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# Corporations As Invisible Friends

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## Business

# Corporations as invisible friends | Harry Glasbeek

By Harry Glasbeek



Harry Glasbeek

(November 13, 2018, 1:06 PM EST) -- The corporate world is a site of legally created irresponsibility.

Our four-year-old had an invisible friend, Kim. She and Kim invited us to a tea party.

Obligingly, we passed cookies and a cup to Kim. Our daughter carelessly dropped a cup. Afraid, and imaginatively, she said that Kim had done it. We told her that pretence had its limits. We had to teach her that all of us are to take responsibility for our conduct and actions taken on our behalf.

That is the moral glue that holds society together. Unless you find yourself in the corporate world.

Stronach, Desmarais, Weston, Bronfman, Irving, McCain, Coutu, Pattison, Schwartz, Thompson, Sobey, Munk, Balsillie, Lazaridis, Rogers, Shaw, Jackman, Bata, Frame and other titans and wannabe titans of Canadian business have invisible friends.

They are corporations. The titans and the wannabes may lose the money they have invested but are not personally responsible. They are allowed to say "Kim did it."

Controlling shareholders of corporations are members of a privileged class. If we want corporations to stop behaving anti-socially, this privilege must be revoked.

Corporations are created as legal persons with all the capacities of individual human beings. As individuals, they are given the ownership of all the property invested in them.

They are separate, in law, from all other persons, including the investors who are given share certificates that give them a right to vote directors in and out. As individuals, corporations are "*personally*" responsible for their actions. They are frequently sued and prosecuted. But, corporations, as corporations, do not care.

They are not only invisible, but also not capable of feeling pain or happiness. Standard goals of our laws, special deterrence, general deterrence, stigmatization and revenge do not work on them. They do work on directors should they be held liable and, perhaps on shareholders if the corporation makes a loss.

But, these impacts on corporate behaviour are indirect and rely on a principle that is anathema to the law's belief in personal responsibility — Peter should not be made responsible for Paul's wrongdoing. The resulting unease inhibits enforcement of laws when corporate behaviour leads to harms.

Similarly, because they are inanimate entities, corporate thinking and doing is done by directors and executives who are to act in the best interests of their corporations. But, as corporations have no brains or feelings, they have no interests. They are pliable and will do anything their directors and managers want them to do. This is what gives the corporate social responsibility and

stakeholder, ethical investors and activist shareholder advocacy movements impetus.

They hope that they can bribe, intimidate, con the directors and managers to make their particular interest to be the interest of corporations. They have little success.

Many of us, non-capitalists who have no significant disposable wealth, have investments in corporations, often indirectly. We invest to secure our savings.

By contrast, the titans and wannabe titans are red-blooded capitalists. They invest some of their spare wealth in corporations to make more wealth. Directors and executives are punished by controlling shareholders if they do not make profit-maximization the primary focus of the corporation and are rewarded (with options and bonuses) if they do.

One of the ways in which they can satisfy shareholders is by letting others bear the harms. Controlling shareholders have no reason to worry about this as they will not be held personally responsible for the conduct.

Directors and executives may be held accountable, but rarely are. They are acutely aware of the power of controlling shareholders to punish and reward them. They will take chances with our welfare.

This is why corporations, as a group, are the most recidivist anti-social members in our polity.

There is a mass of empirical evidence that it is easy in Canada to find controlling shareholders in most of our corporations, small, medium and large. Why not hold them personally responsible for behaviours they could control and from which they seek to benefit?

This is the spirit that animates our legal system. Churches, schools, police commissions, do not condone the bad conduct of their agents they entrust with the task of realizing their goals but we seek to hold them responsible; so, too, with franchisors who benefit from their control over franchisees who resort to wage theft to make a living and licensed liquor sellers who serve customers when they are likely to cause harm to unknown others.

We do not always succeed in bringing these controlling and benefitting institutions and enterprises to justice, but we know we should try if we want justice.

So it is with corporations. As seen, we often know who controls and benefits a harm-doing corporate actor. Let us make them stand up and be counted for acts done on their behalf. No more pretences.

Our daughter no longer has her Kim. She is a socially responsible contributor to society.

Something to ponder?

*Harry Glasbeek is a professor emeritus and senior scholar at Osgoode Hall Law School where he taught labour and corporate law and authored 12 books. Elaboration and nuancing of these arguments may be found in his most recent book, Capitalism: A Crime Story.*

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