

FTR Now

Court of Appeal for Ontario Clarifies Obligation to Report Injuries to Non-Workers

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The recent [Blue Mountain Resorts](#) decision of the Court of Appeal for Ontario has clarified the circumstances in which employers are required to report a critical injury or fatality suffered by a non-worker under the *Occupational Health and Safety Act* (“OHSA”). This *FTR Now* reviews the decision and its implications for employers.

BACKGROUND

On December 7, 2007, a guest of Blue Mountain Resorts drowned in a swimming pool at the resort. Blue Mountain did not report the drowning to the Ministry of Labour because the incident did not involve a worker.

The Minister ordered Blue Mountain to report the fatality pursuant to subsection 51(1) of the OHSA. This section provides that if a person is killed or critically injured from any cause at a workplace, an employer must report the occurrence to the Ministry of Labour.

Blue Mountain appealed the order to the Ontario Labour Relations Board, which upheld the order. A judicial review application of the Board’s decision was dismissed by the Divisional Court. Blue Mountain then appealed to the Court of Appeal for Ontario.

The Court of Appeal held that the Board’s decision was unreasonable and would lead to absurd results. It determined that the reporting requirements of subsection 51(1) are engaged where:

- (a) A worker or non-worker (“any person”) is killed or critically injured;
- (b) The death or critical injury occurs at a place where (i) a worker is carrying out his or her employment duties at the time the incident occurs, or, (ii) a place where a worker might reasonably be expected to be carrying out such duties in the ordinary course of his or her work (“workplace”); and

- (c) There is some reasonable nexus between the hazard giving rise to the death or critical injury and a realistic risk to worker safety at the workplace (“from any cause”).

The Court concluded that the guest drowning in the Blue Mountain Resort swimming pool did not meet this criteria as there was no evidence that it was caused by any hazard that would affect the safety of a worker, whether present or passing through. As the Court stated “Sometimes a swimming pool is just a swimming pool.”

IMPLICATIONS FOR EMPLOYERS

The decision provides greater clarity to employers about when a fatality or a critical injury is reportable to the Ministry of Labour.

As we suggested in our May 30, 2011 [FTR Now](#), employers must undertake a consideration of the hazards which caused the fatality or critical injury and determine whether there is a reasonable nexus with worker safety.

For example, the death of a patient in a nursing home who drowns in a bathtub is not reportable. However, the death of a patient in a nursing home as a result of a slip and fall on a wet floor will be reportable since workers would be exposed to the same hazard.

For more information about this decision or your Health and Safety obligations, please contact [Robert W. Little](#) at 416.864.7332, [Scott G. Thompson](#) at 416.864.7283 or [your regular Hicks Morley lawyer](#).

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