Administrative Monetary Penalties: A Tool for Ensuring Compliance

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Introduction

Administrative Monetary Penalties ("AMP"s) are one of an array of enforcement options that includes warning letters, tickets, permit cancellations and criminal prosecutions. What distinguishes AMPs from other means of ensuring compliance with the law is that AMPs involve a penalty imposed by law or by government officials rather than by the courts. AMPs can be a useful tool for increasing compliance with any environmental regulations. They are essential to some economic instrument programs which both depend on very high rates of compliance and create new incentives to the break the law.

The process for levying AMPs is generally much simpler than the process involved in a fine being levied against a polluter through the normal prosecution process. In some cases an enforcement officer, having gathered evidence of an infraction, immediately issues a notice of violation that sets out the nature of the violation and the penalty. In other cases, administrative penalties may require a review of the facts by designated government officials before a notice of violation is sent to the violator. AMP schemes may also provide for relatively informal hearings prior to an AMP being levied and internal reviews of AMP decisions. Having a review process may reduce the number of appeals. For instance, in its first year under the BC *Forest Practices Code*, there were 50 reviews and only 19 appeals.

AMP systems usually include a right to appeal the AMP to a court or to a neutral administrative tribunal. Usually the first right of appeal is a "trial *de novo*" (i.e. complete reconsideration of the case) but any subsequent appeals or reviews are limited to narrower questions such as whether the officials making the initial decision acted within their jurisdiction and rightly decided matters of law.

The Spectrum of Enforcement Sanctions

AMPs represent one end of the spectrum of procedures by which the state can ensure compliance with the law through imposing penalties on law

breakers. Since AMPs are one of many compliance options it is essential to compare them to other options.

True Crimes

The traditional criminal process lies at one end of the spectrum. For "true crimes" such as murder and burglary, a large number of procedural safeguards have been developed over the last thousand years to protect the rights of individuals against the power of the state and to ensure that innocents are not wrongly jailed. To convict a person of a true crime, proof must be established beyond a reasonable doubt, and the accused's intent to perpetrate the crime (their *mens rea* or guilty mind) must be proven. Under both the common law and the *Canadian Charter of Rights and Freedoms* the accused has a number of rights, such as the right to be presumed innocent until proven guilty by an independent and impartial tribunal and the "right to remain silent".[1]

Automatic Administrative Monetary Penalties

At the other end of the continuum from true crimes and the full criminal process are violations for which AMPs are automatically payable. For instance, under the US *Clean Air Act's* Title IV, utilities are required to install tamper-proof continuous emissions monitoring systems. If these systems indicate that the utility has emitted more sulphur dioxide than it is allowed to, it must pay a fine of $2,000 (US) for every ton or fraction of a ton by which it exceeds its allowable limit. The fine is imposed regardless of whether the utility was negligent in allowing the exceedance to occur. Monitoring is determinative. Without government having taken any enforcement action, a utility will be subject to a further fine if it does not pay the $2,000 within a required time. Violators must also remediate their exceedance by reducing future emissions to a level which is equal to their allowed emissions level less their exceedance. Since the current price for an allowance to emit one ton of sulphur dioxide is approximately $160, the combination of an automatic $2000 per ton bill for an exceedance, plus the requirement for a future emission reduction, provides a strong incentive for compliance.

Continuum of Offences and Procedure

	True Crimes	**Regulatory Offences**	**Regulatory Offences**	**Administrative**	**Administrative**
		(Quasi-crimes)	**(Ticketting)**	**(Discretionary)**	**(Automatic)**
		Summary Conviction			
Example	murder	CEPA violation	speeding	*RCRA, Income Tax, Aeronautics*	SOx Allowance
Intent	intent necessary	usually strict liability	strict or absolute	usually absolute	absolute
Procedure	criminal procedure	criminal procedure	right to criminal procedure	right to administrative fairness	system fairness
Standard of proof	reasonable doubt	reasonable doubt	reasonable doubt	balance of probability	monitoring determinative
"Offences" under *Charter?*	yes	yes	yes	no	no
Purpose of penalty	punitive	punitive/remedial	remedial (to ensure compliance)	remedial (to ensure compliance)	remedial (to ensure compliance)
Quantum of penalty	highly discretionary/high maximum fine/jail	highly discretionary/high maximum fine	no discretion	some flexibility/medium	no discretion/medium

Regulatory Offences

In Canada, most environmental offences are enforced using procedures which lie somewhere on the continuum between true crimes and automatic AMPs. Almost all environmental enactments create offences which are prosecuted in much the same manner as true crimes.[2] Most of these offences are classified by the courts as "regulatory offences," or "quasi-crimes" that do not require proof of intent. Regulatory offences are distinct from true crimes in that they do not carry the same stigma and the offence is an adjunct to a larger regulatory scheme rather than the essence of the legislation. The main purpose of regulatory offences is not so much punishment of wrongful conduct, but encouraging compliance with a regulatory scheme.

While, proof of intent is not necessary, courts will generally assume that these offences are "strict liability offences" offences in which the accused can avoid liability if they introduce sufficient evidence that they used due diligence in avoiding the offence. In other words, although regulatory offences do not require a "guilty mind" the accused is still guilty of negligence in allowing the offence to occur. The legislature can, by statute, deny the defence of due diligence, but only where there is no possibility of jail — including incarceration for non-payment of fines.[3] Regulatory offences are tried by the same provincial court judges that hear most criminal cases and involve proof beyond a reasonable doubt. They are also subject to the procedural protections of the *Charter*.

Tickettable Regulatory Offences

Provincial offence legislation and the federal *Contraventions Act* allow enforcement officials to issue tickets for some regulatory offences. Usually, the enforcement officers can choose to either issue a ticket or give the violator an appearance notice requiring the violator to appear in remand court. The ticket is essentially a ready-made plea bargain. Enter a guilty plea — a violator only need return the ticket along with payment of a pre-set fine — and the violator avoids the inconvenience of court and the possibility of a much higher fine. Because ticketed offences potentially bring the accused into the criminal court system, and because some provincial offence legislation allows for the if the accused does not pay a fine, the courts have treated tickettable offences as "offences" for the purposes of the *Charter of Rights and Freedoms*. If the accused decides not to plead guilty, they are still entitled to proof beyond a reasonable doubt. In most cases — any case where jail is a possibility — due diligence is still a defence.

Although ticketting has many advantages, such as offering the Crown an efficient way of prosecuting minor violations, it suffers several weaknesses. In particular, ticketting is only appropriate where one quantum of fine is appropriate for all cases. For offences such as exceeding permitted emission levels, which can vary between minor accidents causing no harm, to intentional dumping causing severe environmental damage, the fines set by tickets will be inappropriate in most cases. Moreover, even if the enforcement officer decides to use the normal summary conviction process rather than issue a ticket, the low fine applicable to ticketable offences may be interpreted by the courts as an indication that the offence is not a significant one.[4]

Discretionary Administrative Monetary Penalties

The next step on the continuum of procedures by which the Crown can penalize a violator, is the use of AMPs where the decision to levy a fine and its quantum are discretionary. Although AMPs are much less common in Canada than the United States, they have been used in a number of enactments including the federal *Income Tax Act*, the *Aeronautics Act*, the *Employment Insurance Act*, the *Forest Practices Code of British Columbia Act*, and Alberta's *Environmental Protection and Enhancement Act*.

AMPs usually involve absolute liability, i.e., the violator will be subject to a penalty regardless of whether the violator used due diligence or not. However, several Canadian AMP schemes incorporate the defence of due diligence. Proof for AMPs need only be established on the balance of probabilities, not "beyond a reasonable doubt". Where AMPs are appealed to a tribunal, there may be a process of discovery in which the violator is required to answer questions and provide relevant evidence.

To ensure the constitutionality of AMPs there must be no possibility of imprisonment, the AMP system must be intended to ensure compliance with the law rather than punishing wrongdoers, and the penalties levied must not be punitive in the circumstances of any particular case.[5] Although AMPs do not invoke the procedural protections of the criminal justice system, courts will interpret AMP legislation as giving alleged violators a right to administrative fairness or natural justice. At a minimum, an alleged violator has the right to know why an AMP is being levied and must be given a chance to tell its side of the story. The exact content of this common law right will depend on specific legislation and the circumstances of a particular case.

Automatic AMPs

Finally, automatic AMPs such as those imposed by the US sulphur dioxide trading program (discussed above) involve absolute liability and are not subject to the *Charter*. The fairness of automatic penalties depends on the accuracy of monitoring systems and the appropriateness of penalties rather than elements of procedural fairness such as the right to have hearings.

Advantages of AMPs

What are the advantages of AMPs, whether they be discretionary penalties or automatic penalties, over prosecution of environmental offences using tickets or the normal criminal justice system? AMP systems have several advantages, although they remain a supplement to, not a replacement for, the criminal prosecutions. Two clear advantages are that:

- they provide for more effective deterrence, especially for minor offences; and
- they ensure consistency as to the penalties imposed on violators while at the same time being much more flexible than ticketting systems.
- minor advantages are that:
- they can be applied by officials with specialized understanding of industry, and often appeals are to tribunals with specialized understanding; and
- as compared to regulatory offences tried by the normal summary conviction procedure, they involve lower costs per sanction.

Deterrence

In the past ten years Canadian governments have relied on the threat of well publicized big fines and the threat of holding directors and officers liable for their corporation's non-compliance to encourage compliance with environmental laws. This approach has been effective in ensuring that the boards of directors and management of many large companies take an active interest in their firm's compliance with environmental laws. The case of *R.* v. *Bata Industries*, where executives of the accused corporation were found guilty and fined, was a boon to the environmental audit industry. The spectre of personal, quasi-criminal liability ensured that corporate officers and directors took an active interest in their company's compliance.

Unfortunately, the big fine/director officer liability threat is a chimaera for many minor violations. Enforcement staff at Environment Canada and provincial ministries of environment have been facing cutbacks despite a huge growth in the amount of regulations being enforced. Enforcement staff simply do not have the resources to criminally prosecute every violation they come across, and most managers, industrial plant workers, forest workers and farmers know they are unlikely to be prosecuted for minor violations.

Administrative penalties offer an effective deterrent against these minor violations. Why are administrative penalties an effective deterrent? There are five factors that determine the effectiveness of an enforcement strategy: the chances of getting caught, the chances of an enforcement response, the speed of the enforcement response, the chances of a penalty being imposed, and the severity of the penalty.[6]

Chances of getting caught

Generally, the chances of getting caught will depend on the resources devoted to enforcement. Thus, the chances of getting caught likely does not increase significantly with AMPs. The exception is the case of automatic administrative monetary penalties where there is essentially a 100 per cent chance of getting caught.

Chances of enforcement response

The complexity, cost and slowness of prosecutions using the criminal court system is a major factor in many environmental offences not being prosecuted. If a system is easier, less time consuming and less costly to use, it is more likely to be used. Administrative penalties generally are easier to impose for a number of reasons:

- if they are absolute liability offences, there is no need to gather evidence on due diligence;
- proof only needs to be established on the balance of probabilities;

- in the event of an appeal to a tribunal or court, an alleged violator may be responsible for producing relevant evidence and may be required to answer questions, thus reducing the initial evidence gathering task; and
- Most importantly, the number of cases that are brought before an independent tribunal or the courts tend to be lower for AMPs. Less than 1% of AMPs levied by the US EPA are appealed. While over three quarters of Ontario's occupational safety and health at quasi-criminal prosecutions go to trial, only 45% of the AMPs imposed under British Columbia *Workers' Compensation Act* for occupational health and safety offences are appealed.

As a result, the number of investigations leading to significant enforcement action tends to be much higher in systems using AMPs. For British Columbia occupational safety and health legislation, where administrative monetary penalties are used, the probability of a penalty being assessed is twice as high as the probability of a prosecution under Ontario's health and safety legislation, which uses quasi-criminal prosecutions.[8] In 1993-94, of 55 investigations under the *Canadian Environmental Protection Act*, there were only 3 prosecutions. In comparison, in 1995-96, there were 691 investigations under the BC *Forest Practices Code* and 437 confirmed contraventions. AMPs were levied in 128 cases. In addition, non-monetary administrative penalties were issued in many cases: 32 remediation orders, 9 forfeitures and 97 stop work orders. Also, 124 tickets for *Code* infractions were issued under the BC *Offence Act*.

Speed of enforcement response

Obviously both tickets and AMPs offer a very fast process for the initial assessment of the penalty. Moreover, as discussed above, it is less likely that an AMP will be appealed to an administrative tribunal than a regulatory offence going to trial. For the first year of the BC *Forest Practices Code*, only 19 appeals were made.

Chances of penalty imposition

Empirical research in the field of deterrence theory suggests that certainty of punishment is more important than the severity of the penalty in modifying behavior.[9] A violation is more likely to lead to a penalty in an AMP system than a traditional criminal court system, both because AMPs are more frequently used and less frequently appealed. Also, because of differences in the rules of evidence, the use of the "balance of probabilities" test for liability and the removal of the due diligence defence, the chances of penalty imposition are usually assumed to be greater for AMPs.

Severity of penalty

This is the one instance where the criminal justice system has a definite advantage over an AMP system in terms of encouraging compliance. First, the stigma of a prosecution in the criminal court system is an effective deterrent. The opprobrium of having to appear in remand court along with alleged drug traffickers and wife beaters is significant. Although the penalties imposed by criminal courts are often highly uncertain, usually the upper limits are very high, and with proper guidance from the prosecutor as to the importance of the offence, criminal court judges tend to impose very significant penalties. Unlike AMPs, these penalties can have a punitive element. Even where no harm is proven, judges are willing to apply significant sentences where the prosecutor has educated the court as to the significance of the offence.[10]

Although the highest AMPs will tend to be lower than the highest criminal fines and must not be punitive in the circumstances of a particular case, AMPs can be much greater than ticket fines and can be very significant. For instance, the maximum penalty under the US *Resource Conservation and Recovery Act* is $25,000. The maximum applicable under BC *Forest Practices Code* is $100,000.[11]

AMPs and Deterrence Especially Important for Economic Instruments

Thus, administrative penalties offer a means by which enforcement officials can penalize minor violations for which a prosecution in the criminal court system may not be appropriate given the nature of the offence and the limited resources of enforcement staff.

A credible enforcement threat is also important as emission fees and tradeable emission permit systems create incentives to exceed permitted emission levels. If enforcement is not rigorous, polluters may try to avoid emission charges or avoid the need to purchase permits by exceeding their permitted emission levels. For tradeable permit systems or emission fees based on permitted emission levels, emitters are also more likely to operate "closer to the margin" and accidentally exceed permitted emission levels.

However, compliance with permitted emission levels is essential to the working of emission trading systems. If polluters can even marginally exceed their permitted levels without facing a penalty there will be less demand for allowances or credits. This will reduce the economic return to

hose who have invested in emission reductions, hoping to profit from the sale of surplus permits or credits. Exceedances of permitted levels not nly harm the environment but also devalue the currency being traded (i.e., tradeable permits, emission reduction credits, emission allowances etc.). f emitters can trade allowances which are not truly surplus, this will have spill over effects among other well intentioned emitters who may buy the redits and increase their emissions. Designing an effective automatic administrative penalty system was a key to many American environmental groups' support for the US sulpher dioxide allowance trading program.

Consistency

Another advantage to AMPs is they can offer consistency in penalizing violations. Many AMP systems involve formulas or matrices that weigh different factors, add to these an estimate of the economic benefits the offender may have derived from non-compliance, and indicate an appropriate fine. For instance, under the US *Resources Conservation and Recovery Act*, a base penalty is derived from a matrix that considers the extent of the violator's deviation from the legal standard, the potential harm which could result from the violation and the duration of non-compliance. The base penalty is then adjusted for various factors such as the violator's degree of negligence, the violator's compliance history and the violator's ability to pay.[12] Finally, the EPA uses a computer program to calculate the economic benefits derived from non-compliance and adds this to the penalty. The result is penalties which are consistent and commensurate with the offence.

By providing an efficient means by which minor violations can be penalized and by incorporating economic benefits into the fine calculation, AMPs offer a level playing field between firms with impeccable compliance records and those with poor compliance records. They also ensure consistent application of penalties among violators.

Lower costs per sanction

A properly designed AMP system is likely to be less costly per sanction than a full criminal prosecution. However, this does not mean that AMP systems can justify cutbacks in the budget for enforcement staff. As discussed below, the criminal court system is still necessary for relatively serious offences, and for these offences it is still necessary to accept the costs of criminal prosecution.

Also, an AMP system is not inherently less expensive than the criminal justice system. For minor offences the use of tickets is a very effective means of imposing penalties. Also, appeals to an administrative tribunal under an AMP system may be more costly than criminal prosecutions.

Application of penalties by officials with specialized knowledge

AMP systems may also have an advantage in that penalties are imposed by enforcement officers with a specialized knowledge of the industry involved and appeals can be heard by panels with specialized knowledge. A frequent criticism of the use of provincial court judges to try environmental offences is that they have little interest or expertise in relation to specialized regulatory offences and that they are more familiar with and more concerned about, criminal offences.

The advantages of removing regulatory violations from the realm of judges more experienced with criminal law should not be over-estimated. While judges may face difficulties in assessing the competing expert testimony that is often the grist of environmental prosecutions, it is also true that the Canadian judiciary has shown an ability to rise to the challenge of complex and highly technical cases. Environmental prosecutors, when given the resources to fully prepare for environmental prosecutions, have by and large been successful in impressing on the courts the importance of regulatory offences and have been successful in getting the courts to impose substantial penalties and apply innovative sentencing. Thus, the crucial factor in whether judges adequately deal with environmental offences appears to be the quality of the prosecution.[13] Nonetheless, AMPs may have an advantage in that there are lower costs involved in bringing the tribunal up to speed on the significance of a violation.

Are Administrative Monetary Penalties Fair to the Violator?

In assessing AMPs, it is essential to consider whether or not they are fair to the violator. In some jurisdictions, industry has resisted AMPs arguing that they take away a corporation's common law and constitutional protections.[14] In assessing fairness to an individual or corporation charged with violating an environmental law, it is important to recognize that fairness does not exist in a vacuum. It involves a weighing of competing interests.

The societal interest in a clean environment must be weighed against the corporation's or individual's interest in fairness in their individual case.

It is also important to distinguish technical regulatory offences of the sort for which AMPs are appropriate from true crimes. The maxim "better ten guilty people go free than one innocent person go to jail" may be appropriate when there is a possibility of jail. Proof beyond reasonable doubt is appropriate for crimes which have a moral stigma attached to them. However, AMPs are purely monetary and the offences they are applied to carry little stigma.

Are absolute liability offences fair? Is it unfair to deny the defence of due diligence? It is important to remember that:

- Damage to the environment may occur even if an offender is not negligent.
- Even if a violator is not negligent, he or she may gain some competitive advantage by being out of compliance.
- Due diligence can be taken into consideration in the penalty. Where a violator has shown the utmost diligence in avoiding the occurrence of an offence, the quantum of the penalty can be reduced.
- The law recognizes liability without negligence in other areas. For instance, in contract law, liability is determined by the terms and conditions of contracts without regard to the existence of negligence. Mr. Justice Cory of the Supreme Court of Canada in *R.* v. *Wholesale Travel* made an analogy between contract law and regulatory law, stating that those that are participating in certain industries can be deemed as having accepted the terms and conditions of government regulation of those industries.

With regard to removing the procedural protections of the criminal process and proof beyond reasonable doubt, it is again important to make comparisons with the civil law where liability is determined on the balance of probabilities without the protections of criminal procedure. Where penalties are not punitive and the offences do not carry stigma, society's interest in ensuring a clean environment through the creation of a credible enforcement threat may outweigh the interest in not penalizing an innocent.

The Continuing role for the Criminal Court System

An important design issue for any AMP system is which offences should be covered by AMPs, which by criminal prosecutions, and which by either AMP or prosecution. For many offences such as willful dumping, interference with enforcement officials, falsifying records, etc., the criminal court system is the only appropriate remedy. These are true crimes. The solemnity and stigma of the criminal court system are appropriate for these offences. Moreover, because of the stigma attached to these offences, they are more likely to be considered by the courts as "offences" for the purposes of the *Charter of Rights and Freedoms*, and thus offences for which AMPs are inappropriate.

For most offences it is necessary to provide the government with a choice between imposing AMPs or using the criminal system. For instance, in one recent BC prosecution, a trucker was jailed for being an unlicensed transporter of "special" (i.e. hazardous) waste after he had ignored 16 warnings. While an administrative monetary penalty may have been appropriate in the first instance, it is essential to retain the right of criminal prosecutions for violators who flout the law. Similarly, while AMPs may be appropriate for minor violations that cause no damage and usually go unprosecuted, criminal prosecutions will be appropriate for violations having greater consequences. In Alberta, cases involving environmental harm are usually prosecuted in the criminal justice system.

Although AMPs have considerable potential as an added tool in the enforcement toolbox, it must be reiterated that there is potential for improving the quasi-criminal process through processes such as ticketting and amendments to the procedures used in provincial offence legislation. Among other things the following reforms to the existing regulatory offence system are possible:

- increased use of ticketting for minor offences. All provinces have legislation allowing ticketting, but often there is no provision for the use of tickets for many minor environmental offences.
- amendments to environmental legislation allowing innovative criminal sanctions. For instance, the *Canadian Environmental Protection Act* and the *Fisheries Act* allow for remediation orders, mandatory publication of public apologies, compensation for government costs and orders to pay money for research, etc. An example of the use of these innovative provisions is *R.* v. *Corner Brook Pulp and Paper Limited*[15] in which the court ordered the offender to not only pay a $500,000 fine, but also to pay an additional $250,000 towards scholarships and environmental remediation, and to build an effluent treatment plant by July 1st, 1996. To ensure the timely completion of the effluent treatment plant the Court ordered the accused to file a $500,000 letter of guarantee from which $100,000 to $200,000 would be forfeited for every month the completion of the plant was late.

- amendments to environmental legislation altering rules of criminal evidence.

Conclusion

A broad range of enforcement tools is the best strategy for increasing the effectiveness of environmental law enforcement. The range of tools which should be available includes the creation of environmental crimes, the continued use of the criminal court system for quasi-criminal offences, ticketting, discretionary AMPs and automatic AMPs. AMPs are particularly effective in providing a deterrent to minor violations for which:

- the criminal justice system is too cumbersome a response, and
- ticketting is an inappropriate remedy because of the need to ensure that the penalty is appropriate to the circumstances.

AMPs are a most effective deterrent where their use involves absolute liability, proof on the balance of probabilities and the potential for significant but not punitive fines. Automatic penalty systems where a violation automatically leads to a debt due and payable to the government is an innovation in environmental law which is particularly effective. Administrative monetary penalties - either discretionary or automatic - are particularly important in the context of economic instruments such as effluent fees and tradeable emission permit systems which create new incentives to non-compliance.

References

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ENDNOTES

1. The right to be presumed innocent is enshrined in section 11(d) of the *Charter;* the right to remain silent is not spedifically referred to in the *Charter,* but section 7 has been interpreted as including a right against self-incrimination (*Thompson Newspapers Ltd. v. Canada(Director of Investigation and Research, Restrictive Practices Commission)*, [1990] 1 SCR 425), and s. 11(c) protects an accused's right not to be compelled to testify in a proceeding against the accused.

2. Please note that the Criminal Code creates two types of offences: indictable offences and summary offences. Indictable offences are the most serious offences and generally give the accused rights such as the right to trial by jury. For summary offences, the procedure is somewhat abbreviated. Almost all provincial offences and federal environmental offences are tried by a summary conviction.

3. See *R. v. Wholesale Travel Inc.* [1991] 3 S.C.R. 154. The need for a mental element is generally seen as being protected by section 7 of the

Charter, and section 7 does not apply to offences for which there is no possibility of incarceration: *R. v. Richard* (SCC, Doc. No. 24582, October 31, 1996).

4. This concern should not be exaggerated. It is open for the Crown to argue that the reason its normal summary conviction process is used rather than a ticket being issued is because the particular offence was significantly more serious.

5. AMPs — involving the quick levying of fines by government enforcement staff, usually with no public hearing before the initial levying of the fine — will be unconstitutional if they trigger the *Charter* right "to be presumed innocent until proven guilty" in a "public hearing by an independent and impartial tribunal."

6. Environment Canada, *Administrative Monetary Penalties: Their Potential Use in CEPA*. (Number 14 of the Reviewing CEPA, the Issues Report Series, 1994).

7. The *Workers' Compensation Act*

8. Rick Brown, "Administrative and Criminal Penalties in the Enforcement of Occupational Health and Safety Legislation" (1992), 30 *Osgoode Hall Law Journal* 691.

9. Environment Canada, *Supra*, page 11.

10. John Swaigen, *Regulatory Offences in Canada: Liability and Defences* (Toronto: Carswell, 1992) at 224 - 226.

11. *Administrative Remedies Regulation*, BC Reg. 166/95.

12. Consideration of the violator's ability to pay is particularly important for any penalty system in which relatively high fines can be levied. If the fine is found to be punitive in the circumstances of a particular case — if, for instance, it puts an offender out of business or reduces them to penury – the courts may find that the penalty is an offence for the purposes of the *Charter* and may find that certain procedural safeguards usually absent from administrative penalty systems are required.

13. John Swaigen, *Supra* at 224 - 226.

14. See *In the Manner of the Forest Practices Code of British Columbia Act, between Timberwest Forest Ltd. and Forest Practices Board*, Statement of points of Timber West Forest Ltd.

15. *R.* v. *Corner Brook Pulp and Paper Limited* (14 May, 1996, Prov. Ct. Nfld.).
