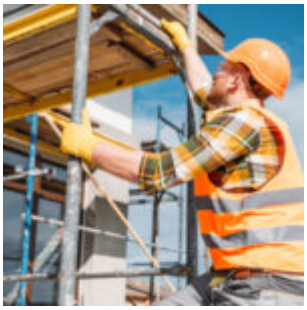
Project Manager Gets 3 ½ Years' Jail for Ontario Scaffold Collapse Tragedy



One of the most infamous safety incidents in the last few years was the tragic collapse of scaffolding at a Toronto construction project on Dec. 24, 2009, which resulted in four deaths, the establishment of the Dean Panel, and changes in Ontario's OHS laws and approach to workplace safety. Several companies and individuals pleaded guilty to or were convicted of OHS violations and/or criminal charges, the most recent of which was a project manager who was convicted of criminal negligence in June 2015. The court just sentenced him to three and a half years in jail. Here's a look at the court's rationale for this sentence.

THE CASE

What Happened: A construction company was hired to repair the balconies on two apartment buildings. On Christmas Eve, five workers and their foreman were working from a leased swing stage. Only one of them was attached to a fall protection lifeline. As the swing stage descended, brackets connecting the platforms failed, causing the foreman and four workers to fall to the ground. Only one worker survived, albeit with very serious injuries. The worker attached to the life line was left dangling in the air until he was pulled to safety. As a result, the project manager for the balcony work was convicted of four counts of criminal negligence causing death and one

count of criminal negligence causing bodily harm. The prosecution asked the court to sentence him to four-five years' jail, while the defence asked for a one-two year prison sentence.

What the Court Decided: The Ontario Superior Court of Justice sentenced the project manager to three and a half years in jail.

The Court's Reasoning: The court noted that it wasn't suggested that a jail term was required to deter the project manager from committing further offences. Both sides agreed that he was unlikely to commit further crimes of any kind and that he was remorseful. But a term of imprisonment *was* necessary to adequately denounce his conduct and to deter others with authority over workers in potentially dangerous workplaces from violating their legal duties to prevent bodily harm from befalling those workers, explained the court. The project manager knew there were six workers on a swing stage that had only two lifelines. But adding additional lifelines would've delayed the work and he knew the company had a deadline to meet. In letting the work continue in 'manifestly dangerous conditions,' he put Metron's interests ahead of his duty to protect the safety of the workers under his care, concluded the court. So although the project manager was a person of good character, the court found that a three and a half year jail sentence was warranted based on the moral blameworthiness of his conduct. The court added that it must be made 'unequivocally clear that persons in positions of authority in potentially dangerous workplaces have a serious obligation to take all reasonable steps to ensure that those who arrive for work in the morning will make it safely back to their homes and families at the end of the day' [*R. v. Vadim Kazenelson*, [2016] ONSC 25 (CanLII), Jan. 11, 2016].

ANALYSIS

Kazenelson wasn't the only individual prosecuted for this

safety incident. In fact, the sentencing court specifically noted that Joel Swartz, the president of Metron Construction, was fined $90,000 after pleading guilty to four OHS violations and Patrick Deschamps, a director of Swing N Scaff Inc., was fined $50,000 for two safety offences. But it stressed that Kazenelson was convicted of *criminal*'not regulatory'charges. And given that he was more directly involved in the incident, his jail sentence isn't surprising. To learn more about the lessons that employers, suppliers and safety professionals can take away from this tragedy, watch a recording of our recent webinar, 'The Metron Construction Tragedy: Lesson Learned' by Ontario OHS lawyer Norm Keith.