2025 Due Diligence Cases Scorecard

EMPLOYER/DEFENDANT WINS ON DUE DILIGENCE (5 cases)

In 2025, there were 5 cases in which an employer who committed an OHS violation successfully made out a due diligence defence. That's 1 more than the year before. Here's a summary of each ruling. Go to the OHS Insider website for the complete 2025 Due Diligence Scorecard analysis.

1. **Ontario:Reasonable for City to Rely on Constructor to Control Traffic at Paving Site**

What Happened: A road grader hits and kills a pedestrian crossing an intersection at a municipal construction site. The Canadian Supreme Court rules that the city can be charged as an employer for an OHS violation (failing to ensure that a traffic signaler was in place) even though it had hired a constructor to oversee the work. The case then goes back down to trial where the city argues that it exercised due diligence.

Ruling: The Ontario court rules that the city exercised due

diligence and dismisses the case. Although the required traffic control measures at the intersection were wanting, it was the constructor and not the city that exercised control over the situation. The city did conduct quality control inspections to ensure that the constructor was complying with the safety requirements contained in the contract. But, the court concluded, "such inspections didn't constitute control over the workplace and the workers on it." The Crown appeals but the Ontario Court of Appeal refuses to take the case, leaving the due diligence verdict to stand.

Ontario (Labour, Immigration, Training and Skills Development) v. Greater Sudbury (City), 2025 ONCA 329 (CanLII), March 31, 2025.

2. Ontario:Top Court Finds Worker Not Guilty of Crane Violations

What Happened: What makes this case unusual is that the defendant isn't a corporation or company owner but a worker. It begins when 8 spools of elevator cable weighing about 4,000 pounds being hoisted onto the roof of a tower breaks free and crashes 300 feet to the ground near a Walmart store. Miraculously, nobody is hurt. But the Ontario Ministry of Labour (MOL) charges the worker acting as the "swamper" for the operation with 4 OHS violations.

Ruling: The Ontario court dismisses all charges, reasoning that the evidence suggests that the incident happened because the pallets holding the spools failed not because the worker didn't fulfill his OHS swamper duties. The case goes all the way up to the Ontario Court of Appeal which rejects the Crown's appeal and upholds the directed verdict in the worker's favour.

Ontario (Labour, Immigration, Training and Skills Development) v. Benevides, 2025 ONCA 426 (CanLII), June 9, 2025.

3. Saskatchewan:Court Overturns Guilty Verdicts Against Employer for Construction Worker's Death

What Happened: A heavy trolley cart being moved by a construction worker falls on a member of the clean-up crew that was removing nails from boards. The victim dies. After a long trial, the court finds the victim's employer guilty of 2 OHS violations—failure to ensure the safe transport of equipment and not providing adequate safety information, training and supervision. The employer appeals.

Ruling: Saskatchewan appeals court rules that the verdicts are unreasonable. Explanation: In rejecting the employer's due diligence defence, the trial court drew on evidence based on experiences at another site run in Grand Prairie by the same contractor that the employer should have applied to the Saskatoon site where the accident occurred. However, in so doing, the court overestimated the employer's connection to and control over the Grande Prairie site. So, the case has to go back down for a new trial.

R v Banff Constructors Ltd., 2025 SKKB 102 (CanLII), July 14, 2025.

4. BC:Employer Provided Robust & Hazard-Specific Training to Fall Victim

What Happened: A worker at a hydro dam construction site suffers serious injuries after falling from an elevated ladder deck. The victim was wearing proper fall protection equipment but didn't tie himself to an anchor before descending. WorkSafeBC hits the employer with a $528,631 AMP for 6 OHS violations in connection with the incident. The employer appeals both the penalty and its size.

Ruling: The BC Workers' Compensation Appeals Tribunal (WCAT)

nixes the AMP finding that the employer either didn't commit or exercised due diligence to prevent the violations. The employer "had a very robust training and safety program" that provided for both new worker and refresher training. The victim received that training and passed a written test. The company also had workers go over their site-specific fall protection plan each day before the start of work and that plan specifically addressed the circumstances which led to the worker's fall, namely unguarded openings and improper use of fall protection.

A2102115 (Re), 2025 CanLII 74913 (BC WCAT), June 5, 2025.

5. BC:City Reasonably Relied on Expert Firm to Carry Out Traffic Control at Its Sites

What Happened: WorkSafeBC fines a city $514,991 after inspectors observe traffic control violations at 3 municipal sites. The city claims it exercised due diligence by contracting with an experienced traffic management company to provide all traffic management within its boundaries.

Ruling: The WCAT says the city took all reasonable steps to prevent the violation and cancels the AMP. "An employer will usually act in a duly diligent manner where it reasonably relies on a contractor to perform a specialized task about which the employer has less expertise," the Tribunal reasons, provided that it furnishes the expert "relevant and helpful information" it needs to carry out those duties. In this case, the city provided "general direction" by identifying the sites where traffic control was required and general parameters and leaving the details to the firm.

A2202333 (Re), 2025 CanLII 44400 (BC WCAT), April 25, 2025.

EMPLOYER LOSES ON DUE DILIGENCE (16 cases)

There were 16 reported cases in which a defendant shown to have committed an OHS violation tried to make out a due diligence defence but failed. Here's a summary of each case.

1. BC:Unreasonable for Prime Contractor to Rely on Subcontractor to Control Potential Lead Exposure

What Happened: The prime contractor in charge of safety at a multi-employer oil and gas site receives an AMP of $365,170 for 6 OHS violations, including inadequate hazard assessment and lead hazard controls. The prime contractor appeals arguing, among other things, that it reasonably relied on its subcontractor's lead exposure control emergency response preparedness program.

Ruling: The WCAT rejects the prime contractor's due diligence defence. The fact that it didn't perform lead abatement operations itself isn't enough to justify its reliance on the subcontractor's program. The prime contractor demonstrated "a lack of awareness" of its OHS duties related to hazard assessments, especially when it had "clear notice" that lead was likely present and need to be tested for and abated. "While it may be appropriate for an employer to reasonably rely on the expertise of a subcontractor in some situations, that reliance becomes unreasonable in the face of clear notice about a likely safety issue," the WCAT concludes.

A2401744 (Re), 2025 CanLII 82488 (BC WCAT), July 17, 2025.

Nova Scotia:Traffic Control Services ProvidedDidn’t Use Due Diligence to Comply

What Happened: OHS inspectors issue 6 AMPs totaling $9,000 against a traffic control services provider for failing to meet the minimum standards of the *Temporary Workplace Traffic Control Manual* after spotting multiple violations at temporary highway sites under its control.

Ruling: The Nova Scotia labour board upholds 5 of the 6 penalties (voiding one penalty on a technicality) finding that the violations occurred, and that the provider didn’t exercise reasonable due diligence to prevent them and ensure compliance citing evidence of insufficient signage, improper use of cones, inaccurate flags on human activity signs, and more than one employee on site without proper safety clothing.

Site 2020 Incorporated (Re), 2025 NSLB 28 (CanLII), February 27, 2025.

3. ## Québec:Construction Firm Didn’t Use Due Diligence to Prevent Circular Saw Injury

What Happened: A construction company appeals its conviction of failing to properly guard a circular saw resulting in a hand injury to an apprentice carpenter-joiner appealed, contending that it wasn’t the victim’s employer and that it exercised due diligence to prevent the violation.

Ruling: The Québec court rejects both arguments and upholds the conviction. Even though the company had a prevention program, it didn’t take steps to ensure that workers actually read and understand it. In addition, it was foreseeable that a carpenter-joiner would suffer injuries as a result of using an unguarded circular saw.

Constructions Stéphane Fortin Inc. v. CNESST, 2025 QCCS 1084 (CanLII), April 4, 2025.

4. Québec:Crane Operator Error Is Foreseeable & No Defence Against OHS Violation

What Happened: A crane rental company charged with using unsafe loading methods leading to a mobile crane tip-over blames the operator for the accident. The operator, a highly experienced veteran, admits that he's entirely at fault and made a "bad call" by choosing to bypass the crane's limitation system to unload concrete blocks.

Ruling: Despite the operator's admission, the Québec court rejects the company's due diligence defence. While the operator clearly made a mistake, the company could and should have foreseen his negligence and taken steps to prevent it, the court reasoned. Instead, it deferred to his senior status and gave him "carte blanche" to do what he wanted. "It would be illogical and contrary to the objectives the Act if the presumption of liability did not apply because of the wrongful act of a worker."

CNESST v. Location de grues Gaétan Roy ltée, 2025 QCCQ 1852 (CanLII), May 23, 2025.

5. Newfoundland:Faulty Crane Procedures Destroy Oil Company's Due Diligence Defence

What Happened: Prosecutors charge an ocean drilling company with 2 OHS violations resulting in injuries to an offshore deck crew member who got pinned between a handrail on the main tubular feeding machine and the Aft Surface Flow Tree handling adapter. After the Crown meets its burden of proving that a

crane and traffic signaling violation, the burden shifts to the company to prove that it took reasonable steps to comply with the requirements and prevent the violations. The company seeks to do this by blaming the operator for operating the crane when he didn't have a clear and unobstructed view of the area without calling for a signaler's assistance, as required by OHS regulations.

Ruling: The Newfoundland court rejects the company's due diligence defence, noting that the problem wasn't the operator's actions but the company's policies which didn't specify how close the crane operator could reasonably get to the load before requiring a signaler. This flaw in the procedure left the operator leeway to do the operation without a signaler.

2025. *v Transocean Canada Drilling Services Ltd.,*2025CanLII 65861 (NL PC), July 10, 2025.

6. Québec:Employer Should Have Inspected Worn Out Old Pump Before Worker Got Electrocuted

What Happened: An electric shock of nearly 600 V from a high-velocity portable pump kills one food plant worker and seriously injures the coworker who comes to his rescue. CNESST charges the employer with an OHS violation. The employer claims that it exercised due diligence, but the court rejects the argument. So, the employer appeals.

Ruling: The Québec court upholds the finding of no due diligence as being based not just on "simple common sense" but ample evidence demonstrating that the pump was old and not properly maintained, all of which made the electrocution hazard reasonably foreseeable. While not expressly required by law, "simple common sense dictated that [the 600-volt connector] be disassembled and examined at least once a

year."

Margarine Thibault Inc. v. CNESST, 2025 QCCS 2650 (CanLII), July 23, 2025.

7. Alberta:Mistake Doesn't Excuse Employer's Failure to Immediately Report Eye Injury

What Happened: A worker observing a coworker's attempt to remove a bearing from a piece of machinery gets hit in the eye by a piece of metal. The employer reports the injury 6 days later and is fined $10,000 for not reporting it "as soon as possible" as OHS regulations require. The employer appeals on the basis of "reasonable mistake of fact" due diligence, contending it didn't believe that the injury was a reportable incident under the law because it wasn't sure that the victim would be hospitalized for the injury.

Ruling: The Alberta Labour Relations Board rejects the appeal. First, it's unclear whether the due diligence defence even applies to OHS incident reporting, the Board reasons. But even if it does, the employer in this case didn't provide evidence to meet its burden of showing that its mistake of fact, i.e., that the injury wasn't reportable because it didn't require hospitalization, was reasonable.

Knelsen Sand & Gravel Ltd. v Occupational Health and Safety, 2025 ABOHSAB 23 (CanLII), October 20, 2025.

8. Québec: Following Industry StandardsDoesn't Prove Due Diligence

What Happened: A CNESST inspector responding to a broken gas pipe incident issues a stop work order at an excavation site after observing workers using unsafe methods to move pipes

with a mechanical shovel. The contractor insists that the procedure is consistent with CNESST Guidelines for work near underground infrastructure.

Ruling: But the Québec court upholds the order and citation, finding that the contractor's methods deviated from the Guidelines in subjecting the pipes to risk of damage. The court also rejects the contractor's due diligence defence, noting that the foreman wasn't aware of the safety protocols for work near underground infrastructure and had to call the company VP to talk to the CNESST inspector. The VP then left the site after the inspection without instructing workers or implementing a safer procedure.

CNESST v. Excavations G. Larouche Inc., 2025 QCCQ 3673 (CanLII), August 5, 2025.

9. BritishColumbia: Certificate of Recognition & Great OHS Audit Scores Don't Prove Due Diligence

What Happened: WorkSafeBC fines a construction company $12,902 after inspectors observe a worker on trusses roughly 16 feet above the ground without any fall protection. The citations also include first aid violations and lack of training. We have a great OHS program, the company insists, citing its recent Certificate of Recognition (COR) and the 96% score from its most recent audit.

Ruling: The BC WCAT finds that the company didn't take reasonable steps to prevent the violations. The fatal flaw in its due diligence defence is inadequate documentation. A COR and great audit score aren't enough, reasons the Tribunal noting that the company provided "a single record of training, little record of how/if it conducts supervision of workers, no direct statements from workers/supervisors, and no records of corrective actions.

A2401378 (Re), 2025 CanLII 97465 (BC WCAT), August 15, 2025.

10. BritishColumbia: How Good Can Fall Protection Training Be When 6 Workers Detach Their Lifelines in the Presence of a Supervisor?

What Happened: A framing company is socked with a $50,020 AMP for fall protection violations after a WorkSafeBC inspector observes 6 workers on a sloping roof who aren't clipped into their fall protection lifeline exposing them to the risk of falling 24 feet to the ground. The company insists that it provided fall protection training and supervision to all of the workers involved and that they had been hooked up but detached for only a moment due to the distraction caused by the inspector's arrival.

Ruling: The BC WCAT upholds the AMP. The fact that all 6 workers on the roof didn't attach their lifelines despite the presence of a supervisor "supports a conclusion that the training and supervision regarding use of fall protection was inadequate." Properly trained workers would understand the risks and connect to the lifeline while working at elevation and not detach even for a moment.

A2201835 (Re), 2025 CanLII 97514 (BC WCAT), August 14, 2025.

11. BritishColumbia: Holding Safety Meetings Every 4 to 6 Weeks Isn't Enough for High-Risk Construction Company

What Happened: Inspectors spot 4 workers on the second story roof of a residential building 18 feet above the ground without fall protection and fine their employer $7,321. The employer claims it exercised due diligence and submits records

of the safety meetings and fall protection plans.

Ruling: The BC WCAT doesn't buy the employer's due diligence defence, noting that 4 of the 10 documents it submitted pertain to safety meetings held after the company was cited. "Due diligence must be demonstrated prior to the contravention," the Tribunal explains. Moreover, holding safety meetings every 4 to 6 weeks "does not demonstrate a safety focus or culture" especially for an employer that operates at multiple construction sites where workers are exposed to a slew of risks.

A2102598 (Re), 2025 CanLII 97409 (BC WCAT), August 7, 2025.

12. BritishColumbia:Prime Contractor Didn't Have an OHS Program

What Happened: The prime contractor on a residential construction site is fined $10,397 for an incident in which a subcontractor's worker suffers serious injuries after getting hit by a falling beam and falling 11 feet through an unprotected opening.

Ruling: The WCAT upholds the penalty. The problem in this case wasn't a flaw or blind spot in the OHS program but the fact that there was no OHS program at all. The prime contractor didn't perform inspections, didn't supervise the subcontractor, didn't post first aid or emergency procedures. Nor was there any use of fall protection, hard hats, guardrails, or scaffolding safety procedures.

A2302365 (Re), 2025 CanLII 74981 (BC WCAT), June 30, 2025.

13. Québec:Employer Who Doesn't Provide Training Can't Blame Victim for

Forklift Tire Explosion

What Happened: A worker repairing a forklift tire is killed when the tire suddenly explodes. Prosecutors charge the tire shop employer with failing to provide the victim with adequate training and supervision. The employer claims that the explosion was unforeseeable because the victim was using dangerous methods to do the job. The employer is convicted and appeals to the province's highest court.

Ruling: The Québec Court of Appeal upholds the conviction. The victim's careless error was the employer's responsibility and might not have happened had he received the safety training and supervision required by OHS laws. It was thus foreseeable that an untrained and unsupervised performing a dangerous forklift tire repair would cause an accident.

9033-5878 Québec inc. v. CNESST, 2025 QCCA 1323 (CanLII), October 23, 2025.

14. BritishColumbia:Safety Policies & Training Don't Prove Due Diligence When They're Not Followed

What Happened: An HVAC worker performing service work at a 6-level parkade dies of carbon monoxide (CO) poisoning after breathing in fumes emitted by a gas-powered pressure washer being used on a different floor. What nobody realizes is that the parkade's exhaust ventilation wasn't operational for several hours; and while a CO alarm eventually goes off, the worker using the pressure washer thinks it's just a drill and ignores it. WorkSafeBC imposes a $297,647 AMP on the prime contractor of the site for multiple OHS violations, including failing to ensure adequate ventilation and limit workers' exposure to CO. The prime contractor says it did its duty by installing the ventilation system and blames the accident on the cleaning worker's failure to follow

instructions about not operating the machine indoors. It also points to its robust training program and extensive OHS policies.

Ruling: The WCAT upholds the AMP and refuses to reduce its amount. Having training programs and policies isn't enough when workers don't follow them. The cleaning worker in this case either didn't know about or deliberately ignored the instructions on how to safely operate the pressure washer. Either scenario suggests that the prime contractor didn't exercise due diligence and that the worker didn't get the adequate supervision and training necessary to ensure safe use of the machine.

A2400212 (Re), 2025 CanLII 44403 (BC WCAT), April 11, 2025.

15. Alberta:Failure to Implement Powered Mobile Equipment Safety Procedures Kills Employer's Due Diligence Defence

What Happened: A construction supervisor doesn't see and accidentally runs his flatbed truck over a coworker while performing inspections at a residential site. The coworker dies and the employer and supervisor are charged with multiple OHS violations. Each defendant is convicted of 2 OHS offences—failure to ensure safe use of powered mobile equipment and provide training and supervision—resulting in fines of $420,000 against the employer and $60,000 against the supervisor.

Ruling: The appeals court affirms the lower court's ruling that the incident was "reasonably foreseeable" and that the defendants didn't use due diligence to prevent it, such as by implementing safe work procedures for using a parked truck to shield another worker. A few months later, the Alberta Court of Appeal sends the case back down on a technicality affecting

what constitutes “powered mobile equipment” and not related to due diligence.

R v Volker Stevin Contracting Ltd., 2025 ABKB 244 (CanLII), April 17, 2025; *R v Volker Stevin Contracting Ltd.*, 2025 ABCA 285 (CanLII), August 15, 2025.

16. BC:Defying Asbestos Stop Work Order Was Deliberate, Not a Reasonable Mistake

What Happened: WorkSafeBC fines a framing company $5,000 for carrying out residential construction work inside a home containing asbestos and with no asbestos abatement measures in place in defiance of a stop work order. The company contends it didn’t know about the stop work order and asserts a reasonable mistake of facts due diligence defence.

Ruling: The WCAT rules that there was no mistake of fact. The evidence indicated that WorkSafeBC and municipal officers notified the company that a stop work order had been issued for the site but the company deliberately chose to ignore it.

A2201776 (Re), 2025 CanLII 54181 (BC WCAT), May 21, 2025.