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BC Supreme Court Rules on Definition of Employer

A decision by the BC Supreme Court is relevant to the definition of who is considered to be an employer. The court case arises as a judicial review of a WorkSafeBC Review Board decision. (2008 BCSC 841; Date: 20080718; Docket: S-075162; Registry: Vancouver)

The full decision is enclosed. Note that WorkSafeBC has indicated that they will appeal.

The Review Board officer had found that Petro Canada was responsible for ensuring the health and safety of the workers employed at two service stations.

On May 8, 2006, a worker at the Scott Road Service Station was struck by a vehicle during a “gas and dash” incident (the “Scott Road Service Station Incident”). In February 2005, a worker at the Langley Service Station was held at knife point during a robbery (the “Langley Service Station Incident”).

WorkSafeBC issued an inspection report for each incident and wrote orders on Petro Canada.

The Honourable Mr. Justice Melnick of the Supreme Court concluded that the primary issue was “the scope of the definition of ‘employer’ under Part 3 of the Act.” (The Workers’ Compensation Act.)

The WorkSafeBC Review Officer had concluded that “the Act has a flexible and expansive concept of “employer” for the purposes of occupational health and safety.” The Review Officer also made these comments:

“I have found that Part 3 of the Act contains an expansive decision of “employer”. It appears that that this part of the Act is primarily concerned with parties who undertake or exert a degree of control and influence in matters of workplace safety. On the basis of the evidence in this case, I am satisfied that this employer may be considered as “an employer” with respect to the service stations, for the purposes of Part 3 of the Act.”

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“In my view, given the expansive interpretation of “employer” allowed under Part 3 of the Act, I am satisfied that a party in this particular employer’s situation could potentially be obligated to perform a risk assessment in accordance with section 4.28 of the Regulation. The extent of this obligation will depend upon the degree of influence and control wielded by the employer and its ability to effect change in the form of policies, procedures and possible modifications of the work environment.”

.....

“In my view, when all of the facts of this case are considered together, it is clear that the employer has undertaken to oversee health and safety matters for all of its service stations. It is to be lauded for this. However, having undertaken this responsibility, and in light its significant influence in the workplace (which justifies it being deemed an “employer” for the purposes of section 115 of the Act), this employer cannot now suggest that it has no responsibilities in this area. ...”

The Supreme Court disagreed with these conclusions. The Court ruled”

“The Review Officer’s interpretation of the scope of “employer” within the meaning of Part 3 is, in my view, evidently not in accordance with reason. His interpretation that an “employer” should essentially encompass anyone with the ability to affect the occupational health and safety of a worker ignores the plain meaning of the definitions set out in s. 106 and the subsequent sections within Part 3, which allocate responsibility for health

and safety among a variety of parties. There is simply no convincing rationale for the notion that the definition of “employer” in Part 3 should be given the scope as set out by the Review Officer. Overall, I find that the Review Officer’s interpretation of the scope of “employer” under Part 3 clearly does not follow the plain and ordinary meaning in the Act.”

.....

“It should also be noted that the Act and the regulations under Part I do not contain any provision deeming a franchisor, lessor, licensor, landlord, or fuel producer as being a deemed “employer” of a franchisee, lessee, licensee, tenant, or retailer’s employees. Nor does Part I state that a WCB Review Officer has the authority to deem just anyone to be an “employer” under Part 1.”

The Supreme Court then set aside the WorkSafeBC Review Officer’s decision.