

Big fish, small fish; big fine, small fine – Recent penalties under Canada’s Fisheries Act

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Environmental offences are typically punishable by fine; however fines can vary, even under a single statute. Canada’s *Fisheries Act*¹ prevents any person from undertaking work or activity that results in a serious harm to fish belonging to a commercial, recreational, or Aboriginal fishery, with some exceptions.² The *Fisheries Act* also prohibits depositing deleterious substances in water frequented by fish,³ and throwing overboard certain substances.⁴

Below are summaries of two recent cases under the *Fisheries Act*. The fines imposed in each varied dramatically.

Irving Pulp and Paper Limited

On November 5, 2018 Irving Pulp and Paper Limited pled guilty to three offences under the pollution prevention provisions of Canada’s *Fisheries Act* in the New Brunswick Provincial Court. Irving was ordered to pay a \$3.5M fine. This is one of the largest ever fines imposed on a company for an environmental violation.⁵

Irving’s charges derive from several discharge events between June 2014 and August 2016. The charges were for the discharge of improperly treated and deleterious effluent into the St. John River from the Irving plant.

Pursuant to the *Pulp and Paper Effluent Regulations*,⁶ Irving reported the discharges to Environment and Climate Change Canada.⁷

Irving’s total \$3.5M penalty will be apportioned between the Government of Canada’s Environmental Damages Fund (\$2.34M), and the University of New Brunswick’s Canadian Rivers Institute (\$1.16M) to be used for research and support projects for conservation, protection, and the restoration of Atlantic salmon in New Brunswick. Irving was also directed to create a plan that clearly describes how Irving will progress towards the commissioning of a new effluent treatment system, as well as the interim measures that Irving must take.⁸

¹ RSC 1985, c F-14 [Fisheries Act].

² *Ibid*, ss. 35(1)-35(2)

³ *Ibid* at s 36(3).

⁴ *Ibid* at s. 36(1)

⁵ Government of Canada, News Release, “Irving Pulp and Paper Limited Sentenced to pay \$3.5 million penalty for three Fisheries Act offences and commits to construct new effluent treatment facility” (5 November, 2018) [Irving].

⁶ *Pulp and Paper Effluent Regulations*, SOR/ 92-269.

⁷ Irving, *supra* note 5.

⁸ *Ibid*.

Arctic Glacier Canada Inc.

Coincidentally, on November 5, 2018, Arctic Glacier Canada Inc. pled guilty to a violation under the *Fisheries Act* in the Provincial Court of British Columbia.⁹ Arctic Glacier was ordered to pay a fine of \$350,000.

Arctic Glacier's charges derive from a fish kill near the Golden Ears Bridge in Surrey, British Columbia.¹⁰ Enforcement Officers from Environment and Climate Change Canada investigated the incident, and concluded that equipment in Arctic Glacier's facility discharged an ammonia solution that ended up in a storm water sewer system that led to an unnamed creek. Water samples were taken from the storm sewer system, as well as near the Arctic Glacier facility, and were found to be harmful to fish.¹¹

In addition to the \$350,000 fine, Arctic Glacier was ordered to complete an independent environmental audit of its facility, in order to implement a storage and disposal procedure for aqueous ammonia. Arctic Glacier was also ordered to train its employees on ammonia management, and to enhance its ammonia-based refrigeration and related exhaust systems as required. Arctic Glacier's fine will be directed to the Environmental Damages Fund.¹²

How Can We Explain the Difference in Magnitude Between the Fines?

Was this a second or subsequent offence for Irving?

Could fines vary so greatly from coast to coast?

Or was it that the New Brunswick Provincial Court considered Irving's actions egregious, because of the number of discharges over a two-year period?

The Environment and Climate Change Canada news releases don't tell us much.

Will we ever know?

⁹ Government of Canada, News Release, "Ice-making company fined \$350 000 for Fisheries Act violation" (9 November, 2018) [Arctic Glacier].

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

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