

Jail term upheld on appeal in criminal negligence case against Metron project manager

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The Ontario Court of Appeal has upheld the criminal negligence (Bill C-45) conviction and three-and-a-half-year jail term imposed on Vadim Kazenelson, a project manager for Metron Construction.⁽¹⁾ The charges arose from an incident in which four workers fell to their death and a fifth sustained permanent injuries after a swing stage collapsed. None of the workers was attached to a lifeline (for further details please see "[First Ontario corporation fined for criminal negligence in workplace accident](#)").

In handing down the sentence, the trial judge had stated that not only had Kazenelson done nothing to rectify the dangerous situation, but:

- he had permitted all six workers to board the swing stage together with their tools;
- he did so in circumstances where he had no information with respect to the swing stage's capacity to bear the weight of the workers and their tools safely; and
- he "adverted to the risk, weighed it against Metron's interest in keeping the work going, and decided to take a chance. That is a seriously aggravating circumstance in relation to the moral blameworthiness of his conduct".

Kazenelson was aware that there was a deadline for completing the work and that his boss was intent on meeting it.

The Ontario Court of Appeal rejected Kazenelson's arguments that he should not have been found guilty of criminal negligence. Kazenelson's argument that the "approach of the trial judge stretches penal negligence too far" given that this was the first conviction of an individual supervisor under Section 217.1 of the Criminal Code (added by Bill C-45 in 2004) was rejected. The appeal court also rejected the argument that Kazenelson had not shown "a wanton and reckless disregard for the workers".

With respect to the jail sentence, the appeal court rejected the argument that Kazenelson's jail term should be shortened because the other workers were "contributorily negligent". The court agreed with the trial judge's reasoning that such argument:

"would ignore the reality that a worker's acceptance of dangerous working conditions is not always a truly voluntary choice. It would also tend to undermine the purpose of the duty imposed by s. 217.1 of the Criminal Code, which is to impose a legal obligation in relation to workplace safety on management."

The appeal court also rejected the argument that, because Kazenelson was a first-time offender, the trial judge had placed too much emphasis on "general deterrence".

This case has sent, and will continue to send a message to employers and supervisors that criminal negligence charges – in addition to Occupational Health and Safety Act charges – are a real possibility after serious workplace accidents, particularly those involving fatalities or serious permanent injuries.⁽²⁾

For further information on this topic please contact [Adrian Miedema](#) at Dentons Canada LLP by

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Endnotes

(1) *R v Kazenelson* (2018 ONCA 77 (CanLII)).

(2) For more information please see www.occupationalhealthandsafetylaw.com.

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