Court File Nos. T-121-22
T-956-21

FEDERAL COURT

BETWEEN:

SAFE FOOD MATTERS INC.
and PREVENT CANCER NOW

Applicants

- and -

ATTORNEY GENERAL OF CANADA
and MINISTER OF HEALTH

Respondents

- and -

JUSTICE FOR MIGRANT WORKERS and
CROPLIFE CANADA

Interveners

APPLICANTS' MEMORANDUM OF FACT AND LAW

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OVERVIEW

1. This case is about whether the Minister of Health (the "**Minister**"), through his delegate the Pest Management Regulatory Agency ("**PMRA**"), reasonably allowed three years of continued sale and use of chlorpyrifos, a pest control product known to cause brain damage in children, after he cancelled all product registrations under the *Pest Control Products Act* (the "**PCPA**" or the "**Act**").

2. Chlorpyrifos is a highly toxic organophosphate pesticide, a class of chemicals first developed as toxic nerve agents in World War II. Chlorpyrifos can permanently damage the developing brains of fetuses and children.

3. The Minister was required to re-evaluate the health effects of chlorpyrifos and determine whether the registrations of chlorpyrifos continued to pose acceptable risks. To do so, he requested data from registrants on health hazards posed by chlorpyrifos as well as occupational exposures. The registrants did not provide the data, and the PMRA cancelled all registrations of pest control products containing chlorpyrifos.

4. Because the Minister did not receive the data, he was unable to complete his assessment of whether chlorpyrifos posed acceptable risks to human health. He nevertheless exercised his discretion under s. 21(5)(a) of the Act to permit continued possession, handling, storage, distribution and use of stocks by allowing sale for two more years and use for three more years. The Minister provided no reasons for this decision and imposed no conditions (the "**First Decision**").

5. The applicants then sought judicial review of the First Decision. The Minister conceded that the First Decision was unreasonable only because no reasons were provided. Subsequently, he published a second decision containing a purported rationale for the three-year phase-out of chlorpyrifos products (the "**Amended Decision**"). In doing so the Minister relied on a policy that he stated required him to implement a phase-out where there were no apparent serious or imminent risks from chlorpyrifos products.

6. The Minister's decisions are unreasonable. The Amended Decision is not a new decision. The Minister failed to ensure that the phase-out posed acceptable risks to

human health as required by the Act. The Minister's Amended Decision is illogical, internally inconsistent and fundamentally misapprehends or ignores key findings of Health Canada's own scientists. The Minister also failed to follow express requirements in the Act including, but not limited to, failing to assess cumulative and aggregate risks and failing to consult the public.

7. A declaration is necessary in this case to ensure the Minister complies with the requirements of the statutory framework in the PCPA in future cancellation decisions.

PART I – FACTS

8. The facts relevant to this application are complex. They are set out in the Affidavits of Elaine MacDonald dated January 19, 2022 and March 7, 2022 which summarize the registration history of chlorpyrifos, the dietary and drinking water assessments conducted by the PMRA, and relevant PMRA policies.[1]

A. The Parties

9. The applicants Safe Food Matters Inc. and Prevent Cancer Now (the "**Applicants**") are two Canadian non-profit organizations working to protect human health and the environment by advocating for limits on the use of harmful pest control products and food production technologies.[2] The Applicants both filed a notice of objection to a previous PMRA decision on chlorpyrifos. The Applicants meet the test for public interest standing and the Respondents have not contested the Applicants' standing to bring the applications.[3]

10. The respondent is the Minister responsible for administering the Act.

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[1] Affidavit of Elaine MacDonald affirmed January 19, 2022 [**First MacDonald Affidavit**] **Applicants' Application Record** [**AR**] **Vol 2, Tab 8**; Affidavit of Elaine MacDonald affirmed March 7, 2022 [**Second MacDonald Affidavit**] **AR Vol 2, Tab 9**.
[2] Affidavit of Margaret Sears affirmed November 2, 2021 [**Sears Affidavit**] at paras 2-7, 9, 12, 17, 25-33 **AR Vol 7, Tab 12, pp.2192-2199**; Affidavit of Mary Lou McDonald affirmed November 3, 2021 [**MLM Affidavit**] at paras 2-9, 11, 17 **AR Vol 7, Tab 11, pp.2098-2101**.
[3] *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 at para 37.

B. The Legislative Scheme

11. The PCPA is built on the premise that pest control products pose potential risks to human health and the environment. The PCPA's primary purpose is to "prevent unacceptable risks to individuals and the environment from the use of pest control products."[4] The legislative and regulatory scheme supports this purpose through a three-pillared approach: "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."[5]

12. The PCPA creates a strong presumption against registration, prohibiting the use, manufacture, sale and other dealings of pest control products until the PMRA has determined that the product's risks are acceptable. At the same time, the PCPA imposes an onus on the would-be registrant to provide enough scientific information to establish that the product's risks are acceptable.[6]

13. Reinforcing its preventative purpose, the PCPA sets a very stringent standard for "acceptable" risk. Under s.2(2), a product's risks are acceptable only where "there is reasonable certainty that no harm to human health, future generations or the environment will result from exposure to or use of the product…"[7] Section 4.1 provides that "[f]or greater certainty, protection and consideration afforded to children in this Act shall also extend to future generations."[8]

14. This high threshold for registration reflects Parliament's concern that only the safest and most useful pest control products should be used in Canada. Parliament adopted this high threshold in the context of pressure from three opposition parties to apply stricter risk standards to pesticides, including recommendations from the Standing Committee on Environment and Sustainable Development to completely

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[4] *Pest Control Products Act*, SC 2002, c 28 [**PCPA**] at preamble and s 4(1).
[5] *Safe Food Matters Inc. v. Canada (Attorney General)*, 2022 FCA 19 at para 1 [***Safe Food Matters***].
[6] PCPA, at ss 2(2), 6, 7(6)(a), 8(1), 8(4), 20, 21(1), 21(2), and 21(5)(a).
[7] PCPA, at s 2(2).
[8] PCPA, at s 4.1.

phase out cosmetic pesticides.[9] The acceptable risk standard adopted in s.2(2) was repeatedly described in Parliamentary proceedings as the highest level of protection for human health and the environment possible short of an outright ban.[10] A standard of "serious and irreversible" harm was explicitly rejected as "lowering considerably the level of protection" and fettering the Minister's ability to refuse registration applications unless there was clear evidence of such harms.[11]

15. Thus, the term "no harm" reflects Parliament's intent to impose a stringent standard which can be triggered by any potential harm. Likewise, the term "reasonable certainty" reflects a high degree of scientific confidence. The certainty in s.2(2) must be both "reasonable" and "scientifically-based".[12]

16. The Minister is also required to review the registration periodically or based on new information through "re-evaluations" and "special reviews" to confirm that the risks remain acceptable.[13] During the course of a re-evaluation, the registrant has the explicit statutory burden to persuade the Minister that the health risks of a pest control product are acceptable.[14]

17. The PCPA also prescribes the specific scientific considerations that the Minister must address when assessing health risks. Section 19 requires the Minister to consider information on aggregate exposure, "namely dietary exposure and exposure from other non-occupational sources, including drinking water and use in and around homes and schools", to assess cumulative effects with products that have a common mechanism of toxicity, and to apply appropriate margins of safety.[15]

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[9] House of Commons Debates, 37-1, No 163 (8 Apr 2002) at 1710-1840; House of Commons, *Pesticides: Making the Right Choice for the Protection of Health and the Environment* (May 2000) (Chair: Charles Caccia) at paras 12.7-12.8.
[10] House of Commons, Standing Committee on Health, *Evidence*, 37-1, No 79 (21 May 2002) at 1140 (Basil Stapleton); House of Commons, Standing Committee on Health, *Evidence*, 37-1, No 80 (23 May 2002) at 1145 (Basil Stapleton).
[11] House of Commons, Standing Committee on Health, *Evidence*, 37-1, No 79 (21 May 2002) at 1200 (Basil Stapleton).
[12] PCPA, at ss 2(1) "health risk" and "threshold effect", 2(2), 7(7), 19(2).
[13] PCPA ss 16, 17, 18, 19, 20.
[14] PCPA ss 2(2), 19(1)(b).
[15] PCPA at s 19(2)(b).

18. Sections 16(3) and 19(1)(a) allow the Minister to deliver a notice in writing requiring product registrants to provide additional information that the Minister considers necessary for the evaluation (a "**Data Call-in**").[16]

19. Under s.20(1), the Minister may cancel registration of a pest control product if either (a) the registrant fails to satisfy a requirement to respond to a Data Call-in, or (b) the Minister has reasonable grounds to believe cancellation is necessary to deal with a situation that endangers human health or safety or the environment. When making a decision on cancellation or amendment following a re-evaluation or special review, the Minister must also take into account the precautionary principle as set out in s.20(2).[17]

20. If a cancellation decision is made under s.20(1)(a), the effective date of cancellation may be delayed only if two conditions are satisfied: (a) no suitable alternative to the use of the pest control product is available, and (b) the Minister considers that the health and environmental risks and value of the product are acceptable until the delayed effective date of amendment or cancellation.[18] Section 22(3) requires the Minister to cancel or amend a registration where he receives a notice of discontinuation.

21. Subsection 21(5) states that when cancelling a product the Minister may also:

> (a) allow the continued possession, handling, storage, distribution and use of stocks of the product in Canada at the time of cancellation, subject to any conditions, including disposal procedures, that the Minister considers necessary for carrying out the purposes of this Act;
>
> (b) require the registrant to recall and dispose of the product in a manner specified by the Minister; or
>
> (c) seize and dispose of the product.

22. Section 28(1)(b) states the Minister "shall consult the public"… before making a decision about the registration of a pest control product on completion of a re-evaluation or special review.[19] Subsection 28(5) of the Act requires the Minister make public "the reasons for it and a summary of any comments that the Minister received

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[16] PCPA, at ss 16(3), 19(1)(a).
[17] PCPA, at s 20(2); *Wier v. Canada*, 2011 FC 1322 [***Wier***] at paras 100-101.
[18] PCPA, at s 21(3).
[19] PCPA, at s 28(1)(b).

on the proposed decision."[20] Subsection 42(2)(h) requires the registry to contain the status, including cancelled status, of all registrations to which this Act applies. Section 35(1) of the PCPA allows any person to file a notice of objection to certain decisions that had been subject to public consultation.

23. In 2018, the PMRA implemented Regulatory Directive DIR2018-01, "Policy on Cancellations and Amendments Following Re-evaluation and Special Review" (the "**Policy**").[21] Per Section 6 of the Policy, existing stocks of products cancelled following re-evaluation will be phased-out on the following three-year timeline:

- One (1) year of sale by registrant from the date of re-evaluation or special review decision, followed by;
- One (1) year of sale by retailer from the last date of sale by registrant, followed by;
- One (1) year of permitted use from the last date of sale by retailer.

24. The Policy creates an exception when the Minister has identified that "risks are imminent and serious" taking into account the potential magnitude of harm, including the seriousness of the effect of concern, the likelihood of the effect occurring, the population exposed to the product, and information such as incident reports and monitoring data.[22] The Policy applies only to cancellations and amendments to registrations "during or following a re-evaluation or special review" and explicitly does not apply to voluntary cancellations.[23]

25. On the same date as the Amended Decision the Minister issued an "update" to the Policy (the "**Cancellation Policy Update**"). The update states that "[i]f there are no serious and imminent risks to human health or the environment, Health Canada **will allow** for a phase out period consistent with the Cancellation Policy…" (emphasis added), and that when risks of concern are considered imminent or serious, Health

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[20] PCPA, at s 28(5).
[21] Affidavit of Elizabeth Gabel affirmed November 17, 2021 [**Gabel Affidavit**], Exhibit B3 **AR Vol 5, Tab 10B.3, pp.1339-1353**.
[22] Gabel Affidavit, Exhibit B3, p.3 **AR Vol 5, Tab 10B.3, p.1359**.
[23] Gabel Affidavit, Exhibit B3, p.2 **AR Vol 5, Tab 10B.3, p.1358**. Notably, some of the cancellations at issue in this case appear to have been discontinuances: see Second MacDonald Affidavit at paras 9-13 **AR Vol 3, Tab 9, pp.494-495**.

Canada "may" require the registrant to recall and dispose of the product… [24] The update also clarifies that there will be no further import or manufacture of the product during the phase-out period.

C. Chlorpyrifos

Chlorpyrifos is a "highly toxic" organophosphate pesticide, a class of chemicals developed as nerve agents in World War II.[25] It inhibits the enzyme acetylcholinesterase ("**AChE**"), necessary for the proper functioning of the human nervous system.[26] It was first registered in Canada in 1969.[27] It is applied directly to crops which may result in human exposure in workers and food. Currently chlorpyrifos is used in Canada on canola, flax, lentil, corn, strawberries, celery, cucumber, green peppers and a variety of other crops. It is also used in forestry and for mosquitos and structural uses.[28] It is historically one of the top ten insecticides used in Canada.[29]

D. The Phase-out Decisions

26. In December 2020, the Minister released the environmental risk portion of the re-evaluation of chlorpyrifos, resulting in cancellations of certain products and uses.[30] The Applicants submitted a notice of objection to the environmental risk decision under

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[24] Second MacDonald Affidavit, Exhibit J **AR Vol 3, Tab 9J, pp.571-572**.
[25] First MacDonald Affidavit at para 10 **AR Vol 2, Tab 8, p.119**; Exhibit F at p.16 **AR Vol 2, Tab 8F, p.222**.
[26] Sears Affidavit, Exhibits D and E **AR Vol 7, Tabs 12D and 12E, pp 2240-2259**; First MacDonald Affidavit at paras 10-13, 31, 35-37, 40, 44-48 **AR Vol 2, Tab 8, pp.119, 127-130**; Gabel Affidavit, Exhibit A6 at pp.3-4, 9, **AR Vol 4, Tab 10A.6, pp.996-997, 1002**; Exhibit A7 at p.9 **AR Vol 4, Tab 10A.7, p.1063**.
[27] First MacDonald Affidavit at para 10-14 **AR Vol 2, Tab 8, pp.119-120**, Exhibit F at p.16 **AR Vol 2, Tab 8F, p.222**; Gabel Affidavit, Exhibit A6 at pp.3-4 **AR Vol 4, Tab 10A.6, pp. 996-997**.
[28] First MacDonald Affidavit at para 12 **AR Vol 2, Tab 8, p.120**, Exhibit L **AR Vol 2, Tab 8L, pp.363-365**; Second MacDonald Affidavit, Exhibit L at pp.15-24 **AR Vol 3, Tab 9L, pp.597-606**.
[29] Sears Affidavit at paras 34-35 **AR Vol 7, Tab 12, p.2199**, Exhibit G **AR Vol 7, Tab 12G, p.2266**; Correspondence between Ecojustice and AGC re corrections to the Affidavit of Margaret Sears, dated June 29 and July 5, 2022 **AR Vol 7, Tab 13, pp.2273-2275**; Certified Tribunal Record in T-121-22 [**Supplementary CTR**] at Doc 01 **AR Vol 14, Tab 19.01, p.4728**.
[30] A list of remaining uses after the environmental risk decision is contained in the Briefing Note for the First Decision: Certified Tribunal Record in T-956-21 [**CTR**] at Doc 433, pp.4-6 **AR Vol 13, Tab 18.433, pp.4587-4589**.

s.35(1) of the Act.[31] In 2019 and early 2021 the Minister commenced the human health risk assessment of chlorpyrifos. The Minister requested human health data regarding uses that were not cancelled in the environmental risk assessment.[32] When the data was not provided, the PMRA cancelled all remaining products registrations.

27. On May 13, 2021, the PMRA released "REV2021-02: Re-evaluation Note: Update on the Re-evaluation of Chlorpyrifos" (the "**First Decision**"). Through REV2021-02, the PMRA stated that it "has cancelled" all remaining chlorpyrifos uses and products, and ordered the existing stocks of all chlorpyrifos products to be phased out with the following timelines:[33]

- Last date of sale by registrant: 10 December 2021;
- Last date of sale by retailers: 10 December 2022; and
- Last date of use for all chlorpyrifos uses/products: 10 December 2023.

28. The cancellation decision led to the termination of the human health risk assessment.[34] The First Decision contained no explanation for the phase-out period. It did not contend that the risks were not serious or imminent[35] or that the risks of chlorpyrifos during the phase-out were acceptable.

29. The Minister now concedes that the First Decision was unreasonable.[36] In October 2021 the Respondents proposed to set aside both the cancellation and phase-out, on narrow grounds, on a motion before the Court without any evidence from the

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[31] Sears Affidavit at paras 25-33 **AR Vol 7, Tab 12, pp.2197-2199**; MLM Affidavit, Exhibit E **AR Vol 7, Tab 11E, pp.2175-2183**. The environmental risk decision is not subject to this application for judicial review, which is limited to the PMRA's cancellation and phase-out decision for failure to provide human health data.
[32] First MacDonald Affidavit at paras 91-92 and 115-118 **AR Vol 2, Tab 8, pp.141, 148**; Gabel Affidavit, Exhibits A12 and A13 **AR Vol 4, Tabs 10A.12-10A.13, pp.1314-1319**.
[33] Gabel Affidavit, Exhibit A11 **AR Vol 4, Tab 10A.11, pp.1307-1310**.
[34] Gabel Affidavit, Exhibit A11 at p.1 **AR Vol 4, Tab 10A.11, p.1310**.
[35] First MacDonald Affidavit at paras 119-121 **AR Vol 2, Tab 8, pp.148-149**; CTR Doc 212 **AR Vol 12, Tab 18.212, p.4114**.
[36] Second MacDonald Affidavit, Exhibits E and H **AR Vol 3, Tabs 9E & 9H, pp.539, 555**.

record in T-956-21.[37] The Applicants declined to consent to such a motion.[38]

30. On December 21, 2021, without notice to the Applicants, the PMRA published a new decision: "REV2021-04: Cancellation of remaining chlorpyrifos registrations under paragraph 20(1)(a) of the Pest Control Products Act" (the "**Amended Decision**").[39] The Amended Decision purports to re-cancel the already cancelled registrations, acknowledging that the First Decision did not contain reasons for the phase-out period. The Amended Decision maintains the phase-out.

31. Relying on the Policy, the Amended Decision states that there are no serious or imminent risks during the phase-out period. The Minister provided the following reasons for this conclusion, in summary: there are no permitted residential uses by homeowners in Canada, mitigation for some risks is in place for workers, chlorpyrifos is not frequently detected in food, there is a low health concern from food alone, there is a low health concern from drinking water, Health Canada's reference doses continue to be protective of the Canadian population, there are "declining" sales in Canada, decreasing use internationally, and no serious Canadian incident reports.

32. The Minister's reasoning for the specific phase-out period is that it "allows existing stocks of chlorpyrifos products in Canada to be exhausted in an orderly manner, to minimize potential risks associated with disposing of existing product all at once, and to minimize potential confusion for the users."[40]

E. PMRA risk assessment process

33. The details of how the PMRA conducts risk assessments and applicable policies are set out in the First MacDonald Affidavit at paras 22-25 and 53-54,[41] and in the

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[37] Second MacDonald Affidavit, Exhibit D **AR Vol 3, Tab 9D, pp.536-537**.
[38] Correspondence of Applicants to the Court October 29, 2021 **AR Vol 7, Tab 15, pp.2289-2292;** *Garshowitz v. Canada (Attorney General)*, 2017 FCA 251 at paras 17-19; *Safe Food Matters Inc. et al v. Minister of Health et al.* (unreported Order) Prothonotary Horne (December 6, 2021) at para 9 **AR Vol 1, Tab 3, pp.64-65**.
[39] Second MacDonald Affidavit, Exhibit H **AR Vol 3, Tab 9H, pp.552-565**.
[40] Second MacDonald Affidavit, Exhibit H at p.3 **AR Vol 3, Tab 9H, p.557**.
[41] First MacDonald Affidavit at paras 22-25, 53-54 **AR Vol 2, Tab 8, pp.123-124, 131-132**; see also Gabel Affidavit, Exhibit B10 at pp.7-9 **AR Vol 5, Tab 10B.10, pp.1472-1474**; Exhibit B12 at pp.2-6, **AR Vol 5, Tab 10B.12, pp.1534-1538**; and Exhibit B11 at p.4 **AR Vol 5, Tab 10B.11, p.1495**.

Second MacDonald Affidavit at paras 48 and 63.[42] The PMRA calculates reference doses to determine safe toxicological levels for exposure.[43] The PMRA considers dietary risks to be acceptable as long as expected intake does not exceed either the acceptable daily intake or acute reference dose.[44] In other words, the reference dose, and whether modelled exposures will exceed it, is used to determine acceptable risk.

34. The Minister is required to calculate dietary risk from both food residues alone and the aggregate risks from food and drinking water.[45] The PMRA policies use water exposure models to estimate the concentration of the pesticide that could run off into surface water or groundwater, known as estimated environmental concentrations.[46] The PMRA then calculates a drinking water level of comparison ("**DWLOC**"), the highest concentration in drinking water that would be acceptable (i.e. produce exposure equal to the reference dose for food and drinking water combined).[47]

F. Toxicology assessment

35. The PMRA developed reference doses for chlorpyrifos products in the early 2000s, based on the neurodevelopmental effects of AChE inhibition.[48] By 2003, the PMRA noted that "a number of publications suggest that chlorpyrifos may have the potential to affect brain development by altering a number of cellular processes and that these effects may be independent of its effects on [AChE]."[49]

36. Starting in 2008, the US Environmental Protection Agency ("**EPA**") began to

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[42] Second MacDonald Affidavit at paras 48 and 63 **AR Vol 3, Tab 9, pp.505, 509-510**.
[43] First MacDonald Affidavit at para 23, **AR Vol 2, Tab 8, p.123**; Gabel Affidavit, Exhibit A6 at p.7 **AR Vol 4, Tab 10A.6, p.1000**.
[44] First MacDonald Affidavit at paras 22-23, **AR Vol 2, Tab 8, p.123**.; Gabel Affidavit, Exhibit B13 at pp.2-7 **AR Vol 5, Tab 10B.13, p.1546-1551**.
[45] PCPA at s.19(2).
[46] Second MacDonald Affidavit at para 63, **AR Vol 3, Tab 9, pp.509-510;** Gabel Affidavit Exhibit B15 at pp. 8-9 **AR Vol 5, Tab 10B.15, pp.1605-1606**.
[47] Second MacDonald Affidavit at para 63 **AR Vol 3, Tab 9, pp.509-510**; Gabel Affidavit Exhibit B15 at pp. 8-9 **AR Vol 5, Tab 10B.15, pp.1605-1606**.
[48] First MacDonald Affidavit at para 22, **AR Vol 2, Tab 8, p.123**; CTR Doc 026 (attachment) at p.2-4 **AR Vol 8, Tab 18.026.a, pp.2422-2424**; Gabel Affidavit, Exhibit A6 at p.4 **AR Vol 4, Tab 10A.6, p.997**.
[49] First MacDonald Affidavit at para 26 **AR Vol 2, Tab 8, p.124**; Gabel Affidavit, Exhibit A6 at p.4 **AR Vol 4, Tab 10A.6, p.997**.

review its use of AChE for reference doses. It repeatedly confirmed through epidemiological and other lines of evidence that serious neurodevelopmental effects in children were predicted at lower levels than those that were involved in AChE inhibition.[50] It also found unacceptable risks and that chlorpyrifos caused "delays in mental development in infants (24-36 months), attention problems and pervasive developmental disorder in early childhood, and intelligence decrements in school age children", and noting it was "impossible" to rule out that a single day of high exposure would have a potential adverse neurodevelopmental effect.[51] Ultimately, after what a US Court described as "egregious delay [that] exposed a generation of American children to unsafe levels of chlorpyrifos"[52] the EPA revoked all food tolerances for chlorpyrifos, ending agricultural uses of the chemical in the United States.[53]

37. The PMRA reviewed these EPA assessments.[54] PMRA scientists recommended in 2015 that the toxicology assessment be updated to consider the EPA's approach to reference doses because the PMRA's was "out of date, against current practices."[55]

38. This 2015 document in its original draft noted that the PMRA had no reference doses for chlorpyrifos oxon, a transformation product that forms in drinking water due to chlorination.[56] PMRA scientists expressed specific concerns over oxon, which had

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[50] First MacDonald Affidavit at paras 34-38, 44-47 **AR Vol 2, Tab 8, pp.126-130**, Exhibit F **AR Vol 2, Tab 8F, pp.227-241**; Gabel Affidavit Exhibits C3 through C14 **AR Vols 5-6, Tabs 10C.3-10C.14, pp.1678-1979**.

[51] First MacDonald Affidavit at paras 45-47, **AR Vol 2, Tab 8, pp.129-130**; Gabel Affidavit, Exhibit C11 at pp.42, 50 **AR Vol 6, Tab 10C.11, pp.1885, 1893**; Exhibit C12 at p.13, **AR Vol 6, Tab 10C.12, p.1923**; Exhibit C13 at p.81050 **AR Vol 6, Tab 10C.13, p.1954**.

[52] First MacDonald Affidavit, Exhibit F at p.66 **AR Vol 2, Tab 8F, p.272**.

[53] First MacDonald Affidavit at paras 47, 161-162, **AR Vol 2, Tab 8, pp.130, 159-160**; Second MacDonald Affidavit at paras 50-52 **AR Vol 3, Tab 9, p.506**; Gabel Affidavit, Exhibit C13 at p.81050 **AR Vol 6, Tab 10C.13, p.1954**; Exhibit C14 at p.48315 **AR Vol 6, Tab 10C.14, p.1958**.

[54] First MacDonald Affidavit at paras 48, 61-68 **AR Vol 2, Tab 8, pp.130, 133-135**.

[55] First MacDonald Affidavit at paras 61-68, **AR Vol 2, Tab 8, pp.133-135**; CTR Doc 026 (attachment) at pp.4-7 **AR Vol 8, Tab 18.026.a, pp.2424-2427**. These specific recommendations were later removed by senior PMRA management: see CTR Docs 027, 029, 031 (attachments), **AR Vol 8, Tabs 18.027.a-18.031.a, pp.2438-2473**, and final briefing note at CTR Doc 386 **AR Vol 13, Tab 18.386, p.4471**.

[56] First MacDonald Affidavit at paras 69, 77, 81-83 **AR Vol 2, Tab 8, pp.135-139**; CTR Doc 038 **AR Vol 8, Tab 18.038, p.2482**.

been identified by the EPA as 1000 times more toxic than chlorpyrifos.[57] This led PMRA scientists to conclude that they needed reference doses for chlorpyrifos oxon.[58] However, the PMRA did not update its toxicology assessment and kept the re-evaluation of the human health aspects of chlorpyrifos on-hold from 2008-2019.[59]

39. In 2021 the Data Call-in for human health included information on the toxicity of chlorpyrifos oxon.[60] Although the PMRA never developed reference doses for the more toxic oxon, the Minister now contends that chlorpyrifos oxon poses a low risk.[61]

40. In 2020 that the European Food Safety Authority ("**EFSA**") was unable to determine a reference dose due to concerns about genotoxicity, neurodevelopmental toxicity and reproductive toxicity and all uses of chlorpyrifos were cancelled in the European Union as a result.[62] The PMRA was aware of this, describing these hazards as "aspects of concern" and deciding to include them in the Canadian re-evaluation.[63]

41. After more than a decade of delay, the PMRA attempted in early 2021 to update its reference doses and exposure data to address issues raised in the EPA, EFSA and Australian reviews through an extensive Data Call-in under s.19(1)(a). However, the registrants did not provide the data and the PMRA cancelled the registrations as a result.[64] In the Amended Decision, the Minister now contends that reference doses from 2000 are protective and finds "low risk" and no serious and imminent risk.[65]

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[57] First MacDonald Affidavit at paras 58-59 **AR Vol 2, Tab 8, pp.132-133**, CTR Doc 038 and 1st attachment **AR Vol 8, Tabs 18.038-18.038.a, pp.2482-2488**.
[58] First MacDonald Affidavit at paras 67, 69, 71-76 **AR Vol 2, Tab 8, pp.135-137**; CTR Doc 038 **AR Vol 8, Tab 18.038, p.2482**.
[59] First MacDonald Affidavit at paras 32-33, 39-43 & 48-50, 68-69 **AR Vol 2, Tab 8, pp.126-135**; CTR Doc 026 (attachment) at pp.4-5 **AR Vol 8, Tab 18.026.a, pp.2423-2424**, CTR Doc 388 **AR Vol 13, Tab 18.388, p.4477**.
[60] Gabel Affidavit Exhibit A13 **AR Vol 4, Tab 10A.13, pp.1315-1319**, CTR Doc 198 (attachment) at pp.8-9 **AR Vol 11, Tab 18.198.a, pp.3961-3962**.
[61] Second MacDonald Affidavit, Exhibit H at p.5 **AR Vol 3, Tab 9H, p.509**.
[62] First MacDonald Affidavit paras 104-114, 163 **AR Vol 2, Tab 8, pp.145-148, 160**; Gabel Affidavit, Exhibit D3 **AR Vol 6, Tab 10D.3, pp.2026-2029**.
[63] First MacDonald Affidavit at paras 109-113 and 115 **AR Vol 2, Tab 8, pp.146-148**, CTR Docs 352 **AR Vol 12, Tab 18.352, pp.4339-4346**, CTR Doc 354 **AR Vol 12, Tab 18.354, p.4347** and CTR Doc 425 at p.3, **AR Vol 13, Tab 18.425, p.4563**; Gabel Affidavit, Exhibit A13 **AR Vol 4, Tab 10A.13, pp.1315-1319**.
[64] First MacDonald Affidavit at paras 115-117 **AR Vol 2, Tab 8, p.148**.
[65] Second MacDonald Affidavit, Exhibit H at pp.5-6 **AR Vol 3, Tab 9H, pp.559-560**.

G. Dietary risk assessment

42. The PMRA last completed a dietary risk assessment for chlorpyrifos in October 2000, which did not include an assessment of drinking water exposures.[66] The assessment concluded that, even without drinking water exposure, potential dietary intake accounted for 71% of the acute reference dose for children 1-6 years and 74% of the acute reference dose in females 13-50 years.[67] The PMRA also identified "significant gaps in field residue data" and water monitoring data.[68] This evaluation was the last time that the PMRA concluded that dietary risks from the uses of chlorpyrifos products were acceptable.

43. In 2015, PMRA scientists recommended that the dietary risk assessment be updated because the use patterns have changed since 2000 and several food residue limits had been added and revised.[69] Soon after, PMRA scientists raised concerns that chlorpyrifos residues were found in 99% of biomonitoring samples[70] and that residues of chlorpyrifos in food commodities were "significantly higher than those used" in the 2000 dietary risk assessment.[71]

44. Just before the First Decision, PMRA scientists confirmed that the dietary risk assessment "needs to be updated to consider exposure of chlorpyrifos from imported treated foods, the most recent residue monitoring data…, metabolites of chlorpyrifos, and any possible revisions of dietary toxicology reference values."[72] They further stated the 2000 dietary risk assessment "does not reflect current science and residue information" and that there were significantly higher residues in commodities, along

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[66] First MacDonald Affidavit at paras 23, 27, **AR Vol 2, Tab 8, pp.123-125**; CTR Doc 375 at pp.4-5 **AR Vol 13, Tab 18.375, pp.4423-4424**; Gabel Affidavit, Exhibit A6 at p.9 **AR Vol 4, Tab 10A.6, p.1002**.
[67] First MacDonald Affidavit at para 29 **AR Vol 2, Tab 8, p.125**, Gabel Affidavit, Exhibit A6 at p.8 **AR Vol 4, Tab 10A.6, p.1001**.
[68] Gabel Affidavit, Exhibit A6 at p.9 **AR Vol 4, Tab 10A.6, p.1002**; First MacDonald Affidavit at para 27 **AR Vol 2, Tab 8, p.124**.
[69] CTR Doc 026 (attachment) at pp.3, 5 **AR Vol 8, Tab 18.026.a, pp.2423-2425**.
[70] CTR Doc 220 (attachment) at p.2 **AR Vol 12, Tab 18.220.a, p.4140**.
[71] First MacDonald Affidavit at para 84, **AR Vol 2, Tab 8, p.139**; CTR Doc 467 at p.2 **AR Vol 13, Tab 18.467, p.4660**.
[72] First MacDonald Affidavit at paras 146-154, 158, **AR Vol 2, Tab 8, pp.155-158**; CTR Doc 198 (attachment) at p.4 **AR Vol 11, Tab 18.198.a, p.3957**.

with higher percent crops treated.[73] PMRA scientists noted that "the 2000 dietary risk assessment is dated and does not reflect the current science and residue information for chlorpyrifos," and "[i]t cannot be relied upon solely in making any re-evaluation decisions [for food residues].[74] PMRA scientists also noted that "current dietary risk to Canadians is unknown and could be underestimated if relying on the 2000 DEA", "future dietary risk to Canadians from imports only is unknown", and "[i]f questioned, PMRA would not be able to scientifically justify maintaining current [food residue limits] based on the outdated dietary risk assessment."[75] These deficiencies were confirmed in a draft Data Call-in Memo in early 2021.[76]

45. In the Amended Decision, the Minister now relies on the 2000 dietary risk assessment and contends that there is "low risk" from food residue.[77]

H. Drinking water and food aggregate risk assessment

46. In the early 2000s, the PMRA requested drinking water data from the registrants and did not receive it.[78] No drinking water assessment was included in the 2000 dietary risk assessment.[79] In 2015, PMRA scientific staff prepared a briefing note to senior managers recommending that the PMRA conduct a drinking water assessment.[80]

47. Between 2016 and 2018 the PMRA would use new monitoring data to prepare several drinking water exposure models addressing Canadian exposures to chlorpyrifos using historical Canadian reference doses.[81] The PMRA scientists relied on modelling

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[73] CTR Doc 467 at p.2 **AR Vol 13, Tab 18.467, p.4660**.
[74] First MacDonald Affidavit at paras 147-153, **AR Vol 2, Tab 8, pp.155-157**; CTR Doc 467 at p.2 **AR Vol 13, Tab 18.467, p.4660**.
[75] CTR Doc 467 at p.3 **AR Vol 13, Tab 18.467, p.4661**.
[76] CTR Doc 198 (attachment) at pp.5-6 **AR Vol 11, Tab 18.198.a, pp.3958-3959**.
[77] Second MacDonald Affidavit, Exhibit H at pp.4-5 **AR Vol 3, Tab 9H, pp.558-559**.
[78] First MacDonald Affidavit, Exhibit C **AR Vol 2, Tab 8C, pp.173-175**; Gabel Affidavit, Exhibit A4 **AR Vol 4, Tab 10A.4, p.983**, Exhibit A6 at p.9 **AR Vol 4, Tab 10A.6, p.1002**; Exhibit A7 at p.6 **AR Vol 4, Tab 10A.7, p.1060**.
[79] Gabel Affidavit, Exhibit A6 at p.9 **AR Vol 4, Tab 10A.6, p.1002**; CTR Doc 375 at pp.4-5 **AR Vol 13, Tab 18.375, pp.4423-4424**.
[80] First MacDonald Affidavit at paras 64-73 **AR Vol 2, Tab 8, pp.134-136**; CTR Docs 026 (attachment) at pp.3, 6, 13, **AR Vol 8, Tab 18.026.a, pp.2423-2433**; CTR Docs 386-388 **AR Vol 13, Tab 18.386-18.388, pp.4471-4478**.
[81] First MacDonald Affidavit at paras 76-89, 97 **AR Vol 2, Tab 8, pp.137-141, 143**.

and described the water monitoring data as "deficient".[82] Each model concluded that drinking water levels of concern were exceeded when current use patterns were permitted.[83] The re-evaluation coordinator for chlorpyrifos described these as pointing to "potential unacceptable risks" for certain populations.[84] These same use patterns are now continued through the current phase-out.[85]

48. The existence of the drinking water modelling and the adverse conclusions the PMRA scientists drew from that modelling was never made public. Any mention of potential unacceptable risk from drinking water was removed from public-facing documents.[86] The Amended Decision does not acknowledge it.[87] Drinking water guidelines remain in place for chlorpyrifos.[88] The Amended Decision now contends that on the basis of monitoring that there is a low risk from drinking water.[89]

I. Occupational exposures and risks

49. The original risk assessment conducted in 2000-2003 did not include important information on dislodgeable foliar residue (DFR) which is relevant to the skin exposure of greenhouse workers.[90] No greenhouse assessment was conducted. The PMRA identified that it was missing inhalation information for adult mosquito uses.[91] This data was requested as part of the 2003 proposed decision but the registrants did not

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[82] First MacDonald Affidavit at paras 76-89 **AR Vol 2, Tab 8, pp.137-141**; Gabel Affidavit, Exhibit A9 at pp.24-25, **AR Vol 4, Tab 10A.9, pp.1188-1189**, Exhibit A10 at p.7 **AR Vol 4, Tab 10A.10, p.1263**.
[83] CTR Doc 045 **AR Vol 10, Tab 18.045, pp.3270-3271**, CTR Doc 050 (attachment) **AR Vol 10, Tab 18.050.a, p.3275**, CTR Doc 066 **AR Vol 10, Tab 18.066, pp.3282-3282**, CTR Doc 454 **AR Vol 13, Tab 18.454, pp.4631-4645**.
[84] First MacDonald Affidavit at paras 96-99, **AR Vol 2, Tab 8, pp.142-144**; CTR Doc 086 and attachment at pp.2 and 30 **AR Vol 10, Tab 18.086-18.086.a, pp.3325-3397**.
[85] First MacDonald Affidavit at paras 86-89, **AR Vol 2, Tab 8, pp.140-141**; CTR Doc 070 (attachment) **AR Vol 10, Tab 18.070.a, p.3290**.
[86] First MacDonald Affidavit at paras 97-99 **AR Vol 2, Tab 8, p.143**; CTR Doc 089 (attachment) at pp.27-28 and 31 **AR Vol 10, Tab 18.089.a, pp.3430-3434**, CTR Doc 103 (second attachment) at pp.27-28 and 30 **AR Vol 10, Tab 18.103.a2, pp.3549-3552**.
[87] Second MacDonald Affidavit at paras 76-78 and 83, **AR Vol 3, Tab 9, pp.515-517**; Exhibit H **AR Vol 3, Tab 9H, pp.552-565**.
[88] Second MacDonald Affidavit at paras 90-95 **AR Vol 3, Tab 9, pp.519-520**.
[89] Second MacDonald Affidavit, Exhibit H at p.5 **AR Vol 3, Tab 9H, p.559**.
[90] Gabel Affidavit, Exhibit A6 at p.28 **AR Vol 4, Tab 10A.6, p.1021**.
[91] First MacDonald Affidavit at paras 90-92 **AR Vol 2, Tab 8, p.141**; CTR Doc 400 **AR Vol 13, Tab 18.400, pp.4494-4495**.

provide it.[92]

50. In 2015, the PMRA decided to assess mosquito adulticide and greenhouse uses for human health.[93] However it took little action on this afterwards and PMRA scientists proposed on multiple occasions to simply cancel these uses.[94] Instead of cancelling the uses, the PMRA re-issued a call for the data in 2019.[95] The PMRA would ultimately reject the data received, and cancel the registrations.[96] Additionally, the 2021 Data Call-in identified numerous other unaddressed issues for occupational risk.[97]

51. Despite the cancellations, these uses remain in place for the duration of the phase-out. The Amended Decision is silent on whether there are acceptable occupational risks for current use patterns and makes no findings about them.

PART II – ISSUES

52. The issues on these judicial review applications are:

1. What is the "decision" of the Minister?
2. Did the Minister comply with his duties under the *Act?*
    a. Did the Minister unreasonably fail to consider the criteria in s.21(5)?
    b. Did the Minister unreasonably interpret s.21(5) and the Policy as limiting his discretion?
    c. Was the Minister's decision unreasonable in light of the constraints in ss.19 and 20 of the Act?

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[92] Gabel Affidavit, Exhibit A6 at p.28 **AR Vol 4, Tab 10A.6, p.1021**; Exhibit A12 **AR Vol 4, Tab 10A.12, p.1312**.
[93] CTR Doc 388 **AR Vol 13, Tab 18.388, p.4477**.
[94] First MacDonald Affidavit at paras 72, 81, 90-91 **AR Vol 2, Tab 8, pp.136, 138, 141**; CTR Doc 404 at p.5 **AR Vol 13, Tab 18.404, p.4502**, CTR Doc 455 at pp.2-3 **AR Vol 13, Tab 18.455, pp.4655-4656**.
[95] Gabel Affidavit, Exhibit A12 **AR Vol 4, Tab 10A.12, pp.1311-1313**.
[96] First MacDonald Affidavit at paras 93, 135-138 **AR Vol 2, Tab 8, pp.142, 153**; CTR Doc 142 **AR Vol 11, Tab 18.142, pp.3688-3690**, CTR Doc 145 **AR Vol 11, Tab 18.145, p.3694**.
[97] CTR Doc 198 (attachment) **AR Vol 11, Tab 18.198.a, pp.3959-3968**.

d. Did the Minister fail to consult the public and provide reasons under s.28 of the Act?

3. Did the Minister misapprehend or ignore the evidence before him that chlorpyrifos posed potential unacceptable risks during the phase-out?

PART III – SUBMISSIONS

53. The standard of review in these applications is reasonableness.[98]

A. What is the "decision" of the Minister?

54. The First Decision cancelled the products and allowed the phase-out. The Amended Decision was made only after the Minister did not succeed in seeking to set aside the First Decision on consent.[99] The Amended Decision is not a fresh exercise of discretion and is simply an after-the-fact attempt to bootstrap and rationalize the First Decision.

55. The Amended Decision confirms the phase-out and solely purports to add new reasons and clarifications to the First Decision. The only change to outcome is that the Amended Decision purports to add two reporting conditions. The Minister did not contest the consolidation of the judicial reviews of each decision.[100]

56. Once the registrations were cancelled in the First Decision, the Minister was *functus officio*.[101] Subsection 21(5) of the Act expressly limits the Minister's discretion to phase out use and distribution of products to "when cancelling the registration…" This discretion applies at the time of cancellation regardless of whether a product is cancelled under ss.20(1)(a) or 22. The power under s.21(5) is an unusual exception to the overall prohibition on unregistered use and sale under section 6 of the Act. As such it should be construed narrowly and in accordance with the overall purpose of the

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[98] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para 16 [***Vavilov***].
[99] Second MacDonald Affidavit, Exhibits D, E, F **AR Vol 3, Tabs 9D-9F, pp.535-548**.
[100] Order of Prothonotary T Horne consolidating Court File Nos. T-956-21 and T-121-22, dated February 15, 2022 **AR Vol 1, Tab 4, pp.74-75**.
[101] *Chandler et al. v. Alberta Association of Architects et al*., [1989] 2 SCR 848, 70 Alta LR (2d) 193 at 862.

statute.[102] The Act's express limitation on the timing of the decision, the requirement to consider disposal conditions, and the cancellation context in which the power is to be exercised all point towards finality. The Minister could not unilaterally undo the cancellations without a new application for registration under sections 7 and 8 of the Act.[103] Despite this, the Minister purported to "immediately" re-cancel the registrations in the Amended Decision.[104]

57. Even if the Minister has some discretion to consider or act upon new health information under s.21(5),[105] the Amended Decision lacks the indicia of a fresh exercise of discretion.[106] It did not turn on any new health evidence, consultation, or other submissions, and did not fundamentally change the contested phase-out in the First Decision. The explicit intention of the Amended Decision is to cure the defective reasons in the First Decision – and it is not a "reconsideration" of the phase-out.[107]

58. Even if the Amended Decision is a new "decision", or provides belated reasons for the First Decision, it is unreasonable. The Amended Decision is non-compliant with essential provisions in the Act, internally inconsistent, lacking in transparency and justification, inconsistent with the underlying cancellation decisions, and fundamentally misapprehends or ignores the evidence before the Minister. In the end result, the Applicants seek declarations that both "decisions" are unreasonable.

B. The Minister failed to comply with his duties under the *Act*

The Minister unreasonably failed to consider the criteria in subsection 21(5) when exercising his discretion

59. Subsection 21(5)(a) of the PCPA is discretionary; this exercise of discretion is

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[102] PCPA, at s 6(1); Ruth Sullivan, *The Construction of Statutes*, 7th ed (LexisNexis Canada Inc: Ottawa, 2022) §15.05.
[103] PCPA, at ss.7-8.
[104] Second MacDonald Affidavit, Exhibit H at p.1 **AR Vol 3, Tab 9H, p.555**.
[105] *Canada (Health) v. The Winning Combination Inc.*, 2017 FCA 101 at paras 79-84; *Interpretation Act*, RSC 1985, c I-21, s.31(3).
[106] *9027-4218 Québec Inc. v. Canada (National Revenue)*, 2019 FC 785 at para 40; *Siyaad v. Canada (Public Safety and Emergency Preparedness)*, 2019 FC 448 at paras 73-87.
[107] Second MacDonald Affidavit, Exhibits D, E, F and H **AR Vol 3, Tab 9D-9H, pp.535-565**.

expressly "subject to" conditions the Minister considers necessary for carrying out the purposes of the Act – the primary purpose being prevention of unacceptable risks. The Minister must exercise his discretion with attention to whether he has reasonable certainty that no harm will occur under subsection 2(2) of the Act, and if not, what conditions might be necessary to prevent unacceptable risks to human health.

60. The Minister failed to consider the test prescribed by statute. Instead, the Minister first applied the three-year phase-out as a default without regard to potential risks, and later attempted to rationalize the decision using the standard from PMRA policy of "serious and imminent harm". In doing so the Minister ignored the express statutory criteria and legal constraints in the Act.

61. As the Federal Court of Appeal recently noted, the discretion of the PMRA is not "untrammeled" and exercises of that discretion must comply with the rationale and purview of the Act.[108] A decision under the PCPA is unreasonable where the decision is not justified in relation to the preamble and purposes of the Act and fails to consider relevant definitions including acceptable risk.[109] The decision-maker's responsibility is to discern meaning and legislative intent, not to "reverse-engineer" a desired (or in this case, pre-determined) outcome.[110] A reasonable decision must be justified in light of the governing statutory scheme, including whether the legislature has chosen to circumscribe a decision-maker's power by using precise and narrow language, and in light of the principles of statutory interpretation including the text, context and purpose of the provision.[111]

62. The Amended Decision's addition of reporting conditions do not serve the Act's primary preventative purpose. The Minister failed to turn his mind to whether the risks of the continued use of chlorpyrifos were acceptable, what conditions might be necessary to render them acceptable, and instead focused on other objectives.

63. In the both decisions the Minister states that the objective of the phase out

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[108] *Safe Food Matters*, at para 47, citing *Vavilov*, at para 108.
[109] *Safe Food Matters*, at paras 51, 65.
[110] *Vavilov*, at para 121; *Safe Food Matters*, at para 40.
[111] *Vavilov*, at paras 110, 120; *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 at paras 21, 31, 35; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 at para 26.

period is to "prevent risks associated with disposing of existing product all at once", and to exhaust existing stocks "in an orderly manner, … and to minimize potential confusion for the users." This was also the sole justification for the First Decision.

64. The Minister's limited findings of "low risk" in the Amended Decision, which are not made for occupational risk, cannot be equated with an overall finding that continued use of chlorpyrifos posed acceptable risks. The Minister was aware of the language in the Act and chose to use other terms, focusing on "serious and imminent harm" and "low risk." The deliberate choice of these terms must be given weight, particularly given the adversarial context in which the Amended Decision came about.

65. Further, if the Minister had confidence in his ability to determine that the risks of continued use of chlorpyrifos were acceptable, he would not have issued a Data Call-in for wide-ranging toxicology data submitted to foreign reviewers with the express purpose of revisiting the hazards of and safe exposure levels of chlorpyrifos.[112] As the data were not provided and the human health evaluation was not completed, the Minister could not have "reasonable certainty that no harm would occur" and he deliberately did not make any finding of acceptable risk.

The Minister unreasonably interpreted s.21(5) and the Policy as requiring him to permit a phase-out where he did not find serious and imminent risks

66. It is clear from the Policy, Cancellation Policy Update, and the Amended Decision that the Minister views the three-year phase-out period in the Policy as mandatory unless "imminent and serious risks are identified..." and that where such risks are not identified, a three-year phase-out identical to that at issue in this case "will" be allowed.[113] The objective of the Policy is to "standardize" timelines.[114] When consulting on the Policy, the PMRA stated that "[s]tandardized timelines reduce the regulatory burden of collecting, providing and assessing information on a product-by-

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[112] CTR Doc 198 (attachment) **AR Vol 11, Tab 18.198.a, pp.3954-3984**, CTR Doc 352 at p.8 **AR Vol 12, Tab 10.352, p.4346**; Gabel Affidavit, Exhibit A10 at p.31 **AR Vol 4, Tab 10A.10, p.1287**.
[113] Gabel Affidavit, Exhibit B3 at p.3 **AR Vol 5, Tab 10B.3, p.1345**; Second MacDonald Affidavit, Exhibit J at p.2 **AR Vol 3, Tab 9J, p.571**; Supplementary CTR Doc 17 **AR Vol 14, Tab 19.17, p.5140**.
[114] Gabel Affidavit, Exhibit B3 at p.1 **AR Vol 5, Tab 10B.3, p.1343**.

product basis."[115] It is clear in the record that the Minister never considered applying any approach to the cancellation other than the default three year phase-out in the Policy.[116]

67. An administrative decision-maker fetters the exercise of their discretion by "relying exclusively on an administrative policy without regard to the law".[117] The legislation that must be the focus of the interpretative exercise, rather than policies developed by the administrative regime.[118] A decision that draws on a policy statement without regard to the law cannot be upheld as reasonable.[119] Here the Minister applied and interpreted the Policy without regard to the purpose or context of the Act or the constraints on his discretion under subsection 21(5).

68. To reasonably exercise his discretion, the Minister must consider more than one part of s.21(5). Subsection 21(5) provides other options for orderly cancellation such as seizure, recall and disposal. The Minister does not explain why allowing continued use and sale better meets the objectives of the Act than, for example, allowing storage and possession until disposal or requiring a product recall. The Minister's failure to turn his mind to this, and his reliance on the Policy to preclude these options, is unreasonable.

69. Subsection 2(2) of the Act requires "reasonable certainty" that "no harm" will occur and does not require a finding of serious health effects. In stark contrast, the Minister defines serious or imminent risk as "a significant likelihood of serious effects occurring, for example, adverse effects reported in incident reports submitted to Health Canada involving death or serious bodily harm."[120] For the Minister to so limit his obligations under subsection 21(5) is unreasonable, particularly when dealing with

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[115] Gabel Affidavit, Exhibit B2, at p.2 **AR Vol 5, Tab 10B.2, p.1335**.
[116] First MacDonald Affidavit at paras 118-122 **AR Vol 2, Tab 8, pp.148-150**, CTR Docs 211-212 **AR Vol 12, Tab 18.211-18.212, pp.4112-4114**; Supplementary CTR Doc 17 **AR Vol 14, Tab 19.17, pp.5135-5141**.
[117] *Bell Canada v. British Columbia Broadband Association*, 2020 FCA 140 at para 157, citing *Stemijon Investments Ltd. v. Canada (Attorney General)*, 2011 FCA 299 at paras 24, 60 [***Stemjion***].
[118] *Canada (Attorney General) v. Picard*, 2014 FCA 46 at paras 21-22.
[119] *Stemijon*, at para 24; *Vavilov*, at para 108.
[120] Second MacDonald Affidavit, Exhibit H at p.3 **AR Vol 3, Tab 9H, p.557**.

human health.

70. The Applicants concede that in *David Suzuki Foundation v. Canada (Health)*, 2019 FC 1637 [***David Suzuki***], this Court held that the Minister did apply the acceptable risk standard when implementing an amendment under s.21(3) and the Policy. In that case, the Court declined to set aside the Policy, as the Court held that it could be (and was in that case) applied in a manner compatible with s.21(3).[121] However *David Suzuki* is distinguishable; in that case the Minister did complete a full re-evaluation and made specific findings on acceptable risks during the phase-out.[122] In contrast, here the Minister was unable to complete any updated human health risk assessment without the requested data, and made no findings of acceptable risks.[123] In the case of chlorpyrifos, the Minister has also interpreted and applied the Policy in a way that gives him no discretion to seize, recall or order disposal of cancelled products with uses posing unacceptable risks. This subverts the primary preventative purpose of the Act and unlawfully fetters his discretion.

The exercise of the Minister's discretion was unreasonable in light of the constraints in sections 19(1)(a), 19(2)(a) and (b) and 20(2) of the Act

71. The exercise of the Minister's discretion under subsection 21(5) is constrained by the three pillars of the Act's express purposes and how the Act gives effect to those purposes.[124] A unanimous panel of the Federal Court of Appeal recently held that it is unreasonable for the PMRA to ignore the requirements in section 19 when making decisions under s.35(1) of the Act, following a re-evaluation.[125] The re-evaluation provisions in section 19 are equally applicable in other decisions flowing from the re-evaluation of products, including the decisions at issue in these applications.

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[121] *David Suzuki Foundation v. Canada (Health)*, 2019 FC 1637 at paras 89-90, 137 [***David Suzuki***].
[122] *David Suzuki* at paras 15, 129-132, 135-137; First MacDonald Affidavit, Exhibits J1 and J2 **AR Vol 2, Tabs 8J.1-8J.2, pp.336-356**.
[123] Notably, the "knockout punch" approach to reasonable statutory interpretation taken in *David Suzuki* pre-*Vavilov* has been expressly overturned. See *Canada (Citizenship and Immigration) v. Mason*, 2021 FCA 156 at paras 23-24, leave to appeal to SCC granted, 2022 CanLII 14385 (SCC).
[124] *Safe Food Matters*, at para 1.
[125] *Safe Food Matters*, at paras 52, 65.

72. Subsection 19(2)(a) of the Act requires the PMRA to apply a scientifically based approach. Implicit in this is that the PMRA will be attentive to its own policies regarding how to assess risks. Further, subsection 19(2)(b)(i) requires that the PMRA consider available information on aggregate exposure to the pest control product, namely dietary exposure and exposure from other non-occupational sources (including drinking water) and cumulative effects of the pest control product and other products that have a common mechanism of toxicity.[126] Section 19(1)(b) also places the "burden" of demonstrating acceptable risk solely on the registrant.

73. The Minister failed to meaningfully grapple with these requirements. For example, the Amended Decision does not acknowledge the existence of modelling showing unacceptable risks from aggregate exposure to diet and drinking water,[127] and exclusively relies on monitoring data that its own policies and past decisions cautioned against[128] and which PMRA scientists had previously rejected as deficient and unreliable.[129] The Minister also failed to apply his own methodologies in dietary risk assessment and uncertainty factors.[130]

74. The Minister also failed to conduct any assessment of the cumulative effects of organophosphates, which he acknowledged had a common mechanism of toxicity of AChE inhibition.[131] The Amended Decision does not acknowledge the significant

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[126] PCPA, at s 19(2)(b)(i).
[127] Second MacDonald Affidavit at paras 76-84, 86-87, 97 **AR Vol 3, Tab 9, pp.515-518, 520**. CTR Doc 070 (attachment) **AR Vol 10, Tab 18.070.a, p.3284**; CTR Doc 086 (attachment) at pp.2 and 30 **AR Vol 10, Tab 18.086.a, pp.3332, 3360**; Gabel Affidavit Exhibit B15 at p.9 **AR Vol 5, Tab 10B.15, p.1606**.
[128] Gabel Affidavit Exhibit B14 at pp.10-12 **AR Vol 5, Tab 10B.14, pp.1582-1584**; Exhibit B15 at pp.8-9 **AR Vol 5, Tab 10B.15, pp.1605-1606**.
[129] Second MacDonald Affidavit at paras 86-87 **AR Vol 3, Tab 9, pp.517-518**, Gabel Affidavit Exhibit A9 at pp. 24-25 **AR Vol 4, Tab 10A.9, pp.1188-1189**, Exhibit A10 at p.7 **AR Vol 4, Tab 10A.10, p.1263**; Exhibit C9 at pp.9-11 **AR Vol 6, Tab 10C.9, pp.1834-1836**.
[130] Gabel Affidavit, Exhibit B10 at p.9 **AR Vol 5, Tab 10B.10, p.1474**; Exhibit B11 at pp.21-25 **AR Vol 5, Tab 10B.11, pp.1512-1516**, Exhibit B12 at pp.2-6 **AR Vol 5, Tab 10B.12, pp.1534-1538**, Exhibit B13 at pp.3-4, 9-18 **AR Vol 5, Tab 10B.13, pp.1547-1548, 1553-1562**, Exhibit B15 at pp.6-8 **AR Vol 5, Tab 10B.15, pp.1603-1605**.
[131] First MacDonald Affidavit at paras 19(d), 25, 133, and 155, **AR Vol 2, Tab 8, pp.122, 124, 152, 158**; Exhibit K **AR Vol 2, Tab 8K, pp.358-361**; CTR Doc 469 **AR Vol 13,**

knowledge gaps on occupational risks from greenhouse or mosquito uses.[132]

75. In the Amended Decision, the Minister reverses the statutory burden on the registrants to prove risks are acceptable. Instead, the Minister places the burden on himself to identify serious and imminent risks, despite the registrants' failure to submit data. This interpretation of the discretion under s.21(5) is unreasonable in light of the objectives and scheme of the PCPA.

76. Finally, the Amended Decision does not address or consider the precautionary principle in subsection 20(2) of the Act.[133] The serious, irreversible effects of chlorpyrifos and uncertainties about reference doses, occupational risk and exposure are not addressed.

77. The Minister ignored key parts of the Policy that could further the Act's purposes as well as the precautionary principle. The Policy requires the Minister to consider the "[p]otential magnitude of harm, in other words, seriousness of the effect of concern, including reversibility."[134] In the Amended Decision, the Minister does not acknowledge the previously conceded potential for permanent brain damage to children, nor the potential for reproductive or genotoxic effects and occupational risks that were to be included in the scope of the health re-evaluation and 2021 Data Call-in.[135] Such potential harms, and whether they are serious or irreversible, are simply dismissed as "hazard based" in the Amended Decision.[136] The Minister fails to grapple with these key issues.

Tab 18.469, p.4681; Gabel Affidavit, Exhibit A6 at pp.3 and 29 **AR Vol 4, Tab 10A.6, pp.996, 1022**.

[132] First MacDonald Affidavit at paras 90-92 **AR Vol 2, Tab 8, p.141**; CTR Doc 198 (attachment) **AR Vol 11, Tab 18.198.a, pp.3959-3968**; CTR Doc 404 at p.5 **AR Vol 13, Tab 18.404, p.4502**, CTR Doc 406 **AR Vol 13, Tab 18.406, p.4518**.

[133] *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town),* 2001 SCC 40 at paras 31-32; *Morton v. Canada (Fisheries and Oceans)*, 2015 FC 575 at paras 40-47.

[134] Second MacDonald Affidavit, Exhibit H at p.3 **AR Vol 3, Tab 9H, p.557**; Gabel Affidavit, Exhibit B3 at p.3 **AR Vol 5, Tab 10B.3, p.1345**.

[135] CTR Doc 198 (attachment) at pp.3-4 **AR Vol 11, Tab 19.198.a, pp.3956-3957**; CTR Doc 354 **AR Vol 12, Tab 18.354, p.4347**; CTR Doc 425 at p.3 **AR Vol 13, Tab 18.425, p.4563**; Sears Affidavit at paras 36-38 **AR Vol 7, Tab 12, pp.2199-2200**.

[136] Second MacDonald Affidavit, Exhibit H at p.7 **AR Vol 3, Tab 9H, p.561**; First MacDonald Affidavit at paras 109-113, **AR Vol 2, Tab 8, pp.146-147**.

The Minister failed to comply with his duties under s.28 of the Act to consult the public and give adequate reasons

78. Transparency is an express ancillary purpose of the Act.[137] Subsection 28(1)(b) of the Act required the Minister to consult the public on his phase-out and cancellation decision because the decision was a decision "about the registration of" chlorpyrifos at the completion of a re-evaluation." The public consultation requirement gave rise to a duty to give reasons under subsection 28(5). No public consultation occurred with either decision. Further, the Minister has failed to ensure that the cancelled status of the products is on the public registry pursuant to subsection 42(2)(h).[138]

79. Curiously, the Minister conceded that the First Decision was unreasonable for failure to provide reasons, implicitly acknowledging that s.28(5) applied,[139] but declined to consult the public on the Amended Decision. The Minister ignored the Applicants' request to be advised and consulted on the decision in a timely way.[140]

80. The Minister's interpretation of the Act to allow him to provide reasons, six months after the fact and during a judicial review, is unreasonable. This interpretation undermines the transparency purpose of the Act and the requirements of s.28.

81. The reasons provided in the Amended Decision are not supported by the record that was before the Minister when the decision was made.[141] It is trite that a decision-maker must disclose the rationale for its decision at the time it was made.[142] As a matter of common sense, any new reasons offered by a decision-maker after a challenge to a

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[137] PCPA, at s 4(2); see also *Safe Food Matters* at para 1.
[138] Second MacDonald Affidavit at paras 34-36, **AR Vol 3, Tab 9, pp.501-502**; Exhibit L **AR Vol 3, Tab 9L, pp.583-608**; Exhibit K **AR Vol 3, Tab 9K, pp.575-581**.
[139] Second MacDonald Affidavit at paras 16-20 **AR Vol 3, Tab 9, pp.496-497**, Exhibits D, F and H **AR Vol 3, Tab 9D-9H, pp.535-565**.
[140] Second MacDonald Affidavit at paras 21 and 25 **AR Vol 3, Tab 9, pp.498-499**, Exhibit G **AR Vol 3, Tab 9G, pp.550-551**; Exhibit I **AR Vol 3, Tab 9I, p.567**.
[141] *Stemjion*, at para 41.
[142] *Stemjion* at paras 41-42; *Leahy v. Canada (Minister of Citizenship and Immigration)*, 2012 FCA 227 at para 145 [***Leahy***]; *Dukuzeyezu v. Canada (Minister of Citizenship and Immigration)*, 2020 FC 1017 at paras 10-11 [***Dukuzeyezu***]; *Shahzad v. Canada (Minister of Citizenship and Immigration)*, 2017 FC 999 at para 19; *Guo v. Canada (Citizenship and Immigration)*, 2022 FC 883 at para 14.

decision has been launched must be viewed with deep suspicion.[143] Transparency – a key pillar of the PCPA – is undermined if decision-makers are able to alter or bootstrap their reasons after the fact.[144]

C. The Minister misapprehended the evidence and provided an irrational chain of analysis

82. Reasons are the "primary mechanism" by which decision-makers show that their reasons are reasonable to the reviewing court.[145] As stated in *Vavilov*: "a decision will be unreasonable if the reasons for it, read holistically, fail to reveal a rational chain of analysis or …where the conclusion reached cannot follow from the analysis undertaken."[146] A reasonable decision must also be justified in light of the evidentiary record and general factual matrix in front of the decision-maker.[147] The decision-maker must grapple with the essential issues raised in the record.[148]

83. The Minister has a statutory duty to consider the available information on potential risks, including past findings of PMRA scientists in his possession, before making his decision.[149] The reasons contained in the Amended Decision do not account for or "grapple" with his scientists' own adverse findings of potential unacceptable risk or the health risks raised by the Applicants.[150] The reasons do not acknowledge or address uncertainties about risks or the Minister's decision to request data to update the human health risk assessment. The Minister simply omits significant adverse findings of PMRA scientists that contradict the rationale in the Amended Decision, and which

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[143] *Stemjion*, at para 41; *R. v. Teskey*, 2007 SCC 25 at para 18.
[144] *Dukuzeyezu*, at para 12.
[145] *Vavilov*, at para 81, citing *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, 174 DLR (4th) 193 at para 39.
[146] *Vavilov*, at para 103.
[147] *Vavilov*, at paras 103-104, 126; see also *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2017 FCA 128 at para 72.
[148] *Vavilov*, at para 129; *Mowi Canada West Inc. v. Canada (Fisheries, Oceans and Coast Guard)*, 2022 FC 588 at paras 247-252; *Wilkinson v. Canada (Attorney General)*, 2014 FC 741 at paras 20, 44 and 45; *Séguin v. Canada (Attorney General)*, 2021 FC 45 at paras 37-40.
[149] PCPA, at s 19(2)(b)(i); *Wier*, at paras 86-87; *Vavilov*, para 126.
[150] Sears Affidavit, Exhibits D and E **AR Vol 7, Tabs 12D-12E, pp.2240-2259**; MLM Affidavit, Exhibit D **AR Vol 7, Tab 11D, pp.2147-2174**; First MacDonald Affidavit at para 121 **AR Vol 2, Tab 8, p.149**; CTR Doc 212 **AR Vol 12, Tab 18.212, p.4114**.

identified both hazards and exposures of concern.[151] Further, the Minister's reasons contain significant unexplained internal contradictions and inconsistencies regarding the relevance of use patterns and reference doses in foreign reviews.[152] In short, the Minister's reasons on essential issues do not "add up".[153]

84. By failing to consider disposal, seizure or recall or other options such as continued possession, the Minister also operates on the premise that there are only two options under s.21(5): the specific three-year phase-out under the Policy or a disorderly disposal of product by confused users. Not only is this contention not substantiated in the reasons, the record, or even an affidavit, the uncontested evidence directly contradicts the Minister's conclusion.[154] The Minister's conclusion that his chaotic decision-making avoids confusion for the users is unintelligible.

85. PMRA scientists and managers had acknowledged immediately prior to the First Decision that no imminent risk analysis had been done for the health assessment. In preparing the First Decision, PMRA scientific staff deliberately asked senior managers not to include language suggesting they had evaluated serious or imminent risk noting that "we haven't done the additional work related to human health."[155]

86. There is no evidence in the record that PMRA scientists reversed their findings or did any further analysis finding "low risk" prior to the Amended Decision.[156] The record produced in support of the Amended Decision is devoid of any new technical hazard or risk analysis by PMRA scientists produced after the First Decision.[157] The

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[151] Second MacDonald Affidavit at paras 40-105 **AR Vol 3, Tab 9, pp.503-522**.
[152] Second MacDonald Affidavit at paras 53-54, **AR Vol 3, Tab 9, pp.506-507**; Exhibit H at p.6 **AR Vol 3, Tab 9H, p.560**.
[153] *Alexion Pharmaceuticals Inc. v. Canada (Attorney General)*, 2021 FCA 157 at paras 12-33.
[154] First MacDonald Affidavit at paras 164-166 **AR Vol 2, Tab 8, pp.160-161**, Exhibits O, P, Q **AR Vol 2, Tabs 8O-8Q, pp.395-435**.
[155] First MacDonald Affidavit at paras 118-122 **AR Vol 2, Tab 8, pp.148-150**; CTR Doc 212 **AR Vol 12, Tab 18.212, p.4114**.
[156] Second MacDonald Affidavit at para 83 **AR Vol 3, Tab 9, pp.516-517**.
[157] Second MacDonald Affidavit at para 120 **AR Vol 3, Tab 9, p.526**, Exhibits U-V **AR Vol 3, Tabs 9U-9V, pp.952-956**. As in *Centre Québécois du droit de l'environnement v. Canada (Environment)*, 2015 FC 773 at para 75, and distinguishable from evidence generated by the PMRA to support the Minister's decision in *Wier*, at para 88.

single, final briefing note in the record, sponsored by a senior manager, does not reference past findings of PMRA scientists or explain why they are no longer valid.[158]

87. The justifiability and intelligibility of the Minister's approach of identifying only whether the risks are serious and imminent, and making statements about "low risk", must also be considered in light of the nature and context of the Data Call-ins that led to cancellation. PMRA scientists repeatedly raised serious unassessed hazards for chlorpyrifos,[159] and outdated assessments.[160] When these hazards were assessed in foreign reviews, they led to widespread use cancellations in two other major OECD jurisdictions.[161] PMRA staff used these foreign assessments to compile the human health Data Call-in that led to the cancellation.[162] In large portions of the Amended Decision, the PMRA now repudiates the significance of those reviews. The Minister has provided no supporting science evaluations for these new conclusions, and no affidavit.[163] As in *Wier*, the scientific rationale "is not properly documented in the record such that it could be relied upon as the basis for the decision."[164]

88. Further, the Minister's own scientists found unacceptable drinking water exposure from the uses of chlorpyrifos now continued through the phase-out.[165] The Amended Decision does not even acknowledge that this assessment took place, and is not transparent or intelligible as a result.

D. Relief should be granted

89. In earlier stages of this proceeding, the Respondents conceded the First

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[158] Supplementary CTR Doc 17 **AR Vol 14, Tab 19.17, pp.5135-5141**.
[159] First MacDonald Affidavit at paras 26, 31, 51-85, 90-99, 112-113 **AR Vol 2, Tab 8, pp.124-126, 131-144, 146-147**.
[160] First MacDonald Affidavit at para 150 **AR Vol 2, Tab 8, p.156**; CTR Doc 198 (attachment) at pp.5-6 **AR Vol 11, Tab 18.198.a, pp.3958-3959**, CTR Doc 467 at p.3 **AR Vol 13, Tab 18.467, p.4661**.
[161] First MacDonald Affidavit at paras 34 and 104-108 **AR Vol 2, Tab 8, pp.126, 145-146**; Exhibit F, **AR Vol 2, Tab 8F, pp.207-322**.
[162] CTR Doc 198 (attachment) **AR Vol 11, Tab 18.198.a, pp.3955-3956**.
[163] Second MacDonald Affidavit at para 120 **AR Vol 3, Tab 9, p.526**, Exhibits U and V **AR Vol 3, Tabs 9U-9V, pp.952-956**.
[164] *Wier*, at para 106. See also *Leahy*, at para 100
[165] Second MacDonald Affidavit at paras 63-73 **AR Vol 3, Tab 9, pp.509-513**; First MacDonald Affidavit at paras 94-99 **AR Vol 2, Tab 8, pp.142-144**; CTR Doc 086 (attachment) at pp.2 and 30 **AR Vol 10, Tab 18.086.a, pp.3332, 3360**.

Decision was unreasonable and consented to setting it aside.[166] There is no basis for them to now oppose a declaration of same. The Applicants seek declaratory relief because of the public interest in protecting children from pesticides, and the importance of this case for future PMRA decision-making.

90. The case has been argued on a full evidentiary record with two interveners representing different points of view.[167] The relief sought in this matter is comparable to the declaratory relief granted in *Équiterre v. Canada (Health)*, 2016 FC 554. As in that case, there is an adversarial context regarding the duties of the PMRA under the Act and it would be consistent with the court's adjudicative function to determine this matter.[168] There are no precedents dealing with human health risks under s.21(5).

91. This case is not moot. The relief sought is forward-looking and not tied to the end of the phase-out period in December 2023, which in any event has not yet occurred. The Amended Decision did not change the fundamental elements of the First Decision which were in dispute, nor did it change the adversarial context. This matter is distinguishable from *David Suzuki Foundation v. Canada (Attorney General)*, 2019 FC 411, where the impugned provisions and process of the legislative scheme had been repealed.[169]

92. Even if the Court finds aspects of the case moot, the Court should exercise its discretion to grant the declarations anyway. The factors relevant to this discretion are whether an adversarial context remains present, judicial economy, and the proper law-making function of the court.[170]

93. This proceeding took over a year and a half to get to a hearing, demonstrating

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[166] Second MacDonald Affidavit, Exhibit D **AR Vol 3, Tab 9D, p.536**.
[167] All former registrants were consulted by the Respondents and chose not to participate beyond confidentiality issues: *Safe Food Matters Inc. et al v. Minister of Health et al.* (unreported Order) Prothonotary Horne (June 13, 2022) at para 6 **AR Vol 1, Tab 6, p.86**. None of the former registrants are prejudicially affected by the declarations sought and are already prohibited from selling their products: see *Hospira Healthcare Corporation v. Canada (Health)*, 2014 FC 179 at para 9.
[168] *Équiterre v. Canada (Health)*, 2016 FC 554 at paras 38-43; *Canada (Fisheries and Oceans) v. David Suzuki Foundation*, 2012 FCA 40 at paras 55-64; *Federal Courts Rules*, SOR/98-106, rule 64.
[169] *David Suzuki Foundation v. Canada (Attorney General)*, 2019 FC 411 at paras 3, 94, 117-118.
[170] *Borowski v. Canada (Attorney General)*, [1989] 1 SCR 342, 57 DLR (4th) 231 at 358-363.

that a three-year phase out can be potentially evasive of review. The Minister's current practice, as demonstrated in this case, is to start with a presumptive three-year phase-out timeline without considering whether risks remain acceptable. This situation puts the health of Canadians at risk and subverts the primary purpose of the statutory scheme. Accordingly, the review of this conduct is of public importance. Without guidance from the Court in the form of a declaration, the Minister will continue to rely on an unreasonable interpretation of these provisions and his obligations under the Act.

E. Costs

94. The Applicants request an order pursuant to Rule 400 that no costs be awarded in any event of the cause on public interest grounds.[171]

PART IV – ORDER SOUGHT

95. The Applicants seek the relief set out in their second amended notice of application in T-956-21 and their notice of application in T-121-22.[172]

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Toronto this 28th day of September 2022.

Laura Bowman
1910-777 Bay Street, P.O. Box 106
Toronto, ON M5G 2C8
Tel: (416) 368-7533 ext. 522
Fax: (416) 363-2746
lbowman@ecojustice.ca

Daniel Cheater
390-425 Carrall Street
Vancouver, BC V6B 6E3
Tel: (604) 685-5618 ext. 282
Fax: (604) 685-7813
dcheater@ecojustice.ca

Counsel for the Applicants, Safe Food Matters Inc. and Prevent Cancer Now

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[171] *Mcewing v. Canada (Attorney General)*, 2013 FC 953 at paras 13-14*;* *Federal Courts Rules*, at rule 400.

[172] Second Amended Notice of Application (Court File No. T-956-21), filed February 10, 2022 at para 6 **AR Vol 1, Tab 1, pp.3-4**; Notice of Application (Court File No. T-121-22) filed January 20, 2022 at para 6 **AR Vol 1, Tab 2, pp.35-36**.

PART V – LIST OF AUTHORITIES

Statutes and Regulations

1. *Federal Courts Act*, RSC 1985, c F-7
2. *Federal Courts Rules*, SOR/98-106
3. *Interpretation Act*, RSC 1985, c I-21
4. *Pest Control Products Act*, SC 2002, c 28

Case Law

5. *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, 2001 SCC 40
6. *9027-4218 Québec Inc. v. Canada (National Revenue)*, 2019 FC 785
7. *Alexion Pharmaceuticals Inc. v. Canada (Attorney General)*, 2021 FCA 157
8. *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817
9. *Bell Canada v. British Columbia Broadband Association*, 2020 FCA 140
10. *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42
11. *Borowski v. Canada (Attorney General)*, [1989] 1 SCR 342
12. *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45
13. *Canada (Attorney General) v. Picard*, 2014 FCA 46
14. *Canada (Citizenship and Immigration) v. Mason*, 2021 FCA 156
15. *Canada (Fisheries and Oceans) v. David Suzuki Foundation*, 2012 FCA 40
16. *Canada (Health) v. The Winning Combination Inc.*, 2017 FCA 101
17. *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65

18. *Centre Québécois du droit de l'environnement v. Canada (Environment)*, 2015 FC 773

19. *Chandler et al. v. Alberta Association of Architects et al.*, [1989] 2 SCR 848

20. *David Suzuki Foundation v. Canada (Attorney General)*, 2019 FC 411

21. *David Suzuki Foundation v. Canada (Health)*, 2019 FC 1637

22. *Dukuzeyezu v. Canada (Minister of Citizenship and Immigration)*, 2020 FC 1017

23. *Earl Mason, et al. v. Minister of Citizenship and Immigration, et al.*, 2022 CanLII 14385 (SCC)

24. *Équiterre v. Canada (Health)*, 2016 FC 554

25. *Garshowitz v. Canada (Attorney General)*, 2017 FCA 251

26. *Guo v. Canada (Citizenship and Immigration)*, 2022 FC 883

27. *Hospira Healthcare Corporation v. Canada (Health)*, 2014 FC 179

28. *Leahy v. Canada (Minister of Citizenship and Immigration)*, 2012 FCA 227

29. *Mcewing v. Canada (Attorney General)*, 2013 FC 953

30. *Morton v. Canada (Fisheries and Oceans)*, 2015 FC 575

31. *Mowi Canada West Inc. v. Canada (Fisheries, Oceans and Coast Guard)*, 2022 FC 588

32. *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27

33. *R. v. Teskey*, 2007 SCC 25

34. *Safe Food Matters Inc. v. Canada (Attorney General)*, 2022 FCA 19

35. *Séguin v. Canada (Attorney General)*, 2021 FC 45

36. *Shahzad v. Canada (Minister of Citizenship and Immigration)*, 2017 FC 999

37. *Siyaad v. Canada (Public Safety and Emergency Preparedness)*, 2019 FC 448

38. *Stemijon Investments Ltd. v. Canada (Attorney General)*, 2011 FCA 299

39. *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2017 FCA 128

40. *Wier v. Canada*, 2011 FC 1322

41. *Wilkinson v. Canada (Attorney General)*, 2014 FC 741

Secondary Sources

42. Ruth Sullivan, *The Construction of Statutes*, 7th ed (LexisNexis Canada Inc: Ottawa, 2022)

43. House of Commons Debates, 37-1, No 163 (8 Apr 2002)

44. House of Commons, *Pesticides: Making the Right Choice for the Protection of Health and the Environment* (May 2000)

45. House of Commons, Standing Committee on Health, *Evidence*, 37-1, No 79 (21 May 2002)

46. House of Commons, Standing Committee on Health, *Evidence*, 37-1, No 80 (23 May 2002)