Violation of Workplace Safety Can Lead to Jail Time

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On January 11, 2016, Vadim Kazenelson was sentenced to 3½ years' imprisonment after having been found guilty of criminal negligence causing death and criminal negligence causing bodily harm for his role in a tragic construction incident. Five workers lost their lives and one worker was seriously injured after the swing stage on which they were working suddenly collapsed. Kazenelson, a project manager at a Toronto-based construction company, had failed to ensure that every worker was attached to a lifeline as required by both the law and industry practice, and had failed to take steps to ensure that a sufficient number of lifelines were available for the workers.

As a matter of fact, only two lifelines were available, even though six workers were working on swing stages that day.

In his sentencing decision, Justice MacDonnell of the Ontario Superior Court mentioned that the offender was aware that the workers were working 100 feet or more above the ground without lifelines, and that his duty to take steps to fix this situation of danger was fully engaged. Justice MacDonnell came to the conclusion that given these circumstances, "a significant term of imprisonment is necessary to reflect the terrible consequences of the offences and to make it 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."

This decision, which is now under appeal, appears to be the harshest sentence given by a Canadian Court for a breach of the duty imposed in section 217.1 of the *Criminal Code*, which states:

Every one who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task.

This section of the *Criminal Code* came into force in 2004 in response to the tragic death of several miners in a violent explosion that took place in a Nova Scotia mine in 1992. The explosion occurred in a context where a gas detection device had been disabled for productivity reasons, as it would frequently interrupt the activities of the

mine. This provision was added to the *Criminal Code* so as to allow the Crown to prosecute individuals and corporations whose failure to safeguard of the health and safety of the workers under their supervision resulted in bodily harm.

While some corporations have been required to pay hefty fines under this provision over the past years, including the Québec-based Transpavé company in 2008, the *Kazenelson* case could mark the beginning of an era where prison sentences will be imposed on persons in position of authority who blatantly breach their duty to take reasonable steps to prevent bodily harm to other people under their authority.

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