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## Increased Enforcement vs. Workplace Injuries: An Ongoing Battle

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January is always an interesting time of year in the Canadian world of occupational health and safety ("OHS"). Mainly because we get to reflect on our previous year's performance and predict what might lie ahead, by reviewing the barrage of statistics that become available to us at this time of year. In particular, we get to take a look at the potential relationship between the number of workplace injuries and enforcement of OHS laws. OHS Regulators across the country have committed to increased enforcement of OHS laws in order to reduce the number of workplace injuries. January is when we get to monitor the progress of these promises.



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The *Association of Workers' Compensation Boards of Canada* ("AWCBC") releases its **National Work Injury and Disease Report**, which outlines, among other statistics, the total number of lost time claims and fatalities accepted by each jurisdiction's workers' compensation board.

There are some interesting highlights to AWCBC's most recent *NWIDR*, which gives us a glimpse of Canada's injury and fatality performance in 2006, now that all of the numbers are in and adjusted for.

The total number of accepted lost time claims decreased for the sixth consecutive year. In 2000, there were 392,502. In 2006, there were 329,357,

down from 337,930 in 2005. This does not necessarily indicate that the number of injuries being suffered on Canadian work sites is decreasing. It could mean that employers are failing to report lost time claims or that the respective workers' compensation boards are denying more claims. In my view, the most plausible explanation of this downward trend in lost time claims is that employers have much more effective early and safe return to work programs and are capable of providing modified duties to injured workers immediately, meaning the claim does not get tracked as a "lost time".

The total number of accepted fatalities decreased from 1,097 in 2005 to 976 in 2006. Do not let the decrease in the total number of fatalities mislead you. 976 accepted fatalities is the second highest total on record since 1993, when there were 758. The number of accepted fatalities has been on an increasing trend ever since, largely due to occupational disease claims involving asbestos. In fact, since 1993, every time the number of accepted fatalities has decreased from the previous year, it increased again in the following year. The sharpest spikes were seen between 1996 and 1997, when the number of accepted fatalities rose from 703 to 833 and between 2004 and 2005, when the number rose from 928 to 1,097.

The other type of statistics released at this time of year, which employers should be particularly concerned about, are published by various Canadian OHS Regulators and outline their respective performances in the previous year. And

while the number of accepted lost time claims and fatalities were decreasing in 2006, OHS Regulators, namely Workplace Health and Safety in Alberta and the Ontario Ministry of Labour, were turning up the heat.

Workplace Health and Safety issued a press release on January 11, 2008, indicating that "fines levied for contraventions of Alberta's Occupational Health and Safety Act reached their highest total ever in 2007." In fact, they have more than tripled since 2005, from approximately \$535,000 to a whopping \$1,720,000 in 2007. The number of completed prosecutions in the province has remained fairly steady - there were a total of 12 in 2007. Two employers were handed fines of \$350,000, which were the highest fines on record in 2007. It is hard to imagine that this trend will continue. But consider that there have already been two convictions in Alberta in 2008, which resulted in fines of \$300,000 and \$350,750, respectively.

In late 2007, the Ontario Ministry of Labour ("MOL") updated its "Report Card", which indicates that the number of inspections, the number of orders issued, the number of convictions and the amount of fines all increased from the 2005/2006 to the 2006/2007 fiscal years (April 1 to March 31). This is not surprising considering that two-hundred new MOL Inspectors have been patrolling workplaces across the province since 2005. The most staggering increase was in the number of convictions, which reached the highest total on record at 856. This was up from 326 in 2005/2006 - an increase of 262%. The total amount of fines reached its second highest total on record at

\$8,821,380, narrowly missing the 2002 record of \$9,157,860 (on only 459 convictions).

This increased enforcement activity is largely driven by commitments made by provincial ministers to reduce the number of workplace injuries by significant amounts. In 2005, for instance, prior to the training of one-hundred new MOL Inspectors, Ontario Premier Dalton McGuinty planned to prevent 60,000 workplace injuries per year by 2008. According to AWCBC's *NWIDR*, the number of accepted lost time claims in Ontario decreased from 89,734 in 2005 to 83,179 in 2006, while the number of accepted fatalities decreased from 412 to 373. The number of accepted fatalities in Alberta decreased from 143 in 2005 to 124 in 2006, while the number of accepted lost time claims increased from 36,305 to 37,577, despite a similar commitment to reduce workplace injuries was made several years ago by a provincial Minister.

Thusfar, it does not appear that the significant increase in enforcement of OHS laws, primarily in Alberta and Ontario, are significantly reducing the number of workplace injuries in either of those provinces. Over the next several Januaries, we will get a chance to see if the most recent surge of convictions and fines results in any reduction in the number of workplace injuries. If it fails to do so, OHS Regulators may have to re-think their approach to preventing workplace injuries.

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