

What's 'Reasonable Doubt' in an Environmental Prosecution?



Proving due diligence isn't the only way to avoid being liable for an environmental offence. Due diligence isn't even an issue unless and until the prosecution can prove 'beyond a reasonable doubt' that the company actually committed the environmental violation. (The same is true for OHS violations.) In other words, all the company has to do to defeat a prosecution is show that there's 'reasonable doubt' about whether it violated an environmental law. So what constitutes reasonable doubt in an environmental prosecution? Unfortunately, that's not an easy question to answer because courts almost never explain in detail why they did or didn't find that reasonable doubt existed in a particular case. Often, the court simply rules that the prosecution met its burden and proceeds to analyze the due diligence defence. Or, in some cases, the two sides agree on the facts so the reasonable doubt question never arises. But here are two relatively rare cases in which courts did, in fact, specifically address and rule on the reasonable doubt issue. In both cases, the court said that there was reasonable doubt in the prosecution's case.

NO PROOF OF CAUSE OF DISCHARGE

FACTS

A tugboat carrying 4,000 gallons of diesel oil was tied to a dock in False Creek in Vancouver. The captain and deckhand left the vessel. Four days later, the unattended vessel was discovered heeled over and submerged. A considerable amount of diesel oil was found in the waters of the creek. The towing company that owned the tugboat was charged with unlawfully discharging a pollutant from a vessel in violation of the *Canada Shipping Act*. The prosecution's theory: A slip line had been tied too tight. When the tide rose, the vessel tipped over and water came in through a porthole and door. The company was acquitted, so the prosecution appealed.

DECISION

A BC Supreme Court ruled that the prosecution failed to prove beyond a reasonable doubt that the company caused the discharge of the oil.

EXPLANATION

The court rejected the prosecution's argument that it only had to prove that diesel oil was discharged from the tugboat. The prosecution had to prove 'the material elements of the offence' beyond a reasonable doubt, the court explained. The material element of this violation wasn't mere ownership of the vessel from which oil was discharged. 'There must be some causal link between [the company] and the discharge of the oil before liability will arise,' said the court. In this case, the cause of the discharge of the oil wasn't clear. The prosecution didn't prove that anyone onboard the tugboat had tied a mooring line too tight or even that the vessel had sunk for that reason. So because there was reasonable doubt about the cause of the discharge, the company wasn't liable.

R. v. Glenshiel Towing Co. Ltd., [2000] BCSC 1292 (CanLII), Aug. 30, 2000

NO PROOF CONTENTS WERE DANGEROUS

FACTS

An Alberta company summoned a delivery man to pick up a package for delivery. The delivery man received a weigh bill and a box. The description of the box's contents on the weigh bill was unreadable. But the box had a dangerous goods sticker or safety mark on it. So the delivery man spoke to a worker, who assured him that the contents weren't dangerous. In fact, either the sticker was removed or the contents were repackaged in a box without a sticker because the delivery man left with a box that didn't contain a safety sticker or mark. After an inspector got information from the RCMP about the box, he investigated and concluded that a dangerous good had been shipped without proper documentation. The company was charged with violating the *Transportation of Dangerous Goods Act* (Act). The prosecution's theory: The box contained an epoxy of paint-related material, which is a dangerous good.

DECISION

A Provincial Court of Alberta ruled that the prosecution failed to prove beyond a reasonable doubt that the contents of the box were dangerous.

EXPLANATION

The prosecution must prove *all* the elements of the violation beyond a reasonable doubt. A lack of clear proof of *any* element will likely raise a reasonable doubt and so require the company's acquittal, the court said. Here, the element that the prosecution couldn't prove was that the contents of the box were dangerous goods as defined in the Act. None of the witnesses who testified knew the contents of the box. One witness did testify that the box 'had to contain the particular epoxy.' But because he never saw the contents, his testimony 'amounts to no more than a guess,' the court concluded. Also, the court noted that the presence of a safety mark on a box might, in some circumstances, support the presumption that its contents were dangerous. But it was unclear what type of safety mark or sticker was on the original box given to the delivery man.

R. v. Premetalco Inc., [2000] ABPC 73 (CanLII), May 12, 2000