WHO SHOULD PROSECUTE II: INTRAGOVERNMENTAL ASPECTS

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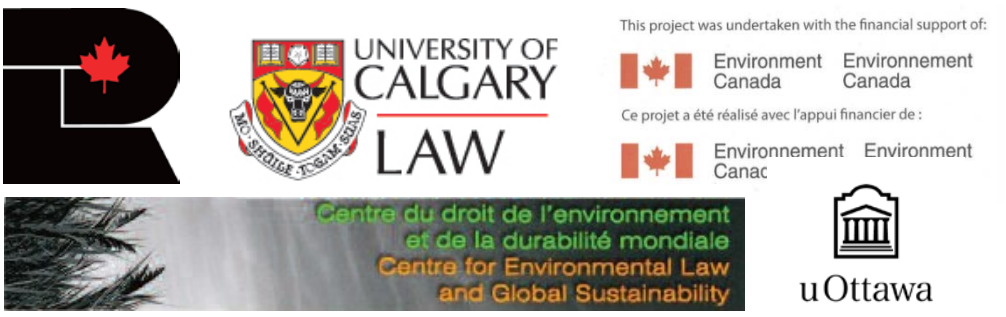

Scenario 1 ("Mexican fish oil"): On a late afternoon, the flight crew of a Transport Canada Dash 8 surveillance aircraft is conducting a routine aerial patrol above and along the shipping lanes off the west coast of Vancouver Island. The crew detects and observes an oily slick on the surface of the ocean. Proceeding to make several passes over one of the ships in the area — the M/T "Champion" — the crew further observes and records a hose connected to one of the manifolds on the port side of the ship dangling above the surface of the ocean and discharging a brownish colored oily substance, leaving a slick approximately 35 miles in length.[1]

Scenario 2 ("Mudfest"): A conservation officer observes an off-road race involving large trucks. Two hours later, he observes sediment entering into a nearby river, which turns the river from transparent to opaque. The silt is entering the river from a storm sewer connected to a ditch. Upon entering the property, the conservation officer videotapes one of the trucks from the race being washed with a fire hose. It is apparent that the sediment being washed off was running down off of the property into the ditch, into the storm sewer, and into the river. The river is a fish migratory route, a spawning habitat, and fishing grounds.[2]

INTRODUCTION

The purpose of this paper is to provide some insight into the federal environmental regime, and the prosecution of federal environmental offences in particular. After setting out in general terms some of the federal environmental offences that judges and practitioners are most likely to encounter, the paper describes the roles of the various actors, including departmental officials, prosecutors and legal services lawyers, in carrying a prosecution forward, as well as some of the considerations that influence whether and which charges are ultimately laid. While these generally fall into one of two groups, i.e. the sufficiency of the evidence and the public interest in prosecuting an offence, their content is influenced by the different perspectives brought by each of the relevant actors.

COMMON FEDERAL ENVIRONMENTAL OFFENCES

While there is now in Canada a relatively robust jurisprudence with respect to regulatory offences generally[3] and environmental offences specifically,[4] it is useful to remember

[1] This scenario is based on the facts in a recent prosecution from British Columbia — *R v Champion Shipping A/S*, Court File No 157673-1 (2013).

[2] This scenario is based on the facts in *R v Jackson* (2002), 48 CELR (NS) 259.

[3] *R v City of Sault Ste-Marie*, [1978] 2 SCR 1299 being the foundational authority establishing that regulatory offences, also referred to as public welfare offences, are not "true crimes" and generally fall within the "strict liability" category of offences.

that, unlike some other jurisdictions that have established specialized environmental courts,[5] in Canada most (if not all) environmental offences are tried in generalist provincial courts where they form only a fraction of the judiciary's caseload.[6] In addition to informing the discussion that follows, therefore, this part is intended to serve as a bit of a primer on the federal environmental regime.

While there are over thirty different federal laws that may be considered environmental in character,[7] most federal environmental prosecutions are for offences under one of the following four statutes: the *Fisheries Act*,[8] *Canadian Environmental Protection Act, 1999* (*CEPA, 1999*),[9] the *Migratory Birds Convention Act, 1994* (*MBCA, 1994*)[10] and the *Canada Shipping Act, 2001*.[11] The first three of these is described in some detail below.

The *Fisheries Act*: Habitat Protection and Pollution Prevention

Since the introduction in 1976 of the habitat protection provisions, the *Fisheries Act* has been widely considered one of Canada's most important environmental laws. The most relevant provisions for our purposes here are subsections 35(1) and 36(3). Currently, subsection 35(1) prohibits the carrying on of any work, undertaking or activity[12] that results in the harmful alteration, disruption, or destruction (HADD) of fish habitat, which the Act defines as spawning grounds and other areas (nursery, rearing, food supply and migration) on which fish depend. In *R. v. Posselt*, the Court held that "the offence is established if the Crown proves beyond a reasonable doubt that the accused interfered

[4] Indeed, whole volumes are now written on the subject, most notably Stanley Berger, *The Prosecution and Defense of Environmental Offences* (Toronto: Canada Law Book, 2012).

[5] On the merits of such courts, see Brian J Preston (Chief Justice), "Benefits of Judicial Specialization in Environmental Law: The Land and Environment Court of New South Wales as a Case Study" (2011-12) 29 Pace Envtl L Rev 396.

[6] Having searched various court websites (e.g. Ontario, British Columbia), no specific statistics on the number of environmental offences prosecuted annually were available. According to Statistics Canada, however, in 2011 there was a total of 2,277,258 violations, of which 2,121,131 were under the *Criminal Code*. Of the remaining federal violations, the vast majority were drug offences (113,144). This leaves 21,344 for *all* other federal statutes, or slightly less than 1%. See online: <http://www.statcan.gc.ca/tables-tableaux/sum-som/index-eng.htm>.

[7] Environment Canada (EC) alone "administers nearly two dozen acts either in whole or in part. It also assists with the administration of many others." EC, online: <http://www.ec.gc.ca/default.asp?lang=En&n=48d356c1-1>.

[8] RSC 1985, c F-14.

[9] SC 1999, c 33 [*CEPA, 1999*].

[10] SC 1994, c 22 [*MBCA, 1994*].

[11] SC 2001, c 26.

[12] 2012, c 19, s 142.

with the fish habitat in a way that has impaired the value or the usefulness of the habitat for one or more of the purposes described in the definition of 'fish habitat'."[13]

As for subsection 36(3), it prohibits the deposit of "deleterious substances," a defined term pursuant to section 34, in waters frequented by fish or in any place where that substance, or some resulting deleterious substance, may enter such waters. In contrast to some other regimes — including the prohibition against HADD — the jurisprudence is clear that the focus is on the substance being deposited, and whether or not it is deleterious to fish, not on the receiving environment: "What is being defined is the substance that is added to the water, rather than the water after the addition of the substance."[14]

Contravention of subsections 35(1) and 36(3) is an offence pursuant to subsections 40(1) and (2), respectively. Importantly, neither prohibition is absolute. Works, undertakings and activities resulting in HADDs can be authorized by the Minister or by regulations pursuant to paragraphs 35(2)(a)-(c). The deposit of deleterious substances can also be authorized but presently only through regulations promulgated pursuant to subsection 36(5). The *Metal Mining Effluent Regulations* (*MMER*)[15] — the primary federal regulation aimed at mining effluent and tailings disposal — are one example of such regulations.[16]

CEPA, 1999: Hazardous Substances and Disposal at Sea

CEPA, 1999 is often referred to as Canada's "flagship environmental legislation," the primary purpose of which is "to contribute to sustainable development through pollution prevention."[17] With twelve distinct parts and over 340 sections, this multifaceted legislation covers such matters as pollution reporting (Part III), pollution prevention (Part IV), controlling toxic substances (including animate products of biotechnology — Parts V and VI), and controlling pollution and managing waste, which includes marine and air pollution (Part VII). The focus here is on Part V and Part VII.

While a comprehensive explanation of Part V is well beyond the scope of this paper,[18] the basic objective of the regime is to assess, characterize and manage (as necessary) both

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[13] *R v Posselt*, [1999] BCJ No 1141 (SC) at para 23.

[14] *R v Kingston* (2004), 240 DLR (4th) 734 at para 64, citing with approval the decision of Seaton J in *R v MacMillan Bloedel*.

[15] SOR/2002-222 [*MMER*].

[16] See *R v Williams Operating Corporation*, 2008 CanLII 48148 (ON SC) for a relatively recent interpretation of the *MMER* scheme.

[17] *CEPA, 1999*, *supra* note 9, "Declaration".

[18] See Chapter 13 in Jamie Benidickson, *Environmental Law*, 3d ed (Toronto: Irwin Law, 2009), for a general overview of the toxic substances regime and Meinhard Doelle, *Canadian Environmental Protection Act and Commentary*, 2008 Edition (Markham: LexisNexis Canada, 2008) for a detailed understanding.

the approximately 23,000 substances already in use in Canada as well as new ones (whether manufactured or imported into Canada). Where, following assessment, a substance is determined to be "toxic,"[19] it is placed on the *Toxic Substances List*[20] and may then be subject to regulations by the Governor in Council (GiC) dealing with a wide range of issues including its manufacture, processing, sale, import, export and release. There are now over 25 such regulations (roughly half of all regulations under *CEPA, 1999*), regulating such chemicals as PCBs, ozone depleting substances, benzene and mercury.

With respect to marine pollution, these provisions are essentially the same as those considered in the constitutionally significant *R. v. Crown Zellerbach*,[21] and implement some of Canada's commitments pursuant to the *Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter, 1972* and the related *1996 Protocol*. Division 3 sets out the regime for disposals at sea. Paragraph 125(1)(a) prohibits disposal of a substance at sea, other than those substances incidental to or derived from the normal operations of a ship, unless it is done in accordance with a Canadian permit.

Offences under *CEPA, 1999* are set out in sections 272 to 274, each of which sets out a different fine regime (different minimums and maximums). Contravention of paragraph 125(1)(a) (disposal at sea) is an offence pursuant to both paragraphs 272(1)(a) (for persons and corporations) and 272.4(1) (for ships). Contravention of regulations, which as noted above play a primary role in the toxic substances regime, is an offence pursuant to various sections depending on the specific regulatory provisions in question. Paragraph 272(1)(h) makes it an offence to contravene any provision of regulations "designated by regulations made under section 286.1." According to the *Regulatory Impact Analysis Statement* (*RIAS*) that accompanied these regulations, their objective is to secure the imposition of the new — and higher — fine scheme[22] for offences involving "harm or risk of harm to the environment, or obstruction of authority."[23] Applying these criteria, Environment Canada (EC) identified over 80 provisions from 25 different *CEPA, 1999*

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[19] *CEPA, 1999*, s 64: "… a substance is toxic if it is entering or may enter the environment in a quantity or concentration or under conditions that (a) have or may have an immediate or long-term harmful effect on the environment or its biological diversity; (b) constitute or may constitute a danger to the environment on which life depends; or (c) constitute or may constitute a danger in Canada to human life or health."

[20] Being Schedule I to *CEPA, 1999*, *supra* note 9.

[21] [1988] 1 SCR 401.

[22] This newer and higher fine scheme was introduced into *CEPA, 1999* and eight other federal environmental statutes administered by EC — including the *MBCA, 1994* — through the 2009 federal *Environmental Enforcement Act*, SC 2009, c 14 [*EEA*]. For more information about the *EEA*, see online: <http://www.ec.gc.ca/alef-ewe/default.asp?lang=En&n=A72F150D-1>.

[23] *Regulations Designating Regulatory Provisions for Purposes of Enforcement* (*Canadian Environmental Protection Act, 1999*) (SOR/2012-134). The *RIAS* is available online: <http://gazette.gc.ca/rp-pr/p2/2012/2012-07-04/html/sor-dors134-eng.html>.

regulations, the vast majority of which regulate toxic substances.[24] Contravention of other regulatory provisions is an offence per section 272.1 and does not attract the higher fine regime.

The *Migratory Birds Convention Act, 1994*: Protecting Migratory Birds

The *MBCA, 1994* implements Canada's international obligations under the *Migratory Birds Convention*.[25] As noted by the Court in *R. v. Carriere*,[26] the preamble to the original 1916 *Convention* recognized that migratory birds "are of great value as a source of food or in destroying insects which are injurious to forests and forage plants on the public domain."[27] In amendments to the *Convention* in 1995, the parties reiterated their commitment to

> … the long-term conservation of shared species of migratory birds for their nutritional, social, cultural, spiritual, ecological, economic, and aesthetic values through a more comprehensive international framework that involves working together to cooperatively manage their populations, regulate their take, protect the lands and waters on which they depend, and share research and survey information.[28]

Common offences under the *MBCA, 1994* include illegal hunting activities[29] as well as contraventions of sections 5 and 5.1. Section 5 prohibits the unlawful possession of migratory birds or nests, including for commercial transactions. Subsections 5.1(1) and (2) are similar to subsection 36(3) of the *Fisheries Act*, in that they prohibit any person or vessel from depositing or permitting the deposit of a substance harmful to migratory birds in waters or areas frequented by migratory birds, or in a place where the substance may enter such waters or a place. The subsection 5.1(1) offence was most recently explained in the relatively high-profile prosecution of a Canadian oil sands company following the death of approximately 1,500 birds after these landed on one of its tailings ponds in the spring of 2008.[30]

Finally, because the *MBCA, 1994* applies not only to persons but also *vessels*, paragraph 5(3)(a) explicitly exempts deposits authorized by the *Canada Shipping Act, 2001*.

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[24] Examples include the *PCB Regulations*, the *2-Butoxyethanol Regulations*, the *Ozone-depleting Substances Regulations, 1998*, the *Benzene in Gasoline Regulations*, the *Pulp and Paper Mill Effluent Chlorinated Dioxins and Furans Regulations*, and the *Chlor-Alkali Mercury Release Regulations*.
[25] See Schedule II of the *MBCA, 1994*, *supra* note 10.
[26] *R v Carriere*, (2005) 272 Sask R 13 [*Carriere*].
[27] *Supra* note 25.
[28] *Ibid*.
[29] See e.g. *Carriere*, *supra* note 26.
[30] *R v Syncrude Canada Ltd*, 2010 ABPC 229 (CanLII) at paras 87-94.

THE PLAYERS

Enforcement Personnel

Except in the case of a private prosecution, enforcement personnel (variously designated) are usually the first to learn about a potential offence, either in the course of an inspection or as a result of a reporting requirement.[31]

Under the *Fisheries Act*, for example, enforcement personnel are designated by the Minister as "fishery officers" or "fishery guardians" (per section 5), or as "fishery inspectors" pursuant to section 38. Fisheries officers and guardians have the authority to enforce all *Fisheries Act* provisions,[32] while fishery inspectors are limited to matters relating to habitat protection and pollution prevention:

> 38(3) An inspector may, for a purpose related to verifying compliance with this Act, enter any place or premises, including a vehicle or vessel — other than a private dwelling-place … in which the inspector believes on reasonable grounds that
>
> (a) there is anything that is detrimental to fish habitat; or
>
> (b) there has been carried on, is being carried on or is likely to be carried on any work, undertaking or activity resulting or likely to result in
>
> (i) the alteration or disruption of fish habitat, or
>
> (ii) the deposit of a substance in water frequented by fish…[33]

Generally speaking, enforcement personnel are guided by compliance and enforcement policies that are often publicly available. With respect to the *Fisheries Act*, fishery officers and guardians are guided by the 2001 *Compliance and Enforcement Policy for the Habitat Protection and Pollution Prevention Provisions of the Fisheries Act*,[34] a joint effort by the Department of Fisheries and Oceans (DFO) and EC to promote consistency in their compliance and enforcement activities bearing in mind the bifurcation since 1978

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[31] Most environmental statutes contain provisions that require the regulated community to report spills, deposits or releases and to take remedial measures related thereto. See e.g. ss 38(5)-(6) of the *Fisheries Act*, paras 95(1)(a)-(c) of the *CEPA, 1999*, and ss 13 and 15 of Ontario's *Environmental Protection Act*, RSO 1990, c E.19.

[32] See *Fisheries Act*, *supra* note 8, ss 49-54 for the full suite of fishery officer and guardian powers.

[33] For enforcement officer and inspector powers under *CEPA, 1999*, the relevant provisions are ss 217-241. For the *MBCA, 1994*, see ss 6-9.

[34] EC, online: <http://www.ec.gc.ca/alef-ewe/default.asp?lang=en&n=D6B74D58-1> [*Fisheries Act Enforcement Policy*].

of responsibility for the environmental provisions of the Act, with section 35 remaining with DFO and subsection 36(3) administered to EC.[35]

Compliance and enforcement policies usually set out a range of potential enforcement activities (e.g. inspections, investigations, the issuance of warnings and prosecution), and then set out the criteria to be considered in response to alleged violations. For example, the above noted *Fisheries Act Enforcement Policy* lists the following criteria:

- Nature of the alleged violation;[36]
- Effectiveness in achieving the desired result with the alleged violator;[37]
- Consistently in enforcement;[38]

According to that same policy, prosecution will always be pursued where evidence establishes that:

- there is evidence that the alleged violation was deliberate;
- the alleged violator knowingly provided false or misleading information to enforcement personnel;
- the alleged violator obstructed enforcement personnel in the carrying out of their duties or interfered with anything seized under the Act;
- the alleged violator concealed or attempted to conceal or destroy information or evidence after the alleged offence occurred; or
- the alleged violator failed to take all reasonable measures to comply with a direction or an order issued pursuant to the Act.

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[35] For the *CEPA, 1999* enforcement policy, see online: <https://www.ec.gc.ca/lcpe-cepa/default.asp?lang=En&n=5082BFBE-1>.

[36] The factors to be considered here include "the seriousness of the damage or potential damage to fish habitat, the fishery resource, or the risks associated with the human use of fish; the intent of the alleged violator; whether it is a repeated occurrence; and whether there were attempts by the alleged violator to conceal information or otherwise circumvent the objectives and requirements of the habitat protection and pollution prevention provisions": *Fisheries Act Enforcement Policy*, *supra* note 34.

[37] The factors to be considered include "the alleged violator's history of compliance with the habitat protection and/or pollution prevention provisions; the alleged violator's willingness to co-operate with enforcement personnel; evidence and extent of corrective action already taken; and the existence of enforcement actions by other federal or provincial/territorial authorities": *ibid*.

[38] The *Fisheries Act Enforcement Policy* states: "Enforcement personnel aim to achieve consistency in their responses to alleged violations. Accordingly, they will consider how similar situations in Canada are being or have been handled when deciding what enforcement action to take."

While federal enforcement personnel may in some jurisdictions (e.g. Ontario) lay charges for alleged offences without first consulting with the Attorney General of Canada (AGC), the ultimate decision on whether to *proceed* with prosecution of the charges rests with the AGC as represented by the Public Prosecution Service of Canada (PPSC) (discussed in the next section).

A final note, and a relatively recent development that is relevant to the discussion here, is the nearly ubiquitous adoption of "risk-based" approaches to compliance and enforcement in the regulatory world, including in the environmental context. As a practical matter, while a prosecutor makes the ultimate determination about whether or not to proceed with a prosecution, alleged violations must first be detected. Risk-based regulation in this context has been described as:

> a targeting of inspection and enforcement resources that is based on *an assessment of the risks that a regulated person or firm poses to the regulator's objectives*. The key components of the approach are evaluations of the risk of non-compliance and calculations regarding the impact that the non-compliance will have on the regulatory body's ability to achieve its objectives. Risk-based regulation thus offers an evidence-based means of targeting the use of resources. It differs from "pyramidic" approaches by emphasizing analysis and targeting rather than a process of responsive escalation.[39]

While the *Fisheries Act Enforcement Policy* discussed above has some risk-based characteristics, especially some of the factors pertaining to the nature of the alleged violation,[40] the second and third criteria, as well as the list of facts that favor the initiation of a prosecution, are more reflective of the pyramidic approach: "A range of enforcement sanctions extending from persuasion, at its base, through warning and civil penalties up to criminal penalties."[41]

A clearer example of risk-based regulation can be found in the *Compliance and Enforcement Policy* for *CEPA, 1999*.[42] This enforcement policy states that "the schedule of inspections will be determined by *the risk that the substance or activity presents* to the environment or to human health, and by the compliance record of the individual, company or government agency."[43]

The Public Prosecution Service of Canada (PPSC)

Formerly known as the Federal Prosecution Service, a branch within the Department of Justice, the PPSC is now an independent organization that reports to Parliament through

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[39] Robert Baldwin & Julia Black, "Really Responsive Regulation" (2008) 71:1 Mod L Rev 59 at 17 [emphasis added].
[40] See footnote 36.
[41] Baldwin & Black, *supra* note 39.
[42] *Supra* note 35.
[43] *Ibid* [emphasis added].

the AGC. By a fairly wide margin, Crown prosecutors have the most decision-making authority with respect to whether a prosecution will proceed to court. In some jurisdictions (e.g. British Columbia), their approval is necessary before charges are laid. Even in those jurisdictions where pre-approval is not required, however, prosecutors retain the discretion to stay a prosecution if the circumstances do not satisfy the following criteria (relevant to both pre-approval and stays), which are also publicly available in what is referred to as the *FPS Deskbook*:

1. Is the evidence sufficient to justify the institution or continuation of proceedings?

    a. A bare *prima facie* case is not enough; the evidence must demonstrate that there is a *reasonable prospect of conviction*.

2. If it is, does the public interest require a prosecution to be pursued?

    a. The factors here will vary from case to case, but generally the more serious the offence, the more likely it is that a prosecution is in the public interest.[44]

With respect to the second criterion, the *FPS Deskbook* makes clear — and current practice bares this out — that prosecutors ought to consult with the relevant investigative agencies:

> This may be particularly important in the case of prosecutions under statutes such as the … the *Fisheries Act* … or the *Income Tax Act*, where the offence provisions serve important regulatory goals. Consideration of what the public interest requires will of necessity require consideration of how the regulatory purpose of the statute might best be achieved. If, for example, the relevant regulatory authority has a mechanism for dealing with the alleged offender such as a compliance program, Crown counsel should consider whether an alternative such as this might better serve the public interest than prosecution.[45]

Departmental Legal Services

Finally, most federal departments and agencies have their own legal services unit (LSU) often staffed by counsel from the Department of Justice. The role of legal services counsel in the prosecution context varies with the circumstances. In the past, counsel have acted as agents for the Crown in prosecutions involving their client department. In most instances, however, counsel play a supporting role, first assisting enforcement personnel in assessing an alleged violation and then, if charges are laid, assisting the Crown prosecutor in understanding the relevant provisions (as necessary) and the client department's objectives in the prosecution. This is especially the case on appeal, where

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[44] These criteria, as well as other useful information about the PPSC's role in the Canadian legal system, are publicly available online: <http://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/index.html> [*FPS Deskbook*].

[45] *Ibid*.

the primary concern may not be directly related to the specific violation at issue but rather an important question of law, such as the correct interpretation of a key provision or complex regulatory scheme.

APPLICATION

Which Shoe Fits Best?

As noted above, amongst the primary considerations for determining whether to proceed with a prosecution is whether the evidence demonstrates a reasonable prospect of conviction.[46] As the two scenarios set out at the outset of this paper make clear, however, occasionally multiple violations may be at play.

With respect to the Mexican fish oil scenario, and bearing in mind the discussion in Part II, potential offences include contravention of *CEPA, 1999* (para. 125(1)(a) — unlawful disposal at sea) and the *MBCA, 1994* (s. 5.1(1) — deposit of a substance harmful to migratory birds), both of which are administered by EC. With respect to the second scenario, Mudfest, both the subsection 35(1) prohibition against HADD (administered by DFO) and the subsection 36(3) prohibition against the deposit of a deleterious substance (administered by EC) are on their face applicable.

In such instances, prosecutors may properly be influenced by strategic considerations. With respect to the Mudfest scenario, for example, an experienced prosecutor would know that in order to secure a conviction for a HADD, the evidence must demonstrate — beyond a reasonable doubt — that some identifiable habitat was actually harmfully altered, disrupted or destroyed. Though by no means impossible, such site-specific harm is often difficult to prove and generally requires expert evidence.[47] In order to secure conviction for contravening subsection 36(3), on the other hand, the evidence must simply show that the substance being deposited is deleterious to fish when deposited into *any* water. The choice may further be simplified where judges in previous cases have taken judicial notice of some element of the offence, e.g. that a particular substance is a deleterious substance, as they have in the case of silt.[48]

Departmental Policies and Priorities

In the regulatory context — and the environmental context in particular — determining whether a prosecution is in the public interest is very much an exercise in cost-benefit

[46] *Ibid.*

[47] For a recent case, see *R v Northwest Territories Power Corp*, 2011 NWTTC 3 at para 89: "The difficulty of proving an ascertainable and quantifiable harm is present in most environmental cases …."

[48] *R v Jourdain*, [1999] BCJ 1186: "It is now trite law that silt and sand can be a deleterious substance to fish habitat."

analysis (CBA). Simply put, the gathering of evidence and its presentation in court, which includes the preparation of witnesses, can be costly endeavors. A department or agency may not feel justified in incurring such costs where the violation is not considered a significant risk (under a risk-based approach) — even where the available evidence suggests a reasonable prospect of conviction. In the Mexican fish oil scenario, for example, it is worth recalling that the occurrence was first observed by a Transport Canada (TC) flight crew. TC also has a mandate with respect to ship pollution under the *Canada Shipping Act, 2001*. Nevertheless, charges were laid under *CEPA, 1999*. One possible explanation is that TC did not consider a prosecution under its legislation to be necessary or useful in achieving its mandate in this context. While such views are theoretically not binding on a prosecutor, proceeding with a prosecution is difficult if the necessary evidence supporting a charge is not collected at the time.

That being said, most federal departments with an environmental protection mandate have entered into information sharing arrangements with other departments, such as the National Aerial Surveillance Program (NASP) operated by TC that detected the Mexican fish oil incident. The NASP crew in that case informed EC of the incident, which then conducted its own follow up and determined that the accused likely violated the disposal at sea provisions of *CEPA, 1999*. As another example, the *Deposit Out of the Normal Course of Events Notification Regulations*[49] under the *Fisheries Act* designate both provincial and federal officials for the purposes of spill notification, a system that ensures the dissemination of knowledge about pollution events to both federal and provincial officials. Such arrangements increase the chances that at least one agency will consider a prosecution to be in the public interest.

[49] SOR/2011-91.