

Who Fines OHS Violators More Harshly—the Courts or the Government?



When a company is charged with violating the OHS laws, those charges can be resolved in a few ways:

- Withdrawn or “stayed”—that is, dismissed
- At trial, resulting in either conviction or acquittal
- With a guilty plea and the court decides the fine
- With a guilty plea and the fine is negotiated with the government.

We recently asked you in which situation you thought a company would get a higher fine for an OHS violation:

- 57% said when pleading guilty and letting the court set the fine.
- 43% said when pleading guilty and accepting the government’s fine.

Although it seems perfectly reasonable to believe that courts punish safety violators more harshly, that’s actually not the case—at least not in Ontario.

Christina Hall and Adrian Miedema, OHS lawyers with Fraser Milner Casgrain LLP, recently released a white paper that looked at the above question. The data they reviewed involved 863 defendants (592 corporations and 271 individuals, such as supervisors and workers) charged with OHS violations. All of the charges in the study were resolved between Jan. 2009 to June 2010.

Their review found that more than two-thirds of Ontario companies charged with OHS violations plead guilty. Defendants who plead guilty and let the court to set their fines pay, on average, **40% less** than defendants who plead guilty and accept the Ministry of Labour’s proposed fine.

The average fine for corporations that pleaded guilty and accepted the MOL’s proposed fine was \$42,871, compared with \$23,542 for corporations that asked the court to decide the amount of the fine.

Other highlights:

- At least one party is convicted and fined in 82% of Ontario workplace incidents that result in OHS charges.
- Two-thirds of corporations that go to trial are found guilty.

- Most corporations plead guilty, while most of the charges against supervisors and workers are withdrawn.
- 85% of OHS charges involve actual or potential worker injuries.
- One-third of safety prosecutions involve the construction industry.
- 90% of the defendants had no prior convictions for safety offences.