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Fatal work injury: Metron's project manager sentenced to three and a half years in prison

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On January 11, 2016, Vadim Kazenelson, a project manager for Metron Construction Corporation ("Metron"), was sentenced to three and a half years in prison.[1] This sentence follows the decision rendered on June 26, 2015 in which the Superior Court of Ontario found Mr. Kazenelson guilty of the five charges against him, including four counts of criminal negligence causing death and one count of criminal negligence causing bodily harm.[2]

This decision follows an accident which occurred in Ontario on December 24, 2009, in which four Metron employees lost their lives after falling 14 floors when the suspended swing stage on which they were standing collapsed. A fifth employee was seriously injured while a sixth employee, who was wearing a safety harness, survived.

The details of the *Kazenelson* case

The investigation revealed, among other things, that the supervisor, who died as a result of the accident, had allowed six employees to work simultaneously on the same swing stage without knowing if the structure could support their weight and without verifying whether the employees were wearing safety harnesses. The facts reveal that on the afternoon of the accident, only two lifelines were available for six workers, in violation of the applicable regulations and industry practice.

In the decision regarding Mr. Kazenelson's conviction, the judge drew the following conclusions from the evidence:

> Despite the fact that supervision of the employees was the late supervisor's responsibility, the accused, as project manager, held a position of authority over this supervisor and was exercising that authority the day of the accident;
> The accused knew full well that each worker using the swing stage had to be attached to a lifeline;
> The accused had used the swing stage during the day and knew there were only two lifelines for at least six workers;
> Thereafter, the accused took no steps to rectify the situation or to ensure that the workers did not use the swing stage without lifelines.

Knowing that there were an insufficient number of lifelines, the accused had a duty to rectify the situation. Indeed, section 217.1 of the *Criminal Code*[3] requires anyone who undertakes or has the authority to direct how another person carries out his work or performs a task to take reasonable steps to prevent bodily harm to that person, or any other person, as a result of that work or task. The employer or the individual who fails in this duty can therefore be considered to have omitted "to do anything" that it was his duty to do and can therefore be convicted of criminal negligence.

This is precisely the conclusion that was reached by the judge in Mr. Kazenelson's case. Mr.

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Kazenelson's inaction constituted a clear breach of the duty imposed upon him by section 217.1 of the *Criminal Code* and Mr. Kazenelson's criminal negligence significantly contributed to the accident. Moreover, the judge concluded that this was a case in which the accused "did advert the risk but decided that it was in Metron's interest to take a chance."[4] "That is a seriously aggravating circumstance in relation to the moral blameworthiness of his conduct."[5]

It must be noted that in 2013, Metron, Mr. Kazenelson's employer, pleaded guilty to the offence of criminal negligence causing death and was ordered by the Court of Appeal of Ontario to pay a fine of $750,000 following this accident.[6] For further details regarding these decisions, we refer you to our previous publications.[7]

Conclusion

This conviction represents the most severe sentence imposed in these types of circumstances since the amendment of the *Criminal Code* in 2004. Prior to this decision, the most serious sentence handed down in similar circumstances was two years less a day in the *Scrocca* case.[8]

Mr. Kazenelson's conviction is illustrative of the trend by which Canadian administrative bodies and courts have been imposing increasingly severe sentences in respect of occupational health and safety infractions, the goal of which is to encourage employers to take occupational health and safety seriously and to invest in prevention. This is in fact reflected in the judge's comments in the decision rendered on January 11, 2016:

> "[...] it is common ground that a term of imprisonment is necessary to adequately denounce Mr. Kazenelson's conduct and to deter other persons with authority over workers in potentially dangerous workplaces from breaching the legal duty set forth in s. 217.1 of the Code to take reasonable steps to prevent bodily harm from befalling those workers."[9]

Lavery will keep you informed of any significant developments in this case.

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1. *R. v. Vadim Kazenelson*, 2016 ONSC 25.
2. *R. v. Vadim Kanenelson*, 2015 ONSC 3639.
3. *Criminal Code*, RSC 1985, c. C-46, section 217.1.
4. *Supra*, note 1 at para 33.
5. *Ibid* at para. 44.
6. *R.* v. *Metron Construction Corporation*, 2013 ONCA 541.
7. You can access our publication regarding the trial court decision by clicking here and our publication regarding the Court of Appeal of Ontario decision by clicking here.
8. *R.* v. *Scrocca*, 2010 QCCQ 8218.
9. *Supra*, note 1, para. 23.

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