

# WEALTH-PROOFING PUNISHMENT: THE CASE FOR INCOME-BASED FINES IN CANADA

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## INTRODUCTION

Canada's system of monetary penalties relies almost entirely on fixed monetary amounts that apply uniformly to all offenders. This model reflects longstanding administrative preferences for simplicity and predictability, but it introduces structural limitations that become clear when contrasted with an income-adjusted system.

The economic dimension reinforces the need for reform. Because the marginal utility of income declines as income increases, a single fixed monetary penalty cannot possibly impose comparable disutility on both high-income and low-income offenders. Income-based fines, also known as "day fines," offer a way to alleviate the disproportionate burden on lower-income groups while preserving deterrence.

**Canada should re-examine its reliance on flat-rate fines in light of both legal and economic concerns. The best path forward, both legally and economically, is to implement income-based fines in provincial regulatory frameworks.**

## THE STATUS QUO

- Canada's system of monetary penalties is divided between criminal fines under federal law and regulatory fines administered by provinces.
- Both levels share a common feature: fixed monetary amounts that apply uniformly to all offenders.
- Courts determine whether a fine should be imposed, not how severely it will be felt by each individual.
- Section 734(2) of the Criminal Code prevents imposing a fine where the offender cannot pay, but it does not authorize scaling the amount to equalize impact across income levels.
- Provincial regimes rely on specified penalty sums predetermined by regulation, leaving no discretion to adjust amounts based on income.
- The model reflects administrative simplicity and predictability, but it produces unequal real-world consequences.

The calculation assumes full-time employment of 40 hours per week over 52 weeks, for a total of 2,080 working hours per year. Dividing annual income by 2,080 produces the hourly wage. For an individual earning \$50,000 annually, this equals approximately \$24.04 per hour. For an individual earning \$500,000 annually, the hourly wage is approximately \$240.38 per hour. Dividing the \$100 fine by each hourly wage shows that the lower-income individual must work approximately 4.16 hours to pay the ticket, while the higher-income individual must work only 0.416 hours (about 25 minutes). Although the fine is nominally identical, the work-time burden differs by a factor of ten.

Please Scan for References:



## THE DAY-FINE FORMULA

$$\text{FINE} = N \times r \times \frac{(I - D)}{365}$$

Where:

- N** is the number of day-fine units associated with the offence
- r** is the statutory rate applied to daily income
- I** represents the offender's annual income
- D** captures permitted deductions such as basic living costs or dependents

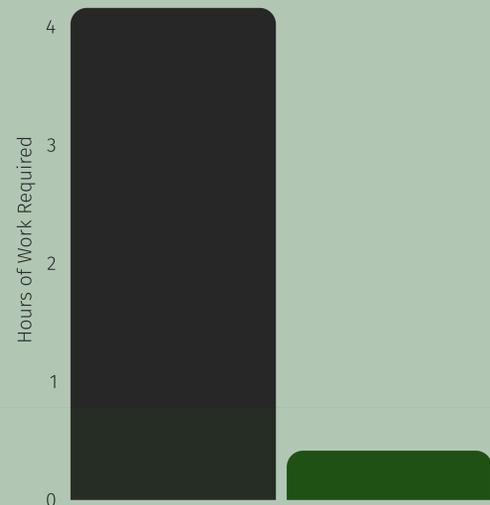
### EXAMPLE OF CALCULATING A FINE

- Assume the legislature assigns three day-units ( $N = 3$ ) to a moderate speeding offence. This reflects the seriousness of the conduct and is fixed for all offenders.
- Assume that the statutory rate is set at 50% of daily disposable income ( $r = 0.5$ ). This means each day-unit represents one-half of an offender's daily income after permitted deductions.
- Assume the legislation allows a basic annual deduction of \$10,000 ( $D = \$10,000$ ) to account for essential living expenses before calculating the fine.

**Person A earns \$50,000 annually.**      **Person B earns \$500,000 annually.**  
 Fine =  $3 \times 0.5 \times ((50,000 - 10,000)/365)$       Fine =  $3 \times 0.5 \times ((500,000 - 10,000)/365)$   
 = **\$164.38**      = **\$2,013.70**

Hours Required to Pay a \$100 Fine

● Person A      ● Person B



## ECONOMIC CONSIDERATIONS

Modern economic analysis of fines begins with the assumption that individuals behave rationally when deciding whether to commit an offence. In Becker's foundational model, offending is conceptualized as a choice made by comparing the expected benefit of a violation to the expected cost of punishment, discounted by the probability of detection.

**Under strict liability, a risk-neutral individual offends when:  $g > p(F + Xt)$**

**g** = private gain; **p** = probability of detection; **f** = fine; **t** = term of imprisonment  
**X** = disutility per unit of incarceration

**Marginal Utility of Income** refers to the idea that each additional dollar is worth more to someone with less money than to someone with more. As income increases, the additional benefit or "utility" gained from each extra dollar declines. Since monetary fines impose little resource cost on society compared to imprisonment, fines are the efficient sanction when they can be set high enough to deter. However, a single dollar amount cannot realistically produce the same deterrent effect across income groups. A fine that may push a low-income person to change their behaviour may barely register for someone with substantial assets.

Using isoelastic utility weights ( $\epsilon = 1.6$ ), Acland & Greenberg estimate how welfare losses scale across income levels:

$$\left(\frac{500,000}{50,000}\right)^{1.6} \approx 40$$

This implies that the lower-income individual experiences approximately forty times more welfare loss from the same fine.

## LEGAL JUSTIFICATION FOR DAY-FINES

### Proportionality

Proportionality is a fundamental principle of Canadian sentencing law.

- Section 718 of the Criminal Code requires "just sanctions" that are proportionate to the gravity of the offence and the offender's responsibility.
- Although courts must consider "ability to pay," this affects only whether a fine may be imposed, not its size.
- A fixed monetary penalty cannot reflect proportionality when its real-world impact varies dramatically across income levels.

Day-fines preserve offence seriousness while calibrating financial impact.

### Constitutional Recognition

**R v Boudreault, 2018 SCC 58**

The Supreme Court held that flat, mandatory monetary penalties can result in grossly disproportionate punishment contrary to s. 12 of the Charter. The Court identified:

- Disproportionate financial consequences
- Risk of detention for non-payment
- Escalating collection mechanisms
- Indefinite punishment

A set dollar figure does not land the same way for everyone.

Income-based fines directly address this structural concern.

### Deterrence & Rule of Law

- Provincial regulatory offences are primarily strict liability and aim to promote compliance and public safety.
- Deterrence carries much of the weight in these regimes.
- A fine that is trivial for higher-income offenders undermines deterrence.
- The rule of law requires that individuals be able to foresee the consequences of their conduct (R v Levkovic).
- Income-based fines preserve predictable offence structure while aligning real-world severity more consistently across offenders.