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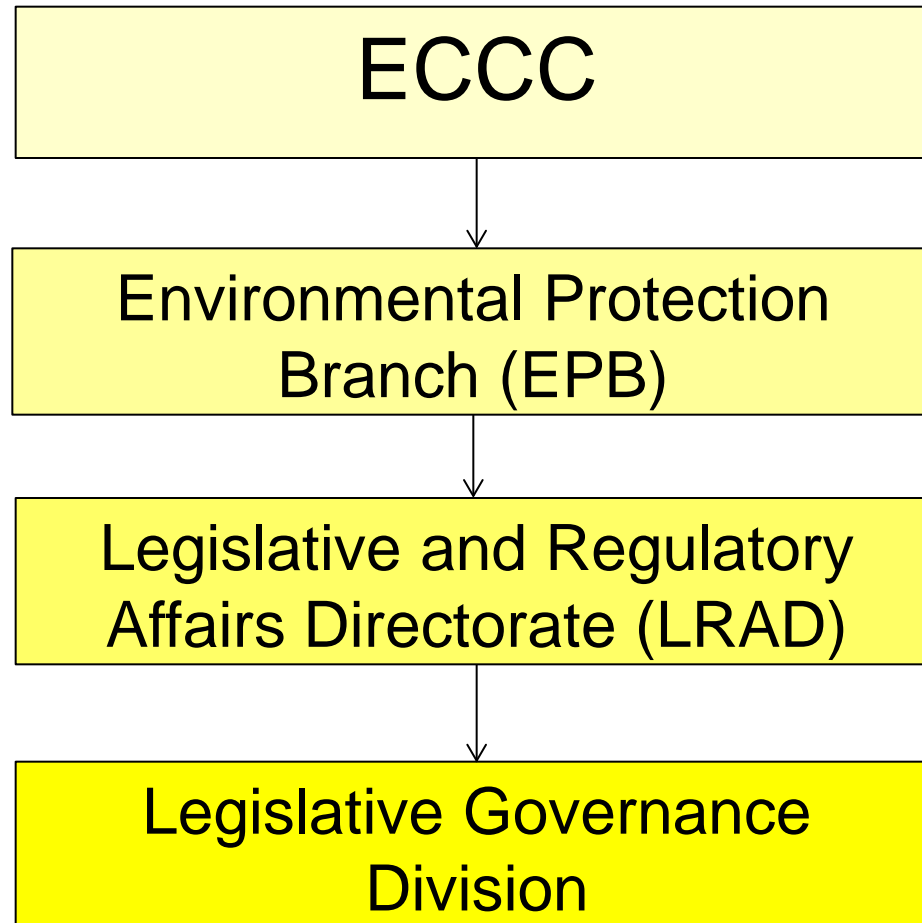
The AMPs regime under the *Environmental Violations Administrative Monetary Penalties Act*

**Canadian Institute of Resources Law Symposium
Environment in the Courtroom (VII): Enforcement Issues in Canadian
Wildlife Protection**

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3 March 2018

Legislative Governance Division



Legislative Governance Division

- Acts as ECCC's focal point for law reform, including government bills as well as private members bills affecting ECCC legislation or mandate
 - Led the implementation of the *Environmental Enforcement Act* and *Environmental Violations Administrative Monetary Penalties Act* development of associated regulations (2007 - June 2017)
- Manages the on-line registries established to facilitate access to documents relating to the *Canadian Environmental Protection Act, 1999* (CEPA) and the *Species at Risk Act*.
- Acts as the Secretariat for CEPA National Advisory Committee
- Prepares annual reports for five statutes and ensures they are available online



Overview

1) Background

- *Environmental Enforcement Act and Environmental Violations Administrative Monetary Penalties Act (EVAMPA)*

2) AMPs Regimes – Common Features

3) AMPs Regime under EVAMPA

- *Environmental Violations Administrative Monetary Penalties Regulations*
 - Designation
 - Baseline penalties
 - Aggravating factors
 - Penalty amounts
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Background

- In 2009, the *Environmental Enforcement Act*:
 - Strengthened and harmonized enforcement regimes in nine acts under the responsibility of the Minister of Environment and Climate Change
 - Created a new enforcement tool – administrative monetary penalties (AMPs) – through the enactment of EVAMPA
- EVAMPA came into force in December 2010 and sets out the framework for the establishment of a fair and efficient AMPs regime.



AMPs Regimes – Common Features

- AMPs are:
 - Monetary penalties issued for violations of the law. They encourage compliance by providing a financial disincentive to wrong-doing
 - Civil and administrative in nature, issued by an administrative official and typically reviewable by an administrative body
 - An increasingly common feature of federal and provincial enforcement regimes
- AMPs add:
 - Another tool to the enforcement toolkit leading to more effective enforcement overall
 - For example, where a warning letter is insufficient to promote compliance but the infraction does not warrant prosecution



AMPs Regime under EVAMPA

- EVAMPA sets out key features of the AMPs regime:
 - Purely administrative: no possibility of imprisonment, cannot AMP and prosecute for same violation, due diligence defence is not available
 - Maximum penalties: \$5000 for individuals; \$25000 for other persons, ships, vessels
 - Liability of corporate directors/officers: those who directed, authorized, assented to, acquiesced in or participated in a violation are liable to an AMP
 - Reviews: alleged violator may request a review of the facts of the alleged violation and/or the penalty amount by the Chief Review Officer
 - Environmental Damages Fund: all revenue from AMPs is credited to the EDF
- Regulations are required to operationalize the AMPs regime by:
 - Designating provisions for which an AMP may be imposed in response to a violation
 - Establishing a method of calculating the amount of the penalty
 - Setting out other procedural details, such as service of documents



AMPs Regulations: Background and Designation

- The *Environmental Violations Administrative Monetary Penalties Regulations* (AMPs Regulations) came into force on June 2, 2017.
- The AMPs Regulations designate violations under six Acts (and associated regulations) administered by ECDC, including the following conservation laws:
 - *Canada Wildlife Act*
 - *Wildlife Area Regulations*
 - *Migratory Birds Convention Act, 1994*
 - *Migratory Birds Regulations*
 - *Migratory Bird Sanctuary Regulations*
 - *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*
 - *Wild Animal and Plant Trade Regulations*



AMPs Regulations: Baseline penalties

- Each designated violation is classified as either Type A, B, or C based on the regulatory significance of the violations:
 - **Type A: less serious, usually administrative**
 - E.g. Failure to possess permit while hunting
 - **Type B: more serious, risk of environmental harm or obstruction of authority**
 - E.g. Hunting or fishing in a wildlife area
 - **Type C: most serious, inherently harmful**
 - E.g. Depositing substance harmful to migratory birds in an area frequented by migratory birds
- The baseline penalty amount for a Type A, B or C violation will be different depending on whether the violator is:
 1. An individual; or
 2. Any other person (e.g. a corporation or government department), ship or vessel.



AMPs Regulations: Aggravating factors

- The AMPs Regulations set out three aggravating factors:
 - History of non-compliance
 - Environmental harm
 - Economic gain
- If any of these aggravating factors apply to a violation, a set amount is added to the baseline penalty amount.



AMPs Regulations: Schedule 4 – Penalty amounts

Identity of Violator	Baseline penalty		Aggravating Factors				Max.
			History of non-compliance	Harm	Economic gain		
					permits	other	
Individual (max: \$5K)	A	\$200	+\$600	+\$300	+\$50	+\$200	\$1,300
	B	\$400	+\$1,200	+\$600	+\$100	+\$400	\$2,600
	C	\$1,000	+\$3,000	N/A	+\$250	+\$1,000	\$5,000
Other person, ship/vessel (max:\$25k)	A	\$1,000	+\$3,000	+\$1,500	+\$250	+\$1,000	\$6,500
	B	\$2,000	+\$6,000	+\$3,000	+\$500	+\$2,000	\$13,000
	C	\$5,000	+\$15,000	N/A	+\$1,250	+\$5,000	\$25,000



AMPs Regulations: Operational considerations

- AMPs Policy Framework document is published on ECCC's website
- ECCC wildlife officers enforcement officers can issue a notice of violation (NOV) where they have reasonable grounds to believe a violation has been committed
 - NOV can be issued "on-the-spot" like a ticket, or up to two years on which the subject matter of the violation arose
 - NOV sets out key details such as the facts surrounding the violation and the penalty amount
- Alleged violator has 30 days to request a review by the Chief Review Officer
- AMPs will be one more tool in the enforcement toolbox
 - AMPs do not replace other enforcement measures (warning letter, compliance order, prosecution, etc.), but are intended to supplement the range of options currently available
 - Wildlife enforcement officer has discretion to choose the best enforcement measures to bring the violator back into compliance based on the individual circumstances of the case (principles set out in ECCC's Compliance and Enforcement Policies)



To learn more

- EVAMPA:
<http://laws-lois.justice.gc.ca/eng/acts/E-12.5/page-1.html>
- AMPs Regulations:
<http://laws-lois.justice.gc.ca/eng/regulations/SOR-2017-109/index.html>
- AMPs Policy Framework Document:
<https://www.canada.ca/en/environment-climate-change/services/environmental-enforcement/publications/policy-framework-administrative-penalties-act.html>
- *Environmental Enforcement Act* website:
<https://www.canada.ca/en/environment-climate-change/services/environmental-enforcement/acts-regulations/about-act.html>
- Environment Protection Review Canada:
<http://www.eprc-rpec.gc.ca/eic/site/eprc-rpec.nsf/eng/home>

