



A Discussion Paper Regarding the Environmental Fines and Sentencing Regime

10 Years Later



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Abstract

Environment and Climate Change Canada (ECCC) and Parks Canada are undertaking a review of the environmental fines and sentencing provisions under ten federal environmental Acts (the Review). The Review is required by law and will culminate in the tabling, by the Minister of Environment and Climate Change, of a report in both Houses of Parliament by December 10, 2021.

The **purpose of this paper is to inform this Review and seek your views** on whether the fine amounts and sentencing principles in these ten Acts advance all of the relevant goals and remain consistent with public values and economic and other relevant circumstances. The relevant goals set out in the Acts are deterrence against committing offences, denunciation of unlawful conduct, reinforcement of the polluter pays principle, and recovery and restoration, as the case may be in each Act (the Fundamental Purposes of Sentencing). To this end, this paper includes questions in *italics* to prompt discussion in the course of engagement. It also provides background on the *Environmental Enforcement Act* to contextualize the Review, sets out the approach to the review and includes examples of findings so far, all with a view to support the engagement process for the Review.

Written comments can be provided directly to:

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Thank you for taking the time to review this material. Your time and insights are appreciated.

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1. Introduction

1.1 Background and Scope of Review

Fueled by a growing understanding of the extent and severity of the damage caused by environmental wrongdoing and increasing demand for more severe penalties and fines for infractions, in 2010, the [*Environmental Enforcement Act*¹](#) (EEA) strengthened Canada's environmental enforcement regime. Prior to the EEA, the fine structure of many of Canada's environmental laws had remained unchanged for over 20 years, did not reflect inflation and fines imposed by courts for environmental wrongdoing often ceased to serve as strong deterrents or to denounce environmental infractions, so much so that some corporate offenders considered low fines to be a cost of doing business. The EEA modernized the fine regimes by establishing minimum penalties and increasing maximum penalties for environmental offences and providing for different fine amounts for individuals, corporations, small revenue corporations, other persons and ships or vessels. It also enhanced sentencing guidance to courts and created an administrative monetary penalties framework for environmental violations.

The EEA also added a requirement to conduct a review every ten years of specific provisions related to fines and sentencing in each of the nine Acts amended by the EEA (the Review Sections.) Although the *Greenhouse Gas Pollution Pricing Act*² (GGPPA) came into force after the EEA, Part 2 of this Act contains the same review requirement as the EEA and so it is included in this Review. The following ten Acts (the Review Acts) are therefore part of this review:

- *Antarctic Environmental Protection Act*³ (AEPA);
- *Canada National Marine Conservation Areas Act*⁴ (CNMCAA);
- *Canada National Parks Act*⁵ (CNPA);
- *Canada Wildlife Act*⁶ (CWA);
- *Canadian Environmental Protection Act, 1999*⁷ (CEPA);
- *International River Improvements Act*⁸ (IRIA);

¹ *Environmental Enforcement Act*, SC 2009, c 14 [EEA].

² *Greenhouse Gas Pollution Pricing Act*, SC 2018, c 12 [GGPPA].

³ *Antarctic Environmental Protection Act*, SC 2003, c 20 [AEPA].

⁴ *Canada National Marine Conservation Areas Act*, SC 2002, c 18 [CNMCAA].

⁵ *Canada National Parks Act*, SC 2000, c 32 [CNPA].

⁶ *Canada Wildlife Act*, RSC 1985, c W-9 [CWA].

⁷ *Canadian Environmental Protection Act, 1999*, SC 1999, c 33 [CEPA].

⁸ *International River Improvements Act*, RSC, 1985, c I-20 [IRIA].

- *Migratory Birds Convention Act, 1994*⁹ (MBCA);
- *Saguenay-St. Lawrence Marine Park Act*¹⁰ (SSLMPA);
- *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*¹¹ (WAPPRIITA); and
- *Greenhouse Gas Pollution Pricing Act* (GGPPA).

Two important Federal Acts were not included in amendments set out in the EEA: the *Species at Risk Act*¹² (SARA) and the *Fisheries Act*¹³.

The Review Sections and the section that mandates the review in each Review Act are set out in Annex 1. Annex 2 sets out a copy of the Review Sections of each of the Review Acts. Only the Review Sections are in the scope of this Review.

For context, the regulatory toolbox outlined in the Acts include a spectrum of enforcement responses, as depicted in Figure 1 below. However, the Review Sections focus only on one end of the spectrum—charges—as shown by the red circle. Within the “charge” end of the spectrum, the Review scope is limited to the sentencing stage. Nonetheless, comments on broader enforcement matters beyond fines and sentencing provisions are also welcomed as part of this engagement process.

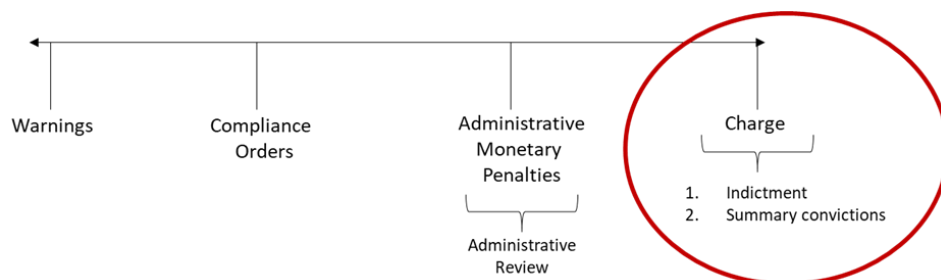


Figure 1: Continuum of Enforcement Responses

1.2 Engagement, Research and Results of the Review

This paper has been prepared to support internal and external engagement processes for the Review. The external process includes engaging with Indigenous Partners and key stakeholders in industry, environmental non-governmental organizations, academia and others in the private sector.

⁹ *Migratory Birds Convention Act, 1994*, SC 1994, c 22 [MBCA].

¹⁰ *Saguenay-St. Lawrence Marine Park Act*, SC 1997, c 37 [SSLMPA].

¹¹ *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*, SC 1992, c 52 [WAPPRIITA].

¹² *Species at Risk Act*, SC 2002, c 29 [SARA].

¹³ *Fisheries Act*, RSC 1985, c F-14.

The input gathered through these processes will be reported and, in conjunction with desk research (e.g. academic journals, case law, comparison of environmental sentencing guidelines, principles, enforcement data, and legislation from other jurisdictions), will inform the final Review Report to be tabled in each House of Parliament by December 10, 2021.

1.3 Organization

This paper has five sections, in addition to this introduction. Section 2 provides a historical baseline that led to the coming into force of the EEA. Section 3 presents a snapshot of the relevant enforcement data collected to date. The fourth section explores key national and global trends that may speak to changes in public values and economic and other relevant circumstances over the past 10 years. The fifth section sets out the main research questions that will drive the Review and sub-questions and examples of findings to date that have been included for illustrative purposes. Throughout, this paper poses several questions (set out in *italics*) to spark discussions in the course of this engagement.

2. The EEA

One of the main objectives of the EEA was the modernization of the fines and sentencing regime for environmental offences. The trigger was the growing understanding of the extent and severity of the damages that could be caused by environmental offences. The underlying consideration was that the objectives of deterrence and denunciation would be better met if court-imposed fines were high enough so that contraventions would not be considered merely costs of doing business. Thus, the EEA amendments created a fine regime that included new minimum fines and increased maximum fines. The EEA also introduced new sentencing provisions, which codified the fundamental purpose of sentencing for each Act, introduced a stronger set of sentencing principles and listed aggravating factors that must be considered by the court when determining the fine amount. It also enhanced the toolkit available to enforcement officers, including expanded use of compliance orders, created a new legislative framework for administrative monetary penalties (AMPs) and a new public registry of corporate offenders. These provisions aimed to provide courts with “goal posts” to impose higher fines and sentences that reflected the seriousness of offences.

The fine regime and prosecutorial landscape of the Review Acts, as it existed prior to the enactment of the EEA, provides a helpful context underlying the rationale for the amendments made to the EEA. For example, CEPA, AEPA, and the MBCA had the highest fines, which were \$1 million for offences where the Crown proceeded by indictment or \$300,000, where the Crown proceeded summarily. Other Acts, such as the IRIA, provided for maximum fines of \$5,000 when by indictment or \$500, when summarily.¹⁴ In the five years preceding the EEA (2003 to 2008), there were 656 prosecutions under the Review Acts, resulting in 479 convictions and 502 sentences of convictions.¹⁵ Reportedly, under CEPA there were 81 cases, under MBCA there were 246, and under WAPPRIITA there were also

¹⁴ House of Commons, Standing Committee on Environment and Sustainable Development, *Testimony*, 40-2 – No 011, 26 March 2009 (Cynthia Wright).

¹⁵ *Ibid* (“The figures do not match because often, in the same prosecution, there may be two convictions, but that gives you an idea of the number of prosecutions that ended up before the courts in the past five years. It doesn’t give any idea of the order of magnitude concerning the number of cases that were processed. These are simply the ones that resulted in prosecutions. I’d say that this is a small proportion of the total cases handled by enforcement officers in recent years”).

246.¹⁶ Furthermore, at the time, a court had never imposed the maximum fines established under CEPA; the highest fine ordered under any of the Reviewed Acts was under WAPPRIITA and it was for \$100,000.¹⁷

3. The Review Acts Today

The EEA was introduced on March 4, 2009, received Royal Assent on June 18, 2009, and came into force in three stages:

- the bulk of the EEA came into force on December 10, 2010 (other than s. 47(2) and ss. 48, 72-80, 87, 88, 101, 121 to 123 and 127);
- the provisions creating a new penalty regime under CEPA and a regulation completing that penalty regime came into force on June 22, 2012 (ss. 72-80, 87 and 88); and
- the penalty regimes of the wildlife statutes amended by the EEA and the regulations completing these penalty regimes came into force on July 12, 2017 (s. 47(2) and ss. 48, 101, 102, and 121-123).

This incremental implementation is particularly important when considering data for the CWA, MBCA, and WAPPRIITA. The amendments set out in the EEA came into force for these three Acts in 2017, five years after they were in force for CEPA, for example.

Notably, in 2015, ECCC, Parks Canada, and PPSC all changed their internal database where information on case files are recorded. Consequently, depending on the department or agency, significant changes with respect to the method and content of reporting differs from previous years. In the case of Parks Canada, for example, the change was so substantial that only data from 2015 onwards will be considered in this Review. In addition, it is important to consider that departments and agencies do not record data in the same way. These are dependent on internal policies and practices mandated by differing information management needs.

Finally, it is important to note that the Review is not a functional or operational review of enforcement activities by ECCC and Parks Canada. It will not explore whether the Review Acts and Review Sections are being effectively enforced. However, it is anticipated that the data collected for the purpose of this Review, including its internal and external engagement component, may shed light on the broader enforcement regime and/or other ECCC or Parks Canada statutes.

3.1 The Review Acts Today – Prosecutions & EDF

Turning to the Acts and the enforcement data, Figure 2 below sets out the number of charges per year from 2014 to 2019 as reported by PPSC. The total number of prosecutions for five of the Review Acts (CEPA, MBCA, WAPPRIITA, CNPA, and CWA) is 3,541. At the time of writing this engagement paper,

¹⁶ *Ibid.*

¹⁷ *Ibid.*

there have been no charges under the AEPA, IRIA, and GGPPA and no charges under the CNMCAA and SSLMPA.

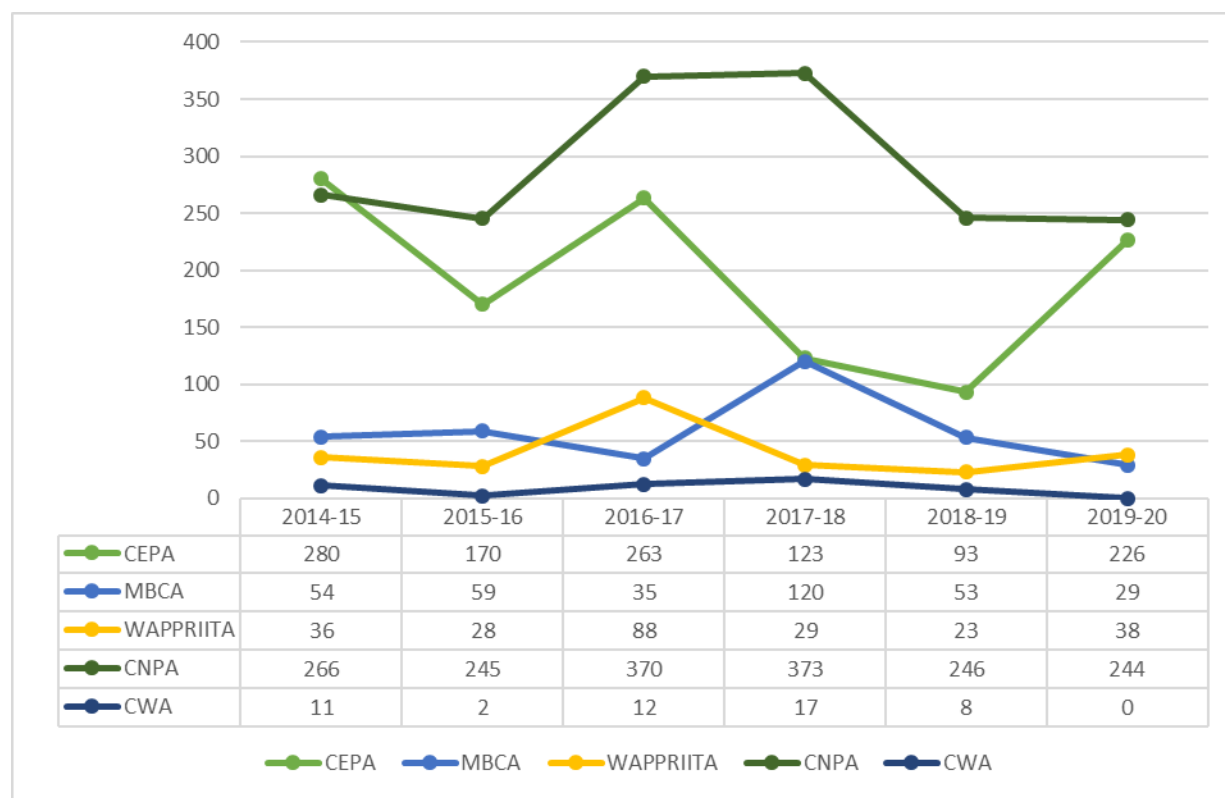


Figure 2: Number of Charges Laid per Act (2014-2019)

All Review Acts have a provision that states that all fines, other than those collected under the *Contraventions Act*¹⁸, are to be credited to the Environmental Damages Fund (EDF).¹⁹ Table 1 sets out the percentage of fines from charges that resulted in guilty pleas or that were imposed by the court after a trial, and that were directed to EDF per statute for the period 2014-2015 to 2019-2020, as reported by PPSC. Almost 50% of the fines directed to EDF were levied under CEPA, while the other Review Acts contributed smaller percentages. The remaining EDF funds flow from fines imposed under other statutes, such as the *Fisheries Act* and *SARA*.

Table 1: Percentage of Fines Directed to EDF (2014-2019)

Statute	% of EDF Funds per Act
CEPA	43%
MBCA, WAPPRIITA, CNPA, CWA ²⁰	8-9%

¹⁸ *Contraventions Act*, SC 1992, c 47.

¹⁹ See e.g. CEPA, s.294(1).

²⁰ Includes CWA, as well as other acts, such as *Canada Shipping Act*, SC 2001, c 26, and the *Arctic Waters Pollution Prevention Act*, RSC 1985, c A-12.

3.2 CEPA

The total amount of fines issued under CEPA from 2010 to 2020 is \$10,726,186, in addition to the fines issued in the *Volkswagen* Case of \$196,500,000, for a total of \$207,226,186. Below, Figure 3 shows the total fines per year issued under CEPA. The *Volkswagen* Case has been excluded for current purposes given the data becomes skewed by its high value.

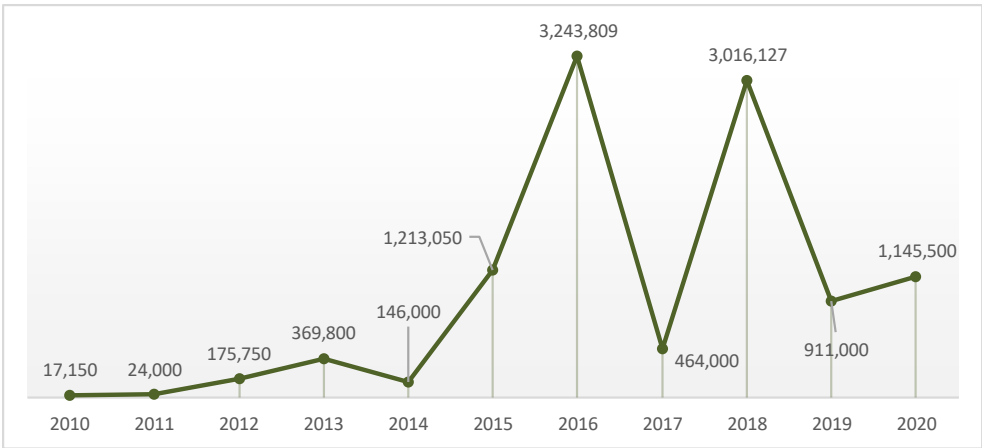


Figure 3: CEPA: Total Fines per Year (2010-2020) (excludes \$196,500,000 fine for Volkswagen)

The top 10 ten highest fines issued under CEPA are set out in Table 2. Considering that prior to the coming into force of the EEA, the highest fine under CEPA was for \$75,000, the table below shows the significant increase in fines in the past 10 years.

Table 2: CEPA Top Ten Highest Fines (2010-2020)

	Offender	Amount	Year
1	Compagnie des chemins des fers nationaux du Canada (CN)	\$1,126,627	2018
2	Tidan Inc.	\$975,000	2016
3	HBC – The Bay	\$765,000	2016
4	Les Entrepôts A.B. inc. & and individual	\$564,000	2019
5	Acklands - Grainger Inc.	\$500,000	2016
6	"Mines Seleine inc., Division de K+S SEL Windsor LTÉE; Le Groupe OCÉAN Inc. ; and 8975914 Canada Inc.	\$400,000	2020
7	Panther Industries	\$375,000	2015
8	Collingwood Prime Realty Holdings Corp & an individual	\$320,000	2018
9	GFL Environmental Inc. & individuals	\$300,000	2018
10	FortisAlberta Inc.	\$300,000	2018

3.3 Wildlife—CWA, WAPPRIITA, and MBCA

Turning to the wildlife-related Review Acts, the total amount of fines charged under CWA, WAPPRIITA, and MBCA from 2009 to 2020 is \$3,864,972. There was an expressive peak in 2018, as per the Syncrude Case set out below, and a sharp decline in 2020.

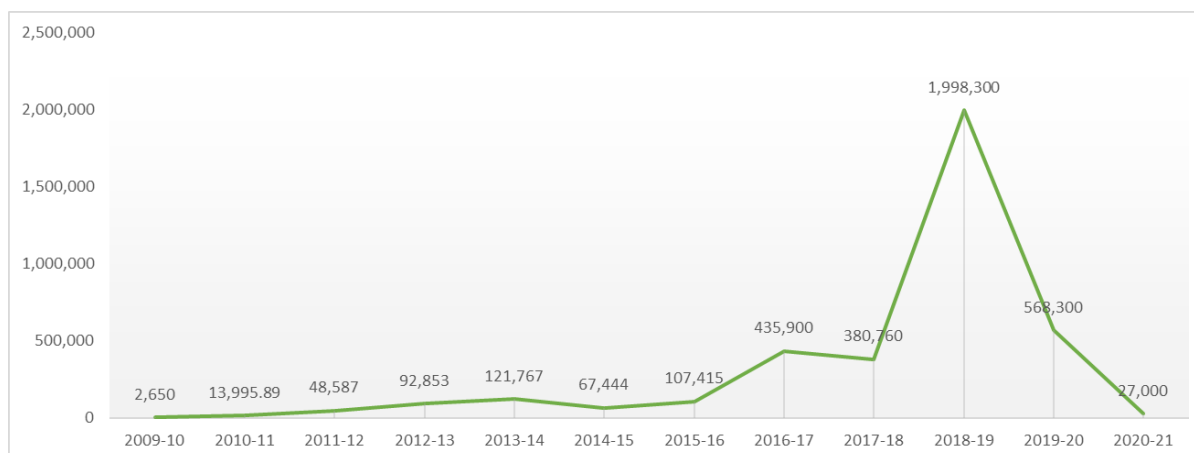


Figure 4: Wildlife-related Review Acts - Total Amount of Fines (2009-2020)

3.3.1 CWA

Figure 5 below sets out the total amount of fines per year under the CWA. The highest fine issued under the CWA was a \$300,000 fine against the Athabasca County, a municipal district in Alberta. In 2019, the County was found to have conducted industrial activity at the Meanook National Wildlife Area.

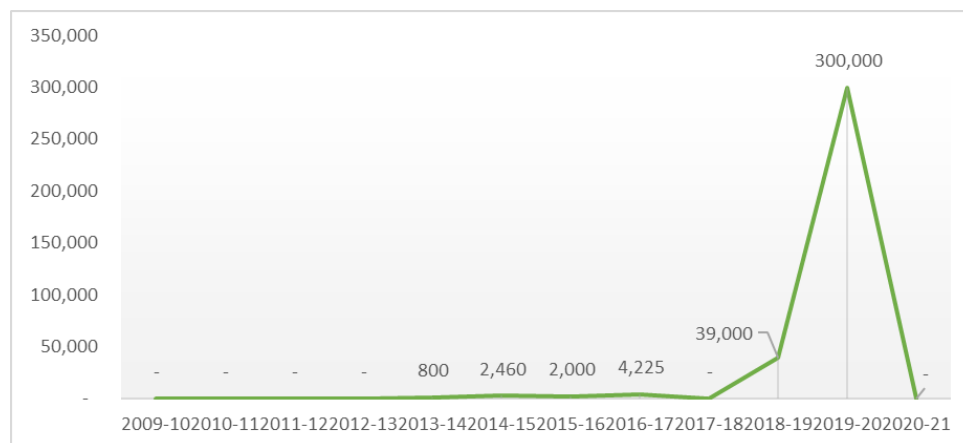


Figure 5: CWA - Total Fines per Year (2009-2020)

3.3.2 MBCA

Below, Figure 6 shows the total amount of fines per year under the MBCA. The total fines issued under the MBCA in the past ten year is \$2,662,350.00.

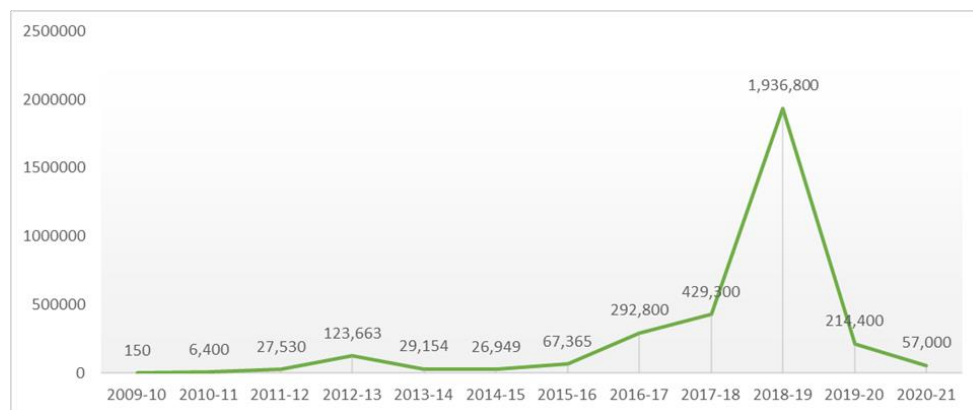


Figure 6: MBCA - Total Monetary Fines (2009-2020)

The top five highest fines issued under the MBCA are set out in Table 3. The highest fine was issued against Syncrude Canada Ltd. It pleaded guilty to violating the MBCA, following an event which lead to the death of 31 great blue herons that were exposed to bitumen at a facility in Alberta.²¹

²¹ Canada, Environment and Climate Change Canada, *Alberta Company fined \$1.775 million for violating the Migratory Birds Convention Act, 1994*, (Ottawa: ECCC, 2019).

Table 3: MBCA - Top Five Highest (2009-2020)

	Offender	Amount	Year
1	Syncrude Canada	\$1,775,000	2019
2	Painted Pony Petroleum Ltd.	\$235,000	2017
3	Husky Oil Operations	\$200,000	2019
4	Fishing Eyelander	\$35,000	2017
5	Individual	\$27,000	2018

3.3.3 WAPPRIITA

Figure 7 shows the total amount of fines per year under WAPPRIITA.

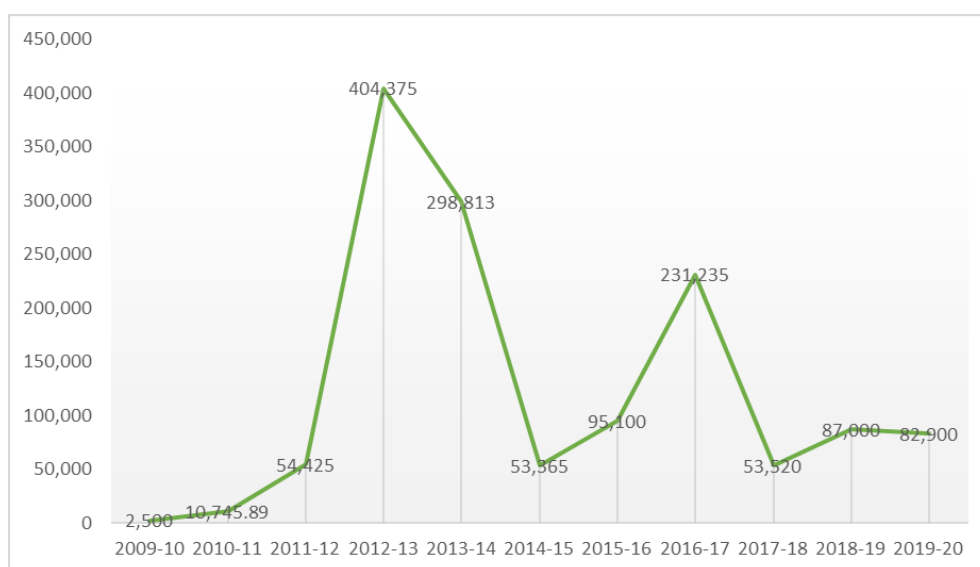


Figure 7: WAPPRIITA: Total Fines per Year (2009-2020)

Table 4 shows the top five fines issued under WAPPRIITA for 2009 – 2020. The highest fine was issued against an individual for offences that were committed during a period of seven years, and involved the Narwhal (also known as the “unicorn of the sea”). The individual also served an eight-month conditional sentence to be served in the community, including four months of house arrest. He was fined \$385,000.

Table 4: WAPPRIITA - Top Five Highest Fines (2009-2020)

	Offender	Amount	Year
1	Individual	\$385,000	2013
2	Pacific Gateway Holding Inc.	\$90,000	2021
3	Individual	\$75,000	2017
4	Pacific Gateway Holding Inc.	\$73,776	2021
5	Topwin Trading Co. Ltd.	\$50,000	2021

3.4 Parks Canada–CNPA

Under the CNPA, in the last five years, the total amount of fines per year is set out in Figure 8 below. The total of amounts levied under the CNPA in five years (2015-2020) is \$2,687,730. However, when excluding the Lake Louise Ski Resort Case of 2017 (guilty plea of felling 38 endangered Whitebark Pines and fined \$2.2 million dollars), the total amount in five years is \$487,730.

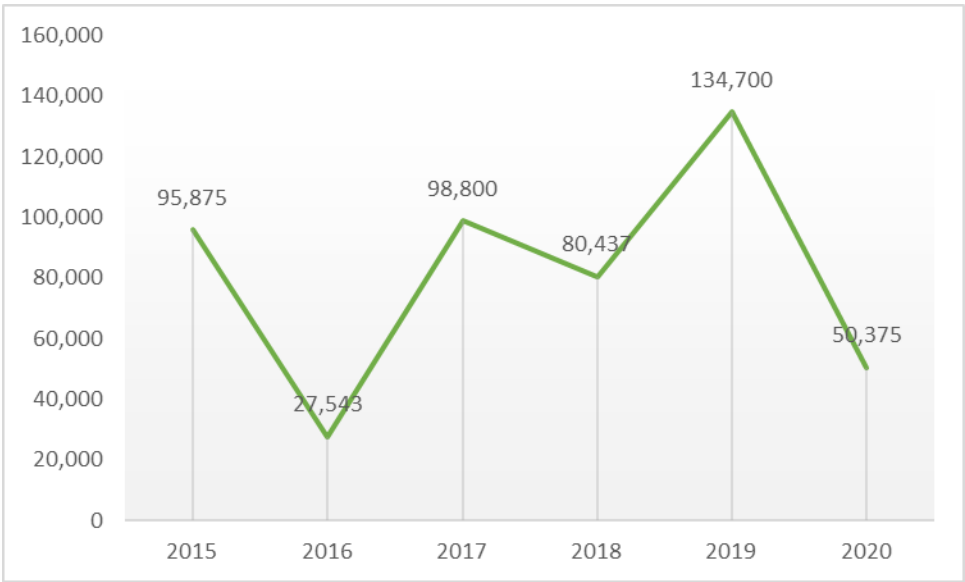


Figure 8: CNPA: Total Amount of Fines per Year (2015-2020) (excludes \$2.2M fine for Lake Louise Ski Resort)

The top five highest fines per year are set out below in Table 5, excluding the Whitebark Pines case.

Table 5: CNPA – Top Highest Fine per Year (2015-2020)

	Offender	Amount	Year
1	Individual	\$20,000	2015
2	Num-Ti-Jah Lodge Ltd.	\$13,500	2016
3	Brewster Inc.	\$10,000	2017
4	Individual	\$9,462	2018
5	Individual	\$3,000	2019

3.5 No Charges

At the time of writing this engagement paper, ECCC confirms there have been no charges under the AEPA, IRIA, and GGPPA. Furthermore, Parks Canada confirms there have been no charges under the CNMCAA and SSLMPA.

Concerning the CNMCAA, it is important to note that Canada has established one national marine conservation area reserve. It is the Gwaii Haanas National Marine Conservation Area Reserve. It was

established 10 years ago off the coast of Gwaii Haanas National Park Reserve and Haida Heritage Site, in Haida Gwaii, British Columbia. As most offences that are discovered in the area occur on land, the charges are laid under the CNPA.

4. Public Values and Economic and Other Relevant Circumstances

This section explores key changes in the global and national context over the last decade that may shed light on whether the fine amounts and sentencing principles in the Review Acts still advance all relevant goals and remain consistent with public values and economic and other relevant circumstances. Some of these potential changes include developments in: (1) the relationship Canadians have with the environment; (2) the relationship between Indigenous Peoples and all Canadians and efforts to promote reconciliation, (3) the concern for environmental justice, and (4) the economic situation.

Other trends that may be relevant include increased emphasis on sustainability, the rise of the environment, social and governance movement (ESG), and changes in technology, for example.

Are there other key trends that should be considered in the Review? Are some more important than others in terms of their relevance to fine amounts and sentencing in environmental legislation?

4.1 Canadians and Their Relationship with the Environment

The Government of Canada has polled Canadians about the environment multiple times in the past 10 years. Whether the focus has been on the link between economic benefits or expenses and the environment²² or with respect to the growing importance of central concepts such as biodiversity, ecosystem services, species at risks and the extent of human interaction with wildlife,²³ the polls show that Canadians value the environment and nature. A recent 2021 public poll on species at risk, nature conservation and nature-based solutions to climate change is telling.²⁴ The results of the poll show that 96% of Canadians considered nature to be at least *somewhat important* to their personal well-being, while 3 in 5 respondents (57%) specified that nature is *very important* to their well-being.²⁵

Examples of the areas of concern that mark the relationship between Canadians and their environment relate to deforestation and other land use changes, ocean acidification, atmospheric pollution, wildlife conservation and biodiversity, the climate crisis, and others. The concern of Canadians with respect to

²² E. DuWors, et al, *The Importance of Nature to Canadian: Survey Highlights* (January 1999), online: <<https://d1ied5g1xfqpx8.cloudfront.net/pdfs/18641.pdf>>. The survey was carried by Statistics Canada, on behalf of a partnership of federal, provincial, and territorial agencies, and with a sample of 86,951 Canadians 15 years of age and over.

²³ Federal, Provincial, and Territorial Governments of Canada, *The 2012 Canadian Nature Survey: Awareness, participation and expenditures in nature-based recreation, conversation, and subsistence activities* (2014), online: https://biodivcanada.chm-cbd.net/sites/ca/files/2017-12/2012_Canadian_Nature_Survey_Report%28accessible_opt%29.pdf > [2012 Survey].

²⁴ Environment and Climate Change Canada, *Species at Risk, Nature Conservation and Nature-Based Solutions Survey for the Canadian Wildlife Service* (March 2021). [2021 Survey].

²⁵ 2021 Survey, at p. 9.

the climate crisis, and its impact on forests, oceans, wildlife, and biodiversity, recently led to action by the Government of Canada. The 2016 *Pan-Canadian Framework on Clean Growth and Climate Change* was Canada's first-ever national climate action plan that was developed with provinces and territories, and in consultation with Indigenous Peoples.²⁶ In 2020, the Government introduced *A Healthy Environment and a Healthy Economy*, a strengthened climate plan.²⁷ In November 2020, the Government introduced Bill C-12—*Canadian Net-Zero Emissions Accountability Act*, which proposes to turn the federal government's commitment to net-zero emission by 2050 into law. In March 2021, the Supreme Court of Canada in its decision of *References re Greenhouse Gas Pollution Pricing Act* (GGPPA) found as fact that climate change is real, that its effects have been and will be particularly severe and devastating in Canada, particularly to Indigenous peoples, and that addressing climate change requires collective national and international action.²⁸

Is the public's strong interest in protecting the environment and nature over the last ten years relevant to the fines and sentencing provisions? If so, how? Are there specific environmental issues (e.g. climate change, preserving biodiversity or ocean acidification) that should be treated differently? If so, what are the determinants and how would they affect the fines and sentencing provisions?

4.2 Reconciliation and Relationship with Indigenous Peoples

The Prime Minister declared in his mandate letter to the Minister of Environment and Climate Change, dated December 13, 2019, that "There remains no more important relationship to me and to Canada than the one with Indigenous Peoples."²⁹ In the past 10 years, significant events have propelled the Federal Government, Provinces, Territories, industry, academia, and civil society to make efforts towards reconciliation. For example, the Truth and Reconciliation Commission and its Calls to Action, the National Inquiry into Missing and Murdered Indigenous Women and Girls, and the Supreme Court of Canada's recognition of aboriginal rights.³⁰ In 2016, the Government of Canada endorsed the *United Nations Declaration on the Rights of Indigenous Peoples* (the "Declaration") without qualification, and committed to its full and effective implementation. Bill C-15 proposes to affirm the Declaration as a universal international human rights instrument with application in Canadian law. As a final example, in 2018 the Government also adopted and released the *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples*.

When considering the path to reconciliation, what are the possible implications that it may have on the Review Sections? What might be the role of Indigenous legal traditions and/or Indigenous perspective in fines and sentencing?

²⁶ Government of Canada, *What's in Canada's National Action Plan*, (2021), online: <<https://www.canada.ca/en/services/environment/weather/climatechange/climate-plan/climate-plan-overview.html>>.

²⁷ *Ibid.*

²⁸ *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11.

²⁹ Prime Minister of Canada, *Minister of Environment and Climate Change Mandate Letter* (December 2019), online: <<https://pm.gc.ca/en/mandate-letters/2019/12/13/minister-environment-and-climate-change-mandate-letter>>.

³⁰ *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44.

4.3 Environmental Justice

Environmental justice is concerned with the notion that environmental benefits and harms are not shared equally among different members of society³¹, and that certain groups and communities – namely, Indigenous and racialized communities and those with a lower socioeconomic status – often bear a disproportionate share of environmental burdens (e.g. environmental pollution and degradation).³² Specific local efforts have helped crystalize the idea that some marginalized and Indigenous communities are disproportionately affected by environmental degradation and harm. Local efforts have transitioned to broader national efforts to elevate the profile of environmental justice issues in Canada, which has led to an increase in attention from the media, academics, and policy makers.

Most recently, the disproportionate share of environmental burdens is being discussed in the context of private member's [Bill C-230, An Act respecting the development of a National Strategy to Redress Environmental Racism](#), introduced by MP Lenore Zann, on February 26, 2020. The Bill proposes a new Act that would require the Minister of Environment and Climate Change to develop and report on a national strategy to redress the harm caused by environmental racism. In the criminal law realm, Bill C-22 proposes repealing mandatory minimum penalties under the *Criminal Code* and the *Controlled Drugs and Substances Act*, in part as a recognition of systemic racism in Canada's criminal justice system and the disproportionate impact of criminal sanctions against Indigenous peoples, Black Canadians, and other members of marginalized communities.³³

Should environmental justice principles be taken into consideration or otherwise impact the fines and sentencing regimes of the Review Acts? If so, how?

4.4 Changes to the Economic Situation

Macroeconomic factors, for example inflation and gross domestic product (GDP), that relate to changes over the past ten years in the behaviour and performance of the economy as a whole, may also be relevant to whether fines and sentences achieve objectives such as deterrence against committing offences or denunciation of unlawful conduct.

In the last ten years, the Canadian GDP growth (annual percentage) has oscillated significantly, ranging from 3% in 2010 to 0.659% in 2015 to 3.171% in 2017, and back to 1.656% in 2019, with an average growth of 3.17% (2010 to 2019).³⁴ There has been an increase in population of approximately 10% with 3.5 million new Canadians.³⁵ In the last 10 years, average inflation has been of 1.716% (2010 to 2020).³⁶ In industry, the Business Development Bank of Canada's study on *The Scale Up Challenge: How are Canadian Companies Performing?* (2016) concludes that "Canadian companies are slightly

³¹ Dayna Nadine Scott, "What is Environmental Justice?" (2014) Osgoode Legal Studies Research Paper Series 4.

³² *Ibid.*

³³ Government of Canada, *Bill C-22, An Act to amend the Criminal Code and the Controlled Drugs and Substances Act*, 43 Parl. 2nd Sess (2021). Further information online: <<https://www.canada.ca/en/departement-justice/news/2021/02/bill-c-22-mandatory-minimum-penalties-to-be-repealed.html>>.

³⁴ The World Bank, *Canada* (2021), online: <<https://data.worldbank.org/country/canada>>.

³⁵ The World Bank, *Canada* (2021), online: <<https://data.worldbank.org/country/canada>>.

³⁶ Statista, *Canada: Inflation rate from 1986 to 2026* (April 2021), at: <<https://www.statista.com/statistics/271247/inflation-rate-in-canada/>>.

smaller than in the past, and are barely growing”.³⁷ Furthermore, it stated that 99.8% of all Canadian business are small (with 1 to 99 employees) or mid-sized (100 to 499 employees) firms.³⁸ Statistics Canada in 2017 affirmed that private sector businesses employed approximately 11.9 million individuals in Canada. The majority of private sector employees worked for small businesses, specifically 69.7% (8.3 million), compared with 19.9% (2.4 million) for medium-sized businesses and 10.4% (1.2 million) for large businesses. Thus, in total, small and mid-sized businesses employed 89.6% (10.7 million) of the private sector workforce, highlighting the important role of small-medium enterprises play in employing Canadians.³⁹

The influence of multinational enterprises (MNEs) on the Canadian economy is also relevant to the changes in the Canadian economy over the past 10 years. In 2018, there were 27,746 MNEs operating in Canada (an increase of 2.2% from 2017), with a combined capital investment in Canada of \$153.7 billion (an increase of 6.5% from 2017).⁴⁰ The influence of these MNEs on the Canadian economy is notable. In 2018, they contributed to more than one-third of all jobs in the corporate sector, half of GDP and nearly 60% of all investment in the form of machinery and equipment, non-residential construction and intellectual property products.⁴¹

In addition, the COVID-19 pandemic has significantly impacted Canadians and the Canadian economy. It has also prompted aspirations regarding the path to recovery, based on calls to “Build Back Better”, which centres on investing in creating an inclusive, green economy.

Has the economic situation or the characteristics of corporate players changed in the past ten years in ways that are relevant to the fines and sentencing regime? If so, how? Have key economic indicators related to individual Canadians changed in the past ten years (e.g. disposable income, unemployment) in ways that are relevant to the fines and sentencing regime? If so, how?

5. Focus of the Research

The Review will be guided by three main lines of inquiry. The first relates to the Fundamental Purposes of Sentencing, as set out in each of the Acts. The second addresses the sentencing regime, which includes the categorization of offenders, sentencing principles, fines, penalties, directors’ and officers’ liability and duties, and other court orders (the Sentencing Regime). The third considers other ancillary clauses (Ancillary Clauses), which include sections on absolute or conditional discharges, the due diligence defence, limitation periods, injunctions, and jurisdictional issues, for example.

³⁷ Business Development Bank of Canada, *The Scale Up Challenge: How Are Canadian Companies Performing?* (September 2016), online: <<https://www.bdc.ca/en/documents/marketing/BDC-etude-canadian-firms-EN-9sept.pdf>>.

³⁸ Businesses are categorized by number of employees, with small businesses having from 1 to 99 employees, mid-sized from 100 to 499, and large businesses 500 or more. See *ibid*.

³⁹ Government of Canada, *Key Small Business Statistics - January 2019* (January 2019), online: <[https://www.ic.gc.ca/eic/site/061.nsf/vwapj/KSBS-PSRPE_Jan_2019_eng.pdf/\\$file/KSBS-PSRPE_Jan_2019_eng.pdf](https://www.ic.gc.ca/eic/site/061.nsf/vwapj/KSBS-PSRPE_Jan_2019_eng.pdf/$file/KSBS-PSRPE_Jan_2019_eng.pdf)> at p. 11.

⁴⁰ Government of Canada, Statistics Canada, *Multinational enterprises exert a significant influence on the Canadian economy, 2018* (December 2021), online: <https://www150.statcan.gc.ca/n1/en/daily-quotidien/201202/dq201202b-eng.pdf?st=6-q_1NYn>.

⁴¹ Government of Canada, Statistics Canada, *Multinational enterprises exert a significant influence on the Canadian economy, 2018* (December 2021), online: <https://www150.statcan.gc.ca/n1/en/daily-quotidien/201202/dq201202b-eng.pdf?st=6-q_1NYn>.

5.1 Are the Fundamental Purposes of Sentencing consistent with public values and economic and other relevant circumstances?

This question explores the four Fundamental Purposes of Sentencing set out in the Review Acts: deterrence, denunciation, polluter-pays principle, and recover and restore.

Do the Fundamental Purposes of Sentencing continue to be important objectives for primary consideration by a sentencing court? Are there other purposes that may be considered? Is there a need to prioritize between them?

5.2 Is the Sentencing Regime consistent with public values and economic and other relevant circumstances to advance the Fundamental Purposes of Sentencing?

Several aspects of the sentencing regime are elaborated on below with further questions.

Are there others aspects of the sentencing regime or other sub-questions that should be considered?

5.2.1 Categories of Offenders

Under the current sentencing regime in the Review Acts there are different categories of offenders (individuals, corporations, small revenue corporations, other persons and ships or vessels in the case of the MBCA, AEPA and CEPA). The applicable fine range varies for different categories of offenders, types of offences, and depending on the procedure followed in the prosecution. A summary of the categories of offenders and the applicable fine regime under the EEA can be found at [Fine regime under the Environmental Enforcement Act - Canada.ca](#).

Canadian common law has also clarified the categorization of offenders. For example, in *R v Terroco*, the Alberta Court of Appeal defines a mid-sized corporation as having gross revenue of \$20 million.⁴² In *R v. Big River First Nation*⁴³ on appeal, the Court of Queen's Bench of Saskatchewan determined that the Big River First Nation, was a "person" and the higher minimum fines applied (a change from \$10,000 to \$100,000 fine for the respondent.)

In the United Kingdom, offenders are placed into two broad groups: individuals and organizations. Organizations are subdivided into four groups based on their "turnover or equivalent": small (between £2 million and £10 million), medium (between £10 million and £50 million), large (£50 million and over), and very large (where the turnover or equivalent "greatly exceeds the threshold for large organizations").⁴⁴ The UK Sentencing Guidelines also include methods for characterizing the "turnover or equivalent" of an organization.⁴⁵

In the US, Sentencing Guidelines implicitly distinguish between individual and organizational offenders with a distinct chapter on sentencing of organizations. The definition of an organization in the US

⁴² *R. v. Terroco Industries Ltd.*, 2005 ABCA 141, at para. 78.

⁴³ *R. v. Big River First Nation*, 2018 SKQB 109.

⁴⁴ The Sentencing Council for England and Wales, *Environmental Offences – Definitive Guideline* (July 2014), online: <<https://www.sentencingcouncil.org.uk/wp-content/uploads/Environmental-offences-definitive-guideline-Web.pdf>> [UK Sentencing Guidelines] at pp. 6-10.

⁴⁵ UK Sentencing Guidelines, at pp. 6-7.

Guidelines is broad: “corporations, partnerships, associations, joint-stock companies, unions, trusts, pension funds, unincorporated organizations, governments and political subdivisions thereof, and non-profit organizations”.⁴⁶ A distinction is also made for criminal purpose organizations, which are treated differently at sentencing. A criminal purpose organization is defined as an organization that operated primarily for a criminal purpose or primarily by criminal means.⁴⁷

Are the categories of offenders under the current legislative scheme adequate or do they need to be revised to better achieve the Fundamental Principles of Sentencing?

5.2.2 Fine Regime and Classification of Offences

In addition to tailored ranges of fines for different categories of offenders as noted above, the Review Acts set out minimum fines and increased maximum fines for serious offences that involve direct harm or risk of harm to the environment, or obstruction of authority (Designated Offences).

A summary of the fine regime under the EEA can be found at [Fine regime under the Environmental Enforcement Act - Canada.ca](https://www.canada.ca/en/environmental-protection/eeac/fine-regime.html).

With regards to minimum sentences, sometimes called mandatory minimum sentences, in Canada, they have attracted a significant amount of debate over the past decade. Most recently, as noted above, Bill C-22 was introduced to ensure that responses to criminal conduct are fair, effective and cognizant of systemic issues with current sentencing policies, specifically with regards to minimum penalties. The proposed legislation would ensure courts continue to impose tough sentences on violent and serious crimes without the disproportionate impacts on Indigenous Peoples, as well as Black Canadians and members of marginalized communities. Consequently, the Bill proposes repealing certain minimum sentences related to imprisonment under the *Criminal Code* and the *Controlled Drugs and Substances Act*.⁴⁸

In the UK, Sentencing Guidelines set minimum/maxima goalposts, but the fine regime for individuals is based on the “weekly income” of the individual. Alternatively, in the US, the *Alternative Fines Act* was enacted as a result of Congress deeming that due to inflation and an increase in the wealth of some defendants, maximum fine amounts were too low and considered to be a cost of doing business. As such, sentencing judges were given three alternative statutory maximums when imposing a fine. The *Alternative Fine Acts* provides that a court may impose a fine that is not greater than the largest amount determined through the following three ways: (i) the maximum amount specified in the law that set the offence; (ii) an amount equal to twice the defendant’s gross pecuniary gain or twice the gross pecuniary loss to other persons resulting from the defendant’s crime; and (iii) a maximum fine set out in the *Alternative Fines Act* itself.⁴⁹ Furthermore, the US has specific acts, rules and guidelines that require the Environmental Protection Agency to adjust statutory penalties on an annual basis to reflect inflation.⁵⁰

⁴⁶ United States Sentencing Commission, *2018 Guidelines Manual Annotated* (November 2018), online: <<https://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2018/GLMFull.pdf>> [US Sentencing Guidelines] at pp. 526.

⁴⁷ US Sentencing Guidelines, at pp. 539.

⁴⁸ Government of Canada, *Bill C-22, An Act to amend the Criminal Code and the Controlled Drugs and Substances Act*, 43 Parl. 2nd Sess (2021). Further information online: <<https://www.canada.ca/en/department-justice/news/2021/02/bill-c-22-mandatory-minimum-penalties-to-be-repealed.html>>.

⁴⁹ *Alternative Fines Act*, 18 U.S.C. § 3571 (2010).

⁵⁰ United States Environmental Protection Agency, Memorandum – Amendments to the EPA’s Civil Penalty Policies to Account for Inflation (effective January 15, 2020) and Transmittal of the 2020 Civil Monetary Penalty

In New Zealand, the *New Zealand Climate Change Response Act 2002* (CRA) stipulates that interest is accrued on unpaid penalties commencing on their due date and the interest continues to accrue until the penalty and any interest is paid in full.⁵¹ Furthermore, the *Resource Management Act*—intended to promote the management of land, air, and water—treats the commission of an offence for commercial gain (or to avoid loss) as aggravating. This is reflected by s. 339B of the Act which allows a court to order that an offender pay an amount not exceeding three times the value of any commercial gain resulting from the commission of the offence if the court is satisfied that the offence was committed to produce a commercial gain.⁵² This penalty is in addition to any other penalty levied for the offence. A similar provision in the Review Acts (see for example section 13.07 of the MBCA) requires the court if satisfied that a property, benefit or advantage has accrued to the offender as a result of the offence, to order the offender to pay an additional fine equal to the amount estimated to have been gained. As such, an offender may face a fine that is greater than the maximum as a result of having acquired a monetary benefit from the offence.

Are the fine amounts and ranges of minimum and maximum fines in the Review Acts adequate to deter and denounce the prohibited activity and restore the environment? The range between minimum and maximum fines is very broad, which allows for extensive discretion: should the fine regime be more prescriptive? If so, how and under what circumstances? Should there be minimum fines? Is the classification of offences (Designated Offences versus others) in the Review Acts adequate to fulfill the Fundamental Purposes of Sentencing?

5.2.3 Additional Court Orders

All Review Acts contain similar court order provisions authorizing the court, upon sentencing, to order the offender to take certain measures (i.e. creative sentencing). For examples of measures, see paragraph 16(1)(b.5) of the MBCA where the court may direct the offender to pay, in the manner prescribed by the court, an amount to environmental or other groups to assist in their work in or for a community near the place where the offence was committed, or paragraphs 16(1)(i) and (j) which allow the court to order the offender to surrender any permit issued under the MBCA and prohibit the offender from applying for a new one.

Another example is the broader administrative sanctions used by the World Bank as part of their anti-corruption measures⁵³ or by the Canadian Ombudsperson for Responsible Enterprises, such as the removal of support from Canadian Trade Commissioners or the inability to obtain financing from other Crown corporations such as the Export Development Agency.⁵⁴

Inflation Adjustment Rule, (January 2020), online: < <https://www.epa.gov/sites/production/files/2020-01/documents/2020penaltyinflationruleadjustments.pdf>>; United States Environmental Protection Agency, *Penalty Inflation Rules and Penalty Policy Amendments* (December 2020), online: <<https://www.govinfo.gov/content/pkg/FR-2020-12-23/pdf/2020-26997.pdf>>.

⁵¹ New Zealand Government, Environmental Protection Authority, *Guidance on Penalties under the Climate Change Response Act 2002* (December 2019), online: <<https://www.epa.govt.nz/assets/CCRA-ETS-Penalties-Guidelines-2020.pdf>>.

⁵² Parliamentary Counsel Office of New Zealand, *Resource Management Act 1991*, 1991 No 69, online: <<https://www.legislation.govt.nz/act/public/1991/0069/latest/DLM239049.html>> at s. 339B.

⁵³ The World Bank, *Sanctions System – About Us*, online: < <https://www.worldbank.org/en/about/unit/sanctions-system#2>>.

⁵⁴ Government of Canada, *Office of the Canadian Ombudsperson for Responsible Enterprise*, online: <https://core-ombuds.canada.ca/core_ombuds-ocre_ombuds/index.aspx?lang=eng>.

In the past ten years, have new types of creative sentences been issued, for example Provincial court orders, that could be relevant to the review? Are there other types of economic sanctions that would be relevant for purposes of court orders? Are there other court orders that could be considered?

5.2.4 Repeat Offenders and Continuing Offences

The Review Acts include doubled minimum and maximum fines for second or subsequent offences. Furthermore, repeat offender clauses in the Review Acts set out the ways a court may deem a “second” or “subsequent” offence, see for example subsection 27(3) of the CNPA. A person is deemed to be a repeat offender if it has been convicted of a “substantially similar offence”. Under most of the Review Acts, if a contravention of the Act or its regulations is committed or continued on more than one day, it constitutes a separate offence for each day on which it is committed or continued, see for example subsection 27(2) of the CNPA. In the case of GGPPA, a person that committed an offence is liable to be convicted for a separate offence for each CO₂e tonne of a greenhouse gas that is emitted over the applicable emissions limit for which no compensation is provided (section 240 of GGPPA). In addition, many of the wildlife Review Acts provide that the fine for an offence involving more than one specimen may be calculated as though each one had been the subject of separate charges, see for example subsection 27(1) of the CNPA.

Is the way repeat offenders are classified adequate or should it be narrowed, broadened or otherwise clarified, and if so, how?

5.2.5 Aggravating and Mitigating Factors

The Review Acts list aggravating factors that must be considered by the court when determining the fine amount and provide that the absence of a listed aggravating factor is not a mitigating factor. See, for example, subsection 13.09(3) of the CWA.

The UK Sentencing Guidelines, for example, make it an aggravating factor if an organizational offender ignored the risks identified by employees or others, which raises linkages to whistleblower protection. Furthermore, where an offence leads to established evidence of broader impact beyond environmental harm, such as to a community, it is an aggravating factor. The location of the offence can also be aggravating, for example, if it occurs near housing, school, livestock, or particularly sensitive environmental area. A similar broadened consideration of the wider impact of an offence can be found in Australia, where a sentence is aggravated if an offence concerns “an Aboriginal object or place or an Aboriginal area—the views of Aboriginal persons who have an association with the object, place or area concerned”.⁵⁵

Are the aggravating factors listed under the Review Acts adequate for ensuring that sentencing environmental offences takes into account all relevant circumstances?

5.2.6 Directors’ and Officers’ Liability

Included in all Review Acts are provisions, adapted as applicable to each Act, that set out that where a corporation commits an offence under the Act, any officer, director, agent or mandatory of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence, and is liable to the punishment provided for an individual for the offence, whether or not the corporation has been convicted. For the purpose of encouraging compliance, information of corporate offenders convicted under the Review Acts and

⁵⁵ New South Wales Government, *National Parks and Wildlife Act 1974*, No. 80, at s. 194(f).

associated regulations over the past five years is required to be published on the Environmental Offenders Registry, see for example section 27.1 of WAPPRIITA.

In the US Guidelines there is a provision that ascribes liability to directors and officers for being “willfully ignorant of the offence,” which applies if the “individual did not investigate the possible occurrence of unlawful conduct despite knowledge of circumstances that would lead a reasonable person to investigate whether unlawful conduct had occurred.”⁵⁶

Are the provisions related to directors and officers adequate for ensuring liability for environmental offences? Are the provisions of the Review Acts which denounce offenders through disclosure of information sufficient?

5.3 Are the Ancillary Clauses consistent with public values and economic and other relevant circumstances?

In this line of inquiry, the focus is on the clauses of the Review Sections that are ancillary to the Fine Regime and the Fundamental Purposes of Sentencing, including but not limited to: proof of offences (e.g., section 60 of the AEPA), certificates of analysis (e.g., section 285 of CEPA), and the due diligence defence (e.g., section 13.17 of the MBCA,).

For example, are there other situations where certificates of analysis may be useful? Is the limitation period for summary conviction adequate? Are there others sub-questions that should be considered?

6. Conclusion

This paper was prepared for engagement purposes only. All findings during the engagement and research process will be assessed considering their relevance to ensuring environmental fines and sentencing principles advance all relevant goals (i.e. deterrence, denunciation, reinforcement of the polluter pays principle, and recovery and restoration, as the case may be) and remain consistent with public values and economic and other relevant circumstances. The findings will also be assessed considering, for example, the Canadian context and the division of powers as it relates to environmental laws. This input will inform a report which will be tabled, by the Minister of Environment and Climate Change, in both Houses of Parliament by December 10, 2021.

Thank you for taking the time to participate in this review.

⁵⁶ US Sentencing Guidelines, Commentary Application notes: 2(J).

Annex 1—Table of Federal Acts, Review Requirement Sections and Review Sections

Act	Review Requirement Section	Review Sections
<i>Antarctic Environmental Protection Act (AEPA)</i>	68.4	50 – 68.3
<i>Canada National Marine Conservation Areas Act (CNMCAA)</i>	28.4	24 – 28.3
<i>Canada National Parks Act (CNPA)</i>	31.4	24 – 31.3
<i>Canada Wildlife Act (CWA)</i>	18.4	13 – 18.3
<i>Canadian Environmental Protection Act, 1999 (CEPA)</i>	294.5	272 – 294.4
<i>International River Improvements Act (IRIA)</i>	52	33 – 50
<i>Migratory Birds Convention Act, 1994 (MBCA)</i>	18.24	13 – 18.23
<i>Saguenay-St. Lawrence Marine Park Act (SSLMPA)</i>	22.3	20 – 22.2
<i>Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (WAPPRIITA)</i>	28.1	22 – 22.16
<i>Greenhouse Gas Pollution Pricing Act (GGPPA)</i>	261	232 – 252

Annex 2—Review Sections

Antarctic Environmental Protection Act (AEPA)

Review

68.4 (1) The Minister shall, 10 years after the day on which this section comes into force and every 10 years after that, undertake a review of sections 50 to 68.3.

Offence — persons

50 (1) Every person commits an offence who contravenes

- (a) section 11, subsection 12(1) or 13(1), section 14, 16, 17 or 20, subsection 37(4) or 37.06(1), section 48 or subsection 49(1);
- (b) any provision of the regulations designated by regulations made under paragraph 26(1)(j.1); or
- (c) any order or direction made under this Act, including one made by a court.

Penalty — individuals

(2) Every individual who commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not less than \$15,000 and not more than \$1,000,000 or to imprisonment for a term of not more than three years, or to both, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$30,000 and not more than \$2,000,000 or to imprisonment for a term of not more than five years, or to both; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not less than \$5,000 and not more than \$300,000 or to imprisonment for a term of not more than six months, or to both, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$10,000 and not more than \$600,000 or to imprisonment for a term of not more than one year, or to both.

Penalty — other persons

(3) Every person, other than an individual or a corporation referred to in subsection (4), that commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not less than \$500,000 and not more than \$6,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$1,000,000 and not more than \$12,000,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not less than \$100,000 and not more than \$4,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$200,000 and not more than \$8,000,000.

Penalty — small revenue corporations

(4) Every corporation that commits an offence under subsection (1) and that the court determines under section 50.2 to be a small revenue corporation is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not less than \$75,000 and not more than \$4,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$150,000 and not more than \$8,000,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not less than \$25,000 and not more than \$2,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$50,000 and not more than \$4,000,000.

2003, c. 20, s. 50/2009, c. 14, s. 12

Offence — persons

50.1 (1) Every person commits an offence who contravenes

- (a) any provision of this Act or the regulations, other than a provision whose contravention is an offence under subsection 50(1); or
- (b) any obligation arising from this Act, whose contravention is not an offence under subsection 50(1).

Penalty — individuals

(2) Every individual who commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not more than \$100,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$200,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not more than \$25,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$50,000.

Penalty — other persons

(3) Every person, other than an individual or a corporation referred to in subsection (4), that commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not more than \$500,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$1,000,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not more than \$250,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$500,000.

Penalty — small revenue corporations

(4) Every corporation that commits an offence under subsection (1) and that the court determines under section 50.2 to be a small revenue corporation is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not more than \$250,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$500,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not more than \$50,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$100,000.

2009, c. 14, s. 12

Determination of small revenue corporation status

50.2 For the purpose of sections 50 and 50.1, a court may determine a corporation to be a small revenue corporation if the court is satisfied that the corporation's gross revenues for the 12 months immediately before the day on which the subject matter of the proceedings arose — or, if it arose on more than one day, for the 12 months immediately before the first day on which the subject matter of the proceedings arose — were not more than \$5,000,000.

2009, c. 14, s. 12

Offence — vessels

50.3 (1) Every Canadian vessel or other vessel commits an offence that contravenes

- (a) subsection 9(1), section 11, subsection 13(1), any of sections 14 to 16, any of subsections 18(1) to (3) or section 20;
- (b) any provision of the regulations designated by regulations made under paragraph 26(1)(j.1);
- or
- (c) any order or direction made under this Act, including one made by a court.

Penalty — vessels of 7 500 tonnes deadweight or over

(2) Every Canadian vessel or other vessel of 7 500 tonnes deadweight or over that commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not less than \$500,000 and not more than \$6,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$1,000,000 and not more than \$12,000,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not less than \$100,000 and not more than \$4,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$200,000 and not more than \$8,000,000.

Penalty — other vessels

(3) Every Canadian vessel or other vessel of less than 7 500 tonnes deadweight that commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not less than \$75,000 and not more than \$4,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$150,000 and not more than \$8,000,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not less than \$25,000 and not more than \$2,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$50,000 and not more than \$4,000,000.

2009, c. 14, s. 12

Offences — vessels

50.4 (1) Every Canadian vessel or other vessel commits an offence that contravenes any provision of this Act or the regulations, other than a provision whose contravention is an offence under subsection 50.3(1).

Penalty — vessels of 7 500 tonnes deadweight or over

(2) Every Canadian vessel or other vessel of 7 500 tonnes deadweight or over that commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not more than \$500,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$1,000,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not more than \$250,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$500,000.

Penalty — other vessels

(3) Every Canadian vessel or other vessel of less than 7 500 tonnes deadweight that commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not more than \$250,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$500,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not more than \$50,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$100,000.

2009, c. 14, s. 12

Deeming — second and subsequent offence

50.5 (1) For the purposes of subsections 50(2) to (4), 50.1(2) to (4), 50.3(2) and (3) and 50.4(2) and (3), a conviction for a particular offence under this Act is deemed to be a conviction for a second or subsequent offence if the court is satisfied that the offender has been previously convicted — under any Act of Parliament, or any Act of the legislature of a province, that relates to environmental or wildlife conservation or protection — of a substantially similar offence.

Application

(2) Subsection (1) applies only to previous convictions on indictment and to previous convictions on summary conviction, and to previous convictions under any similar procedure under any Act of the legislature of a province.

2009, c. 14, s. 12

Relief from minimum fine

50.6 The court may impose a fine that is less than the minimum amount provided for in section 50 or 50.3, as the case may be, if it is satisfied, on the basis of evidence submitted to the court, that the minimum fine would cause undue financial hardship. The court shall provide reasons if it imposes a fine that is less than the minimum amount provided for in any of those sections.

2009, c. 14, s. 12

Additional fine

50.7 If a person or a Canadian vessel or other vessel is convicted of an offence under this Act and the court is satisfied that, as a result of the commission of the offence, the person — or, if the offender is a Canadian vessel or other vessel, the owner or operator of the vessel — acquired any property, benefit or advantage, the court shall order the offender to pay an additional fine in an amount equal to the court's estimation of the value of that property, benefit or advantage. The additional fine may exceed the maximum amount of any fine that may otherwise be imposed under this Act.

2009, c. 14, s. 12

Notice to shareholders

50.8 If a corporation that has shareholders is convicted of an offence under this Act, the court shall make an order directing the corporation to notify its shareholders, in the manner and within the time directed by the court, of the facts relating to the commission of the offence and of the details of the punishment imposed.

2009, c. 14, s. 12

Fundamental purpose of sentencing

50.9 The fundamental purpose of sentencing for offences under this Act is to contribute to respect for the law protecting the Antarctic environment and dependent and associated ecosystems in light of the global significance of the Antarctic and the Treaty through the imposition of just sanctions that have as their objectives

- (a) to deter the offender and any other person from committing offences under this Act;
- (b) to denounce unlawful conduct that damages or creates a risk of damage to the environment; and
- (c) to reinforce the “polluter pays” principle by ensuring that offenders are held responsible for effective clean-up and environmental restoration.

2009, c. 14, s. 12

Sentencing principles

50.91 (1) In addition to the principles and factors that the court is otherwise required to consider, including those set out in sections 718.1 to 718.21 of the Criminal Code, the court shall consider the following principles when sentencing a person who is convicted of an offence under this Act:

- (a) the amount of the fine should be increased to account for every aggravating factor associated with the offence, including the aggravating factors set out in subsection (2); and
- (b) the amount of the fine should reflect the gravity of each aggravating factor associated with the offence.

Aggravating factors

(2) The aggravating factors are the following:

- (a) the offence caused damage or risk of damage to the Antarctic environment or any dependent and associated ecosystem;
- (b) the damage caused by the offence is extensive, persistent or irreparable;
- (c) the offender committed the offence intentionally or recklessly;
- (d) the offender failed to take reasonable steps to prevent the commission of the offence despite having the financial means to do so;
- (e) 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;
- (f) the offender committed the offence despite having been warned by an enforcement officer or an inspector of the circumstances that subsequently became the subject of the offence;
- (g) the offender has a history of non-compliance with federal or provincial legislation that relates to environmental or wildlife conservation or protection; and
- (h) 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.

Absence of aggravating factor

(3) The absence of an aggravating factor set out in subsection (2) is not a mitigating factor.

Meaning of damage

(4) For the purposes of paragraphs (2)(a) and (b), damage includes loss of use value and non-use value.

Reasons

(5) If the court is satisfied of the existence of one or more of the aggravating factors set out in subsection (2) but decides not to increase the amount of the fine because of that factor, the court shall give reasons for that decision.

2009, c. 14, s. 12

Proceedings against vessels

50.92 (1) The provisions of this Act and the Criminal Code relating to indictable or summary conviction offences that apply to persons apply also to Canadian vessels and other vessels, with any modifications that the circumstances require.

Direction binds vessel

(2) For the purpose of prosecuting a Canadian vessel or any other vessel for contravening a direction made under subsection 30(8), section 37.01 or subsection 46(3), any direction made under any of those provisions that is given to the master or a crew member of the vessel binds the vessel as though it had been given to the vessel.

Service

(3) If a Canadian vessel or other vessel is charged with having committed an offence under this Act, the summons may be served by leaving it with the authorized representative, master or any officer of the vessel or by posting the summons on some conspicuous part of the vessel.

Appearance at trial

(4) If a Canadian vessel or other vessel is charged with having committed an offence under this Act, the vessel may appear by counsel or representative. Despite the Criminal Code, if the vessel does not so appear, a court may, on proof of service of the summons, proceed to hold the trial.

2009, c. 14, s. 12

Liability of directors, officers, etc., of corporations

51 (1) If a corporation commits an offence under this Act, any director, officer, agent or mandatary of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the penalty provided for by this Act for an individual in respect of the offence committed by the corporation, whether or not the corporation has been prosecuted or convicted.

Liability of directors and officers of corporate owners of vessels

(2) If a Canadian vessel or other vessel commits an offence under this Act, every director or officer of a corporation that is an owner or an operator of the vessel who directed or influenced the corporation's policies or activities in respect of conduct that is the subject matter of the offence is a party to and guilty of the offence and is liable on conviction to the penalty provided for by this Act for an individual who commits an offence under subsection 50(1), whether or not the vessel has been prosecuted or convicted.

Duties of directors and officers of corporations

(3) Every director and officer of a corporation, including every director and officer of a corporation that is the owner or operator of a Canadian vessel or other vessel who is in a position to direct or influence the corporation's policies or activities relating to conduct prohibited by this Act, shall take all reasonable care to ensure that the corporation or the vessel, as the case may be, complies with

(a) this Act and the regulations; and

(b) any orders and directions of, and prohibitions and requirements imposed by, any court, the Minister, enforcement officers, inspectors and analysts.

2003, c. 20, s. 512009, c. 14, s. 12

Liability of owners, operators, masters and chief engineers of vessels

52 (1) If a Canadian vessel or other vessel commits an offence under this Act and the owner, operator, master or chief engineer of the vessel directed, authorized, assented to, acquiesced in or participated in the commission of the offence, the owner, operator, master or chief engineer, as the case may be, is a party to and guilty of the offence and is liable on conviction to the penalty provided for by this Act for an individual who commits an offence under subsection 50(1), whether or not the vessel has been prosecuted or convicted.

Duties of owners, operators, masters and chief engineers of vessels

(2) The owner, operator, master and the chief engineer of a Canadian vessel or other vessel shall take all reasonable care to ensure that the vessel complies with

(a) this Act and the regulations; and

(b) any orders and directions of, and prohibitions and requirements imposed by, any court, the Minister, enforcement officers, inspectors and analysts.

2003, c. 20, s. 522009, c. 14, s. 12

Continuing offence

53 If an offence under this Act is committed or continued on more than one day, the person or Canadian vessel that committed the offence is liable to be convicted for a separate offence for each day on which it is committed or continued.

Offences involving more than one animal, plant, etc.

53.1 If an offence involves more than one animal or plant, or more than one native bird or native plant as defined in subsection 12(2), the fine to be imposed in respect of that offence may, despite sections 50, 50.1, 50.3 and 50.4, be the total of the fines that would have been imposed if each of the animals, plants, native birds or native plants had been the subject of a separate information.

2009, c. 14, s. 13

Identifying authorized representative, master, etc.

54 The authorized representative or master of a Canadian vessel or the registered owner or pilot in command of a Canadian aircraft may be charged with an offence under this Act as authorized representative, master, registered owner or pilot in command of the vessel or aircraft if it is adequately identified, and no such charge is invalid by reason only that it does not name the authorized representative, master, registered owner or pilot in command.

Due diligence

55 (1) No person may be found guilty of an offence under this Act if it is established that the person exercised all due diligence to comply with this Act or to prevent the commission of the offence.

Exception

(2) Subsection (1) does not apply to an offence relating to

- (a) a contravention of paragraph 12(1)(f) or (g);
- (b) a contravention of section 48; or
- (c) a contravention of section 49 committed knowingly.

No proceedings without consent

56 No proceedings in respect of an offence under this Act may be instituted except by or with the consent of the Attorney General of Canada.

Limitation period

57 No proceedings by way of summary conviction in respect of an offence under this Act may be instituted more than five years after the day on which the subject matter of the proceedings arose, unless the prosecutor and the defendant agree that they may be instituted after the five years.

2003, c. 20, s. 57 2009, c. 14, s. 14

Documents admissible in evidence

58 (1) A document made, given or issued under this Act and appearing to be signed by an analyst is admissible in evidence and, in the absence of evidence to the contrary, is proof of the statements contained in the document without proof of the signature or official character of the person appearing to have signed the document.

Attendance of analyst

(2) The party against whom the document is produced may, with leave of the court, require the attendance of the analyst who signed it.

Notice

(3) No document referred to in subsection (1) may be received in evidence unless the party intending to produce it has given to the party against whom it is intended to be produced reasonable notice of that intention together with a copy of the document.

Injunction

59 (1) If, on the application of the Minister, it appears to a court of competent jurisdiction that a person or Canadian vessel in Canada, or a Canadian, Canadian vessel or permit holder in the Antarctic, has done, is about to do or is likely to do any act or thing constituting or directed toward the commission of an offence under this Act, the court may issue an injunction ordering any person or vessel named in the application

- (a) to refrain from doing any act or thing that, in the opinion of the court, may constitute or be directed toward the commission of an offence under this Act; or
- (b) to do any act or thing that, in the opinion of the court, may prevent the commission of an offence under this Act.

Notice

(2) No injunction may be issued under subsection (1) unless 48 hours notice is given to the party or parties named in the application or the urgency of the situation is such that service of notice would not be in the public interest.

Proof of offence

60 (1) In any prosecution of an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee, agent or mandatary of the accused, whether or not the employee, agent or mandatary is identified or prosecuted for the offence.

Proof of offence

(2) In any prosecution of the master of a Canadian vessel or any other vessel or the pilot in command of a Canadian aircraft for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by a crew member or other person on board the vessel or aircraft, whether or not the crew member or other person is identified or prosecuted for the offence.

2003, c. 20, s. 60/2009, c. 14, s. 15

61 [Repealed, 2009, c. 14, s. 15]

Importing substances by analysts

62 The Minister may, subject to any reasonable condition specified by the Minister, authorize in writing an analyst to import, possess and use a substance for the purpose of conducting measurements, tests and research with respect to the substance.

63 [Repealed, 2009, c. 14, s. 16]

Absolute or conditional discharge

64 (1) If an offender has pleaded guilty to or been found guilty of an offence, the court may, instead of convicting the offender, by order direct that the offender be discharged absolutely or on conditions having any or all of the effects described in paragraphs 66(1)(a) to (n).

Conditions of order

(2) If an order is made under subsection (1) and the offender contravenes or fails to comply with it, or is convicted of an offence under this Act, the prosecutor may apply to the court to revoke the discharge, convict the offender of the offence to which the discharge relates and impose any sentence that could have been imposed if the offender had been convicted at the time the order was made.

Suspended sentence

65 (1) If an offender is convicted of an offence under this Act, the court may suspend the passing of sentence and may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order under section 66.

Application by prosecutor

(2) If the passing of sentence has been suspended under subsection (1) and the offender contravenes or fails to comply with an order made under section 66, or is convicted of an offence under this Act, the prosecutor may apply to the court to impose any sentence that could have been imposed if the passing of sentence had not been suspended.

Orders of court

66 (1) If an offender has been convicted of an offence under this Act, in addition to any other punishment that may be imposed under this Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order having any or all of the following effects:

- (a) prohibiting the offender from doing any act or engaging in any activity that may result in the continuation or repetition of the offence;
- (b) directing the offender to take any action that the court considers appropriate to remedy or avoid any harm to the environment that results or may result from the act or omission that constituted the offence;
- (c) directing the offender to carry out environmental effects monitoring in the manner established by the Minister or directing the offender to pay, in the manner prescribed by the court, an amount for the purposes of environmental effects monitoring;
 - (c.1) directing the offender to implement an environmental management system that meets a recognized Canadian or international standard specified by the court;
 - (c.2) directing the offender to pay Her Majesty in right of Canada an amount of money that the court considers appropriate for the purpose of promoting the conservation or protection of the Antarctic environment or dependent and associated ecosystems;
- (d) directing the offender to have an environmental audit conducted by a person of a class and at the times specified by the court and directing the offender to remedy any deficiencies revealed during the audit;

- (e) directing the offender to publish, in the manner specified by the court, the facts relating to the commission of the offence and the details of the punishment imposed, including any orders made under this subsection;
- (f) directing the offender to notify, at the offender's own cost and in the manner directed by the court, any person aggrieved or affected by the offender's conduct of the facts relating to the commission of the offence and of the details of the punishment imposed, including any orders made under this subsection;
- (g) directing the offender to post any bond or pay any amount of money into court that will ensure compliance with any order made under this section;
- (h) directing the offender to submit to the Minister, on application by the Minister made within three years after the date of conviction, any information with respect to the offender's activities that the court considers appropriate and just in the circumstances;
- (i) directing the offender to compensate any person, monetarily or otherwise, in whole or in part, for the cost of any remedial or preventive action taken, caused to be taken or to be taken as a result of the act or omission that constituted the offence, including the costs of assessing appropriate remedial or preventive action;
- (j) directing the offender to perform community service, subject to any reasonable conditions that may be imposed in the order;
- (k) [Repealed, 2009, c. 14, s. 17]
- (l) directing the offender to pay, in the manner prescribed by the court, an amount for the purposes of conducting research with respect to the Antarctic;
- (m) directing the offender to pay, in the manner prescribed by the court, an amount to an educational institution including for scholarships for students enrolled in studies related to the environment;
- (n) requiring the offender to comply with any other conditions that the court considers appropriate in the circumstances for securing the offender's good conduct and for deterring the offender and any other person from committing offences under this Act;
- (o) requiring the offender to surrender to the Minister any permit issued to the person; and
- (p) prohibiting the offender from applying for any new permit during any period that the court considers appropriate.

Publication

(2) If an offender fails to comply with an order made under paragraph (1)(e), the Minister may, in the manner that the court directed the offender to do so, publish the facts relating to the commission of the offence and the details of the punishment imposed and recover the costs of publication from the offender.

Debt due to Her Majesty

(3) If the court makes an order under paragraph (1)(c.2) or (i) directing a person to pay an amount to Her Majesty in right of Canada, or if the Minister incurs publication costs under subsection (2), the amount or the costs, as the case may be, constitute a debt due to Her Majesty in right of Canada and may be recovered in any court of competent jurisdiction.

Enforcement

(4) If the court makes an order under paragraph (1)(i) directing an offender to pay an amount to a person, other than to Her Majesty in right of Canada, and the amount is not paid without delay, the person may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the offender in the same manner as if it were a judgment rendered against the offender in that court in civil proceedings.

Cancellation or suspension of permits

(5) If the court makes an order under paragraph (1)(o), any permit to which the order relates is cancelled unless the court makes an order suspending it for any period that the court considers appropriate.

Coming into force and duration of order

(6) An order made under subsection (1) comes into force on the day on which it is made or on any other day that the court may determine and shall not continue in force for more than three years after that day unless the court provides otherwise in the order.

2003, c. 20, s. 66/2009, c. 14, s. 17

Compensation for loss of property

66.1 (1) If an offender has been convicted of an offence under this Act, the court may, at the time sentence is imposed and on the application of the person aggrieved, order the offender to pay to that person an amount by way of satisfaction or compensation for loss of or damage to property suffered by that person as a result of the commission of the offence.

Enforcement

(2) If the amount ordered to be paid under subsection (1) is not paid without delay, the aggrieved person may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the offender in the same manner as if it were a judgment rendered against the offender in that court in civil proceedings.

2009, c. 14, s. 18

Variation of sanctions

67 (1) Subject to subsection (2), if a court has made, in relation to an offender, an order or direction under section 64, 65 or 66, the court may, on application by the offender or the Attorney General of Canada, require the offender to appear before it and, after hearing the offender and the Attorney General, vary the order in one or any combination of the following ways that is applicable and, in the opinion of the court, is rendered desirable by a change in the circumstances of the offender since the order was made:

(a) make changes in the order or the conditions specified in it or extend the time during which the order is to remain in force for any period, not exceeding one year, that the court considers desirable; or

(b) decrease the time during which the order is to remain in force or relieve the offender, either absolutely or partially or for any period that the court considers desirable, of compliance with any condition that is specified in the order.

Notice

(2) Before making an order under subsection (1), the court may direct that notice be given to any persons that the court considers to be interested and may hear any of those persons.

Subsequent applications with leave

68 If an application made under section 67 in respect of an offender has been heard by a court, no other application may be made under that section with respect to the offender except with leave of the court.

Application of fines

68.1 (1) All fines received by the Receiver General in respect of the commission of an offence under this Act, other than fines collected under the Contraventions Act, are to be credited to the Environmental Damages Fund, an account in the accounts of Canada, and used for purposes related to protecting, conserving or restoring the environment or for administering that Fund.

Recommendations of court

(2) The court imposing the fine may recommend to the Minister that all or a portion of the fine credited to the Environmental Damages Fund be paid to a person or an organization specified by the court for a purpose referred to in subsection (1).

2009, c. 14, s. 19

Publication of information about contraventions

68.2 (1) For the purpose of encouraging compliance with this Act and the regulations, the Minister shall maintain, in a registry accessible to the public, information about all convictions of corporations for offences under this Act.

Retention

(2) Information in the registry is to be maintained for a minimum of five years.

2009, c. 14, s. 19

Contraventions Act

68.3 If an offence under this Act is designated as a contravention under the Contraventions Act, subsection 8(5) of that Act does not apply in respect of the fine that may be established for that contravention.

2009, c. 14, s. 19

Canada National Marine Conservation Areas Act (CNMCAA)

Review

28.4 (1) The Minister shall, 10 years after the day on which this section comes into force and every 10 years after that, undertake a review of sections 24 to 28.3.

Report to Parliament

(2) The Minister shall, no later than one year after the day on which the review is undertaken, cause a report on the review to be tabled in each House of Parliament.

2009, c. 14, s. 28

Offence

24 (1) Every person who contravenes any provision of this Act or any provision of the regulations designated by regulations made under paragraph 16(1)(n) is guilty of an offence and liable

- (a) on conviction on indictment,
 - (i) in the case of an individual,
 - (A) for a first offence, to a fine of not less than \$15,000 and not more than \$1,000,000, and
 - (B) for a second or subsequent offence, to a fine of not less than \$30,000 and not more than \$2,000,000,
 - (ii) in the case of a person, other than an individual or a corporation referred to in subparagraph (iii),
 - (A) for a first offence, to a fine of not less than \$500,000 and not more than \$6,000,000, and
 - (B) for a second or subsequent offence, to a fine of not less than \$1,000,000 and not more than \$12,000,000, and
 - (iii) in the case of a corporation that the court has determined under section 24.1 to be a small revenue corporation,
 - (A) for a first offence, to a fine of not less than \$75,000 and not more than \$4,000,000, and
 - (B) for a second or subsequent offence, to a fine of not less than \$150,000 and not more than \$8,000,000; or
- (b) on summary conviction,
 - (i) in the case of an individual,
 - (A) for a first offence, to a fine of not less than \$5,000 and not more than \$300,000, and
 - (B) for a second or subsequent offence, to a fine of not less than \$10,000 and not more than \$600,000,
 - (ii) in the case of a person, other than an individual or a corporation referred to in subparagraph (iii),
 - (A) for a first offence, to a fine of not less than \$100,000 and not more than \$4,000,000, and
 - (B) for a second or subsequent offence, to a fine of not less than \$200,000 and not more than \$8,000,000, and

- (iii) in the case of a corporation that the court has determined under section 24.1 to be a small revenue corporation,
 - (A) for a first offence, to a fine of not less than \$25,000 and not more than \$2,000,000, and
 - (B) for a second or subsequent offence, to a fine of not less than \$50,000 and not more than \$4,000,000.

Contravention of other provisions of regulations or of conditions of permits, etc.

(1.1) Every person who contravenes any provision of the regulations, other than a provision designated by regulations made under paragraph 16(1)(n), or any condition of a permit or other authorizing instrument issued under this Act is guilty of an offence and liable

- (a) on conviction on indictment,
 - (i) in the case of an individual,
 - (A) for a first offence, to a fine of not more than \$100,000, and
 - (B) for a second or subsequent offence, to a fine of not more than \$200,000,
 - (ii) in the case of a person, other than an individual or a corporation referred to in subparagraph (iii),
 - (A) for a first offence, to a fine of not more than \$500,000, and
 - (B) for a second or subsequent offence, to a fine of not more than \$1,000,000, and
 - (iii) in the case of a corporation that the court has determined under section 24.1 to be a small revenue corporation,
 - (A) for a first offence, to a fine of not more than \$250,000, and
 - (B) for a second or subsequent offence, to a fine of not more than \$500,000; or
- (b) on summary conviction,
 - (i) in the case of an individual,
 - (A) for a first offence, to a fine of not more than \$25,000, and
 - (B) for a second or subsequent offence, to a fine of not more than \$50,000,
 - (ii) in the case of a person, other than an individual or a corporation referred to in subparagraph (iii),
 - (A) for a first offence, to a fine of not more than \$250,000, and
 - (B) for a second or subsequent offence, to a fine of not more than \$500,000, and
 - (iii) in the case of a corporation that the court has determined under section 24.1 to be a small revenue corporation,
 - (A) for a first offence, to a fine of not more than \$50,000, and
 - (B) for a second or subsequent offence, to a fine of not more than \$100,000.

Continuing offences

(2) If a contravention of this Act or the regulations is committed or continued on more than one day, it constitutes a separate offence for each day on which it is committed or continued.

Offences involving more than one animal, plant or object

(2.1) If an offence involves more than one animal, plant or object, the fine to be imposed in respect of that offence may, despite subsections (1) and (1.1), be the total of the fines that would have been imposed if each of the animals, plants or objects had been the subject of a separate information.

Deeming — second and subsequent offence

(2.2) For the purposes of this section, a conviction for a particular offence under this Act is deemed to be a conviction for a second or subsequent offence if the court is satisfied that the offender has been previously convicted — under any Act of Parliament, or any Act of the legislature of a province, that relates to environmental or wildlife protection or conservation, or the protection of cultural, historical or archaeological resources — of a substantially similar offence.

Application

(2.3) Subsection (2.2) applies only to previous convictions on indictment and to previous convictions on summary conviction, and to previous convictions under any similar procedure under any Act of the legislature of a province.

Injunction

(3) Whether or not proceedings have been commenced with respect to an offence under this Act, Her Majesty in right of Canada may undertake or continue proceedings to prevent conduct that constitutes such an offence.

2002, c. 18, s. 24/2009, c. 14, s. 24

Determination of small revenue corporation status

24.1 For the purpose of section 24, a court may determine a corporation to be a small revenue corporation if the court is satisfied that the corporation's gross revenues for the 12 months immediately before the day on which the subject matter of the proceedings arose — or, if it arose on more than one day, for the 12 months immediately before the first day on which the subject matter of the proceedings arose — were not more than \$5,000,000.

2009, c. 14, s. 25

Relief from minimum fine

24.2 The court may impose a fine that is less than the minimum amount provided for in subsection 24(1) if it is satisfied, on the basis of evidence submitted to the court, that the minimum fine would cause undue financial hardship. The court shall provide reasons if it imposes a fine that is less than the minimum amount provided for in that subsection.

2009, c. 14, s. 25

Additional fine

24.3 If a person is convicted of an offence under this Act and the court is satisfied that, as a result of the commission of the offence, the person acquired any property, benefit or advantage, the court shall order the person to pay an additional fine in an amount equal to the court's estimation of the value of that property, benefit or advantage. The additional fine may exceed the maximum amount of any fine that may otherwise be imposed under this Act.

2009, c. 14, s. 25

Notice to shareholders

24.4 If a corporation that has shareholders is convicted of an offence under this Act, the court shall make an order directing the corporation to notify its shareholders, in the manner and within the time directed by the court, of the facts relating to the commission of the offence and of the details of the punishment imposed.

2009, c. 14, s. 25

Liability of directors, officers, etc., of corporations

24.5 (1) If a corporation commits an offence under this Act, any director, officer, agent or mandatary of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the penalty provided for by this Act for an individual in respect of the offence committed by the corporation, whether or not the corporation has been prosecuted or convicted.

Duties of directors and officers of corporations

(2) Every director and officer of a corporation shall take all reasonable care to ensure that the corporation complies with

- (a) this Act and the regulations;
- (b) orders made by a court, the Minister or the superintendent under this Act; and
- (c) directions of the superintendent, a marine conservation area warden or an enforcement officer made under this Act.

2009, c. 14, s. 25

Fundamental purpose of sentencing

24.6 The fundamental purpose of sentencing for offences under this Act is to contribute to respect for the law establishing and protecting marine conservation areas through the imposition of just sanctions that have as their objectives

- (a) to deter the offender and any other person from committing offences under this Act;
- (b) to denounce unlawful conduct that damages or creates a risk of damage to marine conservation areas; and
- (c) to restore marine conservation area resources.

2009, c. 14, s. 25

Sentencing principles

24.7 (1) In addition to the principles and factors that the court is otherwise required to consider, including those set out in sections 718.1 to 718.21 of the Criminal Code, the court shall consider the following principles when sentencing a person who is convicted of an offence under this Act:

- (a) the amount of the fine should be increased to account for every aggravating factor associated with the offence, including the aggravating factors set out in subsection (2); and
- (b) the amount of the fine should reflect the gravity of each aggravating factor associated with the offence.

Aggravating factors

(2) The aggravating factors are the following:

- (a) the offence caused damage or risk of damage to any marine conservation area resources;
- (b) the offence caused damage or risk of damage to any unique, rare, particularly important or vulnerable marine conservation area resources;
- (c) the damage caused by the offence is extensive, persistent or irreparable;
- (d) the offender committed the offence intentionally or recklessly;
- (e) the offender failed to take reasonable steps to prevent the commission of the offence despite having the financial means to do so;
- (f) 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;
- (g) the offender committed the offence despite having been warned by the superintendent, a marine conservation area warden or an enforcement officer of the circumstances that subsequently became the subject of the offence;
- (h) the offender has a history of non-compliance with federal or provincial legislation that relates to environmental or wildlife protection or conservation or the protection of cultural, historical or archaeological resources; and
- (i) 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.

Absence of aggravating factor

(3) The absence of an aggravating factor set out in subsection (2) is not a mitigating factor.

Meaning of damage

(4) For the purposes of paragraphs (2)(a) to (c), damage includes loss of use value and non-use value.

Reasons

(5) If the court is satisfied of the existence of one or more of the aggravating factors set out in subsection (2) but decides not to increase the amount of the fine because of that factor, the court shall give reasons for that decision.

2009, c. 14, s. 25

Forfeiture of things seized

25 (1) When a person is convicted of an offence under this Act, the convicting court may, in addition to any punishment imposed, order that any seized thing by means of or in relation to which the offence was committed, or any proceeds of its disposition, be forfeited to Her Majesty in right of Canada.

Return where no forfeiture ordered

(2) If the convicting court does not order the forfeiture, a seized thing or the proceeds of its disposition shall be returned to its lawful owner or the person lawfully entitled to it.

Retention or sale

(3) If a fine is imposed on a person convicted of an offence under this Act, any seized thing or any proceeds of its disposition may be retained until the fine is paid or the thing may be sold in satisfaction of the fine and the proceeds applied, in whole or in part, in payment of the fine.

Disposition by Minister

26 Any seized thing that has been forfeited under this Act to Her Majesty in right of Canada or abandoned by its owner may be dealt with and disposed of as the Minister may direct.

Application of fines

26.1 (1) All fines received by the Receiver General in respect of the commission of an offence under this Act, other than fines collected under the Contraventions Act, are to be credited to the Environmental Damages Fund, an account in the accounts of Canada, and used for purposes related to protecting, conserving or restoring marine conservation areas or for administering that Fund.

Recommendations of court

(2) The court imposing the fine may recommend to the Minister that all or a portion of the fine credited to the Environmental Damages Fund be paid to a person or an organization specified by the court for a purpose referred to in subsection (1).

2009, c. 14, s. 26

Orders of court

27 (1) If a person is convicted of an offence under this Act, in addition to any punishment imposed, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order containing one or more of the following prohibitions, directions or requirements:

- (a) prohibiting the person from doing any act or engaging in any activity that may, in the court's opinion, result in the continuation or repetition of the offence;
- (b) directing the person to take any action that the court considers appropriate to remedy or avoid any damage to any marine conservation area resources that resulted or may result from the commission of the offence;
- (c) directing the person to post a bond, provide surety or pay into court an amount of money that the court considers appropriate for the purpose of ensuring compliance with any prohibition, direction or requirement mentioned in this section;
- (d) directing the person to prepare and implement a pollution prevention plan or an environmental emergency plan;
- (e) directing the person to carry out, in the manner established by the Minister, monitoring of the environmental effects of any activity or undertaking on the resources of a marine conservation area or directing the person to pay, in the manner specified by the court, an amount for that purpose;
- (f) directing the person to implement an environmental management system approved by the Minister;
- (g) directing the person to have an environmental audit conducted by a person of a class and at the times specified by the Minister and directing the person to remedy any deficiencies revealed during the audit;

- (h) directing the person to pay to Her Majesty in right of Canada an amount of money that the court considers appropriate for the purpose of promoting the protection, conservation or restoration of marine conservation areas;
- (i) directing the person to publish, in the manner specified by the court, the facts relating to the commission of the offence and the details of the punishment imposed, including any orders made under this subsection;
- (j) directing the person to notify, at the person's own cost and in the manner specified by the court, any person aggrieved or affected by the person's conduct of the facts relating to the commission of the offence and of the details of the punishment imposed, including any orders made under this subsection;
- (k) directing the person to submit to the Minister, when requested to do so by the Minister at any time within three years after the date of conviction, any information with respect to the person's activities that the court considers appropriate in the circumstances;
- (l) directing the person to compensate any person, monetarily or otherwise, in whole or in part, for the cost of any remedial or preventive action taken, caused to be taken or to be taken as a result of the act or omission that constituted the offence, including any costs of assessing appropriate remedial or preventive action;
- (m) directing the person to perform community service, subject to any reasonable conditions that may be imposed in the order;
- (n) directing the person to pay, in a manner specified by the court, an amount to enable research to be conducted into the protection, conservation or restoration of marine conservation areas;
- (o) requiring the person to surrender to the Minister any permit or other authorizing instrument issued under this Act to the person;
- (p) prohibiting the person from applying for any new permit or other authorizing instrument under this Act during any period that the court considers appropriate;
- (q) directing the person to pay, in the manner prescribed by the court, an amount to environmental or other groups to assist in their work related to the marine conservation area where the offence was committed;
- (r) directing the person to pay, in the manner prescribed by the court, an amount to an educational institution including for scholarships for students enrolled in studies related to the environment; and
- (s) requiring the person to comply with any other conditions that the court considers appropriate.

Publication

(1.1) If a person fails to comply with an order made under paragraph (1)(i), the Minister may, in the manner that the court directed the person to do so, publish the facts relating to the commission of the offence and the details of the punishment imposed and recover the costs of publication from the person.

Debt due to Her Majesty

(1.2) If the court makes an order under paragraph (1)(h) or (l) directing a person to pay an amount to Her Majesty in right of Canada, or if the Minister incurs publication costs under subsection (1.1), the amount or the costs, as the case may be, constitute a debt due to Her Majesty in right of Canada and may be recovered in any court of competent jurisdiction.

Enforcement

(1.3) If the court makes an order under paragraph (1)(l) directing a person to pay an amount to another person, other than to Her Majesty in right of Canada, and the amount is not paid without delay, that other person may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the person who was directed to pay the amount in the same manner as if it were a judgment rendered against the offender in that court in civil proceedings.

Cancellation or suspension of permit, etc.

(1.4) If the court makes an order under paragraph (1)(o), any permit or other authorizing instrument to which the order relates is cancelled unless the court makes an order suspending it for any period that the court considers appropriate.

Suspended sentence

(2) Where a person is convicted of an offence under this Act and the court suspends the passing of sentence under paragraph 731(1)(a) of the Criminal Code, the court may, in addition to any probation order made under that paragraph, make an order referred to in subsection (1).

Imposition of sentence

(3) If the person does not comply with the order or is convicted of another offence, the court may, within three years after the order was made, on the application of the prosecution, impose any sentence that could have been imposed if the passing of sentence had not been suspended.

Coming into force and duration of order

(4) An order made under subsection (1) comes into force on the day on which it is made or on any other day that the court may determine and shall not continue in force for more than three years after that day unless the court provides otherwise in the order.

2002, c. 18, s. 27 2009, c. 14, s. 27

Compensation for loss of property

28 (1) If a person has been convicted of an offence under this Act, the court may, at the time sentence is imposed and on the application of the person aggrieved, order the offender to pay to the aggrieved person an amount by way of satisfaction or compensation for loss of or damage to property suffered by that person as a result of the commission of the offence.

Enforcement

(2) If the amount ordered to be paid under subsection (1) is not paid without delay, the aggrieved person may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the offender in the same manner as if it were a judgment rendered against the offender in that court in civil proceedings.

2002, c. 18, s. 28 2009, c. 14, s. 28

Compensation for cost of remedial or preventive action

28.01 (1) A court shall not, under paragraph 27(1)(l), order a person to compensate another person for the cost of any remedial or preventive action referred to in that paragraph if the other person is entitled to make a claim for compensation for that cost under the Marine Liability Act or the Arctic Waters Pollution Prevention Act.

Compensation for loss or damage — property

(2) A court shall not, under subsection 28(1), order a person to pay to another person an amount by way of satisfaction or compensation for loss of or damage to property if the other person is entitled to make a claim for compensation for that loss or damage under the Marine Liability Act or the Arctic Waters Pollution Prevention Act.

2009, c. 14, s. 28

Limitation period

28.1 No proceedings by way of summary conviction in respect of an offence under this Act may be instituted more than five years after the day on which the subject matter of the proceedings arose, unless the prosecutor and the defendant agree that they may be instituted after the five years.

2009, c. 14, s. 28

Contraventions Act

28.2 If an offence under this Act is designated as a contravention under the Contraventions Act, subsection 8(5) of that Act does not apply in respect of the fine that may be established for that contravention.

2009, c. 14, s. 28

Publication of information about contraventions

28.3 (1) For the purpose of encouraging compliance with this Act and the regulations, the Minister shall maintain, in a registry accessible to the public, information about all convictions of corporations for offences under this Act.

Retention

(2) Information in the registry is to be maintained for a minimum of five years.

2009, c. 14, s. 28

Canada National Parks Act (CNPA)

Review

31.4 (1) The Minister shall, 10 years after the day on which this section comes into force and every 10 years after that, undertake a review of sections 24 to 31.3.

Report to Parliament

(2) The Minister shall, no later than one year after the day on which the review is undertaken, cause a report on the review to be tabled in each House of Parliament.

2009, c. 14, s. 40

Offence

24 (1) Every person who contravenes section 13, subsection 32(1) or a provision of the regulations designated by regulations made under paragraph 16(1)(y) is guilty of an offence and liable

- (a) on conviction on indictment,
 - (i) in the case of an individual,
 - (A) for a first offence, to a fine of not less than \$15,000 and not more than \$1,000,000, and
 - (B) for a second or subsequent offence, to a fine of not less than \$30,000 and not more than \$2,000,000,
 - (ii) in the case of a person, other than an individual or a corporation referred to in subparagraph (iii),
 - (A) for a first offence, to a fine of not less than \$500,000 and not more than \$6,000,000, and
 - (B) for a second or subsequent offence, to a fine of not less than \$1,000,000 and not more than \$12,000,000, and
 - (iii) in the case of a corporation that the court has determined under section 27.1 to be a small revenue corporation,
 - (A) for a first offence, to a fine of not less than \$75,000 and not more than \$4,000,000, and
 - (B) for a second or subsequent offence, to a fine of not less than \$150,000 and not more than \$8,000,000; or
- (b) on summary conviction,
 - (i) in the case of an individual,
 - (A) for a first offence, to a fine of not less than \$5,000 and not more than \$300,000, and
 - (B) for a second or subsequent offence, to a fine of not less than \$10,000 and not more than \$600,000,
 - (ii) in the case of a person, other than an individual or a corporation referred to in subparagraph (iii),
 - (A) for a first offence, to a fine of not less than \$100,000 and not more than \$4,000,000, and

- (B) for a second or subsequent offence, to a fine of not less than \$200,000 and not more than \$8,000,000, and
- (iii) in the case of a corporation that the court has determined under section 27.1 to be a small revenue corporation,
 - (A) for a first offence, to a fine of not less than \$25,000 and not more than \$2,000,000, and
 - (B) for a second or subsequent offence, to a fine of not less than \$50,000 and not more than \$4,000,000.

Offence

(2) Every person who contravenes any provision of the regulations other than a provision designated by regulations made under paragraph 16(1)(y), any of subsections 41.5(3) to (5), any condition of a permit, licence or other authorizing instrument issued under the regulations or under subsection 41.1(3) or (4) or 41.4(2) or (3) or any order or direction given by a superintendent, park warden or enforcement officer under subsection 41.1(3) or (4) or 41.4(2) or (3) is guilty of an offence and liable

- (a) on conviction on indictment,
 - (i) in the case of an individual,
 - (A) for a first offence, to a fine of not more than \$100,000, and
 - (B) for a second or subsequent offence, to a fine of not more than \$200,000,
 - (ii) in the case of a person, other than an individual or a corporation referred to in subparagraph (iii),
 - (A) for a first offence, to a fine of not more than \$500,000, and
 - (B) for a second or subsequent offence, to a fine of not more than \$1,000,000, and
 - (iii) in the case of a corporation that the court has determined under section 27.1 to be a small revenue corporation,
 - (A) for a first offence, to a fine of not more than \$250,000, and
 - (B) for a second or subsequent offence, to a fine of not more than \$500,000; or
- (b) on summary conviction,
 - (i) in the case of an individual,
 - (A) for a first offence, to a fine of not more than \$25,000, and
 - (B) for a second or subsequent offence, to a fine of not more than \$50,000,
 - (ii) in the case of a person, other than an individual or a corporation referred to in subparagraph (iii),
 - (A) for a first offence, to a fine of not more than \$250,000, and
 - (B) for a second or subsequent offence, to a fine of not more than \$500,000, and
 - (iii) in the case of a corporation that the court has determined under section 27.1 to be a small revenue corporation,
 - (A) for a first offence, to a fine of not more than \$50,000, and
 - (B) for a second or subsequent offence, to a fine of not more than \$100,000.

2000, c. 32, s. 242009, c. 14, s. 33, c. 17, ss. 3, 122014, c. 35, s. 22019, c. 29, s. 328

Trafficking in wild animals, etc.

25 (1) Except as permitted by this Act or the regulations, no person shall traffic in any wild animal, whether living or dead, at any developmental stage, in any part of or any derivative of, or in any egg or embryo of, a wild animal — or in any plant or part of a plant or in any other naturally occurring object or product of natural phenomena — taken in or from a park.

Offence

(2) Every person who contravenes subsection (1) is guilty of an offence and liable

- (a) on conviction on indictment,
 - (i) in the case of an individual,
 - (A) for a first offence, to a fine of not less than \$7,500 and not more than \$500,000 or to imprisonment for a term of not more than one year, or to both, and
 - (B) for a second or subsequent offence, to a fine of not less than \$15,000 and not more than \$1,000,000 or to imprisonment for a term of not more than one year, or to both,
 - (ii) in the case of a person, other than an individual or a corporation referred to in subparagraph (iii),
 - (A) for a first offence, to a fine of not less than \$400,000 and not more than \$5,000,000, and
 - (B) for a second or subsequent offence, to a fine of not less than \$800,000 and not more than \$10,000,000, and
 - (iii) in the case of a corporation that the court has determined under section 27.1 to be a small revenue corporation,
 - (A) for a first offence, to a fine of not less than \$25,000 and not more than \$3,000,000, and
 - (B) for a second or subsequent offence, to a fine of not less than \$50,000 and not more than \$6,000,000; or
- (b) on summary conviction,
 - (i) in the case of an individual,
 - (A) for a first offence, to a fine of not less than \$4,000 and not more than \$225,000 or to imprisonment for a term of not more than six months, or to both, and
 - (B) for a second or subsequent offence, to a fine of not less than \$8,000 and not more than \$450,000 or to imprisonment for a term of not more than six months, or to both,
 - (ii) in the case of a person, other than an individual or a corporation referred to in subparagraph (iii),
 - (A) for a first offence, to a fine of not less than \$50,000 and not more than \$3,000,000, and
 - (B) for a second or subsequent offence, to a fine of not less than \$100,000 and not more than \$6,000,000, and
 - (iii) in the case of a corporation that the court has determined under section 27.1 to be a small revenue corporation,
 - (A) for a first offence, to a fine of not less than \$15,000 and not more than \$1,250,000, and

(B) for a second or subsequent offence, to a fine of not less than \$30,000 and not more than \$2,500,000.

Definition of traffic

(3) In this section and section 26, traffic means to sell, offer for sale, expose for sale, buy, offer to buy, solicit, barter, exchange, give, send, transport or deliver.

2000, c. 32, s. 252009, c. 14, s. 34, c. 17, ss. 4, 12

Hunting, trafficking or possessing

26 (1) Except as permitted by this Act or the regulations, no person shall

(a) hunt, in a park, any wild animal of a species named in Part 1 of Schedule 3;

(b) traffic in or possess, in a park, any wild animal of a species named in Part 1 of Schedule 3, whether living or dead, at any developmental stage, or any egg or embryo, or any part or derivative, of any such animal; or

(c) traffic in or possess any wild animal of a species named in Part 1 of Schedule 3, whether living or dead, at any developmental stage, taken from a park, or any egg or embryo, or any part or derivative, of any such animal that was taken from a park.

Offence

(2) Every person who contravenes subsection (1) is guilty of an offence and liable

(a) on conviction on indictment,

(i) in the case of an individual,

(A) for a first offence, to a fine of not less than \$15,000 and not more than \$1,000,000 or to imprisonment for a term of not more than five years, or to both, and

(B) for a second or subsequent offence, to a fine of not less than \$30,000 and not more than \$2,000,000 or to imprisonment for a term of not more than five years, or to both,

(ii) in the case of a person, other than an individual or a corporation referred to in subparagraph (iii),

(A) for a first offence, to a fine of not less than \$500,000 and not more than \$6,000,000, and

(B) for a second or subsequent offence, to a fine of not less than \$1,000,000 and not more than \$12,000,000, and

(iii) in the case of a corporation that the court has determined under section 27.1 to be a small revenue corporation,

(A) for a first offence, to a fine of not less than \$75,000 and not more than \$4,000,000, and

(B) for a second or subsequent offence, to a fine of not less than \$150,000 and not more than \$8,000,000; or

(b) on summary conviction,

(i) in the case of an individual,

(A) for a first offence, to a fine of not less than \$5,000 and not more than

\$300,000 or to imprisonment for a term of not more than six months, or to both, and

- (B) for a second or subsequent offence, to a fine of not less than \$10,000 and not more than \$600,000 or to imprisonment for a term of not more than six months, or to both,
- (ii) in the case of a person, other than an individual or a corporation referred to in subparagraph (iii),
 - (A) for a first offence, to a fine of not less than \$100,000 and not more than \$4,000,000, and
 - (B) for a second or subsequent offence, to a fine of not less than \$200,000 and not more than \$8,000,000, and
- (iii) in the case of a corporation that the court has determined under section 27.1 to be a small revenue corporation,
 - (A) for a first offence, to a fine of not less than \$25,000 and not more than \$2,000,000, and
 - (B) for a second or subsequent offence, to a fine of not less than \$50,000 and not more than \$4,000,000.

Hunting, trafficking or possessing

- (3) Except as permitted by this Act or the regulations, no person shall
- (a) hunt, in a park, any wild animal of a species named in Part 2 of Schedule 3;
 - (b) traffic in or possess, in a park, any wild animal of a species named in Part 2 of Schedule 3, whether living or dead, at any developmental stage, or any egg or embryo, or any part or derivative, of any such animal; or
 - (c) traffic in or possess any wild animal of a species named in Part 2 of Schedule 3, whether living or dead, at any developmental stage, taken from a park, or any egg or embryo, or any part or derivative, of any such animal that was taken from a park.

Offence

- (4) Every person who contravenes subsection (3) is guilty of an offence and liable
- (a) on conviction on indictment,
 - (i) in the case of an individual,
 - (A) for a first offence, to a fine of not less than \$10,000 and not more than \$750,000 or to imprisonment for a term of not more than five years, or to both, and
 - (B) for a second or subsequent offence, to a fine of not less than \$20,000 and not more than \$1,500,000 or to imprisonment for a term of not more than five years, or to both,
 - (ii) in the case of a person, other than an individual or a corporation referred to in subparagraph (iii),
 - (A) for a first offence, to a fine of not less than \$450,000 and not more than \$5,500,000, and
 - (B) for a second or subsequent offence, to a fine of not less than \$900,000 and not more than \$11,000,000, and
 - (iii) in the case of a corporation that the court has determined under section 27.1 to be a small revenue corporation,
 - (A) for a first offence, to a fine of not less than \$50,000 and not more than \$3,500,000, and

- (B) for a second or subsequent offence, to a fine of not less than \$100,000 and not more than \$7,000,000; or
- (b) on summary conviction,
 - (i) in the case of an individual,
 - (A) for a first offence, to a fine of not less than \$4,500 and not more than \$250,000 or to imprisonment for a term of not more than six months, or to both, and
 - (B) for a second or subsequent offence, to a fine of not less than \$9,000 and not more than \$500,000 or to imprisonment for a term of not more than six months, or to both,
 - (ii) in the case of a person, other than an individual or a corporation referred to in subparagraph (iii),
 - (A) for a first offence, to a fine of not less than \$75,000 and not more than \$3,500,000, and
 - (B) for a second or subsequent offence, to a fine of not less than \$150,000 and not more than \$7,000,000, and
 - (iii) in the case of a corporation that the court has determined under section 27.1 to be a small revenue corporation,
 - (A) for a first offence, to a fine of not less than \$20,000 and not more than \$1,500,000, and
 - (B) for a second or subsequent offence, to a fine of not less than \$40,000 and not more than \$3,000,000.

Definitions

(5) The definitions in this subsection apply in this section.

hunt means to kill, injure, seize, capture or trap, or to attempt to do so, and includes to pursue, stalk, track, search for, lie in wait for or shoot at for any of those purposes. (chasser)
 possess, in relation to any person, includes knowingly having any thing in any place, whether or not that place belongs to or is occupied by the person, for his or her own use or benefit or for that of another person. (possession)
 wildlife[Repealed, 2009, c. 14, s. 35]

Amendments to Schedule 3

(6) The Governor in Council may, by regulation, amend Part 1 or 2 of Schedule 3 by adding the name of any species of wild animal or by deleting the name of any species of wild animal.
 2000, c. 32, s. 262009, c. 14, s. 35, c. 17, ss. 5, 12

Offences involving more than one animal, plant or object

27 (1) If an offence involves more than one animal, plant or object, the fine to be imposed in respect of that offence may, despite sections 24 to 26, be the total of the fines that would have been imposed if each of the animals, plants or objects had been the subject of a separate information.

Continuing offences

(2) If a contravention of this Act or the regulations is committed or continued on more than one day, it constitutes a separate offence for each day on which it is committed or continued.

Deeming — second and subsequent offence

(3) For the purposes of sections 24 to 26, a conviction for a particular offence under this Act is deemed to be a conviction for a second or subsequent offence if the court is satisfied that the offender has been previously convicted — under any Act of Parliament, or any Act of the legislature of a province, that relates to environmental or wildlife protection or conservation, or the protection of cultural, historical or archaeological resources — of a substantially similar offence.

Application

(4) Subsection (3) applies only to previous convictions on indictment and to previous convictions on summary conviction, and to previous convictions under any similar procedure under any Act of the legislature of a province.

2000, c. 32, s. 27/2009, c. 14, s. 36

Determination of small revenue corporation status

27.1 For the purpose of sections 24 to 26, a court may determine a corporation to be a small revenue corporation if the court is satisfied that the corporation's gross revenues for the 12 months immediately before the day on which the subject matter of the proceedings arose — or, if it arose on more than one day, for the 12 months immediately before the first day on which the subject matter of the proceedings arose — were not more than \$5,000,000.

2009, c. 14, s. 37

Relief from minimum fine

27.2 The court may impose a fine that is less than the minimum amount provided for in section 24, 25 or 26 if it is satisfied, on the basis of evidence submitted to the court, that the minimum fine would cause undue financial hardship. The court shall provide reasons if it imposes a fine that is less than the minimum amount provided for in any of those sections.

2009, c. 14, s. 37

Additional fine

27.3 If a person is convicted of an offence under this Act and the court is satisfied that, as a result of the commission of the offence, the person acquired any property, benefit or advantage, the court shall order the person to pay an additional fine in an amount equal to the court's estimation of the value of that property, benefit or advantage. The additional fine may exceed the maximum amount of any fine that may otherwise be imposed under this Act.

2009, c. 14, s. 37

Notice to shareholders

27.4 If a corporation that has shareholders is convicted of an offence under this Act, the court shall make an order directing the corporation to notify its shareholders, in the manner and within the time directed by the court, of the facts relating to the commission of the offence and of the details of the punishment imposed.

2009, c. 14, s. 37

Liability of directors, officers, etc., of corporations

27.5 (1) If a corporation commits an offence under this Act, any director, officer, agent or mandatary of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the penalty provided for by this Act for an individual in respect of the offence committed by the corporation, whether or not the corporation has been prosecuted or convicted.

Duties of directors and officers of corporations

(2) Every director and officer of a corporation shall take all reasonable care to ensure that the corporation complies with

- (a) this Act and the regulations;
- (b) orders made by a court or the superintendent under this Act; and
- (c) directions of the superintendent, a park warden or an enforcement officer made under this Act.

2009, c. 14, s. 37

Fundamental purpose of sentencing

27.6 The fundamental purpose of sentencing for offences under this Act is to contribute to respect for the law establishing and protecting parks through the imposition of just sanctions that have as their objectives

- (a) to deter the offender and any other person from committing offences under this Act;
- (b) to denounce unlawful conduct that damages or creates a risk of damage to parks; and
- (c) to restore park resources.

2009, c. 14, s. 37

Sentencing principles

27.7 (1) In addition to the principles and factors that the court is otherwise required to consider, including those set out in sections 718.1 to 718.21 of the Criminal Code, the court shall consider the following principles when sentencing a person who is convicted of an offence under this Act:

- (a) the amount of the fine should be increased to account for every aggravating factor associated with the offence, including the aggravating factors set out in subsection (2); and
- (b) the amount of the fine should reflect the gravity of each aggravating factor associated with the offence.

Aggravating factors

(2) The aggravating factors are the following:

- (a) the offence caused damage or risk of damage to park resources;
- (b) the offence caused damage or risk of damage to any unique, rare, particularly important or vulnerable park resources;
- (c) the damage caused by the offence is extensive, persistent or irreparable;
- (d) the offender committed the offence intentionally or recklessly;
- (e) the offender failed to take reasonable steps to prevent the commission of the offence despite having the financial means to do so;
- (f) 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;

- (g) the offender committed the offence despite having been warned by the superintendent, a park warden or an enforcement officer of the circumstances that subsequently became the subject of the offence;
- (h) the offender has a history of non-compliance with federal or provincial legislation that relates to environmental or wildlife protection or conservation or the protection of cultural, historical or archaeological resources; and
- (i) 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.

Absence of aggravating factor

(3) The absence of an aggravating factor set out in subsection (2) is not a mitigating factor.

Meaning of damage

(4) For the purposes of paragraphs (2)(a) to (c), damage includes loss of use value and non-use value.

Reasons

(5) If the court is satisfied of the existence of one or more of the aggravating factors set out in subsection (2) but decides not to increase the amount of the fine because of that factor, it shall give reasons for that decision.

2009, c. 14, s. 37

Forfeiture

28 (1) When a person is convicted of an offence, the court may, in addition to any punishment imposed, order that any seized thing by means of or in relation to which the offence was committed, or any proceeds of its disposition, be forfeited to Her Majesty in right of Canada.

Return where no forfeiture ordered

(2) If the court does not order the forfeiture, the seized thing or the proceeds of its disposition shall be returned or paid to its lawful owner or the person lawfully entitled to it.

Retention or sale

(3) Where a fine is imposed on a person convicted of an offence, any seized thing, or any proceeds of its disposition, may be retained until the fine is paid or the thing may be sold in satisfaction of the fine and the proceeds applied, in whole or in part, in payment of the fine.

Disposition by Minister

29 Any seized thing that has been forfeited under this Act to Her Majesty in right of Canada or abandoned by its owner may be dealt with and disposed of as the Minister may direct.

Application of fines

29.1 (1) All fines received by the Receiver General in respect of the commission of an offence under this Act, other than fines collected under the Contraventions Act, are to be credited to the Environmental Damages Fund, an account in the accounts of Canada, and used for purposes related to protecting, conserving or restoring parks or for administering that Fund.

Recommendations of court

(2) The court imposing the fine may recommend to the Minister that all or a portion of the fine credited to the Environmental Damages Fund be paid to a person or organization specified by the court for a purpose referred to in subsection (1).

2009, c. 14, s. 38

Orders of court

30 (1) When a person is convicted of an offence under this Act, the court may, in addition to any punishment imposed and having regard to the nature of the offence and the circumstances surrounding its commission, make an order

- (a) prohibiting the person from doing any act or engaging in any activity that may, in the opinion of the court, result in the continuation or repetition of the offence;
- (b) directing the person to take any action that the court considers appropriate to remedy or avoid any damage to any park resources that resulted or may result from the commission of the offence;
- (c) directing the person to compensate any person, monetarily or otherwise, in whole or in part, for the cost of any remedial or preventive action taken, caused to be taken or to be taken as a result of the act or omission that constituted the offence, including costs of assessing appropriate remedial or preventive action;
- (d) directing the person to post a bond or pay into court an amount of money that the court considers appropriate for the purpose of ensuring compliance with any prohibition, direction or requirement mentioned in this section;
- (e) directing the person to prepare and implement a pollution prevention plan or an environmental emergency plan;
- (f) directing the person to carry out, in the manner established by the Minister, monitoring of the environmental effects of any activity or undertaking on park resources or directing the person to pay, in the manner specified by the court, an amount for that purpose;
- (g) directing the person to implement an environmental management system approved by the Minister;
- (h) directing the person to have an environmental audit conducted by a person of a class and at the times specified by the Minister and directing the person to remedy any deficiencies revealed during the audit;
- (i) directing the person to pay to Her Majesty in right of Canada an amount of money that the court considers appropriate for the purpose of promoting the protection, conservation or restoration of parks;
- (j) directing the person to publish, in the manner specified by the court, the facts relating to the commission of the offence and the details of the punishment imposed, including any orders made under this subsection;
- (k) directing the person to notify, at the person's own cost and in the manner specified by the court, any person aggrieved or affected by the person's conduct of the facts relating to the

commission of the offence and of the details of the punishment imposed, including any orders made under this subsection;

(l) directing the person to submit to the Minister, when requested to do so by the Minister at any time within three years after the date of conviction, any information with respect to the person's activities that the court considers appropriate in the circumstances;

(m) directing the person to perform community service, subject to any reasonable conditions that may be imposed in the order;

(n) directing the person to pay, in a manner specified by the court, an amount to enable research to be conducted into the protection, conservation or restoration of parks;

(o) requiring the person to surrender to the Minister any permit, licence or other authorizing instrument issued under the regulations to the person;

(p) prohibiting the person from applying for any new permit, licence or other authorizing instrument under the regulations during any period that the court considers appropriate;

(q) directing the person to pay, in the manner prescribed by the court, an amount to environmental or other groups to assist in their work related to the park;

(r) directing the person to pay, in the manner prescribed by the court, an amount to an educational institution including for scholarships for students enrolled in studies related to the environment; and

(s) requiring the person to comply with any other conditions that the court considers appropriate.

Suspended sentence

(2) Where a person is convicted of an offence under this Act and the court suspends the passing of sentence under paragraph 731(1)(a) of the Criminal Code, the court may, in addition to any probation order made under that paragraph, make an order referred to in subsection (1).

Imposition of sentence

(3) If a person does not comply with an order made under subsection (2) or is convicted of another offence, the court may, within three years after the order was made, on the application of the prosecution, impose any sentence that could have been imposed if the passing of sentence had not been suspended.

Publication

(4) If a person fails to comply with an order made under paragraph (1)(j), the Minister may, in the manner that the court directed the person to do so, publish the facts relating to the commission of the offence and the details of the punishment imposed and recover the costs of publication from the person.

Debt due to Her Majesty

(5) If the court makes an order under paragraph (1)(c) or (i) directing a person to pay an amount to Her Majesty in right of Canada, or if the Minister incurs publication costs under subsection (4), the amount or the costs, as the case may be, constitute a debt due to Her Majesty in right of Canada and may be recovered in any court of competent jurisdiction.

Enforcement

(6) If the court makes an order under paragraph (1)(c) directing a person to pay an amount to another person, other than to Her Majesty in right of Canada, and the amount is not paid without delay, that other person may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the person who was directed to pay the amount in the same manner as if it were a judgment rendered against the offender in that court in civil proceedings.

Cancellation or suspension of permits, etc.

(7) If the court makes an order under paragraph (1)(o), any permit, licence or other authorizing instrument to which the order relates is cancelled unless the court makes an order suspending it for any period that the court considers appropriate.

Coming into force and duration of order

(8) An order made under subsection (1) comes into force on the day on which it is made or on any other day that the court may determine and shall not continue in force for more than three years after that day unless the court provides otherwise in the order.

2000, c. 32, s. 30/2009, c. 14, s. 39

Compensation for loss of property

31 (1) If a person has been convicted of an offence under this Act, the court may, at the time sentence is imposed and on the application of the person aggrieved, order the offender to pay to the aggrieved person an amount by way of satisfaction or compensation for loss of or damage to property suffered by that person as a result of the commission of the offence.

Enforcement

(2) If the amount ordered to be paid under subsection (1) is not paid without delay, the aggrieved person may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the offender in the same manner as if it were a judgment rendered against the offender in that court in civil proceedings.

2000, c. 32, s. 31/2009, c. 14, s. 40

Compensation for cost of remedial or preventive action

31.01 (1) A court shall not, under paragraph 30(1)(c), order a person to compensate another person for the cost of any remedial or preventive action referred to in that paragraph if the other person is entitled to make a claim for compensation for that cost under the Marine Liability Act or the Arctic Waters Pollution Prevention Act.

Compensation for loss or damage — property

(2) A court shall not, under subsection 31(1), order a person to pay to another person an amount by way of satisfaction or compensation for loss of or damage to property if the other person is entitled to make a claim for compensation for that loss or damage under the Marine Liability Act or the Arctic Waters Pollution Prevention Act.

2009, c. 14, s. 40

Limitation period

31.1 No proceedings by way of summary conviction in respect of an offence under this Act may be instituted more than five years after the day on which the subject matter of the proceedings arose, unless the prosecutor and the defendant agree that they may be instituted after the five years.

2009, c. 14, s. 40

Contraventions Act

31.2 If an offence under this Act is designated as a contravention under the Contraventions Act, subsection 8(5) of that Act does not apply in respect of the fine that may be established for that contravention.

2009, c. 14, s. 40

Publication of information about contraventions

31.3 (1) For the purpose of encouraging compliance with this Act and the regulations, the Minister shall maintain, in a registry accessible to the public, information about all convictions of corporations for offences under this Act.

Retention

(2) Information in the registry is to be maintained for a minimum of five years.

2009, c. 14, s. 40

Canada Wildlife Act (CWA)

Review

18.4 (1) The Minister shall, 10 years after the day on which this section comes into force and every 10 years after that, undertake a review of sections 13 to 18.3.

Report to Parliament

(2) The Minister shall, no later than one year after the day on which the review is undertaken, cause a report on the review to be tabled in each House of Parliament.

2009, c. 14, s. 51

Offence

13 (1) Every person commits an offence who contravenes

- (a) subsection 11(6) or 11.91(1);
- (b) any provision of the regulations designated by regulations made under paragraph 12(k); or
- (c) an order made by a court under this Act.

Penalty — individuals

(2) Every individual who commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not less than \$15,000 and not more than \$1,000,000 or to imprisonment for a term of not more than five years, or to both, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$30,000 and not more than \$2,000,000 or to imprisonment for a term of not more than five years, or to both; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not less than \$5,000 and not more than \$300,000 or to imprisonment for a term of not more than six months, or to both, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$10,000 and not more than \$600,000 or to imprisonment for a term of not more than six months, or to both.

Penalty — other persons

(3) Every person, other than an individual or a corporation referred to in subsection (4), who commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not less than \$500,000 and not more than \$6,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$1,000,000 and not more than \$12,000,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not less than \$100,000 and not more than \$4,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$200,000 and not more than \$8,000,000.

Penalty — small revenue corporations

(4) Every corporation that commits an offence under subsection (1) and that the court determines under section 13.02 to be a small revenue corporation is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not less than \$75,000 and not more than \$4,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$150,000 and not more than \$8,000,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not less than \$25,000 and not more than \$2,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$50,000 and not more than \$4,000,000.

Relief from minimum fine

(5) The court may impose a fine that is less than the minimum amount provided for in this section if it is satisfied, on the basis of evidence submitted to the court, that the minimum fine would cause undue financial hardship. The court shall provide reasons if it imposes a fine that is less than the minimum amount provided for in this section.

R.S., 1985, c. W-9, s. 131994, c. 23, s. 152009, c. 14, s. 48

Offence

13.01 (1) Every person commits an offence who contravenes

- (a) any provision of the Act or the regulations, other than a provision the contravention of which is an offence under subsection 13(1); or
- (b) an order made under this Act, other than an order the contravention of which is an offence under subsection 13(1).

Penalty — individuals

(2) Every individual who commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not more than \$100,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$200,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not more than \$25,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$50,000.

Penalty — other persons

(3) Every person, other than an individual or a corporation referred to in subsection (4), that commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not more than \$500,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$1,000,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not more than \$250,000, and

(ii) for a second or subsequent offence, to a fine of not more than \$500,000.

Penalty — small revenue corporations

(4) Every corporation that commits an offence under subsection (1) and that the court determines under section 13.02 to be a small revenue corporation is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not more than \$250,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$500,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not more than \$50,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$100,000.

2009, c. 14, s. 48

Determination of small revenue corporation status

13.02 For the purpose of sections 13 and 13.01, a court may determine a corporation to be a small revenue corporation if the court is satisfied that the corporation's gross revenues for the 12 months immediately before the day on which the subject matter of the proceedings arose — or, if it arose on more than one day, for the 12 months immediately before the first day on which the subject matter of the proceedings arose — were not more than \$5,000,000.

2009, c. 14, s. 48

Deeming — second and subsequent offence

13.03 (1) For the purposes of subsections 13(2) to (4) and 13.01(2) to (4), a conviction for a particular offence under this Act is deemed to be a conviction for a second or subsequent offence if the court is satisfied that the offender has been previously convicted — under any Act of Parliament, or any Act of the legislature of a province, that relates to environmental or wildlife conservation or protection — of a substantially similar offence.

Application

(2) Subsection (1) applies only to previous convictions on indictment and to previous convictions on summary conviction, and to previous convictions under any similar procedure under any Act of the legislature of a province.

2009, c. 14, s. 48

Additional fine

13.04 If a person is convicted of an offence under this Act and the court is satisfied that, as a result of the commission of the offence, the person acquired any property, benefit or advantage, the court shall order the person to pay an additional fine in an amount equal to the court's estimation of the value of that property, benefit or advantage. The additional fine may exceed the maximum amount of any fine that may otherwise be imposed under this Act.

2009, c. 14, s. 48

Notice to shareholders

13.05 If a corporation that has shareholders is convicted of an offence under this Act, the court shall make an order directing the corporation to notify its shareholders, in the manner and within the time directed by the court, of the facts relating to the commission of the offence and of the details of the punishment imposed.

2009, c. 14, s. 48

Liability of directors and officers, etc., of corporation

13.06 If a corporation commits an offence under this Act, any director, officer, agent or mandatary of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the penalty provided for by this Act for an individual in respect of the offence committed by the corporation, whether or not the corporation has been prosecuted or convicted.

2009, c. 14, s. 48

Directors' duties

13.07 Every director and officer of a corporation shall take all reasonable care to ensure that the corporation complies with the provisions of this Act and the regulations and obligations and prohibitions arising from this Act or the regulations.

2009, c. 14, s. 48

Fundamental purpose of sentencing

13.08 The fundamental purpose of sentencing for offences under this Act is to contribute, in light of the significant and many threats to wildlife and the importance of wildlife to the well-being of Canadians, to respect for the law protecting wildlife through the imposition of just sanctions that have as their objectives

- (a) to deter the offender and any other person from committing offences under this Act;
- (b) to denounce unlawful conduct that damages or creates a risk of damage to wildlife; and
- (c) to recover wildlife and restore wildlife habitat.

2009, c. 14, s. 48

Sentencing principles

13.09 (1) In addition to the principles and factors that the court is otherwise required to consider, including those set out in sections 718.1 to 718.21 of the Criminal Code, the court shall consider the following principles when sentencing a person who is convicted of an offence under this Act:

- (a) the amount of the fine should be increased to account for every aggravating factor associated with the offence, including the aggravating factors set out in subsection (2); and
- (b) the amount of the fine should reflect the gravity of each aggravating factor associated with the offence.

Aggravating factors

(2) The aggravating factors are the following:

- (a) the offence caused damage or risk of damage to wildlife or wildlife habitat;
- (b) the offence caused damage or risk of damage to any unique, rare, particularly important or vulnerable wildlife or wildlife habitat;
- (c) the damage caused by the offence is extensive, persistent or irreparable;
- (d) the offender committed the offence intentionally or recklessly;
- (e) the offender failed to take reasonable steps to prevent the commission of the offence despite having the financial means to do so;
- (f) 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;
- (g) the offender committed the offence despite having been warned by a wildlife officer of the circumstances that subsequently became the subject of the offence;
- (h) the offender has a history of non-compliance with federal or provincial legislation that relates to environmental or wildlife conservation or protection; and
- (i) 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.

Absence of aggravating factor

(3) The absence of an aggravating factor set out in subsection (2) is not a mitigating factor.

Meaning of damage

(4) For the purposes of paragraphs (2)(a) to (c), damage includes loss of use value and non-use value.

Reasons

(5) If the court is satisfied of the existence of one or more of the aggravating factors set out in subsection (2) but decides not to increase the amount of the fine because of that factor, the court shall give reasons for that decision.

2009, c. 14, s. 48

Documents admissible in evidence

13.091 (1) A document made, given or issued under this Act and appearing to be signed by an analyst is admissible in evidence and, in the absence of evidence to the contrary, is proof of the statements contained in the document without proof of the signature or official character of the person appearing to have signed the document.

Attendance of analyst

(2) The party against whom the document is produced may, with leave of the court, require the attendance of the analyst who signed it.

Notice

(3) No document referred to in subsection (1) may be received in evidence unless the party intending to produce it has given to the party against whom it is intended to be produced reasonable notice of that intention together with a copy of the document.

2009, c. 14, s. 48

Proof of offence

13.1 In any prosecution of an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee, agent or mandatary of the accused, whether or not the employee, agent or mandatary is identified or prosecuted for the offence.

2009, c. 14, s. 48

Continuing offence

13.11 A person who commits or continues an offence under this Act on more than one day is liable to be convicted for a separate offence for each day on which the offence is committed or continued.

2009, c. 14, s. 48

Offences involving more than one animal, plant or other organism

13.12 If an offence under this Act involves more than one animal, plant or other organism, the fine to be imposed in respect of that offence may, despite sections 13 and 13.01, be the total of the fines that would have been imposed if each of the animals, plants or other organisms had been the subject of a separate information.

2009, c. 14, s. 48

Application of fines

13.13 (1) All fines received by the Receiver General in respect of the commission of an offence under this Act, other than fines collected under the Contraventions Act, are to be credited to the Environmental Damages Fund, an account in the accounts of Canada, and used for purposes related to protecting, conserving or restoring the environment or for administering that Fund.

Recommendations of court

(2) The court imposing the fine may recommend to the Minister that all or a portion of the fine credited to the Environmental Damages Fund be paid to a person or an organization specified by the court for a purpose referred to in subsection (1).

2009, c. 14, s. 48

Forfeiture

14 (1) Where a person is convicted of an offence, the convicting court may, in addition to any punishment imposed, order that any seized thing by means of or in relation to which the offence was committed, or any proceeds of its disposition, be forfeited to Her Majesty.

Return where no forfeiture ordered

(2) Where the convicting court does not order the forfeiture, the seized thing, or the proceeds of its disposition, must be returned to its lawful owner or the person lawfully entitled to it.

1994, c. 23, s. 15

Retention or sale

15 Where a fine is imposed on a person convicted of an offence, any seized thing, or any proceeds of its disposition, may be retained until the fine is paid or the thing may be sold in satisfaction of the fine and the proceeds applied, in whole or in part, in payment of the fine.

1994, c. 23, s. 15

Orders of court

16 Where a person is convicted of an offence, the court may, in addition to any punishment imposed and having regard to the nature of the offence and the circumstances surrounding its commission, make an order containing one or more of the following prohibitions, directions or requirements:

- (a) prohibiting the person from doing any act or engaging in any activity that could, in the opinion of the court, result in the continuation or repetition of the offence;
- (b) directing the person to take any action that the court considers appropriate to remedy or avoid any harm to any wildlife that resulted or may result from the commission of the offence;
- (b.1) directing the person to carry out environmental effects monitoring in the manner established by the Minister, or directing the person to pay, in the manner specified by the court, an amount for the purpose of environmental effects monitoring;
- (b.2) directing the person to implement an environmental management system that meets a recognized Canadian or international standard specified by the court;
- (b.3) directing the person to pay to Her Majesty in right of Canada an amount of money that the court considers appropriate for the purpose of promoting the proper management of wildlife or the conservation or protection of wildlife;
- (c) directing the person to publish, in the manner specified by the court, the facts relating to the commission of the offence and the details of the punishment imposed, including any orders made under this subsection;
- (c.1) directing the person to notify, at the person's own cost and in the manner specified by the court, any person aggrieved or affected by the person's conduct of the facts relating to the commission of the offence and of the details of the punishment imposed, including any orders made under this subsection;
- (d) directing the person to compensate any person, monetarily or otherwise, in whole or in part, for the cost of any remedial or preventive action taken, caused to be taken or to be taken as a result of the act or omission that constituted the offence, including costs of assessing appropriate remedial or preventive action;
- (d.1) directing the person to pay, in a manner specified by the court, an amount to enable research to be conducted into the protection or conservation of the wildlife or the wildlife habitat in respect of which the offence was committed;
- (d.2) directing the person to pay, in the manner prescribed by the court, an amount to an educational institution including for scholarships for students enrolled in studies related to the environment;

- (d.3) directing the person to pay, in the manner prescribed by the court, an amount to environmental or other groups to assist in their work in or for the community where the offence was committed;
- (e) directing the person to perform community service in accordance with any reasonable conditions that may be specified in the order;
- (f) directing the person to submit to the Minister, on application to the court by the Minister within three years after the conviction, any information respecting the activities of the person that the court considers appropriate in the circumstances;
- (g) requiring the person to comply with any other conditions that the court considers appropriate in the circumstances for securing the person's good conduct and for deterring the person and any other persons from committing offences under this Act;
- (h) directing the person to post a bond or provide a suretyship or pay into court an amount of money that the court considers appropriate for the purpose of ensuring compliance with any prohibition, direction or requirement under this section;
- (i) requiring the person to surrender to the Minister any permit or other authorization issued under this Act to the person; and
- (j) prohibiting the person from applying for any new permit or other authorization under this Act during any period that the court considers appropriate.

1994, c. 23, s. 152004, c. 25, s. 119(E)2009, c. 14, s. 49

Coming into force and duration of order

16.1 An order made under section 16 comes into force on the day on which it is made or on any other day that the court may determine and shall not continue in force for more than three years after that day unless the court provides otherwise in the order.

2009, c. 14, s. 50

Publication

16.2 If a person fails to comply with an order made under paragraph 16(c), the Minister may, in the manner that the court directed the person to do so, publish the facts relating to the commission of the offence and the details of the punishment imposed and recover the costs of publication from the person.

2009, c. 14, s. 50

Debt due to Her Majesty

16.3 If the court makes an order under paragraph 16(b.3) or (d) directing a person to pay an amount to Her Majesty in right of Canada, or if the Minister incurs publication costs under section 16.2, the amount or the costs, as the case may be, constitute a debt due to Her Majesty in right of Canada and may be recovered in any court of competent jurisdiction.

2009, c. 14, s. 50

Enforcement

16.4 If the court makes an order under paragraph 16(d) directing a person to pay an amount to another person, other than to Her Majesty in right of Canada, and the amount is not paid without delay, that other person may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the person who was directed to pay the amount in the same manner as if it were a judgment rendered against the offender in that court in civil proceedings.

2009, c. 14, s. 50

Cancellation or suspension of permits, etc.

16.5 If the court makes an order under paragraph 16(i), any permit or other authorization to which the order relates is cancelled unless the court makes an order suspending it for any period that the court considers appropriate.

2009, c. 14, s. 50

Suspended sentence

17 (1) Where a person is convicted of an offence and the court suspends the passing of sentence pursuant to paragraph 731(1)(a) of the Criminal Code, the court may, in addition to any probation order made under that paragraph, make an order containing one or more of the prohibitions, directions or requirements mentioned in section 16.

Imposition of sentence

(2) Where the person does not comply with the order or is convicted of another offence, within three years after the order was made, the court may, on the application of the prosecution, impose any sentence that could have been imposed if the passing of sentence had not been suspended.

1994, c. 23, s. 15 1995, c. 22, s. 18

Limitation period

18 No proceedings by way of summary conviction in respect of an offence under this Act may be instituted more than five years after the day on which the subject matter of the proceedings arose, unless the prosecutor and the defendant agree that they may be instituted after the five years.

1994, c. 23, s. 15 2009, c. 14, s. 51

Publication of information about contraventions

18.1 (1) For the purpose of encouraging compliance with this Act and the regulations, the Minister shall maintain, in a registry accessible to the public, information about all convictions of corporations for offences under this Act.

Retention

(2) Information in the registry is to be maintained for a minimum of five years.

2009, c. 14, s. 51

Minister may refuse or suspend permit, etc.

18.2 The Minister may refuse to issue a permit or other authorization under this Act, or may amend, suspend or cancel such a permit or other authorization, if the applicant or the holder has been convicted of an offence under this Act.

2009, c. 14, s. 51

Contraventions Act

18.3 If an offence under this Act is designated as a contravention under the Contraventions Act, subsection 8(5) of that Act does not apply in respect of the fine that may be established for that contravention.

2009, c. 14, s. 51

Canadian Environmental Protection Act, 1999 (CEPA)

Review

294.5 (1) The Minister shall, 10 years after the day on which this section comes into force and every 10 years after that, undertake a review of sections 272 to 294.4.

Report to Parliament

(2) The Minister shall, no later than one year after the day on which the review is undertaken, cause a report on the review to be tabled in each House of Parliament.

2009, c. 14, s. 86

Offence — persons

272 (1) Every person commits an offence who

- (a) contravenes subsection 16(3) or (4), any of subsections 81(1), (3), (4), (10), (11) and (14), 84(2) and 96(3) and (4), section 101, any of subsections 106(1), (3), (4), (10) and (11) and 109(2), section 117 or 123, any of subsections 124(1), (2) and (3), 125(1), (2), (3), (4) and (5), 126(1) and (2) and 139(1), section 142 or 144, subsection 150(3) or (4), section 152, subsection 153(1), section 154, subsection 155(5), section 171 or 181, subsection 185(1), 186(2), 189(1), 202(3) or (4) or 213(3) or (4), paragraph 228(a) or subsection 238(1);
- (b) fails to comply with an obligation set out in section 70, 86, 95 or 111, subsection 169(1), 172(1), 179(1), 182(1), 201(1) or 212(1);
- (c) contravenes a prohibition imposed under subsection 82(1), paragraph 84(1)(b), subsection 107(1), paragraph 109(1)(b) or subsection 186(1) or 225(4);
- (d) contravenes a condition of a permission granted under paragraph 84(1)(a) or 109(1)(a);
- (e) contravenes an interim order made under subsection 94(1), 173(1), 183(1) or 200.1(1);
- (f) fails to comply with a direction given under section 99, 119 or 148;
- (g) knowingly contravenes paragraph 228(b);
- (h) contravenes any provision of the regulations designated by regulations made under section 286.1 for the purpose of this paragraph;
- (i) contravenes an agreement as defined in section 295;
- (j) contravenes an order, direction or decision of a court made under this Act;
- (k) knowingly, with respect to any matter related to this Act or the regulations, provides any person with any false or misleading information, results or samples; or
- (l) knowingly, with respect to any matter related to this Act or the regulations, files a document that contains false or misleading information.

Penalty — individuals

(2) Every individual who commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not less than \$15,000 and not more than \$1,000,000 or to imprisonment for a term of not more than three years, or to both, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$30,000 and not more than \$2,000,000 or to imprisonment for a term of not more than three years, or to both;or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not less than \$5,000 and not more than \$300,000 or to imprisonment for a term of not more than six months, or to both, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$10,000 and not more than \$600,000 or to imprisonment for a term of not more than six months, or to both.

Penalty — other persons

(3) Every person, other than an individual or a corporation referred to in subsection (4), that commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not less than \$500,000 and not more than \$6,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$1,000,000 and not more than \$12,000,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not less than \$100,000 and not more than \$4,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$200,000 and not more than \$8,000,000.

Penalty — small revenue corporations

(4) Every corporation that commits an offence under subsection (1) and that the court determines under section 272.3 to be a small revenue corporation is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not less than \$75,000 and not more than \$4,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$150,000 and not more than \$8,000,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not less than \$25,000 and not more than \$2,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$50,000 and not more than \$4,000,000.

1999, c. 33, s. 2722005, c. 23, s. 372009, c. 14, s. 722017, c. 26, s. 29

Offence — persons

272.1 (1) Every person commits an offence who

- (a) contravenes any provision of this Act, other than a provision the contravention of which is an offence under subsection 272(1);
- (b) fails to comply with an obligation arising from this Act, a requirement imposed under this Act or a request made under this Act, other than an obligation, a requirement or a request the failure to comply with is an offence under 272(1);
- (c) contravenes a prohibition arising from this Act, other than a prohibition the contravention of which is an offence under subsection 272(1);
- (d) contravenes a condition of any permission granted under this Act, other than a condition of a permission the contravention of which is an offence under subsection 272(1);
- (e) fails to comply with a direction given under this Act, other than a direction the failure to comply with is an offence under 272(1);
- (f) contravenes any provision of the regulations, other than a provision the contravention of which is an offence under subsection 272(1) or 272.2(1);
- (g) negligently, with respect to any matter related to this Act or the regulations, provides any person with any false or misleading information, results or samples; or
- (h) negligently, with respect to any matter related to this Act or the regulations, files a document that contains false or misleading information.

Penalty — individuals

(2) Every individual who commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not more than \$100,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$200,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not more than \$25,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$50,000.

Penalty — other persons

(3) Every person, other than an individual or a corporation referred to in subsection (4), that commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not more than \$500,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$1,000,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not more than \$250,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$500,000.

Penalty — small revenue corporations

(4) Every corporation that commits an offence under subsection (1) and that the court determines under section 272.3 to be a small revenue corporation is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not more than \$250,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$500,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not more than \$50,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$100,000.

2009, c. 14, s. 72

Offence — failure to comply with designated regulations

272.2 (1) Every person who fails to comply with a provision of a regulation designated under section 286.1 for the purpose of this subsection commits an offence and is liable

- (a) on conviction on indictment,
 - (i) in the case of an individual, to a fine determined in accordance with the regulations or to imprisonment for a term of not more than three years, or to both, and
 - (ii) in the case of a person, other than an individual, to a fine determined in accordance with the regulations; or
- (b) on summary conviction,
 - (i) in the case of an individual, to a fine determined in accordance with the regulations or to imprisonment for a term of not more than six months, or to both, and
 - (ii) in the case of a person, other than an individual, to a fine determined in accordance with the regulations.

Regulations

(2) The Governor in Council may make regulations prescribing the method of calculating the fine in respect of the offence referred to in subsection (1) committed by individuals, other persons and corporations determined under section 272.3 to be small revenue corporations, which method may be based on a monetary range specified in the regulations.

Tradeable units

(3) If a person is convicted of an offence under subsection (1) by reason of having failed to comply with a provision that requires the remission or the cancellation of tradeable units described in regulations made under section 326, the court shall, in addition to any other punishment that may be imposed under subsection (1), make an order requiring the person to remit or cancel tradeable units of the type and number determined in accordance with regulations made under subsection (4) or, if there are no regulations made under that subsection, in accordance with subsection (5). In the case of an order to remit, the court shall specify in the order the name of the person or entity to whom the tradeable units are to be remitted.

Regulations

(4) The Governor in Council may make regulations prescribing the types of tradeable units described in regulations made under section 326 that a person may be required to remit or cancel in an order made under subsection (3) and the manner of determining the number of those tradeable units that the person may be required to remit or cancel.

Absence of regulations

(5) If there are no regulations made under subsection (4), the court shall require the person to remit or cancel tradeable units of a type and in the number that, in the court's opinion, the person failed to remit or cancel.

2009, c. 14, s. 72

Determination of small revenue corporation status

272.3 For the purpose of sections 272, 272.1 and 272.2, a court may determine a corporation to be a small revenue corporation if the court is satisfied that the corporation's gross revenues for the 12 months immediately before the day on which the subject matter of the proceedings arose — or, if it arose on more than one day, for the 12 months immediately before the first day on which the subject matter of the proceedings arose — were not more than \$5,000,000.

2009, c. 14, s. 72

Offence — ships

272.4 (1) Every ship commits an offence if it contravenes

- (a) section 123, subsection 124(1.1), 125(1), (2.1) or (3.1) or 126(1.1) or (3);
- (b) any provision of the regulations designated by regulations made under section 286.1; or
- (c) any order or a direction made under this Act, including one made by a court.

Penalty — ships of 7 500 tonnes deadweight or over

(2) Every ship of 7 500 tonnes deadweight or over that commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not less than \$500,000 and not more than \$6,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$1,000,000 and not more than \$12,000,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not less than \$100,000 and not more than \$4,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$200,000 and not more than \$8,000,000.

Penalty — other ships

- (3) Every other ship that commits an offence under subsection (1) is liable,
- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not less than \$75,000 and not more than \$4,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$150,000 and not more than \$8,000,000; or
 - (b) on summary conviction,
 - (i) for a first offence, to a fine of not less than \$25,000 and not more than \$2,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$50,000 and not more than \$4,000,000.

2009, c. 14, s. 72

Offences — ships

272.5 (1) Every ship commits an offence if it contravenes

- (a) any provision of this Act that expressly applies to ships, other than a provision the contravention of which is an offence under subsection 272.4(1); or
- (b) any provision of the regulations other than a provision the contravention of which is an offence under subsection 272.4(1).

Penalty — ship of 7 500 tonnes deadweight or over

(2) Every ship of 7 500 tonnes deadweight or over that commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not more than \$500,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$1,000,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not more than \$250,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$500,000.

Penalty — other ships

- (3) Every other ship that commits an offence under subsection (1) is liable,
- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not more than \$250,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$500,000; or
 - (b) on summary conviction,
 - (i) for a first offence, to a fine of not more than \$50,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$100,000.

2009, c. 14, s. 72

Relief from minimum fine

273 The court may impose a fine that is less than the minimum amount provided for in subsection 272(2), (3) or (4) or 272.4(2) or (3) if it is satisfied, on the basis of evidence submitted to the court, that the minimum fine would cause undue financial hardship. The court shall provide reasons if it imposes a fine that is less than the minimum amount provided for in any of those subsections.

1999, c. 33, s. 273/2009, c. 14, s. 72

Deeming — second and subsequent offence

273.1 (1) For the purposes of subsections 272(2) to (4), 272.1(2) to (4), 272.4(2) and (3) and 272.5(2) and (3), a conviction for a particular offence under this Act is deemed to be a conviction for a second or subsequent offence if the court is satisfied that the offender has been previously convicted — under any Act of Parliament, or any Act of the legislature of a province, that relates to environmental or wildlife conservation or protection — of a substantially similar offence.

Application

(2) Subsection (1) applies only to previous convictions on indictment and to previous convictions on summary conviction, and to previous convictions under any similar procedure under any Act of the legislature of a province.

2009, c. 14, s. 72

Damage to environment and risk of death or harm to persons

274 (1) Every person is guilty of an offence and liable on conviction on indictment to a fine or to imprisonment for a term of not more than five years, or to both, who, in committing an offence under this Act,

- (a) intentionally or recklessly causes a disaster that results in a loss of the use or the non-use value of the environment; or
- (b) shows wanton or reckless disregard for the lives or safety of other persons and thereby causes a risk of death or harm to another person.

Criminal negligence

(2) Every person who, in committing an offence under this Act, shows wanton or reckless disregard for the lives or safety of other persons and thereby causes death or bodily harm to another person is subject to prosecution and punishment under section 220 or 221 of the Criminal Code.

1999, c. 33, s. 274/2009, c. 14, s. 72

Additional fine

274.1 If a person or ship is convicted of an offence and the court is satisfied that, as a result of the commission of the offence, the person — or, if the offender is a ship, the owner or operator of the ship — acquired any property, benefit or advantage, the court shall order the offender to pay an additional fine in an amount equal to the court's estimation of the value of that property, benefit or advantage. The additional fine may exceed the maximum amount of any fine that may otherwise be imposed under this Act.

2009, c. 14, s. 72

Notice to shareholders

274.2 If a corporation that has shareholders is convicted of an offence under this Act, the court shall make an order directing the corporation to notify its shareholders, in the manner and within the time directed by the court, of the facts relating to the commission of the offence and of the details of the punishment imposed.

2009, c. 14, s. 72

Limitation period

275 No proceedings by way of summary conviction in respect of an offence under this Act may be instituted more than five years after the day on which the subject matter of the proceedings arose, unless the prosecutor and the defendant agree that they may be instituted after the five years.

1999, c. 33, s. 275/2009, c. 14, s. 72

When consent of Attorney General of Canada required

275.1 A proceeding that is commenced in respect of an offence arising out of a contravention of Division 3 of Part 7 or of any regulation made under that Division, or in respect of an offence under the Criminal Code that is committed in the course of enforcement of this Act, shall not be continued if the offence was committed in an area of the sea referred to in paragraph 122(2)(c) and the accused is either a ship that is not a Canadian ship or a foreign national who was on board such a ship when the offence was committed, unless the Attorney General of Canada consents to the continuation no later than eight days after the proceeding is commenced.

2005, c. 23, s. 38

Continuing offence

276 Where an offence under this Act is committed or continued on more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day on which it is committed or continued.

277 [Repealed, 2001, c. 26, s. 283]

Regulations

278 The Governor in Council may make regulations prescribing the manner in which the proceeds or any part of the proceeds resulting from the payment of a fine or the execution of an order in relation to an offence under this Act shall be distributed in order to reimburse any person, government or body that has commenced the proceedings in respect of the offence for costs incurred by that person, government or body in respect of the prosecution of the offence.

Jurisdiction of justices and judges

278.1 A justice or judge in any territorial division in Canada has jurisdiction to authorize, in the same manner as if the offence had been committed in the territorial division, an arrest, an entry, a search or a seizure in relation to

- (a) an offence arising out of a contravention of Division 3 of Part 7 or of any regulation made under that Division that is committed in an area of the sea referred to in any of paragraphs 122(2)(c), (f) and (g); or
- (b) an offence under the Criminal Code that is committed in the course of enforcement of this Act in an area of the sea referred to in paragraph 122(2)(c) or in an area of the sea referred to in paragraph 122(2)(g) in the course of hot pursuit that commenced while a ship was in an area of the sea referred to in any paragraphs 122(2)(a) to (e).

2005, c. 23, s. 39

Jurisdiction of court

279 (1) If an offence arising out of a contravention of Division 3 of Part 7 or of any regulation made under that Division is committed in an area of the sea referred to in any of paragraphs 122(2)(a) to (e), or if an offence under the Criminal Code is committed in the course of enforcement of this Act in an area of the sea referred to in paragraph 122(2)(c), the offence

- (a) is within the competence of and shall be tried by the court having jurisdiction in respect of similar offences in the territorial division nearest to the place where the offence was committed; and
- (b) shall be tried in the same manner as if it had been committed within that territorial division.

Where offence deemed to have been committed

(2) An offence to which subsection (1) applies is, for the purpose of that subsection, deemed to have been committed either in the place where the offence was actually committed or in the place in which the accused is found.

Jurisdiction of court

(3) If an offence arising out of a contravention of Division 3 of Part 7 or of any regulation made under that Division is committed in an area of the sea referred to in paragraph 122(2)(f) or (g), or if an offence under the Criminal Code is committed in the course of enforcement of this Act in an area of the sea referred to in paragraph 122(2)(g) in the course of hot pursuit that commenced while a ship was in an area of the sea referred to in any paragraphs 122(2)(a) to (e), the offence

- (a) is within the competence of and shall be tried by any court having jurisdiction in respect of similar offences committed by persons within the limits of its ordinary jurisdiction; and
- (b) shall be tried in the same manner as if it had been committed within the jurisdiction of the court before which it is tried.

1999, c. 33, s. 2792005, c. 23, s. 40

Liability of directors, officer, etc., of corporation

280 (1) If a corporation commits an offence under this Act, any director, officer, agent or mandatary of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence, and is liable on conviction to the penalty provided for by this Act for an individual in respect of the offence committed by the corporation, whether or not the corporation has been prosecuted or convicted.

Liability of masters and chief engineers

(2) If a ship commits an offence under this Act and the master or chief engineer of the ship directed, authorized, assented to, acquiesced in or participated in the commission of the offence, the master or chief engineer, as the case may be, is a party to and guilty of the offence, and is liable on conviction to the penalty provided for by this Act for an individual who commits an offence under subsection 272.1(1), whether or not the ship has been prosecuted or convicted.
1999, c. 33, s. 280/2005, c. 23, s. 41/2009, c. 14, s. 73

Duties of directors and officers

280.1 (1) Every director and officer of a corporation shall take all reasonable care to ensure that the corporation complies with

- (a) this Act and the regulations, other than Division 3 of Part 7 and regulations made under that Division; and
- (b) orders and directions of, and prohibitions and requirements imposed by, the Minister, enforcement officers and review officers, other than those issued or imposed in connection with obligations or prohibitions under that Division or regulations made under that Division.

Duties of directors and officers — Division 3 of Part 7

(2) Every director and officer of a corporation who is in a position to direct or influence the corporation's policies or activities in respect of its obligation to comply with Division 3 of Part 7, regulations made under that Division, and orders and directions of, and prohibitions and requirements imposed by, the Minister, enforcement officers and review officers in connection with obligations or prohibitions under that Division or those regulations, shall take all reasonable care to ensure that the corporation so complies.

Liability of directors and officers — Division 3 of Part 7

(3) If a corporation commits an offence arising out of a contravention of Division 3 of Part 7, a regulation made under that Division or an order or direction of, or prohibition or requirement imposed by, the Minister, an enforcement officer or a review officer in connection with an obligation or prohibition under that Division or a regulation made under that Division, every director and officer of the corporation who directed or influenced the corporation's policies or activities in respect of conduct that is the subject matter of the offence is a party to and guilty of the offence, and is liable to the penalty provided by this Act for an individual in respect of the offence committed by the corporation, whether or not the corporation has been prosecuted or convicted.

2005, c. 23, s. 41/2009, c. 14, s. 74

Duties of masters and chief engineers

280.2 (1) The master and the chief engineer of a ship shall take all reasonable care to ensure that the ship complies with

- (a) Division 3 of Part 7 and regulations made under that Division; and
- (b) orders and directions of, and prohibitions and requirements imposed by, the Minister, enforcement officers and review officers in connection with obligations or prohibitions under that Division or those regulations.

Liability of master and chief engineer

(2) If a ship commits an offence arising out of a contravention of Division 3 of Part 7, a regulation made under that Division or an order or direction of, or prohibition or requirement imposed by, the Minister, an enforcement officer or a review officer in connection with an obligation or prohibition under that Division or a regulation made under that Division, the master and the chief engineer of the ship are a party to and guilty of the offence, and are liable to the penalty provided for by this Act for an individual who commits an offence under subsection 272(1), whether or not the ship has been prosecuted or convicted.

2005, c. 23, s. 41/2009, c. 14, s. 75

Duties of ship owners

280.3 (1) Every owner of a ship — and, if the owner is a corporation, every director and officer of the corporation who is in a position to direct or influence its policies or activities relating to conduct prohibited by Division 3 of Part 7 — shall take all reasonable care to ensure that the ship complies, and all persons on board the ship comply, with

- (a) Division 3 of Part 7 and regulations made under that Division; and
- (b) orders and directions of, and prohibitions and requirements imposed by, the Minister, enforcement officers and review officers in connection with obligations or prohibitions under that Division or those regulations.

Liability of ship's owner — individual

(2) If a ship commits an offence arising out of a contravention of Division 3 of Part 7, a regulation made under that Division or an order or direction of, or prohibition or requirement imposed by, the Minister, an enforcement officer or a review officer in connection with an obligation or prohibition under that Division or a regulation made under that Division and the owner of the ship, other than an owner that is a corporation, directed, authorized, assented to, acquiesced in or participated in the commission of the offence, the owner is a party to and guilty of the offence and is liable to the penalty provided by this Act for an individual who commits an offence under subsection 272(1), whether or not the ship has been prosecuted or convicted.

Liability of directors and officers of corporate ship owners

(3) If a ship commits an offence arising out of a contravention of Division 3 of Part 7, a regulation made under that Division or an order or direction of, or prohibition or requirement imposed by, the Minister, an enforcement officer or a review officer in connection with an obligation or prohibition under that Division or a regulation made under that Division, every director or officer of a corporation that is an owner of the ship who directed or influenced the corporation's policies or activities in respect of conduct that is the subject matter of the offence is a party to and guilty of the offence, and is liable to penalty provided by this Act for an individual who commits an offence under subsection 272(1), whether or not the ship has been prosecuted or convicted.

2005, c. 23, s. 412009, c. 14, s. 76

For greater certainty

280.4 For greater certainty, section 283 applies to a person who is a party to an offence by reason of subsection 280.1(3), 280.2(2) or 280.3(2) or (3).

2005, c. 23, s. 412009, c. 14, s. 76

Direction binds ship

280.5 For the purpose of prosecuting a ship for contravening a direction made under section 225.1, any direction made under that section that is given to the master or a crew member of the ship binds the ship as though it had been given to the ship.

2005, c. 23, s. 412009, c. 14, s. 76

Identifying owner, master, etc.

281 The owner or master of a ship, the owner or pilot in command of an aircraft or the owner or person in charge of any platform or other structure may be charged with an offence arising out of a contravention of Division 3 of Part 7 as owner, master, pilot in command or person in charge, as the case may be, of the ship, aircraft, platform or structure if it is adequately identified, and no such charge is invalid by reason only that it does not name the owner, master, pilot in command or person in charge, as the case may be, of the ship, aircraft, platform or structure.

Proceedings against ships

281.1 (1) Subject to subsection (2), the provisions of this Act or the Criminal Code relating to indictable or summary conviction offences that apply to persons apply also to ships, with any modifications that the circumstances require.

Service on ship

(2) If a ship is charged with having committed an offence under this Act, the summons may be served by leaving it with the owner, master or any officer of the ship or by posting the summons on some conspicuous part of the ship.

Appearance at trial

(3) If a ship is charged with having committed an offence under this Act, the ship may appear by counsel or representative. Despite the Criminal Code, if the ship does not so appear, a court may, on proof of service of the summons, proceed to hold the trial.

2005, c. 23, s. 422009, c. 14, s. 77

Proof of offence

282 (1) In any prosecution of an offence under this Act, other than an offence under paragraph 272(1)(k) or (l) or an offence of contravening section 228 or an offence under 274, it is sufficient proof of the offence to establish that it was committed by an employee, agent or mandatary of the accused, whether or not the employee, agent or mandatary is identified or prosecuted for the offence.

Proof of offence

(2) In any prosecution of the master of a ship, the pilot in command of an aircraft or the owner or person in charge of any platform or other structure for an offence arising out of a contravention of Division 3 of Part 7, it is sufficient proof of the offence to establish that it was committed by a crew member or other person on board the ship, aircraft, platform or structure, whether or not the crew member or other person is identified or prosecuted for the offence.

1999, c. 33, s. 2822009, c. 14, s. 78

Defence

283 No person shall be found guilty of an offence under this Act, other than an offence of contravening paragraph 228(a) or knowingly contravening paragraph 228(b), an offence under paragraph 272(1)(k) or (l) or an offence under section 274, if the person establishes that the person exercised all due diligence to prevent its commission.

1999, c. 33, s. 2832009, c. 14, s. 79

Importing substances by analysts

284 Despite any other provision of this Act or the regulations, the Minister may, subject to any reasonable condition specified by the Minister, authorize in writing an analyst to import, possess and use a substance for the purpose of conducting measurements, tests and research with respect to the substance.

Certificate of analyst

285 (1) Subject to subsections (2) and (3), a certificate of an analyst stating that the analyst has analysed or examined a substance or product and stating the result of the analysis or examination is admissible in evidence in any prosecution for an offence under this Act and, in the absence of evidence to the contrary, is proof of the statements contained in the certificate without proof of the signature or the official character of the person appearing to have signed the certificate.

Attendance of analyst

(2) The party against whom a certificate of an analyst is produced may, with leave of the court, require the attendance of the analyst for the purposes of cross-examination.

Notice

(3) No certificate of an analyst shall be received in evidence unless the party intending to produce it has given to the party against whom it is intended to be produced reasonable notice of that intention together with a copy of the certificate.

Safety marks and prescribed documents

286 In any prosecution for an offence under this Act, evidence that a means of containment or transport bore a safety mark or was accompanied by a prescribed document is, in the absence of evidence to the contrary, proof of the information shown or indicated by the safety mark or contained in the prescribed document.

Regulations

286.1 The Governor in Council may, by regulation, designate provisions of regulations made under this Act for the purposes of paragraph 272(1)(h) and subsection 272.2(1) and paragraph 272.4(1)(b).
2009, c. 14, s. 80

Sentencing

Fundamental purpose of sentencing

287 The fundamental purpose of sentencing for offences under this Act is to contribute, in light of the significant and many threats to the environment and to human health and to the importance of a healthy environment to the well-being of Canadians, to respect for the law protecting the environment and human health through the imposition of just sanctions that have as their objectives

- (a) to deter the offender and any other person from committing offences under this Act;
- (b) to denounce unlawful conduct that damages or creates a risk of damage to the environment or harms or creates a risk of harm to human health; and
- (c) to reinforce the “polluter pays” principle by ensuring that offenders are held responsible for effective clean-up and environmental restoration.

1999, c. 33, s. 2872009, c. 14, s. 81

Sentencing principles

287.1 (1) In addition to the principles and factors that the court is otherwise required to consider, including those set out in sections 718.1 to 718.21 of the Criminal Code, the court shall consider the following principles when sentencing a person who is convicted of an offence under this Act:

- (a) the amount of the fine should be increased to account for every aggravating factor associated with the offence, including the aggravating factors set out in subsection (2); and
- (b) the amount of the fine should reflect the gravity of each aggravating factor associated with the offence.

Aggravating factors

(2) The aggravating factors are the following:

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

Absence of aggravating factor

(3) The absence of an aggravating factor set out in subsection (2) is not a mitigating factor.

Meaning of damage

(4) For the purposes of paragraphs (2)(a), (b) and (d), damage includes loss of use value and non-use value.

Reasons

(5) If the court is satisfied of the existence of one or more of the aggravating factors set out in subsection (2) but decides not to increase the amount of the fine because of that factor, the court shall give reasons for that decision.

2009, c. 14, s. 81

Discharge

Absolute or conditional discharge

288 (1) Where an offender has pleaded guilty to or been found guilty of an offence, the court may, instead of convicting the offender, by order direct that the offender be discharged absolutely or on conditions having any or all of the effects described in paragraphs 291(1)(a) to (q).

Conditions of order

(2) If an order is made under subsection (1) and the offender contravenes or fails to comply with it, or is convicted of an offence under this Act, the prosecutor may apply to the court to revoke the discharge, convict the offender of the offence to which the discharge relates and impose any sentence that could have been imposed if the offender had been convicted at the time the order was made.

1999, c. 33, s. 2882009, c. 14, s. 82

Suspended sentence

289 (1) Where an offender is convicted of an offence under this Act, the court may suspend the passing of sentence and may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order under section 291.

Application by prosecutor

(2) If the passing of sentence has been suspended under subsection (1) and the offender contravenes or fails to comply with an order made under section 291, or is convicted of an offence under this Act, the prosecutor may apply to the court to impose any sentence that could have been imposed if the passing of sentence had not been suspended.

1999, c. 33, s. 2892009, c. 14, s. 83

290 [Repealed, 2009, c. 14, s. 84]

Orders of court

291 (1) Where an offender has been convicted of an offence under this Act, in addition to any other punishment that may be imposed under this Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order having any or all of the following effects:

- (a) prohibiting the offender from doing any act or engaging in any activity that may result in the continuation or repetition of the offence;
- (b) directing the offender to take any action that the court considers appropriate to remedy or avoid any harm to the environment that results or may result from the act or omission that constituted the offence;
- (c) directing the offender to prepare and implement a pollution prevention plan or an environmental emergency plan;
- (d) directing the offender to carry out environmental effects monitoring in the manner established by the Minister or directing the offender to pay, in the manner prescribed by the court, an amount for the purposes of environmental effects monitoring;
- (e) directing the offender to implement an environmental management system that meets a recognized Canadian or international standard;
- (f) directing the offender to have an environmental audit conducted by a person of a class and at the times specified by the court and directing the offender to remedy any deficiencies revealed during the audit;
- (f.1) directing the offender to pay to Her Majesty in right of Canada an amount of money that the court considers appropriate for the purpose of promoting the conservation or protection of the environment;

- (g) directing the offender to publish, in the manner specified by the court, the facts relating to the commission of the offence and the details of the punishment imposed, including any orders made under this subsection;
- (h) directing the offender to notify, at the offender's own cost and in the manner specified by the court, any person aggrieved or affected by the offender's conduct of the facts relating to the commission of the offence and of the details of the punishment imposed, including any orders made under this subsection;
- (i) directing the offender to post any bond or pay any amount of money into court that will ensure compliance with any order made under this section;
- (j) directing the offender to submit to the Minister, on application by the Minister made within three years after the date of conviction, any information with respect to the offender's activities that the court considers appropriate and just in the circumstances;
- (k) directing the offender to compensate any person, monetarily or otherwise, in whole or in part, for the cost of any remedial or preventive action taken, caused to be taken or to be taken as a result of the act or omission that constituted the offence, including costs of assessing appropriate remedial or preventive action;
- (l) directing the offender to perform community service, subject to any reasonable conditions that may be imposed in the order;
- (m) [Repealed, 2009, c. 14, s. 85]
- (n) directing the offender to pay, in the manner prescribed by the court, an amount for the purposes of conducting research into the ecological use and disposal of the substance in respect of which the offence was committed or research relating to the manner of carrying out environmental effects monitoring;
- (o) directing the offender to pay, in the manner prescribed by the court, an amount to environmental, health or other groups to assist in their work in the community where the offence was committed;
- (p) directing the offender to pay, in the manner prescribed by the court, an amount to an educational institution including for scholarships for students enrolled in studies related to the environment;
- (q) requiring the offender to comply with any other conditions that the court considers appropriate in the circumstances for securing the offender's good conduct and for deterring the offender and any other person from committing offences under this Act;
- (r) requiring the offender to surrender to the Minister any permit or other authorization issued under this Act to the offender; and
- (s) prohibiting the offender from applying for any new permit or other authorization under this Act during any period that the court considers appropriate.

Publication

(2) If an offender fails to comply with an order made under paragraph (1)(g), the Minister may, in the manner that the court directed the offender to do so, publish the facts relating to the commission of the offence and the details of the punishment imposed and recover the costs of publication from the offender.

Debt due to Her Majesty

(3) If the court makes an order under paragraph (1)(f.1) or (k) directing an offender to pay an amount to Her Majesty in right of Canada, or if the Minister incurs publication costs under subsection (2), the amount or the costs, as the case may be, constitute a debt due to Her Majesty in right of Canada and may be recovered in any court of competent jurisdiction.

Enforcement

(4) If the court makes an order under paragraph (1)(k) directing an offender to pay an amount to a person, other than to Her Majesty in right of Canada, and the amount is not paid without delay, the person may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the offender in the same manner as if it were a judgment rendered against the offender in that court in civil proceedings.

Cancellation or suspension of permits, etc.

(5) If the court makes an order under paragraph (1)(r), any permit or other authorization to which the order relates is cancelled unless the court makes an order suspending it for any period that the court considers appropriate.

Coming into force and duration of order

(6) An order made under subsection (1) comes into force on the day on which it is made or on any other day that the court may determine and shall not continue in force for more than three years after that day unless the court provides otherwise in the order.

1999, c. 33, s. 2912009, c. 14, s. 85

Compensation for loss of property

292 (1) Where an offender has been convicted of an offence under this Act, the court may, at the time sentence is imposed and on the application of the person aggrieved, order the offender to pay to that person an amount by way of satisfaction or compensation for loss of or damage to property suffered by that person as a result of the commission of the offence.

Enforcement

(2) Where an amount that is ordered to be paid under subsection (1) is not paid forthwith, the applicant may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the offender in the same manner as if it were a judgment rendered against the offender in that court in civil proceedings.

Compensation for cost of remedial or preventive action

292.1 (1) A court shall not, under paragraph 291(1)(k), order an offender to compensate a person for the cost of any remedial or preventive action referred to in that paragraph if the person is entitled to make a claim for compensation for that cost under the Marine Liability Act or the Arctic Waters Pollution Prevention Act.

Compensation for loss or damage — property

(2) A court shall not, under subsection 292(1), order an offender to pay to a person an amount by way of satisfaction or compensation for loss of or damage to property if the person is entitled to make a claim for compensation for that loss or damage under the Marine Liability Act or the Arctic Waters Pollution Prevention Act.

2009, c. 14, s. 85.1

Variation of sanctions

293 (1) Subject to subsection (2), where a court has made, in relation to an offender, an order or direction under section 288, 289 or 291, the court may, on application by the offender or the Attorney General, require the offender to appear before it and, after hearing the offender and the Attorney General, vary the order in one or any combination of the following ways that is applicable and, in the opinion of the court, is rendered desirable by a change in the circumstances of the offender since the order was made:

- (a) make changes in the order or the conditions specified in it or extend the period for which the order is to remain in force for any period, not exceeding one year, that the court considers desirable; or
- (b) decrease the period for which the order is to remain in force or relieve the offender, either absolutely or partially or for any period that the court considers desirable, of compliance with any condition that is specified in the order.

Notice

(2) Before making an order under subsection (1), the court may direct that notice be given to any persons that the court considers to be interested and may hear any such person.

Subsequent applications with leave

294 Where an application made under section 293 in respect of an offender has been heard by a court, no other application may be made under that section with respect to the offender except with leave of the court.

Application of fines

294.1 (1) Subject to regulations made under section 278, all fines received by the Receiver General in respect of the commission of an offence under this Act, other than fines collected under the Contraventions Act, are to be credited to the Environmental Damages Fund, an account in the accounts of Canada, and used for purposes related to protecting, conserving or restoring the environment or for administering that Fund.

Recommendations of court

(2) The court imposing the fine may recommend to the Minister that all or a portion of the fine credited to the Environmental Damages Fund be paid to a person or an organization specified by the court for a purpose referred to in subsection (1).

2009, c. 14, s. 86

Publication of information about contraventions

294.2 (1) For the purpose of encouraging compliance with this Act and the regulations, the Minister shall maintain, in a registry accessible to the public, information about all convictions of corporations for offences under this Act.

Retention

(2) Information in the registry is to be maintained for a minimum of five years.

2009, c. 14, s. 86

Minister may refuse or suspend permit

294.3 The Minister may refuse to issue a permit or other authorization under this Act, or may cancel such a permit or other authorization, if the applicant or the holder has been convicted of an offence under this Act.

2009, c. 14, s. 86

Contraventions Act

294.4 If an offence under this Act is designated as a contravention under the Contraventions Act, subsection 8(5) of that Act does not apply in respect of the fine that may be established for that contravention.

2009, c. 14, s. 86

International River Improvements Act (IRIA)

Review — sections 33 to 50

52 (1) The Minister shall, 10 years after the day on which this section comes into force and every 10 years after that, undertake a review of sections 33 to 50.

Report to Parliament

(2) The Minister shall, no later than one year after the day on which the review is undertaken, cause a report on the review to be tabled in each House of Parliament.

2009, c. 14, s. 93

Offence

33 (1) Every person commits an offence who contravenes

- (a) section 4, subsection 24(1), section 31 or subsection 32(1);
- (b) any provision of the regulations designated by regulations made under paragraph 3(f); or
- (c) an order made by a court under this Act.

Penalty — individuals

(2) Every individual who commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not less than \$15,000 and not more than \$1,000,000 or to imprisonment for a term of not more than five years, or to both, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$30,000 and not more than \$2,000,000 or to imprisonment for a term of not more than five years, or to both; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not less than \$5,000 and not more than \$300,000 or to imprisonment for a term of not more than six months, or to both, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$10,000 and not more than \$600,000 or to imprisonment for a term of not more than six months, or to both.

Penalty — other persons

(3) Every person, other than an individual or a corporation referred to in subsection (4), who commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not less than \$500,000 and not more than \$6,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$1,000,000 and not more than \$12,000,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not less than \$100,000 and not more than \$4,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$200,000 and not more than \$8,000,000.

Penalty — small revenue corporations

(4) Every corporation that commits an offence under subsection (1) and that the court determines under section 37 to be a small revenue corporation is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not less than \$75,000 and not more than \$4,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$150,000 and not more than \$8,000,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not less than \$25,000 and not more than \$2,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$50,000 and not more than \$4,000,000.

2009, c. 14, s. 93

Offence

34 (1) Every person commits an offence who contravenes any provision of the Act or the regulations, other than a provision the contravention of which is an offence under subsection 33(1).

Penalty — individuals

(2) Every individual who commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not more than \$100,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$200,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not more than \$25,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$50,000.

Penalty — other persons

(3) Every person, other than an individual or a corporation referred to in subsection (4), that commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not more than \$500,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$1,000,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not more than \$250,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$500,000.

Penalty — small revenue corporations

(4) Every corporation that commits an offence under subsection (1) and that the court determines under section 37 to be a small revenue corporation is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not more than \$250,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$500,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not more than \$50,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$100,000.

2009, c. 14, s. 93

Continuing offences

35 If a contravention of a provision of this Act or of the regulations is committed or continued on more than one day, it constitutes a separate offence for each day on which it is committed or continued.

2009, c. 14, s. 93

Deeming — second and subsequent offence

36 (1) For the purposes of sections 33 and 34, a conviction for a particular offence under this Act is deemed to be a conviction for a second or subsequent offence if the court is satisfied that the offender has been previously convicted — under any Act of Parliament, or any Act of the legislature of a province, that relates to water resource management — of a substantially similar offence.

Application

(2) Subsection (1) applies only to previous convictions on indictment and to previous convictions on summary conviction, and to previous convictions under any similar procedure under any Act of the legislature of a province.

2009, c. 14, s. 93

Determination of small revenue corporation status

37 For the purpose of sections 33 and 34, a court may determine a corporation to be a small revenue corporation if the court is satisfied that the corporation's gross revenues for the 12 months immediately before the day on which the subject matter of the proceedings arose — or, if it arose on more than one day, for the 12 months immediately before the first day on which the subject matter of the proceedings arose — were not more than \$5,000,000.

2009, c. 14, s. 93

Relief from minimum fine

38 The court may impose a fine that is less than the minimum amount provided for in any of subsections 33(2) to (4) if it is satisfied, on the basis of evidence submitted to the court, that the minimum fine would cause undue financial hardship. The court shall provide reasons if it imposes a fine that is less than the minimum amount provided for in that subsection.

2009, c. 14, s. 93

Additional fine

39 If a person is convicted of an offence under this Act and the court is satisfied that, as a result of the commission of the offence, the person acquired any property, benefit or advantage, the court shall order the person to pay an additional fine in an amount equal to the court's estimation of the value of that property, benefit or advantage. The additional fine may exceed the maximum amount of any fine that may otherwise be imposed under this Act.

2009, c. 14, s. 93

Notice to shareholders

40 If a corporation that has shareholders has been convicted of an offence under this Act, the court shall make an order directing the corporation to notify its shareholders, in the manner and within the time directed by the court, of the facts relating to the commission of the offence and of the details of the punishment imposed.

2009, c. 14, s. 93

Liability of directors, officers, etc., of corporation

41 (1) If a corporation commits an offence under this Act, any director, officer, agent or mandatary of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the penalty provided for by this Act for an individual in respect of the offence committed by the corporation, whether or not the corporation has been prosecuted or convicted.

Directors' and officers' duties

(2) Every director and officer of a corporation shall take all reasonable care to ensure that the corporation complies with

(a) this Act and the regulations; and

(b) any orders and directions of, and prohibitions and requirements imposed by, any court, the Minister, enforcement officers and analysts.

2009, c. 14, s. 93

Fundamental purpose of sentencing

42 The fundamental purpose of sentencing for offences under this Act is to contribute to respect for this Act through the imposition of just sanctions that have as their objectives

(a) to deter the offender and any other person from committing offences under this Act;

(b) to denounce unlawful conduct that harms water resources; and

(c) to restore the environment harmed by the offence.

2009, c. 14, s. 93

Sentencing principles

43 (1) In addition to the principles and factors that the court is otherwise required to consider, including those set out in sections 718.1 to 718.21 of the Criminal Code, the court shall consider the following principles when sentencing a person who is convicted of an offence under this Act:

- (a) the amount of the fine should be increased to account for every aggravating factor associated with the offence, including the aggravating factors set out in subsection (2); and
- (b) the amount of the fine should reflect the gravity of each aggravating factor associated with the offence.

Aggravating factors

(2) The aggravating factors are the following:

- (a) the offence caused damage or risk of damage to the environment;
- (b) the offence caused damage or risk of damage to any unique, particularly important or vulnerable environment;
- (c) the damage caused by the offence is extensive, persistent or irreparable;
- (d) the offender committed the offence intentionally or recklessly;
- (e) the offender failed to take reasonable steps to prevent the commission of the offence despite having the financial means to do so;
- (f) 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;
- (g) the offender committed the offence despite having been warned by an enforcement officer of the circumstances that subsequently became the subject of the offence;
- (h) the offender has a history of non-compliance with federal or provincial legislation that relates to water resource management; and
- (i) 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.

Absence of aggravating factor

(3) The absence of an aggravating factor set out in subsection (2) is not a mitigating factor.

Meaning of damage

(4) For the purposes of paragraphs (2)(a) to (c), damage includes loss of use value and non-use value.

Reasons

(5) If the court is satisfied of the existence of one or more of the aggravating factors set out in subsection (2) but decides not to increase the amount of the fine because of that factor, the court shall give reasons for that decision.

2009, c. 14, s. 93

Application of fines

44 (1) All fines received by the Receiver General in respect of the commission of an offence under this Act, other than fines collected under the Contraventions Act, are to be credited to the Environmental Damages Fund, an account in the accounts of Canada, and used for purposes related to protecting, conserving or restoring the environment or for administering that Fund.

Recommendations of court

(2) The court imposing the fine may recommend to the Minister that all or a portion of the fine credited to the Environmental Damages Fund be paid to a person or an organization specified by the court for a purpose referred to in subsection (1).

2009, c. 14, s. 93

Orders of court

45 (1) If a person is convicted of an offence under this Act, in addition to any punishment imposed, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order containing one or more of the following prohibitions, directions or requirements:

- (a) prohibiting the person from doing any act or engaging in any activity that may, in the opinion of the court, result in the continuation or repetition of the offence;
- (b) directing the person to take any action that the court considers appropriate to remedy or avoid any damage to the environment that resulted or may result from the commission of the offence;
- (c) directing the person to post a bond, provide surety or pay into court an amount of money that the court considers appropriate for the purpose of ensuring compliance with any prohibition, direction or requirement mentioned in this section;
- (d) directing the person to carry out environmental effects monitoring in the manner established by the Minister or directing the person to pay, in the manner specified by the court, an amount for the purposes of environmental effects monitoring;
- (e) directing the person to implement an environmental management system that meets a recognized Canadian or international standard specified by the court;
- (f) directing the person to have an environmental audit conducted by a person of a class and at the times specified by the Minister and directing the person to remedy any deficiencies revealed during the audit;
- (g) directing the person to pay to Her Majesty in right of Canada an amount of money that the court considers appropriate for the purpose of promoting sustainable water resource management;
- (h) directing the person to publish, in the manner specified by the court, the facts relating to the commission of the offence and the details of the punishment imposed, including any orders made under this subsection;
- (i) directing the person to notify, at the person's own cost and in the manner specified by the court, any person aggrieved or affected by the person's conduct of the facts relating to the commission of the offence and of the details of the punishment imposed, including any orders made under this subsection;
- (j) directing the person to submit to the Minister, when requested to do so by the Minister at any time within three years after the date of conviction, any information with respect to the person's activities that the court considers appropriate in the circumstances;

- (k) directing the person to compensate any person, monetarily or otherwise, in whole or in part, for the cost of any remedial or preventive action taken, caused to be taken or to be taken as a result of the act or omission that constituted the offence, including costs of assessing appropriate remedial or preventive action;
- (l) directing the person to perform community service, subject to any reasonable conditions that may be imposed in the order;
- (m) requiring the person to surrender to the Minister any licence issued under the regulations to the person;
- (n) prohibiting the person from applying for any new licence under the regulations during any period that the court considers appropriate;
- (o) directing the person to pay, in the manner prescribed by the court, an amount to environmental or other groups to assist in their work in or for a community near the place where the offence was committed;
- (p) directing the person to pay, in a manner specified by the court, an amount to enable research to be conducted into the protection, conservation or restoration of international rivers;
- (q) directing the person to pay, in the manner prescribed by the court, an amount to an educational institution including for scholarships for students enrolled in studies related to the environment; and
- (r) requiring the person to comply with any other conditions that the court considers appropriate for securing the offender's good conduct and for deterring the person and any other person from committing offences under this Act.

Publication

(2) If a person fails to comply with an order made under paragraph (1)(h), the Minister may, in the manner that the court directed the person to do so, publish the facts relating to the commission of the offence and the details of the punishment imposed and recover the costs of publication from the person.

Debt due to Her Majesty

(3) If the court makes an order under paragraph (1)(g) or (k) directing a person to pay an amount to Her Majesty in right of Canada, or if the Minister incurs publication costs under subsection (2), the amount or the costs, as the case may be, constitute a debt due to Her Majesty in right of Canada and may be recovered in any court of competent jurisdiction.

Enforcement

(4) If the court makes an order under paragraph (1)(k) directing a person to pay an amount to another person, other than to Her Majesty in right of Canada, that other person may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the person who was directed to pay the amount in the same manner as if it were a judgment rendered against the offender in that court in civil proceedings.

Cancellation or suspension of licences

(5) If the court makes an order under paragraph (1)(m), any licence to which the order relates is cancelled unless the court makes an order suspending it for any period that the court considers appropriate.

Coming into force and duration of order

(6) An order made under subsection (1) comes into force on the day on which it is made or on any other day that the court may determine and shall not continue in force for more than three years after that day unless the court provides otherwise in the order.

2009, c. 14, s. 93

Forfeiture

46 (1) If a person is convicted of an offence under this Act, the court may, in addition to any punishment imposed, order that any seized thing by means of or in relation to which the offence was committed, or any proceeds of its disposition, be forfeited to Her Majesty in right of Canada.

Return if no forfeiture ordered

(2) If the court does not order the forfeiture, the seized thing or the proceeds of its disposition shall be returned or paid to its lawful owner or the person lawfully entitled to it.

2009, c. 14, s. 93

Retention or sale

47 If a fine is imposed on a person who is convicted of an offence, any seized thing, or any proceeds of its disposition, may be retained until the fine is paid or the thing may be sold in satisfaction of the fine and the proceeds applied, in whole or in part, in payment of the fine.

2009, c. 14, s. 93

Compensation for loss of property

48 (1) If a person has been convicted of an offence under this Act, the court may, at the time sentence is imposed and on the application of the person aggrieved, order the offender to pay to the aggrieved person an amount by way of satisfaction or compensation for loss of or damage to property suffered by that person as a result of the commission of the offence.

Enforcement

(2) If the amount ordered to be paid under subsection (1) is not paid without delay, the aggrieved person may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the offender in the same manner as if it were a judgment rendered against the offender in that court in civil proceedings.

2009, c. 14, s. 93

Limitation period

49 No proceedings by way of summary conviction in respect of an offence under this Act may be instituted more than five years after the day on which the subject matter of the proceedings arose, unless the prosecutor and the defendant agree that they may be instituted after the five years.

2009, c. 14, s. 93

Publication of information about contraventions

50 (1) For the purpose of encouraging compliance with this Act and the regulations, the Minister shall maintain, in a registry accessible to the public, information about all convictions of corporations for offences under this Act.

Retention

(2) Information in the registry is to be maintained for a minimum of five years.

2009, c. 14, s. 93

Migratory Birds Convention Act, 1994 (MBCA)

Review

18.24 (1) The Minister shall, 10 years after the day on which this section comes into force and every 10 years after that, undertake a review of sections 13 to 18.23.

Report to Parliament

(2) The Minister shall, no later than one year after the day on which the review is undertaken, cause a report on the review to be tabled in each House of Parliament.

2009, c. 14, s. 106

Offence — persons

13 (1) Every person commits an offence who

- (a) contravenes section 5, subsection 5.1(1) or (2), paragraph 5.2(a), (c) or (d), subsection 5.3(1), 8.1(6), or 11.24(1);
- (b) knowingly contravenes paragraph 5.2(b);
- (c) contravenes any provision of the regulations designated by regulations made under paragraph 12(1)(l);
- (d) contravenes an order made under subsection 8.1(1) or (2); or
- (e) contravenes an order made by a court under this Act.

Penalty — individuals

(2) Every individual who commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not less than \$15,000 and not more than \$1,000,000 or to imprisonment for a term of not more than three years, or to both, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$30,000 and not more than \$2,000,000 or to imprisonment for a term of not more than three years, or to both;or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not less than \$5,000 and not more than \$300,000 or to imprisonment for a term of not more than six months, or to both, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$10,000 and not more than \$600,000 or to imprisonment for a term of not more than six months, or to both.

Penalty — other persons

(3) Every person, other than an individual or a corporation referred to in subsection (4), that commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not less than \$500,000 and not more than \$6,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$1,000,000 and not more than \$12,000,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not less than \$100,000 and not more than \$4,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$200,000 and not more than \$8,000,000.

Penalty — small revenue corporations

(4) Every corporation that commits an offence under subsection (1) and that the court determines under section 13.02 to be a small revenue corporation is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not less than \$75,000 and not more than \$4,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$150,000 and not more than \$8,000,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not less than \$25,000 and not more than \$2,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$50,000 and not more than \$4,000,000.

1994, c. 22, s. 13 2005, c. 23, s. 9 2009, c. 14, s. 102

Offence — persons

13.01 (1) Every person commits an offence who

- (a) contravenes any provision of this Act or the regulations, other than a provision the contravention of which is an offence under subsection 13(1);
- (b) negligently contravenes paragraph 5.2(b); or
- (c) contravenes an order or direction made under this Act, other than an order the contravention of which is an offence under subsection 13(1).

Penalty — individuals

(2) Every individual who commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not more than \$100,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$200,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not more than \$25,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$50,000.

Penalty — other persons

(3) Every person, other than an individual or a corporation referred to in subsection (4), that commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not more than \$500,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$1,000,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not more than \$250,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$500,000.

Penalty — small revenue corporations

(4) Every corporation that commits an offence under subsection (1) and that the court determines under section 13.02 to be a small revenue corporation is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not more than \$250,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$500,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not more than \$50,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$100,000.

2009, c. 14, s. 102

Determination of small revenue corporation status

13.02 For the purpose of sections 13 and 13.01, a court may determine a corporation to be a small revenue corporation if the court is satisfied that the corporation's gross revenues for the 12 months immediately before the day on which the subject matter of the proceedings arose — or, if it arose on more than one day, for the 12 months immediately before the first day on which the subject matter of the proceedings arose — were not more than \$5,000,000.

2009, c. 14, s. 102

Offence — vessels

13.03 (1) Every vessel commits an offence that contravenes

- (a) section 5.1;
- (b) any provision of the regulations designated by regulations made under paragraph 12(1)(l); or
- (c) an order or a direction made under this Act, including one made by a court.

Penalty — vessels of 7 500 tonnes deadweight or over

(2) Every vessel of 7 500 tonnes deadweight or over that commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not less than \$500,000 and not more than \$6,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$1,000,000 and not more than \$12,000,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not less than \$100,000 and not more than \$4,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$200,000 and not more than \$8,000,000.

Penalty — other vessels

(3) Every other vessel that commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not less than \$75,000 and not more than \$4,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$150,000 and not more than \$8,000,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not less than \$25,000 and not more than \$2,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$50,000 and not more than \$4,000,000.

2009, c. 14, s. 102

Offences — vessels

13.04 (1) Every vessel commits an offence that contravenes any provision of this Act or the regulations, other than a provision the contravention of which is an offence under subsection 13.03(1).

Penalty — vessels of 7 500 tonnes deadweight or over

(2) Every vessel of 7 500 tonnes deadweight or over that commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not more than \$500,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$1,000,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not more than \$250,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$500,000.

Penalty — other vessels

- (3) Every other vessel that commits an offence under subsection (1) is liable,
- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not more than \$250,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$500,000; or
 - (b) on summary conviction,
 - (i) for a first offence, to a fine of not more than \$50,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$100,000.

2009, c. 14, s. 102

Deeming — second and subsequent offence

13.05 (1) For the purposes of subsections 13(2) to (4), 13.01(2) to (4), 13.03(2) and (3) and 13.04(2) and (3), a conviction for a particular offence under this Act is deemed to be a conviction for a second or subsequent offence if the court is satisfied that the offender has been previously convicted — under any Act of Parliament, or any Act of the legislature of a province, that relates to environmental or wildlife conservation or protection — of a substantially similar offence.

Application

(2) Subsection (1) applies only to previous convictions on indictment and to previous convictions on summary conviction, and to previous convictions under any similar procedure under any Act of the legislature of a province.

2009, c. 14, s. 102

Relief from minimum fine

13.06 The court may impose a fine that is less than the minimum amount provided for in section 13 or 13.03, as the case may be, if it is satisfied, on the basis of evidence submitted to the court, that the minimum fine would cause undue financial hardship. The court shall provide reasons if it imposes a fine that is less than the minimum amount provided for in any of those sections.

2009, c. 14, s. 102

Additional fine

13.07 If a person or vessel is convicted of an offence under this Act and the court is satisfied that, as a result of the commission of the offence, the person — or, if the offender is a vessel, the owner or operator of the vessel — acquired any property, benefit or advantage, the court shall order the offender to pay an additional fine in an amount equal to the court's estimation of the value of that property, benefit or advantage. The additional fine may exceed the maximum amount of any fine that may otherwise be imposed under this Act.

2009, c. 14, s. 102

Notice to shareholders

13.08 If a corporation that has shareholders is convicted of an offence under this Act, the court shall make an order directing the corporation to notify its shareholders, in the manner and within the time directed by the court, of the facts relating to the commission of the offence and of the details of the punishment imposed.

2009, c. 14, s. 102

Fundamental purpose of sentencing

13.09 The fundamental purpose of sentencing for offences under this Act is to contribute, in light of the long-standing recognition of the social, cultural and environmental importance of migratory birds, to respect for the law protecting and conserving migratory birds and their nests through the imposition of just sanctions that have as their objectives

- (a) to deter the offender and any other person from committing offences under this Act;
- (b) to denounce unlawful conduct that damages or creates a risk of damage to migratory birds or their nests; and
- (c) to reinforce the “polluter pays” principle and to restore migratory birds and their habitats.

2009, c. 14, s. 102

Sentencing principles

13.1 (1) In addition to the principles and factors that the court is otherwise required to consider, including those set out in sections 718.1 to 718.21 of the Criminal Code, the court shall consider the following principles when sentencing a person who is convicted of an offence under this Act:

- (a) the amount of the fine should be increased to account for every aggravating factor associated with the offence, including the aggravating factors set out in subsection (2); and
- (b) the amount of the fine should reflect the gravity of each aggravating factor associated with the offence.

Aggravating factors

(2) The aggravating factors are the following:

- (a) the offence caused damage or risk of damage to migratory birds or their nests;
- (b) the offence caused damage or risk of damage to any unique, rare, particularly important or vulnerable population of migratory birds;
- (c) the damage caused by the offence is extensive, persistent or irreparable;
- (d) the offender committed the offence intentionally or recklessly;
- (e) the offender failed to take reasonable steps to prevent the commission of the offence despite having the financial means to do so;
- (f) 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;
- (g) the offender committed the offence despite having been warned by a game officer of the circumstances that subsequently became the subject of the offence;
- (h) the offender has a history of non-compliance with federal or provincial legislation that relates to environmental or wildlife conservation or protection; and
- (i) 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.

Absence of aggravating factor

(3) The absence of an aggravating factor set out in subsection (2) is not a mitigating factor.

Meaning of damage

(4) For the purposes of paragraphs (2)(a) to (c), damage includes loss of use value and non-use value.

Reasons

(5) If the court is satisfied of the existence of one or more of the aggravating factors set out in subsection (2) but decides not to increase the amount of the fine because of that factor, the court shall give reasons for that decision.

2009, c. 14, s. 102

Proceedings against vessels

13.11 (1) The provisions of this Act and the Criminal Code relating to indictable or summary conviction offences that apply to persons apply also to vessels, with any modifications that the circumstances require.

Direction binds vessel

(2) For the purpose of prosecuting a vessel for contravening a direction or an order made under this Act, other than an order made under section 11.21, any direction or order made under this Act that is given to the master or a crew member of the vessel binds the vessel as though it had been given to the vessel.

Service

(3) If a vessel is charged with having committed an offence under this Act, the summons may be served by leaving it with the owner, operator, master or any officer of the vessel or by posting the summons on some conspicuous part of the vessel.

Appearance at trial

(4) If a vessel is charged with having committed an offence under this Act, the vessel may appear by counsel or representative. Despite the Criminal Code, if the vessel does not so appear, a court may, on proof of service of the summons, proceed to hold the trial.

Proof of offence — vessel

(5) In a prosecution of a vessel for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by a person on board the vessel, whether or not the person is identified or prosecuted for the offence.

2009, c. 14, s. 102

Liability of directors, officers, etc., of corporation

13.12 If a corporation commits an offence under this Act, any director, officer, agent or mandatary of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to the offence and is liable on conviction to the penalty provided for by this Act for an individual in respect of the offence committed by the corporation, whether or not the corporation has been prosecuted or convicted.

2009, c. 14, s. 102

Liability of masters, chief engineers, owners, etc.

13.13 (1) If a vessel commits an offence under this Act and the master, chief engineer, owner or operator of the vessel directed, authorized, assented to, acquiesced in or participated in the commission of the offence, the master, chief engineer, owner, or operator, as the case may be, is a party to the offence and is liable on conviction to the penalty provided for by this Act for an individual for the offence of contravening section 5.1, whether or not the vessel has been prosecuted or convicted.

Liability of directors and officers of corporate owners of vessels

(2) If a vessel commits an offence under this Act and the owner or operator of the vessel is a corporation, every director and officer of the corporation who directed or influenced the corporation's policies or activities in respect of conduct that is the subject matter of the offence is a party to an offence and is liable on conviction to the penalty provided for by this Act for an individual for the offence of contravening section 5.1, whether or not the vessel has been prosecuted or convicted.

2009, c. 14, s. 102

Proof of offence — corporation

13.14 In a prosecution of a corporation for an offence under this Act, other than an offence of contravening paragraph 5.2(a), knowingly contravening paragraph 5.2(b) or contravening paragraph 5.2(c) or (d) or section 5.4 or 5.5, it is sufficient proof of the offence to establish that it was committed by an employee, agent or mandatary of the accused, whether or not the employee, agent or mandatary is identified or prosecuted for the offence.

2009, c. 14, s. 102

Proof of offence — master or chief engineer

13.15 In a prosecution of a master or chief engineer of a vessel for an offence under this Act, other than an offence of contravening paragraph 5.2(a), knowingly contravening paragraph 5.2(b) or contravening paragraph 5.2(c) or (d) or section 5.4 or 5.5, it is sufficient proof of the offence to establish that it was committed by a person on board the vessel, whether or not the person is identified or prosecuted for the offence.

2009, c. 14, s. 102

Proof of offence — section 5.4

13.16 In a prosecution of an offence under section 5.4, it is sufficient proof of the offence to establish that a substance was deposited by the vessel contrary to section 5.1.

2009, c. 14, s. 102

Due diligence

13.17 A person or vessel that establishes that they exercised due diligence to prevent the commission of an offence under this Act, other than an offence of contravening paragraph 5.2(a), (c) or (d), knowingly contravening paragraph 5.2(b) or contravening section 5.3, shall not be found guilty of the offence.

2009, c. 14, s. 102

Continuing offence

13.18 A person or vessel that commits or continues an offence under this Act on more than one day is liable to be convicted for a separate offence for each day on which the offence is committed or continued.

2009, c. 14, s. 102

Offences involving more than one bird or nest

13.19 If an offence under this Act involves more than one migratory bird or nest, the fine to be imposed in respect of that offence may, despite sections 13, 13.01, 13.03 and 13.04, be the total of the fines that would have been imposed if each of the migratory birds or nests had been the subject of a separate information.

2009, c. 14, s. 102

Application of fines

13.2 (1) All fines received by the Receiver General in respect of the commission of an offence under this Act, other than fines collected under the Contraventions Act, are to be credited to the Environmental Damages Fund, an account in the accounts of Canada, and used for purposes related to protecting, conserving or restoring the environment or for administering that Fund.

Recommendations of court

(2) The court imposing the fine may recommend to the Minister that all or a portion of the fine credited to the Environmental Damages Fund be paid to a person or an organization specified by the court for a purpose referred to in subsection (1).

2009, c. 14, s. 102

Forfeiture

14 (1) If a person or vessel is convicted of an offence, the convicting court may, in addition to any punishment imposed, order that any seized thing by means of or in relation to which the offence was committed, or any proceeds of its disposition, be forfeited to Her Majesty.

Return where no forfeiture ordered

(2) Where the convicting court does not order forfeiture, the seized thing, or the proceeds of its disposition, must be returned to its lawful owner or the person lawfully entitled to possession of it.

1994, c. 22, s. 14/2005, c. 23, s. 10(E)

Retention or sale

15 If a fine is imposed on a person or vessel convicted of an offence, any seized thing, or any proceeds of its disposition, may be retained until the fine is paid, or the thing may be sold in satisfaction of the fine and the proceeds applied, in whole or in part, in payment of the fine.

1994, c. 22, s. 152005, c. 23, s. 11(E)

Court order

16 (1) If a person or vessel is convicted of an offence, the court may, in addition to any punishment imposed and having regard to the nature of the offence and the circumstances surrounding its commission, make an order containing one or more of the following prohibitions, directions or requirements:

- (a) prohibiting the offender from doing any act or engaging in any activity that could, in the opinion of the court, result in the continuation or repetition of the offence;
- (b) directing the offender to take any action the court considers appropriate to remedy or avoid any harm to any migratory bird or nest that resulted or may result from the commission of the offence;
 - (b.1) directing the offender to have an environmental audit conducted by a person of a class specified by the court at the times specified by the court, and directing the offender to remedy any deficiencies revealed by the audit;
 - (b.2) directing the offender to carry out environmental effects monitoring in the manner established by the Minister, or directing the offender to pay, in the manner specified by the court, an amount for the purpose of environmental effects monitoring;
 - (b.3) directing the offender to implement an environmental management system that meets a recognized Canadian or international standard specified by the court;
 - (b.4) directing the offender to pay to Her Majesty in right of Canada an amount of money that the court considers appropriate for the purpose of promoting the proper management, conservation or protection of migratory birds or their habitat;
 - (b.5) directing the person to pay, in the manner prescribed by the court, an amount to environmental or other groups to assist in their work in or for a community near the place where the offence was committed;
- (c) directing the offender to publish, in the manner directed by the court, the facts relating to the commission of the offence and the details of the punishment imposed, including any orders made under this subsection;
 - (c.1) directing the offender to notify, at the offender's own cost and in the manner directed by the court, any person aggrieved or affected by the offender's conduct of the facts relating to the commission of the offence and of the details of the punishment imposed, including any orders made under this subsection;
- (d) directing the offender to compensate any person, monetarily or otherwise, in whole or in part, for the cost of any remedial or preventive action taken, caused to be taken or to be taken as a result of the act or omission that constituted the offence, including costs of assessing appropriate remedial or preventive action;
 - (d.1) directing the offender to pay, in a manner specified by the court, an amount to enable research to be conducted into the protection of the migratory bird populations in respect of which the offence was committed;
 - (d.2) directing the offender to pay, in the manner prescribed by the court, an amount to an educational institution including for scholarships for students enrolled in studies related to the environment;

- (e) directing the offender to perform community service in accordance with any reasonable conditions specified in the order;
- (f) directing the offender to submit to the Minister, on application to the court by the Minister within three years after the conviction, any information about the offender's activities that the court considers appropriate in the circumstances;
- (g) directing the offender to post a bond, provide surety or pay into court an amount of money that the court considers appropriate to ensure compliance with any prohibition, direction or requirement under this section;
- (h) requiring the offender to comply with any other conditions that the court considers appropriate in the circumstances for securing the offender's good conduct and for deterring the offender and any other person from committing offences under this Act;
- (i) requiring the offender to surrender to the Minister any permit issued under this Act to the offender; and
- (j) prohibiting the offender from applying for any new permit under this Act during any period that the court considers appropriate.

Coming into force and duration of order

(1.1) An order made under subsection (1) comes into force on the day on which it is made or on any other day that the court may determine and shall not continue in force for more than three years after that day unless the court provides otherwise in the order.

Publication

(1.2) If an offender fails to comply with an order made under paragraph (1)(c), the Minister may, in the manner that the court directed the offender to do so, publish the facts relating to the commission of the offence and the details of the punishment imposed and recover the costs of publication from the offender.

Debt due to Her Majesty

(1.3) If the court makes an order under paragraph (1)(b.4) or (d) directing an offender to pay an amount to Her Majesty in right of Canada, or if the Minister incurs publication costs under subsection (1.2), the amount or the costs, as the case may be, constitute a debt due to Her Majesty in right of Canada and may be recovered in any court of competent jurisdiction.

Enforcement

(1.4) If the court makes an order under paragraph (1)(d) directing an offender to pay an amount to a person, other than to Her Majesty in right of Canada, and the amount is not paid without delay, the person may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the offender in the same manner as if it were a judgment rendered against the offender in that court in civil proceedings.

Cancellation or suspension of permits

(1.5) If the court makes an order under paragraph (1)(i), any permit to which the order relates is cancelled unless the court makes an order suspending it for any period that the court considers appropriate.

Compensation for loss of property

(2) The court may also, at the time sentence is imposed and on the application of a person who suffered loss of or damage to property as a result of the commission of the offence — other than an owner or operator of a vessel that committed the offence — order the offender to pay that person compensation for the loss.

Enforcement

(3) If the amount that is ordered to be paid under paragraph (1)(d) or subsection (2) is not paid immediately, the person to whom the amount was ordered to be paid may, by filing the order, enter the amount as a judgment in the superior court of the province in which the trial was held, and the judgment is enforceable against the offender as if it were a judgment rendered against them in that court in civil proceedings.

Variation of sanctions

(4) A court that has made an order under subsection (1) in relation to an offender may, on application by the offender or the Attorney General of Canada, require the offender to appear before it and, after hearing the offender and the Attorney General, vary the order in any of the following ways that, in the court's opinion, is appropriate because of a change in the offender's circumstances since the order was made:

- (a) by making changes in the order or the conditions specified in it or extending the period during which it is to remain in force for a period of not more than one year; or
- (b) by decreasing the period during which the order is to remain in force or relieving the offender of compliance with any condition that is specified in it, either absolutely or partially, or for a specific period.

Notice

(5) Before making an order under subsection (4), the court may direct that notice be given to any person that it considers to be interested and it may hear that person.

Subsequent applications with leave

(6) If the court hears an application under subsection (4) in respect of an offender, no other application may be made under that subsection with respect to the offender except with leave of the court.

1994, c. 22, s. 162005, c. 23, s. 122009, c. 14, s. 103

Suspended sentence

17 (1) If a person or vessel is convicted of an offence and the court suspends the passing of sentence under paragraph 731(1)(a) of the Criminal Code, the court may, in addition to any probation order made under that paragraph, make an order under section 16.

Imposition of sentence

(2) If the person or vessel does not comply with the order or is convicted of another offence within three years after the order was made, the court may, on the application of the prosecution, impose any sentence that could have been imposed if the passing of sentence had not been suspended.

1994, c. 22, s. 171995, c. 22, s. 182005, c. 23, s. 13(E)

Civil remedies not affected

17.1 (1) No civil remedy for any conduct is suspended or affected by reason only that the conduct is an offence under this Act.

Remedies not repealed, etc.

(2) Nothing in this Act repeals, removes or reduces any remedy available under a law in force in Canada.

Compensation for cost of remedial or preventive action

(3) A court shall not, under paragraph 16(1)(d), order an offender to compensate a person for the cost of any remedial or preventive action referred to in that paragraph if the person is entitled to make a claim for compensation for that cost under the Marine Liability Act or the Arctic Waters Pollution Prevention Act.

Compensation for loss or damage — property

(4) A court shall not, under subsection 16(2), order an offender to pay to a person compensation for loss of or damage to property if the person is entitled to make a claim for compensation for that loss or damage under the Marine Liability Act or the Arctic Waters Pollution Prevention Act.

2005, c. 23, s. 142009, c. 14, s. 104

Limitation period

18 No proceedings by way of summary conviction in respect of an offence under this Act may be instituted more than five years after the day on which the subject matter of the proceedings arose, unless the prosecutor and the defendant agree that they may be instituted after the five years.

1994, c. 22, s. 182009, c. 14, s. 105

Documents, records and data

18.1 In a proceeding under this Act, a document, a record or data that is required to be kept under this Act or the Canada Shipping Act, 2001 is admissible in evidence and, in the absence of evidence to the contrary, is proof of the statements contained in it.

2005, c. 23, ss. 15, 48

Analyst's certificate

18.2 (1) In a proceeding under this Act, a certificate that appears to be signed by an analyst, that states that an article, sample or substance has been analysed or examined by the analyst and that contains the results of the analysis or examination, is admissible in evidence and, in the absence of evidence to the contrary, is proof of the statements contained in it without proof of the signature or official character of the person appearing to have signed it.

Requiring attendance of analyst

(2) The party against whom a certificate is produced may, with leave of the court, require the analyst's attendance for the purposes of cross-examination.

Notice of intention to produce certificate

(3) No certificate may be admitted in evidence unless, before the trial, the party that intends to produce it gives reasonable notice of that intention, together with a copy of the certificate, to the party against whom it is intended to be produced.

Proof of service

(4) Service of a certificate may be proved by oral evidence given under oath by the person who claims to have served it, or by that person's affidavit or solemn declaration.

Attendance for examination

(5) Despite subsection (4), the court may require the person who appears to have signed the affidavit or solemn declaration to appear before it for examination or cross-examination in respect of the issue of proof of service.

Definition of analyst

(6) For the purposes of this section, analyst means a person who is recognized by a laboratory or research centre as having the authority to perform the analysis or examination that is the subject of the certificate.

2005, c. 23, s. 15

Publication of information about contraventions

18.21 (1) For the purpose of encouraging compliance with this Act and the regulations, the Minister shall maintain, in a registry accessible to the public, information about all convictions of corporations for offences under this Act.

Retention

(2) Information in the registry is to be maintained for a minimum of five years.

2009, c. 14, s. 106

Minister may refuse or suspend permit

18.22 The Minister may refuse to issue a permit under this Act, or may cancel such a permit, if the applicant or the holder has been convicted of an offence under this Act.

2009, c. 14, s. 106

Contraventions Act

18.23 If an offence under this Act is designated as a contravention under the Contraventions Act, subsection 8(5) of that Act does not apply in respect of the fine that may be established for that contravention.

2009, c. 14, s. 106

Saguenay-St. Lawrence Marine Park Act (SSLMPA)

Review

22.3 (1) The Minister shall, 10 years after the day on which this section comes into force and every 10 years after that, undertake a review of sections 20 to 22.2.

Report to Parliament

(2) The Minister shall, no later than one year after the day on which the review is undertaken, cause a report on the review to be tabled in each House of Parliament.

2009, c. 14, s. 114

Offence

20 (1) Every person who contravenes any provision of this Act or any provision of the regulations designated by regulations made under paragraph 17(m.1) is guilty of an offence and liable

(a) on conviction on indictment,

(i) in the case of an individual,

(A) for a first offence, to a fine of not less than \$15,000 and not more than \$1,000,000 or to imprisonment for a term of not more than five years, or to both, and

(B) for a second or subsequent offence, to a fine of not less than \$30,000 and not more than \$2,000,000, or to imprisonment for a term of not more than five years, or to both,

(ii) in the case of a person, other than an individual or a corporation referred to in subparagraph (iii),

(A) for a first offence, to a fine of not less than \$500,000 and not more than \$6,000,000, and

(B) for a second or subsequent offence, to a fine of not less than \$1,000,000 and not more than \$12,000,000, and

(iii) in the case of a corporation that the court has determined under section 20.4 to be a small revenue corporation,

(A) for a first offence, to a fine of not less than \$75,000 and not more than \$4,000,000, and

(B) for a second or subsequent offence, to a fine of not less than \$150,000 and not more than \$8,000,000; or

(b) on summary conviction,

(i) in the case of an individual,

(A) for a first offence, to a fine of not less than \$5,000 and not more than \$300,000 or to imprisonment for a term of not more than six months, or to both, and

(B) for a second or subsequent offence, to a fine of not less than \$10,000 and not more than \$600,000 or to imprisonment for a term of not more than six months, or to both,

(ii) in the case of a person, other than an individual or a corporation referred to in subparagraph (iii),

- (A) for a first offence, to a fine of not less than \$100,000 and not more than \$4,000,000, and
- (B) for a second or subsequent offence, to a fine of not less than \$200,000 and not more than \$8,000,000, and
- (iii) in the case of a corporation that the court has determined under section 20.4 to be a small revenue corporation,
 - (A) for a first offence, to a fine of not less than \$25,000 and not more than \$2,000,000, and
 - (B) for a second or subsequent offence, to a fine of not less than \$50,000 and not more than \$4,000,000.

Contravention of other provisions of regulations

(2) Every person who contravenes any provision of the regulations other than a provision designated by regulations made under paragraph 17(m.1) is guilty of an offence and liable

- (a) on conviction on indictment,
 - (i) in the case of an individual,
 - (A) for a first offence, to a fine of not more than \$100,000, and
 - (B) for a second or subsequent offence, to a fine of not more than \$200,000,
 - (ii) in the case of a person, other than an individual or a corporation referred to in subparagraph (iii),
 - (A) for a first offence, to a fine of not more than \$500,000, and
 - (B) for a second or subsequent offence, to a fine of not more than \$1,000,000, and
 - (iii) in the case of a corporation that the court has determined under section 20.4 to be a small revenue corporation,
 - (A) for a first offence, to a fine of not more than \$250,000, and
 - (B) for a second or subsequent offence, to a fine of not more than \$500,000; or
- (b) on summary conviction,
 - (i) in the case of an individual,
 - (A) for a first offence, to a fine of not more than \$25,000, and
 - (B) for a second or subsequent offence, to a fine of not more than \$50,000,
 - (ii) in the case of a person, other than an individual or a corporation referred to in subparagraph (iii),
 - (A) for a first offence, to a fine of not more than \$250,000, and
 - (B) for a second or subsequent offence, to a fine of not more than \$500,000, and
 - (iii) in the case of a corporation that the court has determined under section 20.4 to be a small revenue corporation,
 - (A) for a first offence, to a fine of not more than \$50,000, and
 - (B) for a second or subsequent offence, to a fine of not more than \$100,000.

1997, c. 37, s. 20/2009, c. 14, s. 114

Continuing offences

20.1 If a contravention of a provision of this Act or of the regulations is committed or continued on more than one day, it constitutes a separate offence for each day on which it is committed or continued.

2009, c. 14, s. 114

Offences involving more than one animal, plant or object

20.2 If an offence under this Act involves more than one animal, plant or object, the fine to be imposed in respect of that offence may, despite section 20, be the total of the fines that would have been imposed if each of the animals, plants or objects had been the subject of a separate information.
2009, c. 14, s. 114

Deeming — second and subsequent offence

20.3 (1) For the purposes of section 20, a conviction for a particular offence under this Act is deemed to be a conviction for a second or subsequent offence if the court is satisfied that the offender has been previously convicted — under any Act of Parliament, or any Act of the legislature of a province, that relates to environmental or wildlife protection or conservation, or the protection of cultural, historical or archaeological resources — of a substantially similar offence.

Application

(2) Subsection (1) applies only to previous convictions on indictment and to previous convictions on summary conviction, and to previous convictions under any similar procedure under any Act of the legislature of a province.
2009, c. 14, s. 114

Determination of small revenue corporation status

20.4 For the purpose of section 20, a court may determine a corporation to be a small revenue corporation if the court is satisfied that the corporation's gross revenues for the 12 months immediately before the day on which the subject matter of the proceedings arose — or, if it arose on more than one day, for the 12 months immediately before the first day on which the subject matter of the proceedings arose — were not more than \$5,000,000.
2009, c. 14, s. 114

Relief from minimum fine

20.5 The court may impose a fine that is less than the minimum amount provided for in subsection 20(1) if it is satisfied, on the basis of evidence submitted to the court, that the minimum fine would cause undue financial hardship. The court shall provide reasons if it imposes a fine that is less than the minimum amount provided for in that subsection.
2009, c. 14, s. 114

Additional fine

20.6 If a person is convicted of an offence under this Act and the court is satisfied that, as a result of the commission of the offence, the person acquired any property, benefit or advantage, the court shall order the person to pay an additional fine in an amount equal to the court's estimation of the value of that property, benefit or advantage. The additional fine may exceed the maximum amount of any fine that may otherwise be imposed under this Act.
2009, c. 14, s. 114

Notice to shareholders

20.7 If a corporation that has shareholders has been convicted of an offence under this Act, the court shall make an order directing the corporation to notify its shareholders, in the manner and within the time directed by the court, of the facts relating to the commission of the offence and of the details of the punishment imposed.

2009, c. 14, s. 114

Liability of directors, officers, etc., of corporation

20.8 (1) If a corporation commits an offence under this Act, any director, officer, agent or mandatary of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the penalty provided for by this Act for an individual in respect of the offence committed by the corporation, whether or not the corporation has been prosecuted or convicted.

Duties of directors and officers

(2) Every director and officer of a corporation shall take all reasonable care to ensure that the corporation complies with

- (a) this Act and the regulations;
- (b) orders made by a court or the superintendent under this Act; and
- (c) directions of the superintendent, a park warden or an enforcement officer made under this Act.

2009, c. 14, s. 114

Fundamental purpose of sentencing

21 The fundamental purpose of sentencing for offences under this Act is to contribute to respect for the law protecting the park through the imposition of just sanctions that have as their objectives

- (a) to deter the offender and any other person from committing offences under this Act;
- (b) to denounce unlawful conduct that damages or creates a risk of damage to the park; and
- (c) to restore park resources.

1997, c. 37, s. 21 2009, c. 14, s. 114

Sentencing principles

21.1 (1) In addition to the principles and factors that the court is otherwise required to consider, including those set out in sections 718.1 to 718.21 of the Criminal Code, the court shall consider the following principles when sentencing a person who is convicted of an offence under this Act:

- (a) the amount of the fine should be increased to account for every aggravating factor associated with the offence, including the aggravating factors set out in subsection (2); and
- (b) the amount of the fine should reflect the gravity of each aggravating factor associated with the offence.

Aggravating factors

(2) The aggravating factors are the following:

- (a) the offence caused damage or risk of damage to any park resources;
- (b) the offence caused damage or risk of damage to any unique, rare, particularly important or vulnerable park resources;
- (c) the damage caused by the offence is extensive, persistent or irreparable;
- (d) the offender committed the offence intentionally or recklessly;
- (e) the offender failed to take reasonable steps to prevent the commission of the offence despite having the financial means to do so;
- (f) 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;
- (g) the offender committed the offence despite having been warned by the superintendent, a park warden or an enforcement officer of the circumstances that subsequently became the subject of the offence;
- (h) the offender has a history of non-compliance with federal or provincial legislation that relates to environmental or wildlife protection or conservation or the protection of cultural, historical or archaeological resources; and
- (i) 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.

Absence of aggravating factor

(3) The absence of an aggravating factor set out in subsection (2) is not a mitigating factor.

Meaning of damage

(4) For the purposes of paragraphs (2)(a) to (c), damage includes loss of use value and non-use value.

Reasons

(5) If the court is satisfied of the existence of one or more of the aggravating factors set out in subsection (2) but decides not to increase the amount of the fine because of that factor, the court shall give reasons for that decision.

2009, c. 14, s. 114

Application of fines

21.2 (1) All fines received by the Receiver General in respect of the commission of an offence under this Act, other than fines collected under the Contraventions Act, are to be credited to the Environmental Damages Fund, an account in the accounts of Canada, and used for purposes related to protecting, conserving or restoring the park or for administering that Fund.

Recommendations of court

(2) The court imposing the fine may recommend to the Minister that all or a portion of the fine credited to the Environmental Damages Fund be paid to a person or an organization specified by the court for a purpose referred to in subsection (1).

2009, c. 14, s. 114

Orders of court

21.3 (1) If a person is convicted of an offence under this Act, in addition to any punishment imposed, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order containing one or more of the following prohibitions, directions or requirements:

- (a) prohibiting the person from doing any act or engaging in any activity that may, in the opinion of the court, result in the continuation or repetition of the offence;
- (b) directing the person to take any action that the court considers appropriate to remedy or avoid any damage to any park resources that resulted or may result from the commission of the offence;
- (c) directing the person to post a bond, provide surety or pay into court an amount of money that the court considers appropriate for the purpose of ensuring compliance with any prohibition, direction or requirement mentioned in this section;
- (d) directing the person to prepare and implement a pollution prevention plan or an environmental emergency plan;
- (e) directing the person to carry out, in the manner established by the Minister, monitoring of the environmental effects of any activity or undertaking on park resources or directing the person to pay, in the manner specified by the court, an amount for that purpose;
- (f) directing the person to implement an environmental management system approved by the Minister;
- (g) directing the person to have an environmental audit conducted by a person of a class and at the times specified by the Minister and directing the person to remedy any deficiencies revealed during the audit;
- (h) directing the person to pay to Her Majesty in right of Canada an amount of money that the court considers appropriate for the purpose of promoting the protection, conservation or restoration of the park;
- (i) directing the person to publish, in the manner specified by the court, the facts relating to the commission of the offence and the details of the punishment imposed, including any orders made under this subsection;
- (j) directing the person to notify, at the person's own cost and in the manner specified by the court, any person aggrieved or affected by the person's conduct of the facts relating to the commission of the offence and of the details of the punishment imposed, including any orders made under this subsection;
- (k) directing the person to submit to the Minister, when requested to do so by the Minister at any time within three years after the date of conviction, any information with respect to the person's activities that the court considers appropriate in the circumstances;
- (l) directing the person to compensate any person, monetarily or otherwise, in whole or in part, for the cost of any remedial or preventive action taken, caused to be taken or to be taken as a result of the act or omission that constituted the offence, including costs of assessing appropriate remedial or preventive action;

- (m) directing the person to perform community service, subject to any reasonable conditions that may be imposed in the order;
- (n) directing the person to pay, in a manner specified by the court, an amount to enable research to be conducted into the protection, conservation or restoration of the park;
- (o) requiring the person to surrender to the Minister any permit or other authorizing instrument issued under this Act to the person;
- (p) prohibiting the person from applying for any new permit or other authorizing instrument under this Act during any period that the court considers appropriate;
- (q) directing the person to pay, in the manner prescribed by the court, an amount to environmental or other groups to assist in their work related to the park;
- (r) directing the person to pay, in the manner prescribed by the court, an amount to an educational institution including for scholarships for students enrolled in studies related to the environment; and
- (s) requiring the person to comply with any other conditions that the court considers appropriate.

Suspended sentence

(2) If a person is convicted of an offence under this Act and the court suspends the passing of sentence under paragraph 731(1)(a) of the Criminal Code, the court may, in addition to any probation order made under that paragraph, make an order referred to in subsection (1).

Imposition of sentence

(3) If a person does not comply with an order made under subsection (2) or is convicted of another offence, the court may, within three years after the order was made, on the application of the prosecution, impose any sentence that could have been imposed if the passing of sentence had not been suspended.

Publication

(4) If a person fails to comply with an order made under paragraph (1)(i), the Minister may, in the manner that the court directed the person to do so, publish the facts relating to the commission of the offence and the details of the punishment imposed and recover the costs of publication from the person.

Debt due to Her Majesty

(5) If the court makes an order under paragraph (1)(h) or (l) directing a person to pay an amount to Her Majesty in right of Canada, or if the Minister incurs publication costs under subsection (4), the amount or the costs, as the case may be, constitute a debt due to Her Majesty in right of Canada and may be recovered in any court of competent jurisdiction.

Enforcement

(6) If the court makes an order under paragraph (1)(l) directing a person to pay an amount to another person, other than to Her Majesty in right of Canada, and the amount is not paid without delay, that other person may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the person who was directed to pay the amount in the same manner as if it were a judgment rendered against the offender in that court in civil proceedings.

Cancellation or suspension of permit, etc.

(7) If the court makes an order under paragraph (1)(o), any permit or other authorizing instrument to which the order relates is cancelled unless the court makes an order suspending it for any period that the court considers appropriate.

Coming into force and duration of order

(8) An order made under subsection (1) comes into force on the day on which it is made or on any other day that the court may determine and shall not continue in force for more than three years after that day unless the court provides otherwise in the order.

2009, c. 14, s. 114

Forfeiture

21.4 (1) If a person is convicted of an offence under this Act, the court may, in addition to any punishment imposed, order that any seized thing by means of or in relation to which the offence was committed, or any proceeds of its disposition, be forfeited to Her Majesty in right of Canada.

Return if no forfeiture ordered

(2) If the court does not order the forfeiture, the seized thing or the proceeds of its disposition shall be returned or paid to its lawful owner or the person lawfully entitled to it.

Retention or sale

(3) If a fine is imposed on a person who is convicted of an offence, any seized thing, or any proceeds of its disposition, may be retained until the fine is paid or the thing may be sold in satisfaction of the fine and the proceeds applied, in whole or in part, in payment of the fine.

2009, c. 14, s. 114

Disposition by Minister

21.5 Any seized thing that has been forfeited under this Act to Her Majesty in right of Canada or abandoned by its owner may be dealt with and disposed of as the Minister may direct.

2009, c. 14, s. 114

Compensation for loss of property

21.6 (1) If a person has been convicted of an offence under this Act, the court may, at the time sentence is imposed and on the application of the person aggrieved, order the offender to pay to the aggrieved person an amount by way of satisfaction or compensation for loss of or damage to property suffered by that person as a result of the commission of the offence.

Enforcement

(2) If the amount ordered to be paid under subsection (1) is not paid without delay, the aggrieved person may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the offender in the same manner as if it were a judgment rendered against the offender in that court in civil proceedings.

2009, c. 14, s. 114

Compensation for cost of remedial or preventive action

21.7 (1) A court shall not, under paragraph 21.3(1)(l), order a person to compensate another person for the cost of any remedial or preventive action referred to in that paragraph if the other person is entitled to make a claim for compensation for that cost under the Marine Liability Act.

Compensation for loss or damage — property

(2) A court shall not, under subsection 21.6(1), order a person to pay to another person an amount by way of satisfaction or compensation for loss of or damage to property if the other person is entitled to make a claim for compensation for that loss or damage under the Marine Liability Act.

2009, c. 14, s. 114

Limitation period

22 No proceedings by way of summary conviction in respect of an offence under this Act may be instituted more than five years after the day on which the subject matter of the proceedings arose, unless the prosecutor and the defendant agree that they may be instituted after the five years.

1997, c. 37, s. 222009, c. 14, s. 114

Contraventions Act

22.1 If an offence under this Act is designated as a contravention under the Contraventions Act, subsection 8(5) of that Act does not apply in respect of the fine that may be established for that contravention.

2009, c. 14, s. 114

Publication of information about contraventions

22.2 (1) For the purpose of encouraging compliance with this Act and the regulations, the Minister shall maintain, in a registry accessible to the public, information about all convictions of corporations for offences under this Act.

Retention

(2) Information in the registry is to be maintained for a minimum of five years.

2009, c. 14, s. 114

Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (WAPPRIITA)

Review

28.1 (1) The Minister shall, 10 years after the day on which this section comes into force and every 10 years after that, undertake a review of sections 22 to 22.16.

Report to Parliament

(2) The Minister shall, no later than one year after the day on which the review is undertaken, cause a report on the review to be tabled in each House of Parliament.

2009, c. 14, s. 125

Offence — persons

22 (1) Every person commits an offence who contravenes

- (a) any provision of this Act;
- (b) any provision of the regulations designated by regulations made under paragraph 21(1)(g.1);
- or
- (c) any order made under this Act by a court.

Penalty — individuals

(2) Every individual who commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not less than \$15,000 and not more than \$1,000,000 or to imprisonment for a term of not more than five years, or to both, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$30,000 and not more than \$2,000,000 or to imprisonment for a term of not more than five years, or to both; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not less than \$5,000 and not more than \$300,000 or to imprisonment for a term of not more than six months, or to both, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$10,000 and not more than \$600,000 or to imprisonment for a term of not more than six months, or to both.

Penalty — other persons

(3) Every person, other than an individual or a corporation referred to in subsection (4), that commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not less than \$500,000 and not more than \$6,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$1,000,000 and not more than \$12,000,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not less than \$100,000 and not more than \$4,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$200,000 and not more than \$8,000,000.

Penalty — small revenue corporations

(4) Every corporation that commits an offence under subsection (1) and that the court determines under section 22.02 to be a small revenue corporation is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not less than \$75,000 and not more than \$4,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$150,000 and not more than \$8,000,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not less than \$25,000 and not more than \$2,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$50,000 and not more than \$4,000,000.

Relief from minimum fine

(5) The court may impose a fine that is less than the minimum amount provided for in this section if it is satisfied, on the basis of evidence submitted to the court, that the minimum fine would cause undue financial hardship. The court shall provide reasons if it imposes a fine that is less than the minimum amount provided for in this section.

1992, c. 52, s. 22/1995, c. 22, s. 18/2009, c. 14, s. 122

Offence — persons

22.01 (1) Every person commits an offence who contravenes any provision of the regulations, other than a provision the contravention of which is an offence under subsection 22(1).

Penalty — individuals

- (2) Every individual who commits an offence under subsection (1) is liable,
- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not more than \$100,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$200,000; or
 - (b) on summary conviction,
 - (i) for a first offence, to a fine of not more than \$25,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$50,000.

Penalty — other persons

- (3) Every person, other than an individual or a corporation referred to in subsection (4), that commits an offence under subsection (1) is liable,
- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not more than \$500,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$1,000,000; or
 - (b) on summary conviction,
 - (i) for a first offence, to a fine of not more than \$250,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$500,000.

Penalty — small revenue corporations

- (4) Every corporation that commits an offence under subsection (1) and that the court determines under section 22.02 to be a small revenue corporation is liable,
- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not more than \$250,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$500,000; or
 - (b) on summary conviction,
 - (i) for a first offence, to a fine of not more than \$50,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$100,000.

2009, c. 14, s. 122

Determination of small revenue corporation status

22.02 For the purpose of sections 22 and 22.01, a court may determine a corporation to be a small revenue corporation if the court is satisfied that the corporation's gross revenues for the 12 months immediately before the day on which the subject matter of the proceedings arose — or, if it arose on more than one day, for the 12 months immediately before the first day on which the subject matter of the proceedings arose — were not more than \$5,000,000.

2009, c. 14, s. 122

Deeming — second and subsequent offence

22.03 (1) For the purposes of subsections 22(2) to (4) and 22.01(2) to (4), a conviction for a particular offence under this Act is deemed to be a conviction for a second or subsequent offence if the court is satisfied that the offender has been previously convicted — under any Act of Parliament, or any Act of the legislature of a province, that relates to environmental or wildlife conservation or protection — of a substantially similar offence.

Application

(2) Subsection (1) applies only to previous convictions on indictment and to previous convictions on summary conviction, and to previous convictions under any similar procedure under any Act of the legislature of a province, other than a procedure commenced by means of a ticket.

2009, c. 14, s. 122

Additional fine

22.04 If a person is convicted of an offence under this Act and the court is satisfied that, as a result of the commission of the offence, the person acquired any property, benefit or advantage, the court shall order the person to pay an additional fine in an amount equal to the court's estimation of the value of that property, benefit or advantage. The additional fine may exceed the maximum amount of any fine that may otherwise be imposed under this Act.

2009, c. 14, s. 122

Notice to shareholders

22.05 If a corporation that has shareholders has been convicted of an offence under this Act, the court shall make an order directing the corporation to notify its shareholders, in the manner and within the time directed by the court, of the facts relating to the commission of the offence and of the details of the punishment imposed.

2009, c. 14, s. 122

Contraventions Act

22.06 If an offence under this Act is designated as a contravention under the Contraventions Act, subsection 8(5) of that Act does not apply in respect of the fine that may be established for that contravention.

2009, c. 14, s. 122

Fundamental purpose of sentencing

22.07 The fundamental purpose of sentencing for offences under this Act is to contribute, in light of the numerous serious threats to plants and animals and their importance to the environment, to respect for the law regulating international and interprovincial trade in animals and plants through the imposition of just sanctions that have as their objectives

- (a) to deter the offender and any other person from committing offences under this Act;
- (b) to denounce the unlawful trade in certain animals and plants and to make it unprofitable; and
- (c) to recover, if possible, certain species of animals and plants unlawfully traded.

2009, c. 14, s. 122

Sentencing principles

22.08 (1) In addition to the principles and factors that the court is otherwise required to consider, including those set out in sections 718.1 to 718.21 of the Criminal Code, the court shall consider the following principles when sentencing a person who is convicted of an offence under this Act:

- (a) the amount of the fine should be increased to account for every aggravating factor associated with the offence, including the aggravating factors set out in subsection (2); and
- (b) the amount of the fine should reflect the gravity of each aggravating factor associated with the offence.

Aggravating factors

(2) The aggravating factors are the following:

- (a) the offence caused damage or risk of damage, directly or indirectly, to animals or plants;
- (b) the offence caused damage or risk of damage to a unique, rare, particularly important or vulnerable species of animal or plant or population of animals or plants;
- (c) the offender committed the offence intentionally or recklessly;
- (d) the offender profited, or intended to profit, by committing the offence;
- (e) the offender has a history of non-compliance with federal or provincial legislation that relates to environmental or wildlife conservation or protection; and
- (f) the offence involved a high degree of planning.

Absence of aggravating factor

(3) The absence of an aggravating factor set out in subsection (2) is not a mitigating factor.

Meaning of damage

(4) For the purposes of paragraphs (2)(a) and (b), damage includes loss of use value and non-use value.

Reasons

(5) If the court is satisfied of the existence of one or more of the aggravating factors set out in subsection (2) but decides not to increase the amount of the fine because of that factor, the court shall give reasons for that decision.

2009, c. 14, s. 122

Offences involving more than one animal or plant, etc.

22.09 If an offence under this Act involves more than one animal or plant, or part or derivative of an animal or plant, the fine to be imposed in respect of that offence may, despite sections 22 and 22.01, be the total of the fines that would have been imposed if each of the animals, plants, parts or derivatives had been the subject of a separate information.

2009, c. 14, s. 122

Continuing offence

22.1 If an offence under this Act is committed or continued on more than one day, it is deemed to be a separate offence for each day on which the offence is committed or continued.

2009, c. 14, s. 122

Application of fines

22.11 (1) All fines received by the Receiver General in respect of the commission of an offence under this Act, other than fines collected under the Contraventions Act, are to be credited to the Environmental Damages Fund, an account in the accounts of Canada, and used for purposes related to protecting, conserving or restoring the environment or for administering that Fund.

Recommendations of court

(2) The court imposing the fine may recommend to the Minister that all or a portion of the fine credited to the Environmental Damages Fund be paid to a person or an organization specified by the court for a purpose referred to in subsection (1).

2009, c. 14, s. 122

Orders of court

22.12 (1) If a person is convicted of an offence under this Act, in addition to any punishment imposed, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order containing one or more of the following prohibitions, directions or requirements:

- (a) prohibiting the person from doing any act or engaging in any activity that could, in the opinion of the court, result in the continuation or repetition of the offence;
- (b) directing the person to take any action that the court considers appropriate to remedy or avoid any harm to any animal or plant to which any provision of this Act applies that resulted or may result from the commission of the offence;
- (c) directing the person to publish, in the manner specified by the court, the facts relating to the commission of the offence and the details of the punishment imposed, including any orders made under this subsection;
- (d) directing the person to notify, at the person's own cost and in the manner specified by the court, any person aggrieved or affected by the offender's conduct of the facts relating to the commission of the offence and of the details of the punishment imposed, including any orders made under this subsection;
- (e) directing the person to compensate any person, monetarily or otherwise, in whole or in part, for the cost of any remedial or preventive action taken, caused to be taken or to be taken as a result of the act or omission that constituted the offence, including costs of assessing appropriate remedial or preventive action;
- (f) directing the person to perform community service in accordance with any reasonable conditions that may be specified in the order;
- (f.1) directing the person to pay, in a manner specified by the court, an amount to enable research to be conducted into the protection or conservation of animals or plants;
- (f.2) directing the person to pay, in the manner prescribed by the court, an amount to an educational institution including for scholarships for students enrolled in studies related to the environment;
- (f.3) directing the person to pay, in the manner prescribed by the court, an amount to environmental or other groups to assist in their work in relation to the protection of the species of animal or plant that was the subject of the offence;

- (g) directing the person to post a bond, provide surety or pay into court an amount of money that the court considers appropriate for the purpose of ensuring compliance with any prohibition, direction or requirement mentioned in this subsection;
- (h) directing the person to pay to Her Majesty in right of Canada an amount of money that the court considers appropriate for the purpose of promoting the conservation or protection of animals or plants;
- (i) directing the person to submit to the Minister, when requested to do so by the Minister at any time within three years after the date of the conviction, any information respecting the activities of the person that the court considers appropriate in the circumstances;
- (j) requiring the person to comply with any other conditions that the court considers appropriate in the circumstances for securing the person's good conduct and for deterring the person and any other person from committing offences under this Act;
- (k) requiring the person to surrender to the Minister any permit issued under this Act to the person; and
- (l) prohibiting the person from applying for any new permit under this Act during any period that the court considers appropriate.

Publication

(2) If a person fails to comply with an order made under paragraph (1)(c), the Minister may, in the manner that the court directed the person to do so, publish the facts relating to the commission of the offence and the details of the punishment imposed and recover the costs of publication from the offender.

Debt due to Her Majesty

(3) If the court makes an order under paragraph (1)(e) or (h) directing a person to pay an amount to Her Majesty in right of Canada, or if the Minister incurs publication costs under subsection (2), the amount or the costs, as the case may be, constitute a debt due to Her Majesty in right of Canada and may be recovered in any court of competent jurisdiction.

Enforcement

(4) If the court makes an order under paragraph (1)(e) directing a person to pay an amount to another person, other than to Her Majesty in right of Canada, and the amount is not paid without delay, that other person may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the person who was directed to pay the amount in the same manner as if it were a judgment rendered against the offender in that court in civil proceedings.

Cancellation or suspension of permits

(5) If the court makes an order under paragraph (1)(k), any permit to which the order relates is cancelled unless the court makes an order suspending it for any period that the court considers appropriate.

Coming into force and duration of order

(6) An order made under subsection (1) comes into force on the day on which it is made or on any other day that the court may determine and shall not continue in force for more than three years after that day unless the court provides otherwise in the order.

2009, c. 14, s. 122

Suspended sentence

22.13 If a person is convicted of an offence under this Act and the court suspends the passing of sentence pursuant to paragraph 731(1)(a) of the Criminal Code, the court may, in addition to any probation order made under that paragraph, make an order directing the person to comply with any prohibition, direction or requirement mentioned in section 22.12.

2009, c. 14, s. 122

Imposition of sentence

22.14 If a person whose sentence has been suspended fails to comply with an order made under 22.12 or is convicted, within three years after the day on which the order was made, of another offence under this Act, the court may, on the application of the prosecution, impose any sentence that could have been imposed if the passing of sentence had not been suspended.

2009, c. 14, s. 122

Limitation period

22.15 No proceedings by way of summary conviction in respect of an offence under this Act may be instituted more than five years after the day on which the subject matter of the proceedings arose, unless the prosecutor and the defendant agree that they may be instituted after the five years.

2009, c. 14, s. 122

Minister may refuse or suspend permit

22.16 The Minister may refuse to issue a permit under this Act, or may cancel such a permit, if the applicant or the holder has been convicted of an offence under this Act.

2009, c. 14, s. 122

Greenhouse Gas Pollution Pricing Act (GGPPA)

Review

261 (1) The Minister must undertake a review of sections 232 to 252 each time the Minister undertakes a review under section 294.5 of the Canadian Environmental Protection Act, 1999.

Report to Parliament

(2) The Minister must, no later than one year after the day on which the review is undertaken, cause a report on the review to be tabled in each House of Parliament.

Offences

232 (1) Every person commits an offence who

- (a) contravenes section 208 or subsection 217(1) or 225(4);
- (b) knowingly contravenes section 209;
- (c) contravenes any provision of a regulation that is designated by regulations made under section 246;
- (d) contravenes an order of a court made under this Part;
- (e) knowingly, with respect to any matter related to this Part, provides any person with any false or misleading information or samples;
- (f) knowingly, with respect to any matter related to this Part, files a document that contains false or misleading information; or
- (g) knowingly, destroys, alters, mutilates, conceals or otherwise disposes of any records that are kept and retained under this Part.

Penalty — individuals

(2) Every individual who commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not less than \$15,000 and not more than \$1,000,000 or to imprisonment for a term of not more than three years, or to both, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$30,000 and not more than \$2,000,000 or to imprisonment for a term of not more than three years, or to both;or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not less than \$5,000 and not more than \$300,000 or to imprisonment for a term of not more than six months, or to both, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$10,000 and not more than \$600,000 or to imprisonment for a term of not more than six months, or to both.

Penalty — other persons

(3) Every person, other than an individual or an organization referred to in subsection (4), that commits an offence under subsection (1) is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not less than \$500,000 and not more than \$6,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$1,000,000 and not more than \$12,000,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not less than \$100,000 and not more than \$4,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$200,000 and not more than \$8,000,000.

Penalty — small revenue organizations

(4) Every organization that commits an offence under subsection (1) and that the court determines under section 234 to be a small revenue organization is liable,

- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not less than \$75,000 and not more than \$4,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$150,000 and not more than \$8,000,000; or
- (b) on summary conviction,
 - (i) for a first offence, to a fine of not less than \$25,000 and not more than \$2,000,000, and
 - (ii) for a second or subsequent offence, to a fine of not less than \$50,000 and not more than \$4,000,000.

Offences

233 (1) Every person commits an offence who

- (a) contravenes any provision of this Part, other than a provision the contravention of which is an offence under paragraph 232(1)(a);
- (b) contravenes any provision of a regulation made under this Part, other than a provision the contravention of which is an offence under paragraph 232(1)(c);
- (c) with respect to any matter related to this Part, provides any person with any false or misleading information or samples; or
- (d) with respect to any matter related to this Part, files a document that contains false or misleading information.

Penalty — individuals

- (2) Every individual who commits an offence under subsection (1) is liable,
- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not more than \$100,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$200,000; or
 - (b) on summary conviction,
 - (i) for a first offence, to a fine of not more than \$25,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$50,000.

Penalty — other persons

- (3) Every person, other than an individual or a organization referred to in subsection (4), that commits an offence under subsection (1) is liable,
- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not more than \$500,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$1,000,000; or
 - (b) on summary conviction,
 - (i) for a first offence, to a fine of not more than \$250,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$500,000.

Penalty — small revenue organizations

- (4) Every organization that commits an offence under subsection (1) and that the court determines under section 234 to be a small revenue organization is liable,
- (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not more than \$250,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$500,000; or
 - (b) on summary conviction,
 - (i) for a first offence, to a fine of not more than \$50,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$100,000.

Order — provision of compensation

- (5) If a person is found guilty of contravening subsection 174(1) or paragraph 178(1)(a), the court must, in addition to any penalty that may be imposed under this section, order the offender to provide compensation, at the rates set out in subsection 174(4), for the excess emissions for which no compensation was provided and for which no compliance units were withdrawn.

Determination of small revenue organization status

234 For the purposes of sections 232 and 233, a court may determine an organization to be a small revenue organization if the court is satisfied that the organization's gross revenues for the 12 months immediately before the day on which the subject matter of the proceedings arose — or, if it arose on more than one day, for the 12 months immediately before the first day on which the subject matter of the proceedings arose — were not more than \$5,000,000.

Relief from minimum fine

235 The court may impose a fine that is less than the minimum amount provided for in subsection 232(2), (3) or (4) if it is satisfied, on the basis of evidence submitted to the court, that the minimum fine would cause undue financial hardship. The court must provide reasons if it imposes a fine that is less than the minimum amount provided for in any of those subsections.

Deeming — second and subsequent offence

236 (1) For the purposes of subsections 232(2) to (4) and 233(2) to (4), a conviction for a particular offence under this Part is deemed to be a conviction for a second or subsequent offence if the court is satisfied that the offender has been previously convicted — under any Act of Parliament, or any Act of the legislature of a province, that relates to the control or pricing of greenhouse gas emissions — of a substantially similar offence.

Application

(2) Subsection (1) applies only to previous convictions on indictment and to previous convictions on summary conviction, and to previous convictions under any similar procedure under any Act of the legislature of a province.

Additional fine

237 If a person is convicted of an offence and the court is satisfied that, as a result of the commission of the offence, the person acquired any property, benefit or advantage, the court must order the offender to pay an additional fine in an amount equal to the court's estimation of the value of that property, benefit or advantage. The additional fine may exceed the maximum amount of any fine that may otherwise be imposed under this Part.

Notice to shareholders

238 If a corporation that has shareholders is convicted of an offence under this Part, the court must make an order directing the corporation to notify its shareholders, in the manner and within the time directed by the court, of the facts relating to the commission of the offence and of the details of the punishment imposed.

Limitation period

239 No proceedings by way of summary conviction in respect of an offence under this Part may be instituted more than five years after the day on which the subject matter of the proceedings arose, unless the prosecutor and the defendant agree that they may be instituted after the five years.

Offence for each tonne

240 If the offence of contravening subsection 174(1) or paragraph 178(1)(a) is committed, the person that committed the offence is liable to be convicted for a separate offence for each CO₂e tonne of a greenhouse gas that is emitted over the applicable emissions limit for which no compensation is provided by the increased-rate compensation deadline.

Regulations

241 The Governor in Council may, by regulation, prescribe the manner in which the proceeds or any part of the proceeds resulting from the payment of a fine or the execution of an order in relation to an offence under this Part must be distributed in order to reimburse any person, government or body that has commenced the proceedings in respect of the offence for costs incurred by that person, government or body in respect of the prosecution of the offence.

Liability of senior officers

242 (1) If an organization commits an offence under this Part, a senior officer of the organization who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence, and is liable on conviction to the penalty provided for by this Part for an individual in respect of the offence committed by the organization, whether or not the organization has been prosecuted.

Definition of senior officer

(2) In this section, senior officer means a director, partner, employee, member, agent, mandatary or contractor who plays an important role in the establishment of an organization's policies or is responsible for managing an important aspect of its activities and, in the case of a corporation, includes its chief executive officer and its chief financial officer.

Proof of offence

243 In any prosecution of an offence under this Part, other than an offence of contravening section 208 or subsection 225(4) or an offence under any of paragraphs 232(1)(b) and (e) to (g), it is sufficient proof of the offence to establish that it was committed by a director, partner, employee, member, agent, mandatary or contractor of the accused organization, whether or not they are identified or prosecuted for the offence.

Defence

244 A person must not be found guilty of an offence under this Part, other than an offence of contravening section 208 or subsection 225(4) or an offence under any of paragraphs 232(1)(b) and (e) to (g), if the person establishes that they exercised all due diligence to prevent its commission.

Certificate of analyst

245 (1) Subject to subsections (2) and (3), a certificate of an analyst that states the result of an analysis or examination and includes any related statement is admissible in evidence in any prosecution for an offence under this Part and, in the absence of evidence to the contrary, is proof of the statements contained in the certificate without proof of the signature or the official character of the person appearing to have signed the certificate.

Attendance of analyst

(2) The party against whom a certificate of an analyst is produced may, with leave of the court, require the attendance of the analyst for the purposes of cross-examination.

Notice

(3) A certificate of an analyst must not be received in evidence unless the party intending to produce it has given to the party against whom it is intended to be produced reasonable notice of that intention together with a copy of the certificate.

Regulations

246 The Governor in Council may, by regulation, designate provisions of regulations made under this Part for the purposes of paragraph 232(1)(c).

Sentencing

Fundamental purpose

247 The fundamental purpose of sentencing for offences under this Part is to contribute — in light of the risks posed by climate change to the environment, including its biological diversity, to human health and safety and to economic prosperity — to respect for laws related to the pricing of greenhouse gas emissions through the imposition of just sanctions that have as their objectives

- (a) the deterrence of the offender and any other person from committing offences under this Part;
- (b) the denunciation of the unlawful conduct; and
- (c) the reinforcement of the “polluter pays” principle.

Principles

248 (1) In addition to the principles and factors that the court is otherwise required to consider, including those set out in sections 718.1 to 718.21 of the Criminal Code, the court must consider the following principles when sentencing a person that is convicted of an offence under this Part:

- (a) the amount of the fine should be increased to account for every aggravating factor associated with the offence, including the aggravating factors set out in subsection (2); and
- (b) the amount of the fine should reflect the gravity of each aggravating factor associated with the offence.

Aggravating factors

(2) The aggravating factors are the following:

- (a) the offender committed the offence intentionally or recklessly;
- (b) the offender failed to take reasonable steps to prevent the commission of the offence despite having the financial means to do so;
- (c) 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;
- (d) the offender committed the offence despite having been warned by an enforcement officer of the circumstances that subsequently became the subject of the offence;
- (e) the offender has a history of non-compliance with federal or provincial legislation that relates to the control or pricing of greenhouse gas emissions; and
- (f) 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.

Absence of aggravating factor

(3) The absence of an aggravating factor set out in subsection (2) is not a mitigating factor.

Reasons

(4) If the court is satisfied of the existence of one or more of the aggravating factors set out in subsection (2) but decides not to increase the amount of the fine because of that factor, the court must give reasons for that decision.

Orders of court

249 (1) If an offender has been convicted of an offence under this Part, in addition to any other punishment that may be imposed under this Part, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order having any or all of the following effects:

- (a) prohibiting the offender from doing any act or engaging in any activity that may result in the continuation or repetition of the offence;
- (b) directing the offender to implement a greenhouse gas emissions control or reduction system that meets a recognized Canadian or international standard;
- (c) directing the offender to have an audit conducted by a person of a class and at the times specified by the court and directing the offender to remedy any deficiencies revealed during the audit;
- (d) directing the offender to pay to Her Majesty in right of Canada an amount of money that the court considers appropriate for the purpose of promoting the control or reduction of greenhouse gas emissions or mitigating the effects of climate change caused by those emissions;
- (e) directing the offender to publish, in the manner specified by the court, the facts relating to the commission of the offence and the details of the punishment imposed, including any orders made under this subsection;
- (f) directing the offender to notify, at the offender's own cost and in the manner specified by the court, any person aggrieved or affected by the offender's conduct of the facts relating to the commission of the offence and of the details of the punishment imposed, including any orders made under this subsection;
- (g) directing the offender to post any bond or pay any amount of money into court that will ensure compliance with any order made under this section;
- (h) directing the offender to submit to the Minister, on application by the Minister made within three years after the date of conviction, any information with respect to the offender's activities that the court considers appropriate and just in the circumstances;
- (i) directing the offender to compensate any person, monetarily or otherwise, in whole or in part, for the cost of any remedial or preventive action taken, caused to be taken or to be taken as a result of the act or omission that constituted the offence, including costs of assessing appropriate remedial or preventive action;
- (j) directing the offender to perform community service, subject to any reasonable conditions that may be imposed in the order;

- (k) directing the offender to pay, in the manner prescribed by the court, an amount for the purpose of conducting research into climate change;
- (l) directing the offender to pay, in the manner prescribed by the court, an amount to groups concerned with climate change — including groups concerned with the effects of climate change on the Indigenous peoples of Canada and on northern, coastal or remote communities — to assist in their work;
- (m) directing the offender to pay, in the manner prescribed by the court, an amount to an educational institution including for scholarships for students enrolled in studies related to climate change;
- (n) requiring the offender to comply with any other conditions that the court considers appropriate in the circumstances for securing the offender's good conduct and for deterring the offender and any other person from committing offences under this Part;
- (o) requiring the offender to remit compliance units to the Minister or any other person; and
- (p) prohibiting the offender from entering into transactions involving compliance units during any period that the court considers appropriate.

Publication

(2) If an offender fails to comply with an order made under paragraph (1)(e), the Minister may, in the manner that the court directed the offender to do so, publish the facts relating to the commission of the offence and the details of the punishment imposed and recover the costs of publication from the offender.

Debt due to Her Majesty

(3) If the court makes an order under paragraph (1)(d) or (i) directing an offender to pay an amount to Her Majesty in right of Canada, or if the Minister incurs publication costs under subsection (2), the amount or the costs, as the case may be, constitute a debt due to Her Majesty in right of Canada and may be recovered in any court of competent jurisdiction.

Enforcement

(4) If the court makes an order under subsection (1) directing an offender to pay an amount to a person other than to Her Majesty in right of Canada and the amount is not paid without delay, the person may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the offender in the same manner as if it were a judgment rendered against the offender in that court in civil proceedings.

Retirement of compliance units

(5) If the court makes an order under paragraph (1)(o), any compliance unit that is remitted to the Minister in accordance with the order is retired from circulation.

Coming into force and duration

(6) An order made under subsection (1) comes into force on the day on which it is made or on any other day that the court may determine and must not continue in force for more than three years after that day unless the court provides otherwise in the order.

Suspended sentence

250 (1) If a person is convicted of an offence and the court suspends the passing of sentence under paragraph 731(1)(a) of the Criminal Code, the court may, in addition to any probation order made under that Act, make an order containing one or more of the prohibitions, directions or requirements referred to in subsection 249(1).

Imposition of sentence

(2) If the person does not comply with the order or is convicted of another offence within three years after the order is made, the court may, on the application of the prosecution, impose any sentence that could have been imposed if the passing of sentence had not been suspended.

Application of fines

251 (1) Subject to regulations made under section 241, all fines received by the Receiver General in respect of the commission of an offence under this Part or any amount received in accordance with an order under paragraph 249(1)(d) are to be credited to the Environmental Damages Fund, an account in the accounts of Canada, and used for purposes related to protecting, conserving or restoring the environment or for administering that Fund.

For greater certainty

(2) For greater certainty, purposes related to protecting, conserving or restoring the environment include promoting the control or reduction of greenhouse gas emissions.

Recommendations of court

(3) A court imposing a fine may recommend to the Minister that all or a portion of the fine credited to the Environmental Damages Fund be paid to a person or an organization, including any entity that represents the interests of one or more of the Indigenous peoples of Canada, specified by the court for a purpose referred to in subsection (1).

Registry**Publication of information about contraventions**

252 (1) For the purpose of encouraging compliance with this Part, the Minister must keep, in a registry accessible to the public, information about all convictions of organizations for offences under this Part.

Retention

(2) Information in the registry is to be kept for a minimum of five years.