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Employer's increased reporting requirements re Occupational Health and Safety Act

By Margaret R. Truesdale

A Divisional Court decision in April of 2011 has raised questions about an employer's responsibility to report to the Ministry of Labour when a guest, customer or visitor suffers a critical injury or death on the employer's workplace.

The facts of the case were that a guest died at Blue Mountain Resort by drowning in an unattended swimming pool. Blue Mountain did not report the death to a health and safety inspector, as they took the position that only injuries or death to workers were reportable pursuant to the Occupational Health and Safety Act (the "Act"). However, an Occupational Health and Safety inspector ordered Blue Mountain to report the death of the guest. Blue Mountain appealed this decision to the Ontario Labour Relations Board (the "Board").

There were two main controversies at the Board level. The first was whether section 51(1) of the Act required reporting of a critical injury or death of a person who was not a worker. The second was whether the guest pool at the resort was a "workplace".

With respect to the first issue, the Board found that the meaning of the term "person" in section 51 of the Act was meant to be broad and was not limited to workers. The Board reasoned that workers may be vulnerable to the same hazards that caused a critical injury or death to a customer or guest.

When considering the correct meaning of the term "workplace", the Board observed that Blue Mountain was a "fixed" workplace and that the area of the resort where Blue Mountain employees perform their work duties should be considered a "workplace", even if an employee was not physically present at the time an incident occurred.

At the Divisional Court, the only real issue was whether the definition of "workplace" should be interpreted as requiring the presence of a worker at the place where a critical injury or death occurred, in order to trigger the reporting requirements of the Act. The Court rejected the argument that a worker had to be present for a location to be considered a workplace, but held that not all 750 acres of property in which the employer had a proprietary interest met the statutory definition of a "workplace". The Court stated that the pool area was a workplace and that each case must be determined on its own particular facts, in order to establish the workplace of a particular employer.

The most specific and narrow principle that can be taken away from this case would be as follows: in a situation where there is a fixed workplace, an employer will have a duty to report a critical injury or death of any person which occurs in an area where one or more workers perform their duties, whether or not a worker was present at the time of the incident, if the hazard that caused the injury or death is a hazard that could also affect a worker.



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This case is quite controversial, as it is unclear whether this means that all employers must report a critical injury or death of any person which occurs in any location where the employer's workforce performs its duties. One big question is whether the reasoning in this case will only be applied to "fixed" workplaces, or whether it could be expanded to employers where employees perform their duties in numerous places. There may well be instances in which the places where workers perform their duties are not under the control of the employer. Furthermore, it is unclear whether reporting will only be required when the critical injury or death resulted from a hazard that could also affect employees.

It may take a number of reported cases before a coherent approach to these issues becomes apparent. At present, as noted by the Divisional Court, when determining the issue of a workplace, "each case must be determined on its own facts".

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