



Issue Date: November 19, 2024

Citation: *Owens and Craig Jr. v. Canada (Environment and Climate Change)*, 2024 EPTC 7

EPTC Case Nos: 0049-2023 and 0050-2023

Case Names: *Owens v. Canada (Environment and Climate Change)*
(0049-2023)
Craig Jr. v. Canada (Environment and Climate Change)
(0050-2023)

Applicants: Jonathan Carwin Owens and James Edward Craig Jr.

Respondent: Minister of Environment and Climate Change Canada

Subject of proceeding: Review commenced under s. 15 of the *Environmental Violations Administrative Monetary Penalties Act*, SC 2009, c 14, s. 126 of Administrative Monetary Penalties issued under s. 7 of that Act for an alleged violation of s. 5(1)(a) of the *Migratory Birds Regulations, 2022* (SOR/2022-105).

Heard: June 4-5 and September 9, 2024 (by videoconference)
October 18, 2024 (Post-Hearing Written Submissions)

Appearances:

Parties

Jonathan Carwin Owens
James Edward Craig Jr.

Minister of Environment and
Climate Change Canada

Counsel

Neil Steen

Brenna Dixon

DECISION DELIVERED BY:

LESLIE BELLOC-PINDER

Overview

[1] This decision deals primarily with the evidentiary foundation upon which a wildlife officer issued two Notices of Violation (“NOVs”) for hunting migratory birds without the necessary permits.

[2] In October 2023, an Environment and Climate Change Canada (“ECCC” or the “Respondent”) wildlife officer conducted hunter compliance checks at a premises near St. Ambrose, MB, known as Delta Wild Wings (“DWW” or “the lodge”). The officer encountered the Applicants, Jonathan Carwin Owens (“Mr. Owens”) and James Edward Craig Jr. (“Mr. Craig”) (collectively, the “Applicants”), who produced provincial (Manitoba) hunting licences but were unable to produce federal Migratory Game Bird Permits for 2023.

[3] Both the *Migratory Birds Convention Act, 1994* (“MBCA”)¹ and *The Wildlife Act*² of Manitoba empower officers to enter and inspect any place in which they believe, on reasonable grounds, that contravention of rules regarding migratory bird hunting has occurred or is occurring. Based on his investigation, an officer employed by ECCC found reasonable grounds to believe that the Applicants violated section 5(1)(a) of the *Migratory Birds Regulations* (“MBR” or “the Regulations”)³ during the time they were staying at DWW.

[4] The officer issued two NOVs on the basis that the Applicants had only partially complied with their obligation to obtain the necessary permits to hunt and that they engaged in environmental harm by killing one or more migratory birds contrary to MBR s.5(1)(a).

[5] The Applicants’ request for review challenges the facts upon which the officer relied in issuing the NOVs. First, they argued that the fruit of the officer’s investigation was illegally obtained due to various infractions of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”).⁴ Second, they argued that the inspection did not occur as the officer described in documents or during his oral testimony. Instead, they provided an alternative set of facts they submitted were more credible and reliable – and which, if believed, would result in significant erosion or contradiction of the “facts” relied on by the Respondent to support the NOVs.

[6] Neither Canadian constitutional law nor the evidence related to the officer’s investigation and subsequent issuance of the violations, supports the Applicants’ position.

¹ *Migratory Birds Convention Act, 1994*, [SC 1994, c 22](#).

² *The Wildlife Act*, [CCSM c W130](#).

³ *Migratory Birds Regulations, 2022* ([SOR/2022-105](#)).

⁴ The [Canadian Charter of Rights and Freedoms](#), part 1 of the *Constitution Act, 1982*, Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11, s. 8, 9, 10(a), 10(b).

While it is beyond dispute that the *Charter* applies to enforcement of regulatory offences, the required contextual approach results in different treatment than typically applied in criminal proceedings. The principles cited by the Applicants, which emanate largely from criminal law, do not automatically or easily transfer over to the investigation and prosecution of regulatory offences.

[7] Turning to the evidence required to support the NOVs, where the Respondent's evidence conflicts with that offered by the Applicants, the Tribunal finds the Respondent's evidence is more credible and reliable. Thus, the Respondent's evidence establishes, on a balance of probabilities, that contravention of s. 5(1)(a) of the MBR occurred as set out in the NOVs.

[8] The Applicants' request for review is dismissed and the NOVs are upheld.

Background and Review Process by the Tribunal

Background

[9] On October 19, 2023, wildlife enforcement officer Riley Black ("Officer Black") attended at DWW to conduct hunter compliance checks. The Applicants, Mr. Owens and Mr. Craig, were staying at DWW between October 15 and 21, 2023. Their intention was to hunt migratory birds during their stay and enjoy the lodge environment.

[10] Officer Black spoke with both Applicants during his inspection, and they produced provincial migratory bird hunting licences, which were valid for the duration of their stay at the lodge. However, they did not produce a federal permit or proof of purchase for a federal permit when requested, nor did they indicate that they had sent someone to acquire a federal permit on their behalf.

[11] Officer Black testified that the Applicants admitted to having hunted migratory birds prior to his inspection and that his search of the federal permit database revealed they did not have valid federal permits at the time of his inspection. The Applicants vehemently disagreed with these aspects of Officer Black's evidence.

[12] Each of the Applicants was issued an Administrative Monetary Penalty (AMP) in the amount of \$500 pursuant to the *Environmental Violations Administrative Monetary Penalties Act*,⁵ (EVAMPA) and the *Environmental Violations Administrative Monetary Penalties Regulations*⁶ ("EVAMP Regulations").

⁵ *Environmental Violations Administrative Monetary Penalties Act*, [SC 2009, c 14, s 126](#) (EVAMPA).

⁶ *Environmental Violations Administrative Monetary Penalties Regulations*, [SOR/2017-109](#) (EVAMP Regulations).

[13] Each of the two AMPs were calculated as follows:

- a. \$400 base penalty amount; and
- b. \$100 for economic advantage⁷

Review Process by the Tribunal

[14] Following the Request for review being filed jointly by both Applicants, ECCC prepared the required AMP Brief and Disclosure documents, and provided them to the Applicants and Tribunal. A pre-hearing management conference occurred on February 14, 2024 and an application directing the Respondent to provide additional disclosure was allowed by the Tribunal on March 21. On May 27, the Respondent filed a legal brief and other material in advance of the hearing, and the Applicants filed some proposed exhibits.

[15] The hearing was conducted virtually over two days on June 4 and 5, 2024. Officer Black and Mr. Craig testified. ECCC filed four Exhibits, as did the Applicants.

[16] Although Mr. Owens endorsed the Request for review which gave rise to the hearing in this matter, he did not participate in the process thereafter. During the pre-hearing conference call and all subsequent proceedings, only Mr. Craig and his counsel participated. That said, counsel confirmed that Mr. Owens was fully aware of the hearing and acknowledged that the decision made by the Tribunal would apply to both NOV's at issue in this proceeding.

[17] Counsel for the Applicants and ECCC filed written submissions following the hearing – the Applicants in July and the Respondent in August. Both counsel presented oral submissions expanding upon their written briefs in September, and additional written briefs were provided in October based on a final narrow point raised during oral submissions.

[18] The case was formally closed and reserved by the Tribunal on October 18, 2024.

[19] The Tribunal has considered all the documentary and oral evidence presented in this matter, and carefully reviewed all legal briefs and authorities filed. In the reasons which follow however, only information necessary to explain the analysis and findings is cited.

⁷ *EVAMP Regulations*, s. 8.1.

Relevant Legislation

[20] Section 7 of the *Environmental Violations Administrative Monetary Penalties Act*,⁸ (EVAMPA) establishes the basis for the circumstances that create a violation that may be subject to an administrative monetary penalty (AMP):

Commission

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.

[21] The relevant violation is set out in s. 5(1)(a) of the MBR⁹ as follows:

Prohibitions

5(1) A person must not engage in any of the following activities unless they have a permit that authorizes them to do so or they are authorized by these regulations to do so:

- (a) capture, kill, take, injure or harass a migratory bird or attempt to do so;
- (b) destroy, take or disturb an egg; and
- (c) damage, destroy, remove or disturb a nest, nest shelter, eider duck shelter or duck box.

Contravention of this prohibition is a Type B violation pursuant to Schedule 1, Division 2 of the EVAMP Regulations.

[22] EVAMPA establishes a process whereby a party who has been served with a NOV may request a review of the penalty or the facts of the alleged violation, or both. On such a review, the Minister has the burden of establishing the violation on a balance of probabilities.¹⁰

[23] Section 6 of the MBCA allows for the designation of officers for the purposes of administering the MBCA and its regulations. Section 6(4) provides officers with all the powers of a peace officer in the execution of their duties under the MBCA. Section 7(1) allows officers to conduct inspections for the purpose of verifying compliance with the Act and the regulations. Specifically, an officer may at any reasonable time, enter and inspect any place, in which they believe, on reasonable grounds, there is any thing to which the

⁸ *Environmental Violations Administrative Monetary Penalties Act*, [SC 2009, c 14, s 126](#) (EVAMPA).

⁹ *Migratory Birds Regulations, 2022*, [SOR/2022-105](#).

¹⁰ EVAMPA, s. 20(2).

MBCA or the regulations apply and/or to inspect any document, record, or data relating to the administration of the Act or the regulations.

[24] Manitoba's *Wildlife Act*¹¹ sets out legal procedures aimed at managing, conserving and enhancing the wildlife resources in the province, and includes its licencing scheme. Section 61(2) states that every person who is required to hold a license or permit must produce and show it to an officer upon request. Section 68(2) allows for the appointment of officers for the purpose of carrying out the Act and its regulations, and section 69 designates an officer to exercise the powers and authorities of a police constable or peace officer for the purposes of the Act. Sections 70(1)(a) and (b) specifically permit officers to enter and inspect any premises in respect of which a license or permit has been issued. Finally, Section 70(4) authorizes officers to inspect any camps occupied by hunting or trapping parties without the need for a warrant.

Issues and Analysis

Issue 1: Has ECCC established the elements of two s. 5(1)(a) MBR violations, on a balance of probabilities?

[25] ECCC has the burden to prove the violations occurred, and the civil standard of proof applies.

[26] Considered together, the documentary evidence and oral testimony comprehensively describe both parties' versions of the facts, circumstances, and legal consequences of the inspection which occurred at DWW on October 19, 2023.

[27] This case turns on findings of fact, but it is first necessary to deal with the scope and precision of admissible evidence before the findings of fact are made.

Application of the *Canadian Charter of Rights and Freedoms*

[28] The Applicants submitted that there is "strong policy for attaching *Charter* obligations to regulatory investigations".¹² ECCC agrees that Officer Black's actions are subject to the *Charter* and the jurisprudence confirms that regulatory inspections may attract *Charter* protection. However, ECCC submits that the "relevant question is not whether the *Charter* applies, but how this regulatory concept shapes the *Charter* analysis."¹³

¹¹ *The Wildlife Act*, [CCSM c W130](#).

¹² Applicants' Brief, "*Charter* Brief of the Applicant" dated July 11, 2024, pg 9, para. 33.

¹³ ECCC Brief, "*Charter* Argument and Section 15 Review Pursuant to *Environmental Violations Administrative Monetary Penalties Act*", dated August 26, 2024, pg 13, para. 26.

[29] The Applicants argued that Officer Black contravened s. 8 of the *Charter* by gaining unlawful entry to a dwelling house and that he lacked reasonable grounds to demand federal permits from the Applicants. Contrary to s. 9, the Applicants argued they were unlawfully detained while Officer Black was questioning them, and that they were not afforded an opportunity to speak with counsel, in violation of their s. 10 *Charter* rights.

[30] Owing to these *Charter* violations, the Applicants argued that the evidence obtained by Officer Black during his *Charter*-infringing investigation ought to be excluded, resulting in a finding that there is insufficient evidence to support the NOV's issued by Officer Black.

[31] ECCC's response to the Applicants' *Charter* arguments begins by noting that "the existence and extent of an individual's *Charter* rights and ensuing obligations in regulatory settings must be assessed contextually [and that] the regulatory context in which Officer Black met and interacted with the Applicants is a significant factor in that broader contextual analysis."¹⁴

[32] ECCC argued that the evidence establishes DWW was and is a hunting lodge, not a private dwelling, and as a result Officer Black, was authorized by law to attend the premises and conduct the investigation in the manner he did. Further, ECCC argued that the Applicants were neither unlawfully detained nor entitled to a warning or the right to counsel as contemplated by s. 10(a)(b) of the *Charter*.

[33] The findings of fact set out below effectively dispose of the Applicants' *Charter* arguments. Before these findings, however, a few words about the *Charter*'s application within the regulatory scheme which includes the Tribunal's review are warranted.

[34] In recent decisions on regulatory *Charter* compliance (*R. v. Mossman* and *Meckert*¹⁵), the Court summarized the past several years of jurisprudence on the application of the *Charter* to regulatory settings:¹⁶

[170] As taught in numerous appellant decisions, regulatory offences differ from criminal offences and receive different treatment under the Charter. Criminal law principles do not automatically transfer over to regulatory offences.

[171] In regulatory settings, such as mining, the individual freely chooses to participate in the industry or regulated activity. Reporting and permitting inspections are conditions of that participation. Participants in regulated activities accept reasonable limitations to ensure safety and compliance. This distinction affects both s. 7 and s. 10(b) Charter rights: *Mossman* at

¹⁴ ECCC Brief, pg 13, para. 27.

¹⁵ *R. v. Mossman and Meckert*, [2023 BCPC 130](#) at paras 170-172.

¹⁶ ECCC Brief, paras. 28-30.

paragraph 13 and *Workers' Compensation Board of British Columbia v. Seattle Environmental Consulting Ltd.*, 2020 BCCA 365, at paragraph 40. The state's information gathering concerning regulatory offences is therefore subject to a lower standard of Charter scrutiny because it engages different interests and a different level of compulsion: *Ontario v. Canadian Pacific Ltd.*, 1995 CanLII 112 (SCC), [1995] 2 S.C.R. 1031 at para. 57.

[35] Thus, the law directs that a contextual approach should balance an individual's interests in limiting self-incrimination with the public interest in enforcing compliance with a regulatory scheme.¹⁷ As stated in *R. v. Mossman*,

[172] Charter compliance must be assessed contextually. When dealing with regulatory offences, the Court must contextualize whether the state officials' regulatory powers were exercised appropriately. The point at which an inspection becomes an investigation will be one of several contextual factors for the Court to consider.¹⁸

[36] Based on the findings of fact below, the Tribunal finds that Officer Black exercised his regulatory powers reasonably and appropriately. He attended at DWW to conduct an inspection. When the Applicants failed to produce federal permits, and the officer did not find evidence of federal permits on the database, he issued two NOVs. Officer Black's actions were authorized by law pursuant to his inspection powers arising from the MBCA and *The Wildlife Act*.

[37] Further, and based on the findings of fact below, the Tribunal finds that Officer Black's actions complied with the *Charter*. Thus, because no *Charter* infringement has been found, no analysis pursuant to s. 24(2) of the *Charter* is necessary.

Credibility and Findings of Fact

[38] The Tribunal must analyze the evidence and decide whether ECCC has proven it is more probable than not that the events supporting issuance of the NOVs actually happened. In doing this, the Tribunal must assess the credibility of the witnesses who provided testimony at the hearing, and whether their evidence is reliable.

[39] Guidance for discharging this sometimes onerous responsibility is fortunately abundant. For this case, the Tribunal has assessed the witness' credibility through four lenses the Court described in *CM v. Attorney General (Canada)* (emphasis added):

Credibility assessment includes consideration of ***consistency and inconsistency*** in the evidence given by the witnesses, including the

¹⁷ *R. v. Mossman*, [2020 BCCA 299](#), at paras 13 and 16.

¹⁸ *R. v. Mossman and Meckert*, at paras 170-171.

plaintiff, with testimony or evidence otherwise given at other times, the existence of independent and reliable **evidence from other sources** with respect to the occurrences alleged or matters collateral to those occurrences and the **reasonableness of the account** in the context of the totality of the circumstances. Occasionally, a witness' **demeanour** may impact on this credibility assessment, however, that is not as reliable as the other approaches outlined.¹⁹

Demeanour

[40] The first witness to testify and the person who bore ECCC's burden of proof was Officer Black. An experienced provincial park and federal wildlife officer, Officer Black described his various roles and responsibilities in a concise and confident manner. He said he had a clear recollection of the day in question, which involved inspecting several locations, including DWW. His encounter with Mr. Craig and Mr. Owens stuck in his mind because it was unusually unpleasant – Mr. Craig being the most difficult hunter Officer Black recalled encountering that entire year, and possibly throughout his whole career.

[41] Notwithstanding his observations about Mr. Craig's presentation, Officer Black testified that he treated the Applicants as efficiently and respectfully as he could, which is also the way he testified. He did not offer disparaging comments about the Applicants, even as he was repeatedly challenged to do so during cross-examination. Officer Black acknowledged he did not write a note about Mr. Craig's behavior in his notebook, because it was not something he intended to act on. But he succinctly stated that his memory of dealing with Mr. Craig on October 19, 2023, was so clear because Mr. Craig was so rude.

[42] Finally, Officer Black did not appear defensive or inclined to justify his actions. He provided details and explanations only when they were required, and did not present as concerned that his evidence required a lengthy explanation.

[43] Conversely, Mr. Craig's testimony frequently diverged into detailed descriptions of superfluous events and stories about himself, his friends, and connections. He presented as a gregarious man, who was charming and good humored during the hearing, not rude.

[44] Mr. Craig's verbosity ended when he was pressed to provide explanations for problematic parts of his testimony or contradictory ECCC evidence. At those times, Mr. Craig appeared visibly uncomfortable and sometimes resorted to making general statements about his integrity and experience in the law enforcement milieu. His answers to questions which might compromise his defence were uncharacteristically short and vague. For example, on the critical issue of what Mr. Owens said or did not say to Officer

¹⁹ *C. M. v. Canada (Attorney General)*, [2004 SKQB 175 \(CanLII\)](#).

Black about hunting during the days before October 19, Mr. Craig said he was unsure about Mr. Owens' words.

[45] Thus, there was a stark contrast between the personal demeanour demonstrated by the two witnesses during this hearing. Officer Black presented as a more dispassionate, objective, and reliable narrator than Mr. Craig. This means that it may be appropriate for the Tribunal to give Officer Black's testimony more weight than Mr. Craig's testimony. That said, demeanour is only one factor which assists the Tribunal in assessing the reliability of the stories the witnesses told, and it is often referred to as the least reliable indicator of truthfulness.

Contradictions and Inconsistencies

[46] It is well-understood that minor internal or external evidentiary inconsistencies in a witnesses' story may not diminish their credibility unduly, but a series of inconsistencies may become significant and "cause the trier of fact to have a reasonable doubt about the reliability of the witnesses' evidence."²⁰ Contradictions between witnesses adverse in interest, on the other hand, may not damage their individual credibility, but still require the trier of fact to weigh the evidence and ultimately prefer one story over another. For this reason, both should be considered.

[47] Examples of relatively unimportant contradictions between Mr. Craig and Officer Black's accounts of the events on October 19 include how many people could be seen through a certain window of the lodge when Officer Black knocked on the door, or which door he knocked upon.

[48] The following contradictions are more significant because they relate to the Applicants' allegation of *Charter* infringements and Officer Black's recollection of unwanted physical contact between himself and Mr. Craig:

- a. Mr. Craig testified that Officer Black walked into the DWW dining room and stood near the water cooler, whereupon he insisted that Mr. Owens and Mr. Craig step outside to speak with him. Officer Black, on the other hand, testified that after knocking on one door and receiving no answer, he went around the building and knocked on another door. Mr. Craig answered that second door and Officer Black told him he wanted to do an inspection. Mr. Craig then said, "go talk to the owner" and slammed the door. Thus, Officer Black testified that he never asked anyone to come out of the lodge, nor did he enter the lodge at any point.

²⁰ *R. v. R.W.B.*, (1993) 24 B.C.A.C. 1 (CA), paras. 28-29, citing *FH v. McDougall*, 2008 SCC 53.

- b. Mr. Craig testified that he was unable to move his vehicle and leave DWW because one or more vehicles parked by enforcement officers were intentionally obstructing the way out. Officer Black testified that he did not park his vehicle to obstruct Mr. Owens' or Mr. Craig's ability to leave, and that they easily drove around all enforcement officers' vehicles when they ultimately left.
- c. During the time he was speaking with Mr. Craig about issuing an NOV, Officer Black testified that Mr. Craig grabbed his arm. Officer Black said he stated, sternly, "Don't touch me" and Mr. Craig replied with an apology, saying "Sorry, cops in my country are assholes". Mr. Craig emphatically denied this incident occurred at all.

[49] Mr. Craig's evidence described in a. and b. above is related to his contention that the officer entered a dwelling house unlawfully and that he was later unlawfully detained, contrary to the *Charter*. The Tribunal finds it is more probable than not that Officer Black neither entered DWW nor blocked Mr. Craig's departure from the premises with his vehicle. On the contrary, the Tribunal finds Officer Black's evidence about standing outside the door, knocking on it, speaking briefly to Mr. Craig who opened it, and then having it shut in his face carries a ring of truth consistent with the circumstances which existed at the time of his inspection. The evidence also establishes that neither Applicant was arrested, detained, taken into custody, or obstructed from leaving the premises. Instead, it establishes that a lawful demand for production of both provincial and federal hunting licences/permits was made, and the Applicants were unable to fully comply.

[50] Regarding the touching incident described in c. above, the Tribunal finds it is more probable than not it occurred as Officer Black described it. He did not present as an individual who was making up a story to embarrass or discredit Mr. Craig, or that he was emotionally invested in the incident. The Applicant's counsel suggested that being "grabbed" was a recent invention in Officer Black's mind because he did not write anything about it in his notebook. Officer Black explained he didn't make such a note because he did not intend to pursue assault charges or escalate the matter in any other way. He put the incident behind him immediately after it happened and carried on doing his job.

[51] In contrast to the officer's relatively routine discharge of his mandate, Mr. Craig acknowledged his escalating discomfort with Officer Black's presence and the inspection process. It is reasonable to infer that a person who shuts a door in a wildlife officer's face may, when faced with that officer's continued presence and persistent questioning, act out further. With these circumstances in mind, the Tribunal finds it is more probable than not that Mr. Craig impulsively reached out and touched or grabbed Officer Black's arm while they were outside the lodge.

[52] The most significant internal inconsistency in Mr. Craig's evidence was his changeable recollection about his and Mr. Owens' hunting activities. Mr. Craig contradicted the statement of Mr. Owens (recorded as an admission in Officer Black's notes), that he and Mr. Craig had been hunting ducks for the past three days, that they had only shot a few, and that the birds had been sent to Sports Afield for plucking.²¹

[53] While testifying, Mr. Craig first denied he had been hunting and said that Mr. Owens was the only one who had hunted. Later, Mr. Craig changed his evidence and said neither of them had hunted at all. At another point, Mr. Craig inferred that Officer Black might be confusing himself and Mr. Owens – and that it was Mr. Owens who might have been discourteous to the officer.

[54] Mr. Owens' absence during this hearing looms large, and had he testified, inconsistencies within Mr. Craig's evidence might have been explained or amplified. But these prospects are now immaterial, and the Tribunal must deal with the evidence as it is.

[55] No argument was advanced that Officer Black's notes setting out Mr. Owens' admission are inadmissible, unreliable, or prepared improperly. The Tribunal accepts Mr. Owens' recorded statement as an admission against his (and Mr. Craig's) interest. Only Mr. Craig disputed Mr. Owens' statement, and he did so unpersuasively and inconsistently: by denying the statement was made at all; by saying he didn't hear it; and by asserting Mr. Owens was only referring to himself as having hunted and not the two of them.

[56] The internal inconsistencies in Mr. Craig's testimony erode his credibility and the reliability of his evidence. Thus, the Tribunal attributes little weight to his statements about when, how much, and with whom he hunted or did not hunt during his stay at DWW.

Other Sources of Evidence

[57] The admission Mr. Owens made to Officer Black, which is also recorded in Officer Black's notes, is evidence in this proceeding that he and Mr. Craig hunted migratory birds during the time they stayed at DWW and that the birds they killed were sent to Sports Afield for plucking (a nearby lodge which also processes birds for hunters). This admission corroborated evidence Officer Black had obtained from individuals at Sports Afield prior to attending at DWW, (i.e.) that Sports Afield had processed birds shot by hunters staying at DWW that week.

²¹ AMP Brief, para. 2 and Officer Black's Notes, pg 2.

[58] The Tribunal places considerable weight on this admission, given that it was provided spontaneously during Officer Black's inspection, is clear, and makes sense within the context of the circumstances which existed at the time. It is largely uncontroverted – challenged only by Mr. Craig, whose evidence on this point carries little weight for the reasons set out in paragraphs 52-56 above.

[59] It is reasonable to infer that it was not until the inspection was underway that either of the Applicants realized they were deficient in their permits. According to Mr. Craig, they had hunted for many years in Canada needing only to acquire provincial licences, which they did again in 2023 and which they were able to easily produce. Mr. Craig testified they did not know about the "new" federal permit system before their October 2023 trip to DWW and simply relied on the proprietor's advice that "all the paperwork" was in order.

[60] Another source of objective evidence regarding the presence or absence of federal permits for Mr. Owens and Mr. Craig is Officer Black's search of the federal electronic permit database for the 2023 bird hunting season.²² This search, conducted when Officer Black was at DWW, confirmed no permit was issued for either one of them. No evidence was presented by the Applicants that the database search was flawed or the database itself unreliable. The Tribunal finds, as a fact, that permits did not appear for either Applicant in the database when Officer Black accessed it on October 19, 2023.

[61] The Tribunal also accepts and relies upon Officer Black's evidence that he prepared the NOVs and explained them to the Applicants. He testified that he had advised Mr. Owens and Mr. Craig he was choosing not to charge them with an offence but was rather issuing violation notices so they would still be allowed to continue hunting for the time they intended to remain at DWW. Officer Black explained he did this because he understood it is very expensive for Americans like Mr. Owens and Mr. Craig to come up and hunt in Canada. He didn't want to deprive them of the opportunity to carry on with what they wanted to do for the rest of their time at DWW. Thus, Officer Black ensured the Applicants were aware they could still purchase a federal permit even after receiving the NOVs.

[62] During his testimony, Mr. Craig acknowledged he was aware that permits could be obtained at a sporting goods store in a small city reasonably close to DWW. He did not identify from whom he received this information or when he received it.

[63] Months after the NOVs were issued, federal permits for both Mr. Owens and Mr. Craig were provided by their counsel on May 27, 2024. These permits do not have a time stamp on them, but they are dated October 19, 2023.

²² AMP Brief, para. 2 and Officer Black's Notes, pg 5.

[64] Connecting these pieces of evidence and making a reasonable inference, the Tribunal finds it is more probable than not that the Applicants acquired federal permits on October 19, 2023, after Officer Black completed his inspection and they received the NOV's.

Reasonableness of the Account

[65] Mr. Craig invited the Tribunal to accept and rely upon his evidence that he and Mr. Owens sent another person who was staying at the DWW lodge to acquire federal permits for them during the morning of October 19. According to Mr. Craig, this person drove to Portage la Prairie to purchase the permits at a sporting goods store before Officer Black arrived at DWW. However, Mr. Craig acknowledged that he completely forgot or “drew a blank” when speaking with Officer Black and did not mention any such person or his mission to acquire the federal permits.

[66] It is neither reasonable nor believable that Mr. Craig would have forgotten to mention such a significant and potentially exculpatory circumstance to the officer who was asking him to produce his federal permit. Thus, the Tribunal finds, on a balance of probabilities, that Mr. Craig did not send another person to acquire his and Mr. Owens' federal permit before the hunter compliance checks resulting in their NOV's were issued.

[67] Similarly, Mr. Craig's characterization of DWW as a “friend's residence”, rather than a hunting lodge which he has incurred expenses to visit annually (during hunting season) for at least 20 years, strains credulity. The Tribunal is not required to decide the status of DWW, but Mr. Craig's evidence in this regard is an example of unreasonable evidence upon which the Tribunal is unwilling to rely.

The Violations are Proven

[68] Where there is conflict between the evidence of Officer Black and Mr. Craig, the Tribunal prefers Officer Black's version because it is “in harmony with the preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.”²³ Thus, the Tribunal finds Officer Black's evidence is reliable and carries more weight than Mr. Craig's evidence, especially where their recollections conflict.

[69] Recognizing ECCC's burden and the civil standard of proof required in this case, the Tribunal finds, on a balance of probabilities, that:

²³ *Faryna v. Chorny*, [1952] 2 DLR 354 (BC CA).

- a. **On or about** October 19, 2023, the Applicants hunted migratory birds (specifically ducks);
- b. When hunting the migratory birds, the Applicants did not possess a federal permit.

Thus, violation of s. 5(1)(a) of the MBR is proven and Officer Black was appropriately empowered to issue the NOV's as he did.

Reading "on or about" into the NOV's

[70] This issue arose at the close of the parties' oral submissions, and counsel requested an opportunity to provide additional written arguments. The Tribunal granted leave to do so.

[71] Essentially, ECCC noted that it was not necessary for it to prove the Applicants hunted migratory birds without a permit on October 19, 2023 precisely. Instead, ECCC submitted the NOV's would be properly supported by the evidence if it was sufficient to establish that the Applicants hunted without the required federal permit in the days immediately preceding October 19, 2023.

[72] On the other hand, the Applicants argued that they could not be held liable for hunting migratory birds on any date other than the one set out in the NOV's, being October 19, 2023.

[73] The argument revolves around whether it is procedurally fair "to hold the Applicants liable for conduct alleged to have taken place on any date other than the Date of Violation."²⁴

[74] On their face, the NOV's provided to the Applicants refer only to October 19, 2023 and do not include the phrase "on or about". For this reason, the Applicants argued that the case they had to meet and for which they had been given notice revolved around the events of October 19, rather than prior or subsequent days during the week they were in Manitoba. Unaware they could be held liable for activities which occurred on other days, they were disadvantaged and might have approached their evidence differently if they had known.

[75] The Applicants then resorted to arguments typically advanced in criminal proceedings where, for example, a defect in a Charge or Information can result in an acquittal if the prosecution's evidence does not conform precisely.

²⁴ Applicants' Post-Hearing Brief dated October 24, 2024, pg 10, para. 28.

[76] On the other hand, ECCC argued the Tribunal is not required to enforce a strict standard, “similar to that commonly used in criminal indictments”.²⁵ ECCC submitted the NOV included the relevant facts necessary for the Applicants to mount a defence, the Applicants were not prejudiced, and that criminal evidentiary standards do not translate to the more flexible scheme of administrative review.²⁶

[77] In *Bell Canada v. Canada (Environment and Climate Change)*, 2022, EPTC 6 the Tribunal considered this same issue – whether a NOV under EVAMPA must identify the exact date of an alleged statutory violation. In *Bell Canada*, the Tribunal confirmed that the word “alleged” must be understood in context, and that an NOV is not an indictment, since the review is administrative and not criminal.²⁷

[78] The Tribunal clarified that the use of words like “alleged” must be understood in the context of the role of a review officer hearing the request for review under the EVAMPA. The review officer makes a *de novo* determination about whether a violation occurred and whether the amount of the penalty imposed was correct. It is “inherent in the process that the review officer must consider the entire record, starting with the notice of violation, but not limited to the content of the notice of violation”.²⁸ In *Bell Canada*, the Tribunal emphasized that the statutory scheme makes express provision for the conduct of a review²⁹ including the right to appear³⁰ and the ability of the Tribunal to compel evidence.³¹ Therefore, “the Tribunal in conducting a review under the EVAMPA is not limited to the documentary record which existed immediately prior to the issuance of the notice of violation but may rest its conclusions on a broader evidentiary basis”.³²

[79] In *Bell Canada*, the Tribunal held that it follows “what is alleged in the notice of violation will not necessarily include all the evidence that the review officer will consider. The violation complained of must be identified in the sense that the relevant facts of the violation must be specified in order to frame the debate and provide notice to the person who is the subject of the notice of violation”.³³

[80] However, “the Tribunal must be careful in borrowing legal concepts from other contexts”.³⁴ Thus, the Tribunal disagreed with the proposition that notices of violation

²⁵ ECCC’s Post-Hearing Brief dated October 18, 2024, pg 2, para. 2.

²⁶ *Ibid*, para. 3.

²⁷ *Bell Canada v. Canada (Environment and Climate Change)*, [2022 EPTC 6](#), para. 38.

²⁸ *Bell Canada*, para. 39.

²⁹ EVAMPA, s.20.

³⁰ EVAMPA, s.18.

³¹ EVAMPA, s.19.

³² *Bell Canada*, para. 40. *BGIS O&M Solutions Inc. v. Canada (Environment and Climate Change)*, [2021 EPTC 9](#), para. 38.

³³ *Bell Canada*, para 41.

³⁴ *Bell Canada*, para 42. *BCE Inc. v Canada (Environment and Climate Change)*, [2021 EPTC 2](#) at paras 25-29.

must be “detailed enough in their formation to survive a motion for summary dismissal”.³⁵ The Tribunal went on to confirm that “just as notices of violation should not be equated with originating processes, they should not be equated with indictments”.³⁶

[81] The Applicants in this case submitted that “in the absence of an amendment to conform the Notice of Violation with the evidence, or an indication on the Notice of Violation that the allegations took place ‘on or about’ October 19, 2023, the Applicants were not properly notified of the case to meet.”³⁷ This argument fails for the very reasons and rationale in *Bell Canada*.

[82] The Applicants also argued that relying on allegation that predate the NOV prejudices their ability to prepare a defence. However, the evidentiary record in this case does not support the Applicants’ contention.

[83] With reasonable haste following filing of the requests for review, and prior to any further steps being taken to enforce the NOVs, ECCC (through its officer) prepared and distributed two AMP Briefs which contained a synopsis of the evidence upon which ECCC would rely. This evidence included Officer Black’s field notes, and these notes clearly show the officer’s reliance on admissions made by the Applicants (and Mr. Owens, in particular) that they had been hunting migratory birds during the days prior to October 19. Additional disclosure in the form of notes from other officers’ notebooks was also directed to be disclosed by the Tribunal at the Applicants’ request.

[84] Thus, particulars of the case the Applicants had to meet in this hearing were well known to them well in advance of the date testimony was given. During the hearing, Mr. Craig was also cross-examined about his activities during the days prior to October 19 and the admissions upon which Officer Black relied.

[85] Like the Tribunal’s unwillingness to rely on an “extreme technicality” to vitiate a NOV in *Bell Canada*³⁸, the Tribunal finds that the NOVs, coupled with the supporting material, relevant jurisprudence, and statutory purpose of EVAMPA permits a broad approach. It is neither a breach of natural justice nor procedurally unfair that the Applicants be required to contend with evidence that they hunted without the requisite federal permit on any day during their visit to Manitoba, before or “on or about” October 19, 2023.

³⁵ *Bell Canada*, para 42.

³⁶ *Bell Canada*, para 43.

³⁷ Applicants’ Post-Hearing Brief, para. 17.

³⁸ *Bell Canada*, para. 49.

Issue 2: Were the AMPs appropriately calculated?

[86] Officer Black issued an AMP to each Applicant respectively in the amount of \$500.³⁹

[87] EVAMPA section 5(1)(a)(i) states that the Governor in Council may make regulations designating the contravention of specified provisions of an Environmental Act as violations that may be proceeded with in accordance with EVAMPA. Section 2(1) of the EVAMPA Regulations implements this power:

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.⁴⁰

[88] Schedule 1 of the EVAMP Regulations designates section 5(1)(a) of the MBR as a Type B violation, and Schedule 4 sets the baseline penalty amount for an individual who commits a Type B violation at \$400. Officer Black determined that an additional \$100 should be added for “economic advantage” as contemplated by s. 8(1) of the EVAMPA Regulations. The advantage is that the Applicants avoided the federal permit fee, and it is immaterial that the fee would have been less than the \$100 amount added by Officer Black.

[89] Thus, the Tribunal finds no error in calculation of the penalty set out in the NOVs and \$500 is the correct amount for each.

Conclusion

[90] During the investigation in this matter which resulted in issuance of Notices of Violation to the Applicants herein, the Applicants rights pursuant to the *Canadian Charter of Rights and Freedoms* were not infringed. As a result, the Applicants’ request that certain evidence be excluded from consideration in this matter pursuant to s. 24(2) of the *Charter* is dismissed.

[91] ECCC has discharged its evidentiary burden and proven that the Applicants violated s. 5(1) of the *Migratory Birds Regulations, 2022* and that the Administrative Monetary was properly calculated.

³⁹ Request for review, pages 8 and 9; Notice of Violation Number 9400-8210, Notice of Violation Number 9400-8209; AMP Briefs, page 5 para 3 and pages 7 to 8.

⁴⁰ EVAMP Regulations, s. 2(1).

Decision

[92] The Notices of Violation are upheld and the Application for Review is dismissed.

“Leslie Belloc-Pinder”
LESLIE BELLOC-PINDER
REVIEW OFFICER