

Rare Jail Sentence Imposed on Company Owner for Safety Offences



Jail sentences are very rare for individuals convicted of violating the OHS laws. (Prison is actually more common for [violators of the environmental laws](#).) But in sentencing the owner of a roofing company to jail in a recent case, an Ontario court suggested that perhaps jail sentences should be imposed more often to deter other individuals and companies from committing similar violations.

A worker was installing roofing membrane from a ladder when he lost his balance and fell about six metres, striking a fence. He had been wearing fall protection but it wasn't affixed to anything at the time of the fall. He died from his injuries.

When asked to identify the deceased worker, the owner of the company, who'd been supervising the work, lied about where the worker had been working and what he'd been doing. The company also didn't immediately notify the MOL of the fatality or submit a written report within 48 hours as required by law. The company pleaded guilty to two safety violations and fined \$50,000.

The owner also pleaded guilty to failing, as a supervisor, to ensure that a worker works with required protective devices and knowingly furnishing an inspector with false information.

At sentencing, the court noted that the owner's lies forced

the MOL and police to waste significant resources and time. 'His conduct demonstrated a planned and deliberate attempt to mislead police and the Ministry in order to avoid consequences for himself and his company,' it explained.

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 fall protection 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 will deter both defendants, and more importantly, other supervisors and roofing companies, from failing to protect their employees, explained the court.

The court 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.

Rather, the court said the main reason it imposed a jail sentence on the owner was to deter *others* from ignoring the legislated fall protection requirements.

'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. 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.

It went on to explain that it wasn't punishing the owner for the failings of the roofing industry in general but for his own failings. But 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.

Ultimately, the court concluded that a 15-day jail sentence was appropriate for the owner [[R. v. Roofing Medics Ltd.](#), [2013] ONCJ 646 (CanLII), Nov. 21, 2013].