

# The Cure for the Cause

Alberta Occupational Health and Safety

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Alberta Association for Safety Partnerships  
Conference

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Creative Sentences

# Occupational Health and Safety Legislation is known as “Public Welfare Law”

- **Since the industrial revolution the importance of these laws has increased. Along with the increased capacity to help ourselves and others, comes the capacity to also cause massive harm to public welfare, accidentally as well as deliberately.**
- **-John Swaigen Regulatory Offences in Canada (1944)**

# Who are our victims?

- **Next of kin**
- **Injured workers**
- **Other workers**
- **Families**
- **Communities**
- **Industries**
- **Society**

# OHS Level 1 Investigations

- **All work related fatalities and life altering serious injuries**
- **Incidents that have the potential of causing massive harm to worker(s) and involve an uncontrolled fire, explosion or flood, collapse of a building or structure, derrick or hoist**

# OHS Level 1 Fatality Statistics

Year	OHS Level 1 Fatalities
2019	18
2018	27
2017	28
2016	24
2015	16

These figures do not include occupational disease or motor vehicle fatalities

# Cases resulting in conviction

Court Outcome Summary Table		
Activity	2017	2018
Cases with Charges Laid	24	21
Cases with Charges Stayed/Withdrawn, Acquittals	7	7
Cases with Convictions	21	22

The statute of limitation under the Occupational Health and Safety Act is 2 years from the date of the commission of the alleged offense. Currently, there are 29 open cases before the Courts

# Principles of Sentencing

- **Denunciation** - A principle of sentencing in criminal law; that the sentence send a clear message to the general public that the offence is serious and the punishment just.
- **Deterrence** - is the use of **punishment** as a threat to deter people from offending.
  - General - A sentencing objective which promotes the reduction of crime by the threat or example of punishment to the population at large.
  - Specific - refers to the use of punishment for criminal activity intended to discourage a **specific** individual from re-offending. The objective of **specific deterrence** is to persuade the person who committed the crime from breaking the **law** in the future.
- **Rehabilitation** - A restoration of reputation and character, bringing back to a positive condition.

# What are the desired outcomes of a meaningful sentence?

- **Victims feel acknowledged with a sense of confidence that similar accidents will be prevented**
- **Workplace safety culture improves, workers and employers regain confidence in safety management system**
- **Industry as a whole learns from the offense. New research/information is developed, shared, training materials are created and targeted to specific cause**
- **Corporation is remorseful, motivated and acknowledges the offence and restores its reputation**
- **Future accidents are prevented both within the corporation and within the industry as a whole**
- **Society embraces the knowledge and transforms it into general deterrence**

# The Occupational Health and Safety Act Section 75 Additional Powers of Court to make directions

75(1) Where a person is convicted of an offence against this Act, the regulations or the OHS code, 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 pay, in the manner and the amount prescribed by the court, a sum of money to a party named by the court to be the recipient of such funds, for any of the following purposes:

- (i) training or educational programs regarding the health and safety of workers;
- (ii) research programs into the diagnostic, preventative or remedial aspects of worker health and safety;
- (iii) any worker health and safety initiative by a non-profit organization;
- (iv) the establishment and maintenance of scholarships for educational institutions offering studies in occupational health and safety and related disciplines;
- (v) any other purpose that furthers the goal of achieving healthy and safe work sites,

or

(b) to take any other action the court considers proper.

(2) The order referred to in subsection (1) may contain any substance or conditions that the court considers appropriate.

(3) The order referred to in subsection (1) may impose terms and conditions on the recipient of any funds paid in accordance with an order made under subsection (1)(a).

# How does one create a meaningful sentence?



# Designing a creative sentence

1. **Initiated by AB Justice**
  - Circumstances of offense are reviewed
  - Identify the nexus - a connection or series of connections linking two or more things. “Cure for the cause”
  - Available industry safety tools, not for profit associations are researched
  - Canvass/screen potential recipients for project/training proposals
  - What measures were taken post offense
  - Non compliance history before and after offence
  - What training, audits, developments are needed to improve the corporate health and safety management system
  - Liaise with victims, canvass them for what kind outcome they would like to see
  - Meet with Corporate Representative, establish motivation, remorse, acceptance, willingness to learn and share
2. **The assessment is prepared in a pre-sentence report with recommended probation conditions and/or project proposal**
3. **The sentencing conditions are accepted by the court**
4. **Sentence conditions are enforceable**

# **Creative Sentencing Provides Benefits to Workplace Safety and Society at Large**

- **Nexus between the cause of the incident and the cure in the form of training tools, research, education, best practices and guidelines to improve safety at work sites**
- **Recognition of the victim's life**
- **Incorporation of circumstances of the incident to develop industry wide learnings**
- **Collaborate effort between the offender, other corporate stakeholders, regulators and subject matter experts**

# Court Outcome Summary

Court Outcome Summary Table 8					
Activity	2015	2016	2017	2018	2019
Cases with New Charges laid	31	26	24	21	12
Cases with New Charges laid for breach of Probation Conditions				1	1
Cases with Charges Stayed, Withdrawn, Acquittals, Not Guilty	4	7	7	4	3
Cases with Convictions	11	19	(#3, Lignin, Conviction from 2016 - fine 2017) 21	22	9
Total Conviction Amounts	\$2 001 249	\$2 050 625	\$3 787 100	\$2 824 435	\$2 588 000
Creative Sentencing Amounts (41.1)	\$ 679 999	\$ 522 750	\$905 000	\$1 048 250	\$ 944 000
Work Site Parties on Corporate Probation and/or Enhanced Regulatory Supervision	5	6	11	8	5
Cases with Jail sentences	0	0	1	0	0

# Successful Outcome

- **On July 25, 2017 the Courts convicted a company in relation to a serious incident where a worker lost his eye. The corporation was ordered to pay \$50,000 to the AASP for the development of the Outdoor Sports and Recreation Industry Health and Safety Best Practices.**
- **After much hard work the guide was launched just last week.**

# What is in the Works

- **On Sept. 10, 2019 the Courts sentenced a corporation in relation to two separate but similar incidents where workers were seriously injured while working with anhydrous ammonia.**
- **The Courts ordered the corporation to pay \$114,000 to the U of A to an endowment fund to benefit ammonia and hazards gas safety and risk management;**
- **And \$114,000 to the AASP to expand the current lock out tag out awareness course to In-depth full-length certificate course for hazardous energy release**

# Just out of the Court

- **Just this morning, the Courts sentenced a corporation in relation to an incident where a security guard was exposed to fatal carbon monoxide levels.**
- **The Courts ordered to the corporation to pay \$150,000 to the AASP to develop a roadmap to health, safety and compliance for property management.**

# How do we know the sentence was effective?

- On going participation after terms have been completed
- Project is complete and accessible
- Victims are acknowledged and see the positive results
- Corporation has improved and maintained safety culture
- Industry has embraced the learnings and uses materials to continue to educate
- **FUTURE ACCIDENTS ARE PREVENTED**

# Thank you to the AASP for the opportunity to share the Alberta OHS Creative Sentencing Experience

