CITATION: Ontario (Labour) v. United Independent Operators Limited, 2011 ONCA 33
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COURT OF APPEAL FOR ONTARIO

Doherty, Feldman and Gillese JJ.A.

BETWEEN

Her Majesty the Queen in Right of Ontario (Ministry of Labour)

Appellant

and

United Independent Operators Limited

Respondent

Grainne McGrath, for the appellant

Karen Fields, for the respondent

Heard: November 4, 2010

On appeal from the judgment of Justice Peter Tetley of the Ontario Court of Justice, dated October 2, 2009, dismissing the appeal from the acquittal entered on November 8, 2007 by Justice of the Peace James E. Oates of the Ontario Court of Justice.

Gillese J.A.:

[1] This appeal requires the court to consider, for the first time, whether independent contractors are to be counted when determining whether an employer must establish and maintain a joint health and safety committee pursuant to s. 9 of the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1 (the "*OHSA"*).

OVERVIEW

[2] United Independent Operators Limited ("UIOL") is a load broker. Customers contract with it to transport aggregate (sand, gravel and crushed stone). In turn, UIOL contracts with truck drivers – who independently own and operate their trucks – to pick up the aggregate from quarries, gravel pits and construction sites and transport it to locations where UIOL's customers need it.

[3] Section 9(2)(a) of the *OHSA* requires a joint health and safety committee ("JHSC") "at a workplace at which 20 or more workers are regularly employed". The question raised on this appeal is whether the independent truck owner/operators ("truck drivers") are "regularly employed" within the meaning of s. 9(2)(a).

[4] As I will explain, it is my view that they are.

BACKGROUND

[5] UIOL's sole business premises are in Woodbridge, Ontario. They consist of a reception area, a lunch room and seven offices (the "UIOL office"). On July 24, 2004, there were eleven employees working at the UIOL office.

[6] The number of truck drivers working for UIOL ranges from 30 to 140, depending on the time of year. When hauling for UIOL, the trucks must bear the UIOL corporate banner so that they are readily identifiable by UIOL customers as being part of the contracted haulage service. UIOL pays the truck drivers based on an agreed price per ton of material transported or by the trip.

[7] To work for UIOL, a truck driver must attend at the UIOL office and give various documents to Ms. Sandra Upshaw, the Safety and Owner/Operator Administrator. The documentation includes such things as a Record of Vehicle Weight, a Certificate of Competency, an Operating License, a Commercial Vehicle Operator Registration Certificate, a Certificate of Insurance, a Driver's License, and a WSIB Certificate or Clearance Certificate. The candidate then obtains and completes an application form.

[8] Once UIOL receives all the necessary documentation, it screens the candidate. If the candidate is accepted, he or she returns for an orientation session that lasts for approximately an hour and a half. This session includes a page-by-page review of the company handbook, the presentation of a safety video, a quiz on the content of the video, and a meeting with the UIOL dispatcher. The company handbook specifies the truck driver's duties, and includes direction on daily responsibilities, procedures to be followed in the quarries, what the truck drivers should wear, and how they should generally operate when working for UIOL.

[9] After orientation is complete, the truck driver can be dispatched by UIOL. There are two dispatchers at the UIOL office. They decide which truck drivers will be dispatched, and they tell the truck drivers where to pick up their loads. Truck drivers must call the office each day between 3 and 5pm to find out where they have been assigned. Although truck drivers are permitted to turn down a dispatch opportunity, this occurs only between 3 and 4% of the time. When truck drivers have a health or safety concern, they are to call the UIOL dispatcher. If customers have concerns in respect of a truck driver, they must raise the matter with staff at the UIOL office.

[10] The truck drivers spend the bulk of their time working at various pits and quarries that are not owned by UIOL. They own their own trucks and pay all associated expenses, including insurance, fuel, repairs, tires, tolls and traffic tickets. Most truck drivers also own their trailers, although some rent trailers from UIOL. They must own a hard hat, safety boots, reflective vest and wheel chocks and they must sign a form saying that they own these items or have purchased them from UIOL.

[11] There are no written employment contracts between the truck drivers and UIOL. No statutory deductions – for income tax, CPP, EI or otherwise – are made from payments to the truck drivers. UIOL does not pay for Workplace Safety and Insurance Board ("WSIB") coverage for the truck drivers nor does it give them Records of Employment when the working relationship is terminated.

[12] Truck drivers attend at the UIOL office approximately twice per month to drop off load sheets or weigh tickets for processing and to secure payment for the haulage services they have provided. They frequently receive safety information when picking up their cheques. Truck drivers must keep detailed "run sheets", setting out the work that they have completed. They have a space at the UIOL office, called the drivers' room, in which they can fill out the run sheets.

[13] Truck drivers are periodically required to attend health and safety meetings, some of which are held at the UIOL office and some of which are held offsite. UIOL also conducts safety meetings with those of its employees who exercise managerial functions.

[14] The Ministry of Labour became involved with UIOL when Amrik Singh, a truck driver who worked for UIOL, was crushed between his truck and that of another UIOL truck driver. He suffered a broken pelvis and two broken legs. The accident occurred at the worksite of a UIOL customer.

[15] While investigating the accident, the Ministry of Labour formed the view that UIOL had contravened the Act by failing to establish and maintain a JHSC. It issued an order requiring UIOL to establish a JHSC (the "Order"). UIOL disputed its obligation to have such a committee, arguing that it had only 11 full time employees and that the truck drivers were not "regularly employed" by it. UIOL pointed out that the truck drivers were not in an employment relationship with it and that they had been held to be

independent contractors by the WSIB, Revenue Canada and the Ministry of Labour, Employment Standards Branch.

[16] Nonetheless, UIOL complied with the Order by establishing and maintaining a JHSC.

[17] Despite UIOL's compliance with the Order, charges were laid against it for having failed to have such a committee in July 2004, when Mr. Singh was injured.

[18] A trial was conducted before Justice of the Peace James E. Oates. He acquitted UIOL.

[19] In finding that UIOL was not required to establish and maintain a JHSC, the trial judge relied heavily on *526093 Ontario Inc. (c.o.b. Taxi Taxi)*, [2000] O.O.H.S.A.D. No. 98 (QL) ("*Taxi Taxi*"), a decision of the Ontario Labour Relations Board, in which "regularly employed" was held to apply only to workers who have a traditional employment relationship with their employers. The trial judge concluded that the facts in the present case and those in *Taxi Taxi* were virtually identical. He listed the following points of similarity: all of UIOL's truck drivers are independent owner/operators; UIOL does not own any of the trucks; UIOL is, in effect, a dispatch business; the truck drivers pay UIOL a fee for its dispatch services; the truck drivers pay all taxes, fees, and tolls; the truck drivers arrange and pay for WSIB coverage; and, the truck drivers do not operate physically from the UIOL office, going to it only to submit the paperwork necessary to be paid.

[20] The Ministry of Labour appealed.

[21] Justice Peter Tetley, of the Ontario Court of Justice, dismissed the appeal. Like the trial judge, he was of the view that UIOL was under no obligation to establish a JHSC.

[22] The appeal court judge acknowledged that the *OHSA* must be interpreted in a broad manner consistent with its legislative purpose but held that the trial judge made no error in relying on the *Taxi Taxi* decision. He accepted the conclusion in *Taxi Taxi* that the mandatory committee structure imposed by s. 9(2)(a) is consistent with an environment in which an employer has regular employees who perform work in its workplace. Like the trial judge, he accepted that the word "employed" in s. 9(2)(a) refers to a traditional employment relationship. He held that the truck drivers are not employed in the traditional sense because they: are entitled to refuse the employment opportunities that UIOL offers them; can work for themselves or someone else; own and maintain their own vehicles; commonly structure their trucking services as independent businesses. In the circumstances, he found "it is difficult to conclude that they were 'regularly employed' by UIOL."

[23] Once more, the Ministry of Labour appeals.

THE ISSUE

[24] This appeal raises a single issue: did the appeal court judge err in holding that the UIOL truck drivers are not "regularly employed" within the meaning of s. 9(2)(a) of the *OHSA*?

THE STANDARD OF REVIEW

[25] This appeal depends on the proper interpretation of the words "regularly employed" in s. 9(2)(a) of the *OHSA*. The interpretation of legislation is a question of law to be reviewed on a standard of correctness: see *Ontario (Ministry of Labour) v. Dofasco Inc*. (2007), 87 O. R. (3d) 161 (C.A.), at para. 6.

THE RELEVANT STATUTORY PROVISIONS

[26] Sections 1(1), 8(1) and 9(1), (2) and (4) of the *OHSA* are relevant to the analysis. They are set out below.

> **1.** (1) In this Act,
>
> "constructor" means a person who undertakes a project for an owner and includes an owner who undertakes all or part of a project by himself or by more than one employer;
>
> "employer" means a person who employs one or more workers or contracts for the services of one or more workers and includes a contractor or subcontractor who performs work or supplies services and a contractor or subcontractor who undertakes with an owner, constructor, contractor or subcontractor to perform work or supply services;
>
> "worker" means a person who performs work or supplies services for monetary compensation but does not include an inmate of a correctional institution or like institution or

facility who participates inside the institution or facility in a work project or rehabilitation program;

"workplace" means any land, premises, location or thing at, upon, in or near which a worker works;

Mandatory selection of health and safety representative

8. (1) At a project or other workplace where no committee is required under section 9 and where the number of workers regularly exceeds five, the constructor or employer shall cause the workers to select at least one health and safety representative from among the workers at the workplace who do not exercise managerial functions.

Joint health and safety committee

Application

9. (1) Subject to subsection (3), this section does not apply,

(a) to a constructor at a project at which work is expected to last less than three months; or

(b) to a prescribed employer or workplace or class of employers or workplaces.

Joint health and safety committee

(2) A joint health and safety committee is required,

(a) at a workplace at which twenty or more workers are regularly employed;

(b) at a workplace with respect to which an order to an employer is in effect under section 33; or

(c) at a workplace, other than a construction project where fewer than twenty workers are regularly employed, with respect to which a regulation concerning designated substances applies.

ANALYSIS

[27] The appeal court judge interpreted the words "regularly employed" in s. 9(2)(a) as encompassing only those workers in a traditional employment relationship. Because the truck drivers are independent contractors, a traditional employment relationship does not exist between them and UIOL. Thus, in his view, the truck drivers were not "regularly employed" for the purpose of determining whether the threshold of 20 workers in s. 9(2)(a) had been met.

[28] The appeal court judge's interpretation of s. 9(2)(a) rested on two primary planks. First, he relied heavily on the reasoning in *Taxi Taxi* that the mandatory committee structure of a JHSC contemplates a traditional employment relationship. Practical considerations involved in forming, operating and maintaining such a committee are consistent with an environment in which an employer has regular employees who perform work at its workplace. Second, he relied on the dictionary meaning of the words "regularly employed".

[29] There is a good deal of force to the appeal court judge's reasoning. Nonetheless, in my view, he interpreted s. 9(2)(a) incorrectly. In excluding the truck drivers due to the nature of their employment relationship, the words "regularly employed" were interpreted in a narrow fashion, one that is inconsistent with the objectives, purpose and legislative scheme of the *OHSA*. Because the *OHSA* is a remedial public welfare statute intended to guarantee a minimum level of protection for the health and safety of workers,

it is to be interpreted generously, rather than narrowly. As this court directed in *Ontario (Ministry of Labour) v. Hamilton (City)* (2002), 58 O.R. (3d) 37, at para. 16:

> When interpreting [the *OHSA*], it is important to bear in mind certain guiding principles. Protective legislation designed to promote public health and safety is to be generously interpreted in a manner that is in keeping with the purposes and the objectives of the legislative scheme. Narrow or technical interpretations that would interfere with or frustrate the attainment of the legislature's public welfare objectives are to be avoided.

[30] With that exhortation in mind, I turn to consider how the words "regularly employed" in s. 9(2)(a) are to be interpreted.

Statutory Interpretation – the Guiding Principles

[31] The modern approach to statutory interpretation is well known: it requires a contextual analysis. Thus, a proper interpretation assesses the legislative provision in context, given the statute's purpose. Insofar as the language of the provision permits, interpretations that are consistent with or promote the legislative purpose should be adopted while interpretations that defeat or undermine legislative purpose should be avoided.

[32] Specifically, the court must examine: the language of the provision, the context in which it is used, and the purpose of the legislation: see *Blue Star Trailer Rentals Inc. and 407 E.T.R. Concession Co*. (2008), 91 O.R. (3d) 321 (C.A.), at para. 23.

The Language of the Provision

[33] Recall the wording of s. 9(2)(a) of the *OHSA*:

> 9. (2) A joint health and safety committee is required,
>
> (a) at a workplace at which twenty or more workers are regularly employed;

[34] Section 9(2)(a) requires a JHSC at a workplace at which twenty or more "workers" are regularly employed. "Worker" is defined in s. 1(1) of the *OHSA* as "a person who performs work or supplies services for monetary compensation".[1] Clearly, the truck drivers perform work or supply services for monetary compensation from UIOL so they are workers within the meaning of s. 9(2)(a) of the *OHSA*. Indeed, UIOL has conceded throughout that the definition of "worker" includes employees, dependent contractors and independent contractors.

[35] Thus, the question becomes, are the truck drivers "regularly employed"? I will consider each word separately, beginning with the word "employed". Neither word is defined in the *OHSA*.

[36] In my view, there can be no doubt that the truck drivers are employed by UIOL, within the meaning of that word in the *OHSA*. In reaching that conclusion, I start from a different point than the courts below, which began by considering the dictionary meaning of the word.

[37] I accept that generally where words in a legislative provision are not defined "it makes sense to start by examining the ordinary meaning or meanings of the words being interpreted": see *Blue Star Rentals,* at para. 24. Thus, one might turn to the dictionary to

[1] The definition goes on to exclude inmates of correctional institutions and like facilities who participate inside the institution or facility in a work project or rehabilitation program.

find the ordinary meaning of the undefined word. In my view, however, that approach is not the appropriate starting point in the present case because while "employed" is not defined in the *OHSA*, "employer" is.

[38] "Employer" is defined in s. 1(1), in part, as a "person who employs one or more workers or contracts for the services of one or more workers and includes a contractor or subcontractor who performs work or supplies services". This court has held that the definition of "employer" in the *OHSA* includes the employer of an independent contractor: see *R. v. Wyssen* (1992), 10 O.R. (3d) 193, at paras. 8-13. UIOL concedes that it is an employer, given the definition of that term in the *OHSA*.

[39] As UIOL is an employer of the truck drivers, within the meaning of the *OHSA*, it stands to reason that the truck drivers are employed by it.

[40] I would add that there is nothing in the plain or ordinary meaning of the word "employ" that detracts from this interpretation. The appeal court judge relied on the following dictionary definition of the word, "the state of fact of being employed, especially for payment … to use or retain the services of (a person) especially in return for payment." On that definition, the truck drivers are employed because UIOL uses or retains their services in return for payment.

[41] Thus, the real question is whether the truck drivers are "regularly" employed by UIOL.

[42] The appeal court judge set out the dictionary meaning of "regular" as "… acting, done, recurring uniformly or calculably in time or manner, habitual constant … to be: normal, customary, or usual occurring at fixed or pre-arranged intervals". On the record, it was normal or customary for UIOL to have between 30 and 140 truck drivers working for it. Thus, on the dictionary definition of "regular", UIOL "regularly" employed truck drivers.

[43] UIOL argues that by using the words "regularly employed" in s. 9(2)(a), the legislature intended to distinguish between employees in traditional employment relationships and those in other types of employment relationships. It contends that had the legislature intended that a JHSC be established in a workplace where twenty or more workers regularly work, regardless of whether they were regularly employed in that workplace, it would have chosen the word "work" rather than "employed".

[44] With respect, I do not find this argument persuasive. On this argument, in order for s. 9(2)(a) to include independent contractors for the purpose of determining whether the threshold has been met, it should have been worded as follows:

> A joint health and safety committee is required,
>
> (a) at a workplace at which twenty or more workers regularly work.

[45] Contrary to UIOL's submission, this wording would not simply make it clear that the legislature intended to capture independent contractors. Instead, it would dramatically change the meaning of s. 9(2)(a) by requiring JHSCs only if 20 or more

workers regularly work "at a workplace", that is, if twenty or more workers regularly work at a particular workplace location. Arguably, this would mean that s. 9(2)(a) would not apply to the many different dispersed and extended workplaces in Ontario, thereby depriving workers in such situations of the protections afforded by a JHSC. There is nothing in the legislation to suggest that JHSCs should be limited in such a fashion – indeed, such a notion runs contrary to the purpose of the legislation, as discussed more fully below.

[46] The OLRB has considered the meaning to be given to the words "regularly employed" in s. 9(2)(a) in two cases: *Taxi Taxi* and *Brewers Retail (Re)*, [1995] O.O.H.S.A.D. No. 20 (QL).[2] A word on those decisions is in order.

[47] It will be recalled that in *Taxi Taxi*, the OLRB held that "regularly employed" in s. 9(2)(a) applies only to workers in traditional employment relationships. This interpretation rested heavily on practical considerations involved in the establishment and operation of JHSCs. During oral argument, we were told of the practical difficulties that employers face in establishing and maintaining JHSCs when their workforce consists of independent contractors, who often work on their own timetables and for a number of employers. For example, an independent truck driver may work for an employer for only a short period of time. If that truck driver is a member of a JHSC, he or she will be

[2] Section 57(1) of the *OHSA* empowers an inspector appointed under the *OHSA* to issue an order when the inspector finds that a section of the *OHSA* is being contravened. Under s. 61 of the *OHSA*, an appeal from such an order lies to an occupational health and safety adjudicator appointed under s. 20(1). Both *Taxi Taxi* and *Brewers Retail* came before the OLRB as a result of an appeal from an inspector's order, pursuant to s. 61 of the *OHSA*.

unavailable to fulfill the duties of the JHSC. The employer will have to frequently recruit and train new members of the JHSC, a costly and time-consuming exercise.

[48] I acknowledge these practical challenges. However, it is clear that UIOL has been able to meet them as it established and has maintained a JHSC since the Order was made.

[49] With respect, *Taxi Taxi* is wrongly decided. The interpretation of "regularly employed" in *Taxi Taxi* is inconsistent with the definitions of "worker" and "employer", both of which include independent contractors. Moreover, it does not appear that a contextual analysis was undertaken in *Taxi Taxi* nor do the reasons in *Taxi Taxi* disclose a consideration of the purpose of the *OHSA*.

[50] In *Brewers Retail,* the OLRB was required to decide whether s. 9(2)(a) applied to a dispersed workplace. In that case, the workers were employees who operated from a retail store and a wholesale warehouse located at outlets in Sarnia. A number of the employees associated with the warehouse were drivers. They had a home base to which they reported for instructions, assignments and payroll, but they spent little or no time at the home base. Nonetheless, the adjudicator held that these employees had to be included for the purpose of determining whether the 20-worker threshold had been met. He noted that dispersed workplaces were commonplace for a number of groups of workers, including truck and bus drivers, and held that a dispersed workplace is not a reason to deny workers the benefit of a JHSC.

[51] As *Brewers Retail* deals with employees (not independent contractors) at dispersed workplaces, it is not directly on point. Its reasoning, however, supports the broader interpretation I would give to the words "regularly employed" in s. 9(2)(a). Just as a dispersed workplace is not a reason to deny workers the benefit of a JHSC, neither is the absence of a traditional employment relationship. The narrow interpretation of "regularly employed" given by the courts below would have the effect of denying the benefits of JHSCs to all workers but those in a traditional employment relationship.

[52] To conclude on this point, when the word "employed" is given the meaning warranted by the *OHSA* and the word "regularly" is given its ordinary meaning, the truck drivers are "regularly employed" by UIOL within the meaning of s. 9(2)(a). As I will now explain, this interpretation of "regularly employed" is consistent with a contextual analysis and promotes the purpose of the legislation.

The Context

[53] To state the obvious, s. 9(2)(a) is part of s. 9 of the *OHSA*. A review of s. 9 is important, therefore, as it provides context when interpreting "regularly employed" in s. 9(2)(a).

[54] Section 9 of the *OHSA* mandates the establishment and maintenance of a JHSC in certain provincially regulated workplaces within Ontario. JHSCs are intended to play a central role in achieving the objective of safe and healthy workplaces in Ontario. They form an integral part of the internal responsibility system, the underlying philosophy of

the *OHSA.* The concept of an internal responsibility system comes from the *Royal Commission on the Health and Safety of Workers in Mines* (Toronto: Ontario Ministry of the Attorney General, 1976), the genesis of the *OHSA* in its current form.

[55] An internal responsibility system is one in which all participants in a workplace have a shared responsibility for health and safety. In the procedural guide issued contemporaneously with the introduction of the *OHSA* (*Guide to the Occupational and Health and Safety Act* (Toronto: Ontario Ministry of Labour, 1978)) at p. 28, the concept of an internal responsibility system is described as follows:

> The [OHSA] is based upon the principle that hazards can best be dealt with in the workplace itself through communication and cooperation between employers and workers.
>
> Fundamental to the [OHSA] is the concept that employers and workers must share responsibility for occupational health and safety and that both must actively seek to identify hazards and develop responses to protect workers. This internal responsibility system assumes assessment of the system itself by employers and workers through the appointment of health and safety committees and representatives and through regular inspections of the workplace.

[56] Section 9 also sets out the functions and powers assigned to the JHSC. Pursuant to ss. 9(18),(23) and (31), a JHSC is statutorily mandated to do such things as identify potential workplace hazards, make recommendations to the employer and workers, conduct workplace inspections and investigate serious workplace incidents.

[57] UIOL submits that s. 8 should also be considered when looking at s. 9(2)(a) in context. I agree – reading a legislative provision in context means that the surrounding provisions and any other relevant provisions must be considered.

[58] Section 8(1) provides that in workplaces where a JHSC is not required and the number of workers regularly exceeds five, the constructor or employer must cause the workers to select at least one health and safety representative. Section 8(1) refers to the broader group of workers, regardless of how they are employed or contracted for and regardless of who contracts or employs them. UIOL submits that the legislature would have used the same language in s. 9(2)(a) had it intended that the threshold was met any time at least 20 workers were present. Therefore, it says, the words "regularly employed" in s. 9(2)(a) must mean workers in a traditional employment relationship.

[59] I do not accept this argument. As I have already explained, use of the words "regularly work" instead of "regularly employed" would have changed the meaning of s. 9(2)(a) in a way that is inconsistent with the purpose of the *OHSA*.

[60] The *OHSA* is built on the notion of the internal responsibility system. It is clear that JHSCs play a critical role in that system. JHSCs assist by increasing the ability of workers and employers to prevent and respond to dangerous and changing conditions. Interpreting s. 9(2)(a) as requiring JHSCs only in workplaces in which employers and workers stand in a traditional employment relationship would seriously curtail the scope of s. 9(2)(a) and run contrary to the purpose of the *OHSA*.

[61] I do accept UIOL's submission that s. 8 is evidence that the *OHSA* does not require that every workplace in Ontario have a JHSC. Section 9(1), which exempts certain constructors and employers, and s. 9(3), which empowers the Minister to establish and maintain a JHSC "despite ss. 9(1) and (2)", reinforce that conclusion.

[62] However, the fact that not every workplace is required to have a JHSC does not justify a narrow interpretation of the words "regularly employed". Nor does the fact that the mandatory committee structure for JHSCs is more easily fulfilled in workplaces where the workers are in traditional employment relationships, the rationale given in *Taxi Taxi*. As has been noted, the *OHSA* is to be generously interpreted. Furthermore, interpreting "regularly employed" as I have above, is contextually consonant with the vital role that JHSCs play as part of an internal responsibility system.

The Purpose of the OHSA

[63] The *OHSA* is a remedial public welfare statute whose purpose is to guarantee a minimum level of health and safety protection for workers in Ontario. This broad purpose must inform the interpretation of s. 9(2)(a) which requires the establishment of a JHSC, an important mechanism in achieving the legislative objective of enhanced worker safety.

[64] Interpreting the words "regularly employed" to include the truck drivers makes sense contextually and supports the purpose of the legislation. Conversely, reading in a requirement that s. 9(2)(a) applies only to workplaces in which workers are in a

traditional employment relationship with their employers would seriously curtail the scope of s. 9(2)(a) and limit the number of JHSCs that must be established and maintained. The narrow interpretation would interfere with the attainment of the purpose of the *OHSA*. It must be rejected in favour of the interpretation that does no violence to the plain meaning of the words "regularly employed" and that promotes worker safety, the purpose of the legislation.

Conclusion

[65] Reading the words "regularly employed" in context and having regard to the purpose of the *OHSA*, although the truck drivers are independent contractors, they must be counted when determining whether the threshold requirement in s. 9(2)(a) has been met.

[66] A final comment is in order. Section 9(2)(a) specifies that a JHSC is required "at a workplace" at which twenty or more workers are regularly employed. This appeal decides that the truck drivers are workers who are "regularly employed". UIOL has conceded throughout that the UIOL office is a "workplace" as defined in the *OHSA*. However, the question of whether the truck drivers are regularly employed "<u>at</u> a workplace" (emphasis added) was not decided in the courts below nor was it argued before us. Thus, deciding the matter in issue on this appeal has not finally decided whether the offence has been made out.

DISPOSITION

[67] Accordingly, I would allow the appeal.

[68] However, rather than order a new trial, I would order a stay of proceedings. UIOL promptly complied with the Order and established a JHSC. It has maintained that committee. Thus, this proceeding is moot insofar as UIOL is concerned. The question of law decided by this appeal was novel and to the extent there was guidance on the point, *Taxi Taxi* favoured UIOL's position that it was not required to have a JHSC. UIOL has gone through a trial and two appeals, at considerable expense. In the circumstances, it is not in the public interest to order a second trial nor does the due administration of justice demand one.

[69] In accordance with the order of Doherty J.A. dated December 21, 2009, in which he granted the Ministry leave to appeal, the Ministry shall pay UIOL's reasonable legal costs of the appeal. If the parties are unable to agree on costs, they may make brief written submissions to the panel within fifteen days of the date of release of these reasons.

RELEASED: JAN 18 2011 ("D.D.")

"E. E. Gillese J.A."
"I agree. Doherty J.A."
"I agree. K. Feldman J.A."