

# Safety Violation Results in Contractor Getting 18 Months in Jail



On Sept. 18, Sylvain Fournier, a Quebec based contractor, was sentenced to 18 months in prison followed by two years of probation.<sup>[1]</sup> Fournier had been found guilty of manslaughter under the *Criminal Code* relating to a workers death by means of a breach of Quebec safety code. The case is the first of its kind in Canada and raises serious concerns about the use of criminal law to enforce provincial regulatory safety standards.

In April 2012, Fournier and several employees were replacing a sewer line in an excavation. This required the excavation of a trench; however, the trench collapsed causing the death of the worker who was in the trench and serious injury to Fournier. At trial, Fournier was convicted of Manslaughter and criminal negligence. The criminal law rule against multiple convictions for substantially the same offence was invoked to stay this charge and there was no further sentence imposed on Fournier.

The prosecution asked for a three-and-a-half year jail term, while the defense argued that a 90 day sentence, three years of probation, 240 hours of community service, and a charitable donation would be an appropriate sentence.

In the sentencing submissions the Crown raised the following aggravating factors to support its request for a lengthy jail term:

- The objective seriousness of the offence;
- The existence of a judicial record;
- The breach of trust in the employer/employee relationship;
- The fact that the victim had been an employee of the offender since 2004 even though the offender had knowledge that the victim did not possess the required qualification cards;
- The offender's total responsibility in a context where this type of work is heavily regulated because of the dangers inherent to these excavations.

Both manslaughter and criminal negligence carry a maximum penalty of imprisonment for life, therefore sentencing him on one charge did not expose him to a greater or lesser penalty.

Justice Dupras held that '[3] On April 3, 2012, Gilles L vesque was working for S. Fournier Excavation Inc., a business whose president is the offender. Both of them were replacing a sewer pipe when the trench at the bottom of which they were working collapsed. The Court concluded that the trench had not been shored as is requested by section 3.15.3 of the *Safety Code for the construction industry*. The collapsing of the banks of the trench caused Mr. L vesque's death and severely injured Mr. Fournier.

[4] Naturally, the Court is sensitive to Gilles L vesque family's sorrow and recognizes that nothing can remedy this tragedy; however, the Court hopes that the family can find soothing and serenity despite all that'

[8] Sentencing is obviously one of the most difficult and delicate exercises in which a Court must engage. 'Although this task is governed by section 718 and seq. of the *Criminal Code* ['] and although the objectives set out in those sections guide the courts and are clearly defined, it nonetheless involves ['] the exercise of a broad discretion by the courts in balancing all the relevant factors in order to meet the objectives being pursued in sentencing'.[2]

The case is important to contractors and owners across Canada since the *Criminal Code* provisions applies in every province. The theory supporting the conviction was affirmed earlier by the Quebec Superior Court, that the 'unlawful act' of the contractor could be the breach of the provincial health and safety standards. The Fournier case is a further example of the increasing trend to increasingly using criminal law to enforce safety standards across Canada.

[1] R. v. Fournier, 2018 QCCQ 6747

[2] Supra.

#### **About Norm Keith**

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