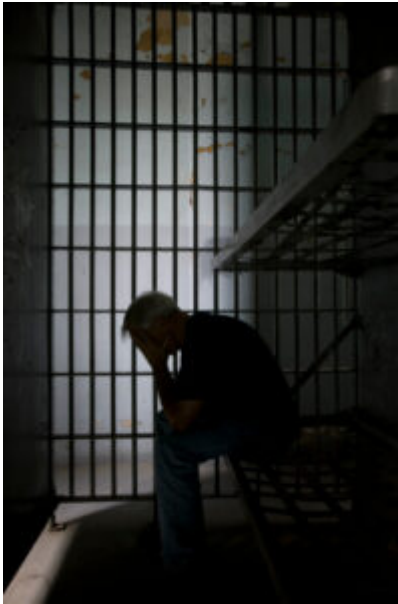


# Poor Record of Complying with Orders Results in Jail Sentence for Supervisor



Prosecutions of individuals for violating the OHS laws are increasing but still relatively rare. And jail sentences for individuals who are convicted of safety offences are even rarer but the courts do appear more willing to throw such people in prison under the right circumstances. An Ontario court recently sentenced a supervisor to 45 days in jail for an incident that left a worker paralyzed. Here's a look at why the prosecution and the court thought prison was warranted in this particular case.

## THE CASE

**What Happened:** A worker was tossing loose shingles from a roof more than three metres high when he slipped and fell off of it. He was permanently paralyzed from the waist down. At the time, there was no fall protection equipment on site. And the injured worker said he'd never been trained on the use of such equipment. The government charged the contractor as an employer and a female employee as a supervisor with OHS violations. The trial court ruled that the female employee qualified as a supervisor under the OHS laws because there was ample evidence she had 'hands-on authority' and directed work. It also found that the Crown had proven the safety violations against the contractor and supervisor beyond a reasonable doubt. The Crown asked for a jail sentence for the supervisor in part because of her prior record of four environmental violations.

**What the Court Decided:** The Ontario Court of Justice sentenced the supervisor to 45 days' jail.

**The Court's Reasoning:** The supervisor had been sentenced to pay fines for her prior environmental violations but just paid one and only when forced to do so by the court. In fact, at the time of sentencing in this case, the supervisor's outstanding fines exceeded \$50,000. Thus, heavy fines clearly weren't a

deterrent to her. In addition, she'd been sent to jail for two prior offences. In short, the prosecution argued that because the supervisor rarely complied with court orders and wasn't deterred by fines, a jail sentence was warranted, especially given the serious injuries the worker suffered.

The court agreed, noting that it was 'disturbing that the vast majority of her regulatory fines remain unpaid' and that the supervisor showed apparent defiance of prior court orders. Although the supervisor's prior convictions weren't for OHS violations, the law still permitted the court to consider them when sentencing her for this safety offence, it explained. So for the following reasons, the court concluded that a 45 day jail sentence was appropriate:

- The supervisor's 'serious disregard for public welfare statutes';
- Her lack of compliance with prior court orders;
- Her continual flouting of various regulatory standards with regard to her workplace;
- The lack of hope for her rehabilitation;
- The need for both general and specific deterrence; and
- Her lack of expression of any remorse for the worker's pain and condition [Ontario (Ministry of Labour) v. J.R. Contracting Property Services, [2014] ONCJ 115 (CanLII), March 6, 2014].

### ANALYSIS

The prosecution in *J.R. Contracting* acknowledged that it was asking for a 'very unusual sentence' but argued that fines clearly weren't deterring the supervisor from violating regulatory laws, such as the environmental and OHS laws. The court also stressed deterrence, noting that 'deterrence has long been regarded as the most important sentencing principle' for safety offences. What's important to remember is that the goal is to deter both the defendant being sentenced from committing future violations but also other individuals and companies from committing similar offences. That is, the sentence is partly intended as a warning to other individuals of the consequences they could face if they act or fail to act as the sentenced defendant did.

The lesson from this case is that a court will look at your prior record and not just previous safety offences when determining an appropriate sentence for violating the OHS laws. It'll consider other regulatory violations, too. Fines are likely to continue to be the sentence of choice for most individuals convicted of OHS violations. But if you have a history of ignoring court orders and failing to pay fines, you face a heightened risk of getting sent to prison instead of being ordered to pay yet another fine your history suggests you're likely to ignore.