

The Ontario Recreation Facilities Association is frequently contacted by our membership for guidance on how Section 51 of the Occupational Health and Safety Act (OHSA) should be interpreted and applied in a recreation environment. The ORFA is not an authority on such matters and therefore refers members to the Ministry of Labour for inquiries of this nature. It must also be noted that not one interpretation can be applicable to every critical injury situation. The following information is shared as general guidance on the topic to assist internal discussions, and for the review and ultimate creation of policy and procedure for Critical Injury Reporting this obligation. As always, the ORFA encourages members to seek specific guidance, expertise and direction from the most appropriate internal and external authorities.

Background

The recent decision by the Ontario Labour Board in Blue Mountain Resorts Ltd. in failing to uphold their requirements of reporting the death of a skier at their facilities in 2008 to the Ministry of Labour (MOL) has resulted in a fine as well as significant shift toward an owners understanding of their reporting obligations when the general public is involved.

Notice of death or injury (OHSA)

51. (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 ORFA contacted MOL offices and received some basic guidance on why the reporting of non-workers injuries is an important part of the OHSA. MOL representatives clarified that “*the purpose of the notification requirement is to enable the Ministry of Labour and other workplace parties to become aware of hazards in the workplace that could present a risk to the health and safety of*

workers, thereby allowing workplace parties to work proactively to prevent similar worker injuries”.

What is a critical injury? O. Reg. 834/90 defines a critical injury as life threatening events that result in a loss of consciousness, substantial loss of blood, a fractured leg or arm, loss of leg, arm, hand or foot, burns to the majority of a human body and loss of vision. The reader must appreciate that each of these injuries may be open for interpretation. Determining if a situation meets the reporting requirements will require an internal review by competent persons. The general guiding philosophy in each workplace should be embraced as “**when in doubt – report**”.

As described in Section 51 (1) of the OHSA, the employer is to provide notification **immediately** and within 48 hours in writing “where a person is killed or critically injured from any cause at a workplace”. The term immediately is not defined. However, it is strongly recommend that the scene be secured until the report is filed and guidance given by the MOL to when the area may be reopened.

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. R.S.O. 1990, c. O.1, s.51

Acceptable forms of reporting to the MOL include email, fax or telephone. The ORFA has been unable to secure any direction of what content or in what layout format the report should be submitted – there is no known actual reporting form to be used at the time of printing of these guidelines.

Other Governing Agencies That Require Consideration

Recreation has a variety of legislative obligations. Members are reminded that they must seek out applicable legislative compliance requirements

specific to their operations. The ORFA offers the following examples for review.

TSSA - Operating Engineer Regulation - Reporting of accidents in a plant room

In an arena environment injuries or death in a refrigeration plant room is governed under the Operating Engineer Regulation which states:

47. The user shall notify the chief officer, by telephone or other direct means, as soon as is practicable of any accident, injury or death, but no more than eight hours after the accident, injury or death, as the case may be, and shall within 48 hours after the accident, injury or death, send the chief officer a written report of the occurrence where,

- (a) a person is seriously injured or killed from any cause; or
- (b) an accident occurs involving property damage.

O. Reg. 219/01, s. 47.

TSSA - Amusement Devices Act

In the aquatic industry injuries or death involving a waterslide or in the park where such an injury occurs at a carousel or other such device the incidents will be governed under the Amusement Devices Act which states:

Notification of accident, etc.

17. (1) If an accident or an incident occurs in connection with an amusement device that results in the death of or serious injury to any person, the licensee responsible for the device shall immediately notify the Director of the accident or incident. R.S.O. 1990, c. A.20, s. 17 (1).

Idem

(2) Every licensee responsible for an amusement device that is involved in an accident or in any incident indicating that the device is potentially dangerous shall notify the Director, by telephone, within twenty-four hours after the accident or incident and shall submit to the Director, within seven days after the accident or incident, a written report setting out the particulars of the accident or incident. R.S.O. 1990, c. A.20, s. 17 (2).

Disturbing evidence

(3) No person, except for the purpose of rescuing a person injured in the accident, shall interfere with an amusement device involved in the death or

serious injury of a person or disturb, destroy, carry away or alter any wreckage, article or thing at the scene of or connected with the accident without permission of an inspector. R.S.O. 1990, c. A.20, s. 17 (3).

Ministry of Environment (MOE) – if an incident involves a noxious gas leak the MOE should be advised. MOE offices are open 24-hours, 365-days per year. Call 1-800-268-6060. If a concentrated ammonia leak or spill occurs, you should call 911 immediately to report it. You may also consider contacting the Poison Control Centre at: 1-800-268-9017.

Alcohol and Gaming Commission of Ontario – if an incident occurs at a licensed event or involves the illegal consumption of alcohol the AGCO may need to be given consideration for reporting.

As each governing agency functions independently it is important to note that it is the “owners” responsibility to report such events to the appropriate governing authorities.

General Reporting Guidelines

Recreation facility management should expect that MOL inspectors will enforce **Section 51(1)** in those situations where:

- a) Workers were critically or fatally injured, and;
- b) The hazard that led to the incident involving the non-worker presents an ongoing risk to the health and safety of workers at that workplace.

Building on the general reporting guidelines of *“the purpose of the notification of non-worker critical injuries” is to enable the Ministry of Labour and other workplace parties to become aware of hazards in the workplace that could present a risk to the health and safety of workers, thereby allowing workplace parties to work proactively to prevent similar worker injuries”* makes the reporting requirements complicated.. The ORFA strongly recommends that a specific policy be created that clearly defines the reporting process. Procedures that direct the process must include information that guides frontline staff on the handling of such events. Included in the procedure should be a list of contacts. This may include facility management, human resource professionals, JHSC members,

health and safety officer, CAO or other appropriate senior staff. Contacting the Ministry of Labour should never be left with junior staff unless stated in the operational policy.

The following is a shortlist of examples provided to stimulate your internal discussions on the types of events that may or may not need to be reported. They should not be used as a failsafe directive for each situation.

Examples of situations that **may have to be reported** when a non-worker is involved might include:

- A patron who falls from a scaffold which is left erected and unsecured in a recreation facility
- A person who is injured when a cemetery head stone falls over while visiting such an area
- A person who gains access to ice resurfacing equipment and injures them self
- A patron who slips and falls on an icy area breaking a leg entering a recreation facility
- A patron is injured or killed from falling snow and ice from a facility roof
- A patron who slips on a pool deck or in a washroom area critically injuring them self

Examples of situations in which it **may not be expected to report** fatal or critical injuries to non worker could include:

- A hockey player who is injured from body contact with another player as part of regular play
- A ball player who is injured by a line drive

Both of these types of events may be considered assumed risk of participation.

- Note: a patron sitting on the bench in a public area that is hit by a stray ball or puck may need to be reported as workers may find themselves in the same area while conducting tasks at the facility

The ORFA also advises that events involving injuries to non-workers may need to be reported to the operation's insurance carrier. Reporting to the MOL may have plaintiffs accessing these same reports as part of a civil action. While failing to

report such events may not only be a concern to the governing agencies it may also be used as part of a court proceeding. Members should be educated on report writing to ensure disclosure of potentially incriminating information is not released or that contradicting information on the same incident does not occur.

Conclusion

The obligation under the OHSA to report has not changed or been revised it has been merely amplified to reflect the changing attitudes toward workplace safety. Recreation environments, unlike a factory floor are more diverse requiring management to be more diligent in their responsibilities to ensure compliance. A MOL investigation may be time consuming and involve the preservation of an incident scene for an indefinite period. Be clear, such areas are the equivalent of a crime scene in another public location seen on the news surrounded by yellow police tape – making the right decision is not only a moral responsibility to those involved, but possibly a decision that could impact your employer legally and you personally.

Other Resources

Reporting Obligations Expanded: Labour Board Rules that Employer Must Report Critical Injuries to Non-Workers
<http://www.sbhlawyers.com/uploads/OH&S%20Apr%202009%20Reporting%20Obligations%20Expanded%20ver%20nws.pdf>

Amusement Devices Act
http://www.e-laws.gov.on.ca/html/repealedstatutes/english/elaws_rep_statutes_90a20_e.htm

Technical Standards Safety Authority: Operating Engineers
<http://www.tssa.org/regulated/operating/default.asp>

Operating Engineers Website
<http://www.operatingengineer.ca/main/default.asp>

Red Cross Operational Best Practices Document
http://www.orfa.com/pdf/resource/LG_CRC_Operational%20Best%20Practices_en.pdf

Other Training Opportunities

- ORFA Legal Awareness Course
- Red Cross Aquatic Management Course

For details on these opportunities visit <http://www.orfa.com/pdevents>

Sample Protocol for MOL Reporting of Public Critical Injuries: Town of Halton-Hills

1. Member of the public becomes critically injured.
2. If we are made aware (because sometimes we aren't unless they intend file a claim) ensure 1st aid and/or EMS is initiated.
3. Have the appropriate staff member investigate the incident/scene immediately.
4. Call the MOL office number on the Emergency Contact List to report injuries that meet the definition of "critical".
5. Only Managers will be taking these "critical/fatality" reporting calls at the MOL office. You will be asked a series of questions - answer as accurately as you can.
6. If you know the injury is critical - say so. If you are not sure - say so. If the injured person refused to give you their name or advise where they were going for medical treatment - say so. Members of the public are not required to provide us (as Employers) with their personal information. We cannot force this information from them and are prohibited from detaining a member of the public, insisting on medical aid, etc.
7. The MOL Manager will then decide if you need to secure the scene, etc. and will advise you whether or not an inspector will be dispatched. They will all have different interpretations and answers/direction/etc.
8. The MOL Critical Injury Report letter will be sent to the MOL office within 48 hours as a follow-up to the initial phone call to their office.

Our inspector advised that generally unless "equipment or machinery" is directly involved in the critical injury, there will not likely be a need to secure the scene or shut down services, beyond the normal time it would take you to investigate the occurrence. You do inspect public injuries as soon as you are made aware of them, right?

Example #1:

Member of Public trips over his own feet in your parking lot, falls and fractures/breaks his arm, there are no pot holes, etc. that may have caused the fall (because you have investigated this). You call the MOL office to report the critical injury – MOL will likely not investigate.

Example #2:

Member of Public walks behind a CH fleet vehicle that is backing up, is hit and sustains a broken leg. You call the MOL office to report the critical injury – MOL will investigate.

Other Sample Policies:

City of Hamilton -

http://www.orfa.com/pdf/resource/documents/CriticalIncidentInvestigationReporting_CityofHamilton.pdf

City of Vaughan -

http://www.orfa.com/pdf/resource/documents/CriticalInjuryInvestigationReporting_CityofVaughan.pdf

City of Oshawa -

<http://www.orfa.com/pdf/resource/documents/AccidentReportingChart-CityofOshawa.pdf>

Blue Mountain Resort -

<http://www.orfa.com/pdf/resource/documents/ReportingCriticalInjuries-BlueMountainResorts.pdf>

City of Kitchener -

<http://www.orfa.com/pdf/resource/documents/ReportingCriticalInjuries-Kitchener.pdf>

TSSA –

Incident Reporting Guideline (for Passenger Ropeway Devices)

<http://www.tssa.org/Corplibrary/ArticleFile.asp?Instance=136&D=300A5E7E3A5D4B7583A0BABE07CAD4AF>

Incident Reporting Guideline (for Elevating Devices)

<http://www.tssa.org/Corplibrary/ArticleFile.asp?Instance=136&D=AD5EDD8123434CBB9B7C02732C4B285A>

Incident Reporting Guideline (for Amusement Devices)

<http://www.tssa.org/Corplibrary/ArticleFile.asp?Instance=136&D=B162474F8DF24DA69E2AF555676F094C>

Other Sources used for this document include

Boglaw Bulletin – May 2009

2009-2010 - ORFA Arena Technical Advisory Committee, Aquatics Technical Advisory Committee, ORFA Refrigeration Technical Advisory Committee

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