

# Statutory Fine Minimums

Sometimes Reduced Below Minimum

## Background



Many statutes comprising the law of quasi-criminal or regulatory offences, the procedures for prosecution thereof are found within the *Provincial Offences Act*, [R.S.O. 1990, c. P.33](#) (the "*POA*"), involve legislatorily prescribed 'statutory minimum' fines; however, despite the various statutes prescribing a 'minimum' required fine upon a conviction for the offence, [s. 59\(2\)](#) of the *POA* itself provides a discretion to lessen the fine to a sum below the minimum.

## Historically

In the past, the s. 59(2) discretion was commonly invoked so to avoid the law from becoming financially oppressive and impactful beyond the intent of deterrent; especially to those who could show that personal circumstances were such that a large 'minimum' would be injurious and is unnecessary to the encouragement of altered behaviour. Flexibility with the minimum also tended to occur frequently where a guilty party was without intent to break or disregard the law but was guilty despite a good social conscience.

## Recently

However, with the decision and reasoning of the Court of Appeal in the matter of *Ontario (Environment, Conservation and Parks) v. Henry of Pelham Inc.*, [2018 ONCA 999](#) clarified a 'test' for consideration by Trial judges prior to providing discretion of flexibility on minimum fines. Specifically, the Court of Appeal stated:

[43] This court has exercised the discretion under [s. 59\(2\)](#) to reduce minimum fines in two cases, both of which arose in the context of the *Compulsory Automobile Insurance Act*, [R.S.O. 1990, c. C.25](#). In *R. v. Ade-Ajayi*, [2011 ONCA 192 \(CanLII\)](#), 97 C.C.L.I. (4th) 183, the Crown agreed to a reduced fine in the “*particularly unusual*” circumstances of the case, which involved an appellant who was unemployed, seeking disability support and living off student loans. In brief reasons, this court described the reduced fine as being in the interests of justice without considering whether the minimum fine was unduly oppressive in the circumstances. In *R. v. A.E.*, [2016 ONCA 243 \(CanLII\)](#), 348 O.A.C. 68, another case involving driving without compulsory insurance, this court reduced the minimum fine because of the appellant’s mental illness and its effect on his ability to earn money to pay the fines. Again, this court described its decision to reduce the fines as being in the interests of justice. In neither case did this court provide interpretive guidance for [s. 59\(2\)](#).

[44] In my view, it is important to distinguish the authority to provide relief from a minimum fine from the duty to impose the minimum fine itself. Contrary to the intervener’s assertion, minimum fines are not mere guidelines; they are statutory requirements that establish sentencing floors. The starting point is that trial judges are required to impose minimum fines established by the relevant legislation. Their authority to provide discretionary relief under [s. 59\(2\)](#) of the [POA](#) – to impose a lesser fine or even suspend a sentence – does not have the effect of rendering minimum fines conditional in their application. On the contrary, minimum fines must be imposed unless the defendant satisfies the court that exceptional circumstances exist that justify the exercise of the court’s discretion to provide relief.

[45] It is important to emphasize that the court’s discretion is not unfettered. If it were – if trial judges could refuse to impose a minimum fine whenever they considered it suboptimal to do so – minimum fines would be reduced in status from rules to mere suggestions.

It is important to note that, and despite the heading shown above, that the Court of Appeal issued more of a reminder for the proper interpretation of the law rather than a change to the law whereas the Court of Appeal continued the above clarification by stating:

[46] [Section 59\(2\)](#) addresses this concern by limiting the circumstances in which relief may be granted. The discretionary power not to apply a minimum fine arises only if, in the opinion of the court, the specified criteria are satisfied.

[47] The difficulty is that the criteria are worded vaguely. [Section 59\(2\)](#) requires trial judges to determine whether circumstances are “*exceptional*”; whether a minimum fine would be “*unduly oppressive*”; and whether a minimum fine would not be “*in the interests of justice*”. These are evaluative and comparative concepts that have no settled core meaning, and they appear to leave considerable room for interpretation and application.

[48] However, vague terms are not to be understood as radically indeterminate, such that they permit virtually any outcome. Vague terms must be interpreted in context, as the modern approach to statutory interpretation makes clear. “*Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament*”: Elmer A. Driedger, *Construction of Statutes*, 2nd ed. (Toronto: Butterworths, 1983) at p. 87, adopted by the Supreme Court in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998 CanLII 837 \(SCC\)](#), [1998] 1 S.C.R. 27, at para. 21, and in *Bell ExpressVu Limited Partnership v. Rex*, [2002 SCC 42 \(CanLII\)](#), [2002] 2 S.C.R. 559, at para. 26.

[49] Thus, the discretion in s. 59(2) must be understood in the context of the Legislature's commitment to imposing minimum fines in a variety of public welfare contexts in order to promote the goal of deterrence. The *OWRA* does not establish a minimum fine that applies on a discretionary basis. The *OWRA* establishes a minimum fine that applies automatically on conviction for the relevant offence, subject only to the limited discretion of trial judges to grant relief under s. 59(2) of the *POA*.

### Summary Comment

Based on the reasoned explanation by the Court of Appeal regarding the intent of s. 59(2) of the *POA*, it appears that the lower courts are receiving a directive that discretionary flexibility on the statutory minimum fines should be a very rare exception rather than commonality.