



**Background paper for the  
"Seminar on Strengthening the Enforcement and  
Administration of Environmental law in North America."  
PANEL 2.- Procedural and evidentiary challenges for effective  
environmental law enforcement. (f) Penalties.  
Author: CEC Secretariat.**

Relevant sentencing factors in Canada may be determined by statute and by the common law, depending on the situation. In some cases, the legislature articulates those considerations that must be taken into account. For example, in the context of the illegal discharge of a pollutant under the federal *Canada Shipping Act*<sup>1</sup>, a fine of up to \$1,000,000 and/or a term of imprisonment of up to 18 months may be assessed, depending on the following factors: a) the harm or risk caused by the offence; b) an estimate of the total cost of cleanup, of harm caused, and of the best available mitigation measures; c) any remedial action taken, or proposed to be taken, by the offender to mitigate the harm; d) whether the pollutant discharged was reported on a timely basis in accordance with the regulations; e) any economic benefits accruing to the offender as a result of the offence; f) any history of non-compliance with other legislation designed to prevent pollution.

Beyond the statutory guidance that may be provided, common law principles for environmental sentencing were articulated in *R. v. United Keno Hill Mines Ltd.*<sup>2</sup> Among the most relevant considerations are: 1) the nature of the environment affected by the offence; 2) the degree of damage and the deliberateness of the offence, together with the attitude (remorse) of the offender; 3) the existence of prior offences; 4) evidence of efforts made to comply; 4) the size and wealth of the corporation; 5) any profit obtained from the offence.

Particularly when applied to corporate directors and business leaders, fines and jail sentences can be effective deterrents. However, it is worth noting that relatively few individuals have received jail sentences in Canada for environmental offences, and far more have been incarcerated for their attempts to protect the environment.<sup>3</sup> But in recognition of the fact that punishment and deterrence are not the only goals of environmental enforcement regimes, the judiciary's remedial powers extend beyond fines and imprisonment. Indeed, the court's authority to order restoration work or other alternative measures is provided under many statutes.

Specifically, under the federal *Canadian Environmental Protection Act, 1999*<sup>4</sup>, the court may issue a variety of orders, directing the offender to: 1) prepare and implement a pollution prevention or emergency plan; 2) carry out environmental effects monitoring; 3) implement an environmental management system; 4) have an environmental audit conducted; 5) publish the facts related to the conviction; 6) cease and desist from

<sup>1</sup> Canada Shipping Act, 2001 (2001, c. 26), s. 191(4).

<sup>2</sup> (1980), 10 C.E.L.R. 43 (Yukon Territory Court).

<sup>3</sup> Boyd, David. *Unnatural Law: Rethinking Canadian Environmental Law and Policy*, Vancouver: UBC Press, 2003.

<sup>4</sup> Canadian Environmental Protection Act, 1999 (c. 33), s. 291 295-309



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engaging particular activities; 7) perform community service; 8) pay for research into the ecological use and disposal of a substance; 9) pay an amount to environmental or health groups in the affected community, or to an educational institution for environmental scholarships.

Also, the Attorney General of Canada may choose to use “environmental protection alternative measures” (EPAM) under *CEPA, 1999*, which involve the negotiation of an agreement with a corporate, government or individual offender.<sup>5</sup> With certain exceptions, EPAM programs can be used for most offences under CEPA, and may replace prosecutions if they will achieve satisfactory environmental protection and if the offender’s compliance history indicates a likely return to CEPA conformity. Under EPAMs, the offender is not required to plead guilty to the violation, but must accept responsibility, and upon fulfillment of EPAM conditions, the court will dismiss the charges against the offender.

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<sup>5</sup> CEPA, 1999, s. 295-309; see also *Compliance and Enforcement Policy for the Canadian Environmental Protection Act, 1999 (CEPA, 1999)*, Environment Canada, March 2001, pp. 30-32. For examples of EPAM agreements, see <http://www.ec.gc.ca/ceparegistry/Enforcement/EPAMs.cfm>