Court File No.: T-294-25 ID 16

FEDERAL COURT

BETWEEN:

UNIVERSAL OSTRICH FARMS INC.

Applicant

and

CANADIAN FOOD INSPECTION AGENCY

Respondent

RESPONDENT'S MOTION RECORD

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Affidavit 1 of Cathy Furness
affirmed January 30, 2025

Court File Number: _____

BETWEEN:

UNIVERSAL OSTRICH FARMS LTD.

Applicant

and

CANADIAN FOOD INSPECTION AGENCY

Respondent

AFFIDAVIT OF CATHY FURNESS

I, CATHY FURNESS of the County of Wellington, in the Province of Ontario, AFFIRM THAT:

1. I am the Deputy Chief Veterinary Officer for Canada, Office of the Chief Veterinary Officer, Policy and Programs Branch at the Canadian Food Inspection Agency (**CFIA**). I have held this position since 2022. Prior to this, I was the Chief Veterinary Officer for the Province of Ontario from 2019 to 2022. Concurrently, I was a Manager of the Veterinary Science Unit, in the Animal Health and Welfare Branch, with the Ontario Ministry of Agriculture, Food and Rural Affairs from 2017 to 2022. From 2013 to 2017, I was the Lead Veterinarian for Planning and Preparedness within the Animal Health and Welfare Branch of the Ontario Ministry of Agriculture, Food and Rural Affairs. I have been a licensed veterinarian since 2000. I am also an American College of Veterinary Internal Medicine board certified Internal Medicine Specialist.

2. In my role as the Deputy Chief Veterinary Officer, I am responsible for providing professional expertise and leadership related to numerous animal health and public health efforts. I contribute to national efforts to ensure that Canada's animal health community and veterinary infrastructure have the capacity to effectively respond to foreign, reportable, emerging and re-emerging animal and zoonotic diseases.

3. I have served as the National Incident Manager for the CFIA outbreak response to highly pathogenic avian influenza from October 2023 until March 2024 and then again from November 2024 to present. In this role, I provide leadership and disease management expertise and support communication between industry and government partners.

4. I have personal knowledge of the contents of the matters described in this affidavit by virtue of my role and experience with CFIA, except those stated to be on information and belief. I believe that all of the information in this affidavit is true.

CFIA's Mandate

5. CFIA is dedicated to safeguarding food, animals and plants, which enhances the health and well-being of Canada's people, environment and economy. The health and safety of Canadians is the driving force behind the design and development of CFIA's programs. One of CFIA's primary objectives is to protect Canadians from preventable health risks related to food and zoonotic diseases (i.e. diseases that can spread from animals to humans).

6. Canada is a member of the World Organisation for Animal Health (**WOAH**). WOAH is a science-based global authority on animal and veterinary public health. As an inter-governmental organisation, WOAH focuses on collecting, analyzing, and transparently disseminating scientific veterinary information on animal diseases and zoonosis situation. WOAH works to improve animal health

and animal welfare worldwide. WOAH's standards inform the measures that CFIA implements to achieve its objectives.

7. Among other things, CFIA is responsible for administering and enforcing the *Health of Animals Act* (***HAA***) and Regulations. The purpose of the *HAA* is to protect the health of animals and humans, as noted by its long title "An Act respecting diseases and toxic substances that may affect animals or that may be transmitted by animals to persons, and respecting the protection of animals". The purpose of the *HAA* is, in part, to prevent or control the spread of the diseases that may affect animals and to prevent or control the spread of diseases that may be spread by animals to humans.

8. The *HAA* defines a "disease" as including "a reportable disease and any other disease that may affect an animal or that may be transmitted by an animal to a person". The *HAA* imposes reporting obligations on "reportable diseases". Veterinarians, and others who analyze animals, and those who own or possess, care or control an animal must immediately notify the nearest veterinary inspector if they become aware of the presence of avian influenza in or around the animal.

9. Section 48 of the *HAA* provides for the treatment or disposition of animals or things that are, or are suspected of being affected or contaminated by disease. The *HAA* and the *Compensation for Destroyed Animals and Things Regulations* allow that compensation may be payable to the owners of animals or things ordered destroyed to prevent the spread of disease.

Background on Avian Influenza

10. Avian influenza (**AI**) is a disease caused by influenza Type A viruses, which occur naturally in wild aquatic bird populations, like dabbling ducks and shore birds, but can spread to domestic poultry, other birds and mammals, and, less commonly, people.

11. AI is highly infectious and may be transmitted from wild birds to domestic birds through direct and indirect contact. Birds infected with AI may not show clinical symptoms of infection. However, the current strain of AI has presented with a higher rate of clinical symptoms and deaths. Birds without signs of infection can still actively transmit the virus and facilitate its mutation.

12. AI is a disease of significant human health concern due to the virus ability to reassort and mutate. Certain mutations can cause the virus to become more likely to infect people and sustain human-to-human transmission. Approximately half of the over 900 human cases reported around the world since 1997 have been fatal. The Public Health Agency of Canada currently deems the risk to humans as low but are continuously monitoring the ongoing outbreak for changes in the virus.

13. Clinical signs of AI in birds vary from mild respiratory disease to acute disease with high mortality. The severity of disease varies depending on the strain of virus and species affected. An outbreak of AI can result in significant die-off events in bird populations.

14. AI variants are categorized into highly pathogenic avian influenza strains (**HPAI**) and low pathogenicity avian influenza strains (**LPAI**). The *Reportable Diseases Regulations* to the *HAA*, which lists reportable diseases, includes LPAI and HPAI – subtypes H5 and H7.

15. AI is diagnosed through laboratory testing. HPAI has been detected in Canada in domestic poultry on numerous occasions. Since 2021, the predominant subtype of AI found in domestic and wild birds in Canada has been HPAI H5N1. Another highly pathogenic variant, HPAI H5N2, was detected for the first time in Canada in November 2024 in domestic poultry in British Columbia.

16. Although rare, transmission of HPAI to humans can occur, most commonly when people have had close contact with infected birds. In rare cases, infection

may lead to severe illness or death. Notably, in the Fall of 2024, a teenager in British Columbia became critically ill from HPAI.

The CFIA's Response to HPAI

17. CFIA plays an important role in furthering the Government of Canada's broader efforts to help prevent the introduction and spread of HPAI in Canada. CFIA's efforts to control HPA1 are aimed at mitigating risks that include:

    a. health impacts on domestic birds;

    b. health impact on humans, including that AI infection in birds could serve as a precursor to a human flu pandemic; and

    c. economic repercussions of an outbreak of AI.

18. CFIA's response strategy to an outbreak of HPAI in poultry is to eradicate detected disease and re-establish Canada's disease-free status as quickly as possible. This is referred to by CFIA and others as a "stamping out" strategy or policy. Stamping out includes ensuring that poultry flocks infected with or exposed to HPAI on an infected premises are humanely destroyed. The Stamping out policy is applied for all detections of AI subtype H5 in domestic poultry, regardless of within flock mortality and evidence of clinical symptoms. This includes situations where birds appear healthy. The stamping out policy mitigates the risk of further spread of the virus, opportunity for virus mutation and risk of transmission to humans.

19. CFIA's implementation of stamping out aligns with WOAH's standards. Without stamping out, a country cannot be considered free from HPAI until at least 12 months from an infection in poultry, as opposed 28 days where stamping out is implemented. Attached to my affidavit as **Exhibit A** is an excerpt from the *Terrestrial Animal Health Code*, Chapter 10.4, "Infection with High Pathogenicity Avian Influenza Viruses", which refers to stamping out and its impacts on a country's disease status.

20. Although my role with CFIA is focused on animal health, my understanding is that losing disease-free status by not implementing stamping out could have adverse impacts on Canada's trade relationships, in particular trading partners could stop importing Canadian poultry including poultry products (meat and eggs) and poultry genetics.

HPAI Response Measures Apply to Ostriches

21. Ostriches are susceptible to infection with AI. Similar to many birds, ostriches typically do not show clinical signs of infection of AI but can nonetheless continue to replicate, mutate, and shed the virus. It is also possible for ostriches to be infected with more than one subtype of influenza virus. This may allow HPAI variants to mix with other circulating influenzas creating new combinations with potentially different behaviors. Additionally, ostriches have potential to contribute genetic mutations to avian influenza viruses that may increase viral adaptability to mammalian hosts.

22. CFIA applies the WOAH's definition of "poultry" when implementing HPAI response measures, including stamping out. Ostriches that are kept in captivity for the production of any commercial animal products or for breeding are considered poultry. Attached to my affidavit as **Exhibit B** is an excerpt from the Glossary to the *Terrestrial Animal Health Code* that includes this definition.

CFIA's Response to HPAI at Universal Ostrich Farms

23. On December 31, 2024, CFIA ordered Universal Ostrich Farms Inc. (**Universal**) to dispose of all ostriches located at 301 Langille Road, Edgewood, British Columbia, by February 1, 2025, upon CFIA's determination that the ostriches were affected or contaminated by AI (the "**Order**"). Attached as **Exhibit C** is a true copy of the Order.

24. Prior to the Order, on December 28, 2024, CFIA was alerted that Universal's ostriches were sick by an anonymous individual not associated with Universal that left CFIA a voicemail. CFIA then contacted Universal. I understand that

Universal reported to CFIA officials that around 25 ostriches died in the previous 3 week period. I understand that Universal had roughly 450 ostriches. CFIA requested that Universal have a veterinarian assess the ostriches for AI.

25. On December 29, 2024, Universal informed CFIA that their private veterinarian was unavailable and they requested that a CFIA veterinarian assess the ostriches for AI. I understand that an additional 4 ostriches died on the same day.

26. On December 30, 2024, CFIA veterinarian, Vaughn Dykstra, went to Universal's premises to collect samples.

27. On December 31, 2024, CFIA received the results from the samples, which confirmed that the ostriches tested were positive for HPAI.

Universal Failed to Qualify for an Exemption

28. I understand Universal requested that CFIA not order disposal of the ostriches. In order to avoid disposing of the ostriches, Universal needed to apply for an exemption from the Order.

29. On January 10, 2025, after considering submissions from Universal, CFIA determined that Universal did not meet the criteria for an exemption from the Order. Attached to my affidavit at **Exhibit D** is a true copy of the January 10, 2025 letter from Troy Bourque, Planning Chief, to Universal communicating this decision.

30. In order to qualify for an exemption, Universal needed to demonstrate that the ostriches: (a) were a distinct epidemiological unit; and (b) possessed rare and valuable poultry genetics.

31. In order for CFIA to recognize a distinct epidemiological unit, Universal was required to demonstrate that a subset of the ostriches existed as a distinct unit with no exposure to AI. In other words, the ostriches needed to be protected from the outside environment where AI was currently known to exist.

32. Universal provided no evidence to support a finding that its ostriches were a distinct unit. To the contrary, the ostriches are housed outdoors in several large pens, with shared personnel and farm management practices exhibited between all groups of birds onsite. There is also a large pond between two of the outdoor bird pens with significant wild bird activity.

33. In order for CFIA to consider its ostriches to possess rare and valuable poultry genetics, Universal was required to demonstrate the high economic value the flock provides to the broader Canadian poultry industry. There must be in place a robust process to actively select and breed for specific desirable traits and evidence that this genetic value is critical to the Canadian poultry industry.

34. Universal provided no evidence that the ostriches possesses rare and valuable poultry genetics.

Consequences of Failing to Follow the Order

35. If Universal fails to dispose of the infected ostriches by February 1, 2025, I understand that CFIA may proceed with humanely disposing of the infected ostriches.

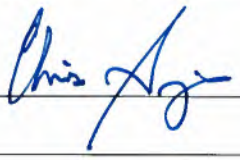
AFFIRMED BEFORE me at the City of Guelph, in the Province of Ontario, this 30 day of January 2025.

A Commissioner for Oaths in and for the Province of Ontario

CHRIS ARANJO

CATHY FURNESS

This is **Exhibit "A"** referred to in the Affidavit of **CATHY FURNESS** affirmed before me at Guelph, Ontario, this 30 day of January, 2025.



CHAPTER 10.4.

INFECTION WITH HIGH PATHOGENICITY AVIAN INFLUENZA VIRUSES

Article 10.4.1.

General provisions

1) This chapter deals with the *listed disease*, *infection* with high pathogenicity avian influenza viruses.

2) For the purposes of the *Terrestrial Code*:

   a) High pathogenicity avian influenza means an *infection* of *poultry* by any influenza A virus that has been determined as high pathogenicity in accordance with the *Terrestrial Manual*.

   b) An occurrence of *infection* with a high pathogenicity avian influenza virus is defined by the isolation and identification of the virus or the detection of specific viral ribonucleic acid, in one or more samples from *poultry*.

   c) The *incubation period* at the *flock*-level for high pathogenicity avian influenza is 14 days.

3) Although the objective of this chapter is to mitigate animal and public health risks posed by *infection* with high pathogenicity avian influenza viruses, other influenza A viruses of avian host origin (i.e. low pathogenicity avian influenza viruses) may have the potential to exert a negative impact on animal and public health. A sudden and unexpected increase in virulence of low pathogenicity avian influenza viruses in *poultry* is notifiable as an *emerging disease* in accordance with Article 1.1.4. *Infection* of domestic and *captive wild* birds with low pathogenicity avian influenza viruses having proven natural transmission to humans associated with severe consequences, and *infection* of birds other than *poultry*, including *wild* birds, with influenza A viruses of high pathogenicity, are notifiable in accordance with Article 1.3.3.

4) A *notification* of *infection* of birds other than *poultry*, including *wild* birds, with influenza A viruses of high pathogenicity, or of *infection* of domestic or *captive wild* birds with low pathogenicity avian influenza viruses does not affect the high pathogenicity avian influenza status of the country or *zone*. A Member Country should not impose bans on the international trade of *poultry commodities* in response to such *notifications*, or to other information on the presence of any non-notifiable influenza A virus in birds.

5) This chapter includes *monitoring* considerations for low pathogenicity avian influenza viruses because some, especially H5 and H7 subtypes, have the potential to mutate into high pathogenicity avian influenza viruses.

6) The use of *vaccination* against avian influenza may be recommended under specific conditions. Any vaccine used should comply with the standards described in the *Terrestrial Manual*. *Vaccination* will not affect the high pathogenicity avian influenza status of a free country or *zone* if *surveillance* supports the absence of *infection*, in accordance with Article 10.4.28., in particular point 2. *Vaccination* can be used as an effective complementary control tool when a *stamping-out policy* alone is not sufficient. Whether to vaccinate or not should be decided by the *Veterinary Authority* on the basis of the avian influenza situation as well as the ability of the *Veterinary Services* to implement the *vaccination* strategy, as described in Chapter 4.18.

7) Standards for diagnostic tests and vaccines, including pathogenicity testing, are described in the *Terrestrial Manual*.

Article 10.4.2.

Safe commodities

When authorising importation or transit of the following *commodities*, *Veterinary Authorities* should not require any conditions related to high pathogenicity avian influenza, regardless of the high pathogenicity avian influenza status of the *exporting country* or *zone*:

1) heat-treated *poultry meat products* in a hermetically sealed container with an F_0 value of 3 or above;

2) extruded dry pet food and coated ingredients after extrusion;

3) rendered *protein meal*, blood meal, feather meal, and *poultry* oil;

4) washed and steam-dried feathers and down from *poultry* and other birds.

Other *commodities* of *poultry* and other birds can be traded safely if in accordance with the relevant articles of this chapter.

Article 10.4.3.

Country or zone free from high pathogenicity avian influenza

A country or *zone* may be considered free from high pathogenicity avian influenza when:

- *infection* with high pathogenicity avian influenza viruses is a *notifiable disease* in the entire country;
- an ongoing awareness programme is in place to encourage reporting of suspicions of high pathogenicity avian influenza;
- absence of *infection* with high pathogenicity avian influenza viruses, based on *surveillance*, in accordance with Chapter 1.4. and Articles 10.4.26. to 10.4.30., has been demonstrated in the country or *zone* for the past 12 months;
- an awareness programme is in place related to avian influenza viruses *risks* and the specific *biosecurity* and management measures to address them;
- *commodities* are imported in accordance with Articles 10.4.7. to 10.4.22.

Surveillance should be adapted to parts of the country or existing *zones* depending on historical or geographical factors, industry structure, population data and proximity to recent *outbreaks* or the use of *vaccination*.

Article 10.4.4.

Compartment free from high pathogenicity avian influenza

The establishment of a *compartment* free from high pathogenicity avian influenza should be in accordance with relevant requirements of this chapter and the principles described in Chapters 4.4. and 4.5.

Article 10.4.5.

Establishment of a containment zone within a country or zone free from high pathogenicity avian influenza

In the event of *outbreaks* of high pathogenicity avian influenza within a previously free country or *zone*, a *containment zone*, which includes all epidemiologically linked *outbreaks*, may be established for the purpose of minimising the impact on the rest of the country or *zone*.

In addition to the requirements for the establishment of a *containment zone* outlined in Article 4.4.7., the *surveillance* programme should take into account the density of *poultry* production, types of *poultry*, local management practices (including inter-premises movement patterns of *poultry*, people and equipment), relevant *biosecurity*, the presence and potential role of birds other than *poultry*, including *wild* birds, and the proximity of *poultry establishments* to permanent and seasonal water bodies.

The free status of the areas outside the *containment zone* is suspended while the *containment zone* is being established. It may be reinstated, irrespective of the provisions of Article 10.4.6., once the *containment zone* is established. It should be demonstrated that *commodities* for *international trade* have originated from outside the *containment zone* or comply with the relevant articles of this chapter.

Article 10.4.6.

Recovery of free status

If *infection* with high pathogenicity avian influenza virus has occurred in *poultry* in a previously free country or *zone*, the free status may be regained after a minimum period of 28 days (i.e. two *flock*-level *incubation periods*) after a *stamping-out policy* has been completed (i.e. after the *disinfection* of the last affected *establishment*), provided that *surveillance* in accordance with Articles 10.4.26. to 10.4.30., in particular point 3 of Article 10.4.28., has been carried out during that period and has demonstrated the absence of *infection*.

If a *stamping-out policy* is not implemented, Article 10.4.3. applies.

Article 10.4.7.

Recommendations for importation from a country, zone or compartment free from high pathogenicity avian influenza

For live poultry (other than day-old poultry)

Veterinary Authorities should require the presentation of an *international veterinary certificate* attesting that:

1) the *poultry* showed no clinical signs of avian influenza on the day of shipment;
2) the *poultry* originated from a country, *zone* or *compartment* free from high pathogenicity avian influenza;
3) the *poultry* originated from a *flock* that was monitored for avian influenza viruses and was found to be negative;
4) the *poultry* are transported in new or appropriately sanitised *containers*.

If the *poultry* have been vaccinated against avian influenza viruses, the nature of the vaccine used and the date of *vaccination* should be stated in the *international veterinary certificate*.

Article 10.4.8.

Recommendations for the importation of live birds other than poultry

Regardless of the high pathogenicity avian influenza status of the country of origin, *Veterinary Authorities* should require the presentation of an *international veterinary certificate* attesting that:

1) on the day of shipment, the birds showed no clinical signs of avian influenza;
2) the birds had been kept in isolation facilities approved by the *Veterinary Services* since they were hatched or for at least 28 days (i.e. two *flock*-level *incubation periods*) prior to shipment and showed no clinical signs of avian influenza during the isolation period;
3) a statistically appropriate sample of the birds was subjected, with negative results, to a diagnostic test for avian influenza within 14 days prior to shipment;
4) the birds are transported in new or appropriately sanitised *containers*.

If the birds have been vaccinated against avian influenza, the nature of the vaccine used and the date of *vaccination* should be stated in the *international veterinary certificate*.

Article 10.4.9.

Recommendations for importation from a country, zone or compartment free from high pathogenicity avian influenza

For day-old live poultry

Veterinary Authorities should require the presentation of an *international veterinary certificate* attesting that:

1) the day-old live *poultry* had been kept in a country, *zone* or *compartment* free from high pathogenicity avian influenza since they were hatched;

   and

   a) the day-old live *poultry* were derived from parent *flocks* that were monitored for avian influenza viruses and were found to be negative at the time of collection of the eggs from which the day-old *poultry* hatched; or
   b) the day-old live *poultry* that hatched from eggs that had had their surfaces sanitised in accordance with point 4 d) of Article 6.5.5.;

AND

2) the day-old live *poultry* were transported in new or appropriately sanitised *containers*.

If the day-old live *poultry* or the parent *flocks* have been vaccinated against avian influenza, the nature of the vaccine used and the date of *vaccination* should be stated in the *international veterinary certificate*.

Article 10.4.10.

Recommendations for the importation of day-old live birds other than poultry

Regardless of the high pathogenicity avian influenza status of the country of origin, *Veterinary Authorities* should require the presentation of an *international veterinary certificate* attesting that:

1) on the day of shipment, the birds showed no clinical signs of avian influenza;
2) the birds were hatched and kept in isolation facilities approved by the *Veterinary Services*;
3) a statistically appropriate sample of the parent *flock* birds were subjected, with negative results, to a diagnostic test for avian influenza at the time of collection of the eggs;
4) the birds were transported in new or appropriately sanitised *containers*.

If the birds or parent *flocks* have been vaccinated against avian influenza, the nature of the vaccine used and the date of *vaccination* should be stated in the *international veterinary certificate*.

Article 10.4.11.

Recommendations for importation from a country, zone or compartment free from high pathogenicity avian influenza

For hatching eggs of poultry

Veterinary Authorities should require the presentation of an *international veterinary certificate* attesting that:

1) the hatching eggs came from a country, *zone* or *compartment* free from high pathogenicity avian influenza;
2)
   a) the hatching eggs were derived from parent *flocks* that were monitored for avian influenza viruses and were found to be negative at the time of collection of the hatching eggs; or
   b) the hatching eggs have had their surfaces sanitised in accordance with point 4 d) of Article 6.5.5.;
3) the hatching eggs are transported in new or appropriately sanitised packaging materials and *containers*.

If the parent *flocks* have been vaccinated against avian influenza, the nature of the vaccine used and the date of *vaccination* should be stated in the *international veterinary certificate*.

Article 10.4.12.

Recommendations for the importation of hatching eggs from birds other than poultry

Regardless of the high pathogenicity avian influenza status of the country of origin, *Veterinary Authorities* should require the presentation of an *international veterinary certificate* attesting that:

1) a statistically appropriate sample of the parent *flock* birds was subjected, with negative results, to a diagnostic test for avian influenza 14 days prior to and at the time of collection of the hatching eggs;
2) the hatching eggs have had their surfaces sanitised in accordance with point 4 d) of Article 6.5.5.;
3) the hatching eggs are transported in new or appropriately sanitised packaging materials and *containers*.

If the parent *flocks* have been vaccinated against avian influenza, the nature of the vaccine used and the date of *vaccination* should be stated in the *international veterinary certificate*.

Article 10.4.13.

Recommendations for importation from a country, zone or compartment free from high pathogenicity avian influenza

For poultry semen

Veterinary Authorities should require the presentation of an *international veterinary certificate* attesting that the donor *poultry*:

1) showed no clinical signs of avian influenza on the day of semen collection;

2) were kept in a country, *zone* or *compartment* free from high pathogenicity avian influenza.

Article 10.4.14.

Recommendations for the importation of semen from birds other than poultry

Regardless of the high pathogenicity avian influenza status of the country of origin, *Veterinary Authorities* should require the presentation of an *international veterinary certificate* attesting that the donor birds:

1) were kept in isolation facilities approved by the *Veterinary Services* for at least 28 days (i.e. two *flock*-level *incubation periods*) prior to semen collection;
2) showed no clinical signs of avian influenza during the isolation period;
3) were subjected, with negative results, to a diagnostic test for avian influenza within 14 days prior to semen collection.

Article 10.4.15.

Recommendations for importation from a country, zone or compartment free from high pathogenicity avian influenza

For eggs for human consumption

Veterinary Authorities should require the presentation of an *international veterinary certificate* attesting that:

1) the eggs for human consumption were produced and packed in a country, *zone* or *compartment* free from high pathogenicity avian influenza;
2) the eggs for human consumption were transported in new or appropriately sanitised packaging materials and *containers*.

Article 10.4.16.

Recommendations for the importation of egg products from poultry

Regardless of the high pathogenicity avian influenza status of the country of origin, *Veterinary Authorities* should require the presentation of an *international veterinary certificate* attesting that:

1) the egg products are derived from eggs which meet the requirements of Article 10.4.15.; or
2) the egg products have been processed to ensure the inactivation of high pathogenicity avian influenza viruses, in accordance with Article 10.4.23.;

AND

3) the necessary precautions were taken to avoid contact of the egg products with any source of high pathogenicity avian influenza viruses.

Article 10.4.17.

Recommendations for importation from a country, zone or compartment free from high pathogenicity avian influenza

For fresh meat of poultry

Veterinary Authorities should require the presentation of an *international veterinary certificate* attesting that the entire consignment of *fresh meat* comes from *poultry*:

1) which originated from a country, *zone* or *compartment* free from high pathogenicity avian influenza;
2) which were slaughtered in an approved *slaughterhouse/abattoir* in a country, *zone* or *compartment* free from high pathogenicity avian influenza and were subjected to ante- and post-mortem inspections in accordance with Chapter 6.3., with favourable results.

Article 10.4.18.

Recommendations for the importation of meat products from poultry

Regardless of the high pathogenicity avian influenza status of the country of origin, *Veterinary Authorities* should require the presentation of an *international veterinary certificate* attesting that:

1) the *meat products* from *poultry* are derived from *fresh meat* which meets the requirements of Article 10.4.17.; or

2) the *meat products* from *poultry* have been processed to ensure the inactivation of high pathogenicity avian influenza viruses in accordance with Article 10.4.24.;

AND

3) the necessary precautions were taken to avoid contact of the *meat products* from *poultry* with any source of high pathogenicity avian influenza viruses.

Article 10.4.19.

Recommendations for the importation of poultry products not listed in Article 10.4.2. and intended for use in animal feeding, or for agricultural or industrial use

Regardless of the high pathogenicity avian influenza status of the country of origin, *Veterinary Authorities* should require the presentation of an *international veterinary certificate* attesting that:

1) these *commodities* were obtained from *poultry* which originated in a country, *zone* or *compartment* free from high pathogenicity avian influenza and that the necessary precautions were taken to avoid contamination during processing with any source of high pathogenicity avian influenza viruses;

OR

2) these *commodities* have been processed to ensure the inactivation of high pathogenicity avian influenza viruses using:

   a) moist heat treatment for 30 minutes at 56°C; or

   b) heat treatment where the internal temperature throughout the product reached at least 74°C; or

   c) any equivalent treatment that has been demonstrated to inactivate avian influenza viruses;

AND

3) the necessary precautions were taken to avoid contact of the *commodity* with any source of high pathogenicity avian influenza viruses.

Article 10.4.20.

Recommendations for the importation of feathers and down from poultry not listed in Article 10.4.2.

Veterinary Authorities should require the presentation of an *international veterinary certificate* attesting that:

1) these *commodities* originated from *poultry* as described in Article 10.4.17. and were processed in a country, *zone* or *compartment* free from high pathogenicity avian influenza; or

2) these *commodities* have been processed to ensure the inactivation of high pathogenicity avian influenza viruses using one of the following:

   a) fumigation with formalin (10% formaldehyde) for 8 hours;

   b) irradiation with a dose of 20 kGy;

   c) any equivalent treatment which has been demonstrated to inactivate avian influenza viruses;

AND

3) the necessary precautions were taken to avoid contact of the *commodity* with any source of high pathogenicity avian influenza viruses.

Article 10.4.21.

Recommendations for the importation of feathers and down of birds other than poultry not listed in Article 10.4.2.

Regardless of the high pathogenicity avian influenza status of the country of origin, *Veterinary Authorities* should require the presentation of an *international veterinary certificate* attesting that:

1) these *commodities* have been processed to ensure the inactivation of high pathogenicity avian influenza viruses using one of the following:
   a) fumigation with formalin (10% formaldehyde) for 8 hours;
   b) irradiation with a dose of 20 kGy;
   c) any equivalent treatment which has been demonstrated to inactivate avian influenza viruses;
2) the necessary precautions were taken to avoid contact of the *commodity* with any source of high pathogenicity avian influenza viruses.

Article 10.4.22.

Recommendations for the importation of collection specimens, skins and trophies of birds other than poultry

Regardless of the high pathogenicity avian influenza status of the country of origin, *Veterinary Authorities* should require the presentation of an *international veterinary certificate* attesting that:

1) these *commodities* have been processed to ensure the inactivation of high pathogenicity avian influenza viruses in accordance with Article 10.4.25.;

AND

2) the necessary precautions were taken to avoid contact of the *commodity* with any source of high pathogenicity avian influenza viruses.

Article 10.4.23.

Procedures for the inactivation of high pathogenicity avian influenza viruses in egg products from poultry

The following time/temperature combinations are suitable for the inactivation of high pathogenicity avian influenza viruses present in egg products:

	Core temperature (°C)	Time
Whole egg	60	188 seconds
Whole egg blends	60	188 seconds
Whole egg blends	61.1	94 seconds
Liquid egg white	55.6	870 seconds
Liquid egg white	56.7	232 seconds
Plain or pure egg yolk	60	288 seconds
10% salted yolk	62.2	138 seconds
Dried egg white	67	20 hours
Dried egg white	54.4	50.4 hours
Dried egg white	51.7	73.2 hours

These time/temperature combinations are indicative of a range that achieves a 7-$\log_{10}$ reduction of avian influenza virus infectivity. These are examples for a variety of egg products but, when supported by scientific evidence, variations of these time/temperature combinations may be used, and they may be used for other egg products, if they achieve equivalent inactivation of the virus.

Article 10.4.24.

Procedures for the inactivation of high pathogenicity avian influenza viruses in meat products from poultry

The following time/temperature combinations are suitable for the inactivation of high pathogenicity avian influenza viruses in *meat products*.

	Core temperature (°C)	Time
Meat products from poultry	60.0	507 seconds
	65.0	42 seconds
	70.0	3.5 seconds
	73.9	0.51 second

These time/temperature combinations are indicative of a range that achieves a 7-$\log_{10}$ reduction of avian influenza virus infectivity. When supported by scientific evidence, variations of these time/temperature combinations may be used if they achieve equivalent inactivation of the virus.

Article 10.4.25.

Procedures for the inactivation of high pathogenicity avian influenza viruses in collection specimens and in skins and trophies

For the inactivation of high pathogenicity avian influenza viruses in collection specimens and in skins and trophies, one of the following procedures should be used:

1) boiling in water for an appropriate time to ensure that any material other than bone, claws or beaks is removed; or
2) soaking, with agitation, in a 4% (w/v) solution of washing soda (sodium carbonate-Na_2CO_3) maintained at pH 11.5 or above for at least 48 hours; or
3) soaking, with agitation, in a formic acid solution (100 kg salt [NaCl] and 12 kg formic acid per 1,000 litres water) maintained below pH 3.0 for at least 48 hours; wetting and dressing agents may be added; or
4) in the case of raw hides, treatment for at least 28 days with salt (NaCl) containing 2% washing soda (sodium carbonate-Na_2CO_3); or
5) treatment with 1% formalin for a minimum of six days; or
6) any equivalent treatment which has been demonstrated to inactivate the virus.

Article 10.4.26.

Principles of surveillance for avian influenza

The following are complementary to Chapter 1.4. and should be applied by Member Countries seeking to determine their high pathogenicity avian influenza status.

These principles are also necessary to support *vaccination* programmes, to monitor low pathogenicity avian influenza viruses, especially H5 and H7, in *poultry* and to detect high pathogenicity avian influenza in *wild* birds.

The impact and epidemiology of avian influenza differ widely among different regions of the world and therefore it is impossible to provide detailed recommendations for all situations. Variables such as the frequency of contacts between *poultry* and *wild* birds, different *biosecurity* levels and production systems, and the commingling of different susceptible species including domestic waterfowl, may require different *surveillance* strategies to address each situation. Furthermore, domestic waterfowl typically do not show clinical signs and have longer infective periods than gallinaceous *poultry*. It is therefore incumbent upon the Member Country to provide scientific data that explain the epidemiology of avian influenza in the region of concern and also to demonstrate how all the risk factors have been taken into account. Member Countries have flexibility to provide a science-based approach to demonstrate absence of *infection* with high pathogenicity avian influenza viruses at an appropriate level of confidence, as described in Chapter 1.4.

There is an increased recognition of the value of the application of sequencing technologies and phylogenetic analyses to determine routes of introduction, transmission pathways and epidemiological patterns of *infection*. When avian influenza viruses are detected, Member Countries should apply these technologies, when possible, to enhance the evidence used to develop specific *surveillance* strategies and control activities.

A *monitoring* system for low pathogenicity avian influenza viruses in *poultry* should be in place for the following reasons:

1) H5 and H7 low pathogenicity avian influenza viruses have the potential to mutate into high pathogenicity avian influenza viruses, but it is not possible to predict which viruses will mutate or when these mutations will occur.
2) The detection of sudden and unexpected increases in virulence of low pathogenicity avian influenza viruses in *poultry* is notifiable as an *emerging disease* in accordance with Article 1.1.4.
3) The detection, in domestic or *captive wild* birds, of low pathogenicity avian influenza viruses that have been proven to be transmitted naturally to humans with severe consequences is notifiable in accordance with Article 1.1.3.

Article 10.4.27.

Surveillance for early warning of high pathogenicity avian influenza

1) An ongoing *surveillance* programme for avian influenza should be in place and be designed to detect the presence of *infection* with high pathogenicity avian influenza viruses in the country or *zone* in a timely manner.
2) The high pathogenicity avian influenza *surveillance* programme should include the following.
   a) An *early warning system* for reporting suspected *cases*, in accordance with Article 1.4.5. throughout the production, marketing and processing chain. Farmers and workers who have day-to-day contact with *poultry*, as well as diagnosticians, should report promptly any suspicion of avian influenza to the *Veterinary Services*. All suspected *cases* of high pathogenicity avian influenza should be investigated immediately and samples should be collected and submitted to a *laboratory* for appropriate tests.
   b) Implementation, as relevant, of regular and frequent clinical inspection, or serological and virological testing of high-risk groups of *animals*, such as those adjacent to a country or *zone* infected with high pathogenicity avian influenza, places where birds and *poultry* of different origins are mixed, such as live bird markets, and *poultry* in close proximity to waterfowl or other potential sources of influenza A viruses. This activity is particularly applicable to domestic waterfowl, where detection of high pathogenicity avian influenza via clinical suspicion can be of low sensitivity.
   c) Immediate investigation of the presence of antibodies against influenza A viruses that have been detected in *poultry* and are not a consequence of *vaccination*. In the case of single or isolated serological positive results, *infection* with high pathogenicity avian influenza viruses may be ruled out on the basis of a thorough epidemiological and *laboratory* investigation that does not demonstrate further evidence of such an *infection*.

Article 10.4.28.

Surveillance for demonstrating freedom from infection with high pathogenicity avian influenza

1) A Member Country declaring freedom of the entire country, a *zone* or a *compartment* from high pathogenicity avian influenza in *poultry* should provide evidence of an effective *surveillance* programme.

   Transparency in the application of different methodologies is essential to ensure consistency in decision-making, ease of understanding, fairness and rationality. The assumptions made, the uncertainties, and the effect of these on the interpretation of the results, should be documented.

   The design of the *surveillance* programme will depend on the epidemiological circumstances and it should be planned and implemented in accordance with this chapter and Article 1.4.6.This requires the availability of demographic data on the *poultry* population and the support of a *laboratory* able to undertake identification of *infection* with avian influenza viruses through virus detection and antibody tests.

   The *surveillance* programme should demonstrate absence of *infection* with high pathogenicity avian influenza viruses during the preceding 12 months in susceptible *poultry* populations (vaccinated and non-vaccinated).

   The design of the sampling strategy should include an epidemiologically appropriate design prevalence. The design prevalence and desired level of confidence in the results will determine the sample size. The Member Country should justify the choice of design prevalence and confidence level used on the basis of the stated objectives of the *surveillance* and the epidemiological situation.

   The sampling strategy may be risk-based if scientific evidence is available, and provided, for the quantification of risk factors. Specific risks could include those linked to the types of production, possible direct or indirect contact

with *wild* birds, multi-age *flocks*, local trade patterns including live bird markets, use of possibly contaminated surface water, the presence of more than one species at the *establishment* and poor *biosecurity* in place.

Data from different *surveillance* activities can be included to increase the sensitivity of the *surveillance* system. If this is to be done, data from structured (e.g. surveys and active *surveillance*) and non-structured (e.g. passive *surveillance*) sources should be combined and the sensitivity of each activity should be quantified in order to be able to quantify the sensitivity of the overall *surveillance* system.

The *surveillance* programme should include *surveillance* for high pathogenicity avian influenza viruses in birds other than *poultry*, including *wild* birds, and *monitoring* of low pathogenicity avian influenza viruses in *poultry*, in order to ensure that *biosecurity* and control measures are fit for purpose.

Documentation of freedom from *infection* with high pathogenicity avian influenza should provide details of the *poultry* population, the occurrence of suspected *cases* and how they were investigated and dealt with. This should include the results of *laboratory* testing and the *biosecurity* and control measures to which the animals concerned were subjected during the investigation.

2. Additional requirements for countries, zones or compartments that practise vaccination

Vaccination to prevent the transmission of high pathogenicity avian influenza virus may be part of a disease control programme. The level of *flock* immunity required to prevent transmission depends on the *flock* size, composition (e.g. species) and density of the susceptible *poultry* population. Based on the epidemiology of avian influenza in the country, *zone* or *compartment*, a decision may be reached to vaccinate only certain species or other *poultry subpopulations*.

In all vaccinated *flocks* tests should be performed to ensure the absence of virus circulation. The tests should be repeated at a frequency that is proportionate to the *risk* in the country, *zone* or *compartment*. The use of sentinel *poultry* may provide further confidence in the absence of virus circulation.

Member Countries seeking the demonstration of freedom from high pathogenicity avian influenza in vaccinated population should refer to the chapter on avian influenza (*infection* with avian influenza viruses) in the *Terrestrial Manual*.

Evidence to show the effectiveness of the *vaccination* programme should also be provided.

3. Additional requirements for recovery of free status

In addition to the conditions described in the point above, a Member Country declaring that it has regained country, *zone* or *compartment* freedom after an *outbreak* of high pathogenicity avian influenza in *poultry* should show evidence of an active *surveillance* programme, depending on the epidemiological circumstances of the *outbreak*, to demonstrate the absence of the *infection*. This will require *surveillance* incorporating virus detection and antibody tests. The Member Country should report the results of an active *surveillance* programme in which the susceptible *poultry* population undergoes regular clinical examination and active *surveillance* planned and implemented according to the general conditions and methods described in these recommendations. The *surveillance* samples should be representative of *poultry populations* at risk. The use of sentinel birds may facilitate the interpretation of *surveillance* results.

Populations under this *surveillance* programme should include:

a) *establishments* in the proximity of the *outbreaks*;

b) *establishments* epidemiologically linked to the *outbreaks*;

c) *poultry* used to re-populate affected *establishments*;

d) any *establishments* where preventive depopulation has been carried out.

Article 10.4.29.

Surveillance of wild bird populations

Passive *surveillance*, i.e. sampling of birds found dead, is an appropriate method of *surveillance* in *wild* birds because *infection* with high pathogenicity avian influenza can be associated with mortality in some species. Mortality events, or clusters of birds found dead should be reported to the *Veterinary Services* and investigated, including through the collection and submission of samples to a *laboratory* for appropriate tests.

Active *surveillance*, i.e. sampling of live *wild* birds, may be necessary for detection of some strains of high pathogenicity avian influenza viruses that produce *infection* without mortality in *wild* birds. Furthermore, it increases knowledge of the ecology and evolution of avian influenza viruses.

Surveillance in *wild* birds should be targeted towards times of year, species and locations in which *infection* is more likely.

Surveillance in *wild* birds should be enhanced by raising awareness, and by active searching and *monitoring* for dead or moribund *wild* birds when high pathogenicity avian influenza has been detected in the region. The movements of migratory water birds, in particular ducks, geese and swans, should be taken into account as a potential pathway for introduction of virus to uninfected areas.

Article 10.4.30.

Monitoring of low pathogenicity avian influenza in poultry populations

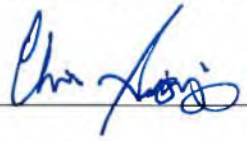
Outbreaks of low pathogenicity avian influenza viruses can be managed at the *establishment* level; however, spread to other *poultry establishments* increases the risk of virus mutation, particularly if it is not detected and managed. Therefore, a *monitoring* system should be in place.

Monitoring the presence and types of low pathogenicity avian influenza viruses can be achieved through a combination of clinical investigation when *infection* is suspected because of changes in production parameters, such as reductions in egg production or *feed* and water intake, and active serological and virological *surveillance*, which can be supported by the information obtained by the *surveillance* system for high pathogenicity avian influenza.

Serological and virological *monitoring* should aim at detecting clusters of infected *flocks* to identify spread between *establishments*. Epidemiological follow-up (tracing forward and back) of serologically positive *flocks* should be carried out to determine whether there is clustering of infected *flocks* regardless of whether the seropositive birds are still present at the *establishment* or whether active virus *infection* has been detected. Hence, *monitoring* of low pathogenicity avian influenza will also enhance early detection of high pathogenicity avian influenza.

NB: FIRST ADOPTED IN 1998; MOST RECENT UPDATE ADOPTED IN 2024.

This is **Exhibit "B"** referred to in the Affidavit of **CATHY FURNESS** affirmed before me at Guelph, Ontario, this 30 day of January, 2025.



GLOSSARY

For the purposes of the *Terrestrial Code*:

ANIMAL

means a mammal, reptile, bird or bee.

ANIMAL FOR BREEDING OR REARING

means a domesticated or confined *animal* which is not intended for *slaughter* within a short time.

ANIMAL FOR SLAUGHTER

means an *animal* intended for *slaughter* within a short time, under the control of the relevant *Competent Authority*.

ANIMAL HANDLER

means a person with a knowledge of the behaviour and needs of *animals* who, with appropriate experience and a professional and positive response to an *animal*'s needs, can achieve effective management and good *welfare*. Competence should be gained through formal training or practical experience.

ANIMAL HEALTH MANAGEMENT

means a system designed to optimise the physical and behavioural health and welfare of *animals*. It includes the prevention, treatment and control of diseases and conditions affecting the individual *animal* and *herd* or *flock*, including the recording of illness, injuries, mortalities and medical treatments where appropriate.

ANIMAL HEALTH STATUS

means the status of a country, *zone* or *compartment* with respect to an animal disease in accordance with the criteria listed in the relevant disease-specific chapter or Chapter 1.4. of the *Terrestrial Code*.

ANIMAL IDENTIFICATION

means the combination of the identification and *registration* of an *animal* individually, with a unique identifier, or collectively by its *epidemiological unit* or group, with a unique group identifier.

ANIMAL IDENTIFICATION SYSTEM

means the inclusion and linking of components such as identification of *establishments* or owners, the persons responsible for the *animals*, movements and other records with *animal identification*.

ANIMAL PRODUCT

means any part of an *animal*, or a raw or manufactured product containing any material derived from *animals*, excluding *germinal products*, *biological products* and *pathological material*.

ANIMAL TRACEABILITY

means the ability to follow an *animal* or group of *animals* during all stages of its life.

ANIMAL WELFARE

means the physical and mental state of an *animal* in relation to the conditions in which it lives and dies.

ANTIMICROBIAL AGENT

means a naturally occurring, semi-synthetic or synthetic substance that exhibits antimicrobial activity (kill or inhibit the growth of micro-organisms) at concentrations attainable *in vivo*. Anthelmintics and substances classed as disinfectants or antiseptics are excluded from this definition.

APIARY

means a *beehive* or group of *beehives* whose management allows them to be considered as a single *epidemiological unit*.

APPROVED

means officially approved, accredited or registered by the *Veterinary Authority*.

BEEHIVE

means a structure for the keeping of honey bee colonies that is being used for that purpose, including frameless hives, fixed frame hives and all designs of moveable frame hives (including nucleus hives), but not including packages or cages used to confine bees for the purposes of transport or isolation.

BIOLOGICAL PRODUCT

means a product of animal or microorganism origin, used in the diagnosis of diseases, for treatment, control and prevention of diseases, or in the collection and processing of *germinal products*.

BIOSECURITY

means a set of management and physical measures designed to reduce the *risk* of introduction, establishment and spread of animal diseases, *infections* or *infestations* to, from and within an animal population.

BIOSECURITY PLAN

means a plan that identifies potential pathways for the introduction and spread of disease in a *zone* or *compartment*, and describes the measures which are being or will be applied to mitigate the disease *risks*, if applicable, in accordance with the recommendations in the *Terrestrial Code*.

BORDER POST

means any airport, or any port, railway station or road check-point open to *international trade* of *commodities*, where import veterinary inspections can be performed.

CAPTIVE WILD [ANIMAL]

means an *animal* that has a phenotype not significantly affected by human selection but that is captive or otherwise lives under or requires human supervision or control.

CASE

means an individual *animal* infected by a pathogenic agent, with or without clinical signs.

CASINGS

means intestines and bladders that, after cleaning, have been processed by tissue scraping, defatting and washing, and have been treated with salt.

COLLECTION CENTRE

means a facility approved by the *Veterinary Authority* for the collection of oocytes or embryos and used exclusively for donor animals which meet the conditions of the *Terrestrial Code*.

COMMODITY

means a live *animal*, an *animal product*, *germinal products*, a *biological product* or *pathological material*.

COMPARTMENT

means an animal *subpopulation* contained in one or more *establishments*, separated from other susceptible *populations* by a common *biosecurity* management system, and with a specific *animal health status* with respect to one or more *infections* or *infestations* for which the necessary *surveillance*, *biosecurity* and control measures have been applied for the purposes of *international trade* or disease prevention and control in a country or *zone*.

COMPETENT AUTHORITY

means a Governmental Authority of a Member Country having the responsibility in the whole or part of the territory for the implementation of certain standards of the *Terrestrial Code*.

CONTAINER

means a non-self-propelled receptacle or other rigid structure for holding *animals* during a *journey* by one or several means of transport.

CONTAINMENT ZONE

means an *infected zone* defined within a previously free country or *zone*, which includes all suspected or confirmed *cases* that are epidemiologically linked and where movement control, *biosecurity* and *sanitary measures* are applied to prevent the spread of, and to eradicate, the *infection* or *infestation*.

DAY-OLD BIRDS

means birds aged not more than 72 hours after hatching.

DISINFECTION

means the application, after thorough cleansing, of procedures intended to destroy the infectious or parasitic agents of animal diseases, including zoonoses; this applies to premises, *vehicles* and different objects which may have been directly or indirectly contaminated.

DISINFESTATION

means the application of procedures intended to eliminate *infestation*.

DISTRESS

means the state of an animal, that has been unable to adapt to stressors, and that manifests as abnormal physiological or behavioural responses. It can be acute or chronic and may result in pathological conditions.

EARLY WARNING SYSTEM

means a system for the timely detection, reporting and communication of occurrence, incursion or emergence of diseases, *infections* or *infestations* in a country, *zone* or *compartment*.

EMERGING DISEASE

means a new occurrence in an *animal* of a disease, *infection* or *infestation*, causing a significant impact on animal or public health resulting from:

a) a change of a known pathogenic agent or its spread to a new geographic area or species; or

b) a previously unrecognised pathogenic agent or disease diagnosed for the first time.

EPIDEMIOLOGICAL UNIT

means a group of *animals* with the same likelihood of exposure to a pathogenic agent. In certain circumstances, the epidemiological unit may be a single *animal*.

ERADICATION

means the elimination of a pathogenic agent from a country or *zone*.

ESTABLISHMENT

means the premises in which *animals* are kept.

EUTHANASIA

means the *killing* of an *animal* using a method that causes a rapid and irreversible loss of consciousness with minimum *pain* and *distress*.

EXPORTING COUNTRY

means a country from which *commodities* are sent to another country.

FEED

means any material (single or multiple), whether processed, semi-processed or raw, which is intended to be fed directly to terrestrial *animals* (except bees).

FEED INGREDIENT

means a component part or constituent of any combination or mixture making up a *feed*, whether or not it has a nutritional value in the *animal*'s diet, including feed additives. Ingredients are of plant (including aquatic plants) or terrestrial or aquatic animal origin, or other organic or inorganic substances.

FERAL [ANIMAL]

means an *animal* of a domesticated species that lives without requiring human supervision or control.

FLOCK

means a number of *animals* of one kind kept together under human control or a congregation of gregarious *wild animals*. A *flock* is usually regarded as an *epidemiological unit*.

FREE COMPARTMENT

means a *compartment* in which the absence of the animal pathogenic agent causing the disease under consideration has been demonstrated by all requirements specified in the *Terrestrial Code* for free status being met.

FREE-ROAMING DOG

means any *owned dog* or unowned dog that is without direct human supervision or control, including *feral* dogs.

FREE ZONE

means a *zone* in which the absence of a specific *infection* or *infestation* in an animal *population* has been demonstrated in accordance with the relevant requirements of the *Terrestrial Code*.

FRESH MEAT

means *meat* that has not been subjected to any treatment irreversibly modifying its organoleptic and physicochemical characteristics. This includes frozen *meat*, chilled *meat*, minced *meat* and mechanically recovered *meat*.

GERMINAL PRODUCTS

means animal semen, oocytes, embryos or *hatching eggs*.

GOOD MANUFACTURING PRACTICE

means a production and testing practice recognised by the *Competent Authority* to ensure the quality of a product.

HATCHING EGGS

means fertilised bird eggs, suitable for incubation and hatching.

HAZARD

means a biological, chemical or physical agent in, or a condition of, an *animal* or animal product with the potential to cause an adverse health effect.

HEADQUARTERS

means the Permanent Secretariat of the World Organisation for Animal Health located at:

12, rue de Prony, 75017 Paris, FRANCE
Telephone: 33-(0)1 44 15 18 88
Fax: 33-(0)1 42 67 09 87
Electronic mail: woah@woah.org
WWW: http://www.woah.org

HERD

means a number of *animals* of one kind kept together under human control or a congregation of gregarious *wild animals*. A *herd* is usually regarded as an *epidemiological unit*.

IMPORTING COUNTRY

means a country that is the final destination to which *commodities* are sent.

INCIDENCE

means the number of new *cases* or *outbreaks* of a disease that occur in a population at risk in a particular geographical area within a defined time interval.

INCUBATION PERIOD

means the longest period that elapses between the introduction of the pathogenic agent into the *animal* and the occurrence of the first clinical signs of the disease.

INFECTED ZONE

means a *zone* either in which an *infection* or *infestation* has been confirmed, or one that is defined as such in the relevant chapters of the *Terrestrial Code*.

INFECTION

means the entry and development or multiplication of a pathogenic agent in the body of humans or *animals*.

INFECTIVE PERIOD

means the longest period during which an affected *animal* can be a source of *infection*.

INFESTATION

means the external invasion or colonisation of *animals* or their immediate surroundings by arthropods, which may cause clinical signs or are potential *vectors* of pathogenic agents.

INTERNATIONAL TRADE

means importation, exportation and transit of *commodities*.

INTERNATIONAL VETERINARY CERTIFICATE

means a certificate, issued in accordance with Chapter 5.2., describing the animal health and public health requirements that are fulfilled by the exported *commodities*.

JOURNEY

An *animal* transport journey commences when the first *animal* is loaded onto a *vehicle/vessel* or into a *container* and ends when the last *animal* is unloaded, and includes any stationary resting/holding periods. The same *animals* do not commence a new journey until after a suitable period for rest and recuperation, with adequate *feed* and water.

KILLING

means any procedure that causes the death of an *animal*.

LABORATORY

means a properly equipped institution staffed by technically competent personnel under the control of a specialist in veterinary diagnostic methods, who is responsible for the validity of the results. The *Veterinary Authority* approves and monitors such laboratories with regard to the diagnostic tests required for *international trade*.

LAIRAGE

means pens, yards and other holding areas used for accommodating *animals* in order to give them necessary attention (such as water, *feed*, rest) before they are moved on or used for specific purposes including *slaughter*.

LISTED DISEASE

means a disease, *infection* or *infestation* listed in Chapter 1.3. after adoption by the World Assembly of Delegates.

LOADING/UNLOADING

Loading means the procedure of moving *animals* onto a *vehicle/vessel* or into a *container* for transport purposes, while unloading means the procedure of moving *animals* off a *vehicle/vessel* or out of a *container*.

MARKET

means a place where *animals* are assembled for the purposes of trade or sale.

MEAT

means all edible parts of an *animal*.

MEAT PRODUCTS

means *meat* that has been subjected to a treatment irreversibly modifying its organoleptic and physicochemical characteristics.

MILK

means the normal mammary secretion of milking *animals* obtained from one or more milkings without either addition to it or extraction from it.

MILK PRODUCT

means the product obtained by any processing of *milk*.

MONITORING

means the intermittent performance and analysis of routine measurements and observations, aimed at detecting changes in the environment or health status of a *population*.

NOTIFIABLE DISEASE

means a disease listed by the *Veterinary Authority*, and that, as soon as detected or suspected, should be brought to the attention of this *Authority*, in accordance with national regulations.

NOTIFICATION

means the procedure by which:

a) the *Veterinary Authority* informs the *Headquarters*,

b) the *Headquarters* inform the *Veterinary Authority*,

of the occurrence of disease, *infection* or *infestation* in accordance with Chapter 1.1.

OFFICIAL CONTROL PROGRAMME

means a programme which is approved, and managed or supervised by the *Veterinary Authority* of a Member Country for the purposes of controlling a *vector*, pathogenic agent or disease by specific measures applied throughout that Member Country, or within a *zone* or *compartment* of that Member Country.

OFFICIAL VETERINARIAN

means a *veterinarian* authorised by the *Veterinary Authority* of the country to perform certain designated official tasks associated with animal health or public health and inspections of *commodities* and, when appropriate, to certify in accordance with Chapters 5.1. and 5.2.

OFFICIAL VETERINARY CONTROL

means the operations whereby the *Veterinary Services*, knowing the location of the *animals* and after taking appropriate actions to identify their owner or responsible keeper, are able to apply appropriate animal health measures, as required. This does not exclude other responsibilities of the *Veterinary Services* e.g. food safety.

OUTBREAK

means the occurrence of one or more *cases* in an *epidemiological unit*.

OWNED DOG

means a dog for which a person claims responsibility.

PAIN

means an unpleasant sensory and emotional experience associated with actual or potential tissue damage. It may elicit protective actions, result in learned avoidance and *distress* and may modify species-specific traits of behaviour, including social behaviour.

PATHOLOGICAL MATERIAL

means samples obtained from live or dead *animals*, containing or suspected of containing infectious or parasitic agents, to be sent to a *laboratory*.

PLACE OF SHIPMENT

means the place where the *commodities* are loaded into the *vehicle* or handed to the agency that will transport them to another country.

POPULATION

means a group of *units* sharing a common defined characteristic.

POULTRY

means all birds reared or kept in captivity for the production of any commercial animal products or for breeding for this purpose, fighting cocks used for any purpose, and all birds used for restocking supplies of game or for breeding for this purpose, until they are released from captivity.

Birds that are kept in a single household, the products of which are used within the same household exclusively, are not considered *poultry*, provided that they have no direct or indirect contact with *poultry* or *poultry* facilities.

Birds that are kept in captivity for other reasons, including those that are kept for shows, racing, exhibitions, zoological collections and competitions, and for breeding or selling for these purposes, as well as pet birds, are not considered *poultry*, provided that they have no direct or indirect contact with *poultry* or *poultry* facilities.

PRE-JOURNEY PERIOD

means the period during which *animals* are identified, and often assembled for the purposes of *loading* them.

PREVALENCE

means the total number of *cases* or *outbreaks* of a disease that are present in a population at risk, in a particular geographical area, at one specified time or during a given period.

PROTEIN MEAL

means any final or intermediate solid protein-containing product, obtained when animal tissues are rendered, excluding peptides of a molecular mass less than 10,000 daltons and amino-acids.

PROTECTION ZONE

means a *zone* where specific *biosecurity* and *sanitary measures* are implemented to prevent the entry of a pathogenic agent into a free country or *zone* from a neighbouring country or *zone* of a different *animal health status*.

QUALITATIVE RISK ASSESSMENT

means an assessment where the outputs on the likelihood of the outcome or the magnitude of the consequences are expressed in qualitative terms such as 'high', 'medium', 'low' or 'negligible'.

QUANTITATIVE RISK ASSESSMENT

means an assessment where the outputs of the *risk assessment* are expressed numerically.

QUARANTINE STATION

means an establishment under the control of the *Veterinary Authority* where *animals* are maintained in isolation with no direct or indirect contact with other *animals*, to ensure that there is no transmission of specified pathogenic agents outside the establishment while the *animals* are undergoing observation for a specified length of time and, if appropriate, testing or treatment.

REGISTRATION

is the action by which information on *animals* (such as identification, animal health, movement, certification, epidemiology, *establishments*) is collected, recorded, securely stored and made appropriately accessible and able to be utilised by the *Competent Authority*.

RESPONSIBLE DOG OWNERSHIP

means the situation whereby a person accepts and commits to perform various duties in accordance with the legislation in place and focused on the satisfaction of the behavioural, environmental and physical needs of a dog and to the prevention of risks (aggression, disease transmission or injuries) that the dog may pose to the community, other *animals* or the environment.

RESTING POINT

means a place where the *journey* is interrupted to rest, *feed* or water the *animals*; the *animals* may remain in the *vehicle*/*vessel* or *container*, or be unloaded for these purposes.

RESTRAINT

means the application to an *animal* of any procedure designed to restrict its movements.

RISK

means the likelihood of the occurrence and the likely magnitude of the biological and economic consequences of an adverse event or effect to animal or human health.

RISK ANALYSIS

means the process composed of *hazard* identification, *risk assessment*, *risk management* and *risk communication*.

RISK ASSESSMENT

means the evaluation of the likelihood and the biological and economic consequences of entry, establishment and spread of a *hazard*.

RISK COMMUNICATION

is the interactive transmission and exchange of information and opinions throughout the *risk analysis* process concerning *risk*, *risk*-related factors and *risk* perceptions among *risk* assessors, *risk* managers, *risk* communicators, the general public and other interested parties.

RISK MANAGEMENT

means the process of identifying, selecting and implementing measures that can be applied to reduce the level of *risk*.

SAFE COMMODITY

means a *commodity* that can be traded without the need for *risk* mitigation measures specifically directed against a particular *listed disease*, *infection* or *infestation* and regardless of the status of the country or *zone* of origin for that disease, *infection* or *infestation*.

SANITARY MEASURE

means a measure, such as those described in various chapters of the *Terrestrial Code*, designed to protect animal or human health or life within the whole territory or a *zone* of a Member Country from *risks* arising from the entry, establishment or spread of a *hazard*.

SEMEN COLLECTION CENTRE

means an *approved* facility that meets the conditions set out in the *Terrestrial Code* for the collection, processing and storage of semen.

SLAUGHTER

means the *killing* of an *animal* primarily intended for human consumption.

SLAUGHTERHOUSE/ABATTOIR

means premises, including facilities for moving or lairaging *animals*, used for the *slaughter* of *animals* to produce animal products and approved by the relevant *Competent Authority*.

SPACE ALLOWANCE

means the measure of the floor area and height allocated per individual or body weight of *animals*.

SPECIFIC SURVEILLANCE

means the *surveillance* targeted to a specific disease or *infection*.

STAMPING-OUT POLICY

means a policy designed to eliminate an *outbreak* by carrying out under the authority of the *Veterinary Authority* the following:

a) the *killing* of 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* by direct animal to animal contact, or by indirect contact with the causal pathogenic agent; *animals* should be killed in accordance with Chapter 7.6.;

b) the disposal of carcasses and, where relevant, animal products by rendering, burning or burial, or by any other method described in Chapter 4.13.;

c) the cleansing and *disinfection* of *establishments* through procedures defined in Chapter 4.14.

STOCKING DENSITY

means the number or body weight of *animals* per unit area on a *vehicle/vessel* or *container*.

STUNNING

means any procedure that causes loss of consciousness for the purpose of *killing* without avoidable *distress*, fear and *pain*.

SUBPOPULATION

means a distinct part of a *population* identifiable in accordance with specific common animal health characteristics.

SURVEILLANCE

means the systematic ongoing collection, collation, and analysis of information related to animal health and the timely dissemination of information so that action can be taken.

TERRESTRIAL CODE

means the WOAH *Terrestrial Animal Health Code*.

TERRESTRIAL MANUAL

means the WOAH *Manual of Diagnostic Tests and Vaccines for Terrestrial Animals*.

TRANSIT COUNTRY

means a country through which *commodities* destined for an *importing country* are transported or in which a stopover is made at a *border post*.

UNIT

means an individually identifiable element used to describe, for example, the members of a *population* or the elements selected when sampling; examples of *units* include individual *animals*, *herds*, *flocks* and *apiaries*.

VACCINATION

means the administration of a vaccine, in accordance with the manufacturer's instructions and the *Terrestrial Manual*, when relevant, with the intention of inducing immunity in an *animal* or group of *animals* against one or more pathogenic agents.

VECTOR

means an insect or any living carrier that transports an infectious agent from an infected individual to a susceptible individual or its food or immediate surroundings. The organism may or may not pass through a development cycle within the *vector*.

VEHICLE/VESSEL

means any means of conveyance including train, truck, aircraft or ship that is used for carrying *animals*.

VETERINARIAN

means a person with appropriate education, registered or licensed by the relevant *veterinary statutory body* of a country to practice veterinary medicine/science in that country.

VETERINARY AUTHORITY

means the Governmental Authority of a Member Country having the primary responsibility in the whole territory for coordinating the implementation of the standards of the *Terrestrial Code*.

VETERINARY LEGISLATION

means laws, regulations and all associated legal instruments that pertain to the veterinary domain.

VETERINARY MEDICINAL PRODUCT

means any product with approved claims to having a prophylactic, therapeutic or diagnostic effect or to alter physiological functions when administered or applied to an *animal*.

VETERINARY PARAPROFESSIONAL

means a person who, for the purposes of the *Terrestrial Code*, is authorised by the *veterinary statutory body* to carry out certain designated tasks (dependent upon the category of *veterinary paraprofessional*) in a territory, and delegated to them under the responsibility and direction of a *veterinarian*. The tasks for each category of *veterinary paraprofessional* should be defined by the *veterinary statutory body* depending on qualifications and training, and in accordance with need.

VETERINARY SERVICES

means the combination of governmental and non-governmental individuals and organisations that perform activities to implement the standards of the *Terrestrial Code*.

VETERINARY STATUTORY BODY

means an autonomous regulatory body for *veterinarians* and *veterinary paraprofessionals*.

WILD [ANIMAL]

means an *animal* that has a phenotype unaffected by human selection and lives independently without requiring human supervision or control.

WILDLIFE

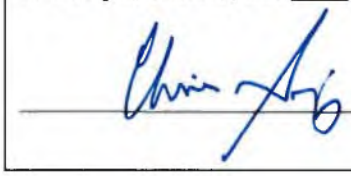
means *feral animals*, *captive wild animals* and *wild animals*.

ZONE

means a part of a country defined by the *Veterinary Authority*, containing an animal *population* or *subpopulation* with a specific *animal health status* with respect to an *infection* or *infestation* for the purposes of *international trade* or disease prevention or control.

NB: FIRST ADOPTED IN 1968; MOST RECENT UPDATE ADOPTED IN 2024.

This is **Exhibit "C"** referred to in the Affidavit of **CATHY FURNESS** affirmed before me at Guelph, Ontario, this 30 day of January, 2025.



Owner or occupier Propriétaire ou occupant	Location of animal(s)/thing(s) Endroit où se trouvent l'(les) animal(aux) ou la(les) chose(s)
Universal Ostrich Owner Name (legal owner of premise): Dave Bilinski Email: universalostrich@gmail.com Phone #: 778-692-9389 301 Langille Road, Edgewood, BC, V0G 1J0	034 301 Langille Road, Edgewood, BC, V0G 1J0 Lat: 49.862402 Long: -118.149296 Premise ID: BC44K4PMR

I have determined or suspect that the animal(s)/thing(s) described below is (are) affected or contaminated by

Je constate ou soupçonne que les animaux ou les choses décrits(es) ci-dessous sont atteints(es) ou contaminés(es) par

Avian Influenza

and pursuant to 48.(1) of the *Health of Animals Act*, I hereby require you, the owner or person having the possession, care or control of the animal(s)/thing(s) to dispose of them during the period commencing on the date of this notice and ending on

et, en vertu du paragraphe 48.(1) de la *Loi sur la santé des animaux*, j'exige que vous, le(la) propriétaire ou la personne qui a la possession, la responsabilité ou la charge de ces animaux ou de ces choses, preniez à leur égard, d'ici le

2025-02-01 ,

and in the following manner:
Method of Destruction to be communicated by CFIA

les mesures décrites ci-dessous :

Digitally signed by ZHANG, XIANG
Date: 2024.12.31 13:36:51 -08'00'

Inspector / Inspecteur Ian Zhang	Date 2024-12-31	Telephone / Téléphone

Identification Number Numéro d'identification	Age Âge	Sex Sexe	Description of Animal(s) or Thing(s) Description de l'(des) animal(aux) ou de la(des) chose(s)
1			All poultry and poultry carcasses along with other material
2			approved by CFIA disposal crew from the above noted poultry
3			production premises.
4			
5			
6			
7			
8			
9			
10			
11			File Number:BC-820 22874
12			
13			
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22			

Disposal

Subsection 48 (1) of the Health of Animals Act:

48.(1) The Minister may dispose of an animal or thing, or require its owner or any person having the possession, care or control of it to dispose of it, where the animal or thing

a) is, or is suspected of being, affected or contaminated by a disease or toxic substance;
b) has been in contact with or in close proximity to another animal or thing that was, or is suspected of having been, infected or contaminated by a disease or toxic substance at the time of contact or close proximity; or
c) is, or is suspected of being, a vector, the causative agent of a disease or a toxic substance.

Mesures de dispositions

Le paragraphe 48(1) de la Loi sur la santé des animaux :

48.(1) Le ministre peut prendre toute mesure de disposition, notamment de destruction, - ou ordonner à leur propriétaire, ou la personne qui en a la possession, la responsabilité ou la charge des soins, de le faire - à l'égard des animaux ou choses qui :

a) soit sont contaminés par une maladie ou une substance toxique, ou soupçonnés de l'être;
b) soit ont été en contact avec des animaux ou choses de la catégorie visée à l'alinéa a) ou se sont trouvés dans leur voisinage immédiat;
c) soit sont des substances toxiques, des vecteurs ou des agents causant des maladies, ou sont soupçonnés d'en être.

Penalty

Section 66 of the Health of Animals Act:

66. Every person who fails to comply with a notice delivered to the person under section 18, 25, 27, 37, 43 or 48 or the regulations is guilty of

a) an offence punishable on summary conviction and liable to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding six months, or to both; or
b) an indictable offence and liable to a fine not exceeding two hundred thousand dollars or to imprisonment for a term not exceeding two years, or to both.

Pénalité

L'article 66 de la Loi sur la santé des animaux:

66. Quiconque contrevient à l'avis qui lui a été signifié au titre des articles 18, 25, 27, 37, 43 ou 48 ou des règlements commet une infraction et encourt, sur déclaration de culpabilité :

a) par procédure sommaire, une amende maximale de cinquante mille dollars et un emprisonnement maximal de six mois, ou l'une de ces peines; ou
b) par mise en accusation, une amende maximale de deux cents mille dollars et un emprisonnement maximal de deux ans, ou l'une de ces peines.

Canadian Food Inspection Agency | Agence canadienne d'inspection des aliments

HEALTH OF ANIMALS ACT
ATTACHMENT TO FORM

LOI SUR LA SANTÉ DES ANIMAUX
ANNEXE AU FORMULAIRE

Owner or occupier Propriétaire ou occupant	Location of animal(s)/thing(s) Endroit où se trouvent l'(les) animal(aux) ou la(les) chose(s)
Universal Ostrich Owner Name (legal owner of premise): Dave Bilinski Email: universalostrich@gmail.com Phone #: 778-692-9389 ~~301 Langille Road, Edgewood, BC, V0G 1J0~~	301 Langille Road, Edgewood, BC, V0G 1J0 Lat: 49.862402 Long: -118.149296 Premise ID: BC44K4PMR

Identification Number Numéro d'identification	Age Âge	Sex Sexe	Description of Animal(s) or thing(s) Description de l'(des) animal(aux) ou de la(des) chose(s)
23			
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Inspector Name / Nom de l'inspecteur	Inspector (Signature) Inspecteur	Date
Ian Zhang		2024-12-31

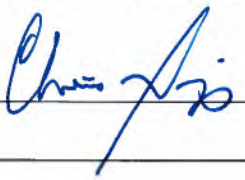
Note: When this form is used to describe additional animals, the original of any form it is used with should have the following statement placed on it:

The description of animals/things to which this form applies is on the attached copy(ies) of form CFIA/ACIA 4209 which bear the name and date above.

Nota : Lorsque ce formulaire sert à décrire d'autres animaux, l'original de tout formulaire qui l'accompagne devrait porter la mention suivante :

La description d'animaux/de choses auxquels s'applique le présent formulaire figure sur la(les) copies annexée(s) des formulaires CFIA / ACIA 4209 qui portent le nom et la date ci-haut.

This is **Exhibit "D"** referred to in the Affidavit of **CATHY FURNESS** affirmed before me at Guelph, Ontario, this 30 day of January, 2025.



CFIA Highly Pathogenic Avian Influenza (HPAI) Event 2022 - Western HPAI Response

10 January 2025

Re: Distinct Unit Evaluation and request for exemption from destruction order issued on December 31 2024 for Ostriches on BC-820-IP-233 (Universal Ostrich Farms Inc., Edgewood, B.C.)

To Whom It May Concern,

Thank you for submitting the Distinct Unit Assessment request package for the HPAI infected premises of Universal Ostrich Farms Inc.

It is critical that, in honouring requests for exemptions from depopulation, we at CFIA remain aligned with our World Organisation for Animal Health (WOAH) obligations to Canada's stamping-out policy with regards to the detection of HPAI. We take these requests seriously and give each request that meets our initial screening criteria due consideration. Conclusions reached in reviewing these applications are final and will not be re-evaluated.

WOAH considers the genus *Struthio spp.* (Ostrich) as "poultry" in their definition of poultry and they are not exempt from a stamping-out policy. This stamping-out policy reflects the risks posed by HPAI infected poultry flocks to humans, domestic animals, and wildlife. As part of the stamping-out policy, the CFIA does not consider individual bird test results when evaluating the epidemiological unit on an HPAI infected premises. In order for Canada to mitigate the risks posed by HPAI infected poultry, maintain its international obligations and the expectation of our trading partners, all birds within the HPAI infected epidemiological unit of a non-commercial poultry infected premises must be destroyed and appropriately disposed.

All criteria listed in the Distinct Unit Assessment must be adequately addressed in order to be granted an exemption from depopulation.

The CFIA defines a Distinct Epidemiological Unit as a group of animals on an infected premises that are separated from an infected susceptible population such that they are not considered exposed to the pathogenic agent. After reviewing all the information provided, including, but not limited to, email communications from Universal Ostrich Inc., an on-site visit conducted by CFIA staff as well as all communications for the purposes of completing the premises investigation questionnaire, we did not find that this proposed distinct unit adequately met the criteria for:

- *A distinct epidemiological unit*. There is no evidence that a subset of animals are a distinct unit or at a different level of risk; all animals on the infected premises are under the same risk of HPAI exposure.

The CFIA may grant an exemption to depopulation for select flocks that meet the requirement of having rare and valuable poultry genetics. This consideration requires a significant burden of proof to demonstrate the high economic value the flock provides to the broader poultry industry. Robust processes must be in place (ex. genomic testing) to actively select and breed for specific desirable traits, with subsequent evidence that this genetic value is critical to the Canadian poultry industry. An evaluation of the information provided was conducted to determine if the genetics of the flock were demonstrated to be of uncommon genetic lines that hold a high economic value to the poultry industry; in conjunction with information available at Animal Genetic Resources of Canada, the material provided for evaluation of the birds present at Universal Ostrich Farms Inc. failed to meet the above definition of rare and valuable poultry genetics. After reviewing all of the information provided, including, but not limited to, email communications from Universal Ostrich Inc. and Yasuhiro Tsukamoto, as well as Struthio Biosciences Inc. business plans, the request for an exemption to depopulation based on rare and valuable poultry genetics is denied. This decision is final and is not subject to appeal.

The CFIA/ACIA 4202-Requirement to Dispose of Animals or Things was delivered on December 31, 2024, and must be completed by February 01, 2025. A draft plan for the destruction and disposal of all birds and things listed on the 4202 can be provided to your case officer for subsequent CFIA review and approval. We appreciate that this is a difficult decision, and should you need support regarding a plan for destruction and /or disposal please let your case officer know. We have also provided the link for the AgSafe mental health website. They have valuable resources that you may find helpful.

Sincerely,

Bourque, TroyBourque
Digitally signed by Bourque, TroyBourque
Date: 2025.01.10 14:54:30 -07'00'

Troy Bourque B.Sc.,D.V.M.

Planning Chief, Western HPAI Response

Fotheringham, Cortnie
2025.01.10 13:57:52 -08'00'

Cortnie Fotheringham

Incident Commander, Western HPAI Response

Court File No.: T-294-25

FEDERAL COURT

BETWEEN:

UNIVERSAL OSTRICH FARMS INC.

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

MEMORANDUM OF FACT AND LAW OF THE RESPONDENT, ATTORNEY GENERAL OF CANADA

DEPARTMENT OF JUSTICE CANADA
British Columbia Region
National Litigation Sector
900-840 Howe Street
Vancouver, BC V6Z 2S9

Per: Paul Saunders
Jordan Marks

Tel.: (604) 666-2061
Fax.: (604) 666-2760
Email: paul.saunders@justice.gc.ca
jordan.marks@justice.gc.ca

Counsel for the Respondent

TABLE OF CONTENTS

OVERVIEW

1. The Court should not grant the interlocutory injunction sought in this motion because the applicant cannot meet the three-part test for injunctive relief.

2. In particular, the public interest in allowing the Canadian Food Inspection Agency (**CFIA**) to carry out its duties under the *Health of Animals Act* (***HAA***) to protect the health and safety of animals and all Canadians far outweighs the economic harms the applicant may suffer if the court does not intervene.

3. The Court should also not grant the additional relief sought, namely, an order amending the quarantine requirements imposed on the applicant by CFIA under section 6 of the *HAA*. The applicant has not identified any legal basis to challenge the quarantine requirements, nor provided any evidence in support. In any event, an order amending those requirements is not available on this motion, or at all.

PART I – FACTS

CFIA Mandate and Statutory Framework

4. CFIA is dedicated to safeguarding food, animals and plants, which enhances the health and well-being of Canada's people, environment and economy. The health and safety of Canadians is the driving force behind the design and development of CFIA's programs. One of CFIA's primary objectives is to protect Canadians from preventable health risks related to food and zoonotic diseases.[1]

5. Canada is a member of the World Organisation for Animal Health (**WOAH**). WOAH is a science-based global authority on animal and veterinary public health. As an inter-governmental organisation, WOAH focuses on collecting, analyzing, and transparently disseminating scientific veterinary information on animal diseases and zoonosis situation. WOAH works to improve animal health and animal welfare

[1] Affidavit 1 of Cathy Furness affirmed January 30, 2025 [**Furness Affidavit**] at para 5.

worldwide. WOAH's standards inform the measures that CFIA implements to achieve its objectives.[2]

6. CFIA is responsible for administering and enforcing a number of federal statutes, including the *HAA* and Regulations.[3] The purpose of the *HAA* is, in part, to prevent or control the spread of the diseases that may affect animals and to prevent or control the spread of diseases that may be spread by animals to humans.[4]

7. The *HAA* defines a "disease" as including "a reportable disease and any other disease that may affect an animal or that may be transmitted by an animal to a person".[5]

8. Section 48 of the *HAA* provides that:

> 48 (1) The Minister may dispose of an animal or thing, or require its owner or any person having the possession, care or control of it to dispose of it, where the animal or thing
>
> (a) is, or is suspected of being, affected or contaminated by a disease or toxic substance;
>
> (b) has been in contact with or 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; or
>
> (c) is, or is suspected of being, a vector, the causative agent of a disease or a toxic substance.[6]

---

[2] Furness Affidavit at para 6.
[3] Furness Affidavit at para 7; *Health of Animals Act*, SC 1990, c 21 [***HAA***]; *Canadian Food Inspection Agency Act*, SC 1997, c 6, ss 4, 11.
[4] Furness Affidavit at para 7; *River Valley Poultry Farm Ltd v Canada (AG)*, 2009 ONCA 326 at para 68.
[5] Furness Affidavit at para 8; *HAA*, s 2(1).
[6] *HAA*, s 48.

> (2) The Minister may treat any animal or thing described in subsection (1), or require its owner or the person having the possession, care or control of it to treat it or to have it treated, where the Minister considers that the treatment will be effective in eliminating or preventing the spread of the disease or toxic substance.
>
> (3) A requirement under this section shall be communicated by personal delivery of a notice to the owner or person having the possession, care or control of the thing or by sending a notice to the owner or person, and the notice may specify the period within which and the manner in which the requirement is to be met.

9. The *HAA* and the *Compensation for Destroyed Animals and Things Regulations* allow that compensation may be payable to the owners of animals or things ordered destroyed to prevent the spread of disease.[7]

Avian Influenza

10. Avian Influenza (**AI**) is a disease caused by influenza Type A viruses, which occur naturally in wild aquatic bird populations, but can spread to domestic poultry, other birds and mammals, and, less commonly, people.[8]

11. Birds infected with AI may show no clinical symptoms of infection, although the current strain of AI has presented with a higher rate of clinical symptoms and death. Clinical symptoms signs of AI in birds vary from mild respiratory disease to acute disease with high mortality. The severity of disease varies depending on the strain of virus and species affected. An outbreak of AI can result in significant die-off events

[7] *HAA*, s 51; *Compensation for Destroyed Animals and Things Regulations*, SOR/2000-233.
[8] Furness Affidavit at para 10.

in bird populations. Birds without signs of infection can still actively transmit the virus and facilitate its mutation.[9]

12. AI variants are categorized into highly pathogenic avian influenza strains (**HPAI**) and low pathogenicity avian influenza strains (**LPAI**). The *Reportable Diseases Regulations* to the *HAA*, which lists reportable diseases, includes LPAI and HPAI – subtypes H5 and H7.[10]

13. AI is diagnosed through laboratory testing. HPAI has been detected in Canada in domestic poultry on numerous occasions. Since 2021, the predominant subtype of AI found in domestic and wild birds in Canada has been HPAI H5N1. Another highly pathogenic variant, HPAI H5N2, was detected for the first time in Canada in November 2024 in domestic poultry in British Columbia.[11]

14. Although rare, transmission of HPAI to humans can occur, most commonly when people have had close contact with infected birds. In rare cases, infection may lead to severe illness or death. Approximately half of the over 900 human cases reported around the world since 1997 have been fatal. In the Fall of 2024, a teenager in British Columbia became critically ill from HPAI.[12]

15. AI is a disease of significant human health concern due to the virus's ability to reassort and mutate. Certain mutations can cause the virus to become more likely to infect people and sustain human-to-human transmission. The Public Health Agency of Canada currently deems the risk to humans as low but are continuously monitoring the ongoing outbreak for changes in the virus.[13]

16. Ostriches are susceptible to infection with AI. Similar to many birds, ostriches typically do not show clinical signs of infection of AI but can nonetheless continue to replicate, mutate, and shed the virus. It is also possible for ostriches to be infected with

[9] Furness Affidavit at paras 11, 13.
[10] Furness Affidavit at para 14.
[11] Furness Affidavit at para 15.
[12] Furness Affidavit at paras 12, 16.
[13] Furness Affidavit at para 12.

more than one subtype of influenza virus. This may allow HPAI variants to mix with other circulating influenzas creating new combinations with potentially different behaviors. Additionally, ostriches have potential to contribute genetic mutations to avian influenza viruses that may increase viral adaptability to mammalian hosts.[14]

CFIA's Response to HPAI

17. CFIA plays an important role in furthering the Government of Canada's broader efforts to help prevent the introduction and spread of HPAI in Canada. CFIA's efforts to control HPAI are aimed at mitigating risks that include:

    a. health impacts on domestic birds;

    b. health impact on humans, including that AI infection in birds could serve as a precursor to a human flu pandemic; and

    c. economic repercussions of an outbreak of AI.[15]

18. CFIA's response strategy to an outbreak of HPAI in poultry is to eradicate detected disease and re-establish Canada's disease-free status as quickly as possible. This is referred to by CFIA and others as a "stamping out" strategy or policy. Stamping out includes ensuring that poultry flocks infected with or exposed to HPAI on an infected premises are humanely destroyed. The stamping out policy is applied for all detections of AI subtype H5 in domestic poultry, regardless of within flock mortality and evidence of clinical symptoms. This includes situations where birds appear healthy. The stamping out policy mitigates the risk of further spread of the virus, opportunity for virus mutation and risk of transmission to humans.[16]

19. CFIA's implementation of stamping out aligns with WOAH's standards. Without stamping out, a country cannot be considered free from HPAI until at least 12 months

[14] Furness Affidavit at para 21.
[15] Furness Affidavit at para 17.
[16] Furness Affidavit at para 18.

from an infection in poultry, as opposed 28 days where stamping out is implemented.[17] Losing disease-free status by not implementing stamping out may have adverse impacts on Canada's trade relationships, in particular trading partners could stop importing Canadian poultry.[18]

20. CFIA applies the WOAH's definition of "poultry" when implementing HPAI response measures, including stamping out. Ostriches that are kept in captivity for the production of any commercial animal products or for breeding are poultry.[19]

December 31, 2024 Order

21. On December 31, 2024, the CFIA provided notice to Universal that it was required to dispose of all ostriches located at 301 Langille Road, Edgewood, British Columbia, by February 1, 2025 (**Order**). Prior to making the Order, CFIA confirmed that Universal's ostriches were affected or contaminated by HPAI.[20] The Order was made under the authority of subsection 48(1) of the *HAA*, and constituted notice under subsection 48(3) of the *HAA*. Universal was informed that failure to comply with the Order constituted an offence.[21]

22. On December 28, 2024, an anonymous individual not associated with Universal left CFIA a voicemail alerting them of sick ostriches at Universal's farm. That same day, CFIA contacted Universal. At that time, Universal reported that around 25 ostriches died in the previous 3 week period. Universal had roughly 450 ostriches.[22]

23. On December 29, 2024, an additional 4 ostriches died.[23]

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[17] Furness Affidavit at para 19, Ex A – *Terrestrial Animal Health Code*, Chapter 10.4, "Infection with High Pathogenicity Avian Influenza Viruses".
[18] Furness Affidavit at para 20.
[19] Furness Affidavit at para 22, Ex B – Glossary to the *Terrestrial Animal Health Code*.
[20] Furness Affidavit at para 23, Ex C.
[21] Affidavit 1 of David Bilinski affirmed January 29, 2025 [**Bilinski Affidavit**], Ex F.
[22] Furness Affidavit at para 24.
[23] Furness Affidavit at para 25.

24. On December 30, 2024, CFIA went to Universal's premises and collected samples.[24]

25. On December 31, 2024, CFIA received the results from the samples collected. The results confirmed that the ostriches tested were positive for AI.[25]

26. In total, 69 ostriches from Universal's farm died of flu-like symptoms between December 2024 and January 15, 2025.[26]

Unsuccessful Request for an Exemption

27. On January 10, 2025, CFIA determined that Universal did not meet the criteria for an exemption from the Order.[27]

28. In order to qualify for an exemption, Universal had to demonstrate that the ostriches: (a) were a distinct epidemiological unit (**Distinct Unit**); and (b) possessed rare and valuable poultry genetics.[28]

29. In order to be a Distinct Unit, a subset of the ostriches must exist as a distinct unit with no exposure to AI. The ostriches needed to be protected from the outside environment where AI was currently known to exist.[29]

30. Universal provided no evidence to support a finding that its ostriches were a Distinct Unit. In fact, the ostriches are housed outdoors in several large pens, with shared personnel and farm management practices exhibited between all groups of birds onsite. The farm also has a large pond between two of the outdoor bird pens with significant wild bird activity.[30]

31. In order for the ostriches to be considered to possess rare and valuable poultry genetics, the flock must provide high economic value to the broader Canadian poultry industry.

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[24] Furness Affidavit at para 26.
[25] Furness Affidavit at para 27.
[26] Bilinski Affidavit at para 77.
[27] Furness Affidavit at para 29.
[28] Furness Affidavit at para 30.
[29] Furness Affidavit at para 31.
[30] Furness Affidavit at para 32.

There must be in place a robust process to actively select and breed for specific desirable traits and evidence that this genetic value is critical to the Canadian poultry industry. Universal provided no such evidence.[31]

PART II – ISSUES

32. The issues before this Court are:

    a. whether this motion should be dismissed for delay; and

    b. whether Universal can meet the test for interlocutory injunctive relief.

PART III – SUBMISSIONS

Motion is not Truly Urgent

33. Universal bears the burden of demonstrating that this matter is truly urgent, such that the Court should consider Universal's motion notwithstanding its failure to comply with the timeline in Rule 362(1) of the *Federal Courts Rules*.

34. CFIA was informed of Universal's intention to bring an interlocutory injunction to stay the Order via its legal counsel on January 27, 2025.

35. On January 30, 2025, CFIA was provided with:

    a. a draft of Universal's notice of motion and sworn copies of the Affidavits of David Bilinsky and Karen Espersen at 9:37am;

    b. an unfiled copy of Universal's notice of motion, notice of application, and sworn copies of the Affidavit of Dr. Steven Pelech and Karina Jones at 2:35pm; and

    c. an unfiled copy of the Affidavit of Micheal Carter attaching the report of Dr. Jeff Wilson at 9:24pm.

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[31] Furness Affidavit at paras 33-34.

36. Universal relies on Rule 361 as a basis for bringing this motion, which dispenses with service requirements for *ex parte* motions.[32]

37. Although Universal relies on Rule 361, CFIA did have one day's notice of this motion. Under Rule 362, a party seeking to bring a motion with less than three days notice must convince the Court of its urgency.

38. Universal has not met its burden to establish the urgency of this motion. Any suggested "urgency" is attributable solely to Universal's delay in bringing the motion, and its underlying judicial review application. Universal does not attempt to explain this delay in its materials. Deadlines for taking action do not become urgent simply because a party delayed taking action until the last minute.[33] The Court is justified in dismissing this motion for delay.[34]

39. It is also noteworthy that the Order does not come into effect on February 1, 2025 ("ordering" a cull); rather, the time for Universal to comply with the Order ends on that date. It is not in the public interest for the Court to intervene on an urgent basis to avoid the consequences of non-compliance with an order presumed to be lawful.

40. If the Court hears this motion, to the extent that there are gaps or conflicts in the evidence, they should be presumed to be amenable to a robust response from CFIA. No adverse inferences should be drawn from CFIA's inability to respond fully or at all to Universal's materials – CFIA's limited affidavit evidence necessarily had to be prepared before even seeing any of these materials.

Test for an Interlocutory Injunction is Not Met

41. Interlocutory injunctions are an extraordinary remedy that should not be lightly granted. While the courts have a supervisory role to play, caution should be exercised

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[32] Rule 374 allows the Court to grant an interim injunction on an *ex parte* motion only if, in the case of urgency, no notice is possible.
[33] *Tsiavos v Canada (Public Safety and Emergency Preparedness)*, 2011 FC 747 [***Tsiavos***] at paras 17-21; *Singh Shergill v Canada (Citizenship and Immigration)*, 2011 FC 1274 at para 10 (in the context of stays of immigration matters).
[34] *Tsiavos* at para 21.

against usurping the legislative and executive roles of government and "governing by interlocutory order".[35]

42. The test for interlocutory injunctive relief (the "RJR Test") requires the moving party to prove:

    a. there is a serious issue to be tried;

    b. irreparable harm would result if the injunction is not granted; and

    c. the balance of convenience, considering of the circumstances, favour granting the injunction.[36]

43. The RJR Test is conjunctive and the party seeking the injunction must satisfy all three parts of the test.

a) Serious Issue to be Tried

44. Given the timeframe within which CFIA is responding to this motion, the absence of detailed submissions on the grounds of review proposed in Universal's underlying application for judicial review should not be taken to reflect the extent of the arguments CFIA may ultimately make in response to each issue, nor to represent any kind of concession that they raise a serious issue to be tried.

45. Even upon a cursory evaluation of the underlying application, it is evident it does not meet the low bar for establishing an arguable case on judicial review.

46. For example, Universal alleges that CFIA breached the requirements of procedural fairness by not explaining what evidence was required to support its application for an exemption to the Order. However, the underlying application only seeks an order quashing the December 31, 2024 Order, and does not challenge the January 10, 2025 decision to deny the exemption. As such, even if the applicant established that the

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[35] *Snuneymuxw First Nation v HMTQ*, 2004 BCSC 205 [***Snuneymuxw***] at paras 69, 72.
[36] *RJR-MacDonald Inc v Canada (AG)*, 1994 CanLII 117 (SCC) [***RJR MacDonald***] at 334.

exemption request process was unfair, that determination would have no bearing on the Court's review of the Order.

47. In addition, Universal alleges that the Order was unreasonable because CFIA failed to consider certain factors including "the characteristics of ostriches, the value of the research potential, and the alternatives to "stamping out" provided by the World Organization of Animal Health." These arguments do not raise a serious issue to be tried because they necessarily require the Court to take on the role of an academy of science and consider whether the Order was the correct decision in light of the scientific evidence or to determine if another alternative provided by the WOAH such as vaccination would have been preferable in the circumstances. That is not the proper role of the Court on judicial review. [37]

48. Finally, Universal alleges that the Order breached its *Charter* rights, without identifying which of its *Charter* rights was allegedly breached, and without providing any arguments with respect to how such a breach could be established and whether it was justified in the circumstances. Puzzlingly, Universal cites the right to property recognized in the *Canadian Bill of Rights*, also without providing any analysis or explanation of how that right could provide any basis for setting aside the Order.[38] These bare assertions, without more, cannot raise a serious issue.

49. In *Bédard v Canada*, this Court dismissed an application for an injunction at the first step of the injunction test where the underlying application challenged an order to destroy a herd of wapiti made under s. 48 of the *HAA.* The Court in that case decided that the underlying application did not raise an arguable case in light of the "singular" provisions of the *HAA* and the highly deferential standard of review that would be applied by the Court tasked with reviewing CFIA's decision.[39]

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[37] *Nunavut Tunngavik Inc v Canada (Minister of Fisheries and Oceans)*, 1998 CanLII 9080 (FCA) at para 18.
[38] Notice of Motion at para 79; Notice of Application at paras 78-80.
[39] *Bédard v Canada*, 1997 CanLII 17621 (FC).

50. In any event, given that the applicant cannot meet either of the other two steps of the injunction test, it is not necessary for the court to decide whether the underlying application raises a serious issue.

b) No Irreparable Harm

51. Universal has not provided evidence establishing that it will suffer irreparable harm if the Order is not stayed pending a determination of the underlying application.

52. Irreparable harm is harm which either cannot be quantified in monetary terms or which cannot be cured because one party cannot collect damages from the other.[40] Clear and non-speculative evidence is necessary to show that irreparable harm will occur and assertions that irreparable harm is "likely" to be suffered are not sufficient.[41] The evidence must establish that the irreparable harm is linked to what is sought to be prohibited by the injunctive relief.[42] In this context, the irreparable harm must flow from the Order, and must be to Universal and not its livestock.[43]

53. Universal alleges that a variety of different harms will occur if the requested injunction is not granted, none of which constitute irreparable harm for the purposes of the injunction test.

54. Several of the alleged harms are not harms to Universal itself and therefore cannot meet the second step of the injunction test. For example, Universal alleges that if its herd is destroyed, its inability to produce ostriches will impact the ostrich industry and extinguish research opportunities.[44]

55. Another alleged harm relates to the difficulty of replacing Universal's herd of ostriches. While Universal states "there is no way to replace it at all", it also states "it would be nearly impossible to purchase 400 ostriches in Canada" and "the cost to

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[40] *RJR MacDonald* at 341.
[41] *United States Steel Corporation v Canada (AG)*, 2010 FCA 200 at para 7.
[42] *Ahousaht First Nation v Canada (Fisheries, Oceans and Coast Guard)*, 2019 FC 1116 at para 93.
[43] *Skibsted v Canada (Environment and Climate Change)*, 2021 FC 301 at paras 44-45.
[44] Notice of Motion at paras 86, 92-94.

purchase an ostrich is $7,500", and "it is very difficult to import ostriches from abroad", suggesting that replacing the herd is not impossible, but simply difficult and cost prohibitive.[45] Additionally, Universal states that it would take two years before it could generate income from new ostriches.[46] Again, this financial loss cannot amount to irreparable harm.

56. Universal's arguments that the loss of its herd cannot be quantified in monetary terms is belied by the existence of a compensation scheme in the *HAA* and the *Compensation for Destroyed Animals and Things Regulations*. Universal's position can only be that the compensation under the statutory scheme is inadequate to fully compensate the financial losses it would suffer if its herd were destroyed.

57. Universal also alleges it will be liable to pay "several hundred thousands of dollars" to a contractual partner if the herd is killed.[47] Universal itself has quantified that loss in monetary terms and, obviously, such loss cannot constitute irreparable harm.

58. A more fundamental problem with Universal's submissions on irreparable harm is that all of the alleged harms relate to the destruction of the herd, rather than to the effects of the Order itself.

59. The Minister has discretionary authority under subsection 48(1) of the *HAA* to either dispose of affected or contaminated animals, or to require their owners to do so. Even if the Court quashed the Order requiring Universal to dispose of its herd, the Minister would retain the statutory authority to dispose of Universal's herd. As such, obtaining an injunction staying the Order, or even succeeding on the application below and having the Order quashed, will not necessarily avoid any harms associated with the destruction of Universal's herd. In other words, the alleged irreparable harm lacks the necessary link to the injunctive relief sought.

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[45] Notice of Motion at paras 84-85, 87-88.
[46] Notice of Motion at para 89.
[47] Notice of Motion at para 90.

c) Balance of Convenience Favours Dismissing the Motion

60. The third branch of the RJR Test only becomes relevant if Universal has established that they will suffer irreparable harm if the injunction is not granted. As Universal has not established irreparable harm, the Court need not consider this element of the test. In any event, the balance of convenience weighs overwhelmingly in favour of dismissing Universal's motion.

61. This step of the test requires the Court to consider not only potential harm and impacts to Universal and CFIA, but to the public interest.

62. Government is assumed to act in furtherance of the public interest. When a Court order interferes with the government's efforts to carry out a prescribed duty related to promoting or protecting public interests, the public interest has a central importance in determining the balance of convenience.[48] When a public authority is prevented from exercising its statutory powers, the public interest – of which that authority is guardian – suffers irreparable harm.[49]

63. The *HAA*'s purpose is to protect the health of people and animals, not the economic interests of individuals.[50] The record includes evidence of risks to human and bird health of failing to apply a stamping out policy that may be difficult to quantify, but are qualitatively different than economic impacts on individuals. These include sickness and death in domestic birds and humans, mutation of new virus variants, and even that HPAI could act a precursor to a human flu pandemic.[51]

64. AI also has potential to create far-reaching economic harm. In addition to impacts on farmers of an outbreak of AI in their own flocks, loss of "disease-free" status by not

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[48] *RJR-MacDonald* at 343-347.
[49] *North of Smokey Fishermen's Assn v Canada (AG)*, 2003 FCT 33 at paras 25, 26; *Fish, Food and Allied Workers (Unifor) v. Canada (Attorney General)*, 2024 FC 1644 at para 169.
[50] *River Valley Poultry Farm Ltd v Canada (AG)*, 2009 ONCA 326 at para 68.
[51] Furness Affidavit at paras 12-13, 16-17.

applying a stamping out policy (including in this case) could have adverse ramifications for Canada's poultry industry as a whole.[52]

65. In the present circumstances, the Court must exercise caution to avoid – by implication of issuing an injunction – making a decision as to whether potential risks posed by delaying CFIA's response to HPAI at Universal are acceptable and may be borne by the public. The Court lacks the expertise to make such risk determinations. Yet this is precisely what Universal asks the Court to do, referring to "very little risk" if the injunction is granted, that the herd "appears healthy", and to Dr. Pelech's opinion that it is extremely unlikely they are shedding virus or that it would be transmissible to humans.[53] Opinions on the merits of a decision made in the public interest do not favor granting an injunction.

PART IV – ORDER SOUGHT

66. The respondent asks that the motion be dismissed with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at the City of Vancouver, in the Province of British Columbia this 31st day of January, 2025.

Paul Saunders
Jordan Marks
Counsel for the Respondent

TO: **Federal Court**

AND TO: **Counsel for the Applicant**

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Per: Michael D. Carter
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[52] Furness Affidavit at paras 19-20.
[53] Notice of Motion at para 99.

PART V – LIST OF AUTHORITIES

Tab	Description
Caselaw	
1.	*Ahousaht First Nation v Canada (Fisheries, Oceans and Coast Guard)*, 2019 FC 1116
2.	*Bédard v Canada*, 1997 CanLII 17621 (FC)
3.	*North of Smokey Fishermen's Assn v Canada (AG)*, 2003 FCT 33
4.	*Nunavut Tunngavik Inc v Canada (Minister of Fisheries and Oceans)*, 1998 CanLII 9080 (FCA)
5.	*River Valley Poultry Farm Ltd v Canada (AG)*, 2009 ONCA 326
6.	*RJR-MacDonald Inc v Canada (AG)*, 1994 CanLII 117 (SCC)
7.	*Singh Shergill v Canada (Citizenship and Immigration)*, 2011 FC 1274
8.	*Skibsted v Canada (Environment and Climate Change)*, 2021 FC 301
9.	*Snuneymuxw First Nation v HMTQ*, 2004 BCSC 205
10.	*Tsiavos v Canada (Public Safety and Emergency Preparedness)*, 2011 FC 747
11.	*United States Steel Corporation v Canada (AG)*, 2010 FCA 200
Legislation	
12.	*Canadian Food Inspection Agency Act*, SC 1997, c 6
13.	*Compensation for Destroyed Animals and Things Regulations*, SOR/2000-233
14.	*Health of Animals Act*, SC 1990, c 21