

Jail Time for OHS Offences

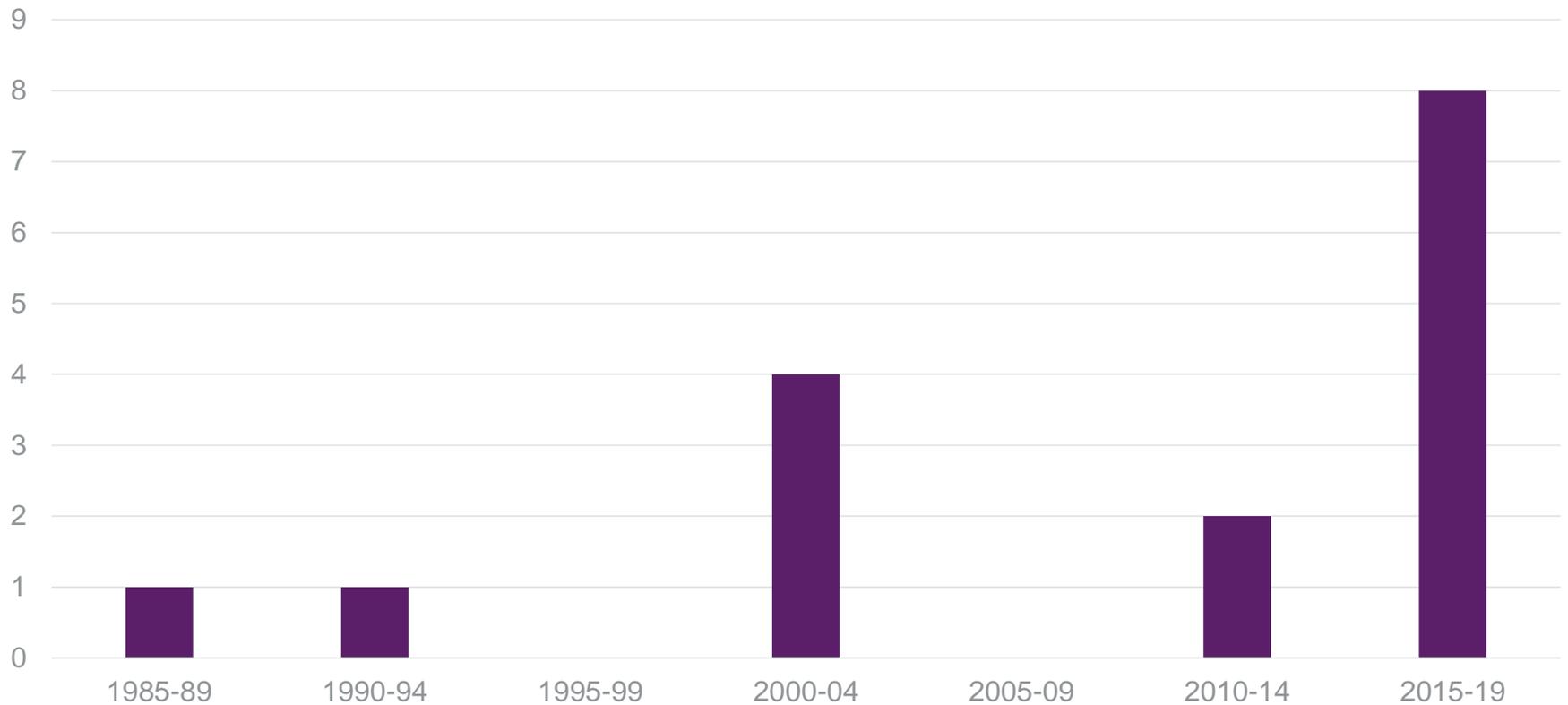
Adrian Miedema

OHSA and Criminal Code

- OHSA (provincial):
 - Individual: fine of \$100,000 and one year in jail
- Criminal Code
 - Up to 10 years in jail if cause bodily harm
 - Up to life imprisonment if cause death

Jail Terms by 5-Year Period (Ontario)

Number of Defendants Jailed



Earliest known case

- *R. v. Zambri*, 1988
- Earliest known Ontario OHSA case in which jail term imposed
 - Numerous safety violations
 - Constructor was clearly aware of dangerous conditions
 - Failed to comply with MOL orders
 - Left site to avoid inspectors
 - Had one prior conviction
 - Did not appear in court
- 3 months in jail

Most notorious case

- *R. v. Kazenelson*, 2018
- “Christmas Eve” fatalities
- 4 workers fell to death when swing stage collapsed
- Project manager convicted of criminal negligence
 - He was aware workers working 100 feet up without lifelines
 - He permitted all 6 workers to board swing stage with their tools
 - He had no information about weight capacity of swing stage
 - He knew the risk but decided to keep work going
 - But – “unquestionably a person of good character”
- 3.5 years in jail

Analysis: Types of Violations

- We identified **16 cases** in which jail terms imposed for workplace safety violations in Ontario history

Analysis: Roofers / Fall Hazards

- 7 roofers
- 12 involved falls or fall protection violations (includes 7 roofers)
- Remaining 4:
 - 1 asbestos violation
 - 1 equipment fell on worker
 - 1 caught in unguarded mixer
 - 1 trucking company owner permitted driver to exceed maximum hours
- Case example: *R. v. Markewycz and Roofing Medics Ltd.* (2013)

Analysis: Injury Severity

- 8 fatality cases
 - 2 paralyzed
 - 3 other serious injuries
 - 2 no injury (both repeat violations)
 - 1 asbestos exposure
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- Case example: *R. v. Bosiljic (1993)*, *R. v. Fummerton (2017)*

Analysis: Prior Convictions

- 7 had prior convictions under OHSA or another statute
- Case example: *R. v. JR Contracting and Lootawan* (2014)

Analysis: No-Show in Court

- 4 did not appear in court
- Case example: *R. v. Sunny Roofing and Dong Mo* (2017)

Analysis: Non-Cooperation with MOL

- 4 failed to cooperate with MOL or tried to evade MOL
 - Case example: *R. v. A Bradley Clothier* (2016)

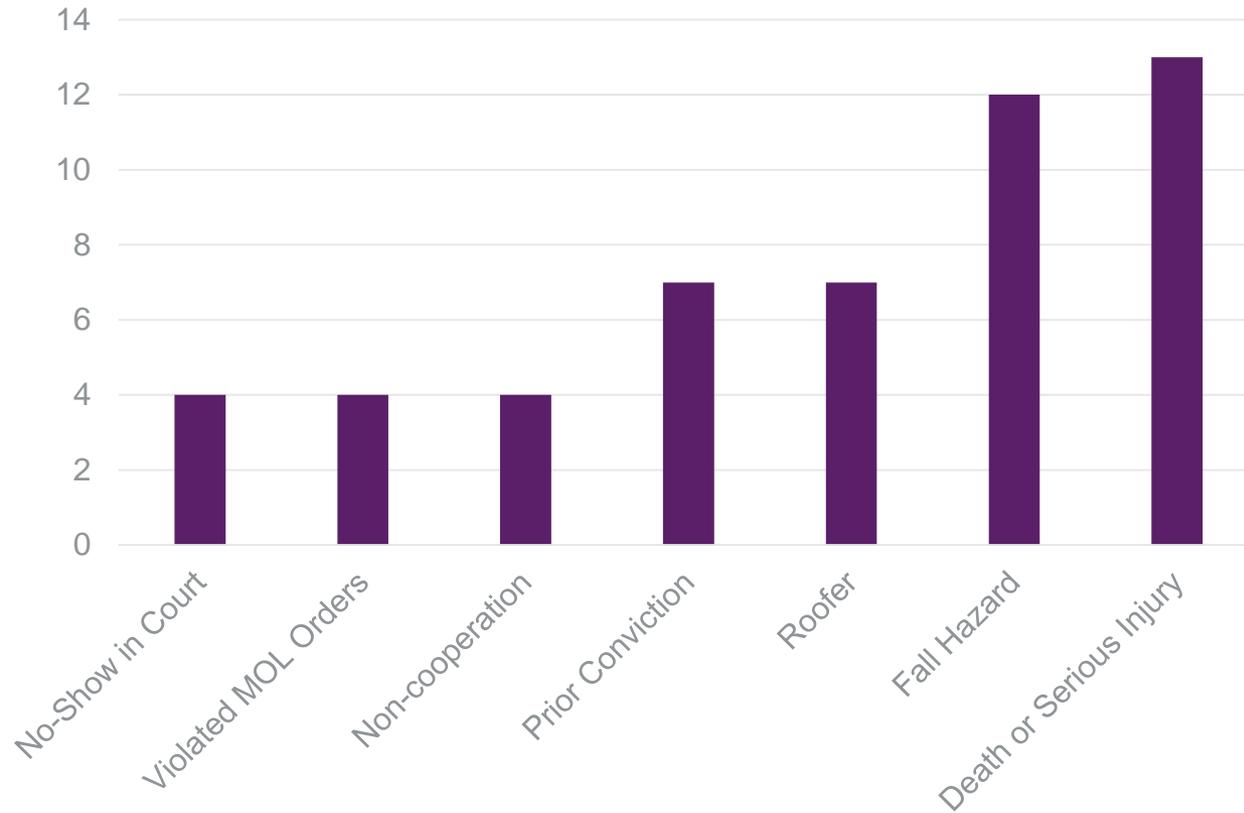
Analysis: Violated MOL Compliance Orders

- 4 violated MOL compliance orders
- Case example: *R. v. JR Contracting and Lootawan* (2014)

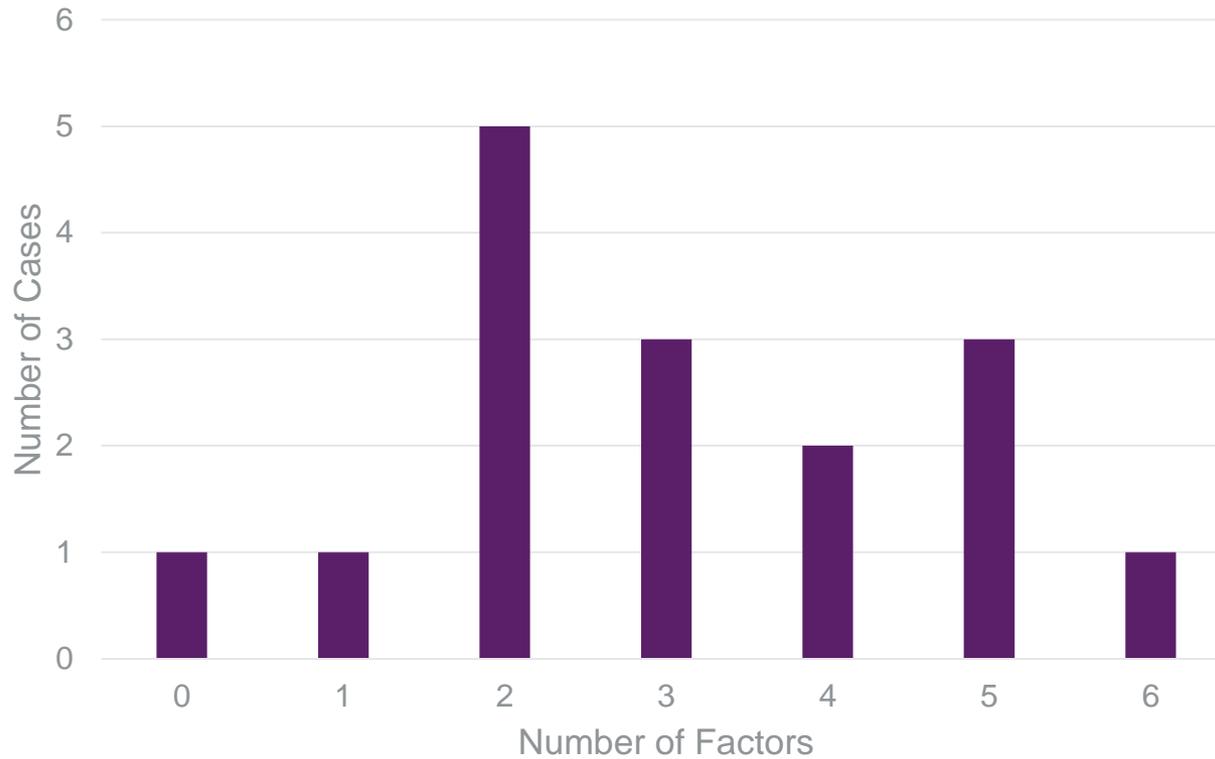
Analysis: Summary of Factors

- Roofer: 7
 - Fall protection violation: 12
 - Death or serious injury: 13
 - Prior convictions: 7
 - No-show in court: 4
 - Non-cooperation with MOL: 4
 - Violated MOL compliance orders: 4
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- 15 of 16 cases had at least 1 of those factors
 - On average, 3 factors per case

Analysis: Number of Cases having Factor



Analysis: Cases by Number of Factors



Conclusions and Recommendations

- Roofers at risk
- Fall hazards risky
- Prevent death or serious injury
- Avoid multiple convictions
- Show up in court!
- Don't deceive or evade MOL
- Comply with MOL Orders

Thank you



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