# Responsibility for Corporate Acts Causing Environmental Harm: Director and Officer Liability

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Introduction

For those among us who need convincing that the officers or directors of a corporation really can be held responsible for the environmental sins of the corporation consider the case of Nester Romaniuk. Mr. Romaniuk operated a company by the name of N.W.R. Ventures Inc. which was engaged in the salvage and reclamation of battery cores. In performing the reclamation procedures, employees of the corporation simply allowed the battery acid to be discharged onto the ground. Perhaps to avoid charges Mr. Romaniuk allowed the corporation's registration to lapse. The Crown therefore charged Mr. Romaniuk personally, as sole director and shareholder, for transgression of sections 4 and 8 of the Spill Control Regulations under the *Environmental Management and Protection Act*. In winning a conviction, the Crown proved that Mr. Romaniuk was, in essence, the company and therefore the owner of the contaminated property as well as owner of the pollutant.²

Admittedly, the fact that Mr. Romaniuk was unrepresented may mean that the case has little precedent value. It might be said the Crown got lucky. However, increasing public awareness of the need to protect the environment and evolving case law in this area is reducing the Crown's need to rely upon luck to tag a director or officer with liability for environmental harm.

The impact of corporate activities on environmental quality can no longer be avoided. Indeed, the need for corporate responsibility is being brought home to the flesh and blood aspects of the impersonal corporation -- its senior management. Provincial legislatures and Parliament, rather than relying upon courts to affix liability upon directors on an ad hoc basis, have addressed the issue directly by providing that directors and officers be specifically responsible for corporate environmental harm.

The traditional notion of a limited liability corporation is quickly becoming an anachronism with regard to environmental offences. By holding directors and officers liable for the tortious

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² Mr. Romaniuk was sentenced to 30 days imprisonment and a $76,000 fine. This conviction and sentence was upheld on appeal (August 4, 1993, Q.B.C.A. No. 24 of 1992, Wedge J.).
activities of a corporation, we are "piercing the corporate veil". Developing case law reflects the principle that directors and officers will be held liable at common law if their actions fall below any applicable common law duty of care. The general rule is still that if an individual acts honestly and in good faith, courts are reluctant to second guess business decisions.

In this paper we will discuss three possible sources for director liability -- civil liability through common law and statute, criminal liability, and quasi-criminal liability arising through breach of environmental regulatory schemes. Discussion of liability is incomplete without some consideration of possible defences, particularly the defence of due diligence. Accordingly, available defences will be reviewed, particularly those in relation to strict liability offences, since most environmental offences fall within this category.

Civil Liability

Tortious behaviour which may result in the environmental liability of a corporation typically involves situations where a spill has occurred, resulting in contaminated land or water also affecting neighbouring properties. Liability for such torts is often asserted on negligence or nuisance principles. However, our purpose here is not to survey the nature of torts but to focus on whether a director or officer can be held accountable for the environmental torts committed by the corporation.

1. Liability At Common Law

That employees or servants of a corporation will be held accountable for torts committed in the course of their employment is clearly established. Accordingly, where an officer or director is personally involved in the commission of a tort he or she will face liability. The more troublesome issue is whether a director or officer should be liable for torts committed by the corporation's employees but in which the director had no direct involvement. Traditionally, directors are not personally liable for the corporation's torts merely by reason of their office.
In *Cormier et al v. Blanchard* the plaintiff sued both the corporation and its directors in nuisance for operating a fish processing plant which resulted in effluent from the plant being washed up onto the plaintiff's beach. The New Brunswick Court of Appeal, in dismissing the appeal of one of the directors, applied the statement found in earlier English authorities to the effect that:

> The officers of a corporation who carry on its business and maintain a nuisance are personally liable in damages for such nuisance. A director or officer of a corporation may be held liable for a nuisance created or maintained by servants or employees of the corporation, if he had knowledge of the existence or continuance of the nuisance, or if by exercising ordinary diligence in his official position he should have known of it.

Clearly then the knowledge that a director had or ought reasonably to have had regarding the circumstances leading to the commission of a tort will be one of several important factors in affixing personal liability. Perhaps the more important determinant is the degree of influence or control, be it executive or financial, the individual director exercises over the corporation, its operations and employees. The Court in the *Cormier* case allowed the appeal of a second director because he exercised no control over the operations of the corporation. In fact, his only involvement was assisting in the purchase of the land upon which the plant was built.

This principle has been confirmed by the Supreme Court of Canada in *R. v. Sault Ste Marie* in the context of a quasi-criminal prosecution, where the court stated:

> Liability rests upon control and the opportunity to prevent, i.e., that the accused could have and should have prevented the pollution (emphasis added).

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Cases such as *Berger v. Willowdale A.M.C. et al* (1983), 41 O.R. (2d) 89 (C.A.) indicate that the element of control and the ability to influence events will be key in determining the liability of a director. In the *Berger* case the president and sole shareholder of the corporate defendant was found liable for the personal injuries sustained by the plaintiff when she slipped and fell on ice. The court stated that the president was or ought to have been aware many days before the mishap of the presence of ice and snow on the pathway but did nothing to have it removed. "He was in total control of the situation at the place of work. He was in a unique position to remedy the situation and the means of alleviating the risk were readily available to him".

4. (1978), 85 D.L.R. (3d) 161
The degree of influence or control exercised by directors was considered in *R. v. Rata Industries Ltd.* In this case, three directors and officers were charged along with the corporate defendant. In acquitting the president, the court held that he had discharged his duty of reasonable care by hiring an experienced director on site to address environmental concerns. Had the president not been able to prove that he had taken reasonable care, he would likely have been convicted, given that he was in a position to remedy the situation.

Cases such as these highlight the special danger posed to sole directors, officers or shareholders of a corporation, since individuals in this position may be regarded by the courts as able to exercise absolute control over the activities of the corporation. It is perhaps more likely that the sole director and shareholder of a corporation would be tagged with personal liability than would one of a large board of directors.

2. **Civil Liability by Statute**

Section 13(3) of the *Environmental Management and Protection Act* subjects an "owner of a pollutant" or "the person having control of a pollutant" to civil liability at the instance or persons harmed by its discharge. Given the definition of "person having control of a pollutant" contained in the *Environmental Management and Protection Act*, and experience in other jurisdictions, it seems that Saskatchewan courts would have no difficulty including directors and officers within that definition.

The potential for liability as it relates to a director is at once obvious. There are a number of cases, both in the environmental area and in other contexts, where officers have been convicted alongside the corporation where the statute contained analogous wording. In *Metropolitan Toronto (Municipality) v. Siapas* the president of a small corporation was found to be "in

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6 A "person having control of a pollutant" means "the person having the charge, management or control of the pollutant immediately before the first discharge of the pollutant and includes a successor, assignee, executor or administrator of that person" (s.2(t)).

7 (1988), 3 C.E.L.R. (N.S.) 122
charge" of operations although a manager was responsible for the day-to-day operations of the company. As a result the President was found in contempt of a number of court orders prohibiting further discharges of pollutants into the municipal sewer system.

One last example may be found here at home in the previously mentioned Romaniuk decision. Mr. Romaniuk, although carrying on operations as the company, N.W.R. Ventures, was found to be "the owner of a pollutant" within the meaning of section 4 of the *Environmental Spill Control Regulations*.

**Criminal and Quasi-Criminal Liability**

As we know, liability will arise in the criminal context when there is a violation of the *Criminal Code*. Although this does occur in the environmental context, environmental offences are much more likely to be quasi-criminal, or of a regulatory nature. A quasi-criminal offence is one created by statute which carries a penalty similar to that of a true crime. Liability for criminal and quasi-criminal offences found in both federal and provincial statutes is summarized below.

1. **Criminal Code**

While the *Criminal Code* does not make specific reference to environmental harm as criminal conduct, it can still be used to impose liability on the directing mind of a corporation. For instance, section 430(1) of the *Criminal Code* states that one commits an offence who wilfully "renders property dangerous, useless, inoperative or ineffective". As well, Section 180(1) of the *Code* makes it an indictable offence to engage in an unlawful act or fail to perform a legal duty which "thereby endangers the lives, safety, health, property or comfort of the public". Finally, an officer or director may find him/herself criminally prosecuted as in aiding and/or abetting the corporation under section 21 of the *Code*. The fact that the director's actions are, at law, considered to be those of the corporation will not insulate the director from prosecution. ⁸

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⁸ *R. v. Fell* (1981) 64 e.e.e. (2d) 456 (Ont. e.A.)
2. Federal Environmental Statutes

There are a number of statutory sources which may result in liability for environmental wrongdoing. Among the many indirect sources, the following sections of federal statutes impose direct liability upon officers of a corporation for environmental harm:

a) Canadian Environmental Protection Act, section 122
b) Fisheries Act, section 78.2
c) Hazardous Products Act, section 28(2)
d) Transportation of Dangerous Goods Act, section 11
e) Hazardous Materials Information Review Act, section 49(2)

The wording used to impose liability upon a director or officer is typified by that found in section 122 of the Canadian Environmental Protection Act:

Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorised, assented to, acquiesced or participated in the commission of the offence is a party to and guilty of the offence, and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted.

3. Provincial Statutes

Similarly, there are countless indirect sources of environmental liability in the provincial realm, as well as the following provincial statutes which impose direct liability upon corporate directors:

a) The Environmental Management and Protection Act, section 35(2)
b) The Clean Air Act, section 22(2)
c) The Dangerous Goods Transportation Act, section 21
d) The Occupational Health and Safety Act, section 34
The wording in provincial statutes is similar to that found in federal legislation. For example, section 35(2) of the *Environmental Management and Protection Act* states that:

If a corporation has committed an offence ... any officer, director or agent of the corporation who directed, authorised, assented to, acquiesced in or participated in the commission of the offence:

(a) is a party to and guilty of the offence; and
(b) is liable on summary conviction to the punishment provided for the offence;

whether or not the corporation has been prosecuted or convicted.

**Defence of Due Diligence**

1. **Due Diligence**

In most cases, the statutory offences defined in federal and provincial legislation are considered strict liability offences. This means that the accused may be acquitted of the offence if he/she proves that all reasonable care was taken in the circumstances. This defence of "due diligence" was created by the Supreme Court of Canada in *R. v. Sault Ste Marie* (1978), 85 D.L.R. (3d) 161.

This benchmark decision categorized all offences as being of three types:

1. Those which are truly criminal in nature and which therefore require proof of *mens rea*.

2. Those which may be regarded as strict liability offences requiring only proof beyond a reasonable doubt that the accused committed the prohibited act with the onus then shifting to the accused to prove that the act occurred without negligence, and

3. Those which may be regarded as absolute liability offences where liability follows simply from proof that the accused committed the prohibited act.

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9 While this defence is always available at common law for strict liability offences, it has also been codified directly into statutes. See for example Section 125 of the *Canadian Environmental Protection Act.*

10 (1978), 85 D.L.R. (3d) 161
Due diligence arose as a necessary defence to a strict liability offence. That is, an accused could successfully avoid conviction by proving on the balance of probabilities that all reasonable care was taken to avoid committing the offence with which it had been charged.

Since this decision virtually all environmental legislation has been regarded as imposing strict rather than absolute liability, as many of the statutes regulating interaction with the environment impose jail sentences as well as fines for violations. If those same offences were to be regarded as imposing absolute liability they would likely infringe a number of provisions of the Charter of Rights and Freedoms. Accordingly, the defence of due diligence is alive and well in the environmental context.

2. Due Diligence By Who?

It need not be shown that every single person within an organization took reasonable steps to avoid commission of the offence. Rather the focus is whether the corporation and/or its directing minds have done so. Sault Ste Marie is a good reference in this regard.

The availability of the defence to a corporation will depend on whether such due diligence was taken by those who are the directing mind and will of the corporation, whose acts are therefore in law the acts of the corporation itself. (85 D.L.R. (3d) 161 at 185).

Nonetheless it should be kept in mind that due diligence can mean something entirely different for a director than it does for the corporation. Clearly, there will be cases, typically in large corporations, where one or more directors will be able to show due diligence in the discharge of their duties while the corporation can not. The Bata Industries decision mentioned earlier is a good example of this, as one of three corporate directors charged was able to prove due diligence in the circumstances.
It is also noteworthy that courts have held that a corporation cannot indemnify directors for fines imposed in sentencing. Directors who are convicted and fined are required to pay such fines personally.

3. **The Onus**

With regard to strict liability offences, the Supreme Court in *Sault Ste. Marie* held that the burden lies with the Crown to prove the *actus reus* of the offence beyond a reasonable doubt. The onus then shifts to the accused to prove on a balance of probabilities that all reasonable steps were taken to prevent the commission of the offence.

However, the *Canadian Charter of Rights and Freedoms* has brought opportunities to challenge this shifting onus and the burden of proof. A number of Ontario Courts have considered this issue, most notably in *R. v. Wholesale Travel Group* 12, which was eventually appealed to the Supreme Court of Canada. In this case the accused was charged with misleading advertising under the *Competition Act*. The Act provided a statutory due diligence offence to the accused. The Supreme Court of Canada was called upon to determine whether requiring the accused to establish that all reasonable care was taken on a balance of probabilities to avoid committing the offence violated section 7 of the *Charter* 13. In short the Court concluded that in the realm of regulatory offences neither the absence of a *mens rea* requirement nor requiring the accused to establish due diligence on the balance of probabilities violates the *Charter*.

4. **Factors Affecting the Standard of Care**

As we have seen, due diligence is really proving that the accused took all reasonable care in the circumstances. It is important to realize that the standard of care to be met is fluid, particularly in the environmental context.

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12 (1991) 84 D.L.R. (4th) 161
13 As it left open the possibility that a person could be convicted of an offence while a reasonable doubt remains.
As Stewart C.J. opined in *R. v. Placer Developments Ltd.* 14 the severity of the standard varies depending upon a number of factors such as "... the gravity of potential harm, the available alternatives, the likelihood of harm, the skill required, and the extent the accused could control the causal elements of the offence."

These concepts of reasonableness are not new. It is often the case in tort law that the standard of care to be applied to the defendant will increase in response to the potential for harm from the defendant's activities as well as the social utility of the activity. In *R. v. Nitrochem Inc.* 15, the court held the company to a higher standard of care in protecting the environment given the nature of the products manufactured.

**The Availability of Alternatives**

In the *Placer Developments* decision, the court also added another factor in determining the standard of care necessary to amount to due diligence. In this evaluation, the court should compare the measures taken to avoid harm against other available alternatives. "To successfully plead the defence of reasonable care the accused must establish on the balance of probabilities that no feasible alternatives could be employed to avoid or minimise the harm." 16

However, courts have also held that poverty is not a consideration in reviewing alternatives. Impecuniosity cannot be an excuse for failing to comply with the law 17.

**Foreseeability (The Skill Required)**

The foreseeability of harm occurring from a particular event is objective and is a strict application of the principle first enunciated in the *Wagon Mound No. 1* 18 -- would a reasonably

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14 (1983), 13 C.E.L.R. 42 at 51
16 (1983), 13 C.E.L.R. 42 at 51
18 [1961] 1 All E.R. 404 (P.C.)
prudent person have foreseen the general type of danger arising from a particular event. In *R. v. Rio Algom*\(^{19}\), the defendant was charged with a violation of the *Occupation Health and Safety Act* as a result of an employee being crushed to death by a gate which had overswung into the path of a mining car. The gate had been erected to prevent mining cars from entering a dump site. Over time and as a result of railcars colliding with the gate it developed a substantial overswing causing it to swing across a parallel set of rail tracks. Even with the overswing the gate still effectively performed its intended function. The corporation was acquitted at trial upon the basis that the type of accident was not reasonably foreseeable. The Ontario Court of Appeal reversed the trial judge's decision stating:

> The test which should have been applied was not whether a reasonable man would have foreseen the accident happening in the way that it did happen, but rather whether a reasonable man in the circumstances would have foreseen that an 'overswing' of the gate could be dangerous (p. 250).

The general rule regarding how much skill a director must exercise in identifying the potential for problems, is that as the gravity of the potential harm increases the foresight required of those engaged in the activity also increases. Again the concept of foreseeability is based upon an objective standard so that a director may not rely upon his own lack of expertise in a particular area as a means of reducing the range of foreseeability. The *Rio Algom* case shows the test is not dependent upon whether persons within the corporation actually foresaw the problems but whether a reasonable person so situated could have foreseen the problem. Accordingly, it is incumbent upon the senior management of a corporation to ensure that the proper expertise is acquired to identify potential risks, but once acquired a Director is entitled to place reasonable reliance on such reports.\(^{20}\)

\(^{19}\) (1988), 46 e.e.e. (3d) 242 (Ont. e.A.)

**Industry Practice**

Neither a director nor the corporation may rely upon an industry practice or custom where a higher degree of care is required, but custom may nonetheless provide a minimum standard of care which the corporation is expected to meet.

5. **Establishing Due Diligence**

The decision in *R. v. Bata Industries Ltd.* is instructive in determining what minimum steps ought to be taken by a director wishing to insulate himself with the defence of due diligence.

(a) Did the Board of Directors establish a pollution prevention 'system', ... Le. was there supervision or inspection? Was there improvement in business methods? Did he exhort those he controlled or influenced [to comply with environmental regulations]?

(b) Did each Director ensure that the Corporate officers have been instructed to set up a system sufficient within the terms and practices of its industry of ensuring compliance with environmental laws, to ensure that the officers report back periodically to the Board on the operation of the system, and to ensure that the officers are instructed to report any substantial non-compliance to the Board in a timely manner?

(c) The Directors are responsible for reviewing the environmental compliance reports provided by the officers of the Corporation but are justified in placing reasonable reliance on reports provided to them by corporate officers, consultants, counselor other informed parties.

(d) The Directors should substantiate that the officers are promptly addressing environmental concerns brought to their attention by government agencies or other concerned parties including shareholders.

(e) The Directors should be aware of the standards of their industry and other industries which deal with similar environmental pollutants or risks.

(f) The Directors should immediately and personally react when they have notice the system failed.
In essence, these factors impose on corporations and their directors a responsibility to establish environmental management plans and record keeping systems to monitor regulatory compliance. If a company can prove that such systems are in place, it is well on its way to establishing due diligence.

**Other Defences**

1. **Mistake of Fact**

   The *Sault Ste Marie* case also stands for the proposition that an accused may avoid liability by proving that he acted under a mistaken set of facts which, if true, would not give rise to liability. To succeed in this defence the accused must prove that his belief in the set of facts was reasonable in the circumstances. This in turn means that he must have taken reasonable steps to ascertain the true facts and the mistake was not due to wilful blindness. That is, if the accused is aware that his/her version of the facts may not be accurate, he/she cannot rely upon the defence by refusing to enquire into the true state of facts. As well the mistake must be in relation to facts. Mistakes as to the applicable law are not a defence.

   A distinction must also be drawn between mistake as to a set of facts and mistakes as to the consequences of known facts. The defence may be successful in the former but not the latter. The *Rio Algom* case provides a good illustration of this distinction. Everyone knew of the overswing of the gate including government inspectors but none believed it presented a danger to employees. The mistake as to the consequences of this known fact was insufficient basis upon which to win an acquittal.

2. **Officially Induced Error**

   This defence may appear at times to overlap with the defence of due diligence but as observed by Lacourciere l in *R. v. Cancoil Thermal Corp.* it is a separate and distinct defence to an alleged
violation of a regulatory law”. Where the accused has reasonably relied upon the erroneous legal opinion or advice of an official who is responsible for the administration or enforcement of a particular law”, he/she will not be found to have violated that law.

In order for the accused to succeed in this defence he must show that his reliance upon the opinion of the official was reasonable in the circumstances. Again what is reasonable "...will depend upon several factors including the efforts he made to ascertain the proper law, the complexity or obscurity of the law, the position of the official who gave the advice, and the clarity, definitiveness and reasonableness of the advice given." Finally, the official who gave the advice must have been asked his opinion after being advised of all material facts by the accused.

3. ActO/God

This defence is much used but rarely successful. To succeed in this defence the accused must establish that the violation of the law was caused by an extraordinary act of nature which no one could have foreseen or prevented. In R. v. North Canadian Enterprises Ltd. 22 the accused was engaged in a copper milling operation when exceptionally heavy rains caused a break down of a water filtration system resulting in unauthorised discharge of pollutants. The defence that the torrential rains amounted to an act of God was not accepted. The Court expressed the view that the Act of God must be "something quite overwhelming, not merely an ordinary circumstance which could have been foreseen and guarded against."

This defence is obviously connected to the concept of due diligence as it is based on the notion that the accused would not have been able to prevent the harmful event regardless of measures or systems designed to ensure reasonable care in the circumstances.

21 (1988), 46 C.C.C. (3d) 242 (Ont. c.A.)
22 (1974), 20 C.C.C. (2d) 242 (Ont. Provo Ct.)
4. **Defence of Sabotage**

In *Ministry of the Environment v. Exolon CO.*[^23] the accused corporation was in the midst of a labour dispute with its employees. In order to enforce demands that an outside contractor not be used to monitor a new system to reduce emissions the employees refused to co-operate in implementing the new procedures. During this time an environment officer noticed a silicon carbide emission of gaseous flame from a furnace on the premises and noted irritation to his throat and eyes as well as a sulphur-like odour. The accused relied upon the defence of sabotage. The court found that the accused should be acquitted because the system which the company had designed to control the emissions would have worked adequately had the employees not deliberately refused to perform their duties and follow instructions.

**Conclusion**

One must look to the plight of corporate directors and officers with some sympathy. Gone are the days where directors could rely upon their duties to act honestly and in the best interests of the corporation as insulation from liability. Increasingly, directors are being required to prove that their activities are held to a high standard of environmental responsibility.

Director's liability for corporate environmental harm is a necessary consideration in our evolving regulatory climate. Fortunately, the scope of liability and related defences is becoming clearer. It is perhaps obvious by now that while the defence of due diligence can appear to take a number of different forms, it essentially stems from two basic propositions -- could the consequences arising from a particular activity reasonably have been foreseen, and if so, would a reasonable person have taken more precautions to prevent those occurrences than was taken in the circumstances.

[^23]: (1981), 36 O.R. (2d) 530 (Prov. Ct.)
The director's obligation to protect the environment is becoming increasingly more difficult to reconcile with the duty to the corporation and its shareholders. These changing expectations signify a changing perception of the role of corporations as responsible citizens. Corporations can no longer rely solely on economic factors as their contribution to society. By finding directors and officers responsible for corporate acts causing environmental harm, courts are peeking behind the corporate veil to ensure that corporations take responsibility for their actions.

(KHCLMPIAMIPROIKHC-PAP.SAM)
OFFICERS & DIRECTORS LIABILITY WORKSHOP
Case Study

Ed and Perry Still learned to make spirits from their father. The "off farm income" generated from the products put the boys through university; both graduating in 1952 with Commerce Degrees - Ed in Accounting and Perry in Marketing.

Knowing well the quality of their father’s recipes and the demand, having been to university for a good bottle of "porch climber," the lads returned to the farm with the entrepreneurial dream of a local distillery in a 40 oz. bottle labelled "Still - The Best."

After a few lean years and a few private sales, Ed and Perry finally secured all the necessary licences and approvals to construct a distillery on their farm near Drink Water. Folklore said the town was named because of the pure spring water which flowed into the Moose Jaw River from the numerous springs in the area. Others said that the morning after a bottle of Still's whiskey, all you wanted to do was drink water.

In any event, the business flourished. Named Still Distilleries, it was incorporated in 1961 with Ed and Perry being the only officers and directors. But in 1989, Ed decided to improve his golf game and retired to Phoenix, relinquishing his office as Vice-president of Finance. He maintained his interest in the business and his directorship. Perry could not get it out of his blood and continued as President and the only other director.

But to replace Ed and keep pace with technology, help was needed. A chemist, Benson Burns, was hired as Vice-president of Production and Quality Control. A chartered accountant, Costa Little, was hired as the Vice-president of Finance. New minds brought new ideas and just in time. Competitive pressures called for greater efficiency and an upgrading of the plant. The most up-to-date technology was installed.
The labelling machine was replaced with one which utilized glue containing high concentrations of mercury. New vats, which produced a 12-year old taste in 18 months, came with a rinsing agent laden with hydrocarbons.

After retirement, Ed returned once a year for a board meeting and to fish the Moose Jaw River. He received monthly financial and operating reports. While he had no part in the upgrading plans, he had Benson and Costa send him machinery specifications and operating procedures which he studied in his idle time. He also wrote a letter to Perry saying he had golfed with a lawyer who suggested the company do an environmental compliance audit and prepare a pollution prevention plan. Perry dismissed the notion as being "American."

Perry, Benson and Costa were at the plant five days a week. Perry did the marketing and Benson the production. Costa looked for ways to save money.

At an executive meeting shortly after the plant was upgraded, Benson announced he had developed an environmentally safe plan to dispose of the vat rinse. Of course, it would not be needed for another 18 months. Costa said he had reviewed the manufacturer's recommended maintenance program for the labelling machine, but thought that the six-month intervals were too short and recommended one year instead. Benson vigorously opposed this idea, but Perry agreed.

Unfortunately, Benson's program for the disposal of the vat rinse was not followed. The driver of the pump trunk who had hauled the vat rinse for 20 years forgot about delivering it to the local refinery which had developed a process to make toe rubbers out of used oil. Rather, he spread the solution in Angus Bullion's pasture as he had done in the past. Prior vat rinse was completely toxic free and, in fact, because of the nitrates, made good fertilizer. Approximately 40 acres of pasture went out of production and 9 of Angus' pure-breds died eating the mutant grass.

Costa's maintenance plan also failed. A glue line ruptured and the slow leak located over the plant's storm sewer was not noticed until Costa's cost control identified about a year later that
he had purchased four times the budgeted amount of glue. The storm sewer naturally drained into Little Bitty Creek, a tributary of the Moose Jaw River. It entered upstream of Drink Water's water supply.

Ed who had been home for a board meeting noticed a lack of lustre in the Walleye in the Moose Jaw River. He reported it to the local authorities and tests identified mercury poisoning. The source of the mercury was traced to the plant.

Angus and the Town of Drink Water sued everyone. Ed, Perry, Benson and Costa as well as Still Distilleries were charged with numerous violations of various environmental protection statutes.