

THE *ENVIRONMENTAL ENFORCEMENT ACT* — SENTENCING IN THE ENVIRONMENTAL CONTEXT

Rebecca Moore

Disclaimer: Any opinions expressed are those of the author and do not necessarily reflect the views of Environment Canada or the Government of Canada.

A Symposium on
Environment in the Courtroom (III): Sentencing and Environmental Offences
February 21-22, 2014
Dalhousie University



This project was undertaken with the financial support of:



Ce projet a été réalisé avec l'appui financier de :



The Canadian Institute of Resources Law encourages the availability, dissemination and exchange of public information. You may copy, distribute, display, download and otherwise freely deal with this work on the following considerations:

- (1) You must acknowledge the source of this work;
- (2) You may not modify this work, and
- (3) You must not make commercial use of this work without the prior written permission of the Institute.

Copyright © 2014

INTRODUCTION

The *Environmental Enforcement Act* amends the fine regimes and sentencing provisions of nine federal environmental Acts.¹ The bulk of the *EEA* came into force on 10 December 2010, making three key changes. 1) It clarifies the sentencing context, codifying the fundamental purposes of environmental sentencing, setting out the main principles of sentencing, and providing a series of aggravating factors which the court must consider in determining the quantum of fines. 2) It standardizes fines across all nine Acts, creating distinct fine levels for different types of offender, increasing maximum fines, and introducing mandatory minimum fines for specified offences. 3) It provides the courts with a greater range of court order powers.

1. ENVIRONMENTAL SENTENCING: OBJECTIVES, PRINCIPLES AND FACTORS

Prior to the introduction of the *EEA*, environmental sentencing was evaluated using a mix of sentencing principles, objectives and factors set out in the *Criminal Code*,² the jurisprudence, and rarely, the environmental statute under which the offence in question occurred. The *Criminal Code* provided the courts with the most guidance on sentencing objectives and principles, outlining major objectives such as deterrence, denunciation, and reparation, and fundamental principles such as proportionality and parity.³ However, due to the distinct nature of environmental offences, the courts recognized that a “special approach”⁴ to environmental sentencing was needed that recognized the important purpose of environmental laws in protecting the public and the environment. As part of this special approach, the courts identified objectives of environmental sentencing such as the protection of the environment⁵ and developed specific sentencing factors that

¹ *Environmental Enforcement Act*, SC 2009, c 14 [*EEA*] amending *Antarctic Environmental Protection Act*, SC 2003, c 20 [*AEPA*]; *Canada National Marine Conservation Areas Act*, SC 2002, c 18 [*CNMCAA*]; *Canada National Parks Act*, SC 2000, c 32 [*CNPA*]; *Canada Wildlife Act*, RSC, 1985, c W-9 [*CWA*]; *Canadian Environmental Protection Act, 1999*, SC 1999, c 33 [*CEPA 1999*]; *International River Improvements Act*, RSC, 1985, c I-20 [*IRIA*]; *Migratory Birds Convention Act, 1994*, SC 1994, c 22 [*MBCA*]; *Saguenay-St Lawrence Marine Park Act*, SC 1997, c 37 [*SSLMPA*]; *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*, SC 1992, c 52 [*WAPPRIITA*]. For clarity, footnotes referencing provisions of the *EEA* will be used in discussing amendments made by the *EEA* to the nine federal environmental statutes it amends. Footnotes referencing the *AEPA*, *CNMCAA*, *CNPA*, *CWA*, *CEPA 1999*, *IRIA*, *MBCA*, *SSLMPA* and *WAPPRIITA* will be used to discuss these laws as they existed prior to the *EEA* (prior to 10 December 2010 in most cases).

² *Criminal Code*, RSC 1985, c C-46, ss 718-718.21.

³ *Ibid.*

⁴ *R v Kenaston Drilling (Arctic) Ltd* (1973) 41 DLR (3d) 252 (NWT SC). See also *R v United Keno Hill Mines Ltd* (1980) 10 CELR 43 at para 6, 1 YR 299 (Yuk Terr Ct) [*United Keno*]; *R v Terroco Industries Ltd*, 2005 ABCA 141 at para 34, 367 AR 1 [*Terroco*].

⁵ See e.g. *R v Corner Brook Pulp and Paper Ltd* [2010] NJ No 206 at para 15 (available on CanLII) [*Corner Brook*].

informed how these overarching considerations should be interpreted or applied, such as: 1) the culpability of the offender, 2) the offender's criminal record, 3) whether the offender has demonstrated remorse, 4) the nature of harm to the environment, 5) the size and wealth of the offender, 6) any attempts to comply with legislation, and 7) any profits realized.⁶

Generally speaking, the approach of the courts has been to evaluate the circumstances relevant to each factor and to vary the amount of the fine depending on whether the factor is determined to be aggravating, mitigating or simply neutral.⁷ However, the interpretation of, or importance assigned to each factor or objective was not always consistent.⁸ The amendments made by the *EEA* address these issues, identifying the overarching purpose and main objectives of environmental sentencing, codifying sentencing factors, and taking a firm position on how these factors should be applied.⁹

Fundamental Purpose of Sentencing under the *EEA*

Under the *EEA*, the fundamental purpose of sentencing is to contribute to respect for environmental laws through the imposition of just sanctions, which have as their objectives deterrence, denunciation, and clean-up/restoration.¹⁰ This essentially codifies the objective of protecting the environment or the public developed in the jurisprudence and restates the objectives set out in the *Criminal Code* that are used most often in environmental sentencing.¹¹ The amendments made by the *EEA* make it clear that respect for environmental laws, and thus protection of the environment, is the overarching purpose of sentencing, rather than one objective of many to be balanced on a case by case basis.

Principles of Sentencing and Aggravating Factors under the *EEA*

The amendments made by the *EEA* also require the courts to consider increasing fines to reflect, not only each aggravating factor associated with the offence, but also the seriousness of each factor. The *EEA* amendments provide a non-exhaustive list of aggravating factors:

- (a) the offence caused damage or risk of damage to the environment or environmental quality;

⁶ *United Keno*, *supra* note 4 at paras 11-37. See also *Terroco*, *supra* note 4 at paras 34-64.

⁷ See e.g. *R v Domtar* [1998] OJ No 6408 at para 11.

⁸ *Ibid* at paras 4, 12, 28. Compare *Corner Brook*, *supra* note 5 at para 15.

⁹ Note that ss 48, 102, 122 of the *EEA* are not yet in force. These provisions amend the sentencing provisions under the *MBCA*, *CWA*, and *WAPPRITA*.

¹⁰ *EEA*, *supra* note 1, ss 12, 25, 37, 48, 81, 93, 102, 114, 122.

¹¹ *Ibid*. See also *supra* note 2.

- (b) the offence caused damage or risk of damage to any unique, rare, particularly important or vulnerable component of the environment;
- (c) the offence caused harm or risk of harm to human health;
- (d) the damage or harm caused by the offence is extensive, persistent or irreparable;
- (e) the offender committed the offence intentionally or recklessly;
- (f) the offender failed to take reasonable steps to prevent the commission of the offence despite having the financial means to do so;
- (g) by committing the offence or failing to take action to prevent its commission, the offender increased revenue or decreased costs or intended to increase revenue or decrease costs;
- (h) the offender committed the offence despite having been warned by an enforcement officer of the circumstances that subsequently became the subject of the offence;
- (i) the offender has a history of non-compliance with federal or provincial legislation that relates to environmental or wildlife conservation or protection; and
- (j) after the commission of the offence, the offender
 - (i) attempted to conceal its commission,
 - (ii) failed to take prompt action to prevent, mitigate or remediate its effects, or
 - (iii) failed to take prompt action to reduce the risk of committing similar offences in the future.¹²

Of particular note, the *EEA* amendments explicitly state that the absence of a specified aggravating factor is not a mitigating factor.¹³ This is in contrast to the general approach taken by the courts, which evaluates sentencing factors as aggravating, mitigating or neutral depending on the circumstances.¹⁴

The Nature of Harm to the Environment

The first four aggravating factors set out in the *EEA* amendments¹⁵ codify elements of the factor of harm to the environment elaborated in the case law,¹⁶ making it clear that both actual harm and the potential for harm to both human health and the environment should be considered aggravating, as should damage to exceptional environments. The gravity of the damage is also aggravating.

¹² *EEA, ibid.*

¹³ *EEA, ibid.*

¹⁴ See e.g. *Terroco*, *supra* note 4 at paras 34-64.

¹⁵ *EEA, supra* note 1, ss 12, 25, 37, 48, 81, 93, 102, 114, 122.

¹⁶ *United Keno, supra* note 4 at paras 11-13; *Terroco, supra* note 4 at paras 45-51.

As the *EEA* amendments clearly state, the absence of these factors is not mitigating. This is in line with the analysis of Ritter J.A. in *Terroco* which emphasizes that a fine should not be reduced on the basis that harm did not materialize¹⁷ and is in keeping with the overarching purpose of respect for environmental laws and thus protection of the environment as well as the objective of deterrence.

Culpability

In evaluating culpability, the courts have assessed the intent of the offender, the foreseeability of the danger, and the ease with which the danger could have been avoided.¹⁸ The *EEA* codifies these elements, providing that offences committed intentionally or recklessly, or offences which could have been avoided through reasonable actions are aggravating.¹⁹ Attempts to conceal an offence are also aggravating under the *EEA* amendments.

Unlike the approach taken in the jurisprudence which states that the “more diligent the offender, the lower the range of fit sentences”,²⁰ the *EEA* amendments make it clear that the absence of intention or recklessness is not a mitigating factor. It is no longer an option, under the *EEA*, to reduce the amount of the fine on the basis that the offence was committed accidentally or innocently. This is in keeping with the overarching purpose of respect for environmental laws and thus protection of the environment as well as the objective of restoration.

Previous Criminal Record and Past Involvement with the Authorities

Under the *EEA*, if an offender disregards the warning of an enforcement officer in committing an offence or has a history of non-compliance with federal or provincial environmental legislation, these are aggravating factors. This is essentially a codification of the jurisprudence which views this type of behaviour as prioritizing profit over compliance²¹ and supports the objectives of deterrence and denunciation.

Clean-up, Restoration and Preventative Action

The courts consider post offence actions such as clean-up and mitigation, and preventative measures through the qualified lens of remorse; they are considered to be

¹⁷ *Terroco*, *ibid* at paras 45-51.

¹⁸ See e.g. *Terroco*, *ibid* at paras 35-36.

¹⁹ *EEA*, *supra* note 1, ss 12, 25, 37, 48, 81, 93, 102, 114, 122.

²⁰ *Terroco*, *supra* note 4 at para 35.

²¹ *United Keno*, *supra* note 4 at para 36.

mitigating unless determined otherwise.²² For instance, if the harm arising from an offence was foreseeable, the courts have indicated that taking preventative measures post offence should not be viewed as mitigating. Similarly, taking clean-up measures to prevent discovery is an aggravating factor.²³

The amendments made by the *EEA* take a different approach, stating that the failure to take prompt action to clean-up, mitigate or to take preventative measures is an aggravating factor, and that the absence of an aggravating factor is not a mitigating factor.²⁴ In effect then, it is no longer open to the courts to reduce the amount of a fine on the basis that an offender put preventative measures in place, or engaged in clean up or mitigation after an offence. This is in keeping with the objectives of clean-up and restoration and the overarching purpose of respect for environmental laws and thus protection of the environment.

Other elements of remorse considered by the courts that are not explicitly listed in the *EEA* amendments such as voluntary reporting, making an early guilty plea or cooperation with the authorities²⁵ may still be considered mitigating under the new sentencing structure.

Increased Revenue or Decreased Costs

Under the *EEA*, if revenue is increased or costs are decreased as a result of an offence, this is an aggravating factor triggering higher fines.²⁶ This is a codification of the existing jurisprudence which states that offenders should not acquire an economic advantage over those that comply with the law. In *Terroco*, Ritter J.A. considered this to be an element of both specific and general deterrence.²⁷ The amendments made to the *EEA* also state that the intention to increase revenue or decrease costs as a result of an offence is an aggravating factor.²⁸

Generally speaking then, the *EEA* amendments reinterpret the sentencing factors elaborated by the courts as aggravating factors, limiting options to reduce the amount of a fine on the basis of mitigating factors such as accidental commission of an offence or prompt clean-up action. In so doing, the *EEA* amendments emphasize the importance of the overarching purpose of respect for environmental laws and thus protection of the environment and the importance of the objectives of deterrence, denunciation and clean-

²² *R v Northwest Territories Power Corp*, 2011 NWTTC 3 at paras 36-37 [*NWT Power*] (available on CanLII).

²³ *Terroco*, *supra* note 4 at paras 39-43.

²⁴ *EEA*, *supra* note 1, ss 12, 25, 37, 48, 81, 93, 102, 114, 122.

²⁵ *Supra* note 22 at paras 36-37.

²⁶ *EEA*, *supra* note 1, ss 12, 25, 37, 48, 81, 93, 102, 114, 122.

²⁷ *Terroco*, *supra* note 4 at para 63.

²⁸ *EEA*, *supra* note 1, ss 12, 25, 37, 48, 81, 93, 102, 114, 122.

up/restoration. It also clarifies the interpretation of *Criminal Code* principles such as proportionality²⁹ in the regulatory context, making it clear that while the gravity of the offence and the degree of responsibility of the offender are aggravating factors, the reverse is not true. Environmental offences are generally speaking, regulatory in nature, designed to prevent harm to the environment and not requiring proof of harm to ground the offence. As such, neither lack of actual harm nor lack of intent on the part of the offender should be used to lower fines.

2. FINES

Prior to the *EEA*

In their 1985 study paper for the Law Reform Commission of Canada entitled *Sentencing in Environmental Cases*, John Swaigen and Gail Bunt discussed the problems inherent in using the same fine structure to address a wide range of offences encompassing an equally wide range of actions or causes, consequences, and offenders. They found that a one size fits all approach to fines exerted a downward pressure on fines as higher fines would be reserved for the most egregious offences and/or for those with the greatest capacity to pay. They argued that tailored fines, distinguishing between offences of varying severity or between offenders with varying abilities to pay, could help address the issue of appropriate fines.³⁰

Prior to the introduction of the *EEA*, the nine environmental Acts amended contained their own distinct fine regime. Within these Acts, the maximum fine available ranged from \$500 to \$300,000 on summary conviction, and from \$5,000 to \$1,000,000 on indictment. Minimum fines were only provided in one instance under subsection 13(1.1) of the *MBCA*. In five of the Acts, the same fine range would necessarily apply to any offence regardless of the severity of the offence or the nature of the offender, subject only to decision to prosecute summarily or by indictment. However, three Acts provided for different fine ranges depending on the type of offender and one provided for different fine ranges depending on the severity of the offence.³¹

The pre-*EEA* fine regimes display many of the problems identified by Swaigen and Bunt: 1) they contain low maximum fines that fail to reflect the seriousness of environmental offences, 2) they set out fine ranges that apply to a broad range of offenders with diverse financial capacities, and 3) the fine ranges apply to a broad range of offences that can be contravened by a broad range of activities having a broad range of consequences.

²⁹ *Supra* note 2, s 718.1.

³⁰ John Swaigen & Gail Bunt, *Sentencing in Environmental Cases: A Study Paper Prepared for the Law Reform Commission of Canada* (Ottawa: Law Reform Commission of Canada, 1985) at 1-7, 24-25.

³¹ *AEPA*, *supra* note 1, s 50; *CNMCAA*, *supra* note 1, s 24; *CNPA*, *supra* note 1, ss 24-27; *CWA*, *supra* note 1, s 13; *CEPA 1999*, *supra* note 1, ss 272-274; *IRIA*, *supra* note 1, s 5; *MBCA*, *supra* note 1, s 13; *SSLMPA*, *supra* note 1, s 20; *WAPPRIITA*, *supra* note 1, s 22.

EEA Amendments

The *EEA* addresses these issues; it standardizes fines across all nine Acts, increasing maximum fines and creating distinct fine levels for different types of offender and for different types of offences.³²

Types of Offender

The *EEA* amendments establish different fine ranges for three categories of offender: individuals, small revenue corporations, and other persons, allowing the fine to be tailored to reflect the fact that the specific deterrence appropriate in a given situation is related to the financial capacity of the offender. In effect, the amendments made by the *EEA* supersede the sentencing factor of size and wealth of the offender elaborated in the jurisprudence, essentially dictating what fines constitute “more than a slap on the wrist but less than a fatal blow”.³³

Nature of Offence

The *EEA* amendments also establish different fine ranges for two categories of offence. Designated offences that involve “direct harm or risk of harm to the environment, or obstruction of authority”³⁴ are subject to a fine range characterized by mandatory minimums and higher maximums. All other offences are subject to a fine range characterized by lower maximum fines.³⁵ This allows the fine to be tailored based on the seriousness of the offence, reflecting the principle of proportionality which states that a sentence should be proportional to the gravity of the offence.³⁶

The *EEA* also recognizes that in certain circumstances, and despite the gravity of the offence, an offender may not have the financial capacity to pay the required minimum fine for designated offences. The amendments made by the *EEA* provide a safety valve for these situations, allowing the court to impose a lower fine if it is satisfied that the mandatory minimum fine would cause undue financial hardship.³⁷

In order to be subject to mandatory minimum fines and higher maximum fines, an offence must be “designated”. Statutory provisions of the nine Acts amended by the *EEA* are designated in the Acts themselves, whereas regulatory provisions must be designated

³² *EEA*, *supra* note 1, ss 12, 24, 33-35, 48, 72, 93, 102, 114, 122 (note that ss 48, 102, 122 of the *EEA* are not yet in force. These provisions amend the fine regimes under the *MBCA*, *CWA*, and *WAPPRIITA*).

³³ *Terroco*, *supra* note 4 at para 60.

³⁴ Regulatory Impact Analysis Statement, C Gaz 2012.I.1566 (*Regulations Designating Regulatory Provisions for Purposes of Enforcement (Canadian Environmental Protection Act, 1999)*).

³⁵ *EEA*, *supra* note 1, ss 12, 24, 33-35, 48, 72, 93, 102, 114, 122.

³⁶ *Criminal Code*, *supra* note 3, s 718.1.

³⁷ *EEA*, *supra* note 1, ss 12, 25, 37, 48, 72, 93, 102, 114, 122.

in regulations under those Acts. At this time, only regulations under *CEPA 1999* are in force. Regulations under the *MBCA* and the *CWA* are in development and were published in the *Canada Gazette*, Part I in December 2012.³⁸

The resulting fine ranges are reflected in the table below:

| Offender | Type of Offence ^a | Summary Conviction | | Indictment | |
|----------------------------|------------------------------|--------------------|-------------|------------|-------------|
| | | Min | Max | Min | Max |
| Individual | Designated | \$5,000 | \$300,000 | \$15,000 | \$1,000,000 |
| | Other | N/A | \$25,000 | N/A | \$100,000 |
| Small Revenue Corporation* | Designated | \$25,000 | \$2,000,000 | \$75,000 | \$4,000,000 |
| | Other | N/A | \$50,000 | N/A | \$250,000 |
| Other Persons** | Designated | \$100,000 | \$4,000,000 | \$500,000 | \$6,000,000 |
| | Other | N/A | \$250,000 | N/A | \$500,000 |

* and ships and vessels under 7 500 tonnes deadweight.

** and ships and vessels of 7 500 tonnes of deadweight or over.

^a Note that the *Canada National Parks Act* does not follow this model as it already provided for different fines based on the severity of the offence, however, all other aspects of its fine regime reflect the amendments made under the *EEA*.

These fines are substantially higher than those that existed prior to the introduction of the *EEA*. Further, minimum and maximum fines double for second or subsequent offences, reflecting the seriousness of harm to the environment and helping to ensure that the overarching objectives of sentencing — deterrence, denunciation, and clean-up/restoration — are achievable.

3. OTHER SENTENCING TOOLS

All the statutes amended by the *EEA*, except the *IRIA*, contained court order powers authorizing the court to order an offender to take certain measures as part of sentencing. However, the range of court order options varied greatly between statutes, with *CEPA 1999* containing the broadest range of powers. The *EEA* amendments standardize court order powers across all nine statutes, ensuring that courts have the same tools for creative

³⁸ *EEA*, *ibid*, ss 12, 24, 33, 48, 72, 93, 102, 114, 122; *Regulations Designating Regulatory Provisions for Purposes of Enforcement (Canadian Environmental Protection Act, 1999)*, SOR/2012-134; *Regulations Concerning the Designation of Regulatory Provisions for Purposes of Enforcement (Canada Wildlife Act)*, C Gaz 2012.I.3415; *Regulations Concerning the Designation of Regulatory Provisions for Purposes of Enforcement (Migratory Birds Convention Act, 1994)*, C Gaz 2012.I.3420.

sentencing under each statute. The *EEA* amendments also introduce new court order powers, including certain mandatory powers.

Mandatory Sentencing Powers

Prior to the introduction of the *EEA*, the courts had the discretion, under five of the nine Acts, to order an offender to pay an additional fine equal to the court's estimation of any property, benefit or advantage accrued as a result of the offence.³⁹ Under the *EEA*, this court order power is extended to all nine Acts and is mandatory. This fine is in addition to any other fine imposed under the *EEA* and may exceed any maximum fines imposed.⁴⁰ This requirement will help ensure that offenders do not obtain an economic advantage by committing the offence, in keeping with the sentencing objective of deterrence.

The *EEA* amendments also require the court to order corporate offenders with shareholders to notify their shareholders of the facts relating to the offence and the details of the punishment imposed, supporting the objective of deterrence.⁴¹ This is in line with the view taken by the Alberta Court of Appeal in *Terroco* that publicizing the facts relating to an offence and the punishment imposed might act as a greater deterrent to large corporations than the imposition of a fine.⁴²

Discretionary Court Order Powers

The *EEA* introduced three new court order powers across all nine acts amended by the *EEA*, giving the courts the authority to require an offender: 1) to pay the Crown an amount of money for the purpose of promoting the conservation and protection of the environment, 2) to surrender any permit or authorization issued under the Act in question to the Minister, and 3) to refrain from applying for any new permit or authorization under the Act in question.⁴³ While the first power can be seen as a broad tool to promote the purposes of environmental legislation and the principle of protection of the environment, the remaining powers are much more targeted, striking directly at an offender's ability to undertake actions requiring a permit under a given statute. The deterrent effect of these powers should not be underestimated as they have the ability to prevent an offender from engaging in a range of activities from hunting migratory birds to disposal at sea.

³⁹ *AEPA*, *supra* note 1, ss 61; *CWA*, *supra* note 1, s 13(5); *CEPA 1999*, *supra* note 1, s 290; *MBCA*, *supra* note 1, s 13(5); *WAPPRIITA*, *supra* note 1, s 22(5).

⁴⁰ *EEA*, *supra* note 1, ss 12, 25, 37, 48, 72, 93, 102, 114, 122 (note that ss 48, 102, 122 of the *EEA* are not yet in force. These provisions introduce or amend the mandatory court order powers under the *MBCA*, *CWA*, and *WAPPRIITA*).

⁴¹ *Ibid.*

⁴² *Terroco*, *supra* note 4 at para 57.

⁴³ *EEA*, *supra* note 1, ss 17, 27, 39, 49, 85, 93, 103, 114, 122.

The *EEA* also modifies and harmonizes existing court order powers across all nine Acts, essentially modifying and reproducing the powers set out in *CEPA 1999* in the other eight Acts as appropriate.⁴⁴ These powers include options to monitor or prevent harm to the environment through directions to carry out environmental effects monitoring, to implement an environmental management system, or to have an environmental audit conducted. Other options are designed to denounce the offender's conduct and to deter the offender from reoffending such as the ability to direct the offender to notify those aggrieved or affected, or to publish the facts of the offence and punishment imposed. Still other authorities are designed to support the objectives of clean-up and restoration by providing the courts with the ability to direct the offender to pay any person for the cost of remedial or preventative actions taken in response to an offence.⁴⁵

Taken together, the *EEA* amendments have increased the strength and scope of the courts' order powers, with a focus on the three objectives of sentencing — deterrence, denunciation, and clean-up/restoration.

CONCLUSION

While it is still too early to evaluate the success of the *EEA*, taken altogether it constitutes a fundamental reshaping of the federal environmental sentencing landscape, providing a consistent procedural framework against which the courts can determine appropriate sentences and militating towards higher fines and a greater use of court order powers.

1. Sentencing: The amendments made by the *EEA* codify and clarify the environmental sentencing context, identifying the overarching purpose and main objectives of environmental sentencing as well as key aggravating factors. This resolves some of the tension seen in the jurisprudence regarding which objectives or principles are most important. The amendments made by the *EEA* also codify the sentencing factors developed in the jurisprudence to assess the amount of a fine, reformatting them as aggravating factors, and expressly stating that the absence of an aggravating factor is not a mitigating factor. Clearly then, it is no longer open to courts to reduce the amount of a fine due to the existence of mitigating factors, unless the mitigating factor in question can be distinguished from the list of aggravating factors set out under the *EEA*.

2. Fines: The *EEA* restructures and standardizes the fine regimes across all nine Acts, eliminating all-purpose fine ranges and replacing them with tailored fine regimes that distinguish between different types of offender and offence. These changes reflect differences in offenders' ability to pay as well as the wide range of offences and harms associated with environmental offences and will provide the courts with a structured

⁴⁴ Note that s 122 of the *EEA* is not yet in force. This provision introduces or amends court order powers under *WAPPRIITA*.

⁴⁵ *EEA*, *supra* note 1, ss 17, 27, 39, 49, 85, 93, 103, 114, 122.

framework in which to evaluate appropriate fines. These fines are also substantially higher and include mandatory minimums for certain offences, highlighting the seriousness of environmental offences.

3. Court Order Powers: The *EEA* amendments provide the courts with a greater range of court order powers, including the obligation to require corporations to notify stakeholders of the facts of the offence and the punishment and the new discretionary powers to direct offenders to surrender existing authorizations and prohibiting them from applying for new ones for a period determined by the court. These are strong deterrents, carrying with them the ability to expose offender corporations to censure and to impede the operations or actions of offenders generally.