

Blakes Bulletin

White Collar Crime

Government of Canada Re-Introduces Bill Seeking to Create Mandatory Jail Sentences for White Collar Crime

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In an effort to deter and punish white collar crime, the Government of Canada has re-introduced legislation that will provide for tougher sentences for convictions involving fraud. Bill C-21: *An Act to Amend the Criminal Code (Sentencing for Fraud)* was introduced on May 3, 2010 (to view Bill C-21, House of Commons, First Reading, May 3, 2010 online, click [here](#)). Bill C-21 is a re-introduction of Bill C-52: *An Act to Amend the Criminal Code (Sentencing for Fraud)*, which did not become law before the prior session of Parliament ended on December 30, 2009.

The re-introduced legislation again proposes significant changes to white collar criminal sentencing involving sentencing length, sentencing factors, and a requirement to consider restitution.

According to Statistics Canada, there were 10,001 cases of fraud across Canada between 2006 and 2007 in which the accused was found guilty. (For further information see Statistics Canada, CANSIM, Table 252-0046, "Adult criminal court survey, number of guilty cases, by type of sentence, annual." A footnote to the table explains that because "[c]ases can have more than one sentence ... sanctions ... will not add to 100%". Data in CANSIM is derived from the Adult Criminal Court Survey.) A recent guilty plea by former Montréal investment advisor Earl Jones and an alleged C\$100-million Ponzi scheme in Calgary have again brought increased public awareness of fraud in Canada.

A key component of Bill C-21 is that it proposes mandatory jail sentences of at least two years for fraud involving more than C\$1-million. In addition, where there are multiple fraud convictions, each for less than C\$1-million but totalling in aggregate more than C\$1-million, the minimum sentence is still to apply.

At present, section 380.1(1) of the *Criminal Code of Canada* (the *Criminal Code*) provides for a number of aggravating circumstances that a judge must consider when determining a sentence for fraud. Through Bill C-21, the government proposes to add additional sentencing factors that a judge must consider in determining a sentence for fraud (for a description of current sentencing factors, please see [Sentencing Options for White Collar Criminal Offences](#)). The new aggravated factors to be added to the existing aggravating circumstances presently in section 380.1(1) include:

- the financial and psychological impact of the fraud on the victim, given the victim's particular circumstances, including their age, health and financial situation;
- the offender's failure to comply with applicable licensing rules or professional standards; and
- the magnitude, complexity, and duration of the fraud and the degree of planning that went into it (to view Department of Justice, "Government of Canada Introduces Legislation to Stand Up for Victims of White-Collar Crime" (May 3, 2010) online, click [here](#)).

As a consequence of the proposed new aggravated factors, judges will have an increased ability to impose stiffer sentences for white collar criminals. Examples include:

- where a fraud was perpetrated against elderly investors without the means to regain their former income;
- where a fraud was purported by an individual who did not follow professional licensing rules or professional standards (for example, a securities broker, lawyer or accountant); and
- where a large fraud transpired or one that occurred over a substantial period of time.

Under section 740 of the *Criminal Code*, judges have a discretionary ability to order that restitution be paid to a victim. If passed, Bill C-21 would require that the judge

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consider a restitution order. Moreover, Bill C-21 would require the court to ask the prosecutor whether victims were given an opportunity to indicate whether they were seeking restitution. In addition, if a restitution order was not made, Bill C-21 would amend the *Criminal Code* to impose an obligation on judges to give reasons that are to be stated in the record as to why a restitution order was not imposed. As a result, if successfully enacted, Bill C-21 is likely to have the effect of increasing the frequency of restitution orders in Canadian fraud convictions.

Bill C-21 will still need to go through Second Reading, a Committee Report and Third Reading before it will become law.

Bill C-21 is an important development in the area of white collar crime. Historically, Canada has lagged behind the United States in both enforcement and sentencing of white collar crime. With the May 3, 2010 re-introduction of proposed amendments to the *Criminal Code*, the government has signaled its clear intention to strengthen the public's protection against white collar crime and to move closer towards the U.S. sentencing model.

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