



***Reconciling Enforcement Statistics with Risk to Health in
Regulatory Offences v. “True” Penal Crimes***

**7th Annual International Conference
Law Enforcement & Public Health
Ottawa**

[Tuesday, July 15, 2025, 4 pm](#)

Bill Jeffery, BA, LLB, MA (in progress),
Executive Director & General Legal Counsel
BillJeffery@HealthScienceAndLaw.ca

How CHSL advocate public health law reforms

- **Publish**: policy reports, journal articles, op-eds, book chapters, briefing notes, technical briefs, news releases, etc.,
- **Testify**: before legislative committees, including the House of Commons Standing Cttee. on Health and relying on research published by the World Health Organization, U.S. National Academy of Medicine, United Nations, OECD, UNICEF, the Supreme Court, and systematic reviews indexed in PubMed and Cochrane Library, etc.
- **Publicize in news media**: interviews for print, online and broadcast media
- **Participate**: in formal advisory committees, e.g., the Trans Fat Task Force, Sodium Working Group and standard-negotiating bodies such as the Codex Food Labelling Committee and the U.N. Human Rights Council negotiations on a draft treaty on business and human rights and the right to development, and four Political Declarations of the High-Level Meeting on the Prevention and Control of Non-Communicable Disease
- **Convene**: experts, policy-makers, journalists, e.g., Biennial Championing Public Health Nutrition and, soon, an SDG successor
- **Meet elected officials and government bureaucrats**: esp. at Health Canada, the Canadian Food Inspection Agency, the House of Commons, and occasionally, in provincial and municipal health authorities
- **Mobilize support**: meet, call, write NGOs, experts, and grassroots, other intermediary decision-makers to:
 - seek their advice (and share ours), and
 - mobilize their support (and offer ours).

Conflict of Interest Disclosure since July 2022

All support for the present manuscript (e.g., funding, provision of study materials, medical writing, article processing charges, etc.) The author's relationships/activities/interests should be defined broadly. For example, if your manuscript pertains to the epidemiology of hypertension, you should declare all relationships with manufacturers of antihypertensive medication, even if that medication is not mentioned in the manuscript.

1. Grants or contracts from any entity (if not indicated in item #1 above): **Carleton University Dept. of Law & Legal Studies to teach Health Law.**
2. Royalties or licenses: **None.**
3. Consulting fees: **None.**
4. Payment or honoraria for lectures, presentations, speakers bureaus, manuscript writing or educational events: **NB Lung Association (nominal re expenses to attend chemical safety meetings)**
5. Payment for expert testimony: **None.**
6. Support for attending meetings and/or travel: **Nominal donation from individual to attend WHO Congress re marketing of breastmilk substitutes.**
7. Patents planned, issued or pending: **None.**
8. Participation on a Data Safety Monitoring Board or Advisory Board: **None.**
9. Leadership or fiduciary role in other board, society, committee or advocacy group, paid or unpaid: **Executive Director, CHSL; member of the Steering Committee of Coalition of Healthy School Food, Chair of the Toxics Caucus of the Canadian Environmental Network, accredited by the United Nations Economic and Social Council, member and former founding VP of the Geneva Global Health Hub, member of the Partners Group of the global School Meals Coalition**
10. Stock or stock options: **None.**
11. Receipt of equipment, materials, drugs, medical writing, gifts or other services: **None.**
12. Other financial or non-financial interests: **None**

Currently funded by:

- Canadian Bar Association (poverty-reduction project)
- Ken and Debbie Rubin Public Interest Advocacy Fund (poverty-reduction project)
- Law Foundation of Ontario public interest fellowship for articling students & Sustainable Development Goals shadow report

Starting points & legal context

1. **Rule of law:** uniform treatment (*Charter of Rights and Freedoms preamble*)
2. **Protection of public safety:** is or should be a/the main objective of public laws
3. **Sentencing principles:** Criminal Code specifies for “true crimes”; only common law for “public welfare offenses.” Ranges bound by statutes & regulations.
4. **Prosecutorial discretion:** Enforcement policy, generally, is reviewable by political masters; prosecutorial discretion in specific cases is not.
5. **Over-enforcement & insensitivity to social determinants of health and “true” crime enforcement:** esp. ref poverty, mental illness, addiction, visible minority, Indigenous status are main critiques of “true crime” laws.

Preview of conclusion:

1. **Under-enforcement, lenient sentences of health protection laws:** Discordance with actual causes of death & physical harm begs new explanations of sentencing and regulations (and involvement of large completing companies and NGOs raise stakes).
 - on average, US police officer makes one serious crime arrest every two months. Klockards, 1988.
 - on average, a Canadian Food Inspection Agency cites an offense leading to a monetary penalty every 16 years (CFIA, 2025)

Social Theory to the rescue?



Emile Durkheim, the so-called father of sociology, stated that law:

*“is nothing more than the most stable and precise element ...[of] **social solidarity...** That **visible symbol is the law.**”*

Durkheim, Émile. *De la Division du travail social*, 2nd ed.

Paris: Félix Alcan. *The Division of Labor in Society*, 2nd ed. (Paris: 1902)

Translation by WD Halls with an introduction by Coser L. New York: Free Press, 1984.

Ontological security from certainty of detection and proportionality of enforcement (Michel Foucault)



Published 2013

Foucault described **six “rules” for punishment** on which health protection regulation seems to fail on the first three by such under-enforcement and fails the latter three by excluding civil society from the explanations and possibility to challenge the regulatory forbearance.

1. Minimum quantity (proportionality between the punishment and benefits obtained from the crime);
2. Sufficient ideality (ensuring sufficient fear of the disadvantages of the crime);
3. Lateral effects (deter others from offending by making the harm well known);
4. Perfect certainty (clearly stated, published criminal code, and striving for 100% detection and prosecution of offenders);
5. Common truth (using only fair and scientific means of pursuing the truth); and
6. Optimal specification (a fully particularized, published code of offences and corresponding penalties with punishment suited to the circumstances and its impact on the offender, including to preventing recidivism).

His compelling concept of the panopticon as a means of violation detection outside of the prison (i.e., by surveillance) is probably being realized beyond his wildest imagination (with surveillance by Internet, drone, satellite imaging, closed circuit TV, DNA matching etc., etc. (He died in 1984, coincidentally, the title of George Orwell’s book about the surveillance society.)

However, Foucault was probably too optimistic about how effective detection would be to deter violations (with flimsy or no penalties for violators detected) and he did not foresee the significance of isolating victims of health protection offences from each other and detailed information about violations for which there were no penalties.

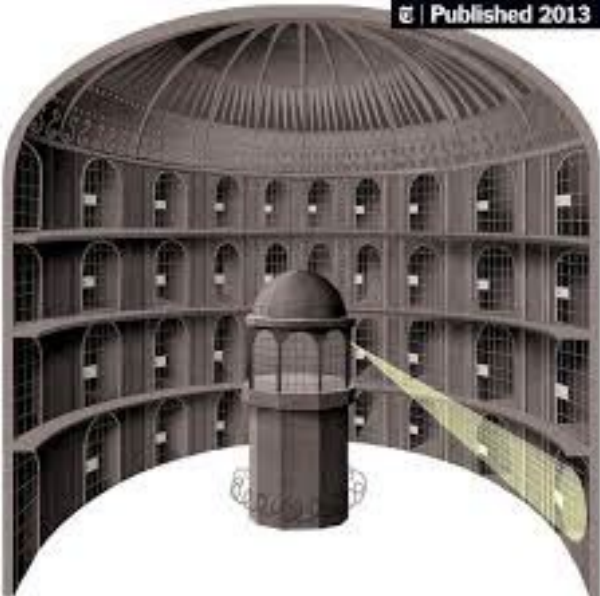


Table 1:
Estimates of Population-Attributable Risk of Death of Regulated and Regulatable

Risk	Estimated deaths in Canada (2021 Global Burden of Disease Study)	Canadian expert sources	Other source estimates
Tobacco	34,171	46,000 ^a	
High alcohol use	10,374	17,098 ^b	
Diet low in whole grains	6,482		
Occupational exposure to asbestos	5,829	2,000 ^c	13 ^d
Drug use	4,762	10,193 ^e	
Diet high in red meat	4,331		
Air pollution	3,976	15,300 ^f	
Diet high in processed meat	2,835		
Lead Exposure	2,215		
TRUE CRIME: Homicide		788 ^j	
Occupational exposure to silica	439		
Occupational injuries	421		
Occupational injuries in federally regulated workplaces		67 (in 2022) ^g	
Food borne pathogens		238 ⁱ	
TRUE CRIME: Negligence causing death		99 ^l	
Unsafe water source	64		
Suboptimal breastfeeding	11	33 ^h	
Total selected regulatable causes of death	75,910		

SOURCES: Unless otherwise indicated in table footnotes set out in this endnote,²⁶ all estimates are from: Global Burden of Disease Collaborative Network. Global Burden of Disease Study 2021 (GBD 2021) Results. Seattle, United States: Institute for Health Metrics and Evaluation (IHME), 2022. Available at: <https://vizhub.healthdata.org/gbd-results?params=gbd-api-2021-permalink/7566149f8fa85ce5444c18be60779c0>

Core criminal sentencing principles

Criminal Code, R.S.C., 1985, c. C-46. (added in 1996).

Available at: <https://laws-lois.justice.gc.ca/eng/acts/c-46/page-120.html#h-130799>

Section 718 states:

*The fundamental purpose of sentencing is to **protect society** and to contribute, along with crime prevention initiatives, to respect for the law and the **maintenance of a** just, peaceful and **safe society** by imposing just sanctions that have one or more of the following objectives:*

(a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;...

(b) to deter the offender and other persons from committing offences;

(c) to separate offenders from society, where necessary;

(d) to assist in rehabilitating offenders;

(e) to provide reparations for harm done to victims or to the community; and

*(f) to promote a sense of responsibility in offenders, and acknowledgment of the **harm done to victims or to the community**.*

Criminal Code, R.S.C., 1985, c. C-46. (added in 1996). Available at: <https://laws-lois.justice.gc.ca/eng/acts/c-46/page-120.html#h-130799>

“[50] But sentencing must in all circumstances be guided by the cardinal principle of proportionality.”

R. v. Bissonnette, 2022 Supreme Court of Canada, 23 (CanLII), [2022] 1 SCR 597, <<https://canlii.ca/t/jpf5d>>

Fines in the Criminal Code

Fines on organizations

735 (1) An organization that is convicted of an offence is liable, in lieu of any imprisonment that is prescribed as punishment for that offence, to be fined in an amount, except where otherwise provided by law,

(a) that is in the **discretion of the court, where the offence is an indictable** offence; or

(b) not exceeding **one hundred thousand dollars, where the offence is a summary** conviction offence.

- “without the safeguards provided for humans”

- “Very often the object is to take away the profit from crime and at the same time impose something more than that as punishment.”

Clayton C. Ruby, Gerald J. Chan, Nader R. Hasan, Annamaria Enenajor Sentencing, (Toronto: LexisNexis, 2017) at 512 and 514.

- And is silent on the ability of the corporation to pay. *R. v. Metron Construction Corporation*, 2013 Ontario Court of Appeal 541 (CanLII) at para 97, <<https://canlii.ca/t/g0bl3>>

- Federal ***Interpretation Act*, R.S.C., 1985, c. I-21**

34(2) All the provisions of the [Criminal Code](#) relating to indictable offences apply to indictable offences created by an enactment, and all the provisions of that Code relating to summary conviction offences apply to all other offences created by an enactment, except to the extent that the enactment otherwise provides.

* And by provincial offences statutes (e.g., *Provincial Offences Act*, R.S.O. 1990, c. P.33. Available at: <https://www.ontario.ca/laws/statute/90p33>

Criminal Code sections 718.21, 732.1 (3.1) re “organizations”

(the latter cited by only 14 reported judgements)

Organizations, Additional factors

718.21 A court that imposes a sentence on an organization shall also take into consideration the following factors:

- (a) any advantage realized by the organization as a result of the offence;
- (b) the degree of planning involved in carrying out the offence and the duration and complexity of the offence;
- (c) whether the organization has attempted to conceal its assets, or convert them, in order to show that it is not able to pay a fine or make restitution;
- (d) the impact that the sentence would have on the economic viability of the organization and the continued employment of its employees;
- (e) the cost to public authorities of the investigation and prosecution of the offence;
- (f) any regulatory penalty imposed on the organization or one of its representatives in respect of the conduct that formed the basis of the offence;
- (g) whether the organization was — or any of its representatives who were involved in the commission of the offence were — convicted of a similar offence or sanctioned by a regulatory body for similar conduct;
- (h) any penalty imposed by the organization on a representative for their role in the commission of the offence;
- (i) any restitution that the organization is ordered to make or any amount that the organization has paid to a victim of the offence; and
- (j) any measures that the organization has taken to reduce the likelihood of it committing a subsequent offence.

“our law has now moved away from reliance on fines to punish and rehabilitate corporate offenders. The list of mitigating and aggravating factors in section 718.21” ?? in Clayton C. Ruby, Gerald J. Chan, Nader R. Hasan, Annamaria Enenajor Sentencing, (Toronto: LexisNexis, 2017) at 541.

Optional conditions — organization

732.1 (3.1) The court may prescribe, as **additional conditions of a probation order made in respect of an organization**, that the offender do one or more of the following:

- (a) make restitution to a person for any loss or damage that they suffered as a result of the offence;
- (b) **establish policies, standards and procedures to reduce the likelihood of the organization committing a subsequent offence;**
- (c) communicate those policies, standards and procedures to its representatives;
- (d) report to the court on the implementation of those policies, standards and procedures;
- (e) identify the senior officer who is responsible for compliance with those policies, standards and procedures;
- (f) provide, in the manner specified by the court, the **following information to the public**, namely,
 - (i) the offence of which the organization was convicted,
 - (ii) the sentence imposed by the court, and
 - (iii) any measures that the organization is taking — including any policies, standards and procedures established under paragraph (b) — to reduce the likelihood of it committing a subsequent offence; and
- (g) comply with any other reasonable conditions that the court considers desirable to prevent the organization from committing subsequent offences or to remedy the harm caused by the offence.

Consideration — organizations

(3.2) Before making an order under paragraph (3.1)(b), a court shall consider whether it would be more appropriate for another regulatory body to supervise the development or implementation of the policies, standards and procedures referred to in that paragraph.

Fining Corporations

Clayton C. Ruby, Gerald J. Chan, Nader R. Hasan, Annamaria Enenajor *Sentencing*, (Toronto: LexisNexis, 2017) at 532

“Prosecuting corporations is **expensive and time-consuming**, and, when all that can be obtained is a **fine which is usually passed on to consumers** or to shareholders, there is little real corporate penalizing taking place. Prosecutors have shown a lack of eagerness to charge senior corporate officials for wrongdoing, and critics have charged that this results in **effective immunity for corporate wrongdoing**, since criminal schemes that go wrong are paid for not by the individual wrongdoer but rather by the corporation itself. A corporate official may well have made a profit for the corporation out of the enterprise and be **praised internally for his skill. It may be that little or no stigma** attaches to the corporate officers who perpetrated the crime.”

Prison fine-equivalents

The Canadian Registry of Wrongful Convictions: <https://www.wrongfulconvictions.ca/>

Name	Date of Conviction	Date Overturned	Total Time Served	Year of Award	Amount of Award
Norman Fox	1976	1984	8 years, 6 months, 17 days	1985	\$275,000
Donald Marshall Jr	1971-11-04	1983-05-10	11 years, 5 months, 28 days	1990	\$1,500,000
Michael McTaggart	1987-09-14	1990-02-09	1 year, 8 months	1994	\$230,000
Herman Kaglik	Dec-92	1998	4 years, 4 months	2000	\$1,100,000
Richard Norris	Dec-79	1991-11-29	9 months	2001	\$507,000
Thomas Sophonow	1983-03-17	1985-12-12	3 years, 9 months, 1 day	2002	\$2,600,000
Clayton Johnson	1993-05-04	2002-02-18	5 years	2004	\$2,500,000
David Milgaard	1970-01-31	1992-04-06	22 years, 10 months, 17 days	2004	\$10,000,000
Gregory Parsons	1994-02-15	1996-12-03	1 month 14 days	2006	\$1,300,000
Simon Marshall	1997-06-27	2005-09-23	6 years, 1 month	2006	\$2,300,000
Steven Kaminski	Sep-92	2004-02-24	7 years	2006	\$2,200,000
Randy Druken	1995-03-18	2000-08-20	6 years, 26 days	2006	\$2,100,000
Steven Truscott	1959-09-30	2007-08-28	10 years, 4 months, 8 days	2007	\$6,500,000
Joseph Dean Webber	2007-12-07	2010-01-06	1 year, 7 months, 16 days	2011	\$392,500
Rejean Hinse	1964-11-03	1997-01-21	8 years	2011	\$4,500,000
Ivan Henry	1983-03-15	2010-10-07	26 years, 10 months, 14 days	2016	\$8,000,000
Average payment per month					\$35,944
Average payment per year					\$431,323

Criminal Code of Canada provisions of interest

(<https://laws-lois.justice.gc.ca/PDF/C-46.pdf> only one criminal code in Canada)

- Health is used in a broad sense only once, in the definition of “Common Nuisance”:

180 (1) Every person is guilty of an indictable offence and liable to imprisonment for a term of not more than two years or is guilty of an offence punishable on summary conviction who commits a common nuisance and by doing so

- (a) endangers the lives, **safety or health of the public**, or*
- (b) causes **physical injury** to any person. [Empasis added.]*

- Criminal negligence causing death is most analogous to harmful regulatory offences

*Section 220 Every person who by criminal negligence **causes death to another person** is guilty of an indictable offence and liable*

- (a) where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and*
- (b) in any other case, to imprisonment for life.*

the actual sentences range from several months to eight years imprisonment (as of 2017).

Clayton C. Ruby, Gerald J. Chan, Nader R. Hasan, Annamaria Enenajor Sentencing, (Toronto: LexisNexis, 2017) at 1238.

Incidents and charge rates for selected crimes in Canada, 2022-2023

sorted by charge rate with crimes of community safety flagged

Violations	Total, all violations	Criminal negligence causing death	Homicide	Operation of a motor vehicle while impaired (alcohol)	Total Criminal Code traffic violations	Total, all Criminal Code violations (excluding traffic)	Shoplifting \$5,000 or under	Total property crime violations
Actual number of incidents	2,526,877	71	778	53,579	123,877	2,342,932	155,280	1,359,949
Total, persons charged	591,770	60	564	28,674	55,446	509,102	27,151	111,946
Percent of incidents charged	23%	85%	72%	54%	45%	22%	17%	8%

Statistics Canada. Table 35-10-0177-01 Incident-based crime statistics, by detailed violations, Canada, provinces, territories, Census Metropolitan Areas and Canadian Forces Military Police, July 25, 2024. <https://www150.statcan.gc.ca/t1/tb11/en/tv.action?pid=3510017701>

Incidents and penalties for selected crimes, for single guilty findings in Canada, 2022-2023

(sorted by % custodial sentences and flagging crimes involving risk of physical harm)

	Total offenses	Homicide	Motor vehicle theft	Theft	Crimes against property	Crimes against the person	Impaired driving	Total offenses for a company
Total guilty	54,879	89	204	2,270	7,250	14,408	12,137	23
Custody	11,265	60	74	733	1,932	2,678	837	0
Conditional sentence	4,208	3	25	193	781	1,462	578	0
Probation	17,796	1	84	970	3,430	7,884	1,441	1
Fine	14,732	0	9	182	474	118	9,174	14
Other sentences (including restitution)	6,878	25	12	192	633	2,266	107	8
% custodial sentence	21%	67%	36%	32%	27%	19%	7%	0%
% custody or peril thereof	61%	72%	90%	84%	85%	83%	24%	4%
% fine	27%	0%	4%	8%	7%	1%	76%	61%

Statistics Canada. Table 35-10-0031-01 Adult criminal courts, guilty cases by most serious sentence

DOI: <https://doi.org/10.25318/3510003101-eng>

Factors to consider in sentencing public welfare offenses

1. *R. v. Terroco Industries Limited*, 2005 [Alberta Court of Appeal](#), 141 (CanLII), <<https://canlii.ca/t/1k3n3>>

- Factors to consider in environmental offences:

- (1) culpability,
- (2) prior records and past involvement with the authorities,
- (3) acceptance of responsibility,
- (4) **damage/harm** and
- (5) deterrence.

- “[65]...Offences under these statutes are similar to manslaughter in that they may be committed in practically infinite variety. Manslaughter ranges from near accident to near murder. These offences range from incidents where due diligence is a near miss to ones where the Crown nearly establishes intentional conduct. At the same time, like offences for like offenders should attract similar sentences. The range of sentence for similar offences by similar offenders should not be so large as to be disparate.”

2. *Ontario (Environment, Conservation and Parks) v. Henry of Pelham Inc.*, 2018 [Ontario Court of Appeal](#) 999 (CanLII), <https://canlii.ca/t/hwgfs> [emphasis added]

...The overarching objective of public welfare legislation, as the Supreme Court of Canada held in *R. v. Wholesale Travel Group* [in 1991]...is the protection of the public. As [the Ontario Court of Appeal] held in *R. v. Cotton Felts Ltd.*... (1982),...**deterrence is the paramount factor in sentencing under public welfare statutes**...

3. *R. v. Cotton Felts Ltd.*, 1982 CanLII 3695 ([Ontario Court of Appeal](#)), <https://canlii.ca/t/gcxgm> at 294 and 295.

“The amount of the fine will be determined by a complex of considerations, including the size of the company involved, the scope of the economic activity in issue, the **extent of actual and potential harm to the public**, and the maximum penalty prescribed by statute. Above all, the amount of the fine will be determined by the need to enforce regulatory standards by deterrence...The paramount importance of deterrence in this type of case has been recognized by this court in a number of recent decisions.”

“This aspect of deterrence is particularly applicable to public welfare offences where it is essential for the proper functioning of our society for citizens at large to expect that basic rules are established and enforced to protect the physical, economic and social welfare of the public.

Sentencing in public welfare offences (continued)

4. *R. v. United Keno Hill Mines Ltd.*, [1980] Yukon Y.T. 10 (YTC.), *R. v. Picadilly Investments Ltd.*, 2008 British Columbia Provincial Court, BCPC 235 (CanLII), <https://canlii.ca/t/20pgn>, etc.

Unique considerations in sentencing for offences involving human safety and security

- Nature of offence
- Compliance history
- Previous convictions or history
- Size of the Corporation
- Illegal Gain
- **Damage to the Society**
- Co-operative Attitude of Company
- Presence of Corporate Officials

5. Fine of \$25,000 imposed under Nova Scotia Occupational Health and Safety Act (where maximum fine of \$250,000 was available) for employee who died by **drowning in a manure pit where the security barricade had been removed**. *R. v. Sutherland*, 2009 Nova Scotia Provincial Court 21 (CanLII), <https://canlii.ca/t/23g9m>

6. A British Columbia Court of Appeal panel unanimously upheld fines imposed by the superior court on several cement and concrete companies for anti-competitive business practices, by writing:

« ***I see no particular virtue in foreseeability***. Indeed, I see the disadvantage that one may budget for a fine when he decides to commit the offence. The complaint seems to be that the price of a permit to commit the crime has been raised without notice and that this is unfair to the conspirators. That argument must fail. As to the shock at the size of the fines I say, "Good". I hope that some people are sufficiently shocked that they will reject this sort of conduct in the future. » *R. v. Ocean Construction Supplies Ltd. and Six Other Corporations*, 1974 CanLII 323 (BC CA) at 326, <https://canlii.ca/t/gwgwd>

Enforcing the *Canadian Environmental Protection Act*



COMPLIANCE AND ENFORCEMENT POLICY FOR THE
CANADIAN ENVIRONMENTAL PROTECTION ACT, 1999 (CEPA, 1999)

MARCH 2001

Prosecution will always be pursued when:

- there is death of or bodily harm to a person;
- there is serious harm or risk to the environment, human life or health;

When making a recommendation to Crown prosecutors with respect to sentencing, enforcement officers will apply the criteria found in CEPA, 1999. Examples of those criteria are:

- the harm or risk of harm caused by the commission of the offence;
- an estimate of the total costs to remedy or reduce the negative effect of any damage caused by commission of the offence;
- whether or not any corrective or preventive action has been taken or proposed by the offender;
- whether the offence was committed intentionally, recklessly or inadvertently;
- whether there was negligence or a lack of concern on the part of the offender;
- what profits or benefits the offender earned as a result of the commission of the offence;
- the offender's compliance history; and
- in the case of an aboriginal offender, any particular circumstances of the aboriginal offender.

Enforcing *CEPA* (continued)



THE VOLKSWAGEN DEFEAT DEVICE CASE AND ENFORCEMENT OF THE CANADIAN ENVIRONMENTAL PROTECTION ACT, 1999

Report of the Standing Committee on Environment and
Sustainable Development

Francis Scarpaleggia, Chair

JUNE 2021
43rd PARLIAMENT, 2nd SESSION

Recommendation 4

- The Committee recommends that the Government of Canada increase the minimum penalty amount of administrative monetary penalties
- Witnesses noted that the certainty of being prosecuted may not be very high in Canada:
- ECCC “initiates very few investigations and lays few criminal charges under CEPA” and even in the milder form of ticketing is “exceedingly rare,...during the 2016–17 fiscal year, 2,721 warnings were issued while 26 criminal investigations were initiated”

Toxic Chemicals



Enforcement of the Canadian Environmental Protection Act (presumably, to reduce thousands of toxic chemicals and particulate matter pollution deaths per year)	
Maximum penalty that Parliament, through the <i>Environmental Violations Administrative Monetary Penalties Act</i> in 2009, and the amount that government eventually (in 2017) authorized inspectors to impose through the <i>Environmental Violations Administrative Monetary Penalties Regulations</i> actually allowed.	\$25,000
Environment and Climate Change Canada # of enforcement actions (and # leading to financial penalty) in 2022-2023	416 (163)
Average amount of administrative monetary penalty	\$1,018
# of quasi-criminal fines imposed in 2024	2
# of staff at Health Canada (Chemicals Management Plan program) and Environment and Climate Change Canada ("Aquatic Ecosystems Health, Substances and Waste Management" program) dedicated to regulating toxic chemicals this year	640 and 1,432
Years that the Auditor General's Office Commissioner of the Environment and Sustainable Development audited the regulation of toxic chemicals because "Given the importance of controlling toxic substances..."	1999, 2002, 2009, 2011, and 2018
In 2018, the Auditor General's Commissioner of the Environment and Sustainable Development reported: <i>[W]e found overall that risk to the environment and human health was not a key criterion in prioritizing most of Environment and Climate Change Canada's enforcement activities...the Department did not know whether its targeted enforcement activities focused on businesses that posed the greatest risks to human health and the environment...We found that most toxic substance regulations received few inspections and enforcement measures"</i>	

Regulation of Pesticides by the Pest Management Regulatory Agency (Health Canada)



Pest Management Regulatory Agency Enforcement Statistics (2022-2023) ⁴⁵	
Pesticide incident reports received	1,566
Scientific studies received through incident reporting	88
Compliance verifications	879
Enforcement actions taken	1,885
5 Administrative Monetary Penalties (number/combined total amount)	\$71,000

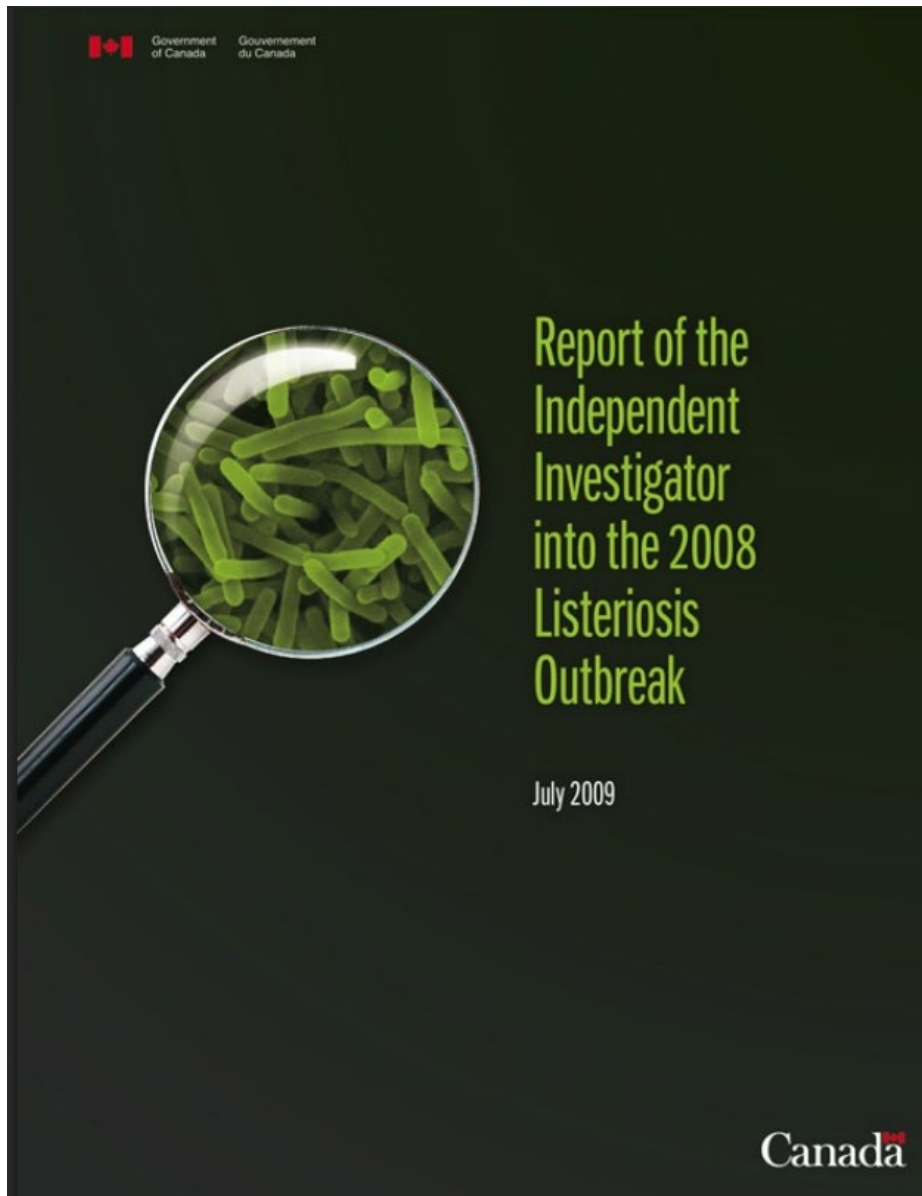
- Cargill was fined \$60,000 by the Pest Management Regulatory Agency (on behalf of the Minister of Health) for “using a pest control product in a way that is inconsistent with the label directions and in a way that endangers human health or the environment.” Such a small penalty will not register on its giant balance sheet; the US-based company has US\$177 billion in global revenue and 8,000 staff employed in Canada.
- In 2025, Walmart was fined \$60,000 for selling six unregistered pesticides to its consumer market; Walmart is the largest company in the world with nearly US\$700 billion in global revenue.

Food Safety



Petri dish with a colony of *Cronobacter sakazakii*

Enforcement by the Canadian Food Inspection Agency (presumably to reduce 238 food safety deaths per year)	
# of inspectors (and total staff) in 2025-2026	2,287 (6211)
Amount that the <i>Safe Foods for Canadians Act</i> authorizes courts to fine serious violations using quasi-criminal procedure	\$5 million- and 2-years imprisonment
Number of fines <u>actually imposed</u> since 2019	Five**
Maximum penalty that Parliament, through the <i>Agriculture and Agri-Food Administrative Monetary Penalties Act</i> , authorized government to impose and amount that <i>Regulations</i> <u>actually allowed</u> inspectors to fin	\$25,000
Food product recalls in 2024 that warned the possibility of death due to <i>Listeria Monocytogenes</i> , <i>Cronobacter</i> , Cyanide or E-coli.	30
Likelihood of inspector citing an offense leading to a financial penalty for a food safety matter in a 40-year career	30%
Average frequency of citing an offense of any sort leading to a financial penalty	Once per 16 years
**A \$1.1-million-dollar fine in January 2025 penalized misrepresenting imported crab as a product of Canada in exports to China; remarkably, this enforcement action protected neither food safety nor Canadians.	



- CFIA enforcement policy aims to achieve “fairness, predictability and consistency”
- 22-23 died as a result of Listeriosis linked to contaminated meat from Maple Leaf processing plant: **fines=\$0**
- \$27 million lawsuit settlement approved: *Bilodeau v. Maple Leaf Foods Inc.*, 2009 CanLII 10392 (ON SC), <<https://canlii.ca/t/22qm8>>

Standard product recall advice for capitulation to industry

- Efforts to link recalled products to individual illnesses and deaths are not conducted systematically by regulators; something that one might expect from a large inspection workforce with stated aspirations to protect public health and led by curious scientists. Quite the contrary, the standard advice provided by the recall notices (and typically echoed by media outlets) is:

“Recalled products should be thrown out or returned to the location where they were purchased.”

- A message more conducive to accountability, general deterrence, compensation, and public health, might instead advise:

“If you or a loved one gets sick after consuming the recalled product, clearly mark the package to ensure that nobody else in your household eats it, freeze it, and take pictures of the package including the Universal Product Code (UPC bar code) and receipt or other proof of purchase and provide samples to your physician for testing and your lawyer.”

Enforcement of occupational health and safety standards (for federally regulated companies)



Imagine from the Canadian Cancer Society.

Enforcement of the Canada Labour Code (presumably to reduce the 67 annual deaths caused by occupational injuries and, likely thousands of deaths due to federally regulated toxic chemicals)	
Maximum administrative monetary penalty authorized by the Act, and the amount that it restricted to by the regulations,	\$250,000 _____
Average # of quasi-criminal penalties per year and range of fines	Two (\$40,000- \$550,000)
Number of administrative monetary penalties imposed since October 2022	61 (24/year)
Range of administrative monetary penalties imposed	\$1,500 to \$87,000
None of the prosecutions concerned the toxic metal lead (a major cause of harm in Canada) and the sole enforcement action concerning asbestos led to a mere warning.	

Enforcement of provincial regulation of alcohol

(and informing more protective countermeasures)



Provincial Regulation of Alcohol (that could reduce consumption of alcohol by minors and inform the efforts to reduce Ontario's share 18,000 alcohol-related deaths/year)	
# of violations of selling alcohol to children and other unspecified offences detected by the Ontario Alcohol and Gaming Commission Mystery Shopper and other unspecified inspections violations in 2021-2022	1,297 (including 116 serious violations)
Number of administrative monetary penalties issued	21 (i.e. 2%)
Rate of non-compliance based on single occasion inspections	1297 of 11,134 inspections (12%)
Information in the enforcement report on quantum of fines, follow-up to determine repeat offenders, and justification for failing to fine violations, especially serious violations	None
Number of alcohol sales licenses regulated by the Ontario Alcohol and Gaming Commission in 2022-2023 (excluding Special Occasion Permits)	32,845
No information was provided in the enforcement report on quantum of fines, follow-up to identify repeat offenders, or justifications for failing to fine violations, especially serious violations	

Institutional conflicts of interest of health inspectors

- 6,211 staff (including 2,287 “Monitoring and Enforcement for Food Safety and Consumer Protection” staff);
- Inspectors required to have minimal training and successful deterrence might mean less work for inspectors.

Law Enforcement Service	Amount of Training (according to online recruitment notices of each agency)
RCMP	26 weeks + high school diploma
Ontario Provincial Police	18 weeks + high school Diploma
Ottawa Police	10 weeks + high school diploma
Canadian Food Inspection Agency Inspectors	College technical diploma in specified list of food- related topics
Municipal Public Health Inspectors	University degree and 12 weeks of training by Canadian Association of Public Health Inspectors

Social Determinants of Health & Crime *meet* Commercial Determinants of Health (WHO report due Sept 2025)

Gregg Caruso



1. Poverty
2. Domestic Violence or Abuse
3. Housing
4. Cultural and family background
5. Level of education
6. Cultural characteristics
7. Mental Health
8. Age
9. Gender
10. Social environments
11. Physical environments.

- Social Determinants of crime and health (Caruso G (2017), *Public Health and Safety: The Social Determinants of Health and Criminal Behavior*. Lanham, MD: Gregg D. Caruso. Available at: <https://core.ac.uk/download/pdf/131215565.pdf>



**World Health
Organization**

- *The private sector influences the social, physical and cultural environments through business actions and societal engagements; for example, supply chains, labour conditions, product design and packaging, research funding, lobbying, preference shaping and others.*
- *Commercial determinants of health impact a wide range of risk factors, including smoking, air pollution, alcohol use, obesity and physical inactivity, and health outcomes, such as noncommunicable diseases, communicable diseases and epidemics, injuries on roads and from weapons, violence, and mental health conditions.*

Conclusions & Recommendations

Conclusions

1. **Lenient enforcement of health protection law:** Violations of health protection laws leading to death or the risk of death are rarely penalized and, when they are, the penalties are generally trivial
2. **Intent seems to be a factor in sentencing for strict and absolute liability offenses:** Stricter enforcement seems to hinge on consideration of mens reus and other factors related to obstruction of justice, not amount of community harm
3. **Stricter enforcement of corporate offenders where NGOs are strong or (presumably) competing companies exert pressure:** There does seem to be a stricter enforcement in domains where civil society organizations are stronger (i.e., organized labour)
4. **Criminal victim surcharges seem tokenistic:** If a fine is imposed, the surcharge is 30% of that fine. If no fine is imposed, the surcharge is \$100 for summary conviction offences and \$200 for indictable offences.

Recommendations for enforcement and law reform

1. **FTP Governments (or the Supreme Court) should establish uniform principles for sentencing public welfare crimes that make prevention/deterrence and public safety paramount.**
2. **Health-protection law administrators should be fearless and goal-oriented.** Inspectors and their law-enforcement and law-making political bosses should take steps to reduce risks of the preventable illness and death through all possible lawmaking and law-enforcement levers and avoid systematically capitulating to harmful industries, such as food, alcohol, toxic chemicals.
3. **Judicial Analytics, an area for future research on community safety sentencing:** Artificial Intelligence has given rise to an emerging field of judicial analytics. Although, algorithmic errors in scrutinizing judgements to advocate greater proportionality between community safety and regulatory sentencing seems promising. Jena McGill and Amy Salyzyn, "Judging by the Numbers: Judicial Analytics, the Justice System and its Stakeholders" (2021) 44:1 *Dalhousie Law Journal* 249.
4. **Commercial & social Determinant of Health and Crime:** The relationship between regulating the commercial determinants of health and the potential benefits for health and the reduction in crime needs further study (including the impact of corporations, generally, on curbing law, policy and public spending to reduce poverty and address mental illness and additions, not addressed in this paper.) Underenforcing public welfare crimes visits its own kind of slow violence on society: blaming the victim and accepting acute and chronic illness leading to premature death and disability.