

**BILL C-45: AN ACT TO AMEND THE CRIMINAL CODE  
(CRIMINAL LIABILITY OF ORGANIZATIONS)**

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## LEGISLATIVE HISTORY OF BILL C-45

### HOUSE OF COMMONS

Bill Stage	Date
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Second Reading:	19 September 2003
Committee Report:	23 October 2003
Report Stage:	27 October 2003
Third Reading:	27 October 2003

### SENATE

Bill Stage	Date
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Third Reading:	30 October 2003

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N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print**.

Legislative history by Peter Niemczak

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BILL C-45: AN ACT TO AMEND THE CRIMINAL CODE  
(CRIMINAL LIABILITY OF ORGANIZATIONS)\*

BACKGROUND

A. Criminal Liability of Corporations and Corporate Officials:  
The Current Law in Canada

The corporate form of business organization is intended to protect shareholders from personal liability for the civil debts of the corporation. Executives, directors and other officers and employees of the corporation enjoy no special immunity from either criminal or quasi-criminal<sup>(1)</sup> liability. Such persons are legally accountable for any misconduct of their own and for any misconduct by others to which they are a party, whether done on behalf of the corporation or otherwise.

Corporations themselves can also be criminally liable in their own right.<sup>(2)</sup> In the case of offences of absolute or strict liability,<sup>(3)</sup> a corporation is subject to penal liability for any unlawful acts or omissions of the corporation *per se* or for those of its employees and agents in

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\* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

- (1) This term refers to federal and provincial offences of a regulatory nature that are found outside the *Criminal Code*.
- (2) The definition of the terms “every one,” “person” and “owner” in section 2 of the *Criminal Code*, R.S.C. 1985, c. C-46, as amended, includes, among other entities, “bodies corporate” and “companies,” but only “in relation to the acts and things that they are capable of doing and owning respectively.”
- (3) Absolute liability offences are those where the guilt of the accused follows automatically from proof that the accused permitted the proscribed result to occur. Strict liability offences are similar to absolute liability offences with the exception that the accused can avoid a finding of guilt by establishing that all reasonable steps were taken to avoid the proscribed result. See: *R. v. City of Sault Ste. Marie*, [1978] S.C.R. 1299, 40 C.C.C. (2d) 353.

the context of their corporate duties.<sup>(4)</sup> In other words, corporations are effectively subject to vicarious criminal liability in the case of *regulatory* offences. In the case of actual *criminal* offences (i.e., those requiring proof of intent or *mens rea*), corporations are liable only for the acts and omissions of such persons who by reason of their relevant position or authority in the corporation may be said to constitute a “directing mind” of the corporation, including all those to whom “governing executive authority” has been delegated.<sup>(5)</sup> This has been interpreted to encompass all individuals who have explicitly or implicitly been given authority to “design and supervise the implementation of corporate policy rather than simply to carry [it] out.”<sup>(6)</sup> This model of corporate criminal liability is known as the “identification theory” model.

#### B. Problems with the Current Criminal Law

The “identification theory” of corporate criminal liability has been criticized as inadequate over the years, both in Canada and elsewhere. Critics of this approach have pointed out that it does not reflect the reality of the internal dynamics of corporations, particularly in the case of larger corporations. Rarely do high-level corporate officials personally engage in the specific conduct or make the specific decisions that result in occupational health and safety violations or in serious workplace injury or death. However, they can often, through actual policy decisions or otherwise, create or contribute to a corporate environment where subordinate managers, supervisors and employees feel encouraged or even compelled to cut corners on health and safety matters, even in the face of legal prohibitions or official corporate policy.

Given the internal behavioural dynamics of corporations, it is argued that the criminal law must look beyond the discrete, wrongful conduct of individuals. Advocates of law reform in this area tend to favour an approach to corporate criminal liability wherein the corporation is linked to the aggregated results of the actions of its key officials and their delegates.<sup>(7)</sup> Moreover, reform advocates feel that by requiring the convergence of the requisite

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(4) See: *R. v. Busy Bee Wine and Spirits Importers* (1921), 36 C.C.C. 93 (Sask. C.A.); and *Canadian Dredge & Dock Co. Ltd. v. The Queen* (1985), 19 C.C.C. (3d) 1, [1985] 1 S.C.R. 662.

(5) *Canadian Dredge & Dock*, *supra*.

(6) *The Rhone v. The Peter A.B. Widener*, [1993] 1 S.C.R. 497.

(7) Stewart Field and Nico Jorg, “Corporate Liability and Manslaughter: Should We Be Going Dutch?” *Criminal Law Review*, 1991, pp. 156-171 (pp. 161-162); and Jennifer Quaid, “The Assessment of Corporate Criminal Liability on the Basis of Corporate Identity: An Analysis,” *McGill Law Journal*, Vol. 43, 1998 (p. 97).

criminal act and intent in particular senior officials, the law currently permits corporations to avoid potential criminal liability by delegating responsibility for health and safety to subordinate managers and supervisors.<sup>(8)</sup>

On the other hand, some commentators have questioned the need for corporate criminal liability altogether,<sup>(9)</sup> while others have warned that moves to facilitate corporate criminal liability could result in a dilution of legal protections for all criminal accused.<sup>(10)</sup>

In its submissions to the public inquiry into the Westray Mine disaster of May 1992, the United Steelworkers of America called for the facilitation of corporate criminal liability and also advocated enhanced criminal accountability of corporate directors and officers.<sup>(11)</sup> The union's position was that the existing provisions of the *Criminal Code* on parties to offences (sections 21 and 22) – which extend liability to those who aid, abet (i.e., encourage) or counsel (which includes to “procure, solicit or incite”) the commission of offences, as well as to those who directly commit them – are inadequate. The union recommended creating a new criminal offence aimed specifically at “directors and responsible corporate agents” who negligently fail to protect the health and safety of employees. The union conceded that the offence would likely have to be confined to situations of *criminal negligence* (i.e., conduct amounting to a “marked departure” from the standard of the reasonable person). However, it was thought that legislating a specific legal duty on the part of key corporate officials to take reasonable care to protect employees would facilitate their prosecution by obviating the need to establish a causal connection between the conduct of a corporate official and the death or injury of an employee.

### C. The Law in Other Countries

While corporate liability for regulatory infractions is widely accepted, the approach of national legal systems to corporate liability for true crimes varies considerably.

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(8) Field and Jorg (1991), pp. 158-159.

(9) V. S. Khanna, “Corporate Criminal Liability: What Purpose Does it Serve?” *Harvard Law Review*, Vol. 109, 1996, pp. 1477-1534.

(10) Victor V. Ramraj, “Disentangling Corporate Criminal Liability and Individual Rights,” *Criminal Law Quarterly*, No. 45, August 2001, pp. 29-52.

(11) Letter of 29 August 1997 from David J. Roberts to Justice K. Peter Richard re “Westray Mine Public Inquiry – Supplementary Recommendations.”

The traditional principle embodied in the Latin maxim *societas delinquere non potest* (companies cannot commit an offence) continues to be reflected in the laws of some states, such as France, Germany and Austria, where corporate criminal liability applies in only limited circumstances,<sup>(12)</sup> and generally on a more restrictive basis than the “identification theory” of Anglo-Canadian law.

In the United States, the federal courts and most states apply a vicarious liability approach to corporations for illegal acts committed by their officers, agents or employees while exercising corporate powers within the scope of their employment for the benefit of the corporation.<sup>(13)</sup> Dutch law also provides for a form of vicarious corporate criminal liability for the acts or omissions of an employee where the act or omission in question belonged to a category of conduct that the corporation accepted to be part of its normal operations and that it had the power to determine.

There have been recent legislative reform initiatives in jurisdictions that, like Canada, retain, or that had retained, the “identification theory” of corporate criminal liability.

In its May 2000 response to an earlier Law Commission recommendation,<sup>(14)</sup> the U.K. Home Office proposed the creation of an offence of “corporate killing,” where a person’s death was a result, in whole or in part, of a “management failure” by a corporation.<sup>(15)</sup> “Management failure” is defined as a situation where the management or organization of a company’s activities fails to ensure the health and safety of its employees or of others affected by its activities.<sup>(16)</sup> In May 2003, the U.K. Home Secretary announced that the Government would proceed with a bill on this matter sometime in the fall of 2003.<sup>(17)</sup>

In 1995, Australia amended its federal Criminal Code in order to address the limitations of the identification theory of corporate liability. Under these amendments, the act or omission of any officer, employee or agent of the corporation acting within his or her actual or

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(12) David A. Frenkel and Yotam Lurie, “Culpability of Corporations – Legal and Ethical Perspectives,” *Criminal Law Quarterly*, No. 45, March 2002, pp. 465-487 (pp. 466-467).

(13) Khanna (1996), pp. 1487 and 1489.

(14) Law Commission (U.K.), *Legislating the Criminal Code: Involuntary Manslaughter*, Report No. 237, 1996, Part VIII.

(15) Home Office (U.K.), *Reforming the Law on Involuntary Manslaughter: The Government’s Proposals*, May 2000.

(16) *Ibid.*, p. 15.

(17) Home Office (U.K.), *Government to Tighten Laws on Corporate Killing*, 21 May 2003.

apparent authority is sufficient to impute the *actus reus*, or guilty act, of the offence to the corporation. The criminal intent, or *mens rea*, necessary to complete the offence is imputed to the corporation on the basis of:

- the actual deliberate or reckless conduct of the Board of Directors or a high managerial agent;
- the express, tacit or implied authorization or permission of the conduct by the Board of Directors or a high managerial agent;
- the existence of a corporate culture within the corporation which directed, encouraged, tolerated or led to non-compliance with the law; or
- the failure of the corporation to maintain a corporate culture which required compliance with the law.<sup>(18)</sup>

Although some other countries have developed looser models of corporate criminal liability, it should be noted that these countries have generally not relaxed their rules for individual criminal responsibility with respect to corporate directors and officers.

#### D. The Evolution of Law Reform in Canada

In its 1987 report entitled *Recodifying Criminal Law*, the Law Reform Commission of Canada offered two models for reforming the law on corporate criminal liability.<sup>(19)</sup> The first model would have retained the identification approach to corporate criminal liability with respect to offences of intent or recklessness; however, the Commission would have expanded the category of personnel whose conduct could trigger the corporation's liability to include all employees who are "identifiable as persons with authority over the formulation or implementation of corporate policy," provided that they were acting within the scope of their authority (i.e., acting at least partially on behalf of the corporation and not in fraud of it). For crimes of negligence, the relevant actions and states of mind of all such employees with the requisite authority could be aggregated for the purposes of fixing liability on the corporation. In other words, it would not be necessary for any individual to have committed the

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(18) Australia, *Criminal Code Act, 1995*, No. 12 of 1995, Part 2.5. It should be noted, however, that criminal law is primarily the responsibility of Australia's states, which have thus far generally retained the identification theory model.

(19) Law Reform Commission of Canada, *Recodifying Criminal Law*, Report No. 31, 1987, pp. 26-27.

offence for the corporation to be guilty. In its alternative model, the Commission proposed applying this latter “aggregation” approach in the attribution of corporate criminal liability for all crimes. The Commission also raised the issue of extending criminal liability to other forms of collective action, such as partnerships, joint ventures and non-profit organizations.

In 1993, a Government White Paper prepared by the Minister of Justice recommended attributing criminal liability to corporations for the acts and omissions of any of its “representatives” while acting under the corporation’s express, implied or apparent authority.<sup>(20)</sup> Like the Law Reform Commission’s report six years earlier, the White Paper recommended expanding the basis for attribution of crimes to corporations beyond the common law concept of the corporate “directing mind”: the White Paper defined a corporation’s “representatives” as including not only its directors and officers but also its employees and agents. Also like the first model proposed by the Law Reform Commission, the White Paper distinguished between crimes of negligence and crimes of intent or recklessness. For the former, the White Paper, like the Law Reform Commission’s report, proposed attributing corporate liability on the basis of the collective, or aggregated, actions and knowledge of all the corporation’s “representatives.” For crimes of intent or recklessness, however, the White Paper proposed aggregation of representatives’ conduct only with respect to the attribution of the *actus reus*, or the guilty physical act or omission forming the basis of the offence. The requisite intent would actually have to be formed by one or more corporate representatives acting within their area of corporate authority. The White Paper also sought to address the issue of criminal liability by other collective entities and proposed extending the definition of “corporation” in the *Criminal Code* to include partnerships, limited partnerships and trade unions.

The White Paper proposals were criticized by the corporate sector for allowing for corporate criminal liability without actual corporate knowledge and through the artificial aggregation of the acts and knowledge of various individuals.<sup>(21)</sup>

In 1997, the Nova Scotia public inquiry into the Westray Mine disaster recommended that the federal government study the issue of the accountability of corporate executives and directors for corporate wrongdoing, particularly in relation to workplace safety, and introduce any necessary legislation.<sup>(22)</sup>

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(20) Minister of Justice, *Proposals to Amend the Criminal Code (General Principles)*, 28 June 1993, pp. 6-7.

(21) Justice Canada, *Government Response to the Fifteenth Report of the Standing Committee on Justice and Human Rights: Corporate Liability*, November 2002.

(22) Nova Scotia, *The Westray Story: A Predictable Path to Disaster – Report of the Westray Mine Public Inquiry*, 1997, recommendation 73.

In response to the Westray inquiry's recommendations, private Members' bills providing for enhanced criminal accountability of corporations and senior corporate officials for corporate wrongdoing were introduced in the House of Commons in 1999 and 2001 by Ms. McDonough and Ms. Desjarlais, respectively: Bills C-468 and C-259 of the 36<sup>th</sup> Parliament, and Bill C-284 of the 1<sup>st</sup> Session of the 37<sup>th</sup> Parliament.

These bills would have extended the basis for attributing criminal liability to corporations by: 1) expanding the category of individuals whose acts or omissions could supply the physical element of an offence (the *actus reus*); and 2) permitting the mental element of the offence (*mens rea*) to be attributed to the corporation through various scenarios of management participation or collective management negligence. The bills also would have shifted the onus to the corporation to disprove the various scenarios for attributing fault to the corporation once the physical element of an offence had been established. The bills also sought to facilitate the personal criminal liability of corporate directors and officers in respect of crimes attributable to the corporation either where these officials were aware of such wrongdoing, or where it was deemed that they should have been aware of it. Finally, the bills proposed the creation of a new *Criminal Code* offence of failing to provide a safe workplace, aimed specifically at corporations and their directors and officers.

Bill C-468 died on the *Order Paper* at the end of the 1<sup>st</sup> Session of the 36<sup>th</sup> Parliament in September 1999. Bill C-259 died on the *Order Paper* at the dissolution of the 36<sup>th</sup> Parliament in October 2000. Bill C-284 was withdrawn at second reading stage when its subject matter was referred for study by the House of Commons Standing Committee on Justice and Human Rights in February 2002.

The Justice Committee held hearings on this issue in the spring of 2002 and heard evidence from some 30 witnesses. The Committee tabled a report in June 2002 recommending that the Government "table in the House legislation to deal with the criminal liability of corporations, directors, and officers."<sup>(23)</sup> The Committee did not achieve consensus on a particular model of corporate criminal liability, but its recommendation for legislative reform expressed its dissatisfaction with the legal status quo.

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(23) House of Commons Standing Committee on Justice and Human Rights, Fifteenth Report, 1st Session, 37<sup>th</sup> Parliament.

In November 2002, the Minister of Justice tabled the Government's response to the Justice Committee's report. In the response, the Government announced its intention to introduce legislation in 2003 to amend the *Criminal Code* with respect to corporate criminal liability. Bill C-45 constitutes the new legislation promised by the Government at that time.

#### E. Bill C-45

Bill C-45 reflects the legislative reforms promised by the Government in its November 2002 response to the Fifteenth Report of the House of Commons Standing Committee on Justice and Human Rights, tabled in June 2002. As outlined by the Department of Justice in November 2002, the highlights of the bill are as follows:

- The criminal liability of corporations and other organizations will no longer depend on a senior member of the organization with policy-making authority (i.e., a "directing mind" of the organization) having committed the offence.
- The physical and mental elements of criminal offences attributable to corporations and other organizations will no longer need to be derived from the same individual.
- The class of personnel whose acts or omissions can supply the physical element of a crime (*actus reus*) attributable to a corporation or other organization will be expanded to include all employees, agents and contractors.
- For negligence-based crimes, the mental element of the offence (*mens rea*) will be attributable to corporations and other organizations through the aggregate fault of the organization's "senior officers" (which will include those members of management with operational, as well as policy-making, authority).
- For crimes of intent or recklessness, criminal intent will be attributable to a corporation or other organization where a senior officer is a party to the offence, or where a senior officer has knowledge of the commission of the offence by other members of the organization and fails to take all reasonable steps to prevent or stop the commission of the offence.
- Sentencing principles specifically designed for corporate/organizational offenders will be adopted.
- Special rules of criminal liability for corporate executives will be rejected.
- An explicit legal duty will be established on the part of those with responsibility for directing the work of others, requiring such individuals to take reasonable steps to prevent bodily harm arising from such work.

## DESCRIPTION AND ANALYSIS

### A. Extending Corporate Criminal Liability to All “Organizations”

Clause 1(1) of the bill amends s. 2 of the *Criminal Code* by changing the definition of “everyone” and “person,” etc., to include “an organization,” instead of the current reference to various public and private entities with the legal capacity to engage in the relevant conduct.

Clause 1(2) adds to s. 2 of the Code a two-part definition of “organization” which would appear to expand the reach of criminal liability to a wide range of entities that structure and embody the collective activities and interests of associated individuals.

The first part of the definition provides that “organization” means not only a public body, body corporate, society, company, or municipality (which are included in the current definition of “everyone,” etc.), but also a firm, partnership, or trade union (which are not currently explicitly mentioned). These additions are probably more of a clarification of existing law, rather than an extension of it. Certainly the courts have found that unions can be guilty of crimes.<sup>(24)</sup>

The second part of the definition, however, does potentially broaden the reach of corporate criminal liability by extending it to any association of persons that: 1) is created for a common purpose; 2) has an operational structure; and 3) holds itself out to the public as an association of persons. Currently, s. 2 of the Code defines “everyone” and “person” for the purposes of criminal liability as including only certain named organizational forms and only to the extent that the entity *per se* is capable of engaging in the prohibited conduct. The proposed definition of “organization,” however, appears to focus more on the nature and quality of the association, rather than the resulting entity’s legal personality (i.e., recognition as a distinct subject of legal rights and obligations with the resulting capacity to sue and be sued before the courts), or even its capacity to engage in the conduct forming the basis of an offence.

Nonetheless, there will still be conceptual limits on the types of offences that may be attributable to organizations. The new provisions on organizational liability proposed in clause 2 (see below) will require, among other things, that the impugned conduct of

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(24) *United Nurses of Alberta v. Alberta (Attorney General)* (1992), [1992] 1 S.C.R. 901, 71 C.C.C. (3d) 225, 89 D.L.R. (4th) 609.

organizational personnel must either be within the scope of their authority within the organization, or be intended at least partially to benefit the organization and not just the individual in question.

Clauses 4, 5, 7–13, 16–18, and 20–22 contain consequential amendments to the Code to reflect the change in terminology from “corporation” to “organization.”

## B. Attributing Criminal Liability to Organizations

Clause 2 of the bill amends Part I of the *Criminal Code* to add new provisions setting out the rules for attributing criminal liability to organizations for the acts of their representatives. These attribution rules represent a codification of an aspect of criminal law that has hitherto been left to the common law. However, the organizational liability rules proposed in new sections 22.1 through 22.3 also reflect a modification of the corporate criminal liability rules developed under the common law. Essentially, the modifications seek to broaden the range of individuals whose actions and intentions can trigger the criminal liability of the organizations they represent.

New section 22.1 defines two overlapping groups of individuals whose conduct could form the basis of a criminal offence attributable to an organization. A “representative” includes virtually everyone who works for, or is affiliated with, an organization: directors and partners, but also any employee or member, or even an agent or contractor. A “senior officer” would mean any representative who plays an important role in organizational policy-making or is responsible for managing an important aspect of the organization’s activities. In the case of a corporation, it is specified that the “senior officer” category includes, at the very least, a director, the chief executive officer, and the chief financial officer.

Under the new rules of organizational liability proposed in clause 2, new sections 22.2 and 22.3, liability for a crime will be attributed to an organization, either on the basis that one or more “senior officers” actually participated in the offence, or on the basis of a combination of the actions of one or more “representatives” and the intent or negligence of one or more “senior officers.”

It should be noted that both “representative” and “senior officer” cover broader categories of personnel than the “directing mind” concept developed under the common law, which limited corporate liability to the conduct of senior corporate officials with policy-making

authority. The new rules also modify the common law by permitting the physical and mental elements of an offence attributable to an organization to be derived from different individuals.

New section 22.2 deals with criminal offences where the requisite “intent” is negligence, namely, criminal negligence causing bodily harm or death. For these offences, an organization will be guilty where:

1. a) a representative, acting within the scope of his or her authority, is a party to the offence; or  
b) the aggregated conduct of two or more representatives would, if done by one of them, make him or her a party to the offence;

and

2. the senior officer responsible, or all senior officers collectively, show a marked departure from the reasonably expected standard of care in failing to prevent a representative from being a party to the offence.

Unlike the current law on corporate criminal liability, section 22.2 will permit the aggregation of the acts and omissions and the state of mind of the organization’s representatives and senior officers in fixing organizational liability. In this way, an organization may be guilty of an offence even if no individual within the organization has committed an offence.

Criminal offences requiring intent or recklessness (which is most of those in the *Criminal Code*), however, will not be attributable to organizations through an aggregation of the conduct of their personnel. New section 22.3 will require that a senior officer, acting at least partially with the intent to benefit the organization:

- a) acting within the scope of his or her authority, is a party to the offence;
- b) acting within the scope of his or her authority, and while having the necessary intent to commit the offence, directs the work of other representatives so that they do the act or make the omission forming the basis of the offence;<sup>(25)</sup> or
- c) knowing that a representative is, or is about to be, a party to the offence, does not take reasonable measures to stop the representative from being party to the offence.

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(25) It is not clear how scenario b) differs from a). Someone who, with the requisite intent, directs the actions of others so that they do the act or make the omission constituting the physical element of the offence, is a party to the offence.

The foregoing differs from the current common law rules by allowing for organizational liability (in scenario c), at least) without a senior officer necessarily being a party to the offence.

Clause 6 of the bill repeals section 391 of the *Criminal Code*, which provides that, for offences under sections 388 (misleading receipts), 389 (fraudulent disposal of goods), and 390 (fraudulent bank receipts), the fact that a person committing such an offence acts in the name of a corporation, firm, or partnership, does not necessarily extend criminal liability to that entity. Since new sections 22.1 through 22.3 provide a complete code for determining the criminal liability of organizations, section 391 is unnecessary.

### C. Workplace Safety

Clause 3 of the bill amends the *Criminal Code* by adding a new section 217.1 which will provide that those who are responsible for directing the work of others are under a legal duty to take reasonable steps to prevent bodily harm to any person arising from such work. This provision does not create a new criminal offence. However, by clarifying the existence of such a legal duty, the provision facilitates the application of the offence of criminal negligence, which is predicated, in part, on the existence of a legal duty.

### D. Sentencing of Organizations

#### 1. Special Sentencing Principles for Organizations

Clauses 14 and 15 of the bill would amend Part XXIII of the *Criminal Code* in order to enact specific principles applicable to the sentencing of organizations convicted of criminal offences. These new principles would supplement, rather than displace, the general purposes and principles of sentencing in sections 718 through 718.2, which are applicable to all offenders.

The new section 718.21 (clause 15) would require a sentencing court to take into account the following factors when sentencing an organization:

- a) any advantage realized by the organization as a result of the offence;
- b) the degree of planning, the duration, and the complexity of the offence;
- c) any attempt by the organization to conceal or convert its assets in an attempt to avoid a fine or the payment of restitution;

- d) the sentence's impact on the viability of the organization and the employment of its employees;
- e) the cost of the investigation and prosecution of the offence;
- f) any regulatory penalty imposed on the organization or one of its representatives for conduct forming the basis of the offence;
- g) whether the organization or any of its representatives have been previously convicted of a similar offence or sanctioned by a regulatory body for similar conduct;
- h) any penalty imposed by the organization on a representative for involvement in the offence;
- i) any amount of restitution that the organization has paid, or been ordered to pay, to any victim of the offence; and
- j) any measures that the organization has taken to reduce the likelihood of its committing a subsequent offence.

## 2. Special Probation Conditions for Organizations

Not all traditional penal sanctions are applicable to or appropriate for offending organizations. A corporation cannot, of course, be imprisoned. A fine is the most common sentence imposed on the corporate or organizational offender. However, a probation order could also be useful in directly influencing the future conduct of organizations convicted of offences. Yet most of the standard probation conditions currently envisioned in the *Criminal Code* are not really geared to – or even applicable to – organizations. Clause 19 of the bill addresses this by amending section 732.1 of the Code to provide for the following additional optional probation conditions that would be available in respect of organizational offenders:

- a) making restitution;
- b) establishing policies, standards, and procedures to reduce the likelihood of subsequent offences (however, the court must first consider whether it would be more appropriate for another regulatory body to supervise the development or implementation of such policies, standards, and procedures);
- c) communicating those policies, standards, and procedures to its representatives;
- d) reporting to the court on the implementation of those policies, standards, and procedures;
- e) identifying the senior officer responsible for compliance with those policies, standards, and procedures;

f) providing, in the manner specified by the court, the following information to the public: i) the offence of which the organization was convicted, ii) the sentence imposed, and iii) any measures taken by the organization to reduce the likelihood of its committing further offences; and

g) complying with any other reasonable conditions considered desirable by the court in preventing subsequent offences by the organization or to remedy the harm caused by the offence.

## COMMENTARY

So far, those critical of Bill C-45 have asserted that the bill does not go far enough in ensuring the criminal accountability of corporate directors and officers; and that the sentencing provisions may be of little use in the case of bankrupt corporations, or against parent or successor corporations.<sup>(26)</sup>

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(26) David J. Roberts, "Westray Response Flawed Legislation," *The Chronicle-Herald* [Halifax], 24 June 2003, p. B2.