



**Issue Date:** June 10, 2021  
**Citation:** *Andrade v. Canada (Environment and Climate Change)*,  
2021 EPTC 4  
**EPTC Case Nos.:** 0005-2019, 0006-2019 and 0007-2019  
**Case Name:** *Andrade v. Canada (Environment and Climate Change)*  
**Applicant:** Patrick Sousa Andrade  
**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 Administrative Monetary Penalties issued under section 7 of that Act for violations of subsection 3(1)(h) of the *Wildlife Area Regulations*, CRC, c 1609, made under the *Canada Wildlife Act*, RSC, 1985, c W-9.

**Heard:** May 18, 2021 (by videoconference)

**Appearances:**

**Parties**

Patrick Sousa Andrade

Minister of Environment and  
Climate Change Canada

**Counsel**

Martin Subak

André Capretti

**DECISION DELIVERED BY:**

**PAUL DALY**

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## **Introduction**

[1] As the late afternoon turned into early evening on January 23, 2019, Patrick Sousa Andrade (“the Applicant”) and his friend Gabriel Langlois encountered wildlife officers who were working for Environment and Climate Change Canada (“the Minister”).

[2] The Applicant and his friend had been snowmobiling. In poor conditions, their snowmobile had become stuck in the snow, a few meters outside of the Lake Saint-François National Wildlife Area (“the Wildlife Area”). At the relevant time, it was an offence under s. 3(1)(h) of the *Wildlife Area Regulations*, CRC, c 1609 “to operate a conveyance” in the Wildlife Area.

[3] Under questioning from the officers, the Applicant allegedly admitted to having snowmobiled in the Wildlife Area on January 23, 2019 and on the two previous days. The officers issued three Notices of Violation, representing three separate incursions into the Wildlife Area. The total of the administrative monetary penalties thereby imposed on the Applicant was \$3,000, representing a base amount for each offence of \$400 and an additional sum of \$600 to take account of environmental harm.

[4] For the reasons that follow, the Tribunal grants the review. The Minister has failed to demonstrate, on the balance of probabilities, that the Applicant committed the offences alleged.

[5] In respect of the Notices of Violation for January 21 and January 22, there is no evidence of a violation beyond the alleged admission of the Applicant, and the probative force of this admission is undermined by evidence given by one of the Minister’s wildlife officers.

[6] In respect of the Notice of Violation for January 23, the Tribunal is not satisfied that it is more likely than not that the Applicant entered the Wildlife Area. He might have done so, but in the absence of direct evidence to that effect, it is impossible to say that the Minister has discharged his burden of establishing, on the balance of probabilities, that an offence was committed.

## **Context**

[7] On the evening of January 23, 2019, wildlife officers Simon Duplin and Daniel Breton, as well as three RCMP officers were patrolling on the Wildlife Area, which borders the United States.

[8] At around 19.54, they came across the Applicant and Gabriel Langlois. The Applicant and Langlois’s snowmobile was stuck in the snow.

[9] The Applicant and Langlois were briefly put in detention under customs legislation and searched by one of the RCMP officers. The Applicant also answered questions from the RCMP officer.

[10] At around 20.10, after having informed the Applicant that he was still detained, officer Duplin informed him of his right to remain silent and told him that any declaration he made to him would be noted by officer Breton.

[11] After having freed their snowmobile, the officers escorted the Applicant and Langlois back to the pickup truck they had rented.

[12] The three Notices of Violation (9200-1201, 9200-1202 and 9200-1203) were served on the Applicant on March 26, 2019.

[13] This map was entered in evidence:



[14] The green lines demarcate the Wildlife Area.

[15] “Motoneige” indicates the point, just outside the Wildlife Area, where the Applicant was found by the RCMP officers and wildlife officers. “Camion” indicates where the Applicant’s truck was parked.

[16] The large mass of water to the North of the Wildlife Area is the Saint Lawrence River. This particular part of the Saint Lawrence River contains Lake Saint-François.

[17] Running South from the Saint Lawrence/Lake Saint-François is the Rivière aux saumons.

[18] The red line represents the route the wildlife officers took from the stranded snowmobile to bring the Applicant back to his truck.

## **Issue**

[19] Has the Minister established on the balance of probabilities, as required by s.20(2) of the *Environmental Violations Administrative Monetary Penalties Act*, that the Applicant operated a conveyance in the Wildlife Area on January 21, January 22 and January 23, 2019?

## **Evidence**

[20] Two wildlife officers testified for the Minister, Simon Duplin and Daniel Breton. Both are experienced officers, who know the Wildlife Area well.

[21] For the most part, the wildlife officers’ testimony confirmed the facts set out above.

[22] The wildlife officers also both testified that it would have been very difficult – and at the least, extremely dangerous – for the Applicant to have travelled from his truck to the place where his snowmobile became stuck in the snow by any other route than the one marked in red on the map. Via the Saint Lawrence and Lake Saint François was, in their view, highly dangerous in January (given that the Saint Lawrence is not yet entirely frozen at this early point in the winter). Via the South, the Applicant would have had to skirt the border with the United States, which is regularly patrolled, and travel across a variety of private fields, an exercise which would have required a high level of skill and experience.

[23] The wildlife officers observed that the Applicant’s snowmobile was more of a sporty type, not designed for off-trail use. Further, in their view, the Applicant and his friend were not well equipped for snowmobiling, as they did not have the shovels and other equipment necessary to dig themselves out of trouble.

[24] Officer Duplin testified, in addition, to two facts which supported the decision to issue the Notices of Violation. First, he testified that the Applicant admitted to having used his snowmobile in the Wildlife Area on January 23 and also on the two preceding days.

However, Officer Breton testified that the Applicant admitted that he had been snowmobiling in the general area, not in the Wildlife Area specifically – in his testimony, given in French, Officer Breton used the phrase « dans le secteur ».

[25] Second, Officer Duplin testified that, after the Applicant had been returned to his truck via the route identified in red on the map, the Applicant confirmed that he had travelled along that route. Also, there was a sign placed to the side of the route: according to Officer Duplin, the Applicant acknowledged that, on his outward journey, he had passed by the same sign.

[26] Lastly, the wildlife officers testified that, around the place where the Applicant and his friend were found with the snowmobile, there were snowmobile tracks to the North and to the South. No evidence was entered about the presence or absence of snowmobile tracks along the Saint Lawrence/Lake Saint-François.

[27] The Applicant testified that he had gone snowmobiling on January 21, January 22 and January 23, 2019. However, he testified that on each occasion he travelled North from his truck to the Saint Lawrence and followed the shoreline along Lake Saint-François to the Rivière aux saumons. On each occasion, the Applicant said, he followed existing snowmobile tracks. He had little or no recollection of his responses to questions posed by the wildlife officers. He also testified that he was very much a recreational, inexperienced snowmobiler: he had hired the truck and the snowmobile in Laval before travelling to the environs of the Wildlife Area.

## **Analysis and Conclusions**

### *January 21 and January 22, 2019*

[28] Based on the evidence, the Notices of Violation issued for January 21 and January 22, 2019 can be dealt with summarily.

[29] The only evidence proffered by the Minister in support of these Notices of Violation is the alleged admission by the Applicant.

[30] The admission was recorded by Officer Duplin.

[31] However, Officer Breton testified that the Applicant responded that he had been snowmobiling in the environs of the Wildlife Area – « dans le secteur » means “in the general area”, not necessarily in the Wildlife Area specifically.

[32] As such, it seems that Officer Duplin may have misunderstood the Applicant’s response to his questions.

[33] Without casting any doubt on the credibility of Officer Duplin, it is impossible to say, based on this evidence, that it is more probable than not that the Applicant entered the Wildlife Area on January 21 and January 22, 2019.

[34] The review must therefore be granted in respect of Notices of Violation N9200-1201, N9200-1202.

*January 23, 2019*

[35] The Tribunal is unable to find that the Minister has discharged his evidential burden.

[36] The Tribunal accepts the evidence of the wildlife officers that reaching the point where the snowmobile was stuck via any other route than the one running through the Wildlife Area was, at the very least, extremely dangerous. Doing something extremely dangerous is, however, consistent with the Applicant's profile as an inexperienced snowmobiler, using a snowmobile ill-suited to off-trail travel and ill-equipped to do so.

[37] Furthermore, the Minister did not lead any specific evidence about weather conditions in the days and weeks leading up to January 23, 2019. The Tribunal is prepared to accept that conditions for snowmobiling are not optimal in late January, generally speaking. But without specific evidence of the weather and conditions around the relevant time, the Tribunal cannot say it is more likely than not that the Applicant did not travel by the apparently perilous route along the Saint Lawrence/Lake Saint-François.

[38] Moreover, the wildlife officers testified that there were snowmobile tracks running due North and due South from the spot where the Applicant's snowmobile was located. This is consistent with the Applicant's account of how he travelled to where he became stuck in the snow.

[39] In truth, the only direct evidence that the Applicant was ever in the Wildlife Area on January 23, 2019 is provided by the Applicants' alleged admissions that he was in the Wildlife Area. These admissions were made late at night, in the dark and in poor weather conditions. They could just as easily be the product of misunderstandings, a hypothesis which is strengthened by the different understandings Officer Duplin and Officer Breton had of the Applicant's alleged admission in relation to January 21 and January 22, 2019. The probative value of the admissions is therefore limited.

[40] The Tribunal cannot find on this record that it is more probable than not that the Applicant ever entered the Wildlife Area. The alleged admissions are insufficient given the circumstances to support the Minister's case.

## Calculation of Penalty

[41] As the Applicant's request for review has been successful, it is not strictly necessary to address the calculation of the administrative monetary penalties imposed. Nonetheless, given that the Tribunal heard arguments on the calculation of the administrative monetary penalties in this case, the Tribunal is in a position to offer some brief comments, which may be useful to officials on the ground and to counsel in future cases.

[42] The penalties imposed here included a base amount of \$400. This is the amount identified for Type B offences such as a violation of article 3(1)(h): *Environmental Violations Administrative Monetary Penalties Regulations*, SOR/2017-109 ("EVAMP Regulations"), Schedule 1, Part 2, Division 2; Schedule 4, Item 1, Column 3. This amount was accurately calculated. The Applicant does not take issue with the calculation of the base amount.

[43] The penalties also included an amount of \$600 for environmental harm: EVAMP Regulations, Schedule 4, Item 1, Column 5. This amount was also accurately calculated.

[44] However, the Applicant took issue with whether the environmental harm amount should have been imposed at all. Article 7 of the EVAMP Regulations provides that the environmental harm amount applies where "the violation has resulted in harm to the environment" (in the French version, « dommages environnementaux [qui] découlent de la violation commise »). This imposes a basic requirement of causality. There must be a causal link between the violation and the environmental harm: see *Nyobe v. Canada (Environment and Climate Change)*, 2020 EPTC 7, at paras 28-34.

[45] Here, the wildlife officers testified that, in general, operating snowmobiles along the route marked in red on the map (shown above at para 13) compacts the snow in the Wildlife Area. The effect of compacting the snow is to make it easier for invasive species to interfere with protected species living in or passing through the Wildlife Area. The Minister submitted that this was sufficient to satisfy the causality requirement of the EVAMP Regulations.

[46] In response, the Applicant submitted that the Minister's evidence was general rather than specific. That snowmobiles in general have the effect of compacting snow and disrupting the ecological balance of the Wildlife Area, the Applicant argued, does not mean that the Applicant's snowmobile specifically had this effect.

[47] The Tribunal agrees with the Minister's submissions in this regard. There is no need for specific evidence of the type the Applicant contemplated. Had the Applicant operated a snowmobile in the Wildlife Area, the snowmobile would have compacted snow in the Wildlife Area. As the Minister's witnesses explained, the compacting of snow causes harm to the protected species living in or passing through the Wildlife Area. Accordingly, it was appropriate to impose the \$600 in respect of environmental harm in

this case (though, as explained above, the underlying violation has not been established on the balance of probabilities).

### **Decision**

[48] The request for review is granted and notices of violation number N9200-1201, N9200-1202 and N9200-1203 are cancelled.

*Review Granted*

*AMPs Cancelled*

*“Paul Daly”*

PAUL DALY  
REVIEW OFFICER