

Jail Time as a Possible Sentence for Safety Offences



A worker in Ontario was installing roofing membrane from a ladder when he lost his balance and fell about six metres, striking a fence. Although he was wearing fall protection, it wasn't affixed to anything. He died from his injuries. When asked to identify the deceased worker, the company owner, who'd been supervising the worker, lied about where he'd been working and what he'd been doing. The company pleaded guilty to two safety violations and was fined \$50,000. The owner pleaded guilty to failing, as a supervisor, to ensure that a worker worked with required protective devices and knowingly furnishing an inspector with false information. The court sentenced him to 15 days in jail, noting that it was doing so to deter others from ignoring the fall protection requirements [[R. v. Roofing Medics Ltd.](#)].

THE PROBLEM

A company or other organization that violates the OHS laws is subject to fines and other monetary penalties. But *individuals*, including members of senior management, supervisors and workers, convicted of safety offences may face another kind of penalty: jail. Prison terms have been a sentencing option in the OHS laws for years but aren't typically imposed. However, the court's comments in the *Roofing Medics* case suggest that perhaps jail sentences should be more common, especially when the imposition of fines

doesn't appear to be increasing compliance.

THE EXPLANATION

An individual accused of a safety offence would face a jail sentence in two ways:

Under the OHS laws. As noted above, the OHS laws permit the court to sentence an individual to imprisonment for safety offences. The maximum sentence possible varies by jurisdiction and, in some cases, by the type of offence. The range is as little as one month (NT, NU and PE) to as much as 36 months (YK), with most jurisdictions setting the maximum sentence at 12 months/one year. Note that fines and jail aren't mutually exclusive sentences, that is, an individual can be sentenced to both pay a fine *and* go to jail under the OHS laws.

Under the *Criminal Code*. When Bill C-45 took effect on March 31, 2004, it enabled the Crown to prosecute individuals for safety violations resulting in serious bodily harm or death as crimes. Individuals convicted of criminal negligence causing bodily harm could get up to 10 years in jail, while those convicted of criminal negligence causing death could get life sentences. But criminal negligence prosecutions for safety incidents are incredibly rare.

Regardless of the above provisions, fines are the standard penalty for individuals who plead guilty to or are convicted of violating the OHS laws. So why was a jail sentence imposed in *Roofing Medics*?

The court noted that the owner's lies forced the MOL and police to waste significant resources and time, explaining that "his conduct demonstrated a planned and deliberate attempt to mislead police and the Ministry in order to avoid consequences for himself and his company". In addition, about a year before the incident, an OHS inspector had raised a number of safety concerns at a company worksite, including the

need to ensure workers had adequate fall protection training. And a week before the tragedy, the owner and seven workers, including the deceased, attended such training. So, reasoned the court, the importance of fall protection should've been in the forefront of the owner's mind.

The staggering number of falls, many fatal, in the roofing industry each year highlighted the need for a sentence that would deter both the company and owner, and more importantly, other supervisors and roofing companies, from failing to protect their workers, said the court. It concluded that a jail sentence was the appropriate disposition for the owner, recognizing that historically jail sentences are the exception, not the norm, for these types of offences. It noted that individual deterrence wasn't a significant role in this sentencing decision.

"It is unacceptable for any roofer to be injured or to die as a result of a fall off a roof. These injuries and deaths can be prevented. Since the industry has not been able to accomplish prevention to date, it is appropriate for the Court to send a message that offenders will be dealt with harshly", said the court. Although the court said it wasn't punishing the owner for the failings of the roofing industry in general but for his own failings, those failings had to be viewed "within the context of an industry that has not been able to prevent the devastating consequences of its failure to comply with fall protection legislation. The reality is that fines have not been sufficient deterrence for these offences", added the court.

THE LESSON

The court in *Roofing Medics* said, "Others in the industry must pause to consider that each and every time they embark on a roofing project they may go to jail if one of their employees does not use fall protection gear". Although this opinion is the view of one court in one jurisdiction, the frustration

that fines alone haven't proven to make workers any safer may resonate across Canada. So although an individual convicted of an OHS offence is still most likely to face a fine, more courts may consider jail an appropriate sentence, especially for violators in positions of authority, flagrant violations, repeat offenders or in circumstances similar to *Roofing Medics*.

SHOW YOUR LAWYER

[*R. v. Roofing Medics Ltd.*](#), [2013] ONCJ 646 (CanLII), Nov. 21, 2013