

FTR Now

Construction Project Manager Sentenced to 3.5 Years for Christmas Eve Fatalities

Date: January 12, 2016

The Metron Construction Corporation (“Metron”) project manager who oversaw the construction project on which a swing stage collapsed, resulting in the deaths of four workers and injury to a fifth, has been sentenced to 3.5 years in jail.

In this *FTR Now*, we discuss the background to this important decision and its significance.

On Christmas Eve in 2009, six workers were repairing concrete balconies on the 14th story of a high rise building. Four workers were killed when the swing stage (suspended scaffolding) in which they were descending collapsed and fell to the ground. The fifth worker, who had been improperly attached to a safety line, suffered serious, permanent injuries. The sixth worker, who had been properly attached to a safety line, suffered no injuries.

As previously reported [1], Metron pleaded guilty to criminal negligence causing death under the Criminal Code and on appeal, a \$750,000 fine was imposed against the company. In addition, Mr. Swartz, the President and sole director of Metron, entered guilty pleas to four charges under the *Occupational Health and Safety Act* and was fined \$90,000 plus the victim fine surcharge.

In June 2015, the project manager, Vadim Kazenelson was found guilty of criminal negligence causing death and criminal negligence causing bodily harm in relation to the collapse of the swing stage under the *Criminal Code*. Among other things, the Court held that the Metron project manager was aware just prior to the incident that there were insufficient lifelines on the swing stage for the number of workers who were using it. Once he became aware that the fall protection was inadequate, he failed to take reasonable steps as required under section 217.1 of the *Criminal Code* to protect the safety of the workers. Consequently, he showed wanton and reckless disregard for the lives and safety of the workers, which constituted criminal negligence.

During sentencing submissions in late 2015, the Crown argued that a jail sentence of four to five years was appropriate. Defence counsel argued for 12 months to two years in prison. On January 11, 2016, the Ontario Superior Court imposed a 3.5 year prison sentence to the project manager.

This is the longest jail term imposed to date by a court under the Bill C-45 amendments added to the *Criminal Code* in 2004. The Court noted that a significant term of imprisonment was necessary to reflect the terrible consequences of the offences.

This case remains a stark reminder of the significant liabilities that can be imposed upon managers and other senior personnel for avoiding their health and safety obligations, whether under the *Criminal Code* or the *Occupational Health and Safety Act*.

If you have any questions about this decision or any other health and safety matter, please contact [Nadine S. Zacks](#) at 416.864.7484 or any member of our [Occupational Health Practice Group](#).

[1] [Ontario Court of Appeal Increases Fine to \\$750,000 for Christmas Eve Fatalities](#), *FTR Now* September 2013; [Court Imposes Criminal Code Fines for Workplace Accident](#), *FTR Now* August 2012.



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