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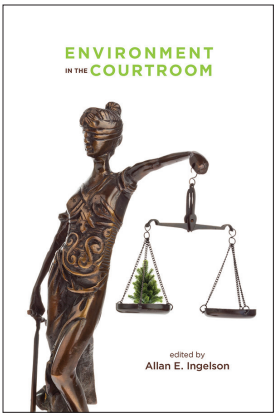

ENVIRONMENT IN THE COURTROOM

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Certain Defences in Criminal Law of the Environment

JEAN PIETTE

Introduction

This chapter presents certain defences used in criminal law of the environmental other than the due diligence defence set forth in *R. v. Sault Ste. Marie*,[1] which has since been codified in various ways in many provincial and federal environmental protection Acts. Most of these defences are known in penal or criminal law. They have been adapted to environmental law and have been subject to various interpretations and applications by different courts across Canada. Defences of particular interest from this standpoint, which have selected for this chapter, are the abuse of process, officially induced error of law, the defence of impossibility, the defence of necessity, and the defence of *de minimis non curat lex*.

We will therefore describe these defences and show how the courts have dealt with them considering the nature and particular purpose of environmental law. Our remarks are not intended to be exhaustive, as there are other defences that address procedural or constitutional issues or deal with the interpretation of statutory law, which creates duties, obligations, and prohibitions specific to environmental law.

Abuse of Process

The defence of abuse of process is well known in criminal law. It enables the accused to have the proceedings stayed or the charge dismissed if it can demonstrate that the authorities have treated it in an unfair or abusive manner, thus compromising the integrity of the judicial process. The conditions for using this defence in criminal law were established by the Supreme Court of Canada in *R. v. Jewitt*.[2] In *Re Abitibi Paper Co. Ltd. and the Queen*,[3] the Court

of Appeal for Ontario established the circumstances and rules under which a justice may find an abuse of process in the context of environmental law. This defence is applicable only "in the most exceptional circumstances," where the behaviour of the Crown may be described as "vexatious, unfair and oppressive," to use the words of Justice Jessup.[4] It should be noted that, like most defences, abuse of process must be proved by a preponderance of evidence submitted by the accused after the Crown has presented the evidence proving that the accused is guilty of the charge against it.

In *Abitibi Paper*,[5] the Court of Appeal reversed the trial judgment and ordered a stay of proceedings because the charges regarding violations of the Ontario *Environmental Protection Act*[6] and the *Ontario Water Resources Act*[7] had been filed before the deadline set by the Ministry of the Environment for the accused to complete work in order to stop polluting the Abitibi River.

In another interesting case, *Attorney General of Quebec v. Balmet Canada Inc.*,[8] a motion to stay the proceedings was granted. The defence argued that there had been an abuse of process by the Attorney General of Quebec and that the proceedings against the defendant were oppressive and vexatious. In this case, the department had waited almost two years after the initial inspection had revealed a fault before instituting proceedings. On this point, the court wished to mention that even if it did not approve of the department's behaviour, the defendant could expect to be prosecuted because the requirement had not been fulfilled. The court also reiterated the principle that a stay of proceedings may be ordered only in the clearest cases. Justice Mayrand nevertheless granted the motion because the Crown sought to punish the defendant for an offence committed on March 3, 1988, while the Department of the Environment had granted the defendant a written extension until March 25, 1988 to comply with a condition of its certificate of authorization. Justice Mayrand wrote the following regarding this matter:

> [Translation] It is inconceivable and disgusting to think that the Department may institute legal proceedings to impose penalties in regard of a situation that it implicitly allows. Because written permission was provided on February 8, 1988 for the situation to continue until March 25, 1988, the defendant could not expect to be prosecuted for this violation on March 3, 1988.

In an occupational health and safety case, *R. v. Toddglen Construction Ltd.*,[9] the court also issued a stay of proceedings based on the evidence that the Ministry of Labour's inspector had agreed not to prosecute the accused if a company

representative testified that a subcontractor was responsible for having performed a dangerous excavation.

A similar situation arose in *R. v. Loblaw Properties Inc.*,[10] where a Ministry of Labour inspector had promised that no charges would be laid against the accused if one of its representatives provided an incriminating statement. A stay of proceedings was also ordered in *R. v. Northwood Pulp Timber Limited*,[11] where the accused had implemented a process water treatment pilot project within a period specified by the Ministry of the Environment, but failed to reduce the illegal discharges.

In cases of environmental law, "vexatious, unfair and oppressive" behaviour has often been associated with the conduct of Ministry of the Environment officials and their interaction with the Crown prosecutor responsible for instituting criminal proceedings.

To mount a successful defence of abuse of process in environmental law, the accused must show that clear promises not to institute proceedings were made and even constituted a contractual agreement between the parties. This defence was therefore rejected in *R. v. Laidlaw Waste Systems Limited*[12] because the department's commitments had more to do with an impression of a commitment than a formal commitment.

The defence of abuse of process was also rejected in *R. v. Placages Techno-Spec*,[13] where the defendant argued that the sampling method used by the Department of the Environment prevented it from mounting a full and complete defence because it did not allow the defendant to provide a sample. This defence was also rejected in *R. v. Syncrude Canada Limited*,[14] where the accused argued that it had complied with the provisions of the permit obtained under the Province of Alberta's environmental legislation. It was the same in *R. v. Canada (Northwest Territories Commissioner)*,[15] where the argument of compliance with a permit to refute a charge of non-compliance with the law was rejected because the permit included the following clause: "Compliance with the terms and conditions of this permit does not exempt the holder from having to comply with the requirements of other federal and territorial legislation."[16]

Officially Induced Error of Law

There is a fundamental rule in our society that ignorance of law is no excuse. The courts have always been reluctant to accept an error of law as a defence or excuse in criminal matters. However, given the number of regulations in modern life, the courts now recognize an exception to this rule when an officially

induced error of law is involved. An error of this nature can therefore have an exculpatory effect under appropriate conditions.[17]

Case law has set out certain conditions that have to be met in order for this defence to be used to excuse the commission of the offence by the accused. In *R. v. Jorgensen*,[18] Justice Lamer stated and updated the conditions for this defence, which may be established by an accused only after the Crown has proved all the elements of the offence.[19] These conditions, which must be established by the defendant by a preponderance of evidence, are as follows:

(1) There must have been an error of law or an error of mixed law and fact;
(2) The accused must have questioned the legality of his or her actions;
(3) The accused must have consulted with or received advice from a person in authority who is competent in the matter, that is to say, a reasonable person normally responsible for enforcing a law or providing advice on the law in question, and to whom questions were asked, or from whom advice was obtained regarding the particular situation in question;
(4) The advice obtained must be reasonable in the circumstances;
(5) The advice obtained must have been erroneous (the accused is not required to demonstrate this because the Crown will have already established what the correct law is);
(6) The accused performed an act or engaged in conduct based on this advice.

If the court allows this defence, it will generally grant a stay of proceedings because this defence functions as an excuse rather than a full defence.[20] However, a court will sometimes grant an acquittal based on this defence.[21]

Although Justice Lamer stated the conditions for officially induced error of law in 1995, that defence had already been recognized for several years. The following cases are prime examples: *MacDougall*,[22] *Cancoil*,[23] and *Gravel Chevrolet Oldsmobile*.[24]

This defence has often been used in criminal law of the environment. In *Québec (P.G.) v. Allard*,[25] the defendants had dug a boat trench at Lac-Kénogami. They had obtained a permit from the municipality but had not obtained a certificate of authorization from the Department of the Environment. The defendants believed that they had all the necessary permits. Given all the circumstances, including a dispute between the municipality and the

department, which the accused could not be blamed for not being aware of, their error was deemed inadvertent; that is to say, it was an honest mistake made in good faith. The defence was therefore allowed.

As a general rule, the absence of legal proceedings, silence on the part of the Crown[26] or the authorities' tolerance may be the source of the error recognized by this defence.[27] An accused who invokes this defence must have inquired about the rules of law governing a particular activity and obtained advice in this regard. The advice issued by the competent authority will be deemed reasonable unless it appears unreasonable on its face.[28] However, this defence was still allowed where the defendants claimed that although their activities were illegal, they had continued for several years with the tacit approval of the authority responsible for enforcing the law, the Department of Fisheries and Oceans.[29]

In *Balmet*,[30] which we have already discussed in the context of the defence of abuse of process, the court stated that the situation was similar to cases in which a defence may be allowed based on officially induced error of law. In this case, the defendant knew that it had violated the terms of the licence issued to it by the department, but it had been misled by a letter from the department, which tolerated this situation until a specified date.

The Superior Court of Quebec also ruled on this defence in a case of environmental law that went to trial in 1992.[31] In this case, the defendant was acquitted on a defence of officially induced error of law. The company claimed that it had been working under the supervision and responsibility of the Quebec Department of Transport and that a department supervisor responsible for enforcing the contract specifications and applicable regulations had approved the release of materials in an unauthorized location, an offence for which it was being now charged.

The case involved an offence under the Quebec *Environment Quality Act*, and the official who had "approved" the release of materials in an unauthorized location was a Quebec Department of Transport official. However, in *Jorgensen*, Justice Lamer wrote that to be eligible, the error had to be induced "in general" by an official responsible for enforcing the law in question.[32] In practice, the courts seem to show flexibility in this regard and allow this defence when, from the accused's point of view, the officer is seen as a duly authorized representative of the public authority even if he or she is not an official responsible for enforcing the law that has been violated. The same situation arose in *Dow Chemical Canada Inc.*[33] and *MacPherson*.[34]

When a court recognizes this defence, it seeks to understand the accused's perception of the Crown (or "authorities"). Thus, in *Forest v. Pointe-Fortune*

(Municipality),[35] a private citizen misled by the mayor of a small town on the need for a permit was granted a stay of proceedings based on this defence. In *R. v. Vostis*,[36] the accused was less fortunate, undoubtedly because he was an experienced businessman who had relied on a receptionist's statements. However, in *Maitland Valley Conservation Authority v. Cranbrook Swine Inc.*,[37] the court accepted the defendants' good faith because they had verified the applicable laws and the Ontario *Building Code Act, 1992*[38] indicated that the approval obtained included a reference to compliance with other applicable laws.

In another case,[39] the accused was charged with making false statements. He relied on the defence of officially induced error because the alleged statements were made in the presence of a wildlife officer who was fully aware of all relevant facts, since he had witnessed them. The defence was accepted for one of the charges.

Sometimes the distinction between the defence of officially induced error and the due diligence defence seems rather tenuous. Thus, in *MacPherson*,[40] cited as an example of officially induced error, the defence appears to be more like a defence of due diligence. In this case, the defendant, Mr. Macpherson, had a pond, which according to the inspectors, did not meet current standards. They then asked him to suspend his operations and make some changes. The defendant made the changes based on his understanding of the instructions, but the inspectors said that they were not satisfied and initiated proceedings. Mr. Macpherson was acquitted because he had made considerable efforts to comply with the inspectors' requirements and believed that he had made the required changes.

When the defence of officially induced error of law is dismissed, it is because the applicable criteria have not been met.[41] It is obvious that honest and reasonable error ceases immediately when an accused receives a letter or notice indicating that a situation or behaviour is contrary to the law.[42]

Defence of Impossibility

"No one is obliged to do the impossible." This truism also applies to environmental law. To successfully establish a defence of absolute impossibility, the accused must be in a situation in which he was unable to act because of a fortuitous event or *force majeure*. Obviously, the impossible situation must not have been created by the defendant. Instead, he must have done everything reasonably possible to avoid committing an offence. The cause must be external, beyond the control of the accused, unpredictable, and unavoidable.[43]

In the recent case of *Directeur des poursuites criminelles et pénales v. Lapointe*,[44] the defendant was accused of having allowed a contaminant (sewage

from a mobile home park) to be released into a stream. The defendant claimed that he had made every effort to find a solution to the pollution problem but that it was impossible for him to correct the situation without the municipality's help. The court considered the defence in light of Paule Halley's work[45] on criminal law of the environment and found that this defence was not admissible in the circumstances of this case. The court wrote the following:

> 44 [Translation] With respect to the defence of impossibility, it is clear that relative impossibility was involved because the situation did not involve an unpredictable event over which the defendant had no control. The evidence showed that he was aware of the pollution situation long before he became the owner of polluting facilities. He was also aware of the high costs that these repairs could entail because the former owner had not been able to afford them and the municipality of Notre-Dame-du-Portage had refused to become involved.

In *Québec (P.G.) v. Récupère-Sol Inc.*,[46] the defendant operated a contaminated soil and water treatment centre and was accused of failing to comply with the conditions of the certificate of authorization granted by the Minister of the Environment, as a result of having received and stored pieces of concrete larger than it was authorized to receive. The defendant pleaded that it was impossible to dispose of the concrete in question because the only company capable of receiving these types of pieces of concrete in Canada was no longer in business. However, the evidence showed that the defendant accepted the concrete after the company had gone out of business, which was common knowledge. The court wrote, "[Translation] Therefore, it knows or should know that it will not be able to dispose of it. No one may invoke their own turpitude as a defence."[47] The defendant did not meet the following essential criterion for establishing a defence of impossibility: "Finally, the accused must not have placed himself in an unavoidable infringement situation." [48]

In *PG du Québec v Beaulieu*,[49] the court ruled in favour of the defendant accused of having discharged wastewater into a ditch, and ordered a stay of proceedings. The accused lived in an area without a sewer system and his lot was too small to accommodate a septic field. Also, installing a septic tank was not practical. The case was declared very exceptional and the defence was described as very unusual. The court stated that the impossible situation in which defendant found himself was "acceptable and reasonable." Because potential solutions were extremely costly and unreasonable, the court ordered a stay of proceedings based on "society's sense of fair play and decency." This economic

argument is more consistent with the relative impossibility of complying with the law and is rarely admitted in a criminal court.

A few years later, the same defendant was prosecuted again for the same offences.[50] The defendant entered a plea of abuse of process, which was rejected this time. The court stated that the doctrine of abuse of process applied only when the facts and the dispute were the same as in the previous case. In this case, the evidence revealed that the circumstances had changed since the first trial: the accused was no longer unable to comply with the law because he could purchase a lot for $500 in order to comply with the standards.

In *R. v. Grégoire*,[51] the accused faced three counts for having discharged manure into a river and having contaminated drinking water. The accused was convicted on two of the three counts, since the court was not satisfied beyond reasonable doubt of his guilt on the first count. The justice wrote:

> [Translation] On February 4, 1980, the defendant cited various events relating to the atmosphere and the temperature, which he described as uncontrollable. These events made it reasonable to assume that on that date it was impossible for him to act differently and that the discharge observed by the inspectors was an overflow from the basin caused by an accumulation of natural rainwater. When the wind picked up, it caused the basin to overflow.

The court therefore accepted a defence of impossibility with respect to the first charge. It considered that the explanations provided by the accused had weakened the prosecution's position, and the court was not satisfied beyond reasonable doubt of the guilt of the accused for the event that occurred February 4, 1980.

The judgment provided few details on the nature and intensity of the weather conditions cited in support of the defence. However, we must remember that the defence of impossibility requires a fortuitous event or *force majeure* to have occurred. However, abnormal weather conditions are predictable and cannot be described as fortuitous events or *force majeure*.

Defence of Necessity

In order to mount a successful defence of necessity against a criminal charge, some essential elements are required. First, the accused must establish that he was in an urgent situation and that in the circumstances it was extremely difficult for him to comply with the law. Second, the offence must have been committed in order to avoid a greater evil. The defendant chose the lesser

of two evils. However, it cannot be a real choice made by the accused since the illegal act was committed in circumstances where it was deemed morally involuntary.

A defendant who wants to use this defence must demonstrate that it was necessary in the circumstances to break the law in order to prevent an event with more serious consequences and that it was better and reasonable to act in this manner. Where an accused reasonably believes that a great evil will occur, committing an offence may be justified if committing the offence prevents a greater evil and if he is in such an urgent situation that no other way to avoid the evil appears reasonably possible.[52]

Perka v. R.[53] established three conditions for the operation of this defence:

(1) The moral involuntariness of the act committed by the accused;
(2) The existence of an urgent situation; and
(3) The harm inflicted is less than the harm the accused sought to avoid.

The defence of necessity has been used in some cases involving criminal law of the environment. However, the courts rarely accept this defence. Thus, in a case in which liquid manure was spread in contravention of section 20 of the *Environment Quality Act*[54] and the *Regulation respecting the prevention of water pollution in livestock operations*,[55] the justice rejected the defence of necessity and found the defendant guilty.[56] As an excuse or rationale for its act, the accused pleaded that it had to spread the manure out of necessity. It submitted that it was in an urgent situation and if it had not spread the manure when the earth was not very frozen or covered with snow, the pit that it used to store its cattle manure would have overflowed before spring, which would have caused greater harm. However, the court came to the following conclusion:

> [Translation] […] that he did not seek other solutions and his choice to spread the manure during the prohibited period was an economic choice rather one motivated by a sincere desire to comply with environmental protection regulations. The situation was not urgent and there was no imminent danger because it was December and he expected the harm to occur at the end of winter. The accused had the means to find a legal solution. For example, he could have hired a septic service company to remove the manure. Obviously, it would have cost some money and the accused would have lost some manure, but that would have been a potential solution.

However, this defence has been accepted in circumstances where the accused had chosen to protect the life and health of a person rather than comply with the provisions of the *Fisheries Act*,[57] which ensures the protection of fish. The same thing occurred in *R. v. Milaster*[58] and *R. v. Western Forest Industries Limited*.[59] The protection of human life, health, and safety prevails over protection of the environment, which reflects the hierarchy of social values.

In *R. v. Saint-Cajetan d'Armagh*,[60] the municipality had dredged a river without first conducting an environmental impact assessment and obtaining a certificate of authorization. The court found that the public authority had failed to act with due diligence but that the defendant had to intervene to prevent a disaster similar to that which had already occurred, that is, frequent flooding. In this case, the court permitted an offence under the *Environment Quality Act* in respect of an activity conducted in the public interest to prevent the catastrophic effects of flooding that would have harmed taxpayers and their property. The court chose to protect the community rather than the environment, even if the protection of life did not seem to be involved. It should be noted, however, that the offence in this case was a violation of an administrative nature, that is, failure to obtain a certificate of authorization to perform work, and that the certificate of authorization would probably have been issued if it had been demonstrated that the work was necessary and if measures had been taken to minimize the environmental impact of the work.

The Defence of *De Minimis Non Curat Lex*

This defence is used when the facts constituting the offence appear so ridiculous that it seems unlikely that the legislation was meant to address these types of situations. The defence then claims that minor contraventions of the law should not give rise to criminal penalties.

This maxim has existed for very long time, but its relevance in environmental law was formally established in *Ontario v. Canadian Pacific Ltd.*,[61] where the Supreme Court of Canada was asked to consider paragraph 13(1)(a) of the Ontario *Environmental Protection Act*,[62] which contains a general prohibition against releasing contaminants into the environment. This provision is somewhat similar to the ban adopted by the Quebec legislature as a residuary clause at the end of the second paragraph of section 20 of the *Environment Quality Act*.[63] The prohibition of the Ontario legislation forbids the discharge of any contaminant that can cause "impairment or serious risk of impairment of the quality of the natural environment for any use that can be made of it."[64] This is obviously a very broad and vague provision. However, this is one way

of legislating to protect the environment. The other is to prohibit the discharge of a particular contaminant based on a very specific quantity or concentration, generally determined by regulations[65] or by enacting highly targeted legislative prohibitions. The defence of *de minimis non curat lex* applies only to prohibitions phrased in general terms.

In its judgment, the court considered that the general prohibition of the Ontario Act was not vague in the constitutional sense but sought to determine the area of risk created by the prohibition and wrote the following in this regard:

> Because the legislature is presumed not to have intended to attach penal consequences to trivial or minimal violations of a provision, the absurdity principle allows for the narrowing of the scope of the provision. In this regard, the principle of absurdity is very closely related to adage of *de minimis non curat lex* (the law does not concern itself with trifles).[66]

This defence, now officially recognized by the Supreme Court of Canada, has not had significant success in the courts. In Quebec, it was accepted in *P.G. du Québec v. Naud*,[67] where the court dismissed the charge of having maintained a dump within 500 feet of a road maintained by the Minister of Highways because the "dump" consisted simply of an automobile body, a small pile of scrap metal and a pile of wood. The court ruled that the law could not deal with such an insignificant matter. This defence was also allowed in the case of a soil remediation activity that was considered a "negligible"[68] activity, but it was rejected in the three other cases in Quebec.[69]

Conclusion

This overview of various defences in criminal law of the environment shows that the courts always seek to maintain balance and equity between the need to protect society's environmental interests and the behaviour of individuals and companies that are subject to the requirements and ever-increasing expectations of environmental legislation.

Environmental law reflects the increasing importance of environmental protection in the hierarchy of social values and the coexistence of this concern with the rights and freedoms recognized in a society governed by the rule of law.

NOTES

1 [1978] 2 SCR 1299.
2 [1985] 2 SCR 128.
3 (1979), 24 OR (2d) 742, 47 CCC (2d) 487 (CA).
4 *Ibid* at 496.
5 *Supra* note 3.
6 RSO 1990, c E.19.
7 RSO 1990, c O.40.
8 *Procureur général du Québec v Balmet Canada Inc*, CQ (Crim Div), Nos 755-27-000012-908, 755-27-000013-906, and 755-27-000014-904, 12 March 1992, Yvan Mayrand J [*Balmet*]; reported in No 88 of Y Duplessis, J Hétu & L Vézina, *Jurisprudence inédite du droit de l'environnement: 1980–1992* (Cowansville: Éditions Yvon Blais Inc, 1994).
9 1994 CLB 15993 (Ont Sup Ct, Prov Div).
10 [2002] OJ No 4324 (CJ).
11 (1992), 9 CELR (NS) 289 (BC Prov Ct).
12 [1995] OJ No 4279 (Prov Ct).
13 JE 92 1270 (Montreal Mun Ct).
14 2010 ABPC 229.
15 (1993), 12 CELR (NS) 25 (NWT Terr Ct), upheld on appeal 15 CELR NS [85].
16 *Ibid* at 103 (author's translation).
17 See Jean Piette & Isabelle Fournier, "Le développement des moyens de défense en droit pénal de l'environnement" in Service de la formation continue du Barreau du Québec, *Développements récents en droit de l'environnement* (Cowansville: Yvon Blais, 1994) 291 at 297; Paule Halley, *Le droit pénal de l'environnement* (Cowansville: Éditions Yvon Blais, 2001) at 253 ff [Halley]; *Québec (Attorney General) v MJ Robinson Trucking Ltd*, CQ Hull, No 550-27-005452-906, 4 December 1991, JE 92-1221 (SC); *R v Macpherson* (1983), 3 FPR 329 at 331 (BC Prov Ct) [*Macpherson*].
18 [1995] 4 SCR 55 at 77–84 [*Jorgensen*].
19 *Ibid* at 81.
20 *Ibid*.
21 For example, in *PG du Québec v Allard*, JE 2001-401 (CA) [*Allard*].
22 It was without a doubt *R v MacDougall*, [1981] 2 SCR 605 [*MacDougall*] that officially recognized the existence of this defence.
23 *R v Cancoil Thermal Corp* (1986), 27 CCC (3d) 295 (Ont CA) [*Cancoil*].
24 JE 91-1697 (CA).
25 JE 98-2179 (CQ), Micheline Paradis J; appeal judgment, *supra* note 21.
26 *Halton Conservation Authority v Cristiano* (1992), 10 CELR (NS) 154 at 160 (Ont CJ, Prov Div).
27 G Côté-Harper & A Manganas, *Droit pénal canadien*, 3d ed (Cowansville: Éditions Yvon Blais, 1984) at 532.
28 *Jorgensen*, *supra* note 18 at 80.
29 *R v Johnson & Wilson* (1988), 2 WCB (2d) 194 (NB Prov Ct).
30 *Balmet*, *supra* note 8 at 14.
31 *Québec (Attorney General) v MJ Robinson Trucking Ltd*, *supra* note 17.
32 *Jorgensen*, *supra* note 18 at 79.
33 (1987), 1 CELR (NS) 169 at 172–174 (Ont Prov Ct, Crim Div).
34 *Macpherson*, *supra* note 17.
35 (2004), JQ No 7390 (SC).
36 (2006), 21 CELR (3d) 218 (Ont CJ), aff'd 35 CELR (3d) 109 (CJ).
37 (2004), OJ No 5724 (CA).
38 SO 1992, c 23.
39 *David v PG du Québec*, JE 93-127 (CS).
40 *Macpherson*, *supra* note 17.
41 *Marcheland v R*, [1991] Recueil de jurisprudence du Québec 799 (CS); *Lalonde v Savard*, JE 88-354 (CA); *Séguin v R*, JE 88-584 (CS); *R v Gruber* (1982), WCB 65 (CTY).
42 *Allard*, *supra* notes 21 and 25; *Québec (Procureur général) v Entreprises A Stabile & Fils*, JE 94-1096 (CQ) at 22.
43 See Piette & Fournier, *supra* note 17 at 300–302; Halley, *supra* note 17 at 213 and ff; *Strasser v Roberge*, [1979] 2 SCR 953, studied the defence of impossibility but did not consider it. In this case, the defendant was charged with having participated in an unlawful strike. The road leading to the mine was blocked, but the mine could be reached by another road and 40% of the other employees ultimately went to work.

44 2012 QCCQ 6464, Julie Dionne J.
45 Halley, *supra* note 17.
46 [2003] JQ No 418, Jean-Yves Tremblay J (CQ).
47 *Ibid* at para 128.
48 *Ibid* at para 127, citing *L'environnement au Québec* des publications CCH.
49 *PG du Québec v Beaulieu*, CSP Rivière-du-Loup, No 250-27-000321-863, 21 October 1987, Marc-André Drouin J; reproduced in No 36 of Duplessis, Hétu & Vézina, *supra* note 8.
50 *PG du Québec v Beaulieu*, JE 91-1487 (CQ).
51 *R v Grégoire*, CP Saint-Hyacinthe (Crim Juris) No 27-001200-81, 11 December 1981, Denis Robert J; reproduced in Duplessis, Hétu & Vézina, *supra* note 8.
52 See in particular *Morgentaler v R*, [1976] 1 SCR 616.
53 [1984] 2 SCR 232.
54 RSQ, c Q-2.
55 RRQ 1981, c Q-2, r 18.
56 *PG du Québec v Ferme du Clan Gagnon Inc*, Alma PC (Crim Div), 29 February 1988, Claude Gagnon J; reproduced in No 33 of Duplessis, Hétu & Vézina, *supra* note 8.
57 RSC 1985, c. F-14.
58 (1982), 3 FPR 403 (BC Prov Ct).
59 (1978), 9 CELR 57, 2 FPR 269 (BC Prov Ct).
60 *R v Corporation municipale de la paroisse de Saint-Cajetan d'Armagh*, QC Montmagny (Crim Div), 16 February 1990, Yvon Sirois J; reproduced in No 52 of Duplessis, Hétu & Vézina, *supra* note 8.
61 [1995] 2 SCR 1031.
62 *Supra* note 6.
63 *Supra* note 54.
64 *Supra* note 6, s 1 (definition of the term "adverse effect").
65 As the Ontario legislature did in subs 6(1) of the *Environmental Protection Act*, *supra* note 6, and as the Quebec legislature did in the first para of s 20 of the *Environment Quality Act*.
66 *Ontario v Canadian Pacific Ltd*, *supra* note 61, at 1081.
67 *PG du Québec v Naud*, CSP Mégantic, No 358-75, 4 February 1976, Gérald Boisvert J; reproduced in Y Duplessis, J Hétu & J Piette, *La protection juridique de l'environnement au Québec* (Montréal: Éditions Thémis, 1982) at 595.
68 *Québec (Procureur général) v Ultramar Canada Inc*, JE 98-745 (CQ).
69 *Québec (Procureur général) v 139452 Canada Inc*, JE 96-550 (CQ); *Québec (Procureur général) v Dyfotech Inc*, [1999] RJQ 2496 (CQ); *Granicor Inc v Québec (Procureur général)*, JE 97-1631 (CS); the following article by Paule Halley is worthwhile reading: "La règle de *minimis non curat lex* en droit de l'environnement" in Service de la formation continue du Barreau du Québec, *Développements récents en droit de l'environnement*, vol 214 (Cowansville: Yvon Blais, 2004) 253 (CAIJ). See also *Québec (Procureur général) v 3766063 Canada Inc*, 2007 QCCQ 866, Richard Laflamme J at para 71.