Federal Court Cour fédérale

Date: 20260407

Docket: T-842-24

Citation: 2026 FC 450

Ottawa, Ontario, April 7, 2026

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

SIMPLE PATH FARMS AND POULTRY LTD

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

and

CHICKEN FARMERS OF CANADA

Intervener

REASONS AND JUDGMENT

I. INTRODUCTION

[1] By a notice of application filed on April 16, 2024, Simple Path Farms and Poultry Ltd. (the "Applicant" or "SPF") seeks judicial review of a decision (the "Decision") of the Chicken Farmers of Canada (the "CFC") made on November 2, 2023. The Decision imposed an

assessment (the "Final Assessment") upon the Applicant, in the amount of $241,485.00. The Final Assessment was made pursuant to subsections 5(1) and 11.2(1) of the *Canadian Chicken Marketing Levies Order*, SOR/2002-35 (the "Levies Order").

[2] The Levies Order was made by the CFC pursuant to paragraph 22 (1) (f) of the *Farm Products Agencies Act*, R.S.C. 1985, c. F-4 (the "FPAA" or the "Act").

[3] The Applicant seeks the following relief in its application:

> 1. A Declaration that section 5(1) of the Levies Order is ultra vires CFC's authority to impose levies or charges under section 12 of the Chicken Farmers of Canada Proclamation SOR/79-158 ("Proclamation");
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> 2. A Declaration that the Final Assessment, which was made pursuant to section 5(1) of the Levies Order, was therefore ultra vires;
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> 3. An Order striking section 5(1) of the Levies Order as ultra vires;
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> 4. An Order setting aside the Final Assessment;
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> 5. An Order granting the Applicant its costs; and
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> 6. Any other relief counsel may advise and/or other relief this Honourable Court deems just.

II. THE PARTIES

[4] The Applicant is a body corporate and a subsidiary of ADP Direct Poultry Ltd.

[5] The Attorney General of Canada, pursuant to Rule 303(2) of the *Federal Court Rules*, SOR/98-106 (the "Rules"), is the respondent (the "Respondent").

[6] The CFC is an Intervener, pursuant to the Order issued on November 4, 2024. It is the marketing agency for chicken and was created pursuant to the *Chicken Farmers of Canada Proclamation,* SOR/ 79-158 (the "Proclamation").

III. THE NON-PARTY

[7] The Farm Products Council of Canada (the "Council") is not a party to this proceeding. It exercises general supervisory powers over the agencies that are subject to the Act.

IV. THE EVIDENCE

[8] The evidence consists of the affidavits filed by the Applicant, the Respondent, and the Intervener, as well as the contents of the Certified Tribunal Record (the "CTR"). No evidence was filed by the Intervener.

[9] The Applicant filed the affidavit of Mr. Augo Pinho, sworn on September 16, 2024. The Respondent filed the affidavit of Ms. Carole Gendron, sworn on December 3, 2024. The Intervener filed the affidavits of Mr. Michael Lalibertè sworn on December 3, 2024, and on March 25, 2025.

[10] The CTR was produced by the CFC, pursuant to Rule 317 of the Rules and certified by Mr. Laliberté. It contains the following documents:

> 1. Memo from CFC staff to policy committee dated February 23, 2011
>
> 2. Minutes of CFC policy to committee conference call dated February 24, 2011 671

3. Memo from CFC staff to CFC board of directors dated February 25, 2011

4. Closed board minutes from March 23, 2011 to March 24, 2011

5. Memo from Y. Ruel re provincial boards, CPEPC, FPPAC, CRFA date March 25, 2011

6. Email from Y. Ruel re consultation dated March 25, 2011 687

7. Letter from W. Hiltz to Y. Ruel dated March 28, 2011 688

8. Email from C. Monchuk to Y. Ruel re MDP Levy rate consultation dated March 25, 2011

9. Letter from Chicken Farmers of Canada to Y. Ruel re Market Development Policy Levy Rate dated April 6, 2011

10. Email from Chicken Farmers of Canada to Y. Ruel re MDP Levy Rate dated April 12, 2011

11. Email from J. Hillard-Murphy to Y. Ruel re MDP Lev Rate dated April 12, 2011

12. Letter from Board of Alberta Chicken Producers to Y. Ruel re Market Development Program Policy Levy Rate dated April 13, 2011

13. Letter from Chicken Farmers of Ontario to Y. Ruel re Market Development Policy – Levy rate dated April 14, 2011

14. Email from S. Acker to Y. Ruel re MDP levy rate dated April 15, 2011

15. Letter from Chicken Farmers of Newfoundland and Labrador to Y. Ruel re Market Development Policy Levy Rate dated April 15, 2011

16. Email from R. Horel to Y. Ruel re MDP levy rate consultation dated April 15, 2011

Encl.

Letter from Canadian Poultry and Egg Processors Council re market development policy levy rate dated April 15, 2011

17. Email from D. Provencal to Y. Ruel re Expansion de Marché – pénalité dated April 18, 2011

18. Memo from Chicken Farmers of Canada to Policy Committee re MDP Levy Rate dated April 20, 2011

19. CFC Policy Committee Meeting dated April 27, 2011

20. Memo from Chicken Farmers of Canada to CFC Board of Directors dated April 28, 2011

21. Open Board of Directors meeting dated May 11, 2011 713

22. Chicken Farmers of Canada Minutes of the Open Board Meeting dated May 11, 2011

23. Letter from Chicken Farmers of Canada to Farm Products Council of Canada re amendments dated September 24, 2012

24. Letter from Farm Products Council of Canada to Chicken Farmers of Canada re approval to amendments to the Canadian Chicken Marketing Levies Order dated December 14, 2012

25. Memo to Market Development Licensees re Canadian Chicken Marketing Levies Order and CFC Market

Development Policy Amendments to the Levy rate dated January 10, 2013

26. Order amending the Levies Order dated December 14, 2012 730

27. Memo to Market Development Licensees Provincial

Commodity Boards re Market Development Policy and Canadian Chicken Marketing Levies Order amendments dated February 7, 2013

28. Letter from Standing Joint Committee to National Farm Products Council re Canadian Chicken Marketing Levies Order dated December 23, 2008

29. Letter from Chicken Farmers of Canada counsel to Standing Joint Committee for the Scrutiny of Regulations re amendments dated August 6, 2009

30. Letter from Standing Joint Committee to Farm Products Council of Canada re order on royalties to be paid for the marketing of Chickens in Canada dated June 4, 2012

V. THE BACKGROUND

[11] The following details are taken from the affidavits filed by the parties and the contents of the CTR.

[12] Mr. Pinho deposed that he is the President and CEO of ADP Direct Poultry Ltd., the parent company of the Applicant. The Applicant is based in Welland, Ontario where it operates a slaughtering facility. It operates three processing facilities in the Greater Toronto area.

[13] SDP is regulated by the CFC, and it holds a market development licence issued by that body, pursuant to the *Canadian Chicken Licensing Regulations*, SOR/ 2002-22 (the "Licensing Regulations").

[14] SPF is a "primary processor" within the meaning of the Levies Order.

[15] Since approximately October 2020, SPF participated in the Market Development Program (the "Program") of CFC. The Program "supplements" the regular chicken production quota system, allowing a licensee like the Applicant to receive extra quota for interprovincial or export trade. Participation in the Program is voluntary.

[16] According to Mr. Pinho, the extra quota is to be marketed within a specific eight-week period that is called a "market development period".

[17] Mr. Pinho described the Applicant as a “small processor with a relatively small quota allocation under the regular chicken production system.” It took part in the Program to ensure enough production for a five-day work week at its processing plant.

[18] On April 23, 2023, the CFC advised the Applicant that it had not met its market development commitments under the policy for two market periods, described as “A-174” and “A- 175”. The A-174 period ran from January 16 to March 12, 2022, and the A-175 period ran from March 13 to May 7, 2022. Consequently, the CFC was going to impose levies in the total amount of $241,485.00 (the “Original Assessment”).

[19] By a letter of May 26, 2023, Counsel for the Applicant notified the CFC that the Original Assessment would be contested.

[20] Although SPF did not deny that it failed to comply with its marketing development commitments for the two periods in issue, it contested the Original Assessment on legal grounds.

[21] Mr. Pinho deposed that the Applicant argued that its failure to satisfy its market commitments met the requirements of the *force majeure* conditions in subsection 11.1(2) of the Levies Order.

[22] The Applicant also advanced arguments to the CFC about the Original Assessment, on administrative law grounds. It submitted that the levies imposed by subsection 5(1) of the Levies

Order were beyond the statutory powers *Chicken Farmers of Canada Proclamation*, SOR/79-158 because they are punitive in nature (the "Vires Argument").

[23] The Applicant argued that subsection 5 (1) of the Levies Order was inconsistent with the *Charter of Rights and Freedoms, Part I of the Constitution Act*, 1982, being Schedule B to the *Canada Act 1982*, 1982, c. 11 (UK) (the "Charter Argument").

[24] Mr. Pinho deposed about steps taken after the CFC made its decision of November 2, 2023. The Applicant filed a Complaint before the Council. The Complaint raised similar arguments about the *vires* of subsection 5(1) of the Levies Order, but those arguments were not pursued before the Council.

[25] Mr. Pinho deposed that prior to receipt of a decision from the Council, the within application for judicial review was commenced on April 16, 2024.

[26] Ms. Gendron is the Director of Regulatory and Sectoral Affairs with the Council. She deposed that she has occupied that position since 2019. In that role she advises and supports the Chairperson and other members of the Council.

[27] Ms. Gendron also deposed that she is responsible for administering all regulatory and policy aspects of the Act.

[28] Ms. Gendron deposed that the marketing agencies created under the Act are bodies corporate and must generate the necessary income for their operating expenses. She deposed as to the role of the Council. The Council exists pursuant to the Act; its duties and powers are spelled out in sections 6 and 7.

[29] Ms. Gendron addressed section 21 of the Act that sets out the objects and powers of an agency governed by the Act. In broad terms, the Council serves an oversight role relative to the operations of agencies. Section 22 of the Act authorizes agencies to make orders and regulations. In some cases, those orders and regulations are subject to prior approval by the Council.

[30] Ms. Gendron deposed that orders and regulations made by the CFC pursuant to paragraph 22(1) (f) of the Act are subject to review and approval by the Council.

[31] Ms. Gendron deposed as to the Complaint jurisdiction of the Council, pursuant to the Act. She deposed that the Council enacted a By-Law entitled “By-Law Governing the Administration of the Complaints Received by the Farm Products Council of Canada”, pursuant to paragraph 7(1)(f) and section 12 of the Act.

[32] Ms. Gendron deposed as to the process provided under the By-Law, including the opportunity for the responding agency to file a response. The By-Law also provides for a “Pre-hearing Conference”, attended by “Advisory Personnel” to the Council. She deposed that the purpose of the Pre-hearing Conference is to address issues like the following:

a. narrow or simplify any issues;

b. identify any facts agreed to by the Parties;

> c. facilitate discussions between the Parties and encourage alternate dispute resolution of any issues;
>
> d. determine any other matter that may assist in a just and expeditious disposition of the matter; and
>
> e. inform the Parties of the Council's role and powers in hearing the Complaint.

[33] Ms. Gendron also deposed that a complaint is heard by a "complaint committee"; the By-Law provides that the final decision is made by the Council, after review of the complaint committee report which will include a recommendation.

[34] Ms. Gendron deposed as to receipt of the Complaint from the Applicant by way of a letter dated December 4, 2023, by its Counsel. The Complaint raised issues as to the *vires* of subsection 5(1) of the Levies Order and, in the alternative, asked that the Council set aside the Final Assessment pursuant to subsection 11.2(1) of the Levies Order.

[35] Ms. Gendron deposed as to the Pre-Hearing Conference that was held on January 26, 2024. In Connection with the Complaint, she attended that Hearing in her capacity as one of the "Advisory Personnel" to the Council. She deposed that at this hearing, Advisory Personnel questioned whether the Council had jurisdiction to consider the Charter values argument raised by the Applicant and if it addresses that part of the Complaint.

[36] Ms. Gendron further deposed that at the Pre-Hearing Conference, Counsel for both the Applicant and the CFC asked if the Council would consider the issue of the *vires* of subsection 5(1) of the Levies Order since the answer might affect the Applicant's decision whether to proceed with its complaint.

[37] Ms. Gendron deposed that on February 6, 2024, Counsel for the Applicant and the CFC submitted a joint letter, setting out their views that the Council indeed has the power to hear and decide questions of law, including Charter issues.

[38] Ms. Gendron deposed that on March 25,2024, she attended another preparatory hearing. Council Member Maryse Dubé presided and according to Mr. Gendron, Ms. Dubé asked Counsel for the parties for their views as to the Council's jurisdiction to entertain questions of law and the application of Charter values.

[39] Ms. Gendron deposed that in this hearing, Counsel for the Applicant advised that argument at the hearing may be limited only to the *force majeure* issue. Ms. Dubé asked that the Complaint be amended to show any changes in that regard.

[40] Ms. Gendron deposed that on March 28, 2024, the Applicant submitted an amended Complaint, deleting any request that the Council exercise its power pursuant to paragraph 7(1)(f) of the Act to strike out subsection 5(1) of the Levies Order as either being *ultra vires* or unreasonable, and to set aside the Final Assessment.

[41] Ms. Gendron deposed that the hearing of the Complaint took place on April 17, 2024, only upon the challenge to the Final Assessment. The Complaint Committee ultimately recommended that the Complaint be dismissed, and the Council agreed with that recommendation. The Council issued its decision on June 12, 2024, dismissing the Complaint.

[42] The Intervener filed two affidavits of Mr. Laliberté in its record. The first affidavit was sworn on December 3, 2024, and the second affidavit, sworn on March 25, 2025.

[43] Mr. Laliberté is the Chief Executive Officer of the CFC and has held that position since 2017. He addressed four subjects in his first affidavit, that is; the regulatory context in which the CFC operates and its mandate; the structure and operation of its Market Development Program; the context around the 2013 amendment to the Levies Order; and, the implications upon the chicken marketing industry of granting the relief sought by the Applicant in this application.

[44] The second affidavit was submitted solely for the purpose of filing two documents. The first document is a copy of the 2001 "Federal-Provincial Agreement for Chicken" which includes, as Schedule "B", a copy of the "Operating Agreement" that was adopted in 2015. This document is attached as Exhibit A to the affidavit.

[45] The second document, attached as Exhibit B to the affidavit of Mr. Laliberté, is a copy of the 2006 "Operating Agreement."

VI. THE DECISION

[46] In its decision dated November 2, 2023, the Board of Directors of the CFC set out the two grounds raised by the Applicant in seeking a waiver or reduction in the Original Assessment: first, that the Applicant had been unable to meet its marketing development commitments due to

the occurrence of one or more events described as *"force majeure"* and two, that subsection 5(1) of the Levies Order is unreasonable because it is punitive in nature.

[47] The Board noted that submissions were made on behalf of the Applicant and on behalf of the CFC staff.

[48] The Board reviewed the background of the matter. It set out the elements of the *force majeure* conditions as follow:

> 2. Force Majeure
>
> i. Force Majeure Guidelines
>
> The Guidelines confirm that a market development licensee is relieved from remitting some or all of the levies assessed when a force majeure event applies to justify the failure or inability to market in a manner that accords with the Policy, the *Canadian Chicken Licensing Regulations*, and the *Canadian Chicken Marketing Quota Regulations*.
>
> To be a force majeure event, the alleged event must satisfy all of the following preconditions:
>
> a) the event alleged must render the performance of the market development licensee's commitment to market the market development product as required by the Policy and Regulations impossible, not just difficult;
>
> b) the event must not be reasonably foreseeable; and
>
> c) the event must be beyond the market development licensee's control.

[49] It determined that these conditions were not met and characterized the conditions faced by the Applicant as "market challenges or commercial risks" associated with participation in the Market Development Program.

[50] The Board declined to address the challenges raised about subsection 5(2) of the Levies Order, mainly on the ground that it was not trained to deal with legal questions. It also said that it considered it inappropriate to wade into a debate about the quantum of the levy when dealing with a *force majeure* application.

[51] The Board said that it was not prepared to engage in the debate, at the risk of introducing uncertainty in the application of the Market Development Policy, across the industry. It referred to Article 11 of the Policy that allows for evaluation and revision.

[52] In its Decision, the Board rejected the arguments about *force majeure* and did not address the Charter Argument.

[53] The Applicant filed a complaint about this Decision before the Farm Products Council of the Council on December 4, 2023.

[54] In its complaint, the Applicant asked the Council to strike subsection 5(1) of the Levies Order as unreasonable or *ultra vires* and cancel the Final Assessment. In the alternative, the Applicant asked that the Council conclude that the *force majeure* conditions were met and set aside the Final Assessment.

[55] Counsel for the FPCC raised a question on or about January 26, 2023, about its jurisdiction to consider questions of law.

[56] Correspondence was exchanged between the parties and submissions were made about jurisdiction.

[57] A hearing was scheduled for April 17, 2024. A “pre-hearing” meeting was scheduled for March 25, 2024.

[58] Following that meeting, the Applicant amended its complaint to the Council and withdrew its submissions about *vires* and the Charter.

[59] In a decision issued on June 12, 2024, the Council’s Complaint Committee recommended that the Council dismiss the amended complaint (the “Complaint Decision”) the conditions of *force majeure* had been met.

VII. SUBMISSIONS

(i) *The Applicant*

[60] The Applicant challenges the legality of subsection 5(1) of the Levies Order on the basis that its enactment was beyond the authority of the CFC to make and operates as a fine or penalty, not as a regulatory measure. It relies on the decision in *Dunn-Rite Food Products Ltd. v. Canada (Attorney General*), 310 F.T.R. 20 in this regard.

[61] The Applicant contends that subsection 12(1), (2) and (3) of the Proclamation do not authorize the imposition of fines or penalties. It refers to and relies upon the decision in *Westbank First Nation v. British Columbia Hydro and Power Authority*, [1999] 3 S.C.R. 134

where, at paragraph 24, the Supreme Court of Canada identified the characteristics of a regulatory charge. It submits that subsection 5(1) of the Levies Order does not meet these elements.

[62] The Applicant refers to paragraph 37(1)(c) of the Act that provides that any person who violates an order or regulation made pursuant to paragraph 22(1)(f) or (g) and approved by the Council may be subject to a fine not exceeding $5000.00. It argues that only this provision allows for the imposition of a penalty.

[63] In its written argument, the Applicant addresses a number of provisions of the Act and of the Proclamation to support its submissions that subsection 5(1) of the Levies Order is beyond the authority of the Council to enact.

(ii) *The Respondent*

[64] The Respondent, on the other hand, focuses on the failure of the Applicant to exhaust its available alternative remedy, that is the Complaint process provided by FPAA. He submits that this application for judicial review is premature , relying on the decision in *Saskatchewan (Minister of Agriculture, Food and Rural Revitalization) v. Canada (Attorney General)*, [2005] F.C.J. No. 1266) where the Court found that the complaint process pursuant to paragraph 7(1)(f) of the Act is a convenient, expeditious and cost-effective alternative to the courts.

[65] The Respondent also refers to and relies upon the decision of the Federal Court of Appeal in *Leth Farms Ltd. v. Canada (Attorney General)*, 359 N.R. 130 to argue that the Council enjoys

a broad range of remedial power. In that case, the Federal Court looked at the connections between paragraphs 6(1)(b), 7(1)(f) and section 21 of the Act and concluded that these provisions show an intention to give the Council a broad range of options to discharge its reviewing role of the operations of the CTMA. The Respondent submits that by analogy, this reasoning applies to the present case.

[66] As well, the Respondent argues that generally, parties can resort to the Courts only after exhaustion of available alternative remedial recourses, relying on the decision in *Dugre v. Canada (Attorney General)*, [2021] F.C.J. No. 50.

[67] The Respondent otherwise maintains that subsection 5(1) of the Levies Order was within the power of the CFC to enact, pursuant to subsection 12(1) of the Proclamation and paragraph 22(1)(f) of the Act. He submits that the provision is reasonable, when considered in relation to section 12 of the Proclamation. Subsection 12(2) requires a body like the CFC to conduct its operations on a self-sustaining financial basis. Subsection 12(3) authorizes the CFC to create reserves for expenses that it deems essential to accomplish its goals.

[68] Relying on the decision in *Re Agricultural Products Marketing Act (Canada)*, [1978] 2 S.C.R.1198, the Respondent argues that the levy was “authorized”, so any punitive aspect is immaterial.

(iii) *The Intervenor*

[69] The Intervener's submissions addressed only the *vires* issue raised by the Applicant. It supported the arguments of the Respondent on this issue. Its submissions were made from its particular perspective as the marketing agent created by the Proclamation, and its role in implementing a marketing plan for the supply management of chicken.

VIII. SUPPLEMENTARY SUBMISSIONS

[70] Further to a Direction issued on September 16, 2025, the Applicant and the Respondent were given the opportunity to address the issue of adequate alternative remedy, following the issuance of the decision of in *Morgenthau v. Toronto Metropolitan University*, 2025 ONSC 4870 by the Divisional Court-Superior Court of Ontario.

[71] The Applicant argues that in the absence of a power for the Council to reconsider the Levies Order, which it approved, the doctrine of adequate alternative remedy does not arise. It distinguishes its case from the circumstances discussed in *Morgenthau, supra*. It submits that the Council, having approved the Levies Order in the first place, would be unlikely to revisit it, even if it had the power to do so.

[72] The Respondent maintained its position that the prevailing jurisprudence supports the view that the Applicant should have made its arguments about *vires* the Council.

IX. DISCUSSION AND DISPOSITION

[73] There is no dispute about the facts. The Applicant submitted a complaint to the council on December 4, 2023. It amended that complaint on March 28, 2024. It withdrew the issues of *vires* and an alleged charter breach.

[74] The Council had raised a concern about its ability to consider issues of law. I note that both the Applicant and the CFC had argued that Council indeed had the jurisdiction to entertain question of law, relying on the decision in *Nova Scotia (Workers' Compensation Board) v. Martin* 2003 SCC 54.

[75] Although the Applicant framed its arguments around the legality of paragraph 5 (1) (b) of the Levies Order and addressed the standard of review applicable to a challenge of *vires* of a regulation, I am satisfied that the dispositive issue arising in this matter is the appropriateness of judicial review in the circumstances.

[76] Paragraph 5(1)(b) of the Levies Order provides as follows:

5 (1) Every primary processor who holds a market development licence issued under the Canadian Chicken Licensing Regulations and who markets chicken produced under a federal market development quota must pay the following:	5 (1) Le transformateur primaire détenteur d'un permis d'expansion du marché, délivré aux termes du Règlement sur l'octroi de permis visant les poulets du Canada et qui commercialise des poulets produits au titre d'un contingent fédéral d'expansion du marché paie ce qui suit :
(b) in the case of chicken that is not marketed before the end of the period referred to in the schedule to the Canadian Chicken Marketing Quota Regulations that immediately follows the market development commitment period,	b) une redevance supplémentaire de 0,60 $ le kilogramme, équivalence en poids vif, pour le poulet qui n'est pas commercialisé avant la fin de la période visée à l'annexe du Règlement canadien sur le contingentement de la commercialisation des poulets qui suit

an additional levy of $0.60 per kilogram on the live weight equivalent of that chicken;	immédiatement la période d'engagement pour l'expansion du marché;

[77] In the first place, the judicial review process is discretionary. I refer to the decision in *Strickland v. Canada (Attorney General),* [2015] 2 S.C.R. 713, *supra* where the Supreme Court said the following at paragraphs 37 and 28:

> [28] In the last of the relevant cases in the TeleZone line, Canadian Food Inspection Agency, the Agency contested the jurisdiction of the Quebec Superior Court to entertain recourses in warranty alleging that a direction the Agency had issued was the cause of any damage meat producers had suffered from being unable to market some of their product: para. 9. The Agency's position was that the claims could not succeed without first attacking the lawfulness or validity of its decision by way of judicial review in the Federal Court: paras. 16 and 20. Once again, this Court affirmed that "[s]uccessfully challenging an administrative decision of a federal board on judicial review is not a requirement for bringing an action for damages with respect to that decision": para. 21. Since the Quebec Superior Court had jurisdiction over the parties and the subject matter of the dispute, the claims were properly before it: para. 29.
>
> …
>
> [37] Judicial review by way of the old prerogative writs has always been understood to be discretionary. This means that even if the applicant makes out a case for review on the merits, the reviewing court has an overriding discretion to refuse relief: see, e.g., D. J. Mullan, "The Discretionary Nature of Judicial Review", in R. J. Sharpe and K. Roach, eds., Taking Remedies Seriously: 2009 (2010), 420, at p. 421; Harelkin v. University of Regina, 1979 CanLII 18 (SCC) , [1979] 2 S.C.R. 561, at p. 575; D. P. Jones and A. S. de Villars, Principles of Administrative Law (6th ed. 2014), at pp. 686-87; Brown and Evans, at topic 3:1100. Declarations of right, whether sought in judicial review proceedings or in actions, are similarly a discretionary remedy: ". . . the broadest judicial discretion may be exercised in determining whether a case is one in which declaratory relief ought to be awarded" (Dickson C.J. in Canada (Auditor General) v. Canada (Minister of Energy, Mines and Resources), 1989 CanLII 73 (SCC), [1989] 2 S.C.R. 49, at p.

> 90, citing S. A. de Smith, Judicial Review of Administrative Action (4th ed. 1980), at p. 513).

[78] In *Morgenthau v. Toronto Metropolitan University*, 2025 ONSC 4870 *supra* at paragraph 52, the Ontario Divisional Court reinforced the guidance of the Supreme Court as follows:

> [52] Nevertheless, it is important to bear in mind that "the discretionary nature of [judicial review] reflects the fact that unlike private law, its orientation is not, and never has been, directed exclusively to vindicating the rights of individuals".[19] Rather, judicial review is a public law remedy, directed at ensuring the lawful exercise of administrative decision-making power.

[79] Just as the judicial review "process" is discretionary, so is a remedy. I refer to subsection 18.1 (3) of the *Federal Courts Act*, R.S.C. 1985, c. F-7 which provides as follows:

Powers of Federal Court	**Pouvoirs de la Cour fédérale**
(3) On an application for judicial review, the Federal Court may	**(3)** Sur présentation d'une demande de contrôle judiciaire, la Cour fédérale peut :
(a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or	a) ordonner à l'office fédéral en cause d'accomplir tout acte qu'il a illégalement omis ou refusé d'accomplir ou dont il a retardé l'exécution de manière déraisonnable;
(b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.	b) déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu'elle estime appropriées, ou prohiber ou encore restreindre toute décision, ordonnance, procédure ou tout autre acte de l'office fédéral.

[80] The Federal Court of Appeal described the doctrine of exhaustion in *C.B. Powell Limited v. Canada (Border Services Agency)*, 2010 FCA 61 at paragraphs 31 and 32 as follow:

> [31] Administrative law judgments and textbooks describe this rule in many ways: the doctrine of exhaustion, the doctrine of adequate alternative remedies, the doctrine against fragmentation or bifurcation of administrative proceedings, the rule against interlocutory judicial reviews and the objection against premature judicial reviews. All of these express the same concept: absent exceptional circumstances, parties cannot proceed to the court system until the administrative process has run its course. This means that, absent exceptional circumstances, those who are dissatisfied with some matter arising in the ongoing administrative process must pursue all effective remedies that are available within that process; only when the administrative process has finished or when the administrative process affords no effective remedy can they proceed to court. Put another way, absent exceptional circumstances, courts should not interfere with ongoing administrative processes until after they are completed, or until the available, effective remedies are exhausted.
>
> [32] This prevents fragmentation of the administrative process and piecemeal court proceedings, eliminates the large costs and delays associated with premature forays to court and avoids the waste associated with hearing an interlocutory judicial review when the applicant for judicial review may succeed at the end of the administrative process anyway: see, e.g., Consolidated Maybrun, above, at paragraph 38; Greater Moncton International Airport Authority v. Public Service Alliance of Canada, 2008 FCA 68 , at paragraph 1; Ontario College of Art v. Ontario (Human Rights Commission) (1993), 1993 CanLII 3430 (ON SCDC), 11 O.R. (3d) 798 (Div. Ct.). Further, only at the end of the administrative process will a reviewing court have all of the administrative decision-maker's findings; these findings may be suffused with expertise, legitimate policy judgments and valuable regulatory experience: see, e.g., Consolidated Maybrun, above, at paragraph 43; Delmas v. Vancouver Stock Exchange (1994), 1994 CanLII 3350 (BC SC), 119 D.L.R. (4th) 136 (B.C.S.C.), affd (1995), 1995 CanLII 1305 (BC CA), 130 D.L.R. (4th) 461 (B.C.C.A.); Jafine v. College of Veterinarians of Ontario (1991), 1991 CanLII 7126 (ON SC), 5 O.R. (3d) 439 (Gen. Div.). Finally, this approach is consistent with and supports the concept of judicial respect for administrative decision makers who, like judges, have decision- making responsibilities to discharge: Dunsmuir v. New Brunswick, 2008 SCC 9 , [2008] 1 S.C.R. 190, at paragraph 48.

[81] In the subsequent decision of *Strickland, supra*, the Supreme Court identified several factors for consideration when the issue of exhaustion of remedies arises, saying the following at paragraphs 42 and 43:

> [42] The cases identify a number of considerations relevant to deciding whether an alternative remedy or forum is adequate so as to justify a discretionary refusal to hear a judicial review application. These considerations include the convenience of the alternative remedy; the nature of the error alleged; the nature of the other forum which could deal with the issue, including its remedial capacity; the existence of adequate and effective recourse in the forum in which litigation is already taking place; expeditiousness; the relative expertise of the alternative decision-maker; economical use of judicial resources; and cost: Matsqui, at para. 37; C.B. Powell Limited v. Canada (Border Services Agency), 2010 FCA 61, [2011] 2 F.C.R. 332, at para. 31; Mullan, at pp. 430-31; Brown and Evans, at topics 3:2110 and 3:2330; Harelkin, at p. 588. In order for an alternative forum or remedy to be adequate, neither the process nor the remedy need be identical to those available on judicial review. As Brown and Evans put it, "in each context the reviewing court applies the same basic test: is the alternative remedy adequate in all the circumstances to address the applicant's grievance?": topic 3:2100 (emphasis added).
>
> [43] The categories of relevant factors are not closed, as it is for courts to identify and balance the relevant factors in the context of a particular case: Matsqui, at paras. 36-37, citing Canada (Auditor General), at p. 96. Assessing whether there is an adequate alternative remedy, therefore, is not a matter of following a checklist focused on the similarities and differences between the potentially available remedies. The inquiry is broader than that. The court should consider not only the available alternative, but also the suitability and appropriateness of judicial review in the circumstances. In short, the question is not simply whether some other remedy is adequate, but also whether judicial review is appropriate. Ultimately, this calls for a type of balance of convenience analysis: Khosa, at para. 36; TeleZone, at para. 56. As Dickson C.J. put it on behalf of the Court: "Inquiring into the adequacy of the alternative remedy is at one and the same time an inquiry into whether discretion to grant the judicial review remedy should be exercised. It is for the courts to isolate and balance the factors which are relevant . . ." (Canada (Auditor General), at p. 96).

[82] The Act authorizes the Council to establish processes and procedures. I refer to paragraph 7 (1) (f) which provides as follows:

Powers of Council	**Pouvoirs du Conseil**
7 (1) In order to fulfil its duties, the Council	7 (1) Afin de remplir sa mission, le Conseil:
…	…
(f) shall make such inquiries and take such action within its powers as it deems appropriate in relation to any complaints received by it from any person who is directly affected by the operations of an agency and that relate to the operations of the agency;	f) procède aux enquêtes et prend les mesures qu'il estime appropriées relativement aux plaintes qu'il reçoit — en ce qui a trait à l'activité d'un office — des personnes directement touchées par celle-ci;

[83] In *Saskatchewan (Agriculture, Food and Rural Revitalization) v. Canada (Attorney General)*, 2006 FC at paragraph 59, the Federal Court recognized that the complaint process provided under the Act is convenient, cost effective and expeditious:

> [59] Applying this doctrine, the Council complaint route is an adequate alternative remedy to address the issues the Applicants seek to raise. To put it another way, the Applicants should not be permitted to forum-shop and circumvent the established statutory remedial mechanism. With respect to the first factor, that of convenience, expeditiousness and cost, Council has an established expertise in the handling of complaints, whether in regard to quota allocations or otherwise, in an efficient, cost effective manner. Specifically, Council's Complaint Guidelines are designed to "ensure the fairest, least expensive and most expeditious way of resolving complaints". Council moves on complaints very quickly. Within five working days of receiving a complaint Council will decide whether a hearing is warranted, and within five working days after that, the Committee charges with conducting the hearing establishes a schedule for the hearing date. In the case at bar, 18 months will have passed from the date of the 2004 quota allocation decision in dispute before the judicial review applications are even heard, let alone decided.

[84] The Applicant complains that the complaint process would not give it an adequate remedy. It argues that the Council had "created" the Levies Order and that it would be pointless to ask it to revoke it or declare it to be *ultra vires*.

[85] In my opinion, this argument is not persuasive.

[86] Access to the complaint process provided must be viewed in the context of the governing legislation, that is that Act and the marketing scheme. The chicken marketing scheme is a joint endeavour between the federal and provincial governments. The focus is upon the market, not the individual.

[87] The doctrine of an adequate alternative remedy applies. That issue was squarely raised by the Respondent in his memorandum of fact and law. The issue was addressed by Counsel for both parties at the hearing. Supplementary written and oral submissions were provided.

[88] The question arises from the failure of the Applicant to pursue the issue about the legality of the Levies Order in its Complaint that went before the Council, in respect of the Decision made by the CFC on November 2, 2023.

[89] The Council was established pursuant to subsection 3 (1) of the Act, which provides as follows:

Council established

3 (1) There is established a council, to be known as the National Farm Products Council, consisting of not less than three and not more than seven members to be appointed by the Governor in Council to hold office during pleasure.

Création du Conseil

3 (1) Est créé le Conseil national des produits agricoles, composé de trois à sept membres, ou conseillers, nommés par le gouverneur en conseil à titre amovible.

[90] Subsection 6 (1) of the Act sets out its duties, as follows:

Duties of Council

6 (1) The duties of the Council are

(a) to advise the Minister on all matters relating to the establishment and operation of agencies under this Act with a view to maintaining and promoting an efficient and competitive agriculture industry;

(b) to review the operations of agencies with a view to ensuring that they carry on their operations in accordance with their objects set out in section 21 or 41, as the case may be; and

(c) to work with agencies in promoting more effective marketing of farm products in interprovincial and export trade and, in the case of a promotion-research agency, in promoting such marketing in import trade and in connection with research and promotion activities relating to farm products.

Mission du Conseil

6 (1) Le Conseil a pour mission :

a) de conseiller le ministre sur les questions relatives à la création et au fonctionnement des offices prévus par la présente loi en vue de maintenir ou promouvoir l’efficacité et la compétitivité du secteur agricole;

b) de contrôler l’activité des offices afin de s’assurer qu’elle est conforme aux objets énoncés aux articles 21 ou 41, selon le cas;

c) de travailler avec les offices à améliorer l’efficacité de la commercialisation des produits agricoles offerts sur les marchés interprovincial, d’exportation et, dans le cas d’un office de promotion et de recherche, sur le marché d’importation ainsi que des activités de promotion et de recherche à leur sujet.

[91] Section 7 of the Act sets out its powers. Paragraph 7(1)(f) I relevant to this case:

Powers of Council	**Pouvoirs du Conseil**
7 (1) In order to fulfil its duties, the Council	7 (1) Afin de remplir sa mission, le Conseil :
(f) shall make such inquiries and take such action within its powers as it deems appropriate in relation to any complaints received by it from any person who is directly affected by the operations of an agency and that relate to the operations of the agency;	f) procède aux enquêtes et prend les mesures qu'il estime appropriées relativement aux plaintes qu'il reçoit — en ce qui a trait à l'activité d'un office — des personnes directement touchées par celle-ci;

[92] The Applicant elected to amend its Complaint, to withdraw any legal challenge to subsection 5(1) of the Levies Order, and to only challenge the finding of the CFC that the *force majeure* had not been met, in order to vacate the assessment.

[93] The Applicant focused its application for judicial review on the *vires* issue, an issue that was not pursued before the Council.

[94] The statutory scheme regulating the Applicant, as a processor in the chicken industry, allows for an interested person to seek recourse in respect of a decision of the CFC, that is, by means of the "complaint" process.

[95] The decisions in *C.B. Powell Ltd., supra* and *Strickland, supra* applied the doctrine of adequate alternative remedy. These decisions were considered and followed by the Divisional Court in *Morgenthau, supra*.

[96] The Courts have confirmed that judicial review is a discretionary remedy that is not available by right. I refer to the decision in *Dunsmuir v. New Brunswick,* [2008] 1 S.C.R. 653 at paragraph 12 where the Supreme Court of Canada described judicial review as "the means by which courts supervise those who exercise statutory powers, to ensure that they do not overstep their legal authority".

[97] When an alternate remedy is available, as was the situation here, the Courts confirmed that it should be used, even if it is not the "preferred" remedy. I refer again to the decision in *Strickland, supra* at paragraph 48 where the Supreme Court said that the discretionary nature of judicial review "reflects the fact that unlike private law, its orientation is not, and never has been, directed exclusively to vindicating the rights of individuals."

[98] At paragraph 59 in *Morgenthau, supra* the court observed that the benefit of the remedy available upon judicial review is only one factor in considering adequacy. The Divisional Court, referring to the decision in *Yatar v, TD Insurance Meloche Monnex,* 2024 SCC 8, said at paragraph 63,that "where there is an appropriate alternative forum that provides the litigant with the opportunity to have questions of fact, law, or mixed fact and law heard", the Court can decline to adjudicate the application for judicial review, as long as the other *Strickland, supra* factors are satisfied.

[99] The Applicant raises an error of law in challenging the *vires* of the Levies Order. In the prevailing context of deference to an administrative decision maker, this question could have proceeded before the Complaint Committee. According to the evidence submitted by the parties,

they made that contention certainly at the second Pre Hearing Conference. The Applicant elected to withdraw the issue and amended the Complaint.

[100] The Complaint Committee, according to section 38 of the By-Law, makes a recommendation to the Council about the disposition of the complaint. The "decision" is made by the Council.

[101] The Council is authorized to exercise continuing supervision of the CFC, in accordance with the provisions of the Act. I refer to the decision in *Saskatchewan, supra* at paragraph 64 where the Court said the following:

> [64] In particular, although Council does not have the ability to step into the shoes of CEMA and decide for itself how a quota allocation ought to be enacted, Council does have the power and the duty to decide whether prior approval ought to be granted in respect of a quota allocation. If not satisfied that CEMA has properly considered the overbase criteria or if not satisfied that the proposed quota allocation accords with the objects of the Act, Council has the authority to withhold prior approval until the outstanding legal or policy concerns are addressed to its satisfaction. Thus, viewed practically and realistically, Council has the ability to provide an adequate remedy in response to a timely quota allocation complaint. Indeed, the Council complaint mechanism offers the advantage of oversight by a body that is both independent and has in-depth knowledge of the industry. In addition, Council provides ongoing, proactive supervision of Agency decisions - something that the Courts are not equipped to provide.

[102] Although in that case the matter concerned a different agency subject to the Act, the reference is apt, insofar as it discusses the powers of the Council.

[103] I also refer to the decision in *Leth Farms v. Canada (Attorney General)*, 2007 FCA 49 at paragraphs 41 and 42 where the Federal Court of Appeal commented on the powers of the Council, as follow:

> [41]The decision of the Council to refuse to hear the complaint because of a lack of jurisdiction raises another concern in relation to the provisions of the Complaint Guidelines. In particular, Part VI, paragraph 3 states, *inter alia*, that the Council may dismiss a complaint in relation to a matter that is beyond its jurisdiction "after discussing the circumstances with the complainant." In reviewing the correspondence from the Council to the appellants and their counsel, the only reference to a lack of jurisdiction is found in the November 22, 2004 correspondence in which the Council stated that it lacked jurisdiction to grant the relief that was requested and that it was unwilling to take any further action. It is an open question as to what the appellants may have said if they had been advised that the Council was uncertain as to whether it could "grant an Order" or exercise "directory authority" in relation to a decision of the CTMA. However, they were not afforded the opportunity to have such a discussion, notwithstanding the clear provisions of Part VI, paragraph 3 of the Complaint Guidelines.
>
> [42]Inasmuch as it is the Council, not the complainant, that has the obligation to determine the remedy, if any, that is to be provided in relation to a complaint, the Council should be reluctant to summarily decline to hear a complaint on the basis of a lack of authority to provide the remedy that has been requested. It may well be that after the complaint has been heard, the Council would be in a position to grant an appropriate remedy, other than the one that was specifically requested. Such a flexible approach is consistent with the provisions of Part IV, paragraph 1 of the Complaint Guidelines.

[104] At paragraph 47 of *Leth, supra*, the Federal Court of Appeal said the following about the powers of the Council pursuant to subsection 7(1) of the Act:

> [47] In construing the scope of paragraph 7(1)(*f*) of the FPAA in the case at bar, the applications Judge focussed on the words "within its powers" which appeared to lead him to conclude that the powers of the Council must be limited to only those powers that are contained in subsection 7(1) of the FPAA. This led to a focus on paragraph 7(1)(*l*) of the FPAA. With respect, this approach was misguided because the focus on the words "within

> its powers" draws attention away from the essence of the provision, namely, that the Council should "take such action. . . . as it deems appropriate" in relation to any complaints". Furthermore, the French version of paragraph 7(1)(*f*) of the FPAA does not contain language that translates into the phrase "within its powers." The absence of these words in the French version of paragraph 7(1)(*f*) of the FPAA is consistent with my view that no special or enhanced emphasis should be given to them in the determination of the proper interpretation of the scope of the powers granted to the Council pursuant to paragraph 7(1)(*f*) of the FPAA.

[105] The Council indeed has expertise in the discharge of its duties and exercise of its powers, pursuant to sections 6 and 7 of the Act, respectively. The Court, on the other hand, exercises a "reviewing" power upon judicial review.

[106] I understand the Applicant to argue that it was more "expeditious" and cost efficient to proceed upon judicial review than to raise the legal questions before the Council, in the anticipation that an access to the Court may have been inevitable.

[107] In my opinion, this position does not overcome the guidance in the jurisprudence about exhausting available alternate remedies. The Applicant could not anticipate any recommendation of the Complaint Committee or decision of the Council.

[108] I agree with the submissions of the Respondent that the issue of convenience is not determined by the Applicant or its interests. In *C.B. Powell*, *supra*, the Federal Court of Appeal addressed the issue at paragraph 4 as follows:

> [4] The Act contains an administrative process of adjudications and appeals that must be followed to completion, unless exceptional circumstances exist. In this administrative process, Parliament has assigned decision-making authority to various

> administrative officials and an administrative tribunal, the C.I.T.T., not to the courts. Absent extraordinary circumstances, which are not present here, parties must exhaust their rights and remedies under this administrative process before pursuing any recourse to the courts, even on so-called "jurisdictional" issues.

[109] At paragraph 33 in *C.B. Powell, supra*, the Federal Court of Appeal spoke about "exceptional circumstances" that might justify by-passing an alternate route to a remedy:

> [33] Courts across Canada have enforced the general principle of non-interference with ongoing administrative processes vigorously. This is shown by the narrowness of the "exceptional circumstances" exception. Little need be said about this exception, as the parties in this appeal did not contend that there were any exceptional circumstances permitting early recourse to the courts. Suffice to say, the authorities show that very few circumstances qualify as "exceptional" and the threshold for exceptionality is high: see, generally, D. J. M. Brown and J.M. Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf) (Toronto: Canvasback, 1998), at paragraphs 3:2200, 3:2300 and 3:4000 and David J. Mullan, *Administrative Law* (Toronto: Irwin Law, 2001), at pages 485–494. Exceptional circumstances are best illustrated by the very few modern cases where courts have granted prohibition or injunction against administrative decision makers before or during their proceedings. Concerns about procedural fairness or bias, the presence of an important legal or constitutional issue, or the fact that all parties have consented to early recourse to the courts are not exceptional circumstances allowing parties to bypass an administrative process, as long as that process allows the issues to be raised and an effective remedy to be granted: see *Harelkin*, above; *Okwuobi*, above, at paragraphs 38–55; *University of Toronto v. C.U.E.W., Local 2* (1988), 1988 CanLII 4757 (ON SC) , 65 O.R. (2d) 268 (Div. Ct.). As I shall soon demonstrate, the presence of so-called jurisdictional issues is not an exceptional circumstance justifying early recourse to courts.

[110] Upon my review of the evidence in this case and consideration of the submissions and relevant jurisprudence, I am not persuaded that there are any exceptional circumstances here to allow the judicial review application to be determined on its merits.

[111] In further submissions on the issue of exhaustion of an adequate alternative remedy, the Applicant commented on the fact that the Respondent did not raise the issue of exhaustion of remedies as a preliminary matter, that is by way of a "preliminary, interlocutory motion".

[112] The practice of the Court does not encourage interlocutory motions in applications for judicial review. I refer again to the decision in *C.B. Powell, supra* at paragraph 41 where the Federal Court of Appeal commented on the use of interlocutory motions on so-called jurisdictional questions, as follows:

> [41] Long ago, courts interfered with preliminary or interlocutory rulings by administrative agencies, tribunals and officials by labelling the rulings as "preliminary questions" that went to "jurisdiction": see, e.g., *Bell v. Ontario Human Rights Commission*, 1971 CanLII 195 (SCC), [1971] S.C.R. 756. By labelling tribunal rulings as "jurisdictional," courts freely substituted their view of the matter for that of the tribunal, even in the face of clear legislation instructing them not to do so.

X. CONCLUSION

[113] In the result, considering the evidence, the arguments and the relevant jurisprudence, I accept the submissions of the Respondent about the failure of the Applicant to exhaust its available remedies and the application for judicial review will be dismissed, with costs to the Respondent. No costs will be awarded in favour of or against the Intervener.

JUDGMENT IN T-842-24

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed, with costs to the Respondent. No costs are awarded in favour of or against the Intervener.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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