



**Issue Date:** June 29, 2021  
**Citation:** *Cormier v. Canada (Environment and Climate Change)*,  
2021 EPTC 6  
**EPTC Case No:** 0012-2020 and 0013-2020  
**Case Name:** *Cormier v. Canada (Environment and Climate Change)*  
**Applicant:** Jean-Marie Cormier  
**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 a violation of paragraph 5(a) of the *Migratory Birds Convention Act, 1994*, SC 1994, c 22, and a violation of paragraph 15(1)(e) of the *Migratory Birds Regulations*, CRC, c 1035.

Heard: June 9, 2021 (by teleconference)

**Appearances:**

**Parties**

Jean-Marie Cormier

Minister of Environment and Climate  
Change Canada

**Counsel/Representative**

Self-Represented

Marilou Bordeleau

**DECISION DELIVERED BY:**

**PAUL DALY**

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## Introduction

[1] Jean-Marie Cormier (“the Applicant”) received two notices of violation in relation to events that occurred on October 11, 2019.

[2] The Applicant was intercepted by officers of the Minister of Environment and Climate Change Canada (“the Minister”) who filmed him shooting at migratory birds from a boat.

[3] The officers decided to issue two notices of violation: one for a violation of paragraph 15(1)(e) of the *Migratory Birds Regulations*, CRC c 1035 (“the MBR”), which prohibits the shooting of migratory birds from a moving vessel; and another for a violation of paragraph 5(a) of the *Migratory Birds Convention Act, 1994* (“the MBCA”), which prohibits the illegal possession of migratory birds.

[4] The Applicant is not challenging the notice of violation relating to the MBR. He is only challenging the violation under the MBCA, claiming that he was not “in possession” of migratory birds. He is therefore invoking the Tribunal’s jurisdiction under the *Environmental Violations Administrative Penalties Act*, SC 2009, c 14, s 126 (“EVAMPA”).

[5] The Tribunal’s role is to determine on the balance of probabilities whether a violation occurred as alleged in the notice of violation (section 20 of EVAMPA) and, if so, whether the applicable penalty amount was calculated in accordance with the *Environmental Violations Administrative Penalties Regulations*, SOR/2017-109 (“the EVAMP Regulations”).

[6] In this case, the Tribunal is of the opinion that the applicant was in illegal possession of migratory birds.

[7] However, the Minister erred in his calculation of the amount of the penalty. An additional amount for environmental damage was unwarranted. The Minister should have imposed this additional amount on the first notice of violation under paragraph 15(1)(e) of the MBR, which the Applicant is not challenging.

[8] The request for review should therefore be granted in part.

## Background

[9] On October 11, 2019, at approximately 8:50 a.m., officers Félix Hamel and Louis-Philippe Supper of Fisheries and Oceans were patrolling the waters of the Île du Havre area in Havre-St-Pierre in the course of their work.

[10] During their patrol, the two officers heard gunshots coming from the south side of Île du Havre. Officer Hamel then disembarked on Île du Havre, equipped with a camera, and headed to the south side of the island to observe the hunters.

[11] The officer then saw a boat with two people aboard, later identified as the Applicant and Mr. Richard Cormier. Officer Hamel filmed and photographed the individuals, whom he suspected of hunting migratory birds.

[12] In the video, it is clear that the Applicant fired from a moving boat.

[13] Officer Hamel then joined Officer Supper, and the two officers met the boat occupied by the Applicant and Mr. Richard Cormier.

[14] Officer Supper introduced himself to the individuals in his capacity as a fishery officer.

[15] He then advised them that they had violated their regulatory obligations by hunting migratory birds from a moving boat.

[16] Officers Supper and Hamel also checked the weapons on board the boat and found that the Applicant had an Adler semi-automatic shotgun, while Mr. Richard Cormier had a single-shot shotgun.

[17] Following this intervention, the officers informed the Applicant that the file would be transferred to the Quebec Ministry of Forests, Wildlife and Parks. After an internal review, it was determined that the file should instead be transferred to the Minister. Based on the notes of officers Supper and Hamel, as well as the supplement to the offence report completed by Officer Hamel, on February 24, 2020, Officer Yann Bolduc issued two notices of violation to the Applicant.

[18] Notice of violation number 9200-1378 for the baseline amount of \$400 was issued to the Applicant because, according to the observations of officers Hamel and Supper, he was found in possession of a migratory bird and was therefore in violation of paragraph 5(a) of the MBCA. A further \$600 was added to this amount for the aggravating factor of environmental harm.

[19] Notice of violation number 9200-1379 in the amount of \$400 was also issued for hunting migratory birds by means of one of the specified vehicles, namely a moving power boat, contrary to paragraph 15(1)(e) of the MBR.

[20] Both notices of violation were served on the Applicant on February 24, 2020.

[21] After discussion between the Applicant and the Minister's representative on December 9, 2020, the Applicant confirmed that he was no longer contesting notice of violation number 9200-1379 for hunting migratory birds by means of a moving power boat. However, he continues to contest notice of violation number 9200-1378 for possession of a migratory bird in contravention of the regulations, and the associated aggravating factor.

[22] Officers Hamel and Bolduc testified at the hearing. The Applicant also gave his version of the facts.

[23] There was little disagreement on the salient facts for the purposes of this request for review.

[24] The Applicant fired at migratory birds from a moving boat and was captured on video doing so. When the Applicant was intercepted by the officers, there was at least one dead migratory bird—an eider duck—in the boat, of which the Applicant was one of two occupants.

## Analysis and Findings

### *General analytical framework*

[25] In a request for review under EVAMPA, the burden is on the Minister to establish on the balance of probabilities that a violation was committed as alleged in the notice of violation that is the subject of the request for review (subsection 20(2) of EVAMPA). It is the Tribunal’s responsibility to ensure that the amount of the applicable penalty, if any, has been properly calculated (subsection 20(3) of EVAMPA).

[26] EVAMPA provides for a regime of absolute liability by excluding defences based on due diligence or good faith: section 11 of EVAMPA; *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.

[27] A violation of the MBCA 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 Penalties Regulations*, SOR/2017-109 (“the EVAMP Regulations”). Notably, Schedule 1, Part 4, Division 1 of the EVAMP Regulations identifies a violation of the MBCA as “a violation that may be proceeded with in accordance with this Act” (paragraph 5(1)(a) of EVAMPA).

### *Offence*

[28] It is appropriate to begin with the text of section 5 of the MBCA:

Except as authorized by the regulations, no person shall, without lawful excuse,  (a) be in possession of a migratory bird or nest; or	Sauf conformément aux règlements, nul ne peut, sans excuse valable :  a) avoir en sa possession un oiseau migrateur ou son nid;
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(b) buy, sell, exchange or give a migratory bird or nest or make it the subject of a commercial transaction.	b) acheter, vendre, échanger ou donner un oiseau migrateur ou son nid, ou en faire le commerce
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[29] The definition of “possession” found in subsection 2(2) of the MBCA is very broad:

<p>For the purposes of this Act,</p> <p>(a) a person has anything in possession when the person has it in their personal possession or knowingly</p> <p style="padding-left: 40px;">(i) has it in the actual possession or custody of another person, or</p> <p style="padding-left: 40px;">(ii) has it in any place, whether or not that place belongs to or is occupied by the person, for their own use or benefit or for the use or benefit of another person; and</p> <p>(b) where a person has anything in their possession or custody with the knowledge and consent of another person or other persons, it is in the possession and custody of each and all of them.</p>	<p>Pour l’application de la présente loi :</p> <p>a) une personne est en possession d’une chose lorsqu’elle l’a en sa possession personnelle ou que, sciemment :</p> <p style="padding-left: 40px;">(i) soit elle l’a en la possession ou garde réelle d’une autre personne,</p> <p style="padding-left: 40px;">(ii) soit elle l’a en un lieu qui lui appartient ou non ou qu’elle occupe ou non, pour son propre usage ou avantage ou celui d’une autre personne;</p> <p>b) lorsqu’une personne, au su et avec le consentement d’une ou plusieurs autres, a une chose en sa garde ou possession, cette chose est censée en la garde et possession de toutes ces personnes et de chacune d’elles</p>
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[30] At a minimum, the Applicant was in possession within the meaning of paragraph 2(2)(b) because, by his own admission, he was in a boat in which there was at least one dead migratory bird.

[31] The Applicant has not raised the possibility that a dead migratory bird is not a migratory bird within the meaning of the MBCA, but such an argument would have difficulty overcoming the broad definition of “migratory bird” in section 2 as “*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”). If the definition indicates that part of a migratory bird is a “migratory bird,” it is difficult to see how the whole of a dead migratory bird would not qualify as such.

[32] It must be concluded that the Applicant was in possession of migratory birds.

[33] It must now be determined whether the Applicant was in possession of these birds “as authorized by the regulations.” The answer must be in the negative.

[34] The Minister maintains that possession was not lawful because it was the result of a violation of paragraph 15(1)(e) of the MBR.

[35] That provision prohibits the hunting of migratory birds “from any aircraft, sailboat, power boat, or motorized vehicle, or any vehicle to which a draught animal is attached.” To fully understand the scope of the provision, it must be read within its broader context.

[36] First, the definition of “hunt” in the MBR is broad, extending under subsection 2(1) to “*chase, pursue, worry, follow after or on the trail of, lie in wait for, or attempt in any manner to capture, kill, injure or harass a migratory bird, whether or not the migratory bird is captured, killed or injured.*” This definition covers not only actions that lead to the death of a migratory bird, but also actions taken beforehand, whether or not they cause death: *Sirois v Canada (Environment and Climate Change)*, 2020 EPTC 6 at paras 44–49.

[37] Second, hunting from a moving boat is prohibited given that subsection 2(3) of the MBR states that “[a] reference in these Regulations to the use of a power boat does not include the use of a power boat when the motor is not in operation and forward progress has ceased.”

[38] When subsection 2(3) and paragraph 15(1)(e) are read together, it must be concluded that it is prohibited to shoot migratory birds from a boat that is in operation and has not ceased forward progress.

[39] In the Minister’s view, possession of a migratory bird that results from hunting from a moving boat is illegal, i.e., it is possession not authorized by the regulations as referred to in section 5 of the MBCA. In light of the provisions analyzed above, the Minister is entirely correct in this regard.

[40] The Applicant claims that the migratory birds found on the boat were not killed by the shots observed on the video. According to him, they were lawfully killed.

[41] However, Officer Hamel’s testimony demonstrates that it is likely that at least one migratory bird was killed by the gunshots seen on the video. He related, both orally and in an affidavit, that he saw the Applicant bend over to pick something up from the water. In fact, he took a picture:



[42] Based on the testimony of Officer Hamel, supported by the video and photograph in evidence, the Tribunal finds that (1) the Applicant fired from a moving boat, in contravention of paragraph 15(1)(e) of the MBR; (2) a migratory bird was killed by one of the shots fired from the boat; and (3) the Applicant brought a migratory bird killed in this manner onto the boat.

[43] It must therefore be concluded that it is likely that the Applicant was in possession of migratory birds in a manner that was not in compliance with the applicable regulations, namely paragraph 15(1)(e) of the MBR, as provided for in section 5 of the MBCA.

[44] The Minister having thus discharged his burden of proof on the balance of probabilities, the Applicant committed a violation of section 5 of the MBCA, as alleged in the notice of violation that is the subject of this request for review.

#### *Penalty*

[45] Through the notice of violation, the Applicant was issued a penalty of \$1,000. This amount includes a baseline amount of \$400 and an additional amount for environmental harm.

[46] The amount of an administrative monetary penalty issued under EVAMPA must be calculated according to the formula found in subsection 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 section 5;</p> <p><b>X</b> is the history of non-compliance amount, if any, as determined under section 6;</p> <p><b>Y</b> is the environmental harm amount, if any, as determined under section 7; and</p> <p><b>Z</b> is the economic gain amount, if any, as determined under section 8.</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'article 5;</p> <p><b>X</b> le cas échéant, le montant pour antécédents prévu à l'article 6;</p> <p><b>Y</b> le cas échéant, le montant pour dommages environnementaux prévu à l'article 7;</p> <p><b>Z</b> le cas échéant, le montant pour avantage économique prévu à l'article 8.</p>
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[47] In this case, we are dealing with “W” and “Y.”

[48] We will first look at the baseline amount. Section 5 of the EVAMP Regulations indicates where to find the relevant amounts:

<p>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.</p>	<p>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.</p>
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[49] According to the EVAMP Regulations, the baseline amount for a violation of section 5 of the MBCA is \$400 when the violation is committed by an individual. This is a Type B violation: EVAMP Regulations, Schedule 1, Part 4, Division 1. The baseline



amount applicable in relation to a Type B violation is \$400: EVAMP Regulations, Schedule 4, Item 1, Column 3.

[50] The baseline penalty amount—the “W” in the formula—was calculated correctly.

[51] We will now look at the additional amount for environmental harm. Section 7 of the EVAMP Regulations tells us in what situations such an amount is applicable:

<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>
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[52] The applicable amount for environmental harm in this case is \$600: EVAMP Regulations, Schedule 4, Item 1, Column 5.

[53] However, the Tribunal is of the opinion that imposing the additional amount on the applicant was unwarranted.

[54] As the Tribunal has found in previous decisions, section 7 requires a causal link between the violation committed and the environmental harm that “resulted” from it. In *Sirois v Canada (Environment and Climate Change)*, 2020 EPTC 6 at para 54, and *F. Legault v Canada (Environment and Climate Change)*; *R. Legault v Canada (Environment and Climate Change)*, 2021 EPTC 1 at para 72, there was a causal link. If the applicants had hunted in accordance with the regulations, the death of the protected species would never have occurred.

[55] Yet in *Nyobe v Canada (Environment and Climate Change)*, 2020 EPTC 7 at paras 32–33, there was no causal link. The applicant imported meat following a trip to Africa. This was a violation of Canadian environmental laws. However, the Minister was unable to demonstrate that any environmental harm *resulted from* the importation of the meat in question. To quote the Tribunal in *Nyobe* at paras 32–33:

[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.

[56] In this case, we find ourselves in a situation that is more comparable to the scenario in *Nyobe v Canada (Environment and Climate Change)*, 2020 EPTC 7, than in *Sirois v Canada (Environment and Climate Change)*, 2020 EPTC 6 and *F. Legault v Canada (Environment and Climate Change)*; *R. Legault v Canada (Environment and Climate Change)*, 2021 EPTC 1.

[57] Once the Applicant committed the violation under the MBCA, the harm had already been done. It was illegal to have a dead migratory bird in his possession. And the death of a migratory bird is indeed environmental harm: *Sirois v Canada (Environment and Climate Change)*, 2020 EPTC 6 at para 54. Admittedly, unlike Mr. Nyobe, Mr. Cormier had actively participated in an illegal hunt. But the Tribunal cannot conclude that environmental harm *resulted from* the Applicant's *possession* of a dead migratory bird. Rather, the environmental harm resulted from the violation of paragraph 15(1)(e) of the MBR, i.e. shooting from a moving vessel. Admittedly, his violation of paragraph 15(1)(e) leads to the conclusion that the Applicant committed a violation of the MBCA. But it does not lead the Tribunal to the conclusion that the environmental harm resulted from the violation of the MBCA.

[58] If the Minister had imposed the additional amount for environmental harm on the notice of violation relating to paragraph 15(1)(e), the request for review would have been dismissed. It is even possible that in principle the Tribunal could correct such an error in the record, adding on its own initiative the additional amount that the notice of violation should have included (subsection 20(3) of EVAMPA). However, since the Applicant withdrew his request for review of the notice of violation relating to paragraph 15(1)(e), the Tribunal cannot now correct that notice.

## **Conclusion**

[59] The Minister has shown on the balance of probabilities that the Applicant committed a violation of section 5 of the MBCA. However, the calculation of the penalty so imposed was not accurate. The request for review should be granted in part by correcting the amount of the penalty issued to the Applicant.

## **Decision**

[60] The review is granted in part. Notice of violation N9200-1378 is upheld, but the AMP amount is corrected from \$1,000 to \$400.

*Review granted in part*

*AMP amount corrected*

*"Paul Daly"*

PAUL DALY  
REVIEW OFFICER