

Personal Liability of Corporate Officers for Environmental Offences



As an EHS manager, you face the challenge of securing corporate support for your OHS and environmental programs and budget. Part of that responsibility is briefing your company executives about legal matters affecting the company's and their own personal liability. Here's a briefing to deliver to your CEO on the personal liability risks of corporate officers for environmental violations committed by their company.

The Situation

BC charges a company and its sole officer, shareholder, and director with operating a solid waste transfer station without a valid licence. The company pleads guilty. But the officer claims that a company and its officers can't be guilty of the same offence. The court pooh-poohs the argument, reasoning that the company and officer can be convicted of the same conduct because they're separate legal entities, and separate entities **can be** convicted for the same conduct. Moreover, the court adds, because the officer was personally responsible for operating the company without a licence, he should bear some responsibility for the offence [*R. v. Dulay*, [2006] B.C.J. No. 1991].

The Problem

Generally, a corporation's directors, officers, and other shareholders (which, for simplicity's sake, we'll refer to collectively as "officers") aren't personally liable if they commit an offence while carrying out their corporate duties. However, the corporation itself is liable for the misconduct of its officers. If an officer does something wrong, prosecutors will usually target the company and not try to impose personal liability on the officer for the same conduct. But in *Dulay*, prosecutors went after both—and they won. **The lesson:** A company and an officer can both be liable for an environmental offence.

The Explanation

A corporation is a legal entity that's separate and distinct from its officers. The corporation is responsible for its own debts, legal violations, and other liabilities. Thus, corporate officers aren't generally responsible for the corporation's liabilities. This principle applies even in a small corporation in which one person is the sole shareholder, officer, and director. This protection against personal liability for a corporation's debts and transgressions is one reason businesspeople form corporations in the first place.

But an officer's protection against personal liability is subject to certain limitations depending on the kind of legal action involved. The protection is strongest in civil proceedings, like lawsuits for damages. Thus, it's very hard—although not impossible—to sue officers personally for misconduct committed by their corporations. The protection is weakest in prosecutions for violations of a criminal or regulatory statute, such as a provincial environmental or OHS act.

From a public policy standpoint, holding officers personally

liable for a corporation's crimes or regulatory offences makes a lot of sense. If it were otherwise, the *Dulay* court explained, corporate officers would be free to form sham corporations with no real assets as a vehicle for committing crimes and environmental offences knowing that the corporation would take the fall for any legal ramifications and that they'd be able to walk away scot-free. And since the corporation has no assets, it wouldn't be able to pay whatever fines, damages, or other monetary penalties against it.

The other point illustrated by the *Dulay* case is that the option to hold a corporation and its officers liable for the same offence is more than just a legal theory. In certain circumstances, it's viable and desirable for prosecutors to go after both the company and its officers for the same offence. In addition to enhancing officer accountability, dual responsibility provides a greater level of deterrence against future violations. If corporate officers know that they won't be able to hide behind their corporations, they'll be less likely to commit offences in the first place and more inclined to take steps to ensure that the corporation doesn't either.

The Takeaway

The company in *Dulay* was very small and its size may have been a factor in the prosecution's decision to prosecute the officer as well as the company. But size isn't everything. After all, in many cases, prosecutors charge small companies with environmental offences without also going after their officers. What distinguishes *Dulay* from these cases is the nature of the officer's involvement in the offence. The officer wasn't off in corporate headquarters, completely unaware that his transfer station wasn't properly licensed. He not only had personal knowledge that the station didn't have a valid license, but also promised the enforcement officer that the site would be cleaned up and its operations stopped.

To sum up, officers can be prosecuted and held personally liable for their companies' environmental offences. In fact, the more involved officers are in the actions that form the basis of the offence, the more likely it is that prosecutors will go after both the company and its officers.