Federal Court Cour fédérale

Date: 20230314

Docket: T-1004-21

Citation: 2023 FC 344

[ENGLISH TRANSLATION]

Ottawa, Ontario, March 14, 2023

PRESENT: Mr. Justice Pentney

BETWEEN:

KOLO SCOOTER INC.

Applicant

and

THE MINISTER OF TRANSPORT

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] The applicant, Kolo Scooter Inc. (Kolo), is a company specialized in the import of recreational electric vehicles. In November 2021, Kolo ordered vehicles manufactured by Wuxi Guyu E-vehicles (Wuxi), a Chinese manufacturer of electric vehicles. According to Kolo, the

ordered vehicles are power-assisted bicycles that are excluded from the safety regime because they are designed for off-road use.

[2] In April 2021, Kolo was informed that the electric vehicles in question, which resemble a scooter and a small motorcycle, could not be imported into Canada as they did not comply with the safety standards applicable to vehicles designed for use on the road.

[3] Kolo is seeking judicial review of that decision, alleging that the respondent's interpretation of the *Motor Vehicle Safety Regulations* (MVSR) is unreasonable.

[4] For the reasons that follow, the application for judicial review is dismissed.

II. Background

[5] Kolo was created in 2020. The company's sole director and shareholder, Adam Paradis, had worked with electric vehicles in Quebec for a few years before the company was founded.

[6] In November 2021, Kolo placed an order for vehicles from Wuxi: 35 vehicles of the "Écolo" model and 50 of the "Faster K1" model (see Appendix "A" for photos of both vehicles).

[7] In April 2021, the container shipping the vehicles ordered by Kolo was inspected by a Canada Border Services Agency (CBSA) officer, who contacted Transport Canada to validate the eligibility of this importation. Following this consultation, the CBSA informed Kolo that its vehicles were ineligible for import into Canada because they did not comply with the new *MVSR*

amendment that came into effect on February 4, 2021. Transport Canada clarified that after the coming into force of the new rules, the old definition of "power-assisted bicycle" was no longer relevant:

> The new approach towards e-bicycles… is to first assess its on-road versus off-road design characteristics. Any e-bicycle product, regardless of speed limitation, equipped with features that resemble on-road prescribed classes of vehicles such as scooters or motorcycles and motor tricycles will be assessed as such.
>
> E-bicycles with off-road characteristics will not be considered regulated if they are designed to operate under the top speed of 32km/h while those that can operate at or speeds greater than 32km/h will be subject to compliance requirements as restricted-use vehicles.

[8] Kolo applied for reconsideration of that decision. The applicant submitted that the definition of the prescribed class of "restricted-use motorcycle" had been changed to "restricted-use vehicle" and that:

> [TRANSLATION]
> Any vehicle considered to be a restricted-use motorcycle today and which will be a restricted-use vehicle in the future if it cannot reach a maximum speed of 32 km/h … [would] no longer be considered to be part of the prescribed class.

[9] In summary, the applicant's position is that [TRANSLATION] "power assisted bicycles that cannot reach the maximum speed of 32 km/h are not "restricted use-vehicles" and are fully compliant with the laws applicable in Canada."

[10] On May 25, 2021, Transport Canada confirmed that vehicles could not be imported without proof of compliance with safety standards. The final decision confirms that, under the definition of "restricted-use vehicle", the most relevant factor for the decision maker was

whether the vehicle was designed for use on public roads or not. Applying this approach, the decision states:

> [TRANSLATION]
> The vehicles shown appear to be capable of mixing with road traffic. They are equipped with front and rear turn signals, a headlight, a brake light, a license plate holder, mirrors, etc. and appear to be designed primarily as a limited-speed motorcycle, indicating that they have been designed for road use.
>
> Your case has been examined by several car inspectors, including myself. The conclusions communicated to you by Mr. Thibodeau are final. You have not provided satisfactory evidence to change these results. As such, these vehicles are inadmissible as no evidence of compliance with the prescribed class of speed-limited motorcycle has been provided. Our position remains the same: the vehicles are not eligible for importation into Canada.

[11] The applicant has applied for judicial review of this decision.

III. Issues and standard of review

[12] The only issue is whether the final decision is unreasonable, in accordance with the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. In this regard, the applicant submits that Transport Canada's interpretation of the MVSR should be rejected. Moreover, the applicant alleges that it was the victim of arbitrary treatment because the respondent did not prevent its competitors from importing vehicles similar to those at issue in this case.

[13] The standard of reasonableness focuses on the decision made by the decision maker, including both the rationale for the decision and the outcome (*Vavilov* at para 83). Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the

reasons given by the administrative decision maker and determine whether the decision is based on “an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85). To make this determination, the reviewing court asks whether the “decision bears the hallmarks of reasonableness — justification, transparency and intelligibility” (*Vavilov* at para 99).

[14] The reviewing court must refrain from “reweighing and reassessing the evidence considered by the decision maker” (*Vavilov* at para 125). The court must instead adopt an attitude of restraint and intervene “only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process” (*Vavilov* at para 13). It must be remembered that reasonableness review always finds its starting point in the principle of judicial restraint and must demonstrate a respect for the distinct role of administrative decision makers (*Vavilov*, at paras 13, 75). The presumption of reasonableness review is based on “respect for the legislature’s institutional design choice, according to which the authority to make a decision is vested in an administrative decision maker rather than in a court” (*Vavilov* at para 46).

[15] The judicial review of a decision based on the interpretation of a statute involves special considerations. The following comments of the Supreme Court of Canada in *Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67, are apt:

> [40] The administrative decision maker “holds the interpretative upper hand” (*McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, [2013] 3 S.C.R. 895, at para. 40). When reviewing a question of statutory interpretation, a reviewing court should not conduct a *de novo* interpretation, nor attempt to

> determine a range of reasonable interpretations against which to compare the interpretation of the decision maker. "[A]s reviewing judges, we do not make our own yardstick and then use that yardstick to measure what the administrator did" (*Delios v. Canada (Attorney General)*, 2015 FCA 117, at para. 28 (CanLII), quoted in *Vavilov*, at para. 83) The reviewing court does not "ask itself what the correct decision would have been" (*Law Society of New Brunswick v. Ryan*, 2003 SCC 20, [2003] 1 S.C.R. 247, at para. 50, quoted in *Vavilov*, at para. 116). These reminders are particularly important given how "easy [it is] for a reviewing court to slide from the reasonableness standard into the arena of correctness when dealing with an interpretative issue that raises a pure question of law" (*New Brunswick Liquor Corp. v. Small*, 2012 NBCA 53, 390 N.B.R. (2d) 203, at para. 30).

[16] The Federal Court of Appeal added further clarification in *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 [*Mason*], citing the earlier decision in *Hillier v Canada (Attorney General)*, 2019 FCA 44:

> [16] *Hillier* begins by reminding reviewing courts of three basic things they should appreciate when conducting reasonableness review. First, in many cases, administrators may have a range of interpretations of legislation open to them based on the text, context and purpose of the legislation. Second, in particular cases, administrators may have a better appreciation of that range than courts because of their specialization and expertise. And, third, the legislation—the law on the books that reviewing courts must follow—gives administrators the responsibility to interpret the legislation, not reviewing courts.
>
> [17] For these reasons, *Hillier* tells reviewing courts to conduct themselves in a way that gives administrators the space the legislator intends them to have, yet still hold them accountable. Reviewing courts can do this by conducting a preliminary analysis of the text, context and purpose of the legislation just to understand the lay of the land before they examine the administrators' reasons. But the lay of the land is as far as they should go. They should not make any definitive judgments and conclusions themselves. That would take them down the road of creating their own yardstick and measuring the administrator's interpretation to make sure it fits.

[17] This is the approach I will follow in this case.

IV. Preliminary objection

[18] A preliminary issue was raised by the respondent and should be dealt with before turning to the merits of the case.

[19] Transport Canada notes that some of the documents Kolo submitted in its file are inadmissible because they were not part of the documents that Transport Canada had in its possession at the time of making its decision. More specifically, they are Exhibits B, O, P and Q of applicant's affidavit, and the corresponding paragraphs in its memorandum of fact and law. In particular, the respondent notes that the invoice for the order of the vehicles was not before the decision maker (a relevant element, as will be discussed later) and that the other documents post-date the decision. The respondent has requested that these documents and the corresponding paragraphs be struck out.

[20] In response, Kolo focused its arguments on the admissibility of the invoice as Exhibit B to its affidavit. The applicant submits that the respondent must necessarily have had a copy of the invoice for its analysis of the record, given the respondent's policy and practice regarding import invoices. Kolo submits that, in reviewing this file, CBSA officers consulted Transport Canada on how to handle the importation of vehicles, and given that CBSA policy requires the importer to produce an invoice, it must be concluded that CBSA officers must have had a copy of the document Kolo submitted with its affidavit.

[21] At the hearing, I determined that there was no evidence that the CBSA or the Transport Canada decision maker was in possession of the invoice (Exhibit B) and that this document was therefore not admissible. However, I have determined that the other documents are relevant to explain the context and are therefore admissible.

V. Analysis

[22] The crux of this case is whether Transport Canada's interpretation of the MVSR is unreasonable. It is useful to begin by examining the applicable legal framework.

A. *Legal framework*

[23] The Minister of Transport is responsible for the application and administration of the *Motor Vehicle Safety Act*, SC 1993, c 16 [the Act], and its regulations, including the MVSR, which include, in Schedules III to VI, the *Canadian Motor Vehicle Safety Standards* [Safety Standards]. The purpose of the Act is reflected in its full title: "An Act to regulate the manufacture and importation of motor vehicles and motor vehicle equipment to reduce the risk of death, injury and damage to property and the environment".

[24] The Act applies to all companies that manufacture, distribute or import vehicles, except for the exceptions set out in section 4 of the MVSR. In the case before me today, the recent changes to the MVSR are at the heart of the debate between the parties. The regulatory framework has been amended in two stages.

[25] In February 2020, the definition of “restricted-use motorcycle” was amended and, in particular, the *Amending Regulations* added to paragraph 4(2)(b) of the MVSR a new exception for “restricted-use vehicles that have motive power and are designed so that their speed attainable in 1.6 km (1 mile) is less than 32 km/h”. This type of vehicle is now excluded from the prescribed classes, and therefore these vehicles were not required to comply with the MVSR safety requirements and the Safety Standards.

[26] There was a second wave of amendments in February 2021. The *Amending Regulations* repealed the definitions of “power-assisted bicycle” and “restricted-use motorcycle”. The two definitions were replaced by a new prescribed class of “restricted-use vehicle”:

Restricted-use vehicle A vehicle — excluding a competition vehicle but including an all-terrain vehicle designed primarily for recreational use — that: **(a)** is designed to travel on not more than four wheels in contact with the ground, and **(b)** is not designed for use on public roads; *(véhicule à usage restreint*)	***véhicule à usage restreint*** Véhicule — sauf le véhicule de compétition, mais y compris le véhicule tout terrain conçu principalement pour les loisirs — qui, à la fois : **a)** est conçu pour rouler sur au plus quatre roues en contact avec le sol; **b)** n’est pas conçu pour être utilisé sur les voies publiques; (*restricted-use vehicle*)

[27] At the same time, the *Amending Regulations* also amended paragraph 4(2)(b) of the MVSR to replace the term “restricted-use motorcycle” with the term “restricted-use vehicles”.

[28] As explained in the "*Regulatory Impact Analysis Statement*" (SOR/2020-22 at 211), the amendments expand the definition of "restricted-use vehicle":

> (T)o ensure that these types of vehicles will fall under the defect and recall regime while also improving alignment between Canada and the United States by applying a minimum speed for consideration as a prescribed class to restricted-use vehicles to exclude slow-moving vehicles not designed for use on public roads.

[29] Recognizing that this second wave of amendments would have an impact on manufacturers and importers of certain vehicles that were not previously subject to the MVSR, the governor in council anticipated that these amendments would come into force 12 months after the effective date of the first wave amendments, on February 4, 2021.

B. *Positions of the parties*

(1) Kolo's position

[30] The applicant argues that Transport Canada should have interpreted the relevant terms of the MVSR in their entire context and in their grammatical sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament. In its view, the crux of the dispute concerns the interpretation of the wording of paragraph 2(1)(b) of the MVSR, more specifically the phrase "is not designed for use on public roads".

[31] Citing definitions of the term "designed" from dictionaries, Kolo states that it [TRANSLATION] "seems clear that the term 'designed' refers to the creation of the vehicle and its

manufacturing process. Yet Transport Canada based its decision on appearance and the detachable elements" (para 47, applicant's submissions).

[32] According to the applicant, the objective of Parliament in enacting the specific amendments to related terms in the MVSR was for the definition in subsection 2(1) to include as many vehicles as possible, so that the definition better reflect the evolution of the recreational vehicle industry and that low-speed recreational vehicles be excluded from the MVSR.

[33] Kolo notes that the instructions to those administered by the regime state that [TRANSLATION] "(l) [t]he original design intent of the manufacturer (i.e., the class and characteristics of the vehicle as designed at the time of main assembly) determines the non-regulated status of a vehicle, not how the importer plans to use a vehicle in Canada" (CBSA Memorandum D19-12-1). In light of this interpretation guide, the applicant submits that the manufacturer Wuxi states in its letter that the electric vehicles it manufactures are designed for off-road use. Kolo argues that this declaration should have been sufficient to qualify the Écolo and Faster K1 models it wishes to import as restricted-use vehicles.

[34] The applicant alleges that the interpretation adopted by Transport Canada is inconsistent with the reading of paragraph 2(1)(b) of the MVSR and fits with neither its context nor its objectives. Kolo argues that Transport Canada's interpretation of the term "designed" leads to the absurd result where previously unregulated power-assisted bicycles are now regulated.

[35] Second, Kolo submits that Transport Canada does not apply its reasoning consistently, making its decision in this case arbitrary. The applicant alleges that Transport Canada authorized the clearance of highly similar and even identical vehicles that its competitors were attempting to import. Kolo provided the decision-maker with documents comparing these vehicles, which demonstrate the similarities between the models.

[36] Regarding the Écolo model, the applicant notes that the model is specifically designed for off-road biking and more precisely for bike paths, private grounds and camping areas. The fact that the model has no floor or footboard means that users have to ride with their feet on the pedals, just like on a bicycle.

[37] As for the Faster K1, Kolo claims that this model has the appearance of a small gasoline moped. It is designed to travel exclusively on off-road paths such as bike paths, camping areas, outfitter grounds and private roads. Kolo notes that the Faster K1 is manufactured with the following components: a pedal system to recharge the electric motor; uncertified tires; unapproved lights; a 500-watt engine, with insufficient power to travel on public roads. It has no identification number as required by the MVSR for vehicles traveling on roads.

[38] Although these documents and Kolo’s clarification of the key features of these vehicles were sent to the decision maker before the final decision was made, Transport Canada did not offer an explanation as to why the models were treated differently.

[39] In sum, Kolo argues that the interpretation of the MVSR, regarding the vehicles involved in this case, was arbitrary and unreasonable and should be reversed.

(2) Position of Transport Canada

[40] The respondent submits that the decision is reasonable because the decision maker considered the evidence submitted by the applicant, but ultimately based its decision on the fact that the vehicles have features designed for use on public roads. Transport Canada stated that the elements noted by the decision-maker, including mirrors, turn signals, a headlight and a brake light, demonstrate that they are not “restricted-use” vehicles.

[41] According to Transport Canada, the heart of the debate in this case is the interpretation of the phrase “not designed for use on public roads” (“n’est pas conçu pour être utilisé sur les voies publiques”), which is found in the definition of “restricted-use vehicle” in subsection 2(1) of the MVSR.

[42] To determine whether vehicles are “designed for use on public roads”, Transport Canada analyzed their design features. The department determined that the vehicles the applicant was attempting to import have some of the features of a vehicle designed for use on public roads, including turn signals, a headlight, a brake light, a license plate bracket and mirrors.

[43] Transport Canada submits that its interpretation of subsection 2(1) of the MVSR is consistent with the modern approach to statutory interpretation. It notes that a reviewing court

must show deference in a context such as this, given the scale and complexity of the legislative and regulatory regime involved and its particularity in terms of safety and transport.

[44] Regarding the decision in this case, Transport Canada submits that the decision maker's reasoning is quite obvious. After considering all the evidence submitted by the applicant, and taking into account the equipment the vehicles are equipped with, the decision maker concluded that the vehicles appeared to be capable of mixing with road traffic and therefore did not meet the definition of "restricted-use vehicle". Transport Canada submits that this is a reasonable conclusion, given the objective of the legislation to protect road safety and considering the features of the vehicles covered by the decision.

[45] Regarding Kolo's allegation of arbitrary treatment, Transport Canada submits that this argument must be rejected because there is a reasonable explanation for the difference in treatment. According to Transport Canada, the other importers demonstrated that the vehicles they wished to import were manufactured prior to the coming into force of the latest amendments to the MVSR, but in this case Kolo did not produce such evidence before the decision was rendered.

[46] Transport Canada maintains that the decision is reasonable and that a reviewing court must show considerable deference, given the department's expertise and the importance of its mandate to protect the public.

(3) Discussion

[47] The analysis must begin with a reference to the modern approach to statutory interpretation. The Supreme Court teaches, “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament” (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 at para 21).

[48] The Supreme Court also confirmed, in *Vavilov* (at para 119), that “[a]dministrative decision makers are not required to engage in a formalistic statutory interpretation exercise in every case.” The parties do not disagree that the statutory interpretation of a provision must be consistent with the text, context and purpose of the provision:

> [121] The administrative decision maker’s task is to interpret the contested provision in a manner consistent with the text, context and purpose, applying its particular insight into the statutory scheme at issue. It cannot adopt an interpretation it knows to be inferior — albeit plausible — merely because the interpretation in question appears to be available and is expedient. The decision maker’s responsibility is to discern meaning and legislative intent, not to “reverse-engineer” a desired outcome.

[49] It must be borne in mind that this is a judicial review of a decision based on an interpretation of the MVSR by Transport Canada. Therefore, the guidelines set out in *Mason* (at para 16) apply. According to these, the reviewing court must bear in mind:

i. that administrators may have a range of interpretations of legislation open to them;

ii. that administrators may have a better appreciation of that range than courts because of their specialization and expertise, and

iii. that the legislation gives administrators the responsibility to interpret the legislation, not reviewing courts.

[50] Starting with the text, the key phrase in this case is “not designed for use on public roads”. Both parties refer to the dictionary to support their position, but it is clear that there is no single definitive interpretation of these terms in the context of the MVSR.

[51] Although there is no statutory definition of the term “public roads”, Transport Canada’s interpretation reflects the common use of the term.

[52] The parties agree that the word “designed” (“conçu” in French) means [TRANSLATION] “(d)evelop something in one’s mind, arrange the various elements and create it or have it created” (Dictionnaire Larousse). I accept this proposal: In the context of the MVSR, we are concerned with original design and the creation of this idea in reality.

[53] Transport Canada has informed the public, including importers, of its interpretation of the term “designed” in the document entitled “Off-Road Vehicles – Are They Regulated?”:

> The following criteria are used to determine whether a vehicle is designed exclusively for off-road use or not:
>
> • The original design intent of the manufacturer;
>
> • The features of the vehicle demonstrate that the vehicle was designed exclusively for use on undeveloped road rights of way, marshland, open country or other unprepared surfaces. These design features should not be limited to readily detachable components such as mirrors, lamps or tires but instead should include features such as suspension characteristics, driveline

> characteristics and any other features that are only found on vehicles designed exclusively for use on unprepared surfaces;
>
> • If the vehicle manufacturer or dealer will assist the importer/end purchaser in obtaining a New Vehicle Identification Statement (NVIS) or a permit (vehicle ownership) to register the vehicle for on-road use; and
>
> • Whether or not the vehicle is consistently promoted exclusively for off-road use.

[54] Transport Canada's interpretation reflects the regulatory context and its overarching purpose of protecting the public and road safety. For example, the reference to "readily detachable components" and the way in which the company promotes the vehicle demonstrate that Transport Canada applied its regulatory expertise when interpreting the meaning of the terms of the MVSR.

[55] In the decision under review, Transport Canada reviewed the features of the two models, the Écolo and the Faster K1, and concluded that they appeared to be designed for use on public roads.

[56] Kolo argued that Transport Canada erred in using the term [TRANSLATION] "appear" instead of analyzing the creation as a whole. According to Kolo, a simple visual resemblance between two vehicles is not sufficient to determine its prescribed class. Kolo points out that the manufacturer Wuxi confirmed that the vehicles were designed only for off-road use.

[57] In addition, Kolo argues that the respondent placed too much emphasis on the detachable components rather than examining the essential components of the vehicles, such as engine

power, maximum speed, and other components showing that the two models it wants to import are designed for off-road use.

[58] I am not persuaded by Kolo's arguments. Transport Canada's interpretation of the phrase "not designed for use on public roads" is reasonable. A number of factors support my finding on this point.

[59] The reference to the term "designed" reflects the legislator's intention to pay attention to the manufacturer's original design instead of emphasizing the importer's or consumer's intention. Transport Canada's interpretation corresponds to this intention.

[60] Kolo does not question the fact that the vehicles have features of a road vehicle, including turn signals, a headlight, a brake light, a license plate holder, and mirrors. I agree with Transport Canada that many of these features are used to signal driver intent to other road users or to prevent a hazard. These components are often found in road vehicles.

[61] The fact that Kolo pays more attention to the other components of the vehicles involved does not mean that Transport Canada's interpretation is unreasonable. Indeed, Kolo brought the decision maker's attention to the other elements (which were summarized above), including the fact that the vehicles have a maximum speed of less than 32 km/h. Taking all of these factors into account, Kolo advised the decision maker that the vehicles should be treated as unregulated restricted-use vehicles.

[62] There are several clues in the emails between Transport Canada employees, as well as in the interpretation documents Transport Canada has published to assist officers with the interpretation of related terms, which show that Transport Canada is aware that the new regulatory provisions affect its assessment of low-speed vehicles designed for off-road use. For example, a document prepared by the MVSR interpretation group notes:

> The new (restricted use vehicle) definition has resulted in the inclusion of previously unregulated vehicle types designed exclusively road use that did not fit the original RUM definition. To preserve the departments desire to not regulate slow-moving vehicles designed exclusively for use off-road or on private property and not designed to be used or mix with regular road traffic (such as pedestrian mall vehicles, mobility scooters, yard maintenance vehicles, ride-on lawn mowers other abnormal vehicles), MVSR Section 4 (2)(b) Prescribed Classes of Vehicles now excludes RUVs designed with maximum speed attainable in 1.6 km (1 mile) of less than 32 km/h, from having to conform with regulations.

[63] However, the document stresses that maximum speed is not decisive in itself: “Another key aspect in the (restricted use vehicle) definition to be used to help clarify what is and is not regulated is (b): not designed for use on public roads”. The discussion in the document on the treatment of “mobility devices”, “scooters” and “toys” reflects the same considerations. And the document states that the intended use of a vehicle is also not determinative.

[64] The decision in this case is consistent with the approach developed in the document and with the text, context and purpose of the regime created by the amendments to the MVSR. The fact that Transport Canada will favour the interpretation that will contribute as much as possible to ensuring the safety of roads and their users is also consistent with the legislation that underpins the regulatory regime.

[65] Regarding Wuxi's letter, I agree that Transport Canada gave it little weight. But the respondent's policy is clear: manufacturer's declarations are not binding. Considering the context and the purpose of the legislative scheme to protect public safety, this is a reasonable approach.

[66] Finally, regarding Kolo's claim that the decision is arbitrary given how differently imports of similar vehicles by other companies were treated, I do not agree. Transport Canada provided a reasonable explanation for the decisions it made in the other cases. The evidence shows that Transport Canada approved the importation of vehicles that were manufactured prior to the coming into force of the MVSR amendments, while warning importers that in the future their products might not be approved. In the case of a significant change to the applicable regulatory regime, this is a reasonable administrative approach in the circumstances. Kolo cannot complain if it failed to provide evidence to the decision maker as to the date of manufacture of the vehicles that are the subject of the decision.

[67] In light of all these elements, I find the decision under review to be reasonable. Transport Canada's interpretation of the key phrase corresponds to the text, context and purpose of the amendments to the regulatory regime, and the decision maker's analysis is clear and consistent in light of the evidence and the submissions filed by the applicant.

[68] There is no basis for setting the decision aside.

[69] Regarding costs, considering the Court's broad discretion in awarding costs and fixing their amount under section 400 of the *Federal Courts Rules*, I see no reason to depart from the

usual practice. Transport Canada is seeking costs in the amount of $3,425.00, and I agree that this is an appropriate amount given the nature of the case, which is not very complex, and the length of the hearing (a single day).

VI. Conclusion

[70] This case essentially concerns the question of which components of vehicles are relevant to determining whether they were designed for use on public roads.

[71] Kolo points out that its previous imports of similar vehicles were approved and refers to arbitrary decisions concerning its competitors. Kolo emphasized certain design features of the vehicles and places particular emphasis on their limited maximum speed. It states that the regulatory reforms were intended to leave regulation of these low-speed vehicles to the provinces.

[72] In its decision, Transport Canada focuses on other elements of vehicle design, particularly road safety features and features commonly associated with road use. It states that it approved other imports because the vehicles were manufactured before the new regulations came into force.

[73] Having considered the evidence and arguments, I am unable to conclude that Transport Canada's decision in this case is unreasonable. Its interpretation of the regulatory amendments is clear, consistent with their context and purpose, and is explained in the decision. It is not my role to provide a new interpretation of the MVSR.

[74] For all these reasons, the application for judicial review is dismissed with costs. The applicant must pay the respondent a lump sum of $3,425.00.

JUDGMENT

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed with costs.

2. The applicant must pay the respondent a lump sum of $3,425.00.

"William F. Pentney"
Judge

Certified true translation
Janna Balkwill

APPENDIX A

ELECTRIC SCOOTER BIKE ÉCOLO (LITHIUM VERSION)

$1,695.00

Choice of colour

Product code: Écolo 20Ah - Blue

Category: Electric scooter bikes

Tags: 48-volt battery, 500-watt motor, electric vehicle

Share:

SPECIFICATIONS	
Motor	500 watts
Maximum speed	32 km/h
Battery	48 volts / 20 Ah – Lithium-ion
Removable battery	Yes
Recharge time	Approximately 6 to 8 hours
Battery life	800 to 1000 charge cycles
Range per charge	50 to 70 km (may vary depending on road conditions and user weight)
Maximum load supported	264 lbs / 120 kg
Dimensions	63” x 28” x 40” / 160 cm x 71 cm x 102 cm
Net weight (including battery)	175 lbs / 80 kg
Tire size	18” x 2.50” (with inner tube)
Breaking system	Drum brake on both wheels
Suspension	Yes
Dashboard	Digital display: Battery charge level / odometer / speed
Light	LED type light
Switch with starter key	Yes
Additional features	Remote start / front storage box
Available colour(s)	Blue

FASTER K1 ELECTRIC SCOOTER

Product code: Scooter K1

Category: Electric scooter bikes

Tags: 72 volt battery, 500 Watt motor, electric vehicle

Share:

SPECIFICATIONS	
Motor	500 watts
Maximum speed	32 km/h
Battery	72 volts / 32 Ah – Lead Acid Gel
Removable battery	Only when replacing
Recharge time	Approximately 6 to 8 hours
Battery life	300 to 400 refills
Battery life per charge	Up to 90 to 100 km (may vary depending on road conditions and user weight)
Maximum load supported	330 lbs / 150 kg
Dimensions	67” x 29” x 41” / 171 cm x 74 cm x 105 cm
Net weight (including battery)	210 lbs / 96 kg
Tire size	Front wheel: 120/70/12 – Rear wheel: 130/70/12
Breaking system	2-wheel hydraulic brake
Suspension	Hydraulic suspension
Dashboard	Digital display: Battery charge level / odometer / speed
Light	LED type light
Switch with starter key	Yes
Additional features	Remote starter / FM/MP3/USB radio player with Bluetooth / 5-volt USB socket to charge a mobile phone / alarm system
Available colour(s)	Blue / Glossy Black

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1004-21
STYLE OF CAUSE:	KOLO SCOOTER INC v THE MINISTER OF TRANSPORT
PLACE OF HEARING:	VIA VIDEOCONFERENCE
DATE OF HEARING:	FEBRUARY 22, 2022
REASONS FOR JUDGMENT AND JUDGMENT:	PENTNEY J.
DATED:	MARCH 14, 2023

APPEARANCES:

Carole-Anne Pelletier Julien Dubois	FOR THE APPLICANT KOLO SCOOTER INC.
Jessica Pizzoli	FOR THE RESPONDENT THE MINISTER OF TRANSPORT

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Department of Justice Canada Montréal, Quebec	FOR THE RESPONDENT THE MINISTER OF TRANSPORT