

WINNERS & LOSERS: Is an 'Honest' Mistake a Defence to an Environmental Violation?



Suppose a company tries to comply with an environmental requirement but fails because of a genuine error. Is an honest mistake a defence to an environmental violation? *Answer:* Yes—but only if the mistake was not only honest but also reasonable. Here are two cases illustrating the factors that determine if honest mistakes are reasonable.

MISTAKE WAS HONEST & REASONABLE

FACTS

After a timber company got approval from the BC Ministry of Forests (MOF) to build roads in a new cut block, it hired a contractor to build one of these roads. The contractor placed culverts at water crossings for the removal of trees that were cut as the road was built. After the trees were gone, the contractor tried to remove a culvert from one creek but it was frozen in place. The company decided to leave the culvert there, believing it could remove the culvert later when the ground thawed without damaging the surrounding environment. But the government charged the company with violating the *Fisheries Act* and the *Forestry Act* by installing and leaving the culvert in a fish habitat. The company argued that it didn't think that there were any fish in that part of the creek because a waterfall prevented them from entering the area.

DECISION

The BC Supreme Court dismissed the charges, ruling that the company's mistake of fact was honest and reasonable.

EXPLANATION

Throughout the extensive process to get the permit to build the roads, which included site inspections, mapping and the involvement of the MOF and the Ministry of Environment (MOE), no one believed that there were fish in the creek between the waterfall and the culvert's location. Although MOE personnel later testified that they knew that cutthroat trout were in this area, there was no evidence that they'd ever communicated this information to the company or the

MOF. So given the existence of the waterfall and the lack of information from the MOE, the company's belief that there were no fish in the part of the creek where the culvert was located was both honest and reasonable, concluded the court.

R. v. Crestbrook Forest Industries Ltd., [1998] CanLII 3886 (BC S.C.), June 12, 1998

MISTAKE WAS HONEST BUT UNREASONABLE

FACTS

On July 25, 2010, fisheries inspectors conducting surveillance videotaped a group of fishermen illegally fishing for salmon with a net. When they reviewed the video, they saw one fisherman legally catch a salmon by angling. They questioned the fisherman about his companions and asked to see the salmon he'd caught, which he showed them. The inspector found that the fisherman had tagged the salmon as required. But the date he punched out on the tag was July 26, not July 25. The fisherman was charged with violating the *Salmon Angling and Tag Use Order* under the *Wild Life Act*. He admitted punching out the wrong date but claimed it was an honest mistake.

DECISION

A Newfoundland and Labrador Provincial Court convicted the fisherman, ruling that the mistake was honest but unreasonable.

EXPLANATION

The court explained that for a mistake to constitute a defence for an environmental violation, it had to be both honest *and* reasonable. Here, the court acknowledged that the fisherman's mistake as to the date on the tag was an honest one. But there was no evidence of what steps, if any, he'd taken to determine the correct date before punching it out on the tag or why he mistakenly thought the date was July 26. Thus, the fisherman's mistake was unreasonable and not a defence.

R. v. Shears, [2011] N.J. No. 232, June 28, 2011