

Violation of Workplace Safety Can Lead to Jail Time

February 01, 2016

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.

By

[Katherine Poirier](#), [Raphaël Girard](#)

Expertise

[Labour & Employment](#)

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription

preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2025 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.