

# Historic Guilty Pleas to OHS & C-45 Charges Relating to Christmas Eve Fatalities



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The tragic death of four workers falling on a construction site on Christmas Eve 2009 in Toronto, Ontario garnered nationwide media attention and quickly became known as one of the highest profile workplace accidents in Ontario, if not Canadian history. The accident spurred a historic, comprehensive review of Ontario's occupational health and safety system and led to amendments to Ontario's *Occupational Health and Safety Act*. It also resulted in both regulatory and criminal charges being filed against the parties involved in the construction project.

On June 15, 2012, in a Toronto courtroom, Metron Construction entered a guilty plea to one charge of criminal negligence causing death under the Criminal Code as amended by Bill C-45.

At the same time, its President pleaded guilty to four contraventions of Ontario's *Occupational Health and Safety Act* (OHSA). Each charge alleged that the President failed, as a company director, to ensure that Metron complied with the OHSA and its regulations. The charges the President pleaded guilty to were:

- two counts under section 26.2 of the Construction Regulations including failing to take reasonable care to ensure a worker using a fall protection system was adequately trained; and that there were proper records of training (including names of workers and dates of training);
- one count under section 93 Construction Regulations of failing to take reasonable care to ensure a suspended scaffold was maintained in a condition that did not endanger a worker or was defective or hazardous; and
- one count under section 134 of failing to ensure that a suspended platform complied with all aspects of the Construction Regulations.

The President has not as yet been sentenced. A joint submission (a proposal put forward jointly by Crown and Defence) has been placed before the court for a fine of \$22,500 per charge, for a total of \$90,000. The court does not have an obligation to accept the joint submission but it is rare for courts to depart from one.

Similarly, Metron has not yet been sentenced on its guilty plea to the criminal negligence charge. Under the Criminal Code there is no limit on the amount of a fine that may be imposed upon a corporation. The Crown has sought a penalty of \$1 million dollars. The defence has not yet completed their submissions on sentencing. Sentencing proceedings have been put over to a later date.

## **The Accident**

On December 24, 2009, six workers employed by Metron were working on a swing-stage scaffold while repairing balconies at a high-rise apartment building in Toronto. Five of the workers were not using fall arrest systems. The swing-stage collapsed. The fall tragically killed four workers and seriously injured another. A sixth worker's fall was halted by the lifeline of his fall arrest system. Both the Ontario Ministry of Labour and the Toronto Police investigated the accident.

## **The Charges**

Following its investigation, the Ministry of Labour laid a total of 61 charges against multiple parties under the *OHS*A. Among the charges, thirty were laid against Metron, fifteen charges were laid against its President and another eight charges against a Company supervisor. Swing N' Scaff Inc., the company that provided the swing-stage being used at the time of the accident, was also charged with four *OHS*A offences and its Director was charged with an additional three *OHS*A offences.

Following its own investigation, the Toronto Police also laid numerous criminal charges. Metron, its President, and a supervisor were each charged with four counts of criminal negligence causing death and one count of criminal negligence causing bodily harm. Criminal charges against the supervisor are still pending and a preliminary hearing commenced on May 7, 2012 in Toronto and is ongoing. In this hearing a judge will assess if there is sufficient evidence for the matter to proceed to a criminal trial.

## **Commentary**

This case is historic as it represents the first corporate guilty plea in Ontario under the Criminal Code as amended by Bill C-45 in 2004. If imposed, a corporate sentence of one million dollars will represent the highest penalty for criminal negligence causing death for a workplace accident in Canadian history. The only other prior corporate criminal negligence conviction in such a matter, on a guilty plea in 2008, was Transpave, resulting in a fine of \$100,000.00 in Quebec.

The proposed fine against Metron's President will, if imposed, set a new high water mark for a sentence against any individual, let alone a director and officer under an *OHS* statute in Canada.

## **OHS Insider Resources**

The *OHS Insider's* C-45 Compliance Centre has detailed information on criminal negligence, including the elements of a criminal negligence charge and how to protect your company and individuals, such as officers and directors, supervisors, JHSC members and even safety coordinators, from facing such a charge.