

Federal Court



Cour fédérale

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T-2262-22

Citation: 2025 FC 1703

Ottawa, Ontario, October 22, 2025

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**ANIMAL JUSTICE CANADA AND
SOI DOG CANADA**

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

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I. Overview

[1] These are separate but related applications for judicial review brought by the Applicants, Animal Justice Canada and Soi Dog Canada, of three ministerial orders made by a delegate of the Minister of Agriculture and Agri-Food [the Minister], the Canadian Food Inspection Agency [the CFIA or the Agency] pursuant to subsections 27.1(2), (3), and (4) of the *Health of Animals Act*, SC 1990, c 21 [the *HAA*].

[2] The Minister's orders are the Prohibition Order (T-2260-22); the Designation Order (T-2261-22); and the Secondary Control Zone Order (T-2262-22) [the Orders]. Together, they establish the Import Ban, which operates to prohibit the entry of commercial dogs into Canada from countries the Agency designated as high risk for canine-variant viruses (i.e., rabies).

[3] The issue is whether the Orders were reasonable and made in a procedurally fair manner on the record before the Minister's delegate. This is not an appeal. The Court does not decide what measures it would have taken. The review is confined to whether the Agency's reasoning and process meet the requirements of law.

[4] Notwithstanding the able submissions of counsel for the Applicants, I am not persuaded that the Orders are unreasonable considering the statutory constraints set by section 27.1 of the *HAA*; nor am I convinced that the Applicants were owed a duty of fairness in the making of the Orders.

II. Background

A. The parties

[5] The Applicants are Animal Justice Canada and Soi Dog Canada. Animal Justice Canada is a non-profit advocacy organization dedicated to the enforcement and development of Canadian animal protection laws. It has participated in litigation concerning animal welfare in courts across Canada. Soi Dog Canada is a not-for-profit corporation that operates internationally to rescue dogs for adoption in Canada through its facilities in Phuket, Thailand. Together, they argue that the Minister's Import Ban was procedurally unfair and unreasonable. They emphasize that Soi Dog Canada, directly affected by the measure, was neither informed nor consulted before the Orders took effect, and that the Orders fail to conform to the legal constraints prescribed by the *HAA*.

[6] The Minister's delegate, the President of the CFIA, signed and issued the impugned Orders. The CFIA is responsible for administering and enforcing the Act and is mandated to protect Canadians from diseases spread by animals to humans, also known as zoonotic diseases. Its position is that the Import Ban was reasonable, recognizing the urgent need for controlling the

entry of commercial dogs from countries with high risk of dog rabies, and that no procedural fairness was owed to Soi Dog Canada.

III. Facts

B. Background leading up to the Minister's Orders

[7] On May 15, 2021, the CFIA introduced stricter import conditions for commercial dogs under eight months of age intended for breeding or exhibition. These measures were adopted to safeguard human and canine health by closing loopholes that had permitted misuse of import categories, incomplete or inaccurate documentation, and issues in humane transport.

[8] On June 14, 2021, the US Centers for Disease Control (CDC) imposed its own temporary suspension on dogs entering from more than 100 high-risk rabies countries. That suspension followed the detection of a rabid dog in the United States in 2019. Initially set as an emergency response measure, it was later extended into 2023 with modifications that relaxed the rules governing importation.

[9] A month later, Canada faced its own case of the importation of a rabies-infected dog. In July 2021, a dog imported from Iran by a rescue organization was diagnosed with rabies. Dr. Ireland, Executive Director of the Animal Health Directorate, Policy and Programs Branch at the CFIA, attests this was the first case of canine rabies in Canada since the 1960s. The public health response was understandably extensive: nine public health units were engaged, 24 individuals were identified as exposed, and 14 required post-exposure prophylaxis (PEP)

treatment. At the time of import, the dog met all requirements under the *HAA* and the *Health of Animals Regulations*, CRC, c 296 [*HAR*] including a valid rabies vaccination certificate issued nine months earlier.

[10] Shortly after the incident, Dr. Ireland received letters from public health officials expressing concern regarding the incident and urging stronger import control measures. These letters came from:

- Dr. Howard Njoo, Public Health Agency of Canada's (PHAC) Deputy Chief Public Health Officer and Interim Vice-President, Infectious Diseases Program Branch (August 10, 2021);
- Dr. Cathy Furness, Chief Veterinarian for Ontario, and Dr. Kieran Michael Moore, Chief Medical Officer of Health, Ministry of Health (Ontario) (August 20, 2021); and
- Peter Heywood, Chair of the Association of Supervisors of Public Health Inspectors of Ontario (ASPHIO) (September 3, 2021).

[11] Each called for a temporary suspension of dog imports from high-risk countries, drawing direct comparison to the U.S. ban announced by the CDC on June 14, 2021, and urged a review of the CFIA's measures during the period of suspension.

[12] In his letter, Dr. Njoo also noted data showing a 400% increase in commercial dog imports since 2013. He further highlighted the health risks posed by rescue dogs of unknown rabies status and warned that the US ban could divert such dogs to Canada. He requested that

the CFIA impose a similar temporary ban to permit a review of existing measures, including consideration of rabies titre testing as recommended by the World Organization for Animal Health (WOAH). In his words:

The Public Health Agency of Canada (PHAC) has been working with the Canada Border Services Agency (CBSA) to look at the commercial dog importation trends over time, which has shown an over 400% increase in the importation of dogs into Canada since 2013. Rescue dogs are a particular focus of public health concern, given that they are often in poor health, have unknown status with respect to rabies disease, and are frequently sourced from countries where canine rabies is present.

[...]

Given the current temporary ban by the U.S., there is a concern that many dogs which were previously destined for that country may now be diverted to Canada, further escalating the risk of importation of rabid dogs into this country.

[...]

Therefore, on behalf of the PHAC, I am respectfully requesting that the Canadian Food Inspection Agency (CFIA) considers imposing a ban similar to the one that has been implemented by the U.S. to allow time for a careful review and implementation of additional measures, such as the World Organization for Animal Health (OIE) recommendation to also require proof of vaccination through titre testing. [emphasis added]

[13] Dr. Furness and Dr. Moore of Ontario's Ministry of Health likewise urged a temporary ban on "all classes of dogs" from high-risk countries:

The Chief Veterinarian for Ontario and the Chief Medical Officer of Health for Ontario strongly urge the Canadian Food Inspection Agency (CFIA) to implement an equivalent temporary ban on importation of all dogs from countries considered high risk for canine rabies. While the ban is in place, additional review of dog importation regulations should be undertaken, with the goal of strengthening these rules for all classes of dogs in order to better protect public health and animal health in Ontario and Canada. [emphasis added]

[14] Mr. Heywood's letter echoed the same request:

ASPHIO strongly urges the Canadian Food Inspection Agency (CFIA) to implement an equivalent temporary ban on importation of all dogs from countries considered high risk for canine rabies. While the ban is in place, ASPHIO also urges the CFIA to conduct an additional review of dog importation regulations, with the goal of strengthening these rules for all classes of dogs in order to better protect public health and animal health in Ontario and Canada.

[15] In her reply to Dr. Furness and Dr. Moore dated November 30, 2021, Dr. Ireland wrote that "an internal working group in the CFIA is currently exploring options to implement interim measures until changes to the Health of Animals Regulations and amendments to the import requirements for dogs can be made." In her subsequent letter to Mr. Heywood dated January 14, 2022, Dr. Ireland further noted that the CFIA was "exploring options to address increases in the use of fraudulent rabies vaccination certificates."

[16] On August 7, 2021, the CFIA prepared an internal draft report entitled *Addressing the Public and Animal Health Risks Associated with Importing Dogs from High-Risk Countries for Dog Rabies*. The report identified an import ban as the Agency's proposed approach and underscored the serious public health risks posed by rabies. It stated:

Rabies is fatal in both humans and animals and inadequately vaccinated dogs imported into Canada are a public health threat. The importation of just one rabid dog could lead to the transmission to humans, animals and wildlife. Dog mediated rabies is of particular concern because it was eliminated from Canada and the US since the 1960's and 2007, respectively. This rabies variant can spread from dog to dog more easily than other rabies variants (e.g., racoon rabies).

[17] At this stage, the contemplated ban had not yet been narrowed to target commercial dogs alone:

Should the policy include measures allowing certain specific types of dog imports from affected countries to continue (e.g., service dogs), these will need to be easily verifiable by agency personnel as well as designed to protected [sic] against possible fraud. If pre-arrival document verification by CFIA is part of the process, the required resources to do the work need to be set aside and trained.

[...]

6. Other Considerations (Note: IAB is still considering options and impacts)

[18] On November 17, 2021, a report titled *Review of the Centers for Disease Control and Prevention (CDC)’s Rabies Status Country Assessment Process* was prepared by the Animal Health Science Division of the CFIA. This report was requested by Dr. Boubacar Sidibe, CFIA Policy and Programs Branch, on October 15, 2021. It concluded that the CDC’s methodology for classifying countries by rabies risk was “scientifically sound, evidence-based, validated, annually updated, and uses multiple sources of data.” It recommended adopting the CDC framework as the basis for Canada’s import regime, noting that it would be “very difficult, if not impossible” for the CFIA to produce a list of comparable quality in the short term.

[19] The following month, the CFIA produced another internal report titled *Import Restrictions for Dogs from Countries Considered High Risk for Rabies Caused by Canine-Variant Viruses*. That report set out operational and policy considerations for implementing a ban and targeted “mid-March 2022” for the measures to come into force. It also emphasized integration with the United States, identifying as a next step the need to “[c]ollaborate with CDC towards a US-Canada common list of High-Risk Countries for Dog Rabies.”

[20] On January 15, 2022, the CFIA confirmed a second case of rabies in a dog imported from Iran the previous June. The dog was seen at an emergency clinic in Toronto on January 12 and identified as the source of 31 high-risk human contacts, with many requiring post-exposure prophylaxes. Like the first case, this dog also entered Canada with a valid rabies vaccination certificate that met all requirements under the *HAA* and *HAR*.

[21] On March 16, 2022, the Minister was briefed on the proposed Import Ban. At that stage, the policy distinguished three categories of imports—assistance dogs, personal pets, and commercial dogs. The latter class of dogs would be banned, while the first two would be permitted entry if accompanied by an import permit. This briefing document also anticipated communications challenges relating specifically to rescue organizations:

Commercial dogs from these countries, including rescue dogs, will no longer be eligible for import. Rescue organizations not expected to be supportive.

[22] On May 26, 2022, the CDC formally notified the CFIA that it would be modifying its suspension of dog imports from high-risk rabies countries, effective June 10, 2022. The changes were twofold: first, the suspension would be extended until January 31, 2023; second, importation would be permitted provided dogs entered through designated ports of entry with CDC-approved animal care facilities. The letter stated:

CDC is modifying the temporary suspension to provide additional pathways for importers. In place of a CDC Dog Import Permit or US-issued rabies vaccination certificate, importers may make a reservation to bring foreign-vaccinated dogs into the United States through a port of entry with a CDC-approved animal care facility (ATL, JFK, LAX, MIA). More facilities may be added during the suspension. CDC will require the dogs undergo a veterinary exam,

re-vaccination, and, in some cases, quarantine, at the CDC-approved animal care facility before being cleared for entry.

[23] On June 13, 2022, the President of the CFIA prepared a memorandum for the Minister of Health outlining the proposed import ban. Among other matters, it contained a section entitled “Anticipated Stakeholder Reaction.” The memorandum recorded that while discussions had taken place with government departments, airports and airlines, veterinarians, and public health officials, none were held with animal rescue organizations or commercial importers. It stated:

Discussions have not taken place with humane societies, dog breeder associations, or international animal rescue groups that import dogs for adoption. It is expected that they will vocally oppose this measure, and cite the potential impact on shipments of rescued dogs including from countries such as Ukraine and Afghanistan.

It should be noted that the proposed measure would not affect personal pet dogs travelling with Ukrainian refugees.

[24] The memorandum further emphasized that the measures would be temporary pending regulatory amendments:

To reduce the risk associated with dog imports, the CFIA has drafted an order imposing conditions on dog imports from high-risk countries into airports in Canada, which will be designated as Secondary Control Zones. The order will be temporary until the CFIA can develop a permanent solution supported by an amendment to the HAR. This approach is similar to that taken by the US-CDC and will allow the CFIA to gather further information and experience, and undertake consultations prior to amending the regulations.

[25] On June 22, 2022, Derrick Milburn, Senior Advisor to the Vice-President of the CFIA’s Policy and Programs Branch, prepared a summary of the CDC’s June announcement modifying

its suspension, which was sent to Dr. Ireland. He noted the “significant CDC investments in human and financial resources” to support those changes:

Before arriving in the United States, importers must make reservations with facilities and all costs are incurred by the importer. These changes come 1½ years after the initial temporary suspension which completely prohibited the entry of commercial dogs. They reflect significant CDC investments in human and financial resources during this period, including an expanded team of CDC import specialists and private-public partnerships in approved quarantine facilities. The CDC has informed CFIA that it continues to see high compliance rates and since the measures were introduced in 2021, a significant reduction in animal welfare issues from dogs arriving from high risk rabies countries.
[emphasis added]

[26] On June 28, 2022, the same day the Notice to Industry regarding the import ban was to be published, the CFIA held “conversations” with several stakeholders, including the Canadian Veterinary Medical Association, the Ordre des Médecins Vétérinaires Du Québec (OMVQ), Dr. Scott Weese (Director of the Centre for Public Health and Zoonoses and Chief of Infection Control at the Ontario Veterinary College, University of Guelph), the Chief Veterinary Officer of Ontario, Humane Society International (HSI), Humane Canada, the Pet Industry Joint Advisory Council of Canada (PIJAC), and the Canadian Kennel Club. Staff recorded that representatives of Humane Society International (HSI) expressed disappointment at the “lack of consultation” prior to the announcement of the measure.

[27] Later that same day, the President of the CFIA, acting under the Minister’s delegated authority in subsection 27.1(2) of the *HAA*, issued the first of three Orders, declaring a Secondary Control Zone. The Designation Order and the Prohibition Order followed on September 28, 2022. These three Orders collectively form the measures now under review.

IV. Decision Below

[28] Pursuant to subsection 27.1(2) of the *HAA*, the Minister's delegate declared a Secondary Control Zone to prevent the spread of canine-variant viruses into Canada based on the Minister's belief that it existed outside of Canada and could be prevented using this declaration [the Secondary Control Zone Order].

[29] Pursuant to subsection 27.1(3) of the *HAA*, the Minister's delegate designated "all dogs ... with the exception of personal pet dogs and assistance dogs" as "being capable of being affected or contaminated by rabies caused by canine-variant viruses" [Designated Animal] as subject to the Secondary Control Zone [the Designation Order].

[30] Pursuant to subsection 27.1(4) of the *HAA*, the Minister's delegate prohibited the "removing from, moving within or taking into a Secondary Control Zone" of the Designated Animal prescribed in the Designation Order [the Prohibition Order].

V. Issues

[31] There are two determinative issues in this proceeding. The first is whether a duty of procedural fairness was owed by the CFIA to Soi Dog Canada. The second is whether the Orders were reasonable. The Applicants submit that the Minister acted unreasonably by failing to comply with the constraints of the *HAA* and by issuing the Orders without notifying, engaging, or consulting international dog rescue organizations, including Soi Dog Canada. In broad strokes, I will analyze the Orders by considering two questions:

- 1) Whether the Orders are properly characterized as “policy” or “administrative” decisions, which is determinative of whether procedural fairness is owed to Soi Dog Canada; and
- 2) Whether the Orders were made within the factual and legal constraints consistent with the reasonableness analysis set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov].

[32] The Respondent also proposes two secondary issues. First, they argue that Animal Justice Canada lacks standing, both direct and public interest, because it has no genuine interest in the Application and offers no distinct perspective that would assist the Court. Second, the Respondent challenges the admissibility of paragraphs 40 and 68 of Lisa Wagner’s Affidavit, and the second and third sentence of paragraph 24 of Camille Labchuk’s Affidavit.

VI. Standard of Review

[33] For questions of procedural fairness, the standard of review is akin to correctness. Justice Pentney in *Kambasaya v Canada (Minister of Citizenship and Immigration)*, 2022 FC 31 at para 19, aptly described that standard:

Questions of procedural fairness require an approach resembling the correctness standard of review that inquires “whether the procedure was fair having regard to all of the circumstances” (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific*]; *Heiltsuk Horizon Maritime Services Ltd v Atlantic Towing Limited*, 2021 FCA 26 at para 107). As noted in *Canadian Pacific* at paragraph 56, “the ultimate question remains whether the applicant knew the

case to meet and had a full and fair chance to respond”, and at paragraph 54, “[a] reviewing court... asks, with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed”.

[34] For substantive review, I agree with the parties that the Minister’s orders are reviewable on the standard of reasonableness, as articulated by the Supreme Court of Canada in *Vavilov*.

[35] Reasonableness is a deferential, yet robust, standard of review: *Vavilov* at paras 12-13. The court must give considerable deference to the decision-maker, recognizing that this entity is empowered by Parliament and equipped with specialized knowledge and understanding of the “purposes and practical realities of the relevant administrative regime” and “consequences and the operational impact of the decision” that the reviewing court may not be attentive towards: *Vavilov* at para 93. Absent exceptional circumstances, reviewing courts must not interfere with the decision maker’s factual findings and cannot reweigh and reassess evidence considered by the decision-maker: *Vavilov* at para 125.

[36] Reasonableness review is not a mere “rubber-stamping” process: *Vavilov* at para 13. It is the reviewing court’s task to assess whether the decision as a whole is reasonable; that is, it is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker: *Vavilov* at para 85.

VII. Legal Framework

[37] Section 27.1 of the *HAA* provides:

Secondary control zone

27.1 (1) If the Minister makes an order under subsection 27(1), he or she may — for the purpose of preventing the spread of the disease or toxic substance identified in the order or monitoring that disease or toxic substance — by order, declare any area that he or she considers necessary to be a secondary control zone, in which case the Minister shall describe the zone.

Disease outside Canada

(2) If the Minister believes that a disease or toxic substance exists in an area outside Canada, he or she may — for the purpose of preventing the spread of that disease or toxic substance into Canada or monitoring that disease or toxic substance — by order, declare any area in Canada that he or she considers necessary to be a secondary control zone, in which case the Minister shall describe the zone and identify that disease or toxic substance.

Designated animal or thing

(3) The Minister may, by order, designate any animal or thing that is capable of being affected or contaminated by the disease or toxic substance in respect of which the secondary control zone referred to in subsection (2) is declared.

Conditions

(4) The Minister may, by order, prohibit or impose conditions on — including

Zone de contrôle secondaire

27.1 (1) S'il prend l'ordonnance prévue au paragraphe 27(1) et afin d'empêcher la propagation de la maladie ou de la substance toxique qui y est précisée ou de surveiller cette maladie ou cette substance toxique, le ministre peut, par ordonnance, déclarer comme zone de contrôle secondaire toute région qu'il estime nécessaire; il doit alors délimiter cette zone.

Maladie hors du Canada

(2) S'il est d'avis qu'une maladie sévit ou qu'une substance toxique existe dans une région à l'étranger, le ministre peut, par ordonnance, afin d'empêcher la propagation au Canada de cette maladie ou de cette substance toxique, ou de surveiller cette maladie ou cette substance toxique, déclarer comme zone de contrôle secondaire toute région du Canada qu'il estime nécessaire; il doit alors délimiter cette zone et préciser la nature de la maladie ou de la substance toxique en cause.

Animal ou chose désignés

(3) Le ministre peut, par ordonnance, désigner tout animal ou toute chose susceptibles d'être contaminés par la maladie ou la substance à l'égard de laquelle la zone visée au paragraphe (2) a été déclarée.

Conditions

(4) Le ministre peut, par ordonnance, interdire l'entrée, la

requiring a permit for — removing from, moving within or taking into a secondary control zone a designated animal or thing.

sortie ou le déplacement dans toute zone de contrôle secondaire d'animaux ou de choses désignés, ou y imposer des conditions, notamment l'obtention d'un permis.

[38] Subsection 33(1) of the *HAA* provides:

Inspectors and officers may exercise Minister's powers

33 (1) An inspector or officer may, subject to any restrictions or limitations specified by the Minister, exercise any of the powers and perform any of the duties or functions of the Minister under this Act, except the powers mentioned in subsections 27(1) and 27.1(1) and (2) and sections 27.4 and 27.5.

Délégation

33 (1) L'inspecteur et l'agent d'exécution peuvent exercer, aux conditions fixées par le ministre, les pouvoirs et fonctions conférés à celui-ci sous le régime de la présente loi, à l'exception des pouvoirs énoncés aux paragraphes 27(1) et 27.1(1) et (2) et aux articles 27.4 et 27.5.

VIII. Analysis

Preliminary Issue: Standing

[39] The Respondent argues that Animal Justice Canada lacks both personal and public interest standing. It maintains that Animal Justice Canada is not directly affected by the Orders and therefore has no legal right to bring this application. Animal Justice Canada, relying on the Affidavit of Camille Labchuk, contends that it has a “long-standing, genuine, and continuing concern” with animal welfare and a history of involvement in proceedings concerning the interpretation and enforcement of animal protection laws across Canada.

[40] As the Federal Court of Appeal explained in *League of Human Rights of B’Nai Brith Canada v Odynsky*, 2010 FCA 307 at paragraph 58, an applicant is “directly affected” within the meaning of s. 18.1(1) of the *Federal Courts Act*, RSC 1985, c F-7, only if the decision “affected its legal rights, imposed legal obligations upon it, or prejudicially affected it in some way”. I agree with the Respondent that Animal Justice Canada does not have personal or direct standing. There is no evidence, nor argument advanced, that the Orders under review affected Animal Justice Canada’s legal rights or imposed any legal obligations on it.

[41] I must therefore consider whether Animal Justice Canada nonetheless has public interest standing. The governing authority is *British Columbia (Attorney General) v Council of Canadians with Disabilities*, 2022 SCC 27 [*Council of Canadians with Disabilities*] at paragraph 28, where the Supreme Court restated the three-part test: (1) whether the case raises a serious justiciable issue, (2) whether the applicant has a genuine interest in the matter, and (3) whether the proceeding is a reasonable and effective means of bringing the issue before the Court.

[42] With these principles in mind, and for the reasons that follow, I am satisfied that (1) there is a serious justiciable issue, (2) Animal Justice Canada has a genuine interest in that issue, and (3) their participation as parties will contribute significantly to reasonable and effective litigation.

[43] The Respondent accepts that the application raises a serious justiciable issue, and I agree. The real dispute is whether Animal Justice Canada has a genuine interest in the matter and whether its participation is a reasonable and effective means of litigating the issue.

(1) Does the Applicant have a real stake or genuine interest in the issue?

[44] Although Animal Justice Canada has no direct legal interest in the outcome, I am satisfied it has a genuine interest.

[45] The Respondent argues that Animal Justice Canada's advocacy mandate cannot substitute for a genuine interest in measures restricting the importation of commercial dogs for public health reasons. Its written submissions describe Animal Justice Canada's activities as limited to "outreach and public awareness campaigns", and in cross-examination Ms. Labchuk confirmed that the organization does not itself import dogs. Yet, as Ms. Labchuk's affidavit demonstrates, Animal Justice Canada has a long record of public education, law reform, legal advocacy, enforcement complaints, and strategic litigation. I am not persuaded that these activities fall outside the scope of a "genuine interest" simply because the Orders were adopted for public health purposes. Framed from an animal welfare perspective, animal advocacy groups such as Animal Justice Canada plainly have a genuine interest in policies affecting the placement of rescue dogs within Canada.

(2) Is the participation of the Applicant a reasonable and effective way to litigate?

[46] With regards to the third factor, in *Council of Canadians with Disabilities* at paragraph 55, the Supreme Court set out a non-exhaustive list of considerations courts may take into account when determining whether the proposed proceeding is a reasonable and effective means of bringing the case:

[55] The following non-exhaustive list outlines certain "interrelated matters" a court may find useful when assessing the third factor:

1. *The plaintiff's capacity to bring the claim forward*: What resources and expertise can the plaintiff provide? Will the issue be presented in a sufficiently concrete and well-developed factual setting?
2. *Whether the case is of public interest*: Does the case transcend the interests of those most directly affected by the challenged law or action? Courts should take into account that one of the ideas animating public interest litigation is that it may provide access to justice for disadvantaged persons whose legal rights are affected.
3. *Whether there are alternative means*: Are there realistic alternative means which would favour a more efficient and effective use of judicial resources and would present a context more suitable for adversarial determination? If there are other proceedings relating to the matter, what will be gained in practice by having parallel proceedings? Will the other proceedings resolve the issues in an equally or more effective and reasonable manner? Will the plaintiff bring a particularly useful or distinctive perspective to the resolution of those issues?
4. *The potential impact of the proceedings on others*: What impact, if any, will the proceedings have on the rights of others who are equally or more directly affected? Could “the failure of a diffuse challenge” prejudice subsequent challenges by parties with specific and factually established complaints?

[47] Applying these factors liberally, I am satisfied that Animal Justice Canada has the resources and expertise to advance this claim. The Respondent argues that the organization has “no unique perspectives to contribute,” portraying its work as confined to “public awareness.” I disagree. As I have already found, Animal Justice Canada has an extensive record of legal advocacy before Canadian courts. That it lacks expertise in one discrete topic—i.e., import bans on commercial dogs from high-risk rabies countries—does not disqualify it from participating in this case. To hold otherwise would effectively bar animal welfare organizations from advancing issues that, while novel, fall squarely within their broader mandate.

[48] The Respondent submits that Animal Justice Canada fails to offer a distinctive perspective. It directs the Court to *Knauff v Ontario (Natural Resources and Forestry)*, 2023 HRTO 969 at paragraph 11 [*Knauff*], where the Tribunal denied Animal Justice Canada intervention on the basis that it “do[es] not propose a distinct perspective that would be helpful to the Tribunal in determining the question before it.” However, I find that *Knauff* does not carry the weight the Respondent assigns to it. Whatever the uncertainty about whether Animal Justice Canada brings a distinct perspective here, I am not persuaded that its participation would fail to assist the Court. I consider and give weight to the organization’s public interest mandate, established record of litigation, and especially its legal advocacy resources. Unlike Soi Dog Canada, which operates on a volunteer basis, Animal Justice Canada is well-resourced: it employs five full-time staff, *pro bono* counsel, dedicated advisors in the areas of animal law, and of course, their Executive Director, Ms. Labchuk, who herself previously worked as a summer law student and Director of Legal Advocacy with the organization. In my view, these considerations alone are sufficient to justify granting Animal Justice Canada public interest standing.

[49] The reasoning in *Council of Canadians with Disabilities* also lends support to Animal Justice Canada’s standing in this case. In that case, the Supreme Court accepted public interest standing even without a directly affected co-plaintiff. Here, Animal Justice Canada is joined by Soi Dog Canada, whose animal rescue operations are directly affected by the Import Ban. The presence of Soi Dog Canada as a co-Applicant goes beyond the threshold in *Council of Canadians with Disabilities*, and to deny Animal Justice Canada participation would be inconsistent with the spirit of that decision.

[50] I therefore grant Animal Justice Canada public interest standing.

Preliminary Issue: Admissibility of Affidavit Content

[51] The Respondent challenges the admissibility of paragraphs 40 and 68 of Lisa Wagner's Affidavit, and the second and third sentence of paragraph 24 of Camille Labchuk's Affidavit as failing to comply with Rule 81(1) of the *Federal Courts Rules*, SOR/98-106 [Rules].

Content of affidavits

81 (1) Affidavits shall be confined to facts within the deponent's personal knowledge except on motions, other than motions for summary judgment or summary trial, in which statements as to the deponent's belief, with the grounds for it, may be included.

Contenu

81 (1) Les affidavits se limitent aux faits dont le déclarant a une connaissance personnelle, sauf s'ils sont présentés à l'appui d'une requête – autre qu'une requête en jugement sommaire ou en procès sommaire – auquel cas ils peuvent contenir des déclarations fondées sur ce que le déclarant croit être les faits, avec motifs à l'appui.

[52] Paragraph 40 of Ms. Wagner's Affidavit reads:

In response, Soi Dog Canada sent the CFIA a letter on July 24, 2022, expressing concern about the Import Ban. I attach a copy of this letter at Exhibit F to this Affidavit. In this letter, I expressed Soi Dog Canada's concerns with the Import Ban due to the impact on rescue organizations, travellers, other importers and the dogs themselves. I also described other measures that could be adopted to achieve the CFIA's statement objective of keeping Canada "rabies-free". For instance, I noted that several other "rabies-free countries have supplemented their rabies vaccination requirements by also requiring a post-vaccination, pre-entry, rabies antibody titer test," which confirms that the animal was vaccinated and is protected against the disease. I likewise noted that other countries, namely the European Union and the United Kingdom, "use these recommendations and have used antibody testing to bolster the vaccination requirements in their respective import controls for over two decades." This approach mirrors the recommendation of

the World Organization for Animal Health (“WOAH”), which recommends that vaccination requirements be supplemented by a rabies antibody titration test. I attach an excerpt of WOAH’s Terrestrial Animal Health Code at Exhibit G to this Affidavit.

[53] The second and third sentence of paragraph 24 of Ms. Labchuk’s Affidavit read:

Our complaint urged that the CFIA not implement a blanket import ban and instead introduce an effective, science-based approach to rabies prevention as recommended by the World Organization for Animal Health at Article 8.14.7 of the Terrestrial Animal Health Code.

Our complaint appears at Exhibit B to this Affidavit, and Article 8.14.7 of the Terrestrial Animal Health Code appears at Exhibit C to this Affidavit.

[It is agreed that Article 8.14.17 was a ‘typo’ and should instead read as 8.15.7]

[54] The Respondent submits that both affidavits extend well beyond what Rule 81(1) permits. That Rule confines affidavits to facts within personal knowledge, yet it says that these affidavits contain speculation, commentary, and assertions of minimal relevance. On judicial review, evidence is generally restricted to the record before the decision-maker, subject only to narrow exceptions for background or fairness, and the Respondent argues these affidavits exceed such limits, citing *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 17–18. The Respondent further contends that the affiants offer opinions on the scientific validity of CFIA’s measures and WOAH standards without the necessary expertise, noting that neither affiant possesses the requisite scientific or medical qualifications. Ms. Wagner holds a Bachelor of Arts degree and certifications in dog training and pet first aid, and Ms. Labchuk is a lawyer. In the Respondent’s view, the opinions expressed in these paragraphs are inadmissible.

[55] The starting point in this analysis is the well-established rule that evidence not before the decision-maker is inadmissible on judicial review. The law admits only narrow exceptions: (1) where the new evidence provides general background, (2) addresses procedural fairness, or (3) demonstrates a complete absence of evidence before the administrative decision-maker: *Association of Universities and Colleges of Canada v Canadian Copyrights Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19–20 [Access Copyright].

[56] In any event, even if the letter described by Ms. Wagner (at paragraph 40) and the complaint described by Ms. Labchuk (at paragraph 24) were characterized as new evidence, I am satisfied they fall squarely within the “general background” exception. Both were sent to the CFIA and, whether reviewed by the Minister or their delegate, they provide relevant context bearing directly on a material issue before the Court on judicial review: *Chopra v Canada (Treasury Board)* (1999), 168 FTR 273 (TD). I find that the excerpts brought to my attention above primarily summarizes the record and reiterates the substance of the letter and complaint that have been included in the Applicants’ submissions for this judicial review. Both documents exist independently of the affidavits and form part of the factual background leading to this application. Accordingly, these are admissible as background evidence and do not constitute impermissible new evidence.

[57] The Respondent also notes that Ms. Labchuk, when cross-examined on her knowledge of the proposed alternatives, including Article 8.15.7 of the WOA’s *Terrestrial Animal Health Code*, had acknowledged that she was “not familiar enough with the instrument” or the “regime” to address whether the measures were binding on Canada. She further confirmed that she had “no personal knowledge” of how Canada’s regulatory framework incorporated WOA

measures. While her evidence reflects a lack of familiarity with certain technical aspects, the objection in this regard is one of weight, not admissibility.

[58] I turn next to the Respondent's challenge to paragraph 68 of Ms. Wagner's Affidavit:

68. In sum, it remains possible to this day to import rescued dogs from Thailand that meet the necessary criteria—age, microchip, rabies vaccination, titer testing, and examination by a veterinarian on arrival—into the United States, and the implementation of the new rule will not close this pathway. Indeed, since the Modified Suspension Measures were implemented in June 2022, Soi Dog has imported 129 dogs into the United States, none of which were infected with rabies.

[59] In substance, Ms. Wagner describes her knowledge of US rabies controls in 2022 and asserts that the US framework was less restrictive than Canada's Import Ban. This paragraph, which provides general background on US CDC measures, is admissible.

Procedural Fairness

The Nature of the Orders

[60] The determination of whether the Orders are a policy decision or are administrative in nature is an important threshold issue because it affects the circumstances in which the Court will intervene. A decision-maker exercising broad policy discretion is subject to fewer limits than one making a more narrowly legal or adjudicative determination: see *Entertainment Software Association v Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100 at paras 24–36; *Barry Seafoods NB Inc v Canada (Fisheries, Oceans and Coast Guard)*, 2021 FC 725 at para 23 [*Barry Seafoods*].

[61] The Applicants submit that the Orders made under section 27.1 of the *HAA* are closer in nature to administrative decisions and thus attract a duty of procedural fairness. They rely on jurisprudence distinguishing administrative from legislative or policy measures, noting that the latter do not engage such a duty: *Martineau v Matsqui Institution*, [1980] 1 SCR 602 at 628; *Canadian Assn. of Regulated Importers v Canada (Attorney General)*, [1994] 2 FC 247 (CA) [*Canadian Assn. of Regulated Importers*]; *South Shore Trading Co Ltd v Canada (Fisheries, Oceans and Coast Guard)*, 2025 FC 174 at paras 43–48, 52–53 [*South Shore*]. The Applicants submit that the Orders do not impose a general rule of conduct but are narrowly directed at commercial dogs, excluding personal pets and assistance dogs, and in practical terms bear most heavily on international rescue organizations.

[62] The Respondent characterizes the Orders as policy or legislative in nature. They reject the Applicants' claim that the narrower effect of the Orders renders them administrative, submitting that the fact they affect rescue organizations more acutely does not alter their character, citing *Barry Seafoods* at para 32; *South Shore* at paras 44–48; and *Universal Ostrich Farms Inc v Canadian Food Inspection Agency*, 2025 FC 878 at para 69. The Respondent also stresses that all statutory decisions involve the application of law to facts. They say that this is inherent in Parliament's design assigning to the Minister, and through their delegate the CFIA, the responsibility to control communicable diseases in animals and plants that threaten public health. In their view, this statutory context underscores that the Orders are an exercise of delegated policy authority, not administrative adjudication.

[63] The parties also disagree on the application of *Mowi Canada West Inc v Canada (Fisheries, Oceans and Coast Guard)*, 2022 FC 588 [*Mowi*]. The Applicants submit that the

Import Ban is analogous to *Mowi*, where the Court held that a ministerial decision to phase out salmon farming permits was not a matter of general policy but an administrative decision attracting a duty of fairness. They stress that, despite the Court's framing of the decision as affecting individual licence holders, its practical effect was to shut down the fishery. The Respondent disagrees, saying that *Mowi* turned on its direct impact on 19 specific aquaculture licences issued under the *Fisheries Act*. By contrast, the Orders here operate as broad measures under the *HAA*, and as this Court confirmed in *South Shore* and *Universal Ostrich*, the extent of the Applicants' operational impact does not alter the classification of the decision as policy in nature.

[64] I agree with the Respondent's submission that the Orders are properly characterized as the Minister's policy decision.

[65] The jurisprudence of this Court and the Federal Court of Appeal distinguishing legislative or policy decisions from administrative ones has largely arisen in the fisheries context: *Carpenter Fishing Corp v Canada*, 1997 CanLII 26668 (FCA), [1998] 2 FC 548 at para 28; *Malcolm v Canada (Fisheries and Oceans)*, 2014 FCA 130 at paras 32, 34; *Barry Seafoods* at para 33; *Munroe v Canada (Attorney General)*, 2021 FC 727 at paras 29–31 [*Munroe*]. While the present case arises in a different context, I find that the underlying inquiry is the same: does the decision impose a “general rule of conduct without reference to a particular case”: *Munroe* at para 37, citing *R v Corcoran*, 1999 CanLII 19147 (NL SC) at paras 12–15, 20–21.

[66] This distinction was clearly articulated in *Ecology Action Centre Society v Canada (Attorney General)*, 2004 FC 1087 at paragraph 50 [*Ecology Action*], citing *De Smith Judicial*

Review of Administrative Action (S.A. De Smith & J.M. Evans, 4th ed. (London, England: Stevens, 1980)):

[50] The decision which is challenged here is a legislative decision. A legislative act differs from an administrative act and that difference is discussed in *De Smith Judicial Review of Administrative Action* (S.A. De Smith & J.M. Evans, 4th ed. (London, England: Stevens, 1980)) at page 71 as follows:

A distinction often made between legislative and administrative acts is that between the general and the particular. A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative act cannot be exactly defined, but it includes the adoption of a policy, the making and issue of a specific direction, and the application of a general rule to a particular case in accordance with the requirements of policy or expediency or administrative practice.

[67] In short, legislative or policy decisions involve the creation of rules of general application, whereas administrative decisions apply those rules in specific cases.

[68] Consistent with this distinction, this Court has found that management decisions of general scope are policy in nature. In *Barry Group Inc v Canada (Fisheries, Oceans and Coast Guard)*, 2017 FC 1144 [*Barry Group*], Justice Southcott held that the Minister's decision to close the 2016 Atlantic mackerel fishery was legislative, not administrative.

[69] In the present case, I accept that the Orders effectively terminated Soi Dog Canada's operations and had a significant impact on their charitable mandate. But these Orders apply to *all* importers of commercial dogs, not rescues alone, and thus constitute a general rule of conduct. While rescue organizations face greater burdens compared to other commercial

importers, it is not relevant to the present analysis. As Justice Southcott observed in *Barry Seafoods* at paragraph 32, citing *Barry Group* at paragraph 28, a measure of general application does not lose its policy character merely because it impacts some participants more than others:

At a factual level, I agree with the Applicants that the Decision had the potential to affect them, and in the result did affect them, adversely and in a manner different from the effect upon the inshore fleet. However, I do not consider this impact to translate into a conclusion that the Decision is administrative in nature. The fact that a fisheries management measure of general application has a particular effect upon a particular participant or set of participants in the fishery, or affects some participants more than others, does not in itself change the nature of that decision such that it can be characterized as an administrative act (see *Barry Group Inc. v. Canada (Fisheries, Oceans and Coast Guard)*, 2017 FC 1144 at para 28).

[70] The Applicants argue that this case is different from the fisheries closure decisions such as *South Shore*, which were held to be broad policy choices not engaging procedural fairness, and is more aligned with *Mowi*. They say the Import Ban was directed at a defined group, namely international dog rescues, making it narrower in character and therefore subject to fairness obligations. I disagree.

[71] The distinction between targeting a subgroup and affecting individuals is immaterial. Again, the proper question is whether the Orders imposed a “general rule of conduct without reference to particular cases:” *Ecology Action* at para 50. On that test, the Import Ban is a measure of general application, applying equally to all commercial dog imports. I accept the Respondent’s submission that it was not crafted to single out rescues but to regulate the broader category of commercial dogs, which public health authorities, including Dr. Njoo of PHAC, had identified as a class of concern.

[72] The Applicants also referred this Court to evidence purporting to show that the Import Ban was designed with animal rescue organizations squarely in mind. They rely on references in the Certified Tribunal Record suggesting the CFIA anticipated that rescues, including Soi Dog Canada, would bear the brunt of the measure. They note, for instance, a January 24, 2022 memorandum to the Minister that warned of negative reactions from rescues and recognized that the ban would impair their ability to import dogs and undermine their business model. They also point to a March 14, 2021 presentation to the Ministers of Health and Agriculture which identified rescues as the sole stakeholders expected to oppose the proposed ban.

[73] I am not persuaded that this evidence renders the Orders administrative in nature.

[74] A similar argument was raised before Justice Southcott in *Barry Group*. There, the Applicants pointed to notes from an October 14, 2016 conference call, attached to Mr. Lester's affidavit, which specifically referred to their interests:

[26] I also note the Applicants' submission that the interests of the Applicants were specifically referred to during the October 14, 2016, conference call that led to the issuance of the VOs. The notes of the participants in the October 14 call, which were attached to Mr. Lester's affidavit, support this submission, as there are references to the Applicants and the contact details for their representatives. These notes also include references to the 60/40 split of the TAC and, in Mr. Lester's own notes, to the "fixed fleet" (meaning the Under 65 Fleet) having exceeded their quota. The Applicants also point out that it can be inferred from some of the notes from the October 14 call that one option being considered during the call was closing the commercial fishery only for the Under 65 Fleet.

[27] The evidence clearly supports a conclusion that the effect of the closure upon the Over 65 Fleet was discussed during the October 14, 2016 call. Indeed, it would be odd if that point had not been discussed, as the evidence includes a letter sent by Mr. Barry to Mr. Lester the previous day, advising that the Over 65

Fleet expected to start fishing shortly and were hopeful of harvesting 3200 mt (i.e. 40% of the TAC). While not as clear, it may also be that the possibility of closing the commercial fishery only for the Under 65 Fleet was discussed.

[75] Justice Southcott accepted that the interests of the Applicants had been discussed, but nonetheless concluded, applying the test from *Ecology Action Centre*, that the decision could not be characterized as an administrative act.

[76] I reach the same conclusion here. The Import Ban, like the fisheries management measures in *Barry Group*, is a policy decision taken in the exercise of the Minister's broad discretionary authority. It cannot be recast as administrative merely because its impact was felt more acutely by some actors, including international rescuers. Nor does the CFIA's decision to regulate the class of commercial dogs transform the measure into one directed at a particular case.

[77] It follows from this characterization that the Applicants' further submission, i.e., that the Orders were procedurally unfair because they affected the interests of Soi Dog Canada without consultation, cannot succeed. That submission depends on treating the Orders as administrative in nature. Having found them to be policy in character, I note that such decisions are subject only to statutorily mandated requirements of natural justice, not to broader duties of fairness: *South Shore* at para 52, citing *Barry Seafoods* at para 61. The Applicants have not identified any such statutory requirement that was breached.

[78] As the Federal Court of Appeal confirmed in *Canadian Assn. of Regulated Importers* at 258–259, legislative or policy decisions do not attract duties of procedural fairness. I therefore

agree with the Respondent that the Orders are policy decisions. Accordingly, no procedural fairness rights were violated.

Reasonableness

[79] As the Supreme Court noted in *Vavilov* at paragraph 143, principles of reasonableness review developed before that decision, including “academy of science” cases, must now be read in light of *Vavilov*. This alignment recognizes that some administrative decision-makers, such as the CFIA, are tasked with assessing and weighing scientific evidence. Reviewing courts must not re-weigh or substitute their own assessment of that evidence. More broadly, *Vavilov* mandates that courts consider whether a decision “bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision”: *Vavilov* at para 99.

(1) Factual Constraints

[80] I begin with the factual constraints bearing on the Minister’s delegate.

[81] As *Vavilov* instructs, a decision may be unreasonable where the decision-maker has fundamentally misapprehended or failed to account for the evidence before it: *Vavilov* at paras 125–126. Conversely, where there is evidence in the record capable of supporting the outcome, the decision will generally withstand review unless the decision-maker is shown to have disregarded crucial contrary evidence: *Canada (Attorney General) v Best Buy Canada Ltd*, 2021 FCA 161 at paras 123, 129–130.

[82] The Applicants argue that the CFIA failed to conduct any meaningful analysis of “obviously available measures” short of a full import ban. In particular, they submit that the CFIA ignored the June 2022 modifications made by the CDC to its temporary suspension, which permitted certain imports under conditions such as titre testing. They contend that the CFIA “refused to engage with the reams of evidence surrounding the well-known and available alternative measures that could have been used instead.”

[83] These concerns are reflected in Ms. Wagner’s letter to the CFIA on behalf of Soi Dog Canada, in which she emphasized that rabies vaccination requirements alone were insufficient and that requiring pre-entry rabies antibody titre testing would align Canada with “internationally recognized and recommended best practices.” She also urged that airports designated as Secondary Control Zones be reopened. Similarly, Ms. Labchuk’s complaint on behalf of Animal Justice Canada characterized the Import Ban as “heavy-handed and unnecessary.” She called for a “targeted, science-based policy,” including antibody or blood tests, or at minimum exemptions for established dog rescue organizations that could provide reliable vaccination and serology documentation.

[84] In consideration of the evidence before the Minister’s delegate, including the above letters, the relevant factual constraints on the Orders include the following:

- The CDC’s temporary import ban on all dogs from high-risk rabies countries;

- The first case of importation of a rabies-infected dog from Iran that complied with Canada's then-current requirements, and the serious public health consequences that followed;
- The second case of rabies in a dog imported from Iran into Canada on June 28, 2021, discovered only in January 2022;
- Letters from Dr. Njoo, Dr. Furness, Dr. Moore, and Mr. Heywood in the months after the first case, urging CFIA to impose a temporary ban akin to the CDC's in order to assess alternatives, and warning that importers could divert dogs through the other jurisdiction if measures were not aligned;
- Dr. Njoo's additional concerns about commercial imports, which had increased by 400% since 2013, with data suggesting that 23% of commercial imports originated from high-risk countries;
- The need for the CFIA to have an aligned approach with the US CDC to prevent risk of importers "circumventing new measures by bringing dogs via the other country";
- The CDC's June 2022 modification to and extension of the temporary importation ban, providing alternative methods for the import of commercial dogs;

- An analysis of the practices of other jurisdictions with respect to the importation of commercial dogs (an internal assessment report titled *Importation of Commercial Dogs – An International Comparison* is provided in the record);
- The CFIA’s recognition of the “significant CDC investments in human and financial resources” required to implement those modifications, and its own resource constraints;
- Canada’s WOAHA commitments and guidelines and the discretion retained by member states to impose “additional risk measures” as required pursuant to Article 5.1.2 of the *Terrestrial Animal Health Code*; and
- The letter and complaint submitted to the CFIA by Ms. Wagner and Ms. Labchuk, respectively.

[85] The Applicants say that the CFIA’s failure to adopt measures such as titre testing amounts to ignoring critical evidence. Ms. Wagner had urged titre testing as an alternative to a ban, while Ms. Labchuk had pointed to Article 8.15.7 of the *Terrestrial Animal Health Code*, which propose the presentation of an “international veterinary certificate” confirming that the animals:

1. showed no clinical sign of rabies the day prior to or on the day of shipment;
2. were permanently identified and their identification number stated in the certificate;

AND EITHER:

3. were vaccinated or revaccinated, in accordance with the recommendations of the manufacturer. The vaccine should have been produced and used in accordance with the Terrestrial Manual; and

4. were subjected not less than 3 months and not more than 12 months prior to shipment to an antibody titration test as prescribed in the Terrestrial Manual with a positive result of at least 0.5IU/ml;

OR

5. were kept in a quarantine station for six months prior to export.

[86] Considering the factual constraints, I am unable to conclude that the CFIA fundamentally ignored or misapprehended the evidence before it. At most, the alternative measures identified by the Applicants were options available to but ultimately not adopted by the Agency.

[87] The question before this Court is not whether the Applicants' preferred measures would have been equally or more effective, but whether the decision-maker fundamentally failed to grapple with the record. I find that the Minister's delegate did not. The decision reflects a weighing of competing considerations in light of a serious public health risk, and as *Vavilov* instructs, it is not the role of this Court to reweigh the evidence or substitute its own assessment of the merits.

[88] Furthermore, the record demonstrates that the CFIA considered the CDC's later modifications, including internal discussion of the substantial resources required to administer them, and that it examined international practices through the comparison report. It also reflects that the CFIA's initial adoption of the import ban was driven by the desire to align Canada's measures with those of the CDC, to mitigate diversion risk, and to address urgent concerns

following two confirmed rabies importations. Against that backdrop, the fact that the CDC later modified its approach does not establish that CFIA disregarded the evidence before it.

(2) Legal Constraints

[89] I turn next to the legal constraints on the Minister's orders, which must also be satisfied to meet the standard of reasonableness.

[90] The Applicants focus their challenge on subsection 27.1(2) of the *HAA*, arguing that the Orders were not shown to be “necessary” within the meaning of the statute. This provision, to my knowledge, has not been interpreted by this Court.

[91] Subsection 27.1(2) reads:

Disease outside Canada

(2) If the Minister believes that a disease or toxic substance exists in an area outside Canada, he or she may — for the purpose of preventing the spread of that disease or toxic substance into Canada or monitoring that disease or toxic substance — by order, declare any area in Canada that he or she considers necessary to be a secondary control zone, in which case the Minister shall describe the zone and identify that disease or toxic substance. [emphasis added]

Maladie hors du Canada

(2) S'il est d'avis qu'une maladie sévit ou qu'une substance toxique existe dans une région à l'étranger, le ministre peut, par ordonnance, afin d'empêcher la propagation au Canada de cette maladie ou de cette substance toxique, ou de surveiller cette maladie ou cette substance toxique, déclarer comme zone de contrôle secondaire toute région du Canada qu'il estime nécessaire; il doit alors délimiter cette zone et préciser la nature de la maladie ou de la substance toxique en cause. [italiques ajoutés]

[92] As stated by the Supreme Court in *Vavilov* at paragraph 110:

Whether an interpretation is justified will depend on the context, including the language chosen by the legislature in describing the limits and contours of the decision maker's authority. If a legislature wishes to precisely circumscribe an administrative decision maker's power in some respect, it can do so by using precise and narrow language and delineating the power in detail, thereby tightly constraining the decision maker's ability to interpret the provision. Conversely, where the legislature chooses to use broad, open-ended or highly qualitative language — for example, “in the public interest” — it clearly contemplates that the decision maker is to have greater flexibility in interpreting the meaning of such language.

[93] The Applicants submit that properly interpreted, subsection 27.1(2) imposes the legislative restriction on the Minister that the order must be “necessary:”

The HAA grants a great deal of power to the Minister of Agriculture and Agri-Food (“Minister”) to establish and utilize “secondary control zones” to control the spread of animal diseases. However, the legislation only permits such measures to be used when doing so is “necessary” to control the spread of a disease. While there is no single document that formally reflects the CFIA's “reasons” for the Import Ban, the record reasonably shows that the CFIA failed to approach its task and apply itself in accordance with this standard.

That the HAA imposes a standard of necessity for the imposition of control zones is clear on the face of the legislation. Secondary control zone orders must be “necessary” in the circumstances to control the spread of a disease before they can be imposed.
[emphasis added]

[94] I am not persuaded that the proper interpretation of s. 27.1(2) is as broad as the Applicants submit.

[95] One properly approaches statutory interpretation by keeping in mind that the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously

with the scheme of the Act, the object of the Act, and the intention of Parliament:

Canada (Canadian Human Rights Commission) v Canada (Attorney General), 2011 SCC 53 at para 33.

[96] The Supreme Court has also instructed at that in *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43 at paras 23–24, noting close attention must be paid to the text of the statute, as it is the text that anchors the interpretive exercise:

It is well settled that “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” (E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87, quoted in *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27, at para. 21; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 26; *La Presse inc. v. Quebec*, 2023 SCC 22, at para. 22).

In this case, it is important to highlight a few principles that guide the interpretation of s. 91 para. 4 of the YPA. First, the YPA must be given a large and liberal interpretation that will ensure the attainment of its object and the carrying out of its provisions according to their true intent, meaning and spirit (see *Interpretation Act*, CQLR, c. I-16, s. 41; *Protection de la jeunesse – 123979*, at para. 21). However, just as the text must be considered in light of the context and object, the object of a statute and that of a provision must be considered with close attention always being paid to the text of the statute, which remains the anchor of the interpretive exercise. The text specifies, among other things, the means chosen by the legislature to achieve its purposes. These means “may disclose qualifications to primary purposes, and this is why the text remains the focus of interpretation” (M. Mancini, “The Purpose Error in the Modern Approach to Statutory Interpretation” (2022), 59 *Alta. L. Rev.* 919, at p. 927; see also pp. 930-31). In other words, they may “tell an interpreter just how far a legislature wanted to go in achieving some more abstract goal” (p. 927). As this Court recently noted, an interpreter must “interpret the ‘text through which the legislature seeks to achieve [its] objective’, because ‘the goal of the interpretative exercise is to

find harmony between the words of the statute and the intended objective . . .” (R. v. Breault, 2023 SCC 9, at para. 26, quoting MediaQMI inc. v. Kamel, 2021 SCC 23, [2021] 1 S.C.R. 899, at para. 39; see also Quebec (Attorney General) v. 9147-0732 Québec inc., 2020 SCC 32, [2020] 3 S.C.R. 426, at para. 10).

[97] I agree with the Respondent:

The Applicants cannot conflate these three (3) distinct orders, into one decision under review. The Court’s review must be directed at individual administrative decisions. Each of the three Orders under review was made pursuant to a different authority under section 27.1 of the *HAA*. While those provisions are interrelated, they are legally distinct, and it would be inappropriate—and outside the statutory framework of judicial review—to merge them into a single analysis.

The Applicants further erred by attempting to impose a “necessity” requirement across all three Orders, despite the clear language of section 27.1 of the *HAA*. The term “necessary” appears only in subsection 27.1(2), which governs the Declaration Order and authorizes the Minister of AAFC to declare any area they believe “is necessary” to be a secondary control zone. This requirement does not extend to the Designation Order under subsection 27.1(3), or the Prohibition Order under subsection 27.1(4), which contain no such textual limitation.

[98] Importantly, the legal requirement of necessity in s. 27.1(2) is limited to the area being described in the Secondary Control Zone Order. It is not, under any reasonable interpretation, requiring that the Order itself be “necessary.”

[99] The Applicants raised no objection to the necessity of the identified areas listed in the Secondary Control Zone Order; nonetheless, it is evident from the record that there is substantial support for the listing of every airport in Canada.

[100] The CFIA noted that there are no animal handling or inspection facilities at Canadian airports, nor are there designated workers to care for animals being held. There is also no dedicated CFIA staff stationed at airports; instead, only local CFIA Animal Health District Office staff are available, and they are not posted full-time at ports of entry. These operational realities, together with the factual constraints described at paragraph 84, formed part of the context in which the Minister's delegate reasonably determined it was necessary to designate airports as secondary control zone areas under subsection 27.1(2) of the Act.

[101] The statutory requirement of necessity applies only to the establishment of the secondary control zone under subsection 27.1(2). It does not extend to the Designation Order under subsection 27.1(3) or the Prohibition Order under subsection 27.1(4). The Applicants' submissions proceed on the assumption that the necessity standard governs all three Orders. As I have concluded, that is not the case. Each Order must nevertheless have been made in a manner that is reasonable, having regard to the factual and legal constraints.

[102] Subsection 27.1(3) establishes a low statutory threshold. It authorizes the Minister to designate any animal as subject to the secondary control zone if it is "capable of being affected or contaminated" by the identified disease. The language of this provision is permissive (may) and does not import the "necessity" standard that constrains subsection 27.1(2). The record confirms that two separate incidents of rabid dogs imported into Canada prompted the CFIA's concern that domestic and imported dogs could transmit the virus. I find that those events alone are sufficient to demonstrate that dogs are plainly capable of being contaminated with rabies. The Designation Order is consistent with the constraints set out by subsection 27.1(3).

[103] Subsection 27.1(4) provides that the Minister may impose conditions on the movement of animals within or out of a secondary control zone. Like subsection 27.1(3), this provision similarly confers a discretionary authority on the Minister not constrained by necessity. I find that the Order made under this provision was grounded in the same factual context described at paragraph 84, including the heightened public health risk posed by the importation of rabid dogs and the CFIA's limited operational capacity. Taken together, these operational and public health constraints provided a rational basis for the Order. I am satisfied that the Prohibition Order was reasonable in light of those constraints.

[104] For these reasons, I find the three Orders under review to be reasonable, and within both the factual and legal constraints.

[105] The parties agreed that each will bear its own costs.

JUDGMENT in T-2260-22, T-2261-22 and T-2262-22

THIS COURT'S JUDGMENT is that these applications are dismissed, without costs.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: T-2260-22
T-2261-22
T-2262-22

STYLE OF CAUSE: ANIMAL JUSTICE CANADA and SOI DOG CANADA
v ATTORNEY GENERAL OF CANADA

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DATED: OCTOBER 22, 2025

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