

# \$70,000 fine in child's death

Posted By KARENA WALTER, STANDARD STAFF - Feb 20<sup>th</sup>, 2009

Toddler Kolton Tkachuk loved his swing set and sliding down the slide.

He'd sing about the pig and sheep in Old MacDonald and liked watching Dora the Explorer.

He knew how to say Grace before meals, but mixed up the signs of the cross, doing the holy and spirit backwards.

They are some of the memories his parents put on a web-site as part of a promise, made on the toddler's deathbed, to never forget him.

On Friday, the company that failed to brace a garage door which fell and killed the St. Catharines toddler, was fined \$70,000 in provincial offences court.

The tragedy occurred at the Tkachuk's Cherie Road home on May 23, 2007, four days after Kolton celebrated turning three.

"It's not going to bring our son back," said his dad Kyle Tkachuk outside the courtroom, where Concrete Finishes Niagara was found guilty of failing to ensure measures and procedures were carried out at a workplace.

Ministry of Labour lawyer Lori Hamilton told the court four workers arrived at the home shortly before 11 a. m. that day to work on the garage floor.

Kolton's mother Frances Tkachuk went to talk to supervisor Dixon Winger after parking her vehicle on the street. She had baby Felicia in a carrier and Kolton with her.

Frances was standing outside the garage door speaking to Winger, with Kolton next to her, when workers went inside the garage.

One of the workers pulled the garage door's release cord to disconnect the door from the automatic opener. The 254-pound door came down and struck Kolton on the head and neck.

Frances removed Kolton from under the door while Winger tried to call 911. He was unable to get reception and drove Frances and her son to an ambulance station.

From there, the toddler was taken to St. Catharines General Hospital and airlifted to a hospital in Hamilton but could not be saved.

"Every day since, we ask ourselves why this happened and we miss our son, our guardian angel," the Tkachuks wrote in a victim impact statement read by Hamilton.

Kyle Tkachuk was in the courtroom, but asked his wife not to come, saying she had been through enough.

Frances was unable to sleep properly for a year after witnessing her son's death and the couple started going to a grief councillor.

Hamilton said no bracing was placed on the garage door and there was no fencing or barricades around the project.

Xavier Navarrete, lawyer for Concrete Finishes, said although the company pleaded not guilty, it agreed with the facts read to the court and was not calling any witnesses.

Navarrete said the tragedy had a great impact on Wininger who tried to get help for the toddler.

"He lives with that memory every day of his life, wondering if there was something that could be done," Navarrete said.

Because of the tragedy, some employees left the company and others are dealing with substance abuse problems, Navarrete said.

He asked the company be given three years to pay the \$70,000 fine.

"It's hard to operate a business when you're thinking about this tragedy every day."

Justice of the Peace Carollyn Straughan found the company guilty and agreed to the time to pay.

Other charges, including those specifically against Wininger, were withdrawn by the Ministry.

Felicia is now just over two years old. The Tkachuks have a second daughter, Kalista Kyla, born on Feb. 10.

They wrote in their victim impact statement they made six promises to Kolton on his deathbed, including to cherish his memory.

To that end, they wrote down all their memories of what Kolton said and did, his favourite books, songs he knew and other special traits.

The memories were put on a website which the family invites people to view at [www.koltontkachuk.com](http://www.koltontkachuk.com).

They also promised to turn the tragedy into something positive by starting a memorial fund to increase garage door safety awareness. They said many families have told them they have checked their own garage doors because of what happened to Kolton.

Kyle Tkachuk wrote they are sad Felicia, who was a baby at the time, will never know her older brother.

"My wife and I will never be as happy as when our precious son was alive."