

Court of appeal decides WSIB fraud requires wilful act

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The Workplace Safety and Insurance Board (WSIB) must prove that a worker intended to obtain WSIB benefits to which they were not entitled when it charges a worker with "wilfully failing to inform the Board of a material change", the Ontario Court of Appeal has decided.

The WSIB recently prosecuted three workers who were receiving WSIB benefits for failing to report a material change with respect to their entitlement to WSIB benefits. (1) The WSIB argued that it was not required to prove that the workers intended to defraud the WSIB. The court disagreed. It held that to obtain a conviction for failing to report a material change, the prosecutor must prove something akin to tax evasion or fraud. The court said that the WSIB must prove that the accused:

- knew that a material change in their health, income, employment status or other circumstance had occurred – 'material change' is a change that could affect their entitlement to benefits that are paid by the WSIB;
- intended not to inform the WSIB of that change;
- intended by failure to inform, to receive benefits to which they were not entitled; or
- foresaw that failure to inform was certain to result in the receipt of benefits to which they were not entitled.

With respect to one of the three workers, whose first language was not English and who may not have understood his obligations, the court held that the prosecutor had not proven the necessary intent. As such, this charge was dismissed.

The other two workers, who were found guilty at trial, were awarded a new trial as the trial justice's decision did not contain sufficient detail to permit the court to determine whether the workers had the necessary intent to receive WSIB benefits to which they were not entitled.

The decision is a setback for the WSIB in prosecuting workers for WSIB fraud, as it will often be difficult for the WSIB to prove that a worker intended not to inform the WSIB of a material change and intended to receive benefits to which they were not entitled. (2)

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Endnotes

(1) *Workplace Safety and Insurance Board v Curtis*, (2018 ONCA 441) (CanLII).

(2) For more information please see www.occupationalhealthandsafetylaw.com.

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