

## News

### Court of Appeal for Ontario considers mitigation in OHSA sentencing case

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In [Ontario \(Labour\) v. Flex-N-Gate Canada Company](#), the Court of Appeal for Ontario found that corrective action taken by an employer to merely comply with a safety order following a workplace accident was not a mitigating factor for sentencing purposes under the *Occupational Health and Safety Act* (“OHSA”), and that fines for multiple OHSA breaches may not be imposed “concurrently”.

After a worker was badly injured in a workplace accident, two orders were issued against the employer by the Ministry of Labour (“MOL”). The first ordered compliance with the applicable regulations regarding the safe movement of material and the second prohibited the employer from using certain equipment pending compliance.

The employer complied with the orders and implemented new procedures, but evidence indicated that it did nothing beyond mere compliance. At sentencing, the employer was fined \$25,000 for each offence, totalling \$50,000, plus the 25% victim fine surcharge. On appeal, the Ontario Court of Justice found that the corrective actions taken by the employer were a mitigating factor and that the sentences could run currently, resulting in a fine of \$25,000, plus the victim fine surcharge.

That finding was reversed by the Court of Appeal. It stated that mere compliance with the MOL orders was not a mitigating factor in sentencing; to find otherwise would undermine both the goals of deterrence and prevention under OHSA. However, if the employer took steps beyond mere compliance, that factor might be a mitigating factor in sentencing.

For a more detailed summary of this decision, see our Case in Point blog post, “[Mere compliance with OHSA order not a mitigating sentencing factor, says Ontario Court of Appeal](#)”.