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Federal Court of Appeal File No. A-205-25
Federal Court File No. T-294-25 / T-432-25

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

UNIVERSAL OSTRICH FARMS INC.

Applicant

and

CANADIAN FOOD INSPECTION AGENCY

Respondent

APPLICANT'S REPLY MEMORANDUM

(*Supreme Court Act,* Section 40)

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PART I – OVERVIEW

1. The Respondent portrays this case as a fact-bound quarrel over one farm,[1] yet the Federal Court of Appeal ("FCA") expressly held that *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, requires reformulation of how reasonableness review applies to discretionary policy decisions made under statutory powers and that the approach in *Maple Lodge Farms Ltd. v. Government of Canada*, [1982] 2 SCR 2, has been overtaken.[2] Whether to confirm or correct that reformulation is a question of public importance squarely raised on this record. The FCA itself noted that "The parties did not refer us to any decision of this or another appellate court that has ruled on this question," underscoring the system-wide significance of the framework questions presented.[3]

2. The FCA's later stay reasons acknowledged, but did not decide, the legal framework for reconsideration when facts evolve during court-ordered preservation.[4] The Court directed fresh facts to the Minister/CFIA and emphasized that whether any duty to reconsider exists was not before it. The Respondent's own reliance on the September 22, 2025, reconsideration letter in its leave response confirms the issue's practical salience in emergency-policy settings where facts evolve during litigation and judicial preservation orders are in force.[5]

3. This case arrives with an unusual, preserved record created by successive stays, 267 days without disease transmission despite continuous exposure, an archetype of matters capable of repetition yet evading review. The Court itself recognized the national stakes by ordering an expedited leave schedule and an interim-interim stay with CFIA custody.[6] The preserved record permits appellate guidance that

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[1] Respondent Response to Application for Leave to Appeal (RR), paras 51–52 (asserting the case is highly specific with no broader application).
[2] *Universal Ostrich Farms Inc. v. CFIA*, 2025 FCA 147 (CanLII) [FCA Decision], paras 48–52; (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (CanLII). *Vavilov* is common ground; the live issue is FCA 147's reformulation for policy-structured discretion); (*Maple Lodge Farms Ltd. v. Government of Canada*, [1982] 2 SCR 2, 1982 CanLII 24 (SCC). The FCA held that post-*Vavilov*, the nominate categories are overtaken and review proceeds under *Vavilov*'s unified reasonableness framework).
[3] FCA Decision at para 48.
[4] *Universal Ostrich Farms Inc. v. CFIA*, 2025 FCA 164 (CanLII) [FCA Stay Dismissal], paras 40–41.
[5] RR at paras 44–45 (reconsideration letter; SCC interim-interim stay).
[6] Order of O'Bonsawin J., Sept. 24, 2025 (interim-interim stay with CFIA custody; non-interference; expedited leave schedule).

irreversible enforcement would otherwise moot, making this the right vehicle for the guidance lower courts and administrators need.

4. The timeline reveals CFIA's haste: the agency issued its destruction order on December 31, 2024, 41 minutes after receiving the first positive test. No ostrich has died from avian flu since January 15, 2025.[7] Yet the CFIA's September 22, 2025, denial addressed none of this unprecedented record.[8] The point for leave is doctrinal: where statutes require consideration of treatment or alternatives before destruction (s. 48(2) of the *Health of Animals Act*, SC 1990, c 21), what minimum reasons demonstrate that the statutory precondition was actually considered within *Vavilov*'s reasonableness architecture. [9] That question is not farm-specific; it is law-structuring.

PART II – REPLIES TO THE RESPONDENT

A. "No conflict / no public importance"

5. The Respondent says there is "no conflict" and that mere "clarification" is insufficient. It invokes *Cabin Ridge Project Ltd. v. Alberta*, 2025 ABCA 109 and *R. v. Theriault*, 2021 ONCA 554 to narrow s. 40. Those authorities do not diminish the public-importance of a Court of Appeal's reformulation of reasonableness review across policy-structured discretion; at most they restate that leave is not for routine error-correction. [10] Here, the FCA recorded a split within the Federal Court on how to review discretionary policy decisions post-*Vavilov*, then resolved it by declaring *Maple Lodge* "overtaken" and by supplying a reformulated, unified framework. As the FCA acknowledged, no cited authorities had been raised which resolved this precise question; the need for this Court's guidance is especially acute.[11]

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[7] Affidavit of David Bilinski (Sept. 22, 2025), at para 4 ("250 days since the last avian-influenza mortality… no deaths, no clinical signs, no transmission")
[8] RR Exhibit G (CFIA letter to UOF re Ministerial Reconsideration, Sept 22, 2025), p. 29. (The Minister's September 22, 2025, refusal to reconsider does not engage with that preserved, anomaly-rich record; instead, it reiterates stamping-out rationales and denies reconsideration)
[9] FCA Decision, paras 54–56, 71-77.
[10] RR at paras 54–56 (no conflict; clarification insufficient), paras 47–49 (public-importance framing; *Cabin Ridge*/*Theriault*); (*R. v. Theriault*, 2021 ONCA 554 (CanLII), paras 36–37. *Theriault* simply reiterates the "germane to disposition/outcome-affecting" screen; here, the FCA's reformulation was the analytical engine of the result, so the *Theriault* screen is met); (*Cabin Ridge Project Ltd. v. Alberta*, 2025 ABCA 109, is at most a gatekeeping reminder; it does not diminish the public-importance of an appellate reformulation that now structures reasonableness review of policy-structured discretion).
[11] FCA Decision at para 48.

6. Moreover, the Respondent's suggestion that our questions are "abstract" overlooks the FCA's own analysis: its reformulation was not dicta. It structured the merits outcome below and will govern review of policy-structured discretion across the federal administrative justice system.[12] Clarifying a rule that binds future cases is the textbook function of leave, particularly where appellate courts have diverged or expressly reformulated the doctrine.

7. This Court's decision in *Vavilov* further illustrates its commitment to clarifying legal principles and ensuring coherence in the law. By reconsidering the framework for the standard of review, this Court aimed to bring greater predictability to this area of law, addressing concerns about the complexity and inconsistency of previous approaches. This decision highlights this Court's proactive role in refining legal doctrines to better serve the needs of the justice system.[13]

B. "Not germane / inevitable failure"

8. The Respondent argues the questions are not germane or that the appeal would inevitably fail.[14] That misconstrues both the leave standard and the record. The FCA's reformulation is embedded in its reasons and informed each step of its analysis, making the questions central, not collateral, to the disposition below. Leave is justified even if the case-specific disposition might not change, because the point of review-framework law is guidance, not error-correction in a single file. This Court has repeatedly granted leave to clarify doctrinal structure even where the practical result for the parties may be unchanged. Rule-of-law benefits, predictability, coherence, and administrability, are themselves reasons of public importance. The Respondent's reliance on *Lake Erie & Detroit River Rwy. Co. v. Marsh*, 35 S.C.R. 197 is misplaced, as that 1904 case predates modern leave jurisprudence.[15]

C. Reconsideration is a doctrinal question, not "new facts"

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[12] FCA Decision, paras 50–53.
[13] Vavilov at paras 4, 9-10, 21-22.
[14] RR at paras 49–50 ("germane"; "inevitable failure"; outcome prediction).
[15] Respondent relies on *Lake Erie & Detroit River Rwy. Co. v. Marsh*, 35 S.C.R. 197 at 199–200, for "inevitably fail" negating a serious issue; but *Marsh* is a 1904 special-leave ruling predating modern s. 40 jurisprudence.

9. The Respondent says "reconsideration" is irrelevant or new. [16] The FCA's stay reasons say otherwise: they directed fresh facts to the Minister/CFIA and expressly did not decide whether any legal entitlement to reconsideration exists. The Respondent itself put the September 22, 2025 reconsideration letter in issue in its leave response confirming that the salient question is legal: how administrative law should structure reconsideration when permissive statutes and emergency policies meet dynamic facts, and courts have preserved the status quo to avoid mootness. [17] A denial reconsideration without engagement on the statutory preconditions and the evolved factual context exposes the doctrinal gap we ask this Court to fill.[18]

D. Minimum reasons under s. 48 HAA (within Vavilov's framework)

10. The Respondent minimizes the reasons issue as case-specific. [19] The question is doctrinal and broadly significant. *Vavilov* demands justification, transparency and intelligibility of the decision-maker's path.[20]

11. Respondent's reliance on *Maple Lodge* is misplaced post-*Vavilov*. The Respondent itself characterizes *Maple Lodge*'s "continued relevance" as "not germane" and says that disagreeing with the FCA "would only make it less likely" UOF succeeds. [21] The FCA held that *Maple Lodge*'s nominate-categories framework is overtaken.[22] What remains is *Vavilov*'s unified reasonableness analysis, applied in policy-structured contexts. That is the clarification we seek.

PART III – ORDER SOUGHT

12. An order granting leave to appeal from the judgment of the Federal Court of Appeal dated August 21, 2025 (2025 FCA 147);

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[16]RR at paras 57–60 (reconsideration is irrelevant/new and outside scope).
[17]RR Tab 2A (Affidavit of D. Bilinski, Ex. G — CFIA letter "Re Request for Ministerial Reconsideration"), at 29–31.
[18]This question does not invite the Court to find facts or supervise science; it asks which legal triggers and minimum explanations courts require when an agency is asked to reconsider during preserved litigation.
[19]RR at paras 61–63 (no public-importance issue on "minimum requirements" for reasons).
[20] Vavilov at paras 85-86, 105-108.
[21]RR at paras 55–56 ("not germane"; "would only make it less likely"). Respondent's Record, Tab 1 (Memorandum of Argument) at 13.
[22] FCA Decision at para 49.

13. Expedited determination of this application and, if leave is granted, abridgment of time under Rule 6 of the Rules of the Supreme Court of Canada with directions fixing an expedited timetable for the appeal and an early hearing date;
14. Such further and other relief as this Honourable Court may deem just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Victoria, British Columbia, this 29th day of September 2025

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PART IV – TABLE OF AUTHORITIES

Supreme Court of Canada

Authority	Citation	Para #
Canada (Minister of Citizenship and Immigration) v. Vavilov	2019 SCC 65	1, 4, 5, 7, 10,11
Lake Erie & Detroit River Rwy. Co. v. Marsh	35 S.C.R. 197	8
Maple Lodge Farms Ltd. v. Government of Canada	[1982] 2 S.C.R. 2	1, 5, 11

Federal Courts

Authority	Citation	Para #
Universal Ostrich Farms Inc. v. CFIA ("FCA Decision")	2025 FCA 147	1, 4, 5, 6, 11
Universal Ostrich Farms Inc. v. CFIA ("FCA Stay Decision")	2025 FCA 164	2

Provincial Courts

Authority	Citation	Para #
Cabin Ridge Project Ltd. v. Alberta	2025 ABCA 109	5
R. v. Theriault	2021 ONCA 554 (CanLII)	5

Statutes

Authority	Citation	Para #
Health of Animals Act, s. 48 (EN/FR)	R.S.C. 1990, c. 21	4