Federal Court of Appeal File No.
Federal Court File No. T-294-25/ T-432-25

FEDERAL COURT OF APPEAL

BETWEEN:

UNIVERSAL OSTRICH FARMS INC.

Appellant

and

CANADIAN FOOD INSPECTION AGENCY

Respondent

NOTICE OF APPEAL

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears below.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at Vancouver.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341A prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor or, if the appellant is self-represented, on the appellant, WITHIN 10 DAYS after being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341B

prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

May 26, 2025

Issued by: Original signed by G. Lischenski,
Registry Officer

Address of local office:
Pacific Centre
P.O. Box 701
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TO:
Attorney General of Canada
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APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the order of the Honourable Mr. Justice Zinn dated May 13, 2025 and entered as 2025 FC 878, which dismissed Universal Ostrich Farms Inc.'s (the "Appellant's") application for judicial review of decisions made by the Canadian Food Inspection Agency ("CFIA") ordering the slaughter of the Appellant's ostrich herd (the "Culling Decisions").

THE APPELLANT ASKS that:

1. The order of Justice Zinn be set aside;
2. The order be replaced with an order quashing the Culling Decisions;
    a. Alternatively, the matter be remitted to the CFIA for reconsideration in accordance with the law;
    b. In the further alternative, the matter be remitted back to the Federal Court for reconsideration in accordance with the law;
3. Costs of this appeal and the proceeding below; and
4. Such further and other relief as counsel may advise and this Honourable Court may permit.
5. The Appellant further requests and/or notes that it will imminently be filing a motion requesting a stay of the execution and enforcement of the Culling Decisions and/or an order otherwise prohibiting and restraining the CFIA from culling the Appellant's ostrich herd until such time as this Honourable Court renders a final determination in this appeal.

THE GROUNDS OF APPEAL are as follows:

6. The Appellant owns a unique breeding stock of ostriches on a farm located in a remote part of British Columbia. On December 30, 2024, the CFIA received reports ostrich deaths on the Appellant's property and declared the Appellant's farm an "Infected Place" pursuant to the *Health of Animals Act*, SC 1990, c 21 (the "*Act*"). The CFIA further required that the flock be quarantined and imposed various other measures including restrictions on the Appellant's ability to test and treat the flock.

7. On December 31, 2024, laboratory testing revealed a subtype of avian influenza in a small portion of the Appellant's ostrich flock. The CFIA ordered the destruction of the entire flock that same day (the "Destruction Decision"). The CFIA relied on its authority under the *Act* and upon its policy of "stamping-out" *aka* rapidly culling infected avian populations expressed in the CFIA's policy called the *Highly Pathogenic Avian Influenza 2022 Event Response Plan*.

8. The Appellants subsequently requested an exemption from the order to slaughter its ostriches, but this request was denied by the CFIA on January 10, 2025 (the "Exemption Denial"). Next, in late January 2025, the Appellant requested permission to conduct or otherwise arrange additional tests on its ostriches (who then appeared healthy) to confirm whether they continued to shed the avian influenza virus and to have genetic experts analyze its flock. These requests, along with any subsequent requests to conduct testing or otherwise examine the health of its ostriches, were denied by the CFIA.

9. The Appellant's subsequently applied for judicial review of the CFIA's Culling Decisions, which included the legislative and policy framework under which the

Culling Decisions were made. In dismissing the application for judicial review, the lower court made multiple reversible errors.

10. First, the lower court erred in finding that the CFIA's "Stamping-Out Policy" – under which the Culling Decisions were made—was consistent with the CFIA's mandate under the *Act*. Specifically, the court:

a. Took an unduly narrow interpretation of the CFIA's mandate under the *Act;*

b. Erred in its interpretation of s. 48 of the *Act* including, among others, ignoring important limitations on the CFIA's discretion found therein;

c. Misapplied the test in reviewing policy decisions by administrative decision-makers;

d. Misapprehended several of the Appellant's arguments including, among others, that the CFIA's discretion was impermissibly and unreasonably fettered; and

e. Erred in law when assessing the evidence before the court including, for instance:

    i. concluding that the court need not engage with the parties' expert reports in conducting its analysis of whether the CFIA's policy decisions were rational and justified and

    ii. in accepting and relying upon the scientific evidence and legal conclusions as stated in Dr. Cathy Furness' affidavit.

11. Next, the court below erred in finding that the Culling Decisions were reasonably made. Specifically, the court:

a. Failed to properly conduct a reasonableness review in assessing the Culling Decisions including by, among others, unduly deferring to the CFIA's expertise in a manner inconsistent with the approach described in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*];

b. Failed to fully consider the consequences of the Culling Decisions on the Appellant, the ostrich herd, and the public interest in scientific research; and

c. Misapprehended several of the Appellant's arguments, including failing to consider whether the CFIA's decisions restricting or denying testing or analysis of the health of the ostriches were reasonable.

12. In failing to consider whether the CFIA's decisions restricting or denying further testing, the lower court:

a. Erred in refusing to consider relevant evidence relating to those decisions and

b. Erred in concluding that the CFIA's dealings with the Appellants concerning the Culling Decisions met the requisite degree of procedural fairness.

13. In addition and/or in the further alternative, the Appellant submits that the order of Zinn J. be set aside given the ineffective assistance of Appellant's counsel at the application for judicial review. The Appellant's prior counsel's acts and omissions at that hearing fell well outside the range of reasonable professional assistance, amounted to incompetence, and resulted in a miscarriage of justice. Notably, the Appellant's prior counsel had a financial stake in the destruction of the Appellant's ostriches,

resulting in a blatant conflict of interest that adversely affected counsel's representation of the Appellant's interests.

14. The Appellant relies upon such further and other grounds as it will elaborate upon in its Memorandum of Fact and Law and such further and other grounds that this Honourable Court may permit.

15. The Appellant submits that this Court has the jurisdiction to grant the orders requested pursuant to, among others, sections 27 and 52 of the *Federal Courts Act*, RSC 1985, c F-7; and Parts 3 and 6 of the *Federal Courts Rules*, SOR/98-106.

Date: May 26, 2025

US

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I HERBY CERTIFY that the above document Is a true copy of the original *filed in*

the Court on May 26, 2025

Dated May 26, 2025
Ginette Lischenski

Digitally signed by Lischenski, Ginette
DN: cn=Lischenski, Ginette, c=CA, o=GC, ou=CAS-SATJ, email=ginette.lischenski@cas-satj.gc.ca
Date: 2025.05.26 13:11:02 -07'00'