



Issue Date: December 8, 2023

Citation: *Sallstrom v. Canada (Environment and Climate Change)*,
2023 EPTC 12

EPTC Case No: 0001-2023

Case Name: *Sallstrom v. Canada (Environment and Climate Change)*

Applicant: Charles Sallstrom

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 37(2)(b) of the *Migratory Birds Regulations, 2022*, SOR/2022-105, made under the *Migratory Birds Convention Act, 1994*, S.C. 1994, c. 22.

Heard: In writing

Appearances:

Parties

Charles Sallstrom

Minister of Environment and
Climate Change Canada

Counsel/Representative

Self-Represented

Jan Verspoor (Counsel)

DECISION DELIVERED BY:

HEATHER MCLEOD-KILMURRAY

Introduction

[1] According to the partial *Agreed Statement of Facts*, on December 28, 2022, the Applicant Charles Sallstrom and a male friend were canoeing in the Pitt-Addington marsh in Pitt Meadows, BC, which the parties agree is a known hunting destination. Mr. Sallstrom had a shotgun in his possession. When the two men came to shore, Wildlife Officers Andrew Smith and Kyle Flindt approached them. Mr. Sallstrom complied with their request to produce his hunting licence, driver's licence and the shotgun. Mr. Sallstrom did not have any migratory birds in his possession.

[2] Wildlife Officer Smith then issued Notice of Violation ("NOV") No. 9500-8258 in the amount of \$400 to the Applicant pursuant to s. 10(1) of the [Environmental Violations Administrative Monetary Penalties Act](#), S.C. 2009, c. 14, s. 126 ("EVAMPA"). The NOV was for violation of s. 37(3)(b) of the [Migratory Birds Regulations, 2022](#) ("the Regulations") under the [Migratory Birds Convention Act, 1994](#), S.C. 1994, c. 22 ("the Act"). (The NOV was mistakenly issued as a violation of s. 37(2)(b) of the Regulations but was later corrected to say s. 37(3)(b).)

Relevant Legislation

Migratory Birds Convention Act, 1994 (S.C. 1994, c. 22)

13.01(1) Every person commits an offence who

(a) contravenes any provision of this Act or the regulations, other than a provision the contravention of which is an offence under subsection 13(1).

Migratory Birds Regulations, 2022 (SOR/2022-105)

37(1) A person must not hunt migratory game birds except with ...

(c) a shotgun not larger than number 10 gauge that either

(i) is designed to be capable of holding no more than three cartridges, or

(ii) has had its capacity reduced to three cartridges in the magazine and chamber combined, by means of the cutting off or the altering or plugging of the magazine with a one-piece metal, plastic or wood filler that cannot be removed unless the gun is disassembled.

37(3) A person must not, while hunting migratory game birds, have in their possession in the hunting area ...

(b) a shotgun other than one referred to in s. 37(1)(c)

Environmental Violations Administrative Monetary Penalties Regulations (SOR/2017-109)

2(1) The contravention of a provision of an Environmental Act or of any of its regulations that is set out in column 1 of Schedule 1 is designated as a violation that may be proceeded with in accordance with the Act.

Section 3: This is a Type B violation under the Regulations, so

4 (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.

Schedule 1

Part 4, Division 2, Item 34 – designates violation of *Migratory Birds Regs* s. 37(3)(b) as a Type B violation.

Issues

[3] The task of the Tribunal is to determine on a balance of probabilities (i) whether the violation alleged in the Notice of Violation has occurred (s. 20 EVAMPA) and (ii) whether the fine imposed was correctly calculated according to the [Environmental Violations Administrative Penalties Regulations](#), SOR/2017-109.

Analysis and Findings

[4] Mr. Sallstrom argued orally during a Pre-Hearing Conference on August 10, 2023, that his shotgun was not loaded, that he was not shooting, and that no animal was shot. He argued that he was not hunting and was new to hunting in the area.

[5] Section 20(2) of *EVAMPA* provides that the Minister bears the burden of proving on a balance of probabilities that the alleged violation occurred.

[6] The Minister submits that section 37(3)(b) is the provision of the *Migratory Birds Regulations, 2022* under which Mr. Sallstrom was issued the AMP. It states that “A person must not, while hunting migratory game birds, have in their possession in the hunting area ... (b) a shotgun *other than* one referred to in s. 37(1)(c)”.

[7] That section explains what kind of shotgun is permitted to be in the possession of a person while hunting migratory birds: “A person must not hunt migratory game birds except with ... (c) a shotgun not larger than number 10 gauge that either (i) is designed to be capable of holding no more than three cartridges, or (ii) has had its capacity reduced to three cartridges in the magazine and chamber combined, by means of the cutting off or the altering or plugging of the magazine with a one-piece metal, plastic or wood filler that cannot be removed unless the gun is disassembled.”

[8] In other words, it is permissible to hunt migratory birds with a shotgun smaller than a number 10 gauge and that is not capable of holding more than three cartridges or has had its capacity reduced to three cartridges in the manner described. Mr. Sallstrom had a shotgun that was capable of holding more than three cartridges in the magazine and chamber combined.

[9] In order for s. 37(1) and (3) to apply at all, a person must in fact be “hunting” migratory game birds. The word “hunt” is not defined in the Act, but is defined in section 1(1) of the *Migratory Birds Regulations, 2022* as follows:

“hunt means chase, pursue, worry, follow after or on the trail of, lie in wait for, or attempt in any manner to capture, kill, take, injure or harass a migratory bird, whether or not it is captured, killed, taken, injured or harassed.”

[10] Applying this test to the facts, ECCC argues that “[b]eing present in a known hunting area for migratory birds while in possession of a shotgun meets the statutory definition of hunting. Specifically, this amounts to lying in wait for a migratory bird. It is not necessary that there be any evidence that a migratory bird was captured, killed, injured or harassed.” In addition, they state that “Mr. Sallstrom stated to Officer Smith that he was new to hunting waterfowl in the area and that his friend was accompanying him but not hunting”. ECCC submits that this indicates that “Mr. Sallstrom was hunting migratory birds that day, irrespective of whether he fired his gun or killed any migratory birds.”

[11] Finally, Mr. Sallstrom did not dispute the fact that the shotgun he had in his possession was a shotgun capable of holding more than three cartridges in the magazine and chamber combined. He asserted instead that the shotgun was not loaded. However, s. 37(3)(b) of the *Regulations* does not prohibit such a gun only if it is loaded. The test is whether the shotgun is capable of holding more than three cartridges, which this one was.

[12] While it may appear surprising that a person could fall within the definition of “hunting” if the shotgun was unloaded, the purpose of the *Migratory Birds Convention Act, 1994* is set out in s.4 of the Act, which provides: “The purpose of this Act is to implement the Convention by protecting and conserving migratory birds — as populations and individual birds — and their nests.” The definition of “hunt” in the *Regulations* makes it quite clear that killing, taking or injuring a migratory bird is not required to fall within the definition of “hunt” and that activities in an area for hunting migratory birds are just as important as the outcome(s) (capturing, killing, taking, injuring or harassing). It is possible to chase, pursue, worry, follow, capture, kill, take, injure or harass a migratory bird with an unloaded weapon.

[13] As held by this Tribunal in *Sirois v Canada (Environment and Climate Change)*, [2020 EPTC 6](#), “It is clear that, through the (EVAMP) Act, Parliament created an absolute, not strict, liability regime. The key provision in that respect is subsection 11(1) of the Act, according to which neither exercising due diligence nor believing in the existence of facts that, if true, would exonerate the Applicant are admissible as a defence. Conversely, the Applicant’s intent is completely irrelevant” (at para 41). In this case, Mr. Sallstrom had a hunting licence, and he had a prohibited shotgun in his possession in a migratory birds hunting area.

[14] The Tribunal finds that Mr. Sallstrom’s activities fit the definition of “hunting”. He was in possession of a shotgun and a hunting licence in a migratory game bird area. Whether or not animals were actually harmed is not necessary to fit the definition. Further, the Tribunal finds that the capacity of Mr. Sallstrom’s shotgun was not reduced to a maximum of three cartridges. The Tribunal is therefore satisfied that the Minister has proved that Mr. Sallstrom was in violation of s. 37(3)(b) of the *Regulations*.

Conclusion

[15] The Tribunal concludes that the Minister has met its burden of proving on a balance of probabilities that Mr. Sallstrom had a prohibited shotgun in his possession in a hunting area “while hunting migratory game birds”. As a result, the Tribunal concludes that the violation alleged in the Notice of Violation has occurred.

Penalty

[16] Section 20(3) of *EVAMPA* requires the Tribunal to ensure the amount of the applicable penalty has been properly calculated. As a Type B violation under *EVAMPA* and s. 2(1) and Schedule 1 of the *Regulations*, the amount of \$400 is the lowest penalty amount available for the violation on the facts, and Mr. Sallstrom did not dispute the calculation of the amount of the penalty.

Decision

[17] The Tribunal upholds Notice of Violation No. 9500-8258 and the penalty amount.

Review Dismissed

“Heather McLeod-Kilmurray”

HEATHER MCLEOD-KILMURRAY
REVIEW OFFICER