



**Ottawa, November 16, 2023** – A decision in file T-824-21 was issued today by the Honourable Justice Angela Furlanetto of the Federal Court:

**IN THE MATTER OF  
RESPONSIBLE PLASTIC USE COALITION, DOW CHEMICAL CANADA ULC,  
IMPERIAL OIL, A PARTNERSHIP BY ITS MANAGING PARTNER IMPERIAL  
OIL LIMITED, AND NOVA CHEMICALS CORPORATION**

**v.**

**THE MINISTER OF THE ENVIRONMENT AND CLIMATE CHANGE, THE  
MINISTER OF HEALTH and THE ATTORNEY GENERAL OF CANADA  
and  
AMERICAN CHEMISTRY COUNCIL, AMERICAL FUEL & PETROCHEMICAL  
MANUFACTURERS, PLASTIC INDUSTRY ASSOCIATION, ENVIRONMENTAL  
DEFENCE CANADA INC. AND OCEANA CANADA, ANIMAL JUSTICE,  
THE ATTORNEY GENERAL FOR THE PROVINCE OF ALBERTA and THE  
ATTORNEY GENERAL FOR THE PROVINCE OF SASKATCHEWAN**

**Summary:** An application for judicial review was brought by the Responsible Plastic Use Coalition, Dow Chemical Canada ULC, Imperial Oil, a partnership by its managing partner Imperial Oil Limited, and Nova Chemicals Corporation. The Applicants challenged the Order-in-Council [Order] adding “plastic manufactured items” [PMI] to the List of Toxic Substances in Schedule 1 [the List] of the *Canadian Environmental Protection Act, 1999*, SC 1999, c 33 [the Act].

Interveners included industry associations and environmental groups. The Attorneys General of Saskatchewan and Alberta intervened in response to a Notice of Constitutional Question.

The Applicants argued that the Order adding PMI to the List was unreasonable as it was not a proper use of the Governor-in-Council’s [GIC’s] authority and did not comply with the statutory scheme under the Act. They argued that the listing for PMI was too broad, that PMI was not a “substance” or “class of substances” within the Act, and that the proper scientific analysis and risk assessments were not completed to demonstrate that the category of PMI were toxic.

They also asserted that the decision of the Minister of Environment and Climate Change to deny requests for a Board of Review to assess the alleged risks associated with PMI was unreasonable. The Applicants, Saskatchewan and Alberta further asserted that the Order was unconstitutional because it fell outside the federal Criminal Law Power.

The Respondents took the position that the GIC acted within their power under the Act and its overarching purpose to protect the environment through pollution prevention. The Respondents did not deny that analyses of the type typically conducted for chemical compounds were not conducted; however, they asserted that it was not necessary and was impractical in this instance. The Respondents argued that the Order did not raise any concerns with the division of powers and that the breadth of the listing was a reflection of the statutory scheme under the Act.

Federal Court



Cour fédérale

Upon considering the parties and interveners' arguments, including the implications on the application of Bill S-5, the *Strengthening Environmental Protection for a Healthier Canada Act*, SC 2023, c 12, the Court determined that PMI was too broad to be on the List and that this breadth rendered the Order unreasonable. The Court found that there was no reasonable apprehension that all PMI are harmful and that the Order extended beyond the constitutional guardrails established in *R v Hydro-Quebec*, [1997] 3 SCR 213. The Court retroactively quashed the Order and declared it invalid and unlawful as of its registered date (April 23, 2021).

A copy of the decision is available on the Federal Court [website](#):

<https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/524419/index.do>.