

# Index

## **Actus reus**

- continuing offences, 3:37
- Criminal Code jurisprudence, intersection of with regulatory law, 3:60
  - extraterritorial reach of Canadian law, 3:60
- duty to take reasonable care, 8:20:40
- fraud, 16:20
- generally, 3:10
- limitation periods, 3:37
- risk assessment codification, 3:10
- risk assessment, relevance to, 3:10
- rules, 2:15
  - application of models, 2:15:30.40
  - balance between systems, 2:15:30
  - ex ante systems, 2:15
    - advantages, 2:15:10
    - appropriate role, 2:15:30
    - disadvantages, 2:15:20
    - proper role for, 2:15:30.10
    - rules vs. principles, 2:15:30.20
  - ex post systems, 2:15
    - complexity, 2:15
      - rules vs. principles, 2:15:30.30
- standard of proof, 3:10
  - reasonable doubt vs. balance of probabilities, 3:10
  - regulatory trial, in, 3:10
- strict liability regulatory offences, 11:20:40
- subsequent civil proceedings, 3:50
  - actus reus findings, use of, 3:50
- subsequent remedial measures, 3:35
  - civil context, judicial guidance, 3:35
- types of regulation, 3:20
  - due diligence defence and, 3:40

**Actus reus** — *continued*

types of regulation — *continued*

- limited site-specific assessment, 3:20:20
- prosecutorial discretion to choose type, 3:30
- reasonable standard approach, 3:20:40
  - due diligence defence and, 3:20:40
  - fraud and, 3:20:40
- site-specific balancing, 3:20:30
  - analysis benchmarks, 3:20:30.20
  - certificate of approval approach, 3:20:30.30
  - inherently toxic, 3:20:30.10
    - not inherently toxic, 3:20:30.20
  - site-specific licences, 3:20:30.30
  - vagueness of general prohibitions, 3:20:30
- strict codified standards, 3:20:10
  - defence challenges to charge, 3:20:10
  - disadvantages to, 3:20:10
  - due diligence defence problems, 3:20:20
  - Occupational Health and Safety Act example, 3:20:10

**Administrative monetary penalties (AMPs)**

- ability to pay, 15:20:20.80.30
- absolute liability offences vs., 15:10
- administrative law principles, application of, 15:40
  - bias, 15:40
  - overlapping jurisdictions issue, 15:40
- administrative penalties vs. regulatory offences, 15:10
- alternative regulatory approaches, 15:50:10.10
  - criminal offences, true, 15:50:10.10.80
  - de-escalating pyramid, 15:50:10.10.90
  - mandatory orders, 15:50:10.10.60
  - mediation, 15:50:10.10.20
  - multiple track and hybrid AMPs, 15:50:10.10.40, 15:20:20.40
  - quasi-criminal sanctions, 15:50:10.10.70
  - ticketing, 15:50:10.10.30
  - topic specific AMPs, 15:50:10.10.50
  - warning letters, 15:50:10.10.10
- bright line tests, 15:60
- cap on, 15:10, 15:70:10, 15:70:20
- Charter, application of
  - generally, 15:10, 15:30:10
  - psychological stress issue, 15:30:10.10
  - reasonable limits issue (s. 1), 15:30:10.30.50
  - Securities Act AMPs, 15:30:10.20

## INDEX

### **Administrative monetary penalties (AMPs) — *continued***

- Charter, application of — *continued*
  - security of the person (s. 7), 15:30:10.10
  - Telecommunications Act provisions (Bill C-73), 15:20:20.40
  - true penal consequences (s. 11), 15:30:10.20
    - burden of proof issue, 15:30:10.30.10
    - cruel and unusual punishment, 15:30:10.30.60
    - disclosure of evidence, 15:30:10.30.20
    - forfeiture as redressing wrong to society, 15:30:10.20.50
    - impartiality of tribunal, 15:30:10.30.30
    - investment infringement, 15:30:10.20.40
    - magnitude of fine, 15:30:10.20.40
    - Martineau factors, 15:30:10.10
    - objectives of statute, 15:30:10.20.10
    - pioneer cases, 15:30:10.20.70
    - process analysis, 15:30:10.20.30
    - purpose of sanction, 15:30:10.20.20
    - securities AMPs, 15:30:10.20.30
    - void for vagueness issue, 15:30:10.30.40
  - Wigglesworth test, 15:30:10.20
    - “by nature” test, 15:30:10.20.10
    - “true penal consequences” test, 15:30:10.20.20
- Competition Act, under, 15:20:10, 15:20:20.20
  - ability to pay, 15:20:20.80.30
  - appeals provisions, 15:20:20.80.20
  - civil track, 15:20:10
  - hearings, 15:20:20.80.10
  - magnitude of fine, 15:30:10.20.40
  - remedies for compliance, 15:20:10
    - internal discipline, 15:20:20.10
- Criminal Code offences vs., 15:10, 15:50:10.10.80
- deterrence purpose, 15:20:20.10
- due diligence defence and, 15:10, 15:20:20.50, 15:20:20.60, 15:30:10.10
- environmental AMPs, 15:20:20.70
  - application only to “regulated person”, 15:20:20.70.40, 15:30:10.10
  - calculation of penalty, 15:20:20.70.30
  - double jeopardy, provision for, 15:20:20.70.60
  - innocent acts, 15:20:20.70.10
  - reverse onus provision, 15:20:20.70.50
  - scope of, 15:20:20.70.20
- generally, 15:10
  - new debate for administrative law, 15:10:30
  - new pyramid, 15:10:40
  - robust procedural and appeal protections, 15:10:20

**Administrative monetary penalties (AMPs) — *continued***

generally — *continued*  
schemes and punitive paradigm, 15:10:10  
hearings, 15:20:20.80.10  
investigations vs. offences, 11:20:45  
magnitude, approach toward determining, 15:80  
caps on AMPs, 15:80:40  
cases involving AMPs, 15:80:20  
matrix approach, 15:80:30  
analysis, 15:80:30:10  
post violation rehabilitation efforts, 15:80:50  
regulatory pyramids, 15:80:10  
policy arguments, 15:50  
principled approach proposal, 15:70  
capping to distinguish punitive monetary penalties and punitive criminal  
fines, 15:70:20  
violations of which regulator aware, 15:70:20.10  
violations of which regulator unaware, 15:70:20.20  
capping to minimize damage from wrongful finding of violation, 15:70:10  
categories of penalties created in proportion to gravity of potential harm,  
15:70:50  
criteria for assessment of quantum reflect risk management and  
compliance efforts, 15:70:40  
ex post enforcement swift, 15:70:110  
ex post penalties severe enough to act as disincentive, 15:70:90  
judicial membership in tribunals to counter agency bias, 15:70:70  
new criminal offences, 15:70:100  
procedure precisely matches escalating penalty sought, 15:70:60  
right of appeal wider as penalty category increases, 15:70:80  
warning letter requirement for anti-competitive conduct, 15:70:30  
protective and preventative vs. punitive purpose, 15:20:20.10  
quasi-criminal offence, whether, 15:10, 15:50:10.10.70  
regulatory compliance, 15:20:20  
civil redress, 15:20:20.20  
CRTC quasi-judicial orders, 15:20:20.20  
due diligence defence, 15:20:20.50, 15:20:20.60  
environmental legislation, 15:20:20.70  
internal discipline, 15:20:20.10  
multiple-track, 15:20:20.40  
professional discipline, 15:20:20.10  
securities regulation, 15:20:20.10  
sentencing, 15:20:20:60  
tailor-made, 15:20:20.30  
regulatory pyramid and, 15:10

## INDEX

### **Administrative monetary penalties (AMPs)** — *continued*

- Securities Act provisions, 15:20:20.10
- Telecommunications Act, under, 15:20:20.40
  - appeals provisions, 15:20:20.80.20
- types and varieties of, 15:10

### **Advertising, misleading**, *see also* Competition Offences

- civil offence re, 2:80, 2:95:40
- regulatory offence, abandonment of, 2:80, 3:60
- reviewable practices, 2:80
- two-track approach, 2:80, 2:100

### **Audits**. *See* Canadian Charter of Rights and Freedoms

### **Authorization**, 8:20

### **Bill C-45**, *see also* Canadian Charter of Rights and Freedoms; Sentencing

- authority, scope of,
- described, generally, INT
- directing mind concept, expansion of, INT, 5:10
- due diligence defence, 4:10
- enforcement of, 5:50:50
  - factors to be considered in, 5:50:50
- evaluation of, 5:50
  - comparison with United States, 5:50:20
  - opinion convergence, left and right, 5:50:30
  - symbolic role, 5:50:40
    - auditor imbedment, 5:50:40.30
    - individual liability compared, 5:50:40.20
    - private information incentive, 5:50:40.40
    - regulatory sanction fallback, 5:50:40.10
    - restorative justice approach towards enforcement, 5:50:40.50
  - track record, 5:50:10
- fundamental effects of, 5:10
- fundamental shift created by, 5:50:30
- negligence offences, 5:40:150
  - cumulative concept, 5:40:150
  - due diligence and, 5:40:150
- organization, expanded definition of, 5:40:10
- organization's activities, important aspect of, 5:40:50
- reasonable person analysis, 4:20
- representative, expanded definition of, 5:40:70
- senior officer, new definition of, 5:40:20, 5:40:60
- step-by-step analysis, 5:40:120

**Bill C-45** — *continued*

- subjective intent offences, 5:40:110
  - “all reasonable steps” requirement, 5:40:110
  - Charter issues re, 5:40:110
  - senior office definition and, 5:40:110
- Westray mine explosion and, INT, 5:10
- with intent at least in part to benefit the organization, 5:40:130
- workers, protecting, 5:40:160

**Business theory**

- An Intelligent Organization, 7:20:10
- causes of non-compliance, 7:50
- compensation, 7:20:30
- core competence agenda, 7:20:10
- corporate compliance systems, 7:20:45
  - communication of standards and procedures, 7:20:45
  - Competition Bureau model, 7:20:45.10
  - deferred prosecution agreements, 7:20:45.10
  - disciplinary enforcement of standards, 7:20:45
    - risk analysis where none is available, 7:20:45.10.04
  - establishment of standards and procedures, 7:20:45
  - implementation steps, 7:20:45
  - non-prosecution agreements, 7:20:45.10.03
  - overseeing of compliance effort, 7:20:45
  - policing of policies, 7:20:45
  - practical tips, 7:20:45.10.10
  - reporting requirement, 7:20:45
  - self reporting, 7:20:45.05
  - use immunity, 7:20:45.10.05
  - whistleblowers, 7:20:45
  - wrongful delegation, 7:20:45
  - zone of non-discovery, 7:20:45.10.02
- directors’ duty to creditors, 7:20:50.40
- empiricism, new, 7:40
  - due diligence assessment, 7:40
  - expert consultant trial testimony, 7:40
- Enron scandal, effects of, 7:20:10, 7:20:50
- ethical business, 7:20:50
  - accountability, domains of, 7:20:50.40
  - BCE Inc. case, 7:20:50.40.10
  - economic corporation model, 7:20:50.20
  - illegal activity, 7:20:50.20
  - indirect governance model, 7:20:50.40
  - legal and moral corporation overlap, 7:20:50.40.10

## INDEX

- Business theory** — *continued*
- ethical business — *continued*
    - legal corporation model, 7:20:50.30
    - moral corporation model, 7:20:50.10
    - overlapping models, 7:20:50.40
    - Peoples v. Wise case, 7:20:50.40
    - post-Enron attitude, 7:20:50.10
    - reform proposal, 7:20:50.40
  - ethics theory, 7:20:10
  - feedback mechanisms, 7:20:30
  - generally, INT, 7:10
  - integrated approach, 7:20:40
  - managing theories, 7:30
    - chains, 7:30
    - hubs, 7:30
  - matrix implementation at operational level, 7:20:18
    - document retention policy, advisability of, 7:20:18
  - matrix planning applied to specific tasks, 7:20:15
    - calculation of potential gravity of harm, 7:20:15.20
    - calculation of probability of non-compliance, 7:20:15.10
    - drawing matrix, 7:20:15.30
    - identification of thresholds, 7:20:15.40
    - self audits and privilege, 7:20:15.30.10
  - matrix planning at operational level, 7:20:10
    - industry standard in risk management, as setting, 7:30
  - “new math” after Enron, 7:20:50
  - organizational learning. *See* technological change, *infra*
  - pilot projects, use of, 7:20:40
    - positive matrix, 7:60
  - Seeing Tomorrow, 7:20:10
    - solutions to non-compliance, 7:50
  - technological change —
    - adapting to, 7:20:20
    - competence, 7:20:20.20
    - implementation of, 7:20:10
    - knowledge management, 7:20:20.10
    - performance, 7:20:20.30
    - risk management priorities, 7:20:20.30
  - Value Shift, 7:20:10
    - domains of commitment, 7:20:10
  - whistleblowers, 7:20:18.10
- Canadian Charter of Rights and Freedoms**
- absolute liability regulatory offences, 2:70

**Canadian Charter of Rights and Freedoms** — *continued*

- administrative monetary penalties and. *See* Administrative monetary penalties (AMPs)
- Bill C-45 and corporate rights, 11:20:60
  - adverse in interest, 11:20:60.20
  - as creation of “Charter-free zone”, 11:20:60.10
  - co-accused, compulsion to testify, 11:20:60.20
  - employee Charter rights, 11:20:60.10
  - senior officers, parallel charges against, 11:20:60.20
  - standing issues, 11:20:60.10
- compliance audits vs. tax evasion audits, 11:20:30
  - adversarial relationship, test re existence, 11:20:30
  - auditors vs. investigators, relationship re, 11:20:30
  - criminal classification, test re, 11:20:30
  - detention, Charter rights on, 11:20:30
  - gravity of adverse effect, analysis re, 11:20:30
  - Income Tax Act offence, 11:20:30
  - individual vs. corporate actors, 11:20:30
  - Jarvis case analysis, 11:20:30
  - penal liability test, 11:20:30
  - search warrants, requirement for, 11:20:30
- compliance inspection powers, scope of, 11:20:20
  - abatement vs. enforcement officers, 11:20:20
  - compliant instigating investigation, 11:20:20
  - deterrence purpose, 11:20:20
  - inspectors’ training, level of, 11:20:20
  - investigations vs. offences, 11:20:45
  - Ontario Water Resources Act (s. 15) provisions, 11:20:20
  - reasonable and probable grounds for inspection, 11:20:20
  - warrantless seizure, 11:20:20
  - written demand for information, 11:20:20
- compliance inspection vs. adversarial evidence gathering, 11:10
- due diligence, requirement to establish, 2:50
- effect on regulatory offences, 2:50
- liability to imprisonment, effect of, 2:50
- Oakes test analysis (s. 1), 2:50
- presumption of innocence (s. 11(d)), 2:50
  - reverse onus and, 2:50
- procedure, 11:15
- regulatory statutes and —
  - generally, 11:10
  - mad cow problem, 11:10
  - uneasy alliance between, 11:10
- regulatory warrants and due diligence, 11:20:50

## INDEX

### **Canadian Charter of Rights and Freedoms** — *continued*

- regulatory warrants and due diligence — *continued*
  - CanadianOxy case, 11:20:50
  - due diligence evidence, burden to produce, 11:20:50
  - permitted scope of warrants, judicial discretion re, 11:20:50
  - post-event documents, seizure of, 11:20:50
  - “reciprocal fairness” concept, 11:20:50
  - Wholesale Travel case, 11:20:50
- remedies for procedural violations, 11:40
  - costs award as remedy for Charter violation, 11:40:10
    - deterrence, role of, 11:40:10.40
    - function of remedy, 11:40:10.40
    - jurisdictional threshold, 11:40:10.10
    - procedure for applying test for, 11:40:10.30
    - reform proposals, 11:40:10.50
    - regulatory matters, in, 11:40:10.40
    - test for, 11:40:10.20
- remedies post-Jarvis, 11:30
- rights, individual vs. corporate, 11:20:10
  - choice, theories of, 11:20:10
  - licenced, free will involvement in business activity, 11:20:10
  - privacy expectations, 11:20:10
  - self-incrimination, protection against, 11:20:10
  - unreasonable search and seizure, 11:20:10
  - U.S. “required records” exception to Fifth Amendment, 11:20:10
- securities offences, challenges to, 2:80, 9:20
- senior officer definition, 5:40:20, 5:40:60
- strict liability regulatory offences, 2:50, 11:20:40
  - actus reus of offence, 11:20:40
  - detention, Charter rights on, 11:20:40
  - due diligence defence, 11:20:40
  - expanded scope of, 2:50
  - Jarvis case factors, application of, 11:20:40
  - reasonable and probable grounds analysis, 11:20:40
  - reverse onus provision in, 2:50
  - unreasonable search and seizure Charter rights, 11:20:40
- subjective intent offences, 5:40:110, 9:30:10
- trial within a reasonable time, 11:50
- “use immunity”, 11:10, 11:20:70, 11:20:45.10.05
- Wholesale Travel case, 2:50
  - confusion created by, 2:60

**Competition offences.** *See also* Administrative monetary penalties (AMPs); Advertising, misleading

**Competition offences** — *continued*

- 2009 amendments to Competition Act, 2:95
- abuse of dominance, 2:95:30
- cartels/conspiracy, 2:95:10
- civil/administrative track, 2:95:20
- misleading/deceptive advertising, 2:95:40

**Compliance audits.** *See* Canadian Charter of Rights and Freedoms

**Compliance inspection.** *See* Canadian Charter of Rights and Freedoms

**Corporate criminal liability.** *See* Criminal liability

**Corporate organizations, sentencing issues**

- corporate risk, government as unsecured creditor for, 13:30:20
  - bonds, posting, 13:30:20
  - limited liability, principle of, 13:30:20
  - mining company context, 13:30:20
  - public security, 13:30:20
- Corruption of Foreign Officials Act, 17:50
- multinational corporations, 13:30:10
  - “directing mind” theory, 13:30:10
- “natural person” analogy, 13:10, 13:20:10
  - corporate veil, piercing, 13:20:30
    - criticism of, 13:20:30
    - principles re, 13:20:30
    - U.S. empirical study re, 13:20:50
  - finances, 13:20:10
    - indemnification provisions, 13:20:10
    - passing on cost of, 13:20:10
    - tax deductibility, 13:20:10
    - undercapitalized corporation, enforcement against, 13:20:20
  - subsidiary corporations, 13:20:40
    - alter ego principle, 13:20:40
    - test re holding parent liable, 13:20:40
  - secured corporation model, 13:40

**Corporate rights.** *See* Canadian Charter of Rights and Freedoms

**Corporate veil, piercing,** 13:20:30

**Costs.** *See* Due diligence defence

## INDEX

### **Corruption of Foreign Public Officials**

- agents and contractors, 17:40
- calculation of potential gravity of harm, 17:90:30
  - formula for calculation of gravity of potential risk, 17:90:30.10
  - seriousness of harm, 17:90:30.20
  - volume and scope of activities, 17:90:30.30
- conclusion, 17:150
- Corruption of Foreign Public Officials Act —
  - “agrees” to give or offer, 17:20:20
  - books and records, 17:20:60
    - categories of offences, 17:20:70
    - transparency in, 17:20:80
  - bribing foreign public official offence, 17:20:10
  - corporate liability, 17:30
    - middle managers, 17:30:10
      - comparative perspectives, 17:30:10.50
      - defense of taking all reasonable measures, 17:30:10.40
      - due diligence levels, 17:30:10.30
      - important aspects of organization’s activities, 17:30:10.20
      - responsible for managing, 17:30:10.10
      - senior officer as a party, 17:30:10.30
    - exemption for reasonable promotional expenses, 17:20:40
    - facilitation payments, 17:20:50
    - level of intent required, 17:20:30
    - nationality jurisdiction, 17:20:90
    - real and substantial connection, 17:20:90
  - debarment, 17:60
    - administrative appeals or reviews, 17:60:10.60
    - administrative discretion, lack of, 17:60:10.30
    - affiliates, 17:60:10.20
    - economic impact, 17:60:10.50
    - historical debarment model, 17:60:10
    - narrow public interest exceptions, 17:60:10.40
    - revised rules, 17:60:20
      - admissions of guilt, 17:60:20.40
      - affiliates, 17:60:20.20
      - disjunctive test, 17:60:20.10
      - due process, 17:60:20.50
      - existing contracts, 17:60:20.60
      - interim suspensions, 17:60:20.40
      - permanent ineligibility, 17:60:20.30
      - third party monitoring and evaluation, 17:60:20.70
    - strict rules with a ten-year ban, 17:60:10.10
  - deferred prosecution agreements, 17:110

**Corruption of Foreign Public Officials** — *continued*

- directors' liability, 17:70
- drawing the matrix, 17:90:40
- Extractive Sector Transparency Measures Act, 17:80
- foreign corrupt practices, 17:90:20
  - aggregate probability of non-compliance, 17:90:20.110
  - alternative solutions/scenarios, 17:90:20.30
  - calculation of the probability of non-compliance, 17:90:20
  - foreseeability of the effect, 17:90:20.20
  - industry standards, 17:90:20.100
  - matters beyond control, 17:90:20.80
  - past compliance, 17:90:20.40
  - past efforts to address the problem, 17:90:20.50
  - preventative systems, 17:90:20.10
  - promptness of response, 17:90:20.60
  - skill level, 17:90:20.70
  - subsidiaries, 17:90:20.90
  - third parties, 17:90:20.80
  - time period, 17:90:20.60
- government, plan for meeting with, 17:130
  - investigation was thorough, 17:130.40
  - misconduct has stopped, 17:130:30
  - regular risk assessments are occurring, 17:130:60
  - remediation has taken place, 17:130:50
  - seek an advance opinion, 17:130:10
  - take ownership of the issue, 17:130:20
- introduction, 17:10
- new systems to encourage compliance, 17:120
  - codes of conduct, 17:120.30
  - compensation models, 17:120:40, 17:120:50
  - documentation of risk management, 17:120:40
  - enforcement, 17:120:100
  - key steps in risk based approach, 17:120.20
  - regulator response to existence of compliance programmes, 17:120:10
  - risk based approach, key steps, 17:120.20
  - tone from the top, 17:120:90
  - whistleblowers, 17:120:70
- risk assessment, 17:90
  - calculation of potential gravity of harm, 17:90:30
  - foreign corrupt practices, 17:90:20
  - methodology: a risk matrix, 17:90:10
- self-reporting, 17:100
- sentencing, 17:50
  - corporate criminal law, 17:50:40

## INDEX

### **Corruption of Foreign Public Officials** — *continued*

- sentencing — *continued*
  - first jail sentence, 17:50:10
  - Griffiths Energy - lessons learned, 17:50:30
  - jurisprudence, 17:50:20
  - theoretical perspectives, 17:140

### **Courts**

- regulatory offences, developments by, 12:30:20
- risk communication by, 1:80

### **Criminal Code**

- administrative monetary penalties and, 15:10, 15:50:10.10.80
- Bill C-45. *See* Bill C-45
- federal regulatory offences and, 12:30:10
- insider trading, 9:20
- LRCC proposal for new, 2:30:60
- parties to offence, 8:20:20

### **Criminal liability**

- Bill C-45. *See* Bill C-45
- British Petroleum Gulf Spill, 5:10
- corporate mind concept, INT, 5:20
- Corruption of Foreign Officials Act, 17:30
- criminal prosecutions, effects on corporation, 5:50
- defences —
  - taking of all reasonable measures, 5:40:130.30
- dichotomy when dealing with agents or contractors, 5:40:90
- directing minds concept, 5:10, 5:20, 5:20:30
  - multiple minds, 5:20:10
- due diligence, 5:10
- Enron scandal, 5:10
- expanded liability. *See* Bill C-45
- Japanese atomic disaster, 5:10
- liability, senior officers, 5:10
- matrix analysis, 5:40:100
- negligence, 5:40:80
  - recklessness, 5:40:80
- policy vs. operational functions, 5:20:20
- proof of fault, 5:10
- proof problems re large corporations, 5:30
  - directing mind, 5:30
  - multiple decision-makers, 5:30
- prosecution decision, guidelines re, 7:20:45

**Criminal liability** — *continued*

- respondeat superior doctrine, 5:20
- rogue managers and directors, 5:20:30
  - “total fraud” doctrine, 5:20:30
- Spain’s approach, 5:40:170
- United States’ approach, 5:40:170
- Walkerton, 5:10
- Westray mines explosion, 5:10, 5:20:20
  - manslaughter charges, 5:10

**Deregulation**

- Breyer, Stephen, 1:30
- globalization, effects of, 1:30, 1:60
- Great Britain, in, 1:30
- harms, types of, 1:60
- investment banking, 1:30
- mad cow outbreak, 1:30
- new regulatory models in response to, 1:60
- privatization and regulation, 1:30
- pro-market ideology and, 1:30
- Reagan, Ronald —
  - effect of, 1:30
- regulation, relationship with, 1:30
- Thatcher, Margaret —
  - effect of, 1:30
  - influences on, 1:30
- United States, in, 1:30

**Deterrence**

- administrative monetary penalties and, 15:20:20.10
- compliance inspection powers as, 11:20:20
- costs and, 11:40:10.40
- generally. *See* Sentencing
- LRCC review re, 2:30

**Directing mind**

- Bill C-45 and, INT, 5:10
- competing, 10:30:20
- criminal liability and, 5:20
- multinational corporations, of, 13:30:10
- regulatory offences and. *See* Regulatory offences

**Division of powers**, 2:90, 14:50

## INDEX

- Due diligence defence.** *See also* Administrative monetary penalties (AMPs)
- actus reus and, 3:20:20, 3:20:40, 3:40
  - Bill C-45 liability, 4:10, 12:20:10.10
  - Charter and, 2:50
  - civil consequences, 4:120
  - corporate compliance systems. *See* Business Theory
  - cost consequences of, 4:110
    - burdens of proof, 4:110:10
    - criminal vs. civil proceedings, 4:110:20
    - experts, cost of, 4:110:20
    - mediation, 4:110
    - partial indemnity vs. substantial indemnity costs, 4:110:30
    - pre-trial plea discussions, 4:110
    - reforms re, 4:110:30
    - solicitor-and-client costs, 4:110:30
  - documentation of, 6:20:30
  - duty to take reasonable care, 8:20:40
  - evidence, 9:30:30
  - factors re, 4:70, 4:70:150
    - abnormal sensitivities, foreseeability of, 4:70:20
    - actions of government officials, 4:70:140
    - alternative solutions, availability of, 4:70:30
    - analysis paralysis, 4:70:110
    - character of neighbourhood, 4:70:60
    - complexities of issues, 4:70:110
    - economic considerations, 4:70:130
      - clear cases of failure test, 4:70:130.10
      - disadvantaged minority seeking protection, 4:70:130.10
      - gatekeeper test, 4:70:130.10
      - government defendants and, 4:70:130.10
        - Bill C-45 changes, 4:70:130.10
    - efforts made to address problem, 4:70:70
      - post-event measures, 4:70:70
    - electronic communications, 4:70:120
    - foreseeability of effect, 4:70:20
    - industry standards, 4:70:50
      - comparative data, use of, 4:70:50
      - geographic size of industry setting standard, 4:70:50
      - technological limitations and, 4:70:50
    - legislative/regulatory compliance, 4:70:40
    - matters beyond control of accused, 4:70:90
    - nature and gravity of adverse effect, 4:70:10
    - occupational safety context, 4:70:20
    - preventative systems, 4:70:120

**Due diligence defence** — *continued*

factors re — *continued*

- promptness of response, 4:70:80
- proportionality of preventative measures, 4:70:10
- skill level expectation, 4:70:100
  - necessity of supervision, 4:70:100
  - reliance on expert consultants, 4:70:100
- technological limitations, 4:70:50, 4:70:90
- time period, 4:70:80
  - contaminated lands cases, 4:70:80
  - continuous discharge cases, 4:70:80
  - precharge events debate, 4:70:80
- fault analysis, 4:40
- generally, INT, 4:10
- individuals, for. *See* Risk management systems for individuals
- mens rea offences, application of principles to, 4:130
  - wilful blindness, 5:40:140
- mistake of fact defence, 4:50
  - regulatory vs. criminal, 4:50
- negligence, 5:40:150
- officially induced error, 4:60
  - criminal proceedings, in, 4:60
  - excuse vs. justification, 4:60
  - factors required to prove, 4:60
  - ignorance of the law and, 4:60
  - onus on defendant, 4:60
  - recognition of by Supreme Court of Canada, 4:60
- onus of proof, INT
- reading in, 2:70
- reasonable person analysis, 4:20
  - Bill C-45, under, 4:20
  - criminal and regulatory convergence, 4:20
  - dangerous driving offence, 4:20
  - gender and, 4:100
    - culpable indifference framework, 4:100
    - feminist debate, 4:100
    - new test, 4:100
  - objective test, 4:20, 4:100
  - onus on accused, 4:20
  - penal negligence cases, 4:20
  - reasonable woman, 4:20, 4:100
  - Sault Ste. Marie case, 4:20
- regulatory warrants and. *See* Canadian Charter of Rights and Freedoms
- reliance on erroneous legal advice, 4:50

## INDEX

### **Due diligence defence** — *continued*

- res ipsa loquitur and, 4:10, 4:30
  - effect of, 4:30
  - environmental cases, relevance to, 4:30
  - hindsight bias, 4:30
  - Petro Canada case analysis, 4:30
  - “representative heuristic” flaw of, 4:30
  - risk analysis flaw of, 4:30
  - risk management analysis, 4:30, 5:40:130.30.10
  - rule of evidence, as, 4:30
  - tort law, obsolescence in, 4:30
- risk analysis, two levels of, 4:40
- risk management basis of, 4:10, 4:40
- risk management decision matrix, 4:90
  - competition bargain price matrix, 4:90
- risk management matrix, 4:80
- risk management priorities, 4:80
  - external factors to risk management, 4:80:30
  - precautions to avoid event, 4:80:10
  - scenario planning, 4:80
  - systems to measure potential gravity of impact, 4:80:20
- statutory violations in negligence law, 4:40
  - economic formulae re, 4:40
- steps taken to prevent event, 4:45
  - focus on type of act, 4:45
  - relationship to charge, 4:45
- template for, 4:90
- tort law parallel, 4:10
- trends in case law, 4:75

### **Due diligence implementation**, 8:20

**Duty to take reasonable care.** *See* Individual liability, types of

### **Enforcement**

- abatement vs. enforcement officers, 11:20:20
- enforcement pyramid, 14:30
- regulations, of. *See* Regulations
- restorative justice and, 14:45
- self-regulation, of, 14:30
- undercapitalized corporation, against, 13:20:20

**Enron scandal**, 7:20:10, 7:20:50, 8:10, 10:30:10, 10:50

**Environmental offences.** *See* Administrative monetary penalties (AMPs)

**Ethical business.** *See* Business theory

**Fines.** *See* Corporate organizations, sentencing issues; Regulatory offences;  
Sentencing

**Foreign corrupt practices.** *See* Corruption of foreign public officials

**Fraud, principles of.** *See* White collar crime

**Globalization.** *See* Deregulation

**Individual liability**

- corporate liability and, 14:60
- director, bribery of, 17:70
- Enron scandal, effects of, 8:10
- generally, INT, 8:10, 8:30
- group vs. personal liability, tension between, 8:10
- middle manager, 17:30:10
- senior officers, 8:10, 8:30
- stigma of, *see* Stigma of individual liability
- types of, 8:20
  - authorize, permit or acquiesce, 8:20:30
    - acquiescence clause, 8:20:30
    - mens rea requirement, 8:20:30
    - proof, elements of, 8:20:30
  - duty to take reasonable care, specific, 8:20:40
    - actus reus issues, 8:20:40
    - directors, obligations on, 8:20:40
    - due diligence factors, 8:20:40
    - hierarchy issues, 8:20:40
    - proof, elements of, 8:20:40
    - “reasonable” issues, 8:20:40
    - “responsible share” doctrine, 8:20:40
    - standard of reasonable care, 8:20:40
- influence or control, common law principles of, 8:20:60
  - intentional torts, principles re, 8:20:60
  - master and servant concept, 8:20:60
  - negligence, concept of, 8:20:60
  - permission vs. knowledge, 8:20:60
  - principal and party, doctrines of, 8:20:60
  - vicarious liability, 8:20:60

## INDEX

### **Individual liability** — *continued*

types of — *continued*

party, 8:20:20

    Criminal Code provision re, 8:20:20

    provincial offences, 8:20:20

    regulatory offences, 8:20:20

principal, 8:20:10

    criminal context, 8:20:10

    due diligence and reliance on experts, 8:20:10.20

    nature of testimony, 8:20:10.10

    scope of, 8:20:10

    securities offences, 8:20:10

    sophisticated individuals, 8:20:10

    strict liability offences, 8:20:10

statutory language re influence and control, 8:20:50

    “cause or permit”, 8:20:50

    “person responsible”, 8:20:50

### **Individual risk management**, 8:20

**Influence or control.** *See* Individual liability, types of

### **Insider trading**, 9:20

**Jail**, 2:30:50, 9:10, 9:30:10, 12:40:40, 12:50:60.30

### **Law Reform Commission of Canada review**

    Criminal Code, proposed new, 2:30:60

    criminal law, dilution of, 2:30

    deterrence, 2:30

    distinctive ingredients of regulatory offences, 2:30

        hearings vs. trials, 2:30:30

        jail sentence, no risk of, 2:30:50

        negligent vs. intentional conduct, 2:30:20

        proactive prescriptions, 2:30:10

        stigma, lower, 2:30:40

    generally, 2:30

    moral prohibition, 2:30

    social change, law as instrument of, 2:30

### **Liability**

    corporate, 14:60

    individual. *See* Individual liability

**Licensing.** *See* Stigma of individual liability

**Management theory.** *See* Business theory

**Mens rea**

directing minds concept and, 6:20:10  
fraud, 16:20:20, 16:20:30  
public welfare offences, 2:60  
strict liability offences and, 2:40  
subjective scale re, 9:30:10

**Mistake of fact,** 4:50

**Monetary penalties.** *See* Administrative monetary penalties (AMPs)

**Multinational corporations,** 13:30:10

**Natural person.** *See* Corporate organizations, sentencing issues

**Negligence**

Bill C-45 and. *See* Bill C-45  
due diligence defence and, 5:40:150  
influence or control and, 8:20:60  
penal negligence, 4:20, 9:30:20  
statutory violations, 4:40

**Officially induced error.** *See* Due diligence defence

**Organizational criminal liability.** *See* Criminal liability

**Party to offence,** 8:20:20, 8:20:60

**Penalties.** *See* Administrative monetary penalties (AMPs)

**Principal,** 8:20:10, 8:20:60

**Privatization**

lab water testing, of, 1:40, 1:60  
regulation and, 1:30

**Proof**

criminal liability of large corporations, 5:30  
directing mind, 5:30  
due diligence, of, INT, 4:110:10

## INDEX

### **Proof** — *continued*

- insider trading, 9:20
- senior officer definition, re, 5:40:20, 5:40:60
- standard of. *See* Actus reus

### **Public commands and standards**, 14:30

### **Public interest groups**, 14:20

### **Public perceptions of risk**, 1:50:20, 1:60

### **Public welfare offences**, 2:60

### **Punishment.** *See* Sentencing

### **Reasonable person analysis**, 4:20, 9:30:20

### **Regulation**, *see also* Deregulation

- American history of, 1:20
  - New Deal initiatives, 1:20
- Canadian history of, 1:20
  - excessive regulation, 1:20
- codification of risk, as, 1:60
- federalism issues, 1:20
- historical survey, 1:20
- philosophical approach to, 1:20
- procedural justice and, 14:50
- public vs. expert perceptions, 1:60
- rationales for, 1:20
- regulatory pyramids. *See* Regulatory pyramids
- responsive. *See* Responsive regulation
  - Canadian Food Inspection Agency, 1:45
- Walkerton water contamination, 1:10, 1:40
  - “Common Sense Revolution” and, 1:40
  - lessons of, 1:40
  - origins of problem, 1:40
  - “precautionary principle”, 1:40
  - privatization of lab testing, 1:40
    - failure to identify risks re, 1:60
  - risk management model applied to, 1:60

### **Regulations**

- enforcement of
  - failures re, 1:70, 6:30

**Regulations** — *continued*

enforcement of — *continued*

    risk management and, 1:70

failure to update, 6:30

formulation of, 1:60

    public opinion as motivator, 1:60

    risk management element, 1:60

role of, 1:60

susceptibility to lobbying, 6:30

**Regulatory offences**

actus reus in. *See* Actus reus

administrative monetary penalties. *See* Administrative monetary penalties (AMPs)

Charter, effect of on. *See* Canadian Charter of Rights and Freedoms

classification methodology, 2:70

    absolute liability offences, 2:70

    common law defences preserved, 2:70

    intent wording, 2:70

    legal onus on accused, 2:70

    legal onus on prosecution, 2:70

    no defence available, 2:70

    no imprisonment, 2:70

    offence regulatory in content and purpose, 2:70

    presumption of strict liability, 2:70

    refinement by Supreme Court of Canada, 2:70

constitutional division of powers issues, 2:90

    federal criminal law power, 2:90

    provincial punishment powers, 2:90

criminal model re, history of, 2:20

directing mind in actus reus vs. mens rea, 6:20:10

    compliance monitoring, 6:20:30

    corporate policy authority, nature of, 6:20:10

    documentation of due diligence, 6:20:30

    generally, 6:10, 6:20

    illegality vs. criminality, 6:30

    primary corporate liability, 6:20:20

    shield vs. sword, as, 6:20:30

    true crimes vs. regulatory offences, 6:20:10

    wilful blindness, 5:40:140

distinctive ingredients of, 2:30

finest, 6:10, 6:30, 6:40

halfway house in Canada. *See* Sault Ste. Marie case

hierarchy of offences, need for, 2:100

## INDEX

### **Regulatory offences** — *continued*

- hierarchy of offences, need for — *continued*
  - coerciveness levels, 2:100
  - LRCC approaches, 2:100
  - multiple track systems, 2:100
- jurisdictional disputes re, 6:40
- legislative reforms and, 6:40
- mens rea vs. strict/absolute liability offences, 2:40
- penalties for, 6:40
- public welfare offences encompassing mens rea offences, 2:60
- quasi-regulatory offences, 2:60
- regulatory prosecutions
  - public penal nature as criminal, 2:60
- regulatory vs. true criminal offences, 2:60
- review by LRCC. *See* Law Reform Commission of Canada review
- risk assessment
  - absence of mental element, 2:60
- Sault Ste. Marie case, INT, 2:40
  - blurring of categories, 2:60
  - Charter and. *See* Canadian Charter of Rights and Freedoms
  - three categories analysis, 2:40
- sentencing and. *See* Sentencing
- strict liability offences
  - absence of mental element, 2:60
  - actus reus of, 11:20:40
  - increase in penalties for, INT
  - presumption of, 2:70
- true crimes vs., 6:40
- two-track approaches, 2:70
  - advertising offences. *See* Advertising, misleading
  - securities offences. *See* Securities offences

### **Regulatory pyramids**

- administrative monetary penalties and, 15:10
- criminal sanctions, 14:30
- coal mining safety model, 14:30
- compliance pyramid concept, 14:30
- constitutional division of powers and, 14:50
- enforcement pyramid, 14:30
- escalated responses, 14:30
- mandatory punishment, 14:30
- prosecutions, 14:30
- public commands and standards, 14:30
- punishment and persuasion, forces of, 14:30

**Regulatory pyramids** — *continued*

- restorative justice, 14:30
- risk assessment techniques, 14:30
- risk management of, 14:30
- self-regulation, enforcement of, 14:30
- warning letters, 14:30

**Res ipsa loquitur.** *See* Due diligence defence

**Respondeat superior doctrine,** 5:20

**Responsive regulation**

- adverse publicity, effect of, 14:20
- described, 14:20
- generally, 14:20
- parties to regulation, 14:20
- public interest groups, involvement of, 14:20
- regulation vs. deregulation, 14:20
- self-regulation, responses to failure of, 14:20

**Restorative justice**

- costs of, 14:40
- enforcement and, 14:45
- environmental enforcement, 14:40
- nursing home example, 14:40
- punishment threat and, 14:40
- regulatory pyramid, as part of, 14:30, 14:40
- reintegrative shaming, 14:40
- sentencing principle, as, 12:40:50, 12:50:60.40
- vaguely worded standards, 14:40

**Risk**

- alternate approaches to, 1:60
- analysis, components of, 1:50
- assessment. *See* Risk assessment
- assessment vs. management, INT
- communication. *See* Risk communication
- interpretation. *See* Risk communication
- management. *See* Risk management
- risk society analysis, 1:60

**Risk assessment**

- actus reus and, 3:10
- biology, risk and, 1:50:22

## INDEX

### **Risk assessment** — *continued*

- competition problem, application to, 1:50:30
- consumers, by, 1:50:40.30
- corruption of foreign public officials, 17:90
- described, 1:50, 1:50:10
- dose curve, 1:50:10
- dose-response assessment, 1:50:10
- empirical measurement and, 1:50:30
  - academic fields, application to, 1:50:30
  - paradigmatic shifts, 1:50:30
- environmental risks, ranking of
  - expert evidence vs. public opinion, 1:50:20
  - gender differences, 1:50:20
  - “knowledge gap” issues, 1:50:20
  - smoking example, 1:50:20
  - “unrealistic optimism”, 1:50:20
- exposure assessment, 1:50:10
- hazard identification, 1:50:10
- individuals, re, 10:40
- NAS-NRC model re, 1:50:10
- result categorization, 1:50:10
- “science-based” policy and regulation, 1:50:10
- scientific developments and, 1:50:30
- sociology, risk and, 1:50:22
- techniques, 14:30
- Walkerton case study, 1:50:10
- workplace injuries statistics, 1:50:10

### **Risk communication**

- codification of legislative risk assessment, 1:80
- compliance plans, development of, 1:80
- court role, 1:80
  - risk analysis by courts, 1:80
- due diligence assessment, 1:80
- monetary issues, assessment of, 1:80
- new regulatory state, 1:80
- precautionary principle, 1:80
- regulatory standard violation, assessment of, 1:80
- remediation of contaminated sites, 1:80
- risk management cycle model, 1:80
- risk perceptions, 1:80

**Risk management**, *see also* Regulation; Regulations  
benchmarks element, 1:50:40.40

**Risk management** — *continued*

- criminal law, use of, 14:10
- criminal vs. regulatory offences and, 1:60
- deregulation and, 14:10
- described, 1:50:40
- drunk driving example, 1:60
- due diligence defence and. *See* Due diligence defence
- elements of, 1:50:40
- enterprise, 1:50:40.50
  - COSO framework, 1:50:40.50
- Environment ministry example, 1:60
- experts and, 1:60
- failures of risk management, *see* Risk management, failures of
- inconsistency issues, 1:60
- individuals, for. *See* Risk management systems for individuals
- industry standards, 7:30
- ministerial turnover issue, 1:60
- political visibility issue, 1:60
- prioritization methodology, 1:50:40.30
- public opinion and budgetary issues, 1:60
- “random agenda selection” problem, 1:60
- regulating unknown future risks, 14:70
- regulation and, 14:10
- risk management, of, 14:30
- risk measure element, 1:50:40.30
  - Ford Pinto case, 1:50:40.30, 1:80
- scenarios element, 1:50:40.20
- technological change and, 7:20:20.30
- time horizon element, 1:50:40.10
- Walkerton water contamination and, 1:10
  - Walkerton Report assessment, 1:60, 1:70

**Risk management, failures of**

- Airbnb, 1:49:10.40.40
- Barclays price-fixing, 1:49:10.40.30
- Deepwater Horizon and British Petroleum, 1:49:10.40.10
- financial crime generally, 1:49:10.40.50
- Flint, Michigan water crisis, 1:40:10
- Fukushima Daiichi, 1:49:10.40.20
- Lac-Mégantic explosion, 1:49:10.10
  - Canadian banks, 1:49:10.40.34
- Panama Papers, 1:49:10.40.37
- Uber, 1:49:10.40.40
- Volkswagen emissions scandal, 1:49:10.40.35

## INDEX

### **Risk management, failures of** — *continued*

- Walkerton water crisis, 1:40
- Wells Fargo Cross Selling Scandal, 1:49:10.40.32

### **Risk management systems for individuals**

- compliance officers, 10:20
- dynamic between individuals and corporations after charges, 10:40
  - co-accused criminal context, 10:40
  - defence funding issues, 10:40
  - indemnification issues, 10:40
  - individual charged and corporation not, 10:40
  - individual testifying against corporation, 10:40
  - “prisoner’s dilemma”, 10:40
  - protection of individual by court, 10:40
  - risk assessments re individuals, 10:40
- generally, INT, 10:10
- individual due diligence, 10:30
  - compensation tied to due diligence, 10:30:40
  - competing directing minds, 10:30:20
  - conflicts of interest, 10:30:30
  - documentation of, 10:30:10
  - Enron example, 10:30:10
  - indemnities, 10:30:50
  - internal memos, use of, 10:30:10
  - value neutral language, use of, 10:30:10
  - whistleblower protection, federal, 10:30:10
- individual liability, punishment vs. indemnification, 10:20
- individual morality within group, 10:50
  - acquired situational narcissism, 10:50
  - Enron culture, 10:50
  - individual responsibility, 10:50
  - lawyers, 10:50
  - narcissism, 10:50
- individual vs. corporate due diligence, 10:30

### **Sault Ste. Marie case**, INT, 2:40, 2:60, 4:20

### **Secret commissions**, 16:40

### **Securities offences**, *see also* Stigma of individual liability

- administrative monetary penalties and, 15:20:20.10
- administrative proceedings, 2:80
- Crawford Report, 2:80. 10
- criminal proceedings, 2:80

**Securities offences** — *continued*

- multiple tracks re, 2:80:10, 2:100
- Charter challenge to, 2:80:10
- penalties, 2:80
- quasi-criminal proceedings, 2:80:10

**Self-regulation**, 14:20, 14:30

**Senior officer**

- generally. *See* Bill C-45
- individual liability, 8:10, 8:30
- intent of, 5:40:130
- new definition of senior officer, 5:40:20, 5:40:60
- parallel charges against, 11:20:60.20
- party to an offence, 5:40:120.10
- scope of authority, 5:40:130.10

**Sentencing**, *see also* Administrative monetary penalties (AMPs); Corporate organizations, sentencing issues; Stigma of individual liability

- Bill C-45, 12:20:10
  - aggravating factors, 12:20:10.10
  - due diligence defence, 12:20:10.10
  - mitigating factors, 12:20:10.10
  - probation orders, 12:20:10.20
  - reparation and restitution, 12:20:10.10
  - sentencing discretion re corporations, 12:20:10
  - sentencing principles for organizations, 12:20:10.10
- corruption of foreign officials, 17:50
- debarment —
  - administrative discretion, lack of, 12:20:20.30
  - administrative appeals or reviews, 12:20:20.60
  - affiliates, 12:20:20.20
  - economic impact, 12:20:20.50
  - historical model, 12:20:20
  - narrow public interest exceptions, 12:20:20.40
  - rules, 12:20:10.30
  - ten-year ban, 12:20:20.10
- deterrence —
  - general deterrence, 12:50:10.10.20
  - specific deterrence, 12:50:10.10.10
  - traditional theory, 12:50:10.10
- finest —
  - Bill C-45 departure from, 12:20:10
  - monetary value issues, 12:10

## INDEX

### **Sentencing** — *continued*

- general principles —
  - denunciation and retribution, 12:40:20
    - “criminality of conduct”, 12:40:20
  - deterrence, 12:40:10
    - ability to pay, 12:40:10
    - finest, 12:40:10
    - forfeiture cases, 12:40:10
    - price vs. sanction dichotomy, 12:40:10
    - probationary orders, 12:40:10
  - jail, 12:40:40
    - imprisonment as last resort
      - environmental context, 12:40:40.20
      - motor vehicle context, 12:40:40.10
  - “polluter pays” principle, 12:40:50
  - rehabilitation, 12:40:30
  - restorative justice, 12:40:50
- generally, INT, 12:10
- Integrity Regime, 12:20:30
  - admissions of guilt, 12:20:30.40
  - affiliates, 12:20:30.20
  - disjunctive test, 12:20:30.10
  - due process, 12:20:30.50
  - existing contracts, 12:20:30.60
  - interim suspensions, 12:20:30.40
  - permanent ineligibility, 12:20:30.30
  - third party monitoring and evaluation, 12:20:30.70
- minimum sentences for large frauds, proposed, 12:25
  - community impact statements, 12:25:10
- rational actor model, 12:10
- regulatory offences, 12:30
  - federal, 12:30:10
    - Canadian Environmental Protection Act, 1999, 12:30:10
    - Criminal Code and, 12:30:10
  - provincial, 12:30:20
    - court development, 12:30:20
    - Ontario Provincial Offences Act, 12:30:20
- tables, App. A
- theories specific to organizational compliance
  - corporate theory, 12:50:20
  - denunciation and retribution, 12:50:60.10
    - valuation vs. pricelessness, 12:50:60.10
  - deterrence
    - empirical study of, need for, 12:50:60

## **Sentencing** — *continued*

theories specific to organizational compliance — *continued*

fine as deterrent, 12:50:30

external measurement, 12:50:30.10

internal factors, 12:50:30.20

marginal utility, 12:50:30.30

tax evasion, 12:50:30.30

government inspector, placement of, 12:50:60.20

jail, 12:50:60.30

prioritizing of sentencing factors, 12:50:60.50

rationality, myth of, 12:50:50

corporate rationality, 12:50:50.20

individuals in regulated sectors, 12:50:50.10

rehabilitation, 12:50:60.20

restorative justice, 12:50:60.40

risk of apprehension, 12:50:40

## **Stigma of individual liability**

evidence, discovery of in regulatory offences, 9:30:30

due diligence evidence, 9:30:30

finances, futility of, 9:10

generally, INT, 9:10

insider trading —

as theft, 9:20

Criminal Code provision re, 9:20

onus of proof, 9:20

jail, sanction described, 9:10

licensing dimension —

convergence of regulatory and criminal standards, 9:30:20

dangerous driving offence, 9:30:20

faceless reasonable person standard, 9:30:20

penal negligence law, evolution of, 9:30:20

regulatory vs. criminal offences, 9:30:20

strict liability offences, 9:30:20

licensing of conduct, 9:40

car driving, 9:40

compliance orders re individuals, 9:40

continuing education, 9:40

general theory re, 9:40

professionals, 9:40

regulatory offences, shifting of status of, 9:30

securities fraud as criminal offence, 9:10

securities offences, new, 9:20

Charter challenge re, 9:20

## INDEX

### **Stigma of individual liability** — *continued*

securities offences, new — *continued*

Crawford Report, 9:20

defence provision, 9:20

imprisonment provisions, 9:10

increased penalties under, 9:20

insider trading, 9:20

text of, 9:20

true crime nomenclature used, 9:20

stigma, 9:30:10

absolute liability offences, 9:30:10

empirical measurement of, lack of, 9:30:10

environmental offences, 9:30:10

jail sentence, 9:30:10

lower stigma of regulatory offences, 9:30:10

misconduct of individual CEOs, 9:30:10

subjective mens rea scale —

Charter s. 7 requirement, 9:30:10

deceptive advertising on lower end, 9:30:10

wilful blindness, 5:40:140

types of regulatory offences, 9:30:10

Wholesale Travel case, 9:30

**Strict liability.** *See* Canadian Charter of Rights and Freedoms; Regulatory offences

**Subsidiary corporations, 13:20:40**

**Technological change.** *See* Business theory

**Telecommunications regulation.** *See* Administrative monetary penalties (AMPs)

**True crimes,** 6:20:10, 6:40, 9:20

**Use immunity,** 11:10, 11:20:70

**Walkerton water contamination.** *See* Regulation; Risk assessment; Risk management

### **Warrants**

Charter and. *See* Canadian Charter of Rights and Freedoms

search, 11:20:30

warrantless seizure, 11:20:20

**Westray Mine explosion**, INT, 5:10, 5:20:20

**Whistleblower protection**, 7:20:45, 10:30:10

**White collar crime**

civil law, parallel to criminal fraud, 16:30

comparison, 16:30:20

introduction, 16:30:10

ethical behaviour, 16:60

fraud, law of, 16:20

actus reus, of fraud, 16:20:10

elements, dishonest act and deprivation, 16:20:10.10

mens rea, corporate officials, 16:20:30

mens rea, of fraud, 16:20:20

elements, subjective knowledge, 16:20:20.10

generally, 16:10:10

historical analysis of financial crimes, 1:20:10

introduction, 16:10

principles, 16:50

rules, 16:50

secret commissions, 16:40

**Wholesale Travel case**, 2:50, 2:60, 9:30, 11:20:50