

# The Good, the Bad, and the Troubling

## Fasken Martineau's 2017 Employer Occupational Health and Safety Survey Report

LEGAL COMPLIANCE CHALLENGES FOR CANADIAN EMPLOYERS



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## The Good, the Bad, and the Troubling:

# Fasken Martineau's 2017 Employer Occupational Health and Safety Survey Report

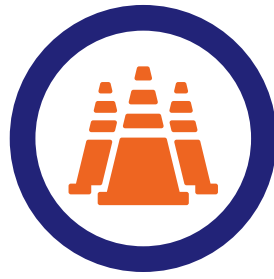
Fasken Martineau is pleased to release *The Good, the Bad, and the Troubling*, a report on the findings of the 2017 Employer Occupational Health and Safety (OHS) Survey. The survey was conducted among 358 employers nationwide, with the highest percentage of responses coming from employers in Ontario, Québec and British Columbia. Approximately 33% of respondents worked for large organizations with 1,000 or more workers. It exposed the increasingly aggressive enforcement of OHS legislation across Canada despite the good work of Canadian organizations in their attempts to comply with OHS legislation. *The Good, the Bad, and the Troubling*, details the challenges facing organizations in each of the four crucial areas: OHS Policy & Program, Alcohol and Drugs in the Workplace, Harassment and Violence in the Workplace, and OHS Inspectors and Enforcement. These statistics come predominantly from survey respondents who are already receiving or are interested in relevant training and legal advice. For employers that do not have adequate occupational health and safety programs in place, the picture is likely worse, so this report should ring alarm bells.

The 2017 Employer OHS Survey revealed that nearly half of employers received a visit from an OHS Inspector in the last 24 months yet the majority of respondents reported that none of their managers and supervisors are aware of what to do when an OHS Inspector visits their workplace. A third of respondents received Orders or Directions from an OHS Inspector in the past 24 months but only 9% exercised their legal right to appeal the Orders. These findings indicate that Canadian employers may be unaware of their legal rights when being accused of an OHS violation by the Regulator. As a consequence, employers are at risk of conceding OHS violations that may result in regulatory investigations, charges, penalties, hefty fines and even jail terms.

Fasken Martineau is committed to ensuring organizations build and maintain safer and healthier workplaces that avoid the costly monetary penalties and criminal charges that may accompany OHS violations. Establishing effective and customized OHS policies and procedures is the first step in creating a lasting commitment to safety. Training and auditing on OHS compliance is also critical to ensure your organization complies with ever-evolving OHS legislation. We look forward to helping you build and maintain safer workplaces where all employees work safe and work smart.

**Norm Keith**, Partner & **Cathy Chandler**, OHS Consultant and Paralegal





# 1. Employer's OHS Policy & Program

The majority of Canadian organizations are aware that an **OHS policy and program is required by law**. However, more than 40% of them are failing to comply with a key requirement of Occupational Health and Safety: ensuring all employees are trained on the company's OHS policy and program. Fasken Martineau's 2017 Employer OHS Survey revealed that **only 34% of responders work at an organization that formally trained every worker, contractor and sub-contractor on its OHS policy and program**. This means that 66% of responders work at organizations that risk not only OHS violations and the regulatory investigations, charges, penalties, fines and jail terms that accompany them, but also the lives and safety of its workers. Further placing companies at risk of liability is the fact that almost **half of company directors and officers may not be able to navigate their organization's health and safety programs** because they either have not received training on their legal duties and/or the organization's OHS policy and programs or it is unclear whether they have received such training.

At Fasken Martineau, we create OHS policies and programs that are customized to the characteristics and dangers of each workplace and the tasks performed by employees. Our experienced lawyers can also ensure that your OHS policies and programs provide mechanisms for proactive and regular reporting, investigation, assessment and control. Our team of experienced health and safety consultants will audit your OHS program to determine legal compliance and assist you in ensuring all workers are provided with training, information and instruction on the contents of your OHS policy and program. Fasken Martineau reviews and develops hundreds of OHS procedures for clients each year and our lawyers are available to develop and deliver training programs on almost any OHS topic.

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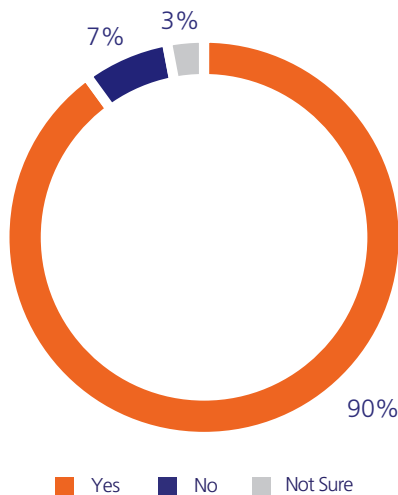
*Did You Know...*

An OHS policy is a formal statement outlining the legislated health and safety standards of a workplace and an organization's commitment to health and safety in the workplace. **All provincial and federal health and safety legislation in Canada require the development and annual review of an OHS Policy.**

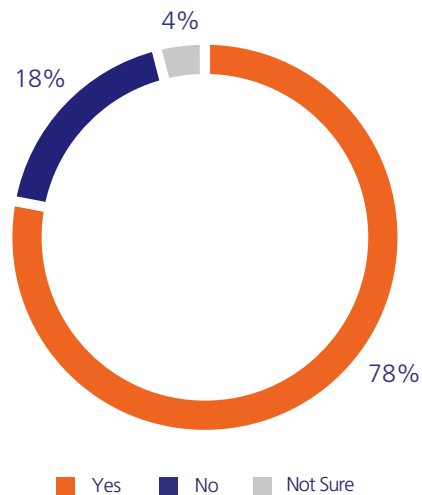
An OHS policy details the responsibilities, values and rules that ensure all employees understand their shared role in realizing a safe work environment. The law requires that this policy is posted in conspicuous places within the workplace because **all employees should be aware of the document and its contents.**

## Survey Results

Q: Does your organization have a written Occupational Health & Safety (OHS) policy and program?

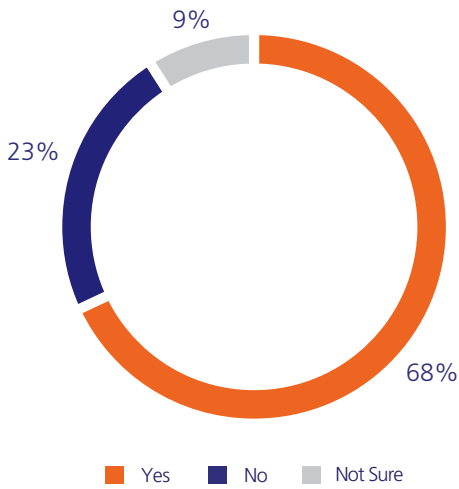


Q: Is your organization's OHS policy posted in the workplace?

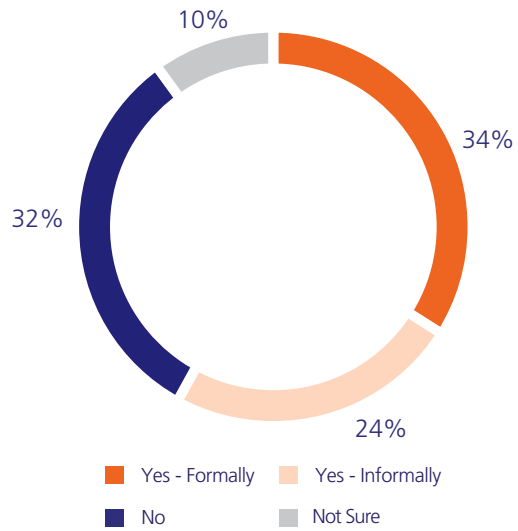




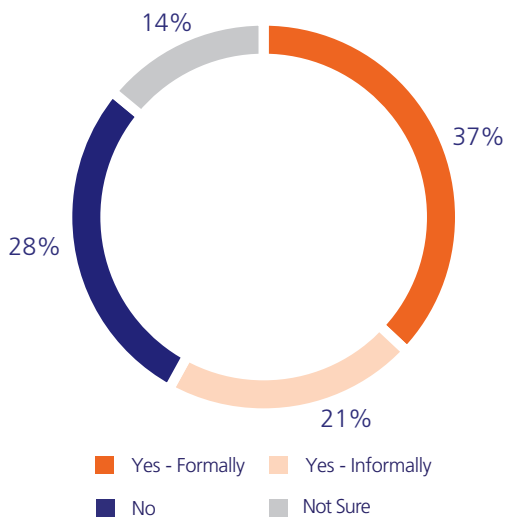
Q: Has your organization reviewed and updated its OHS policy and program in the last 12 months?



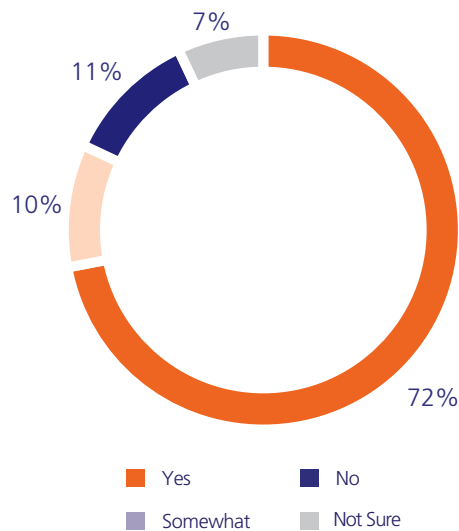
Q: Has your organization trained every worker, contractor and sub-contractor on its OHS policy and program?



Q: Has every Director and Officer of your organization received training and instruction on your OHS policy and program?



Q: Does your OHS program set out the roles and responsibilities of the employer, senior management, supervisors and workers of your organization?







## 2. Alcohol and Drugs in the Workplace

Fasken Martineau's 2017 Employer OHS Survey revealed that more than 50% of respondents suspected that a worker was under the influence of alcohol and/or non-prescription drugs while at work in the last 12 months. Almost one quarter of respondents, with 100% certainty, knew of one or more workers that had been under the influence of alcohol or non-prescription drugs while at work in the last year. Our survey also found that 79% of respondents work at organizations that do not have an Alcohol and Drug policy that provides for random alcohol and drug testing for employees in safety sensitive positions. Problematically, 60% of respondents' managers and supervisors are not trained to identify workers that may be under the influence of alcohol and/or non-prescription drugs in the workplace. This increases Canadian organizations' chances of experiencing alcohol and drug related problems or safety concerns at the workplace.

Fasken Martineau keeps companies compliant with legislation by developing, reviewing and assisting clients to implement Workplace Drug and Alcohol policies and programs. Fasken Martineau's half day seminar: Managing the Risk of Alcohol & Drugs in the Workplace, deals with the legal and human resources challenges of alcohol and drug use and abuse in the workplace and what employers can do to minimize risks. Our team of Labour, Employment & Human Rights lawyers are well versed on the legal challenges and human rights considerations regarding drug and alcohol policies, including having appeared before the Supreme Court of Canada in the *Stewart v. Elk Valley Coal Corporation* case in relation to whether the correct test for establishing *prima facie* discrimination in the context of mental disability should be applied differently to those suffering from addiction-related disability.

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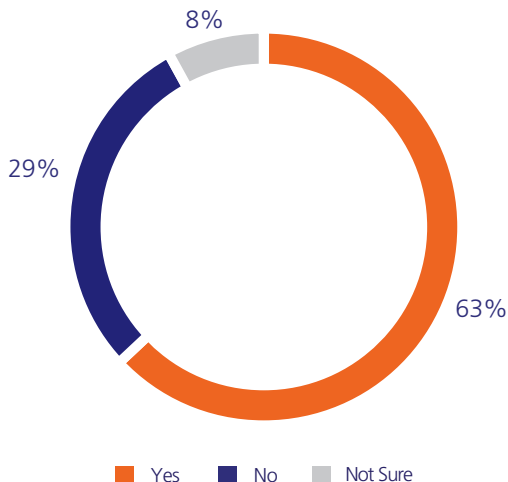
*Did You Know...*

The World Health Organization's most recent report estimates that 246 million people worldwide, or 1 out of 20 between the ages of 15-64, used an illicit drug in 2013. Thus, **there may be adverse effects in your workplace due to the significant potential for impairment of employees.**

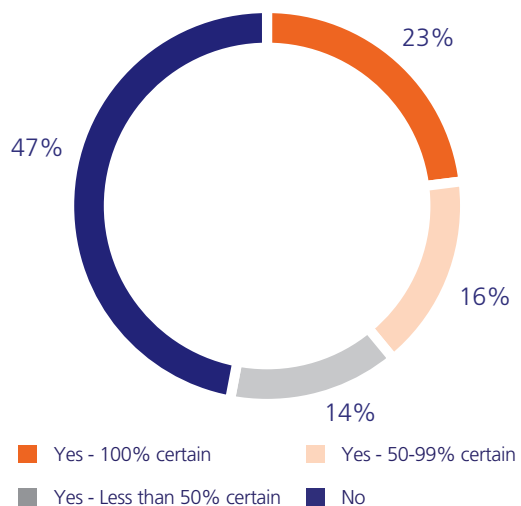
Looking for guidance with addressing alcohol and drugs in the workplace to ensure compliance with OHS legislation? Consult Norm Keith's recently updated text, *Alcohol and Drugs in the Canadian Workplace*, Lexis Nexis, 2nd Ed. 2015. You can also learn more about drugs and alcohol use in the workplace by attending one of **Fasken Martineau's complimentary Drug & Alcohol Seminars in 2017.**

## Survey Results

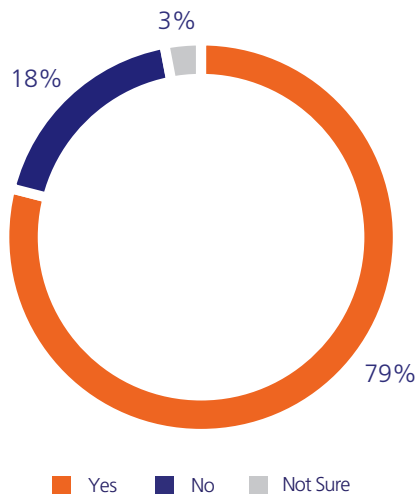
Q: Does your organization have a written Alcohol and Drugs (A&D) policy?



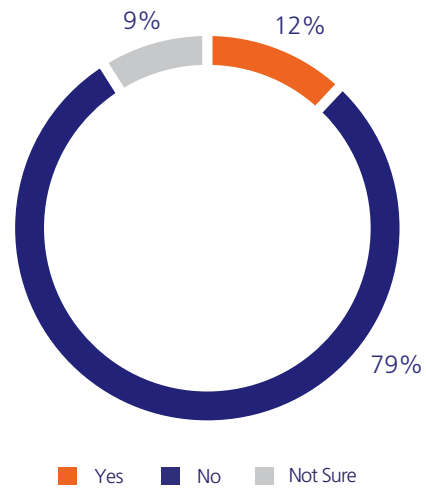
Q: Do you have reason to believe that a worker has been under the influence of alcohol and/or non-prescription drugs in your workplace in the last 12 months?



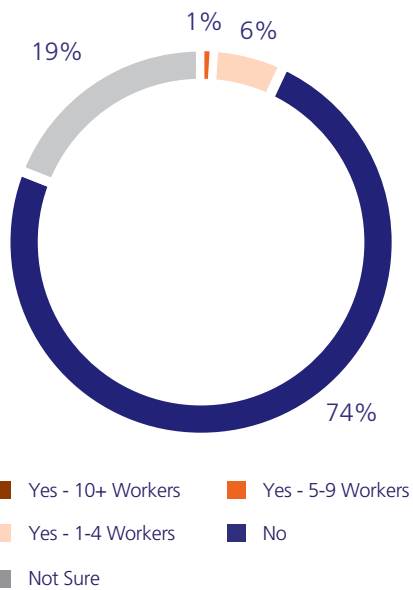
Q: Does your organization have an Employee Assistance Program to assist workers with substance abuse issues?



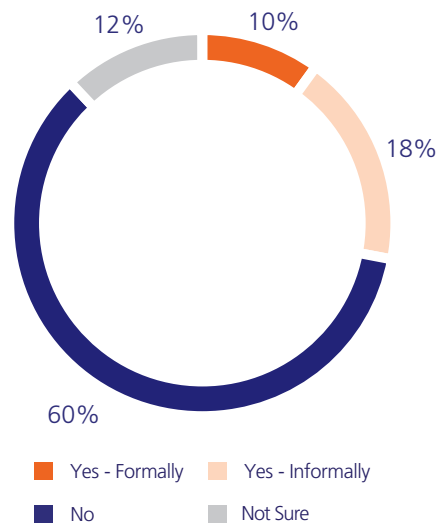
Q: Does your organization's A&D policy provide for random alcohol and drug testing of workers in safety sensitive positions?



Q: Have any workers presented your organization with a medical marijuana card?



Q: Are managers and supervisors of your organization trained to identify workers that may be under the influence of drugs and/or alcohol in the workplace?







### 3. Harassment and Violence in the Workplace

Fasken Martineau's 2017 Employer OHS Survey revealed that 50% of Canadian companies have not conducted a workplace Harassment and Violence (H & V) risk assessment in the last 12 months. Thus, half of Canadian companies risk violating OHS legislation that requires employers to take reasonable steps to ensure employees experience no harassment or violence in the workplace; this cannot be accomplished without a regular H & V risk assessment. Our survey also found that nearly half of organizations have not provided every manager, supervisor and worker with training about domestic and/or sexual violence in the workplace. These organizations also risk violating OHS laws, which require that companies provide information and instruction to employees on the contents of the workplace violence and harassment prevention program and that includes instructions on domestic and/or sexual violence in the workplace as well as measures in place to control the risk of workplace H&V.

Fasken Martineau can conduct an annual workplace violence risk assessment that is customized to your company's needs and proactively assess the potential risks of violence arising from the type, nature and conditions of your workplace. Our services also include developing and reviewing workplace violence and harassment policies and procedures and conducting workplace harassment investigations. Look for Fasken Martineau's half-day seminar on managing and preventing workplace violence and harassment, including practical compliance strategies and how to implement them.

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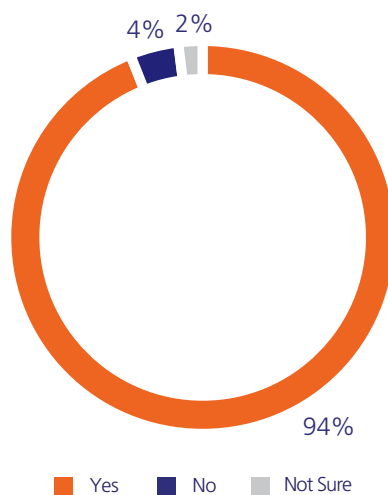
*Did You Know...*

Bill 132, which was passed in Ontario last year, expanded the Occupational Health and Safety Act's definition of workplace harassment to include workplace sexual harassment. **Employers are now required to address, via a written program, complaints of workplace harassment** and take reasonable steps to ensure that employees experience no harassment within the workplace.

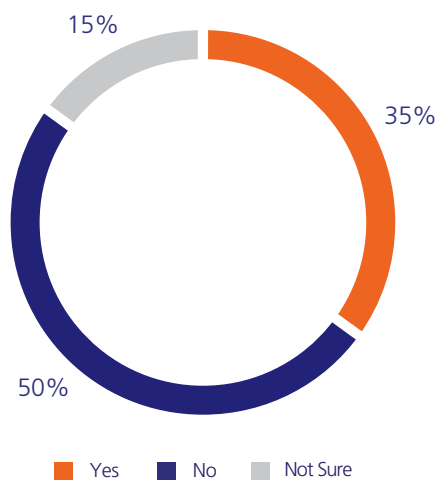
Fasken Martineau prepares organizations for success by recommending solutions for effectively managing incidents and complaints of workplace harassment and compliance with the workplace harassment provisions in the *OHSA*.

## Survey Results

Q: Does your organization have a Harassment and Violence (H&V) policy?

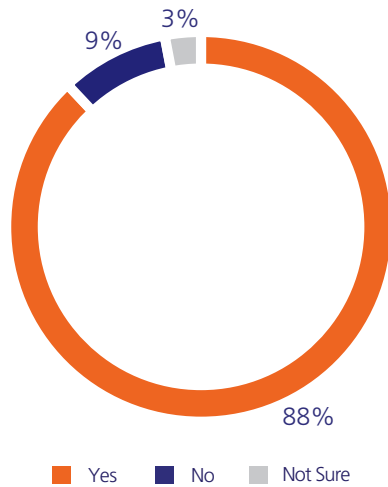


Q: Has your organization conducted a workplace H&V risk assessment in the last 12 months?

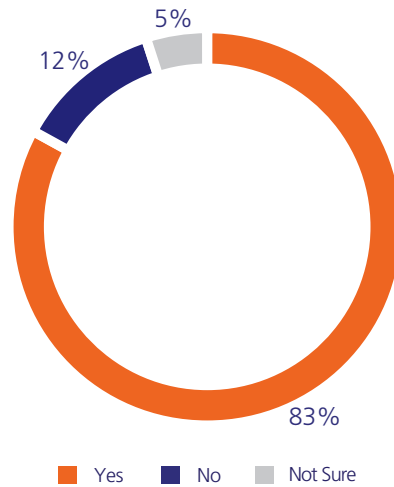




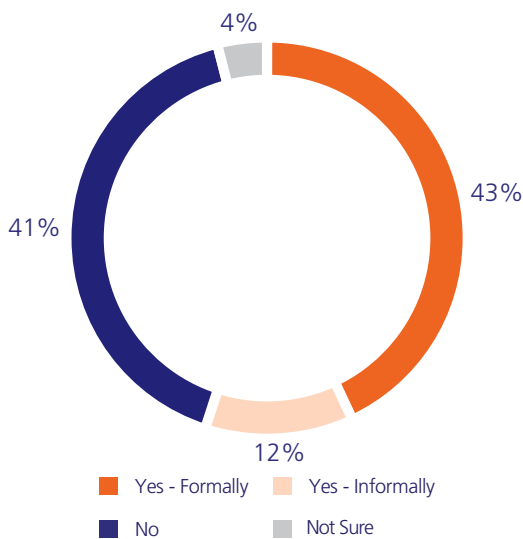
Q: Does your organization have a written procedure for workers to report H&V incidents?



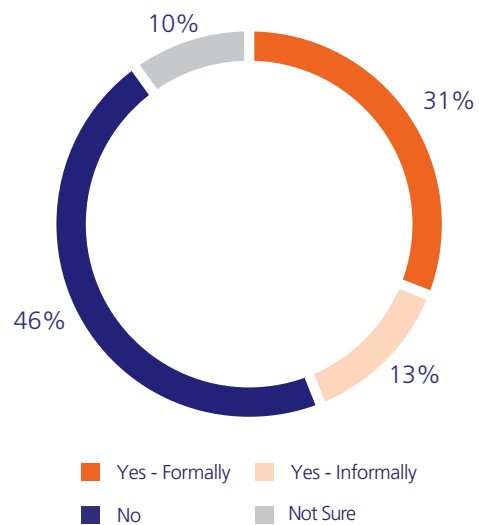
Q: Does your organization have a written program that sets out how H&V incidents or complaints will be dealt with?



Q: Have you been notified of an H&V incident or complaint within your organization in the last 12 months?



Q: Has your organization provided every manager, supervisor and worker with training regarding domestic and/or sexual violence in the workplace?







## 4. OHS Inspectors and Enforcement

Our 2017 Employer OHS Survey found that although 49% of Canadian companies had been visited by an OHS inspector in the last 24 months, more than half of directors and officers did not know what to do when an OHS Inspector visits their workplace. Among other broad duties, OHS inspectors conduct routine inspections to verify compliance with legislation and companies must always be prepared for an unexpected visit from an OHS inspector. Our survey also revealed that only 9% of the companies surveyed appealed an OHS Order or Direction in the last 24 months even though employers and other workplace parties have the right to appeal orders issued by OHS inspectors.

At Fasken Martineau, we advise, represent and defend clients in workplace health and safety matters at all levels of courts up to and including the Supreme Court of Canada. We provide advice and legal representation when it comes to appealing Orders from regulators and regularly attend at Mediations and Hearings at labour relations boards across Canada.

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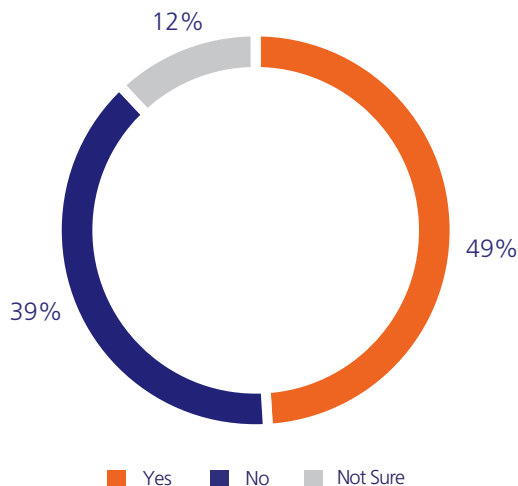
### Did You Know...

OHS inspectors can impose an Administrative Monetary Penalty (“AMP”) upon discovering OHS violations. Where instances of non-compliance are identified, OHS inspectors have the power to order compliance, and, in certain circumstances, stop an organization’s work until non-compliance is remedied. In addition to orders, AMPs, and prosecutions under OHS legislation, individuals and organizations may also be prosecuted under the *Criminal Code* for criminal negligence causing bodily harm or death following workplace incidents.

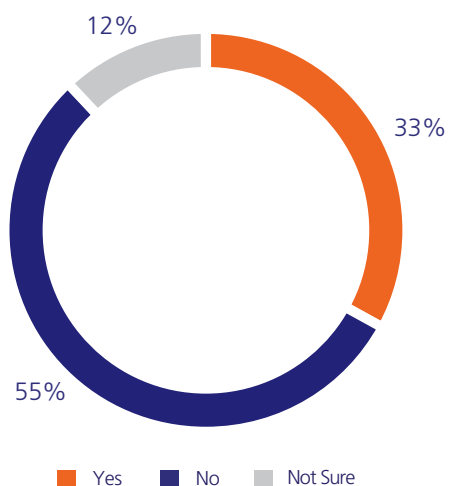
Achieve OHS legal compliance by reading Norm Keith’s *Canadian Health and Safety Law*, which provides detailed information on how to appeal orders and defend against OHS and criminal charges.

## Survey Results

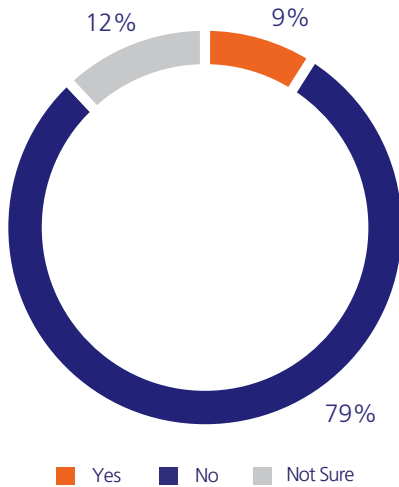
Q: Has your organization been visited by an OHS inspector in the last 24 months?



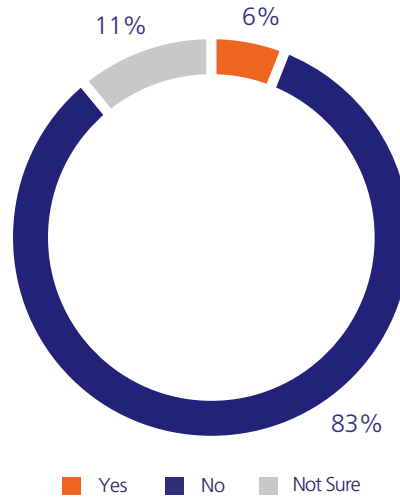
Q: Has your organization received an Order, Requirement or Direction by an OHS inspector in the last 24 months?



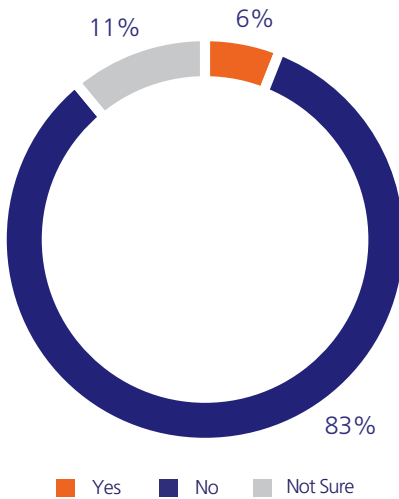
Q: Has your organization appealed an OHS Order or Direction in the last 24 months?



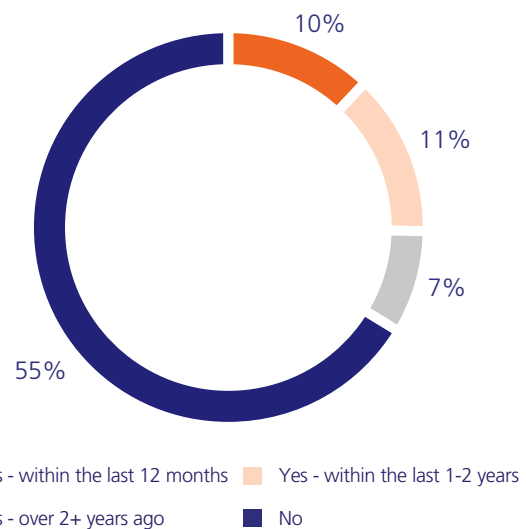
Q: Has your organization received an Administrative Monetary Penalty (“AMP”) for an OHS contravention in the last 24 months?



Q: Has your organization been charged with an OHS offence in the last 24 months?



Q: Has your organization provided training to management and/or supervisors on “What to do when the OHS Inspector Arrives?”







## 5. Conclusions

Fasken Martineau's 2017 Employer OHS Survey uncovered Canadian companies' efforts, challenges and failures in complying with ever-evolving OHS laws and legal enforcement. Our Survey indicates that many employers do not get a passing grade when it comes to OHS legal compliance. It also sends a clear message to employers across Canada of the increasingly aggressive enforcement of OHS legislation by regulators and by courts. Our Survey also flags the broadening scope of OHS laws in the areas of workplace violence, harassment and alcohol and drugs.

Going forward, Canadian companies should prepare themselves for continued enforcement and prosecution in relation to health and safety matters, and for a trend towards higher fines and jail terms for individuals. Many employers would benefit from Fasken Martineau's proactive OHS Prevention Services.

Don't become a statistic. Fasken Martineau can prepare your company by providing comprehensive training, consulting and legal services from our exceptional team of lawyers, paralegals and health and safety consultants.

**Be trained, be prepared, and be safe.**





# Contacts

If you would like to be on our mailing list to receive news of seminars and legislative updates, please visit [www.fasken.com/en/occupational-health-safety](http://www.fasken.com/en/occupational-health-safety).



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# About Fasken Martineau

Fasken Martineau is a leading international business law and litigation firm with recognized legal expertise in multiple jurisdictions and deep industry knowledge of new and existing OHS laws and regulations. We represent employers and senior management when there is a workplace accident, appeal OHS Regulators directions and orders; defend OHS regulatory and criminal charges in court; and act as counsel at all levels of Workers' Compensation appeals and related litigation. Fasken Martineau has some of the best lawyers and OHS consultants available to assist with OHS issues. Our lawyers have written and contributed to many of the leading textbooks on the subject, and have been involved in several leading OHS cases at all levels of court and tribunals, up to and including the Supreme Court of Canada.

# Special Thanks to Our Survey Partners

Fasken Martineau would like to thank the following industry associations for their support and contribution towards this Occupational Health and Safety Survey Report.



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CHAMBER  
OF COMMERCE**

**LA CHAMBRE  
DE COMMERCE  
DU CANADA**

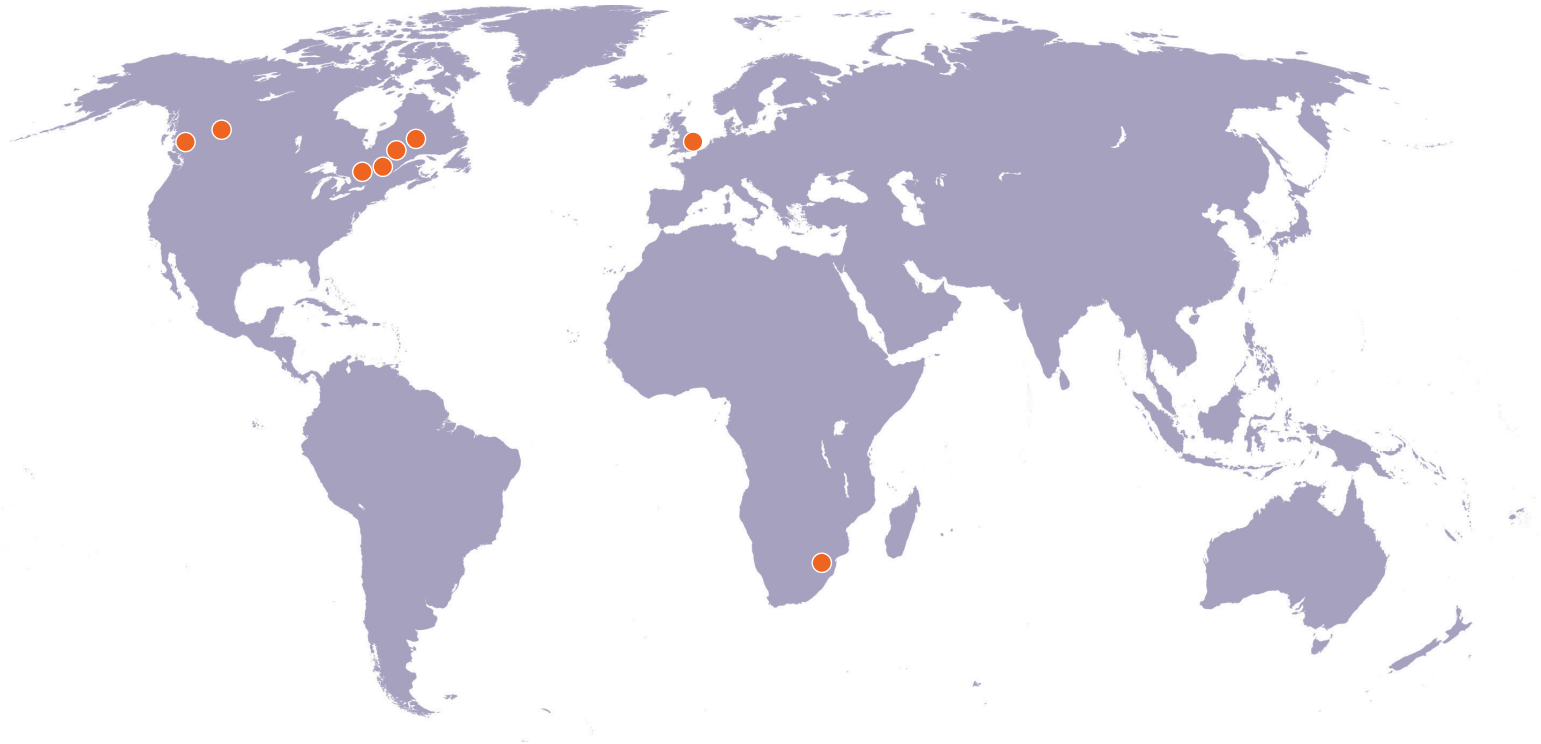


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