

Minimum Fines

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In *R v Henry of Pelham Inc.*,¹ the minimum fine was abrogated twice. The Justice of the Peace (“JP”) and judge on appeal each awarded different fines, which were less than the statutory minimum. The third time, the Ontario Court of Appeal (“ONCA”) varied the sentence again, imposing the minimum fine prescribed by the *Ontario Water Resources Act* (“OWRA”).²

Jurisdiction to Abrogate a Minimum Fine

The *Provincial Offences Act* (“POA”),³ s. 59(2), allows a court to impose a fine less than the statutory minimum where the court is of the opinion that “exceptional circumstances exist so that to impose the minimum fine would be unduly oppressive or otherwise not in the interests of justice”.⁴ Courts have held that the magnitude of the fine must be proportional to the nature and seriousness of the offence, the background of the offender, and to the offender’s ability to pay.⁵

In determining the appropriate fine, courts must strike a balance between the circumstances of the case and the circumstances of the accused, considering:

- ♦ exceptional circumstances,
- ♦ the oppressiveness of the fine,
- ♦ the interests of justice, and
- ♦ the intent of the legislature.⁶

¹ (28 April 2017), Information No 16-3110-01 (Ont CJ); (24 October 2017), Information No 16-3110-01 (Ont CJ).

² *Ontario Water Resources Act*, RSO 1990, c O 40, s 109 [OWRA].

³ RSO 1990 c P 33.

⁴ *Ibid*, s 59(2).

⁵ *R v Hitchon*, [2000] OJ No 5260 (Ont CJ) at para 12.

⁶ *R v Clarke*, 2012 ONCJ 627 at para 11.

R v Henry of Pelham Inc. Facts

The bad news is that Henry of Pelham Inc. (HP) was convicted for spreading cattle manure and grape pomace on its vineyard that leached into a creek and may have contaminated a neighbour's pond.

The good news is that as soon as HP was notified of the potential contamination, HP retained an environmental consultant to prepare an action plan and arranged to have the neighbour's pond cleaned up.

The fact is that the minimum fine for a corporation's first conviction for discharging any material into any water that may impair water quality is \$25,000.⁷

The first unusual news was that the JP found there were extraordinary circumstances that warranted abrogating the minimum fine and substituting a fine of \$600.

The second, even more unusual, news was that the appeal judge also found there were extraordinary circumstances that warranted abrogating the minimum fine, but substituted a fine of \$5,000 to replace the \$600 fine.

The new news from the ONCA is that *POA*, s. 59(2) should be applied with restraint. The ONCA varied the appeal judge's fine and imposed the statutory minimum fine of \$25,000.⁸

Pre-ONCA Decision

Prior to the ONCA's decision, we speculated on possible outcomes. The ONCA could have said that the JP's assessment of the facts was correct and that \$600 is an appropriate fine.

On the other hand, the ONCA could have said the same thing about the appeal judge's assessment that the appropriate fine was \$5,000, not \$600.

And the ONCA could also say that the minimum fine is the minimum fine and courts must adhere to it, except in exceptional circumstances; this is precisely what happened.

ONCA Clear Guidance

Now we have clearly articulated guidance from the ONCA on the rigidity of minimum sentence provisions and the latitude in the courts' discretion to abrogate the minimum fine.

⁷ *OWRA*, *supra* note 2 at s 109.

⁸ *Ontario (Environment, Conservation and Parks) v Henry of Pelham Inc*, 2018 ONCA 999 at para 3, 2018 CarswellOnt 20638.

The ONCA found that behaving responsibly following the commission of the offence is not a relevant consideration to apply the *POA*, s. 59(2) discretion to provide relief from a minimum fine.⁹ HP pled guilty to impairing water quality, contrary to the *OWRA*, and the ONCA saw no basis for concluding that the interests of justice validated derogation from the minimum fine prescribed.¹⁰

In light of *R v Henry of Pelham Inc.*, we now know that a court will not easily abrogate a statutory minimum fine.

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⁹ *Ibid* at para 72.

¹⁰ *Ibid*.