



Issue Date: February 04, 2026

Citation: *Bedrock Homes Limited v. Canada (Environment and Climate Change)*, 2026 EPTC 2

EPTC Case No: 0046-2024

Case Name: *Bedrock Homes Limited v. Canada (Environment and Climate Change)*

Applicant: Bedrock Homes Limited

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 an alleged violation of section 5(1)(c) of the *Migratory Birds Regulations, 2022* (SOR/2022-105).

Heard: January 8, 2026 (by videoconference)

Appearances:

Parties

Bedrock Homes Limited

Minister of Environment and
Climate Change Canada

Representative/Counsel

Mike Froese (Representative)

Matthew Szostakiwskyj (Counsel)

DECISION DELIVERED BY:

JUSTIN DUNCAN

Introduction

[1] Bedrock Homes Limited (“Applicant”) has requested the Environmental Protection Tribunal of Canada (“Tribunal”) review a Notice of Violation (“Notice”) issued against it by Environment and Climate Change Canada (“ECCC”) after one of its employees moved an American robin nest containing hatchlings without a permit, resulting in their deaths. The main dispute on this application for review is whether the Applicant can be held responsible for the actions of its employee when it specifically instructed the employee not to act until after a permit had been obtained.

[2] For the following reasons, the Applicant’s request for review is dismissed and the Notice is upheld.

Facts

[3] The parties filed an agreed statement of facts with the Tribunal. The facts contained in that document are summarized below.

[4] The Applicant is a home builder and owned a lot located in Spruce Grove, Alberta. During construction on that lot, an employee of the Applicant contacted ECCC to advise that an American robin nest containing four unhatched eggs had been discovered in a partially constructed garage.

[5] The Applicant was advised by ECCC that a danger/destruction permit would be required under the [*Migratory Birds Regulations, 2022*](#) (“MBR”) to allow the nest to be moved. In addition, ECCC provided the Applicant with instructions that would have to be taken to safely move the nest once a permit had been issued.

[6] The Applicant instructed its employees to complete an application for the permit prior to moving the nest.

[7] On or about July 4, 2024, the four eggs had hatched. An employee of the Applicant reviewed the permit application and independently decided that the permit requirement did not apply in the circumstances. He built a nest box and relocated the nest and hatchlings to the nest box, largely in accordance with the instructions ECCC had provided. However, he failed to follow the recommendation to relocate the nest to within 1-2 meters of its original location. Presumably this recommendation is to ensure that the parent birds can relocate the nest once it has been moved. Instead, the nest box was moved out of the garage and located in a nearby natural space on the lot.

[8] Subsequently, ECCC instructed the Applicant to transport the hatchlings to WILDNorth Wildlife Rescue and Rehabilitation as the nest appeared to have been abandoned by the parent birds.

[9] On July 26, 2024, an ECCC Wildlife Officer was informed by WILDNorth that the four hatchlings had died on or around July 10-11, 2024. The Wildlife Officer interviewed the Applicant’s employee who had moved the nest. The employee indicated that he had been working as a site superintendent for the Applicant when he moved the nests, that the Applicant

did not direct him to move the nest or hatchlings without completing the permit application, and that he was acting of his own accord when he moved the nest and hatchlings.

[10] On October 17, 2024, ECCC issued Notice of Violation no. 9400-0890A on the basis that the Applicant had unlawfully damaged, destroyed, removed or disturbed a nest of a migratory bird, contrary to section 5(1)(c) of the MBR. The total penalty of the Notice was \$5,000, calculated as follows: a penalty amount of \$2,000 plus an aggravating factor of \$3,000. The aggravating factor, or environmental harm, was the disruption of habitat through the taking and moving of the nest, resulting in the death of hatchlings.

Analysis

[11] There is no dispute that ECCC has met its burden to show that a violation of s. 5(1)(c) of the MBR has occurred: in the absence of a necessary permit, a migratory bird nest containing four hatchlings was moved and resulted in the eventual death of the hatchlings. The relevant provisions of the Act and Regulations are as follows:

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

13 (1) Every person commits an offence who

(c) contravenes any provision of the regulations designated by regulations made under paragraph 12(1)(l)

Migratory Birds Regulation, 2022, SOR/2022-105

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:

(c) damage, destroy, remove or disturb a nest, nest shelter, eider duck shelter or duck box.

[12] The dispute between the parties is whether the Applicant should be subject to an administrative monetary penalty under the [Environmental Violations Administrative Monetary Penalties Act](#) ("EVAMPA") in circumstances where they specifically directed their employees to leave the nest alone until a permit could be obtained.

[13] ECCC filed detailed written submissions with the Tribunal while the Applicant decided not to file written submissions but, rather, relied on submissions made verbally during the hearing on January 8, 2026.

[14] In summary, it was ECCC's submission that under the absolute liability regime established under the EVAMPA, a corporation is vicariously liable for a violation committed by its employees. It was submitted that the evidence demonstrates that the employee in question was at all material

times in an employment relationship with the Applicant, thereby satisfying this legislated requirement.

[15] In the alternative, ECCC submitted that the employee's actions were sufficiently connected to the scope of his employment to satisfy the common law test for vicarious liability. It was submitted that the wrongful act was sufficiently related to the conduct authorized by the Applicant to justify the imposition of vicarious liability. Namely, the employee was acting in the scope of his employment with the Applicant: he was at a worksite owned by the Applicant, was overseeing construction on the Applicant's behalf, and the nest was discovered at the worksite over which the Applicant had given the employee responsibility as site superintendent.

[16] The Applicant submitted that this situation should be considered one where the employee is acting outside of the scope of their employment, similar to a situation where an employee is caught shoplifting or speeding while on the job and for which an employer cannot be found responsible.

[17] It was also submitted by the Applicant that they are a reputable company and that they have previously made great efforts in circumstances similar to these to ensure that migratory birds are protected from construction activities and that they had properly instructed their employees to obtain a permit prior to moving the nest containing the hatchlings. Despite these efforts, the Applicant submitted, their employee decided independently that they could protect the hatchlings and move the nest without obtaining a permit first.

[18] I find the parallels the Applicant asks the Tribunal to draw to other types of violations faces some challenges and these other examples of potential employee behaviour are not particularly helpful in this context. Not only can employers be held liable for the behaviour of their employees in many regulatory contexts, including traffic violations in some situations, the statutory regime established by Parliament under EVAMPA is specific in its application to employer-employee relationships.

[19] During the hearing, the Applicant expressed dismay at the potential reputational harm they could face if the penalty were imposed. The administrative penalty regime established under EVAMPA is not a criminal or even a quasi-criminal system. Administrative penalties do not lead to a criminal record or expose persons to potential incarceration. An administrative penalty under EVAMPA does not require a finding of guilt, but rather a determination that a violation occurred.

[20] Furthermore, EVAMPA specifically states, at s. 9(1), that "it is sufficient proof of the violation to establish that it was committed by an employee or agent or mandatary of the person, whether or not the agent or mandatary has been proceeded against in accordance with this Act."

[21] The behaviour at issue in this matter is not sufficiently removed from the duties and responsibilities of the employee to conclude that it should be considered outside of the employment relationship. On the basis of the limited evidence available, it appears that at all times, the Applicant's employee was carrying out activities that he believed were in the interests of the Applicant and, although he mistakenly believed a permit was not required to move the nest, he was in charge of taking the steps necessary to move the nest and did so to ensure that construction could continue. If an employee makes a mistake in fulfilling their employment

responsibilities or carrying out the duties assigned to them, as here, they remain an employee for the purpose of EVAMPA s. 9(1).

[22] The Applicant also submitted that they took all the steps they could have to prevent the actions taken by their employee and that if managers had become aware that the employee had decided to move the nest before obtaining a permit, they would have taken steps to prevent him from doing so. This is a due diligence defence that is precluded by s. 11(1)(a) of EVAMPA. That section provides that a person named in a violation does not have a defence by reason that the person exercised due diligence to prevent the violation:

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.

[23] The Applicant had also submitted that it would have been more appropriate to assess the penalty against its employee in his individual capacity. The Tribunal does not have the power under EVAMPA to assign penalties amongst potential persons. Rather, the Tribunal's task is to assess whether ECCC has met its burden to show that the notice of violation was properly assessed against the Applicant and whether the amount of the penalty was properly calculated. It appears, on the facts provided, that the penalty could have been assessed against the Applicant's employee or the Applicant, but that decision was at the discretion of the Wildlife Officer at the time of issuance.

[24] The Applicant has not alleged any error in the calculation of the penalty, and having reviewed the EVAMPA and its Regulations, I see no error. Schedule 4 of the [Environmental Violations Administrative Monetary Penalties Regulations](#) sets out that a baseline penalty amount for a violation section 5(1)(c) of the MBR is to be \$2,000 for persons other than an individual with an aggravating factor of \$3,000 for environmental harm. As a result, the amount of the penalty is upheld.

Decision

[25] For the reasons outlined above, I uphold Notice of Violation no. 9400-0890A and the review is dismissed.

Review Dismissed

"Justin Duncan"

JUSTIN DUNCAN
REVIEW OFFICER

