

Ministry of Labour, Training and Skills Development
Operations

How the MLTSD Determines Whether or Not to Prosecute.

PROSECUTIONS

THE PURPOSES OF PROSECUTIONS

Why is a prosecution initiated?

THE PURPOSES OF PROSECUTIONS

Answer:

General deterrence for others

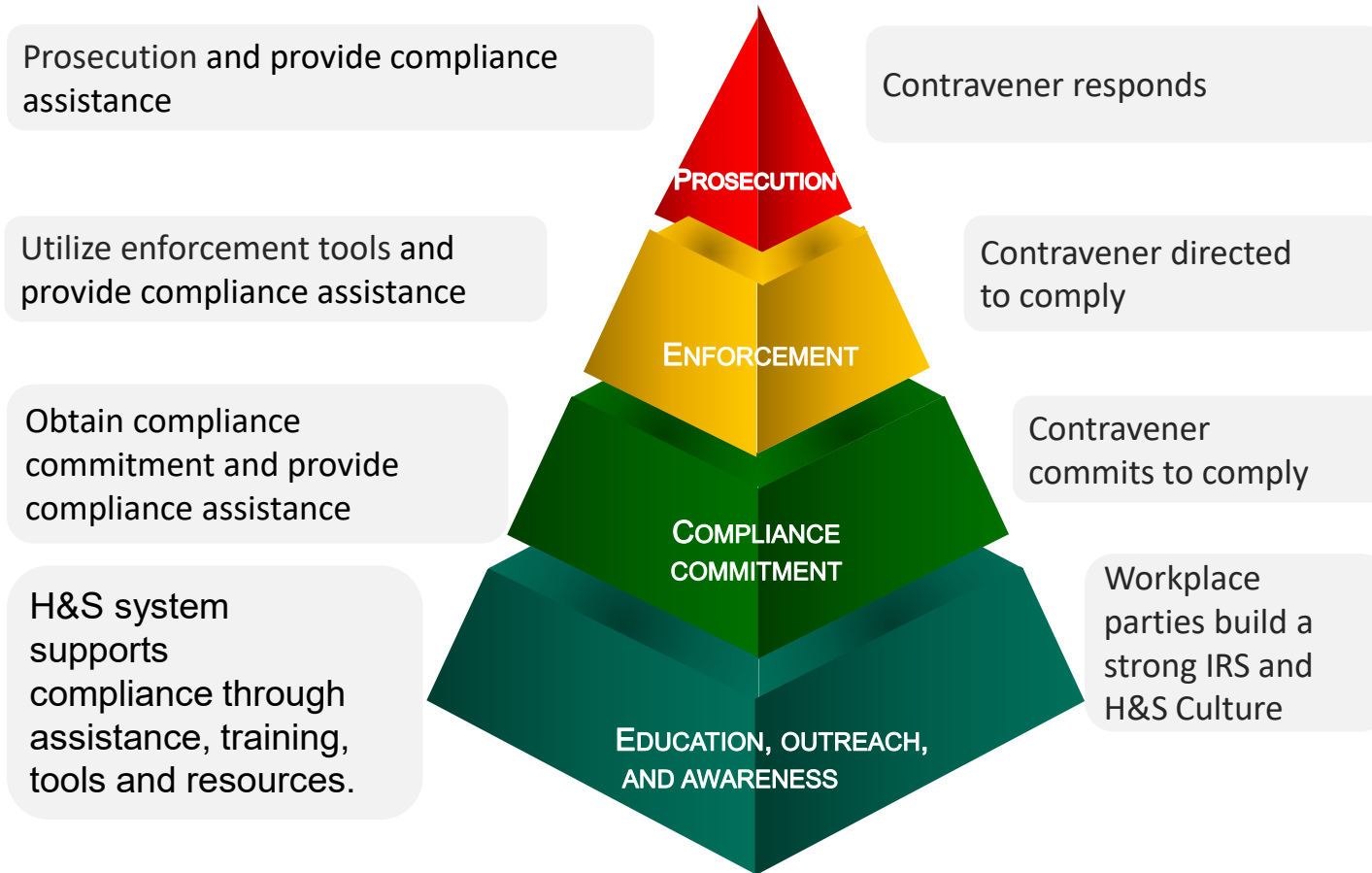
Specific deterrence for the defendant

LEGAL CONSIDERATIONS FOR PROSECUTIONS

- The realistic prospect of conviction
- The public interest
- The seriousness of the offence
- Steps taken by the defendant to avoid the offence

OHS Compliance Continuum Model

Incorporating a flexible, risk-based approach to achieving compliance



STRUCTURE OF THE POA – 10 Parts

- Part I** • Commencement of Proceedings by Certificate of Offence
- Part II** • Commencement of Proceedings for Parking Infractions
- Part III** • Commencement of Proceedings by Information
- Part IV** • Trial and Sentencing
- Part V** • General Provisions
- Part VI** • Young Persons
- Part VII** • Appeals and Reviews
- Part VIII** • Arrest, Bail and Search Warrants
- Part IX** • Orders on Application under Statutes
- Part X** • Agreements with Municipalities Concerning Administrative Functions and Prosecutions

COMMENCEMENT OF PART I AND PART III OFFENCES

PART I

- Used to initiate prosecutions
- Used for minor offences
- Limitation period is 30 days
- Penalties:
- Offence Notice – Varies by offence
- Summons – Up to \$1000.00 per offence
- Matters are heard before Judges or Justices of the Peace in Provincial Court

PART III

- Used to initiate prosecutions
- Used primarily for significant offences or aggravating circumstances
- Limitation period is two years less a day
- Penalties:
- Person – Up to \$500,000 and/or one year imprisonment per offence
- A Director or Officer of the company – up to \$1,500,000 per offence and/or one year imprisonment per offence
- Corporation – Up to \$1,500,000 per offence
- Matters are heard before Judges or Justices of the Peace in Provincial Court

How are fines determined

- Part 1 Offence Notice – set fines within the schedules
- Part 1 Summons – determined by the Justice of the peace or Judge
- Part 3 Prosecution (long and short form) – determined by the Justice of Peace or Judge

Where does the MLTSD's authority to prosecute come from?

THE PROVINCIAL OFFENCES ACT (POA)

- Applies to ALL Provincial Legislation
- Sets process & provides forms
- Sets offence limitation period of 6 months for statutes that do not provide own
- **MLTSD has a 30 day limitation period for initiating a prosecution under Part 1 of the POA and 2 years under Part 3 of the POA**
- Details the procedures for initiating the charge process
- Jurisdiction - ONTARIO
- Ontario Court of Justice maintains jurisdiction for prosecution of offences

THE PROVINCIAL OFFENCES ACT (POA) ADMINISTRATIVE LEGISLATION

- Created to separate the adjudication of provincial statutes/authority from the criminal court system
- Allows for easier access to courts
- Provides for easier management of the Provincial Justice System

PROVINCIAL OFFENCES OFFICER (POO)

Section 1(1) of the POA states

- A police officer,
- A constable appointed pursuant to any Act,
- A municipal law enforcement officer referred to in subsection 101(4) of the Municipal Act, 2001 or in subsection 79(1) of the City of Toronto Act, 2006, while in the discharge of his or her duties,
- A by-law enforcement officer of any municipality or of any local board of any municipality, while in the discharge of his or her duties,
- An officer, employee or agent of any municipality or of any local board of any municipality whose responsibilities include the enforcement of a by-law, an Act or a regulation under an Act, while in the discharge of his or her duties, or
- A person designated under subsection (3).

PROVINCIAL OFFENCES OFFICER (POO)

You must be designated pursuant to section 1(3) of the POA to commence a Part I Prosecution.

It states:

A minister of the Crown may designate in writing any person or class of persons as a provincial offences officer for the purposes of all or any class of offences.

Construction Schedules for Part 1

PART I - SCHEDULE OF OFFENCES

Employment Standards	Occupational Health & Safety	Others
Employment Standards Act <ul style="list-style-type: none"> Schedule 4.2 	Occupational Health and Safety Act <ul style="list-style-type: none"> Schedule 66.2 (17) 	Emergency Management and Civil Protection Act <ul style="list-style-type: none"> Schedule 4.0.1
Minimum Wage Exemptions Regulation – O.Reg. 285/01 <ul style="list-style-type: none"> Schedule 4.3 	Construction Regulation – O.Reg. 213/90 <ul style="list-style-type: none"> Schedule 67 (102) Schedule 67.1 (53) 	
	Diving Regulation – O.Reg. 629/94: <ul style="list-style-type: none"> Schedule 67.2 	
	Industrial Regulation – O.Reg. 851/90 <ul style="list-style-type: none"> Schedule 67.3 Schedule 67.4 	
	Mining Regulation – O.Reg. 854/90 <ul style="list-style-type: none"> Schedule 68 	
	Window Cleaning Regulation – O.Reg. 859/90 <ul style="list-style-type: none"> Schedule 69 	

PART I – OFFENCE NOTICE - “TICKET”

Industrial Program

Worker working without hair suitably confined under subsection 83 (1) of Reg. 851	28 (1) (a)	\$250
Employer failing to ensure worker does not wear loose or dangling jewellery or clothing near source of entanglement under subsection 83 (2) of Reg. 851	25 (1) (c)	\$550
Supervisor failing to ensure worker does not work with loose or dangling jewellery or clothing near source of entanglement under subsection 83 (2) of Reg. 851	27 (1) (a)	\$450

Construction Program

Worker failing to work in compliance with subsection 26.1 (2) of O. Reg. 213/91 by not being adequately protected by fall protection	28 (1) (a)	\$350
Supervisor failing to ensure worker adequately protected by fall protection under subsection 26.1 (2) of O. Reg. 213/91	27 (1) (a)	\$550
Employer failing to ensure worker adequately protected by fall protection under subsection 26.1 (2) of O. Reg. 213/91	25 (1) (c)	\$650

PART I – OFFENCE NOTICE – “Ticket”

Victim Fine Surcharge Regulation

For Set Fines of (\$)	Add Surcharge (\$)
0 - 50	10
51 – 75	15
76 – 100	20
101 – 150	25
151 – 200	35
201 – 250	50
251 – 300	60
301 – 350	75
351 – 400	85
401 – 450	95
451 – 500	110
501 – 1000	125
Over \$1000	25% of Actual Fine

Note:

O.Reg. 161/00 pursuant to section 60.1 of the Provincial Offences Act, provides the legislative authority for the victim fine surcharge.

The eTicketing program will automatically place the set fine amount and include the required Victim Fine Surcharge on the Offence Notice.

Questions