

Creative Sentencing

The Cure for the Cause

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The genesis of the creative sentence process

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/or 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
2021	17
2020	22
2019	25
2018	27

These figures do not include occupational disease or motor vehicle fatalities

The Review for Enforcement Action

- All completed Level 1 Investigations are reviewed for enforcement action (REA)
- The Officer presents the case to a OHS panel to establish if they have reasonable and probable cause that an offense has been committed.
- When reasonable & probable cause has been established, the case is referred to Alberta Justice to consider charges.

Alberta Justice Review

	Cases Reviewed for Enforcement Action (REA)	% of cases Referred to AB Justice	Cases Reviewed by AB Justice	% of cases Referred to AB Justice resulting in charges	% of cases resulting in Conviction
2016	47	64	43	65	73
2017	39	56	35	80	75
2018	51	57	26	81	85
2019	54	55	31	61	85
2020	46	54	21	52	87

Alberta Justice Review

Alberta Justice will review all the evidence on the file.

- Must have reasonable likelihood of conviction and be in the public interest for a charge to be recommended.
- If the case supports a charges, the Officer will have the charges sworn, the summons will be generated and served on the accused worksite parties.

After the summons has been served

- AB Justice works with the defendant or their counsel to resolve the case outside of a trial
- Should both sides fail to find a resolution, then the case may go to trial
- AB Justice must continually evaluate the strength of the case. When a reasonable likelihood of conviction no longer exists, the charges will be stayed or withdrawn.

Resolution process

- After charges have been laid, AB Justice begins the negotiations. A resolution offer is often prepared and can include different sentencing options. Fines, creative sentence or combination of both
- Creative sentencing is a powerful negotiating tool
- Either the defendant or AB Justice can initiate a potential creative sentence as part of the resolution negotiations
- OHS will be engaged by AB Justice to conceptualize creative sentencing options

The Nexus

Giving regard to the circumstances of the offense, creative sentencing options can follow two possible streams or a combination of them. They are both administered under *OHS Act Sec. 75*.

1. **A diversion of funds** otherwise allocated to general revenue towards training, research, not for profits, educational institutions scholarships for the purpose of achieving health and safe worksites
2. **Enhanced regulatory supervision** is aimed specifically at the defendant and or the worksite party. Conditions similar to probation are designed to address gaps in the health & safety management system, publically acknowledge the offense and include safety training requirements,

The Joint Submission

- When the defendant accepts a resolution offer, a guilty plea is entered to one or more of the charges and a date is set for sentencing
- Both AB Justice and the defendant submit the agreed statement of facts and present to the Judge the sentencing submissions. Together, this is called the **Joint Submission**
- The submission can include a creative sentence proposal or a presentence report for enhanced regulatory supervision or both

The Court Order

The presiding Judge will consider the joint submission and accept it or on rare occasions will modify the terms of the submission

Upon acceptance from the Judge, a Court Order is generated that will specify the terms of sentencing which can include the fine payment schedule, creative sentence proposal, conditions of enhanced regulatory supervision or a combination of these options.

Monitoring compliance of the Court Order

OHS Officers are designated by the Courts to monitor compliance with the Court Order. There are several mechanisms that can be triggered in the event of non compliance

- ***OHS Act Sec. 75(3)*** binds the recipient to use any Court Order funds in accordance with terms set out in the proposal
- ***OHS Act Sec. 76*** ensures the recipient is paid by the defendant
- ***OHS Act Sec. 73*** binds the defendant to carry out the conditions of enhanced regulatory supervision Court Order

All Court Orders specify that any party may return to the Court to seek further direction and could result in further legal action if needed

Court Outcome Summary

ACTIVITY	2018	2019	2020	2021
Charges laid	21	19	11	11
Charges laid for breach of Court Order supervision	1	1	0	0
Charges Stayed, Withdrawn, Acquittals	4	3	3	3
Cases with Convictions	22	18	20	6
Total Conviction Amounts	\$2 824 435	\$4 162 800	\$ 2 816 535	\$794,000
Creative Sentencing Amounts (Sections 41.1 or 75)	\$1 048 250	\$2 071 000	\$ 1 769 850	\$300,000
Fine Ranges (lowest and highest total fines per incident)	\$ 28 750 \$ 300 000	\$ 70 000 \$ 450 000	\$ 40 000 \$ 320 000	\$24,000 \$300,000
Creative Sentencing	7	10	12	1
Corporate Probation and/or Enhanced Regulatory Supervision	8	7	11	13 4

Creative sentence outputs

Research: \$285,000 allocated to protect worker safety in Alberta by enhancing field level training for ground hazards associated with tailings facilities, dams and systems

Training: \$310,000 allocated to develop 3D animation to recreate the incident as part of a training tool called “Building Capacity to Manage Pressure”

Resources: \$150,000 to develop a toolkit for the property management industry

Education: \$159,000 allocated to GPRC Safety courses available to people within the community

Enhanced Regulatory Supervision outcomes

- Increased commitment to safety and desire to change safety culture within their organization
- Corporate representatives reaching out to OHS for more speaking engagements to share their story
- Developing a can do it attitude and progressing to SECOR or COR certification

Are you up for the challenge?

**You cannot be
Challenged
Without
change**

AASP needs to hear from you!

- What initiatives do you think will help improve health & safety at work sites?
- What kind of learning platform would you like to see in the future?
- Do you see any existing gaps in training or research as it relates to worker safety in your industry?

**Share your ideas with
your association**

Creative Sentencing Going Forward

- “Based on comments from the bench, the interest that defendants have who participated in creative sentencing and the wealth of opportunities for servicing the public interest thorough creative sentencing, I am sure it will continue to be a major, and perhaps a proportionately larger part of sentencing.” S.McRory former AB Environmental Crown Prosecutor

Questions & comments

Thank you