Creative Sentences for OHS Violations



In general, an organization or individual who's convicted of or pleads guilty to violating the OHS laws is sentenced to pay a fine to the government. (And in some cases, individuals may also be sentenced to serve time in jail.) But courts may be permitted to impose so-called "creative" sentences, in which a defendant may be ordered to invest in the development of a safety training program on a specific topic related to the offence or to perform community service. Creative sentences are fairly common in *environmental* prosecutions. However, they're rarer in safety prosecutions. (See this recent OHS case from Nova Scotia in which the court decided that a creative sentence *was* appropriate.) Here's a look at what the OHS laws in each jurisdiction say about creative sentences.

CREATIVE SENTENCES UNDER THE OHS LAWS	
FED	*Canada Labour Code* doesn't permit creative sentences.
AB	*OHS Act*: 1. Where a person is convicted of an offence against this Act, in addition or as an alternative to taking any other action provided for in this Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order directing the person: a. to establish or to revise: i. the policy referred to in Sec. 32(a) and arrangements referred to in Sec. 32(b), or ii. a training or educational program regarding the health or safety of workers at the work site; b. to take specific action to improve health and safety at work sites; or c. to take any other action specified in the regulations [Sec. 41.1(1)]. 2. The order may contain any substance or conditions that the court considers appropriate [Sec. 41.1(2)].

BC	*Workers Compensation Act*: 1. If a person is convicted of an offence, in addition to any other punishment imposed, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order doing one or more of the following: a. directing the person to perform community service in accordance with the requirements established by the court; b. directing the person to pay to the Board an amount for the purpose of research or public education related to occupational health and safety; c. directing the person to post a bond or pay into court an amount of money the court considers appropriate for the purpose of ensuring compliance with any prohibition, direction or requirement under this section; d. directing the person to submit to the Board, on application by the Board within three years after the date of the conviction, any information respecting the activities of the person that the court considers appropriate in the circumstances; e. directing that the facts relating to the commission of the offence be published by the Board at the expense of the person convicted, subject to any maximum amount or other restrictions established by the court; f. prohibiting the person from working in a supervisory capacity at any workplace for a period of not more than six months from the date of conviction; and g. requiring the person to comply with any other conditions that the court considers appropriate for securing the person's good conduct and for preventing the person from repeating the offence or committing other offences under this Part [Sec. 219(1)].
MB	*The Workplace Health and Safety Act*: 1. When a person is convicted of an offence under this Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, order the offender to pay to the minister an amount that the government must use for the purpose of educating the public on matters relating to workplace safety and health. Such a penalty may be required in addition to any other penalty that may be imposed under this Act [Sec. 55.1(1)]. 2. The total of: a. any additional amount required to be paid as discussed above; and b. any penalty required to be paid under Sec. 55 must not exceed the amount of the maximum penalty for which the offender could be liable under Sec. 55 [Sec. 55.1(2)].
NB	*OHS Act* doesn't permit creative sentences.
NL	*OHS Act*: 1. Where a person is convicted of an offence under this Act, in addition to another punishment that may be imposed, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order: a. directing the offender to publish, in the manner directed, the facts relating to the offence; b. directing the offender to pay to the minister, in the manner directed, an amount for the purpose of public education in the: i. safe conduct of the activity in relation to which the offence was committed, and ii. duties and responsibilities of employers and workers under Secs. 5 and 7 of this Act; c. on application by the minister made within three years after the date of conviction, directing the offender to submit to the minister the information with respect to the activities of the offender that the court considers appropriate in the circumstances; d. directing the offender to perform community service, subject to the reasonable conditions that may be imposed by the order; e. directing the offender to provide a bond or pay an amount of money into court that will ensure compliance with an order made under this section; and f. requiring the offender to comply with the other reasonable conditions that the court considers appropriate in the circumstances for securing the offender's good conduct and for preventing the offender from repeating the same offence or committing other offences [Sec. 69(1)].
NT/ NU	*Safety Act* doesn't permit creative sentences.

NS	*OHS Act*: 1. Where a person is convicted of an offence pursuant to this Act, in addition to a fine imposed pursuant to Sec. 74 and, in addition to any other punishment that may be imposed pursuant to this Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order: a. directing the offender to publish, in the manner prescribed, the facts relating to the offence; b. directing the offender to pay to the Minister an amount for the purpose of OHS initiatives including, but not limited to, public education; c. on application by the Director made within three years after the date of conviction, directing the offender to submit to the Director such information with respect to the activities of the offender as the court considers appropriate and just in the circumstances; d. directing the offender to perform community service, subject to such reasonable conditions as may be imposed in the order; e. directing the offender to provide such bond or pay such amount of money into court as will ensure compliance with an order made pursuant to this Section; and f. requiring the offender to comply with such other reasonable conditions as the court considers appropriate and just in the circumstances for securing the offender's good conduct and for preventing the offender from repeating the same offence or committing other offences [Sec. 75(1)].
ON	*OHS Act* doesn't permit creative sentences.
PE	*OHS Act*: 1. Subject to Sec. 44(2), when a person is convicted of an offence under this Act or the regulations, in addition to any other penalty that may be imposed by a court under this Act or the regulations, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order: a. directing the offender to publish the facts relating to the offence; b. directing the offender to pay to the Board an amount to be used by the Board for public education regarding: i. safe conduct of the activity related to the offence that was committed, and ii. principles of responsibility for safe working conditions provided for in this Act; c. directing the offender to submit to the Director such information respecting the activities of the offender as the court considers appropriate; d. directing the offender to perform community service, on the terms and conditions stated in the order; e. directing payment by the offender of such security for the performance of the order as the court considers appropriate; and f. imposing such other conditions on the offender as the court considers appropriate [Sec. 44(1)]. 2. The total of money payable under the above must not exceed the maximum amount payable under Sec. 43 [Sec. 44(2)].
QC	*An act respecting occupational health and safety* doesn't permit creative sentences.
SK	*The Saskatchewan Employment Act* doesn't permit creative sentences.
YT	*OHS Act* doesn't permit creative sentences.