

# Ontario Manager Gets Record C-45 Jail Sentence for Work Death



The maximum fine for an OHS violation ranges from \$350,000 to \$600,000 (first offence), depending on the province. Although that's not chump change, there may be situations where not following the law is a better financial option. Thus, for example, in Ontario, safety shortcuts exposing a company to a potential \$500,000 fine may be worth taking to earn a \$2 million early completion bonus. In 2004, Canada adopted a law called C-45 making it a crime for corporations and their representatives to deliberately expose their workers to known hazards in the interest of profits. So far, though, prosecutors have been reluctant to use C-45. But the Metron Construction disaster in which 4 workers lost their lives because they didn't have required fall protection is the kind of egregious case C-45 was designed for. And now the manager in charge of the Metron project has been sentenced to 3 1/2 years in jail, the harshest C-45 penalty ever imposed. Here's a look at the case and what it portends in Ontario and nationwide.

## **THE CASE**

**What Happened:** The Metron disaster took place at a Toronto construction project on Christmas Eve of 2009. Although the manager was unaware of the \$50,000 bonus in the offing, he knew that the concrete work on the 18-story apartment complexes was behind schedule and had to get done by the end of the year. So he let the foreman do something that he knew was illegal and highly unsafe: send 7 workers up a creaky swing stage scaffold equipped with only 2 fall arrest lifelines. The stage collapsed and the 5 workers not attached to a lifeline plunged 12 stories to their death (except for one who miraculously survived the fall without serious injury).

The Ontario court found the manager guilty of violating C-45, specifically the duty (under Section 217.1 of the Criminal Code) of a person in control of work to take "reasonable steps" to protect workers performing it. Both sides agreed that the manager had committed criminal negligence and deserved to go to jail. The issue was how long the sentence should be. The Crown wanted 4 to 5 years; the manager's lawyers argued for 12 months plus probation.

**What the Court Decided:** The Ontario Superior Court sentenced the manager to 3 ½ years.

**How the Court Justified Its Decision:** The manager didn't exactly fit the role of villain. As the court acknowledged, he was honest, hard-working and conscientious. He

was a good father to his 3 young sons and a caring husband to his ailing wife. And he exhibited sincere remorse for his role in the incident. But sentencing isn't just about character, the court explained, citing the following factors to justify its harsh sentence:

- He knew the danger: As a seasoned veteran with over a decade in construction, the manager knew perfectly well that letting 6 or more workers use a swing stage equipped with just 2 lifelines violated fundamental OHS laws and industry requirements that each worker wear a full body harness with a lanyard attached to a lifeline.
- He put the company's financial interests ahead of his workers' lives: The manager was normally safety-conscious and would have fired any foreman that let a crew work on a swing stage without fall protection. But waiting for the extra lifelines would have slowed the work. So he let the operation proceed. In so doing, he put Metro's interest in making the deadline ahead of his workers' safety.
- His actions had disastrous consequences: Because of the manager's decision, 4 workers were dead. A strong sentence was needed to deter others from gambling with the lives of their workers and "make it unequivocally clear that persons in positions of authority in potentially dangerous workplaces [must] take all reasonable steps to ensure that workers 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].

#### WHAT IT MEANS

Although the penalty handed down makes *Kazenelson* a landmark case, it doesn't herald and isn't likely to spur a new wave of C-45 prosecutions. Although prosecutors want employers to be conscious of C-45 and the potential for criminal liability, they'll continue to reserve it for egregious and dramatic cases. What's required isn't just a death but an employer that acts in wanton and reckless disregard of health and safety, e.g., by putting profits ahead of workers a la Metron Construction and Westray. The significance of *Kazenelson* is the message it sends: If and when such cases do arise, the principles are going to jail.

Meanwhile, OHS inspections and prosecutions will remain the mainstay of workplace health and safety law enforcement. And while it's technically not a defence to a criminal charge, showing due diligence to prevent known hazards and comply with OHS laws makes it impossible for prosecutors to prove that an employer acted with the reckless and wanton disregard for safety required to convict a corporation or its representatives for criminal negligence under C-45.