

# OHS E-BULLETIN

CURRENT OCCUPATIONAL HEALTH AND SAFETY ISSUES

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## SAFETY WITHOUT BORDERS? LET'S HOPE NOT.



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Since becoming critically relevant to Alberta workers and employers since about 2006, the Alberta Occupational Health and Safety legislation continues to present interesting twists and turns for all concerned. One issue that seems to be foremost on the minds of those of us obsessed with OHS, here and in other Canadian jurisdictions, is a question that one would have thought would be quite rudimentary: when do the reporting requirements under OHS legislation apply? As recent case law from across the country demonstrates, this seemingly straightforward issue is not clear.

It was early last year when the horrific tale of the little girl who was fatally struck by debris falling from a downtown Calgary hotel (*R. v. Grenville Germain Calgary Ltd.*) returned to the public's attention. At the time of the sentencing, there was considerable public outrage that the fine amounted to \$15,000.00, the maximum pursuant to the *Safety Code Act*. The anger seemed directed at the low amount and the fact that the event did not attract a charge under the *Occupational Health and Safety Act*, which notoriously has a maximum fine of \$500,000.00 for a first offence. This incident placed the issue of a non-worker being injured in

what appeared to be a workplace accident in a most upsetting way on the Alberta public conscience.

The uproar caused by this unfortunate accident puts the question of OHS reporting obligations in Alberta on a map dotted with cases from other jurisdictions. At the beginning of February 2003, an OHS tribunal upheld the decision of a federal safety officer who cited the Royal Bank of Canada for failing to report a worker's death within 24 hours, pursuant to Part II of the Canada Labour Code. There, a bank manager appeared to have died of a heart attack. Assuming that he had died of natural causes, the bank did not report the fatality within the legislated 24 hours, and instead reported it seven days later. The federal OHS tribunal concluded that the bank manager's death had occurred at a workplace while he was at work, thereby triggering the reporting requirements (re Royal Bank of Canada [2012] OHSTC 5, February 3, 2012).

A similar jurisdictional issue has just been heard by the Ontario Court of Appeal. In the Blue Mountain Resorts Ltd. case, the company was charged with failing to report after a guest had drowned in an unsupervised swimming pool. Much

like the Royal Bank, Blue Mountain did not report the death as it assumed that the OHS reporting obligations did not apply to a non-worker in circumstances that it considered to have been outside of work and thus not at a workplace. Two levels of decision makers (the Ontario Labour Review Board and the Ontario Court of Justice) disagreed, determining that the reporting obligation was triggered where a hazard existed, finding that workers and guests are vulnerable to the same hazards. The matter was argued before Ontario's highest court on March 14; stay tuned to Field Law to learn the outcome.

Interestingly, Section 51 of the Ontario *Occupational Health and Safety Act* reads, "Where a person is killed...from any cause at a workplace...the employer shall notify an inspector...". The Alberta version, Section 18 of our *OHS Act*, states as follows "If an injury or accident...occurs at a worksite... employer...shall notify...". While the Ontario Court of Appeal must no doubt focus on the language of Section 51 and the meaning of "a person" for the purposes of that provision, it awaits to be seen how Alberta's focus on the incident as opposed to the victim ("If an injury or accident") will be determined should the right case arise. Notably, the above-referenced Section 18 refers specifically to an injury or accident described in subsection (2); subsection (2) refers to an injury or accident resulting in death, or "a worker's being admitted to a hospital for not more than 2 days". While an argument may theoretically lie in the general reference to death (as opposed to a worker's death), the trigger of a hospital stay clearly is worker-based. Does this mean one must report all deaths at a worksite but only worker injuries of 2+ days but not similar non-worker injuries? Perhaps.

Given the overall focus of the Alberta OHS legislation on safety of workers, as opposed to the general public, one would hope that Alberta judges, if faced with this question,

come to what is in our respectful view the right answer: employers already have much to do to look after the health and safety of workers; it would be a giant leap backwards if they had to also protect the world. ▲

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Workwise is a commentary on current legal issues in the employment and labour area and should not be interpreted as providing legal advice. Consult your legal advisor before acting on any of the information contained in it. Questions, comments, suggestions and address updates are most appreciated and should be directed to:

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