The law before the cmcha 2007 law company business partnership essay

Law

Introduction

Chapter 1: The Law before the CMCHA 2007

The first prosecution for Corporate Manslaughter was Cory Bros Ltd in 1927. This failed however due to showing that an indictment could not come against a corporation for a case involving personal violence as a company could not have the requisite „ guilty mind‟ or „ mens rea‟. The Cory Bros case was decided before the principle of „ identification‟ was developed. Since then, there have been some major disasters that have focused the publics concern as to the lack of corporate liability and accountability of Company Directors and organisations as a whole. This concern started in 1985 when 49 people died in the Bradford City football stadium fire. However, the principal of Corporate Manslaughter was first properly conceived during R v P&O European Ferris (Dover) Ltd (1991) when the Herald of Free Enterprise sank killing 187 people. Other major disasters that have gone unpunished include the Piper Alpha oil platform explosion in 1988, Hillsborough in 1989 and more recently the Hatfield rail disaster in 2000. Even though the Lyme Bay Canoe tragedy provided the first successful conviction of CorporateManslaughter in 1994 and therefore the basis for six other successful convictions, they are all of small companies where „ identification‟ of failure is simple. The unsuccessful cases of the 1980‟s and 1990‟s show how after most of the disasters in recent times on which an inquiry was held and evidence of management failure present, there was no / inadequate investigation of criminal offences, nobody found accountable and nobody punished. This is mainly due to the size and complexity of the organisations involved. This has created dismay to all bereaved families and

those affected by the disasters. This dismay highlights the need for CMCHA 2007 in order to enable successful convictions of similar future cases and therefore provide justice. Before CMCHA 2007 was put in place, a company could be prosecuted for a wide range of criminal offences including manslaughter. However, to be prosecuted for manslaughter a company had to be in " gross breach of a duty of care owed to the victim." A " directing mind" of the company (a senior individual) had to be guilty of the offence; this is known as the identification principle. (Ministry of Justice 2007) Prosecutions under this offence were therefore difficult, as a sole person would need to be singled out for a gross breach of their duty and it is difficult to pinpoint responsibilities up the chain of command. In 1996 the Law Commission‟s report " Legislating the Criminal Code: Involuntary Manslaughter" (Law Commission 1996, Law Commission 1996) included proposals for a new offence of corporate killing. This would act as a stand alone statutory offence, enabling the prosecution of companies rather than just individuals (prosecutable by old law). The Labour Party showed commitment to the reforming of the law in their manifesto in 1997 and the Law Commission‟s report provided the platform for the Governments consultation paper in 2000 entitled " Reforming the Law on Involuntary Manslaughter: the Government‟s Proposals." (Welham 2000)A draft Corporate Manslaughter Bill (Cm 6497) was published in March 2005, which set out the new Government proposals, most notably the application of the new offence to Crown bodies. This draft was then analysed by the Home Affairs and Work and Pensions Committees in the House of Commons in the

same year. Their report (HC 540 I-III) was published in December 2005 and the Government responded in March 2006 (Cm 6755). (Matthews 2008)

Chapter 2: The CMCHA 2007

The first section in this chapter is to introduce the most important part of the CMCHA 2007: to layout the new statutory offence of Corporate Manslaughter and the elements of the offence that need to be proved in order to commit the offence. Secondly, a detailed examination of the elements will be followed, by referring to cases and criticisms. Finally, the act will be tested by looking into the case laws and the criticisms to see how it really goes in reality. 2. 1 Introducing the CMCHA 2007The most significant part in the legislation is the brand new statutory offence of corporate manslaughter which is contained within s1 of the CMCHA:" An organisation to which this section applies is guilty of an offence if the way in which its activities are managed or organised-causes a person’s death, andamounts to a gross breach of a relevant duty of care owed by the organisation to the deceasedThe organisations to which this section applies are: a corporation; a department or other body listed in Schedule 1; a police force; a partnership, or a trade union or employers’ association, that is an employer. An organisation is guilty of an offence under this section only if the way in which its activities are managed or organised by its senior management is a substantial element in the breach referred to in subsection (1)." 2. 2 The required elementsIn order to find the defendant guilty, the prosecution will have to show the followed elements. 2. 2. 1 An organisationFirstly, there must an organisation such as a corporation. Nevertheless, the CMCHA does more than just mere corporate liability. According to Schedule 1 of the act, it

can be applied to, for example, trade unions, police Attorney General’s Office and the Royal Mint. 2. 2. 2 Relevant Duty of CareSecondly, such organisation must owe a duty of care to the victim. The meaning the duty of care has been expressed in s2(1):" A " relevant duty of care", in relation to an organisation, means any of the following duties owed by it under the law of negligence-a duty owed to its employees or to other persons working for the organisation or performing services for it; a duty owed as occupier of premises; a duty owed in connection with –the supply by the organisation of goods or services (whether for consideration or not), the carrying on by the organisation of any construction or maintenance operations, the carrying on by the organisation of any other activity on a commercial basis, orthe use or keeping by the organisation of any plant, vehicle or other thing; a duty owed to a person who, by reason of being a person within subsection (2), is someone for whose safety the organisation is responsible." Such duty is up for the judge to determine whether a duty of care is owed to the victim by the organisation. Such rule is identified in s2(5) that the " judge must make any findings of fact necessary to decide that question". However, it is down for the prosecution to prove the duty of care exists. The Judge will consider Lord Bridge’s three-point approach in Caparo Industries plc v. Dickman[1]: firstly the foreseeability of harm; secondly the proximity between the defendant and the victim; and finally the duty of care must be reasonably imposed. However, it has been criticised when applying the approach in the CMCHA. Gobert suggests that it is " in fact otiose"[2]by using the Law Commission[3]and Home Office[4]as the example and says that both reports have not included the duty of care requirement. Also, the Joint

Committee[5]suggested that the relevant duty of care should not be included. Gobert’s argued that the relevant duty of care is superfluous and he suggests that organisations are " already under a duty not to kill innocent persons"[6]. 2. 2. 3 CausationIn s1(1)(a), it states that:"... the way in which its activities are managed or organised –causes person’s death". The Explanatory Notes in the Act says that: " The usual principles of causation in the criminal law will apply to determine this question. This means that the management failure need not have been the sole cause of death; it need only be a cause (although intervening acts may break the chain of causation in certain circumstances)."[7]In fact, it can be compared with the common law offence of manslaughter. Gobert is again criticised on the Government’s decision to reject the Law Commission’s " conception of causation in favour of the more conventional approaches used by the courts, which themselves have long been a source of controversy and confusion"[8]. The Law Commission recommended that there should be an express provision " to the effect that in this kind of situation the management failure may be a cause of the death, even if the immediate cause is the act or omission of an individual"[9]. Within the timeframe between the report and the legislation, there have been a significant number of judicial decisions on causation such as R. v. Kennedy (No. 2) that the chain of causation can be broken by voluntary acts. It is therefore suggested that " the Law Commission’s formulation may be needed more than ever if the Act is to have any bite"[10]. 2. 2. 4 A " gross breach" According to s. 1(1)(b), the death must be a " gross breach" of the relevant duty of care. Section 1(4)(b) states as follows:"(b) a breach of duty of care by an organisation is a ‘ gross’ breach if

the conduct alleged to amount to a breach of that duty falls far below what can reasonably be expected of the organisation in the circumstances". Such matter is down for the jury to decide. According to s8, the jury must consider "(a) how serious that failure was" and "(b) how much of a risk of death it posed"[11]. In addition, under s. 8(3), jury may also consider Health and Safety policies and guidance and " any other matters they consider relevant"[12]. In respect of the offence, Forlin questioned " how far does a company’s management failure need to fall below what can reasonably be expected?" Unfortunately, the answer would remain uncertain where there is no landmark case yet for the offence.[13]Therefore, until the landmark case exists, the law might look into the ‘ gross negligence’ case law instead where Lord Hewart C. J. in R. v. Bateman[14]has stated the requirement of the " gross negligence"."... the negligence of the accused went beyond a mere matter of compensation between subjects and showed such disregard for the life and safety of others, as to amount to a crime against the State and conduct deserving of punishment".[15]2. 2. 5 The senior management testThe CMCHA provides the definition of the term " senior management" in s1(4)(c) that:"‘ senior management’, in relation to an organisation, means the persons who play significant roles in-the making of decisions about how the whole or a substantial part of its activities are to be managed or organised, orthe actual managing or organising of the whole or a substantial part ofthose activities." Nevertheless, the " senior management" test received significant criticisms. Most of the criticisms were that the test has taken the law backwards to the " directing mind and will" doctrine in Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd[16]. Matthews states

that " the definition of an organisation’s senior management under the Act has a far wider compass than merely those, under common law, who constituted the " directing minds" of a company, which was effectively limited to a company’s Board of Directors"[17]. In other words, the test itself is wider than the directing mind and will approach. Equally, Card sees that such new test " still restricts the range of people whose misconduct can result in liability for corporate liability"[18]. However, unlike Matthews, Card argues that the test is " too narrow" and that there " is a risk that cynical organisations will delegate their decision-making and management and organisation in areas related to health and to safety to people falling outside the definition"[19]. This is a criticism is seen to be a fair one. Organisations will always try to restrict their liabilities on different aspects, such as tax liability. They are advised by legal firms and accountants firms on how to limit liabilities. Therefore it can be said that organisations and their representatives are " prepared" for the inferences of the legislation. According to Matthews, the significant point of the test is the difficulty with the definition of ‘ senior management’ that " there is no established meaning in either legislation or case law"[20]. This is therefore certainly causing problems especially when it is applied in reality in courts. According to Forlin’s view mentioned above, applying the tests will remain difficult until there is a binding case exists which can assist the judges on making decisions. 2. 3 Does the CMCHA 2007 really work? The CMCHA has always been compared to the old common law doctrine. It can be advised that such defined statutory crime makes the deaths in workplace become more significant. However, the act gives no individual liabilities, it can be argued

that it simply puts a ‘ price tag’ on people’s life which is considerably different when compared to murder and manslaughter. The question that flows from this is whether the CMCHA will present a suitable punishment for organisations. For example, if a company disregards health and safety laws for whatever reasons and caused death, is the fine sufficient an effective deterrent against it? Also, if the company is a monopoly one, such as a gas and electricity company, it seems that such punishment will not do so much harm then those small companies. The company is just earned ‘ lesser’ in the financial year. Griffin sees that the CMCHA " is to be welcomed as a statute which identifies a company’s liability for the offence of manslaughter in a manner that extends the probability of a successful prosecution"[21]. Griffin identifies arguably the CMCHA’s greatest deficiency in that it " discards a golden opportunity in its failure to contain provision for the secondary liability of a culpable senior manager"[22]. Elliott and Quinn think that the CMCHA looks very similar to the old common law and will be as hard to prosecute and it is " disappointing".[23]2. 3. 1 R. v. Cotswold Geotechnical (Holdings) Limited [2011] All ER (D) 100The first prosecution using the CMCHA was in 2011. Alexander Wright was an employee of a ‘ one man band’ firm that involved in an accident whilst he was obtaining soil samples. Mr Wright was working alone in a 3. 5 metres deep trial pit. The pit collapsed and he died from crushing and traumatic asphyxiation. The company was convicted of corporate manslaughter contrary to s 1(1) of the Corporate Manslaughter and Corporate Homicide Act 2007 and sentence with a fine of £385, 000. The company appealed the sentence decision claimed that it was manifestly excessive. Indeed, the judge imposed a fine which was 250% of

its turnover of £154, 000 and was therefore so substantial that the company could not be possible to pay and would therefore leaded into liquidation. The appeal was dismissed. Lord Judge held that it was plainly foreseeable that the company’s operations could cause serious injury or death. And it was unfortunate but unavoidable and inevitable if a company was put into liquidation because of the fine. The original sentence from Mr Justice Field could not be criticised as he had properly referred to the fact that the company had a gross breach of duty of a system of work that was unsafe with the potential for causing death. 2. 3. 2 Lion Steel LimitedIt is the second prosecution under the legislation. In this case, Steven Berry fell through a roof from his employer’s factory while he was fixing a leak and found dead. The company was prosecuted under the CMCHA 2007 whereas three individual directors were also charged with gross negligence manslaughter and under s 37 of the Health and Safety at Work etc Act 1974. In contrast to Cotswold Geotechnical Limited, Lion Steel Limited is a much larger company with over a hundred employees. Therefore, the law is supposed to face a better test according to the size of the company. However, Lion Steel did not have a complex management structure, as those described earlier before and therefore the law still awaits its first true significant test. Lion Steel was fined with £480, 000. 2. 3. 3 The impact on both casesThese two cases under this legislation had a high expectation to demonstrate the effectiveness of the new legislation compared to the old approach. Since the defendant company was a ‘ one man band’, the ‘ senior management’ element has not been examined nor considered thoroughly. According to McCluskey, the ‘ true test’ of CMCHA 2007 and " senior management" test must undergo

some legal debates in court procedures when prosecuting large companies that have a complex management structures.[24]He went further to comment that " this case is such that it unfortunately tells us nothing whatsoever about how these new principles operate"[25]. Moreover, Justice Field suggested that level of the fine was not excessive in the offence because judges have guidelines to follow and the guidelines were not law. In fact " the appropriate fine will seldom be less than £500, 000 and may be measured in millions of pounds"[26]. However, Field and Jones argue that it " will be viewed by some as an indication that the Act lacks bite"[27]if the fine is less than the starting point accord to the guidelines. Similarly, even Lion Steel Limited has over a hundred employees, it’s management structure was not ‘ complex’ enough for the law to be truly tested. The concepts could be tested only when the prosecution brought against larger organisations. Regardless of the outcome, " such a prosecution would at least grab the attention of boardrooms once again."[28]2. 3. 3 ConclusionThe main point is whether the CMCHA has resolved the previous common law doctrine’s deficiencies. Law reform is supposed to develop and take the law forward. After the demonstration of two cases, it shows that the CMCHA still cannot be fully tested, especially on the ‘ senior management’ element. Therefore it is still difficult to judge on the new law has taken the law backward or forward, until the prosecution can bring it against some real large organisations.

Chapter 3: Criminal versus Civil Liability: What is more Suitable for Corporate Killing?

Fisse and Braithewaite question whether criminal law is a suitable mechanism for dealing with corporate killing, and recognise that " most theories of corporate punishment rely on deterrence as a justification". Khanna suggests that civil liability would perhaps be more appropriate because civil damages could be awarded in " recognition of the loss suffered and deterrence". Ultimately it is important to examine whether civil liability would be more suitable that criminal liability because the former could achieve the deterrence goal sought by the latter whilst satisfying the public need for compensation. Fischel and Sykes point out that the social interests that the criminal law seeks to protect suffer because criminal law has the potential to result in over-deterrence: economically " the penalty exceeds the social harm, the problems of socially excessive product prices and litigation costs again arises". This is an interesting observation, though it is argued that introducing economical elements into proceedings for the loss of life is unsuitable because attaching a value to the loss of life suggests that a penalty can exceed the social harm caused by murder or manslaughter. Attaching a price to human life is a dubious and dangerous practice which ignores the moral harm caused by the loss of life. Clarkson indeed argues against civil law being used to deal with corporate killing, and recognises that the stigma attached to and resulting from criminal proceedings is more appropriate and fitting when death occurs. This issue can also be applied to the concept of punishment – does the Act provide for harsh enough punishment? Welham explores this issue, considering the possibility that fines may not be harsh enough for corporations, and fail to recognise the

extent of the harm that results from the death of an individual. Khanna argues against this, stating that " small companies, which comprise about 45% of all companies in the UK, have no significant reputation to be lost through stigmatic punishment".

Chapter 4: The International Approach to Corporate Killing – Canadian

This chapter will consider the Canada approach of corporate criminal liability for manslaughter. The similarities and differences with the system in the UK will be discussed as well as areas that could have been adopted to improve the UK law. The first section will consider the historical Canadian approach to corporate criminal liability. The second section will consider the reform process after the Westray Mine Disaster 1992 whereas the time delay is similar to the UK. It took 11 years between the Westray Mine Disaster and reform in Bill C-45. The final section will discuss both the first prosecutions that followed under Bill C-45 and briefly the sentencing. 4. 1 The Canadian ApproachThe traditional approach in Canada for corporate criminal liability was based on the identification doctrine. Canada approved the identification doctrine even before it was accepted in England[29]. 4. 1. 1 The identification doctrine in CanadaThe leading case is the Canada Supreme Court decision in R. v. Canadian Dredge & Dock Company[30]. Prior to the decision, the application was similar to the narrow approach in a UK House of Lords case Tesco Supermarkets Limited v. Nattrass[31]. Nevertheless, the doctrine was widened by the Supreme Court in Canadian which it held that a corporation could have more than one " directing mind". The difference between the approaches is that the Canada Supreme Court were prepared to

identify the directing mind at a lower and wider level within a corporation in contrast with the UK approach. According to Hanna, there are a number of examples of where the Canadian courts have indicated an ability to implement a broader approach to the identification doctrine. She also confirms and compares the situation between Canada and England that the directing mind may reside in fairly low-level officials in Canada, by contrasting with Tesco Supermarkets v. Nattrass.[32]However, the identification doctrine in Canada has not been without criticism. Norm Keith acknowledged that " illegal and policy criticisms of the narrow nature of the identification theory were widespread"[33]. Manning and Sankoff agreed with this view where " application of these principles has proven somewhat troublesome given the intricate ways in which corporations are established and organized"[34]. The identification theory has also been commented as uncertain especially when dealing with corporations with complex management structures where it lowers the possibility for offences committed by lower level managers within the corporation.[35]4. 2 The Westray Mine Disaster (1992)The Westary Mine Diasater was the cause that makes the Canadian reform the law. In 1992, methane gas and subsequent coal dust exploded in Westray Mine. 26 miners were found dead. It was Canada's most serious mining disaster since 1958. A few attempts has been made to charge the managers, however, they all failed thought the defendants would stay the prosecution for future charges whenever possible. 4. 2. 1 The InquirySix days after the explosion, the Canadian government created a Public Inquiry into the Westray Mine and the safety issues resulting from the explosion.[36]The inquiry was once stopped because the

defendants’ lawyers saw that it was unconstitutional where it would prevent their clients to have a fair trial.[37]The inquiry was finally resumed in 1995 and the report was released in 1997. The report made 74 recommendations and the no. 73 one was seen to be the catalyst for reform which it suggest the government should institute a study of the accountability of corporate executives and directors for the wrongful or negligent acts of the corporation and introducing new legislations were necessary to ensure the executives and directors are held properly accountable for workplace safety. 4. 3 Reform - Bill C-45After the inquiry, the Canadian Government proposed new legislation contained within Bill C-45 and it finally came into force in 2004. Bill C-45 it received wide support from the people, for example Sarmite Bulte stated that: "... Bill C-45 would give Canada rules that are appropriate for the complex, modern corporate world where often a company has many places of business, various subsidiaries, parts of the business contracted out to specialists, decentralized control over some parts of the business and a great deal of discretion vested in its managers".[38]Jennifer believes that the new bill provides a new regime outlining the framework of corporate liability in Canada.[39]Though, some claimed that it was rather a political posturing by the government.[40]4. 3. 1 The Key ElementsThere are two significances in Bill C-45. Firstly, the extension of potential liability (Actus Rues and Mens Rea) to organisations and secondly, a creation of a new Criminal Code offence, the two formulas under which organisations can now be held criminally liable. The first formula is now stated in s22. 1 of the Canada Criminal Code:" In respect of an offence that requires the prosecution to prove negligence, an organization is a party to the offence ifacting within the

scope of their authorityone of its representatives is a party to the offence, ortwo or more of its representatives engage in conduct, whether by act or omission, such that, if it had been the conduct of only one representative, that representative would have been a party to the offence; andthe senior officer who is responsible for the aspect of the organization’s activities that is relevant to the offence departs – or the senior officers, collectively, depart – markedly from the standard of care that, in the circumstances, could reasonably be expected to prevent a representative of the organization from being a party to the offence". And the second formula is stated in s22. 2 of the Criminal Code and is for offences not based on negligence (such as intention/ recklessness or wilful blindness):" 22. 2 In respect of an offence that requires the prosecution to prove fault – other than negligence – an organization is a party to the offence if, with the intent at least in part to benefit the organization, one of its senior officersacting within the scope of their authority, is a party to the offence; having the mental state required to be a party to the offence and acting within the scope of their authority, directs the work of other representatives of the organization so that they do the act or make the omission specified in the offence; orknowing that a representative of the organization is or about to be a party to the offence, does not take all reasonable measures to stop them from being a party to the offence". Each time law is reformed, the question always comes down to whether the reform is successful or it is just the old law in other form and the Criminal Code is in no exception. According to Keith, he confirms that 22. 1 and 22. 2 of the Criminal Code provided a statutory framework for the mens rea and of orgainsations, for the very first time in which both of them

successfully redefined how could organisations be proven to have committed and offence.[41]Dusome agreed with such view and further said that Bill-C45 widened the scope of the identification theory of corporate criminal liability and the category of people who might be charged and convicted rather than just individuals and corporations, it could even be trade unions, partnerships and " association of persons".[42]However, Dusome also criticises that Bill-45 does not go sufficiently far where it remains the old confining limits that it is still necessary to prove the fault senior officer.[43]4. 3. 2 Prosecutions under Bill C-45There are number of cases held after the Bill C-45. Here will discuss four of them and see how it really goes after the reform. 4. 3. 2. 1 R v FantiniThe first was R v Fantini 2005[44]. Fantini was in charge of a construction site where the accident was happened that caused a worker's death. He was charged under s217. 1 with criminal negligence causing death and another 8 charges under the Occupational Health and Safety Act. The charge of negligently causing death was withdrawn by the Crown for public interest reason.[45]According to Mervyn F. White, the decision in Fantini produced uncertainty of law to which Bill C-45 should be applied and enforced.[46]Fantini received only $50, 000 fine which was extremely less compared to Cotswold Geotechnical which was fined £385, 000 and Lion Steel which was fined £480, 000. In fact, Gorewich J. has reasoned that because the defendant was a smaill contractor instead of a corporate defendant, otherwise the fine would be far greater.[47]4. 3. 2. 2 R v Transpave Inc. In this case, a death was caused by Transpave[48]and it was charged under Bill C-45. The defendant was fined with $100, 000 and a $10, 000 victim surcharge. Again, the fine for Transpave was relatively small.

However, it was because it spent $500, 000 to make safety improvements after the accident, which the court has taken it into account when setting the amount of fine. The decision in Transpave has shown that an effective health and safety program is inevitable which the court pays a high attention to. 4. 3. 2. 3 R v ScroccaScrocca's employee was killed by him where he failed to brake employee and pinned him against a wall by driving a backhoe. The fact is that the backhoe has not been carried out any maintenance since the purchase in 1976. Scrocca was convicted of criminal negligence causing death and two years less a day imprisonment. The sentence will be served in the community with condition, including a curfew. 4. 3. 2. 4 R v GagnéGagné was the first acquittal case. The defendants were charged with 1 count of criminal negligence causing death and 3 counts of criminal negligence causing bodily harm. One employee was and three were injured when a train hit a maintenance vehicle. The court quashed the conviction and gave reason that the crown was not able to proof of wanton and reckless disregard, also the accident was caused from a corporate culture of unsafe practices and lack of training. 4. 4 ConclusionAfter seeing the four cases, the Bill C-45 seems works better than the old law but there is still lack of reliable patterns of the court decision. This view is confirmed in Beeho that " it is difficult to discern any reliable trends or patterns on the case law". [49]Compared to the UK, Canada now has a much better law of corporate liability while the UK is still in very early stages of trying to ascertain whether the new law should behave. The focus of this chapter is that how the UK Government should have learned from the Canada Government in order to improve the corporate liability like the Canadians do. In respect of reforming

the law, the Canadian Government has already concerned about the offence against a specific corporate killing and realised that it would " be too narrow … as it would not respond to corporate crimes against the environment and other corporate harms"[50]. Though, the most significant concern in the UK was that " the major limitation of the CMCHA is the fact that it only applies to corporations and does not apply to individuals, even corporate directing minds"[51]. The reason that the UK government should adopt the Canada Law is that there are similarities between the UK and Canadian legal system. In addition, Canada has taken a rounded approach to corporate criminal liability at the Federal level. Wells commented the reform in Canada " capture(s) the essence of organizational decision-making in more imaginative way(s)" and that the UK senior-manager test was just a failure. [52]Furthermore, the Canadians have taken a non-specific offence approach to corporate criminal liability rather than in the UK which only focus on a specific offence. Nevertheless, it seems that the Canadians were able to notice the weakness of their law, though the time spent was considerably long (11 years). The Canadian law has both its strengths and weaknesses, undoubtedly, the UK law could not just ‘ copy’ from it where it is very hard to say it gives the UK a real model for improvement. However, the Canadian law reforms occurred before the UK, and the law have been tested with many prosecutions under their new law. Throughout the discussion in the chapter, though the Candian law still receives criticism, but it seems that it still works better than the UK law at the moment, at least they do not struggle with the old identification doctrine therefore the UK could still keep its eye on them and try to improve the current law.

Conclusions