Ministry of Labour Potentially Liable for Negligent Safety Inspections

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From time to time judges comment and decide on matters affecting employment law in the context of cases which at first blush have nothing to do with employment. One recent judicial decision in a claim arising from the tragedy at Elliot Lake should be noted by employers as it may have an impact on how workplace health and safety inspections and investigations are conducted in the future.

Quinte v Eastwood Mall is a class-action proceeding arising out of the collapse of the Algo Centre Mall in June 2012. The decision covers a variety of preliminary matters and challenges to the case as pleaded by the representative plaintiffs, who were two owners of a business in the mall, one of whom was injured in the collapse.

This judgment was not a final judgment, and did not actually determine whether the plaintiffs' claim against any of the myriad of defendants was valid. Nonetheless, the judge's commentary and decision is relevant to all employers with responsibilities under the occupational health and safety and worker's compensation regimes.

In particular, the Court dismissed a motion by the Ontario Ministry of Labour to have the case against it dropped. Additionally, the Court held that persons with Employment Standards Act and workers' compensation claims could continue to participate in the lawsuit.

The Case Against the Ministry of Labour

The plaintiffs argued that Occupational Health and Safety Inspectors working for the Ministry had, over a period of thirty years, ignored and failed to respond properly to the hazards which eventually led to the collapse. They argued that the inspectors had a responsibility to either mandate that the hazards be fixed, or report them to other regulatory bodies. The Ministry argued that the law does not allow individuals to sue the government for the consequences of not effectively enforcing workplace safety laws.

The Court categorically rejected the Ministry's argument. It held that there was

a great deal of precedent for the proposition that a negligent inspection by a government employee could result in the Ministry being held liable civilly. Interestingly, the Court also determined that actual identification by an Inspector of a serious and specific danger is not required in order to hold the Ministry liable.

It is interesting to compare this decision with criminal cases in which defendants who have been found not guilty have attempted to pursue cases against Crown Prosecutors. The Courts have repeatedly held that a Crown Prosecutor cannot be sued for their actions in a criminal case, unless it can be proven that the Prosecutor acted maliciously.

As a practical matter, it is extremely difficult to prove that a Prosecutor acted with malice and thus such cases are rarely successful. It is difficult to understand why there appears to be a lower threshold for bring a lawsuit in the context of an investigation/inspection phase of a matter.

It is important to appreciate that the Court did not render a final decision as to whether the claims had any merit. It simply held that there was at least the possibility of success and that the claims should proceed to trial. However, the Court clearly stated that the Ministry can be sued by private individuals for the consequences of negligent inspections. The Court's ruling means that the trial of the matter will focus on the merits of the question of whether negligence by the Ministry in conducting health and safety inspections played a role in the collapse of the mall.

This decision will likely have significant consequences for workers, employers and the Ministry. Under WSIA, workers are barred from suing their own employer (and most other employers) for negligence arising out of a workplace accident. However, since the Ministry (like most public sector employers) is a 'Schedule 2' employer under the WSIA, most private sector employees are not impeded by the WSIA from pursuing a claim for negligence.

Assuming that this decision is not overturned by a higher Court, we anticipate that the pre-accident inspection activity by the Ministry will be subject to significant scrutiny from counsel for injured workers and that the Ministry may find itself as the defendant in any number of personal injury cases in the future.

As a practical matter, this means that the Ministry Inspectors will not only have to consider the public interest when conducting inspections, but also potential liability to individual workers and other parties who may suffer a future accident which could have been prevented by a more rigorous inspection. The Ministry will likely have to consider potential civil liability when instructing Inspectors on how to conduct enforcement action. This may result in more aggressive enforcement activity by the Ministry.

It remains to be seen what level of negligence an injured worker (or any other party) will have to establish in order for the Ministry to be held liable. It is our view that that workers bringing such cases will have to prove that the Ministry failed to take enforcement action with respect to obvious serious safety hazards (i.e. ignoring blatant machine guarding violations) or failed to take appropriate action to follow-up on compliance orders issued with respect to serious safety violations.

Double Recovery Objection to WSIB Claimants

In a class proceeding, a class is essentially a group of people with some defined similar characteristics who are all represented by one plaintiff. Traditionally, defendants try to reduce the potential size of the class by pleading that more characteristics in common are required in order to participate. The Ministry argued that persons with claims also proceeding under WSIA should be prohibited from joining this lawsuit.

The Court did not accept the Ministry's argument. The Court pointed out that that individuals who are pursuing WSIB claims may have entitlements which are not subject to the statutory bar under WSIA.

Further, in certain circumstances, the WSIB itself has the right to pursue civil remedies in the name of injured workers and it ought to be allowed to pursue such actions through the class action process if wishes to do so. The Court pointed out that WSIB issues and other circumstances applicable to specific claimants could be addressed by an individual assessment of damages.

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