

ADMINISTRATIVE MONETARY PENALTIES: REGULATORS “AMP-ING” UP THE PRESSURE ON BUSINESSES

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Administrative Monetary Penalties (“**AMPs**”) are increasingly being used by Canadian regulators as sanctions for all manner of regulatory non-compliance. This bulletin explains what AMPs are and what steps you should take if faced with one.

What are AMPs?

AMPs are sanctions aimed primarily at deterring companies as well as individuals from violating legislation through financial penalties.

Instead of navigating through courts or tribunals, AMPs are imposed directly within the regulatory framework as an alternative and/or supplement to regulatory offence prosecutions. Their much faster application is the main appeal for regulators. Generally, when determining whether to impose an AMP, officers are expected to consider factors such as the nature and severity of the offence, aggravating factors, the duration of the violation, the implementation of preventative and mitigation measures, and any economic gains derived from the violation, while ensuring that the AMP remains non-punitive in nature.^[1]

AMPs offer regulators a faster, more flexible, and more economical tool compared with traditional criminal or quasi-criminal offence prosecution. While they have been in existence for many years (for example in the federal environmental protection area), they have been expanding in range and use as regulators seek to remain timely in their enforcement activities and find practical alternatives to a court system under stress.

High AMPs Upheld by Courts

While municipal AMPs such as parking fines are typically small, provincial and federal AMPs can range from nominal to substantial amounts. AMPs issued in the higher range have been upheld by courts.

For example, violations of the *Alberta Securities Act* have attracted penalties of up to \$1 million per infraction.^[2] Meanwhile, under the *Investment Canada Act* violators have been charged up to \$10,000 per day,^[3] while deceptive marketing tactics under the *Competition Act* have resulted in penalties of up to \$10 million.^[4]

Widespread Use

AMPs can be now found virtually everywhere: in federal, provincial, and municipal regulations, across most regulated sectors.

At the **municipal** level, AMPs are implemented for a variety of infractions, ranging from parking violations to issues related to business licensing. **Provincially**, their scope is equally diverse, covering sectors such as securities, environmental protections and elections. For example, Ontario introduced proposals for revamped environmental AMPs under legislation such as the *Environmental Protection Act* and the *Safe Drinking Water Act*, 2002.^[5]

Consider the Environmental Protection Act (CEPA) an guide for this Act, *Canada Shipping Act* to the *Canada Elections Act*. Some examples: \$5,000 for individuals and \$25,000 for other entities. The calculation of the AMP takes into account the baseline penalty, any history of non-compliance, the nature of the environmental harm, and any potential economic benefit from the violation. Each day that an offence continues is treated as a separate offence, so penalties can add up quickly.

• **Motor Vehicle Safety Act (Federal)**: New AMPs have been introduced as of October 3, 2023.^[6] Individual fines range from \$400 to \$4,000, while companies can face penalties from \$20,000 to \$200,000.^[7] Fines can be imposed per vehicle or even per day for ongoing violations.^[8] Several factors influence the imposition of an AMP, including the risk posed by the violation, the level of deliberateness or negligence exhibited by the offender, any economic benefits gained from the violation, efforts made to mitigate the violation, the degree of

Navigating the AMP Process

cooperation with Transport Canada, and the manner in which the non-compliance was discovered (challenging the AMP order).^[9]

The process typically involves five steps:

1. **Notice of Intention Issued:** The regulator issues a Notice of Intention to the contravening party outlining the contravention and the amount of the AMP, including dates, location and severity of occurrence and any aggravating factors considered. In limited cases, a Notice of Intention might not be mandated by the regulation— for example, where there is only one contravention, a lower severity type or the contravention occurs for only one day.^[12]
2. **Responding to the Notice of Intention:** The notified party has an opportunity to provide additional context or information about the situation.^[13]

AMPs under CEPA

In 2022, Bell Canada was fined \$5,000 due to a halocarbon leak from its AC system.^[10]

In a more high-profile case, Volkswagen was subjected to a significant \$17.5 million AMP following the vehicle emissions scandal in 2020. This was in addition to a massive \$196,500,000 fine after Volkswagen pleaded guilty to 60 offenses under the same act.^[11]

3. **Issuing the AMP:** After assessing the information provided, the regulator decides whether to impose the AMP.[\[14\]](#)
4. **AMP Review and Appeal Process:** The Director (or another reviewing authority) can be requested to review the AMP, which will either be confirmed, altered or revoked. If the Director confirms or alters the AMP, the decision can be appealed to the administrative tribunal.[\[15\]](#)
5. **Judicial Reviews, if any:** As a last resort, entities can seek a judicial review of the administrative tribunal decision.

Challenging an AMP: Your Options

AMPs, while administrative in nature, can have substantial financial and other consequences such as reputational damage. Often, no distinction is made by stakeholders or the public or the consumer between an AMP and a fine imposed by a court after a trial and a criminal conviction.

When faced with an AMP, there are several avenues for a challenge.

- **Procedural challenges** – the officer failed to comply with the procedural protections and obligations imposed by the governing statute.
- **Challenges on the merits** – the officer erred in law or fact because, for example, the facts did not make out the elements of a violation under the applicable statute, or the officer failed to properly apply the statutory factors in deciding to issue the AMP and in fixing its amount.[\[16\]](#)
- **Provincial bill or charter of rights challenges** – rely on the principle that one should not be deprived of property without due process of law.[\[17\]](#) An AMP may be found to violate this principle if the administrative procedure leading to the penalty was flawed or unjust.
- **Charter of Rights and Freedoms challenges** – under sections 7, 8 and 11 relating to issues such as the right to a fair trial, the presumption of innocence, the right to life, liberty and security, and protections from unreasonable search and seizure.
- **Defences** such as due diligence, reasonable and honest mistake of fact, officially induced error, and abuse of process *may* apply depending on the particular statutory scheme.[\[18\]](#)

What to Do If You Receive a Notice of an AMP: A Strategic Approach

When faced with a notice of an AMP, understanding its gravity is crucial. Treat it with the same diligence as you would any regulatory investigation or prosecution:

- Immediately secure the expertise of internal and/or external legal counsel.
- Preserve all relevant evidence.
- Assert your right to remain silent when necessary.

- Develop and follow comprehensive internal procedures. These should include incident response, notification, disclosure, reporting, inspections, and managing search warrants.
- Don't leave any stone unturned. Ensure a thorough and organized collection of all relevant information.
- Stay alert to any indications of potential quasi-criminal offence charges emerging from the notice.
- Review any prior interactions and dealings with the regulatory relating to the notice.
- Protect confidential and privileged communications.
- Ensure statutory timelines are met.

Above all, remember that the regulator has a number of tools at its disposal. The AMP notice is just one of them. Be prepared and treat every response not as a routine business communication but as a formal judicial filing against you.

[1] Ontario Ministry of the Environment, Conservation and Parks "[Consultation Guide on Proposed Regulations for the Expansion of Administrative Penalties](#)", at 14.

[2] *Lavallee v Alberta (Securities Commission)*, [2010 ABCA 48](#).

[3] *United States Steel Corporation v Canada (Attorney General)*, [2011 FCA 176](#).

[4] *Canada (Competition Bureau) v Chatr Wireless Inc.*, [2013 ONSC 5315](#).

[5] Environmental Registry of Ontario, [Expanding administrative penalties for environmental contraventions](#) (last updated 9 November 2023).

[6] See the McMillan [Bulletin](#) regarding the AMP regime under the *Motor Vehicle Safety Act* and Regulations.

[7] *Ibid.*

[8] *Ibid.*

[9] *Ibid.*

[10] *Bell Canada v Canada*, [2022 EPTC 6](#).

[11] *R v Volkswagen AG*, [2020 ONCJ 398](#).

[12] See the McMillan [Bulletin](#) regarding Ontario's AMP regime for environmental violations.

[13] *Ibid.*

[14] *Ibid.*

[15] *Ibid.*

[16] For example, in *Callaway v Office of the Election Commissioner*, [2023 ABKB 233](#) at paras 93-124, a political candidate fined for contravening the *Election Finances and Contributions Disclosure Act* successfully argued that the Commissioner had failed to take mitigating factors into account.

[17] *Canadian Bill of Rights*, S.C. 1960, c. 44, s. 1(a).

[18] For example, due diligence is not available under the British Columbia *Environmental Management Act*, the federal *Environmental Violations Administrative Monetary Penalties Act* or the federal *Agricultural and*

Agri-food Administrative Monetary Penalties Act. See *Mount Polley Mining Corporation v Environmental Appeal Board*, [2022 BCSC 1483](#) at para 69; *Environmental Violations Administrative Monetary Penalties Act*, [SC 2009, c 14](#), s 11(1)(b); *Canada Border Services Agency v Castillo*, [2013 FCA 271](#) at paras 20-22; *Doyon v Canada (Attorney General)*, [2009 FCA 152](#) at para 11.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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