

Close Cull: SCC Stays Cull of Ostrich Farm Exposed to Avian Flu

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On September 24, 2025, the Supreme Court of Canada (SCC) granted a temporary stay of the Canadian Food Inspection Agency's (CFIA) Notice to Dispose, which ordered the culling of approximately 400 ostriches exposed to an outbreak of avian influenza (H5N1) at Universal Ostrich Farms (Universal Farms) in Edgewood, British Columbia. The SCC's decision to stay the order pending appeal marks the latest development in a series of judicial reviews and appeals that have attracted national and international attention since early 2025.

Background

In December 2024, the CFIA received an anonymous report concerning multiple ostrich deaths (approximately 30 deaths in 3 weeks), at Universal Farms. Following CFIA intervention, the Canadian Animal Health Surveillance Network confirmed that two of the deceased ostriches had tested positive for H5N1 avian influenza. In response, on December 31, 2024, the CFIA issued a Notice to Dispose, mandating the culling of all affected ostriches by February 1, 2025.¹

Ostrich deaths continued at Universal Farms, ultimately reaching 69 deaths, with the last death occurring on January 15, 2025. Universal Farms applied to the CFIA for an exemption of the Notice to Dispose, arguing that its ostriches possessed "rare and valuable genetics" that justified preservation. The CFIA denied the request for exemption, stating that the Universal Farms had provided insufficient evidence to support its claim.² Universal Farms then applied to the Federal Court for judicial review of both the CFIA's decision to issue the Notice of Disposal and its denial of the exemption request. The Federal Court granted a temporary stay of the Notice to Dispose pending review.

Positions of the Parties

The CFIA follows the internationally recognized "Stamping-Out Policy," which requires the swift culling of birds exposed to avian influenza.³ This policy reflects the CFIA's mandate to safeguard public health and Canada's global trade reputation by controlling the spread of zoonotic and enzootic diseases and ensuring the safety of the food supply. In line with this mandate, the CFIA argues that permitting a poultry flock known to be exposed to H5N1 to remain alive poses a significant risk to humans and other poultry due to potential

viral reassortment or mutation.⁴

Universal Farms argued that disposing of approximately 400 ostriches would cause irreparable harm due to the destruction of “rare and valuable poultry genetics” and the loss of a specialized research-based business.⁵ Universal Farms further argued that the cull would also be senseless, given the apparent immunity of the surviving ostriches to H5N1, who have remained healthy for over 200 days.⁶

Judicial History

In May 2025, the Federal Court dismissed both applications for judicial review, finding the CFIA’s decisions procedurally fair and substantively reasonable under the *Health of Animals Act*.⁷

In June 2025, Universal Farms appealed the Federal Court’s decision to the Federal Court of Appeal (FCA). The FCA granted another stay of the Notice to Dispose pending appeal.⁸ The FCA later dismissed the appeal, unanimously siding with the CFIA and emphasizing the CFIA’s broad discretionary authority to order culls based on disease risk.⁹ Universal Farms subsequently appealed the FCA’s decision to the SCC.

SCC Grants Stay of Proceedings

The SCC granted a stay of the CFIA’s Notice to Dispose, temporarily halting the disposal of all affected ostriches until the SCC decides whether to grant leave to appeal the FCA’s decision.¹⁰

In granting the stay, the SCC would have assessed whether the high threshold test was met by considering three factors: (1) whether there was a serious issue to be tried, (2) whether irreparable harm would result without a stay, and (3) whether the harm to Universal Farms from proceeding with the cull outweighed the potential harm to the public if the stay were granted.¹¹

The Implications of the Stay of Proceedings

The SCC’s stay of proceedings does not imply that it will hear the appeal or indicate that the SCC will rule in Universal Farms’ favour. Rather, it halts enforcement of the Disposal Order to allow for legal processes, highlighting the importance of interim relief to fair judicial processes.

Interim relief is a powerful judicial tool used to promote fairness and access to justice by preventing irreparable harm done before a court can make its ruling. The SCC’s willingness to grant Universal Farms the stay clarifies this as a context in which interim relief is justified (i.e., when culling animals is at stake).

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Should the SCC hear Universal Farms' appeal, there is potential for broader policy implications since the case involves several facets of law, including trade, animal welfare, biosecurity, and administrative law.

What's Next

Given the urgent nature of the culling order and the various procedural delays up to this point, the SCC has indicated that it will deal with the matter on an expedited basis.¹² The CFIA must file its response to the appeal application by October 3, 2025, and Universal Farms will then have two days to file a reply. The ostriches will remain under CFIA custody until the SCC decides whether to hear Universal Farms' appeal.

If you have any questions about the content of this article or how to comply with guidance from the CFIA, please contact a member of the Cassels [Regulatory Group](#).

¹ [Supreme Court of Canada grants stay in the case of B.C. ostrich cull | CBC News](#)

² *Universal Ostrich Farms Inc. v. Canada (Food Inspection Agency)*, [2025 FC 878](#) at para 1.

³ *Ibid.*, at para 2.

⁴ [Canada's top court halts execution of nearly 400 ostriches, for now | CBC News](#).

⁵ *Universal Ostrich Farms Inc. v. Canada (Food Inspection Agency)*, [2025 FC 878](#) at para 2.

⁶ [B.C. ostrich cull: Answering your questions after Supreme Court of Canada's reprieve | CBC News](#)

⁷ *Supra* note 2.

⁸ *Universal Ostrich Farms Inc. v. Canada (Food Inspection Agency)*, [2025 FCA 122](#).

⁹ *Universal Ostrich Farms Inc. v. Canada (Food Inspection Agency)*, [2025 FCA 147](#).

¹⁰ *Supra* note 6.

¹¹ *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994 1 SCR 311](#).

¹² *Supra* note 1.