

Chief Justice Robson's Prescient Interpretation of Corporate Criminal Liability

D A R C Y M A C P H E R S O N *

INTRODUCTION

When I began my engagement with this project, I expected to write a contribution that would serve as a survey of the contribution of Justice Robson to a large area of law. In my case, I thought it would be corporate and commercial law. But, as I read through Justice Robson's decisions in the area, I kept coming back to the decision in *R v Martin*. I was fairly confident that there would be other contributions that would attempt to draw conclusions about Justice Robson's personal characteristics, personal view of the law, and his overall attempt to shape the legal precedents of this province.

All of these things are valuable, and from my reading of the drafts of the contributions herein, the contributors have done this very well. Therefore, I decided to take what is a somewhat unique approach. I took a single case where, oddly enough, Justice Robson was in partial dissent, and compared his views, as espoused in the case, and those of his colleagues, with the views of the Supreme Court of Canada on the same subject much later on (in this case, more than half a century later). While the majority judgment gets some credit in the later judgment of the Supreme Court of Canada on the subject, Justice Robson gets no citation at all. Nonetheless, in my view, as will be seen below, there is much to suggest that Justice Robson's judgment is more explicitly in line with the jurisprudence that would come along later than were those of his colleagues.

* Professor MacPherson is a Professor in the Faculty of Law at the University of Manitoba. He is a Research Associate at the Marcel A. Desautels Centre for Private Enterprise and the Law. Professor MacPherson would like to thank Kate Wagar for her research assistance, and the Legal Research Institute of the University of Manitoba for research funding.

In *R v Martin*,¹ Justice Robson (as he then was) found himself in partial dissent in the Court of Appeal. Being in dissent was hardly a new phenomenon² for the man who was, at the time, often the panel's junior justice. Nonetheless, this case is not primarily raised for its discussion of the issues that caused Justice Robson to dissent.³ Rather, what was more interesting to me were two lesser aspects of his judgment in the case. The first of these was not meaningfully commented upon by the majority; the second aspect received universal agreement. Both of these issues relate to issues around criminal liability of corporate agents. The first was the suggestion that being a corporate agent (presumably, as opposed to acting on one's own behalf) would somehow affect the liability of the agent vis-à-vis the criminal law.⁴ The second is the idea that a controlling mind of the corporation could be guilty of conspiring with that corporation. As will be shown below, both of these concepts would find favour with the Supreme Court of Canada's jurisprudence on issues of corporate

¹ (1932), [1932] 3 WWR 1, [1933] 1 DLR 434, 40 Man R 524, 59 CCC 8 [*Martin* cited to DLR].

² See e.g. *Newton & Co v Wolvin* (1930), 39 Man R 285; *R v Banque Canadienne Nationale* (1930), 39 Man R 108; *Wrathall v Ripstein* (1932), 40 Man R 272.

³ The main point of his dissent was the count of theft relating to taking money from the company behind which he was the driving force was not proven. Justice Robson held that the evidence offered in respect of this count in the indictment did not actually relate to the crime alleged. See *Martin*, *supra* note 1 at 456–57, *per* Justice Robson, dissenting. In the view of Justice Robson, the idea of a conviction for theft requires a specificity of the value stolen, not merely a general deficiency in an account.

⁴ The civil law (as in the law of torts and contracts as opposed to the criminal law, and not the legal system of, for example, Quebec) is quite different in this regard. For example, as a general rule, where a corporate agent enters into a contract with a third party, the agent “drops out of the equation” and there is a direct contractual relationship between the third party, on the one hand, and the principal, on the other. On this point, see e.g. Cameron Harvey & Darcy MacPherson, *Agency and Partnership Law Primer*, 5th ed (Toronto: Thomson Reuters Canada Limited, 2016) at 95, and Gerald Fridman, *Canadian Agency Law*, 3rd ed (Markham, Ont: LexisNexis Canada Inc. 2017) at §6.6. The approach of allowing the liability of the corporation to limit or eliminate the liability of the purported agent is also consistent with the approach of most Canadian common-law jurisdictions that have statutory rules with regard to pre-incorporation transactions. On this point, see *Canada Business Corporations Act*, RSC 1985, c C-44, para. 14(2)(b); *Business Corporations Act*, RSA 2000, c B-9, para. 15(3)(b); *The Corporations Act*, CCSM, c C225, para. 14(2)(b); *Business Corporations Act* RSO c B.16, para 21(2)(b); *Business Corporations Act*, SNB 1981, c B-9.1, para. 12(2)(b); *Corporations Act*, RSNL 1990, c C-36, para 26(2)(b); *Business Corporations Act*, SNWT 1996, c 19, para. 14(2)(b); *Business Corporations Act*, SNWT (Nu.) 1996, c 19, para 14(2)(b); *The Business Corporations Act*, RSS 1978, c B-10, para 14(2)(b).

criminal liability, but this occurred more than five decades after Justice Robson and his colleagues were writing.

FACTS

In the case, Mr. Martin was a stockbroker.⁵ He had also been involved in discussions of a partnership with a Montreal firm.⁶ As a result, Martin caused the business to be transferred to a corporation.⁷ The accused's brokerage clients were informed in writing of the transfer of the business to the corporation.⁸ Though the corporation had three directors, the directors met only to pass the formal by-law of the corporation.⁹ The other two directors were salaried employees of the corporation.¹⁰ Martin held all but two of the 200,000 shares of capital,¹¹ and had effective control over the business.¹² According to an accountant at trial, the corporation was insolvent from the time of the business transfer.¹³ The corporation goes into liquidation 14 months after incorporation.¹⁴ Martin knew a year prior to liquidation that there was insolvency.¹⁵ Clients of the company had provided securities to cover trades on the margin.¹⁶ Martin borrowed against these securities for his own purposes.¹⁷ As a result of these transactions, and other methods, somehow, Martin ended up with hundreds of thousands of dollars of what had been his clients' money and other property.¹⁸ Martin was charged with theft and conspiracy. Ultimately, the entire Court would convict him of the former (though members of the

⁵ *Martin*, *supra* note 1 at 435, *per* Justice Dennistoun.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid* at 436.

¹⁰ *Ibid.*

¹¹ *Ibid* at 435-36.

¹² *Ibid* at 436.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid* at 437.

¹⁶ *Ibid* at 436.

¹⁷ *Ibid* at 437.

¹⁸ *Ibid* at 437-38.

majority would convict him of different counts then would Justice Robson in partial dissent).

ANALYSIS

1. The Controlling Mind Is Criminally Liable

A. Justice Robson

With respect to the first issue raised in this contribution (that is, the effect of a corporation being associated with the fraud where the controlling force behind the corporation is the direct perpetrator of the fraud), Justice Robson writes:

Then we come to the question as to the difference, if any, in Martin's responsibility because of the incorporation of the company and the existence, separate from himself, of the legal person with whom these customers did business. Of course, the effect of the case of *Salomon v Salomon & Co Ltd*, [1897] A.C. 22 is well known. It has not, as was suggested, inadvertently I think, been overruled, but it has been decided that its principle cannot be made use of to exempt a person, in effect constituting the company, from personal responsibility in criminal law from the penalties for frauds committed by him by means of such an agency. For this see *Rex v Grubb*, in the Court of Criminal Appeal [1915] 2 KB 683, 84 LJKB 1744. That case was similar to this and it contains many apposite remarks by Lord Reading, CJ, at p 1748 of the Law Journal Report, he is reported thus:

Whether the transactions are regarded as those of the company, directed and controlled by the appellant as the agent of the company, or whether they are regarded as the transactions of the appellant, using the company as the instrument to carry them out, there is abundant evidence that, although the property was sent to the company, the appellant obtained or assumed exclusive control over the property in question, and that it was fraudulently converted by his directions.

The *Grubb* case, *supra*, was under the *Larceny Act, 1901*, ch 10, s 1, but I think its reasoning clearly applies under section 357 of the *Code*.¹⁹

¹⁹ *Criminal Code*, RSC 1927, c 36 (in force at the time of *Martin*, *ibid*), read as follows:

357. Every one commits theft who, having received, either solely or jointly with any other person, any money or valuable security or any power of attorney for the sale of any property, real or personal, with a direction that such money, or any part thereof, or the proceeds, or any part of the proceeds of such security, or such property, shall be applied to any purpose or paid to any person specified in such direction, in violation of good faith and contrary to such direction, fraudulently applies to any other purpose or pays to any other person such money or proceeds, or any part thereof. 2. When the person receiving such money, security

In the *Grubb* case there apparently was particular knowledge on the part of the accused of the receipt and conversion of the money. I do not think there is any difference in favor of Martin in this case in the fact that he did not attend to the business in detail. He was its sole master and aware of its general course and there must be imputed to him knowledge of every transaction that was taking place. He must have known that the customers' moneys or securities were going into the company's bank account or the general pledge and out of reasonable hope of specific application to the purpose for which they were received.²⁰

One of the interesting portions of this quote for me was the underlined words. Of course, no serious current corporate lawyer, judge or scholar would suggest any lack of importance for the *Salomon* case.²¹ It is widely accepted as the seminal case on the legal personality of a corporation, separate from those who provide it capital, and those who control its operations.²² But in the era in which the Court of Appeal was writing in the *Martin* case, the ubiquity of corporations had not yet taken hold. One can see this even from the facts of *Martin* itself, where the business of the accused had operated quite successfully for some time²³ in an unincorporated state²⁴ before the incorporation of the business. In today's business world, given that corporate law is designed to

or power of attorney, and the person from whom he receives it, deal with each other on such terms that all money paid to the former would, in the absence of any such direction, be properly treated as an item in a debtor and creditor account between them, this section shall not apply, unless such direction is in writing.

²⁰ *Martin*, *supra* note 1 at 460–61, *per* Justice Robson.

²¹ [1897] AC 22 (HL) [*Salomon*].

²² *Kosmopoulos v Constitution Insurance Co*, [1987] 1 SCR 2 at 10, *per* Justice Wilson, for the majority; *Burke Estate v Royal & Sun Alliance Insurance Co of Canada*, 2011 NBCA 98 at para 60, *per* Chief Justice Drapeau, for the Court; *Meditrust Healthcare Inc v Shoppers Drug Mart* (2002), 61 OR (3d) 786 at 790, *per* Justice Laskin, for the Court.

²³ *Martin*, *supra* note 1 at 435, *per* Justice Dennistoun.

²⁴ Interestingly, the facts are not entirely clear as to the type of business organization that was in use on the facts prior to the incorporation. On the one hand, it is clear that Martin was completely in charge of the corporation. Therefore, it would seem unlikely that Martin had one or more partners immediately prior to the incorporation. However, there was another name included in the name of the business both before (Clark, Martin & Co.) and after incorporation (Clark, Martin & Co. Ltd.). Therefore, there is at least some evidence that at some point prior to incorporation, there may have been other owners involved in the business. If so, this would be a partnership, not a sole proprietorship, as the latter by definition has only one owner.

increase returns and limit risk for shareholders²⁵ it is often used by not only large businesses, but small and medium sized enterprises as well.²⁶ In other words, the corporation is now ubiquitous throughout the economy for those businesses that are allowed to access its protections.²⁷ Yet, it was clear that Justice Robson recognized the importance of the principle on which the case stands, even though his brethren made no reference to the case. Justice Robson's recognition of the importance of the principle may be attributable to his work as a corporate lawyer prior to his judicial career.²⁸

One also sees this distinction in the following as well. Justice Robson believes that it is possible for the theft to be against not only the corporation (from whom the direct money was taken), but also against many individual investors.²⁹ The majority does not agree. Justice Dennistoun writes as follows: "I consider that the verdicts of theft from individuals are covered by the theft from the company, and are surplusage."³⁰ Justice Trueman writes on the same point as follows: "A conviction for theft from the company of moneys and securities which include the moneys and securities alleged to have been stolen from Weiner and the other named customers precludes a conviction for theft from them."³¹ Justice Robson, dissenting, held that on the facts, certain convictions for theft by conversion should be sustained.³²

Frankly, in my view, the dissent has the better of the argument. The majority seems to view the value stolen as the important thing. But two groups

²⁵ See J Anthony VanDuzer, *The Essentials of Canadian Law – The Law of Partnerships and Corporations*, 4th ed, (Toronto: Irwin Law, 2018) at 126–29.

²⁶ *Ibid* at 134–35.

²⁷ Under the law of certain provinces, there are some restriction on the use of corporations by professional practices. For example, law firms generally do not incorporate, though individual partners may create "law corporations" (without limited liability for professional negligence). See for instance, *The Legal Profession Act*, CCSM, c L107, Part 4.

²⁸ Justice Robson was in practice with James Aikins. See the Memorable Manitobans – Hugh Amos Robson, Manitoba Historical Society, available online: <http://www.mhs.mb.ca/docs/people/robson_ha.shtml> [Date accessed: July 7, 2019]. Aikins and his firm were and are (now known as MLT Aikins) known for their representation of corporate and government clients. See Memorable Manitobans – James Albert Manning Aikins, Manitoba Historical Society, available online: <http://www.mhs.mb.ca/docs/people/aikins_jam.shtml> [Date accessed: July 7, 2019].

²⁹ On this point, see *Martin*, *supra* note 1 at 461–62.

³⁰ *Ibid* at 442.

³¹ *Ibid* at 451.

³² *Ibid* at 462.

of people have enforceable interests in that value. The corporation had valid possession of the securities and other value, while the individual investors would have an equitable interest in the value held by the corporation in their accounts. Justice Robson, quite correctly in my view, holds that the individual investors were victims of the theft, as well as the corporation.³³ Again, Justice Robson seems implicitly to be fully aware that recognizing all the victims of the wrongdoing would do not harm to the *Salomon* principle.

B. The Supreme Court of Canada

First, there can be little doubt that the *Canadian Dredge & Dock* case is the seminal Canadian statement on the application of the identification doctrine as the basis under which a corporation may be held liable for a criminal offence requiring proof of *mens rea*.³⁴ But *Canadian Dredge & Dock* is about more than just that. In particular, the case discusses the relationship between the fault and liability of the corporation, on the one hand, and the fault and liability of the individual who committed the underlying offence, on the other.

In *Canadian Dredge & Dock Co v The Queen*,³⁵ Justice Estey writes as follows:

Generally, the directing mind is also guilty of the criminal offence in question [that is, the criminal offence with which the corporation is charged]. Glanville Williams, in *Textbook of Criminal Law* (1978), states, at p. 947:

[...] the director or other controlling officer will almost always be a co-perpetrator or of accessory in the offence [...]

In *R v Fell* (1981), 64 CCC (2d) 456, Martin J.A., for the Ontario Court of Appeal, quoted the foregoing excerpt with approval but was there concerned with determining whether the directing mind was also guilty of the offence and not with the question as to whether or not this was a condition precedent to corporate liability. It may well be inevitable that guilt of the directing mind is a condition precedent to corporate guilt, but this has yet to be stated

³³ This is not to say that the overall sentence for Martin should be increased substantially. Rather, it is the recognition that the individuals were victims of crime (so as not to indicate that they are unaffected by the criminal undertaking of the accused) that is, to me at least, critical here.

³⁴ See e.g. *R v Metron Construction Corp*, 2013 ONCA 541 at paras 57–58, per Justice Pepall, for the Court; *Revenu Canada c Forges du Lac Inc*, [1997] RJQ 1254 (CA) at 1259, per Justice Chamberland, for the Court; *R v Church of Scientology of Toronto* (1997), 33 OR (3d) 65 [*Church of Scientology*] at 129, per Justice Rosenberg, for the Court.

³⁵ [1985] 1 SCR 662, per Justice Estey, for the Court [*Canadian Dredge & Dock*].

judicially. This discussion is directed to the corporate responsibility in criminal law where its directing mind has committed an offence.³⁶

The opening words of this excerpt show that, at least as a general rule, the position of the directing mind³⁷ does not protect an individual from criminal responsibility. Also, this is the case whether or not the corporate entity is charged with a crime.³⁸ Seeking to protect a corporation's interest does not lessen or absolve a corporate manager or controlling mind from criminal liability undertaken by the actions of that corporate manager with the requisite *mens rea*. The Court in *Canadian Dredge & Dock* does not view this as in any way inconsistent with the separate legal personality of the corporation. The case of *Salomon* is not even mentioned in the judgment in *Canadian Dredge & Dock*.

What is also interesting here is that the approach that Justice Robson took shows that the liability of senior managers is not inconsistent with the *Salomon* principle, that is, liability of an individual for actions undertaken in the context of a corporation may still be appropriate and respect the separate legal personality of the corporation.³⁹ This again found a home in later Canadian jurisprudence.⁴⁰ In other words, Justice Robson foreshadowed what would be cemented in Canadian law more than half a century later. In the Manitoba

³⁶ *Ibid* at para 22.

³⁷ "Directing mind" is to be differentiated from "regular employees." A directing mind has "governing executive authority" (see *Rhône (The) v Peter A.B. Widener (The)*, [1993] 1 SCR 497, *per* Justice Iacobucci, for the majority), meaning that the person has the ability to set policy for the corporation, rather than simply carry out the policy set by others. See also *Canadian Dredge & Dock*, *ibid* at para 20. In some jurisprudence, the distinction is made between the "hands" of the corporation (not a directing mind), as opposed to its "brain" (a directing mind). On this point, see the judgment of Lord Justice Denning, as he then was, in *H L Bolton (Engineering) Co v T J Graham & Sons Ltd*, [1957] 1 QB 159 (CA) at 172.

³⁸ It is notable that in *Canadian Dredge & Dock*, *supra* note 35, the corporations were charged with an offence (fraud by big-rigging and conspiracy), while in the *Martin* case, the question at hand was whether Martin's criminal responsibility for theft and conspiracy.

³⁹ See e.g. *Church of Scientology*, *supra* note 34. An application for extension of time granted and application for leave to appeal to the Supreme Court of Canada dismissed April 9, 1998 (Lamer CJ and McLachlin (as she then was) and Iacobucci JJ).

⁴⁰ See, on the criminal side, *Church of Scientology*, *ibid*, and on the civil side for wrongdoing (outside of contracts), see *ADGA Systems International Ltd v Valcom Ltd et al* (1999), 43 OR (3d) 101 (C.A.), *per* Justice Cathy, for the Court; leave to appeal denied [1999] SCCA No. 124 (QL) (holding directors and officers liable for causing non-employees of the company to breach their contracts with their current employers to come work for the corporation); see also *Mentmore Manufacturing Co v National Merchandise Manufacturing Co* (1978), 89 DLR (3d) 195, 22 NR 161 (Fed CA), *per* Justice LeDain (as he then was), for the Court.

Court of Appeal, this element of the judgment belonged solely to Justice Robson. It was not commented upon by the remainder of the panel in *Martin*.

2. Conspiracy

A. The Manitoba Court of Appeal

On the second issue to be discussed here (whether the controlling mind can enter into a conspiracy to commit a crime with the corporation is a controlling mind), the majority writes as follows:

With regard to the charges of conspiracy, I would allow Martin's appeal and enter a verdict of not guilty.

Allison and Hare were employees whose duty it was to manage the business and audit the books.

The books were accurately kept, they show every transaction which took place. Every order for the purchase or sale of stocks or bonds was duly executed, every hypothecation is properly indicated. Allison and Hare believed Martin to be a wealthy man able to protect his trades from his personal resources. They considered the company as Martin's property and obeyed his instructions implicitly.

The opening of accounts for Martin's trades, and withdrawals in other names than his, is not evidence of an intent to defraud on their part. It is said in evidence that it is a common practice to open accounts in a broker's books designated by initials, letters, or fictitious names, for the purpose of concealing the identity of the trader. That there were at least four accounts which showed Martin's trades, withdrawals and advances, called "P.V.T.;" "D. Morrison;" "D. 1;" "Mrs. Wm. Martin, Jr.;" "Surplus, etc." is no evidence of fraud on customers, as the customers had no access to the books and no person was deceived thereby.

I can find no agreement by Allison and Hare to assist Martin by deceit, falsehood or other fraudulent means to defraud the creditors, the public, or the company, and would enter a verdict of not guilty in respect to counts 2 and 3. The insertion of the company as one of the conspirators with Martin in these counts need not be considered in view of the finding in respect to count 1.

That Martin should be found guilty of conspiring with the company, is, in the peculiar facts of this case, unnecessary when he was the sole actor in the management and control of the company. When Allison and Hare [the other directors] are eliminated, the charges disappear, for the company could have no *mens rea* apart from that of Martin himself.⁴¹

⁴¹ *Martin*, *supra* note 1 at 440-41, *per* Justice Dennistoun.

Justice Robson agrees, writing as follows:

The learned Judge found the defendant guilty under counts 2 and 3, conspiracy, and not guilty under count 4, conspiracy. I agree with my learned brethren that as the evidence does not show guilty participation by the alleged co-conspirators there can be no conviction of Martin of conspiracy.⁴²

To be fair, the remaining two members of the panel (Chief Justice Prendergast and Justice Trueman) are not clear on the position of how they arrive at the conclusion that the conspiracy convictions cannot be sustained, though the conclusion itself is clear. With respect to Chief Justice Prendergast, the report provides only that “Prendergast, C.J.M., agrees in the result.” The result, at least with respect to the conspiracy charges, was unanimous. But, if one agrees with the reasoning as well as the result, one is left to wonder why the concurrence was limited to the result only. With respect to the judgment of Justice Trueman, on the other hand, the only reference to conspiracy was put tersely as follows: “The conviction of the appellant under counts 2 and 3 for conspiracy should also be set aside for reasons indicated by the Court at the hearing.”⁴³ From the judgment, it is unclear as to whether the written statements of Justice Dennistoun represent the oral indication at the hearing. In the end, therefore, at least from the historical perspective of those looking at this case more than 85 years later, we can only be certain of the reasoning that motivated Justice Dennistoun and Justice Robson. The reasoning that motivated others to resolve the case is not clear.

The key takeaway here is that conspiracy between a corporation and the driving force behind that corporation is not possible when these are the only two conspirators. As we will see below, other than the reference by Justice Estey to the judgment of Justice Dennistoun, the judgments of Justices Dennistoun and Robson in *Martin* are much clearer on this point than is that of Justice Estey in *Canadian Dredge & Dock*.⁴⁴

B. The Supreme Court of Canada

On the second point, Justice Estey in *Canadian Dredge & Dock* writes as follows:

It follows that the management officer is not guilty additionally of the offence of conspiring with the employer to commit the wrongful act in question

⁴² *Ibid* at 458, *per* Justice Robson, dissenting, but not on this point.

⁴³ *Ibid* at 455, *per* Justice Trueman.

⁴⁴ *Canadian Dredge & Dock*, *supra* note 35.

because in the identification theory there is only one entity, the natural, and legal person having merged into one identity, and hence the basic requirement of two persons in a conspiracy is not met. See *R. v. Martin*, [1932] 3 W.W.R. 1 (Man. C.A.), per Dennistoun J.A., at p. 8; *R. v. McDonnell*, [1966] 1 All E.R. 193, at p. 201; Leigh, *The Criminal Liability of Corporations and Other Groups* *supra*, at p. 257; and Ewaschuk, *Corporate Criminal Liability and Related Matters* (1975), 29 C.R.N.S. 44, at pp. 62-64; but see also *R. v. Electrical Contractors Association of Ontario and Dent*, *supra*, at p. 272.⁴⁵

To be fair to Justice Estey, the Supreme Court dealt with the parties before it quite appropriately. The Court was clearly focused on dealing with the particular defences offered by the accused of the corporation.⁴⁶ It is also clear that the grant of leave to appeal in *Canadian Dredge & Dock* was limited to particular issues.⁴⁷

But the question that in my view is left unanswered by Justice Estey in the excerpt is this: "It is clear that conspiracy between the driving force and the corporation alone is a conspiracy at all. However, what if there is a third conspirator involved?" Justice Robson's judgment, as well as that of Justice Dennistoun makes clear that if any other person were involved in the conspiracy, the conspiracy charge would have been successful as against the controlling force of the corporation. Otherwise, why would the Court of Appeal have needed to address each of the potential other co-conspirators before finding that the conspiracy charges could not be supported? Therefore, the answer offered by the Court of Appeal is not only consistent with what the Supreme Court of Canada would later decide, it is actually better in that it explains fully what is intended in that if there is a third conspirator involved (in addition to both (i) the corporation and (ii) the driving force behind that corporation), namely that the conspiracy would be maintained, because each of the driving force and the corporation itself could conspire with the third party. I suspect that this is what Justice Estey meant by his judgment in *Canadian Dredge & Dock*,⁴⁸ but until another case like *Martin* or *Canadian Dredge & Dock* (that is, a case with a potential conspiracy between the directing mind and the corporation with another conspirator) arises for decision, *Martin* remains for me at least, a clearer statement of the law on this point.

⁴⁵ *Ibid* at para 20.

⁴⁶ *Ibid* at para 3.

⁴⁷ *Ibid* at para 2.

⁴⁸ *Canadian Dredge & Dock*, *supra* note 35.

CONCLUSION

Though Justice Robson found himself in partial dissent in *Martin*,⁴⁹ to me, there is a great deal to commend in his judgment. It could be said to be prescient of future developments. In my view, when judges see the future importance of what would later become a key principle (*Salomon*⁵⁰) and see its limits in a way that proves consistent with later jurisprudential developments, we should acknowledge the importance of that early judicial wisdom. Furthermore, when all of the judges in the same case deal appropriately with a difficult area of law (conspiracy) and apply to a developing area (criminal responsibility in the corporate context), this is something of note, particularly in a historical volume such as this one. Justice Robson was ahead of his time in this way, and as can be seen in other contributions in this volume, in many other ways as well. Sometimes, it is only by looking back that one can see where the law may be headed. Even though Justice Robson was in partial dissent in *Martin*, there is much in his judgment to suggest that his views were, on some aspects of the case, those that would have a persuasive effect on the law long after he had left the Bench.

⁴⁹ *Martin*, *supra* note 1.

⁵⁰ *Salomon*, *supra* note 21.