Federal Court Cour fédérale

Date: 20220616

Docket: T-121-22
T-956-21
T-1412-21

Citation: 2022 FC 915

Toronto, Ontario, June 16, 2022

PRESENT: Case Management Judge Trent Horne

BETWEEN:

SAFE FOOD MATTERS INC. AND PREVENT CANCER NOW

Applicants

and

ATTORNEY GENERAL OF CANADA AND MINISTER OF HEALTH

Respondents

ORDER AND REASONS

I. Overview

[1] Justice for Migrant Workers and CropLife Canada have each brought motions in writing to intervene in these applications for judicial review. The motions will be granted, on terms.

II. Background

[2] These proceedings involve challenges to decisions of the Minister of Health through the Pest Management Regulatory Agency ("PMRA"), and made pursuant to the *Pest Control Products Act*, SC 2002, c. 28 ("PCPA").

[3] All three decisions relate to chlorpyrifos, an organophosphate insecticide.

[4] On June 14, 2021, the applicants commenced an application for judicial review (Court file no. T-956-21) of a decision of the Minister of Health published on May 13, 2021 that purported to cancel all uses of chlorpyrifos and its registered end-use products. In this proceeding, the applicants challenge the decision of the Minister, through her delegate the PMRA, to allow the sale (two years) and use (three years) of chlorpyrifos-containing pest control products following the cancellation of their registration under the PCPA. The applicants state that the PMRA could not establish that chlorpyrifos uses posed acceptable risks for the phase-out period. Accordingly, the applicants assert that it was unreasonable for the PMRA to permit the sale and use of chlorpyrifos over a three-year period. The notice of application has been amended twice, most recently on February 22, 2022.

[5] After receipt of the certified tribunal record in T-956-21, the applicants discovered that the Minister, through the PMRA, made a decision on April 19, 2021 to maintain maximum residue limits ("MRL") of chlorpyrifos on food products for an indefinite period. On September 16, 2021 the applicants commenced an application for judicial review of that decision. In part, the applicants challenge the Minister's decision on the basis of evidence that

chlorpyrifos causes harm to human health, and the absence of any acceptable risk rationale for the decision. This proceeding was assigned Court file no. T-1412-21 and has been referred to by the parties as the “MRL Application”, a definition I will adopt in these reasons.

[6] The applicants moved to consolidate the two applications. By order dated December 6, 2021, I granted the motion in part, and ordered that the applications in Court file nos. T-956-21 and T-1412-21 will be heard together, or heard one immediately after the other, as directed by the presiding judge.

[7] On December 21, 2021 the Minister made a further decision respecting the cancellation and phase-out of chlorpyrifos pest control products. On January 20, 2022 the applicants filed a third notice of application challenging this decision, assigned Court file no. T-121-22.

[8] On consent of the parties, I issued an order on February 15, 2022 consolidating the applications in Court file nos. T-956-21 and T-121-22. The parties have referred to the consolidated proceedings in T-956-21 and T-121-22 as the “Phase-out Applications”, a definition I will also adopt in these reasons.

[9] The three applications are being case managed together and are proceeding on a common schedule. Affidavits have been exchanged, and cross-examinations are scheduled to be completed by early July. The applicants’ records are due on September 30, 2022, subject to any modification to the schedule arising from this motion.

[10] Two intervention motions have been brought. The first is by Justice for Migrant Workers ("J4MW"), a non-profit collective based in Toronto whose primary purpose is to work towards the fair and just treatment of migrant agricultural workers in Ontario and throughout Canada. J4MW seeks to intervene in the Phase-out Applications only. The second motion is by CropLife Canada ("CropLife"), a trade association that represents manufacturers and developers of plant science innovations, including pest control products, for use in agriculture and other settings. CropLife seeks to intervene in both the Phase-out Applications and the MRL Application.

[11] The respondents do not oppose the relief requested by both proposed interveners. The applicants support the granting of intervener status to J4MW, and strongly oppose granting such status to CropLife.

III. Intervention Rules and Jurisprudence

[12] Subrule 109(2) of the *Federal Courts Rules*, SOR/98-106 ("Rules") provides that the Court may, on motion, grant leave to any person to intervene in a proceeding. While the test for granting intervention has been canvassed in multiple authorities of this Court and the Federal Court of Appeal, it has been recently articulated by the Federal Court of Appeal in *Canada (Citizenship and Immigration) v Canadian Council for Refugees*, 2021 FCA 13 (*"Canadian Council for Refugees*") at para 6:

> 6. Thus, the current test for intervention under Rule 109 is as follows:
>
> I. The proposed intervener will make different and useful submissions, insights and perspectives that will further the Court's determination of the legal issues raised by the parties to the proceeding, not new issues. To determine usefulness, four questions need to be asked:

(a) What issues have the parties raised?

(b) What does the proposed intervener intend to submit concerning those issues?

(c) Are the proposed intervener's submissions doomed to fail?

(d) Will the proposed intervener's arguable submissions assist the determination of the actual, real issues in the proceeding?

II. The proposed intervener must have a genuine interest in the matter before the Court such that the Court can be assured that the proposed intervener has the necessary knowledge, skills and resources and will dedicate them to the matter before the Court;

III. It is in the interests of justice that intervention be permitted.

[13] Not all factors need to be present and some may weigh more heavily than others. There may also be new considerations, unique to a particular case, which are pertinent. For this reason, the criteria are not prescriptive, but rather must remain flexible. The over-arching test is whether the Court will be better served in its consideration of the issue with which it has to grapple by the presence of the intervener (*Gordillo v. Canada (Attorney General)*, 2020 FCA 198 at para 9 ("*Gordillo*")).

[14] The Court must also consider the language of Rule 109, which provides that the proposed intervention will "assist the determination of a factual or legal issue related to the proceeding" – that is, the issues raised in the existing application for judicial review. In that regard, an applicant for intervention cannot make new legal arguments that are foreclosed by the evidentiary record.

As was stated by Justice Stratas in *Canada (Attorney General) v Canadian Doctors for Refugee Care*, 2015 FCA 34 at para 19:

> Notices of application … serve to define the issues in a proceeding. Existing parties build their evidence and submissions around those carefully defined issues. An outsider seeking admission to the proceedings as an intervener has to take those issues as it finds them, not transform them or add to them. Thus, under Rule 109(2)(b) a proposed intervener must show its potential contribution to the advancement of the issues on the table, not how it will change the issues on the table.

IV. J4MW's Motion

[15] My analysis is structured around the elements of the test as expressed in *Canadian Council for Refugees*, and considers the evidence and submissions by J4MW, in light of the notices of application in the Phase-out Applications.

A. *Will J4MW make different and useful submissions, insights and perspectives that will further the Court's determination of the legal issues raised by the parties to the proceeding, not new issues?*

[16] At the outset, this requires identification of the legal issues raised in the Phase-out Applications. In brief, the notices of application assert that the PMRA acted unreasonably and unlawfully in permitting the continued sale and use of chlorpyrifos. More specifically, the notices of application review the requirements of the PCPA, the actions (and inaction) of PMRA, and conclude that the PMRA did not explicitly rely on any provision of the PCPA in allowing the existing stocks of chlorpyrifos in Canada to continue to be sold and used for this three-year phase-out period. The notices of application also assert that the PMRA did not provide any

reasons or any risk management rationale for the phase-out. Declaratory relief is sought, including that the impugned decisions are unreasonable, unlawful and an error of law.

[17] In its notice of motion, J4MW proposes to address the following questions, if granted leave to intervene:

> a. Was the PMRA's decision to allow the sale and use of chlorpyrifos over a three-year period unreasonable, unlawful and/or made without jurisdiction?
>
> b. Did the PMRA's decision lack justification, transparency or intelligibility?
>
> c. Was the PMRA's decision made without regard to the purposes of the *Pest Control Products Act*, S.C. 2002, c. 28, or without regard to relevant legal constraints in the Act which apply to cancellations of registrations?

[18] In my view, these three questions all point in the same direction: was the decision reasonable?

[19] The nature of the submissions that J4MW intends to make on these points is described in affidavit of Christopher Ramsaroop, a co-founder of J4MW.

[20] If granted leave to intervene, J4MW will submit that migrant agricultural workers are directly impacted by the PMRA's decision to permit the use of existing stocks of chlorpyrifos, and that the decision is both unreasonable and unlawful in light of the unacceptable occupational risk that unregulated pesticides pose to migrant farmworkers. J4MW will further submit that strict compliance with the PCPA is necessary to give meaning to the recitals of the PCPA and fulfil its primary mandate.

[21] As noted by the Federal Court of Appeal in *Atlas Tube Canada ULC v Canada (National Revenue)*, 2019 FCA 120 ("*Atlas Tube*"), interveners may be well-placed to help the Court assess the likely effects or results of rival interpretations of a legislative provision because of their experience analyzing and working with it. Some of that experience may be in the field, on the ground, and practical in nature (at paras 10-11).

[22] J4MW states that these submissions will be made through an equity-based lens which is informed by the unique vulnerability of migrant agricultural workers, that strict compliance with the PCPA is of heightened importance to migrant workers, and that the minimal standards set out in that legislation are essential protections for this vulnerable constituency.

[23] I conclude that the legal issues proposed to be addressed by J4MW are not doomed to fail, and are aligned with those raised by the applicants; J4MW is not seeking to expand the issues to be determined in these proceedings.

[24] I also conclude that J4MW will bring a different insight and perspective to the hearing. While the notices of application in the Phase-out Applications describe the matters as being about measures to protect the health of Canadians, and refer to agricultural uses of chlorpyrifos, I do not conclude that the applicants and J4MW will be making the same argument, or from the same perspective. J4MW will bring a broader perspective, specifically that of a group that is directly involved with and impacted by the ongoing use of this insecticide.

B. *Does J4MW have a genuine interest in the matter before the Court such that the Court can be assured that it has the necessary knowledge, skills and resources and will dedicate them to the matter before the Court?*

[25] I have no difficulty concluding that J4MW has a genuine interest in the matter before the Court – the health and safety of migrant agricultural workers, including those exposed to chlorpyrifos, is at the core of its mandate.

[26] As for its skills and resources, J4MW delivered clear and concise motion materials within the deadlines set by my earlier direction. This suggests that J4MW will do the same as an intervener.

[27] I also note that J4MW is an experienced intervener, having done so in *Schuyler Farms Limited v Dr Nesathurai*, 2020 ONSC 4711; *OPT v Presteve Foods Ltd*, 2015 HRTO 675; and *Ontario (Attorney General) v Fraser*, [2011] 2 SCR 3.

[28] I conclude that J4MW has the necessary knowledge, skills and resources, and will dedicate them to the matter before the Court.

C. *Is it in the interests of justice to grant leave to J4MW to intervene?*

[29] No hearing date has been set in the Phase-out Applications; J4MW will not be filing evidence, or cross-examining on the evidence filed by the parties. Granting leave to intervene will not disrupt the existing schedule, or delay the hearing. J4MW is well-positioned to assist the Court in its consideration of the issues raised in these applications, particularly as it relates to

some of the broader implications of the Court's decision, and to the Court's consideration of the relevant sections of the PCPA. It is therefore in the interests of justice to grant leave to intervene.

V. CropLife's Motion

[30] I will consider CropLife's motion in the same manner.

A. *Will CropLife make different and useful submissions, insights and perspectives that will further the Court's determination of the legal issues raised by the parties to the proceeding, not new issues?*

[31] The legal issues raised in the Phase-out Applications have been reviewed above.

[32] In the MRL Application, the notice of application asserts that the decision not to cancel chlorpyrifos maximum residue limits was unreasonable and unlawful, particularly that it was made despite PMRAs awareness that it could not find that the risks from MRLs were acceptable from a health risk perspective, and that the PMRA did not notify or consult the public or make the MRL decision public. The MRL Application seeks an order that the Minister revoke all maximum residue limits for chlorpyrifos, and a declaration that the Minister's decision not to revoke or amend maximum residue limits was unlawful and unreasonable.

[33] In its notice of motion, CropLife identifies its proposed submissions as:

> In the Phase-Out applications:
>
> (i) the practical implications which would result from limiting PMRA's discretion to conduct and rely on its own independent risk-assessment of registered products (including assessing the risks to human health and the environment in Canada) when deciding on the appropriate conditions to impose on a registration, including the

appropriate phase-out period for a cancelled pesticide, in accordance with the aims of the Act and the specific provisions of the Act which confer discretion to the PMRA;

(ii) how the PMRA's discretion to stipulate a phase-out period under the Cancellation and Amendment Policy, including its approach to risks which are not imminent and serious, is consistent with the "precautionary 3 principle" espoused in section 20(2) of the Act and with the discretion afforded to the PMRA under subsections 21(5) and 22(3) of the Act; and

(iii) the relationship between sections 20(1)(b), 21(5) and 22(3) of the Act.

In the MRL application:

(iv) the need for a contextual, purposive reading of the Act as it relates to the interpretation and application of sections 9 to 11 by the PMRA;

(v) the practical implications and potential absurdity of the immediate revocation of MRLs in the context of a decision by the PMRA to establish a phase-out period for the implementation of a product's cancellation; and

(vi) how Canada's international trade obligations are a relevant consideration to the interpretation of the Act and the exercise of PMRA's discretion to set MRLs.

In all three applications:

(vii) the need for notions of "risk" and "harm" at section 2(2) of the Act to be defined in a manner consistent with the scheme and purpose of the Act to avoid the practical implications which would result in the absence of a phase-out period following cancellation of a pesticide or the immediate revocation of MRLs during a phase-out period; and

(viii) the PMRA's expertise and the deference owed to its interpretation of the Act, its home statute, and its assessment of different risks in a given case.

[34] I share the applicants' concern that some of the issues as framed by CropLife go beyond the issues as framed in the notices of application. It gives the appearance of going beyond providing the Court with a broader perspective, and into a referendum on PMRA policies and practices as a whole. This particularly applies to items (i) and (ii) above, which are not limited to the decisions in issue. If these issues were narrowed to the decisions in issue, and to chlorpyrifos pest control products, they would be more aligned with the issues raised by the parties. While leave to intervene will be granted, it will be on narrower terms than what CropLife proposes, specifically to narrow the issues to chlorpyrifos and the decisions in issue.

[35] I do not find the applicants' position on the two intervention motions entirely consistent. In the J4MW motion (which the applicants support), the proposed intervener relies on *Atlas Tube* for the proposition that interveners with "on the ground*"* experience can be welcomed. CropLife can equally bring this experience from the perspective of manufacturers and distributors.

[36] The applicants object to CropLife's proposed submissions on international law, asserting that international law is not relevant to the issues in the application, and that any argument in this respect would be based on policy, and therefore doomed to fail.

[37] In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, the Supreme Court determined that, in some administrative decision making contexts, international law will operate as an important constraint on an administrative decision maker. It is well established that legislation is presumed to operate in conformity with Canada's international obligations, and the legislature is presumed to comply with the values and principles of

customary and conventional international law. It has also been clear that international treaties and conventions, even where they have not been implemented domestically by statute, can help to inform whether a decision was a reasonable exercise of administrative power (at para 114). I therefore do not see the application of any international trade obligations in the context of the reasonableness of the impugned decisions as an argument that is doomed to fail.

[38] I conclude that CropLife will bring a different insight and perspective to the hearing, specifically that of a group that was involved in the manufacture and distribution of this insecticide.

B. *Does CropLife have a genuine interest in the matter before the Court such that the Court can be assured that it has the necessary knowledge, skills and resources and will dedicate them to the matter before the Court?*

[39] The applicants argue that while CropLife and its members may be generally interested in interpretive issues under the PCPA, they do not agree that this general interest alone amounts to a genuine interest in the specific issues raised in the applications.

[40] The applicants argue that all registrations for chlorpyrifos were cancelled in May 2021, and that the second phase-out decision prohibited former registrants from selling products containing chlorpyrifos after December 2021. The applicants also point to the fact that the record does not show that former registrants of chlorpyrifos sought or expressed an interest in a prolonged phase-out of chlorpyrifos products or maintenance of MRLs, and that no former registrants have sought party or intervener status. The applicants argue that CropLife's interest is purely jurisprudential.

[41] A general interest in the development of the law, because a proposed intervener might be affected by the Court's decision, is a jurisprudential interest, and is insufficient (*Right to Life Association of Toronto and Area v Canada (Employment, Workforce and Labour)*, 2022 FCA 67 at para 24 ("*Right to Life*")). In *Right to Life*, three intervention motions were considered together. The Court acknowledged that the moving parties were interested in the development of the law because they, like hundreds of other organizations, might be affected by the Court's decision. However, only one of the proposed interveners discussed how the Minister's actions in issue would tangibly affect it. This party expressed concern that the impugned attestation requirement would prevent it from applying for the federal government's Summer Jobs Program. But notwithstanding this requirement, it applied for and received funding in years after the rejection of funding that was the subject of the appeal. The request for intervention was rejected (paras 24-25).

[42] As framed in its notice of motion, CropLife's intended submissions appear to go beyond the scope of the notices of application, and seek to engage in a broader policy review. However, in its reply argument, CropLife states: "[t]o be clear, CropLife's submissions will relate to the arguments made by the applicants in support of their request that this Court find that the PMRA failed to comply with their statutory obligations in issuing a phase-out period or failing to cancel all MRLs for chlorpyrifos". To hold CropLife to this submission, I will grant leave to intervene on narrower terms that what CropLife proposes. Only then can CropLife have a genuine interest in the matter before the Court.

[43] As for its skills and resources, CropLife is represented by experienced counsel, and delivered its motion materials within the deadlines set by my earlier direction. This suggests that CropLife will do the same as an intervener.

C. *Is it in the interests of justice to grant leave to CropLife to intervene?*

[44] Both the applicants and CropLife made extensive submissions on CropLife's intervention in an earlier proceeding, also involving a decision of the PMRA.

[45] In *David Suzuki Foundation v Canada (Health)*, Court file no. T-784-19, CropLife was granted leave to intervene by prothonotary Tabib. After CropLife filed its materials, the applicants brought a motion to strike certain portions of CropLife's memorandum of fact and law, and certain materials from its book of authorities. The motion was granted in part. Justice Southcott determined that portions of CropLife's memorandum of fact and law exceeded the terms on which intervention was granted by: (a) relying on new evidence included in the intervener's book of authorities and referenced in footnotes in its memorandum; and (b) including arguments that CropLife was not granted leave to advance (*David Suzuki Foundation v Canada (Health)*, 2019 FC 1473 ("*Suzuki*")). It appears that the *David Suzuki* matter is the only instance where CropLife has been granted intervener status, at least in the Federal Courts.

[46] The applicants place significant emphasis on this interlocutory order, describing CropLife's intervention history as "troubling". The applicants point to CropLife's argument on the *Suzuki* motion, specifically that the issues raised in the motion were *res judicata* because they

were already decided through the intervention order. CropLife argued that the motion for leave to intervene in *Suzuki* was granted without any restrictions, and that the motion represented an effort by the applicants to re-litigate the intervention motion. CropLife's argument was determined to have no merit (*Suzuki* at paras 16-19).

[47] In its lengthy reply submissions, CropLife downplays the order that was made against it, and focuses on portions of decision on the merits (*David Suzuki Foundation v Canada (Health)*, 2019 FC 1637) where the arguments advanced by the intervener supported certain conclusions reached by the Court.

[48] I agree with CropLife's submission that each motion to intervene must be judged on its own merits. But intervention in another's case is a privilege, not a right (*Right to Life* at para 17). An intervener's past conduct is certainly a relevant consideration. There is a clear prohibition on interveners supplementing a record with new evidence. The Court determined that CropLife improperly attempted to introduce further materials and argument. This is a factor that weighs against granting leave to intervene.

[49] Another recognized factor in motions to intervene, specifically when assessing the interests of justice, is "equality of arms". If the Court "allows piles of interveners on one side of the debate, it creates the appearance that it wants a gang-up against one side". And the concern is beyond just appearance. If one side is so numerous or dominant that its voices drown out the other side and prevent it from expressing itself adequately, fairness is called into question (*Canadian Council for Refugees* at paras 13-18).

[50] In these proceedings, the respondent is a government regulator. The applicants describe themselves as non-governmental organizations working to protect the health of the environment and humans by contributing to the development of government policies that limit the use of pest control products and food production technologies that are harmful. J4MW is a non-profit dedicated to the interests of migrant agricultural workers.

[51] There are no "piles" of interveners in these matters, only two. The fact that J4MW met the test for intervention does not mean that CropLife is guaranteed entry, but the objective of equality of arms is a factor that favours granting leave to CropLife as well.

[52] There are factors that weigh against granting CropLife leave to intervene. In balancing all the above factors, I conclude that the Court would be better served in its consideration of the issues with the presence of CropLife as an intervener.

VI. Terms of Intervention

[53] Intervention by J4MW and CropLife will be subject to the following terms.

A. *No new evidence or issues*

[54] The jurisprudence is consistent and clear in this respect. The Court does not frown on interveners slipping in fresh evidence, or expanding the issues as framed by the parties, such conduct is deplored (*Right to Life* at para 13). This should go without saying, but in light of the earlier skirmishing in *David Suzuki*, it bears repeating. The interveners may not file further evidence, in books of authorities or otherwise. CropLife's reply argument states that: "CropLife

does not intend to adduce and does not need to adduce evidence to make its eventual submissions on the merits of the applications", and "there is already evidence on the record alluding to the practical implications of phase-out which will serve as the evidentiary foundation for CropLife's submissions." I therefore expect that there will be no issue in this regard.

B. *Length of written and oral argument*

[55] J4MW requests leave to file a memorandum of fact and law not exceeding 20 pages and the ability to present oral submissions for up to 30 minutes. This is reasonable.

[56] J4MW will be granted leave to serve and file a memorandum of fact and law in the Phase-out Applications, not to exceed 20 pages, and the ability to present oral submissions at the hearing for up to 30 minutes, subject to the discretion of the presiding judge.

[57] CropLife requests leave to file a memorandum in each of the Phase-out and MRL Applications not exceeding 20 pages, and oral submissions for up to 75 minutes. A combined 40 pages of written argument and 2.5 hours of submissions is unreasonable and will not be granted. Equality of arms also favours some measure of parity between the interveners for the terms of their participation. Further, allowing one intervener almost half a day for argument runs the risk of increasing the length of the overall hearing, and thereby delaying when it can be heard.

[58] CropLife will be granted leave to serve and file a memorandum of fact and law in each of the Phase-out and MRL Applications, not to exceed 25 pages in the aggregate, and the ability to

present oral submissions at the hearing of all three matters for up to 40 minutes in the aggregate, subject to the discretion of the presiding judge.

C. *Timing for the memoranda of fact and law*

[59] J4MW proposes that it deliver its memorandum of fact and law within 15 days after the deadline for the applicants to serve their memorandum of fact and law. CropLife requests that it deliver its memorandum of fact and law 30 days after the filing of the respondents' records.

[60] The applicants ask that memoranda be filed within 15 days of the date of this order; the respondents request that the interveners' memoranda be filed by November 18, 2022. On the current schedule, that is two weeks after the respondents' records are due.

[61] One of the cardinal rules for interveners is that they must not repeat submissions already made by the parties; they are to bring different submissions and perspectives. On the current schedule, the applicants' records are due on September 30, 2022. I do not see a benefit to having the interveners file their memoranda first.

[62] To ensure that the table is fully set by the parties before the interveners file any argument, the interveners' memoranda of fact and law shall be served and filed within 21 days of the service and filing of the respondents' records.

[63] The applicants and respondents may serve and file a memorandum of fact and law in response to the interveners' memoranda, not to exceed 10 pages, which shall be served and filed within 10 days of the service and filing of the interveners' memoranda.

[64] The participation of the interveners cannot delay the scheduling of the hearing. The applicants shall therefore serve and file a requisition for hearing within 10 days after service of the respondents' records. This will allow intervener argument and scheduling the hearing to proceed in parallel.

VII. Costs

[65] The Court has full discretionary power over the amount and allocation of costs (subrule 400(1)).

[66] J4MW did not request costs in its notice of motion, so none will be awarded.

[67] CropLife requested costs if unsuccessfully opposed. The applicants did oppose CropLife's motion, but were partially successful in doing so. There will be no order as to costs.

ORDER in T-121-22, T-956-21, T-1412-21

THIS COURT ORDERS that:

1. Justice for Migrant Workers ("J4MW") is granted leave to intervene in Court file nos. T-956-21 and T-121-22 on the following terms:

    a. J4MW may serve and file a memorandum of fact and law, not to exceed 20 pages, within 21 days of service and filing of the respondents' records;

    b. The issues to be addressed by J4MW are:

        i. Was the Pest Management Regulatory Agency's ("PMRA") decision to allow the sale and use of chlorpyrifos over a three-year period unreasonable, unlawful and/or made without jurisdiction?

        ii. Did the PMRA's decision lack justification, transparency or intelligibility?

        iii. Was the PMRA's decision made without regard to the purposes of the Pest Control Products Act, SC 2002, c 28 ("Act"), or without regard to relevant legal constraints in the Act which apply to cancellations of registrations?

    c. J4MW is not permitted to file any evidence, nor conduct any cross-examinations on affidavits filed by the applicants and the respondents;

    d. The applicants and respondents in T-956-21 and T-121-22 may serve and file a memorandum of fact and law, not to exceed 10 pages, responding to J4MW's

memorandum of fact and law, within 10 days of service and filing of the interveners' memoranda;

e. J4MW is permitted to present oral argument, not exceeding 30 minutes, at the hearing of the applications in T-956-21 and T-121-22, or such other amount of time as the presiding judge may order;

f. Any further documents served on any party in T-956-21 and T-121-22 shall also be served on J4MW;

g. J4MW may not seek costs in these applications, or have costs awarded against it. This does not apply to any future interlocutory motions.

2. CropLife Canada ("CropLife") is granted leave to intervene in Court file nos. T-956-21, T-1412-21 and T-121-22 on the following terms:

a. CropLife may serve and file a memorandum of fact and law in the consolidated proceedings in T-956-21 and T-121-22, and T-1412-21, not to exceed 25 pages in the aggregate, within 21 days of service and filing of the respondents' records;

b. The issues to be addressed by CropLife are:

i. In T-956-21 and T-121-22:

1. The practical implications which would result from limiting PMRA's discretion to conduct and rely on its own independent risk-assessment of registered products (including assessing the

risks to human health and the environment in Canada) when deciding on the appropriate conditions to impose on a registration, specifically the appropriate phase-out period for chlorpyrifos-containing pest control products, in accordance with the aims of the Act and the specific provisions of the Act which confer discretion to the PMRA.

2. How the PMRA's discretion to stipulate a phase-out period for chlorpyrifos-containing pest control products under the Cancellation and Amendment Policy, including its approach to risks which are not imminent and serious, is consistent with the "precautionary 3 principle" espoused in section 20(2) of the Act and with the discretion afforded to the PMRA under subsections 21(5) and 22(3) of the Act.

3. The relationship between sections 20(1)(b), 21(5) and 22(3) of the Act.

ii. In T-1412-21:

1. The need for a contextual, purposive reading of the Act as it relates to the interpretation and application of sections 9 to 11 by the PMRA.

2. The practical implications and potential absurdity of the immediate revocation of MRLs for chlorpyrifos-containing pest control

products in the context of a decision by the PMRA to establish a phase-out period for the implementation of that product's cancellation.

3. How Canada's international trade obligations are a relevant consideration to the interpretation of the Act and the exercise of PMRA's discretion to set MRLs for chlorpyrifos-containing pest control products.

iii. In T-956-21, T-1412-21 and T-121-22:

1. The need for notions of "risk" and "harm" at section 2(2) of the Act to be defined in a manner consistent with the scheme and purpose of the Act to avoid the practical implications which would result in the absence of a phase-out period following cancellation of a pesticide or the immediate revocation of MRLs during a phase-out period.

2. The PMRA's expertise and the deference owed to its interpretation of the Act, its home statute, and its assessment of different risks in a given case.

c. CropLife is not permitted to file any evidence, nor conduct any cross-examinations on affidavits filed by the applicants and the respondents;

d. The applicants and respondents in T-956-21, T-1412-21 and T-121-22 may serve and file memoranda of fact and law, not to exceed 10 pages, responding to CropLife's memoranda of fact and law, within 10 days of service and filing of the interveners' memoranda;

e. CropLife is permitted to present oral argument, not exceeding 40 minutes, at the hearing of the applications in T-956-21, T-1412-21 and T-121-22, or such other amount of time as the presiding judge may order;

f. Any further documents served on any party in in T-956-21, T-1412-21 and T-121-22 shall also be served on CropLife;

g. CropLife may not seek costs in these applications, or have costs awarded against it. This does not apply to any future interlocutory motions.

3. The style of cause is amended to reflect Justice for Migrant Workers and CropLife Canada as interveners.

4. The applicants shall serve and file a requisition for hearing within 10 days after service of the respondents' records.

5. There is no order as to costs.

"Trent Horne"
Case Management Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	T-121-22, T-956-21 AND T-1412-21
STYLE OF CAUSE:	SAFE FOOD MATTERS INC. ET AL v ATTORNEY GENERAL OF CANADA ET AL

MATTER CONSIDERED AT TORONTO, ONTARIO WITHOUT PERSONAL APPEARANCE OF THE PARTIES

ORDER AND REASONS:	CASE MANAGEMENT JUDGE TRENT HORNE
DATED:	JUNE 16, 2022

WRITTEN SUBMISSIONS BY:

Laura Bowman Daniel Cheater	FOR THE APPLICANTS
Elizabeth Koudys	FOR THE RESPONDENTS
Ilija Dimeski Shane Martínez	FOR THE INTERVENER JUSTICE FOR MIGRANT WORKERS
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