



**Issue Date:** November 11, 2020  
**Citation:** *Moreau v. Canada (Environment and Climate Change)*, 2020 EPTC 8  
**EPTC Case No.:** 0018-2019  
**Case Name:** *Moreau v. Canada (Environment and Climate Change)*  
**Applicants:** Joël Moreau  
**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:** November 4, 2020 (by videoconference)

**Appearances:**

**Parties**

**Counsel/Representative**

Joël Moreau

Self-Represented

Minister of Environment and  
Climate Change Canada

Ludovic Sirois

**DECISION DELIVERED BY:**

**PAUL DALY**

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## **Introduction**

[1] On June 22, 2019, two photographers climbed on a dike at the Cap-Tourmente National Wildlife Area. Access to the dike is prohibited. Simon Bourbeau, Technical Assistant in the Area, interacted with the two photographers. He later identified Joël Moreau (the applicant) as one of them. The applicant denies having climbed on the dike and is seeking a review of the notice of violation that was issued against him following his identification by Simon Bourbeau. For the following reasons, the request for revision is dismissed. The Tribunal finds that it is more likely than not that the applicant committed the violation alleged in the notice of violation.

## **Background**

[2] Section 8 of the *Wildlife Area Regulations*, C.R.C., c. 1609 (the Regulations) reads 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." The Regulations were passed under the authority of the *Canada Wildlife Act*, R.S.C. (1985), c. W-9.

[3] A formal public notice is posted at the entrance to the Area. Access to the dike where the two photographers were located was therefore prohibited according to section 8 of the Regulations. It is possible to walk in the vicinity of the dike, but it is forbidden to leave the official trails.

[4] The dike is next to an artificial marsh that is home to several species. Not far from the dike is an observatory where members of the public can look at the marsh. There is a parking lot next to the observatory. This is where the events of June 22, 2019, leading up to the notice of violation that is the subject of this application for review, took place.

[5] Underlying the notice of violation is a violation of section 8 of the Regulations. The amount of the penalty so imposed is \$1,600, consisting of a base amount of \$400 and an additional amount of \$1,200 for a history of non-compliance. In this regard, it should be noted that the applicant has already contravened the Regulations, having pleaded guilty before the Court of Québec in 2019 to a violation of paragraph 3(1)(a).

## **Issue**

[6] The issue is whether the applicant committed the alleged violation and, if so, whether the amount of the administrative monetary penalty was properly calculated.

## **Analysis**

[7] The Tribunal is seized of the request for review within the legislative and regulatory framework established by the *Environmental Violations Administrative Monetary Penalties Act*, S.C. 2009, c. 14, s. 126 (EVAMPA) and the *Environmental Violations Administrative Monetary Penalties Regulations*, SOR/2017-109 (EVAMP Regulations).

[8] In accordance with this legislative and regulatory framework, once a request for review is filed, the Tribunal verifies whether the violation as alleged in the notice of violation was indeed committed by the applicant and whether the penalty, if any, was correctly calculated.

[9] Section 7 of the EVAMPA reads as follows:

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| <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 <a href="#">paragraph 5(1)(a)</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'<a href="#">alinéa 5(1)a)</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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[10] Under section 20 of the same Act, after receiving relevant information and representations, the Tribunal must determine whether the alleged violation was committed by the applicant and whether the amount of the penalty was properly calculated - the burden of proof is on the Minister, who has to discharge it on the balance of probabilities:

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| <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</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</p> |
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| <p>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>montant de la pénalité s'il estime qu'il n'a pas été établi conformément aux règlements.</p> |
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## Analysis and Findings

### *Credibility*

[11] The Tribunal heard three witnesses by videoconference: Simon Bourbeau, Technical Assistant, Pascal Gagnon, the wildlife officer who issued the notice of violation, and the applicant.

[12] The Tribunal found the testimony of Simon Bourbeau and Pascal Gagnon convincing, as it was not only consistent, but also well-supported by the record.

[13] The applicant's version of events, on the other hand, was implausible.

### *The events of June 22, 2019*

[14] Simon Bourbeau explained that he was working at the Area on June 22, 2019. Around 1:30 p.m., in the vicinity of the observatory, he noticed two photographers on the dike. At the observatory near the dike were several people, attracted by a tricolored heron that had appeared in the area, a species rarely seen at the Area. There were several vehicles in the parking lot next to the observatory.

[15] Not wanting the photographers to disturb the tricolored heron, vegetation, or other species sensitive to the presence of humans, Simon Bourbeau signalled to them as discreetly as possible. From a distance, he gestured towards the photographers with his arms and then whistled to get them down from the dike. They finally came down. Simon Bourbeau returned to the parking lot and the two photographers followed him more slowly. Before returning to the parking lot, Simon Bourbeau took pictures of the vehicles that were potentially the vehicles of the photographers.

[16] Simon Bourbeau was able to see the photographers up close. First, once he had come down from the dike (but before returning to the parking lot), one of the photographers tried to show Simon Bourbeau the picture he had taken of the tricolored

heron. Second, when the two returned to the parking lot after getting off the dike, Simon Bourbeau spoke with them about their non-compliance with the Regulations.

[17] Following his discussion with the photographers in the parking lot, Simon Bourbeau went into the observatory. Shortly after entering the observatory, he received an emergency call from elsewhere in the Area. Before leaving the premises to answer, Simon Bourbeau saw the two photographers unlock and roll down the windows of a car in the parking lot. It was one of the vehicles that Simon Bourbeau had photographed. It turned out that this vehicle belonged to the applicant, as a verification of the licence plate subsequently established.

[18] For the purposes of the current request for review, the Tribunal is of the view that this evidence demonstrates that it is more likely than not that the applicant committed the offence alleged in the notice of violation. His car was in the parking lot near the dike. Simon Bourbeau noticed that the two photographers unlocked the applicant's car and rolled down the windows. This took place shortly after he met with and saw the two photographers up close. Therefore, it is more likely than not that the applicant was one of the two photographers who were on the dike, an area whose entry is prohibited pursuant to section 8 of the Regulations.

[19] This is not the end of the story, however. On June 24, 2019, Simon Bourbeau discussed the events on the dike with an ornithologist he met at the Area. In describing the applicant, Simon Bourbeau recalled that the applicant had been involved in another incident in 2017 concerning his failure to comply with wildlife regulations, which led to his guilty plea in the Court of Quebec. Simon Bourbeau then spontaneously stated that it was the same person. In 2017, a citizen had sent an incriminating photo of the applicant to Simon Bourbeau, who forwarded it to a supervisor, thereby triggering proceedings against the applicant. Moreover, Simon Bourbeau related this revelation to his supervisor in an e-mail on June 24, 2019. It is understandable that Simon Bourbeau did not immediately make the connection with the applicant, because he had only transmitted the incriminating photo, but the fact that he made the connection a few days after the event is entirely plausible and supported by the record.

[20] A few weeks later, on July 15, 2019, Pascal Gagnon sent him a photo of the applicant. Simon Bourbeau noted that it was one of the photographers he met on June 22, 2019. At the hearing, Simon Bourbeau identified the applicant again as one of the two photographers. Simon Bourbeau calmly answered the applicant's questions at the hearing, convincingly explaining why he described him in his email of June 24, 2019, as a man in his sixties with dark thinning hair. In short, Simon Bourbeau and the applicant had such a history that Simon Bourbeau was well positioned on July 15, 2019, and at the hearing to identify the applicant as one of the two photographers who were on the dike on June 22, 2019.

[21] It should be added that Simon Bourbeau had no personal interest in the applicant's case. As a technical assistant, Simon Bourbeau has neither the power of

arrest nor the power to issue a notice of violation. The decision to issue one was made by Pascal Gagnon. There was, in other words, no reason to doubt Simon Bourbeau's testimony which, the Tribunal recalls, was consistent and aligned well with the record, especially the partial joint statement of facts submitted by the parties as well as his affidavit and that of Pascal Gagnon.

[22] Again, the Tribunal notes that, in and of itself, the credible testimony of Simon Bourbeau and the evidence in the record support the notice of violation and demonstrate, on the balance of probabilities, that a violation was committed.

*The applicant's version of events*

[23] Out of respect for the applicant, the Tribunal will explain why it does not accept his version of the facts.

[24] As for the applicant's version of the facts, it is simply implausible.

[25] First, during the hearing, the applicant mentioned for the first time an American friend who accompanied him to the Area on June 22, 2019. According to the applicant, this woman, tired from jet lag, was resting in his car in the parking lot when Simon Bourbeau signalled to the two photographers. For his part, the applicant was taking pictures elsewhere on the reserve. However, the applicant did not mention an American woman in the affidavit he filed. When asked why he did not call her as a witness, the applicant did not offer a coherent justification. He simply said that the woman was only in Quebec for a short period of time and that, once she returned to the United States, he lost all contact with her, not having her address or telephone number. However, he admitted that he made no effort to find the woman. The Tribunal draws a negative inference as to the credibility of the applicant.

[26] Second, the applicant provided no evidence of any other photos he may have taken during his visit to the Area on June 22, 2019. In other words, there is no concrete evidence to support his version of events.

[27] Third, the applicant alleges that he briefly met a certain Roger Beaupré on the morning of June 22, 2019. The possible relevance of this assertion must be explained. After having received information from Simon Bourbeau concerning the violation, the licence plate and the identity of the applicant, Pascal Gagnon continued the investigation, eventually deciding to issue the notice of violation referred to in the current request for review. An additional search ordered by Pascal Gagnon revealed a Facebook page that featured a photo of a tricolored heron taken on June 22, 2019, by a Roger Beaupré, a Facebook friend of the applicant. The applicant's Facebook account is expressly mentioned by this Roger Beaupré in the publication of the photo of the same bird that drew so much attention to the Area on June 22, 2019.

[28] According to the applicant, his chance meeting with Roger Beaupré on the morning of June 22, 2019, explains why he was mentioned on Facebook in connection with the tricolored heron. However, Roger Beaupré did not testify either. The applicant did adduce into the record an email from a Roger Beaupré. He admitted, however, that he had previously communicated with the person who sent the e-mail. The Tribunal cannot therefore assign much weight to this e-mail. In any case, the statements in the e-mail were very vague, did not establish the time of the meeting with the applicant and even left doubt as to the applicant's involvement in taking the picture of the heron.

[29] Fourth, even if the Tribunal accepted that the applicant met Roger Beaupré in the morning and that an American woman accompanied him, his version of events would not be more consistent. According to the applicant, he arrived at the Area around 9:30 or 10:00 a.m. He spent an hour on the scene before going to park his car near the dike. However, Simon Bourbeau's intervention at the dike took place at 1:30 p.m. The applicant would therefore have left the American woman - whom he barely knew - alone in his car for a period of at least two hours, without any means of communication, since, according to the applicant, they had not exchanged their respective telephone numbers. In short, it is hard to believe that the applicant would have met Roger Beaupré early in the morning and returned to his car after 1:30 p.m.

### *Summary*

[30] The Tribunal is of the opinion, on the balance of probabilities, that the applicant committed the violation alleged in the Notice of Violation that is the subject of this request for review.

### *Penalty amount*

[31] While the applicant does not question the amount of the penalty imposed, it is nevertheless incumbent on the Tribunal to verify that the calculation was accurate.

[32] The calculation methods are established by the EVAMP Regulations. Subsection 4(1) provides a formula:

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| <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> |
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[33] According to EVAMP Regulations, a violation of section 8 of the Regulations is a Type B: Schedule 1, Part 2, Section 2 violation. Section 1 and Column 3 of Schedule 4 of the EVAMP Regulations establish that the baseline penalty amount for a Type B violation is \$400 when committed by an individual. Given that the applicant is an individual who contravened section 8, the base amount of \$400 is correct.

[34] With respect to the additional amount for a history of non-compliance, the relevant provision is at paragraph 6(2)(d) of the EVAMP Regulations:

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| <p>A violator has a history of non-compliance if, in the five years preceding</p> <p>...</p> <p>(d) the commission of a violation relating to any Environmental Act, other than the <i>Canadian Environmental Protection Act, 1999</i> or the <i>Greenhouse Gas Pollution Pricing Act</i>, or a regulation made under one of those Acts, they were subject to an enforcement action in relation to that Act or any of that Act's regulations.</p> | <p>L'auteur a des antécédents de non-conformité si, dans les cinq ans précédant :</p> <p>...</p> <p>d) une violation de toute loi environnementale — autre que la <i>Loi canadienne sur la protection de l'environnement (1999)</i> ou la <i>Loi sur la tarification de la pollution causée par les gaz à effet de serre</i> — ou aux règlements d'application de ces lois, il a déjà fait l'objet d'une mesure de contrôle d'application à l'égard de ces mêmes lois ou de leurs règlements.</p> |
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[35] The Regulations are an "Environmental Act" for the purposes of the EVAMP Regulations: see subsection 2(1) and Schedule 1, Part 2, Section 2.

[36] The notice of violation referred to in the current request for review relates to section 8 of the Regulations. The applicant's previous record relates to paragraph 3(1)(a) of the Regulations. Thus, the applicant was "subject to an enforcement action in relation to that Act or any of that Act's regulations." Subsection 6(3) of the EVAMP Regulations defines an enforcement action as "the imposition of a ticket, penalty, conviction or injunction or the use of environmental protection alternative measures." Therefore, an additional amount should be imposed for this history of non-compliance.

[37] According to subsection 6(1) of the EVAMP Regulations, in order to calculate this additional amount, reference should be made to Schedules 4 and 5 of the EVAMP Regulations. Given that the violation in this case is a Type B violation, the applicable amount is set out in Schedule 4. For an individual such as the applicant, the amount is \$1,200: Section 1, Column 4.

[38] The calculation of the amount of the penalty with respect to the applicant's history of non-compliance was therefore accurate.

### Summary

[39] In this case, the administrative monetary penalty was calculated in accordance with the terms and conditions established by the EVAMP Regulations.

### Decision

[40] The request for review is dismissed and notice of violation number N9200-1407 is upheld.

*Review Dismissed*

*“Paul Daly”*

PAUL DALY  
REVIEW OFFICER