

**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

**RESPONSE TO THE APPLICATION FOR LEAVE TO APPEAL OF THE
RESPONDENT, CANADIAN FOOD INSPECTION AGENCY**

(Pursuant to Rule 27 of the Rules of the Supreme Court of Canada)

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**MEMORANDUM OF ARGUMENT OF THE RESPONDENT,
CANADIAN FOOD INSPECTION AGENCY**

PART I: OVERVIEW AND STATEMENT OF FACTS

A. Overview

1. Universal Ostrich Farms Inc. (UOF) seeks leave to appeal from the Federal Court of Appeal’s unanimous decision dismissing its appeal of the Federal Court’s decision dismissing two judicial review applications.¹ Both applications challenged decisions by the Canadian Food Inspection Agency (CFIA) regarding steps necessary to contain an outbreak of high pathogenicity avian influenza (HPAI) at UOF’s premises. The Federal Court and Court of Appeal both emphatically upheld the reasonableness of CFIA’s decisions. UOF’s application for leave to appeal largely repeats or reformulates arguments the Court of Appeal found raise no serious issue when it refused to issue a stay pending this application.²

2. The essence of UOF’s case is to challenge the merits of CFIA’s HPAI response policy as it applies to their ostriches, a highly specific issue that is not of public importance. UOF’s proposed questions for appeal are cast in general terms but are clearly aimed at securing a third opportunity to litigate UOF’s fundamental disagreement with CFIA’s policy decision and its implementation at their premises. However, that UOF disagrees with CFIA, or disbelieves judicial findings of fact about risks to public health, animal health, and trade, or would prefer a different outcome, does not provide a basis for this Court’s intervention on appeal.

3. The Court of Appeal applied this Court’s unambiguous guidance in *Vavilov*³ in dismissing UOF’s appeal. As the Court of Appeal held, “the law we are bound to apply inevitably leads to the conclusion that this appeal must be dismissed.”⁴ It is not a matter of public importance to provide UOF with another opportunity to litigate the application of settled law to the facts of this case.

¹ *Universal Ostrich Farms Inc v Canada (Food Inspection Agency)*, [2025 FC 878](#) at paras [80](#), [83](#), [168](#) [FC Decision]; *Universal Ostrich Farms Inc v Canada (Food Inspection Agency)*, [2025 FCA 147](#) [FCA Decision].

² *Universal Ostrich Farms Inc v Canada (Food Inspection Agency)*, [2025 FCA 164](#) [FCA Stay Dismissal].

³ *Canada (Minister of Citizenship and Immigration) v Vavilov*, [2019 SCC 65](#).

⁴ FCA Decision at para [5](#).

4. UOF's application for leave to appeal to this Court should be dismissed. In the words of the Court of Appeal, "[t]he CFIA must now be allowed to discharge the mandate conferred on it by Parliament and implement its lawful policy".⁵

B. Factual Background

5. The Federal Court and Court of Appeal have already made factual findings relevant to this motion on an extensive evidentiary record. UOF does not challenge any of these findings on appeal. Key facts necessary to decide this application are set out below.

i. CFIA's Mandate and the *Health of Animals Act*

6. The CFIA is a federal agency tasked with safeguarding food, animals and plants, to enhance the health and well-being of Canada's people, environment, and economy.⁶ Among other things, CFIA is responsible for administering and enforcing the *Health of Animals Act* (*HAA*),⁷ and associated regulations. The *HAA* provides multiple tools for achieving its objectives of preventing and controlling the spread of zoonotic diseases and thereby protecting public health and Canada's economy.⁸

7. One of those tools is section 48 of the *HAA*, which grants authority to the Minister to dispose, or to require the disposal, of animals or things that are, or are suspected of being, affected or contaminated by a disease or toxic substance, or have been in close proximity to another animal or thing that was, or is suspected of having been, affected or contaminated by a disease or toxic substance at the time of contact or close proximity.⁹ Mere suspicion of exposure is sufficient to justify exercising the authority granted to CFIA under section 48.¹⁰

⁵ FCA Stay Dismissal at para [83](#).

⁶ FC Decision at para [14](#).

⁷ *Health of Animals Act*, [SC 1990, c 21](#).

⁸ FC Decision at paras [80-81](#).

⁹ FCA Decision at paras [9-10](#); FC Decision at para [82](#).

¹⁰ FCA Decision at paras [63-64](#), [81](#), [93](#), [98](#); FC Decision at paras [78](#), [83](#).

ii. HPAI Poses Serious Risks to Animal and Public Health

8. Canada has been experiencing an outbreak of HPAI since November 2021. Avian Influenza (AI) variants are categorized into high pathogenicity strains, HPAI, and low pathogenicity strains, LPAI. The current outbreak has predominantly involved HPAI subtype H5N1.¹¹

9. Migratory wild waterfowl and shorebirds serve as natural reservoirs and vectors for the spread of AI, including HPAI. AI is highly infectious and may be transmitted from wild birds to domestic birds through direct and indirect contact. AI can also spread to other animals, including mammals and, less commonly, people.¹²

10. AI viruses can survive for months or even years in the environment, particularly in wet environments and at colder temperatures. Contaminated water, soil, feces, feathers and carcasses can create a source of infection or re-infection that can remain long after individual birds have recovered and are no longer shedding the virus.¹³

11. HPAI is a major concern for public health because of its capacity to cause serious illness and death in humans. Approximately half of human cases reported worldwide have been fatal.¹⁴

12. All poultry, including ostriches, are susceptible to AI infection, although the clinical signs of infection and mortality rates vary between species. Exposed and infected ostriches may show no clinical signs of disease, but continue to shed virus and act as a reservoir for the further spread of infection to people, livestock, and wildlife. Ostriches in particular are known to contribute genetic mutations to avian influenza viruses that increase its adaptability to mammals.¹⁵

iii. The International Standard is to “Stamp Out” HPAI

13. Canada is a member of the World Organisation for Animal Health (WOAH). WOAH is a science-based international organization recognized by its 183 member countries as the international

¹¹ FC Decision at para [23](#).

¹² FCA Decision at para [8](#); FC Decision at para [15](#).

¹³ FCA Decision at paras [8](#), [95](#); FC Decision at para [16](#).

¹⁴ FCA Decision at para [95](#); FC Decision at para [17](#).

¹⁵ FCA Decision at para [12](#); FC Decision at para [241](#); FCA Stay Dismissal at para [55](#).

standard setting organization for animal health and zoonoses, including the prevention and control of zoonotic diseases, including HPAI.¹⁶

14. WOAHA supports the implementation of a stamping out policy in response to HPAI outbreaks in poultry, including ostriches, and a majority of WOAHA members, including Canada, recognize this policy as the international standard.¹⁷ The WOAHA Terrestrial Animal Health Code defines a “Stamping Out Policy” as a policy designed to eliminate an outbreak by (a) killing the animals which are affected and those suspected of being affected in the herd or flock and, where appropriate, those in other herds or flocks which have been exposed to infection; (b) disposing of carcasses; and (c) cleaning and disinfecting the premises.¹⁸ The first step of a stamping out approach is also referred to as depopulation.

15. WOAHA standards, including stamping out HPAI in poultry, are incorporated into Canada’s international trade arrangements.¹⁹ Non-compliance with the Stamping Out Policy could “impose economic costs far exceeding the immediate costs of containing individual outbreaks and harm the broader Canadian poultry industry, not just the affected premises”.²⁰

16. Since the first HPAI outbreak in Canada in 2004, CFIA has adopted a stamping out approach in relation to HPAI in poultry in alignment with WOAHA standards. CFIA’s response measures during the current HPAI outbreak event are set out in and guided by a number of policy documents. Under the Highly Pathogenic Avian Influenza 2022 Event Response Plan, which operationalizes CFIA’s policy decision to follow a stamping out approach to HPAI, whenever a case of AI subtype H5 is confirmed, a notice to dispose is issued, an epidemiological investigation is done, all infected or exposed animals are humanely destroyed and safely disposed of, and the infected environment is decontaminated.²¹

17. In most situations, all birds on an infected premises owned by the same owner or that regularly share staff, equipment, or other things (such as feed) are considered to be a single epidemiological

¹⁶ FCA Decision at para [95](#).

¹⁷ FCA Decision at para [95](#).

¹⁸ FC Decision at para [93](#).

¹⁹ FC Decision at para [98](#).

²⁰ FC Decision at paras [99-100](#). Also see: FCA Decision at paras [11](#), [95](#).

²¹ FCA Decision at paras [10-13](#); FC Decision at paras [93-94](#), [101-104](#).

unit and will therefore be subject to depopulation.²² However, CFIA policy provides for limited exemptions to depopulation in “exceptional circumstances” for pet birds, rare and valuable poultry genetics, and distinct units. Regardless of under which category an exemption is requested, any exempted birds must form an epidemiological unit separate from the infected unit.²³

iv. CFIA’s Response to the HPAI Outbreak at UOF

18. In December 2024, UOF’s owners noticed that their ostriches were exhibiting flu-like symptoms. Around 25 to 30 of UOF’s then approximately 450 ostriches died in a three-week period.²⁴ UOF’s owners did not report the sickness or deaths to CFIA. CFIA has since issued a Notice of Violation to UOF in relation to this breach of UOF’s obligations under s. 5(1) of the *HAA*.

19. On December 28, 2024, CFIA was notified by an anonymous individual of multiple ostrich deaths at UOF’s premises. CFIA contacted UOF’s owners and immediately placed a verbal quarantine on the premises, pending formal documentation. The next day, UOF requested that a CFIA veterinarian assess the ostriches for AI. Another four ostriches died that day.²⁵

20. On December 30, 2024, inspectors from the CFIA went to UOF’s premises to collect samples. One of UOF’s owners explained that only two mortalities, including the one on the driveway, were in good enough condition to be sampled, as the other deceased ostriches had been scavenged by wild animals or were in later stages of decomposition.²⁶

21. Also on December 30, 2024, a CFIA Inspector issued documents under the *HAA* and regulations, including a Declaration of Infected Premises and Requirement to Quarantine for UOF’s premises, which set out movement controls and biosecurity parameters to contain the HPAI on UOF’s premises.²⁷ CFIA has since issued a second Notice of Violation to UOF in relation to breaches of these requirements.

²² FCA Decision at para [13](#); FC Decision at para [103](#).

²³ FCA Decision at para [14](#); FC Decision at paras [105-109](#).

²⁴ FC Decision at paras [27](#), [29](#).

²⁵ FC Decision at para [30](#).

²⁶ FCA Decision at para [18](#); FC Decision at para [31](#), [147](#).

²⁷ FC Decision at para [31](#).

22. On December 31, 2024, samples collected from UOF's ostriches tested positive for AI, subtype H5, at a provincial laboratory accredited by CFIA to test for HPAI.²⁸
23. On December 31, 2024, a CFIA Inspector issued a Notice to Dispose under section 48(1) of the *HAA*, which required UOF to dispose of its flock of HPAI-exposed ostriches by February 1, 2025 (Notice to Dispose).²⁹
24. CFIA assigned a Case Officer to act as a primary point of contact for UOF, who explained what was required to request an exemption from depopulation. On January 2, 2025, she sent UOF a number of documents, including the Notice to Dispose and information about the requirements to qualify for an exemption to depopulation.³⁰
25. On January 3, 2025, CFIA's National Centre for Foreign Animal Disease (NCFAD), a WOAHI-designated international centre of expertise in avian influenza, performed full genome sequencing on duplicate samples taken from UOF. The sequencing identified the virus on UOF's farm as HPAI H5N1. The NCFAD confirmed that the HPAI strain detected in the ostriches at UOF represents a reassortment (genotype D1.3) of H5N1 not previously identified in either domestic poultry or wild birds in Canada.³¹
26. Among many other communications by phone and email, CFIA met with UOF's owners virtually on January 3, 2025, to gather more information about the farm. CFIA inspectors also attended UOF's premises on January 7, 2025, to conduct a site assessment.³²
27. Between January 4 and 9, 2025, UOF submitted a number of documents in support of its request for an exemption from depopulation for its ostriches, including letters of support and information relating to its business plan to sell ostrich antibodies and other commercial ventures.³³
28. Information provided by UOF and collected by the CFIA during this period established that all of the ostriches were housed outdoors in several large pens, with shared personnel, feed, and farm management practices. Individuals not affiliated with UOF were reported to have walked through the

²⁸ FCA Decision at para [19](#); FC Decision at para [32](#).

²⁹ FCA Decision at para [19](#); FC Decision at para [33](#).

³⁰ FC Decision at paras [34-37](#).

³¹ FCA Decision at para [19](#); FC Decision at para [32](#).

³² FC Decision at paras [37-39](#).

³³ FC Decision at para [40](#).

infected zone. The farm also has a large pond at the centre of the property and significant wild bird activity over the entire premises, including around ostrich feed dishes. Other wild animals, such as weasels, were also able to access ostrich enclosures.³⁴

29. On January 10, 2025, after considering UOF's submissions and other information collected by CFIA, a committee of CFIA officials gave serious consideration to whether UOF's ostriches could be spared but determined that none of them existed as a distinct epidemiological unit and met the criteria for an exemption from depopulation.³⁵ UOF's poor biosecurity conditions and practices were a key factor in this decision.³⁶

30. By the end of January 2025, 69 ostriches had died of flu-like illness.³⁷

31. Evidence before the Court of Appeal included that UOF had allowed visitors supportive of the farm to camp on the property and allowed people close access to the infected herd, raising additional concerns about the risk of transmission of the virus to people. The evidence also explained that CFIA did not send employees to UOF's premises after February 2025 due to safety concerns associated with the presence of protestors, and that numerous threats against CFIA employees had been made on social media by members of the public who oppose the presence of CFIA oversight and the destruction of the ostriches, including from protestors residing on the premises.³⁸ According to UOF, when CFIA attended its premises on September 22, 2025 to enforce the Notice to Dispose, approximately 40 protestors were gathered on the property.³⁹

C. Procedural Background

32. UOF filed two judicial review applications in this matter. The first, filed January 30, 2025, sought review of the December 31, 2024 Notice to Dispose. The second, filed February 7, 2025, sought review of the January 10, 2025 decision by CFIA to deny UOF's request for an exemption from the depopulation component of the Stamping Out Policy.

³⁴ FCA Decision at para [100](#); FC Decision at paras [38-39](#), [55](#), [238-239](#).

³⁵ FCA Decision at para [100](#); FC Decision at paras [38-39](#), [41](#), [55](#), [238-239](#).

³⁶ FC Decision at para [239](#).

³⁷ FCA Stay Dismissal at para [57](#); FC Decision at para [42](#).

³⁸ FCA Stay Dismissal at para [57](#).

³⁹ Affidavit of David Bilinski affirmed September 22, 2025 [*Bilinski Affidavit*] at para 31 (Respondent's Record [RR], Tab 2A at 18).

33. CFIA filed extensive evidence in the judicial review applications, including: (a) evidence of the serious risks posed by HPAI to animals and humans, including from ostriches;⁴⁰ (b) evidence of CFIA’s rationale for adopting the Stamping Out Policy and maintaining iterative versions of the policy over time;⁴¹ and (c) evidence of the economic implications for Canada of not implementing a stamping out policy that accords with international standards.⁴²

i. Federal Court Dismisses Judicial Reviews

34. The applications for judicial review were heard together over two days, April 15-16, 2025. On May 13, 2025, the Federal Court issued detailed reasons for judgment dismissing both applications for judicial review with costs.

35. The Federal Court concluded that the record provides “resounding” support for the decision to implement a Stamping Out Policy in the exercise of the Minister’s discretion under section 48 of the *HAA*. The Federal Court considered the extensive evidentiary record, and found that, “CFIA has remained responsive to evolving scientific and policy developments, and nonetheless determined, on reasoned grounds and with material facts considered, that continued application of the Stamping Out Policy properly advances the objectives of the *Act*.”⁴³

36. The Federal Court likewise found that the Notice to Dispose and refusal to exempt any of UOF’s ostriches from depopulation were reasonable and procedurally fair. With respect to the decision to issue the Notice to Dispose, the Federal Court rejected UOF’s arguments about fettering and found that the Minister’s discretion under section 48 of the *HAA* had been reasonably exercised both in the adoption of the Stamping Out Policy and through the exemption process.⁴⁴ The Federal Court further found that CFIA’s reasons for refusing UOF’s exemption request turned on the particular facts, and that “[t]he CFIA’s reasons also demonstrate substantive engagement with the Applicant’s specific circumstances rather than merely providing generic justifications”.⁴⁵ The Federal

⁴⁰ FC Decision at paras [15-18](#), [23](#), [144](#), [241](#).

⁴¹ FC Decision at paras [93-94](#), [139](#), [164-168](#).

⁴² FC Decision at paras [98-100](#).

⁴³ FC Decision at para [168](#).

⁴⁴ FC Decision at para [192](#); FCA Decision at para [22](#).

⁴⁵ FC Decision at para [266](#).

Court declined to consider evidence that post-dated the impugned decisions, citing established principles as articulated by this and other courts about the nature and scope of judicial review.⁴⁶

ii. Court of Appeal Dismisses Appeal

37. UOF filed a Notice of Appeal and motion for a stay of the Federal Court decision pending its appeal to the Court of Appeal. On June 20, 2015, the Court of Appeal granted UOF’s motion for a stay pending appeal. The Court of Appeal acknowledged that “further delay can potentially increase the risks posed by the HPAI virus and cause harm to Canada’s international trade agreements” but concluded that this risk could be balanced against the need to provide a “meaningful right of appeal” for UOF by ordering that the appeal proceed on an exceptionally expedited basis.⁴⁷ All materials were filed within three weeks of the Court’s order, and the hearing took place in Ottawa four days later.

38. On August 21, 2025, a panel of three Justices of the Court of Appeal unanimously dismissed UOF’s appeal with costs.⁴⁸ The Court of Appeal also heard and dismissed a motion brought by UOF to adduce fresh evidence on the appeal, applying settled law governing the role of the Court on judicial review.⁴⁹ The Court of Appeal’s decision is the subject of this application.

39. Applying *Vavilov* and considering the relevant factual and legal context, the Court of Appeal decided that the Stamping Out Policy, the Notice to Dispose, and the refusal to grant an exemption from depopulation each met the reasonableness standard. Like the Federal Court, the Court of Appeal concluded that UOF’s arguments concerning fettering had no merit, given the record before the decision-makers in this case and in light of previous jurisprudence confirming that the Minister can exercise discretion to adopt policies of general application under section 48(1) of the *HAA*.⁵⁰

40. Among other findings, the Court of Appeal referred to evidence in CFIA’s possession that “amply supports” implementing the Stamping Out Policy as a response to the risks posed by HPAI: (a) stamping out responds to risks to animal and human health by effectively controlling the spread of HPAI to other sites or species; (b) stamping out is consistent with international standards; and

⁴⁶ FC Decision at paras [7-8](#); *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, [2011 SCC 61](#) at paras [22-26](#) [*Alberta Teachers*].

⁴⁷ FCA Stay Decision at para [11](#).

⁴⁸ FCA Decision.

⁴⁹ FCA Decision at paras [5](#), [24-32](#), [41](#), [43](#).

⁵⁰ FCA Decision at paras [78-79](#), [83-85](#); FCA Stay Dismissal at paras [32-36](#).

(c) stamping out effectively responds to the risks posed by HPAI to Canada’s economy and failure to apply the policy would jeopardize Canada’s access to export markets for its poultry and poultry products and damage Canada’s reputation as a country able to successfully control, contain and eliminate diseases in accordance with its international commitments.⁵¹

41. In light of this evidence, the Court of Appeal concluded that “CFIA reasonably chose as its preferred measure the timely destruction of any type of bird that was both susceptible to HPAI and exposed to it”, without additional testing and despite the fact that some birds may survive infection. Given that CFIA’s choice to adopt a stamping out approach was reasonable, its implementation by way of the Notice to Dispose and refusal to grant an exemption were also found by the Court of Appeal to be reasonable.⁵²

iii. Court of Appeal Dismisses Stay Pending Leave to Appeal to this Court

42. On September 4, 2025, UOF filed a motion in the Court of Appeal seeking a stay pending the disposition of its proposed appeal to this Court under section 65.1 of the *Supreme Court Act*.

43. On September 12, 2025, the Court of Appeal dismissed UOF’s motion and also dismissed UOF’s request for a stay pending a decision on its request for ministerial reconsideration of the Notice to Dispose, brought under subsection 50(1) of the *Federal Courts Act*.⁵³ The Court of Appeal found that UOF’s proposed application for leave to appeal did not raise any serious question for this Court considering the criteria for leave to appeal in section 40 of the *Supreme Court Act*.⁵⁴ The Court of Appeal further found that the evidence filed on the stay motion established that the outbreak at UOF involved a virus with enhanced pathogenicity that continues to pose serious risks to animal and public health and the Canadian poultry industry and trade.⁵⁵

44. Since filing the within leave application, UOF has requested reconsideration of the Notice to Dispose. CFIA has considered UOF’s request and determined that there are no circumstances that would warrant such reconsideration, including because UOF’s entire ostrich flock continues to meet

⁵¹ FCA Decision at para [95](#).

⁵² FCA Decision at paras [96-101](#).

⁵³ FCA Stay Dismissal.

⁵⁴ FCA Stay Dismissal at para [45](#).

⁵⁵ FCA Stay Dismissal at paras [62-66](#).

the criteria for depopulation under the Stamping Out Policy and for disposal under section 48 of the *HAA*, which addresses serious risks to animal and human health and thereby the Canadian economy.⁵⁶

45. On September 24, 2025, this Court granted an interim-interim stay of the enforcement of the Notice to Dispose pending this Court’s disposition of UOF’s application for leave to appeal filed September 19, 2025 and successive stay motion to this Court filed September 23, 2025.

PART II: STATEMENT OF THE QUESTION IN ISSUE

46. UOF’s application for leave to appeal does not raise a question of public importance that merits review by this Court. Leave to appeal should not be granted.

PART III: STATEMENT OF ARGUMENT

A. No Issue of Public Importance

47. UOF’s application fails to identify any issue of public importance for this Court and repeats arguments the Court of Appeal dismissed as raising no serious issue.

48. The dominant question on this application is whether UOF’s proposed appeal presents an issue that goes beyond the interests of the litigants and is of interest to Canadians generally, which may include constitutional questions, a conflict in appellate jurisprudence, or an “epidemic of cases misinterpreting Supreme Court authority”.⁵⁷

49. The issues for this Court must also be “germane to the disposition of the case”,⁵⁸ as opposed to abstract or hypothetical. In other words, “If there is little or no prospect that the findings or the outcome will be altered in a given case, leave to appeal may be denied regardless of the fact that issues of public importance are addressed in the case.”⁵⁹

⁵⁶ Bilinski Affidavit, Exhibit G (**RR**, Tab 2A at 28). See also: FCA Stay Dismissal at paras [57-60](#).

⁵⁷ *Supreme Court Act*, [s 40](#); *Cabin Ridge Project Limited v Alberta*, [2025 ABCA 109](#), citing *Supreme Court of Canada Practice* at §1:2, §4:152 [**Cabin Ridge**].

⁵⁸ *R v Theriault*, [2021 ONCA 554](#) at para [36](#), citing *Supreme Court of Canada Practice* at §1:2 [**Theriault**]. Also see: *Cabin Ridge* at para [20](#).

⁵⁹ *Theriault* at para [37](#).

50. An appeal that will inevitably fail on the basis of settled legal principles also cannot raise a matter of public importance.⁶⁰

51. The essence of UOF's case is to challenge the reasonableness of the Stamping Out Policy as it applies to their ostriches,⁶¹ a highly specific issue with no application beyond this case. Further, the issues proposed by UOF for consideration by this Court are either already settled in the jurisprudence or are tied to its particular factual situation. None of the proposed issues have any reasonable prospect of changing the outcome in this case, including because there is "very limited room for finding the Stamping-Out Policy to be unreasonable."⁶²

i. No Issue of Public Importance as to the Relevance of *Maple Lodge Farms*

52. UOF argues that this Court's resolution of conflicting Federal Court decisions regarding the continued relevance of *Maple Lodge Farms*⁶³ to reasonableness review of discretionary policy decisions is an issue that warrants a decision from this Court.⁶⁴ There is no merit to this argument, which was dismissed by the Court of Appeal as raising no serious issue.⁶⁵

53. First, there is no need for this Court to revisit its clear guidance in *Vavilov* and subsequent cases regarding the reasonableness standard of review. The Court of Appeal's "reformulation" of how reasonableness review applies to discretionary policy decisions was based on unambiguous and recent guidance from this Court on the guiding legal principles and the application of *Vavilov*'s framework to prior jurisprudence. As noted in *Auer*, prior jurisprudence is relevant insofar as that jurisprudence is consistent with *Vavilov*'s framework. In the words of the Court of Appeal, "there is no uncertainty".⁶⁶

⁶⁰ *Byatt International SA v Canworld Shipping Co*, [2013 BCCA 558](#) at para [21](#).

⁶¹ FCA Decision at paras [5](#), [57](#), [90](#).

⁶² FCA Decision at para [82](#).

⁶³ *Maple Lodge Farms v Government of Canada*, [1982 CanLII 24 \(SCC\)](#), [1982] 2 SCR 2.

⁶⁴ Applicant's Memorandum at para 28 (Applicant's Record [AR] at 248).

⁶⁵ FCA Stay Dismissal at paras [24-31](#).

⁶⁶ FCA Stay Dismissal at [27-28](#).

54. Second, there is no conflict in appellate jurisprudence on this issue. The Court of Appeal’s role includes resolving conflicts in Federal Court jurisprudence and it has done so in this case. Standing alone, clarification or “reformulation” of a point of law by an appellate court, however it is described, does not raise an issue of public importance.⁶⁷

55. Third, the continued relevance of *Maple Lodge Farms* is not germane to the disposition of UOF’s case. The Court of Appeal clarified that the unified reasonableness standard described in *Vavilov* applies to discretionary policy decisions of general application.⁶⁸ If the nominate categories from *Maple Lodge Farms* still limited the scope of review for such decisions (which was not argued by either party at either level of court), UOF would have been confronted with a higher standard for reasonableness review of the Stamping Out Policy. In other words, even if this Court were to disagree with the Court of Appeal’s conclusion that *Maple Lodge Farms* has been overtaken by *Vavilov*, it would only make it less likely that the Notice to Dispose would be set aside.

56. Finally, UOF’s various assertions about the need for “guardrails” and “constraints” are simply a restatement of its reasonableness arguments made and rejected below. There is no dispute that the principles of *Vavilov* apply, and that the constraints in this case include the relevant legal and factual context. UOF simply disagrees with the Court of Appeal’s conclusions in this case which, again, is not an issue of public importance.

ii. No Issue of Public Importance as to Potential Ministerial Reconsideration

57. UOF raises a new argument that the lack of a “principled reconsideration” framework that could address changing circumstances due to “serial litigation” raises an issue of public importance. This argument has no merit.

58. First, what UOF appears to seek is continuous judicial supervision through evolving factual circumstances. It is axiomatic that this is contrary to the proper scope of judicial review.⁶⁹ The Notice to Dispose and exemption refusal were before the Federal Court in the judicial review proceedings and their legality has been affirmed on appeal by the Court of Appeal. Potential reconsideration of

⁶⁷ FCA Stay Dismissal at paras [28-29](#).

⁶⁸ FCA Stay Dismissal at para [30](#).

⁶⁹ *Alberta Teachers'* at paras [22-26](#).

CFIA's decisions based on fresh evidence was not properly before the Federal Court or Court of Appeal and is irrelevant to UOF's proposed appeal on this application.⁷⁰

59. Second, the Court of Appeal has considered and rejected UOF's argument that the possibility of reconsideration raises a serious question in the context of its stay motion.⁷¹ Although not relevant to the substance of UOF's proposed appeal, the record demonstrates that CFIA has considered UOF's request for reconsideration of the Notice to Dispose. This underscores that there is no "reconsideration problem"⁷² that has prevented CFIA from considering whether its lawful HPAI response policy should still be implemented after a period of Court-ordered delay.

60. Third, UOF's references to "serial litigation" do not support its case for an opportunity to pursue an appeal to this Court.⁷³ To the contrary, the Court of Appeal expressed concern that delay caused by stays could "seriously threaten the CFIA's ability to discharge its protective mandate under the [HAA]".⁷⁴ The same is true for further delay while UOF pursues an appeal with no reasonable prospect of altering the outcome in this case.

iii. No Issue of Public Importance as to "Minimum Requirement" for Reasons

61. UOF argues that whether there is a "minimum requirement" for reasons under section 48(2) of the HAA that CFIA failed to meet raises an issue of public importance. The adequacy of reasons in a specific case is not an issue of public importance. Moreover, UOF ignores that the Federal Court and Court of Appeal found that, to the extent reasons were required, CFIA provided UOF with responsive reasons explaining the basis for its decisions.⁷⁵

62. UOF did not challenge the adequacy of CFIA's reasons before the Court of Appeal, where UOF challenged only the substantive reasonableness of the Stamping Out Policy and CFIA's implementation decisions. The Court of Appeal found that CFIA reasonably assessed that implementing the Stamping Out Policy is the most effective option for responding to the serious risks

⁷⁰ FCA Decision at paras [27-31](#), [57](#).

⁷¹ FCA Stay Dismissal at paras [75-77](#).

⁷² Applicant's Memorandum at para 34 (AR at 250).

⁷³ Applicant's Memorandum at para 35 (AR at 250).

⁷⁴ FCA Stay Dismissal at para [60](#); FC Decision at para [83](#); FCA Decision at para [76](#).

⁷⁵ FCA Decision at para [100](#); FC Decision at paras [199](#), [266](#).

posed by HPAI, including at UOF's premises.⁷⁶ UOF now asserts that "why treatment was not considered effective"⁷⁷ should have been explained in CFIA's reasons.

63. This argument is without substance. UOF gestures towards the importance of reasons in the abstract but does not identify any effective treatment for HPAI or flaw in CFIA's reasons that would warrant setting aside the Notice to Dispose. CFIA's evidence was that there is no effective treatment for HPAI.⁷⁸ UOF also ignores the very nature of section 48 of the *HAA*, which authorizes CFIA to act swiftly and decisively to contain pathogens,⁷⁹ and in this context the urgency and importance of HPAI responses.⁸⁰ Whether or not CFIA should have explained to UOF why it was not implementing ineffective or non-existent treatment options for HPAI in its reasons is not an issue of public importance warranting a decision from this Court.

iv. No Issue of Public Importance as to CFIA's Decisions "Evading Review"

64. UOF puzzlingly asserts that CFIA orders of the kind challenged in its judicial review applications "evade review", which supports granting leave to appeal. At the same time, UOF acknowledges that stays granted in this case have preserved the *status quo*,⁸¹ which allowed UOF to challenge CFIA's implementation decisions on their merits before the Federal Court and Court of Appeal before the Notice to Dispose was enforced. In other words, CFIA's implementation decisions have not evaded review and were not rendered moot before they could be adjudicated on the merits, where UOF was wholly unsuccessful.

65. UOF also suggests that delays caused by stays in this litigation have transformed its subject matter, "creating the unusual record necessary to address recurring issues that otherwise evade review".⁸² UOF does not identify any specific issues that have evaded review, other than that this Court can provide "guidance on policy-structured discretion and reconsideration" under section 48 of the *HAA*. This is the same issue addressed above in relation to the continued relevance of *Maple Lodge Farms*, which the Court of Appeal addressed. UOF's argument is difficult to parse but appears

⁷⁶ FCA Decision at paras [76](#), [79](#), [97](#), [100](#); FC Decision at para [167](#).

⁷⁷ Applicant's Memorandum at para 38 (AR at 251).

⁷⁸ FC Decision at para [144](#).

⁷⁹ FC Decision at para [12](#); FCA Decision at para [81](#).

⁸⁰ FC Decision at para [192](#).

⁸¹ Applicant's Memorandum at para 44 (AR at 253).

⁸² Applicant's Memorandum at para 44 (AR at 253).

to be a new iteration of its persistent attempt to litigate the reasonableness of CFIA’s policies and implementation decisions based on what it claims to be the situation today. This is outside the scope of these proceedings.⁸³

v. “Additional Considerations” do not Support Granting Leave

66. Finally, UOF’s “Additional Considerations” simply restate their earlier arguments. None of these arguments raise a question of public importance or support granting leave in this case for the reasons set out above in relation to the proposed questions for appeal.

B. Conclusion

67. UOF’s application does not raise any issues of public importance. There is no issue that merits intervention by this Court. The application should be dismissed.

PART IV: SUBMISSIONS CONCERNING COSTS

68. Canada seeks an order for costs in the cause.

PART V: ORDER SOUGHT

69. An order that the application for leave to appeal be dismissed with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at the City of Vancouver, Province of British Columbia, this 25th day of September, 2025.



Aileen Jones

Banafsheh Sokhansanj

Paul Saunders

Counsel for the Respondent,

Canadian Food Inspection Agency

⁸³ FCA Decision at para [29](#).

PART VI: TABLE OF AUTHORITIES

Authority		Cited at para.
Caselaw		
<i>Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association</i> , 2011 SCC 61		36, 58
<i>Byatt International SA v Canworld Shipping Co</i> , 2013 BCCA 558		50
<i>Cabin Ridge Project Limited v Alberta</i> , 2025 ABCA 109		48-49
<i>Canada (Minister of Citizenship and Immigration) v Vavilov</i> , 2019 SCC 65 .		3
<i>Maple Lodge Farms v Government of Canada</i> , 1982 CanLII 24 (SCC) , [1982] 2 SCR 2		53
<i>R v Theriault</i> , 2021 ONCA 554		49
<i>Universal Ostrich Farms Inc v Canada (Food Inspection Agency)</i> , 2025 FC 878		1,6-30, 33, 35, 36, 60, 61, 62, 63
<i>Universal Ostrich Farms Inc v Canada (Food Inspection Agency)</i> , 2025 FCA 122		37
<i>Universal Ostrich Farms Inc v Canada (Food Inspection Agency)</i> , 2025 FCA 147		1, 4, 7, 9-12, 14-17, 20, 22, 23, 25, 28-31, 36-41, 43, 51, 58, 60-63, 65
¹ <i>Universal Ostrich Farms Inc v Canada (Food Inspection Agency)</i> , 2025 FCA 164		1, 4,12, 30, 39, 43, 44, 52-55, 59, 60, 61
Legislation		
<i>Health of Animals Act</i> , SC 1990, c 21	<i>Loi sur la santé des animaux</i> , LC 1990, ch 2	6

File Number: 41992
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

AFFIDAVIT OF DAVID BILINSKI
(Motion for Stay Pursuant to s. 65.1 of the Supreme Court Act)

I, **DAVID BILINSKI**, of Victoria, British Columbia, MAKE OATH AND SAY:

A. Introduction and Qualifications

1. I am a director and co-owner of Universal Ostrich Farms Inc. ("UOF") and as such have personal knowledge of the facts and matters herein, except where I state they are based upon information and belief, in which case I believe them to be true.
2. I make this affidavit in support of UOF's urgent motion for a stay of the Canadian Food Inspection Agency's ("CFIA") Notice to Dispose dated December 31, 2024, pending this Court's determination of our application for leave to appeal filed September 19, 2025.

3. **URGENT CIRCUMSTANCES:** As I swear this affidavit, RCMP and CFIA officials are on site at our farm with warrants to destroy our entire flock of approximately 400 healthy ostriches within 24-48 hours. The details of this enforcement action are set out in Section H below. Time is of the essence.

B. Current Critical Timeline and Health Status

4. As of today, September 22, 2025, it has been 250 days since the last avian influenza mortality occurred on our farm. The last ostrich death attributable to H5N1 occurred on January 15, 2025. Since that date, over eight months ago, not a single ostrich has died from disease, shown clinical signs of H5N1, or transmitted infection to other birds or wildlife. Attached and marked as **Exhibit "A"** is a photograph dated September 20, 2025 showing the current healthy state of the ostriches and biosecurity infrastructure.
5. CFIA has not conducted an on-site inspection of our property since February 26, 2025, 209 days ago. Despite this extended absence of oversight, CFIA now seeks immediate destruction based on observations that are over seven months old.
6. I personally observe our ostriches daily and maintain detailed health records. As of September 22, 2025:
 - a) Zero mortality from disease for 250 consecutive days
 - b) Zero clinical signs of H5N1 infection
 - c) Zero transmission events to new birds or wildlife
 - d) All approximately 400 surviving ostriches remain healthy and active
 - e) Wild birds regularly visit our property without becoming infected
7. The spring migration period (March-May 2025) passed without any transmission to wild birds or new infections in our flock, despite regular wild bird presence on and around the property. We have drained the pond discussed in February and are converting the area for manure storage. We continue to follow wildlife deterrent measures and maintain the

quarantine controls previously imposed. Attached and marked as **Exhibit "B"** is a photograph showing the drained pond area.

C. The December 31, 2024 Emergency Response

8. On December 29, 2024, laboratory testing confirmed the presence of H5N1 highly pathogenic avian influenza ("HPAI") in samples from deceased ostriches on our farm. Within 48 hours, on December 31, 2024 at 2:17 PM, CFIA issued a Notice to Dispose ordering the destruction of our entire flock, approximately 400 birds. This Notice was issued just 41 minutes after CFIA received the initial test results. Attached and marked as **Exhibit "C"** is the Notice to Dispose and related CFIA orders dated December 31, 2024.
9. The outbreak was limited in scope. Of approximately 420 ostriches on our farm in December 2024, only about 69 birds died during the outbreak period (December 2024 to January 15, 2025), representing an approximately 17% mortality rate. This stands in stark contrast to typical HPAI outbreaks in poultry operations, where mortality rates routinely exceed 85-95%.
10. I immediately sought an exemption from the destruction order on January 3, 2025, proposing enhanced biosecurity measures and ongoing monitoring. CFIA denied this request on January 10, 2025, stating it had "no discretion" to consider alternatives under its policies despite the permissive language in s. 48 of the Health of Animals Act. Attached and marked as **Exhibit "D"** is the CFIA correspondence denying our exemption request dated January 10, 2025.

CI. The Unique and Irreplaceable Nature of Our Flock

11. UOF operates on approximately 58 acres in Edgewood, British Columbia. We are Canada's only commercial ostrich farm, maintaining breeding stock that represents 32 years of selective breeding since 1993. This genetic lineage cannot be replaced or reconstituted once destroyed.

12. Our operation is unique in North America. The surviving flock of approximately 400 ostriches includes:
- a) Breeding pairs with documented lineages spanning three decades
 - b) Birds specifically selected for disease resistance and Canadian climate adaptation
 - c) Ostriches that have demonstrated natural immunity to H5N1, having survived exposure
 - d) Some ostriches from the very first group we started with 32 years ago
13. The genetic value of these birds has been developed through careful selection over decades. Unlike poultry that can be replaced from commercial hatcheries, our ostrich genetics represent irreplaceable bloodlines developed specifically for Canadian conditions. It takes approximately 3.5 years before an ostrich can be used as a breeder, and many more years to develop the harmonious herd relationships we have established. Attached and marked as **Exhibit "E"** is documentation showing an ostrich sale invoice demonstrating the commercial value of our ostriches at \$7,500 per bird.

E. Scientific Evidence of Pre-existing Immunity

14. In summer 2024, months before the December outbreak, we tested ostrich egg yolk samples for routine testing. Dr. Steven Pelech, a Professor of Medicine at the University of British Columbia and expert in immunology, subsequently tested these archived samples and detected H5- and N1-specific antibodies predating the outbreak.
15. This scientific evidence indicates that our ostriches developed immunity to H5N1 before the December 2024 outbreak, which explains:
- a) The remarkably low mortality rate (17% vs. typical 85-95% in poultry)
 - b) The complete cessation of mortality after January 15, 2025
 - c) The absence of any transmission events over 250 days
16. Dr. Pelech's expert report, included in the Motion Record as Tab 3, concludes that the surviving ostriches pose negligible transmission risk and offer valuable research opportunities for understanding natural H5N1 immunity.

F. Current Biosecurity Measures

17. Since December 2024, we have maintained comprehensive quarantine and biosecurity measures including:
 - a) Complete isolation of the property with restricted access
 - b) Division of the property into quarantine zones
 - c) Daily health monitoring and illness record-keeping
 - d) Implementation of CFIA-required biosecurity protocols
 - e) Drainage of the pond and planned conversion for manure storage
 - f) Wildlife deterrent measures
18. We have complied with all CFIA orders to the best of our abilities. From the date we first discovered illness, no ostriches have left our farm. We ceased all sales and shipments immediately. Only essential personnel have accessed the premises.

G. Procedural History

19. Following CFIA's denial of our exemption request, we obtained an interlocutory stay from the Federal Court on February 18, 2025. The Federal Court ultimately dismissed our judicial review application on May 28, 2025.
20. The Federal Court of Appeal granted a stay pending appeal on June 20, 2025, with Justice Roussel finding that all three branches of the *RJR-MacDonald* test were satisfied. The appeal was heard on July 15, 2025.
21. On August 21, 2025, the Federal Court of Appeal dismissed our appeal but made significant observations about the state of the law.
22. Following the FCA's judgment, we immediately sought a brief administrative pause from CFIA to prepare our stay motion and leave application. On August 28, 2025, CFIA refused this request through counsel and indicated it would proceed with destruction preparations.

23. We filed our application for leave to appeal with this Court on September 19, 2025, and served it on the Respondent through counsel the same day.
24. We submitted our request for ministerial reconsideration on September 10, 2025, with comprehensive supporting materials including the new scientific evidence of pre-existing immunity. Attached and marked as **Exhibit "F"** is our submission confirmation and cover briefing note for ministerial reconsideration dated September 10, 2025.
25. At approximately 6:21 A.M on September 22, 2025, I received the Minister's denial of our reconsideration request. Despite 250 days without any disease, mortality, or transmission, the Minister refused to reconsider the destruction order. Attached and marked as **Exhibit "G"** is the CFIA denial letter dated September 22, 2025.

H. ENFORCEMENT ACTION CURRENTLY UNDERWAY

26. At approximately 10:00 AM. on September 22, 2025, approximately 3.5 hours after receiving the Minister's denial, enforcement began at Universal Ostrich Farms.
27. Approximately 40 vehicles from RCMP and CFIA arrived at our property. Officers and officials took positions around the premises. Attached and marked as **Exhibit "H"** are photographs showing the enforcement vehicles on site taken at 3:30 P.M
28. At approximately 1:00 P.M CFIA officials served warrants on me authorizing them to take immediate control and custody of all ostriches on our premises. Attached and marked as Exhibit "I" is a copy of the warrant(s) served.
29. I have been ordered to leave the quarantine area immediately. I am now prohibited from accessing, feeding, or caring for the birds I have raised for 32 years. The ostriches are now entirely in CFIA custody.

30. CFIA officials informed me verbally at approximately 1:30 PM that the destruction of the flock will proceed within 24 to 48 hours, meaning by Wednesday September 24, 2025 at the latest.
31. Approximately 40 protesters have gathered at the farm in response to the enforcement action. The situation is tense but peaceful. Media are present. I have urged all supporters to remain peaceful and to respect law enforcement while we pursue legal remedies.

I. Irreparable Harm

32. The destruction of our flock would cause multiple forms of irreparable harm that cannot be compensated monetarily.
33. The regulatory compensation available under the Compensation for Destroyed Animals Regulations would provide only nominal market value approximately \$500 to \$3,000 per bird based on meat value, which entirely fails to capture the genetic, research, and business value of these specialized animals. Our ostriches sell for \$7,500 per bird, creating a deficit of at least \$4,500 per ostrich between statutory compensation and actual value.
34. To understand the full scope of irreparable harm, it is necessary to explain our specialized business model which has evolved from traditional farming to cutting-edge biotechnology research:
- a) Until March 2020, UOF was engaged in selling ostriches for breeding purposes, meat processing, ostrich oil skin care products, and agritourism. The average selling price for one of our ostriches was \$7,500 (see **Exhibit "E"**).
 - b) In March 2020, we became familiar with the work of Dr. Yasuhiro Tsukamoto, President of Kyoto Prefecture University and founder of Ostrich Pharma KK. Based on Dr. Tsukamoto's published studies, ostrich eggs are uniquely suited for developing Immune Globulin Yolk ("IgY") antibodies because: (i) the size of their yolk and concentration of antibodies; (ii) antibodies can last several years in high concentration; (iii) these antibodies can neutralize H5N1 virus; (iv) one

ostrich egg equals 100 chicken eggs in antibody production; (v) antibodies can be extracted without harvesting the animal. Attached as **Exhibit "J"** is a true copy of the study authored by Dr. Tsukamoto.

- c) On May 6, 2020, we secured a letter of intent from Breathe Medical Manufacturing for exclusive supply of our COVID-19 antibodies produced using ostrich eggs, valued at approximately \$3,000,000. Attached as **Exhibit "K"** is a true copy of the Breathe Medical Manufacturing letter of intent.
- d) In December 2020, UOF began procuring antigens from Immune Bio Solutions Inc., which allowed UOF to produce COVID-19 antibodies using ostrich eggs. By December 2020, UOF's operations became entirely dedicated to scientific research through antibody production. Attached as **Exhibit "L"** is a true copy of the Bio Solutions invoice for the first production batch.
- e) In 2022, we incorporated Struthio Bio Science Inc. ("Struthio") to engage in manufacturing and marketing of ostrich egg IgY antibodies and related products in partnership with UOF.
- f) In April 2024, we negotiated agreements implementing a new ownership structure for Struthio, with Dr. Tsukamoto joining the board in exchange for investment and patent licensing necessary for commercialization. **Exhibit "M"** is the Struthio BioScience Business Plan dated December 2024, which identifies UOF as crucial partner supplying necessary ostrich eggs. The plan projects financial returns in the order of millions of dollars annually. I rely on this to show the existence of our business model and that UOF's flock is integral to our commercial strategy.
- g) **Exhibit "N"** is a true copy of the Struthio and Ostrich Pharma KK Agreement executed on April 11, 2024, showing third-party investment contingent on UOF's continued operations.
- h) **Exhibit "O"** is a true copy of the Exclusive Egg Supply Agreement between UOF and Struthio BioScience Inc. dated April 3, 2024, formalizing UOF's role as sole supplier of ostrich eggs for Struthio's operations with a five-year term.
- i) If UOF's flock is destroyed, UOF will be unable to perform its obligations under the Exclusive Supply Agreement. UOF cannot purchase ostrich eggs elsewhere to

cover these obligations. The Struthio-OPKK venture has been placed on hold pending the outcome of the culling decision.

J. Immediate and Irreversible Harm

35. As I swear this affidavit, CFIA is actively preparing for the destruction of approximately 400 healthy ostriches that have shown no signs of disease for 250 days.
36. Without immediate intervention from this Court, the entire flock will be destroyed before any court can consider the merits of our legal arguments.
37. I confirm that we are prepared to have CFIA maintain custody and control of the birds for biosecurity purposes. We are NOT seeking release of the birds or access to them. We simply seek preservation of their lives while the legal issues are determined by the courts.
38. If the birds are destroyed in the next 24-48 hours:
 - a) Our leave application to the Supreme Court will be rendered moot;
 - b) Our planned judicial review of the Minister's denial will be rendered moot;
 - c) 32 years of irreplaceable genetics will be lost forever;
 - d) Canada will lose its largest commercial ostrich research farming operation;
 - e) Valuable research subjects that have demonstrated natural immunity will be destroyed;
 - f) No amount of compensation could restore what will be lost.

K. Undertakings During the Stay

39. To address any concerns and demonstrate good faith, UOF hereby undertakes during any stay period to:
 - a) Maintain all current biosecurity and quarantine measures without reduction or modification;
 - b) Permit unlimited CFIA inspections and monitoring at any time without notice;
 - c) Not sell, transfer, move, release, or allow any birds to leave quarantine;
 - d) Immediately notify CFIA of any health changes (within 24 hours);

- e) Prosecute the leave application diligently and on any compressed timetable the Court directs;
- f) Accept any additional reasonable conditions this Court deems appropriate;
- g) Abide by any order this Court makes as to damages should CFIA suffer any compensable harm as a result of the stay.

40. I further undertake that if this Court grants any form of stay:

- a) We will not interfere with CFIA's custody and control of the birds
- b) We will not attempt to access the quarantine area unless authorized by CFIA;
- c) We will cooperate fully with any inspection or monitoring CFIA requires;
- d) We will discourage any protest activity that could interfere with CFIA operations;
- e) We will immediately notify the Court of any material change in circumstances.

L. Urgent Request for Relief

41. Given that enforcement is actively underway with destruction imminent within 24-48 hours, I respectfully request that:

- a) This motion be placed before this Honourable Court as soon as possible; and
- b) An interim stay be granted to preserve the status quo.

42. Every hour that passes brings us closer to irreversible destruction. By the time courts open Tuesday morning, preparations for destruction will be well advanced. Only immediate judicial intervention can preserve the subject matter of this litigation.

LI. International Context

43. Our flock has been disease-free for 250 days, which is nearly nine times the 28-day international benchmark for regaining disease-free status under World Organization for Animal Health (WOAH) standards following completion of disease control measures. Attached and marked as **Exhibit "P"** is documentation from WOAH, EU, and USDA confirming the 28-day disease-free standard for HPAI.

N. Conclusion

44. The proposed destruction of approximately 400 healthy ostriches would be both irreversible and unconscionable. These birds have demonstrated no signs of disease for over 250 days while maintained under strict quarantine conditions.

45. The enforcement action currently underway will result in the destruction of these healthy birds within 24-48 hours unless this Court intervenes.

46. I make this affidavit in support of UOF's urgent motion for a stay pursuant to s. 65.1 of the *Supreme Court Act* and for no other or improper purpose.

The deponent was not physically present before the commissioner but was present through video conferencing, and the process described for remote commissioning of Affidavits as outlined by the Law Society of British Columbia was utilized.

SWORN (OR AFFIRMED) BEFORE)
ME REMOTELY at Victoria British Columbia)
on September 22, 2025)

Umar A. Sheikh)
.....)

A commissioner for taking)
affidavits for British Columbia)



DAVID BILINSKI

Umar A. Sheikh

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Canadian Food
Inspection Agency

Agence canadienne
d'inspection des aliments

029

September 22, 2025

Universal Ostrich Farms Ltd.
301 Langille Road
Edgewood, BC

Dear David Bilinski and Karen Espersen,

On September 11, 2025, Universal Ostrich Farms Inc. (UOF) submitted a "Request for Ministerial Reconsideration" to the Minister of Agriculture and Agri-food, the Chief Veterinary Officer of the Canadian Food Inspection Agency (CFIA) and the President of the CFIA.

UOF requested that the Minister "rescind" the Notice of Requirement to Dispose of Animals and Things, issued to UOF on December 31, 2024 under section 48 of the *Health of Animals Act* (Notice). UOF also requested that the Minister designate its ostriches for research purposes under paragraph 13(2)(a) of the HAA, approve its "Risk-Managed Alternative Control Protocol", and authorize immediate testing of its ostriches.

The CFIA will not reconsider the Notice. This decision is in-line with the *Health of Animals Act* (HAA) and CFIA's stamping-out response policy to highly pathogenic avian influenza (HPAI), a policy which has been found reasonable on review by both the Federal Court and Federal Court of Appeal. None of the information provided by UOF suggests that any of its ostriches were not exposed to HPAI. As such, the entire herd continues to meet the criteria for depopulation under the CFIA stamping-out policy.

Your request for an exemption from depopulation was denied as the documentation you provided and our biosecurity assessment of the premises did not meet the criteria of a distinct epidemiological unit. Furthermore, UOF did not provide documentation to support the animals on this premises having rare and valuable genetics. The information provided by UOF in this request does not warrant reconsideration of the Notice or CFIA's application of the exemption criteria under the stamping-out policy.

The main purpose of the HAA is to enable CFIA to protect the health of people and animals. Reconsidering the Notice in these circumstances would threaten the CFIA's ability to discharge its mandate under the HAA in rapidly eliminating HPAI outbreaks through the timely destruction of infected and exposed birds. It would delay disposal when all criteria for implementing the policy have been met and disposal is consistent with the purposes of the HAA.

None of the information provided merits reconsideration of the Notice on the basis of the herd's scientific value. There are already numerous studies in scientific literature evaluating the duration of immunity in a variety of avian species, including ostriches.

This is Exhibit " G " referred to in the
Affidavit of David Bilinski
sworn (or affirmed) before me at
Victoria, BC
this 22 day of September 2025.
US
A Commissioner for Taking Affidavits for British Columbia

Umar A. Sheikh

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None of the scientific information provided, including the report of Dr. Pelech, warrants reconsideration of CFIA's assessment of the risk of disease transmission posed by these birds and the premises, and the continued risks to animal health, human health and Canada's poultry industry.

The CFIA does not agree with UOF's assertion that biosecurity measures have been implemented and upheld since December 28, 2024. The single action of draining the pond will not absolutely deter wildlife and birds from accessing the property, nor does it address the environmental contamination of the premises. The inability to comply with the quarantine requirements placed by CFIA on the farm to mitigate the risk of spread of HPAI from the infected premises has been documented numerous times by the CFIA throughout the duration of the quarantine order.

Regarding the international standards cited in UOF's request, UOF has misinterpreted the WOAHA Code, and mistakenly conflated the USDA's response policy for HPAI in dairy cattle, or South Africa's approach to HPAI control in ostriches with Canada's response to HPAI in poultry. For example, the "exceedance factor" cited by UOF in relation to the WOAHA standard is applicable only after a stamping-out policy has been completed. A stamping-out policy in dairy cattle is not warranted as the current understanding of the epidemiology and pathogenesis of the disease do not require destruction of the cattle. UOF has correctly stated that South Africa has applied a modified stamping-out approach to HPAI in ostriches which cannot facilitate country level freedom from HPAI; Canada does not apply a modified stamping-out approach to HPAI in poultry and pursues country level freedom from HPAI.

The CFIA does not agree with UOF's opinion that the CFIA is inconsistently applying its disease control policies based on the Scrapie Pilot Project which UOF has referenced. The CFIA utilizes a science-based approach to disease control, which reflects the inherent characteristics of the specific reportable disease as well as the goal of the control measures. Unlike HPAI, scrapie does not infect a wide range of host species (i.e. wildlife, or ruminants other than sheep and goats), it is not zoonotic (i.e. capable of infecting humans), it is not easily transmissible, it occurs at a low level of prevalence within infected flocks, and Canada has not achieved country level freedom from Scrapie under the WOAHA Terrestrial Animal Health Code 14.8.3.

CFIA is preparing to proceed with a humane cull of all ostriches at Universal Ostrich Farm and the disposal of any contaminated things on the premises. Following the cull, CFIA will oversee the cleaning and decontamination process.

Under subsection 35(2) of the HAA, as the owners having care and control of these birds, you are required to give CFIA all reasonable assistance to enable the humane cull. Specifically, CFIA is requesting your assistance by continuing to feed/water the birds and muster the birds in a manner that will be specified by CFIA inspectors when CFIA is onsite.

Subsection 35(1) of the HAA prohibits any person from obstructing a CFIA inspector as they perform their duties. The CFIA also requests your assistance by ensuring



CFIA inspectors and other staff or contractors have unimpeded access to the property and that no individuals, including yourselves, will hinder the CFIA's actions on the premises. These actions will include: the movement of equipment on and off the site, the movement of personnel on and off the site, and the humane culling of the birds on-site. We expect your cooperation in ensuring that no individuals are permitted to be inside of the animal pens or to be present on the North side of Langille Road adjacent to the property.

We understand this is a difficult time, that these activities can be extremely upsetting, and that your ability to assist with facilitating the humane cull may be limited for those or other reasons. If so, we ask that as CFIA proceeds with the cull you, as owners of the property and birds or the persons in charge of a place, ensure there is unimpeded access to the site and that no person or objects are obstructing the activities of the CFIA. We do encourage owners that are feeling anxious or stressed to visit the [AgSafe](https://agsafebc.ca/mental-wellness/) mental health website. They have valuable resources that you may find helpful. <https://agsafebc.ca/mental-wellness/>

Sincerely,

Cortnie Fotheringham
Incident Commander, HPAI
Western Area Manager of Emergency Management
Canadian Food Inspection Agency