Environmental Protection
Tribunal of Canada

Tribunal de la protection de
l'environnement du Canada

Issue Date:	June 25, 2021
Citation:	*Desrosiers v. Canada (Environment and Climate Change),* 2021 EPTC 5
EPTC Case No:	0032-2020
Case Name:	*Desrosiers v. Canada (Environment and Climate Change)*
Applicant:	Mario Desrosiers
Respondent:	Minister of Environment and Climate Change Canada

Subject of proceeding: Review commenced under section 15 of the *Environmental Violations Administrative Monetary Penalties Act*, S.C. 2009, c. 14, s. 126, of an Administrative Monetary Penalty issued under section 7 of that Act for a violation of paragraph 3(1)(a) of the *Wildlife Area Regulations*, C.R.C., c. 1609, made under the *Canada Wildlife Act*, R.S.C., 1985, c. W-9.

Heard:	In writing

Appearances:

Parties	**Counsel**
Mario Desrosiers	Kathleen Picard
Minister of Environment and Climate Change Canada	Rosine Faucher

DECISION DELIVERED BY:	**PAUL DALY**

Introduction

[1]   On September 23, 2020, Mario Desrosiers ("the Applicant") was intercepted by a law enforcement officer while fishing from one of the islands in the Îles de Contrecoeur National Wildlife Area (the "Area").

[2]   The Applicant was served with a Notice of Violation under paragraph 3(1)(a) of the *Wildlife Area Regulations* ("WAR") and was ordered to pay an Administrative Monetary Penalty in the amount of $400.

[3]   The Notice of Violation was issued pursuant to subsection 10(1) of the *Environmental Violations Administrative Monetary Penalties Act*, S.C. 2009, c. 14 ("EVAMPA").

[4]   The Applicant is seeking a review of the Notice of Violation, thereby invoking the jurisdiction of the Tribunal under EVAMPA.

[5]   However, the Applicant readily admitted that he was fishing in the Area. There was, accordingly, a violation of the WAR as alleged in the Notice of Violation. The Applicant argued that he did not know that access to the Area is prohibited. This defence is expressly excluded by EVAMPA. The request for review must therefore be dismissed.

Analysis and Findings

Violation

[6]   It is not necessary to describe the factual background in detail, because the parties agree on the key element, namely that the Applicant was fishing in the Area.

[7]   At the relevant time, subsection 3(1) of the WAR provided as follows:

Subject to subsection (2), no person shall, in any wildlife area, (a) hunt or fish . . .	Sous réserve du paragraphe (2), il est interdit à quiconque se trouve dans une réserve d'espèces sauvages (a) de chasser ou de pêcher

[8]   Under subsections 13.01(1) and 13.01(2) of the *Canada Wildlife Act*, R.S.C. 1985, c. W-9, offences under the WAR are punishable by fines on indictment or summary conviction.

[9]   In addition, a violation of the WAR is subject to the procedure set out in EVAMPA, section 5 of which provides that certain violations of Canadian environmental laws specified by regulation warrant the imposition of administrative monetary penalties

calculated in accordance with the formulas set out in the *Environmental Violations Administrative Monetary Penalties Regulations*, SOR/2017-109 (the "EVAMP Regulations"). Notably, Schedule 1, Part 2, Division 2 of the EVAMP Regulations identifies a violation of the WAR as "a violation that may be proceeded with in accordance with the Act" (subsection 2(1) of the EVAMP Regulations).

[10]   The burden is on the Minister of Environment and Climate Change Canada ("the Minister") to show, on the balance of probabilities, that a violation has occurred: section 20 of EVAMPA. It is clear in this case that it is more likely than not (if not certain) that the Applicant committed the violation identified in subsection 3(1) of the WAR, as he has admitted that he was fishing in the Area.

[11]   What about the Applicant's defence? The Applicant testified under oath that he had no idea he was in a wildlife area because he did not see signs declaring that he was in one. He maintains that he was innocent, having no criminal intent.

[12]   The Tribunal does not question the honesty or good faith of the Applicant. However, according to the explicit provisions of EVAMPA, neither his honesty nor his good faith can serve as a defence. Subsection 11(1) of EVAMPA is clear in this regard:

| 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. |

[13]   In several decisions, the Tribunal has found that a violation has occurred despite the good intentions of the Applicant: see, for example, *Sirois v. Canada (Environment and Climate Change)*, 2020 EPTC 6, at para. 41; *F. Legault v. Canada (Environment and Climate Change); R. Legault v. Canada (Environment and Climate Change)*, 2021 EPTC 1, at para. 52.

[14]   It follows that by his presence and activities in the Area, the Applicant committed a violation of the WAR, punishable by a Notice of Violation issued under EVAMPA.

Penalty

[15]   The formula for calculating the amount of an Administrative Monetary Penalty issued under EVAMPA is found in 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.

[16]   In this case, we are interested in "W" because the penalty imposed on the Applicant includes only the base amount: history of non-compliance, environmental damage and economic benefit do not come into play here.

[17]   Regarding the baseline amount, section 5 of the EVAMP Regulations states where to find the relevant amounts:

The baseline penalty amount for a violation is the amount set out in column 3 of Schedule 4 or of Schedule 5 that corresponds to the category of the violator and the type of violation committed as set out in columns 1 and 2, respectively, of the applicable schedule.	Le montant de la pénalité de base applicable à une violation est celui prévu à la colonne 3 de l'annexe 4 ou de l'annexe 5, selon l'auteur et le type de violation commise figurant, respectivement, aux colonnes 1 et 2 de cette même annexe.

[18]   In accordance with the procedures specified in section 5, the Tribunal finds that a violation of paragraph 3(1)(a) of the WAR was, at the relevant time, a Type B violation: Schedule 1, Part 2, Division 2.

[19]   For an individual, the applicable amount for a Type B violation is $400: Schedule 4, Item 1, Column 3. This is the amount of the penalty imposed in this case.

[20]   It follows that the calculation of the Administrative Monetary Penalty was correct.

Conclusion

[21]   The Minister has demonstrated that a violation occurred, despite the Applicant's good intentions. It was therefore appropriate to issue the Notice of Violation that is the subject of the current review request. The penalty imposed was calculated in accordance with the rules set out in the EVAMP Regulations. It follows that the request for review must be dismissed.

Decision

[22]   The request for review is dismissed. Notice of violation N9200-1078 is therefore upheld.

Review dismissed

"Paul Daly"
PAUL DALY
REVIEW OFFICER