



Court File No. *T-2261-22*

FEDERAL COURT (CANADA)

**ANIMAL JUSTICE CANADA and
SOI DOG CANADA**

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

NOTICE OF APPLICATION FOR JUDICIAL REVIEW

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Ottawa.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules* information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

October 27, 2022

Issued by: _____

**ORIGINAL SIGNED BY
WAYNE SAWTELL
A SIGNÉ L'ORIGINAL**

(Registry Officer)

Address of local office: Federal Court (Canada)
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Respondent

APPLICATION

This is an application for judicial review pursuant to section 18.1 of the *Federal Courts Act*, R.S.C., 1985, c. F-7, of an order made by a delegate of the Minister of Agriculture and Agri-Food (the “**Minister**”) pursuant to section 27.1(2) of the *Health of Animals Act*, S.C. 1990, c.21 (“*HAA*”) (the “**Secondary Control Zone Order**”).

Together with an Order made by a delegate of the Minister pursuant to section 27.1(3) of the *HAA* (the “**Designation Order**”) and an order made by a delegate of the Minister pursuant to section 27.1(4) of the *HAA* (the “**Prohibition Order**”), these Orders cumulatively have the effect of prohibiting the entry of “commercial dogs” into Canada—with the exception of personal pet dogs and assistance dogs—from 109 countries (collectively the “**Decision**”). Commercial dogs include dogs rescued abroad and destined for adoption or foster in Canada.

Although the Secondary Control Zone Order is dated June 28, 2022, all three Orders were posted publicly on or about September 27, 2022. Their cumulative effect is to prohibit the entry of all commercial dogs from over 109 countries as of September 28, 2022. There are no exceptions to this blanket prohibition.

The Applicants make application for:

- i. An Order pursuant to Rule 302 of the *Federal Courts Rules* permitting this application to challenge three orders, *i.e.*, the Secondary Control Zone Order, the Designation Order and the Prohibition Order.
- ii. An Order declaring the Secondary Control Zone Order invalid or unlawful, and an Order requiring the Minister reconsider the Secondary Control Zone Order in accordance with this Honourable Court’s directions;
- iii. If necessary, an Order extending the time for filing this application pursuant to subsection 18.1(2) of the *Federal Courts Act*;
- iv. An Order for costs of this application; and
- v. Such further and other relief as this Court considers appropriate.

The grounds for the application are:

I. Parties to the Application

1. The Applicant Animal Justice is Canada's leading animal advocacy organization focused on animal law. Animal Justice is comprised of Animal Justice Canada, and Animal Justice Canada Legislative Fund, a non-profit (collectively, "Animal Justice"). Both entities are incorporated pursuant to the *Canada Not-for-profit Corporations Act*. Animal Justice has a long-standing, genuine, and continuing concern with ensuring that animals are protected from harm, suffering, and killing to the maximum extent possible under Canadian law.
2. Animal Justice works to prevent animal suffering through the enforcement of existing laws, strengthening legal protections for animals, and increasing public awareness regarding risks to animals' health and well-being posed by a range of animal use industries, including the pet trade. Animal Justice actively supports the work of animal rescue organizations and promotes dog rescue and adoption in order to promote the well-being of vulnerable dogs in need of homes and to prevent the breeding and sale of dogs by "puppy mills" and unscrupulous breeders. The group has been actively engaged in opposing and increasing public awareness about the Decision to ban the import of dogs that is at issue in this application.
3. Animal Justice has a history of involvement, both as a party and as an intervener, in Court cases across Canada involving the interests of animals and the interpretation of laws aimed at protecting the interests of animals. The group has appeared before a range of Canadian courts, including the Ontario Court of Appeal, the Alberta Court of Appeal, and the Supreme Court of Canada. It has significant experience and expertise with the interpretation of the *HAA* and the *Health of Animals Regulations*, C.R.C. c. 296 ("**HAR**").
4. The Applicant Soi Dog Canada ("**Soi Dog**") is a not-for-profit corporation incorporated pursuant to the *Canada Not-for-profit Corporations Act*, operating under the umbrella of Soi Dog International. It is dedicated to improving the health and well-being of street dogs and working towards the elimination of cruelty and neglect toward dogs in Thailand. Soi Dog imports dogs for adoption in Canada from its hospital and sanctuary facilities in Phuket, Thailand, where approximately 1,700 vulnerable animals, including both cats and dogs, are under its care. Soi Dog has also spayed and neutered over 800,000 animals in Thailand, effectively eliminating canine rabies from the island of Phuket.
5. Soi Dog imports approximately 100 dogs into Canada per year on average. Dogs are imported either for private adoption or are placed with partner

rescue organizations situated across Canada. Soi Dog conducts extensive due diligence on individuals wishing to adopt its dogs and on its partner organizations to ensure the dogs will be well cared for the duration of their lives.

6. Likewise, Soi Dog ensures that dogs are healthy and fully vaccinated—notably against rabies—and complies with all Canadian health and safety requirements prior to the dogs being imported into Canada.
7. Since its inception, Soi Dog has imported 528 dogs into Canada. It has never imported a dog infected with rabies.
8. Soi Dog is aware of at least 50 other Canadian rescue organizations importing dogs. It estimates that thousands of rescued dogs are imported into Canada every year.
9. The Canadian Food Inspection Agency (“CFIA”) is a federal regulatory agency established pursuant to the *Canadian Food Inspection Agency Act*, S.C. 1997, c. 6. The CFIA is responsible for the administration and enforcement of an enumerated set of federal statutes, including the *HAA*. Its mission consists of protecting Canadians from preventable health risks related to zoonotic diseases and safeguarding animals, in addition to plants and food.
10. The Minister has the authority, pursuant to section 27.1(2) of the *HAA*, to declare by Order “any area in Canada” to be a secondary control zone where she believes that “a disease or toxic substance exists in an area outside Canada” and that declaring the area to be a secondary control zone is necessary for the purpose of “preventing” or “monitoring” the spread of that disease. Pursuant to section 27.1(3) of the *HAA*, the Minister may by Order, designate any animal that is capable of being affected by the disease in respect of which the secondary control zone is declared under section 27.1(2). The Minister may likewise, by Order pursuant to section 27.1(4) of the *HAA*, prohibit or impose conditions on the movement of designated animals into and out of a secondary control zone.

II. The Decision at Issue in this Application

11. On June 28, 2022, the CFIA announced in a notice to industry published on its website that it would be implementing a ban on the entry of “commercial dogs” from “countries at high-risk for dog rabies” (the “**Import Ban Notice**”). It noted that commercial dogs “can include, but are not limited to dogs for resale, adoption, fostering, breeding, show or exhibition, research, and other purposes.”

12. The notice specified that dogs were imported into Canada with dog rabies in 2021, but that there are no current active cases of the disease in Canada. The notice further advised that existing import permits would remain valid until September 28, 2022, and that all shipments of commercial dogs from target countries would be prohibited thereafter.
13. According to the CFIA's own publicly available information, there have been only two cases of "recently imported" dogs with rabies, one in 2021 and one in 2022. Both dogs were imported from Iran.
14. Both Applicants learned of the CFIA's planned import ban by way of the Import Ban Notice. Neither of the Applicants were previously notified or consulted by the CFIA. To the Applicants' knowledge, the CFIA did not consult with any of the over 50 Canadian dog rescue organizations directly and adversely impacted by the blanket import ban.
15. Conversely, the Applicants understand the CFIA engaged in consultation with groups representing the pet industry and purebred dog breeders—groups that are adverse in interest to the Applicants and to the dog rescue community—prior to the import ban coming into effect.
16. After learning of the Import Ban Notice, Animal Justice launched a campaign and action page on June 29, 2022, encouraging its supporters to write to Members of Parliament and call on the CFIA to amend the proposed import ban. More than 33,000 individuals have signed Animal Justice's petition calling for an amendment.
17. The Applicants also attempted outreach with the CFIA. On July 24, 2022, Soi Dog sent a letter to the CFIA expressing its concerns with the import ban. The CFIA responded on August 17, 2022, in an email describing the Decision defending the CFIA's approach as "relevant and proportionate to the current public health risk." Soi Dog sent a follow-up letter on August 30, 2022.
18. Given the absence of meaningful consultation by the CFIA in response to these outreach efforts, the Applicants and the Rescue Dogs Advocacy Coalition ("RDAC")—an association that advocates for dog rescue groups and the welfare of rescue dogs—sent a complaint to the CFIA's Complaints and Appeals Office on September 26, 2022. The complaint urged that the CFIA not implement the blanket import ban and instead introduce an effective, science-based approach to rabies prevention as recommended by the World Organisation for Animal Health. Animal Justice sent an addendum to the original complaint on October 6, 2022. The Applicants and RDAC have not yet received a response to their complaint.

19. Rather, the CFIA posted the three orders effecting the import ban at issue in this application on or about September 27, 2022. First, the President of the CFIA issued the Secondary Control Zone Order declaring a secondary control zone applicable to 199 airports, airparks, and seaplane terminals located across all Canadian provinces and territories. In promulgating this order, she stated her belief that rabies caused by canine-variant viruses “can be prevented from spreading into Canada” in the 199 areas identified in the Order. Although this order is dated June 28, 2022, it was posted publicly by the CFIA on or about September 27, 2022.
20. Second, an Inspector of the CFIA issued the Designation Order designating all dogs—except for personal pet dogs and assistance dogs—as “being capable of being affected or contaminated by rabies caused by canine-variant viruses.” This order is dated September 27, 2022.
21. Third, an Inspector of the CFIA issued the Prohibition Order prohibiting “the taking into, moving within or removing from, any of the secondary control zones” identified in the Secondary Control Zone Order the animals identified in the Designation Order originating from 109 “high-risk countries for rabies.” This order is dated September 27, 2022.
22. The effect of the Decision has been the immediate cessation of imports of dogs for adoption and fostering from the target countries effective September 28, 2022. The Decision will materially harm the operations of Soi Dog and other organizations that rescue dogs from these countries. The Decision also unnecessarily deprives safe and humane placements for dogs who are in dire need, and unreasonably inhibits the ability of Canadian families to adopt dogs from abroad. Over the longer term, the Decision is reasonably expected to increase animal suffering contrary to the HAA’s stated purpose—*i.e.*, the “protection of animals”—due to an increased reliance on inhumane puppy-mills and commercial breeders to supply prospective demand for dogs in Canada.
23. The Decision directly affects the Applicant Soi Dog as an organization that rescues dogs from Thailand, a country identified in the Schedule to the Prohibition Order. It results in direct and adverse operational, moral, and other consequences to Soi Dog.

III. Grounds on which the Secondary Control Zone Order should be Set Aside

24. The Secondary Control Zone Order issued by the statutory delegates on behalf of the Minister should be declared invalid, and quashed and set aside because:
 - a. The statutory delegates failed to observe procedural fairness in effecting the Secondary Control Zone Order given their failure to

provide the Applicants and other directly-affected rescue organizations the opportunity to be heard ahead of the Secondary Control Zone Order being made.

b. The Secondary Control Zone Order is substantively unreasonable because:

- i. The statutory delegate acted without jurisdiction or beyond their jurisdiction in imposing an effective import prohibition on commercial dogs from the target countries. The authority to prohibit imports of animals requires the promulgation of a regulation by the Minister pursuant to section 14 of the *HAA*, rather than the mere promulgation of an Order by an Inspector.
- ii. The Secondary Control Zone Order is capricious and failed to adequately take in account the evidentiary record and the general factual matrix. First, the statutory delegate unreasonably imposed a blanket import ban that was not necessary to achieve animal health and wellness objectives and was not necessary to control the spread of rabies, as required by the *HAA*. The Secondary Control Zone Order departs from global best practices and measures adopted in other similar countries; the United States, Australia, and the E.U., all of which admit foreign-vaccinated dogs coming from high-risk countries provided that certain requirements are satisfied. Second, the Secondary Control Zone Order is substantively unreasonable as it was effected in pursuit of an improper purpose.

c. The statutory delegate otherwise acted contrary to law.

25. These grounds may be amended further to receipt of the material transmitted pursuant to Rules 317 and 318 of the *Federal Courts Rules*, or as other information otherwise becomes disclosed about the Secondary Control Zone Order.
26. The *Federal Courts Act* and the *Federal Courts Rules*.
27. Such other grounds as may be raised and this Honourable Court may permit.

This application will be supported by the following material:

1. An affidavit or affidavits filed by the Applicants;

2. The Secondary Control Zone Order and other materials transmitted pursuant to Rules 317 and 318 of the *Federal Courts Rules*; and
3. Such further and other material and authorities as counsel may advise and this Court may permit.

RULE 317 REQUEST – CERTIFIED TRIBUNAL RECORD

Pursuant to Rule 317 of the *Federal Courts Rules*, SOR/98-106, the Applicant hereby requests that the CFIA send a certified copy of the following materials that are not in the possession of the Applicants but are in the possession of the CFIA to the Applicants and to the Registry:

1. All materials pertaining to the Secondary Control Zone Order that are relevant to this application.

October 27, 2022


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I HEREBY CERTIFY that the above document is a true copy of the original filed in the Court./

JE CERTIFIE que le document ci-dessus est une copie conforme à l'original déposé au dossier de la Cour fédérale.

Filing date
Date de dépôt

OCT 27 2022
OCT 28 2022

Dated
Fait le


WAYNE SAWTELL
REGISTRY OFFICER
AGENT DU GREFFE