Federal Court Cour fédérale

Date: 20250708

Docket: T-2722-23

Citation: 2025 FC 1213

Toronto, Ontario, July 8, 2025

PRESENT: Madam Justice Go

BETWEEN:

BGIS GLOBAL INTEGRATED SOLUTIONS CANADA LP

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Halocarbons are greenhouse gases that contribute to depletion of the ozone layer and climate change. In Canada, Parliament enacted various statutory regimes, including the *Environmental Violations Administrative Monetary Penalties Act*, SC 2009, c 14, s 126 [*EVAMPA*], to minimize and/or reverse the harmful effect of human activities on the environment and to tackle climate change.

[2] The Applicant, BGIS Global Integrated Solutions Canada LP [BGIS], was issued two administrative monetary penalties [AMPs] under the *EVAMPA* for violating paragraph 3(a) of the *Federal Halocarbon Regulations*, SOR/2003-289 [*FHR 2003*], as repealed by *Federal Halocarbon Regulations*, SOR/2022-110, s 29 [*FHR 2022*], in connection with releases of halocarbons from chiller systems in two buildings that BGIS managed.

[3] BGIS filed a request for review of the AMPs to the Environmental Protection Tribunal of Canada [EPTC]. Under paragraph 11(1)(a) of *EVAMPA*, a person named in a notice of violation does not have a due diligence defence to prevent the violation. BGIS relied on subsection 11(2) that preserves common law justifications to argue that compliance with paragraph 3(a) of the *FHR 2003* was impossible due to the nature of the chillers and technological limitations. BGIS also submitted that the absolute liability regime created by paragraph 11(1)(a) of *EVAMPA* is contrary to paragraph 11(d) of the *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 [*Charter*], and is otherwise offensive to the principles of natural justice under section 7 of the *Charter*.

[4] In a decision dated November 16, 2023, EPTC upheld the AMPs issued against BGIS [Decision].

[5] BGIS now brings this application for judicial review on the following grounds: a) the Decision was unreasonable, and b) the EPTC was incorrect or unreasonable in finding that section 11(1)(a) of *EVAMPA* is not contrary to paragraph 11(d) of the *Charter* and that a mental element is necessary to engage the principles of natural justice under section 7 of the *Charter*.

[6] I dismiss the application. While the reasons provided by the EPTC were brief, the Decision, read as a whole, grappled with BGIS's key submissions on impossibility. Further, I find that the statutory regime created by *EVAMPA* is not criminal, and as such, paragraph 11(d) of the *Charter* does not apply. I also find that section 7 of the *Charter* is not engaged because BGIS fails to identify any deprivation of a right to life, liberty or security of the person.

II. Background

A. *Factual Context*

[7] BGIS is a real estate management services company. It operates and maintains a number of global facilities, including the Canadian Grain Commission Building [CGC Building] and the Canada Revenue Agency Building [CRA Building] located in Winnipeg, Manitoba [together, the Facilities].

[8] The Facilities are owned by His Majesty the King in Right of Canada and are under the control and administration of Public Services and Procurement Canada [PSPC]. PSPC contracted BGIS to provide property management, among other services. BGIS then sub-contracted Southampton-Trane Air Conditioning (Calgary) Inc or its affiliate [Trane] to provide maintenance services on certain equipment in the Facilities, including chiller systems (i.e. air conditioning systems).

B. *Legislative context*

[9] Halocarbons are widely used in refrigeration and air conditioning systems. Emissions of halocarbons can have global warming potentials hundreds to thousands of times greater than that of carbon dioxide (CO^2), and some halocarbons can contribute to ozone depletion: see Regulatory Impact Analysis Statement [RIAS] accompanying the *FHR 2022*, C Gaz II, Vol 156, No 12 at 1846-47; see also the RIAS accompanying the *FHR 2003*, C Gaz I, Vol 136, No 49 at 3637-39.

[10] The Government of Canada has enacted different sets of regulations to maintain and control the handling of halocarbons at the federal level. The *FHR 2003* were in place at all times material to this application.

[11] Subsection 3(a) of the *FHR 2003* prohibits releases of halocarbons from refrigeration or air-conditioning systems, subject to a limited exemption. Subsection 3(a) states:

Prohibitions	**Interdictions**
3 No person shall release, or allow or cause the release of, a halocarbon that is contained in	**3** Il est interdit de rejeter un halocarbure — ou d'en permettre ou d'en causer le rejet — contenu, selon le cas :
(a) a refrigeration system or an air-conditioning system, or any associated container or device, unless the release results from a purge system that emits less than 0.1 kg of halocarbons per kilogram of air purged to the environment;	**a)** dans un système de réfrigération ou de climatisation, ou dans tout contenant ou dispositif complémentaire, sauf si le rejet se fait à partir d'un système à vidange qui émet moins de 0,1 kg d'halocarbure par kilogramme d'air vidangé dans l'environnement

[12] Section 32 of the *FHR 2003* requires the owners of the system or equipment in question to report the releases to Environment and Climate Change Canada.

[13] Through *EVAMPA*, Environmental Officers designated by the Minister of Environment and Climate Change [Minister] may issue notices of violation if designated provisions of certain environmental laws are violated. Violations of paragraph 3(a) of the *FHR 2003* are subject to administrative monetary penalties under sections 7 and 10 of *EVAMPA*, and Section 1, Part 5, Division 9 of the *Environmental Violations Administrative Monetary Penalties Regulations*, SOR/2017-109 [*EVAMPR*]. This means that any person who fails to comply with section 3(a) of the *FHR 2003* may be subject to an AMP.

[14] Under *EVAMPR*, the magnitude of the penalties depends on several factors, including the recipient's history of non-compliance and any economic gain resulting from the non-compliance: *EVAMPR* at sections 6, 8, and 8.1.

[15] In addition to establishing a system of administrative penalties for various environmental law violations, *EVAMPA* also sets out the process governing requests to review from notices of violation to the Chief Review Officer of the EPTC. Under subsection 20(2) of *EVAMPA*, the Minister has the burden of proving, on a balance of probabilities, that the applicant committed the violation. Subsection 23 of *EVAMPA* provides that determinations of a review officer are final, except for judicial review by this Court.

[16] Paragraph 11(1)(a) of the *EVAMPA* makes the defence of due diligence unavailable where a notice of violation is challenged before the EPTC. Subsection 11(1) reads as follows:

11 (1) A person, ship or vessel named in a notice of violation does not have a defence by reason that the person or, in the case of a ship or vessel, its owner, operator, master or chief engineer	**11 (1)** L'auteur présumé de la violation — dans le cas d'un navire ou d'un bâtiment, son propriétaire, son exploitant, son capitaine ou son mécanicien en chef — ne peut invoquer en défense le fait qu'il a pris les mesures nécessaires pour empêcher la violation ou qu'il croyait raisonnablement et en toute honnêteté à l'existence de faits qui, avérés, l'exonéreraient.
(a) exercised due diligence to prevent the violation; or **(b)** reasonably and honestly believed in the existence of facts that, if true, would exonerate the person, ship or vessel.	

[17] However, subsection 11(2) of *EVAMPA* preserves the use of other common law defences so long as it is not inconsistent with *EVAMPA*:

Common law principles	**Principes de la common law**
(2) Every rule and principle of the common law that renders any circumstance a justification or excuse in relation to a charge for an offence under an Environmental Act applies in respect of a violation to the extent that it is not inconsistent with this Act.	**(2)** Les règles et principes de la common law qui font d'une circonstance une justification ou une excuse dans le cadre d'une poursuite pour infraction à une loi environnementale s'appliquent à l'égard d'une violation dans la mesure de leur compatibilité avec la présente loi.

C. *The Incidents giving rise to the AMPs*

[18] On November 5, 2018, a halocarbon leak was detected from the chiller at the CGC Building [CGC Leak]. The CGC Leak released 108 kilograms of halocarbon before it was capped and isolated on the same day. Also on the same day, BGIS verbally reported the CGC Leak to the Minister. The CGC leak was ultimately repaired on February 1, 2019, and a written report was provided on February 12, 2019 per section 33 of the *FHR 2003*.

[19] On April 24, 2019, another halocarbon leak was detected from the chiller at the CRA Building [CRA Leak]. The CRA Leak released 136 kilograms of halocarbon. It appears that the initial date of the leak is unknown but it was first identified on April 24, 2019 and subsequent repair work was performed on April 29 and April 30. This leak was verbally reported to the Minister on May 2, 2019, and a written report was provided on May 13, 2019.

D. *Procedural history*

[20] On July 11, 2019, two Notices of Violation were issued to BGIS under section 7 and subsection 10(1) of *EVAMPA* for contravention of paragraph 3(a) of the *FHR 2003*. These notices fined BGIS $5,000 for each violation.

[21] On August 27, 2019, BGIS filed a Request for Review of the Notices of Violation to the EPTC.

[22] Subsequently, questions arose about the EPTC's jurisdiction to hear and consider constitutional questions and policy concerns. Pre-Hearing Conferences were held on February 25, 2020, and July 20, 2021, to address these questions. Parties made submissions on whether the EPTC has the power to consider constitutional questions and policy concerns in executing its mandate.

[23] On June 9, 2022, the EPTC found it had implied jurisdiction to determine questions of law, and therefore constitutional questions. However, it found that Environmental Review Officers cannot consider policy concerns or cancel Notices of Violation because of said policy concerns.

[24] On July 21, 2023, the EPTC held a virtual hearing on the merits.

E. *Decision Under Review*

[25] In the Decision, the EPTC dismissed BGIS' requests for review and upheld both Notices of Violation. It considered the parties' submissions on three issues:

1. Did BGIS release, or allow or cause the release of, a halocarbon from (i) the CGC Chiller; and (ii) CRA Chiller, in violation of subsection 3(a) of the *FHR 2003?*
2. Were the CGC Leak and the CRA Leak impossible to prevent, and therefore justified or excused pursuant to subsection 11(2) of the *EVAMPA*?
3. Is the Absolute Liability regime created by section 11(1)(a) of *EVAMPA* unconstitutional, or otherwise offensive to the principles of natural justice?

[26] The EPTC found against BGIS on each issue.

[27] First, the EPTC found on a balance of probabilities that BGIS had continuing control of the chillers and that BGIS had not provided sufficient evidence that the halocarbon releases were unforeseeable. It therefore held BGIS "allowed the release of a halocarbon" contrary to paragraph 3(a) of the *FHR 2003*. BGIS does not challenge this finding in the case at bar.

[28] Second, the EPTC found "the common law excuse of impossibility requires that the impossibility be absolute." EPTC also found BGIS "has not put forth sufficient evidence to establish either that the impossibility was absolute, or that they undertook sufficient steps under their obligations to inspect, repair and maintain the equipment." As such, it held that BGIS had not established on a balance of probabilities that the leaks were impossible to prevent and thus it was not excused from liability under subsection 11(2) of *EVAMPA*.

[29] Third, the EPTC held paragraph 11(d) of the *Charter* does not apply to the absolute liability regime under *EVAMPA* because AMPs are "violations" and not "offences." It further held the regime requires no mental element and therefore it does not offend principles of natural justice.

[30] While the penalty amounts were not disputed, the EPTC also found that the imposed penalty of $5,000 for each violation was correct.

III. Issues and Standard of Review

[31] In light of the parties' submissions, I frame the issues before me as follows:

1. Was the EPTC's rejection of BGIS's impossibility defence reasonable?

2. Was it correct or reasonable for the EPTC to find that paragraph 11(1)(a) of *EVAMPA* does not violate paragraph 11(d) or engage section 7 of the *Charter*?

3. If the Court finds paragraph 11(1)(a) of *EVAMPA* violates paragraph 11(d), and/or that it engages section 7 of the *Charter*, is the impugned section saved under section 1 of the *Charter*?

4. What is the appropriate remedy?

[32] The parties agree that the standard of review for the first issue is reasonableness. Under a reasonableness standard, the Court should assess "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision:" *Vavilov* at para 99. BGIS bears the onus of demonstrating that the Decision is unreasonable: *Vavilov* at para 100. However, "[a]ny alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision:" *Vavilov* at para 100. Reasonableness review is not a "line by line treasure hunt for error:" *Vavilov* at para 102.

[33] The parties further agree that the standard of review for issue two is correctness. If the Court disagrees, then BGIS submits in the alternative that the standard is reasonableness.

[34] In *Vavilov*, the Supreme Court of Canada instructs that applicable standard of review for constitutional questions is correctness because "constitutional matters require a final and determinate answer from the courts" and "the constitutional authority to act must have determinate, defined and consistent limits:" at paras 55-56.

[35] I therefore find the standard of review for issue two is correctness. Under a correctness standard, the Court "will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 50).

[36] Having found that the correctness standard applies to issue two, I will therefore rephrase that issue as follows: Was it correct for the EPTC to find that paragraph 11(1)(a) of *EVAMPA* does not violate paragraph 11(d) or engage section 7 of the *Charter*?

IV. Analysis

A. *Was it reasonable for the EPTC to reject BGIS's impossibility defence?*

[37] With respect to the first issue, BGIS submits the Decision was not justified, intelligible, or transparent and therefore unreasonable.

[38] Citing *Vavilov* and *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [*Mason*] at para 66, BGIS submits that the EPTC neglected to justify is conclusions in light of the evidence provided and submissions advanced by BGIS, and instead adopted the Respondent's submissions without justification.

[39] BGIS emphasizes that "[r]easons are crucial to encouraging transparency and shielding against arbitrary decision-making, as they support a culture of justification from administrative decision-makers," citing *Vavilov* at para 80-81, 99, and notes that the Supreme Court of Canada

[SCC] has identified the need to "develop and strengthen a culture of justification in administrative decision-making:" *Vavilov* at para 2, cited in *Mason* at para 8.

[40] In the same vein, BGIS submits a decision will be unreasonable where one side's submissions have been fully incorporated into the written reasons and the other side's have been left unaddressed because this leaves "an analytical gap which the Court cannot fill:" *O'Grady v Bell Canada*, 2015 FC 1135 at para 38 [*O'Grady*].

[41] BGIS submits that the EPTC paraphrased the Respondent's incorrect argument that the BGIS did not put forth sufficient to establish the impossibility defence. To the contrary, BGIS submits it provided an affidavit from Oleg Vecherya, BGIS's technical services manager in Winnipeg [Vecherya Affidavit]. BGIS contends that Mr. Vecherya's evidence explained the impossibility of entirely avoiding occasional releases, despite best efforts, due to the limitations inherent in the chiller system technology, yet the Decision makes no mention of this important evidence.

[42] Further, and despite case law raised in BGIS's submissions on this issue, BGIS argues the EPTC failed to refer to a single case in the Decision, leaving the BGIS's evidence and submissions unaddressed.

[43] I reject BGIS's arguments, for the following reasons.

[44] First, I find BGIS selectively focuses on only parts of the Decision to support its position. When read as a whole, the Decision demonstrates that EPTC did grapple with BGIS's evidence and submissions on the issue of impossibility defence.

[45] While BGIS points only to paras 58 to 60 of the Decision in their argument, I note that in the preceding paragraphs, the Decision summarized the parties' submissions and evidence. With respect to the BGIS's submissions, the EPTC began by noting at para 51: "The Applicant submits that while section 11(1) precludes the use of due diligence as a defence, section 11(2) of *EVAMPA* preserves the use of other common law defences. I agree with this."

[46] Having found itself in agreement with BGIS on the availability of other common law defences, the EPTC went on to set out paragraph 11(a) of *EVAMPA*, before summarizing the Applicant's position in paras 52 to 54 of the Decision as follows:

> [52] The Applicant maintains that the common law defence of impossibility of compliance is made out because Chiller systems by their nature are prone to unforeseen leaks, and the extent and frequency of inspections, repairs, and replacements necessary for BGIS to undertake to prevent occurrences like the Releases renders compliance with section 3(a) not a "reasonable legal alternative."
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> [53] Further, the Applicant submits that the reasonable legal alternative in the present circumstances can be inferred from maintenance protocols produced by the manufacturers of the Chillers and from the *FHR*, which prescribes maintenance requirements. BGIS subcontracted Trane to follow the manufacturers' protocols and exceeded the maintenance requirements prescribed by the *FHR*.
>
> [54] Accordingly, BGIS maintains that in order to make out the defence of impossibility, BGIS was not required to have taken every last precaution imaginable to prevent releases of halocarbon.

[47] I agree with the Respondent that while the EPTC did not explicitly refer to the Vecherya Affidavit, the above quoted paragraphs contain all the relevant affidavit evidence BGIS says the EPTC failed to consider.

[48] Second, I find *O'Grady* distinguishable. The Court noted at para 25 of *O'Grady*, "[t]here were only two sentences in the Decision which were not written by the Respondent." By contrast, the EPTC gave brief summaries of both the Applicant's and the Respondent's submissions.

[49] The fact that the EPTC paraphrased the Respondent's submissions does not constitute a reviewable error; paraphrasing parties' submissions is par forthe course in decision writing. Nor is it unreasonable for the EPTC to state it was "more persuaded by the Respondent's submission" so long as it provided reasons for doing so, which it did. The EPTC cited, as reasons, the "ample contractual provisions whereby BGIS had inspection, repair and maintenance obligations," its finding that "the common law excuse of impossibility requires that the impossibility be absolute," and that "BGIS has not put forth sufficient evidence to establish either that the impossibility was absolute, or that they undertook sufficient steps under their obligations to inspect, repair and maintain the equipment." These reasons may be brief, but they nevertheless allow the Court to understand the basis of the EPTC's findings.

[50] As the SCC cautioned in *Vavilov*, "the written reasons given by an administrative body must not be assessed against a standard of perfection. That the reasons given for a decision do 'not include all the arguments, statutory provisions, jurisprudence or other details the reviewing

judge would have preferred' is not on its own a basis to set the decision aside:" *Vavilov* at para 91 quoting *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*]. The SCC also cautioned that "[r]eviewing courts cannot expect administrative decision makers to 'respond to every argument or line of possible analysis' (*Newfoundland Nurses*, at para. 25), or to 'make an explicit finding on each constituent element, however subordinate, leading to its final conclusion' (para. 16):" *Vavilov* at para 128.

[51] In the case before me, the Decision shows that the EPTC grappled with the key issues and central arguments raised by BGIS on the issue of impossibility defence. While the EPTC did not explicitly refer to the Vecherya Affidavit or cite the specific case law the parties relied on, the Decision read as a whole reveals a rational chain of analysis that makes it possible for the Court to understand the decision-maker's reasoning on a critical point: *Vavilov* at 103.

[52] For these reasons, I find the EPTC's rejection of BGIS's impossibility defence reasonable.

B. *Was it correct for the EPTC to find paragraph 11(1)(a) of EVAMPA does not violate paragraph 11(d) and does not engage section 7 of the* Charter*?*

[53] As noted above, paragraph 11(1)(a) of the *EVAMPA* makes the defence of due diligence unavailable where a notice of violation is challenged before the EPTC.

[54] Before the Court, BGIS submits that, in the absence of a due diligence defence, the application of paragraph 11(1)(a) of the *EVAMPA* to subsection 3(a) of the *FHR 2003* is contrary to paragraph 11(d) of the *Charter*. BGIS also argues the EPTC incorrectly required a mental element to engage the principles of natural justice under section 7 of the *Charter*.

[55] Paragraph 11(d) of the *Charter* guarantees that any person charged with an offence has the right "to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal." Meanwhile, section 7 of the *Charter* guarantees that "everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

[56] I will address BSIC's arguments on paragraph 11(d) first.

(1) Did the EPTC correctly find that paragraph 11(d) of the *Charter* does not apply to the absolute liability regime under *EVAMPA?*

[57] BGIS argues that the EPTC failed to identify and apply the legal test applicable to determining whether paragraph 11(d) of the *Charter* is engaged, as outlined by the SCC in *R v Wigglesworth,* 1987 CanLII 41 (SCC), [1987] 2 SCR 541 [*Wigglesworth*]. BGIS submits the Decision "only superficially addressed this issue by focusing on the language used in subsection 13(2) of *EVAMPA* in isolation." In so doing, BGIS submits the EPTC failed to consider their submission that if a penalty is criminal in nature, or has true consequences, then the penalty's recipient is entitled to the procedural protections of section 11 of the *Charter*.

[58] Applying the correctness standard, I will determine whether paragraph 11(d) of the *Charter* applies in this case, as opposed to considering the EPTC's reasons for finding it does not.

[59] In *Wigglesworth*, the SCC explained that a matter could fall within section 11 of the *Charter* either because a) by its very nature it is a criminal proceeding or b) because a conviction in respect of the offence may lead to a true penal consequence: *Wigglesworth* at 554; see also *R v Martineau*, [1990] 2 SCR 633 at para 19 [*Martineau*].

[60] In the case before me, BGIS relies on both components of the *Wigglesworth* test.

(a) *Is the proceeding under EVAMPA by its nature a criminal proceeding?*

[61] BGIS argues that the proceeding by *EVAMPA* is by its nature a criminal proceeding.

[62] BGIS submits a penalty is criminal by its nature when it is aimed at promoting public order and welfare with a public sphere of activity: *Wigglesworth* at 554. The focus of the inquiry is on the nature of the proceedings themselves, taking into account their purpose as well as their procedure. Penalties have a criminal purpose when they seek to bring their subject "to account to society" for "violating the public interest:" *Guindon v Canada*, 2015 SCC 41 [*Guindon*] at para 45.

[63] I begin my analysis by asking when a proceeding is said to be "promoting public order and welfare within a public sphere of activity" in such a way as to render it a criminal

proceeding. I look to para 53 in *Guindon*, where the SCC answered this question as follows: "The question is whether the objectives of the proceedings, examined in their full legislative context, have a regulatory or a penal purpose." The SCC also went on to cite, by way of example, Wilson J's comment in *Wigglesworth*, that proceedings of an "administrative nature instituted for the protection of the public in accordance with the policy of a statute" or which impose disqualifications "as part of a scheme for regulating an activity in order to protect the public" are generally not the sort of proceedings that engage s. 11:" *Guindon* at para 53.

[64] I further note the case law suggests that merely because the legislation is aimed at addressing a public purpose does not mean it is criminal by nature. As Nadon JA of the Federal Court of Appeal [FCA] remarked in *United States Steel Corporation v Canada (Attorney General)*, 2011 FCA 176 [*United States Steel Corporation*] at para 47: "While it is true that both Wilson J. in *Wigglesworth* (page 560) and Fish J. in Martineau (para. 21) made the point that proceedings which are criminal by their very nature will have public purposes, it cannot be automatically concluded that a public purpose necessarily leads to a criminal proceeding."

[65] Nadon JA continued at paras 48-49:

> [48] Consequently, proceedings having a public purpose can be penal or not. Hence, certain proceedings with publicly beneficial purposes will automatically fall within section 11, such as proceedings brought under the *Criminal Code* (*Wigglesworth*, page 560) Other proceedings, however, with publicly beneficial purposes will almost always fall outside the realm of section 11, such as proceedings brought under provincial securities acts (*Lavallée*, para.21).
>
> [49] Thus, it seems clear that the mere existence of a public purpose cannot *per se* be determinant. Courts must go further and ask what sort of public purpose is the legislation addressing? There will not be much doubt that a public purpose pertaining to

> dishonesty, fraud or immorality will usually lead to a penal characterization by the court. However, a public purpose that pertains to financial regulations will generally fall on the administrative/non-penal side of the spectrum.

[66] I gather from the above cited case law that there are several relevant considerations when applying the first part of the *Wigglesworth* test:

- The Courts should consider whether the matter is aimed at promoting public order and welfare with a public sphere of activity; the focus of the inquiry is on the nature of the proceedings themselves, taking into account their purpose as well as their procedure.
- While proceedings which are criminal by their very nature will have public purposes, it cannot be automatically concluded that a public purpose necessarily leads to a criminal proceeding. The mere existence of a public purpose is not *per se* determinant, and the Courts must consider the sort of public purpose is the legislation addressing.
- The objectives of the proceedings must be examined in their full legislative context to see if they have a regulatory or a penal purpose.
- While a public purpose pertaining to dishonesty, fraud or immorality will usually lead to a penal characterization by the court, proceedings of administrative nature instituted for the protection of the public in accordance with the policy of a statute or which impose "disqualifications as part of a scheme for regulating an activity in order to protect the public" are generally not.
- Penalties have a criminal purpose when they seek to bring their subject "to account to society" for "violating the public interest."

[67] Applying these principles, I proceed to examine the objectives of *EVAMPA*.

[68] BGIS submits that the stated purpose of AMPs issued under *EVAMPA* is to achieve compliance with environmental legislation within the shortest time possible, and with no further occurrences of violation: Government of Canada, Environment and Climate Change Canada, Policy Framework to implement the Environmental Violations Administrative Monetary Penalties Act, Chapter 3, <canada.ca/en/environment-climate-change/services/environmental-

enforcement/publications/policy-framework-administrative-penalties-act/chapter-3.html>. BGIS further submits that the EPTC has previously acknowledged that protecting the environment is a "public purpose of superordinate importance:" *Bell Canada v Canada (Environment and Climate Change)*, 2022 EPTC 6 [*Bell*] at para 65, citing *R v Hydro-Québec*, 1997 CanLII 318 (SCC), [1997] 3 SCR 213 at para 85 [*Hydro-Québec*].

[69] I note that section 3 of *EVAMPA* sets out of the purpose of the legislation and states as follows:

Purpose of the Act	**Principe**
3 The purpose of this Act is to establish, as an alternative to the existing penal system and as a supplement to existing enforcement measures, a fair and efficient administrative monetary penalty system for the enforcement of the Environmental Acts.	**3** La présente loi a pour objet d'établir, comme solution de rechange au régime pénal et comme complément aux autres mesures d'application des lois environnementales en vigueur, un régime juste et efficace de pénalités.

[70] As the EPTC noted in *Bell* at para 15:

> Through the *EVAMPA* and the *EVAMPR*, Parliament created a mechanism to address violations of Canada's environmental laws. **Parliament's objective was "to establish, as an alternative to the existing penal system and as a supplement to existing enforcement measures, a fair and efficient administrative monetary penalty system for the enforcement of the Environmental Acts"** ("*d'établir, comme solution de rechange au régime pénal et comme complément aux autres mesures d'application des lois environnementales en vigueur, un régime juste et efficace de pénalités*") (*EVAMPA*, s 3).
>
> [Emphasis added]

[71] Further, according to the RIAS completed for *EVAMPR*, C Gaz I, Vol 150, No 15 at 1022:

> The purpose of *EVAMPA* is to establish a fair and efficient system of AMPs. AMPs encourage greater compliance and have become an increasingly common feature of federal and provincial enforcement regimes in Canada. AMPs provide a financial disincentive to non-compliance with designated legislative requirements and are an administrative alternative to other enforcement measures, which may not be effective or available in all situations.
>
> AMPs are intended to be a supplement to existing enforcement measures and to provide an alternative, in some circumstances, to prosecution in court. Therefore, a person, ship or vessel cannot be subject to both an AMP and prosecution for the same violation, and an AMP carries no possibility of imprisonment.

[72] The RAIS continues to describe the objective of the *EVAMPR* as follows:

> The objective of the proposed Regulations is to implement an AMPs regime applicable to specified legislation administered by the Department, in order to give enforcement officers a new tool to help achieve higher levels of compliance with federal environmental legislation and, as a result, improve environmental protection in Canada.

[73] Indeed, consistent with its stated purpose, section 10 of *EVAMPA* empowers officers designated by the Minister with the discretion to issue a notice of violation instead of initiating a criminal proceeding.

[74] Subsection 13(2) of *EVAMPA* specifically states:

Violations not offences	**Précision**
13(2) For greater certainty, a violation is not an offence and, accordingly, section 126 of the *Criminal Code* does	**(2)** Il est entendu que les violations ne sont pas des infractions; en conséquence, nul ne peut être poursuivi à ce

not apply in respect of a violation	titre sur le fondement de l'article 126 du *Code criminel*.

[75] Further, as the Respondent points out, when *EVAMPA* was introduced in Parliament, the Parliamentary Secretary to the Minister stated that the legislation created an administrative scheme "for responding to less serious environmental infractions that might otherwise go unaddressed because of the prohibitive cost and time associated with prosecution:" House of Commons Debates, 40th Parl. 2nd Sess, No 31, Vol 144 (23 March 2009) (Mr. Mark Warama, Parliamentary Secretary to the Minister of the Environment, CPC) [House Debates] at 1824. As Mr. Warama continued: "These administrative monetary penalties are relatively low financial penalties that are appropriate enforcement tools for responding to violations of law that are relatively minor in nature:" House Debates at 1824.

[76] Examined in its full legislative context, with a focus on the nature of the proceedings, the fact that *EVAMPA* has a public purpose of protecting the environment, *per se*, does not transform its proceedings into criminal matters. Subsection 13(2) of *EVAMPA* makes clear that a violation such as the one issued against BGIS not an offence. Parliament considers AMPs to provide an alternative to criminal proceedings, in order to address less serious environmental violations in a more efficient manner. Viewed in such context, I find that *EVAMPA* falls within those matters of administrative nature instituted for the protection of the public in accordance with the policy of a statute and one which impose disqualifications "as part of a scheme for regulating an activity in order to protect the public" (*Guindon* at para 53), rather than matters of "dishonesty, fraud or immorality" (*United States Steel Corporation* at para 49) that fall under the ambit of criminal law.

[77] I consider BGIS's argument that the SCC has found that the protection of the environment is a valid criminal law purpose: *Hydro-Québec* at para 123; *Reference re Assisted Human Reproduction Act*, 2010 SCC 61 at para 235; see also *Syncrude Canada Ltd v Canada (Attorney General)*, 2016 FCA 160 [*Syncrude*].

[78] I note that in *Hydro-Québec*, the SCC considered whether, in pith and substance, a law dealing with the dumping of toxic substances fell under the federal jurisdiction of criminal law. The majority of the SCC found that the environment is not a subject matter of legislation under the *Constitution Act*, 1867. Rather, it is a diffuse subject that cuts across many different areas of constitutional responsibility, some federal, some provincial. If a provision relating to the environment in pith and substance falls within the parameters of any power assigned to the body that enacted the legislation, then it is constitutionally valid. Thus, while in the context of *Hydro-Québec*, the SCC found the relevant environmental protection legislation dealing with control of toxic substances to fall under the criminal law ambit, it does not follow, as the BGIS urges, that any environmental law is by definition criminal in nature.

[79] I also consider *Syncrude*, another case BGIS cites in support of its argument. In *Syncrude*, the appellant produced diesel fuel at its oil sands operations in Alberta for use in its vehicles and equipment. The appellant challenged certain regulations that required all diesel fuel produced, imported or sold in Canada to contain at least two per cent renewable fuel as *ultra vires* and constitutionally invalid. At para 20, the FCA noted what was, and was not, in issue in the appeal. Among other things, the FCA noted that the appellant did not contest that the reduction of the air pollution a proper objective of the criminal law power. Rather, the core of

Syncrude's challenge was "that subsection 5(2) is not aimed at the reduction of air pollution, but is an economic measure aimed at the creation of a local market, a matter within subsection 92(13), or is directed to non-renewable natural resources, a matter of provincial legislative competence under section 92A of the *Constitution Act*, 1867."

[80] In dismissing the appeal and rejecting the appellant's argument that the regulation in question was an economic measure, the FCA went on to find that protection of the environment was, in the context of that case, a legitimate use of the criminal law purpose. However, I do not equate the FCA's finding with BGIS's contention that the protection of the environment can ***only*** be a criminal law purpose. Indeed, such a finding would be inconsistent with the SCC's teaching in *Hydro-Québec*.

[81] At the hearing before me, BGIS asked the Court to consider *John Howard Society of Saskatchewan v Saskatchewan (Attorney General)*, [2025] SCC 6 [*John Howard*], a recent SCC decision that revisited and reversed its previous decision in *R v Shubley*, [1990] 1 SCR 3. BGIS pointed to para 50 of *John Howard* to argue that the SCC rejected a "formalistic" approach to applying *Wigglesworth*. Instead, BGIS urged the Court to look at the *Wigglesworth* factors holistically together, and as society evolves, the Court should consider environmental law offences are now generally treated by the court and legislature as the most serious type of offence akin to criminal offences.

[82] I am not persuaded by BGIS's submission. Para 50 of *John Howard* reads:

> [50] As this Court recognized in *K.R.J.*, the true penal consequence test from *Wigglesworth* sets an "indisputably high bar"

> in order to give effect to s. 11's purpose by limiting the number of offences outside the criminal context that trigger the most robust procedural protections in our legal system (para. 38). However, in setting this high bar, *Wigglesworth* did not suggest that the sanctions recognized as true penal consequences, such as imprisonment, must be understood formalistically. A formalistic interpretation of these sanctions erodes the acknowledgment in *Wigglesworth* that, where non-criminal offences may lead to the imposition of truly punitive consequences, s. 11 should apply to fulfil its liberty-protecting purpose. Adopting a formalistic understanding of sanctions recognized as true penal consequences risks undermining this purpose by allowing the label placed on such sanctions, rather than their impact on individual liberty, to govern the determination of whether s. 11 applies.

[83] Thus, my reading of *John Howard* suggests that the SCC continues to hold an "indisputably high bar" before extending section 11 protection to offences outside of the criminal law context. The SCC made its comment about not applying *Wigglesworth* formalistically in the context of considering sanctions recognized as true penal consequences, such as imprisonment. Thus, the SCC's comment, in my view, is relevant when considering the second part of the *Wigglesworth* test. Moreover, it is applicable when considering sanctions that are already recognized true penal consequences, such as imprisonment.

[84] Finally, I consider BGIS's argument that AMPs are credited to the Environmental Damages Fund pursuant to subsection 27(3) of *EVAMPA* with the purpose of achieving restoration of damage to the natural environment and wildlife conversation in a cost-effective way. In addition, AMPs pursuant to *EVAMPA* are intended to bring violators to account to society, suggesting a criminal law purpose, argues BGIS.

[85] I disagree with BGIS's arguments.

[86] As the SCC found in *Wigglesworth*, the fact that the fines collected in that case did not form part of the Consolidated Revenue Fund but were to be used for the benefit of the Royal Canadian Mounted Police made it more likely that the fines were purely an internal or private matter of discipline: *Wigglesworth* at 561. While I do not consider the Environmental Damages Fund to be private or internal in nature, the fact that the AMPs are credited to a specific fund, as opposed to the Consolidated Revenue Fund is another indicator that the nature of the proceedings under *EVAMPA* are not criminal in nature.

(b) *Are the AMPs a true penal consequence?*

[87] BGIS submits a true penal consequence is one that imposes "imprisonment or a fine which by its magnitude would appear to be imposed for the purpose of redressing the wrong done to society at large rather than to the maintenance of internal discipline within [a] limited sphere of activity:" *Guindon* at para 46, citing *Wigglesworth* at 561 and *Martineau* at para 57. BGIS submits that the AMPs are a true penal consequence and the EPTC failed to consider the BGIS's submissions to that effect.

[88] BGIS makes several arguments to support its position.

[89] First, BGIS submits that while the magnitude of the AMPs in this case is not so high as to be definitively punitive when considered without context, the penalty is a true penal consequence because achieving perfect compliance with no recurrence of the violation is impossible, making the penalty's quantum disproportionate to the amount required to achieve regulatory purposes.

[90] BGIS further submits that the sentencing principle of deterrence is incorporated into the determination of the magnitude of penalties through a consideration of the recipient's history of non-compliance and any economic gain resulting from the non-compliance. BGIS submits that in the criminal law context, the SCC has defined deterrence as "the imposition of a sanction for the purpose of discouraging the offender and others from engaging in criminal conduct:" *R v BWP; R v BVN*, 2006 SCC 27 at para 2. It follows that the same principle should apply when considering the magnitude of penalties under *EVAMPR*. The magnitude of a penalty issued under *EVAMPA* can be increased for the amount of harm done to the environment, and the penalties are paid into the Environmental Damages Fund. According to BGIS, these factors indicate that the penalties are intended to some extent to provide reparation for harm done in a manner consistent with the principles of criminal sentencing.

[91] I am not persuaded by these arguments.

[92] As a starting point, I note that the SCC in *Guindon* observed that there is inevitably some overlap between the analysis of the purpose of the scheme and the purpose of the sanction although courts must look at both separately to the extent that is possible; however, the SCC also noted that situations in which a proceeding meets one but not both branches will be rare: *Guindon* at para 46.

[93] The SCC in *Guindon* dealt with penalties issued for false statements made under the *Income Tax Act*. While finding that the purpose of the proceedings in issue was to promote honesty and deter gross negligence, or worse, on the part of the preparers, the SCC found the

proceedings in question not to be criminal in nature and they did not lead to the imposition of true penal consequences. The SCC held:

> [75] Administrative monetary penalties are designed as sanctions to be imposed through an administrative process. They are not imposed in a criminal proceeding. Thus, the issue of whether a person who is the subject of an ostensibly administrative regime is in reality "charged with an offence" is addressed by the second *Wigglesworth*/*Martineau* test: Does the sanction impose a true penal consequence? *Wigglesworth* teaches that a true penal consequence is imprisonment or a fine which, having regard to its magnitude and other relevant factors, is imposed to redress the wrong done to society at large rather than simply to secure compliance: see p. 561.

[94] The SCC continued on to note that while imprisonment is always a true penal consequence, a monetary penalty "may or may not be a true penal consequence. It will be so when it is, in purpose or effect, punitive. Whether this is the case is assessed by looking at considerations such as the magnitude of the fine, to whom it is paid, whether its magnitude is determined by regulatory considerations rather than principles of criminal sentencing, and whether stigma is associated with the penalty: see, e.g., *Canada (Attorney General) v. United States Steel Corp.*, 2011 FCA 176, 333 D.L.R. (4th) 1, at paras. 76-77:" *Guindon* at para 76.

[95] As BGIS acknowledges, the penalty imposed in this case, $5000 for each of the two violations, is not significant. During the House Debates, AMPs were described as "relatively low financial penalties that are appropriate enforcement tools for responding to violations of law that are relatively minor in nature." In any event, as the parties agree, the magnitude of the penalty is not determinative on its own; even large penalties can be considered administrative, as opposed to criminal in nature: *Guindon* at para 77.

[96] I also note that in *Guindon*, the SCC considered whether deterrence could be a factor indicative of true penal consequences in that case and adopted the FCA's finding that the maximum penalty of $100,000 plus the person's gross compensation "does not demonstrate a purpose extending beyond deterrence to denunciation and punishment of the offender for the 'wrong done to society': *Wigglesworth*, *supra*, at page 561. Rather, in light of the possibility of false statements going undetected, penalties of such magnitude are necessary to prevent them from being regarded as just 'another cost of doing business': *United States Steel [Corp.]*, *supra*, at paragraph 77. [para. 47]:" *Guindon* at para 87. In other words, that the fine in question may serve as a deterrence is also not relevant.

[97] I consider BGIS's further argument that it faces significant stigma with regard to these penalties, resulting in a true penal consequence. BGIS contends that the imposition of an AMP, even one with a relatively low monetary value, can be a deciding factor in BGIS's bid for Requests for Proposals [RFPs], which are highly competitive and through which BGIS secures the majority of its work. Further, the *EVAMPA* does not allow for the ability to request the removal of a violation from the records, which BGIS submits increases stigma — in contrast to the AMPs in another regime which were found to have no "stigma associated with the penalties as no criminal record is established and any notation of the violation in the records of the Minister can be removed by request after five years:" *Mario Côté Inc v Canada (Canadian Food Inspection Agency)*, 2015 CART 25 at para 36 [*Mario Côté*]. Finally, the protection of the environment has been found to be a fundamental value and as such, the imposition of penalties may have a serious detrimental impact on BGIS's reputation generally: *114957 Canada Ltée (Spraytech, Société d'arrosage) v Hudson (Town)*, 2001 SCC 40.

[98] I find little guidance from the jurisprudence on the issue of stigma, both in terms of the nature of the stigma, and the type of evidence the Courts may require from the party who is asserting the presence of stigma. From the case law, the Courts seem to use the term “stigma” as it attaches to criminal acts such as murder, theft and the like. The Courts has also noted the concept of “moral blameworthiness” that may justify the stigma, indicating a “moral” quality to the question of stigma: *Martineau* at paras 11-12.

[99] It may well be that, as more Canadians become concerned about climate change and attach ever greater importance to the need for environmental protection, there will be those who consider breaches of environmental law immoral and liken such breaches to criminal acts. However, in this case, other than stating there exists such social stigma, BGIS presents no evidence to support its assertion. As the Respondent points out, and I agree, the only evidence BGIS submitted to the EPTC about the impact of an AMP on BGIS related to its ability to win or lose a particular RPF thus implicating its financial interests. BGIS provided no evidence to the EPTC to establish social stigma, if any, that may be associated with the receipt of an AMP.

[100] Finally, just because *EVAMPA* does not allow for the ability to request the removal of a violation from the records, as BGIS submits, does not make AMP a true penal consequence. In *Mario Côté*, the fact that the notation of the violation in the records can be removed by request after five years was but one factor the member cited for finding the sanctions imposed are not true penal consequences. The member also noted the lack of imprisonment, the modest amounts of the fines, the fact that the magnitude of the fine is determined by statutory provisions and not

by principles of criminal sentencing, and the lack of stigma associated with the penalties as no criminal record is established.

[101] Other than the possibility of the removal of the records, all the other factors noted in *Mario Côté* are present in this case, thus leading to the conclusion that the AMPs do not amount to true penal consequences.

[102] Based on the above, I find that paragraph 11(d) of the *Charter* does not apply to the absolute liability regime under *EVAMPA* as it applies to paragraph 3(a) of the *FHR 2003*.

(2) Did the EPTC err in finding that a mental element is necessary to engage the principles of fundamental justice under section 7 of the Charter?

[103] BGIS submits that the EPTC erroneously held that the absolute liability regime under *EVAMPA* does not offend the principles of fundamental justice because it requires no mental element. BGIS argues that a liability regime does not need to have a mental element for it to offend the principles of natural justice: *Re BC Motor Vehicle Act*, [1985] 2 SCR 486.

[104] BGIS further submits that the principles of fundamental justice under section 7 of the *Charter* are basic principles that underlie the notions of justice and fairness, citing *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9 at para 19 [*Charkaoui*], and that they find their meaning in the cases and traditions that form the basic norms for how the state deals with its citizens: *Canadian Foundation for Children, Youth and the Law v Canada (Attorney General)*, 2004 SCC 4. BGIS adds that these principles include a guarantee of procedural

fairness, and that the central issue in determining whether the principles of natural justice have been observed is whether the process is fundamentally unfair to the affected person: *Charkaoui* at paras 19, 22. Finally, citing *R v City of Sault Ste. Marie*, [1978] 2 SCR 1299 [*Sault Ste. Marie*] at 1311-1312, BGIS reiterates that absolute liability violates "fundamental principles of penal liability" and that there is "generally held revulsion against punishment of the morally innocent:" *Sault Ste. Marie* at 1310.

[105] While I take no issues with the submissions BSIC makes on the principles of fundamental justice, their arguments on section 7 must fail due to one fundamental flaw, namely, BGIS fails to demonstrate any deprivation of life, liberty, or security of the person to trigger a section 7 analysis in the first place.

[106] As the SCC instructed in *R v White*, [1999] 2 SCR 417 at para 38, when a court is asked to determine whether section 7 has been infringed, the analysis consists of three stages. The first stage involves asking whether there exists a real or imminent deprivation of life, liberty, security of the person, or a combination of these interests. The second stage involves identifying and defining the relevant principle or principles of fundamental justice. At the final stage, the court must determine whether the deprivation has occurred in accordance with the relevant principle or principles.

[107] BGIS's argument skips the first stage of the three-prong test. At the hearing, I asked BGIS to clarify which one of their section 7 interests is engaged in this case. Counsel for BGIS

did not address my question directly but merely reiterated that there are principles of fundamental justice at stake.

[108] Without demonstrating how BGIS's section 7 interests have been engaged by the absolute liability regime under the *EVAMPA*, there is no need for the EPTC, and now the Court, to consider whether the regime offends the fundamental principles under section 7 of the *Charter*.

C. *What is the appropriate remedy?*

[109] Given my findings above, I need not address the parties' argument on section 1 of the *Charter*. BGIS's application is dismissed.

V. Conclusion

[110] The application for judicial review is dismissed.

VI. Costs

[111] The parties will have 30 days from the date of this decision to make their submissions on costs.

JUDGMENT in T-2722-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. The parties shall file their submissions on costs within 30 days from the date of this decision.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2722-23
STYLE OF CAUSE:	BGIS GLOBAL INTEGRATED SOLUTIONS CANADA LP v THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	JUNE 9, 2025
JUDGMENT AND REASONS:	GO J.
DATED:	JULY 8, 2025

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