



**Issue Date:** October 9, 2020  
**Citation:** *Nyobe v. Canada (Environment and Climate Change, 2020 EPTC 7)*  
**EPTC Case No.:** 0005-2020  
**Case Name:** *Nyobe v. Canada (Environment and Climate Change)*  
**Applicants:** Simonet-Albert Nyobe  
**Respondent:** Minister of Environment and Climate Change Canada

**Subject of proceeding:** Review commenced under s. 15 of the *Environmental Violations Administrative Monetary Penalties Act*, SC 2009, c 14, s 126 of an Administrative Monetary Penalty issued under s. 7 of EVAMPA for a violation of s. 6(2) of the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*, SC 1992, c 52.

**Heard:** September 17, 2020 by teleconference call

**Appearances:**

**Parties**

**Counsel/Representative**

Simonet-Albert Nyobe

Self-Represented

Minister of Environment and  
Climate Change Canada

Raphaëlle St-Pierre

**DECISION DELIVERED BY:**

**PAUL DALY**

---

## Introduction

[1] Simonet-Albert Nyobe (“Applicant”) is requesting a review of an Administrative Monetary Penalty (“AMP”) issued on January 16, 2020, for a violation of s. 6(2) of the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*, SC 1992, c 52 (“Act”).

[2] The Applicant does not dispute that he violated s. 6(2) of the Act. Instead, he is contesting the amount of the AMP levied, \$1,100. More specifically, he accepts the amount of \$400 (the baseline amount for the violation), but challenges the amount of \$100 for his alleged economic gain as a result of the violation of the Act and the amount of \$600 for environmental harm related to the violation of the Act.

[3] For the reasons below, the Tribunal is of the view that the application for review must be allowed in part. It was not warranted in this case to impose an additional amount for environmental harm. The amount of the AMP must therefore be corrected from \$1,100 to \$500. The notice of violation is upheld, but the amount of the AMP is corrected from \$1,100 to \$500.

## Background

[4] The salient facts are undisputed. The Minister filed the affidavit of Officer Guillaume Dangleant with the Tribunal. During a hearing held by teleconference call, the Tribunal heard Officer Dangleant and the Applicant, and both were perfectly credible.

[5] On June 12, 2019, the Applicant was questioned at the Montréal-Trudeau Airport upon his return to Canada from a trip to Cameroon. In his luggage, an officer of the Canadian Border Services Agency (CBSA) found a package of meat. The Applicant was unaware of the contents of his luggage, which had been packed by his spouse. She had allegedly purchased the meat at a market in Cameroon.

[6] The officer then informed a wildlife officer of Environment and Climate Change Canada that he had seized a package of meat. An analysis performed by the wildlife officer revealed that the package contained the carcass of an African civet (*Civettictis civetta*), an animal listed in Appendix III of the *Convention on International Trade in Endangered Species of Wild Fauna and Flora*.

[7] Having identified the meat, the officer took steps to determine whether any legislative or regulatory provisions had been violated. Researching under what conditions one could legally import an African civet to Canada, the officer contacted the Cameroonian authorities, who explained to him that exporting this type of meat from Cameroon is prohibited without first obtaining a certificate of origin. There is a fee for such a certificate.

[8] The officer also researched the African civet. According to the studies he consulted, the species is collected without consideration for the quotas imposed by the country, and it is generally the males that are collected, creating an overpopulation of females and decreasing biodiversity. Moreover, the Cameroonian authorities confirmed that Cameroon imposes hunting quotas with respect to the African civet.

[9] On January 16, 2020, the officer issued notice of violation 9200-1076. The AMP amount was \$1,100, broken down as follows:

\$400 (baseline amount for the violation)

\$100 (economic gain amount)

\$600 (environmental harm amount).

[10] In a letter dated January 17, 2020, the Applicant requested a review of the notice of violation, admitting to the violation of s. 6(2) of the Act but challenging the amount of the penalty.

## **Issues**

[11] Was the amount of the AMP levied against the Applicant calculated correctly?

## **Discussion**

### *Minister's Argument*

[12] The Minister notes that the importation of an animal listed in the Convention is *a priori* a violation of the Act, which via s. 6 prohibits the importation of protected species to Canada, a violation subject to an AMP under the regime established by the *Environmental Violations Administrative Monetary Penalties Act*, SC 2009, c 14, s 126 ("EVAMPA"). Because the African civet is listed in the appendix to the Convention, issuing an AMP was warranted.

[13] To calculate the amount of an AMP, one must refer to the *Environmental Violations Administrative Monetary Penalties Regulations*, SOR/2017-109 ("EVAMP Regulations"). A violation of s. 6(2) of the Act corresponds to a Type B violation according to Schedule 1, Part 3, Division 1 of the EVAMP Regulations. According to the EVAMP Regulations, the baseline penalty amount is \$400 for an individual such as the Applicant, to which additional amounts were added for environmental harm (EVAMP Regulations, s. 7) and economic gain (EVAMP Regulations, s. 8) resulting from the violation of s. 6(2) of the Act.

[14] For the environmental harm, the Minister cites the *Policy framework to implement the Environmental Violations Administrative Monetary Penalties Act: chapter 4*, online:

<https://www.canada.ca/en/environment-climate-change/services/environmental-enforcement/publications/policy-framework-administrative-penalties-act/chapter-4.html#4.3>. The Framework provides a broad definition of environmental harm.

According to the Minister, the Applicant, in importing African civet to Canada, participated in the “killing, harming, harassing, capturing or taking of wildlife species” and the disruption of biodiversity. Referring to studies demonstrating that hunting quotas are not respected in Cameroon and others demonstrating that hunters tend to target males, thereby creating an overpopulation of females that disrupts biodiversity, the Minister notes that the Applicant’s importation caused environmental harm.

[15] With respect to economic gain, the Minister notes that economic gain includes an avoided financial cost, according to the EVAMP Regulations. In this case, by failing to procure the necessary permits for importing/exporting African civet, the Applicant ended up with an economic gain by avoiding the cost of obtaining the certificate of origin.

### *Applicant’s Argument*

[16] The Applicant acknowledges that he violated the Act. He is not challenging the baseline penalty amount.

[17] However, he is challenging the additional amounts.

[18] With respect to environmental harm, the Applicant notes that he did not personally participate in the hunt for or purchase of the African civet. He had not even been aware that it was in his luggage. The Applicant also raises the presumption against extraterritorial application of Canadian laws, noting that all the events causing environmental harm in this case took place outside Canada.

[19] With respect to economic gain, the Applicant argues that his importation of the African civet will not result in any economic gain for him. In his view, there is no evidence that the meat was intended for the market.

### *Minister’s Reply*

[20] With respect to the extraterritorial application of Canadian laws, the Minister notes that the Act implements international obligations, and its objective—the protection of endangered species—must be given a broad and liberal interpretation.

## **Analysis and Findings**

### *Legislative and regulatory framework*

[21] The Tribunal’s role is to verify whether the violation as alleged in the notice of violation was committed by the Applicant and whether the penalty, if applicable, was calculated correctly.

[22] According to s. 20 of EVAMPA, after receiving a request for review and relevant information and representations, the Tribunal must verify whether the alleged violation was committed by the Applicant and whether the amount of the penalty was calculated correctly. The burden of proof lies with the Minister, who must discharge it on a balance of probabilities. Section 20 is reproduced in full below:

<p>(1) After giving the person, ship or vessel that requested the review and the Minister reasonable notice orally or in writing of a hearing and allowing a reasonable opportunity in the circumstances for the person, ship or vessel and the Minister to make oral representations, the review officer or panel conducting the review shall determine whether the person, ship or vessel committed a violation.</p> <p>(2) The Minister has the burden of establishing, on a balance of probabilities, that the person, ship or vessel committed the violation.</p> <p>(3) If the review officer or panel determines that the penalty for the violation was not determined in accordance with the regulations, the review officer or panel shall correct the amount of the penalty.</p>	<p>(1) Après avoir donné au demandeur et au ministre un préavis écrit ou oral suffisant de la tenue d'une audience et leur avoir accordé la possibilité de présenter oralement leurs observations, le réviseur ou le comité décide de la responsabilité du demandeur.</p> <p>(2) Il appartient au ministre d'établir, selon la prépondérance des probabilités, que le demandeur a perpétré la violation.</p> <p>(3) Le réviseur ou le comité modifie le montant de la pénalité s'il estime qu'il n'a pas été établi conformément aux règlements.</p>
--	--

[23] The amount of an AMP is calculated in accordance with the terms set out in the EVAMP Regulations. In this case, the relevant provision is s. 4(1) 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><b>W + X + Y + Z</b></p> <p>where</p> <p><b>W</b> is the baseline penalty amount determined under <a href="#">section 5</a>;</p> <p><b>X</b> is the history of non-compliance amount, if any, as determined under <a href="#">section 6</a>;</p> <p><b>Y</b> is the environmental harm amount, if any, as determined under <a href="#">section 7</a>; and</p> <p><b>Z</b> is the economic gain amount, if any, as determined under <a href="#">section 8</a>.</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><b>W + X + Y + Z</b></p> <p>où :</p> <p><b>W</b> représente le montant de la pénalité de base prévu à l'<a href="#">article 5</a>;</p> <p><b>X</b> le cas échéant, le montant pour antécédents prévu à l'<a href="#">article 6</a>;</p> <p><b>Y</b> le cas échéant, le montant pour dommages environnementaux prévu à l'<a href="#">article 7</a>;</p> <p><b>Z</b> le cas échéant, le montant pour avantage économique prévu à l'<a href="#">article 8</a>.</p>
--	---

*Violation of s. 6(2) of the Act*

[24] The Applicant readily admits that he violated s. 6(2) of the Act.

[25] A violation of s. 6(2) of the Act is a Type B violation: Schedule 1, Part 3, Division 1 of the EVAMP Regulations.

[26] According to the EVAMP Regulations, the baseline penalty amount for a Type B violation is \$400: Schedule 4, Item 1, Column 3.

[27] The baseline penalty amount is therefore correct.

*Environmental harm*

[28] In this case, in the notice of violation, additional amounts were added to the baseline amount to take into account environmental harm and economic gain.

[29] With respect to environmental damage, it is worth reproducing s. 7 of the EVAMP Regulations in full:

<p>If the violation has resulted in harm to the environment, the environmental harm amount is the amount set out in column 5 of Schedule 4 that corresponds to the category of the violator and the type of violation committed as set out in columns 1 and 2, respectively, of that Schedule.</p>	<p>Si des dommages environnementaux découlent de la violation commise, le montant pour dommages environnementaux est celui prévu à la colonne 5 de l'annexe 4, selon l'auteur et le type de violation commise figurant, respectivement, aux colonnes 1 et 2 de cette même annexe.</p>
--	---

[30] This request for review raises an issue involving the extraterritorial application of legislative and regulatory provisions. The Applicant correctly refers to the presumption that Parliament does not intend to apply its laws outside of Canada—a well-established principle of Canadian law. The Minister, on the other hand, argues that environmental harm committed outside of Canada can constitute environmental harm for the purposes of the EVAMP Regulations, because violations of Canadian regulations sometimes have adverse effects overseas. The Minister cites s. 4 of the Act and suggests that it requires a broad and liberal interpretation:

<p>The purpose of this Act is to protect certain species of animals and plants, particularly by implementing the Convention and regulating international and interprovincial trade in animals and plants.</p>	<p>La présente loi a pour objet la protection de certaines espèces animales et végétales, notamment par la mise en œuvre de la Convention et la réglementation de leur commerce international et interprovincial.</p>
---	---

[31] Fortunately, it is unnecessary for the purposes of this request for review to make a definitive decision about the territorial scope of the Act and the EVAMP Regulations.

[32] The Tribunal notes that it is necessary to establish that “the violation **has resulted in** harm to the environment”. In this case, there is no evidence in the record connecting the Applicant’s violation to environmental harm that may have taken place in Cameroon. The Applicant did import meat to Canada, but he neither hunted a protected species in Cameroon nor purchased the carcass that was found in his luggage.

[33] Even if the Tribunal were to accept the Minister’s proposal that damage to Cameroonian biodiversity can constitute environmental harm for the purposes of s. 7 of the EVAMP Regulations, it is impossible to establish on the basis of the evidence in the record that the Applicant’s violation **resulted in** the environmental harm.

[34] The Tribunal is of the view that the amount of the AMP was not calculated in accordance with the terms of the EVAMP Regulations, with respect to the environmental harm amount.

## *Economic gain*

[35] With respect to economic gain, the relevant provision is s. 8 of the AMP Regulations:

<p><b>8</b> (1) Subject to subsection (2), if the violation has resulted in economic gain to the violator, including an avoided financial cost, the economic gain amount is the amount set out in column 6 of Schedule 4 that corresponds to the category of the violator and the type of violation committed as set out in columns 1 and 2, respectively, of that Schedule.</p> <p>(2) If the only economic gain is the avoidance of the cost of obtaining a permit, licence or other authorization, the economic gain amount is the amount set out in column 7 of Schedule 4 that corresponds to the category of the violator and the type of violation committed as set out in columns 1 and 2, respectively, of that Schedule.</p>	<p><b>8</b> (1) Sous réserve du paragraphe (2), si l'auteur de la violation tire un avantage économique, y compris l'évitement d'une dépense, de la violation commise, le montant pour avantage économique est celui prévu à la colonne 6 de l'annexe 4, selon l'auteur et le type de violation commise figurant, respectivement, aux colonnes 1 et 2 de cette même annexe.</p> <p>(2) Si l'avantage économique représente seulement l'évitement des droits d'obtention d'un permis, d'une licence ou de toute autre autorisation, le montant pour avantage économique est celui prévu à la colonne 7 de l'annexe 4, selon l'auteur et le type de violation commise figurant, respectivement, aux colonnes 1 et 2 de cette même annexe.</p>
--	---

[36] The Applicant submitted that he did not personally benefit from his violation of the Act. The Minister has not established that the Applicant benefited from his violation of the Act. However, to take an example that is highly relevant to this case, it is clear from s. 8(1) of the EVAMP Regulations that "an avoided financial cost" may constitute economic gain.

[37] The Minister established through communications with the Cameroonian authorities that a permit is necessary to export an African civet from Cameroon and that there are fees associated with obtaining such a permit. Exporting an African civet from Cameroon without having paid for a permit therefore did result in an economic gain for the Applicant.

[38] According to the EVAMP Regulations, the amount applicable to individuals for an economic gain is \$100: Schedule 4, Item 1, Column 7. This amount was therefore calculated in accordance with the terms established by the EVAMP Regulations.

## *Summary*



[39] The Applicant having admitted to a violation of the Act, the Tribunal verified the amount of the AMP. The Tribunal is of the view that the baseline amount was calculated correctly. The same is true for the aggravating factor of economic gain. However, the Tribunal is of the view that imposing an amount for environmental harm is unwarranted.

### **Decision**

[40] The review is granted in part. The notice of violation is upheld, but the AMP amount is corrected from \$1,100 to \$500.

*Review Granted in Part*

*AMP Amount Corrected*

*“Paul Daly”*

PAUL DALY  
REVIEW OFFICER