

Codification of the Due Diligence Defence in Environmental Laws



Companies and individuals can avoid liability for environmental violations if they can prove that they took all reasonable steps to prevent the violations and comply with the law. The so-called “due diligence” defence was established in the *Sault Ste. Marie* case and has evolved through subsequent court decisions. But although the concept of due diligence originated in case law, many environmental laws now codify this defence and spell out when it applies—and doesn’t apply—to environmental offences. Here’s a look at what the primary environmental statutes in each jurisdiction say about the due diligence defence as it applies to offences under these laws.

DUE DILIGENCE DEFENCE IN ENVIRONMENTAL LAWS	
FED	<p><u>Canadian Environmental Protection Act:</u></p> <p>No person shall be found guilty of an offence under this Act, other than a violation of Sec. 228(a) or a knowingly violation of Sec. 228(b), a violation of Secs. 272(1)(k) or (l) or an offence under Sec. 274, if the person establishes that the person exercised all due diligence to prevent its commission [Sec. 283].</p>

<p>AB</p>	<p><u>Environmental Protection and Enhancement Act</u>: No person shall be convicted of an offence under Secs. 61, 67, 75, 76, 79, 88, 108(2), 109(2), 110(1) or (2), 111, 112, 137, 148, 149, 155, 157, 163, 169, 170, 173, 176, 188, 191, 192, 209, 227(b), (c), (e), (g) or (i) or 251 if that person establishes, on a balance of probabilities, that the person took all reasonable steps to prevent its commission [Sec. 229].</p>
<p>BC</p>	<p><u>Environmental Management Act</u>: In a prosecution for an offence under or arising out of a contravention of Secs. 9 (1) or 10 (1) or (3) or of a regulation made with respect to hazardous waste, it's sufficient proof of the offence to establish that it was committed by an employee or agent of the accused corporation whether or not the employee or agent is identified or has been prosecuted for the offence, <i>unless</i> the accused establishes that the offence was committed without the accused's knowledge or consent or that the accused exercised all due diligence to prevent its commission [Sec. 121(2)].</p>
<p>MB</p>	<p><u>The Environment Act</u> doesn't address the due diligence defence.</p>
<p>NB</p>	<p><u>Clean Environment Act</u> doesn't address the due diligence defence.</p>
<p>NL</p>	<p><u>Environmental Protection Act</u> doesn't address the due diligence defence.</p>
<p>NT/NU</p>	<p><u>Environmental Protection Act</u>: No person shall be found guilty of an offence under this Act or the regulations if the person establishes that he or she exercised all due diligence to prevent its commission [Sec. 14.2].</p>

<p>NS</p>	<p style="text-align: center;"><u>Environment Act:</u></p> <p>Unless otherwise provided in this Act, no person shall be convicted of an offence under this Act if the person establishes that the person:</p> <ul style="list-style-type: none"> a) exercised all due diligence to prevent the commission of the offence; or b) reasonably and honestly believed in the existence of facts that, if true, would render the conduct of that person innocent [Sec. 160] (the so-called "reasonable mistake of fact" type of due diligence defence).
<p>ON</p>	<p style="text-align: center;"><u>Environmental Protection Act:</u></p> <ul style="list-style-type: none"> 1) A requirement that a person pay an environmental penalty applies <i>even if</i>: <ul style="list-style-type: none"> a) the person took all reasonable steps to prevent the contravention; or b) at the time of the contravention, the person had an honest and reasonable belief in a mistaken set of facts that, if true, would have rendered the contravention innocent [Sec. 182.1(6)]. 2) A requirement that a person pay an administrative penalty applies <i>even if</i>: <ul style="list-style-type: none"> a) the person took all reasonable steps to prevent the contravention; or b) at the time of the contravention, the person had an honest and reasonable belief in a mistaken set of facts that, if true, would have rendered the contravention innocent [Sec. 182.3(10)].
<p>PE</p>	<p style="text-align: center;"><u>Environmental Protection Act</u> doesn't address the due diligence defence.</p>

<p>QC</p>	<p style="text-align: center;"><u>Environment Quality Act:</u></p> <p>1) In any penal proceedings relating to an offence under this Act or the regulations, proof that the offence was committed by an agent, mandatary or employee of any party is sufficient to establish that it was committed by that party, <i>unless</i> the party establishes that it exercised due diligence and took all necessary precautions to prevent the offence [Sec. 115.39].</p> <p>2) If a legal person or an agent, mandatary or employee of a legal person, partnership or association without legal personality commits an offence under this Act or the regulations, its director or officer is presumed to have committed the offence <i>unless</i> it's established that the director or officer exercised due diligence and took all necessary precautions to prevent the offence [Sec. 115.40].</p>
<p>SK</p>	<p style="text-align: center;"><u>Environmental Management and Protection Act, 2002</u> doesn't address the due diligence defence.</p>
<p>YT</p>	<p style="text-align: center;"><u>Environment Act</u> doesn't address the due diligence defence.</p>