

STOP THE GAME, We've Got to Wait for the Inspector!!

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A recent decision of the Divisional Court has potentially expanded the circumstances under which an employer might have to report a death or critical injury to the Ministry of Labour. On December 24, 2007, a guest at Blue Mountain Resorts, drowned in the hotel swimming pool. Blue Mountain did not report this event to the Ministry. Section 51 of the *Occupational Health and Safety Act* (the "OHSA") requires an employer to inform an OHSA inspector whenever a person is killed or critically injured from any cause at a workplace. In addition, the site of the death or critical injury is to be secured and remain that way until the site is inspected and permission is given by an Inspector to move anything. Critical injuries include those where an arm or leg is broken and cases where a person is unconscious, even for a brief period.

An OHSA inspector ruled that Blue Mountain had not reported an injury they were required to report. Blue Mountain appealed this decision to the Ontario Labour Relations Board (the "Board"). The Board upheld the ruling of the Inspector and went on to find the entire resort of some 750 acres was a workplace within the meaning of the OHSA. Blue Mountain brought an Application for Judicial Review before the Divisional Court arguing that this definition of a workplace was unworkable. Blue Mountain pointed out that broken arms and legs are an almost everyday occurrence at Blue Mountain Resort because of the inherent nature of the activities which take place there. Therefore, preserving an accident scene and reporting every broken leg or broken arm to the Ministry of Labour and waiting for the permission of an inspector to interfere with the site of the incident would create, not only a tremendous burden upon the Ministry, but also unduly interfere with the operation of the resort. The Divisional Court upheld the decision of the Board, but failed to realistically deal with the real concern raised by Blue Mountain with respect to what would happen in the event a guest at Blue Mountain fell and broke an arm while skiing.

The Divisional Court found that where a critical accident or death occurs in a situation where a worker could be subjected to a similar 'risk', the Ministry must be informed and the other provisions of the OHSA apply. The difficulty with this interpretation, especially in the context of a

ski resort, is that at least some employees of any ski resort actually ski as part of their regular duties. Most ski resorts employ instructors and ski patrollers who are obviously subject to some of the same risks as those of ordinary guests. This decision seems to imply that when anyone breaks a leg or arm or has another critical injury at any ski resort in Ontario, there is an obligation on that resort to inform the Ministry and to preserve the site of the accident. If this case stands, Ministry inspectors are going to be very busy during the next ski season.

But this decision could have an impact on more than just ski resorts! Any occupier of premises where the public are admitted is subject to the same requirements. For example, if an individual slips and falls and breaks an arm while shopping at a shopping centre, the shopping centre would be required to report the incident to the Ministry of Labour and to preserve the site until an inspector of the Ministry of Labour allowed them to do otherwise. The same problems could exist for other locations, such as golf courses, skating rinks, and other sports facilities. Taken to its extreme, this decision could mean, that whenever a player in a pro sport game suffers a critical injury, the Ministry of Labour must be called and the site preserved until the inspector gives permission for the site to be disturbed. One can imagine the chagrin which this could cause in the event a member of a professional team was injured during a game and the game had to be stopped until such time as an inspector from the Ministry of Labour arrived, inspected the scene, and then allowed the game to continue. If this case stands uncontested, all such incidents, could require the full panoply of notification, inspection and the other proscribed procedures under the OHSA.

Next year's hockey season may certainly be interesting!