



**Issue Date:** December 18, 2023

**Citation:** *Parulan v. Canada (Environment and Climate Change)*,  
2023 EPTC 13

**EPTC Case No:** 0014-2023

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

**Applicant:** Eliazer Rodel Parulan

**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 an alleged violation of s. 7(1) of the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*, S.C. 1992, c. 52.

**Heard:** In writing

**Appearances:**

**Parties**

Eliazer Parulan

Minister of Environment and  
Climate Change Canada

**Counsel/Representative**

Self-represented

Evan Morrow (Counsel)

**DECISION DELIVERED BY:**

**LESLIE BELLOC-PINDER**

## Background

[1] Eliazer Parulan (“Applicant”) is requesting a review of an Administrative Monetary Penalty (“AMP”) issued on March 23, 2023, for a violation of s. 7(1) of the [Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act](#) (“WAPPRIITA”). The AMP levied was for \$800.

[2] In December of 2021, the Applicant transported a leopard tortoise (*stigmochelys pardalis*) from Saskatoon, Saskatchewan to Winnipeg, Manitoba, without first obtaining a Live Wild Export permit from the relevant provincial authority. The cost to obtain the permit would have been \$30, but the Applicant was not aware of the requirement to procure it. At the time of this hearing, the Applicant fully acknowledged he contravened the applicable legislation and did not have the requisite permit.

[3] The Applicant travelled with the tortoise, as a courtesy, to deliver it to his friend without expectation of profit. He ultimately received \$100 from his friend as reimbursement for travelling expenses.

[4] A pre-hearing conference took place on September 21, 2023. At that time, counsel for the Minister of Environment and Climate Change Canada (“ECCC” or the “Minister”), indicated that the penalty appeared to have been incorrectly calculated. Mr. Morrow undertook to file written submissions with the Environmental Protection Tribunal of Canada (“Tribunal”) explaining why, in his submissions, the correct amount of the AMP should have been \$500.

[5] Following receipt of the Minister’s submissions, the Applicant confirmed in writing to the Tribunal that he agrees with the amended penalty calculation.

[6] For the reasons set out below, the Tribunal finds that the request for review must be allowed in part. The incorrect amount was imposed for the element of economic gain. The amount of the AMP should therefore be corrected from \$800 to \$500. The notice of violation is upheld, but the amount of the AMP is corrected from \$800 to \$500.

## Issues

[7] The issues are:

- (a) Whether ECCC has established the elements of a violation of subsection 7(1) of the WAPPRIITA;
- (b) If so, whether the amount of the AMP should be changed.

## Facts

[8] The parties agree to the relevant facts as set out in the Notice of Violation and amplified by the *Agreed Statement of Facts* also filed herein. The Applicant transported a live tortoise from Saskatchewan to Manitoba without previously obtaining a permit under the *WAPPRIITA*.

[9] On March 23, 2023, Officer Mitchel Elder issued Notice of Violation no. 9400-8331 to the Applicant. The amount in the AMP was \$800, broken down as follows:

\$400 (baseline amount for the violation)  
\$400 (economic gain).

## Discussion

[10] In his written submissions, counsel for the Minister submitted that in the monetary penalty under review, the economic gain penalty amount used was \$400 – which is the amount intended to apply to Type B violations. In this case, however, the additional economic gain incurred by the Applicant was limited to his failure to obtain a permit prior to transporting the tortoise. As such, the Minister submitted that the correct economic gain penalty should be calculated pursuant to s. 8(2) of the [Environmental Violations Administrative Monetary Penalties Regulations](#) (“*EVAMP Regulations*”). As a result, the Minister concluded that the appropriate economic gain amount with respect to this violation should be \$100.

[11] The Applicant agrees with the Minister’s submissions and accepts that the correct amount of the AMP should be \$500 in total.

## Analysis and Findings

[12] Subsection 7(1) of the *WAPPRIITA* prohibits transportation of an animal between provinces if a permit is required, and section 31(1) of Saskatchewan’s *Wildlife Act, 1998* mandates the permit.

[13] Read together, the *Wildlife Act, 1998* and Appendix 1 of Saskatchewan’s *Captive Wildlife Regulations, 2021* apply to the tortoise at issue in this case and a permit to transport is clearly required. As a result, the violation is established.

[14] This kind of violation is subject to an AMP under the regime established by the [Environmental Violations Administrative Monetary Penalties Act](#) (“*EVAMPA*”). Given that the Applicant admits he transported the tortoise without a permit, issuing an AMP was warranted.

[15] Under s. 20 of *EVAMPA*, after receiving a request for review and relevant information and representations, the Tribunal must verify whether the alleged violation was committed by the Applicant and whether the amount of the penalty was calculated correctly. To calculate the amount of an AMP, one must refer to the *EVAMP Regulations*.

[16] The burden of proof lies with the Minister, who must discharge it on a balance of probabilities. Section 20 is reproduced in full below:

<p><b>20 (1)</b> 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.</p> <p><b>(2)</b> The Minister has the burden of establishing, on a balance of probabilities, that the person, ship or vessel committed the violation.</p> <p><b>(3)</b> 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.</p>	<p><b>20 (1)</b> Après avoir donné au demandeur et au ministre un préavis écrit ou oral suffisant de la tenue d’une audience et leur avoir accordé la possibilité de présenter oralement leurs observations, le réviseur ou le comité décide de la responsabilité du demandeur.</p> <p><b>(2)</b> Il appartient au ministre d’établir, selon la prépondérance des probabilités, que le demandeur a perpétré la violation.</p> <p><b>(3)</b> Le réviseur ou le comité modifie le montant de la pénalité s’il estime qu’il n’a pas été établi conformément aux règlements.</p>
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[17] The amount of an AMP is calculated in accordance with the *EVAMP Regulations*. In this case, the relevant provision is s. 4(1) of the *EVAMP Regulations*:

<p><b>4(1)</b> 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>4(1)</b> 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>
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<b>W</b> is the baseline penalty amount determined under section 5;	<b>W</b> représente le montant de la pénalité de base prévu à l'article 5;
<b>X</b> is the history of non-compliance amount, if any, as determined under section 6;	<b>X</b> le cas échéant, le montant pour antécédents prévu à l'article 6;
<b>Y</b> is the environmental harm amount, if any, as determined under section 7; and	<b>Y</b> le cas échéant, le montant pour dommages environnementaux prévu à l'article 7;
<b>Z</b> is the economic gain amount, if any, as determined under section 8.	<b>Z</b> le cas échéant, le montant pour avantage économique prévu à l'article 8.

[18] With respect to economic gain, the relevant provision is s. 8 of the *EVAMP Regulations*:

<p><b>8 (1)</b> Subject to subsection (2), if the violation has resulted in economic gain to the violator, including an avoided financial cost, the economic gain amount is the amount set out in column 6 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><b>(2)</b> If the only economic gain is the avoidance of the cost of obtaining a permit, licence or other authorization, the economic gain amount is the amount set out in column 7 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><b>8 (1)</b> Sous réserve du paragraphe (2), si l'auteur de la violation tire un avantage économique, y compris l'évitement d'une dépense, de la violation commise, le montant pour avantage économique est celui prévu à la colonne 6 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> <p><b>(2)</b> Si l'avantage économique représente seulement l'évitement des droits d'obtention d'un permis, d'une licence ou de toute autre autorisation, le montant pour avantage économique est celui prévu à la colonne 7 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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[19] The Applicant admits that he violated s. 7(1) of the *WAPPRIITA* by transporting the tortoise without a permit.

[20] A violation of s. 7(1) of the *WAPPRIITA* corresponds to a Type B violation according to Schedule 1, Part 3, Division 1 of the *EVAMP Regulations*. The baseline amount for a person who commits a Type B violation is \$400. The AMP issued to the Applicant included the \$400 baseline amount, as well as \$400 for the economic gain

component. There were no allegations of a history of non-compliance or environmental harm.

[21] The \$400 economic gain component in the AMP issued to the Applicant was calculated under subsection 8(1) of *EVAMP Regulations*. The Minister, on whom the burden rests to establish the elements of the AMP, has not established that the Applicant benefited from his violation of the *WAPPRIITA*. To the contrary, both the Applicant and the Minister agree that the only economic gain to the Applicant in this case was the avoidance of the cost of obtaining a permit.

[22] The Tribunal finds that 8(2) is the correct provision to calculate the penalty in this case since the only economic gain was the avoidance of the cost of obtaining a permit. Column 7 of Schedule 4 for a Type B violation sets this economic gain component at \$100.

### **Conclusion**

[23] Given the Applicant's admission, the role of the Tribunal is limited to verifying the amount of the AMP. The Tribunal finds that the baseline amount was calculated correctly, however the economic gain component was not.

### **Decision**

[24] The review is granted in part. The notice of violation is upheld, but the AMP amount is corrected from \$800 to \$500.

*Review Granted in Part*

*AMP Amount Corrected*

Leslie Belloc-Pinder

LESLIE BELLOC-PINDER  
REVIEW OFFICER