

## ***MOL Cannot Automatically Shut Down Our Favourite Tourist Destinations***

Employers can breathe a small sigh of relief!

The Ontario Court of Appeal overturned an earlier ruling which held that all critical injuries and/or deaths that occur to non-workers in a workplace have to be reported to the Ministry of Labour.

By way of background, the case arose when a guest of Blue Mountain Resort Limited (“Resort”), a ski/spa resort in Ontario, drowned in the Resort’s unattended indoor swimming pool. The initial question was whether the Resort was required to report the death to the Ministry of Labour, pursuant to the *Occupational Health and Safety Act, 1990* (“Act”), on the basis that the person’s death took place at a “workplace”.

Both the Ministry of Labour and the Divisional Court had held that the Resort was under an obligation to report the death to the Ministry of Labour, thereby triggering an investigation and potentially costly and inconvenient consequences to the Resort’s business operations (e.g. they would have been shut down during the investigation).

Thankfully for employers, the Court of Appeal disagreed and overturned the decision holding that for the reporting obligation to be triggered there must be “*some reasonable nexus between the hazard giving rise to the death or critical injury and a realistic risk to worker safety at the site.*” In this case, the Court found that no such nexus existed. Interestingly, the Court went on to highlight the fact that reporting every critical injury or death of a non-worker would lead to “absurd results”. In particular, if the earlier decision were to stand, the reporting obligations of the Act (and subsequent shutdown for the Ministry of Labour investigation) would be triggered in almost any situation where a non-worker was injured or died. Imagine a spectator attending a hockey game, having a heart attack in the stands, and the game having to be stopped, the spectators told to leave and the arena shut down! That would be absurd!

Even though the Court of Appeal limited the scope of the reporting requirement, employers should still be mindful that the Act (and this recent decision) does not restrict reporting requirements to workers only. The reporting requirements will still apply to workers and non-workers alike provided that the following two part test is met:

- a. The incident occurs at a location that can properly be described as a workplace; and
- b. There is a reasonable nexus between the hazard that caused a critical injury and the realistic risk to worker safety where the incident took place.

Please contact e2r Solutions® should you require assistance understanding your reporting obligations or any of your other obligations under health and safety legislation.

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