

Report on the Review of the Federal Environmental Fines and Sentencing Regime – 10 years later



Environment and
Climate Change Canada

Environnement et
Changement climatique Canada

Canada 

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Executive Summary

On behalf of the Minister, Environment and Climate Change Canada (ECCC) and Parks Canada conducted a review of the environmental fines and sentencing provisions under ten federal environmental Acts (the Review) 10 years after the provisions were adopted. The Review was mandated by law, which also required the Minister of Environment and Climate Change to table this report in both Houses of Parliament.

The purpose of the Review was to evaluate whether the fine amounts and sentencing principles in the ten Acts (the Review Acts) advance the goals of the regime and remain consistent with the public values, as well as economic and other circumstances. The Review looked at the three elements of the fines and sentencing regime: the fundamental purposes of sentencing (e.g. deterrence and denunciation), the sentencing regime itself (e.g. fines, sentencing principles, and aggravating factors), and ancillary clauses (e.g. absolute or conditional discharges, the due diligence defence, limitation periods, injunctions, and jurisdictional issues). It considered whether these provisions continue to advance the goals set out in the Acts; that is, deterrence against committing offences, denunciation of unlawful conduct, application of the polluter pays principle, and recovery and restoration, as the case may be in each Act (the Fundamental Purposes of Sentencing) and whether the regime as a whole remains consistent with public values, as well as economic and other circumstances. The Review was not meant to review the enforcement activities of ECCC and Parks Canada or to result in any definitive proposal for law reform.

The Review included desk research and analysis, and incorporates results from both internal, as well as external engagement efforts. In spite of changes in the context, such as the relationship Canadians have with the environment and climate change, the relationship between Indigenous Peoples and all Canadians and efforts to promote reconciliation, the concern for environmental justice, and the economic landscape in Canada, the fines and sentencing regimes remain consistent with public values, as well as economic and other circumstances. While there is great variation in the fines, the highest fines imposed by courts under the Review Acts are much higher (several in the millions) than the highest fine imposed under the Acts prior to when the provisions were adopted (\$100,000). The Review also found that the fundamental purposes of sentencing remain relevant, minimum fines for environmental offences are important because they provide clear legislated goal posts to courts of the seriousness of environmental offences, the fine ranges allow for appropriate flexibility, and the Acts have a comprehensive list of non-fine sentencing orders and aggravating factors, which are key to environmental sentencing.

A number of concepts were identified as areas that may be further explored, researched and consulted upon in the event there is an opportunity for legislative reform in the future. For example: further categorizing offenders for sentencing purposes to include other legal entities, such as limited liability partnerships, municipalities, very large corporate offenders; formally prioritizing deterrence among the Fundamental Purposes of Sentencing; and adjusting the fine ranges to reflect inflation. The Review also highlights trends in environmental sentencing that may impact the Review Sections in the future.

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1. The Review

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, and did not reflect inflation. Moreover, 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, other persons and 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 10 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 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);
- *Canada Environmental Protection Act, 1999*⁷ (CEPA);
- *International River Improvements Act*⁸ (IRIA);
- *Migratory Birds Convention Act, 1994*⁹ (MBCA);
- *Saguenay-St. Lawrence Marine Park Act*¹⁰ (SSLMPA);

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

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

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

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

- *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*¹¹ (WAPPRITA); and
- *Greenhouse Gas Pollution Pricing Act* (GGPPA).

Two important Federal Acts were not included in amendments set out in the EEA and, as such, they are not part of this Review: 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 listed in Annex 1. Annex 2 sets out a copy of the text 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 includes 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. The Review did not explore whether the Review Acts and Review Sections are being effectively enforced, nor was it a functional or operational review of enforcement activities by ECCC and Parks Canada. Nonetheless, comments on broader enforcement matters beyond fines and sentencing provisions were welcomed as part of the engagement process. Finally, it is important to note that the Review was not created or designed to result in any decisive proposal for law reform.

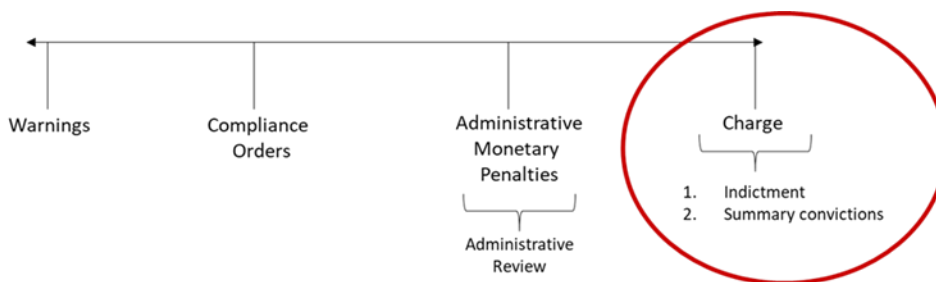


Figure 1: Continuum of Enforcement Responses

1.2 Research and Methodology

To evaluate whether the fines and sentencing regime still advance all relevant goals and remain consistent with public values, as well as economic and other relevant circumstances, input was gathered through external engagement efforts, as set out in Annex 3, in conjunction with desk research (e.g. academic journals, case law, comparison of environmental sentencing guidelines, enforcement data, and legislation from other jurisdictions both domestically and internationally), and data obtained from the enforcement branches of ECCC and Parks Canada.

Data Limitations

Three main data limitations were found during the Review. The first was that there are very few reported sentencing cases for offences under the Review Acts. Second, external engagement efforts

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

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

¹³ *Fisheries Act*, RSC 1985, c F-14.

elicited limited results. Third, the data obtained related to fines and sentencing under the Review Acts had significant limitations arising from the short time frame of the EEA amendments, changes in databases, and inevitable human error. Furthermore, the timeline of the coming into force of the EEA is particularly relevant to the Review.

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

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

Therefore, not all Review Acts have the same lifespan as others. This is particularly important for data for the CWA, MBCA and WAPPRIITA. The amendments set out in the EEA came into force for these Acts in 2017 (and not in 2012 as with CEPA, for example). Thus, the data that relates to the amendments ensuing from the EEA are only for three years, and not ten as envisioned by legislative review.

Moreover, and most importantly, ECCC (including Environmental Damages Fund, or EDF) and Parks Canada all changed their internal databases in 2015. Consequently, depending on the department or agency, significant changes on how and what was reported differs from previous years. In the case of Parks Canada, for example, only data collected since 2015 was available for the Review. In addition, departments and agencies account differently due to internal policies and practices mandated by different information management needs.

As with any database, the data therein is susceptible to human error in internal data recording practices. Furthermore, the data herein was compiled on a yearly basis and is based on sentencing dates. The reason for doing so is to provide an order of magnitude. However, as the time span between investigations, prosecutions and verdicts can take multiple years, the data may include sentences that derive from previous versions of the Review Acts.

Finally, any differences between the [Discussion Paper Regarding the Environmental Fines and Sentencing Regime](#), published on June 16, 2021, and this Final Report are the result of further research and clarification efforts. The results set out in this Final Report prevail.

Key Changes in the Last Decade

Four key changes over the last decade were identified in the global and national context that may impact the fines and sentencing regime. These are changes related to: (1) the relationship Canadians have with the environment and climate change; (2) the relationship between Indigenous Peoples and all Canadians and efforts to promote reconciliation; (3) the concern for environmental justice; and (4) the economic landscape in Canada. Section 5 sets out a summary of the relevant evidence gathered to support this view.

The Research Questions

The provisions subject to the Review can be divided into three bundles related to the fundamental purposes of sentencing (e.g. deterrence and denunciation), the sentencing regime itself (e.g. fines, sentencing principles, and aggravating factors), and ancillary clauses (e.g. absolute or conditional discharges, the due diligence defence, limitation periods, injunctions, and jurisdictional issues). When the Bill proposing the EEA was tabled in Parliament, supporting documentation considered during the House of Commons and Senate committees review indicated that the underlying intent of mandating a review of these provisions every 10 years was “to ensure fine amounts and principles remain consistent with public values, the economy and other circumstances.”¹⁴ The three main research questions integrate this underlying intent:

1. Are the Fundamental Purposes of Sentencing consistent with public values, as well as economic and other relevant circumstances?
2. Is the Sentencing Regime consistent with public values, as well as economic and other relevant circumstances to advance the Fundamental Purposes of Sentencing?
3. Are the Ancillary Clauses consistent with public values, as well as economic and other relevant circumstances?

The Report answers these questions, while acknowledging that the questions were open-ended and had the potential to attract a wide range of subjective responses.

1.3 Organization

This paper has seven sections. It begins with the background of the EEA and describes the scope of the Review, its methodology, and organization. The second section presents the historical context that led to the adoption of the EEA. The third section provides a snapshot of the relevant enforcement data. The fourth section summarizes the messages heard during external engagement. The fifth section outlines key changes in the global and national context over the last decade. Section six summarizes the key findings on whether the Review Sections still reflect public values, as well as economic and other considerations on the fines and sentencing regime of the Review Acts. The seventh and last section, concludes with final comments on the Review.

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

¹⁴ Clause by Clause Briefing Books, C-16, *Environmental Enforcement Act*, 40th Parliament, 2nd Session 57-58 Elizabeth II, 2009.

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, provide 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 convicted.¹⁵ In the five years preceding the EEA (2003 to 2008), there were 656 prosecutions under the Review Acts, and 502 sentences or convictions.¹⁶ Under CEPA there were 81 cases, under MBCA there were 246, and under WAPPRIITA there were also 136.¹⁷ Furthermore, at the time, a court had never imposed the maximum fines established under CEPA; the highest fine ordered under any of the Review Acts was under WAPPRIITA and it was for \$100,000.¹⁸

3. The Review Acts

3.1 The Review Acts Today—Charges & Environmental Damages Fund

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 the Public Prosecution Service Canada (PPSC). The total number of charges for five of the Review Acts (CEPA, MBCA, WAPPRIITA, CNPA, and CWA) is 3,541.

¹⁵ House of Commons, *Standing Committee on Environment and Sustainable Development*, 40th Parl, 2nd Sess, No 11 (26 March 2009) (Albin Tremblay), online: <<https://www.ourcommons.ca/DocumentViewer/en/40-2/ENVI/meeting-11/evidence>>.

¹⁶ *Ibid* (“[i]n the past five years, there were 656 prosecutions, of which 479 cases culminated in convictions. In all, there were 502 sentences or convictions. 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. ...the most important acts as far as charges are concerned are the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act* and the *Migratory Birds Convention Act, 1994*. Of the 502 cases I mentioned awhile ago, 136 are related to the first act, 246 to the second one, and 81 to CEPA”).

¹⁷ *Ibid*.

¹⁸ *Ibid* (Cynthia Wright) (“[t]he biggest fine ever collected was \$100,000”).

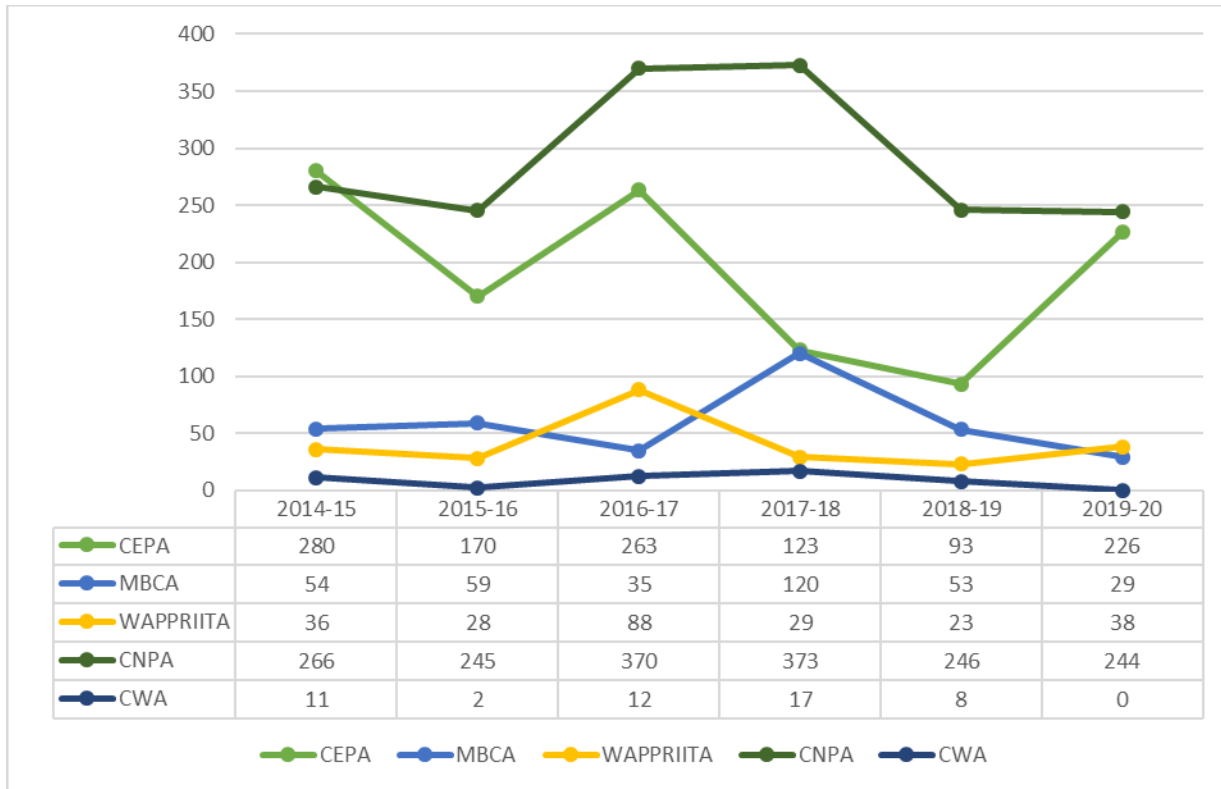


Figure 2: Number of Charges Laid per Act (2014-2019)

All Review Acts have a provision that states that all fines, other than those collected under the *Contraventions Act*¹⁹, are to be credited to the EDF.²⁰

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 in the figure becomes skewed by its high value.

Under CEPA, 7.4% of all fines were less than \$5,000, and 8.1% of fines were equal to \$5,000, for a total of 15.5% of all fines issued were equal to \$5,000 or less. On the high end of the spectrum, 5.4% of all fines were equal to \$100,000, and 18.2% of fines were more than \$100,000, for a total of 23.6% of all fines issued were equal to \$100,000 or more.

¹⁹ *Contraventions Act*, SC 1992, c 47.

²⁰ See e.g. CEPA, s. 294(1).

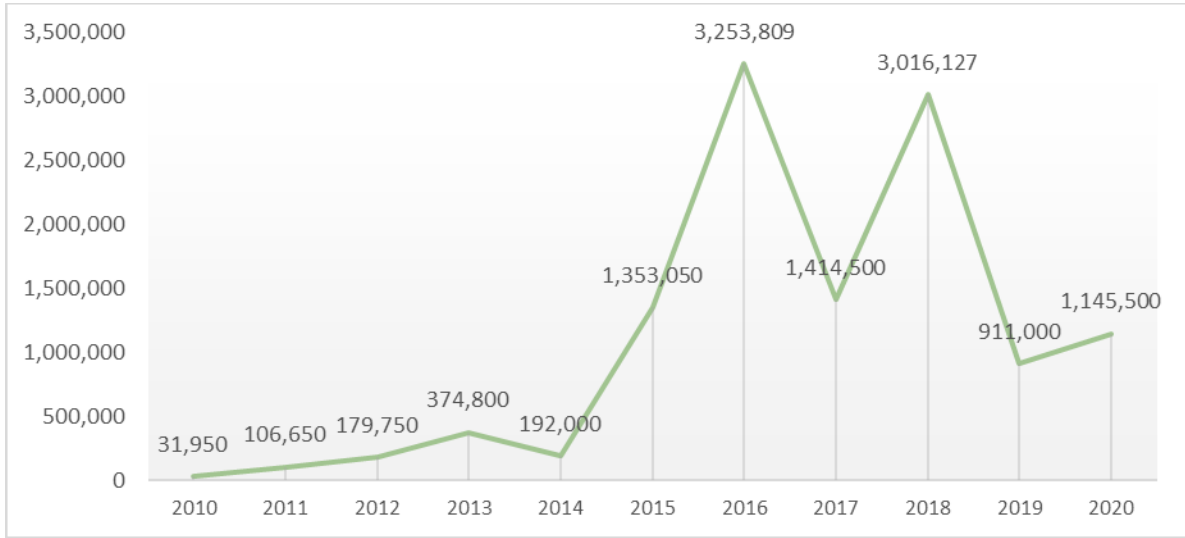


Figure 3: CEPA - Total Fines per Year (2010-2020) (excludes \$196,500,000 fine for Volkswagen)

The top ten highest fines issued under CEPA are set out in Table 1. 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 1: CEPA - Top Ten Highest Fines (2010-2020)

	Offender	Amount	Year
1	Volkswagen	\$196,500,000	2020
2	Compagnie des chemins des fers nationaux du Canada (CN)	\$1,126,627	2018
3	Tidan Inc.	\$975,000	2016
4	HBC – The Bay	\$765,000	2016
5	Les Entrepôts A.B. inc. and an individual	\$564,000	2019
6	Acklands - Grainger Inc.	\$500,000	2016
7	Mines Seleine inc., Division de K+S SEL Windsor LTÉE; Le Groupe Océan Inc. ; and 8975914 Canada Inc.	\$400,000	2020
8	Panther Industries	\$375,000	2015
9	Collingwood Prime Realty Holdings Corp & an individual	\$320,000	2018
10	GFL Environmental Inc. and individuals	\$300,000	2018
	FortisAlberta Inc.	\$300,000	

3.3 Wildlife—CWA, WAPPRITA, and MBCA

Turning to the wildlife-related Review Acts, the total amount of fines charged under CWA, WAPPRITA, and MBCA from 2009 to 2020 is \$5,583,975. There was an expressive peak in 2018, as per the Syncrude Case set out below, and a sharp decline in 2020.

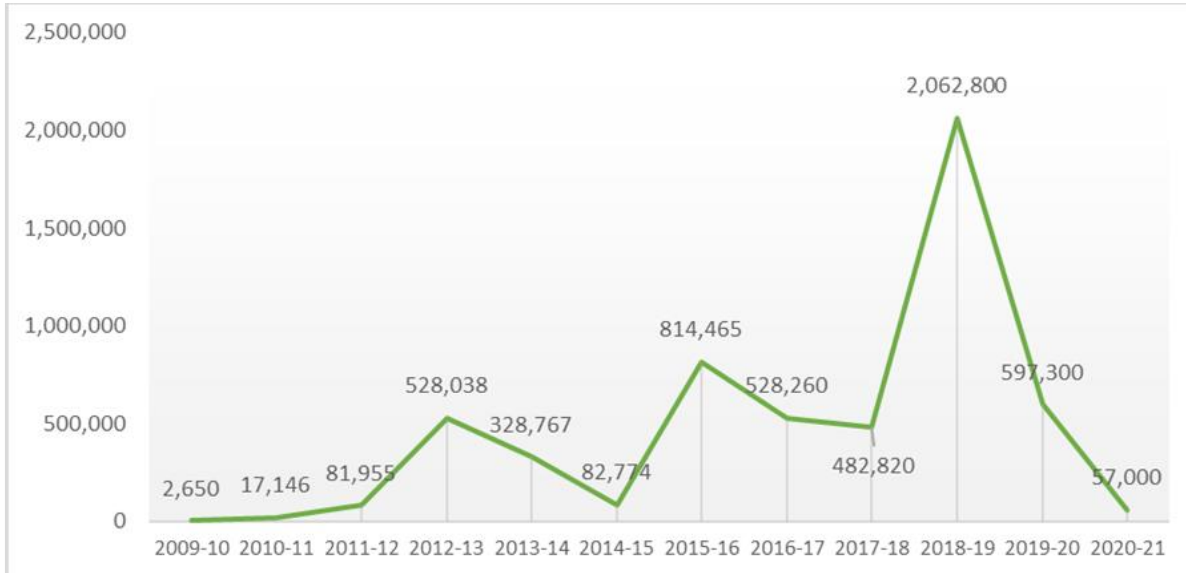


Figure 4: Wildlife-related Review Acts - Total Amount of Fines (2009-2020)

Under the wildlife-related Review Acts, 37% of all fines issued were less than \$5,000, with an additional 6% of fines of \$5,000, for a total of 43% of all fines issued were \$5,000 or less. Furthermore, on the high end of the spectrum, 10% of fines were more than \$100,000.

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.

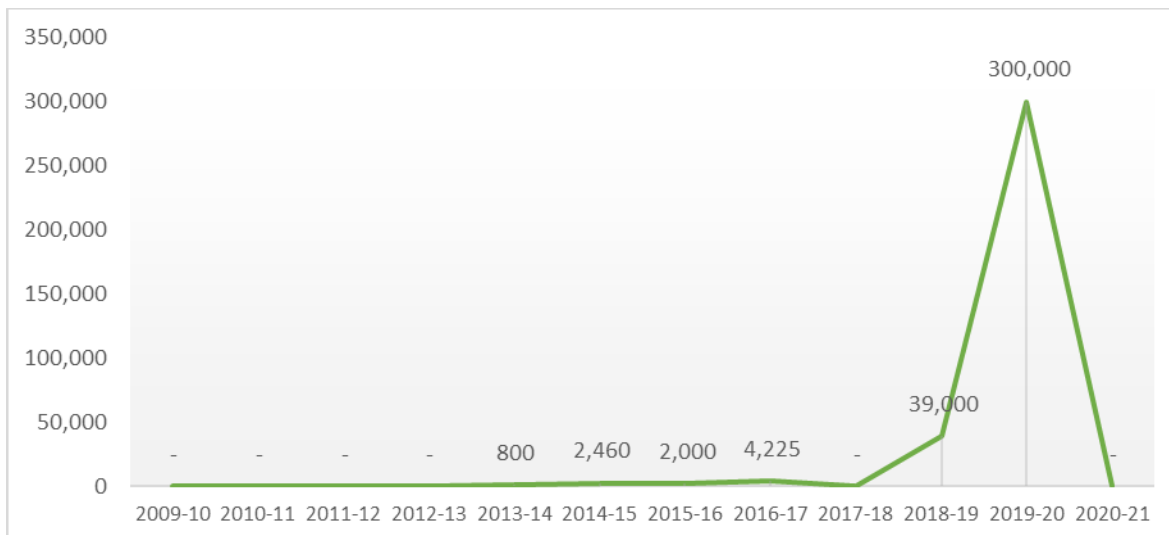


Figure 5: CWA - Total Fines per Year (2009-2020)

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 over the review period is \$3,861,511.

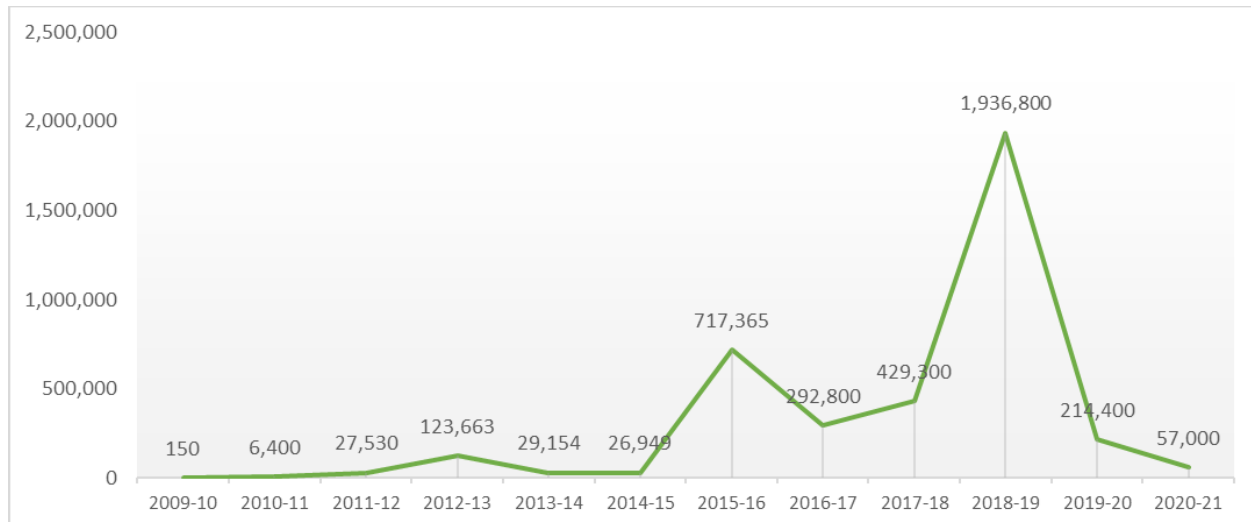


Figure 6: MBCA - Total Monetary Fines (2009-2020)

The top five highest fines issued under the MBCA are set out in Table 2. The highest fine was issued against Syncrude Canada Ltd. It pleaded guilty to violating the MBCA, following an event which led to the death of 31 great blue herons that were exposed to bitumen at a facility in Alberta.²¹

Table 2: MBCA - Top Five Highest Fines (2009-2020)

	Offender	Amount	Year
1	Syncrude Canada	\$1,775,000	2019
2	Canaport LNG Limited Partnership	\$650,000	2015
3	Painted Pony Petroleum Ltd.	\$235,000	2017
4	Husky Oil Operations	\$200,000	2019
5	Fishing Eyelander	\$35,000	2017

3.3.3 WAPPRIITA

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

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

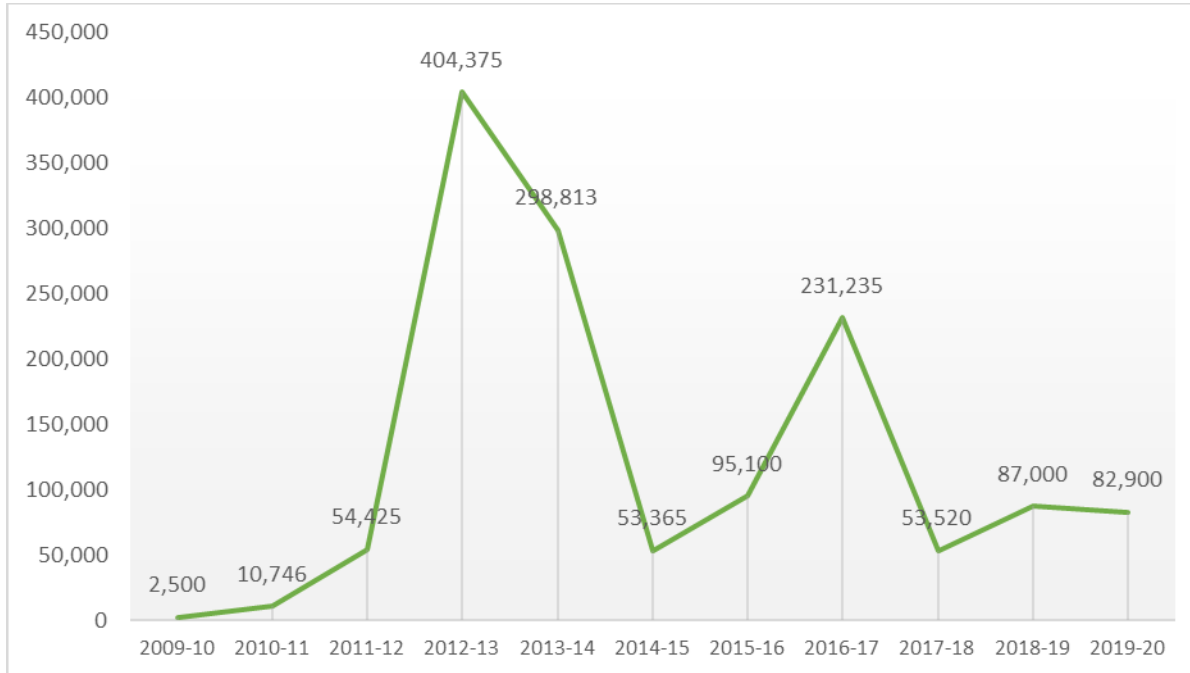


Figure 7: WAPPRIITA - Total Fines per Year (2009-2020)

Table 3 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 trade in narwhal tusks. The individual also served an eight-month conditional sentence to be served in the community, including four months of house arrest. They were fined \$385,000.

Table 3: 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 amount of fines issued under CNPA from 2015 to 2020 is \$1,087,730, including the fine issued in the Lake Louise Ski Resort Case (guilty pleas entered under both SARA and CNPA for felling 38 endangered Whitebark Pines, resulting in \$500,000 fine for the conviction involving CNPA). Below, Figure 8 shows the total fines per year issued under CNPA. The Lake Louise Ski Resort Case has been excluded for current purposes given the data in the figure becomes skewed by its high value .

Furthermore, in the past five years (2015-2020) under the CNPA, 98.8% of fines were below \$5,000,²² and only one case was above \$100,000.

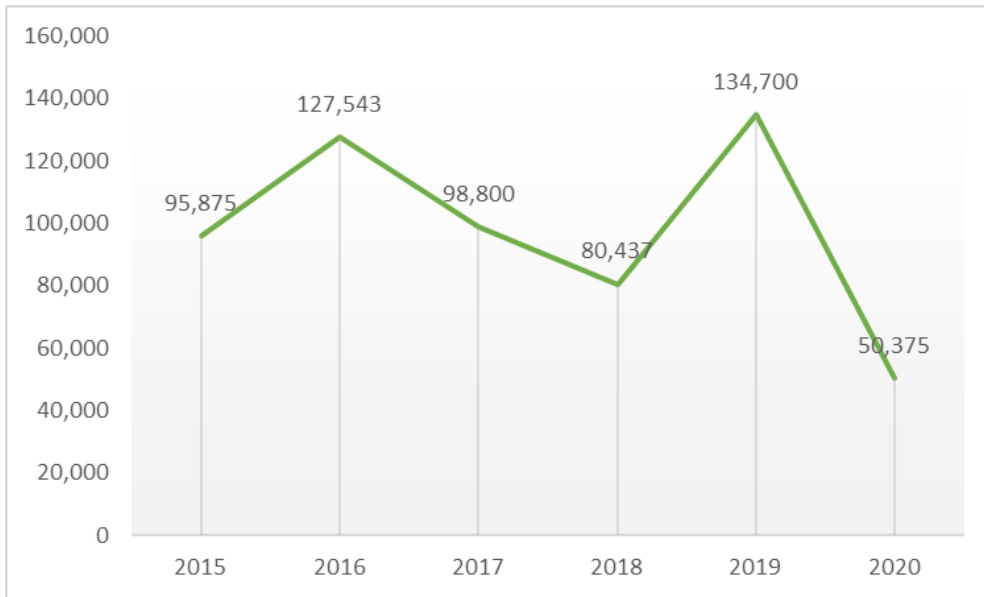


Figure 8: CNPA – Total Amount of Fines per Year (2015-2020) (excludes \$500K fine for Lake Louise Ski Resort)

The top five highest fines are set out below in Table 4.

Table 4: CNPA – Top Highest Fines (2015-2020)

	Offender	Amount	Year
1	Lake Louise Ski Resort	\$500,000	2020
2	Individual	\$20,000	2015
3	Num-Ti-Jah Lodge Ltd.	\$13,500	2016
4	Brewster Inc.	\$10,000	2017
5	Individual	\$9,462	2018

3.5 No Charges

At the time of writing, ECCC confirmed there have been no charges under the AEPA, IRIA, and GGPPA. There have been no charges under GGPPA because it is still a relatively new Act, as it came into force in 2018. Furthermore, Parks Canada confirmed there have been no charges under the CNMCAA and SSLMPA. Parks Canada relies heavily on the issuance of tickets under the *Contraventions Act* for the SSLMPA. As for the CNMCAA, there are no regulations and only one national marine conservation area reserve has been established – the Gwaii Haanas National Marine Conservation Area Reserve. As most non-compliance that is discovered in the area occurs on land, the charges are laid under the CNPA.

²² This percentage excludes from the count values of zero or null.

4. External Engagement—Messages Heard

The following is a list of issues relevant to the Review that were raised on a recurring basis by key stakeholders during the external engagement efforts. Annex 3 summarizes external engagement efforts.

Fundamental Purpose of Sentencing

A review of the fundamental purpose of sentencing may be relevant to highlight the significance of recovery and restoration and linkages to the dangers and effects of climate change, in addition to deterrence. Moreover, the inclusion of other purposes of sentencing may be beneficial, including the specific incorporation of the purposes of sentencing set out in the *Criminal Code*, such as the separation of offenders from society, the rehabilitation of offenders, and the promotion of a sense of responsibility in offenders. Finally, questions about how these additional purposes of sentencing apply to corporate offenders were also raised.

Fine Quantum

The values set out in the fine regime were mostly considered adequate, except for offences that apply to wildlife infractions, as well as offences that may have an effect on climate change. The reduction of mandatory minimum fines was suggested when breaches are of technical or administrative obligations that have little or no impact on environmental protection. Fine values that are linked to the economic situation of the offender were also suggested.

*Non-Fine Sentencing Orders*²³

The significance of non-fine sentencing orders was highlighted, and considered to be a more effective tool for the purposes of both deterrence and restoration and recovery, especially against corporate offenders.

Aggravating and Mitigating Factors

The importance of including Indigenous-related views (e.g. as set out in Australian legislation, 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”²⁴) in the aggravating factors was raised. In addition, the possibility of adding mitigating factors, such as collaboration with authorities and the speed of return to compliance, amongst others, were brought up.

Miscellaneous Drafting Issues

Attention was drawn to various and varied drafting issues in the Review Acts, which could be clarified, and which exist in both the English and the French versions of the Review Acts.

²³ These are similar to what is sometimes referred to as “creative sentencing” orders, which is a catch-all term used to describe the various options in a section of legislation that covers court orders relating to penalty (e.g. community service orders, compensation orders, or publication orders). In the Review, the term “non-fine sentencing order” is used as many common creative sentencing orders are under the purview of the EDF.

²⁴ *National Parks and Wildlife Act 1974* (NSW), s. 194(f).

Cross-cutting Issues

In addition, it was raised whether and how larger policy issues (i.e. societal choices), such as mitigation of the climate crisis, the pursuit of environmental justice, the harmonious use of land and waters, may be integrated within the fines and sentencing regime, and within the Review Acts in general.

In all the above cases, the interweaving of Indigenous legal worldviews and traditions was raised for possible consideration.

Out of Scope Issues

Two main issues were highlighted that are not within the scope of the Review. The first was to include in the Review other Federal Acts, such as the *Fisheries Act* and *SARA*, with a view to harmonizing penalties and fine regimes under other federal environmental legislation. The second was the necessity to review the entire framework of the Review Acts, including provisions outside of the statutory review requirements. For instance, the need to review the rate of success in bringing violators back into compliance after any kind of enforcement action, as well as the administration and perceived transparency of the EDF with respect to the funds received from the fines and penalties regimes.

5. Public Values, as well as Economic and Other Relevant Circumstances

The Review found four key changes in the global and national context over the last decade that 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, as well as economic and other relevant circumstances. The key changes are: (1) the relationship Canadians have with the environment and climate change; (2) the relationship between Indigenous Peoples and all Canadians and efforts to promote reconciliation, (3) the concern for environmental justice, and (4) the economic landscape in Canada.

5.1 Canadians and Their Relationship to 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 environment²⁵ 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,²⁶ the polls show that Canadians value the environment and nature. For example, a 2021 public poll on species at risk, nature conservation and nature-based solutions to climate change²⁷ shows that 96% of Canadians

²⁵ Environment Canada, *The Importance of Nature to Canadian: Survey Highlights*, by Elaine DuWors et al (Ottawa: Environment Canada, 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.

²⁶ Canadian Councils of Resource Ministers, Environment Canada, *The 2012 Canadian Nature Survey: Awareness, participation and expenditures in nature-based recreation, conversation, and subsistence activities* (Ottawa: Canadian Councils of Resource Ministers, 2014), online: <https://biodivcanada.chm-cbd.net/sites/ca/files/2017-12/2012_Canadian_Nature_Survey_Report%28accessible_opt%29.pdf> [2012 Survey].

²⁷ Environment and Climate Change Canada, *Species at Risk, Nature Conservation and Nature-Based Solutions Survey for the Canadian Wildlife Service* (Ottawa: ECCC, 2021) [2021 Survey].

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.²⁸ Earlier polls, such as those conducted in 1996²⁹ and 2012 concentrated on nature-related leisure activities or the spending of Canadians in relation to the environment. In contrast, the 2021 poll focused on Canadians' views on nature conservation. A July 2021 Global Ipsos Poll also found that “the current top-of-mind issues Canadians are now thinking about most are healthcare, affordability and cost of living, climate change and the economy — largely remaining the same from two years ago”.³⁰

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 the climate crisis, and its impact on forests, oceans, wildlife, and biodiversity, is particularly acute.

In concert with the changes in public opinion, Canadian governments at the federal, provincial-territorial, and local levels have increased spending on environmental protection over the past decade. For example, spending on environmental protection grew by 33% between 2008 and 2016, rising from \$9.5 billion to \$12.6 billion.³¹ Among member countries of the Organization for Economic Co-operation and Development (OECD), Canada ranks fourth in environmental policy stringency.³²

Furthermore, knowledge creation on environmental issues in Canada, as seen through the publication of materials on Canada and the environment, has increased over the past 10 years. Over that period, there was a 41% increase of books, a 53.7% increase of articles, and a 371.6% increase of reports published on the subject of Canada and the environment. Over that period, there was a slight (15.74%) decrease in theses published on the subject.³³

During external engagement efforts, participants suggested that Canadians have become more sensitized to the issue of climate change as a global matter, but this did not necessarily translate into a greater concern for environmental protection in general. Although, climate change was raised repeatedly as a critical concern, it was also highlighted that such shift in Canadians was not universal. Furthermore, it was noted that the responsibility for the protection of the environment does not lie only with the government, but also with businesses, citizens and consumers.

²⁸ 2021 Survey, at p. 9.

²⁹ DuWors et al, *supra* note 25.

³⁰ David Lao, “COVID-19 no longer top issue facing Canadians ahead of possible election: poll”, *Global News* (26 July 2021), online: <<https://globalnews.ca/news/8055986/issues-ipsos-polling-federal-election/>>.

³¹ Statistics Canada, *Government spending on environmental protection in Canada, 2008 to 2016*, (Ottawa: Statistics Canada, 5 June 2018), online: <<https://www150.statcan.gc.ca/n1/pub/16-508-x/16-508-x2018002-eng.htm>>.

³² See Canada, Innovation, Science and Economic Development Canada, “Report from Canada's Economic Strategy Tables: Report - Resources of the Future”, (Ottawa: ISED, 19 October 2018), online: <<https://www.ic.gc.ca/eic/site/098.nsf/eng/00026.html>>; OECD Statistics, *Environmental Policy Stringency Index*, (2017), online: <<https://stats.oecd.org/Index.aspx?DataSetCode=EPS>>. Based on the data available, as of 2015 (the last available report) Canada ranks fourth among OECD countries and globally, behind the United Kingdom, France and Italy. In 2012, the last time data was available for all 180 countries, Canada ranked seventh globally behind Denmark, Australia, Netherlands, France, Japan and Finland. Regardless of the amount of data available, Canada has maintained its position globally as having one of the top 10 highest environmental policy stringency.

³³ University of Toronto Libraries (2021), online: <<https://onsearch.library.utoronto.ca/>>. Books: 2000 to 2010 – 8,876/ 2011 to 2022 – 12,516; Articles: 2000 to 2010 – 493,446/ 2011 to 2022 – 758,617; Reports: 2000 to 2010 – 23,664/ 2011 to 2022 – 111,616; Theses: 2000 – 2010 – 110,308/ 2011 – 2022 – 92,938.

5.2 Reconciliation and Relationship with Indigenous Peoples

In the past 10 years, significant events have propelled the federal government, provinces, territories, industry, academia, and civil society to make efforts towards reconciliation. Examples of such events include 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 title.³⁴ 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. The *United Nations Declaration on the Rights of Indigenous Peoples Act*, which received Royal Assent on June 21, 2021, affirms the Declaration as a universal international human rights instrument with application in Canadian law. In 2018, the government also adopted and released the *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples*. Since 2020, a number of former residential schools across Canada have been designated as National Historic Sites.³⁵ In 2021, the identification of unmarked and undocumented graves and burial sites at residential schools has brought to public consciousness the depths of pain and sense of injustice felt by Indigenous peoples in Canada, highlighting further the need for reconciliation.³⁶

Provinces and territories have also taken an active role in advancing reconciliation with Indigenous Peoples. In 2019, British Columbia became the first jurisdiction to pass legislation implementing UNDRIP.³⁷ Other examples include the September 2020 Mandate Letters from Premier Caroline Cochrane of the Northwest Territories that direct Ministers to lead efforts to implement UNDRIP and advance reconciliation, and Bill 76 in Ontario, which seeks to enact UNDRIP.³⁸

As mentioned above, industry has taken certain initiatives toward reconciliation over the last decade³⁹, and academia has committed to reconciliation through a number of initiatives, including the creation of the National Building Reconciliation Forum in 2015. This Forum brings together all post-secondary institutions across Canada and significant actors in the world of Indigenous education to promote projects directed towards advancing reconciliation.⁴⁰

³⁴ See e.g. *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44.

³⁵ See e.g. Parks Canada, "Residential Schools in Canada", (Ottawa: Parks Canada, 15 July 2021), online: <<https://www.pc.gc.ca/en/culture/dmhc-hsmbc/pensionnat-residential>>.

³⁶ See e.g. Department of Justice Canada, "Background: Special Interlocutor on Indian Residential Schools (IRS) Unmarked Burial Sites", (Ottawa: Department of Justice Canada, 10 August 2021), online: <<https://www.canada.ca/en/department-justice/news/2021/08/backgrounder-special-interlocutor-on-indian-residential-schools-irs-unmarked-burial-sites.html>>.

³⁷ *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c 44.

³⁸ Bill 76 passed second reading in March 2019, although it has not progressed since then.

³⁹ See e.g. Katherine Wheatley & Joanne Lau, *Business and Reconciliation: An Update Exploring the Performance of Public Companies in Canada* (2021), online: <https://reconciliationandinvestment.ca/wp-content/uploads/2021/03/SHARE-RRII-Business-and-Reconciliation_Update.pdf>; Canadian Trucking Alliance, *Indigenous Recruitment & Retention: A Roadmap for Canada's Trucking and Logistics Industry* (2018), online: <<http://cantruck.ca/trucking-hr-canada-releases-roadmap-for-recruiting-and-retaining-indigenous-peoples/>>; The Mining Association of Canada, *Indigenous and Community Relationships*, online: <<https://mining.ca/towards-sustainable-mining/protocols-frameworks/indigenous-and-community-relationships/>>; Chemistry Industry Association of Canada, *2020 Year in Review* (2020), online: <https://canadianchemistry.ca/wp-content/uploads/2021/02/Chemistry-Year-in-Review-2020_ENG_Web-1.pdf>; Forest Products Association of Canada, *Submission to the Standing Committee on Indigenous and Northern Affairs: On the Subject Matter of Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples* (2018), online: <https://www.fpac.ca/wp-content/uploads/18_05_01_FPACsubmissionToINAN.pdf>.

⁴⁰ Université du Québec & Université Laval, "6th edition of the National Building Reconciliation Forum: Falling into step with First Peoples students" (Education News Canada: 18 November 2020), online:

The growing importance of reconciliation and understanding its effect on the Review Sections, for example, on how environmental offences impact Indigenous Peoples as both offenders, as well as victims of environmental offences, and how to interweave Indigenous worldviews and legal traditions in environmental sentencing was highlighted during external engagement efforts.

5.3 Environmental Justice

Environmental justice is concerned with the notion that environmental benefits and harms are not shared equally among different members of society⁴¹, 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).⁴² 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. The relevance of environmental justice was also confirmed during external engagements efforts, although some participants shared that the fines and sentencing regime was not the appropriate place to address specific environmental problems that arise from the accumulation of multiple societal choices, such as climate change, unintended consequences of land use planning, and negative repercussion of spatial planning policies (e.g. residential areas near industrial activities). In contrast, other participants considered the fines and penalties regime should reflect distributional (and other equity) concerns.

5.4 Changes to Canada’s Economic Landscape

Macroeconomic factors, for example inflation and gross domestic product (GDP), that relate to changes over the past 10 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 10 years, the Canadian GDP growth (annual percentage) has oscillated, 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).⁴³ There has been an increase in population of approximately 10% with 3.5 million new Canadians.⁴⁴ In the last 10 years, average inflation has been of 1.716% (2010 to 2020).⁴⁵ 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 smaller than in the past, and are barely growing”.⁴⁶ Furthermore, it stated that 99.8% of all Canadian business

<<https://educationnewscanada.com/article/education/level/university/1/866916/6th-edition-of-the-national-building-reconciliation-forum-falling-into-step-with-first-peoples-students.html>>. The 6th edition of the National Building Reconciliation Forum was held at the Université Laval and the Université du Québec.

⁴¹ Dayna Nadine Scott, “What is Environmental Justice?” (2014) Osgoode Legal Studies Research Paper Series 4.

⁴² *Ibid.*

⁴³ The World Bank, *Canada* (2021), online: <<https://data.worldbank.org/country/canada>>.

⁴⁴ *Ibid.*

⁴⁵ Statista, *Canada: Inflation rate from 1986 to 2026* (April 2021), at: <<https://www.statista.com/statistics/271247/inflation-rate-in-canada/>>.

⁴⁶ 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>>.

are small (with 1 to 99 employees) or mid-sized (100 to 499 employees) firms.⁴⁷ 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 small-medium enterprises play in employing Canadians.⁴⁸

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).⁴⁹ 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.⁵⁰

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

During external engagement efforts, participants reiterated that Canada's economic landscape is a relevant factor for assessing the Review Acts. However, no particular change was highlighted that suggested that the Review Sections were not adequate as drafted. In some cases, judicial discretion was raised as being mostly sufficient in addressing any economic variances.

6. Results

The Review was guided by three main lines of inquiry or "questions". As previously noted, the three questions mirror the three elements of the provisions subject to the Review. 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. In answering these questions (set out below), the Review took into consideration key changes in the global and national context, as well as desk research, and key messages from the engagement efforts.

In all cases, the Review found that the fine amounts and sentencing principles in the Review Acts continue to advance all of the relevant goals and remain consistent with public values, as well as economic and other relevant circumstances.

⁴⁷ 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.*

⁴⁸ Government of Canada, *Key Small Business Statistics - January 2019* (Ottawa: January 2019), p. 11, online: <[https://www.ic.gc.ca/eic/site/061.nsf/wwapj/KSBS-PSRPE_Jan_2019_eng.pdf/\\$file/KSBS-PSRPE_Jan_2019_eng.pdf](https://www.ic.gc.ca/eic/site/061.nsf/wwapj/KSBS-PSRPE_Jan_2019_eng.pdf/$file/KSBS-PSRPE_Jan_2019_eng.pdf)>.

⁴⁹ Statistics Canada, *Multinational enterprises exert a significant influence on the Canadian economy, 2018* (Ottawa: Statistics Canada, December 2021), online: <https://www150.statcan.gc.ca/n1/en/daily-quotidien/201202/dq201202b-eng.pdf?st=6-q_1NYn>.

⁵⁰ *Ibid.*

6.1 Are the Fundamental Purposes of Sentencing consistent with public values, as well as economic and other relevant circumstances?

The EEA added a provision to each of the Review Acts setting out the Fundamental Purposes of Sentencing: deterrence, denunciation, restoration and recovery, and the polluter-pays principle, as the case may be in each Act. The purposes of sentencing brought by the EEA were modeled after the *Criminal Code* and were intended to provide courts with further guidance in determining appropriate penalties by setting out the paramount purposes of a sentence under each specific statute. The codification of sentencing purposes for regulatory offences is a relatively recent phenomenon.⁵¹ Indeed, other pieces of long-standing environmental legislation at the federal and provincial levels, such as the *Fisheries Act*, SARA, and the Ontario *Environmental Protection Act*, lack such provisions.⁵² In contrast, more recent federal legislation outside of the environmental context, such as the *Cannabis Act*, both codifies and prioritizes sentencing purposes.⁵³

Comparable jurisdictions have codified fundamental purposes of sentencing in general,⁵⁴ and some have included other specific purposes for environmental sentencing⁵⁵, such as punishment, retribution, and community protection.⁵⁶ Under the Review Acts, these additional purposes are reflected by sentencing principles set out in the *Criminal Code*, which are incorporated both statutorily as well as by virtue of the *Interpretation Act*. Of note, the separation of offenders from society as a fundamental purpose was specifically raised during the engagement efforts, including how this should be considered in environmental sentencing particularly when dealing with corporate offenders.

Deterrence

Case law applying the Review Acts confirms that deterrence is paramount among the principles for environmental sentencing.⁵⁷ The paramountcy of deterrence in environmental sentencing is congruent with the increasing importance Canadians attribute to the environment, as outlined in Section 5.1,

⁵¹ Law Commission of Ontario, *Sentencing Purposes and Principles for Provincial Offences: The Modernization of the Provincial Offences Act*, by Honourable Mr. Justice Rick Libman, (Toronto: LCO, June 2010), online <<https://www.lco-cdo.org/wp-content/uploads/2010/11/poa-commissioned-paper-libman.pdf>>.

⁵² See also *Environmental Management Act*, SBC 2003, c 58, *Environmental Protection and Enhancement Act*, RSA 2000, c E-12, *Environmental Act*, RSY 2002, c 76, *Environment Quality Act*, CQLR c Q-2, *Environmental Protection Act*, SNL 2002, c E-14.2, *Provincial Offences Act*, RSO 1990, c P-33.

⁵³ See e.g. *Public Health Act*, SBC 2008, c 28. Note that other provincial legislation also sometimes contains both such codification, as well as specific prioritization.

⁵⁴ US, United States Sentencing Commission, *Guidelines Manual 2018* (Washington DC: USSC, 2018), online: <<https://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2018/GLMFull.pdf>> [US Guidelines]; *Sentencing Act 1991* (Vic).

⁵⁵ UK, *Sentencing Council for England and Wales, Environmental Offences Definitive Guideline* (26 February 2014), online: <<https://www.sentencingcouncil.org.uk/wp-content/uploads/Environmental-offences-definitive-guideline-Web.pdf>> [UK Guidelines].

⁵⁶ Honorable Justice Rachel Pepper, Land and Environment Court of New South Wales, “Recent Developments in Sentencing for Environmental Offences” (Lecture delivered at the Australasian Conference of Planning and Environment Courts and Tribunals, Perth, 28 August – 2 September 2012), online: <https://www.lec.nsw.gov.au/content/dam/dcj/ctsd/lec/documents/speeches-and-papers/pepperj_recent_developments_in_sentencing_for_environmental_offencesva.pdf>.

⁵⁷ See e.g. 1980 Carswell Yukon 9, 1 YR 299, 10 CELR 43 (YT Terr. Ct.) [*Keno Hill*]; *R v Terroco Industries Limited*, 2005 ABCA 141 [*Terroco*].

including species at risk, nature conservation, and nature-based solutions for climate change.⁵⁸ Comparable jurisdictions share Canada's emphasis on deterrence as a fundamental sentencing purpose. For example, the United Kingdom highlights the importance of deterrence in its Environmental Sentencing Guidelines.⁵⁹

Denunciation

Denunciation is derived directly from the *Criminal Code* and remains a key tenet of sentencing in the environmental context. The importance and efficacy of denunciation was highlighted during the engagement efforts, especially as it relates to corporate offenders.

Restoration and Recovery

The principles of restoration and recovery state that offenders should repair the damage they cause and assist in the rehabilitation and amelioration of that damage.⁶⁰ During the engagement efforts, restoration and recovery were deemed to be key to the purposes of sentencing, and in some cases were deemed paramount.

Polluter-pays

The polluter-pays principle has been widely recognized in international treaties, key documents by intergovernmental organizations, and Canadian jurisprudence.⁶¹ The principle seeks to ensure that offenders are held responsible for the effective clean-up and environmental restoration of any damage they cause.⁶² During engagement efforts, issues were raised relating to the treatment of pre-sentencing efforts made by an offender to clean-up, pay for, or otherwise remedy the contamination arising from their offending, and how that should factor, if at all, into the polluter pays principle at sentencing.

Additionally, it was noted that the polluter-pays principle has a permissive implication that potentially licences offenders to pollute as long as they pay for the damage done. If addressed in isolation, and not in conjunction with the principles of denunciation and deterrence, fines levied in accordance with the polluter-pays principle can become 'the cost of doing business.' The Environmental Law Centre of Alberta has considered whether the polluter pays principle should be modified to include an additional element where it covers not only the costs of repairing environmental damage, but also costs associated with avoiding and reducing environmental damage.⁶³ Nevertheless, given the paramountcy of deterrence in environmental sentencing, the polluter-pays principle may serve as a 'floor' to ensure that offenders are, at a minimum, required to rectify harm done. Thus, although the polluter-pays

⁵⁸ Paul Adams. Creative Sentence Negotiation: Looking Beyond Deterrence" in Allan E. Ingelson eds, *Environment in the Courtroom* (Calgary: University of Calgary Press, 2019), at p. 436, online: <https://prism.ucalgary.ca/bitstream/handle/1880/109483/9781552389867_chapter31.pdf?sequence=33&isAllowed=y>.

⁵⁹ UK Guidelines, at pp. 1-4.

⁶⁰ See *R v Northland Properties Corp.*, 2015 BCSC 1571; *R v Gwaii Wood Products Ltd.*, 2017 BCPC 6, 2017.

⁶¹ See e.g. Environmental Law Centre of Alberta, "The Polluter Pays Principle in Alberta Law", (Edmonton: ELCA, December 2019) (CanLII), online: <<https://canlii.ca/t/sp6g>>; *Rio Declaration on Environment and Development*, UNGA, 12 August 1992, 29th year, Annex I, UN A/CONF.151/26 (Vol. I) (1992), online: <https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf>; *Orphan Well Association v Grant Thornton Ltd.*, 2019 SCC 5 (CanLII), [2019] 1 SCR 150, para 29.

⁶² *Imperial Oil Ltd. v Quebec (Minister of the Environment)*, 2003 SCC 58, para 23-24.

⁶³ See Environmental Law Centre of Alberta, "The Polluter Pays Principle in Alberta Law", (Edmonton: ELCA, December 2019) (CanLII), online: <<https://canlii.ca/t/sp6g>>.

principle may raise certain concerns, the Review found that the principle remains a solid tenet of environmental sentencing.

Considering the above, the Review confirmed that the Fundamental Purposes of Sentencing remain consistent with public values, as well as economic and other relevant circumstances.

Areas for further consideration

Notwithstanding the above, in the course of the Review, some concepts were identified that could be further explored, researched and consulted upon in the event there is an opportunity for legislative reform in the future, such as:

- Broadening of the current application of deterrence under the Review Acts, such that sentencing under the Review Acts deters environmental offences generally rather than just offences related to the specific subject matter of the Act at issue.⁶⁴ In contrast, denunciation is defined within the Review Acts in a comprehensive manner, and not limited to a violation of the Act at stake.⁶⁵ A broader approach takes a more holistic view of deterrence and is in line with the approach in the *Criminal Code* for some offences.⁶⁶ However, while the approach would enhance the breadth of deterrence under the Review Acts, it may ultimately complicate proceedings under the Review Acts without materially changing sentencing outcomes.
- Formally prioritizing deterrence among the Fundamental Purposes of Sentencing would entail codifying the common law principle that deterrence is paramount over the other sentencing principles in environmental sentencing.⁶⁷ The prioritization of sentencing purposes is already found in Canadian statutes, such as the *Criminal Code* and the *Cannabis Act*.⁶⁸ Formally prioritizing deterrence in the Review Acts would provide the judiciary with greater guidance and help to ensure that fines under the Review Acts do not merely amount to the ‘cost of doing business’, particularly for very large corporate offenders. On the other hand, formally prioritizing the fundamental purposes of sentencing may reduce the judiciary’s discretion in pursuing a sentence that is proportionate and individualized.

⁶⁴ See e.g. CEPA, s. 287(a) (“to deter the offender and any other person from committing offences under this Act”).

⁶⁵ See e.g. CNPA, s. 27.6 (“to deter the offender and any other person from committing offences under this Act” in contrast with “to denounce unlawful conduct that damages or creates a risk of damage to parks”, and “to restore park resources”).

⁶⁶ See e.g. *Criminal Code*, RSC 1985, c C-46, s. 718(b) (“to deter the offender and other persons from committing offences”).

⁶⁷ See *R v Shamrock Chemicals Ltd* (1989), 7 WCB (2d) 417 (Ont Prov Ct), var’d 9 WCB (2d) 18 (Dist Ct), cited in Dianne Saxe & Meredith James, “Holding Directors and Officers Liable for Environmental Problems: Sentencing and Regulatory Orders” in Allan E. Ingelson eds, *Environment in the Courtroom* (Calgary: University of Calgary Press, 2019); *Terroco; Keno Hill*. See also Paul Adams, “Creative Sentence Negotiation: Looking Beyond Deterrence” in Allan E. Ingelson eds, *Environment in the Courtroom* (Calgary: University of Calgary Press, 2019), at p. 436; John D. Cliffe, Q.C., “Creative Sentencing in Environmental Prosecutions, the Canadian Experience: An Overview” in Allan E. Ingelson eds, *Environment in the Courtroom* (Calgary: University of Calgary Press, 2019), at p. 365.

⁶⁸ See e.g. *Criminal Code*, s. 718.01; *Cannabis Act*, SC 2018, c 16, s. 15.

6.2 Is the Sentencing Regime consistent with public values, as well as economic and other relevant circumstances to advance the Fundamental Purposes of Sentencing?

One of the key objectives of the EEA was the modernization of the fines and sentencing regime of the Review Acts. The EEA added minimum fines and increased maximum fines in all Acts. As previously noted, the new provisions aimed to provide courts with “goal posts” to impose higher fines and sentences that reflected the seriousness of the offences.

The Review examined various aspects of the sentencing regime, including the categorization of offenders, fine regime (minimum and maximum fines), additional court orders, second and subsequent offences, continuing offences, aggravating and mitigating factors, and directors’ and officers’ liability. Overall, it found that the Sentencing Regime remains consistent with public values, as well as economic and other relevant circumstances and continues to advance the Fundamental Purposes of Sentencing, as explained below.

6.2.1 Categorization of Offenders

Under the current sentencing regime in the Review Acts, the fine ranges vary based on the categorization of the offender. Excluding vessels and ships, there are three main categories of offenders: individuals, small revenue corporations, and other persons (including non-small revenue corporations). The last category is essentially a catch-all for legal persons and other entities that are not individuals or small revenue corporations. All corporations that are not small revenue corporations, including very large offenders, will also fall into this category. As a result, any corporate offender that exceeds \$5 million in annual gross revenue will be subject to the highest fine ranges in the Review Acts. Additional categorization of offenders has been highlighted by case law.⁶⁹ In other instances, case law has also clarified questions relating to the categorization of an organization.⁷⁰

Other Canadian federal and provincial statutes and legislation from other jurisdictions categorize offenders differently than the Review Acts. In Canada, the categorization of offenders is not consistent across various pieces of federal legislation.⁷¹ In contrast, provincial Acts tend to have two categories of offenders (individual /natural persons and corporations or other persons).⁷² In Australia, the United Kingdom, the United States, and New Zealand, individuals and organizations for sentencing purposes are distinguished, either implicitly or explicitly. For example, New Zealand has separate fine maxima for individuals and for organizations, with higher fines for the latter category.⁷³ The United Kingdom Sentencing Guidelines take a more granular approach to categorization of organizations based on their

⁶⁹ See e.g. *Terroco*, para 78. The Alberta Court of Appeal characterized a corporation with \$20 million in annual gross revenue as a “mid-level corporation”.

⁷⁰ See *R v Big River First Nation*, 2019 SKCA 117, para 48. The Saskatchewan Court of Appeal found that the appeal judge did not err in characterizing a “band” as a person rather an individual. This finding subjected the band to a higher minimum fine.

⁷¹ See e.g. SARA, s. 97. SARA includes a category for non-profit corporations, while the *Fisheries Act* uses only a person.

⁷² See e.g. *Environmental Management Act*, SBC 2003, c 58; *Environmental Protection and Enhancement Act*, RSA 2000, c E-12, *Environment Act*, RSY 2002, c 76, *Environment Quality Act*, CQLR c Q-2, and *Environmental Protection Act*, SNL 2002, c E-14.2.

⁷³ Note that, although the rules in New Zealand and Australia refer to other persons and corporations, this section will use the term “organization”.

turnover (i.e. the amount received in sales for a specified period),⁷⁴ while the United States Sentencing Guidelines define “organization” in a broad fashion, which includes unions, trusts, partnerships, associations, pension funds, for instance.⁷⁵

The variations in the categorization of offenders is noteworthy for three reasons. The first is the fact that different types of offenders are deterred by different sanctions. Therefore, the categorization of an offender that is linked to both a particular fine range, as well as any other penal sanctions, is important in the deterrence of that specific category of offender. For example, the United Kingdom’s categories for large and very large corporate offenders may allow for stronger deterrence for that type of offender, than a general category for corporate offenders.⁷⁶ The second is that due to the large range between minimum and maximum fines set out in the Review Acts, coupled with the limited number of reported cases on sentencing applying the Review Acts, there are few goal posts in sentence setting. A granular approach to the categorization of offenders may provide clearer legislative goal posts to courts regarding a type of offender. The third reason is that the Review Acts do not have a separate category for organizations, such as limited liability partnerships, associations, non-governmental organizations, unlike, for example, in the United States Sentencing Guidelines where one is included. During engagement, this was raised as a point of interest.

6.2.2 Fine Regime: Minimum & Maximum Fines

Under the current regime, 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](#).

Under SARA, which was not modified by the EEA or consequently part of the Review, there are no minimum amounts, only maximum fines set out in the legislation.⁷⁷ In some cases, federal Acts that relate to economic crime have fines based on values that change over time such as turnover or other economic factors of the offender.⁷⁸ These are known as relative fines. The United Kingdom Sentencing Guidelines, for example, include relative fines for individuals (i.e. based on their weekly income),⁷⁹ and the United States Federal Sentencing Guidelines include relative fines for offences related to any economic gain arising from the offence.⁸⁰ New Zealand follows the United States Federal Sentencing Guidelines in that respect.⁸¹

It is worth noting that the Review Acts’ use of absolute fine ranges makes those Acts less resilient to inflation than comparable regimes in other jurisdictions. As mentioned above, both the United Kingdom and the United States use relative fines, which implicitly reflect inflation. Moreover, in the United States,

⁷⁴ UK Guidelines, at pp. 7-10.

⁷⁵ US Guidelines.

⁷⁶ UK Guidelines, at p. 7. The UK Guidelines have separate categories for large and very large corporate offenders. For offenders that fall into the former category, courts will impose a fine within the specified fine range. For offenders that fall into the latter category, courts may “move outside the suggested range to achieve a proportionate sentence”.

⁷⁷ SARA, s. 97(1.1).

⁷⁸ See e.g. *Income Tax Act*, RSC 1985, c 1 (5th Supp), s. 239; *Excise Tax Act*, RSC 1985, c E-15, s. 97.1(2).

⁷⁹ UK Guidelines, p. 24.

⁸⁰ See e.g. US Guidelines, p. 439.

⁸¹ *Resource Management Act 1991* (NZ) 1991/69, s. 339B.

there are specific Acts, rules and guidelines that require the Environmental Protection Agency to adjust statutory penalties on an annual basis to reflect inflation.⁸² Australia also takes measures to ensure that its fine amounts reflect inflation. In Australia, fines are calculated on the basis of “penalty units”, the value of which is determined by an indexation formula that is designed to adjust fines to the country’s present economic landscape.⁸³ In contrast, the Review Acts’ fine ranges do not scale in proportion with inflation and, as a result, may become less stringent over time.

Even though minimum fine amounts may be problematic,⁸⁴ the Review Acts provide for a relief mechanism should a court determine that there would be undue financial hardship if the minimum fine were to be imposed.⁸⁵ Although there may be such concerns, there was almost unanimous agreement from participants in the course of engagement efforts that minimum fines for environmental offences are key. The reason is that minimum fines provide clear goal posts by Parliament to courts of the seriousness of environmental offences.

Furthermore, the fine ranges were not raised as being a significant issue in the course of engagement efforts, and it was highlighted that fines issued under the Review Acts have never reached the maximum amounts. The data confirmed this finding. Moreover, as noted during the Standing Committee on Environment and Sustainable Development’s hearing on the Enforcement of CEPA, the “size of a fine (is) much less significant as a deterrent than the certainty of prosecution.”⁸⁶ This was also confirmed during the Review and in engagement efforts. Also, due to the large range between minimum and maximum fines, it was understood that the fine ranges allowed for flexibility and the application of the cornerstone principle of Canadian sentencing—the constructing of proportionate and individualized sentences—that encompasses both the regulatory, as well as the criminal objectives of the Review Acts. However, some participants in engagement efforts highlighted concerns with corporate offenders, especially large multinational offenders, and whether they are duly fined and penalized.

6.2.3 Additional Court Orders

All Review Acts contain similar court order provisions authorizing the court, upon sentencing, to order the offender to take certain measures which are other than paying fines.⁸⁷ 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

⁸² 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 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>>.

⁸³ *Crimes Act 1914* (Cth), s. 4AA.

⁸⁴ See e.g. the proposal to repeal certain minimum sentences related to imprisonment (Bill C-22) as set out under the *Criminal Code* and the *Controlled Drugs and Substances Act*. 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). See also: Department of Justice Canada, “Bill C-22: Mandatory Minimum Penalties to be repealed”, (Ottawa: Department of Justice Canada, 18 February 2021), online: <<https://www.canada.ca/en/departement-justice/news/2021/02/bill-c-22-mandatory-minimum-penalties-to-be-repealed.html>>.

⁸⁵ See e.g. AEP, s. 50.6; CNPA, s. 27.2; CEPA, s. 273; MBCA, s. 13.06; WAPPRIITA, s. 22(5).

⁸⁶ See House of Commons, *Standing Committee on Environment and Sustainable Development*, 43rd Parl, 2nd Sess, No 11 (February 1st 2021) (Prof. Ariane Gagnon-Rocque), online: <<https://www.ourcommons.ca/DocumentViewer/en/43-2/ENV/1/meeting-11/evidence>>.

⁸⁷ These are similar to what is sometimes referred to as “creative sentencing” orders, which is a catch-all term used to describe the various options in a section of legislation that covers court orders relating to penalty, e.g. community service orders, compensation orders, publication orders.

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.

Both the desk research, as well as engagement efforts, highlighted that non-fine sentencing orders could play a role in deterring offenders, especially corporate offenders. In federal,⁸⁸ provincial,⁸⁹ and comparable jurisdictions,⁹⁰ non-fine sentencing orders are discretionary, when legislated. In comparable jurisdictions, like the United States, restitution and community service for corporate offenders is a possibility as an addition to, and not in lieu of, fines and imprisonment.⁹¹ The United Kingdom sets out ranges of community orders, which include community service and prohibited activities.⁹² Other types of court orders in other Canadian legislation, as well as other comparable jurisdictions, include corporate probation,⁹³ prohibition of directors and officers to act as directors and officers for a period of time,⁹⁴ economic sanctions, and corporate community service.

Non-fine sentencing orders are key to environmental sentencing, and the Review noted that the Review Acts have a comprehensive list of non-fine sentencing orders, including a general provision that allows for courts to impose other types of non-fine sentences.⁹⁵ Although such provisions are wide-ranging, non-fine sentences particularly directed towards corporate offenders, such as set out in the United Kingdom and the United States, are not expressly included.

6.2.4 Second or Subsequent Offences 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”.

Other pieces of federal legislation, including the SARA, *Fisheries Act*, and the *Criminal Code*, have penalties that escalate for second or subsequent offences.⁹⁶ Compared to the Review Acts, the *Criminal Code* deems offences to be second or subsequent offences in a broader range of circumstances. For example, a variety of prior firearm offences can count as a first offence for robbery with a firearm. The United States, United Kingdom, and Australia (at the state level) employ penalty

⁸⁸ See e.g. *Canada Shipping Act, 2001*, SC 2001, c 26; *Fisheries Act*, SARA.

⁸⁹ See e.g. *Environmental Assessment Act*, SBC 2018, c 51; *Environmental Protection and Enhancement Act*, RSA 1980, c E-13.

⁹⁰ See e.g. UK Guidelines, pp. 19, 24; US Guidelines, p. 516. The US includes, as an addition to and not in lieu of fines and imprisonment, restitution and community service for corporate offenders. The UK Guidelines set out ranges of community orders, which include unpaid work and prohibited activities.

⁹¹ US Department of Justice, “Memorandum Re: Guidance on Restitution, Community Service, and Other Sentencing Measures Imposed in Environmental Crimes Cases”, (Washington: Environment and Natural Resources Division, 16 January 2009).

⁹² UK Guidelines, at pp. 19, 24.

⁹³ See e.g. US Guidelines, § 8D1.2 – 8D1.4. Such probation orders can, among other things, prohibit offending companies from bidding on government contracts.

⁹⁴ See e.g. *Securities Act*, RSO 1990, c S-5, s. 127(1).

⁹⁵ See AEPA, s. 66; CNMCAA, s. 27; CNPA, s. 30; CWA, s. 16; CEPA, s. 291; IRIA, s. 45; MBCA, s. 16; SSLMPA, s. 21.4; WAPPRIITA, s. 22.12; GGPPA, s. 249.

⁹⁶ See e.g. SARA, s. 97(3); *Fisheries Act*, s. 40; *Rouge National Urban Park Act*, SC 2015, c 10, s. 33; *Criminal Code*, s. 286.1.

escalation for subsequent environmental offences.⁹⁷ New Zealand does not seem to have these statutory provisions.

Also of note, 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.

6.2.5 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. Many other federal Acts include legislated aggravating factors.⁹⁸ While some provincial Acts do include them,⁹⁹ it is not as prevalent as in federal Acts. Both the United States and the United Kingdom have aggravating factors in their sentencing guidelines which are specific to environmental crime, while Australia, for example, has legislated aggravating factors for all crime.¹⁰⁰

The Review Acts do not include mitigating factors, as these are generally found in the common law. In many federal Acts, the same provision as set out in the Review Acts that states that the absence of an aggravating factor is not a mitigating factor, is also quite prevalent.¹⁰¹ Furthermore, legislated mitigating factors are not common, either in provincial or federal Acts. In the sentencing guidelines of comparable jurisdictions, for example in the United Kingdom, mitigating factors are listed, although such list is not definitive.

The Review found that the aggravating factors set out in the Review Acts are comprehensive, as well as comparable to those found in other jurisdictions, when these are legislated. During engagement efforts, the Review heard from a participant that legislating mitigating factors may be beneficial, although others deemed it to be unnecessary.

6.2.6 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

⁹⁷ 33 USC §1319(c)(1)-(2) (2019); Austl, Commonwealth, Australian Institute of Criminology, *Environmental Crime in Australia* by Samantha Bricknell (Canberra: Australian Institute of Criminology, 2010), online: <<https://core.ac.uk/download/pdf/30682032.pdf>>.

⁹⁸ See e.g. *Energy Safety and Security Act*, SC 2015, c 4; *International Boundary Waters Treaty Act*, RSC 1985, c I-17; *Oceans Act*, SC 1996, c 31.

⁹⁹ See e.g. *Environment Quality Act*, CQLR, c Q-2, s. 115.41; *Environmental Protection Act*, RSO 1990, c E-19, s. 188.1(1).

¹⁰⁰ See e.g. *Criminal Code*, s. 380.1 ("aggravating circumstances").

¹⁰¹ See e.g. *Canada Oil and Gas Operations Act*, RSC 1985, c O-7, s. 60(4).

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.

The language in the Review Acts on directors' and officers' liability mirrors the language found in a vast number of both federal and provincial legislation.¹⁰² Furthermore, the language has been considered in a number of cases at all levels of court.¹⁰³ In the course of engagement efforts, participants highlighted that the provisions associated with the liability of directors and officers were rarely used for a number of reasons, such as the difficulty in adducing evidence internally from private corporations and the distance of directors and officers from decisions on the ground, for example. In some cases, it was acknowledged that directors and officers are charged when feasible.¹⁰⁴

Considering all of the above, the Review found that overall, the Sentencing Regime remains consistent with public values, as well as economic and other relevant circumstances and continues to advance the Fundamental Purposes of Sentencing.

Areas for further consideration

Notwithstanding the above, in the course of the Review, some concepts were identified that could be further explored, researched and consulted upon in the event there is an opportunity for legislative reform in the future, such as:

- Further categorizing offenders for sentencing purposes to include other legal entities, such as limited liability partnerships, municipalities, very large corporate offenders, as well as other categories for individuals, such as Indigenous offenders. The inclusion of new categories of offenders may be beneficial for a number of reasons, for example, to increase certainty for offenders due to the large range between minimum and maximum amounts. However, the lack of sentencing data from reported case law, and the granularity of this approach, may trigger concerns. For instance, apprehension associated with the required evidence needed to be adduced to prove an offender's category, as well as possible concerns with parity of sentencing, a fundamental principle in sentencing as set out in the *Criminal Code*, may arise.
- Adjusting the fine ranges to reflect inflation. Fines could be adjusted to reflect inflation in numerous ways. Fines under the Review Acts could be based on a formula that automatically accounts for inflation, as is done in Australia.¹⁰⁵ Alternatively, the Review Acts could be amended to insert their fine amounts in their regulations rather than the Acts themselves, which would make the fine amounts easier to periodically update to reflect inflation. Finally, the introduction of relative fine amounts would ensure that fines under the Review Acts implicitly reflected inflation.

¹⁰² More than 90 federal Acts mirror this language. See e.g. *Fisheries Act*, s. 78.2; *SARA*, s. 98; *Oceans Act*, SC 1996, c 31, s. 39.61; *Extractive Sector Transparency Measures Act*, SC 2014, c 39, s. 376; *Energy Administration Act*, RSC 1985, c E-6, *Energy Efficiency Act*, SC 1992, c 36; *Fishing and Recreational Harbours Act*, RSC 1985, c F-24. Numerous provincial statutes also use this language. See also *Toxics Reduction Act, 2009*, SO 2008, c 19; *Food and Safety Quality Act, 2001*, SO 2001 c 20; *Invasive Species Act, 2015*, SO 2015, c 22.

¹⁰³ See *R v Joseph Martin (CA)*, 1991 CanLII 7340 (ON CA); *R v Whissell*, 1994 ABCA 375; *Beaulne c Sansfaçon*, 1997 CanLII 10564 (QC CA); *R v Croft*, 2006 NLCA 33.

¹⁰⁴ See e.g. Dianne Saxe & Meredith James, "Holding Directors and Officers Liable for Environmental Problems: Sentencing and Regulatory Orders" in Allan E. Ingelson eds, *Environment in the Courtroom* (Calgary: University of Calgary Press, 2019).

¹⁰⁵ *Crimes Act 1914* (Cth), s. 4AA.

- Including new non-fine measures in the court orders sections of the Review Sections, as well as creating new, non-fine based mandatory sentences (i.e. using creative sentences in mandatory sentences). As noted, creative sentences are key in environmental sentencing.¹⁰⁶ Due to the possible effect on deterrence, incorporating mandatory non-fine sentencing options as part of mandatory sentences could warrant further evaluation. At the same time, there must be some judicial discretion, such as already found within the Review Acts, related to the non-imposition of mandatory fines in cases of undue financial hardship.¹⁰⁷ Other types of creative sentences, such as corporate probation,¹⁰⁸ prohibition of directors and officers to act as directors and officers for a period of time,¹⁰⁹ economic sanctions, and corporate community service, could also be further explored.
- Clarifying the definition of subsequent offence in order to better subject offenders with a history of environmental non-compliance to the more stringent penalties for second and subsequent offences. Such a proposal, which was raised during the engagement efforts, could take numerous forms. For example, it could remove the requirement that prior offences be “substantially similar” in order to trigger the second or subsequent offence rules; it could consider the offender’s compliance history with “substantially similar” environmental offences in other jurisdictions; it could involve considering the offender’s past offences against vulnerable communities or Indigenous communities; it could involve considering the compliance history of an offender’s directors or officers; or it could involve deeming subsequent offences by non-arm’s length parties to be second or subsequent offences. However, this approach could put disproportionate emphasis on punishment, as opposed to bringing people into compliance.¹¹⁰
- Including an aggravating factor for offences that result in cumulative impacts or effects.¹¹¹ Although the Review Acts list numerous aggravating factors, none of these encompass the principle of cumulative effects of harm or potential harm of an offence.¹¹² The case law applying the Review Acts has clarified this may be a significant consideration, although it

¹⁰⁶ See e.g. Alberta Environment and Parks, “Environmental compliance – Creative sentencing – Overview”, (Edmonton: 2021), online: <<https://www.alberta.ca/environmental-compliance-creative-sentencing-overview.aspx>>.

¹⁰⁷ See e.g. CNPA, s. 27.2.

¹⁰⁸ See e.g. US Guidelines, § 8D1.2 – 8D1.4. Such probation orders can, among other things, prohibit offending companies from bidding on government contracts.

¹⁰⁹ See e.g. *Securities Act*, RSO 1990, c S-5, s. 127(1).

¹¹⁰ See *Thomson Newspapers Ltd. v Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)*, 1990 CanLII 135 (SCC), [1990] 1 SCR 425. LaForest J states that the objective of regulatory offences generally is to induce compliance with the relevant regulatory regimes.

¹¹¹ British Columbia, “Cumulative Effects Framework”, (Victoria: 2021), online: <<https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/cumulative-effects-framework>> (Cumulative effects/impacts are “changes to environment, social and economic values caused by the combined effect of past, present and potential future human activities and natural processes”).

¹¹² See e.g. CEPA, s. 287.1(1). The Review Acts’ aggravating factors include that the offence caused damage or risk of damage to the environment, its quality, or caused harm that is extensive, persistent or irreparable.

may also still be a point of contention.¹¹³ Numerous federal¹¹⁴ and provincial Acts¹¹⁵ include the concept of “cumulative effects”, but this is usually when dealing with advancement in approval processes, such as environmental assessments. The inclusion of an aggravating factor for cumulative impacts of offences, however, may not bring any material differences to cases, as the burden of proof of an aggravating factor is beyond a reasonable doubt, and may be difficult to prove.

6.3 Are the Ancillary Clauses consistent with public values, as well as economic and other relevant circumstances?

In this line of inquiry, the focus was 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).

In the course of the Review no major consideration arose with regard to the Ancillary Clauses of the Review Sections, whether in the literature or during engagement efforts. For example, the due diligence defence is widely used in both federal¹¹⁶ and provincial¹¹⁷ Acts, and is a core part of strict liability offences.¹¹⁸

Considering the above, the Review found that the Ancillary Clauses are consistent with public values, as well as economic and other relevant circumstances.

Areas for further consideration

Notwithstanding the above, in the course of the Review some concepts were identified, which could be further explored, researched and consulted upon, in the event there is an opportunity for legislative reform in the future, such as:

- Specifying the judicial venue for indictable offences under the Review Acts to ensure that certain, more serious cases (e.g. complex or of higher gravity) under those Acts are within the

¹¹³ Martin Z.P. Olszynski, “Ancient Maxim, Modern Problems: De Minimis, Cumulative Environmental Effects and Risk-Based Regulation” (2015) 40:2 Queen’s L. J. 705-740.

¹¹⁴ See e.g. *Pest Control Products Act*, SC 2002, c 28; *International Boundary Waters Treaty Act*, SC 2001, c 40 (addition of cumulative effects); *Nunavut Waters and Nunavut Surface Rights Tribunal Act*, SC 2002, c 10 (cumulative effects in determining compensation, ss. 61, 67); *Impact Assessment Act*, SC 2019, c 28 (purpose of the Act s. 1, as well as factors that impact assessment s. 22(1)(a)(ii)); *Amendment of the Fisheries Act*, SC 2019, c 14 (regarding cumulative effects of regulation); *Wildlife Area Regulations*, CRC, c 1609 (regarding factors when approving a permit); *Pest Control Products Act*, SC 2002, c 28.

¹¹⁵ See e.g. *Municipal Wastewater Regulation*, BC Reg 87/2021; *Environmental Assessment Act*, SBC 2018, c 51; *An Act to affirm the collective nature of water resources and provide for increased water resource protection*, SQ 2009, c 21; *Environment Quality Act*, CQLR, c Q-2; *Far North Act, 2010*, SO 2010, c 18; *Environmental Rights Act*, SNWT 2019, c 19.

¹¹⁶ See e.g. *Fisheries Act*; SARA; *Marine Transportation Security Act*, SC 1994, c 40; *Competition Act*, RSC 1985, c C-34.

¹¹⁷ See e.g. *Contaminated Sites Remediation and Consequential Amendments Act*, SM 1996, c 40; *Environment Act*, SNS 1994-95, c 1.

¹¹⁸ The Review Acts’ offences are mostly strict liability offences, also known as statutory or public welfare offences. As stated by Dickson J in *R v City of Sault Ste. Marie*, [1978] 40 CCC (2d) 353, these types of offences are a “half way house” to avoid the perceived unfairness of no-fault liability on one hand and the difficulty of a strict *mens rea* approach on the other.

absolute jurisdiction of a superior court of criminal jurisdiction.¹¹⁹ At present, the Review Acts do not contain any provisions to that effect. During engagement efforts some participants noted that many cases are exceptionally complex, reliant on expert evidence, and, as a result, not best-suited to be heard by lower courts. This is especially true when dealing with cases where the offender is a very large corporate offender, for example. Other federal legislation, such as the *Competition Act*, does include a provision for absolute jurisdiction of a superior court in the cases of indictable offences. However, it must be noted that the data does not show that multinationals are the main objects of prosecutions under the Review Acts. In fact, in most cases, offenders are individuals and private corporations.

6.4 Other Areas for Future Consideration

6.4.1 Key Changes to National Context—Reconciliation and Environmental Justice

Key changes in the global and national context over the last decade 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, as well as economic and other relevant circumstances. In particular, considerations related to Canadians' relationship with the environment and changes in the economic landscape have been taken into account. However, key changes related to the importance attached to improving the relationship between Indigenous Peoples and all Canadians and efforts to promote reconciliation, as well as the increased recognition of environmental justice concepts warrant specific mention here.

Opportunities for more engagement with Indigenous partners would be warranted if legislative changes are envisaged in the future. In particular, engagement could seek to better understand the possible impacts of the 94 calls to action (“Calls to Action”) of the Truth and Reconciliation Commission. For example, the Calls to Action related to Indigenous offenders, Indigenous victims and communities, and the recognition and implementation of Indigenous justice systems, and how they may impact the Review Sections. Furthermore, environmental justice is beginning to permeate the environmental arena. Further engagement and study may be pursued in order to examine if and how the Review Acts and Sections may be impacted by environmental justice considerations.

6.4.2 Non Binding Sentencing Guidelines

Sentencing guidelines for environmental crime are used in the United Kingdom, the United States, and Australia. New Zealand has general guidelines that also apply to environmental crime. In Canada, there is no sentencing guideline at the federal level. Instead, enforcement officers, prosecutors, and courts depend on the ranges established by legislated mandatory minimums and maximums for offences, and case law. While the Supreme Court of Canada (SCC) has endorsed the use of informal sentencing ranges by appellate courts to guide discretion of lower courts, it has reiterated that “sentencing ranges are primarily guidelines, and not hard and fast rules.”¹²⁰ Sentencing ranges, the SCC has held, are not intended to restrict the discretion of a sentencing judge, but rather to provide a historical snapshot of sentencing decisions made by sentencing judges for certain offences for individuals in certain circumstances.¹²¹

¹¹⁹ See e.g. *Competition Act*, s. 34(3).

¹²⁰ *R v Lacasse*, 2015 SCC 64, para 60.

¹²¹ *Ibid*, para 67.

Ontario is the only Canadian province or territory with environmental sentencing guidelines.¹²² British Columbia has crown counsel guidelines for environmental prosecutions,¹²³ and New Brunswick¹²⁴ and Nova Scotia¹²⁵ have departmental guidelines summarizing their environmental statutes (including the fine provisions). However, these latter guidelines do not provide any additional substantive advice on how fines ought to apply.

Establishing non-binding sentencing guidelines for environmental offences in Canada would allow for judicial discretion but still represent a paradigm shift and a significant undertaking. Such guidelines may bring benefits such as clear sentencing goal posts for environmental offences. This approach would likely also require consultation with other federal departments that operate in the regulatory space given the impacts that might transcend environmental offending.

7. Conclusion

In 2010, the EEA came into force marking a new era for environmental enforcement in Canada. Triggered by a growing understanding of the extent and severity of environmental offending and its impact on Canadians, the EEA modernized the environmental fines and sentencing regime of the Review Acts. Within these changes, the EEA included a requirement to review the offence and penalty sections of the Review Acts every 10 years. Its purpose is to ensure that fine amounts and sentencing principles continue to advance all relevant goals, and keep pace with societal and economic changes. This Report is the product of the first Review since the EEA came into force.

This Report has presented the background of the EEA, the methodology employed in the course of the Review, and the fines and sentencing principles at work under the Review Acts. The Review found that, in general, the Review Sections remain consistent with public values, as well as economic and other circumstances. Nonetheless, a number of concepts were identified that may be further explored, researched and consulted upon in the event there is an opportunity for legislative reform in the future.

¹²² See Ontario, Ministry of the Environment, Conservation and Parks, “Guideline for Implementing Environmental Penalties (Ontario Regulations 222/07 and 223/07)”, (Toronto: Queen’s Printer for Ontario, 7 September 2021), online: <<https://www.ontario.ca/page/guideline-implementing-environmental-penalties-ontario-regulations-22207-and-22307>>.

¹²³ British Columbia Prosecution Service, “Environmental Prosecution”, (Crown Counsel Policy Manual) (Victoria: BCPS, 1 March 2018), online: <<https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/env-1.pdf>>.

¹²⁴ New Brunswick, Department of Environment, “Compliance and Enforcement Policy”, (Fredericton: NBDE, October 2010), online: <<https://www2.gnb.ca/content/dam/gnb/Departments/env/pdf/Publications/ComplianceEnforcementPolicy.pdf>>.

¹²⁵ Nova Scotia, Environment and Labour, “A Guide to the Environment Act”, (Halifax: NSEL, February 2006), online: <<https://www.novascotia.ca/nse/ea/docs/EAActGuide.pdf>>.

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

Act	Review Requirement Section	Review Sections
<u>Antarctic Environmental Protection Act (AEPA)</u>	68.4	50 – 68.3
<u>Canada National Marine Conservation Areas Act (CNMCAA)</u>	28.4	24 – 28.3
<u>Canada National Parks Act (CNPA)</u>	31.4	24 – 31.3
<u>Canada Wildlife Act (CWA)</u>	18.4	13 – 18.3
<u>Canadian Environmental Protection Act, 1999 (CEPA)</u>	294.5	272 – 294.4
<u>International River Improvements Act (IRIA)</u>	52	33 – 50
<u>Migratory Birds Convention Act, 1994 (MBCA)</u>	18.24	13 – 18.23
<u>Saguenay-St. Lawrence Marine Park Act (SSLMPA)</u>	22.3	20 – 22.2
<u>Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (WAPPRIITA)</u>	28.1	22 – 22.16
<u>Greenhouse Gas Pollution Pricing Act (GGPPA)</u>	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. 502009, 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 (i),
 - (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 (i),
 - (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. 2732009, 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. 2742009, 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. 279
2005, 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. 2802005, c. 23, s. 412009, 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. 412009, 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. 412009, 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. 287
2009, 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. 132005, c. 23, s. 92009, 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. 212009, 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.

Annex 3—Engagement Efforts

The following engagement efforts were conducted:

1. **Methodological Review**—Prior to embarking on the Review, input was sought from academics in the field to discuss methodological options.
2. **Discussions with Foreign Officials:**

USA

Environmental Crimes Section
Environment and Natural Resources Division
United States Department of Justice

UK

Enforcement & Prosecutions
UK Environment Agency

Europe

European Network of Prosecutors for the Environment

3. **Engagement Paper**—*A Discussion Paper Regarding the Environmental Fines and Sentencing Regime* was published, as well as shared directly with Indigenous partners and key stakeholders, on June 16, 2021.

4. **Roundtables:**

Roundtables and alternative engagement fora were offered to a range of partners and stakeholders, such as Indigenous partners, academics, environmental non-government organizations, industry representatives, and lawyers. The engagement period began on June 16 and ended on August 31, 2021, with roundtables offered on the following dates: July 6, 7, 8, 21, 22, and 23, as well as on August 3 and 5.

5. **The following organizations participated in informational meetings, roundtables, or otherwise provided feedback:**¹²⁶

- Atlantic Policy Congress of First Nations
- British Columbia Assembly of First Nations
- Canadian Electricity Association
- Canadian Fuels Association
- Canadian Transportation Equipment Association
- Canadian Trucking Alliance

¹²⁶ Listed in alphabetical order.

- Centre québécois du droit de l'environnement
- Chemistry Industry Association of Canada
- Cliffe, Tobias, Barristers & Solicitors
- Conseil Patronal de L'environnement du Québec
- Dawson Strategic
- Faculté de droit, Université Laval
- Frank J. E. Zechner Professional Corporation
- Grand Council Treaty #3
- Institut de développement durable des Premières Nations du Québec et du Labrador
- Métis Nation of Alberta
- Métis National Council
- Metis Settlements General Council
- Mi'gmawe'l Tplu'taqnn Inc.
- Mining Association of Canada
- Motorcycle and Moped Industry Council (MMIC) and Canadian Off-Highway Vehicle Distributors' Council
- Osler, Hoskin & Harcourt
- Truck & Engine Manufacturers Association
- University of Calgary, Faculty of Law
- Wasauksing First Nation