

## Jail Time for Health & Safety Violations



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Peter Straszynski is a partner of the firm in our Employment & Labour Group. He assists employers with all of their labour and employment issues, from the hiring to the post-termination stages of employment, in both the union and non-union settings.

In a landmark decision released in January 2016, the Ontario Court has sentenced a project manager to 3.5 years in prison in relation to a scaffold collapse that many will remember having occurred in Toronto on Christmas Eve in 2009. Vadim Kazanelson, an employee and project manager with Metron Construction, was convicted of four counts of criminal negligence causing death and one count of criminal negligence causing bodily harm.

Under Kazanelson's supervision, six workers were allowed to board and work on a swing stage equipped with only two lifelines. By law, every worker on such a stage must be secured to their own lifeline. Only one of the workers were attached to a lifeline when the swing stage failed and collapsed, resulting in a fall of more than 100 feet. Miraculously, one of the five workers who fell survived the fall, but the four others died. The one worker secured to the lifeline survived unharmed and was pulled in to safety.

The charges against Kazanelson were laid under that *Criminal Code* of Canada (amended by Bill C-45 in 2004 to impose serious penalties

in cases of occupational health and safety violations causing bodily harm or death).

In finding Kazanelson guilty of criminal negligence causing death or serious bodily harm, the Court found that that not only was he aware that the six workers had boarded and were working on the staging with no lifelines, but that he did nothing "in circumstances where he had no information with respect to the capacity of the stage to safely bear the weight to which it was being subjected."

The decision is extremely significant to employers and supervisors because it illustrates the Court's readiness to impose incarceration as a penalty against individuals in health and safety matters, in addition to the traditional fines or penalties imposed against corporate defendants.

The case also serves to remind employers of the diminishing tolerance for health and safety negligence and the importance of vigilance in safety training, education and enforcement of rules for management and workers alike.