Federal Court of Appeal | Cour d'appel fédérale

Date: 20220202

Docket: A-85-20

Citation: 2022 FCA 19

CORAM: **STRATAS J.A.**
RIVOALEN J.A.
MACTAVISH J.A.

BETWEEN:

SAFE FOOD MATTERS INC.

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

and

DAVID SUZUKI FOUNDATION, ENVIRONMENTAL DEFENCE CANADA INC. and FRIENDS OF THE EARTH CANADA/LES AMIS DE LA TERRE

Interveners

Heard by online video conference hosted by the registry on December 9, 2021.

Judgment delivered at Ottawa, Ontario, on February 2, 2022.

REASONS FOR JUDGMENT BY: RIVOALEN J.A.

CONCURRED IN BY: STRATAS J.A.
MACTAVISH J.A.

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REASONS FOR JUDGMENT

RIVOALEN J.A.

I. Introduction

[1] In 2002, Parliament overhauled the regulation of pest control products and passed the *Pest Control Products Act*, S.C. 2002, c. 28 (the Act) and its regulations. It created a comprehensive regulatory scheme for the registration and use of pesticides in Canada. The purpose of the Act is to protect human health and safety and the environment by regulating products used for the control of pests. It does this by preventing unacceptable risks to individuals and the environment from the use of pesticides. What emerges from the legislative and regulatory scheme are three pillars supporting the purpose of protecting public health and the environment: i) a rigorous, scientifically-based approach; ii) a strong re-evaluation process when more is known about the product; and iii) the opportunity for public participation to enhance decision-making and increase public confidence in it.

[2] The appellant, Safe Food Matters Inc., is a non-profit organization dedicated to promoting public health and protecting the environment by educating Canadians about the safety of food production technologies.

[3] The respondent, the Attorney General of Canada, represents the Pest Management Regulatory Agency (the PMRA), a branch of Health Canada responsible for the regulation of pesticides under the Act. The PMRA acts on behalf of the Minister of Health.

[4] An example of a pest control product regulated under the Act is glyphosate, the active ingredient in products such as Roundup. In 1976, glyphosate was registered for use in Canada and has been continuously registered for use since then. In 2005, the PMRA gave approval to a label expansion that allowed glyphosate to be used as a pre-harvest desiccant on a variety of crops, including chickpeas. In 2009, the PMRA gave notice of its intention to re-evaluate glyphosate to determine whether it should remain registered for use. On April 13, 2015, the PMRA made public a proposed re-evaluation decision. In response to the proposed re-evaluation decision, the appellant provided written comments and participated in the public consultation process.

[5] In 2017, after completing the public consultation process, the PMRA issued a re-evaluation decision permitting the continued registration of glyphosate products for use in Canada. In broad terms, the PMRA did not agree with the appellant's written comments.

[6] The release of the PMRA's re-evaluation decision triggered another right under the Act. Sixty days after a re-evaluation decision is released, subsection 35(1) of the Act allows any person to object to it with reasons. Here, the appellant did just that. In particular, following the process set out in the Act, the appellant filed a notice of objection (the NOO) to the re-evaluation decision. It presented nine objections that, in its view, raised "scientifically founded doubt" about the validity of the PMRA's evaluations concerning glyphosate products. It hoped the PMRA would exercise its statutory discretion to appoint a review panel in accordance with subsection 35(3) of the Act to consider the subject matter of the objections raised in the NOO, with a view to confirming, reversing or varying the re-evaluation decision.

[7] Section 4 of the *Review Panel Regulations*, S.O.R./2008-22 (the Regulations) provides that the review panel shall consist of one or more expert scientists who are independent of government and free from any actual or potential conflict of interest in relation to the decision under review.

[8] Subsection 35(5) of the Act requires the PMRA to provide written reasons without delay to the person who filed the notice of objection if a decision is made not to establish a review panel.

[9] On January 11, 2019, in written reasons, the PMRA dismissed the objections raised in the appellant's NOO and exercised its discretion not to establish a review panel (the PMRA Decision). The PMRA Decision is the decision the appellant challenges in this case.

[10] The PMRA found the issues raised in the appellant's NOO did not meet the criteria outlined in section 3 of the Regulations. Section 3 requires the Minister of Health to take the following factors into account in determining whether it is necessary to establish a review panel:

a) Whether the information in the NOO raises "scientifically founded doubt" as to the validity of the evaluations, on which the decision was based, of the health and environmental risks and the value of the pest control product; and

b) Whether the advice of expert scientists would assist in addressing the subject matter of the objection.

[11] The appellant, Safe Food Matters Inc., applied to the Federal Court for judicial review of the PMRA Decision. On February 13, 2020, the Federal Court dismissed the application (*McDonald v. Canada (Attorney General)*, 2020 FC 242 (*per* Simpson J.) (the Federal Court Decision)). Safe Food Matters Inc. now appeals to this Court.

[12] For the following reasons, I would allow the appeal, quash the PMRA Decision and remit the matter back to the PMRA for reconsideration in accordance with the guidance offered in these reasons.

[13] For ease of reference, section 35 of the Act and section 3 of the Regulations are appended to these reasons.

II. The Standard of Review

[14] As this appeal is from a judgment on a judicial review application, in accordance with the Supreme Court of Canada's decision in *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559 at paragraphs 45-46 [*Agraira*], this Court is required to step into the shoes of the Federal Court. We must determine whether the Federal Court selected the appropriate standard of review and, if it did, whether it applied it properly. Recently, the Supreme Court of Canada in *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42, 462 D.L.R. (4th) 585, declined the invitation to reconsider *Agraira* and confirmed that its principles continue to apply.

[15] The parties agree that the question for us is whether the PMRA Decision is reasonable, having regard to the reasonableness standard of review established by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65, 441 D.L.R. (4th) 1 [*Vavilov*].

III. The PMRA Decision under Review

[16] In its NOO, the appellant raised nine objections. The main basis for the first four objections is that when glyphosate is applied, for pre-harvest desiccation purposes in certain crops such as chickpeas, the residue levels of glyphosate may exceed the permitted maximum levels and may therefore be of concern to human health. These objections included concern that the maximum residue level of glyphosate may be exceeded because of a purported increase in dietary consumption of certain crops such as chickpeas since 2010. These four objections were key to raising "scientifically founded doubt". The remaining five objections presented other arguments largely concerning enforcement issues and product labelling.

[17] The NOO provided several references in support of its objections from scientific studies, literature and government publications, as well as Health Canada policy documents. The NOO added that the re-evaluation decision did not consider certain evidence it provided.

[18] In the concluding paragraphs of the NOO, the appellant argued that Canadians are likely consuming crops that contain unacceptable levels of glyphosate residue and as a result, a review panel should be established to assess glyphosate in the context of its objections.

[19] In response to the NOO, the PMRA wrote a two-page letter consisting of seven paragraphs. The first two paragraphs of the letter confirmed the general purpose of a notice of objection and that the appellant's NOO has been reviewed and assessed in accordance with the Act and Regulations. The PMRA, paraphrasing section 2 of the Regulations, recounted that the purpose of a notice of objection is "to identify the area of science supporting the re-evaluation decision to which objection is taken, to provide the scientific basis of the objection and to request that the area of science in question be referred to a review panel for reconsideration and recommendation."

[20] The third paragraph stated that "[t]he PMRA has taken all reasonable measures to ensure impartiality in determining if a panel should be established." It added that "[t]he notice of objection, including the scientific rationale, was assessed by a team of PMRA evaluators who were not involved in the original re-evaluation decision" and explained that "[t]his team provided recommendations as to the requirement for a review panel based on the validity and the scientific plausibility of the issues raised in the notice." In addition, the third paragraph cited the factors the PMRA must take into account pursuant to section 3 of the Regulations. It offered no definition of the term "scientifically founded doubt".

[21] The fourth paragraph listed the information received from the appellant that the PMRA reviewed.

[22] The fifth paragraph set out the PMRA's decision in response to the NOO: "The information which you submitted in support of your objection does not meet either of those

factors and, accordingly, does not provide a basis for the establishing of a review panel" and so "[a]s a consequence, a review panel will not be established to reconsider the regulatory decision in response to your request."

[23] The sixth paragraph introduced the attachment to the letter. The attachment contained six pages of scientific explanation from the PMRA to certain objections raised in the appellant's NOO.

[24] The seventh and last paragraph of the letter provided contact information and reference numbers to the PMRA decision in case the appellant had any questions.

IV. The Federal Court Decision

[25] The Federal Court correctly identified reasonableness as the standard of review to be applied to the PMRA Decision.

[26] The Federal Court noted that the meaning of the term "scientifically founded doubt" found in subsection 3(a) of the Regulations had not been defined in previous jurisprudence and so it proceeded with its own statutory interpretation of this term. The Federal Court determined that "scientifically founded doubt" about the validity of the evaluations "must be demonstrated by at least one controlled peer reviewed study published in a reputable journal that contradicts or raises a reasonable doubt about the Evaluations' conclusions" (Federal Court Decision at paras. 17-20).

[27] The Federal Court conducted its own detailed analysis of whether the objections put forward in the appellant's NOO raised scientifically founded doubt about the validity of the PMRA's risk evaluations and found that they did not.

[28] The Federal Court stated that "[s]tatutory interpretation is not the purview of a panel of expert scientists" and concluded that Safe Food Matters Inc. had "not shown in their NOO that there exists scientifically founded doubt about the validity of the Evaluations" (Federal Court Decision at paras. 73 and 74).

[29] As a result, the Federal Court determined that the PMRA Decision not to establish a review panel was reasonable.

V. Positions of the Parties

A. *The Appellant's Position*

[30] The appellant submits that the PMRA Decision was unreasonable for four reasons:

1. It failed to interpret the statutory scheme governing the criteria for assessing the NOO;

2. It did not comply with the statutory scheme, as properly interpreted;

3. It failed to address the impact on individuals; and

4. It failed to address the appellant's evidence and submissions.

[31] In the appellant's view, the PMRA Decision also fails to meet the requisite standard of justification, transparency and intelligibility by providing insufficient reasoning (*Vavilov* at para. 99).

[32] During oral submissions, the appellant focused its argument on the lack of reasoned explanation on the part of the PMRA and its failure to justify its reasoning in relation to the relevant factual and legal constraints that bear on the PMRA Decision.

B. *The Respondent's Position*

[33] The respondent submits that the PMRA Decision is consistent with the statutory scheme and that the PMRA reasonably addressed the appellant's objections, namely those concerning how moisture and maturity affect pesticide levels in crops and the PMRA's dietary consumption data. Read in context, the PMRA's reasons were sufficient and its decision not to establish a review panel was reasonable.

C. *The Interveners' Position*

[34] David Suzuki Foundation, Environmental Defence Canada Inc. and Friends of the Earth Canada/Les Amis de la Terre, the interveners in this appeal, focus on the Federal Court's definition of "scientifically founded doubt". Among other things, they argue that Parliament did not intend that the PMRA be limited to considering only those objections that are supported by a peer-reviewed study. After all, objections may be made by any member of the public, not just scientists who know about and can access peer-reviewed studies.

[35] Consistent with the objectives of the notice of objection process—namely to provide concerned parties an opportunity to highlight areas of reconsideration for the PMRA—the interveners submit that "scientifically founded doubt" must be read harmoniously with the overall process of risk prevention found in the Act.

[36] The interveners argue that, read in context, "scientifically founded doubt" simply amounts to a credible doubt, based on available information, whether the PMRA has met the high acceptable risk threshold. Moreover, it would be unfair to place the same standard on members of the public in an objection process as that imposed on the registrant in a registration process to establish acceptable risk.

VI. Analysis of the PMRA Decision

[37] At the outset, it is important for us to be reminded that under the Act, it is for the members of the PMRA, not the Federal Court or this Court to decide on the merits of whether the PMRA should exercise its discretion under section 35 of the Act to appoint a review panel. It is clear that the PMRA is the merit-decider, not this Court. (See *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, 428 N.R. 297 at paras. 17 and 18 [*Universities and Colleges of Canada*]; *Delios v. Canada (Attorney General)*, 2015 FCA 117, 472 N.R. 171 at para. 41; *Sexsmith v. Canada (Attorney General)*, 2021 FCA 111 at para. 32 [*Sexsmith*]; *Alexion Pharmaceuticals Inc. v. Canada (Attorney General)*, 2021 FCA 157, 185 C.P.R. (4th) 83 at para. 24 [*Alexion*]).

[38] Likewise, according to the principles enunciated in *Vavilov*, it is for the members of the PMRA to interpret their home statute, not the Federal Court or this Court (*Vavilov* at paras. 108-110 and 119).

[39] Therefore, on judicial review or in an appeal from a judicial review, acting under the reasonableness standard, we do not re-weigh the evidence before the PMRA, we do not second-guess the exercise of its discretion, and we do not proceed with our own statutory interpretation of the Act and its Regulations. Under this legislative regime, that is the job of the PMRA. As long as its interpretation of the Act and Regulations is reasonable, and the reasons it provides for its decision are justifiable, clear and intelligible, we owe deference and should not interfere

(*Vavilov* at paras. 75, 83, 85 and 86; *Canada (Minister of Citizenship and Immigration) v. Mason*, 2021 FCA 156 at paras. 41 and 42 [*Mason*]).

[40] While the administrative decision-maker is responsible for interpreting its statute, there is no need for it to mimic how courts go about it (*Vavilov* at paras. 119 and 120). Whatever interpretative approach the decision-maker takes, however, its task is to ensure that the interpretation of the statutory provision is consistent with the text, context and purpose of the provision (*Vavilov* at para. 120; *Canada Post Corp. v. Canadian Union of Postal Workers*, 2019 SCC 67, 441 D.L.R. (4th) 269 at para. 42 [*Canada Post*]). In other words, the decision-maker must grapple with the issue of the proper meaning of the legislation before it and explain why its decision is within legislative constraints (*Mason* at paras. 34 and 35; *Alexion* at para. 20).

[41] At the very least, a reviewing court must be "able to discern the interpretation adopted by the decision maker from the record and determine whether that interpretation is reasonable" (*Vavilov* at para. 123; *Canada (Attorney General) v. Kattenburg*, 2021 FCA 86, 458 D.L.R. (4th) 744 at para. 16 [*Kattenburg*]; *Yu v. Richmond (City)*, 2021 BCCA 226, 54 B.C.L.R. (6th) 71 at para. 53).

[42] In the end result, a decision-maker is constrained by the specifically worded statutory scheme under which it draws its authority. If the decision-maker fails to respect specifically worded statutory provisions, reversal of the decision can result (*Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100, [2020] F.C.J. No 671 (QL) at paras. 33 and 35).

[43] With these principles in mind, for the following reasons, I am of the view that the PMRA Decision is unreasonable.

A. *The PMRA Decision fails to interpret the governing legislation*

[44] To start, I note that the PMRA Decision does not refer to past decisions dealing with the manner in which it exercises its discretion under subsection 35(3) of the Act. The parties did not place any such decisions before this Court and there is no jurisprudence to assist the PMRA.

[45] This is the first time that this Court is called upon to review a decision of the PMRA.

[46] As mentioned in paragraph 39 above, it is for the PMRA to interpret its own legislation in a way that is reasonable and in a manner that can be understood. Expert scientists employed by government may well be tasked with reviewing the science raised in the NOO, but the PMRA is tasked with the interpretation of the Act and Regulations in the context of the scientifically-based objections in the NOO and the record. The PMRA's responsibility is to consider the scientific basis for the objection and the corresponding scientific advice it receives from expert scientists employed by government. With this information in hand, and in coming to its decision of whether it should exercise its discretion to establish a review panel, the PMRA must look to the relevant provisions of the Act that will inform its decision. As well, it must take into account the two factors set out in subsection 3(a) and 3(b) of the Regulations which are: (a) whether the information in the notice of objection raises scientifically founded doubt as to the validity of the evaluations, on which the decision was based, of the health and environmental risks and the

value of the pest control product; and (b) whether the advice of expert scientists would assist in addressing the subject matter of the objection. While the PMRA does have discretion, it can only exercise such discretion once both of these factors are considered.

[47] Therefore, even where a decision-maker like the PMRA has the discretion to make a particular decision, such as whether it is necessary to establish a review panel, its discretion is not untrammeled. The exercise of discretion must comply with the rationale and purview of the Act (*Vavilov* at para. 108).

[48] The Act's primary purpose is the protection of individuals and the environment, and it achieves this protection by: i) requiring a scientifically-based approach to the evaluation of risks posed by the use of pest control products; ii) requiring periodic re-evaluations of registered pest control products, such as is the case here; and iii) inviting public participation in the regulatory scheme.

[49] In addition to the Act, the PMRA's discretion is further constrained by making it subject to the two factors set out in section 3 of the Regulations. That is, section 3 of the Regulations limits the PMRA's discretion by dictating factors that it must consider in arriving at its decision as to whether it is necessary to establish a review panel. While it can consider other factors, it must consider at least those two factors.

[50] The PMRA Decision falls short of these fundamental requirements. I will provide a few specific examples to clarify my point.

[51] The PMRA does not justify its decision by looking to the preamble of the Act, which outlines the need to prevent unacceptable risks to the public from the use of pest control products. The PMRA Decision fails to consider the definitions of “health risk” and “acceptable risks” set out in subsections 2(1) and 2(2) of the Act. It also is silent on the primary objective of the legislation, being the prevention of unacceptable risks to individuals and the environment from the use of pest control products, as set out in subsection 4(1) of the Act.

[52] The PMRA Decision does not explain the scientific approach it must take in evaluating the health and environmental risks of a pest control product and in determining whether those risks are acceptable as outlined in subsection 19(2) of the Act.

[53] While it identified the appropriate section of the Regulations applicable to a review of a notice of objection, the PMRA Decision provided no explanation whatsoever as to the meaning of the term “scientifically founded doubt” found in subsection 3(a) of the Regulations. Further, nowhere in its reasons did it tackle the question of whether the advice of expert scientists would assist in addressing the subject matter of the objection, as it was required to do under subsection 3(b) of the Regulations. Both of these factors must be addressed.

[54] Rather, in its decision not to establish a review panel, the PMRA simply provided a conclusory statement that the NOO did not meet either factor set out in section 3 of the Regulations. We simply cannot discern from the PMRA Decision why the PMRA concluded that the objections raised in the NOO did not meet either of those factors. This is particularly important given the statutory requirement for the PMRA to provide written reasons under

subsection 35(5) of the Act, which is designed to make the public participation meaningful. The failure to provide any explanation of either of these factors is critical and this is sufficient, in my view, to render the PMRA Decision unreasonable.

[55] Here, the PMRA has not demonstrated through its reasons that it was alive to the need to interpret the Act and the Regulations and, in particular, to identify the essential elements of the text, context and purpose of the Act and the Regulations as it was required to do (*Mason* at para. 42; *Sexsmith* at para. 35; *English v. Richmond (City)*, 2021 BCCA 442 at paras. 68-75).

[56] The PMRA has not fulfilled its task of ensuring that the interpretation of subsection 35(3) of the Act and section 3 of the Regulations is consistent with the text, context and purpose of the provisions (*Vavilov* at para. 120; *Canada Post* at para. 42). It did not grapple with the issue of the proper meaning of the legislation before it and explain why its decision is within legislative constraints (*Mason* at paras. 34 and 35; *Alexion* at para. 20).

[57] This failure to provide a legislative interpretation renders the PMRA Decision unreasonable (*Alexion* at paras. 30-32).

B. *The record does not assist in discerning the PMRA Decision*

[58] I have already concluded that the PMRA Decision is unreasonable because it lacks any legislative interpretation of the relevant provisions of the Act and most importantly, does not provide any interpretation of the mandatory factors it must consider under section 3 of the

Regulations. Nevertheless, I will continue my analysis by looking at the record to determine whether it can assist me in discerning the basis for the PMRA Decision (*Vavilov* at para. 123; *Kattenburg* at para. 16). I conclude that it does not. From the reasons offered in light of the record, we simply do not know *why* a review panel might not assist in this case in considering whether the re-evaluation decision should be confirmed, reversed or varied in some way.

[59] Here, the record contains no more than a smattering of references to "concerns", "scientifically founded doubt[s]" and "scientific grounds". Even if we could discern an interpretation from these few references, the PMRA Decision remains unreasonable. Under the most generous interpretation, these references relate to the quality of the objections before the PMRA. That is, they speak to the requirement for a "scientifically founded doubt" under subsection 3(a) of the Regulations. (See Science Management Committee Briefing dated June 29, 2017, Appeal Book, tab 6, exhibit P, p. 815; Science Management Committee Briefing dated November 15, 2018, Appeal Book, tab 6, exhibit P, p. 843; PMRA's Memorandum to Charles Smith dated July 16, 2018, Appeal Book, tab 6, exhibit P, pp. 855 ff.; Glyphosate Notice of Objection, Appeal Book, tab 33, pp. 2593 ff.; PMRA's Memorandum to Catherine Adcock dated August 30, 2018, tab 34, pp. 2617 ff.).

[60] However, subsection 3(a) of the Regulations is only one of two factors the PMRA was tasked to interpret, as set out in paragraphs 53 and 54 of these reasons. Subsection 3(b) says that the PMRA shall assess "whether the advice of expert scientists would assist in addressing the subject matter of the objection." In other words, the PMRA was required to evaluate factors beyond the four corners of the NOO. The record does not show a shred of analysis beyond the

scientific aspects of the decision itself. Therefore, we can discern no interpretation of subsection 3(b) of the Regulations from the record.

[61] The PMRA did not explicitly or implicitly consider the text, purpose or context of section 35 of the Act or section 3 of the Regulations. If it did so, its reasons, explicit or implicit, cannot be discerned from the record. The PMRA Decision is unreasonable as it fails to meet the requisite standard of justification, transparency and intelligibility (*Vavilov* at para. 99; *Alexion* at para. 66).

[62] I have concluded that the PMRA Decision is unreasonable because it lacks any interpretation of the Act and Regulations, and I am unable to discern a legislative interpretation from the record. Thus, I need not consider the appellant's other arguments because these conclusions are sufficient to end my review.

C. *The Federal Court's definition of "Scientifically Founded Doubt"*

[63] I wish to add a word or two on the Federal Court's interpretation of the term "scientifically founded doubt". I agree with the parties, including the interveners, that the Federal Court erred when it provided its own interpretation of this term. How this term is to be interpreted is the job of the PMRA, not the Federal Court. The Federal Court is the reviewing court, not the merits-decider (*Universities and Colleges of Canada*).

D. *Guidance*

[64] As this case represents the first time that this Court is reviewing a decision of the PMRA, it may be useful to provide some guidance to the PMRA when it goes about its redetermination. This is particularly important, given the number of years that have passed since the re-evaluation decision was made public. Further, it would be unfortunate for the redetermination decision to come back to the Federal Court, and possibly this Court, for a review on substantive unreasonableness. This guidance may avoid a possible "endless merry-go-round of judicial reviews and subsequent reconsiderations" (*Vavilov* at para. 142; *Sexsmith* at para. 31).

[65] In determining this matter and, in particular, in going about the interpretation of the legislation, I would suggest that the PMRA should have regard and communicate how it had regard at least to the following:

- The specific text, context and purpose of the preamble of the Act;

- The definitions of "health risk" and "acceptable risks" in subsections 2(1) and 2(2) of the Act;

- Consideration of the primary objective of the Act set out in subsection 4(1) of the Act;

- The meaning of “a scientifically based approach” when the PMRA undertakes a re-evaluation of a pest control product as set out in subsection 19(2) of the Act;

- The specific role of the PMRA and its tasks to perform when it undertakes a review of a notice of objection pursuant to subsection 35(3) of the Act;

- The specific role and purpose of a review panel, in contrast to the role and purpose of the PMRA, when it receives a notice of objection under subsection 35(1) of the Act;

- The specific threshold to be met when assessing “scientifically founded doubt” pursuant to the factors set out in section 3 of the Regulations;

- The criteria that would determine whether the advice of expert scientists would assist in addressing the subject matter of the notice of objection under section 3 of the Regulations.

[66] The PMRA should then explain why it has made the decision it has, based on the interpretation of the legislation it has reached and the facts it has found.

[67] In offering this guidance, consistent with my role as an appellate judge on a judicial review, I am not proposing any particular outcome on the merits of the matters before the PMRA.

VII. Conclusion

[68] For these reasons, I would allow the appeal. Making the judgment the Federal Court should have made, I would grant Safe Food Matters Inc.'s application for judicial review, quash the PMRA Decision and remit the matter back to the PMRA for redetermination in light of the guidance provided in these reasons. As the appellant is not seeking costs, I would award none.

"Marianne Rivoalen"
J.A.

"I agree.
David Stratas J.A."

"I agree.
Anne L. Mactavish J.A."

ANNEX

***Pest Control Products Act*, S.C. 2002, c. 28**	***Loi sur les produits antiparasitaires*, L.C. 2002, ch. 28**
Reconsideration of Decisions	**Examen des décisions**
Notice of objection to registration decisions	**Avis d'opposition - homologation**
35 (1) Any person may file with the Minister, in the form and manner directed by the Minister, a notice of objection to a decision referred to in paragraph 28(1)(a) or (b) within 60 days after the decision statement referred to in subsection 28(5) is made public	35 (1) Dans les soixante jours suivant celui où l'énoncé de décision visé au paragraphe 28(5) est rendu public, toute personne peut déposer auprès du ministre, selon les modalités que celui-ci fixe, un avis d'opposition à la décision visée aux alinéas 28(1)a) ou b).
Notice of objection to authorization decisions	**Avis d'opposition – autorisation d'exportation**
35 (2) Any person may file with the Minister, in the form and manner directed by the Minister, a notice of objection to a decision to authorize the export of a pest control product or to amend or cancel an authorization within 60 days after a notice referred to in subsection 33(6) or 34(4) is made public.	35 (2) Dans les soixante jours suivant celui où l'avis visé aux paragraphes 33(6) ou 34(4) est rendu public, toute personne peut déposer auprès du ministre, selon les modalités qu'il fixe, un avis d'opposition à la décision d'autoriser l'exportation d'un produit antiparasitaire ou de modifier ou de révoquer l'autorisation d'exportation.
Establishment of a review panel	**Constitution d'une commission d'examen**
35 (3) After receiving a notice of objection, the Minister may, in accordance with the regulations, if any, establish a panel of one or more individuals to review the decision and to recommend whether the decision should be confirmed, reversed or varied.	35 (3) Le ministre peut, après réception de l'avis d'opposition, constituer, en conformité avec les éventuels règlements, une commission d'examen, composée d'un ou de plusieurs individus, chargée d'examiner la décision prise et de recommander soit sa confirmation, soit son annulation, soit encore sa modification.

Notice of review panel

35 (4) The Minister shall give public notice of the establishment of a review panel.

Avis – commission d'examen

35 (4) Le ministre publie un avis de la constitution de la commission d'examen.

Reasons to be provided if panel not established

35 (5) If the Minister does not establish a panel, the Minister shall provide written reasons without delay to the person who filed the notice of objection.

Non-constitution motivée

35 (5) Si le ministre décide de ne pas constituer de commission d'examen, il communique sans délai ses motifs écrits à la personne qui a déposé l'avis.

Terms of reference and procedure

35 (6) The Minister may determine the terms of reference of a review panel and the procedure for the review, and may at any time change them.

Mandat et procédure

35 (6) Le ministre peut fixer le mandat de la commission et prévoir la procédure d'examen et, à tout moment, les modifier.

Representations

35 (7) A review panel shall give any person a reasonable opportunity to make representations in respect of the decision under review, in accordance with the terms of reference.

Observations

35 (7) La commission est tenue, en conformité avec son mandat, de donner à toute personne la possibilité de présenter ses observations sur la décision faisant l'objet de l'examen.

Public access

35 (8) Subject to subsections 44(3) and (6), the hearings of a review panel shall be open to the public.

Accessibilité

35 (8) Sous réserve des paragraphes 44(3) et (6), les audiences de la commission sont publiques.

Information to be placed in Register

35 (9) A review panel shall give the information submitted to it to the Minister, who shall place it in the Register.

Inscription au Registre

35 (9) Les renseignements fournis à la commission sont remis au ministre, qui les verse au Registre.

***Review Panel Regulations*, S.O.R./2008-22**	***Règlement sur les commissions d'examen*, D.O.R.S./2008-22**
Establishing Review Panels	**Constitution des commissions d'examen**
3 The Minister shall take the following factors into account in determining whether it is necessary to establish a review panel:	3 Le ministre prend en compte les facteurs ci-après pour déterminer s'il y a lieu de constituer une commission d'examen :
(*a*) whether the information in the notice of objection raises scientifically founded doubt as to the validity of the evaluations, on which the decision was based, of the health and environmental risks and the value of the pest control product; and	*a*) l'avis d'opposition soulève un doute, sur la base de renseignements fondés scientifiquement, quant à la validité des évaluations qui ont été faites de la valeur du produit antiparasitaire et des risques sanitaires et environnementaux qu'il présente et qui ont mené à la décision contestée;
(*b*) whether the advice of expert scientists would assist in addressing the subject matter of the objection.	*b*) l'obtention de l'avis de scientifiques serait susceptible de favoriser le règlement de l'objet de l'opposition.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-85-20

APPEAL FROM A JUDGMENT OF THE HONOURABLE JUSTICE SIMPSON OF THE FEDERAL COURT DATED FEBRUARY 13, 2020, NO. T-277-19

STYLE OF CAUSE:	SAFE FOOD MATTERS INC. v. ATTORNEY GENERAL OF CANADA, and DAVID SUZUKI FOUNDATION, ENVIRONMENTAL DEFENCE CANADA INC. and FRIENDS OF THE EARTH CANADA/LES AMIS DE LA TERRE
PLACE OF HEARING:	BY ONLINE VIDEO CONFERENCE
DATE OF HEARING:	DECEMBER 9, 2021
REASONS FOR JUDGMENT BY:	RIVOALEN J.A.
CONCURRED IN BY:	STRATAS J.A. MACTAVISH J.A.
DATED:	FEBRUARY 2, 2022

APPEARANCES:

Andrea Gonsalves Karen Bernofsky	FOR THE APPELLANT
Andrea Bourke Karen Lovell Elizabeth Koudys	FOR THE RESPONDENT
Laura Bowman Ian Miron	FOR THE INTERVENERS

SOLICITORS OF RECORD:

Stockwoods LLP Toronto, Ontario	FOR THE APPELLANT
A. François Daigle Deputy Attorney General of Canada	FOR THE RESPONDENT
Ecojustice Toronto, Ontario	FOR THE INTERVENERS