OHS Compliance Takeaways from the 2025 Due Diligence Scorecard

Due diligence, while often referred to in the industry as an informal standard of OHS program compliance, is technically a legal defense that arises in an OHS prosecution when and if the prosecution proves that an employer committed the prohibited act (*actus reus*). The burden then shifts to the defendant to show that it exercised *due diligence*—that is, that it took every reasonable precaution to comply with the law.

Due diligence has two branches:

- **Reasonable Steps:** The employer proves it took all reasonable steps to comply and avoid the violation.
- **Reasonable Mistake of Fact:** The employer shows that it reasonably relied on a mistaken set of facts which, if true, would have made its conduct legal.

Most OHS cases turn on the first branch—whether the employer's conduct met the "reasonable steps" standard. Since there's no single definition of "reasonable," courts decide each case on its facts. The one universal rule: you can't prove due diligence without a functioning system to ensure compliance with OHS laws.

That's why the annual *Due Diligence Cases Scorecard*—now in its

20th year—is essential reading. It shows how abstract legal principles play out in the real world and what separates successful defenses from costly failures.

The 2025 Snapshot: Modest Uptick in Employer Success

In 2025, Canadian courts and tribunals decided **21 due diligence cases**—just one fewer than last year. Employers won **5** of them, a slight improvement over 2024's 4 wins and a strong rebound from 2023, when defendants were shut out completely.

Year	Total Cases	Employer Wins	Win Rate
2023	21	0	0%
2024	22	4	18%
2025	21	5	24%

That 24% win rate is one of the best in recent years, though it still underscores how hard it is for employers to meet the due diligence threshold. Roughly four out of five defendants still lost.

Where Employers Prevailed: Takeaways from the 5 Wins

The winning employers in 2025 had one thing in common: they could prove a structured, rational, and well-documented approach to safety management.

1. ## Reasonable Reliance on Contractors

Two different municipalities successfully argued that they reasonably relied on external experts to perform

specialized safety functions—traffic control. Courts affirmed that such reliance is permissible only when the employer clearly defines responsibilities and verifies compliance through oversight mechanisms, not micromanagement.

Action Points:

- Clearly define contractor roles and safety expectations in written agreements.
- Verify—don't assume—compliance through site visits and audits.
- Keep detailed records of communications, inspections, and corrective actions.
- Avoid "rubber-stamp" oversight.
- Document real checks on safety performance.

2. Robust, Job-Specific Training

In BC, an employer was able to get a $528,000 fine overturned because it had a "robust and hazard-specific training program," daily safety briefings, and written tests. The decision underscores that specificity and documentation make training programs defensible.

Action Points:

- Go beyond generic OHS training—customize it to site hazards.
- Require written or practical tests to verify competency.
- Refresh training regularly and record attendance.
- Ensure supervisors conduct and document daily hazard reviews.

3. With Control Comes Responsibility

In Saskatchewan, an appeals court overturned OHS convictions

because the trial court misapplied evidence from another worksite. The ruling reminds employers that courts must link safety expectations to specific circumstances under their control.

Action Points:

- Maintain detailed records distinguishing your site conditions from others.
- Keep clear internal documentation showing who controlled which site activities.
- Provide the necessary information and support to the contractors and prime contractors to whom you delegate safety functions to ensure they carry out the function effectively.
- Monitor and verify that contractors and prime contractors are carrying out their delegated functions effectively.
- Challenge enforcement findings that rely on unrelated comparators.

4. Due Diligence & OHS Liability Affects Everyone

In Ontario (*Benevides*), an individual worker—not a company—was acquitted when the evidence showed that equipment failure, not negligence, caused a near-miss. It's a reminder that OHS compliance is an imperative for not just corporations but also workers and supervisors.

Action Points:

- Train workers and supervisors on their personal OHS responsibilities.
- Ensure accident investigations isolate human error from system failure.
- Recognize that human error committed by a worker or

supervisor doesn’t prove due diligence when the error is reasonably foreseeable and/or attributable to company action or inaction.

Why Employers Lost: 5 Cautionary Tales

The losing cases reveal the common errors and faulty assumptions that companies make which undermine their subsequent attempts to make out a due diligence defense.

1. Having OHS Programs & PoliciesDoesn’t Prove Due Diligence

Several BC cases show that even high audit scores and Certificates of Recognition (CORs) don’t guarantee success. In one case, a company with a 96% audit score still lost because it lacked training records and proof of supervision. Documentation—not reputation—is what wins due diligence cases.

Action Points:

- Keep contemporaneous records of worker training, supervision, and inspections.
- Store safety meeting minutes and corrective actions in a central database.
- Don’t rely solely on audit scores; auditors aren’t substitutions for regulators.

2. Foreseeability & Control Matter

Courts repeatedly emphasized that employers can’t escape liability by blaming workers or subcontractors. The Québec crane case (*Gaétan Roy ltée*) and Newfoundland’s *Transocean* ruling both faulted employers for

foreseeable risks they failed to control.

Action Points:

- Conduct formal hazard assessments that include foreseeable worker errors.
- Require operators to follow written procedures with clear limits.
- Review and update procedures whenever conditions or equipment change.

3. Training and Supervision Failures

At least half the losing cases involved inadequate training or supervision. Québec's *Forklift Tire Explosion* and BC's *Carbon Monoxide Poisoning* cases both turned on gaps between written policies and real-world practice.

Action Points:

- Don't assume workers will follow their training.
- Verify that workers understand and are competent of applying their training.
- Match every policy with an enforcement mechanism (e.g., supervisor sign-offs).
- Audit your own safety culture by spot-checking worker knowledge.
- Empower supervisors to intervene immediately when unsafe acts occur, including via the imposition of discipline.

4. Inadequate Safety Culture

The BC fall protection cases revealed a recurring pattern: infrequent safety meetings, inconsistent supervision, and tolerance of unsafe behavior. The takeaway: OHS culture has to be continuous, not occasional.

Action Points:

- Hold toolbox talks at least weekly—daily on high-risk sites.
- Incorporate safety observations and near-miss reporting into daily routines.
- Reward compliance and address violations consistently across all sites.
- Document the actions you take to enforce your OHS policies and procedures.

5. The Limits of "Reasonable Mistake"

Employers invoking the "reasonable mistake of fact" defense fared poorly. In Alberta (*Knelsen Sand & Gravel*), a company's mistaken belief that an injury wasn't reportable was deemed unreasonable. In BC, a firm's claimed ignorance of an asbestos stop-work order failed entirely.

Action Points:

- Establish a checklist for reportable incidents and distribute it to all managers.
- Confirm, in writing, receipt of any stop-work or regulatory orders.
- Treat "I didn't know" as a compliance failure—train staff to verify facts before acting.

Key Lessons for Employers in 2026

The 2025 Scorecard reveals a maturing judicial consensus about what **real** due diligence looks like:

1. **Documentation is Imperative.** Courts won't take your word for it—you must be able to prove training, supervision, and enforcement with written records.

2. **Reasonable Reliance Requires Oversight.** Delegating safety duties doesn’t relieve you of responsibility; you must monitor and verify.
3. **Culture Counts.** Regular, proactive engagement with workers—daily safety meetings, site-specific plans, and refresher training—carry weight.
4. **Foreseeability Is the Legal Lens.** Courts ask: was the accident reasonably foreseeable? If yes, prevention was expected.
5. **Policy Alone Isn’t Protection.** Even excellent written programs fail if workers don’t follow them in practice.

Conclusion: Due Diligence as a Living System

The 2025 cases show that due diligence isn’t a box-checking exercise but a living system of accountability, communication, and verification. The employers who won didn’t just have safety policies—they had evidence that their systems worked in real time.

For those who lost, the message is equally clear: OHS programs don’t measure up to the standard of due diligence when they exist only on paper.