

INDUSTRY PERSPECTIVES: Supervisors "doing time" for OHSA offences more common than before

by CAROLYN SAVOURY Sep 3, 2015

Where a supervisor is found guilty of an offence under the Occupational Health and Safety Act (the Act), imprisonment is an available, although rarely used, sanction.



However, recently the courts have been considering imprisonment as an appropriate sanction for supervisors, with the express goal of deterring others from violating the Act.

Supervisors serving jail time

In *R v Roofing Medics Ltd*, 2013 ONCJ 646, a worker fell from a ladder, landed on a fence, and died shortly thereafter. The court found the supervisor guilty of failing to ensure his worker used a fall arrest system and sentenced the supervisor to 15 days in jail. The following aggravating factors were particularly relevant in determining that sentence:

The supervisor lied about the accident at the hospital and continued to lie for days after, both to the police and the Ministry of Labour.

One week before the accident, the supervisor and his workers received fall protection training, thus fall arrest protection should have been at the forefront of the supervisor's mind.

The deceased worker rarely secured his safety belt to a fixed anchor point; a fact the supervisor either knew or ought to have known given his frequent presence on the site.

Acknowledging a jail sentence is "the exception, not the norm," the court made it clear the objective of the sentence was to deter other supervisors from violating the Act:

Others must pause to consider that [...] they may go to jail if one of their employees does not use fall protection gear. [...] [I]f workers continue to fall [...] in contravention of fall arrest regulations, supervisors can expect that jail sentences will be longer and may well become the norm.

More recently, in Ontario (Ministry of Labour) v J.R. Contracting Property Services, 2014 ONCJ 115, a worker fell from a roof and was permanently paralyzed. The worker had not been trained in the use of fall protection nor provided with any fall protection equipment. The court found the supervisor guilty of failing to take every reasonable precaution to protect a worker, in particular failing to ensure fall protection equipment was provided, contrary to the Act. She was sentenced to 45 days in jail.

In this case there were several aggravating factors, including the supervisor had previously been found guilty of several provincial environmental offences, her prior sentences included imprisonment and substantial fines, \$50,000 of which remained unpaid, and she lacked remorse. Despite this particularly egregious history, the fact that jail time was awarded, should be a significant wake-up call for supervisors and employers everywhere.

Tips for employers

Safety at the workplace is not a new concept, nor is the potential for jail time for a supervisor who fails to take reasonable steps to protect his or her workers. To minimize the risk of 'doing time,' every employer should take steps to ensure the following:

Training: Supervisors receive regular and ongoing training to understand and implement the workplace's health and safety policies and programs.

Communication: Supervisors regularly and consistently communicate with workers, other supervisors and senior managers to identify issues and ensure prompt safety compliance.

Enforcement: Supervisors consistently and transparently enforce all health and safety requirements, demonstrating a "zero tolerance" for violators, including immediate and progressive discipline, up to and including termination depending on the severity and consistency of the infraction.

Record keeping: Supervisors keep detailed notes of observations and any remedial or follow-up steps taken to ensure compliance.

Co-operation: Supervisors receive regular and ongoing training on how to respond to a workplace accident, including legal obligations (Sherrard Kuzz LLP has prepared a 12-Step Accident Checklist available by contacting our office).

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