MITCHELL SPENCE

NO SOUL TO DAMN? REVISITING THE CASE FOR CORPORATE MANSLAUGHTER IN NEW ZEALAND

Submitted for the LLB (Honours) Degree

Faculty of Law

Victoria University of Wellington

2014

Abstract

Currently a corporation cannot be convicted of manslaughter in New Zealand. Increasingly, this distinction demarcated between individuals and corporations seems out of touch, particularly in light of legislation passed in cognate jurisdictions and the ascendance of a plethora of industrial disasters both in New Zealand and abroad.

Taking as its focus the Report of the Independent Taskforce on Workplace Health and Safety (2013), this paper contemplates the above issues, concluding that the offence's alignment with fundamental criminal law principles makes a strong case for its introduction in New Zealand. Consideration is also given to the format and rules of attribution that should accompany a resolve to prosecute corporate manslaughter, finding that a more comprehensive discussion, going beyond the recommendations of the Taskforce, is necessary before any legislation is settled on.

Key Words: corporate manslaughter; workplace health and safety; attribution; corporate criminal liability.

Contents

I Introduction

Recent high profile events have revealed an abject failure in the operation of New Zealand's legal regime for workplace health and safety. In addition to the well-publicised mining disaster at Pike River in 2010,[1] the collapse of the Christchurch Television building (CTV) during the February 2011 earthquake and a recurring spate of fatalities within the forestry industry have made the issue of deaths in industry and employment manifest in the public consciousness. Concurrently, a discourse has emerged calling for an increased focus on higher penalties for what is a perceived culture of negligence among numerous New Zealand corporations.

Central in much of the commentary around this issue have been calls for the introduction of an offence of corporate manslaughter, a charge that remains curiously absent from our law. Organisations such as the New Zealand Council of Trade Unions have argued vehemently for the enactment of such charges, in order to more appropriately lay blame for deaths that occur in an industrial or corporate context.[2] Such a development would bring New Zealand to par with several other commonwealth jurisdictions that have embraced the concept of criminal liability for deaths at the hands of corporations. The most significant recent development in this respect was the United Kingdom, which in 2007 enacted the Corporate Manslaughter and Corporate Homicide Act (CMCHA).[3]

Against this background, the Independent Taskforce on Workplace Health and Safety was convened and published a report in 2013 assessing the efficacy and suitability of our current legal mechanisms in this area.[4] In the course of the widespread review it conducted regarding industrial health and safety, it sought in part to track the development of offences of corporate manslaughter in other jurisdictions and assess the potentiality of replicating these laws in New Zealand. The Taskforce's key recommendations for addressing offending were the strengthening of occupational health and safety laws and the extension of the existing law

[1] See generally Rebecca Macfie *Tragedy at Pike River Mine – how and why 29 men died* (Awa Press, Wellington, 2013).
[2] New Zealand Council of Trade Unions "Submission to the Transport and Industrial Relations Committee on the Health and Safety Reform Bill 2014" at [S.93]. See also Sarah-Lee Stead and Nura Taefi "Should New Zealand introduce corporate manslaughter?" *ISN Magazine* (New Zealand, July 2012) at 22.
[3] Corporate Manslaughter and Corporate Homicide Act 2007 (UK).
[4] Independent Taskforce on Workplace Health and Safety *The Report of the Independent Taskforce on Workplace Health and Safety* (April 2013).

of manslaughter to corporations.[5] Whilst the first of these objectives is on the path to being addressed through the Health and Safety Reform Bill 2014,[6] recent remarks by the Prime Minister appear to have put the issue of corporate manslaughter to rest once again.[7]

The aims of this paper are twofold. Part III aims to consider afresh the case for corporate manslaughter in contemporary New Zealand, concluding that the offence's consistency with the principles of deterrence and denunciation in the criminal law and the persistence of industrial related harms warrants criminal sanction in the form of a manslaughter charge. Part IV will examine with a critical eye the conclusions of the Taskforce, pondering how to structure and conceptualise any eventual offence of corporate manslaughter so as to achieve a more robust and safe industrial culture.

II Corporate Criminal Liability

The position has now been reached that a person, for the purposes of the criminal law, may include both natural and artificial persons.[8] The common law was historically hesitant to recognize the notion of a corporate body having a conscience sufficiently autonomous to warrant criminal punishment and, as Baron Edward Thurlow notably stated in 1844, the traditional thinking was that such bodies had "no soul to be damned, and no body to be kicked."[9] The earliest rationalisations of a doctrine of corporate criminal liability were made on the basis of agency, where "acts had to be performed not by the corporation, but in its name."[10] Vicarious liability provided one method by which the corporate body could be penalized, however, it was of limited use in that it could not apply to mens rea offences. The 1944 case of *DPP v Kent and Sussex Contractors*, the first in a line of cases elucidating the modern position, came to the conclusion that a corporation could possess guilty knowledge and form an intention to perform a criminal act.[11] There now exists a rebuttable presumption

[5] Independent Taskforce on Workplace Health and Safety, above n 4, at [386].
[6] Health and Safety Reform Bill 2014 (192-1).
[7] Patrice Dougan "PM: Corporate manslaughter law 'unlikely'" *The New Zealand Herald* (New Zealand, 3 December 2013).
[8] Interpretation Act 1999, s 30: "person includes a corporation sole, and also a body of persons, whether corporate or unincorporate." See also, Crimes Act 1961, s 2: "person… include[s]… any… company, and any other body of persons, whether incorporated or not."
[9] Quoted in Amanda Pinto and Martin Evans *Corporate Criminal Liability* (3rd ed, Sweet and Maxwell, London, 2003) at 15.
[10] LH Leigh *The Criminal Liability of Corporations in English Law* (Widenfield and Nicolson, London, 1969) at 5.
[11] *DPP v Kent and Sussex Contractors Ltd* [1944] KB 146; [1944] 1 All ER 119 at 155.

that criminal offences apply directly, not vicariously, to corporate bodies, unless the language of the relevant offence suggests otherwise.[12] Certain offences, such as perjury, bigamy[13] and the subject of this paper, homicide, have been ruled as inapplicable to a corporation as, by their very nature, they necessitate the actions of a singular, natural person.

In seeking to provide a principled basis for attributing blame to the corporate body, Andrew Ashworth writes that the trend in the development of corporate liability rules "has been to attempt to fit corporate liability into the existing structure rather than to consider its implications afresh." [14] Although the criminal law was engineered overwhelmingly to ascertain the liability of individuals, a *de novo*, first principles approach to the implications of corporate liability has not taken place. It is this confused basis on which the principles of corporate liability lie that informs much of the debate as to its future.

A The 'identification' doctrine

The settled norm in the imputation of criminal liability to corporations is the *identification* doctrine, which requires that a single individual, acting as a "directing mind and will," as distinct from the "hands" of the company in the wider workforce, is identified as having performed the requisite elements of the offence.[15] The House of Lords in *Tesco Supermarkets Ltd v Nattrass*, the authoritative ruling on this issue, articulated the following central principle: [16]

> "[T]he person who acts is not speaking or acting for the company. He is acting as the company and his mind which directs his acts is the mind of the company. There is no question of the company being vicariously liable. He is not acting as a servant, representative, agent or delegate. He is an embodiment of the company or, one could say, he hears and speaks through the *persona* of the company, within his appropriate sphere, and his mind is the mind of the company."

[12] AP Simester and WJ Brookbanks *Principles of Criminal Law* (4th ed, Brookers, Wellington, 2012) at 220.
[13] *R v ICR Haulage Ltd* [1944] 1 KB 551, 1 All ER 691 (CA) at 554 and 693.
[14] Andrew Ashworth and Jeremy Hodder *Principles of Criminal Law* (7th ed, Oxford University Press, Oxford, 2013) at 147.
[15] *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd* [1915] A.C. 705 (HL) at 713.
[16] *Tesco Supermarkets Ltd v Nattrass* [1972] AC 153, [1971] 2 All ER 127 (HL) at 170.

This individual must have personally committed the crime in question in order for liability to be attributed to the company.

It has long been considered that the identification process yields unsatisfactory results, with Celia Wells writing that the model's "concentration on the misdeeds of managerial officers ignores the reality of corporate decision making."[17] Indeed, in all but the smallest of companies, layers of authority serve to divorce the senior management from the day-to-day workings of the organisation, rendering the task of identifying such an individual virtually impossible. Arising out of these concerns, a model of 'aggregation' has been suggested to remedy the shortfalls of this focus on the location of a culpable individual officer. Such a system would introduce liability where two or more officers perform acts or omissions that, if carried out by one of them, would ordinarily lead to the personal liability of that officer. The conduct of this totality of individuals is *aggregated* to attach to the corporate body itself. However, common law courts have given strong indication that they do not consider it appropriate to alter the basis of liability in this way, such as in *Attorney General's Reference (No 2 of 1999)* where the identification doctrine was affirmed as the established and correct principle.[18]

Notably, the judgment of Lord Hoffmann in *Meridian Global Funds Management Asia Ltd v Securities Commission* put forward a substantially more *ad hoc* method of attribution, grounded in statutory interpretation. Lord Hoffmann was of the view that:[19]

> "[T]he Court must fashion a special rule of attribution for the particular substantive rule. This is always a matter of interpretation: given that it was intended to apply to a company, how was it intended to apply? Whose act (or knowledge, or state of mind) was for this purpose intended to count as the act etc of the company? One finds the answer to this question by applying the usual canons of interpretation, taking into account the language of the rule (if it is a statute) and its content and policy."

Such an approach found favour with the New Zealand Court of Appeal in *Linework Ltd v Department of Labour,*[20] but it is also the case that the orthodox identification doctrine

[17] Celia Wells, *Corporations and Criminal Responsibility* (Oxford, Clarendon Press, 1993) at 132.
[18] *Attorney-General's Reference (No. 2 of 1999)* [2000] 2 Cr App R 207 at 218 per Rose LJ.
[19] *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 3 NZLR 7 (PC) at 12-13.

maintains a strong hold in spite of Lord Hoffmann's seemingly transformative ruling.[21] While Lord Hoffmann's test might appear to be at odds with identification principles, scholars are of the view that the *Meridian* approach does not purport to overturn the traditional doctrine, but supplements it with a "principle of allegiance to the purpose of the statute" where the circumstances require.[22] The default rules continue to be based on the location of a "directing mind and will."[23]

B Corporate manslaughter: the 'current position'

1 New Zealand

A corporation may not be convicted of manslaughter in New Zealand. Whilst a *person* is designated in the Crimes Act as referring to both natural and legal persons,[24] the language of section 158 limits the ambit of a potential charge of homicide to the "killing of a *human being* by another."[25] The verdict reached in *R v Murray Wright Ltd* unequivocally confirmed that the 'human being requirement' prevents a company from being liable, as a principal, for homicide.[26] At a minimum, this element of section 158 would require amendment to the term *person* in order for a manslaughter charge to be brought against a corporation. However, this does not deny the ability of a corporate body to be liable as a secondary party to a homicide committed by an individual.[27] The relevant Crimes Act provision governing the ambit of secondary participation, section 66, does not contain the same language of a "human being."[28]

2 United Kingdom

(i) Common law:

---

[20] *Linework Ltd v Department of Labour* [2001] 2 NZLR 639 (CA) at [12].
[21] *St Regis Paper Company Ltd v R* [2011] EWCA Crim 2527 at [12].
[22] Simester and Brookbanks, above n 12, at 228.
[23] Ibid.
[24] Crimes Act 1961, s 2.
[25] Crimes Act 1961, s 158.
[26] *R v Murray Wright Ltd* [1970] NZLR 476 (CA) at 480.
[27] Simester and Brookbanks, above n 12, at 221.
[28] Crimes Act 1961, s 66.

Prior to the introduction of its present statutory instrument, the common law of the United Kingdom had warmed to the idea of extending the application of the offence of manslaughter to corporate bodies. Although accounts differ as to the exact genesis of the principle, the unreported 1965 case of *R v Northern Strip Mining Construction Co Ltd* is often touted as the earliest indication of an assent to prosecuting corporate manslaughter at common law.[29] In any event, by 1969 scholars accepted that "it now seems clear that corporations may be liable for manslaughter."[30] However, conviction for the common law offence of manslaughter by gross negligence was still dependent on attributing liability under the identification doctrine, a hurdle that bred a very limited number of successful prosecutions.[31] One salient example, the capsizing of the Herald of Free Enterprises ferry in 1987, caused the death of nearly 200 passengers resulting from the failure of members of three employees of mixed seniority to close and check the ship's bow doors.[32] A Judicial Inquiry into the disaster led Sheen J to reach the damning verdict that "from top to bottom the body corporate was infected with the disease of sloppiness."[33] However, Bingham L.J., reiterating the identification doctrine, ruled that manslaughter could not be proved.[34] The resulting legislation, the CMCHA, was intended as a corrective to the dire state of affairs in which such tragedies went without penalty.

(ii) Corporate Manslaughter and Corporate Homicide Act 2007:

The product of repeated calls for reform dating back to 1996,[35] the CMCHA served to introduce an offence distinct from the common law of manslaughter, grounded primarily in the law of negligence. The new offence, contained in Section 1 of the Act, provides that an organisation will be guilty if it causes a person's death in circumstances of a gross breach of a duty of care to which the defendant company owed the victim.[36] Additionally, the way in which in which the company's activities are managed or organised by its senior management

[29] *R v Northern Strip Mining Construction Co Ltd* (*The Times* 2, 4, 5 February 1965). Cited in Gary Slapper "Corporate manslaughter: An examination of the determinants of prosecutorial policy" (1993) 2 Social and legal Studies 423 at 424.
[30] LH Leigh, above n 10, at 59.
[31] Andrea Oates *Tolley's Corporate Manslaughter and Homicide: A guide to compliance* (Lexis Nexis, London, 2008) at 7.
[32] Pinto and Evans, above n 9, at 220.
[33] Report of Sheen J "MV Herald of Free Enterprise report of Court no. 8074 Formal Investigation" (Ministry of Transport (UK), London, 1987) at 14.
[34] *P&O Ferries (Dover) Ltd (The Herald of Free Enterprise Case)* [1990] 93 Cr App R 72 at 84.
[35] See Generally Law Commission (UK) *Legislating the Criminal Code: Involuntary Manslaughter* (Law Com 237, 1996).
[36] Corporate Manslaughter and Corporate Homicide Act, s 1.

must form a *substantial element* of the breach.[37] Such has been termed a 'managerial fault' model; its intent being that "liability for the new offence depends on a finding of gross negligence in the way in which the activities of the organization are run."[38] A finding of these elements creates prima facie liability under the Act to an unlimited fine, a remedial and/or a publicity order, provided that the defendant cannot establish one of the Act's many exceptions.[39] This development was welcomed among legal academics, and the 'managerial fault' approach to liability has been heralded as "breaking new conceptual ground."[40] The question of whether this legislation has truly been apt in prosecuting divergent behaviour will be considered at a later point in the essay.[41]

III The Case for Corporate Manslaughter

A Principles and policies of the criminal law

Many of the fundamental principles of the criminal law would arguably be well served by the introduction of a charge of corporate manslaughter. Principally, conviction for an offence of manslaughter, as opposed to a prosecution for breach of a health and safety offence would more adequately reflect the community outrage that is evident in the burgeoning calls for stricter penalties for corporate offending. Widespread dissatisfaction with the outcome of attempts to hold companies and the individuals within them to account, including the refrain from prosecuting Pike River manager Peter Whittall,[42] has only served to exacerbate this sense of disillusionment with the potency of our current legal armoury. Such public disquiet provides cause for considering the "fair labelling" principle of the criminal law, which holds that offences should be "subdivided and labelled so as to represent fairly the nature and magnitude of law-breaking."[43] This principle is not merely to satiate public outrage but exists

[37] Corporate Manslaughter and Corporate Homicide Act, s 1(3).
[38] Ministry of Justice (UK) "A guide to the Corporate Manslaughter and Corporate Homicide Act 2007, Explanatory Notes" (Minsitry of Justice, United Kingdom 2007) at [14].
[39] CMCHA, ss 3(1) – 7(1); Exceptions to the CMCHA include public policy decisions, and instances in relation to military activities, the Police and Emergency Services.
[40] AP Simester and GR Sullivan *Criminal Law Theory and Doctrine* (4th ed, Hart Publishing, Oxford 2010) at 282.
[41] See part IV C 1.
[42] Ministry of Business, Innovation and Employment "Charges against Peter Whittall not proceeding" (press release, 12 December 2013). See also Rebecca Macfie, above n 1, at 248.
[43] Ashworth, above n 14, at 77.

for reasons of legal principle, arguing, "where people reasonably regard two types of conduct as different, the law should try to reflect that difference."[44]

The criminal stature of a manslaughter charge arguably becomes more desirable in the context of our current regime for the correction of health and safety malfeasance, the Health and Safety in Employment Act 1992.[45] Breaches of this legislation are considered 'regulatory offences' which, although carrying penalty, fall victim to a perceived "'real' crime-'quasi' crime distinction."[46] Manslaughter, a serious 'true crime' offence, would provide a greater avenue for expressing public censure and condemnation. Whether or not such a distinction is valid, there is something to be said for classifying corporate behaviour causing death as manslaughter in order to more adequately reflect its seriousness, rather than falling under the 'regulatory' sphere of the criminal law.

Intuitively, the 'stigma' and detrimental public image accompanying a manslaughter charge, in conjunction with higher penalties, would work to satisfy the 'deterrence' aims of the criminal law. However, one compelling argument weighing against this appearance of harmony with fundamental principles is a concern that a corporate manslaughter charge might merely create a semblance of stricter penalties whilst the bulk of deterrence is realised by the health and safety compliance regime. In effect, it would be tantamount to a hollow attempt at "penal populism."[47] Such a criticism would seem to have greater gravity in light of the impending passage of the Health and Safety Reform Bill in which, it is hoped, a more effective compliance and penalty regime will be established.

It is the author's view that the justification for corporate manslaughter remains in spite of this development. The new offences contained in the Bill before the House will not penalise deaths but merely the exposure to the *risk* of death.[48] While there would undoubtedly be a degree of overlap between the behaviour examined under both categories of offences, the

[44] Ashworth, above n 14, at 77.
[45] Health and Safety in Employment Act 1992, ss 49-56.
[46] Wells, above n 17, at 8.
[47] See generally John Pratt and Marie Clark "Penal Populism in New Zealand" (2005) 7 *Punishment and Society* 303.
[48] Proposed offences under the Health and Safety Reform Bill include reckless conduct in respect of health and safety duty (s 42), failing to comply with a health and safety duty that exposes and individual to the risk of death or serious injury or illness (s 43) and failing to comply with a health and safety duty (s 44).

focus remains on different harms and outcomes. The justification for a corporate manslaughter indictment, if only for symbolic reasons, remains intact.

In any event, submissions made during the legislative passage of the Bill indicate a view in some quarters that the introduction of corporate manslaughter is still necessary, with the Council of Trade Unions criticising the Bill for not going far enough in its punishment of negligent organisations.[49] The lack of sanction currently available to address the dangerous behaviour found in recent years reflects how patent the need for an offence of this nature is.

B New Zealand: a commonwealth anomaly

New Zealand's lack of an offence of corporate manslaughter puts it at odds with developments in many of the jurisdictions to which our legal system is attentive, particularly in light of the CMCHA. In addition, New Zealand remains firmly grounded in the common law doctrine of identification, where many other commonwealth jurisdictions have sought statutory reform of these rules, whether pertaining to a specific manslaughter offence or rules of general application in the criminal law. Notably, Canada amended its corporate liability rules in 2003, and although not equipped with a charge of corporate manslaughter, they have attempted to make prosecutions against corporations easier concerning their offence of causing death by criminal negligence.[50] Australia similarly sought to change the generic rules of corporate liability at a federal level, albeit in a different manner[51] and, although other states have not followed its lead, the Australian Capital Territory (ACT) enacted an offence of Industrial Manslaughter in 2003 where an employer or senior officer causes the death of a worker in the course of employment.[52]

Notwithstanding the question of whether or not these offences are in fact effective, New Zealand comparatively appears behind in its treatment of industrial and workplace related fatalities.

---

[49]New Zealand Council of Trade Unions, above n 2. See also Radio New Zealand "Safety reforms don't go far enough, MPs told" (2014) <www.radionz.co.nz>.
[50] Criminal Code RSC 1985 c C-46, ss 22.1-22.2. See part IV A for a fuller discussion of Canada's corporate liability rules.
[51] Criminal Code Act 1995 (Aus), Criminal Code, Part 2.5, ss 12.1-12.6. See part V for fuller discussion.
[52] Crimes Act 1900 (ACT), ss 49D-49E.

IV The Report of the Independent Taskforce on Workplace Health and Safety

The Taskforce was established in June 2012, with a view to undertaking a "strategic review of whether the New Zealand workplace health and safety system remains fit for purpose" on the occasion of the 20 year anniversary of the Health and Safety in Employment Act 1982.[53] The report of the Royal Commission on the Pike River Coal Mine Tragedy, released that September, had already taken the view that consideration should be given, among a full spectrum of health and safety reform proposals, to the introduction of an offence of corporate manslaughter, a call to which the Taskforce took heed.[54] The resultant report undertook to examine the current state of the law internationally as regards corporate manslaughter, as well as setting out their view of the approach New Zealand should take. It provides perhaps the most holistic and comprehensive survey of issues pertaining to health and safety law in New Zealand. Accordingly, the recommendations made by the Taskforce would likely be salient to any concrete proposals for reform, should they arise in the future. Scrutiny of the Taskforce's findings in respect of corporate manslaughter is thus valid and important.

The principal argument made within the report was that changes in the common law rules of the attribution of corporate criminal liability, applicable to all offences, was the issue of primary importance for New Zealand and that, from these changes, the extension of the general law of manslaughter to corporations would become feasible. Changes to the rules of attribution were said to rest on two key issues: (i) Allowing the attribution of criminal liability to a corporation as a result of the acts and omissions of a greater range of officers and employees, and (ii), the introduction of a system of aggregated criminal liability for the acts and omissions of two or more officers.[55]

A Liability for the acts and omissions of a greater range of officers

The Taskforce directed strong criticism at the identification doctrine of attribution, particularly in its requirement that the offending individual be a "directing mind and will" of the corporate body. This was cited as the predominant reason why criminal prosecutions

[53] Independent Taskforce on Workplace Health and Safety "Terms of Reference for the Independent Taskforce undertaking the Strategic Review of the Workplace Health and Safety System" (2012) <hstaskforce.govt.nz>.
[54] Royal Commission on the Pike River Coal Mine Tragedy *Report of the Royal Commission on the Pike River Coal Mine Tragedy*, Volume 2 (2012) at 310.
[55] Independent Taskforce on Workplace Health and Safety, above n 4, at [382].

against corporations, in New Zealand and beyond, were seen as unlikely to succeed. In order to remedy this shortcoming, the Taskforce considered that, provided the individuals concerned were acting within the scope of their authority, corporate criminal liability should extend to the acts and omissions of a "greater range of officers."[56]

It is, of course, hard to determine what degree of extension was meant by the phrase 'greater range of officers,' as the Taskforce did not see it necessary to expand on their conclusions. However, the Taskforce did refer with apparent approval to the terminology adopted in the Canadian Criminal Code as one way to structure corporate liability rules so as to relax the stringent requirements of the identification doctrine.[57] As a result of their familiar dissatisfaction with the workings of the existing rules of attribution, statutory reform took place in Canada in 2003 through the passing of Bill "C-45." Of note within such reforms was the use of the term "senior officer," who play a central role in the attribution of liability to corporations for offences of negligence. Such officers are defined within the Code as a "representative who plays an important role in the establishment of an organisation's policies or is responsible for managing an important aspect of the organisation's activities and, in the case of a body corporate, includes a director, its chief executive officer and its chief financial officer."[58] Although these officers would appear to refer to the similar narrow class of individuals considered a "directing mind and will" under the previous doctrine, explanations of the Bill by the Canadian Department of Justice maintain that the Code's focus is "on the function of the individual, not any particular title."[59]

Although case law concerning these adaptions to the Code is limited, the recent judgment in *R v Metron Construction Corp.* gives promising signals that the Courts have interpreted the concept of a 'senior officer' as widening the basis of attributing liability away from a small cache of upper level management.[60] In that case, three employees of the defendant construction company fell to their deaths from a swing stage platform while working to restore a high-rise building. The platform was not properly constructed and collapsed under the weight of six men in gross excess of the platform's weight capacity. The site supervisor, Mr Fazilov, permitted this overabundance of workers on the platform, with the additional

[56] Independent Taskforce on Workplace Health and Safety, above n 4, at [382].
[57] Ibid, at [381].
[58] Criminal Code 1985 (Canada), above n 50, s 2.
[59] Department of Justice (Canada) "Criminal Liability of Organizations – a plain language guide to Bill C-45" (2003) <www.justice.gc.ca> at 5.
[60] *R v Metron Construction Corp* [2012] 1 CCEL (4th) 266.

knowledge that they were under the influence of drugs at the time. At trial, Justice Bigelow saw no reason why Fazilov could not be classed as a senior officer and expressed that "these changes in the criminal law…clearly extends the attribution of… corporate criminal liability to the actions of mid-level managers."[61]

Section 22.1 of the Code, which establishes the Canadian approach to liability for crimes of negligence, also differs critically from the identification doctrine in that these senior officers need not have personally committed the offence, but must exhibit a *marked* departure from the standard of care that, in the circumstances, could reasonably be expected to prevent any *representative* of the organisation from being a party to the offence.[62] In essence, senior officers owe a duty not to allow, through want of care, other representatives to commit the unlawful acts or omissions. Says Colvin, "the focus on senior personnel has moved away from their own conduct and onto the quality of their supervision of other persons."[63] Where the traditional identification doctrine would require this officer to be personally guilty, the Code would allow liability where any representative or representatives[64] commit the offence, provided they were unsupervised to a marked degree by a relevant senior officer.

It can be gleaned from the amendments made to the Code that the location of a senior officer was to be based on authority in real terms, rather than a limitation to a specific class of officers with titles of formal seniority.[65] It may well be that this facet of the Code imports some of the problems that have been levelled at the approach taken by Lord Hoffmann in *Meridian*. Such an approach would allow the judge to make an assessment of whether the offending actor was intended, due to the policy and language of the offence, as a relevant directing mind for attribution of liability to the company, seemingly avoiding a fixed determination of a certain class of management for attribution. Indeed, one of the pertinent considerations when assessing liability on the basis of the *Meridian* approach is whether the individual concerned had practical or effective authority.[66] Similarly, section 22.1 merely requires that the senior officer play a significant role in policy and or management. Criticism of the particular approach taken by Lord Hoffmann has been forthcoming by academic

[61] *R v Metron Construction Corp*, above n 60, at [15].
[62] Criminal Code 1985 (Canada), above n 50, s 22.1. A 'representative' is defined in s 2 of the Code as a "director, partner, employee, member, agent or contractor of the organization."
[63] Eric Colvin and Sanjeev Anand *Principles Of Criminal Law* (3rd ed, Thomson, Toronto 2007) at 126.
[64] The Code also allows for a system of aggregated liability: ss 22.1(a)(ii).
[65] Department of Justice (Canada), above n 59, at 5.
[66] *Linework Ltd v Department of Labour*, above n 20, at [12].

writers, mostly for reasons of the apparent inconsistencies such an approach might result in, with the "greater uncertainty regarding who will be deemed the relevant person within the corporate hierarchy … likely to lead to difficulties."[67] This is particularly true for corporations, which require clarity from judicial rulings in order to create policies that can provide a meaningful method to ensure compliance with the law.

By way of comparison, the CMCHA's "senior management" test could be said to mirror the language of "senior officer" present in the Canadian Code.[68] In a similar vein to the interpretation of senior officer in the Code, "senior management" is defined within the Act as the persons who play a significant role in:[69]

> (i) the making of decisions about how the whole or a substantial part of its activities are to be managed or organised, or;
> (ii) the actual managing or organising of the whole or a substantial part of those activities.

The inclusion of persons tasked with *actual* management or organisation might reflect the Canadian interpretation of persons wielding actual authority, potentially giving scope for the courts to look below a director and executive level in interpreting 'senior management' to officers more aligned with the "hands" of the corporation. But, as will be made clear at a further point in this paper, a body of case law has not developed in the United Kingdom surrounding this offence so as to test this hypothesis.[70]

The CMCHA could comparatively be said to suffer from a lack of clarity as to the conduct that will be required to bring a corporations' senior management, however interpreted, within the purview of the Act. Section 22.1 of the Code establishes that, at a minimum, senior officers must have been grossly negligent in failing to prevent other representatives from committing the offence. By contract, the CMCHA states only that the way in which these persons manage the organisation's activities should play a substantial role in the breach of duty owed.

---

[67] Meaghan Wilkinson "Corporate Criminal Liability. The Move Towards Recognising Genuine Corporate Fault" (2003) 9 Canta LR 142 at 151.
[68] Corporate Manslaughter and Corporate Homicide Act, s 1(3).
[69] s 1(4)(c).
[70] See Part IV C 1.

Additionally, there currently exists a lack of elucidation as to what a *substantial* role will even entail. Early perceptions of the legislation were of the view that substantial was to mean "more than trivial," and in so doing meant that senior managers would not have to be solely responsible for the breach of duty.[71] It is submitted that, with respect, this is a strained interpretation of the provision, as any plain reading of the language of a *substantial* element would suggest that a high threshold of conduct is required.

Perhaps symptomatic of the lack of time in which coherent legal principles have been able to develop, the law appears to be at a loss as to an effective way to capture corporate liability in terms of the true nature of the bodies' activities. The emphasis on officers at a senior level of management likely reflects the justified apprehension that, in fixing the threshold of officers too low, bottom-rung employees, who by and large do not perform meaningful work and are not influential enough to truly embody the company, will be able to be identified as satisfactory to pin liability for serious offences to the corporation aggregate. However, in so doing, these models may replicate the same focus on individuals that were the immediate cause for their reform.

B Aggregation

The Taskforce was of the view that changes in the general rules of corporate liability would "need to provide that liability could be attributed to a corporation if two or more individuals of the required seniority within the company engaged in conduct that, if it had been the conduct of only one of them, would have made them personally liable for the offence."[72] It is beyond doubt that this would require statutory enactment, as the common law has not felt able to so radically alter the basis of liability.[73]

Changing the basis of corporate liability in this way would harmonise New Zealand practice with a vast swathe of academic commentary in support of aggregation. Writes Celia Wells, "it is necessary to move away from the idea, implicit in both the vicarious and *alter ego* principles, that a corporation can only be liable through the unlawful activities of one particular officer or worker."[74] Influenced by this academic appraisal, the concept of

[71] Oates, above n 31, at 142.
[72] Independent Taskforce on Workplace Health and Safety, above n 4, at [382].
[73] *Attorney General's Reference No. 2 of 1999*, above n 18, at 218 per Rose LJ.
[74] Wells, above n 17, at 132.

aggregation has also formed an integral role in cognate corporate liability laws. Section 22.1 of the Canadian Code provides that an organization is party to an offence of negligence "if…two or more of its representatives engaged in conduct…such that, if it had been the conduct of only one representative, that representative would have been a party to the offence."[75] Additionally, the CMCHA would appear to provide for aggregation in that the 'senior management' who must play a substantial role in the breach refers to the *persons* who play significant managerial roles, rather than the location of a singular officer.[76]

The pronouncements made by the Taskforce, although in support of the principle of aggregation, contain key differences to the approaches taken internationally. Where the Taskforce's reasoning would aggregate liability where two officers *of the required seniority* commit the required acts, the Canadian Code stipulates that two or more *representatives*, rather than the analogous senior officers, can be aggregated to constitute a liable organisation. The Taskforce's reasoning thus appears to be still grounded in concerns with a limited upper class of management, rather than taking an expansive view of corporate culpability as capable of stemming from a variety of levels of the corporate structure. Arguably, it is the "hands" of the corporation that are most likely to commit the acts catalysing a homicide.

In spite of the growing attention given to models of aggregation, the theoretical underpinnings of the concept are not unanimously championed among academics. Some consider it "not possible to artificially construct the *mens rea* in this way," being of the view that "two semi innocent states of mind cannot be added together to produce a guilty state of mind."[77]

A common justification for a system of aggregation is that the model captures instances of a "widespread pattern of negligence by its individual representatives [that] may amount to a more serious breach of its own duty of care."[78] However, the author is of the view that it would be wrong to presuppose that an aggregated system will deal wholly with *widespread* patterns among a large number of employees. The model, by its very description, would draw liability from the conduct of as few as two employees. While aggregation would adequately catch cases of widespread malfeasance where it can be said that all layers of the organization

[75] Criminal Code (Canada), above n 50, s 22.1.
[76] Corporate Manslaughter and Corporate Homicide Act, s 1(3).
[77] David Ormerod *Smith and Hogan's Criminal Law* (13th ed, Oxford University Press, New York, 2011) at [10.1.2.5].
[78] Colvin and Anand, above n 63, at 127.

played a role in the offences committed, it may also impose liability in the situation where two wayward employees, subject to a lack of supervision, commit the relevant offence. It is doubtful whether this is conduct that we would instinctively liken to an organisation plagued by the "disease of sloppiness."

It is submitted that, for these reasons, aggregation should not provide the fulcrum of any method of attributing criminal liability to a corporation. While a useful tool, it should be coupled with an assessment of the corporate body as a whole, so as to mitigate the risk of apportioning blame at companies when only a small number of representatives were privy to the offence.

C No separate offence of corporate manslaughter

Going against the grain of the reforms enacted in the United Kingdom and other commonwealth jurisdictions, the view of the Taskforce was that reform should come via the extension of the general law of manslaughter to corporations. Thus, while they were enthusiastic about a charge of some nature becoming part of our law, the Taskforce did not support the introduction of a separate statutory offence of corporate manslaughter, as has been the recent trend. This was justified primarily on the basis of the Taskforce's characterisation of the comparative offences in the United Kingdom and Canada as being of limited efficacy. The Taskforce concluded that the low rate of successful prosecutions of corporations for manslaughter was indicative of the hold of existing corporate liability rules, which "make it very difficult to convict a corporation for core Crimes Act offences."[79]

Further justification against an isolated change to the law of manslaughter was made on the basis for a potential legal anomaly, whereby the particular offence of corporate manslaughter would be adrift from the orthodox principles informing the criminal liability of corporations generally. If recourse was made to a separate offence, framed to relieve the difficulties of establishing liability using the identification doctrine, the Taskforce rightly indicates that it "would end up making it easier to convict a corporation of manslaughter than of some other offence against a person"[80] In principle, the means of attributing corporate liability should apply consistently to any offence that a corporation could conceivably commit. The specific

[79] Independent Taskforce on Workplace Health and Safety, above n 4, at [379].
[80] Ibid, at [380].

harm of killing does not of itself warrant a distinct lower threshold of liability, and offences such as Injuring by Unlawful Act should also be relieved from the strictness of the identification doctrine.[81] The Taskforce's view was that changes at a general level to the rules of attribution were preferable for the coherent development of the law.

1 Is the CMCHA 2007 an effective means of attributing liability?

The Taskforce placed strong emphasis on what it considered to be a failure in the operation of the 2007 legislation. Indicative of this failure was, in the Taskforce's view, a low rate of prosecutions brought under the Act, of which "all…were against small companies."[82] As a result, they were of the opinion that a model such as that developed in the United Kingdom should not be followed.[83] The emergent case law surrounding the offence, or lack thereof, to some extent supports this conclusion. The first successful indictment brought under the Section 1 offence, *R v Costswold Geotechnical Holdings Ltd*, concerned the death of a geologist resulting from the collapse of an unsupported pit. The defendant was a small company in which the sole director, Mr Eaton, was easily classifiable as senior management.[84] There was, as a result, no question that Eaton had played a substantial role in the company's breach of duty and it seems likely that the director would have been identified as a "directing mind." Further charges were instigated against JMW Farm Ltd and Lion Steel Ltd, the latter of which was a company of larger size, however both pleaded guilty, thus avoiding the need to proceed to trial.[85] But the Taskforce's analysis of these cases as few and far between served to mischaracterize the operation of the Act as a failure, where it is instead merely the case that a body of law surrounding the offence simply has not had the opportunity to develop.[86] This does not necessarily mean that the offence is ineffective.

Of critical importance to, and currently absent from, any analysis of the CMCHA is an exposition regarding how the mechanics of the offence will work in the courts. Issues such as how the judge will summarise a 'gross' breach in the context of corporate, rather than individual offending, and how the senior management test will unfold are the characteristics

[81] Crimes Act 1961, s 190.
[82] Independent Taskforce on Workplace Health and Safety, above n 4, at [374].
[83] Ibid, at [376].
[84] *R v Cotswold Geotechnical Holdings Ltd* 2011 WL 2649504 at 3.
[85] Jonathon Grimes "Corporate Manslaughter" *The Law Society Gazette* (London, 29 August 2012) <www.lawgazette.co.uk>.
[86] As at 21 August 2014 there have been six convictions for corporate manslaughter.

that make the offence unique and thus provide the salient points in any discussion of whether we should adopt it.

As New Zealand has the benefit of time, with no proposals for corporate manslaughter at any substantive stage in the legislative process, we would do well to assess the continuing prosecutions under the Act as they come to light. The Taskforce was premature in reaching a conclusion that the statutory approach of the United Kingdom was wholly inappropriate as a method of reform.

V Prosecuting Errant 'Corporate Culture'

Rather than a conclusion that the CMCHA 2007 is ineffective as a method of structuring a charge of corporate manslaughter, this paper will argue that elements of the United Kingdom's offence have merit and warrant adoption or, at the very least, consideration should New Zealand ever resolve to legislate for corporate manslaughter. Of particular note is its scope to evaluate "the way the organisation's activities were managed or carried out."[87] This element of the offence speaks to a concern with prosecuting a 'corporate culture' where, rather than assessing a corporation in terms of the acts of the individuals within it, the focus would turn to the corporation aggregate, inviting an assessment of the internal policies and processes of the company, as well as the internal views as to the importance of such structures. The virtues, or otherwise, of this model of liability were not canvassed in the Taskforce's report.

Expressions of support for attributing liability on this basis abound in academic literature, where authors have argued that "responsibility…can be found in the corporations structures themselves."[88] LH Leigh was of the view that the imputation of corporate liability "should depend not upon the status of the actor performing it, but on whether the crime represents a policy decision on the part of those in control of the corporation."[89] This concentration of matters of policy and process has led some to conclude that a culture based method of attribution might provide one method by which we can calibrate a corporate body's *intent*. They submit that these components of culture would give "evidence of corporate aims,

[87] Corporate Manslaughter and Corporate Homicide Act, s 1(3).
[88] Wells, above n 17, at 157.
[89] LH Leigh, above n 10, at 126.

intentions and knowledge of individuals within the corporation," and such would be authoritative "because they have emerged from the decision making process recognised as authoritative within the corporate culture."[90]

A first principles assessment has led the author to the view that Sheen J struck at the heart of the harms that a corporate manslaughter charge should address when he lambasted the P&O Ferries Corporation for their affliction with the "disease of sloppiness."[91] Arguably, a culture-based model of liability is best placed to identify a truly blameworthy corporation in line with this fundamental notion.

This argument speaks to a wider discord articulated by Colvin between "nominalist" and "realist" theories of the corporate body. Where "nominalist theories view organizations as nothing more than collectivities of individuals… realist theories, on the other hand, assert that organizations have an existence that is, to some extent, independent of the existences of their members."[92] The Taskforce's recommendations, particularly aggregation, in truth fall prey to a *nominalist* conception of organizational personality that do not differ in any practical respect from the current identification doctrine. The extension of liability to a greater range of officers, while aimed to capture the entirety of activity within the corporation, would only give a realistic picture in the circumstance of officers from a range of levels within the corporation being at fault. Short of an affirmation of a corporate culture model, this would not prevent the same focus on the acts of individuals.

Parallel jurisdictions have embraced corporate culture as a doctrine of attribution. The Australian Criminal Code, in providing for corporate culture as a means of proving fault, defines the term as an "attitude, policy, rule, course of conduct or practice existing within the body corporate."[93] However, as the major criminal offences lie within the legislative territory of states, the potential benefits of such an amendment have not borne fruit. The ACT was compelled to adopt this more holistic approach to corporate liability, although other states have not followed suit. The only example of an offence of this nature within Australia, the Territory adopted a corporate manslaughter offence, termed 'Industrial Manslaughter,' to be

[90] S Field and N Jorg, "Corporate Manslaughter and Liability: Should we be Going Dutch?" (1991) Crim LR 156 at 159.

[91] Sheen J, above n 33.
[92] Colvin and Anand, above n 63, at 123.
[93] Criminal Code Act 1995 (Aus), s 12.3(6).

found in sections 49A-49E of the Crimes Act 1900 (ACT).[94] The offence provides that an employer or senior officer of an employer (this may be an individual or a company) is guilty of an offence where its reckless or negligent conduct results in the death of an employee. More significantly, the general principles of corporate liability espoused in the Territory's Criminal Code 2002 allow for the attribution of fault if the corporation is found to have *authorized or permitted* the commission of the offence. Such can be established by: [95]

> "(c) proving that a corporate culture existed within the corporation that directed, encouraged, tolerated or led to noncompliance with the contravened law; or
>
> (d) proving that the corporation failed to create and maintain a corporate culture requiring compliance with the contravened law."

A constraint on any analysis of these 'corporate culture' provisions is evident in that examples of the model's application in the ACT are extremely unlikely given the territory's small size and its workforce being largely composed of bureaucracy.[96] Without substantial business and industrial sectors, the potential reach of the territory's model remains unclear and untested. Furthermore, the evidential difficulties of pinpointing a corporation's culture has been a point of criticism amongst scholars, as is the question of whether the corporation aggregate, or merely one offending section of the company, must have an errant culture in order to warrant criminal sanction.[97]

While the term 'corporate culture' might appear malleable and prone to ambiguity, links to the upper levels of a corporation's management persist under the commonwealth code. Questions of whether "authority" to perform the proscribed acts had been given, or was believed on reasonable grounds to have been given, by a senior manager are "relevant considerations" as to whether or not such a culture exists.[98]

Lessons from the industrial disasters in New Zealand that have been the catalyst for the very occurrence of this debate seem to suggest that the health and safety culture of the companies

---

[94] Crimes Act (ACT), ss 49A-E. Note, however, that the ACT offence relates only to deaths that occur within the workplace.
[95] Criminal Code 2002 (ACT), s 51(2)(c)-(d).
[96] Des Taylor and Geraldine McKenzie "Staying focused on the big picture: should Australia legislate for corporate manslaughter based on the UK model?" (2013) 37 CLJ 99, at 11.
[97] Allens Arthur Robinson, "'Corporate Culture' as a basis for the criminal liability of corporations" (prepared for the United Nations Representative of the Secretary-General on Human and Business, February 2008) at 17.
[98] Criminal Code (ACT), s 51(4).

in question was highly relevant to the eventual tragedies. Inquiries into the Pike River disaster identified that the "organizational culture" of the company put production before safety, and a criticism levelled at senior management of the organisation was that they "pressed ahead when health and safety systems and risk assessment processes were inadequate."[99] This was characterised as a systemic shortfall and a 'cultural influence' of management, which permeated the organisation as a whole.[100] This would seem to confirm that there is a valid need to amend the organisational culture of companies so as to improve our health and safety record, and supports the case that it is the acts of the over-arching entity, rather than one or a combination of individuals within it, that should principally be at issue in the context of a corporate manslaughter offence.

Having established that there is an apparent need for considerations of corporate culture within a corporate manslaughter offence, the question is whether this necessitates a separate statutory offence channelling these concerns, such as in the UK. This would seem to turn on the issue of whether the prosecution of corporate culture might not be properly confronted by a mere extension of the general law of manslaughter to corporations. Alternatively, the prosecution of errant corporate cultures could be introduced supplementary to reform of the general rules of corporate criminal attribution, alongside the extension of the net of liable officers and aggregation.

V Alternative Reform Options

A Collateral individual liability

Section 1 of the CMCHA makes clear that only an *organisation*[101] can be liable for corporate manslaughter.[102] An individual cannot be liable for the offence, nor can they be tried as a secondary party.[103] Academics have voiced concern around this measure, arguing that, if they are sufficiently culpable, individual directors should also be made accountable on a separate basis for the outcome of the corporation's failings.[104] This is pertinent if reforms move the

[99] Royal Commission on the Pike River Coal Mine Tragedy, above n 54, at 56.
[100] Ibid, at 175.
[101] Organisations for the purposes of the CMCHA include Corporations (s 1(2)(a)), Government departments or other public bodies (s 1(2)(b)), a Police Force (s 1(2)(c)), or a partnership, trade union or employers' association, that is an employer (s 1(2)(d)).
[102] Corporate Manslaughter and Corporate Homicide Act, s 1.
[103] s 18.
[104] Taylor and McKenzie, above n 96, at 114.

basis of corporate manslaughter away from the identification doctrine, where the locus of liability will no longer be an individually culpable "directing mind." Reform of our health and safety laws indicate that this issue would not arise, as the creation of positive duties on directors to minimise Health and Safety risks in the current Bill were mooted in advice to the Taskforce as "not mutually exclusive" to a corporate manslaughter enactment and able to be enforced in combination.[105] This parallel prosecution would ensure that all culpable parties are punished, while reflecting that these two notions of liability are, and should be, grounded on categorically distinct principles.

B Constructive liability

One of the options under consideration when the Law Commission reported on corporate manslaughter in the United Kingdom was a form of constructive liability, whereby guilt for manslaughter would arise wherever a death occurred as a result of a breach of a health and safety offence. Such an approach was rejected, although committing a health and safety offence was imported as a relevant jury consideration regarding whether a "gross breach" of the duty under the Act occurred.[106] This model is closely analogous to the conventional 'unlawful act' permutation of the general law of manslaughter currently in place in New Zealand.

There is an arguable case for this approach to liability. The Health and Safety in Employment Act imposes wider duties on employers "to ensure that no action or inaction of any employee while at work harms any other person,"[107] making the scope of the duties owed under it applicable to any eventuation of a homicide at the hands of a corporation. The UK's hesitance to accommodate constructive manslaughter perhaps stems from the Law Commission's publication of disapproval with this type of liability throughout the eneral criminal law.[108] The same concerns do not appear to be present in New Zealand, so in the absence of any apparent advantages to one variation over another, consideration might also be lent to an enactment of this kind.

---

[105] Ministry of Business, Innovation and Employment "Supporting Material for MBIE's presentation to the Independent Taskforce on Workplace Health and Safety" (27 November 2012) at 22 (Obtained under Official Information Act 1982 Request to the Minister of Labour).
[106] David Ormerod, above n 77, at [15.4.2.2].
[107] Health and Safety of Employment Act 1992, s 15.
[108] Law Commission (UK), above n 35, at [5.14].

VI Conclusion

It is clear that, aside from the continued prevalence of great harms at the hands of corporations in our society, the development of criminal sanctions on the part of many of our most comparable foreign jurisdictions warrants serious consideration of the need for an offence of corporate manslaughter. Given that the Taskforce additionally recognised the offence as desirable for New Zealand, this divergence from the commonwealth norm cannot, in the long term, be maintained.

The final recommendations reached by the Taskforce, namely that widespread general change to the common law rules of attribution was required, concurs with the weight of commonwealth thinking both in academic and legislative circles and was undoubtedly the correct conclusion. However, because the law in this area internationally is still in a state of infancy, it would be premature to take the Taskforce's recommendations as an exhaustive statement of the options available in New Zealand. Indeed, their report was not intended to be so.

If our elected representatives deem it appropriate for corporate manslaughter to be introduced into our legal system, the author is of the view that consideration should be given to a fuller range of options for law reform. Any eventual reforms should not take a patchwork quilt approach, but consider afresh the underlying principles of corporate criminal liability. This will only come as a result of a longer conversation, not by enacting a stand-alone law of corporate manslaughter while leaving the bulk of our criminal law subject to its historical underpinnings of individual liability. Reform of corporate criminal liability principles should only come from the acceptance of a realist view that an organization can have an existence, indeed "soul," independent of the individuals within it.

VII Bibliography

A Cases

1 New Zealand

Linework Ltd v Department of Labour [2001] 2 NZLR 639 (CA).

Meridian Global Funds Management Asia Ltd v Securities Commission [1995] 3 NZLR 7.

R v Murray Wright Ltd [1970] NZLR 476.

2 United Kingdom

Attorney-General's Reference (No. 2 of 1999) [2000] 2 Cr App R 207.

DPP v Kent and Sussex Contractors Ltd [1944] KB 146; [1944] 1 All ER 119.

Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd [1915] A.C. 705 (HL).

P&O Ferries (Dover) Ltd (The Herald of Free Enterprise Case) [1990] 93 Cr App R 72.

R v Cotswold Geotechnical Holdings Ltd [2011] WL 2649504.

R v ICR Haulage Ltd [1944] 1 KB 551; 1 All ER 691 (CA).

R v Northern Strip Mining Construction Co Ltd The Times 2, 4, 5 February 1965.

St Regis Paper Company Ltd v R [2011] EWCA Crim 2527.

Tesco Supermarkets Ltd v Nattrass [1972] AC 153; [1971] 2 All ER 127 (HL).

3 Canada

R v Metron Construction Corp [2012] 1 CCEL (4th) 266.

B Legislation

1 New Zealand

Crimes Act 1961.

Health and Safety in Employment Act 1992.

Health and Safety Reform Bill 2014 (192-1).

Interpretation Act 1999.

2 United Kingdom

Corporate Manslaughter and Corporate Homicide Act 2007.

3 Canada

Criminal Code RSC 1985 c C-46.

4 Australia

(i) Commonwealth

Criminal Code Act 1995.

(ii) Australian Capital Territory

Crimes Act 1900.

Criminal Code 2002.

C Reports

Allens Arthur Robinson, "'Corporate Culture' as a basis for the criminal liability of corporations," prepared for the United Nations Representative of the Secretary-General on Human and Business, February 2008.

Independent Taskforce on Workplace Health and Safety *The Report of the Independent Taskforce on Workplace Health and Safety*, April 2013.

Law Commission (UK) *Legislating the Criminal Code: Involuntary Manslaughter* (Law Com 237, 1996).

Report of Sheen J "MV Herald of Free Enterprise report of Court no. 8074 Formal Investigation," Ministry of Transport (UK), London, 1987.

Royal Commission on the Pike River Coal Mine Tragedy, *Report of the Royal Commission on the Pike River Coal Mine Tragedy*, Volume 2, 2012.

D Books and Chapters in Books

Ashworth, Andrew and Hodder, Jeremy *Principles of Criminal* Law, 7th ed, Oxford University Press, Oxford, 2013.

Colvin, Eric and Anand, Sanjeev *Principles Of Criminal Law*, 3rd ed, Thomson, Toronto 2007.

Leigh, LH *The Criminal Liability of Corporations in English Law*, Widenfield and Nicolson, London, 1969.

Macfie, Rebecca *Tragedy at Pike River Mine*, Awa Press, Wellington, 2013.

Oates, Andrea *Tolley's Corporate Manslaughter and Homicide: A guide to compliance*, LexisNexis Butterworths, 2008.

Ormerod, David *Smith and Hogan's Criminal Law*, 13th ed, Oxford University Press, New York, 2011.

Pinto, Amanda and Evans, Martin *Corporate Criminal Liability* 3rd ed, Sweet and Maxwell, London, 2003.

Simester, AP and Brookbanks, WJ *Principles of Criminal Law*, 4th ed, Brookers, Wellington, 2012.

Simester, AP and Sullivan, GR *Criminal Law Theory and Doctrine*, 4th ed, Hart Publishing, Oxford 2010.

Wells, Celia *Corporations and Criminal Responsibility*, Oxford: Clarendon Press, 1993.

E Articles

Field, S and Jorg, N "Corporate Manslaughter and Liability: Should we be Going Dutch?" (1991) Crim LR 156.

Lederman, Eli "Models for Imposing Corporate Criminal Liability: From Adaptation and Imitation Toward Aggregation and the Search for Self-Identity" (2000) 4 Buffalo Criminal Law Review 641.

Pratt, John and Clark, Marie "Penal Populism in New Zealand" (2005) 7 *Punishment and Society* 303.

Slapper, Gary "Corporate manslaughter: An examination of the determinants of prosecutorial policy" (1993) 2 Social and Legal Studies 423.

Taylor, Des and McKenzie, Geraldine "Staying focused on the big picture: should Australia legislate for corporate manslaughter based on the UK model?" (2013) 37 CLJ 99.

Wilkinson, Meaghan "Corporate Criminal Liability. The Move Towards Recognising Genuine Corporate Fault" (2003) 9 Canta LR 142.

F News Articles

Sarah-Lee Stead and Nura Taefi "Should New Zealand introduce corporate manslaughter?" *ISN Magazine*, New Zealand, July 2012.

Dougan, Patrice, "PM: Corporate manslaughter law 'unlikely,' New Zealand Herald, December 3, 2013.

Radio New Zealand "Safety reforms don't go far enough, MPs told" (2014) <www.radionz.co.nz>.

Jonathon Grimes "Corporate Manslaughter" *The Law Society Gazette* (London, 29 August 2012) <www.lawgazette.co.uk>.

G Other Sources

Ministry of Justice (UK) "A guide to the Corporate Manslaughter and Corporate Homicide Act 2007, Explanatory Notes," Minsitry of Justice, United Kingdom 2007.

Ministry of Business, Innovation and Employment "Charges against Peter Whittall not proceeding," press release, 12 December 2013.

Independent Taskforce on Workplace Health and Safety "Terms of Reference for the Independent Taskforce undertaking the Strategic Review of the Workplace Health and Safety System" (2012) <hstaskforce.govt.nz>.

Department of Justice (Canada) "Criminal Liability of Organizations – a plain language guide to Bill C-45" (2003) <www.justice.gc.ca>.

New Zealand Council of Trade Unions "Submission to the Transport and Industrial Relations Committee on the Health and Safety Reform Bill 2014."

Ministry of Business, Innovation and Employment "Supporting Material for MBIE's presentation to the Independent Taskforce on Workplace Health and Safety" (27 November

2012) at 22 (Obtained under Official Information Act 1982 Request to the Minister of Labour).

VIII Word Count

The text of this paper (excluding abstract, non-substantive footnotes and bibliography) comprises approximately 8,000 words.