



**Issue Date:** October 4, 2023  
**Citation:** *Struthers v. Canada (Environment and Climate Change)*,  
2023 EPTC 9  
**EPTC Case No:** 0033-2022  
**Case Name:** *Struthers v. Canada (Environment and Climate Change)*  
**Applicant:** Leigha Struthers  
**Respondent:** Minister of Environment and Climate Change Canada

**Subject of proceeding:** Review commenced under s. 15 of the *Environmental Violations Administrative Monetary Penalties Act*, S.C. 2009, c. 14, s. 126 of an Administrative Monetary Penalty issued under s. 7 of that Act for a violation of section 3.3 (1)(c) of the *Wildlife Area Regulations* C.R.C., c. 1609, enacted under the *Canada Wildlife Act*, R.S.C., 1985, c. W-9

**Heard:** September 6, 2023 (by videoconference)

**Appearances:**

**Parties**

Leigha Struthers

Minister of Environment and  
Climate Change Canada

**Counsel/Representative**

Self-Represented

Emily Keilty (Counsel)

**DECISION DELIVERED BY:**

**PAUL MULDOON**

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## Overview

[1] Environment and Climate Change Canada (“ECCC” or “Minister”) issued a Notice of Violation to Leigha Struthers (“Requester”) on November 21, 2022 concerning violation of the [Wildlife Area Regulations](#) under the [Canada Wildlife Act](#) where the Requester entered a National Wildlife Area (“NWA”).

[2] ECCC submits that the elements of the violations have been established and no defence are available to the Requester.

[3] The Requester submitted a Request for Review to the EPTC and does not deny entering the NWA, however, she states that she failed to see the signs prohibiting her from entering the site as the signs are one-sided facing the waters and that many persons were within the NWA.

[4] For the reasons below, the Tribunal finds that ECCC has established the elements of the violation. The Tribunal finds that the defences submitted by the Applicant do not apply in the circumstances of this review.

## Background

[5] The basic facts in this review are not in dispute.

[6] Under the *Canada Wildlife Act*, *Wildlife Areas Regulations*, (“Regulations”) were enacted to allow for the establishment, management and protection of NWAs for research, conservation and interpretation. NWAs are established pursuant to the Act to protect and conserve wildlife and wildlife habitat including habit to species at risk, endangered species and species of special concern. Wellers Bay, located in Prince Edward County, Ontario is designated as a NWA and access to the Wellers Bay NWA is prohibited to protect fragile beach and dune ecosystems, sensitive wildlife habitats, and also to reduce the risk of exposure to injury from Unexploded Explosive Ordnance (UXO) on the site. Unlawful entry to the NWA is posted with signs along the boundary of the NWA and all main access points. There are no current permit holders for Wellers Bay NWA.

[7] On July 31, 2022, Wildlife Officers Joshua Ladouceur and Drew Hartman were conducting enforcement activities in Wellers Bay NWA. They were working in plain clothes and on an unmarked boat to monitor compliance and detect unlawful entry in the Weller Bay's NWA. In the afternoon of that day, the Officers observed a group of four individuals entering the NWA from the Wellers Bay side to the Lake Ontario side of the NWA. When the group entered, the Wildlife Officers state that the persons walked by an unobstructed prohibited entry sign. ECCC provided photographs that were submitted into evidence of the individuals returning from the Lake Ontario side to their vessel. The Wildlife Officers state the group of individuals returned via the same path in which they entered and once more walked past the forementioned sign.

[8] On November 21, 2022, Officer Ladouceur issued a Notice of Violation (NOV) #N9300-7055 for a violation of Section 3.3(1)(c) of the Regulations to the Requester and the amount of the penalty is \$200.00. The NOV was served by way of courier with the effective date of service to be December 2, 2022.

[9] The Requester submitted here Request for Review on November 23, 2022.

### **Issues in this Review**

[10] The issue in this Request for Review is whether ECCC has established that the alleged violation has occurred and whether there are any defences applicable with respect to the allegations in the NOV.

[11] The Requester does not contest whether the amount of the penalty was properly calculated. The penalty is the lowest penalty possible under the appropriate regulation.

### **Relevant Legislation and Regulations**

[12] The most relevant provisions of the [Environmental Violations Administrative Monetary Penalties Act](#) ("EVAMPA") are outlined below with the regulations pertaining to the calculation of the penalty is reproduced in Appendix 1:

**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.

**11(1)** 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.

**(2)** Every rule and principle of the common law that renders any circumstance a justification or excuse in relation to a charge for an offence under an Environmental Act applies in respect of a violation to the extent that it is not inconsistent with this Act.

**20(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.

**22** If the review officer or panel determines that a person, ship or vessel has committed a violation, the person, ship or vessel is liable for the amount of the penalty as set out in the decision.

[13] The applicable provisions of the *Canada Wildlife Act* and its regulations are as follows with provisions pertaining to permitting and the specific regulation establish the Wellers Bay NWA is reproduced in Appendix 1:

*Canada Wildlife Act* (R.S.C., 1985, c. W-9)

**12** The Governor in Council may make regulations

- a)** respecting the prohibition against entry, generally or for any specified period or purpose, by persons on lands under the administration of the Minister, or on public lands referred to in an order made under subsection 4(3), or on any part of those lands;

*Wildlife Area Regulations* (C.R.C., c. 1609)

**2** In these regulations

...

**wildlife area** means an area of public lands set out in Schedule I. (*réserve d'espèces sauvages*)

**3.3 (1)** No person shall enter any of the following wildlife areas except in accordance with a permit issued under section 4:

**(c)** Wellers Bay National Wildlife Area, as set out in item 6 of Part IV of Schedule I;

## *ECCC Submissions*

[14] ECCC submit that the elements of the violation are established. ECCC notes that the Wildlife Officers witnessed the Requester and the other individuals accessing the NWA in an area that is posted with signs and monitored by two trail cameras. The Requester was captured on one of the trail cameras on the NWA returning to the Wellers Bay side from the Lake Ontario side and Officer Ladouceur intercepted the group once they had returned to their vessel. Officer Ladouceur states that the vessel was anchored approximately 25 yards from the unobstructed prohibited entry sign referenced above for approximately 1 to 2 hours.

[15] ECCC states that the Requester identified herself to Officer Ladouceur. The Officer provided information to the Requester and the three other individuals on the Regulations and explained the possible enforcement actions that could result in the issuance of Administrative Monetary Penalties (AMPs).

[16] ECCC states that on August 31, 2022, Officer Hartman verified with Canada Wildlife Services, the government body responsible for issuing permits under the *Canada Wildlife Act*, that the Requester did not hold a valid permit associated with the Wellers Bay NWA. On November 21, 2022, Officer Ladouceur issued NOV #N9300-7055 for a violation of Section 3.3(1)(c) of the Regulations to the Requester by way of courier. The penalty amount issued to the Requester was \$200, as set out in Schedule 4 of the [Environmental Violations Administrative Monetary Penalties Regulations](#) (“EVAMP Regulations”). This amount corresponds to the category of the violator (Column 1) and the type of violation committed (Column 2) of Schedule 4.

[17] ECCC states that, with the statements from the Wildlife Officers, the various photographs with the Requester entering the Wellers Bay NWA, and the fact that the Requester admits to entering the area, there is sufficient evidence to establish that the violation did occur. ECCC further submits that none of the defences in section 11 of EVAMPA are applicable.

[18] ECCC states that the Requester walked by the sign entering the site, walked over the hill to Lake Ontario on the other side and walked back and certainly would have seen the sign on the Lake Ontario side. The Minister states that the signs are in a reasonable view and the Requester made no effort to read any of the signs.

[19] ECCC states that there is sufficient signage and it is not practical for fencing or other barriers to protect the site because of the sensitivity of the wildlife and the ecosystem as a whole.

### *Requester's submissions*

[20] The Requester admits that she left the boat she was on, entered the site, walked over the small hill to Lake Ontario and then went back to the boat and that the time she was at the site was very short time, as short as ten minutes.

[21] The Requester states that she did not see the signs and she notes that the signs are single sided, only facing outward, and hence, if one is walking on the beach, the signs are not facing you.

[22] The Requester states that there are no barriers for the public to restrict access to the site and there was no indication that entering the site would subject someone to a penalty. She states that if the site was dangerous owing to ammunitions or the need to protect wildlife, there should be clearer indications to the public not to approach or enter the site.

[23] The Requester indicated that it was an unpleasant experience being approached by the Wildlife Officers and being warned that a penalty could be issued considering the lack of notice that such actions could be taken by simply walking onto the site.

### **Analysis and Findings**

#### *Whether ECCC has established the elements of a violation of Regulations under the Canada Wildlife Act*

[24] Under s. 20 of *EVAMPA*, Review Officers are to determine whether a violation was committed and whether the AMP was calculated properly. The burden is on ECCC to demonstrate on a balance of probabilities that the elements of the violation are present. Section 11 of the *EVAMPA* provides that defences related to “mistake of fact” and “due diligence” cannot be relied upon. As noted, the Requester does not dispute the amount of the AMP.

[25] As noted, the *Canada Wildlife Act* establishes the authority to enact regulations to create NWA for various purposes including for the protection of wildlife areas. The regulations, reproduced in this Decision, provides for the establishment of Wellers Bay as a NWA. Under that Regulations, no person shall enter Wellers Bay NWA unless a permit under the Regulations has been issued for that purpose. The Minister has provided uncontested evidence that the Requester did not have a permit to enter the NWA for any purpose.

[26] In the Minister's disclosure, the Wildlife Officers provided reports from their first-hand observations that the Requester entered the Wellers Bay NWA on July 31, 2022. The observations of the entry, discussions with the Requester at the site and the surrounding circumstances that lead to the issuance of the Notice of Violation are articulated in detail in the disclosure submitted by ECCC. Further, the Minister's disclosure provides a series of photographs with time and date stamps showing the Requester walking in the NWA.

[27] The Requester does not contest that she entered the NWA on the date and time as outlined in the evidence.

[28] The Tribunal therefore finds that the Minister has established that elements of the violation of section 3.3 (1)(c) of the *Wildlife Area Regulations* under the *Canada Wildlife Act* has been met.

*Whether any of the defences in EVAMPA are applicable in the circumstances in this review*

[29] The Requester's primary submission pertains to her position that, as the Tribunal understands it, is that there is inappropriate or lack of signage such that she either did not notice the signs or that the signs were insufficient to be brought to her attention. Her Request for Review document, she states that: "I decided to pass over to the other side of the beach from the sand hill directly behind the boat and dipped into the water for a total of 4-5 minutes... There was no sign on the hill behind us, near our boat within reading distance nor was there signs on the other side of the beach stating danger. When I returned to the boat from the dangerous side of the beach, I did pass a sign but it was a single sided sign which was fact the opposite direction of my view. So walking back to the boat, I did not see the sign at all." She later states in the document that she could not make out what the sign stated 20-30 feet away but only could do so when about 10 feet away. She states she should have been more aware of the signage posted on the beach but the signage was not in her direct vision or posted near the boat.

[30] As mentioned, section 11(1) of *EVAMPA* states a person who is subject to a violation does not have a defence even that person exercised due diligence to prevent the violation; or reasonably and honestly believed in the existence of facts that, if true, would exonerate the person. Section 11(1) reflects that the enabling legislation is intended to be an absolute liability regime. In *Bell Canada v. Canada (Environment and Climate Change)*<sup>1</sup>, the regime is outlined as follows:

[21] Lastly, the *EVAMPA* and the *EVAMPR* establish an absolute liability regime. Parliament achieved this objective by specifying in section 11 of the *EVAMPA* that "[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") ("*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*"). Thus, the due diligence defence is excluded from the outset. Common law rules and principles nevertheless continue to apply, but only "to the

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<sup>1</sup> [\*Bell Canada v. Canada \(Environment and Climate Change\)\*](#), 2022 EPTC 6.

extent that [their application] is not inconsistent with the Act” (“*dans la mesure de leur compatibilité avec la Loi*”).

[22] As Dickson J. (as he then was) noted in [R. v. Sault Ste. Marie, \[1978\] 2 SCR 1299](#), at page 1310, the result is the possibility of “conviction on proof merely that the defendant committed the prohibited act constituting the *actus reus* of the offence. There is no relevant mental element. It is no defence that the accused was entirely without fault. He may be morally innocent in every sense, yet be branded as a malefactor and punished as such”. The comments of the Federal Court of Appeal in [Doyon v. Canada \(Attorney General\), 2009 FCA 152](#) describe this general context very well:

[27] In short, the Administrative Monetary Penalty System has imported the most punitive elements of penal law while taking care to exclude useful defences and reduce the prosecutor’s burden of proof. Absolute liability, arising from an *actus reus* which the prosecutor does not have to prove beyond a reasonable doubt, leaves the person who commits a violation very few means of exculpating him- or herself.

[23] Significant consequences may follow, but the will of Parliament in this regard appears to be clear, at least according to our previous decisions: see, for example [F. Legault v. Canada \(Environment and Climate Change\)](#); [R. Legault v. Canada \(Environment and Climate Change\), 2021 EPTC 1](#).<sup>2</sup>

[31] In this review, the Tribunal accepts that the Requester did not see the signs and therefore was not aware that she was entering a NWA and by doing so, violating the appropriate regulations. However, I have reviewed the Minister's documentation and photographs depicting the placement, size and wording of the signs. I have also reviewed a number of photographs that depict the relationship of the boat the Requester departed from, and her proximity to the signs as she walked through the NWA. From this evidence, the Tribunal is satisfied that she did enter the NWA and that the signage was appropriate in the circumstances. I accept the submission from ECCC that it is not feasible to actually block access to the site since it is an important habitat for wildlife. In short, the signage is present and obvious. The Tribunal recognizes, as the Requester submits, that it would be preferable that the signs would be double-faced to make the warnings clearer. However, the Tribunal finds that, even if the signs were double-faced, the Requester has not satisfied it would have had any material difference in the outcome in this matter.

[32] Although the Requester did not expressly raise the issue, I note that the jurisprudence of the Tribunals is consistent that the Tribunal does not have the authority to review the exercise of discretion of enforcement officers and I agree with the reasoning in the jurisprudence.<sup>3</sup>

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<sup>2</sup> [Ibid.](#), at paras. 21-25.

<sup>3</sup> See: [Ibid.](#), at paras. 89-90.



## **Conclusion**

[33] ECCC has discharged its burden under s. 20(2) of *EVAMPA* by demonstrating, on a balance of probabilities, that a violation of section 3.3(1)(c) of the *Wildlife Area Regulations* occurred. As well, the AMP was calculated correctly in accordance with the *EVAMP Regulations*.

## **Decision**

[34] The Notice of Violation is upheld and the review is dismissed.

*Review dismissed*

"Paul Muldoon"

PAUL MULDOON  
REVIEW OFFICER

## **APPENDIX A – Relevant Legislation and Regulations**

### ***Environmental Violations Administrative Monetary Penalties Regulations, SOR/2017-109***

**4 (1)** The amount of the penalty for each 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.

**5** The baseline penalty amount for a violation is the amount set out in column 3 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.

### ***Wildlife Area Regulations, C.R.C., c. 1609***

#### **Permits**

**4 (1)** The Minister may, on application, issue a permit to a person or a government body for any activity referred to in section 3 or 3.3 if

(a) in the case where the purpose of the proposed activity is to promote the conservation or protection of wildlife or wildlife habitat,

(i) the benefits that the proposed activity is likely to have for the conservation or protection of wildlife or wildlife habitat outweigh any adverse effects that it is likely to have on wildlife or wildlife habitat, and

(ii) there are no alternatives to the proposed activity that would be likely to produce the same or equivalent benefits for the conservation or protection of wildlife or wildlife habitat but would be likely to have less significant adverse effects; and

(b) in any other case,

(i) taking into consideration the measures described in paragraph (2)(d), the adverse effects that the proposed activity is likely to have on wildlife or wildlife habitat would not compromise their conservation, and

(ii) there are no alternatives to the proposed activity that would allow the applicant to achieve the same outcome but would likely have less significant adverse effects on wildlife or wildlife habitat.

## **SCHEDULE I – Wildlife Areas, Part IV – Ontario**

### **6 Wellers Bay National Wildlife Area**

Being all those parcels of land, in the County of Prince Edward, in the township of Hillier, being more particularly described under Firstly to Thirdly as follows:

Firstly, those parcels described as Baldhead Island, Fox Island, the northern portion of Baldhead Peninsula or Green Island containing 40 acres and the southerly 40 acres of said Peninsula in a deed between Tom S. Farncomb and Woneita Weddell and His Majesty King George VI in right of Canada, registered in the Registry Office at Picton as 8433;

Secondly, that parcel described as part of lot 13, Stinson Block in a deed between Charles Henry Twells and His Majesty the King in right of Canada, registered in said Office as 8585;

Thirdly, that parcel described as part of lot 13, Stinson Block in a deed between Norman Keith Kent and Her Majesty the Queen in right of Canada, registered in said Office as 9320; said parcels containing together about 100 acres.