

# How Having a Sound Safety Culture Can Result in a Lower OHS Fine



A safety culture can minimize both injury *and* liability risks

People in our field talk a lot about the importance of having an organizational culture that emphasizes health and safety. And they're 1,000% right. Point 1: There's a growing body of evidence demonstrating that an organization's 'safety culture' has an impact on its safety performance and compliance. Of course, incidents and violations can happen even at companies with strong safety cultures. But what often gets overlooked is Point 2, namely the way that having that strong safety culture can minimize the liability impacts of safety breakdowns that do occur. The reason for this is that courts will factor your safety culture into their determination of whether to hold you liable for a violation, and if so, how much to fine you for committing it. Here are 2 cases illustrating how having a strong safety culture can result in a lower fine and how not having one can result in a higher fine.

## Having a Safety Culture Leads to a Lower Fine

### What Happened

A worker at a power plant was assigned to man a conveyor belt

system used to move coal into hoppers. His job was to move the conveyor system to the empty hopper and discharged the coal into that hopper through 14-inch-wide slots in the floor. But he wasn't supposed to vanish. Co-workers found his hard hat on the floor near one of the slots. Almost 10 hours later, they found his body buried in coal in the hopper below the slot. The power company pleaded guilty, as an employer, to failing to provide fall protection in violation of the province's fall protection and scaffolding regulations. All that remained to decide was the sentence.

## Decision

The Nova Scotia Provincial Court imposed a \$25,000 fine and tacked on \$15,000 for education sessions through the Nova Scotia Construction Safety Association, a fairly light sentence for a fatality.

## Explanation

The court said there was no suggestion that the company was a 'bad corporate citizen' or that it had cut corners to increase profits. In fact, the court praised the company's robust safety culture and cited it as a mitigating factor. Specifically, it noted that the company had:

- An OHS program that included, among other things, monthly JHSC workplace inspections; monthly coal system inspections; 'tailboard meetings' for workers to raise and discuss safety issues; safety manuals; and safety training;
- A substantial safety budget of \$700,000, with each unit having its own safety budget; and
- A safety excellence charter as well as a safety newsletter, safety stand-downs and intra-company safety awards.

# Not Having a Safety Culture Leads to a Higher Fine

## What Happened

Two workers were assigned to sort a pile of scrap aluminum. Because the pile was so large, there wasn't enough room in the area where it had been dumped to sort it. So, the foreman told the workers to sort the scrap in a location close to stacked bales of scrap wire. The stack was 4 bales high and about 3 metres in height. A large bale weighing 2,080 pounds fell on one of the workers. Co-workers tried but couldn't remove the bale by hand or forklift. The worker died from his injuries. The company was convicted of a safety offence and fined \$100,000 at that time, 2/3 of the maximum penalty for the violation. (\$500,000 is currently the maximum fine for a corporate OHS violation in Alberta.) It contended the fine was too harsh.

## Decision

The Alberta Court of Queen's Bench rejected the appeal and upheld the sentence.

## Explanation

The company argued that the fine was too high, noting that it was a first offender and didn't have 'malevolent corporate practices or a bad corporate culture.' But the trial court had faulted the company for providing no signs, barriers or supervision even though it knew that stacking bales was dangerous. It also criticized the company's corporate culture of delegating safety to workers, which it didn't believe should be encouraged. The appeals court noted, 'The modern corporate attitude should be oriented to safety first.' The company also noted that it had spent \$15,000 to reconfigure the site to prevent a similar incident. The appeals court was

unmoved. Post-incident actions can lead to a lower fine if the judge thinks they're a sign that the company's culture is safety-sensitive. But the trial court in this case had taken the company's reconfiguration efforts into account and didn't find them significant enough to warrant a lower fine.

1. [v. General Scrap Iron & Metals Ltd.,](#) [2003] ABQB 22 (CanLII)