

“Maximum fine now \$1.5 million, prosecution deadline potentially indeterminate: What do recent amendments to the Ontario OHSA mean for your business?”

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Ontario: Schedule 30 to Bill 177

- Effective December 14, 2017
 - Increased maximum fines
 - Changed the limitation period for laying charges
 - Changed accident notification rules

Increase to maximum fines: Corporations

- New maximum: \$1.5 million
- Old maximum: \$500,000

Increase to maximum fines: Corporations

- Last increase: 1990 (from \$25,000 to \$500,000)
- \$500,000 with inflation 1990 to 2017: \$840,000
- \$1,875,000 new total maximum with Victim Fine Surcharge

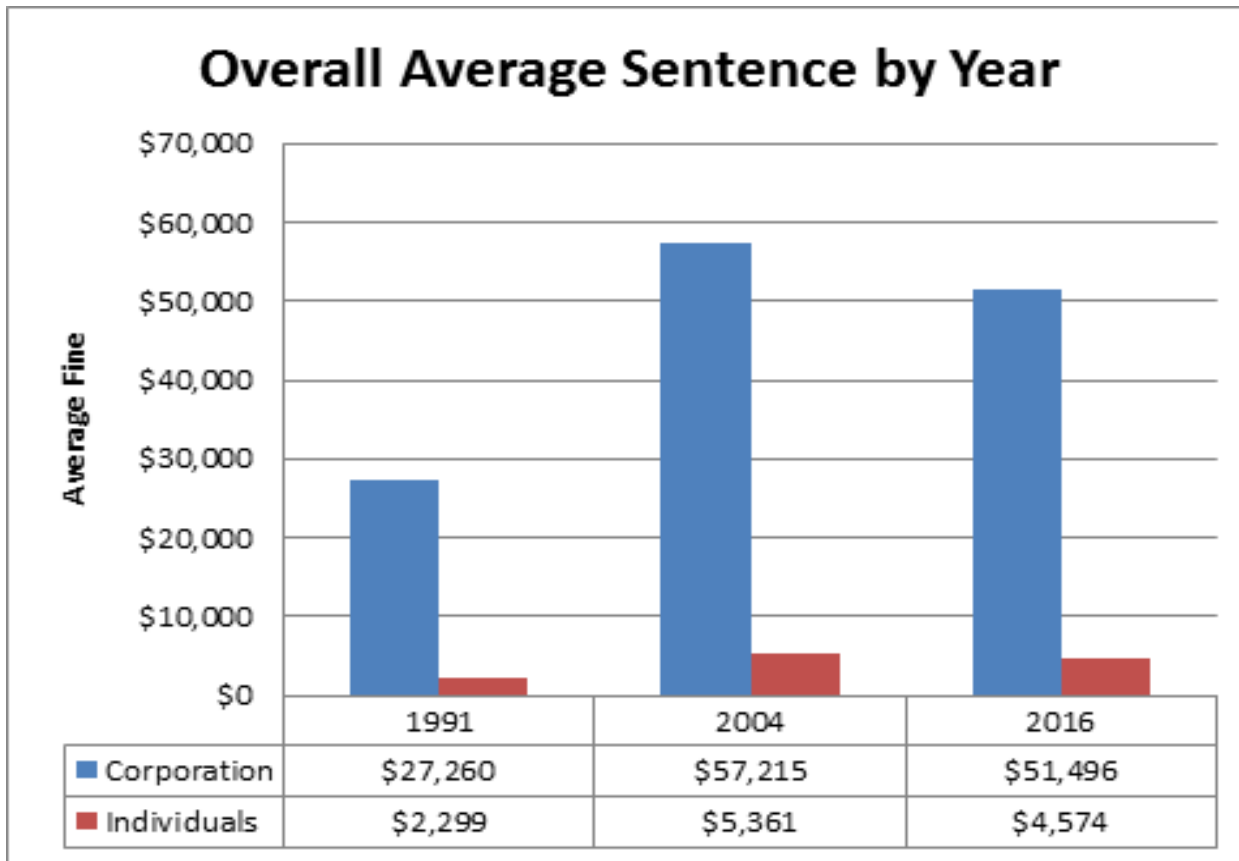
Increase to maximum fines: Individuals

- Supervisors, directors, workers
- New maximum: \$100,000
- Old maximum: \$25,000

Increase to maximum fines: Individuals

- Last increase: 1979 (from \$10,000 to \$25,000)
- \$25,000 with inflation 1979 to 2017: \$82,000
- \$125,000 new total maximum with Victim Fine Surcharge

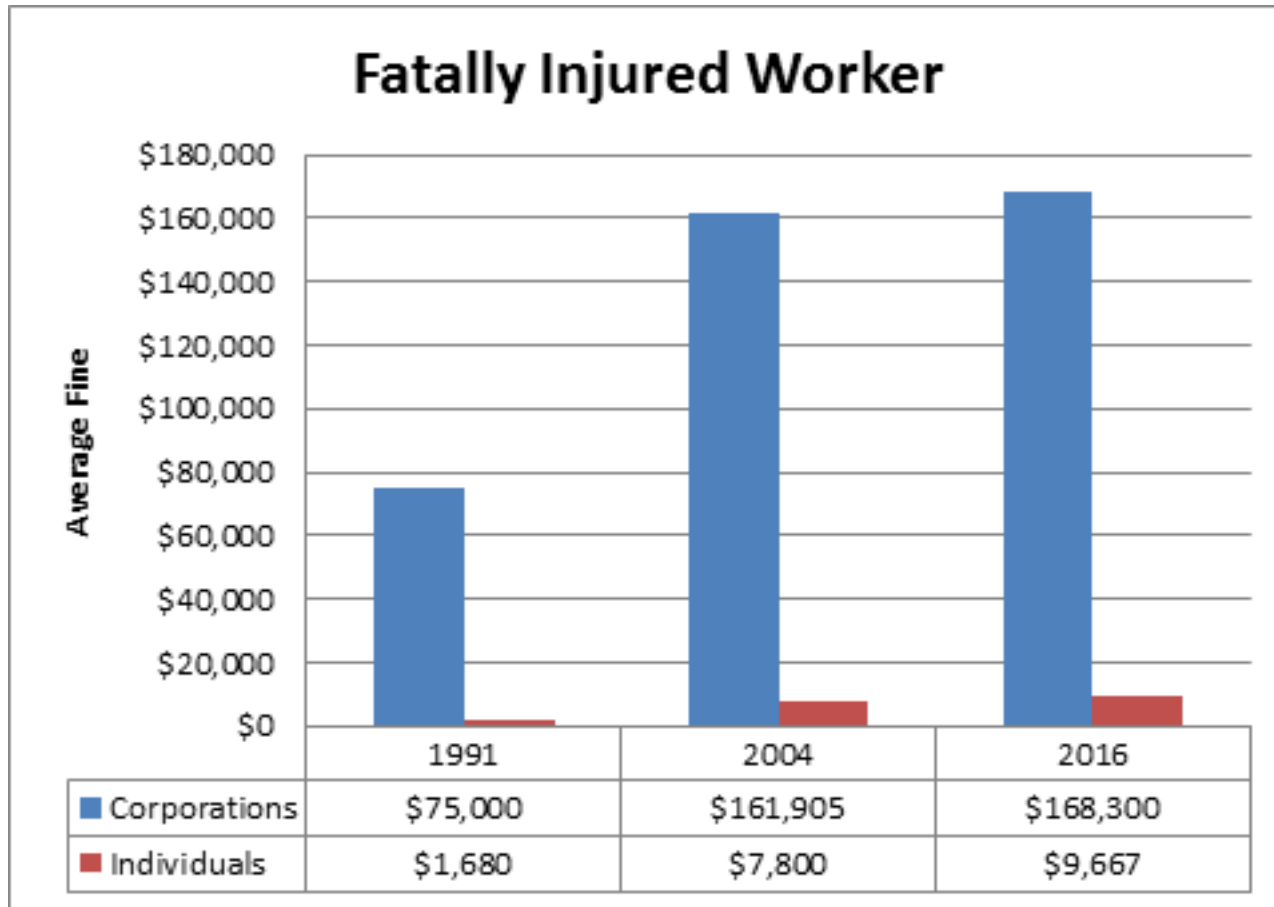
Actual fines - Ontario



Averages calculated by Dentons Canada LLP

Data source: Exner et al., "Annotated Occupational Health and Safety Act", Thomson Reuters

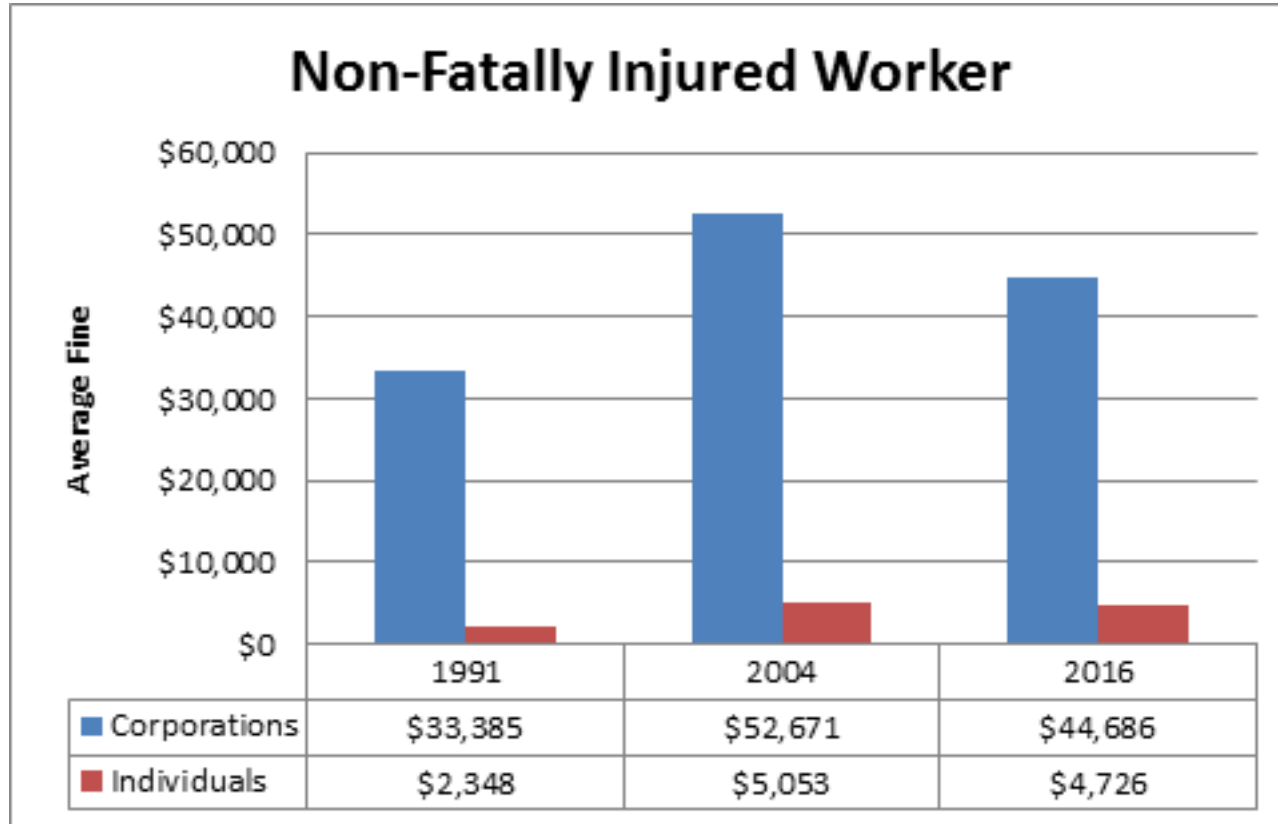
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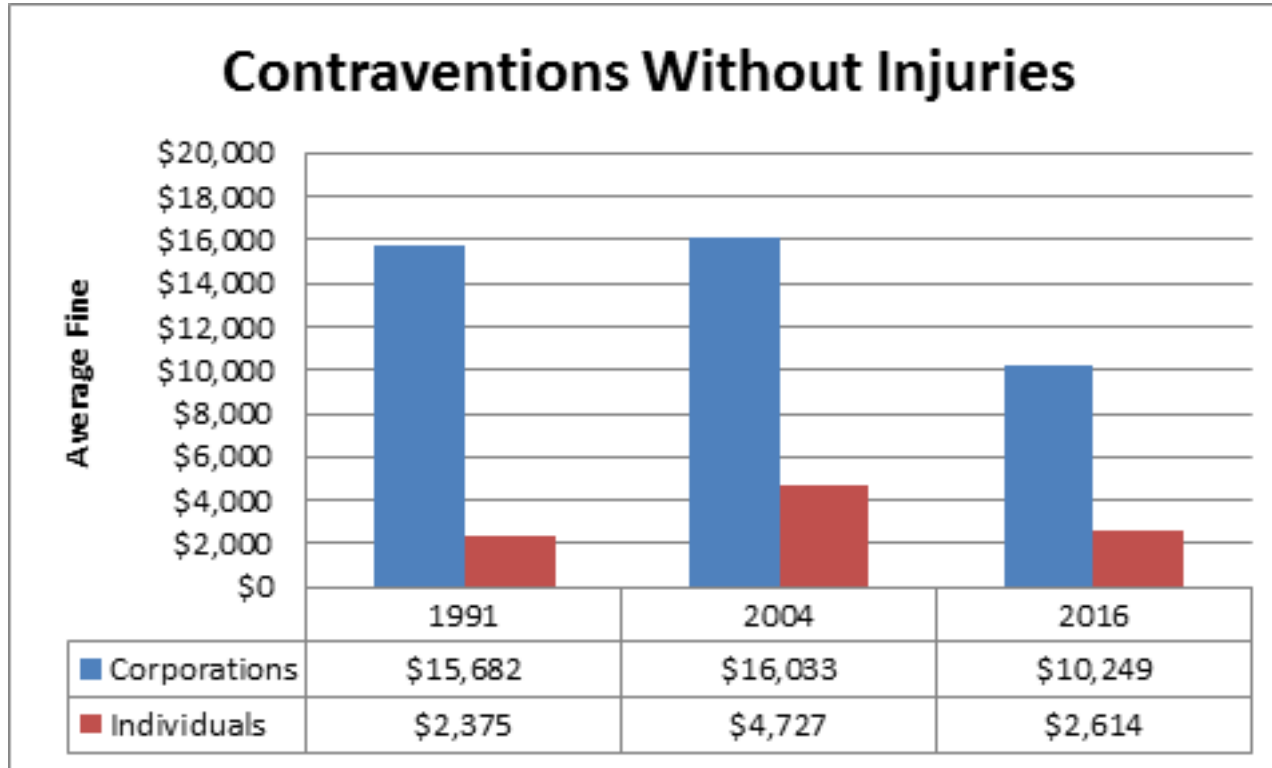
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How do courts react to increases in maximum fines?

- “The average fine after *Bill 208* is \$33,504, about six times the previous average”.

R.M. Brown, “Administrative and Criminal Penalties in the Enforcement of Occupational Health and Safety Legislation”, 30 Osgoode Hall L.J. 691 (1992)

How do courts react to increases in maximum fines?

- Cotton Felts factors for setting fine include:
“the **maximum** penalty prescribed by statute”
- *Agra Foundations Ltd.* (Alta, 2011):
“The Court interprets the increase in statutory fines under this section of the Act as indicative of the **legislature's intention to warn employers** than fines to be imposed will be sufficient to be felt by the employer and will be sufficient to serve as a warning to others that infractions of the legislation will be costly.”

So what do we expect to happen with fines?

- Ministry of Labour prosecutors?
- Courts?

Change to limitation period for laying charges

- Old limitation period: one year
- New limitation period: later of:
 - One year, or
 - One year after the day upon which an inspector becomes aware of the alleged offence.

Change to limitation period for laying charges

- In part, response to *Corporation of the City of Guelph* court decision in 2012
- Engineer and architect found not guilty of OHSA charges where wall collapsed more than one year after their work was completed

Change to limitation period for laying charges

- What does change mean?
 - Reportable accidents: one year if reported
 - Non-reportable accident: potentially indefinite
 - Retroactive?

Change to limitation period for laying charges

- MOL inspectors:
 - Unannounced inspections: MOL inspectors ask for accident history?
 - If accident, will MOL inspectors ask about previous accidents?
 - One accident lead to charges relating to multiple incidents?

Change to limitation period for laying charges

- Practical considerations for employers:
 - Documenting accidents?
 - Investigating accidents?
 - Documenting results of investigation?
 - Investigations under privilege?

New reporting rules: structural inadequacy of building

- S. 25(2)(n):
 - Employer that does not own building:
must notify MOL if JHSC or health and safety representative “has identified potential structural inadequacies of a building, structure, or any part thereof, or any other part of a workplace, whether temporary or permanent, as a source of danger or hazard to workers.”

Government has power to make regulations with new reporting obligations

- Government can make regulation specifying:
 - additional notice requirements under
 - S. 51 (fatality or critical injury)
 - S. 52 (notice to JHSC for certain non-critical injuries)
 - S. 53 (accident, premature or unexpected explosion, fire, flood or inrush of water, failure of any equipment . . .)
 - Including:
 - who is required to provide the notice
 - deadline for providing notice
 - information in notice

Important case: *Quinton Steel*

- “General duty” charge can impose greater obligations than set out in the regulations under the OHSA
- Affect on your business?

Important case: *Saskatoon Convalescent Home*

- In general, OHSA protections cannot be bargained away by a release
- However, once a “triggering events” occurs which provides a worker with the right to make a complaint under OHS legislation, that right becomes “personal” to the worker.
- Release in respect of personal right can be enforceable.

Important case: *Municipality of Chatham-Kent*

- Section 54(1)(c) of the OHSA:
 - Gives inspectors power to require production of documents even without contravention of OHSA or regulations.

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Harassment arbitration hearing should be open to the public, including the press, arbitrator rules



Posted on May 2nd, 2018 By **Adrian Miedema**
Categories: **Caselaw Developments, Safety Professionals - Practice Issues, Violence and Harassment**

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A police union's harassment grievance arbitration hearing should be open to the public, including the press, despite the sensitive issues that it raised, a labour arbitrator has ruled. The case illustrates the publicity risk that employers face in many workplace disputes, and the need for employers to consider publicity when analyzing litigation risk.

The grievance alleged that the police services board failed to provide a harassment-free workplace to its civilian members. The issues had resulted in two workplace investigations that had not resolved the dispute.

The arbitrator noted the general requirement, under the *Statutory Powers Procedure Act*, that a hearing be open to the public. The police board argued that the press should be excluded. Two officials with the police force, who were "interested parties" at the arbitration, argued that the hearing should be held *in camera* – that is, closed to the public and the media.

Thank you



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