## Construction Manager gets prison in scaffold deaths

By: Peter Edwards<<http://www.thestar.com/authors.edwards_peter.html>> Star Reporter, Published on Mon Jan 11 2016
In a historic case, a construction company boss has been sentenced to three-and-a-half years in jail for an incident in which four workers died and another was critically injured after falling 13 storeys from a scaffold outside a Toronto apartment building on Christmas Eve 2009.
Vadim Kazenelson, 40, was found guilty last June of four counts of criminal negligence causing death and one count of criminal negligence causing bodily injury. He was the project manager for Metron Construction on the apartment balcony repair job when the tragedy occurred at 2757 Kipling Ave., just south of Steeles Ave. W.
Outside the University Ave. courthouse, Ontario Federation of Labour president Chris Buckley said this marks the first time a supervisor in Canada has been sent behind bars for the death of a worker on the job.
“Justice has been served,” Buckley said on Monday morning shortly after the sentence was handed down. “It sends a strong message, and employers should have shivers up their spines today.”
“It’s historic,” Buckley said.
Kazenelson said nothing as spectators in the courtroom cried when his sentence was read out. He moved immediately to apply for bail, and the Crown is not opposing the move pending his appeal of the sentence. That means Kazenelson could remain free for the foreseeable future. He has been out on bail since his arrest.
The jail sentence is the first of its kind since the federal government passed Bill C-45 in March 2004. The law added a section to the Criminal Code that imposed criminal liability on organizations and individuals that don’t take reasonable steps to prevent their workers from being injured or killed on the job.
At its passing, the legislation was known as the “Westray bill,” named after the May 1992 coal mining disaster in Plymouth, N.S., where 26 workers died in a methane gas explosion. A public inquiry concluded five years later that the mine’s ventilation system was “woefully inadequate” and that the mine’s management had flouted safety regulations. The report also blamed the Nova Scotia government for its attitude of “apathy and complacence” when it came to enforcing the rules.
Two mining bosses and the company were initially charged with criminal negligence causing death and manslaughter, but those charges were later dropped when the Crown concluded there was no chance of conviction.

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Since Bill C-45 passed almost 12 years ago, there have been eight cases with charges under the new criminal code provisions, according to Canadian Centre for Occupational Health and Safety. Of those, only Kazenelson has faced jail time for the death of a worker on his watch.
The men who died when their swing bridge broke in half at the Kipling Ave. apartment building on Christmas Eve 2009 were immigrants from Ukraine, Uzbekistan and Latvia. Alesandrs Bondarevs, 25, Aleksey Blumberg, 33, Vladimir Korostin, 40, and site supervisor Fayzullo Fazilov, 31, were killed in the fall.
None was attached to a safety line.
Dilshod Marupov, then 22, was partially secured by one of two lifelines on the scaffold but suffered severe injuries. Staff at Sunnybrook Hospital, where he was treated, initially thought he had shattered his spine and might need to have his feet amputated.
A sixth worker who was secured by the other lifeline survived with no injuries. Kazenelson, meanwhile, clung to the balcony as the scaffold snapped and his workers plummeted to their deaths, according to trial evidence.
Metron Construction was ordered to pay a $750,000 fine after pleading guilty to criminal negligence causing death in 2012. It was the highest fine in Canadian history for criminal corporate liability.
The company’s owner, Joel Swartz, was also ordered to pay $112,500 after pleading guilty to four violations of the Occupational Health and Safety Act.
The company that manufactured the swing stage, Ottawa-based Swing N Scaff Inc., was fined $350,000 and Patrick Deschamps, one of the company’s directors, was fined $50,000.
The Ontario Federation of Labour launched a campaign immediately after the incident, with the slogan “Kill a Worker, Go to Jail.” It called for jail time for bosses whose criminal negligence results in a worker’s death.
In Kazenelson’s case, Crown attorney Rochelle Direnfeld had sought a sentence of four to five years. Defence lawyer Lou Strezos recommended 12 months to two years in custody, followed by parole conditions that included Kazenelson speaking publicly about workplace safety.
At a court hearing last October, the construction boss apologized for his role in his workers’ deaths. “I am going to live all my life with that pain,” he told the court. “All the men on the job site, they are good workers and good men. I’m sorry for their families and all those who suffered.”
In passing his sentence, Justice Ian MacDonnell noted that Kazenelson was not part of the original decision to have six workers high above ground with only two lifelines. Fazilov made that call earlier in the day, the judge said.
The men who were killed all knew they were running risks, he added, but their boss still should have corrected things.
“Mr. Kazenelson did nothing to rectify the situation,” MacDonnell said.
The judge noted that Kazenelson, a Russian-born veteran of the Israeli military, had no prison record and is “hardworking, conscientious and safety-minded.” He added that the father of three has shown real remorse and is unlikely to commit a crime again.
Kazenelson also had a reputation of being a boss who would fire workers for safety infractions, MacDonnell said. Still, a stiff sentence was needed to denounce the crime and deter others from committing similar offences, MacDonnell said.
Outside the courthouse, Det. Kevin Sedore said employers will pay attention to the sentencing.
“I think this is going to send a clear message to other employers as well as supervisors,” he said.