



Issue Date: June 14, 2023
Citation: *Longpre v. Canada (Environment and Climate Change)*, 2023 EPTC 6
EPTC Case No: 0023-2022
Case Name: *Longpre v. Canada (Environment and Climate Change)*
Applicant: Katherine Longpre
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 a violation of section 5(1) of the *Migratory Bird Sanctuary Regulations*, C.R.C., c. 1036, made under the *Migratory Birds Convention Act, 1994*, S.C. 1994, c. 22.

Heard: In Writing

Appearances:

Parties

Counsel/Representative

Katherine Longpre

Self-Represented

Minister of Environment and
Climate Change Canada

Paul Saunders (Counsel)

DECISION DELIVERED BY:

LESLIE BELLOC-PINDER

Overview

[1] On August 25, 2022, a domestic dog owned by Katherine Longpre (“the Applicant”) was at large on the eastern portion of Cadboro Bay Beach, which is an area within the Victoria Harbour Migratory Bird Sanctuary (“the MBS”). The dog ran toward a Great Blue Heron and it flew away.

[2] This is the incident which gave rise to two financial penalties levied upon the Applicant. The first was a \$100 fine for contravening the Capitol Regional District Bylaw No. 8556 because the dog was not on its leash when it ran at the heron. The second was a \$400 administrative monetary penalty (“AMP”) issued by the Wildlife Enforcement Officer because the incident occurred within the MBS.

[3] This proceeding relates to the second financial penalty.

[4] Based on information received from the bylaw enforcement officer, on September 7, 2023, a wildlife officer issued a Notice of Violation (“NOV”) to the Applicant for breach of Section 5(1) of the [Migratory Bird Sanctuary Regulations](#), C.R.C., c. 1036 (“the MBSR”). The Applicant asks that the Environmental Protection Tribunal of Canada (“EPTC”) review and overturn the NOV, or at least reduce the amount of the monetary penalty imposed.

[5] Any violation of the Regulations may justify the imposition of an administrative monetary penalty in an amount determined in accordance with the rules set out in the [Environmental Violations Administrative Monetary Penalties Regulations](#), SOR/2017-109 (the “*EVAMP Regulations*”). The recipient of such an administrative monetary penalty may not rely on good faith or even due diligence as a defence. This principle, as well as the limited role of the EPTC in conducting reviews, flows from the [Environmental Violations Administrative Monetary Penalties Act](#), S.C. 2009, c. 14, s. 126 (“*EVAMPA*”).

[6] The fact that an Applicant may also have been assessed another penalty arising from the same incident but based on a distinct regulatory regime does not influence the legitimacy of the NOV or its effect.

[7] For the following reasons, the Applicant’s review is dismissed and the NOV is upheld.

Facts

[8] The Applicant resides in Victoria, British Columbia. She owns a dog and sometimes walks with her pet at Cadboro Bay Beach within the MBS. Her dog has a collar to which the Applicant can attach a leash. There is no dispute that, at the time the Applicant's dog ran toward a Great Blue Heron in the MBS on August 25, 2022, the dog's collar was not attached to a leash.

[9] Assistant Bylaw Officer Brandon Cameron observed the Applicant's dog running toward the heron while not being restrained by a leash. He described the incident and his subsequent conversation with the Applicant in an Affidavit dated March 17, 2023.

[10] Officer Cameron issued a Municipal Ticket for an off-leash dog on August 25, 2022. He also contacted Wildlife Officer Justin Ziola to inform him of the violation because it involved a dog chasing a migratory bird within the MBS.

[11] Thereafter, on September 7, 2022, Wildlife Officer Ziola issued the NOV based on the information provided by Officer Cameron. The information upon which Officer Ziola relied is contained in his Affidavit dated March 6, 2023, and its accompanying Exhibit A - an AMP Brief and Disclosure Package.

[12] The Applicant submitted a request for review on September 15, 2022. She noted that the incident did not cause any serious harm, that she paid the municipal ticket promptly, and that the NOV would not have any deterrent effect because she has no history of non-compliance with environmental regulations.

Procedure

[13] The parties completed an *Agreed Statement of Facts* and set deadlines for filing written submissions. Both parties filed materials in accordance with the established timeline.

[14] I have reviewed the Request for Review, NOV, *Agreed Statement of Facts*, and Affidavits noted above. I have also considered the parties' submissions set out in their respective written Briefs. The Respondent's Brief was provided first (on April 28, 2023) as a courtesy to the Applicant since she is self-represented. The Applicant then filed her Brief (May 4, 2023) and the Respondent filed a supplementary Brief in response to the Applicant's Brief (May 15, 2023).

[15] The Applicant's Brief purports to raise a constitutional question which is not properly before the Tribunal due to non-compliance with the process set out in the *EPTC Draft Rules of Procedure* (s. 29) and the *Federal Courts Act* (s. 57). That said, the Tribunal will address the Applicant's submission related to "double jeopardy" within the analysis below.

Issues

[16] The issues are:

- (a) Whether the Applicant's dog was running at large within the MBS;
- (b) Whether it is relevant that the dog running toward the heron harmed the heron or the heron's environment;
- (c) Whether the Wildlife Officer ought to have exercised his discretion not to issue a NOV knowing that the Applicant had already been issued a municipal ticket arising from the incident; and
- (d) Whether the amount of the administrative monetary penalty has been correctly calculated or can be reduced.

Analysis

[17] The migratory birds convention is an agreement between Canada and the United States which recognizes the necessity for international cooperation to protect migratory birds from the many threats they face. The convention sets out Canada's plan to ensure conservation of the migratory bird population by regulating potentially harmful human activities within the country. One such tool is the creation of bird sanctuaries and the regulations upon which the NOV at issue in this case is based.

[18] Section 5(1) of the *MBSR* states that no person who owns a dog or cat shall permit the dog or cat to run at large in a migratory bird sanctuary.

[19] The Respondent's Brief includes a reasonable review of the interpretative principles the Tribunal must employ as it considers the phrase "run at large". The plain and ordinary meaning of the phrase "run at large" evokes the absence of restraint. Within the context of protecting birds from dogs and cats, the phrase inevitably places responsibility on owners to restrain their animals so they do not harass or annoy the birds. Consequently, a dog running in a bird sanctuary without being restrained by a leash held by an owner is running at large contrary to section 5(1).

[20] The evidence establishes, and the parties agree, that the Applicant's dog was running at large in the MBS. It is immaterial whether the dog was wearing a collar. Further, the duration of time the dog might have been off leash is not a significant fact.

[21] Contravention of subsection 5(1) of the *MBSR* is an offence contrary to the [Migratory Birds Convention Act, 1994](#) ("*MBCA*") and subject to the procedure in *EVAMPA*.

[22] Subsection 2(1) of the *EVAMP Regulations* provides that a violation of a provision

set out in column 1 of Schedule 1 to the *EVAMP Regulations* is a violation punishable under the Act. Therefore, a violation of the *MBSR* may justify the imposition of an administrative monetary penalty in an amount calculated in accordance with the *EVAMP Regulations*.

[23] Thus, in this case, the facts establishing a violation of the *MBSR* are not in dispute. The Applicant's dog was off its leash and running at large in the MBS. By permitting her dog to run at large in this place, the Applicant committed a violation of the *MBSR*. In so doing, the Applicant faces the imposition of an administrative monetary penalty.

[24] While the tribunal has no reason to doubt the Applicant's assertion that her dog was not running at large for very long within the MBS or that her dog caused no harm while doing so, these circumstances have no impact on the fact that a violation occurred.

Absence of obvious harm to a migratory bird or its environment is not an exculpatory or mitigating factor

[25] The fundamental purpose of the *MBCA* is to protect and conserve migratory birds and their nests. The Applicant argues that her dog did not harm either the bird it ran toward or any nest in the area. The evidence indicates that the bird flew away from the dog, and there is no evidence regarding nests in the area. Thus, the Applicant submits that the violation is largely notional, and the Tribunal should consider that no actual harm was done when it considers the enforceability of the AMP.

[26] This is an understandable, but vexing, position to environmental protection measures which are intended to have the broadest possible application. While an individual infraction, considered on its own, can often be characterized as insignificant or benign, the cumulative effect of every infraction is enormous and could lead directly to the environmental harm Canada seeks to minimize by implementing various environmental statutes and agreements.

[27] Sanctuaries for migratory birds require diligent and constant protection precisely because incursions are likely to be discreet and perhaps even fleeting. Perhaps due to the ephemeral nature of some bird habitats, among other reasons, harm due to such incursions is presumed and need not be proven. Enforcement activity is fortified by the statutory absolute liability regime, which demonstrates Parliament's recognition of the superordinate importance of environmental protection. Thus, it is not legally relevant whether the Applicant's dog physically touched or visibly harmed the heron it ran toward.

The Tribunal may not interfere with the officer's exercise of discretion

[28] It is well established by the Tribunal's case law that the EPTC's role is, first, to determine whether a violation alleged in a NOV has in fact occurred and, second, to determine whether the amount of the administrative monetary penalty has been correctly calculated. The EPTC has no power to review or interfere with the Minister's officers' exercise of discretion to issue a NOV in the first place.¹ Further, the EPTC has no jurisdiction to vary the amount of the penalty imposed in the notice because the scale has been established by the *EVAMP Regulations* and must be applied by the officers without variation.

[29] In this case, the Applicant submits that Bylaw Officer Cameron "worked closely together" with Wildlife Officer Ziola and infers that their communication is somehow inappropriate. The evidence does not support such an inference. Indeed, cooperation between municipal and federal law enforcement agencies is predictable in areas where their mandates and jurisdictions overlap. This does not mean, however, that one agency dictates the activities of the other.

[30] After being advised of the incident giving rise to the bylaw infraction fine levied upon the Applicant, Wildlife Officer Ziola conducted a separate investigation (based largely on information provided by Bylaw Officer Cameron). Officer Ziola could have chosen to provide the Applicant with a warning, as was done in the *Friesen* case cited by the Applicant. However, Officer Ziola instead exercised discretion to issue the NOV, drawing on training and experience to achieve an appropriate protective outcome in this matter.

[31] The Tribunal has no authority to re-examine Officer Ziola's discretion.

[32] Further, that the Applicant received two separate financial penalties flowing from two distinct regulatory offences arising from the same factual circumstance does not create the unconstitutional "double jeopardy" described in the Applicant's Brief. The Respondent's reply Brief succinctly sets out the legal test(s) which must be met to potentially challenge the applicability of the federal legislation at issue in this case, and these tests are not met on the facts before the Tribunal.

[33] First, the nature, purpose, and scope of the municipal and federal regulations which animate and support the two penalties levied against the Applicant are distinct. Second, the violations are regulatory and not criminal or punitive. While the Applicant views the quantum of the fine(s) she received as excessive and/or punitive, it is clear from the purpose and effect of AMPs that they are created to secure compliance with environmental legislation, and not to punish. The Officer's decision to assess the minimum available penalty against the Applicant in the NOV illustrates this objective. Third, the Applicant did not provide proper

¹ *Fontaine v. Canada (Environment and Climate Change)*, 2020 EPTC 5, and *Hoang v. Canada (Environment and Climate Change)*, 2019 EPTC 2

notice of the constitutional question she wished to raise concerning the validity or applicability of a federal regulation. Such notice to the federal and provincial Attorneys General is required by Rule 29 of the *EPTC Draft Rules of Procedure* and section 57 of the *Federal Courts Act* and its absence is procedurally fatal to the application.

Penalty

[34] Subsection 5(1) of the *MBSR* is a type B violation as per Schedule 1, Part 2, Division 2 of the *EVAMP Regulations*.

[35] The baseline type B violation penalties for individuals is \$400 as per Schedule 4, Column 3 of the *EVAMP Regulations*. Thus, the Applicant in this case received the minimum penalty for the kind of violation she committed, and no additional amount was assessed for any aggravating factor.

[36] The \$100 municipal bylaw infraction fine is not an amount this Tribunal would “add” to the *EVAMP Regulations* penalty, nor does this legally distinct penalty result in an excessive penalty as submitted by the Applicant.

[37] There is no error in the calculation of the administrative monetary penalty imposed on the Applicant.

Decision

[38] The request for review is dismissed. Notice of violation 9500-7463 is therefore upheld.

Review Dismissed

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