

Codification of the Due Diligence Defense in the OHS Laws



Companies and individuals can avoid liability for safety 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, some OHS laws now codify this defence and spell out when it applies—and doesn’t apply—to safety offences. Here’s a look at what the OHS acts in each jurisdiction say about the due diligence defence as it applies to offences under these laws. (For more on due diligence, go to the [Due Diligence Compliance Centre](#).)

DUE DILIGENCE DEFENCE IN THE OHS LAWS	
FED	Canada Labour Code : On a prosecution of a person for a violation of any provision of Part II (Occupational Health and Safety), except Secs. 125(1)(c), (z.10) and (z.11), it’s a defence for the person to prove that the person exercised due care and diligence to avoid the violation [Sec. 148(4)].
AB	OHS Act doesn’t address the due diligence defence.

BC	<p><u>Workers' Compensation Act</u>:1) A person isn't guilty of an offence if the person proves that the person exercised due diligence to prevent the commission of the offence [Sec. 215].</p> <p>2) An administrative penalty must not be imposed under this section if an employer exercised due diligence to prevent the circumstances on which the penalty could be based [Sec. 196(3)].</p>
MB	<u>The Workplace Safety and Health Act</u> doesn't address the due diligence defence.
NB	<u>OHS Act</u> doesn't address the due diligence defence.
NL	<u>OHS Act</u> doesn't address the due diligence defence.
NT/NU	<u>Safety Act</u> doesn't address the due diligence defence.
NS	<p><u>OHS Act</u>:Notwithstanding Sec. 76(1), the act or omission of a manager, superintendent or another person who exercises management functions for the employer isn't the act or omission of the employer where it's proven that the employer took every precaution reasonable in the circumstances to ensure that the act or omission wouldn't occur and the employer:</p> <p>a) didn't have actual knowledge of, or couldn't reasonably have known of, the act or omission; and</p> <p>b) didn't expressly or impliedly consent to the act or omission [Sec. 76(2)].</p>
ON	<u>OHS Act</u> :On a prosecution for a failure to comply with Sec. 23(1); Secs. 25(1)(b), (c) or (d); or Sec. 27(1), it shall be a defence for the accused to prove that every precaution reasonable in the circumstances was taken [Sec. 66(3)].
PE	<u>OHS Act</u> doesn't address the due diligence defence.

QC	<i>An Act Respecting Occupational Health and Safety</i> : In proceedings contemplated in this chapter, proof that an offence has been committed by an agent or mandatary of or a worker employed by an employer suffices to establish that it was committed by the employer, unless the employer establishes that the offence was committed without his knowledge or consent and despite provisions made to prevent its being committed [Sec. 239].
SK	<i>OHS Act</i> doesn't address the due diligence defence.
YT	<i>OHS Act</i> doesn't address the due diligence defence.