Environmental Protection Tribunal of Canada

Tribunal de la protection de l'environnement du Canada

Issue Date:	February 23, 2021
Citation:	*Legault v. Canada (Environment and Climate Change)*, 2021 EPTC 1
EPTC Case Nos.:	0001-2020 and 0002-2020
Case Name:	*F. Legault v. Canada (Environment and Climate Change)* (0001-2020); *R. Legault v. Canada (Environment and Climate Change)* (0002-2020)
Applicants:	Frédéric Legault and Richard Legault
Respondent:	Minister of Environment and Climate Change Canada

Subject of proceeding: Review commenced under section 15 of the *Environmental Violations Administrative Monetary Penalties Act*, SC 2009, c 14, s 126, of an Administrative Monetary Penalty issued under section 7 of that Act for a violation of subsection 14(1) of the *Migratory Birds Regulations*, CRC, c 1035, made under the *Migratory Birds Convention Act*, 1994, SC 1994, c 22.

Heard: January 27, 2021 (by teleconference)

Appearances:

Parties	**Counsel/Representative**
Frédéric Legault Richard Legault	Self-Represented
Minister of Environment and Climate Change Canada	Rosine Faucher

DECISION DELIVERED BY: **PAUL DALY**

Introduction

[1] On September 21, 2019, Frédéric Legault and Richard Legault (the "Applicants") were hunting along the banks of the Richelieu River. They were unaware that two days earlier, on September 19, 2019, officers of the Minister of the Environment and Climate Change Canada (the "Minister") had discovered corn seeds 40 metres from the Applicants' hunting site.

[2] This discovery was quite important. Subsection 14(1) of the *Migratory Birds Regulations*, CRC, c 1035 (the "MBR"), prohibits hunting within 400 metres of any place where bait has been deposited unless the place has been free of bait for at least seven days.

[3] Officers of the Minister who were conducting a patrol observed the Applicants within this 400-metre radius, and pursuant to section 126 of the *Environmental Violations Administrative Monetary Penalties Act*, SC 2009, c 14 ("EVAMPA"), issued the notices of violation that are the subject of this request for review. Through the notices of violation, the Applicants are being assessed administrative monetary penalties of $1,000 each, in both cases a baseline amount of $400 and an additional $600 for environmental harm, calculated as per the criteria set out in the *Environmental Violations Administrative Monetary Penalties Regulations*, SOR 2017-109 (the "EVAMP Regulations").

[4] The Applicants plead that they acted without guilty intent and at all times behaved in accordance with what they reasonably believed to be their regulatory obligations as hunters, and are seeking a review of the administrative monetary penalties that were imposed.

[5] Notwithstanding the good faith of the Applicants, the Tribunal must dismiss their request for review. Given that EVAMPA establishes an absolute liability regime and the Tribunal has no jurisdiction to review the discretion of the Minister's officers to issue administrative monetary penalties, intervention is not warranted in this case. The Applicants violated subsection 14(1) of the MBR, and the applicable penalties were calculated correctly.

Background

[6] The Saint-Blaise-sur-Richelieu and Sabrevois sector of the Richelieu River is located in Quebec. Pursuant to section 2.1 of the *Migratory Birds Convention Act, 1994*, SC 1994, c 22 (the "MBCA"), the MBCA and its regulations apply to this territory. Consequently, the *Migratory Birds Regulations*, CRC, c 1035 (the "MBR"), also apply.

[7] Officers Antoine Marcil, Simon Duplin and Marjolaine Lagacé are employees of Environment and Climate Change Canada ("ECCC") and have been designated as game officers by the Minister.

[8] On September 19, 2019, officers Marcil and Duplin were patrolling along the Richelieu River in the Saint Blaise-sur-Richelieu and Sabrevois sector to detect any places that had been baited for the purpose of hunting migratory birds.

[9] At geographic coordinates 45° N 12.720; 73° W 14.967, the officers discovered a pile of grains deposited in shallow water. They photographed the grains and took a sample (#EC 0007509). The grain was a mixture of cereals, including corn, which is frequently used by hunters to bait waterfowl. A sign identifying the hunting site (a duckboard) was posted on a tree near where the bait had been discovered. The sign indicated the initials “FL” and the year “2019.” The officers departed and left the site open.

[10] The migratory bird hunting season in the area opened on September 21, 2019, as according to the MBR, this area is in District F: Schedule 1, Part V, Table 1, Item 4.

[11] On September 21, 2019, officers Duplin and Lagacé were conducting hunter inspections in the Richelieu River sector in the context of the opening day of the migratory bird hunt.

[12] At approximately 7:57 a.m., the officers encountered the Applicants at geographic coordinates 45° N 12.736; 73° W 14.996, which was approximately 40 metres from the baited site identified two days earlier, on September 19, 2019, at geographic coordinates 45° N 12.720; 73° W 14.967. The sign posted on a tree indicating “FL 2019” was visible. The Applicants were just finishing up their hunt.

[13] The Applicants were wearing hunting gear (hip waders and camouflage clothing), and were aboard a duck hunting boat that was camouflaged and surrounded by a few duck decoys in the water, which is typical for migratory bird hunting.

[14] The Applicants had 12 ducks in their boat, which is the daily bag limit for two hunters. Ducks are migratory birds as defined in the MBCA.

[15] The Applicants were preparing to leave the site following their hunt. Frédéric Legault was picking up the decoys, and Richard Legault was in the boat. Their weapons were unloaded and already packed away.

[16] In the discussion that followed, the Applicants explained that they had baited the site in August, but not in September, and not in the place where the officers had found bait on September 19. They were unaware that they were hunting at a site that was within 400 metres of a place that had been baited in the previous seven days. In fact, the officers checked the site where they had discovered bait on September 19 and found that it had disappeared.

[17] Officer Duplin informed the Applicants that they had committed the violation of hunting within 400 metres of a baited site and explained that they would receive an enforcement letter in the mail.

[18] Officer Duplin explained to them that they would be allowed to hunt again in seven days since there was no bait left, or once the signs indicating that the area had been baited were removed.

[19] On November 25, 2019, Officer Lagacé issued administrative monetary penalty notices of violation 9200-1328 and 9200-1329 against the Applicants.

Issues

[20] Nothing in this case suggests that the Applicants acted with guilty intent. On the contrary, according to the joint statement of facts prepared by the parties, the Applicants at all times acted in accordance with what they believed to be their regulatory obligations.

[21] The issue in this case is therefore (1) whether, despite the absence of guilty intent, the Applicants violated subsection 14(1) of the MBR; and (2) whether the amount of the penalties is appropriate.

Discussion

Minister's argument

[22] The Minister's argument is founded on two elements. The first is an analysis of the absolute liability regime and the limited role of the Tribunal under EVAMPA. The second is an analysis of the elements of the alleged violation in this case, in light of the information set out in the joint statement of facts.

[23] The Minister submits that the Tribunal's mandate is clear. When a request for review is before it, the Tribunal cannot determine whether the Minister's officers exercised their discretionary powers properly and reasonably. In addition, the Tribunal does not have jurisdiction to set aside an administrative monetary penalty (once the elements of the violation have been demonstrated) nor can it change its amount: *Hoang v. Canada (Environment and Climate Change Canada)*, 2019 EPTC 2 at para 21; 1952157 *Ontario Inc. v. Canada (Environment and Climate Change)*, 2019 EPTC 5, at para 40.

[24] The Minister refers to section 13.01 of the MBCA:

(1) Every person commits an offence who (a) contravenes any provision of this Act or the regulations, other than a provision the contravention of which is an offence under subsection 13(1); (b) negligently contravenes paragraph 5.2(b); or (c) contravenes an order or direction made under this Act, other than an order the contravention of which is an offence under subsection 13(1).	(1) Commet une infraction quiconque contrevient : a) à toute disposition de la présente loi ou des règlements, à l'exception d'une disposition dont la contravention constitue une infraction aux termes du paragraphe 13(1); b) par négligence à l'alinéa 5.2b); c) à tout ordre donné en vertu de la présente loi, à l'exception d'un ordre dont la contravention constitue une infraction aux termes du paragraphe 13(1).

[25] The Minister notes that wildlife officers may impose an administrative monetary penalty on a person if the officers have reasonable grounds to believe that the person has committed a violation, pursuant to paragraph 5(1)(a) and sections 7 and 10 of EVAMPA.

[26] Moreover, according to the Minister, citing subsection 11(1) of EVAMPA and *Sirois v. Canada (Environment and Climate Change)*, 2020 EPTC 6, at para 41, the Applicants' intent is simply not relevant in determining whether an offence has been committed.

[27] According to the Minister, it follows that this is a regime of absolute, not just strict, liability. For the Minister, subjecting hunters to a regime of absolute liability is consistent with the principle that a hunter is deemed to have accepted the terms and conditions attaching to the privilege of participating in the regulated activity of hunting. Moreover, citing *R. c. Gladu*, 2018 QCCS 2769, at para 45, the Minister contends that a regulatee cannot be described as being morally innocent when they commit a regulatory offence.

[28] As to the elements of the violation, the Minister first cites subsection 14(1) of the MBR:

Subject to section 23.3, no person shall hunt for migratory game birds within 400 m of any place where bait has been deposited unless the place has been free of bait for at least seven days or the bait was deposited in accordance with subparagraph (5)(a)(i) or (ii).	Sous réserve de l'article 23.3, il est interdit de chasser les oiseaux migrateurs considérés comme gibier dans un rayon de 400 m d'un endroit où un appât a été déposé, à moins que l'endroit n'ait été exempt d'appât depuis au moins sept jours ou que l'appât n'ait été déposé conformément aux sous-alinéas (5)a)(i) ou (ii).

[29] In this case, the Applicants were found with the spoils of their hunt within 400 metres of a location where bait had been discovered fewer than seven days earlier. The grains found on September 19 were bait as defined in the MBR, specifically “corn, wheat, oats or other grain, pulse or any other feed, and . . . any imitation thereof that may attract migratory game birds” (“du maïs, du blé, de l’avoine, une légumineuse ou une imitation de ceux-ci, ou tout autre aliment susceptible d’attirer les oiseaux migrateurs considérés comme gibier”). And the Applicants were 40 metres from the baited site on September 21. The Applicants had hunted ducks, which are a protected species under the MBCA.

[30] As for the calculation of the penalty, the Minister submits that the starting point is the baseline amount. The baseline penalty amount applicable is the amount set out in Column 3 of Schedule 4 of the EVAMP Regulations 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. According to the EVAMP Regulations, this is a Type B violation: Schedule I, Part 4, Division 2. The baseline penalty is therefore $400, as set out in Schedule 4 of the EVAMP Regulations, Column 3, Item 1.

[31] According to the Minister, an amount for environmental harm caused by the Applicants’ violation must be added to the baseline amount. Pursuant to section 7 of the EVAMP Regulations, 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. The Minister, citing his *Policy Framework to Implement the Environmental Violations Administrative Monetary Penalties Act*, chapter 4.3, considers killing, harming, harassing, capturing or taking of wildlife species to be environmental harm. The Tribunal confirmed in *Sirois v. Canada (Environment and Climate Change)*, 2020 EPTC 6, at paras 53–54, that shooting and killing a migratory bird constitutes environmental harm. The additional amount applicable under section 7 of the EVAMP Regulations would therefore be $600: Schedule 4, Column 5, Item 1.

Applicants’ argument

[32] The Applicants plead, in essence, that they lacked guilty intent, having acted at all times in accordance with what they believed to be their regulatory obligations.

[33] They note that on reading the file, it is impossible to conclude beyond any doubt that they committed a violation. Nothing suggests that the Applicants baited the site prior to their hunt on September 21, 2019. Indeed, numerous people had access to the site before September 21, 2019—notably, Waterfowler Heritage Day took place the weekend before, giving young hunters the opportunity to hunt along the river.

[34] According to the Applicants, because the officers who discovered the bait on September 19, 2019, decided to leave the site open, and because no trace of bait was still present on September 21, 2019, they had no way of knowing that they were hunting within 400 metres of a place that had been baited in the previous seven days. This was therefore a trap.

[35] The Applicants do not dispute the calculation of the administrative monetary penalty amount.

Analysis and findings

Legislative framework

[36] The EVAMP Regulations were enacted pursuant to the MBCA, which implements Canada's international obligations as a signatory to the Migratory Birds Convention.

[37] Section 12 of the MBCA authorizes the Governor in Council to "make any regulations that the Governor in Council considers necessary to carry out the purposes and provisions of this Act and the Convention" ("Le gouverneur en conseil peut prendre les règlements qu'il juge nécessaires à la réalisation de l'objet de la présente loi et de la convention").

[38] The MBCA provides a definition of migratory bird:

migratory bird means a migratory bird referred to in the Convention, and includes the sperm, eggs, embryos, tissue cultures and parts of the bird	Tout ou partie d'un oiseau migrateur visé à la convention, y compris son sperme et ses œufs, embryons et cultures tissulaires

[39] Ducks are among the species protected by the MBCA.

[40] The administrative monetary penalties imposed on the Applicants included two amounts. The first amount is derived from subsection 14(1) the MBR, which stipulates:

Subject to section 23.3, no person shall hunt for migratory game birds within 400 m of any place where bait has been deposited unless the place has been free of bait for at least seven days or the bait was deposited in accordance with subparagraph (5)(a)(i) or (ii).	Sous réserve de l'article 23.3, il est interdit de chasser les oiseaux migrateurs considérés comme gibier dans un rayon de 400 m d'un endroit où un appât a été déposé, à moins que l'endroit n'ait été exempt d'appât depuis au moins sept jours ou que l'appât n'ait été déposé

	conformément aux sous-alinéas (5)a)(i) ou (ii).

[41] According to section 13.01 of the MBCA, contravening the MBR is an offence.

[42] Through EVAMPA, Parliament created an administrative monetary penalty system as an alternative to the existing penal system and as a supplement to existing environmental enforcement measures (section 3).

[43] Section 5 of EVAMPA thus provides that the Governor in Council may identify statutes and regulations whose contravention is punishable by an administrative monetary penalty. The MBCA and the Regulations are part of this administrative monetary penalty system because they are identified in Schedule 1, Part 4, of the EVAMP Regulations.

[44] The second amount was imposed under the EVAMP Regulations, section 7 of which provides that an additional amount will be added to the administrative monetary penalty if "the violation has resulted in harm to the environment" ("[s]i des dommages environnementaux découlent de la violation commise").

[45] The Tribunal's role is circumscribed by EVAMPA. According to section 7:

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.	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.

[46] Moreover, section 11 excludes certain defences, thereby establishing a regime of absolute liability:

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 (a) exercised due diligence to prevent the violation; or (b) reasonably and honestly believed in the existence of facts that, if true, would exonerate the person, ship or vessel.	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 faits qui, avérés, l'exonéreraient.

[47] The Tribunal's role—confirmed by the Tribunal's case law—is to determine whether a violation was committed and if so, the amount of the applicable administrative monetary penalty: *Hoang v. Canada (Environment and Climate Change)*, 2019 EPTC 2, at paras 19–21; *Fontaine v. Canada (Environment and Climate Change)*, 2020 EPTC 5, at para 28; *Sirois v. Canada (Environment and Climate Change)*, 2020 EPTC 6, at para 18.

[48] This is also clear from section 20 of EVAMPA. After receiving the relevant information and representations, the Tribunal must determine whether the Applicant committed the alleged violation and whether the penalty amount was calculated correctly. The burden of proof is on the Minister, who must discharge it on a balance of probabilities. Section 20 should be reproduced here in its entirety:

(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. (2) The Minister has the burden of establishing, on a balance of probabilities, that the person, ship or vessel committed the violation. (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.	(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. (2) Il appartient au ministre d'établir, selon la prépondérance des probabilités, que le demandeur a perpétré la violation. (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.

Offence

[49] In *R. v. Chapin*, [1979] 2 SCR 121, at page 133, Justice Dickson offered the following comments on an earlier version of subsection 14(1) of the MBR:

Hunting being a permitted sport, it would be a practical impossibility for a hunter to search a circular area having a diameter of half a mile for the presence of illegally deposited bait, before hunting. One must bear in mind the nature of the terrain over which hunting is done, as the evidence in this case discloses, and the fact that many hunters hope to get into position before first light. Is one first expected to search through swamp, bog, creeks, corn fields, over land and in water in search of illegal bait?	La chasse est un sport autorisé et il serait pratiquement impossible pour un chasseur de fouiller une région d'un demi-mille de diamètre pour s'assurer avant de chasser qu'on n'y a placé aucun appât illicite. Il ne faut pas oublier la configuration des terrains de chasse, comme le révèle la preuve en l'espèce, et le fait que de nombreux chasseurs choisissent un emplacement avant le lever du jour. Le chasseur doit-il d'abord vérifier qu'il n'y a aucun appât illicite dans les marais, les marécages, les ruisseaux, les champs de maïs, sur la terre ferme et dans l'eau?

[50] In Justice Dickson's opinion, a due diligence defence was therefore a necessity in relation to subsection 14(1).

[51] However, Parliament chose to abolish the old strict liability regime—which would have allowed the Applicants to raise a convincing due diligence defence in this case—and to establish an absolute liability regime in its place. By removing any defence of error of fact, good faith or due diligence through section 11 of EVAMPA, Parliament established an absolute liability regime.

[52] In an absolute liability regime, intent is irrelevant: *Sirois v. Canada (Environment and Climate Change)*, 2020 EPTC 6, at para 41. The Applicants may well proclaim their innocence, but the Tribunal cannot grant their request for review on the basis of their good faith. That door was closed by Parliament.

[53] In this case, the Applicants were hunting within 400 metres of a site baited less than seven days earlier, as described in subsection 14(1) of the MBR. That is all the Minister had to show. The Minister has discharged his burden of proof. A violation was committed.

[54] Moreover, the officers' decision to issue a notice of violation is immune from oversight by this Tribunal. As the Tribunal has now observed on a number of occasions, its role is simply to verify whether the violation alleged in the notice was committed and if so, whether the amount of the penalty imposed is correct. Nothing more, and certainly not to review the discretionary power of the Minister's officers. That door was also closed by Parliament.

[55] Admittedly, section 11 does not eliminate all possible defences. Common law defences may be raised to the extent that they are consistent with EVAMPA: subsection 11(2). However, none are applicable in this case.

[56] In mentioning a [TRANSLATION] "trap," the Applicants are referring to the defence of entrapment. This defence was raised before the Tribunal in *Rice v. Canada (Environment and Climate Change)*, 2020 EPTC 4. Although this decision was not cited by the Applicants, it is appropriate to refer to it in the context of developing a harmonized decision-making culture (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para 130).

[57] At para 31 of *Rice*, the Tribunal quoted from the Ontario Court of Appeal analysis in *R. v. Clothier*, 2011 ONCA 27, which is based on the analysis of Justice Lamer of the Supreme Court of Canada in *R. v. Mack*, [1988] 2 SCR 903, and *R. v. Barnes*, [1991] 1 SCR 449). In light of the case law, the Tribunal noted that there are two situations in which the defence of entrapment may apply:

First, when government authorities provide a person with an opportunity to commit a crime, unless they have a reasonable suspicion that the person is already engaged in criminal activity, or unless they are acting in the course of a bona fide investigation. Second, when government authorities, though they have a reasonable suspicion or are acting in the course of a bona fide investigation, go beyond providing an opportunity to commit a crime by inducing the commission of an offence.	Premièrement, lorsque les autorités gouvernementales fournissent à une personne l'occasion de perpétrer un crime, à moins qu'elles puissent raisonnablement soupçonner que cette personne est déjà engagée dans une activité criminelle, ou qu'elles agissent au cours d'une véritable enquête. Deuxièmement, lorsque les autorités gouvernementales, quoi qu'elles aient ce soupçon raisonnable ou qu'elles agissent au cours d'une véritable enquête, font plus que fournir une occasion et incitent à perpétrer une infraction.

[58] In this case, the authorities did not induce the Applicants to commit an offence. Did they, however, provide an "opportunity to commit a crime" by leaving the site open after the bait was discovered on September 19, 2019? The answer must be in the negative for two reasons. First, it was not the Minister's officers who provided the "opportunity to commit a crime", but rather the person—still unknown—who baited the site. To say that the decision not to close the sites within 400 metres of the baited site provided an "opportunity to commit a crime" would suggest that the Minister's officers have a positive obligation to take the necessary steps to prevent citizens from committing violations under the provisions of EVAMPA. The defence of entrapment is not that broad, particularly in a regulatory context: *R. v. Clothier*, 2011 ONCA 27, at para 32.

[59] Second, even if the officers did provide "an opportunity to commit a crime", they were acting "in the course of a bona fide investigation". Having identified the baited site on September 19, they returned on September 21 to conduct hunter inspections. They encountered the Applicants who, in light of the information before the Tribunal, were clearly not the responsible party, but had the misfortune to be in the wrong place at the wrong time. But the officers were indeed "in the course of a bona fide investigation".

[60] The defence of entrapment does not apply in this case.

[61] In the absence of a valid argument for the defence of entrapment, the Applicants must ask the Tribunal to review the discretion of the Minister's officers. But in reviewing the exercise of the officers' discretion, the Tribunal would be exceeding the powers granted to it by Parliament. The Tribunal therefore cannot do so.

[62] Despite their good faith and due diligence, the Tribunal cannot accept the Applicants' argument.

Penalty amount

[63] While the Applicants do not question the amount of the penalty imposed, verification of the amount is part of the Tribunal's role when it receives a request for review.

[64] In this case, the relevant provision is subsection 4(1) of the EVAMP Regulations:

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

[65] According to the EVAMP Regulations, contravening subsection 14(1) of the Regulations is a Type B violation: Schedule 1, Part 4, Division 2. Item 1 and Column 3 of Schedule 4 establish that the baseline penalty amount for a Type B violation is $400 when committed by an individual. Given that the Applicants are individuals who contravened subsection 14(1), the baseline amount of $400 is correct.

[66] The amount for an aggravating factor is established in Schedule 4 of the EVAMP Regulations. According to Item 1, Column 5 of Schedule 4 of those Regulations, the amount for environmental harm is $600 in respect of an individual.

[67] Section 7 of the EVAMP Regulations should be reproduced here.

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.	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.

[68] In this case, it is clear that there was environmental harm in the form of the death of the ducks hunted by the Applicants. This conclusion flows from the Tribunal's earlier case law: *Sirois v. Canada (Environment and Climate Change)*, 2020 EPTC 6, at para 54.

[69] The Minister relies in part on his *Policy Framework*, which provides a broad and liberal definition of the term "environmental harm." The *Policy Framework* is a "soft law" instrument adopted by the Minister—it is not a statutory provision duly enacted by Parliament, nor is it a regulatory provision subject to the *Statutory Instruments Act*, RSC 1985, c S-22. The Tribunal wishes to emphasize that its conclusion in this case is based on the relevant statutory and regulatory provisions and not on the *Policy Framework*.

[70] Certainly, the Supreme Court of Canada has suggested that soft law (such as the *Policy Framework*) may in principle form part of the interpretive context: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 SCR 559, at para 85. However, the legitimacy of the suggestion that the Minister may, through his soft law, expand the scope of statutory and regulatory provisions, thereby imposing obligations on individuals, is questionable. It is not necessary in this context to say more, because the Tribunal's case law establishes that the death of an animal is environmental harm within the meaning of section 7 of the EVAMP Regulations, but the Tribunal nonetheless considers it desirable to make it clear that it did not take the *Policy Framework* into consideration in reaching its conclusion.

[71] For section 7 to apply, it is necessary to establish not only environmental harm, but also a causal link between the violation and the resulting environmental harm: *Nyobe v. Canada (Environment and Climate Change)*, 2020 EPTC 7, at paras 32–33.

[72] The necessary causal link is present here. If they had been acting in accordance with the regulatory framework, the Applicants would not have hunted at the site where they hunted on September 21, 2019. Their violation of subsection 14(1) is intrinsically linked to their presence at the site and the hunting of ducks. Therefore, the death of the ducks resulted from the violation of subsection 14(1), as required by section 7 of the EVAMP Regulations, and the additional amount for environmental harm applied.

[73] The amount of the administrative monetary penalties imposed on the Applicants was correct.

Summary

[74] Although the Applicants lacked guilty intent and acted in good faith at all times, they nevertheless committed the violation alleged in the notice of violation. In addition, the amount of the administrative monetary penalty was correct.

Decision

[75] The request for review will therefore be dismissed.

Review dismissed

"Paul Daly"

PAUL DALY
REVIEW OFFICER