Federal Court of Appeal | Cour d'appel fédérale

Date: 20250620

Docket: A-205-25

Citation: 2025 FCA 122

2025 FCA 122 (CanLII)

Present: **ROUSSEL J.A.**

BETWEEN:

UNIVERSAL OSTRICH FARMS INC.

Appellant

and

CANADIAN FOOD INSPECTION AGENCY

Respondent

Motion dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on June 20, 2025.

REASONS FOR ORDER BY: ROUSSEL J.A.

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REASONS FOR ORDER

ROUSSEL J.A.

[1] The appellant, Universal Ostrich Farms Inc., has appealed a judgment of the Federal Court dated May 13, 2025 (2025 FC 878), dismissing its applications for judicial review of two related decisions made by the Canadian Food Inspection Agency (CFIA) under section 48 of the *Health of Animals Act*, S.C. 1990, c. 21 (HAA). The first decision was issued on December 31, 2024, and required the appellant to dispose of all the ostriches on the appellant's farm by February 1, 2025, after laboratory testing confirmed infection with H5N1 highly pathogenic

avian influenza (HPAI). The second decision, dated January 10, 2025, denied the appellant's request for an exemption to depopulation. In the judgment under appeal, the Federal Court found that the CFIA's two decisions were reasonable and made in a procedurally fair manner.

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[2] The appellant has brought a motion seeking an order staying the execution and enforcement of the notice to dispose issued by the CFIA on December 31, 2024, and/or otherwise prohibiting and restraining the CFIA from "culling" the ostriches until such time as this Court renders a final determination in the appeal. The appellant also seeks an order permitting the appellant to conduct diagnostic testing on its ostrich flock while the birds remain under quarantine. Finally, the appellant seeks an order suspending the operation of any CFIA directive or policy that currently prohibits independent or non-CFIA diagnostic testing of the quarantined ostriches.

[3] To succeed in its motion, the appellant must demonstrate that it meets the requirements of the conjunctive tripartite test for granting a stay or interlocutory injunction set out by the Supreme Court of Canada in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311. Specifically, the appellant must establish that the appeal raises a serious issue, that it will suffer irreparable harm if the stay is not granted, and that the balance of convenience favours granting the stay.

[4] Regarding the first element of the test, the appellant raises several grounds of appeal in the notice of appeal. In particular, the appellant submits that the Federal Court erred in its analysis of the CFIA's "stamping-out" policy and the CFIA's mandate, that it improperly

deferred to the CFIA's expertise in conducting its reasonableness review and failed to fully consider the consequences of the decisions on the appellant, the ostrich herd and the public interest in scientific research, and that it erred in refusing to consider relevant evidence relating to the CFIA's decisions to restrict or deny testing and in concluding that the CFIA's dealings with the appellant met the requisite degree of procedural fairness. The appellant further asserts that the Federal Court's decision should be set aside due to the "ineffective assistance" of the appellant's former counsel at the hearing of the applications.

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[5] The threshold for establishing a serious issue is generally a low one and will be met if the issues raised in the notice of appeal are not frivolous or vexatious (*RJR-MacDonald* at 348). I am satisfied that the appellant has established that the appeal raises a serious issue.

[6] With respect to the second element of the test, the appellant submits that it will suffer irreparable harm if the stay is not granted. The appellant alleges that the disposal of the ostriches would mean the closure of the appellant's 25-year-old business, the loss of the appellant's decades-long efforts in cultivating a unique flock of ostriches and the end of the appellant's scientific and commercial ventures to harvest antibodies from the ostriches' blood or eggs to create a biomedical product for treating or diagnosing avian influenza.

[7] As the Supreme Court of Canada noted in *RJR-MacDonald*, irreparable harm refers to the nature of the harm suffered, as opposed to its magnitude. It is "harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other" (*RJR-MacDonald* at 341). The Supreme Court of Canada provided that

such harm could include instances where the party seeking the stay will be put out of business by the court's decision or will suffer permanent market loss or irreversible damage to its business reputation (*RJR-MacDonald* at 341).

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[8] I accept that the depopulation of the appellant's farm will have a real and negative impact on the appellant. It will undoubtedly seriously disrupt the appellant's business operations and cause the appellant severe economic loss. Although the appellant may be entitled to compensation under the *Compensation for Destroyed Animals and Things Regulations*, S.O.R./2000-233, the compensation for an ostrich is limited to a maximum of $3,000 per animal, an amount that is lower than the alleged average price of approximately $7,500 per ostrich. This Court held in *David Hunt Farms Ltd. v. Canada (Minister of Agriculture)* (C.A.), [1994] 2 FC 625, that where the "amount of the recoverable loss is restricted by statute, and that amount is significantly less than the actual loss to be incurred if the injunction does not issue, irreparable harm is established" (*David Hunt Farms* at 633).

[9] Likewise, I accept that a refusal to grant the stay will likely render the appeal moot as the very subject matter of the appeal will be destroyed.

[10] I am therefore satisfied that the appellant will be exposed to irreparable harm if the stay is not granted.

[11] With respect to the third element of the test, I note that a stay was granted by the Federal Court on February 1, 2025, and that the respondent has agreed not to proceed with the disposal

of the ostriches pending the determination of the stay motion. That said, I accept that further delay can potentially increase the risks posed by the HPAI virus and cause harm to Canada's international trade agreements. I also agree that the public interest in the CFIA being able to carry out its mandate of mitigating risks posed by infectious animal diseases is of central importance in determining the balance of convenience. Conversely, the appellant is also entitled to a meaningful right of appeal. I am satisfied that in this case, an expedited hearing of the appeal can achieve an appropriate balance between these two competing interests.

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[12] Accordingly, an expedited hearing will be ordered and the stay will thus be granted, but only in respect to the notice dated December 31, 2024, requiring the appellant to dispose of the ostriches pursuant to subsection 48(1) of the HAA. The other two orders sought by the appellant are denied. The stay will be in effect pending the disposition of the appeal, or until another date should the Court order otherwise.

[13] The appeal shall proceed on an expedited basis as follows:

a. The appellant is not required to prepare and file an appeal book, but instead shall file a copy of the application records that were before the Federal Court with the Registry no later than July 2, 2025;

b. The appellant shall serve and file the appellant's memoranda of fact and law and book of authorities no later than July 4, 2025;

c. The respondent shall serve and file the respondent's memoranda of fact and law and book of authorities no later than July 11, 2025;

d. As an aid to argument, the parties may file a compendium or daybook consisting of documents already filed before the Court no later than two days before the day of the hearing of the appeal;

e. For the convenience of the parties and the Court, all documents shall be served and filed electronically unless otherwise ordered;

f. The parties shall advise the Judicial Administrator of their availability no later than June 25, 2025, for a hearing to be conducted during the weeks of July 14, 2025, or July 21, 2025, at the latest, the estimated length of hearing as well as their preference for the hearing to be conducted in person in Ottawa or by videoconference.

"Sylvie E. Roussel"
J.A.

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FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-205-25
STYLE OF CAUSE:	UNIVERSAL OSTRICH FARMS INC. v. CANADIAN FOOD INSPECTION AGENCY

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:	ROUSSEL J.A.
DATED:	JUNE 20, 2025

WRITTEN REPRESENTATIONS BY:

Umar Sheikh	FOR THE APPELLANT
Aileen Jones Banafsheh Sokhansanj Paul Saunders	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Sheikh Law Victoria, British Columbia	FOR THE APPELLANT
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