

File Number: [to be assigned]
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 APPLICATION FOR LEAVE TO APPEAL FROM THE JUDGMENT
OF THE FEDERAL COURT OF APPEAL)

FORM 25

B E T W E E N:

UNIVERSAL OSTRICH FARMS INC.

Applicant

and

CANADIAN FOOD INSPECTION AGENCY

Respondent

NOTICE OF APPLICATION FOR LEAVE TO APPEAL
(UNIVERSAL OSTRICH FARM INC., APPLICANT)

(Section 40(1) of the *Supreme Court Act*, R.S.C. 1985, c. S-26; Rule 25 of the *Rules of the Supreme Court of Canada*)

TAKE NOTICE that **UNIVERSAL OSTRICH FARMS INC.**, Applicant, applies for leave to appeal to the Supreme Court of Canada, under section 40(1) of the *Supreme Court Act*, from the judgment of the Federal Court of Appeal in Court File No. A-205-25, dated August 21, 2025 (2025 FCA 147).

THE APPLICATION IS FOR:

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

2. 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;
3. Such further and other relief as this Honourable Court may deem just.

AND FURTHER TAKE NOTICE that this application for leave to appeal is made on the following grounds:

4. Policy-structured discretion post-*Vavilov*. The Federal Court of Appeal recognized that reviewing discretionary, policy-based decisions “requires reformulation” post-*Vavilov* and that the pre-2019 approach in *Maple Lodge Farms Ltd. v. Government of Canada*, [1982] 2 S.C.R. 2 (*Maple Lodge*) has been overtaken; national guidance is required on how *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (*Vavilov*) applies when an administrator applies a general policy to a specific premises. See *Universal Ostrich Farms Inc. v. CFIA*, 2025 FCA 147.
5. Statutory discretion under s. 48 of the *Health of Animals Act*. Section 48(1) uses “may,” and s. 48(2) expressly contemplates “treatment” alternatives. Guidance is required on whether an agency can assert “no discretion” by policy where Parliament has conferred discretion, and what reasons are required to demonstrate fidelity to the statute and to the availability of s. 48(2) options.
6. Dynamic-facts reconsideration gap. The Court of Appeal directed that fresh evidence of changed circumstances be addressed by administrative reconsideration while acknowledging no established right to reconsideration exists. National guidance is needed to close this systemic gap so that temporary emergency orders do not persist despite fundamentally changed facts.
7. Minimum responsive reasons (including s. 48(2) and proportionality). When a blanket “stamping-out” policy is applied to a particular premises, what reasons must show, including engagement with feasible s. 48(2) treatment alternatives and proportionality consistent with

Vavilov and Mason v. Canada (Citizenship and Immigration), 2023 SCC 21 (*Mason*), especially where the record showed, inter alia, 69 deaths out of approximately 400 birds and no disease manifestations after January 15, 2025?

8. Mootness — “capable of repetition yet evading review.” Recurrent emergency orders typically resolve in months, while appellate review takes longer. Guidance is required on applying *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342 (*Borowski*) so that uniform standards can be provided notwithstanding practical mootness.
9. Expedition is warranted. In light of Grounds 4–8 and the recurring, time-sensitive nature of these issues, the Applicant seeks expedited determination of leave and, if leave is granted, abridgment of time and directions for an expedited appeal timetable under Rule 6.

Dated at Victoria, British Columbia this 19th day of September 2025.

SIGNED BY:

Umar A. Sheikh

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NOTICE TO THE RESPONDENT OR INTERVENER: A respondent or intervener may serve and file a memorandum in response to this application for leave to appeal within 30 days after the day on which a file is opened by the Court following the filing of this application for leave to appeal or, if a file has already been opened, within 30 days after the service of this application for leave to appeal. If no response is filed within that time, the Registrar will submit this application for leave to appeal to the Court for consideration under section 43 of the *Supreme Court Act*.

SOR/2016-271, s. 44.