

# Accident Investigation & Reporting



Avoid Incriminating yourself when reporting work incidents to OHS officials.

**Don't use legally required incident reports to 'tell the story of the accident.'**

OHS laws require employers to report serious workplace accidents, injuries and illnesses to the government. Not filing a proper accident report can expose the company and its officials to the risk of prosecution and fines. For example, an Ontario restaurant owner was fined \$20,000 for not reporting a broken leg suffered by a waitress [R. v. Famz Foods Ltd.]. A Saskatchewan farming operation was hit with a \$14,286 fine for failing to report the hospitalization of a worker with a machine injury [K. Hauesler Farms Inc., Govt. Press Release, December 22, 2020].

OHS Reporting Fines:

- \$43,750 (total fine for 2 OHS violations): Worker suffers serious finger injuries after reaching into fully energized machine to clear paper jam and manufacturer didn't notify Manitoba WSH Branch until the next day [Advance Paper Box Ltd., March 12, 2019];
- \$20,000: Ontario restaurant owner didn't report broken leg suffered by a waitress to MOL [ v. Famz Foods Ltd.,

Govt. Press Release, May 1, 1998];

- \$14,286: Saskatchewan farm operator didn't report hospitalization of a worker with a machine injury [Hauesler Farms Inc., Govt. Press Release, December 22, 2020];
- \$10,075: Alberta company waited 2 days to notify Manitoba WSH Branch of worker's injuries in an acetylene torch explosion [316291 Alberta Operating as Western Archrib, March 15, 2018]; and
- \$2,100: Saskatchewan company didn't report hospitalization of worker injured in ladder fall within 72 hours [Alford Floors & Interiors (1967) Ltd., 2017].

## WHAT YOUR ACCIDENT REPORTS SAYS MAY BE USED AGAINST YOU

Accident reporting is crucial to the viability of the OHS system. The government needs to know when accidents happen. It also needs basic information about the accident so it can investigate and enforce the laws. Since the government can't be everywhere at once, it's reasonable to require companies to notify the authorities when accidents occur. Self-reporting helps the government track, analyze and, ultimately, prevent accidents.

But there's also another side to consider. When the government investigates an accident, it's also looking for evidence it can use to prosecute the company and its officials. The accident report is often the first place the government looks for incriminating evidence, warns an OHS lawyer. 'In Ontario, for example, prosecutors will often use and put into evidence the accident report the company submitted under the OHS Act,' she explains.

**Example:** An Ontario manufacturer hired an engineering firm to investigate the cause of an amputation injury. In addition to technical details, the report cited a Hazard Alert from the Ministry of Labour (MOL) from 5 years earlier warning of the

machine part that caused the accident. The engineer attached a copy of the Alert (which wasn't even posted on the MOL's website) to the report. The company included a copy of the complete engineer's report, Alert and all, with the accident report. The government used these materials as evidence in its prosecution of the company.

**Strategic Pointer:** Alberta is the only province that expressly bans prosecutors from using accident reports in this way. Section 33(8) of the Alberta OHS Act says an accident report 'is not admissible as evidence for any purpose in a trial arising out of the serious injury or accident, an investigation or public inquiry under the Fatality Inquiries Act or any other action.'