




TICKETING AND ADMINISTRATIVE PENALTIES AS ENFORCEMENT TOOLS FOR REGULATORS:

THE ALBERTA EXPERIENCE IN A NATIONAL CONTEXT

GPAC Operations, Maintenance & Safety Conference
April 4, 2014



TODAY'S AGENDA

- BRIEF HISTORY & OVERVIEW – NATIONAL PERSPECTIVE
- ADMINISTRATIVE PENALTIES
- ON-THE-SPOT TICKETING
- ALBERTA TAPS – IN MORE DETAIL
- KEY EMPLOYER CONSIDERATIONS
- RECOMMENDATIONS TO MITIGATE RISK
 - DUE DILIGENCE

REASON FOR LEGISLATIVE CHANGES

- “The intent of this legislation is to ensure willing and active compliance with existing regulations by creating new penalties and bolstering those that already exist...”
- “The provisions of this Act are aimed directly at them. This Act sends a clear message that they will not be able to flout the rules and put either the safety of Albertans at risk without meaningful consequences.”

OVERVIEW

- The problem from the Regulator Perspective:
 - Persistent/repeated non-compliance with OHS rules
 - Recent increase in provincial injury rate
 - Fatality rate remains unacceptably high
 - 188 fatalities in 2013 (many occ. disease – 2x increase)
- Regulator Response:
 - Multi-part strategy that included increasing tools available to enforce rule
 - Ticketing and Administrative Penalties System

BILL 6 – WHY?

“In the past many [regulators'] warnings have been ignored, and the only way to deal with the situation was through protracted and costly suspensions or prosecutions”.

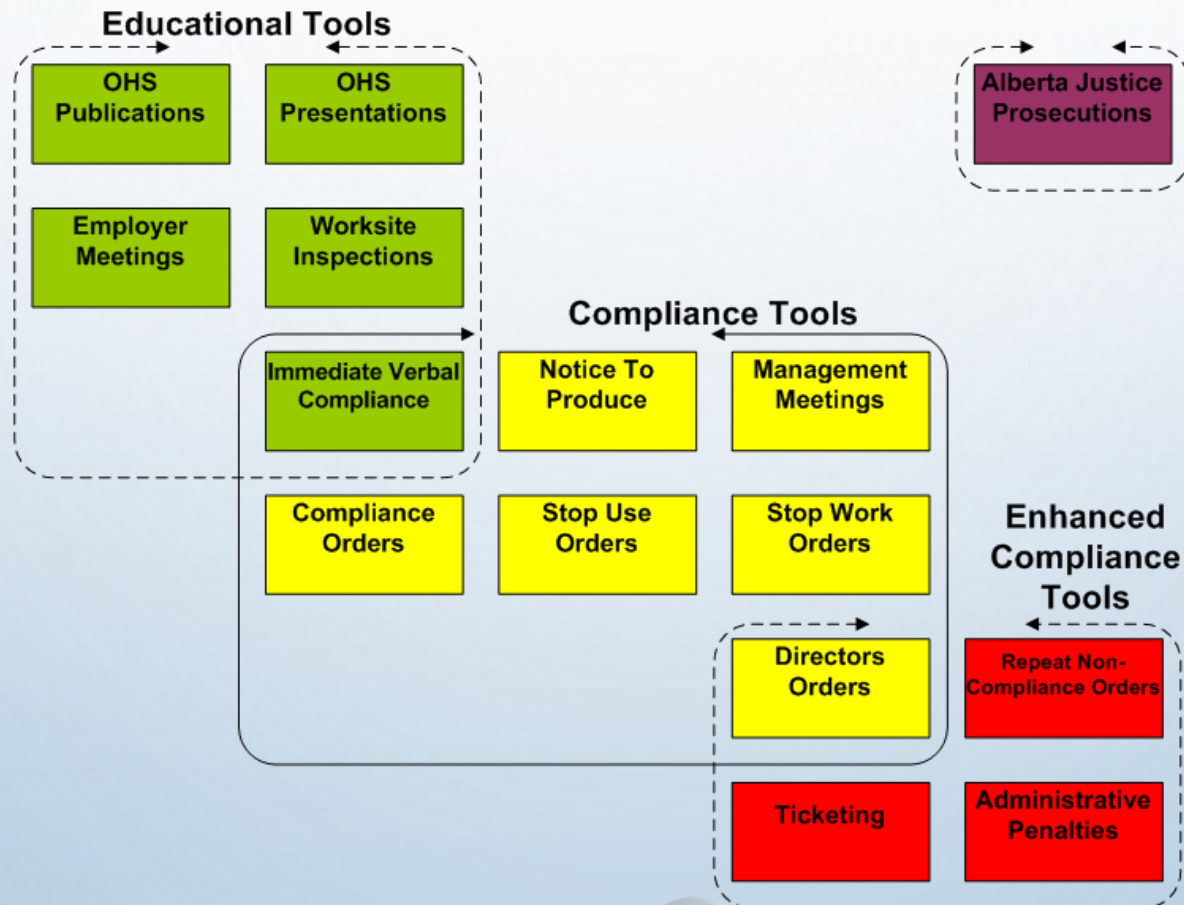
HON. MATT JENEROUX, MLA (ALBERTA) OCTOBER 24, 2012

CURRENT VIEW

“We will be slapping them with tickets and fines because no one has the right to put their co-workers in danger by not practicing safe rules around the workplace”.

LABOUR MINISTER THOMAS LUKASZUK MARCH 27, 2014

OHS COMPLIANCE TOOLS – ALBERTA



HOW DO TICKETS AND ADMIN. PENALTIES FIT WITH OTHER COMPLIANCE TOOLS?

- THE FOLLOWING SUITE OF COMPLIANCE ENFORCEMENT TOOLS ARE AVAILABLE TO OHS:
 - Education / Information
 - Stop work orders
 - Tickets
 - Court Orders
 - Orders to comply
 - Stop use orders
 - Administrative penalties
 - Court prosecutions
- EACH ENFORCEMENT TOOL SERVES A DIFFERENT PURPOSE IN ENSURING COMPLIANCE AT THE WORKSITE
 - Keeping workers safe and healthy is the overall goal – is it achieved?

ENFORCEMENT OF OCCUPATIONAL HEALTH & SAFETY ACT (OHSA), REGULATION AND CODE IN ALBERTA

- SITE INSPECTIONS
 - Complaint based, follow-up or random
- ORDERS
 - Appeals to the Occupational Health and Safety Council
 - Can be enforced through the Court of Queen's Bench
- ADMINISTRATIVE PENALTIES/FINES
 - Officers are being retrained and becoming Peace Officers
 - Details set out below
- PROSECUTIONS
 - Last resort, education to achieve compliance in first instance
 - Fatality, serious injury or near miss = likely prosecution

ALBERTA DEPARTMENT OF HUMAN SERVICES RESOURCES

- Alberta's Ministry of Human Services now has **143** workplace safety inspectors, an approximate 30 per cent increase since 2011, when the rate of lost time injuries spiked for the first time in 10 years
- Only **10** trained as Peace Officers as of March 27, 2014 – next training course is in June 2014

ADMINISTRATIVE PENALTIES

- A monetary penalty levied by administrative action not a judicial action (i.e. not in Court)
- The stated aim is to promote remedial action, preventive in nature, to address a health/safety issue and re-establish compliance with legislated requirements

ADMINISTRATIVE PENALTIES: CROSS-CANADA COMPARISON

- OHS LEGISLATION IN BC, AB, MB, NS AND YT PERMITS ADMINISTRATIVE PENALTIES
 - In BC, AB, NS, and YT: may levy an AP as an alternative to prosecution for contravening the act, regulations or an order
 - In MB: may only levy an AP for failing to comply with an improvement order

WHAT ARE THE CHARACTERISTICS OF AN EFFECTIVE ADMINISTRATIVE PENALTY SYSTEM?

To be effective, an APS needs to be:

- **Responsive:** encouraging speedy correction of a contravention
- **Proportional:** reflecting the seriousness of a potential risk created by the contravention
- **A deterrent:** a consequence for the creation of risk is more likely to prevent harm



● EFFECTIVE DATE – THEY'RE HERE...

- Administrative penalties were in effect
October 1, 2013

WHO CAN RECEIVE AN AP?

ALL REGULATED PARTIES AT A WORK SITE:

- Prime Contractors
- Contractors
- Employers
- Suppliers
- Workers

ASSESSING A PENALTY

UNDER THE NEW SYSTEM, THE FOLLOWING COULD TRIGGER A PENALTY LEVY:

- A single provision of legislation being contravened
- Multiple provisions of legislation being contravened
- Non-compliance with an Officer's order
- Non-compliance with the conditions of an acceptance issued pursuant to the legislation
- Non-compliance with an approval issued pursuant to the legislation

AMOUNT OF THE PENALTY

- Maximum of \$10,000 per contravention per day
- In accordance with the principle of proportionality, the \$-value of a penalty levy would be a calculated 'base' amount reflecting:
 - The degree of risk of harm; and
 - The seriousness of the contravention
- That base would then be adjusted (+/-) by considering factors reflecting site-specific conditions of the contravention - so case by case basis

TIMELINES

- In keeping with the principle of timeliness and in accordance with operational procedures, the Alberta Department of Human Services has said it would aim to finalize a decision to assess a penalty levy:
 - For relatively straightforward issues within 60 days; and
 - For more complex issues, a maximum of 180 days

TIME LINES CONT'D

- **AS PER S.40.3(5):**

“A notice of administrative penalty may be given within 2 years after the alleged contravention or non-compliance occurs, but not afterwards.”

APPEALS

- APS is an administrative process – not Court based
- The **OHS Council, an independent review body** is where appeals are directed and heard for APS levies
 - See <http://humanservices.alberta.ca/working-in-alberta/6446.html>
- Appeals of APS levies are separate and distinct from appeals of Compliance Orders
- Have **30 days** from the date the penalty is levied

LEGISLATION REQUIREMENTS -APS

- Since administrative penalties are NOT a judicial process, the *OHSA* was amended (by way of Bill 6) to enable the creation of an AP system
- An Administrative Penalty Regulation has been prepared that contains the necessary details for officers to issue penalties

PUBLICATION

- It is proposed that as an education and motivation factor:
 - A summary of issued penalties, after any appeal is settled, would be posted on the Department's web site identifying recipient, the amount, and the reason for the penalty
- This has reputational risk implications

WHAT IS TICKETING?

- The ticketing system enables OHS Officers to issue on-the-spot tickets to employers or workers who are in violation of legislated health and safety rules
 - The tickets will be similar to traffic tickets
- The purpose of issuing tickets is to provide a consequence for non-compliance with specified OHS legislation requirements
- Officers will have discretion, in accordance with operational policies and procedures, on when to issue tickets
 - There are apparently no ticketing quotas and tickets will only be issued when an officer believes it is appropriate to do so
 - Revenue neutral expectation

TICKETS

PROVINCIAL OFFENCES PROCEDURES ACT (POPA)

- Already exists
- Establishes the ticketing system rules for Alberta
 - Issuance of tickets
 - Payment of tickets
 - Challenges to tickets

ENABLING LEGISLATION

Procedures Regulation (POPA)

- Specifies Ticketable Provisions for multiple pieces of provincial legislation
 - Includes *Traffic Safety Act*
- Now includes the OHSA
 - OHS ticketable provisions and fine amounts are listed in the OHSA Regulation (O.C. 267/2013, A.R. 166/2013) with Code references

TICKET INITIATIVE HISTORY

- Ticketable provisions originally recommended by the construction industry
 - Initially only construction related provisions were included
- Minister directed the department to develop a more comprehensive system suitable for all industries

WHEN? WHAT MUCH?

- **Came into effect – January 1, 2014**
- **Tickets:** Range from \$100-\$500, plus victim surcharge (15%) but no GST
- **Employer** - \$300 - \$500, **Employee** - \$100 - \$200
 - All penalties will go to the general revenue fund – but negotiations are underway to have them fund OHS Safety Programs
 - Where only the Employee is ticketed, the OHS Officer will give the Employer a “Contact Report”
 - In many cases the Employer and Employee can be ticketed for the same offence

CHALLENGES TO TICKETS

- The ticket can be paid and guilt is admitted or it can be challenged through the Court system
- Provincial Court trials
 - Advocates can be hired for assistance (does not have to be a lawyer, unlike in the Court of Queen's Bench)

WHO CAN BE TICKETED?

- Tickets can be issued to a **worker** or an **employer**
- OHS Officers can request ID
 - Upon request, workers and employers must provide proof of identity
 - Employers are also required to identify their workers if an OHS Officer asks them to do so

TICKET CATEGORIES

11 GENERAL CATEGORIES

1. ADMINISTRATIVE REQUIREMENTS
2. PPE
3. FALL PROTECTION
4. FIRE & EXPLOSION PREVENTION
5. EQUIPMENT SAFETY
6. CRANES, HOISTS AND RIGGING

TICKET CATEGORIES – CONT'D

CATEGORIES, CONT'D

7. STAIRWAYS AND LADDERS
8. UNSAFE BEHAVIOURS
9. CHEMICAL AND BIOLOGICAL HAZARDS
10. HOUSEKEEPING
11. FALLING OBJECTS

TICKETABLE PROVISIONS

- **EXAMPLES OF THE 66 OFFENCES:**
 - Failure to have a code of practice
 - Failure to have a log book
 - Failure to wear visible clothing
 - Failure to wear other PPE
 - Failure to use fall protection
 - Permitting an open flame near explosives or flammables
 - Failure to have access to emergency eye wash or showers

HOW DO YOU FIGHT A TICKET?

CAN PLEAD NOT GUILTY AND GO TO PROVINCIAL COURT OR GUILTY AND PAY THE PENALTY

- When an Officer issues a ticket it will set out a Court date and location
- The back of the ticket will set out the options

PEACE OFFICER ACT

- OHS OFFICERS WILL BECOME PEACE OFFICERS IN ORDER TO ISSUE TICKETS
 - Effect on perception during site visits?
- OFFICERS WILL HOLD TWO PIECES OF ID:
 - OHS Officer identification
 - Peace Officer identification

ADMINISTRATIVE PENALTIES & TICKETING?

CAN A REGULATED PERSON RECEIVE AN ADMINISTRATIVE PENALTY AND BE CHARGED?

- AS PER S.40.3(4): **NO**, NOT IF THE FINE IS PAID AND IT RELATES TO THE SAME CONTRAVENTION OR FAILURE

“A regulated person who pays an administrative penalty in respect of a contravention or a failure shall not be charged under this Act with an offence in respect of the same contravention or failure to comply that is described in the Notice of Administrative Penalty.”

● INTERFERENCE WITH OHS OFFICERS

AS PER S.40.4:

“No person shall interfere with or in any manner hinder an officer or peace officer who is exercising powers or performing duties or functions under the Act”

COMPLIANCE POLICY AND PROCEDURES

- **COMPLIANCE POLICY**

- the compliance policy and enforcement procedures document outlines the policy and procedures used by Occupational Health and Safety when responding to instances of non-compliance at Alberta work sites
- <http://employment.alberta.ca/sfw/12235.html>

REASONABLE STEPS TO ENSURE LEGAL COMPLIANCE

- Effective Health and Safety Management systems
 - Identification and analysis of health and safety hazards at the work site
 - Implementing control measures to eliminate or reduce the risks to workers from hazards
 - Clearly demonstrated management commitment and written corporate policy
 - Documented disciplinary action for non-compliant employees
 - A LOT OF EMPHASIS ON DISCIPLINE NOW

REASONABLE STEPS TO ENSURE LEGAL COMPLIANCE CONT'D

- HEALTH AND SAFETY MANAGEMENT SYSTEMS
 - Worker competency and training – see CSA: Z-1001 dealing with “occupational health & training”
 - Inspection program
(*also need an audit system to ensure compliance)
 - Emergency response planning
 - Management system administration
- ***SEE DUE DILIGENCE HANDOUT***

EMPLOYER CONSIDERATIONS

- During recruitment process will you ask if the worker has been convicted of an offence?
 - Can/will you pay employee's fines?
 - Insurance and performance management considerations
- How will you educate them about this new initiative?

EMPLOYER CONS. CONT'D

- Will you require an employee to notify you if they have been charged and/or convicted of an offence?
 - Consider updating employee handbook, employment offers and/or agreements to reflect this
- When contracting for work will this be a relevant consideration in evaluating safety record?
- Will APS and/or Tickets affect later regulatory action if related to the same type of breach?
- What is the effect on future offence sentencing if conviction?

QUESTIONS?

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THANK YOU