

Due Diligence Defence for Vehicle Emissions Standards in Canada

October 04, 2017

In a recent case in Ontario, *R. v. Daymak Inc.*, 2017 ONCJ 251, the Ontario Court of Justice considered the requirements of the due diligence defence in the context of emissions standards charges.

Daymak Incorporated ("Daymak"), a motorized vehicle design and sales company, and its officers were charged with contravention of section 154 by not abiding by conditions set out in section 153 of the Canadian Environmental Protection Act, 1999 ("CEPA") relating to national emissions standards for vehicles and equipment. Daymak submitted an evidence of conformity ("EOC") package to Environment Canada, indicating their intention to sell certain scooters from China in compliance with applicable emissions standards. After importation, however, Environment Canada's tests revealed the amounts of hydrocarbon and carbon monoxide emitted by the LJ50QT-K exceeded the maximum permissible quantities.

Regarding the emissions violations charge, the Crown proved beyond a reasonable doubt that scooters from each of Daymak's shipments of the scooters failed emissions tests conducted by Environment Canada's Transport Division. However, the Court ultimately held that Daymak and its officers exercised due diligence in accordance with section 238 of CEPA.

Daymak cited the following efforts to comply with CEPA standards:

- researching the reliability of the manufacturer before ordering, hiring the Motorcycle and Moped Industry Council of Canada ("MMICS") and the Motor Vehicle Import and Export Consulting Service ("MVIICS") of Canada to prepare all relevant applications and to check components;
- paying for external testing; and
- providing a notice of defect when Environment Canada discovered some scooters had adjustable carburetors that increased emission levels.

Significantly, Daymak demonstrated that its reliance on a compliance officer and compliance strategy was reasonable. Daymak adduced evidence that the emissions

problems were caused by defective and adjustable internal parts that could only have been identified by dismantling and professionally inspecting the scooters. The Crown did not establish to do so was a due diligence requirement. Rather, the Court distinguished R. v. Canadian Tire Corporation¹ from the present set of facts, which case involved erroneous components on labels that could be readily visible, rather than internal components.

Although a U.S. Environmental Protection Agency Evidence of Conformity ("EOC") certificate was obtained for the scooters, the Crown argued the certificate was unacceptable due to the fact that it referred to a prior year of manufacture. However, the Crown provided no authority to suggest the testing of engines in a year prior to the year of import fell short of what constitutes due diligence. To establish that Daymak could not have reasonably prevented the violations, it relied on manufacturer testimony of carburetor and catalyst defects as the cause of increased emissions, production errors, and Environment Canada's acknowledgement to Daymak that the company had taken proper steps to rectify engine flaws. Applying the definition of due diligence in R. v. Petro-Canada², the Court found Daymak had taken "reasonable care to avoid any foreseeable cause" of CEPA non-compliance.

With respect to the charges under section 153(1)(b) of CEPA, relating to EOC, the Crown argued the imports were not covered by the requisite documentation pursuant to CEPA as a result of a discrepancy in the EOC discovered during emissions testing. The accused submitted that the EOC had accurately described the product, and that Daymak had received acknowledgement that the EOC package it submitted was in a manner and form satisfactory to the Minister of the Environment. The Court found that the Crown had not provided any authority establishing that an inaccurate depiction of one aspect of the engine type meant that the entire vehicle imported was not covered by that entry documentation.

Implications

As emissions controls on vehicles, engines and equipment become more prominent in these times of increased focus on climate change and environmental regulation, companies and their management should focus their attention on ensuring they can meet due diligence defences. Companies should record their efforts to meet emissions standards, including the evidence of component manufacturers. If emissions violations are easily detectable, then they should be addressed. However, this case indicates that the standard of due diligence required for emissions controls on vehicles, engines and equipment is reasonable care to avoid any foreseeable cause of CEPA non-compliance.

1 2004 ONCJ 3129

2 (2003), 63 O.R. (3d) 219 (C.A.)

By

[Matti Lemmens](#)

Expertise

[Environmental](#)

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices**Calgary**

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.