

Background:

Many people are allergic to bee stings and need to carry an EpiPen, a device that allows them to inject epinephrine, a drug that can prevent potentially fatal anaphylactic shock. EpiPens are expensive and typically last for only a year.

Mama Melissa Ltd (MML) is a company that markets various honey-based products. MML sells a product called Bee-Shield, which it claims can protect against anaphylactic shock from bee stings. Bee-Shield sells for \$20, far cheaper than an EpiPen, but is essentially honey-based tablets.

May Ma is allergic to bee stings. She is unhappy that she has to buy an EpiPen every year and then throw it away. She decides to protect herself with Bee-Shield instead. May is stung by a bee when she is on a bush walk. Medical help cannot get to her in time, and sadly May dies.

Oliver, May's partner, believes that MML caused her death and wants the company to be prosecuted for manslaughter.

Required:

Advise Oliver whether MML could be prosecuted for manslaughter under New Zealand law.

We recommend you use ILAC in answering this question. However, your answer should include a brief discussion of the rules of attribution as they relate to crimes. [Hint: see Lord Hoffmann's explanation in *Meridian Global*.] Do not consider consumer law.

Estimated word count is 200-300 words. You should not exceed 300 words.

Attribution

As the actors in MML were acting under MML (marketing tablet for MML), the liability caused by the actions of the actors in the company (incorrectly marketing tablets as anaphylactic preventative) is attributed to MML. Therefore in this case MML could be considered a liable party in the incident (May dying as a result of relying on MML product).

Issue

May Ma died as a result of relying on MML statement.

Can MML be prosecuted for manslaughter under New Zealand law?

Law

Crimes Act 1961 s158 Homicide; Homicide is the killing of a human being by another, directly or indirectly, by any means whatsoever.

Crimes Act 1961 s171; Except as provided in [section 178](#), culpable homicide not amounting to murder is manslaughter.

Application

For a crime to be considered manslaughter under section 171 it must first meet the definition of a homicide in section 158.

Section 158 states that homicide is the killing of a human being by another, directly or indirectly, by any means whatsoever. This suggests that for a crime to be considered homicide it must occur between two people.

On the grounds that a company is not a person, a company who causes the death of another person is not considered to have committed homicide and thus cannot be prosecuted for manslaughter. This is observed in *R v Murray Wright* [1970] NZLR 476 which confirmed that the “human being” requirement prevents a company from being liable for homicide.

Conclusion

Oliver cannot prosecute MML for manslaughter as a company is not a person and thus cannot be prosecuted for manslaughter as it does not meet the requirements of a homicide.