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ISO STANDARDS 14000

by Mtre Hélène Lauzon

ISO Standards 14000 applicable in environmental matters are to be adopted by the International Organization for Standardization in 1996. It would therefore appear appropriate for us to summarize the key elements of these standards and provide you with our analysis thereof.

The role of the International Organization for Standardization, also known as ISO, an acronym for International Standards Organization, is to establish uniform production and management standards to reduce tariff barriers in the context of market globalization. ISO Standards 9000 have already been adopted by this organization to induce enterprises to adopt a product quality control policy. The adoption of ISO Standards is in keeping with the global market standardization process, the development of concepts such as "total quality" and, in environmental matters, sustainable development.

ISO Standards 14000 are mainly intended to standardize management tools and systems in environmental matters by encouraging the adoption of an environmental policy by all corporations, large or small. In addition to preventing environmental contamination, this management tool is designed to assist enterprises in monitoring the compliance of their activities with applicable environmental legislation and regulation.

The elements of an environmental management system are specified in ISO Standards 14001. This standard requires the implementation of an environmental policy, whereby the enterprise undertakes to prevent environmental contamination and to comply with environmental legislation. It also requires the establishment of a procedure to identify the environmental impact of the activities of the enterprise as well as its legal obligations. This management system is completed by the establishment of a personnel training program, the adoption of information communication procedures, the establishment of a documentation system, the identification of preventive and corrective measures to be implemented and the

establishment of emergency response procedures. An environmental audit program must also be established. Lastly, the environmental management system must be reviewed periodically by management.

ISO 14004 sets out in further detail the contents of the general guidelines set forth under ISO 14001. ISO 14010 to 14012 provide guidelines for environmental audit procedures and competence criteria for auditors.

While adherence to ISO Standards is not a guarantee of an enterprise's compliance with required norms and laws, such standards do constitute a tool which enable enterprises to take the required measures for compliance with environmental legislation.

The implementation of an environmental management policy is now a definite, if not essential, asset which will allow an enterprise against which criminal and penal proceedings have been instituted, to invoke a defence of due diligence. In this connection, we may refer to the *Bata case*¹, in which the directors of the famous shoe manufacturer were sued personally for their failure to take appropriate measures to prevent ground water contamination. In that judgement, which is authoritative throughout Canada, the Court set forth for the first time the elements of directors' due diligence :

- the adoption and implementation by the Board of Directors of a contamination prevention system is a key element in the assessment of a due diligence defence. Thus, in connection with such policy, each director must be satisfied that management has been properly instructed

to set up an environmental legislation compliance program, to report periodically to the Board on the operation of this program and to report any breach of legal requirements. As a general rule, the directors must review environmental compliance reports which they receive from management, but they may reasonably rely on reports furnished by the latter or by external consultants;

- the directors must be satisfied that management will promptly report any environmental concern brought to its attention by government agencies or other concerned parties, including shareholders. In addition, the directors should be aware of the standards applicable to their industry and other industries, the activities of which involve similar environmental risks. Lastly, the directors must act immediately when they are informed of any breakdown of the prevention policy;
- within the framework of the policy referred to above, the Court expects to find an emergency program in case of discharges, a continuing environmental audit program, a training program or any other evidence of the implementation of a proactive policy in environmental matters.

The question is therefore whether a certification under ISO 14000, the principal purpose of which is to establish an environmental contamination prevention policy, guarantees the availability of a due diligence defence for an enterprise and its directors served with criminal and penal proceedings for environmental damages.

¹ *R. v. Bata Industries Ltd.*, (1992) 7 C.E.L.R. (N.S.) 245, confirmed by *R. v. Bata Industries Ltd.*, (1993) 11 C.E.L.R. (N.S.) 208 but the sentence was modified, reversed by the Court of Appeal of Ontario on the issue of the Directors' indemnification in *R. v. Bata Industries Ltd.*, (1995) 25 O.R.(3d) 321.

The answer to this question will vary according to the manner in which the policy has been implemented by the particular enterprise. There is no doubt that an enterprise should not only adopt such policy, but also adopt it in conformity with recognized standards on this subject, namely ISO Standards.

In this perspective, the implementation of procedures in conformity with ISO Standards 14000 is no doubt an asset, and ISO 14000 certification will become a necessity, especially where the enterprise intends to carry on its activities on international markets or with government organizations.

Our firm can provide expert advice on the implementation of ISO Standards 14000. It may also assist your enterprise in proceeding with a compliance audit (legal audit) of its environmental activities and with a review of its certificates and authorizations.

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