Criminal negligence: The Court of Appeal of Ontario increases to $750 000 the fine imposed on Metron Construction Corp.

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On September 4, 2013, the Ontario Court of Appeal ordered Metron Construction Corporation ("Metron") to pay a fine in the amount of $750 000 for criminal negligence causing death.[1] After Metron pled guilty to the offence, the trial judge ordered the company to pay a fine of $200 000. This case was the result of the collapse of a swing stage from the 14th floor of a building on December 24, 2009 which resulted in the death of a supervisor and three employees.

According to the Ontario Court of Appeal, the fine which Metron was ordered to pay by the trial judge was manifestly unfit. We are of the opinion that the following aspects of the decision are particularly noteworthy.

The Use of Health and Safety Case Law

According to the Court of Appeal, the trial judge placed too much emphasis on the case law dealing with fines in the context of occupational health and safety offences (penal provisions). In so doing, the trial judge failed to consider the higher degree of moral blameworthiness associated with a criminal conviction. In addition, the intrinsic seriousness of the offence of criminal negligence causing death must be considered. Lastly, since Metron pled guilty to this offence, it could not subsequently try to diminish its liability and distance itself from the actions of the supervisor, its representative, by relying on his corporate rank or his level of management responsibility.

The Company's Ability to Pay

The section of the *Criminal Code* related to fines for organizations does not impose any maximum amount and does not require the court to consider the company's ability to pay.[2] The ability to pay may be considered in determining the punishment but does not constitute a prerequisite for the imposition of a fine. In Metron's case, the economic viability of the enterprise was not a determining

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factor necessary to establish the appropriate fine and too much emphasis had been placed on Metron's ability to pay.

The Court of Appeal concluded that a $200 000 fine did not reflect the gravity of a guilty verdict for criminal negligence causing death, the particular circumstances of the case, or the serious consequences for the victims and their families. The negligence of the supervisor, and thus Metron's criminal responsibility, was "extreme". A fine in the amount of $750 000 was more appropriate.

This judgment of the Ontario Court of Appeal is the first of an appellate court on the subject. It is particularly enlightening as to the criteria which must guide the courts in determining the appropriate punishment for criminal negligence in the context of an occupational accident. It is also the highest fine imposed on an enterprise guilty of criminal negligence causing death, the previous record being $100 000.[3]

For more details on the trial level judgment, please see our publication by clicking here.

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[1] *R.* v. *Metron Construction Corporation*, 2013 ONCA 541.

[2] *Criminal Code*, R.S.C. 1985, c. C-46, section 735.

[3] *R*. v. *Transpavé inc.*, 2008 QCCQ 1598.

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