



CRIMINAL LIABILITY OF ORGANIZATIONS IN CANADA





OVERVIEW

- The Problem of Corporate Criminal Liability
- Old Law in Canada
- Other Jurisdictions: U.S.A., Australia, U.K.
- Law Reform Attempts
- Bill C-45 and New Codified Rules
- Important Features of the Canadian Model



The Problem of Corporate Criminal Liability

- Criminal law can apply to corporations as “persons”, but there has been little or no corresponding statutory guidance for determining *how* a corporation commits a criminal offence (act and mental state)
- Left to courts to develop common law rules



The Law in Canada prior to Bill C-45

Canada: Common law “directing mind”/ “identification doctrine” tests

- *Canadian Dredge and Dock Co. v. The Queen*
 - Supreme Court of Canada (1985) – “directing mind”
- *The Rhône v. The Peter A.B. Widener*
 - Supreme Court of Canada (1992) – “executive decision-making authority”





Other Jurisdictions

- Vicarious liability – United States federal law
- Corporate culture – Australia
- Identification theory – United Kingdom, United States state criminal law
- Corporate manslaughter – United Kingdom legislation before Parliament



Law Reform Attempts

- 1976 Law Reform Commission Working Paper on *Group Action*; 1987 Law Reform Commission Report on *Recodifying the General Part of the Criminal Code*
- Critiques of the *Dredge and Dock* decision
- 1997 Commission of Inquiry into the Westray Mine Disaster (1992)
- 1999-2002: NDP Bills C-259/C-284; House of Commons Standing Committee on Justice and Human Rights committee report





Law Reform Attempts...

- Government response to the Report of the Standing Committee on Justice and Human Rights (2002)
- Key Principles of Response
 - Criminal law should apply to all persons including corporations – broad approach to “corporation”
 - The class of persons liable should include those who exercise delegated/operational authority, not just executive
 - Where the offence is one of negligence, corporate criminal liability should be based on the actions and moral fault of the corporation as a whole



Bill C-45

- Introduced June 12, 2003; received all-party support; Royal Assent on November 7, 2003; came into force March 31, 2004
- Overview of new corporate liability rules:
 - Modernized the *Criminal Code* definitions
 - Codified rules for attributing criminal liability to organizations – liability rules expanded; different rules for offences requiring subjective intent and offences of criminal negligence



Bill C-45: Modernized Definitions

- “organization” means
 - a public body, body corporate, society, company, firm, partnership, trade union or municipality, or
 - an association of persons that
 - (i) is created for a common purpose,
 - (ii) has an operational structure, and
 - (iii) holds itself out to the public as an association of persons

- “senior officer” means a representative who plays an important role in the establishment of the organization's policies or is *responsible for managing an important aspect of the organization's activities* and, in the case of a body corporate, includes a director, its chief executive officer and its chief financial officer

- “representative” means a director, partner, employee, member, agent or contractor of the organization



Bill C-45: Liability Rules

Crimes requiring subjective mental state

- Organization liable where “senior officer” has at least in part intent to benefit the organization *and*
 - acting within his authority, commits offence personally;
 - acting within his authority, has guilty mind for offence and directs another person to do the act; *or*
 - knows that a representative is about to commit the offence and does not take reasonable steps to stop it





Bill C-45: Liability Rules

Criminal negligence offences

- Organization liable where
 - acts and/or omissions of one “representative”, or of multiple “representatives” taken as a whole, acting within scope of their authority, constitute the offence; *and*
 - responsible “senior officer(s)”, individually or collectively, show marked departure from standard of care expected in circumstances to prevent offence





Bill C-45: Other Reforms

In addition to rules on corporate criminal liability, Bill C-45 addressed:

- Sentencing for corporations: set out factors for court to consider on sentencing a corporation; optional conditions of probation relating to remedial policies to prevent future offences
- Workplace safety: codified a duty of care for persons who oversee work of others (applies to individuals and corporations)



Important Features of Bill C-45

- Bill C-45 did *not* expand personal criminal liability for directors and officers by virtue of their position
- Criminal liability still based on principle of *personal* fault
- Directors and officers subject to prosecution where they commit crime personally, or aid or abet another person to commit a crime, including the corporation



Important Features of Bill C-45

- C-45 established liability rules on principled basis, by asking how an organization acts and has a state of mind
- General and comprehensive approach: Rules apply to *all* criminal offences as contrasted with “corporate manslaughter” model