



Issue Date: September 8, 2022
Citation: *Friesen v. Canada (Environment and Climate Change)*, 2022 EPTC 7
EPTC Case No.: 0072-2021
Case Name: *Friesen v. Canada (Environment and Climate Change)*
Applicant: Abraham Friesen
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 subsection 3(1)(h) of the *Wildlife Area Regulations*, CRC, c 1609, made under the *Canada Wildlife Act*, RSC, 1985, c W-9.

Heard: In writing

Appearances:

Parties

Abraham Friesen

Minister of Environment and
Climate Change Canada

Counsel/Representative

Abraham Friesen

Cody Francon

DECISION DELIVERED BY:

LESLIE BELLOC-PINDER

Overview

[1] In April 2021 a domestic cat owned by Abraham Friesen (“the Applicant”) was at large in a Prairie National Wildlife Area east of Rosthern, SK (“the NWA”). Approximately one month prior, Wildlife Officers warned the Applicant that his cat was prohibited from entering the NWA. Despite this warning, the cat was photographed in the NWA on two subsequent occasions, being April 17, 2021 and April 29, 2021.

[2] On September 10, 2021 a wildlife officer issued a Notice of Violation (“NOV”) to the Applicant for breach of Section 3(1)(h) of the [Wildlife Area Regulations](#) (“the Regulations”). The Applicant asks that the Environmental Protection Tribunal of Canada (“EPTC”) review and overturn the NOV, or at least reduce the amount of the monetary penalty imposed

[3] Any violation of the Regulations may justify the imposition of an administrative monetary penalty (“AMP”) in an amount determined in accordance with the rules set out in the [Environmental Violations Administrative Monetary Penalties Regulations](#) (the “EVAMP Regulations”). The recipient of such an administrative monetary penalty may not rely on good faith or even due diligence as a defence. This principle, as well as the limited role of the EPTC in conducting reviews, flows from the [Environmental Violations Administrative Monetary Penalties Act](#) (“EVAMPA”).

[4] For the following reasons, the Applicant’s review is dismissed and the notice of violation is upheld.

Facts and Procedure

[5] The Applicant resides near Hague, SK, on agricultural land located across the road from the NWA at issue in this case. The NWA is a “Wildlife Area” pursuant to the [Canada Wildlife Act](#) and protected by the [EVAMP Regulations](#).

[6] On March 17, 2021, three Wildlife Officers arrived at the NWA and observed two cats in a ditch between the road and the NWA. One officer took photographs of the cats, which were filed as evidence in this hearing.

[7] The officers then attended at the Friesen residence across the road from the NWA to inquire about the cats. The Applicant and his wife confirmed that they were the cats’ owners, whereupon the officers explained the restrictions in effect for the NWA and that domestic pets could not be permitted to roam free within its area. The Applicant was also advised of the potential penalties for a first offence, but the officers declined to sanction the Applicant by issuing a NOV at that time. Instead, one officer provided the Applicant with a business card in case he had any further questions about his responsibilities or potential liability.

[8] Thereafter, the wildlife officers installed trail cameras around the NWA. On April 17 and 29, 2021, one of the Applicant's cats was photographed in the NWA. These photographs, among others, were filed as evidence in this proceeding.

[9] Due to the cat's repeated presence in the NWA and the previous warning given to the Applicant, which was not heeded in a timely fashion, a formal NOV was issued to the Applicant on September 10, 2021.

[10] The Applicant submitted a request for review on October 16, 2021. He explained that he was unaware his cats could not enter the NWA until he was advised by the Wildlife Officers on March 17, 2021. Thereafter, the Applicant explained he had difficulty in finding a new home for one or all of his cats. The Applicant's intention was to relocate the cats so he would not run afoul of the [Regulations](#). However, it took him a long time to find appropriate adoptive home(s) for the animals.

Procedure

[11] The parties completed an *Agreed Statement of Facts* and set deadlines for filing written submissions. The Respondent provided its written submissions on or before the deadline date, but the Applicant filed no further materials.

[12] Further, the Applicant did not contact the EPTC, nor did he acknowledge receipt of the Respondent's written submissions for a considerable period. Concern mounted that the Applicant had either decided to abandon his request for review or was uncertain about his responsibilities.

[13] To ensure procedural fairness, the EPTC served the Applicant with notice that, if no further written submissions were received by a specified date, the review would be decided based on the materials that had been filed to that date. On the last day for filing submissions, the Applicant confirmed, in writing, that he had no further submissions and simply wished to rely on his assertions set out in the original request for review.

Issues

[14] The issues are:

- (a) Whether the Applicant's difficulty finding an alternative home for his cat who entered the NWA in April constitutes a defence to the imposition of the administrative monetary penalty; and,
- (b) If a defence is not available, whether the amount of the administrative monetary penalty has been correctly calculated or can be reduced.

Analysis

Violation

[15] Subsection 3(1)(h) of the [Regulations](#) states:

3 (1) Subject to subsections 3.1(1) to (3) and sections 3.6 and 3.7, no person shall do any of the following in any wildlife area except in accordance with a permit issued under section 4 or section 8.1:

(h) allow any domestic animal to run at large or keep any domestic animal on a leash that is longer than three metres.

[16] Section 2 of the [Regulations](#) defines domestic animal as a vertebrate that has been domesticated by humans, and domestic cats fall under this definition as a species regardless of their individual temperaments.

[17] Contravention of subsection 3(1)(h) of the [Regulations](#) is an offence pursuant to subsection 13.01(1) of the [Canada Wildlife Act](#).

[18] Subsection 2(1) of the [EVAMP Regulations](#) provides that a violation of a provision set out in column 1 of Schedule 1 to the [EVAMP Regulations](#) is a violation punishable under the [EVAMPA](#). Therefore, a violation of the [Regulations](#) may justify the imposition of an administrative monetary penalty in an amount calculated in accordance with the [EVAMP Regulations](#).

[19] In this case, the facts of a violation of the [Regulations](#) are not in dispute. The Applicant's domestic cat is prohibited from entering the NWA and the Applicant was warned at least one month prior to the dates his cat was photographed in the area. By permitting his cat to enter the NWA, the Applicant has committed a violation of the [Regulations](#). In so doing, the Applicant faces the imposition of an administrative monetary penalty.

[20] While the tribunal has no reason to doubt the Applicant's assertion that it was difficult for him to find an alternative residence for his cat, his best efforts and good faith are not defences. Pursuant to subsection 11(1) of the [EVAMPA](#), due diligence is excluded as a defence, and the facts do not support any common law defence that might be available in limited circumstances. The Applicant's intentions and best efforts are simply not relevant in the context of a request for a review under the [EVAMPA](#), given its absolute liability regime.

[21] Moreover, it is now well established by the Tribunal's case law that the EPTC's role is, first, to determine whether the violation alleged in the notice of violation has in fact occurred and, second, to determine whether the amount of the administrative monetary penalty has been correctly calculated. The EPTC has no power to review or interfere with

the Minister's officers' exercises of discretion to issue a notice of violation.¹ Further, the EPTC has no jurisdiction to vary the amount of the penalty imposed in the notice because the scale has been established by the [EVAMP Regulations](#) and must be applied by the officers without variation.

[22] In this case, the Applicant clearly committed the alleged violation.

Penalty

[23] Subsection 3(1)(h) of the [Regulations](#) is a type B violation as per Schedule 1, Part 2, Division 2 of the [EVAMP Regulations](#).

[24] The baseline type B violation penalties for individuals is \$400 as per Schedule 4, Column 3 of the [EVAMP Regulations](#). Thus, the Applicant in this case received the minimum penalty for the kind of violation he committed, and no additional amount was assessed for any aggravating factor.

[25] There is no error in the calculation of the administrative monetary penalty imposed on the Applicant.

Decision

[26] The request for review is dismissed. Notice of violation N9400-8252 is therefore upheld.

Review Dismissed

"Leslie Belloc-Pinder"

LESLIE BELLOC-PINDER
REVIEW OFFICER

¹ [Hoang v. Canada \(Environment and Climate Change\), 2019 EPTC 2](#); and, [Fontaine v. Canada \(Environment and Climate Change\), 2020 EPTC 5](#)