

# Recent Alberta OHS Case Illustrates Sentencing Factors in Action



When a company is convicted of an OHS violation and the court is deciding its sentence, the court must generally consider certain factors spelled out in either the OHS laws or 'case law' that is, the sentences imposed by courts in other similar cases. Sentencing factors fall into two basic categories:

- **Aggravating factors**, which weigh in favour of a harsher sentence, such as the violation resulted in a fatality or serious injury or the company committed the offence intentionally or recklessly; and
- **Mitigating factors**, which weigh in favour of a lighter sentence, such as the company's attempts to comply with the law and its remorse and acceptance of responsibility.

Here's a look at a recent case from Alberta that illustrates how courts balance these factors in determining the appropriate sentence for a company convicted of safety offences.

## THE CASE

**What Happened:** A temporary worker employed by a salvage company fell approximately three metres from an opening in a wall onto a pile of pipe, suffering a broken leg and three broken ribs. The company was convicted of several safety violations.

**The Sentence:** The Alberta Provincial Court fined the company \$100,000.

**How the Court Justified the Sentence:** In sentencing the company, the court considered various factors, including:

**Nature of the victim and injuries.** The injured worker was a temporary worker on his second day of work for the company. The fall resulted in serious injuries that kept him in the hospital for almost two weeks.

**Degree of negligence.** The court noted that the company didn't have safety plans, safety documentation, hazard assessments, emergency response plans or procedures, or fall protection procedures for any of the work being done by its workers at this site. And it didn't conduct any safety training for the workers it sent to the site. Instead, it claimed that the site owner was responsible for the safety of all workers there although it didn't do anything to ensure the

site owner was, in fact, taking steps to protect workers.

**Compliance with the OHS regulations.** The OHS regulations required the company to prepare certain documentation for the worksite, including a written hazard assessment, fall protection plan and emergency response plan. It neither prepared any of these documents nor confirmed that the site owner had done so.

**Remorse.** The corporate officers who testified on the company's behalf showed a lack of remorse and their actions didn't indicate any remorse either.

**Reasonable foreseeability.** The hole in the second floor wall the worker fell through was large (8' x 6'). It had no curb, gate or guardrail across it. The court concluded that it was 'abundantly clear' that a fall such as the one that happened was reasonably foreseeable.

The court concluded that the company and its officers didn't understand their duties to workers under the OHS laws or simply chose to ignore them. As a result of the company's 'apparent disregard for the health and safety of its employees' and the need to impose a sufficient penalty to act as a deterrent, the court decided that a total fine of \$100,000 was appropriate [*R. v. Canadian Consolidated Salvage Ltd. (Clearway Recycling)*, [2013] ABPC 120 (CanLII), May 6, 2013].

## ANALYSIS

A \$100,000 fine is significant, especially for an incident that didn't involve a fatality. But the court clearly felt that the company's actions' or rather lack of actions' and the poor attitude of its officers as to health and safety compliance warranted a significant penalty. *The lesson:* Failing to take any steps at all to comply with the OHS laws and protect workers will result in not only a conviction for a safety violation but also a higher fine than a company that at least tried to comply with the law. (For more on sentencing, see 'Winners & Losers: When Does a Safety Offence Warrant a Six-Figure Fine' April 2010, p. 16.)