



# ***BLUE MOUNTAIN v. MINISTRY OF LABOUR***

by John A. Olah  
Beard Winter LLP

Ontario Association of Police Chiefs  
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# ***Background***

- *There were 2 field visits to Blue Mountain by the MOL inspector, May 2007 and March 2008*
- *In the 1<sup>st</sup> visit ordered the production of documents relating to **all ski area accidents involving patrons** from December 2006 i.e. 6 months*
- *2<sup>nd</sup> visit related to **a drowning death** that occurred in an **unsupervised pool** on December 24, 2007*

# ***Background***

- ***Blue Mountain appealed the orders to the Ontario Labour Relations Board (OLRB)***
- ***There were 2 main grounds of attack:***
  - ***The documents sought were subject to solicitor and client privilege***
  - ***The order with respect to reporting client critical injuries and deaths was beyond the jurisdiction of the OLRB in that s.51(1) of the Occupational Health and Safety Act (OHSA) only applied to workers and workplaces and not to customers***

# ***Background***

- *The case was heard over several days*
- *The OLRB reserved and released its reasons on March 23, 2009*
- *It **quashed the orders** relating to the production of documents and **accepted** our argument that the documents were subject to privilege*

# ***Background***

- ***However, the OLRB accepted the Ministry's argument that critical injuries to customers had to be reported***
- ***This decision is now before on the Divisional Court of Ontario on a judicial review***

# *The Ontario Labour Relations Board's Decision*

➤ *The decision focused on section 51(1) of the OHSA:*

*(1) Where a person is killed or critically injured from any cause **at a workplace**, the constructor, if any, and the **employer shall notify an inspector**, and the committee, health and safety representative and trade union, if any, **immediately of the occurrence by telephone, telegram or other direct means** and the employer shall, **within forty-eight hours after the occurrence, send to a Director a written report of the circumstances of the occurrence** containing such information and particulars as the regulations prescribe.*

# *The Ontario Labour Relations Board's Decision*

- *The OLRB decided that because the section referred to a “person” rather than a worker, that the section **caught all persons, whether workers or customers on a work site***

# *The Ontario Labour Relations Board's Decision*

- *The Board then determined that all of Blue Mountain's 750 acres, including its ski hills, condominiums and stores constituted a workplace*
- *The pool was an unsupervised pool*
- *There was **no evidence** whether or when Blue Mountain employees would be in the area but the Board **speculated that the pool had to be serviced by its employees***

# *Potential Impact on Ontario Police Services*

- *The MOL took the position that all highways, because the OPP patrol them, constitute a workplace*
- *Therefore all critical injuries and deaths have to be reported*
- *This reasoning will apply to municipal police forces*

# *Impact on Blue Mountain*

- *Blue Mountain has 715,000 visits annually*
- *On an average Saturday in February 16,000 visitors will attend*
- *There are 1.5 incidents per 1,000 visits, well below the industry average*
- *This could mean 24 critical injuries and could result in 24 of 36 ski runs being shut down*

# *Potential Impact on Ontario Police Services*

- *To complicate matters even further, have to consider the provisions of s.51(2):*

## *Preservation of Wreckage*

*(2) Where a person is killed or is critically injured at a workplace, no person shall, except for the purpose of,*

*(a) saving life or relieving human suffering;*

*(b) maintaining an essential public utility service or a public transportation system; or*

*(c) preventing unnecessary damage to equipment or other property, interfere with, disturb, destroy, alter or carry away any wreckage, article or thing at the scene of or connected with the occurrence until permission so to do has been given by an inspector. (emphasis added)*

# *Potential Impact on Ontario Police Services*

- *Does this section mean that an officer cannot have damaged cars removed from the 401 until permission is given by the MOL?*
- *Does this mean that EMS cannot carry away the victim until the scene is released by an inspector?*
- *What kind of potential chaos will this cause to our roads and highways?*

# *Potential Impact on Ontario Police Services*

- *This provision will apply every time a police officer has contact with an incident in which there is a critical injury or death:*
  - *Arrests where force is used*
  - *Shooting incidents*
  - *Subduing prisoners who are unruly*
  - *If the force has a marine unit, then all boating accidents and swimming accidents*

# *Impact on Other Agencies*

- *Other emergency personnel e.g. fire fighters, EMS staff*
- *Jurisdictional issues e.g. Coroner's Office, Special Investigations Unit*
- *Municipalities, as they patrol roads and sidewalks*
- *Transit systems, e.g. Toronto Transit Commission*

# *Impact on Other Service Providers*

- *Hospitals now have to report critical injuries? e.g. Emergency Departments*
- *Recreational facilities e.g. Air Canada Centre, Ivor Wynn Stadium, the Rogers Centre now have to report injuries to players and stop games until investigated by the Ministry of Labour?*
- *Local church, if a parishioner has a stroke or heart attack, have to stop the service until the Ministry releases the scene?*

# *Impact on Other Service Providers*

- *The Ministry of Labour becomes if not the lead agency then at least a reporting agency in the case of every serious injury in the Province*

# *Impact on Other Service Providers*

- *Local movie house or theatre?*
- *Your favourite restaurant*
- *Under this definition **virtually the whole province**, including the Legislature, becomes a work place and subject to the Ministry reporting*

# ***Conclusion***

- *Hopefully the Divisional Court **will bring some sense to this situation***
- *Some of the agencies who will be affected by this decision **may want to seek standing to correct the situation***

