

Court of Appeal Quadruples the Fine Against Metron Construction

As many of you will recall, on Christmas Eve in 2009, five Metron Construction workers fell 13 storeys at a construction site. Four of the five workers were killed and the fifth worker suffered serious injuries. While the accident occurred in Toronto, this horrific story was reported across Canada and in the United States. An investigation later revealed that the workers had not been properly harnessed, nor had they been trained in the use of fall protection. The swing stage from which the workers fell had not been properly maintained and had been loaded beyond its weight capacity. The investigation also suggested that three of the workers involved had recently ingested marijuana.

Following the incident, a judge sitting on the Ontario Court of Justice found Metron to be criminally responsible and issued a \$200,000 fine. In addition to the fine against the Company, Metron's President was personally fined \$90,000. To put these fines in context, \$200,000 was three times the net earnings of Metron in its last profitable year. The Court of Justice's decision was intended to send a clear message regarding the importance of workplace safety. We at e2r Solutions circulated an Alert! on this decision on July 19, 2012.

The Court of Appeal recently reversed the Court of Justice's sentence against Metron, increasing the fine against the Company to \$750,000. In a unanimous decision, three Court of Appeal Justices noted that the initial sentence was not in line with the seriousness of the offence. The Court of Appeal also noted that Metron was not excused from its wrongdoing on the basis that the site supervisor had lower-level management responsibilities. Moreover, the Court of Appeal argued that the trial judge placed too great an emphasis on Metron's ability to pay the fine, going so far as to note that, depending on the gravity of the offence, putting a company out of business may be an acceptable outcome.

The Court of Appeal decision in Metron underscores the importance of workplace safety and the need for Canadian employers across all jurisdictions to critically assess the safety of their workplaces. Failure to provide a healthy and safe work environment may very well result in findings of criminal negligence, significant fines, and even insolvency.

Please contact e2r Solutions® if you would like to discuss workplace safety and your obligations under the applicable health and safety legislation.