WINNERS & LOSERS: Is Compliance with Environmental Law a Defence to Civil Liability?

If your company is sued in civil court, such as for nuisance or negligence, one defence it might raise is that its operations complied with all applicable environmental laws. The argument is essentially that if the activity complained of was compliant with the law, it couldn't possibly be a nuisance or negligent. But although compliance with the law is a sure defence to environmental violations, its success as a defence to civil charges is less certain. Here are two cases in which companies argued that their compliance with the law should shield them from civil liability.

COMPLIANCE IS A DEFENCE

FACTS

When the owners of a farm found that their oil furnace wouldn't turn on, they called their fuel supplier, which sent workers who discovered that the fuel tank had a broken valve and oil had leaked onto the ground. The land was remediated at a cost of about $1.2 million. The farm owners sued the company that had installed the fuel tank for negligence. The company argued that it had complied with the law when it installed the

tank.

RULING

An Ontario Superior Court dismissed the lawsuit.

EXPLANATION

The court said there was no evidence that the fuel tank's installation was negligent. The installation of fuel oil tanks is governed by the *Technical Safety and Standards Act, 2000* and its related regulation, which incorporates a CSA standard. This tank's installation didn't comply with the manufacturer's instructions, which were merely guidelines. But it *did* comply with the regulations and CSA standard, said the court. Thus, the farm owners failed to prove that the company didn't meet the standard of care expected of a reasonable prudent person in the circumstances because the company had installed the fuel oil tank in accordance with the law. In any event, the court also found that the tank tilted due to soil erosion, causing the valve to crack and leak. Thus, the leak wasn't related to the tank's installation anyway.

Thornhill v Highland, [2014] ONSC 3018 (CanLII), May 15, 2014

COMPLIANCE ISN'T A DEFENCE

FACTS

After a cement company opened a plant, neighbours soon began complaining to the Minister of the Environment about the noise, smoke and dust. When their complaints weren't resolved, a group of over 2,000 residents filed a class action lawsuit claiming that the plant's disturbances constituted a nuisance in violation of Article 976 of the *Québec Civil Code* (Code). The company eventually shut down the plant. But the lawsuit still needed to be decided because the residents demanded damages for loss of the use and enjoyment of their property while it was operating. After a series of appeals, the case

eventually went to the Supreme Court.

RULING

The Supreme Court of Canada ruled that the cement company was liable to its neighbours for nuisance and ordered it to pay them $15 million in damages.

EXPLANATION

The Supreme Court ruled that the company wasn't at fault for the way it performed its operations. Among other things, the company had complied with all applicable environmental laws. But the Court interpreted Article 976 as imposing 'no-fault liability' for nuisances'that is, the liability is based on the *harm* suffered by the neighbours rather than on the *conduct* of the person who caused it. (The Court found that this concept of no-fault liability in the Code was consistent with the approach taken to nuisance claims under Canadian common law.) Thus, if the company's activities caused 'abnormal or excessive annoyances to the neighbourhood,' it would be liable without proof of fault, such as violation of the law, explained the Court. And the Court found that the plant's operations were, in fact, abnormal and excessive. So despite the company's compliance with the relevant standards and law, it was liable for nuisance under the Code, concluded the Court.

St. Lawrence Cement Inc. v. Barrette, [2008] SCC 64 (CanLII), Nov. 21, 2008