Federal Court  Cour fédérale

Date: 20221101

Docket: T-876-20

Citation: 2022 FC 1487

Ottawa, Ontario, November 1, 2022

PRESENT: Mr. Justice McHaffie

BETWEEN:

COB ROLLER FARMS LTD.

Applicant

and

9072-3636 QUÉBEC INC., CARRYING ON BUSINESS AS ÉCOCERT CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Écocert Canada suspended and then cancelled Cob Roller Farms Ltd's organic certification under the *Safe Food for Canadians Regulations*, SOR/2018-108 [*Safe Food Regulations*]. The cancellation was based on "false or misleading statements" said to have been made by Cob Roller in the context of its application for certification, contrary to section 15 of the *Safe Food for Canadians Act*, SC 2012, c 24 [*Safe Food Act*]. Cob Roller argues the suspension and cancellation were done unfairly and unreasonably, and asks the Court to set them aside.

[2] For the reasons I give below, I conclude that Écocert Canada did not follow the procedures required by the *Safe Food Regulations* before suspending and cancelling Cob Roller's certification. In particular, it did not give Cob Roller prior notice of the grounds for the suspension and a period in which to take corrective action, and did not give Cob Roller prior notice of the issues leading to the cancellation and an opportunity to make submissions on them. Having failed to take such steps, Écocert Canada did not meet the level of procedural fairness established by regulation. The decisions must therefore be set aside and the matter referred back to Écocert Canada.

[3] I further conclude that Écocert Canada's decision on cancellation does not meet the requirements of transparency, intelligibility, and justification required of a reasonable decision. While Écocert Canada identified the statements it found to be false or misleading, it gave no explanation why those statements fell within section 15 of the *Safe Food Act*, and no reasons for rejecting Cob Roller's submission that they were simple oversights or mistakes. Given Écocert Canada's recognition that not every error in an application requires cancellation of a certification under the relevant regulatory regime, it was incumbent on Écocert Canada to explain the reasons for its cancellation decision, which it did not do. The justifications Écocert Canada provided on this application cannot be considered, and cannot cure an unexplained decision.

[4] The application for judicial review is therefore granted. The suspension and cancellation decisions are set aside and the matter is remitted to Écocert Canada for redetermination.

II. Issues and Standard of Review

[5] The primary issues on this application are whether Écocert Canada's suspension and subsequent cancellation of Cob Roller's organic certification were (a) procedurally fair, and (b) substantively reasonable.

[6] The parties agree, as do I, that the fairness of the process leading to the decisions is to be reviewed on a standard that is akin to correctness but actually involves no standard of review: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54–55; *Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14. In assessing procedural fairness, the Court must consider whether the procedure was fair having regard to all the circumstances: *Canadian Pacific* at para 54. For reasons I have previously expressed, this standard does not change simply because aspects of the process are defined by legislative provisions: *Iwekaeze v Canada (Citizenship and Immigration)*, 2022 FC 814 at paras 9–14; *Mission Institution v Khela*, 2014 SCC 24 at paras 5, 79–90.

[7] The parties similarly agree that the merits of Écocert Canada's decisions are reviewable on the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25. When applying the reasonableness standard, the Court must assess whether the decision shows the requisite attributes of justification, transparency, and intelligibility, and whether it is justified in relation to the relevant factual and legal constraints that bear on it: *Vavilov* at para 99. I agree with the parties, subject to one caveat regarding the statutory interpretation of section 15 of the *Safe Food Act*.

[8] The caveat relates to the parties' submissions regarding the interpretation of section 15 of the *Safe Food Act*, discussed below at paragraphs [72] to [76]. Subsequent to the hearing of this matter, the Supreme Court of Canada rendered its decision in *Society of Composers, Authors and Music Publishers of Canada v Entertainment Software Association*, 2022 SCC 30 [*SOCAN v ESA*]. The Supreme Court held that, as an exception to the presumption of reasonableness review, the correctness standard should apply when courts and administrative bodies have concurrent first instance jurisdiction over a legal issue in a statute: *SOCAN v ESA* at paras 26–42, citing *Rogers Communications Inc v Society of Composers, Authors and Music Publishers of Canada*, 2012 SCC 35.

[9] In the present case, administrative bodies, such as Écocert Canada, have first instance jurisdiction to interpret and apply section 15 of the *Safe Food Act* in circumstances relating to cancellation of an organic certification. However, courts may also have first instance jurisdiction to interpret and apply section 15 where, for example, a person is charged with an offence for contravening section 15, or the Minister seeks an injunction or forfeiture on this basis: *Safe Food Act*, ss 15, 33, 37, 39. An argument may therefore be made that *SOCAN v ESA* dictates that correctness is the appropriate standard on this issue. I need not decide this question, since I have concluded that Écocert Canada's decisions cannot stand even if the deferential reasonableness standard is applied and even accepting its interpretation of section 15. I therefore did not seek further representations from the parties on the point, and simply raise this as a caveat in light of the intervening jurisprudence of the Supreme Court.

III. Analysis

[10] Before addressing the two primary issues raised by Cob Roller, namely procedural fairness and reasonableness, I will address (A) three preliminary issues that arise from the manner in which the parties presented this application, (B) the applicable regulatory framework, and (C) the background to the suspension and cancellation decisions at issue on this application.

A. *Preliminary Issues*

(1) Écocert Canada as respondent to the application

[11] This application for judicial review is brought pursuant to sections 18 and 18.1 of the *Federal Courts Act*, RSC 1985, c F-7. The parties agree that Écocert Canada is a "federal board, commission or other tribunal" since it is a body exercising jurisdiction or powers conferred by or under an Act of Parliament, namely the *Safe Food Act* and the *Safe Food Regulations*: *Federal Courts Act*, s 2 ("federal board, commission or other tribunal").

[12] However, Rule 303(1) of the *Federal Courts Rules*, SOR/98-106, provides that on an application for judicial review, the applicant shall name as a respondent every person directly affected by the order sought, *other than* the tribunal in respect of which the application is brought, unless the tribunal is required to be named as a party by statute. Where there is no such party, the applicant is to name as a respondent the Attorney General of Canada: *Federal Courts Rules*, Rule 303(2). The Attorney General has a public interest mandate focused on the rule of law and their position may not always align with that of the tribunal: *Kinghorne v Canada*

(Attorney General), 2017 FC 1012 at para 8. While the tribunal may in some cases be substituted for the Attorney General as respondent, this should only occur on motion by the Attorney General where the Court is satisfied the Attorney General is unable or unwilling to act: *Federal Courts Rules*, Rule 303(3).

[13] As I advised the parties at the hearing of the application, these Rules mean that Cob Roller should have named the Attorney General of Canada as respondent, rather than Écocert Canada. However, Écocert Canada did not object to being named as respondent. Nor did the Attorney General object to not being named, despite receiving a copy of the notice of application from the Court on the day it was filed, pursuant to Rule 133(2). The application for judicial review has therefore proceeded with Écocert Canada as respondent for the past two years, including through a contested motion for an extension of time and the subsequent preparation of affidavits, conduct of cross-examinations, and filing of records: see *Cob Roller Farms Ltd v 9072-3636 Québec Inc (Écocert Canada)*, 2020 FC 806. While this is not in conformity with the *Federal Courts Rules*, I concluded at the hearing that the interests of justice and efficiency were best served in the circumstances by proceeding with Écocert Canada as the respondent: *Federal Courts Rules*, Rules 3, 55.

[14] I also note that Écocert Canada, appropriately, did not object to Cob Roller seeking review of both the suspension and the cancellation in the same application for judicial review. An application for judicial review must be limited to a single decision or order, unless the Court orders otherwise: *Federal Courts Rules*, Rule 302. This Court has recognized that closely linked decisions or a continuous course of conduct may be treated as a single decision: *Burlacu v*

Canada (Attorney General), 2019 FC 1215 at para 21, citing *Council of the Innu of Ekuanitshit v Canada (Fisheries and Oceans)*, 2015 FC 1298 at para 49 and *Whitehead v Pelican Lake First Nation*, 2009 FC 1270 at paras 51–52. In its notice of application, Cob Roller requested leave to bring the application for more than a single order, if necessary. Here, the suspension and cancellation of Cob Roller's organic certification are very closely linked and are part of a continuing course of conduct. To the extent they are considered separate decisions rather than parts of a single decision, I am satisfied that Cob Roller's challenges to each can and should be considered together as part of this application: *Federal Courts Rules*, Rules 3, 302.

(2) The parties' affidavit evidence

[15] Both Cob Roller and Écocert Canada filed affidavits that go beyond the admissible evidence that may be filed on an application for judicial review.

[16] In general, the evidence on an application for judicial review is limited to information that was before the decision maker: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19 [*Access Copyright*]. As exceptions to this general rule, an affidavit providing general background may be admissible where it will assist the Court in understanding the issues, and evidence going to procedural defects or the content of the record before the decision maker may also be admissible: *Access Copyright* at para 20. However, affidavits that seek to either supplement the record or bolster the decision maker's reasons are generally not admissible: *Access Copyright* at paras 19–20; *Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 116 at para 33; *Sellathurai v*

Canada (Public Safety and Emergency Preparedness), 2008 FCA 255 at paras 45–47; *Sapru v Canada (Minister of Citizenship and Immigration)*, 2011 FCA 35 at paras 52–53.

[17] Cob Roller filed the affidavit of Brooke Leystra, the sole officer and director of Cob Roller. This affidavit presents admissible background to the decisions, evidence regarding information that was presented to Écocert Canada, including through verbal statements, and evidence of the procedure leading to the cancellation decision. However, it also contains inadmissible statements regarding Cob Roller's position on the application for judicial review and extensive argument regarding the fairness and reasonableness of Écocert Canada's decisions. While these are largely duplicative of Cob Roller's written submissions, they are inappropriate in an affidavit and will be ignored. Ms. Leystra's affidavit also includes statements regarding damages allegedly suffered by Cob Roller because of the decisions, as well as its mitigation efforts. These statements, in addition to being inadmissible, are irrelevant to the issues before the Court on the application. They will also be ignored.

[18] Écocert Canada filed affidavits from its General Manager, Sébastien Houle, and from one of its inspectors, Simon Jacques. Mr. Jacques' affidavit provides factual background regarding the inspections leading to the suspension and cancellation. This information was before the decision maker and is admissible.

[19] Mr. Houle's affidavit similarly provides admissible background and procedural information. However, it also purports to provide evidence regarding the reasons for Écocert Canada's decisions that go well beyond the reasons provided to Cob Roller. This attempt

to supplement the decisions is not permissible: *Sellathurai* at paras 45–47. As Cob Roller submits, the decisions under review are the decisions made by the administrative decision maker at the time they were made, and judicial review is not an opportunity for the decision maker to cure or rationalize their decisions with the presentation of new reasons. Mr. Houle's affidavit also contains extensive argument, purporting to set out why Cob Roller's explanations are insufficient and why Écocert Canada's decisions were justified. As with Ms. Leystra's affidavit, these arguments are misplaced in an affidavit and will be ignored.

(3) New document tendered by Écocert Canada

[20] At the hearing, Écocert Canada sought leave to tender a document said to be a correct version of Exhibit Q to Ms. Leystra's affidavit. The document is a Yield Confirmation Notice with respect to the 2018 year, issued by Agricorp, the Ontario government's crop insurance agency. As discussed below, Écocert Canada raised the Yield Confirmation Notice as one of the grounds for the cancellation of Cob Roller's certification. Mr. Houle raised concerns about the authenticity of the copy of the document attached at Exhibit Q to Ms. Leystra's affidavit at his cross-examination in January 2021. Counsel for Écocert Canada stated at the hearing that this new version was received directly from Agricorp after the cross-examination, and that it was different from Ms. Leystra's Exhibit Q.

[21] I ruled at the hearing that the new document would not be admitted. It was not in the interests of justice to permit the document to be filed since (a) Écocert Canada received it in March 2021, but did not seek leave to tender the document until the hearing itself, well over a year later; (b) the document was not before the decision maker at the time of the decisions and is

therefore generally inadmissible on an application for judicial review; and (c) to the extent that the document might be relevant to Ms. Leystra's credibility, permitting Écocert Canada to raise it on the day of the hearing would be prejudicial to Cob Roller.

B. *The Regulatory Framework for Federal Organic Certification*

[22] The labelling of organic foods destined for interprovincial trade is governed by the provisions of Part 13 of the *Safe Food Regulations*, promulgated pursuant to section 51 of the *Safe Food Act*. These provisions are administered and enforced by the Minister of Agriculture and Agri-Food through the Canadian Food Inspection Agency [CFIA] under a program known as the Canada Organic Regime.

[23] Under the *Safe Food Regulations*, only a person holding a certificate may package and label foods as "organic" or use the "Canada Organic" logo: *Safe Food Regulations*, ss 1 ("organic product"), 342, 353, 356, 358, 359, Schedule 9. Such certificates are issued not by the CFIA itself but by "certification bodies" who are accredited by the CFIA: *Safe Food Regulations*, ss 340 ("certification body"), 344, 347, 360–363. To be accredited as a certification body, a person must demonstrate, among other things, their compliance with a standard issued by the International Organization for Standardization, ISO/IEC 17065, entitled *Conformity assessment – Requirements for bodies certifying products, processes and services*: *Safe Food Regulations*, ss 340 ("ISO/IEC 17065"), 360, 364. Écocert Canada is an accredited certification body.

[24] The *Safe Food Regulations* provide for the potential suspension and/or cancellation of an organic certification issued by a certification body. Section 349 governs suspension. It requires a certification body to suspend a certification if the holder of the certificate does not comply with the *Safe Food Act*, Part 13 of the *Safe Food Regulations*, or the applicable organic standards: *Safe Food Regulations*, s 349(1). The section also sets out procedures to be followed in the case of a potential suspension, including the provision of a written report and an opportunity for corrective action:

Conditions	**Conditions**
349 (2) The certification body must not suspend a certification unless the holder of the certificate	**349 (2)** L'organisme de certification ne peut suspendre la certification que si, à la fois :
(a) was provided with a written report that sets out the grounds for the suspension and the period within which corrective action must be taken in order to avoid the suspension; and	**a)** un rapport écrit précisant les motifs de suspension et le délai dans lequel des mesures correctives doivent être prises afin d'éviter la suspension a été fourni au titulaire du certificat;
(b) failed to take corrective action within that period or, if the certification body granted an extension at the written request of the holder, within any later period specified by the certification body.	**b)** le titulaire a omis de prendre des mesures correctives dans le délai imparti ou, si l'organisme de certification a accordé une prolongation, à la demande écrite du titulaire, dans le délai précisé par l'organisme de certification.
Extension of period	**Prolongation du délai**
(3) The certification body may grant an extension of the period in which corrective action must be taken only once.	**(3)** L'organisme de certification ne peut prolonger le délai dans lequel des mesures correctives doivent être prises qu'une seule fois.

Written notice	**Avis écrit**
(4) The certification body must notify the holder of the certificate in writing of the suspension and the date on which it takes effect.	**(4)** L'organisme de certification est tenu d'aviser par écrit le titulaire de la suspension et de la date de sa prise d'effet.
Duration of suspension	**Durée de la suspension**
(5) The suspension of a certification must be lifted if the certification body determines that corrective action has been taken.	**(5)** La suspension de la certification est levée lorsque l'organisme de certification établit que des mesures correctives ont été prises.
[Emphasis added.]	[Je souligne.]

[25] Section 350 of the *Safe Food Regulations* governs cancellation of an organic certification. It provides that a certification body "must cancel a certification" in certain circumstances. The first two of these are of particular relevance to this application:

Cancellation	**Révocation**
350 (1) The certification body must cancel a certification if	**350 (1)** L'organisme de certification est tenu de révoquer la certification dans les cas suivants :
(a) the holder of the certificate fails to take corrective action within 30 days after the day on which the certification was suspended;	**a)** le titulaire du certificat omet de prendre des mesures correctives dans les trente jours suivant la date de suspension de la certification;

(b) the holder of the certificate was not in compliance with section 15 of the Act in respect of the application made under section 344 or 347 or at any time during the period of validity of the certification;	**b)** le titulaire ne s'est pas conformé à l'article 15 de la Loi dans le cadre de la demande visée aux articles 344 ou 347 ou à tout moment pendant la période de validité de la certification;
[…]	[…]
[Emphasis added.]	[Je souligne.]

[26] Section 15 of the *Safe Food Act*, referred to in paragraph 350(1)(*b*), is a general provision that prohibits "false or misleading statements" or the provision of "false or misleading information" to those exercising authority under the statute:

False or misleading information	**Renseignements faux ou trompeurs**
15 It is prohibited for a person to make a false or misleading statement to any person who is exercising powers or performing duties or functions under this Act — or to provide him or her with false or misleading information — in connection with any matter under any provision of this Act or the regulations, including in respect of an application for a licence or registration.	**15** Il est interdit à toute personne de faire une déclaration fausse ou trompeuse à une personne qui exerce des attributions sous le régime de la présente loi, ou de lui fournir des renseignements faux ou trompeurs, relativement à toute question visée par toute disposition de la présente loi ou des règlements, notamment dans le cadre d'une demande de licence, d'enregistrement ou d'agrément.
[Emphasis added.]	[Je souligne.]

[27] The combined operation of paragraph 350(1)(*b*) of the *Safe Food Regulations* and section 15 of the *Safe Food Act* means that a certification body must cancel a certification if the

holder has made or provided a “false or misleading statement” or “false or misleading information” to a person exercising duties or functions under the *Safe Food Act* in respect of their application or at any time during the certification’s period of validity.

[28] As can be seen, paragraph 350(1)(*a*) of the *Safe Food Regulations* requires cancellation where corrective action is not taken within 30 days of the suspension of a certification. Cancellation under this paragraph therefore requires that there have been a prior suspension under section 349. However, no prior suspension is referred to in paragraph 350(1)(*b*).

[29] Like section 349, section 350 of the *Safe Food Regulations* sets out procedures to follow before a cancellation, notably the provision of notice and an opportunity to be heard, set out in subsection 350(2):

Conditions	**Conditions**
350 (2) The certification body must not cancel a certification unless the holder of the certificate was notified in writing of the grounds for the cancellation and was provided with an opportunity to be heard in respect of the cancellation.	**350 (2)** L’organisme de certification ne peut révoquer la certification à moins que le titulaire du certificat n’ait été avisé par écrit des motifs de révocation et que celui-ci n’ait eu la possibilité de se faire entendre à l’égard de la révocation.
Written notice	**Avis écrit**
(3) The certification body must notify the holder of the certificate in writing of the cancellation and the date on which it takes effect.	**(3)** L’organisme de certification est tenu d’aviser par écrit le titulaire du certificat de la révocation et de la date de sa prise d’effet.
[Emphasis added.]	[Je souligne.]

[30] In addition to these statutory and regulatory provisions, CFIA has published a "Canada Organic Regime Operating Manual." This Operating Manual contains policies and procedures for activities under the Canada Organic Regime, and frequently references Part 13 of the *Safe Food Regulations*. The Operating Manual notes that in the event of conflict, the *Safe Food Regulations* take precedence.

C. *The Suspension and Cancellation Decisions at Issue*

(1) Cob Roller's application for certification

[31] Cob Roller has produced organic crops for a number of years. It operates four fields in Ontario, producing corn, soybeans and other crops. Before 2019, Cob Roller held an organic certification with another certification body, Global Organic Alliance [GOA]. After GOA ceased its Canadian operations, Cob Roller applied to Écocert Canada on June 1, 2019 to have its certification transferred. Écocert Canada's application form included a "History Sheet" requiring the applicant to identify the "Field Area" for each field and to give information regarding the crop and the fertilizers, amendments, and phytosanitary products applied to the field for the current and the previous three years. Cob Roller identified two of its fields as having a Field Area of 50 acres, and two as having a Field Area of 100 acres, and set out the crops and fertilizers that had been on the fields since 2016. It left blank all of the spaces for disclosure of phytosanitary products, which include the herbicide Roundup.

[32] Écocert Canada sent Cob Roller the results of its pre-inspection documentary review on June 17, 2019. It noted that the history of one of Cob Roller's fields (Field 4) was missing from

the form and required a declaration that the field had not been treated with any non-organic substances for at least 36 months. This 36-month period reflects the Canadian Organic Standards incorporated by reference in the *Safe Food Regulations*, which require that no prohibited substances be used for at least 36 months before the harvest of an organic crop: *Safe Food Regulations*, s 340 ("CAN/CGSB-32.310", "CAN/CGSB-32.311"), 344, 345. Écocert Canada's review also noted a missing production plan and required that production plans be available at the time of inspection.

[33] Using an Écocert Canada form, Cob Roller sent the requested "36 Months Declaration" in early July. Écocert Canada inspected Cob Roller's farming operation in August 2019 and identified two further areas of non-conformity regarding missing records. Cob Roller addressed these issues and Écocert Canada issued an organic certificate on October 7, 2019.

(2) Complaint and further inspection

[34] On November 26, 2019, Écocert Canada received a complaint against Cob Roller. It did not advise Cob Roller of either the existence or content of the complaint. However, as a result of the complaint, Mr. Jacques of Écocert Canada conducted an unannounced inspection of Cob Roller's site on December 9, 2019. During the inspection, he spoke with Ms. Leystra and her husband, the other owner of Cob Roller, Scott Leystra. At the conclusion of the inspection, Mr. Jacques prepared an exit interview form, a copy of which he left with Cob Roller.

[35] The exit interview form indicates that the inspection was a "Random inspection," which accords with Ms. Leystra's statement that Mr. Jacques told her the inspection was random. The

exit interview form includes the heading “Observed deviation.” Under this heading, Mr. Jacques identified three issues: (a) a missing crop annex for the 2018 organic certificate from GOA; (b) the unavailability of certain harvest records from prior years for inspection; and (c) a “clarification” that the field size declared in the application was the total farm size, rather than the smaller cultivated area. With respect to the third issue, Cob Roller was asked to “Please confirm exact size of the field.”

(3) “Notice of Ground for Cancellation” and Cob Roller’s response

[36] Ten days later, on December 19, 2019, Écocert Canada sent Cob Roller a “Notice of Ground for Cancellation.” The Notice cited paragraph 350(1)(*b*) and subsection 350(2) of the *Safe Food Regulations* and stated that Cob Roller’s certification was suspended. The Notice identified nine asserted areas of non-compliance. These included two of the deviations identified in the exit interview form (the unavailable harvest records and the field size issue), together with seven new issues. Of the nine issues, two were identified as involving “untruthful/misleading information,” namely the field size declarations for three of the fields, and the fact that Cob Roller’s initial application had not identified the use of Roundup in 2016 on one of its fields (Field 3). Écocert Canada appears to have become aware of the 2016 use of Roundup on Field 3 because Cob Roller had previously declared the use to GOA, and GOA’s file was provided to Écocert Canada.

[37] The other areas of non-compliance included concerns that grain bins were not numbered and their capacities not mentioned on Cob Roller’s Organic Plan maps, and that Cob Roller was not appropriately managing its buffer zone. With respect to the latter of these concerns,

Écocert Canada noted that Cob Roller's yields appeared high and asked for an explanation and a copy of Agricorp yield declarations.

[38] The Notice advised Cob Roller that it had an opportunity to be heard in respect of the cancellation, which it could do by "tak[ing] advantage of the appeal process within thirty (30) days from the date of the notice informing [it] of the decision."

[39] Cob Roller sent Écocert Canada a 23-page response on January 19, 2020, addressing the nine issues raised in the Notice. The response included a statement that the field acreages were a mistake resulting from Ms. Leystra writing the total acreage for each farm and not the workable acres. Ms. Leystra provided corrected acreages and GPS maps to verify the areas. The response also stated that the last application of Roundup was in May 2016 and that it had been identified in the GOA history sheets. Again, corrected field history documents were provided. As part of the response to the concern about storage bin information, Cob Roller provided a sketch of its storage bins with their capacities. It also responded to the concern about yields with information about its crop performance and a copy of the 2018 Yield Confirmation Notice from Agricorp.

(4) The "Result of appeal request" and cancellation

[40] On February 6, 2020, Écocert Canada sent Cob Roller a "Result of appeal request," dated February 5. This one-page document informed Cob Roller "of the result of your request to appeal the certification decision" in the following language:

> **Your appeal is denied**: the initial certification decision of ECOCERT CANADA is maintained. The denial is based on the following reasons:

FALSE OR MISLEADING STATEMENT:

- False declaration about field size, higher than real acreage (Home farm (Field No 1); Churchil [*sic*] Farm (Field No 2); Hodgson Farm (Field No 4);
- Misleading declaration in the field history provide to ECOCERT (Field No 3);
- Missing declaration in Organic System Plan of an organic storage site: Inwood Storage Site - 1712 McAustan [*sic*] Road.
- Wrong declaration /no correction of the Yield Confirmation Notice of Agricorp: only yellow corn was listed on your 2018 Organic certificate of Global Organic Alliance while the 2018 Yield Confirmation Notice of Agricorp stated 3000 bu of Organic Soybeans.

[Bold in original.]

[41] The document reproduced section 15 of the *Safe Food Act*. It then referred to paragraph 350(1)(*b*) of the *Safe Food Regulations* and said that Écocert Canada must cancel Cob Roller's certification because it was not in compliance with section 15 of the *Safe Food Act*. Écocert Canada attached a Notification of Cancellation stating that the certification agreement concluded with Écocert Canada was cancelled and that Cob Roller was required to stop referring to the term organic or to Écocert Canada.

[42] On February 7, 2020, the day after receiving the "Result of appeal request," Ms. Leystra sent an email to Écocert Canada, repeating Cob Roller's explanations with respect to the first two listed declarations (the field size and field history), and providing explanations regarding the second two (the storage site and Yield Confirmation Notice). This email was sent again on

February 11. Écocert Canada responded by email on February 12 thanking Ms. Leystra for the information, but saying that "the certification is close[d] since the appeal has been denied."

D. *Procedural Fairness*

[43] The parties made submissions regarding the appropriate contents of the duty of fairness in the circumstances, with reference to the factors set out in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 21–28. Applying these factors, Cob Roller argues that a high degree of procedural fairness was owed, while Écocert Canada argues that the duty of fairness is minimal.

[44] In my view, these arguments are largely beside the point, as the *Safe Food Regulations* themselves set out procedural requirements that must be followed regardless of what the common law duty of fairness might dictate: *Ocean Port Hotel Ltd v British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2001 SCC 52 at paras 20–22. As set out in paragraph 18.1(4)(*b*) of the *Federal Courts Act*, the Court may grant relief if the decision maker failed to observe procedural fairness or if it failed to observe any "other procedure that it was required by law to observe." For the following reasons, I conclude that Écocert Canada did not follow the procedures mandated by the *Safe Food Regulations* and that this rendered the suspension and cancellation procedurally unfair.

(1) The suspension

[45] As set out above, subsection 349(2) of the *Safe Food Regulations* provides that a certification body *must not* suspend a certification unless the holder (a) was provided with a written report that sets out the grounds for the suspension and the period within which corrective action must be taken to avoid a suspension; and (b) failed to take corrective action within that period. Écocert Canada did not do this. Rather, in its Notice of Ground for Cancellation, it purported to immediately suspend Cob Roller's certification without any prior report setting out the grounds for suspension and a period for corrective action. Inconsistently, while the Notice of Ground for Cancellation suspended Cob Roller's certification, it also purported to provide a period of time for Cob Roller to take action with respect to the identified non-compliance issues.

[46] It is worth noting that the exit interview form provided at the conclusion of the inspection on December 9, 2019, cannot be considered a prior written report in compliance with paragraph 349(2)(*a*). While that form listed certain "Observed deviations," it did not identify them as potential grounds for suspension, did not give a period to take corrective action, and only identified two of the nine grounds given in the Notice of Ground for Cancellation.

[47] Écocert Canada does not contend that Cob Roller was given a prior written report. Rather, it argues, based on statements by Mr. Houle in his affidavit and cross-examination, that the decision to immediately suspend Cob Roller's certification was taken to protect the public interest given the significant risks to the organic integrity of Cob Roller's products. I cannot accept this for two reasons. First, as set out above, it is not open to Mr. Houle to buttress

Écocert Canada's decision through subsequent statements filed in the context of an application for judicial review: *Sellathurai* at paras 45–47. Second, the public interest in accurate organic labelling underlies the entirety of Part 13 of the *Safe Food Regulations*, which nonetheless prohibits a certification body from suspending a certification until after a written report and period for corrective action are given. It is not open to Écocert Canada to override the regulatory procedures that govern its certifications based on its own sense of the public interest.

[48] This is so whether the Notice of Ground for Cancellation was based on concerns about non-compliance with organic standards, with false or misleading information under section 15 of the *Safe Food Act*, or a combination of the two. Écocert Canada notes that the Notice of Ground for Cancellation states that it was made according to paragraph 350(1)(*b*), dealing with false or misleading information, and not a failure to take corrective action. It is clear from the contents of the Notice of Ground for Cancellation that both concerns with respect to misrepresentation and other concerns about non-compliance were raised. In any case, the *Safe Food Regulations* do not provide for an immediate suspension of certification even where there is a concern that a false or misleading statement has been made. Section 350 of the *Safe Food Regulations* sets out a clear procedure for cancellation, including cancellation based on section 15 of the *Safe Food Act*. Subsection 349(2) contains clear language that a certification body *must not* suspend a certification except if a written report and time for corrective action are given. I cannot accept Écocert Canada's contention that it has some form of residual discretion to immediately suspend a certification in such circumstances.

[49] I therefore conclude that Écocert Canada did not follow the requisite regulatory procedures before suspending Cob Roller's organic certification.

(2) The cancellation

[50] Écocert Canada also did not follow the procedures set out in the *Safe Food Regulations* with respect to cancellation of a certification.

[51] Subsection 350(2) states that a certification body *must not* cancel a certification unless the holder of the certificate was notified in writing of the grounds for the cancellation and was provided with an opportunity to be heard. Écocert Canada failed to comply with this procedure in two ways.

[52] First, the Notice of Ground for Cancellation did not give Cob Roller notice of the grounds for cancellation and provide an opportunity to be heard before making a decision on cancellation. To the contrary, it effectively stated that a decision had been made and that Cob Roller could take advantage of an "appeal process" within 30 days of the date of the notice "informing you of the decision." Subsection 350(2) of the *Safe Food Regulations* creates a process of notice and an opportunity to be heard before a decision is made. It cannot be read as creating or permitting a process whereby a decision is made immediately and without notice, followed by an opportunity to appeal.

[53] Nor is this simply a question of terminology. The difference between an appeal *after* a decision is made and an opportunity to be heard *before* a decision is made is underscored by the

Notice itself, which advised Cob Roller that its submissions would have to be accompanied by documents proving the merits, "including the new elements justifying the revision of the decision" [emphasis added]. The ultimate cancellation decision is presented as a "Result of appeal request" in which the "initial certification decision of ECOCERT CANADA is maintained." These indications all suggest Écocert Canada had already made a decision before Cob Roller had the opportunity to be heard, contrary to subsection 350(2).

[54] Écocert Canada argues that its appeal process conforms with section 7.13 of the ISO/IEC 17065 standard, with which it must comply. Section 7.13 of ISO/IEC 17065 deals with "Complaints and appeals" and requires certification bodies to have processes to receive, evaluate and make decisions on complaints and appeals.

[55] In my view, nothing in section 7.13 of ISO/IEC 17065 can be taken as overriding subsection 350(2) of the *Safe Food Regulations*. It is unclear that section 7.13 of the standard is intended to deal with suspension or cancellation of a certification, given that section 7.11 separately deals with "termination, reduction, suspension or withdrawal of certification." In any case, section 7.13 cannot have the effect of rewriting the express regulatory requirement for notice and an opportunity to be heard *before* cancellation by turning it into a process of decision *followed* by submissions on appeal. It is worth noting that sections C.2.4.2 and C.4 of the Canada Organic Regime Operating Manual also refer to appeals related to certification decisions, but the Operating Manual gives no suggestion that a certification body's appeal process can replace the notice required by subsection 350(2) of the *Safe Food Regulations.* To the contrary, a separate section of the Operating Manual, section C.2.8, addresses suspension and cancellation and

indicates that a certification body shall suspend and cancel a certification "as per part 13 of the [*Safe Food Regulations*]."

[56] I also cannot accept Écocert Canada's submission that the right to be heard was respected because the parties had discussions and exchanges during the course of the inspection on December 9, 2019. Subsection 350(2) of the *Safe Food Regulations* provides that the opportunity to be heard must be after written notice is given of the grounds for cancellation. There is no indication that any written notice of the grounds was given prior to the inspection, so the discussions at the inspection cannot satisfy the "opportunity to be heard" requirement of subsection 350(2). Nor is there any indication that there was discussion during the inspection of any of the issues leading to the cancellation other than the field size.

[57] Second, Écocert Canada cancelled Cob Roller's certification based on four grounds, two of which were not identified at all in the Notice. The grounds given regarding (a) a missing declaration regarding the storage site, and (b) the concern about the Yield Confirmation Notice from Agricorp were raised for the first time in the "Result of appeal request" document cancelling the certification. With respect to these grounds, Cob Roller had no notice in writing of the grounds for the cancellation and no opportunity to be heard, again contrary to subsection 350(2) of the *Safe Food Regulations*.

[58] Écocert Canada relies on this Court's decision in *Foster Farms* for the proposition that the duty of procedural fairness does not generally impose a duty to provide notice to an applicant regarding deficiencies in their applications: *Foster Farms LLC v Canada (International Trade*

Diversification), 2020 FC 656 at para 65. While this may be true, in my view there is a significant difference between a concern about a deficiency or shortcoming in an application and an assertion that an applicant has made a false or misleading statement. In any event, as stated above, whether or not the common law duty of fairness would impose an obligation to give notice is immaterial when the regulatory regime expressly imposes such an obligation.

[59] I therefore conclude that Écocert Canada also did not follow the requisite regulatory procedures before cancelling Cob Roller's organic certification.

(3) Impact of the failure to follow the *Safe Food Regulations*

[60] The Supreme Court has noted that not every breach of a statutory or regulatory procedural requirement will render a decision unfair: *Khela* at para 90. A "strictly technical breach," for example, may not render the decision unfair, and it is up to the reviewing judge to determine whether a given breach resulted in procedural unfairness: *Khela* at para 90. In my view, however, that assessment must respect the legislator's choice regarding the necessary and appropriate process to follow. Where the legislator has defined the procedure it considers fair, it can be presumed that a non-technical breach of those procedures would be considered unfair.

[61] In the present case, I cannot see Écocert Canada's non-compliance with the procedures set out in sections 349 and 350 of the *Safe Food Regulations* to be merely technical. Rather, they go to the heart of the issues of notice and an opportunity to be heard, which are central to concepts of fairness in administrative decision-making and central to the procedural protections

built into the *Safe Food Regulations*. I conclude that these breaches of the prescribed procedures rendered the process unfair.

[62] A breach of procedural fairness will ordinarily render a decision invalid, requiring the matter to be sent back for redetermination: *Canada (Attorney General) v McBain*, 2017 FCA 204 at para 9, citing *Cardinal v Director of Kent Institution*, [1985] 2 SCR 643. However, there is an exception where the outcome is "legally inevitable": *McBain* at para 10, citing *Mobil Oil Canada Ltd v Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 SCR 202 at pp 227–228. Écocert Canada argues, again with reference to statements made by Mr. Houle on this application for judicial review, that each of the four grounds was sufficient to cancel the certification. It argues that Cob Roller had prior notice of two of the alleged false or misleading statements, and that the cancellation should therefore stand even if notice was not given in respect of the other two grounds.

[63] However, as stated above, Écocert Canada cannot now put forward on judicial review additional reasons or justifications not found in its decision. The Court simply cannot accept a decision maker's assertion, put forward for the first time on judicial review, that it would have reached the same conclusion regardless of any fairness concerns.

[64] Nothing in the reasons given for the decision indicates that each of the false or misleading statements was found independently sufficient to justify the cancellation. Rather, the denial of the appeal was based on the four false or misleading statements, presented together. Despite Écocert Canada's reference to the requirement in subsection 350(1) of the *Safe Food*

Regulations that a certification body *must cancel* a certification if the holder is not in compliance with section 15 of the *Safe Food Act*, I cannot conclude that the outcome is "legally inevitable" or that it is certain that Écocert Canada would have reached the same result had the breach of fairness not occurred: *McBain* at paras 10, 12. This is particularly so given Écocert Canada's recognition, discussed further below, that it is not every untrue statement on an application that will necessarily require the cancellation of a certification.

[65] I therefore conclude that Écocert Canada did not comply with the procedural requirements set out for suspension and cancellation in the *Safe Food Regulations*, and thus failed to observe a procedure that it was required by law to observe: *Federal Courts Act*, s 18.1(4)(*b*). I further conclude that this failure resulted in a procedural unfairness that requires the decisions to be set aside and remitted for redetermination.

(4) Non-disclosure of the complaint

[66] While the foregoing is sufficient to conclude that there was a breach of procedural fairness, I will also address Cob Roller's argument that it was unfair for Écocert Canada not to disclose the complaint made against Cob Roller, and for it to falsely assert that the inspection that resulted from the complaint was a "random" one. For the following reasons, I conclude it was not.

[67] Again, the starting point is the procedure set out in the *Safe Food Regulations*. Subsections 349(2) and 350(2) require a certification body to give notice of the grounds for the suspension and cancellation, respectively. However, the *Safe Food Regulations* do not address

disclosure of any complaints received in respect of a certification holder that may have led to an inspection or, ultimately, a suspension or cancellation. To the contrary, they require a certification body to comply with the ISO/IEC 17065 standard referred to above, and provide that the certification body's accreditation may be suspended or cancelled if they do not comply: *Safe Food Regulations*, ss 360(*a*), 364(1), 365(1). As Écocert Canada points out, section 4.5.3 of the ISO/IEC 17065 standard requires the certification body to keep confidential "[i]nformation about a client obtained from sources other than the client (e.g. from the complainant or from regulators)." As a result, the *Safe Food Regulations* implicitly require a certification body, through conformity with the ISO/IEC 17065 standard, to keep confidential information about the certification holder that it obtained from a complainant.

[68] This is not to say that the requirement of confidentiality can be used to ignore the obligation to give notice of the grounds of a potential suspension or cancellation. As indicated above, the standard cannot override the clear requirements of the *Safe Food Regulations*. However, a distinction must be made between disclosure of the *grounds* for suspension or cancellation, and disclosure of an underlying *complaint* that might be the source of the concern or that might, as here, have led to an inspection that in turn led to grounds for suspension or cancellation.

[69] This distinction also answers Cob Roller's reliance on *O'Connell, as the Registrar of Motor Vehicles for the Province of New Brunswick v Maxwell*, 2016 NBCA 37 [*Maxwell*]. In that case, the New Brunswick Court of Appeal upheld a determination that the Registrar of Motor Vehicles had denied Mr. Maxwell procedural fairness in revoking his personalized license

plates without a meaningful opportunity for participation. The Court of Appeal noted that Mr. Maxwell "was not provided with a copy of the complaint and thus did not have knowledge of the case against him": *Maxwell* at para 47. It held that by failing to allow him to know the case against him and make representations, the Registrar failed to respect the minimal requirement of procedural fairness: *Maxwell* at para 47.

[70] Cob Roller argues that, as in *Maxwell*, Écocert Canada's failure to disclose the complaint deprived it of procedural fairness. I disagree. As I read *Maxwell*, the primary fairness concern was the Registrar's failure to give Mr. Maxwell notice of the substance of the case against him, rather than the non-disclosure of the underlying complaint in particular. In any case, the administrative context is different. Some administrative circumstances may require disclosure of the actual underlying complaint leading to an administrative process and decision. Others may simply require disclosure of the substance of the case, without disclosure of the complaint itself. The *Safe Food Regulations* require notification in writing of the grounds for the cancellation and an opportunity to be heard, while implicitly requiring the certification body to preserve the confidentiality of the complaint. In such circumstances, I cannot conclude that Écocert Canada's obligations of procedural fairness required it to disclose the complaint that led to the inspection of Cob Roller, either in whole or in substance. Rather, it was required to disclose the grounds on which a cancellation might or would be based.

E. *Reasonableness*

[71] In addition to the procedural unfairness, I agree with Cob Roller that Écocert Canada's cancellation decision does not bear the hallmarks of a reasonable decision as described by the

Supreme Court of Canada in *Vavilov*. Écocert Canada accepts that not every error or misstatement is necessarily a "false or misleading statement" that requires cancellation. Yet its decision to cancel Cob Roller's certificate gives no explanation or indication why it concluded that the identified statements were "false or misleading statements," or why it did not accept Cob Roller's submissions with respect to the two statements for which notice had been given.

(1) Section 15 of the *Safe Food Act*

[72] As set out above, section 15 of the *Safe Food Act* prohibits a person from making a false or misleading statement or providing false or misleading information to a person exercising powers or performing duties under the act. Paragraph 350(1)(*b*) of the *Safe Food Regulations* requires the certification body to cancel a certification if the holder was not in compliance with section 15.

[73] Cob Roller argues that a mere clerical oversight or misunderstanding cannot be a "false or misleading statement" requiring cancellation of an organic certification. It argues that section 15 of the *Safe Food Act* does not create a strict liability regime but requires some intent to mislead, which Cob Roller did not have.

[74] In oral submissions, Écocert Canada accepted the contention that not every clerical error or untrue statement must result in cancellation. It gave as an example of an error that would not justify cancellation a mistake on an application in a company's date of incorporation. It argues that Parliament's intent should be considered in assessing the question and that Écocert Canada is able to, and was charged with, distinguishing between such errors and those that are false or

misleading. Écocert Canada rejects, however, the argument that section 15 includes or requires an element of intent. I note for clarity that these interpretive arguments regarding section 15 were presented by Écocert Canada on the argument of this application, rather than in its reasons for decision.

[75] In support of its argument that section 15 requires intent, Cob Roller points to the Federal Court of Appeal's decision in *Mootoo,* which set aside a penalty for a "false and misleading" misrepresentation under the *Employment Insurance Act*, SC 1996, c 23, on the basis that there was no intent to mislead: *Mootoo v Canada (Minister of Human Resources Development)*, 2003 FCA 206 at paras 5–6. In my view, *Mootoo* is not helpful, as the statutory provision at issue in that case expressly refers to "a representation that the claimant or other person knew was false or misleading" [emphasis added]: *Employment Insurance Act*, s 38(1)(*a*); *Mootoo* at paras 1, 5. Whether intent is required under section 15 of the *Safe Food Act* must be assessed based on the language and context of that provision and not based on analogy to another statutory scheme with different statutory language.

[76] More to the point is Cob Roller's reference to the Canada Organic Regime Operating Manual published by the CFIA. Section C.2.4 of the Operating Manual addresses the initial certification decision by a certification body. Écocert Canada cited this section in its certification of Cob Roller. Within this section of the Operating Manual, section C.2.4.1 provides that a certification body may deny certification if it "has reason to believe that an applicant for initial certification has willfully made a false statement regarding its production system and operations related to the products included in the application" [emphasis added]. The Operating Manual is

neither legislation nor regulation and cannot override the relevant legislative and regulatory provisions: *Alexion Pharmaceuticals Inc v Canada (Attorney General)*, 2021 FCA 157 at para 38. However, as with a policy guideline it may provide relevant context to the interpretation and administration of Part 13 of the *Safe Food Regulations*: *Vavilov* at para 94; *Alexion* at para 39. There may be arguments, as Cob Roller suggests, supporting a consistent approach to the issue of intent between the application and cancellation process.

[77] I conclude that I need not decide these issues, as even on Écocert Canada's approach to section 15, its decisions are not transparent, intelligible, and justified.

(2) Écocert Canada's decisions are not transparent, intelligible, and justified

[78] Where an administrative tribunal is required to give reasons for decision and does so, the content and quality of those reasons is to be reviewed in accordance with the administrative law framework for substantive review: *Vavilov* at paras 76–81. In the present case, Écocert Canada did give reasons for decision. In my view, and as Écocert Canada conceded in oral submissions, it was required to do so. The context of the *Safe Food Regulations*, in which "the decision-making process gives the parties participatory rights" and requires written notice of the decision; the nature of the decision; its impact on Cob Roller's ability to offer organic products; and Écocert Canada's own choice to issue reasons all point to a requirement to give reasons: *Vavilov* at para 77, citing *Baker* at paras 23–27, 43.

[79] This conclusion is reinforced by the ISO/IEC 17065 standard, with which Écocert Canada must comply to be accredited. As noted above, section 7.11 of the standard deals

with termination, reduction, suspension, and withdrawal of certification. That section, and in particular sections 7.11.2 and 7.11.6, incorporate the requirements of section 7.6 when dealing with a certification decision. Section 7.6.6 requires a certification body that is deciding not to grant certification to notify the applicant and "identify the reasons for the decision." Thus, the ISO/IEC 17065 standard also appears to require a certification body issuing an adverse decision in respect of termination or suspension to identify the reasons for the decision.

[80] Having been required to give written reasons and having given such reasons, Écocert Canada's decisions must bear the hallmarks of reasonableness—justification, transparency, and intelligibility—and must be justified in relation to the relevant factual and legal constraints that bear on it: *Vavilov* at paras 76–81, 99.

[81] The reasons for decision issued by Écocert Canada in their "Result of appeal request" are set out in paragraphs [40] and [41] above. In substantive part, they simply state which "false or misleading statements" are the basis for the denial of the appeal, with nothing further. They do not indicate why these statements are considered "false or misleading" within the scope of section 15 of the *Safe Food Act*, nor why Cob Roller's submissions regarding the two statements for which they were given notice were not accepted. Nor can the reasons for this be gleaned from the record. While the record explains why the statements regarding field size and the field history (Roundup) were considered incorrect, it gives no indication as to why or whether Écocert Canada considered those statements to be "false and misleading" for the purposes of section 15.

[82] This is a material omission, even on Écocert Canada's interpretation of section 15. Écocert Canada accepts that not every error in an application form is a "false or misleading" statement that requires the cancellation of a certification. It asserts that it is charged with distinguishing between errors that require cancellation and those that do not. However, it provided Cob Roller with no justification for its apparent conclusion that these statements required cancellation, and gave no indication it had meaningfully accounted for Cob Roller's central submission that they were mere oversight: *Vavilov* at paras 86, 127–128.

[83] Écocert Canada argues that since subsection 350(1) of the *Safe Food Regulations* states it *must* cancel a certification in the event of non-compliance, there is no need to provide any reasons beyond the identification of the false or misleading statement in question. I cannot agree. Although the effect of non-compliance with section 15 of the *Safe Food Act* is spelled out in subsection 350(1), this does not mean the conclusion that there has been non-compliance with section 15 need not be explained. Again, even accepting the interpretation of section 15 put forward by Écocert Canada on this application, the mere identification of one or more statements does not itself explain why Cob Roller was considered non-compliant with section 15.

[84] The record provides even less explanation of the two statements regarding bin size and the Yield Confirmation Report. With respect to the latter of these in particular, there is no explanation as to how or why Écocert Canada concluded that Cob Roller's dealings with Agricorp in 2018 could amount to a "false and misleading statement" to a person exercising powers or performing duties under the *Safe Food Act*.

[85] In this regard, I repeat that Mr. Houle's affidavit and Écocert Canada's arguments on this application, which purport to provide justifications that were not provided in Écocert Canada's written decision, cannot be accepted or considered: *Sellathurai* at paras 45–47. I agree with Cob Roller's submission that a decision maker cannot cure an unreasonable decision at the stage of judicial review by presenting a new and better justification not given in its reasons for decision.

[86] I therefore conclude that Écocert Canada's decisions do not display the hallmarks of transparency, intelligibility, and justification required of a reasonable decision. As a result, I need not address Cob Roller's further arguments regarding, for example, the last application of Roundup having been outside the 36-month period required for organic certification, and the vagueness of the reference to "Field Area" on Écocert Canada's form, other than to note that it does not appear that these arguments were made to Écocert Canada at the time of its decisions.

F. *Remedy*

[87] Cob Roller's written submissions asked that the Court issue a writ of *mandamus* requiring Écocert Canada to reinstate its certification, retroactive to December 19, 2019, but it presented no argument on the applicable test for a *mandamus* order. At the hearing of the application, it focused on its alternative request for orders remitting the matter to Écocert Canada and directing it to reconsider the suspension and cancellation decisions in accordance with the Court's directions.

[88] Cob Roller's notice of application also requested substantial damages. However, it again made no written submissions in support of this request. Cob Roller appears to recognize that damages cannot be obtained on judicial review, because it has independently commenced an action for damages, which has been held in abeyance pending this decision (Court File No. T-1305-20).

[89] In my view, the appropriate remedy in the circumstances is that normally granted upon a successful judicial review, namely setting aside the suspension decision and the cancellation decision, and remitting the matter to Écocert Canada for redetermination. There is no indication that all certification or cancellation decisions are made by the same individual at Écocert Canada. To the contrary, Mr. Houle's affidavit indicates that Écocert Canada receives thousands of certification applications and makes thousands of certification decisions per year, and that the appeal in Cob Roller's matter was considered by a person not involved in the certification activities. My order will therefore include the usual requirement that the redetermination be made by an individual or individuals not previously involved in the assessment of Cob Roller.

IV. Conclusion

[90] The application for judicial review will therefore be granted and the suspension and cancellation of Cob Roller's organic certification will be set aside and the matter remitted to Écocert Canada for redetermination by a different individual.

[91] In accordance with the parties' agreement, each party will bear its own fees and disbursements.

JUDGMENT IN T-876-20

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted.
2. The suspension of the organic certification issued by 9072-3636 Québec Inc., cob as Écocert Canada to Cob Roller Farms Ltd. dated December 19, 2019, is set aside.
3. The cancellation of the organic certification issued by 9072-3636 Québec Inc., cob as Écocert Canada to Cob Roller Farms Ltd. dated February 5, 2020, is set aside.
4. The foregoing matters are remitted to 9072-3636 Québec Inc., cob as Écocert Canada for redetermination, such redetermination to be undertaken by an individual or individuals who were not involved in the issuance, suspension, or cancellation of Cob Roller Farms Ltd.'s organic certification.
5. There is no order as to costs.

"Nicholas McHaffie"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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