liability Act*

Preceding the implications of the addition of CPTED principles within the scope of the *OLA*, determining a breach regarding an occupant's duty of care to visitors can pose its own difficulty. Dembour et al., 2020 identify a flexible three-step systemic test for determining a breach of duty under the *Occupiers Liability Act* (1957) based on judicial edicts from England and Wales: (1) the foreseeability of the risk of injury and the likelihood that the risk would materialise; (2) a reasonable expectation that the occupier was under a duty to have taken remedial action; and (3) the question of whether this duty was discharged in an appropriate

manner. Although following slightly different legislation, the concepts for addressing a breach of duty are applicable to this thesis.

The following lists legislation relevant to this thesis under the *Occupiers' Liability Act*, RSA 2000, c 0-4 of Alberta. Only sections applicable to the discussion and analysis have been highlighted.

## **Definitions**

**1** In this Act,

- (a) “common duty of care” means the duty of care of an occupier of premises to visitors provided for in section 5;
- (b) “entrant as of right” means a person who is empowered or permitted by law to enter premises without the permission of the occupier of those premises;
- (c) “Occupier” means
  - (i) a person who is in physical possession of premises, or
  - (ii) a person who has responsibility for, and control over, the condition of premises, the activities conducted on those premises and the persons allowed to enter those premises, and for the purpose of this Act, there may be more than one occupier of the same premises;
- (d) “Premises” includes
  - (i) staging, scaffolding, and similar structures erected on land, whether affixed to the land or not.

(There are many other defined premises not relevant to the specifics of this thesis paper).
- (e) “Visitor” means
  - (i) an entrant as of right,



***CBE Liability for Unsafe School Design: Assessing Judicial CPTED Precedent and Developing a Systematic Test for OLA Adjudication***

- (ii) a person who is lawfully present on premises by virtue of an express or implied term of a contract,
- (iii) any other person whose presence on premises is lawful, or
- (iv) a person whose presence on premises becomes unlawful after the person's entry on those premises and who is taking reasonable steps to leave those premises (*Occupiers' Liability Act*, RSA 2000, c 0-4, (1)).

**Duty of care to visitors**

**5** An occupier of premises owes a duty to every visitor on the occupier's premises to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purpose for which the visitor is invited or permitted by the occupier to be there or is permitted by law to be there (*Occupiers' Liability Act*, RSA 2000, c 0-4, (5)).

**When common duty of care applies**

**6** The common duty of care applies in relation to (a) the condition of the premises, (b) activities on the premises, and (c) the conduct of third parties on the premises (*Occupiers' Liability Act*, RSA 2000, c 0-4, (6)).

**Risks willingly accepted**

**7** An occupier is not under an obligation to discharge the common duty of care to a visitor in respect of risks willingly accepted by the visitor. (*Occupiers' Liability Act*, RSA 2000, c 0-4, (7)).

**Effect of warning**

**9** A warning, without more, shall not be treated as absolving an occupier from discharging the common duty of care to the occupier's visitor unless, in all the circumstances, the warning is

***CBE Liability for Unsafe School Design: Assessing Judicial CPTED Precedent and Developing a Systematic Test for OLA Adjudication***

enough to enable the visitor to be reasonably safe. (*Occupiers' Liability Act*, RSA 2000, c 0-4, (9)).

**Trespassers**

**12(1)** An occupier does not owe a duty of care to a trespasser on the occupier's premises. (*Occupiers' Liability Act*, RSA 2000, c 0-4, (12(1))).

*II-3-b) CBE Standards*

The CBE's administrative regulation provides detailed access control and video surveillance policies. At this time, we could not locate any public evidence of a CPTED audit conducted for any CBE premises. Although every individual school within the CBE has slight design variations, the following policies and regulations are the CBE standards across the board.

The CBE's Video Surveillance Technology (VST) means any electronic surveillance device, hardware, or software capable of recording, retaining, or sharing communications related to an individual or group. This includes visual, digital, location, or similar data (Calgary Board of Education, 2024a). The CBE policy requires evidence of theft, vandalism, violence, safety concerns, or security breaches to permit the installation of any VST equipment and must be positioned to address one of the specified problems (Calgary Board of Education, 2024a). This demonstrates a reactive approach to criminal activity rather than proactive deterrence of all possible crimes. Real-time monitoring by any person, including authorized personnel, is prohibited except in exigent circumstances (Calgary Board of Education, 2024a). The CBE takes caution in protecting the privacy information of its visitors under the Freedom of Information and Protection of Privacy Act and the Education Act. The CBE's VST administrative regulation was approved in 2007; the latest revision was in 2024 and is not up for review until 2029 (Calgary Board of Education, 2024a). Overall, the VST policy of the CBE does cover some basic

CPTED requirements, but lacks coverage consistent with liability found in relevant court decisions.

The CBE discusses policies that display access control around their buildings, referred to as ‘key control’. The CBE has several unique access keys to ensure secure access control for personnel entering and exiting schools. A “Grand Master Outside Key” provides access to all CBE schools and buildings, a “School Access Card” provides access to a specific school building, and a “School Grand Interior Master Key” opens all the rooms in a specific school (Calgary Board of Education, 2003). In the event of lost or stolen keys, the building doors are reprogrammed or re-keyed and reported to the Security Monitoring Center (Calgary Board of Education, 2003).

The CBE lists several additional security measures. Visitors and volunteers must sign in at the main office, students must always carry an identification card, and lockdowns developed by the Calgary Police Service (CPS) are practiced (Calgary Board of Education, 2024b). All schools have primary and secondary evacuation sites, and staff are trained according to these CBE standards (Calgary Board of Education, 2024b).

#### **II-4) Jurisprudence**

Several cases in Canada demonstrate the court application of the *OLA* and negligence laws. The three most applicable cases highlighted demonstrate consistent issues that courts identify to test for breaches of the specified legislation. Although additional cases will be referenced throughout this thesis, the themes of CPTED, duty of care, and liability present in the following decisions are essential to the specified purpose of the research question.

*II-4-a) McAllister v Calgary (City), 2018 ABQB 480*

Kyle McAllister (plaintiff) was physically assaulted at the Canyon Meadows C-Train Station, a premises under the control of the City of Calgary. The plaintiff argues that the City, as the occupier of the premises, owed him the duty of care prescribed under section 5 of the *Occupiers' Liability Act* (OLA), ensuring reasonable safety during his use of the premises (*McAllister v Calgary (City)*, 2018 ABQB 480 at para 3).

The court presented five issues to test for liability under section 5 of the OLA (*Calgary (City)* at para 6). First, was the city an “occupier” of the specified location when the crime occurred? Second, was the plaintiff a “visitor” to the specified premises? Third, if the answer to issues one and two is yes, giving rise to the duty of care owed pursuant to section 5 of the OLA, what was the standard of care to be met? Fourth, was this standard duty of care breached? To determine issues three and four, the court looked to CPTED principles and experts to establish the standard duty of care expected and any breaches that do not meet the standard (*Calgary (City)* at para 27-40). Fifth, If the duty of care was breached, did the breach cause or contribute to the plaintiff’s injuries? The court utilized the “but for” causation test to address issue five. “But for the City’s breach of the duty of care, would the plaintiff have suffered the injuries alleged at all or to a less severe degree?” (*Calgary (City)* at para 41). Ultimately, the court determined that the city breached s. 5 of the OLA; had appropriate CPTED principles been in place, the assault would have been stopped at an earlier stage, resulting in less severe injuries (*Calgary (City)* at para 44).

*II-4-b) Tanaka v London Drugs Limited, 2019 BCSC 1182*

Musashi Tanaka (plaintiff) was physically assaulted by another customer at the customer service desk of a London Drugs store. The plaintiff’s case is pleaded in common law negligence

***CBE Liability for Unsafe School Design: Assessing Judicial CPTED Precedent and Developing a Systematic Test for OLA Adjudication***

under the *Occupiers' Liability Act*, R.S.B.C 1996, c 337 (*Tanaka v London Drugs Limited*, 2019 BCSC 1182 at para 2). The plaintiff claims the staff at London Drugs were negligent in preventing the assault, failed to warn him about the risk presented by the offender, and failed to detain the offender to identify the individual (*London Drugs Limited* at para 2).

Similarly to *McAllister v Calgary (City)*, the court identified three issues to test the defendant's liability in negligence or under the *OLA*. First, did the defendant breach its duty of care to the plaintiff by failing to prevent the assault? Second, did the defendant breach its duty of care to the plaintiff by failing to warn about the risks posed by the offender? Finally, did the defendant breach its duty to the plaintiff by not detaining the offender immediately following the assault (*London Drugs Limited* at para 30)?

The court determined that customers attacked by sudden and unprovoked acts of violence are not a foreseeable risk; guarding against such a contingency would render the defendant an insurer, which is not the standard imposed by the *OLA* (*London Drugs Limited* at para 45). Additionally, the court determines the *OLA* does not impose a duty on the occupant to take affirmative steps to assist the plaintiff in prosecuting a lawsuit against the offender (*London Drugs Limited* at para 64). In this instance, such affirmative steps would be to detain the perpetrator. The court concluded that the mere fact that the assault occurred on the occupants' premises was insufficient to establish liability under the *OLA* (*London Drugs Limited* at para 65) and dismissed the case.

*II-4-c) Moffitt v TD Canada Trust, 2021 ONSC 6133*

Bruce Moffitt (Plaintiff) was assaulted in an automatic bank machine (ATM) vestibule around 10:15 pm on May 28th, 2013. The plaintiff alleges that TD Bank owed him a duty of care, and his damages are due to the breach of said duty of care (*Moffitt v TD Canada Trust*,

2021 ONSC 6133 at para 2). The issues raised by the court relevant to this thesis are: What is the standard of care owed? Did TD breach the standard of care? Did any breach in the standard of care cause or contribute to the plaintiffs' injuries in any way? The court identifies three key concepts to answer the issues relevant to this paper's application. Determination of negligence to establish the standard of care, the application of CPTED principles to assess any breach, and the *OLA* establishing legislation.

The court identifies that a plaintiff must demonstrate four aspects to determine negligence as established by the Supreme Court in *Mustapha v Culligan of Canada Ltd*, 2008 SCC 27, [2008] 2 S.C.R. 114. Was the plaintiff owed a duty of care? Was the conduct a breach of the standard of care? Did the plaintiff sustain damage? Were the damages caused by the breach of the duty of care? (*TD Canada Trust* at para 210). Utilizing the expert witnesses of Elgin Austin and Terry Hoffman, the court accepted TD had sufficient security based on the principles of CPTED (*TD Canada Trust* at para 154 & 168). CPTED had a significant impact in demonstrating occupiers' liability, and the court concluded no breach (*TD Canada Trust* at para 321).

This case slightly differs from *McAllister v Calgary (City)*, as the court determined that live CCTV monitoring would not make any difference in dealing with sudden and random acts of violence (*TD Canada Trust* at para 303). The central conflict between these two decisions is that *McAllister v Calgary (City)* considered the severity of the victim's injuries and the ability to stop them earlier, making them less severe. *Moffitt v TD Canada Trust* does not consider the impact live monitoring has on the duration or severity of an assault.

## **II-5) Chapter Summary**

This chapter provided an overview of the relevant corpus related to CPTED and occupiers' liability. The literature first reviewed the progression and current state of CPTED principles and understanding, focusing on its application within schools. Themes highlighted CPTED's significance regarding visitor well-being and school liability. Presenting necessary legislation develops a foundation for the pressing liability. Finally, comprehending essential jurisprudence is significant in determining the judicial precedent and application of CPTED and legislation. The intricacies of applying CPTED principles in court decisions and legislation require a contemporary criminological lens.

## **CHAPTER III: THEORETICAL APPROACH**

### **III-1) Chapter Overview**

This chapter explores contemporary criminology and its significance in researching the multidisciplinary field of environmental criminology as it applies to occupiers' liability and negligence. First, it provides an overview of contemporary criminology as a theoretical approach and the components that benefit this framework. Following this brief discussion, the rationale for selecting a contemporary criminology theoretical framework for the thesis objective is presented. This chapter will conclude with a succinct summary and connection to the methodology and research design chapter.

### **III-2) Overview of Theoretical Approach**

This thesis examines Occupiers' liability and negligence through a contemporary criminology theoretical framework, incorporating several theories relative to environmental criminology. The overarching test developed throughout this thesis utilizes the jurisprudence of relevant Canadian case law to identify consistent judicial precedent. Contemporary criminology is a multidisciplinary field that draws on various disciplines to study and understand crime and criminal behaviour (Andresen, 2024). This approach is considered a modern field of study and incorporates present research and theories. This theoretical framework is ideal for incorporating new and progressive perspectives.

Environmental criminology is a multidisciplinary perspective that draws on knowledge and methods from several fields of study to understand the relationship between the physical environment and criminal behaviour. Geography, ecology of crime, urban planning, and psychology are some of the domains incorporated. Additionally, several theories are employed to comprehend the dynamics of the area of study. Social Disorganization, Routine Activity,



*CBE Liability for Unsafe School Design: Assessing Judicial CPTED Precedent and Developing a Systematic Test for OLA Adjudication*

Rational Choice, prevention, and geometry theories are some aspects considered in environmental criminology (Andresen, 2024). Further, CPTED reflects a contemporary global crime prevention approach (Cozens et al., 2005).

### **III-3) Rationale for Using the Chosen Theoretical Approach**

Connecting the gap between CPTED principles, research, legislation, and application within the jurisprudence requires the consideration of several different disciplines. A contemporary criminology approach accommodates a holistic understanding of the selected topic's complexity and multidimensional nature. Further, drawing on contemporary criminological research aids in developing a well-informed, evidence-based analysis of the application of CPTED principles in case law. This includes the analysis of the effectiveness of CPTED-based approaches to deterrence, understanding the impact environmental factors have on criminal activity, and evaluating the legal implications of CPTED principles in occupiers' liability and negligence cases.

A key strength of contemporary criminology is translating research findings into practical, real-world solutions. In this instance, the development of a judicial test would not only help courts more consistently assess liability based on CPTED principles but also improve the safety and design of physical school environments. A possible limitation of this theoretical approach is the quantity of relevant jurisprudence. As established in the literature review, CPTED is a relatively new, complex discipline that is still being refined (Ekholm, 2011; Sohn, 2016). The amount of case law and judicial precedent utilizing CPTED principles to determine occupiers' liability and negligence is limited. Therefore, decisions and precedents may not be well-substantiated, as only a few cases have been heard.

### **III-4) Chapter Summary**

This chapter identifies the theoretical perspective adopted for this thesis. Given the dynamic and multidisciplinary nature of CPTED, jurisprudence, and relevant policies necessary for data collection and analysis, a contemporary criminology approach permits this thesis to employ a modern and complex perspective toward applying crime prevention within a legal context. A contemporary criminology posture effectively examines the integration of relevant jurisprudence case studies with a content analysis methodology among security policies.

## **CHAPTER IV: METHODOLOGY AND RESEARCH DESIGN**

### **IV-1) Chapter Overview**

This thesis utilizes a case study and content analysis methodology. As discussed in the previous chapter, contemporary criminology is a multidisciplinary approach apt for understanding environmental criminology's complexities. The subject matter collected throughout this thesis explores different sources and information streams, requiring an adaptable methodology for retrieval. Specifically, this thesis considers judicial decisions and posted policy to inform the results found; therefore, the methods employed must be situated appropriately. Similar methodologies in other qualitative research examining judicial decisions surrounding *OLA* have been used (Bennett, 2011; Dembour et al., 2020). This chapter begins with an overview of the methodological approach, describing its application of procedures and techniques to identify, select, and analyze the applied information. A description of the methodology will be provided, summarizing how the methods were used and operationalized to collect and analyze information. Next, a brief section will depict this methodology's potential limitations and challenges. This chapter will conclude with a concise summary of the discussed topic.

### **IV-2) Overview of Case Study and Content Analysis Methodology**

The structure of this study follows a qualitative research design. Developing a test that consists of judicial precedents requires an in-depth case analysis methodology. Electronic case law research is employed through this methodology to identify relevant cases. Through this method, specific case databases such as CanLII were searched. Additional broad Google searches were conducted to aid in searches for relevant cases. Case criteria had to consist of *OLA* decisions with increased importance on cases utilizing principles of CPTED to inform decisions.

***CBE Liability for Unsafe School Design: Assessing Judicial CPTED Precedent and Developing a Systematic Test for OLA Adjudication***

Cases citing *OLA* and CPTED within the CanLII website were filtered by relevance to the chosen topic. Additional cases that held relevant precedent to the results of this study, not found on CanLII, like *Moffitt v TD Canada Trust*, 2021 ONSC 6133, were retrieved from outside sources.

Another method operationalized through the chosen methodology is content analysis. After retrieving relevant cases, an in-depth analysis of the decisions and arguments presented was conducted. The information collected from the precedent set by judicial decisions informs the systematic test developed and presented in the results section of this thesis. Similarly, data collected regarding the CBE's security standards employed an online content analysis. Information was drawn from CBE webpage sources and public policy to determine the current state of their security requirements. Keywords such as "CBE security standards" or "CBE policy statements" were used in the search. A large amount of policy information or statements was discovered by navigating CBE official websites and filtering relevance through content analysis.

### **IV-3) Limitations and Challenges**

The corpus surrounding the judicial application of CPTED principles in *OLA* decisions does not have significant saturation. As a result, relying solely on precedents set through judicial decisions limits this methodology due to the lack of established cases. Similar to the living tree doctrine, which states the Constitution must be capable of growth and development over time to meet new social, political, and historical realities exhibited in *Hunter et al. v. Southam, Inc.* [1984] 2 SCR 145 by Justice, soon to be Chief Justice, Dickson, judicial precedents evolve with changes in legislation or improved understandings. As the principles of CPTED continue to be understood, so too may the precedents set through court decisions be refined. This limitation

does not have immediate implications for this research thesis as the current precedent gathered is accurate and consistent with the most relevant/recent jurisprudence.

Consistent with any case study methodology, it is important to recognize researcher bias. For this paper, we have selected the case search criteria, creating a bias toward cases that fit the necessary conditions. However, as mentioned above, due to the lack of jurisprudence on the selected topic, there are not many cases involving the application of CPTED in *OLA* decisions. Therefore, there are not many, if any, cases to exclude when determining the current judicial precedent.

#### **IV-4) Chapter Summary**

This chapter describes the methodological approach used for the thesis. It explains a case study and content analysis approach and how it applies to developing a judicial precedent-based test utilizing CPTED principles to determine a breached duty of care under the *OLA*. Additionally, this section demonstrates the relevant methods employed and how they were used to collect and analyze data. Finally, the limitations and challenges of the chosen research path were highlighted. Developing the aforementioned test was possible by utilizing the research design and methodology discussed in this chapter.

## **CHAPTER V: DATA ANALYSIS AND RESULTS**

### **V-1) Chapter Overview**

This chapter identifies the precedents regarding the determination of guilt under the *OLA* utilizing CPTED principles resulting from a judicial case analysis. First, this chapter discusses data collection and information analysis, presenting the data collected from each specific case and the rationale and challenges behind the information selected. Subsequently, the significance of the data collected from each relevant case will be discussed by analyzing the results. All results will be synthesized into the central findings of the analysis, demonstrating the correlation, differences, and implications between each judicial case regarding the precedent-developed test. The results of the precedents collected will then be applied to particular aspects of the CBE's current security standards. This chapter concludes with a complete summary encompassing the findings of the analysis.

### **V-2) Data and Information Analysis**

#### *V-2-a) Collection of Data and Information*

The collected data is derived from relevant judicial decisions that employ a specific test establishing a precedent for determining guilt under the *OLA*. These decisions incorporate CPTED principles or a breach of the common duty of care assessment. All data with respect to judicial decisions and precedents were collected through a content analysis method. *McAllister v Calgary (City)*, 2018 ABQB 480, is the most significant case relevant to this thesis. In this decision, the court proposes five issues to test for liability under section 5 of the *OLA*, including determining a breached duty of care through the application of CPTED principles. All five steps provide an essential precedent and input toward the result analysis. One challenge faced within the scope of this case is the dependency on expert witnesses and opinions to determine whether

the occupant's environment was consistent with acceptable CPTED practices. Unfortunately, due to the complexity of CPTED (Ekholm, 2011), case-by-case examination and input of unique environments must be done by an expert to uphold credibility.

A precedent demonstrating liability through negligence of the common duty of care under the *OLA* was collected from *Tanaka v London Drugs Limited*, 2018 BCSC 1182. This case addresses an occupant's duty to warn and whether the responsibility to detain a perpetrator falls under the duty of care. This decision does not specifically reference any CPTED principles, which creates difficulty when synthesizing with the other cases. That being said, *Tanaka v London Drugs Limited* does utilize surveillance video and provides a comprehensive analysis for assessing breached duty of care under the *OLA*.

Data regarding the determination of negligence to establish the standard of care, CPTED application for assessing breach of duty, and real-world implementation of *OLA* legislation were collected from *Moffitt v TD Canada Trust*, 2021 ONSC 6133. This case references four aspects required to determine negligence, quoted from the Supreme Court of Canada (SCC) in *Mustapha v Culligan of Canada Ltd*, 2008 SCC 27, [2008] 2 S.C.R. 114. The sufficient requirements for CPTED application to ensure proper security and care of visitors were presented by expert witnesses, informing the results of this study. One major challenge of this case analysis was the deviation from the precedent set in *McAllister v Calgary (City)*. *Moffitt v TD Canada Trust* considers if a breach in the standard of care caused or contributed to the plaintiffs' injuries, but failed to address the severity of the victim's injuries and the ability to intervene in a timely manner, as discussed in *McAllister v Calgary*. This deviation is satisfied due to the contextual implications found in *McAllister v Calgary*. The expected increase in foot traffic of a busy C-train station on New Year's Eve, as conceded by the court (*Calgary (City)* at para 29), varies

drastically compared to using an ATM in the evening. Reflecting on these two cases, the expectation of a duty of care presents contextual contingencies that can vary an occupants' legislative responsibility.

CBE security standards were collected through a content analysis method utilizing publicly available information from official CBE websites and posted policies. This includes current VST, access control, and protocol standards. It is unrealistic to assume that a developed precedent test could be applied to every school within the CBE in this thesis. This challenge was overcome by directly retrieving security standards from policies that inform every school under the CBE.

### **V-3) Results from Analysis**

#### *V-3-a) Implications of McAllister v Calgary (City)*

Held in 2018, *McAllister v Calgary (City)* is the seminal case for developing our systematic test. On January 1st, 2007, the plaintiff, Kyle McAllister, was assaulted on the Plus 15 connecting the Canyon Meadows C-Train Station parkade to the Canyon Meadows C-Train Station (*McAllister v Calgary (City)*, 2018 ABQB 480 at para 2). McAllister sued on the grounds that the City was an occupier of the premises and, therefore, owed him the duty of care prescribed under section 5 of the *OLA (Calgary (City))* at para 3). The court presents five landmark questions to determine guilt; this rationale sets an important precedent for developing our test.

These questions ensure that every aspect required to determine the guilt of any *OLA* legislation is fulfilled. First, is the accused an occupier of the premises in which the crime took place? Under section 1 of the *OLA*, an occupier is defined as (i) a person who is in physical possession of premises, or (ii) a person who has responsibility for, and control over, the condition



***CBE Liability for Unsafe School Design: Assessing Judicial CPTED Precedent and Developing a Systematic Test for OLA Adjudication***

of premises, the activities conducted on those premises and the persons allowed to enter those premises. It is inherently obvious that the accused cannot be found guilty under the *OLA* if they are not the occupier of the premises.

Second, was the plaintiff a visitor to the specified premises? To be considered a visitor, an individual must be an entrant as of right, lawfully present on the premises by virtue of an express or implied term of a contract, have a lawful presence on the premises or a person whose presence on premises becomes unlawful after they have entered the premises and who is taking reasonable steps to leave said premises (*Occupiers' Liability Act*, RSA 2000, c 0-4 (1)). Once the court finds the occupier and visitor acceptable under the *OLA* definition, the case proceeds to steps three to five to determine any breach or liability.

As depicted in section 5 of the *OLA*, an occupier of premises owes a duty of care to every visitor on site. To assess a breach in this allotted duty of care, the court states it is necessary to determine the standard duty of care to be met. Expert witnesses are called to answer this, highlighting CPTED principles and standards (*Calgary (City)* at para 27-40). The City of Calgary recognized CPTED as a standard for station design (*Calgary (City)* at para 36). This rationale used by the court is a significant precedent for the development of this thesis, as it utilizes the principles of CPTED to determine the standard duty of care under the *OLA*.

The fourth issue raised by the court was whether the defendant breached the specified duty of care. The decision stemmed from a deficiency in CPTED principles and safety measures leading to a breach of the duty of care owed to the plaintiff (*Calgary (City)* at para 40). Furthermore, it is established that failure to perform an earlier safety audit does not constitute a breach of the duty of care. This is an important note by the court; although the importance of a CPTED audit is recognized, the inaction of failing to conduct a previous audit does not warrant

***CBE Liability for Unsafe School Design: Assessing Judicial CPTED Precedent and Developing a Systematic Test for OLA Adjudication***

guilt. Rather, liability is derived from the actual state of the current CPTED principles and practices at the time of the criminal action.

After determining a breach of the duty of care owed to the plaintiff, the final issue imposed by the court asks if the breach caused or contributed to Kyle McAllister's injuries. For this final step, the court utilizes the 'but for' test of causation. But for the City's breach of the duty of care, would Kyle have suffered the injuries alleged at all or to a less severe degree (*Calgary (City)* at para 41)? This contributes to a precedent which considers the response time and ability to lessen the severity of damage done by a crime. This argument greatly contributes to contextual considerations and the potential liability the CBE could face due to prohibited live monitoring.

*V-3-b) Implications of Tanaka v London Drugs Limited*

Another customer assaulted the plaintiff (Musashi Tanaka) at the customer service desk of a London Drugs store. This case addresses negligence under the *Occupiers' Liability Act*, R.S.B.C. 1996, c. 337 and the expectations of a duty to warn.

Three issues arise underlying the foundation for the rationale for this decision. The first and most important part for the scope of this thesis is the discussion of whether it is a breach of duty by failing to prevent an assault. The court clarifies that an occupant does not have a duty to guard against sudden, random, and unprecedented acts of violence (*Tanaka v London Drugs Limited*, 2019 BCSC 1182 at para 45). Furthermore, any such duty to guard imposed upon an occupant would render them an insurer, which is not the standard imposed by the *OLA* (*London Drugs Limited* at para 45). The influence derived from this rationale informs the precedent that failing to prevent an assault is not the ground on which liability is established. Rather, the conditions and contextual implications of the criminal event are considered. In other words, if all

***CBE Liability for Unsafe School Design: Assessing Judicial CPTED Precedent and Developing a Systematic Test for OLA Adjudication***

precautions and expectations of a duty of care are met to ensure a reasonably foreseeable safety of a visitor's use of the premises, an unexpected act of violence cannot be attributed to an occupant's negligence.

The second issue addressed in *Tanaka v London Drugs Limited* is whether a duty to warn is within the scope of the *OLA*. Under section 9 of the Alberta *OLA*, A warning on its own does not satisfy a fulfilled duty of care unless, given the circumstances, a warning is sufficient to ensure the visitor is reasonably safe. Given the specific context of a random act of violence, it is not possible to establish the offender as a foreseeable risk of physical harm to the victim (*London Drugs Limited* at para 55).

Finally, it is determined that an occupant does not have a duty to take affirmative steps to assist the plaintiff in prosecuting a lawsuit against the offender. Risking one's own personal safety to detain a violent individual for the sole purpose of protecting the plaintiff's economic interests does not fall under the scope of the *OLA* (*London Drugs Limited* at paras 63-64).

*V-3-c) Implications of Moffitt v TD Canada Trust*

The Plaintiff, Bruce Moffitt, was assaulted in an ATM vestibule around 10:15 pm on May 28th, 2013. The important issues raised by the court in this case relevant to the scope of this thesis include: What is the standard of care owed? Did TD breach the standard of care? Did any breach in the standard of care cause or contribute to the plaintiffs' injuries?

Following the precedent set in *Mustapha v Culligan of Canada Ltd*, 2008 SCC 27, [2008] 2 S.C.R. 114, the court identifies the four points an individual must demonstrate to succeed in an action of negligence. The defendant owed the plaintiff a duty of care, the defendant's behaviours breached that duty of care, the plaintiff sustained damage, and the damages suffered resulted from fact and law by the breach of duty. To determine whether a duty of care was owed, the court

***CBE Liability for Unsafe School Design: Assessing Judicial CPTED Precedent and Developing a Systematic Test for OLA Adjudication***

utilizes the *OLA*, establishing that the plaintiff was indeed a ‘visitor’ and TD was indeed the ‘occupant’ for the location in which the crime took place (*Moffitt v TD Canada Trust*, 2021 ONSC 6133 at para 212-215).

Proceeding, the court identifies the specific standard of care owed. The determination of whether a defendant has taken reasonable steps is measured against the objective standard of a reasonable person (*TD Canada Trust* at para 216). It is established that reasonableness requires a consideration of the factual matrix for each specific case (*TD Canada Trust* at para 218). This means that identifying the standard of care owed under the *OLA* requires reflection on the contextual contingencies found at the time of the crime. Examples of these contingencies include the physical environment, crime rate, risk of harm/assessments (time of day), or other aggravating factors that could increase an occupant’s expectation of possible criminal activity.

Following identifying the duty of care owed, the court utilizes CPTED principles and experts to ascertain any breach of the duty owed to the plaintiff. Considerations include signage, lighting, mirrors, security guards/surveillance, access control, live monitoring, and panic alarms (*TD Canada Trust* at para 280-306). Using CPTED experts is deemed necessary because a trier of fact would not be aware of or able to consider CPTED implications without expert assistance (*TD Canada Trust* at para 151).

Because each case on the duty of care has a unique factual matrix, it is difficult to find analogous cases (*TD Canada Trust* at para 311). It is through these contextual variances that we see decisions that slightly differ from previous precedents. It is concluded in *Moffitt v TD Canada Trust* that live monitoring makes no difference in dealing with sudden and random acts of violence (*Moffitt v TD Canada Trust* at para 303). This varies from the decision found in *McAllister v Calgary (City)*, which considers the duration of the assault and the ability to

minimize the plaintiffs' harm through an improved response time (*Calgary (City)* at para 41).

Further demonstrating the importance of the factual matrix of each case.

#### *V-3-d) Application of Current CBE Security Standards*

According to CBE policy, installing VST equipment requires evidence of theft, violence, **safety concerns**, or security breaches to be permitted (Calgary Board of Education, 2024a). This poses a reactive approach to a specific criminal act rather than a proactive approach to deterring all criminal behaviour. To adhere to CBE guidelines, a CPTED audit appears necessary to provide appropriate safety concerns permitting the installation of VST. Further, real-time monitoring by any person, including authorized personnel, is prohibited except in exigent circumstances (Calgary Board of Education, 2024a). Consistent with the jurisprudence provided throughout this thesis, many violent acts related to occupiers' liability are random and sudden. Exigent circumstances would include violent acts; however, without live monitoring, there may be circumstances where nobody is aware of the criminal act taking place.

CBE policy has very extensive access control regulations. As mentioned in the literature review, the CBE has several unique access keys to ensure secure access control for personnel entering and exiting schools. A "Grand Master Outside Key" provides access to all CBE schools and buildings, a "School Access Card" provides access to a specific school building, and a "School Grand Interior Master Key" opens all the rooms in a specific school (Calgary Board of Education, 2003). In the event of lost or stolen keys, the building doors are reprogrammed or re-keyed and reported to the Security Monitoring Center (Calgary Board of Education, 2003).

CBE schools foster a very dynamic environment with new student turnover each year. Enrollment has been significantly increasing each year within these schools (Calgary Board of Education, 2023), demonstrating increasing responsibility and contextual changes.

***CBE Liability for Unsafe School Design: Assessing Judicial CPTED Precedent and Developing a Systematic Test for OLA Adjudication***

Although CBE regulations are coherent with the Freedom of Information and Protection of Privacy Act and the Education Act (Calgary Board of Education, 2024a), adhering to these guidelines could block certain CPTED principles. These contextual contingencies may create future liability. The ‘factual matrix’ seen between the relevant jurisprudence provides evidence that risk mitigation and proactive considerations may be necessary to diminish the growing liability risk of occupants.

#### **V-4) Central Findings from Analysis**

The results collected from this case study analysis contribute to the findings of our systematic test. We will refer to this test framework as the *CPTED and OLA Security Assessment Framework* (COSAF), with the pronunciation “co-safe.” Finding consistent correlations within each case ensures that COSAF is coherent with the relevant jurisprudence.

##### *V-4-a) Precedent Informing COSAF*

To commence, we will discuss the first step in the test, which we refer to as the necessary *OLA* considerations. Courts address the sufficient *OLA* conditions that must be satisfied to continue with a prosecution. In *McAllister v Calgary (City)* at paras 11-26, the court determines if the context of the plaintiff being on the premises is consistent with the definition of ‘visitor’ under the *OLA*. Additionally, it is determined if the City of Calgary is the appropriate occupier of premises for ascribing guilt. This step in ensuring the context matches the descriptions found within the *OLA* is often redundant or a legal formality; however, it is important to ensure correctness to progress to the next step.

Found in *McAllister v Calgary*, *Tanaka v London Drugs Limited*, and *Moffit v TD Canada Trust*, the common duty of care is addressed. Specifically, what is the common duty of care owed to the visitor? Because an occupant owes a duty of care to each visitor under s. 5 of the Alberta

***CBE Liability for Unsafe School Design: Assessing Judicial CPTED Precedent and Developing a Systematic Test for OLA Adjudication***

*OLA*, it must be determined what exactly that required duty is. Section 5 states that the occupier of premises must ensure that, in all the circumstances, it is reasonable to see that the visitor will be reasonably safe. This means the liability and duty of care of occupants will vary on a case-by-case basis because of the factual matrix of each unique case, as seen in *Moffit v TD Canada Trust* at para 218. We see an example of this contextual consideration in *McAllister v Calgary* at para 5, regarding the increased foot traffic on the C-train due to it being New Year's Eve. Further, the circumstances in *Tanaka v London Drugs Limited* at para 55 state that a random act of violence is impossible to predict; therefore, it can not be reasonably expected to provide a warning.

Following the establishment of the expected duty of care owed, including contextual considerations. The jurisprudence follows a pattern of determining if the duty of care was breached. Based on the identified circumstances, did the occupant breach or neglect the common duty of care owed to the visitor? In this step, we begin to see courts relying on CPTED principles and experts to form their rationale. *McAllister v Calgary (City)* at para 36 recognizes the principles of CPTED as the standard of care employed by the City. By examining CPTED principles communicated by experts, the court determines if the CPTED standard matches the premises' environment when the crime occurred (*McAllister v Calgary (City)* at para 40). We see the same utilization of experts and CPTED principles forming the court's rationale in *TD Canada Trust* at paras 144-169 & 280-306. CPTED experts are necessary to comprehensively evaluate any premises environment (*TD Canada Trust* at para 151). Therefore, any decision utilizing a CPTED evaluation at this point in time requires incorporating expert input.

Finally, after establishing a breach in the duty of care owed, the courts determine if the breach caused or contributed to the injuries sustained (*Calgary (City)* at para 41; *TD Canada*

*Trust* at para 315). In this step, the factual matrix holds significant consideration. For example, in *Calgary (City)* at paras 42-44, the court incorporates the duration of the assault, stating that the City is liable due to their ability to intervene at an earlier time had there been video monitoring personnel to respond. This demonstrates that, in some cases, the consideration for a breach of duty of care can extend further than just if it caused or contributed, but also the severity sustained.

#### *V-4-b) COSAF Test*

The multi-step test COSAF, has been developed based on the correlations between the relevant jurisprudence. This framework, like each individual case, is subject to contextual contingencies that may add or remove appropriate issues.

### **COSAF**

**Step one:** Does the specific context surrounding each party align with *OLA* definitions?

- (i) Does the context of the plaintiff's presence on the premises align with the definition of a visitor under the *OLA*?
- (ii) Does the defendant meet the definition of an occupier provided by the *OLA*, thus qualifying as the appropriate party responsible for the premises in question?

**Step two:** If the answer to the questions in Step one is yes, in accordance with section 5 of the *OLA*, what was the standard of care to be met?

- (i) What aspects of the case's factual matrix contribute to establishing the required standard of care?
- (ii) What relevant CPTED conditions are necessary to ensure a common duty of care?

**Step three:** Was the duty of care breached?



***CBE Liability for Unsafe School Design: Assessing Judicial CPTED Precedent and Developing a Systematic Test for OLA Adjudication***

(i) Were there significant CPTED deficiencies on the premises at the time of the incident that compromised the duty of care owed to the plaintiff?

**Step four:** If yes, did the breached duty of care proximately cause or contribute to the injuries sustained by the plaintiff?

(i) ‘But for’ the defendant's breach of the duty of care, would the plaintiff have suffered the injuries alleged at all or to a less severe degree?

*V-4-c) CBE Implication and Application of COSAF*

Due to the dynamic environment of K-12 schools and the sensitivity and privacy concerns related to the utilization of surveillance and video cameras, the CBE has several policies restricting the implementation of risk and liability mitigation strategies. This thesis does not intend to determine the value of any policies but rather to identify areas of potential liability established by previous cases and develop methods to reduce the risk of future liability accusations.

Applying COSAF requires a specific case sample to address all the contextual variances for evaluation. However, suggestions for risk mitigation are identified by understanding the causes of liability in the relevant jurisprudence. In *McAllister v Calgary (City)*, liability is found because of a lack of personnel observing the video monitoring system sufficient for the foot traffic that night. Schools also have many people in one area; our findings show enrollment has been significantly increasing each year within CBE schools (Calgary Board of Education, 2023). Additionally, real-time monitoring by any person is prohibited by CBE policy (Calgary Board of Education, 2024a). Given the circumstances, a poor response time leading to an increase in the severity of damage done due to unobserved security monitors could result in liability for the CBE. ‘What ifs’ are an easy topic to get lost in, meaning imagined circumstances of potential

liability do not include all contextual details. Additionally, the necessity of experts to determine sufficient environmental conditions of premises, observed in *Moffit v TD Canada Trust*, makes it even more challenging to argue potential liabilities. However, given the liability found in cases like *McAllister v Calgary (City)*, it is not a stretch that a similar case could present itself to the CBE.

Further, the CBE prohibits the installation of VST equipment unless there is evidence of theft, violence, safety concerns, or security breaches (Calgary Board of Education, 2024a). Policies like these stress the importance of CPTED due diligence. Waiting for evidence of the above criteria is a reactive approach that does not reach the foreseeable harm standard depicted under the *OLA*. Liability may exist in an occupant's negligence in following specific protocols to ensure all foreseeable risks are identified. Not establishing foreseeable risk to visitors on-premises because a CPTED audit was not conducted to find evidence of 'safety concerns' could lead to a guilty negligent conviction. Given the heightened privacy standards associated with the CBE, due to the sensitivity of visitors' ages on the premises, the duty of care to ensure the safety and security of students is correspondingly increased. The findings of this paper demonstrate a need for required CPTED audits among all CBE schools for risk mitigation, identification of safety concerns, and the security of visitors on-premises.

## **V-5) Chapter Summary**

This chapter analyzed relevant jurisprudence regarding *OLA* cases utilizing CPTED principles within the decision rationale to develop a framework to assess the potential liability of the current CBE environment and security standards. The results formed COSAF, a legal framework for assessing and integrating *OLA* liability with CPTED principles. Specific liability risks among the current CBE security posture, coherent with relevant cases, were identified,

***CBE Liability for Unsafe School Design: Assessing Judicial CPTED Precedent and Developing a Systematic Test for OLA Adjudication***

demonstrating a need for CPTED audits among CBE schools to ensure risk mitigation and a common duty of care towards visitors. The contextual contingencies found among *OLA* cases involving CPTED principles were highlighted, proving the difficulty of identifying analogous cases and the need for a systematic framework like COSAF.

## **CHAPTER VI: DISCUSSION**

### **VI-1) Chapter Overview**

This thesis developed a systematic test called COSAF by analyzing precedents set through judicial decisions. Results demonstrated potential areas of liability the CBE could face through examining a correlation to circumstances similar to those of other occupants found in the relevant jurisprudence. Ultimately, it was determined the most effective means for reducing liability risk is through CPTED practice and audits. This chapter addresses the research question based on observations from our analysis and results. The relation to existing research and literature, evident in our findings, is discussed. Next, the implications and contributions of this thesis will be explored. This chapter will conclude with a brief summary.

### **VI-2) Addressing the Research Question**

As mentioned above, a systematic test was developed based on judicial precedent referred to as COSAF. This framework aids in adjudicating *OLA* case decisions by providing a step list for assessing liability through incorporating CPTED principles. With the progressive use of CPTED in judicial decision rationale, integrating CPTED with *OLA* legislation to be practiced in the same breath was necessary. Unique contextual contingencies found among the jurisprudence that held similar correlation to current CBE policy and security standards were identified. These suggested potential areas of liability consistent with *OLA* decisions with similar circumstances. Additional findings beyond the initial inquiry of the research question demonstrated the necessity of CPTED audits of CBE schools to ensure risk mitigation and safety of all visitors on campus. The CBE is in a unique position, ensuring a balance between student privacy and security. Navigating strict policy guidelines while ensuring the duty of care owed to

visitors, adhering to CPTED standards, and relying on proven effective principles are paramount for CBE liability reduction.

### **VI-3) Relation to Existing Research and Scholarship**

Due to the recent progression of CPTED reliance within court proceedings and the specific nature of the chosen topic, literature directly related to this thesis is scarce. The content analysis of this research paper focused mainly on case studies and judicial findings. Therefore, the results directly relate to the relevant jurisprudence utilized throughout this paper. However, contributions to improved school safety and liability reduction are in the relevant CPTED literature. Much of the current research regarding CPTED in schools provides different positive methods and benefits through its integration within educational environments. Additionally, researchers have presented significant evidence for the effectiveness of CPTED principles and the need for their incorporation. This research builds off previous research, providing a legal lens, highlighting both the necessity for visitor safety and the legal implications of inadequate implementation.

### **VI-4) Implications**

The findings integrate *OLA* legislation with CPTED practices, allowing for an improved comprehension of CPTED's contributions to *OLA* decisions. COSAF provides consistency through the adjudication process and a template to help inform future relevant case decisions. Understanding the judicial perspective and evaluation standards increases occupants' responsibility to uphold a reasonable common duty of care. This thesis provides insight into CBE safety standards, contributing to future security improvements and ultimately increasing the CBE schools' overall safety and legality. This research differs from previous literature, focusing on a

legal scope for CPTED adherence, making it a mandatory condition rather than a sufficient consideration.

## **VI-5) Chapter Summary**

This chapter facilitates a comprehensive discussion, reflecting on the research question related to the gathered results. It displays the contributions made through the development of COSAF and its significance within legal and preventative practice. The CBE's potential liability was uncovered, as were unanticipated results related to the urgent need for CPTED audits within schools. Utilizing a legal perspective, this thesis builds on prior CPTED and school safety research, demonstrating the legal aspects of CPTED enforcement. The implications and benefits for future relevant judicial decisions positively contribute to consistency throughout the adjudication process. Finally, this chapter argued the necessity of CPTED compliance among CBE schools to reduce potential *OLA* liability and ensure the well-being of their visitors.

## **CHAPTER VII: CONCLUSION**

### **VII-1) Chapter Overview**

This thesis examines the increasing application of CPTED principles in *OLA* judicial cases. The research question aimed to develop a systematic test based on relevant judicial cases employing CPTED practices in *OLA* adjudication and identify potential liabilities the CBE could face when assessed under these legal standards. By analyzing the legal application of CPTED principles in judicial decisions, this paper further demonstrates the applied benefits of CPTED within a legal context.

To answer the aforementioned questions, this thesis followed a content analysis approach within a relevant case study methodology, incorporating a contemporary framework into the research design. Gathered through this approach, this chapter will discuss the key findings and implications of the original research objective. Following a brief discussion regarding the recognized limitations/challenges and the mitigation strategies employed throughout this study, suggestions for potential future research leading to further advancements within this field will be made. Consistent with every chapter, a succinct summary will provide closure to the chapter and the thesis paper.

### **VII-2) Key Research Findings**

The most significant finding within this thesis was the development of COSAF to assist in adjudicating *OLA* cases involving CPTED principles. Identifying judicial precedent and progressing court decisions into a single systematic test provides a consistent decision-making framework grounded in previous court rulings. The jurisprudence informing COSAF contributes to the literature surrounding the advancement of CPTED principles by demonstrating the legal implications of preventative measures.

With a more comprehensive grasp of the judicial rationale surrounding CPTED consideration within an *OLA* context and the similarities in certain factual matrix circumstances, this paper's findings suggested possible areas of liability faced by the CBE. Ultimately, the significance of CPTED principles and the necessity of conducting audits were met through the evidence gathered in the relevant jurisprudence. Providing further legal context to the rapidly advancing CPTED theory.

### **VII-3) Limitations and Other Considerations**

Using content analysis for case study methodologies creates the potential for researcher bias. Cases that specifically support our COSAF design can be chosen to bolster its credibility and support our argument. The severity of this limitation is not as drastic as there are limited cases involving the specifics of CPTED integration within *OLA* decisions to choose from. Nevertheless, to mitigate selection bias, cases that differ in precedent seen between *McAllister v Calgary (City)* and *Moffitt v TD Canada Trust* were compared against each other. In actuality, this provided more profound insight into the topic, demonstrating the importance of contextual considerations, contributing to step two of COSAF. Additionally, precedent is used to create consistency among judicial decisions. Selecting cases that establish precedent in a newer legal context attempts to find the intention of the legal decisions to inform COSAF, rather than selecting cases for any preconceived hypothesis.

Further challenges found within this thesis's results demonstrate that COSAF is very contextual and potentially inaccessible. When working with CPTED principles, developing a 'one size fits all' systematic test is difficult. Every environment has its own unique physical design, requiring a new evaluation for every case. Additionally, outside considerations, like the increased foot traffic seen in *McAllister v Calgary (City)*, vary the expected duty of care depicted



in the *OLA*. The inaccessibility of regular COSAF practice rests with the current need for expert opinion. Due to CPTED's complicated nature (Ekblom, 2011), a court of law or an occupier assessing their environment will have a difficult time determining if the specific environment in question holds sufficient CPTED practices to meet the required common duty of care to visitors without the input of an expert perspective. However, by reflecting on court cases which display similar environmental circumstances, a general understanding may be formed through a direct comparison. That being said, it is necessary to highlight the importance of considering the factual matrix between every environment, which can drastically influence liability owed.

#### **VII-4) Suggested Future Research**

Today, CPTED requires an educated understanding to determine effectiveness and implementation. Although an occupant's intention may be to incorporate CPTED practice around their given environment, it proves difficult without the assistance of an informed practitioner. Future research providing a more succinct and generally applicable CPTED theory would prove beneficial for both court proceedings and preventive safety measures. Identified in the literature review, CPTED continues to become more widely understood and researched; following this trajectory, the general understanding of the theory will likely become more common.

The utilization of CPTED principles in cases shows another dimension that occupants like the CBE must consider and produce. Due to the sensitive nature of fostering children within premises, schools must adhere to several strict policies and education acts to maintain the legality of their operation. For these reasons, possible future research could address the conflicts these policies and acts have with CPTED safety standards and *OLA* legislation. It is a possibility that some of the guidelines the CBE must uphold are directly compromising their legislative duty of care.

**VII-5) Chapter Summary**

The conclusion of this thesis provides a comprehensive synthesis of the thesis objective and findings. An insight into the current state of CPTED research surrounding schools, relevant *OLA* legislation, and available precedent set by the jurisprudence was depicted in the literature review. This provided the thesis with a background or a starting point for which the research was built. A contemporary criminological theoretical framework was employed to adhere to the multi-dimensional nature of the chosen topic. Content analysis and case studies allowed for the appropriate data to be collected and effectively analyzed, forming the targeted research results. This structure allowed for identifying a synthesized systematic test, COSAF, to provide consistency to *OLA* adjudication and evaluate the security posture of the CBE. Ultimately, each chapter contributed to the objective set out by the research question: identifying a systematic test and assessing possible liability faced by the CBE.

With the advancement of understanding regarding CPTED principles and its implication within *OLA* case decisions, “the developing body of CPTED concepts has done much to establish the reasonableness of certain crime prevention approaches and, thus, the unreasonableness of property owners who fail to take widely accepted steps” (Gordon & Brill, 1996). Besides providing a comprehensive precedent-based test for assessing *OLA* decisions utilizing CPTED principles, this thesis demonstrates the necessity for occupiers to consider the environment of their own premises, ensuring the safety standard of a common duty of care to all visitors.

## REFERENCES

- Andresen, M. A. (2024). *Environmental criminology: evolution, theory, and practice* (Third edition). Routledge. <https://doi.org/10.4324/9781003377955>
- Balkin, J.M. (1993). Understanding Legal Understanding: The Legal Subject and the Problem of Legal Coherence. *The Yale Law Journal*, 103(1), 105-176. <https://doi.org/10.2307/797078>
- Bennett, L. (2011). Judges, child trespassers and occupiers' liability. *Journal of Property, Planning and Environmental Law*, 3(2), 126-. <https://doi.org/10.1108/17561451111148248>
- Calgary Board of Education. (2024a). *Administrative Regulation No. 1066 - Video Surveillance*. <https://www.cbe.ab.ca/GovernancePolicies/AR1066.pdf>
- Calgary Board of Education. (2003, May 13). *Administrative Regulation 8015 - Key Control*. <https://www.cbe.ab.ca/GovernancePolicies/AR8015.pdf>
- Calgary Board of Education (2024b, February 13). *Security*. <https://discoveringchoices.cbe.ab.ca/security>
- Calgary Board of Education. (2023, December 12). *2023-2024 School Enrolment Report*. <https://cbe.ab.ca/FormsManuals/School-Enrolment-Report-2023-2024.pdf>
- Cozens, P., Babb, C., Stefani, D. (2023). Exploring and developing crime prevention through environmental design (CPTED) audits: an iterative process. *Crime Prevention and Community Safety*, 25(1), 1-19. <https://doi.org/10.1057/s41300-022-00170-0>
- Cozens, P., Hillier, D., Prescott, G. (2001). Crime and the design of residential property – exploring the theoretical background: Part 1. *Property Management; Bradford*, 19(2), 136-164. <https://doi.org/10.1108/02637470110388235>
- Cozens, P. M., Saville, G., & Hillier, D. (2005). Crime prevention through environmental design (CPTED): a review and modern bibliography. *Property Management*, 23(5), 328–356. <https://doi.org/10.1108/02637470510631483>

***CBE Liability for Unsafe School Design: Assessing Judicial CPTED Precedent and Developing a Systematic Test for OLA Adjudication***

Cozens, P., & Sun, M. Y. (2019). Exploring crime prevention through environmental design (CPTED) and students' fear of crime at an Australian university campus using prospect and refuge theory. *Property Management*, 37(2), 287–306.

<https://doi.org/10.1108/PM-04-2018-0023>

Dembour, M-B., Turner, J., & Barrow, C. (2020). When are occupiers in breach of their duty of care? The advantages of a systematic test. *Legal Studies (Society of Legal Scholars)*, 40(1), 95–112.

<https://doi.org/10.1017/lst.2019.17>

Ekblom, P. (2011). Deconstructing CPTED... and Reconstructing it for Practice, Knowledge Management and Research. *European Journal on Criminal Policy and Research*. 17, 7-28.  
DOI: 10.1007/s10610-010-9132-9

Fisher, B. (1995). Crime and Fear on Campus. *The ANNALS of the American Academy of Political and Social Science*, 539(1), 85-101.

<https://doi.org/10.1177/0002716295539001007>

Gordon, C. L., & Brill, W. (1996). *The Expanding Role of Crime Prevention Through Environmental Design in Premises Liability*. U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

[https://books.google.ca/books?hl=en&lr=&id=pIraAAAAMAAJ&oi=fnd&pg=PA6&dq=Gordon,+C.+L.,+%26+Brill,+W.+\(1996\).+The+Expanding+Role+of+Crime+Prevention+Through+Environmental+Design+in+Premises+Liability,+U.S.+Department+of+Justice,+Office+of+Justice+Programs,+National+Institute+of+Justice.&ots=HyIINH6gR4&sig=XhwMXdylZgOwZr3zOh25dTIhOBM](https://books.google.ca/books?hl=en&lr=&id=pIraAAAAMAAJ&oi=fnd&pg=PA6&dq=Gordon,+C.+L.,+%26+Brill,+W.+(1996).+The+Expanding+Role+of+Crime+Prevention+Through+Environmental+Design+in+Premises+Liability,+U.S.+Department+of+Justice,+Office+of+Justice+Programs,+National+Institute+of+Justice.&ots=HyIINH6gR4&sig=XhwMXdylZgOwZr3zOh25dTIhOBM)

*Hunter et al. v. Southam, Inc.* [1984] 2 SCR 145.

Jacobs, J. (1961). *The Death and Life of Great American Cities*. New York: Random House.

Jeffery, C. R. (1971). Crime Prevention Through Environmental Design. *American Behavioural Scientist*, 14(4), 467-624. [https://doi.org/10.1177/000276427101400409open\\_in\\_new](https://doi.org/10.1177/000276427101400409open_in_new)

Lamoreaux, D., & Sulkowski, M. L. (2019). An alternative to fortified schools: Using crime prevention through environmental design (CPTED) to balance student safety and psychological well-being. *Psychology in the Schools*, 57(1), 152-165. <https://doi.org/10.1002/pits.22301>

Lee, S., Lee, C., Won Nam, J., Vernez Moudon, A., & Mendoza, J. A. (2023). Street environments and crime around low-income and minority schools: Adopting an environmental audit tool to assess crime prevention through environmental design (CPTED). *Landscape and Urban Planning*, 232, 104676-. <https://doi.org/10.1016/j.landurbplan.2022.104676>

*McAllister v Calgary (City)*, 2018 ABQB 480. <https://canlii.ca/t/hslfn>

*Moffitt v TD Canada Trust*, 2021 ONSC 6133. <https://zubco.com/wp-content/uploads/2024/02/Moffit-v.-TD-Reasons-for-Decision-Sept.-16-2021.pdf>

*Mustapha v Culligan of Canada Ltd*, 2008 SCC 27, [2008] 2 S.C.R. 114.

National Center for Injury Prevention and Control (U.S.). Division of Violence Prevention., & Carter & Carter Associates. (2017). *Crime Prevention Through Environmental Design (CPTED) School Assessment (CSA)*. Centers for Disease Control and Prevention. <https://stacks.cdc.gov/view/cdc/46282>

Newman, O. (1972). *Defensible Space; Crime Prevention Through Urban Design*. MacMillan.

*Occupiers Liability Act*, RSA 2000, c O-4. <https://canlii.ca/t/544dm>

*Occupiers Liability Act*, RSBC 1996, c 337. <https://canlii.ca/t/51vby>

*R v Chen*, 2010 O.J. No. 5741.

*R v Oakes*. [1986] 1 SCR 103.

- Shariati, A., & Guerette, R. T. (2020). The Forgotten (Practical Side of School Safety: What Do Clery Reports Say about CPTED and Crime on College Campuses?. *Planning, Practice, & Research*, 35(4), 396-417. <https://doi.org/10.1080/02697459.2020.1740417>
- Sohn, D.-W. (2016). Residential crimes and neighbourhood built environment: Assessing the effectiveness of crime prevention through environmental design (CPTED). *Cities*, 52, 86–93. <https://doi.org/10.1016/j.cities.2015.11.023>
- Tanaka v London Drugs Limited*, 2019 BCSC 1182. <https://canlii.ca/t/j1k9s>
- Vagi, K. J., Stevens, M. R., Simon, T. R., Basile, K. C., Carter, S. P., Carter, S. L. (2018). Crime Prevention Through Environmental Design (CPTED) Characteristics Associated With Violence and Safety in Middle Schools. *Journal of School Health*, 88(4), 296-305. <https://doi.org/10.1111/josh.12609>
- Walpole v Brush*, 2023 ONSC 4869. <https://canlii.ca/t/jzvfl>