



Issue Date: July 15, 2020
Citation: *Fontaine v. Canada (Environment and Climate Change)*,
2020 EPTC 5
EPTC Case No.: 0022-2019
Case Name: *Fontaine v. Canada (Environment and Climate Change)*
Applicants: Gaétan Fontaine
Respondent: Minister of Environment and Climate Change Canada

Subject of proceeding: Review commenced under section 15 of the *Environmental Violations Administrative Penalties Act*, SC 2009, c 14, s 126 of an Administrative Monetary Penalty issued under section 7 of that Act for a violation of section 8 of the *Wildlife Area Regulations*, CRC, c 1609, made under the *Canada Wildlife Act*, RSC, 1985, c W-9.

Heard: In writing

Appearances:

Parties

Gaétan Fontaine

Minister of Environment and
Climate Change Canada

Counsel/Representative

Self-Represented

Philippe Proulx

DECISION DELIVERED BY:

PAUL DALY

Introduction

[1] On October 5, 2019, Gaétan Fontaine (the “Applicant”) walked through the Îles-de-Contrecoeur National Wildlife Area (the “Area”), a place which members of the general public are prohibited from entering. He spent only a few minutes in the Area before running into officers of Environment and Climate Change Canada (the “Minister”), who explained to him that access to the Area was prohibited. Nonetheless, he received a notice of violation setting out a total penalty of \$400 for a violation of section 8 of the *Wildlife Area Regulations*, CRC, c 1609 (the “Regulations”), made under the *Canada Wildlife Act*, RSC, 1985, c W-9.

[2] The request for review must be dismissed. Any violation of the Regulations may justify the imposition of an administrative monetary penalty in an amount determined in accordance with the rules set out in the *Environmental Violations Administrative Monetary Penalties Regulations*, SOR/2017-109 (the “EVAMP Regulations”). The recipient of such an administrative monetary penalty may not rely on good faith or even due diligence as a defence. This principle, as well as the limited role of this Tribunal in requests for review of notices of violation, flows from the *Environmental Violations Administrative Monetary Penalties Act*, SC 2009, c 14, s 126 (the “Act”). For the following reasons, the notice of violation received by the Applicant is upheld.

Background

[3] In fall 2018, Environment and Climate Change Canada published a public notice prohibiting access to the Area in the French-language newspaper “Les 2 Rives”. This public notice is also available on the Government of Canada website: <https://www.canada.ca/en/environment-climate-change/services/national-wildlife-areas/locations/iles-de-contrecoeur.html>

[4] On October 5, 2019, the Applicant went on a kayak trip from the shore of the municipality of Contrecoeur. No notice prohibiting access to the reserve islands was posted at the launch site. However, signs indicating the existence of a wildlife area are posted in certain places on the islands in the Area.

[5] During this outing, the Applicant and another person walked around one of the Area’s islands for a few minutes. The Applicant did not see any signs indicating that he was on a wildlife area.

[6] Around 1:37 p.m., wildlife officers François Gendron and Karine Lefebvre were informed that individuals were walking on one of the islands in the Area. The officers went to the island and noted the presence of footprints, but were unable to locate the individuals in question.

[7] After leaving the island, they encountered the first kayaker whose description matched the alert received. They identified themselves as game wardens for the Minister. The first individual confirmed that he had walked on the island with the Applicant, who was then a little further away in another kayak, for a few moments.

[8] The officers then spoke with the Applicant. They were able to identify the Applicant using the information he provided verbally, following a call to the Royal Canadian Mounted Police to confirm its authenticity. The Applicant stated that he had only walked along the beach.

[9] On October 28, 2019, Officer Gendron issued a notice of violation of section 8 of the Regulations.

[10] Service of this notice of violation took effect on November 7, 2019.

Issues

[11] The issues are:

1. whether the Applicant's short-term entry into the Area justified the imposition of an administrative monetary penalty; and
2. if so, whether the amount of the administrative monetary penalty has been correctly calculated.

Discussion

Minister's Argument

[12] The Minister relies on section 8 of the Regulations, which prohibits access to wildlife areas when a notice to that effect is posted at the entrance to a wildlife area or published in a local newspaper.

[13] The Minister notes that the facts constituting the offence are not in dispute. Noting that a notice was duly published in a local newspaper, the Minister contends that a violation of the Regulations clearly occurred. The absence of signs at a place where the offence was committed cannot, in the Minister's view, serve as a basis for this request for review.

[14] As for the fact that the Applicant sincerely believed that it was permissible to travel in the Area, the Minister recalls that section 11 of the Act excludes the defences of good faith and due diligence.

[15] In addition, the Minister notes that the Tribunal's role is circumscribed by the Act and the Tribunal is not in a position to review the exercise of discretion by the Minister's officers.

[16] Finally, the Minister is of the opinion that the administrative monetary penalty in this case was calculated in the manner set out in the EVAMP Regulations.

Applicant's Argument

[17] In his written argument, the Applicant notes that there was no sign at the place where he set off in the kayak, which is the only place, according to him, where one can launch to access the Area.

[18] The Applicant finds it unacceptable not to inform members of the general public that access to the Area is prohibited, by means of a sign posted near the boat launch.

[19] In his request for review, the Applicant notes that this was his first visit to the Area, that he was unaware of the prohibition against members of the general public, that he acted in good faith and that he only walked on the Area for a few minutes. He therefore feels that it would be appropriate to show him some leniency.

Analysis and Findings

Violation

[20] The Applicant has committed a violation of section 8 of the Regulations.

[21] There are two ways to prohibit access to a wildlife area, either by posting a notice at the entrance to a wildlife area or by publishing a notice in a local newspaper. Section 8 of the Regulations provides as follows:

Where the Minister has published a notice in a local newspaper or posted a notice at the entrance of any wildlife area or on the boundary of any part thereof prohibiting entry to any wildlife area or part thereof, no person shall enter the area or part thereof set out in the notice.	Il est interdit à quiconque de pénétrer dans une réserve d'espèces sauvages ou dans une partie de celle-ci lorsqu'un avis y interdisant l'accès, émanant du ministre, a été publié dans un journal local ou est affiché à l'entrée d'une réserve d'espèces sauvages ou à ses limites.
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[22] In this case, the Minister published a notice in the French-language newspaper "Les 2 Rives". This is a local newspaper. Clearly, the Applicant did not read that notice.

Nevertheless, the Minister fulfilled his obligation under section 8. Access to the Area is therefore prohibited to members of the general public.

[23] A violation of the Regulations is subject to the legislative framework established by the Act. Section 7 of the Act provides as follows:

<p>Every person, ship or vessel that contravenes or fails to comply with a provision, order, direction, obligation or condition designated by regulations made under paragraph 5(1)(a) commits a violation and is liable to an administrative monetary penalty of an amount to be determined in accordance with the regulations.</p>	<p>La contravention à une disposition, un ordre, une directive, une obligation ou une condition désignés en vertu de l’alinéa 5(1)a) constitue une violation pour laquelle l’auteur — personne, navire ou bâtiment — s’expose à une pénalité dont le montant est déterminé conformément aux règlements.</p>
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[24] Subsection 2(1) of the EVAMP Regulations provides that a violation of a provision set out in column 1 of Schedule 1 to the EVAMP Regulations is a violation punishable under the Act. The Regulations are found in the second section of the second part of the EVAMP Regulations. Therefore, a violation of the Regulations may justify the imposition of an administrative monetary penalty in an amount calculated in accordance with the EVAMP Regulations.

[25] In this case, the facts of a violation of the Regulations are not in dispute. Access to the Area is prohibited to the general public. By entering the Area, the Applicant has committed a violation of section 8 of the Regulations. In so doing, the Applicant faced the imposition of an administrative monetary penalty.

[26] The Applicant’s good faith and due diligence are not defences. In this regard, it is important to note that the Act significantly circumscribes the Tribunal’s jurisdiction. In particular, subsection 11(1) excludes certain defences:

<p>A person, ship or vessel named in a notice of violation does not have a defence by reason that the person or, in the case of a ship or vessel, its owner, operator, master or chief engineer</p> <p>(a) exercised due diligence to prevent the violation; or</p>	<p>L’auteur présumé de la violation — dans le cas d’un navire ou d’un bâtiment, son propriétaire, son exploitant, son capitaine ou son mécanicien en chef — ne peut invoquer en défense le fait qu’il a pris les mesures nécessaires pour empêcher la violation ou qu’il croyait raisonnablement et en toute honnêteté à l’existence de</p>
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<p>(b) reasonably and honestly believed in the existence of facts that, if true, would exonerate the person, ship or vessel.</p>	<p>faits qui, avérés, l'exonéreraient.</p>
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[27] It is therefore an absolute liability regime. The Applicant's intentions are simply not relevant in the context of a request for review under the Act.

[28] Moreover, it is now well established by the Tribunal's case law that the Tribunal's role is (1) to determine whether the violation alleged in the notice of violation has in fact occurred and (2) to determine whether the amount of the administrative monetary penalty, if any, has been calculated in accordance with the EVAMP Regulations. See *Hoang v Canada (Environment and Climate Change)*, 2019 EPTC 2, noting that the Tribunal cannot review the Minister's officers' exercises of discretion to issue a notice of violation.

[29] In this case, the Applicant clearly committed the alleged violation.

Penalty Amount

[30] The amount of the administrative monetary penalty imposed on the Applicant is also correct.

[31] The formula for calculating the amount of an administrative monetary penalty issued under the Act is set out in section 4 of the EVAMP Regulations:

<p>(1) The amount of the penalty for each Type A, B or C violation is to be determined by the formula</p> <p>W + X + Y + Z</p> <p>where</p> <p>W is the baseline penalty amount determined under section 5;</p> <p>X is the history of non-compliance amount, if any, as determined under section 6;</p> <p>Y is the environmental harm amount, if any, as determined under section 7; and</p> <p>Z is the economic gain amount, if any, as determined under section 8.</p>	<p>(1) Le montant de la pénalité applicable à une violation de type A, B, ou C est calculé selon la formule suivante :</p> <p>W + X + Y + Z</p> <p>où :</p> <p>W représente le montant de la pénalité de base prévu à l'article 5;</p> <p>X le cas échéant, le montant pour antécédents prévu à l'article 6;</p> <p>Y le cas échéant, le montant pour dommages environnementaux prévu à l'article 7;</p> <p>Z le cas échéant, le montant pour avantage économique prévu à l'article 8.</p>
<p>(2) The amount of the penalty for each Type D or E violation is to be determined by the formula</p> <p>W + X + Y</p> <p>where</p> <p>W is the baseline penalty amount determined under section 5;</p> <p>X is the history of non-compliance amount, if any, as determined under section 6; and</p> <p>Y is the economic gain amount, if any, as determined under section 8.1.</p>	<p>(2) Le montant de la pénalité applicable à une violation de type D ou E est calculé selon la formule suivante :</p> <p>W + X + Y</p> <p>où :</p> <p>W représente le montant de la pénalité de base prévu à l'article 5;</p> <p>X le cas échéant, le montant pour antécédents prévu à l'article 6;</p> <p>Y le cas échéant, le montant pour avantage économique prévu à l'article 8.1.</p>

[32] Column 1 of Schedule 1 to the EVAMP Regulations identifies legislative or regulatory provisions for which an administrative monetary penalty may be imposed.

Column 2 of Schedule 1 assigns a type of violation – A, B, C, D or E – to each provision in column 1.

[33] A violation of the Regulations is a type “B” violation.

[34] The next step is to calculate the base amount of the penalty according to the calculation grid provided in Schedule 4. The base amount for a type “B” violation committed by an individual is \$400.

[35] Since the Applicant is an individual, the basic amount of the penalty was \$400, which is the amount of the administrative monetary penalty imposed by the notice of violation.

[36] There is no error in the calculation of the administrative monetary penalty imposed on the Applicant.

Summary

[37] The Applicant committed the violation of the Regulations identified in the notice of violation. The amount of the penalty is correct.

[38] His entry into the Area was of short duration, and he probably acted in good faith, not knowing that he was prohibited from entering. Nevertheless, under the legislative and regulatory framework circumscribing the Tribunal’s role, there is no valid reason in law to grant the request for review.

Decision

[39] The request for review is dismissed. Notice of violation N9200-1232 is therefore upheld.

Review Dismissed

“Paul Daly”
PAUL DALY
REVIEW OFFICER