Federal Court Cour fédérale

Date: 20220224

Docket: T-1271-20

Citation: 2022 FC 264

Ottawa, Ontario, February 24, 2022

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

MAC BERRY FARMS LIMITED

Applicant

and

ATTORNEY GENERAL OF CANADA REPRESENTING THE MINISTER OF AGRICULTURE AND AGRI-FOOD CANADA

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review brought by Mac Berry Farms Ltd. [Applicant or Mac Berry] of a decision by the Director, Programs Branch, Farm Income Programs Directorate of Agriculture and Agri-Food Canada [Agri-Food Canada], Ms. Tammy Abel, dated September 22, 2020, refusing to reconsider the calculation of the Applicant's 2018 AgriStability benefits.

Background

[2] AgriStability is one of four Business Risk Management [BRM] programs (AgriStability, AgriInsurance, AgriInvest and AgriRecovery) which are intended to assist producers (farmers) with income and production losses. The BRM programs, including AgriStability, are administered pursuant to program guidelines. Until March 31, 2018, and for the purposes of this matter, these were the AgriStability: Growing Forward 2 – Program Guidelines [Guidelines], since April 2018, the program has been administered pursuant to the Canadian Agricultural Program and the Canadian Agricultural Partnership – AgriStability Program Guidelines.

[3] AgriStability is a margin-based program designed to assist producers (farmers) manage large income declines. Essentially, participants in AgriStability contribute a calculated amount for each program year (Guidelines s 3.4.1). Upon processing of submitted applications claiming loss, the program Administrator is required to send a Calculation of Program Benefits to participants detailing their Program Year Margin (the Production Margin for the current year being the difference between allowable income and allowable expenses, as defined by the Guidelines, and subject to the Guideline adjustments) and Reference Margin (as set out in s 4.5 of the Guidelines). Subject to program criteria and eligibility, if the participant’s Program Year Margin has declined relative to the Reference Margin, the Calculation of Program Benefits will indicate the amounts payable to the participant (Guidelines s 3.5.1; capitalized terms are defined in the Guidelines).

[4] AgriStability provides a benefit payment for producers who have a significant decrease in their income compared to a computed average of the previous five years (a positive margin payment). That is, where the Participant’s Program Year Margin has declined by more than 30% compared to their Reference Margin (Guidelines s 3.7).

[5] Additionally, AgriStability provides a benefit for producers whose eligible expenses exceed their eligible income (a negative margin payment) under certain other conditions (Guidelines s 3.8). For producers who do not participate in the AgriInsurance program at the Minimum Coverage Level (as defined in the Guidelines, typically 70%), negative margin payments are reduced by 70% of the deemed AgriInsurance benefit, representing the indemnity a participant would have received under AgriInsurance, less the premium that they would have paid (Guidelines s 3.8.1). For purposes of calculating the deemed benefit a participant who has not purchased any coverage from AgriInsurance will have coverage, premium, loss and benefit deemed at the Minimum AgriInsurance Level. The Guidelines state that AgriInsurance agencies will calculate the deemed AgriInsurance benefit based on information provided by the Administrator, and for this purpose, AgriInsurance agencies may contact the participant in order to obtain additional information needed to calculate the deemed benefit. If a participant has no AgriInsurance history, coverage premium and losses (if any) will be determined as for a new entry into the AgriInsurance program. This may require the use of “regional or provincial average” information rather than the usual individual underwriting process.

[6] Mac Berry is a Nova Scotia fruit farming operation.

[7] In October 2018, Mac Berry submitted a 2018 AgriStability Interim Payment Application. Based on a 2018 AgriStability Interim Payment Calculation of Program Benefits [COB] Notice, the Applicant was determined to be entitled to a positive margin benefit of $68,628.79. The Applicant was paid this benefit amount in two equal instalments, an interim payment on November 6, 2018 and a final payment on May 31, 2019. On May 31, 2019 AgriStability issued Mac Berry's final 2018 AgriStability COB Notice. This included a Calculation of Benefits Summary in respect of Mac Berry's positive margin benefit which also determined that Mac Berry had a Program Year Margin (loss) of $44,721.00, indicating that Mac Berry's allowable expenses exceeded its allowable income by that amount. The document states: "You have a negative program year margin. This benefit calculation is for the positive margin portion of your AgriStability benefit. We will calculate your negative margin benefit later".

[8] Mac Berry submitted its final 2018 AgriStability payment application on January 23, 2019. This included a submission from Mac Berry indicating that it was anticipating payment of a 2018 negative margin payment and that it had received such a payment in connection with its 2017 application, which had been based on a review by AgriStability of Mac Berry's actual production figures. Mac Berry set out its understanding of how the negative margin benefit would be calculated by AgriInsurance in the absence of crop insurance, explained that this would not be representative of Mac Berry's situation, explained why AgriInsurance coverage would not benefit its operations, and attached its 10-year highbush blueberry production history and its 2017 negative margin calculation.

[9] On June 27, 2019, Mac Berry wrote to the AgriStability appealing its determination of Mac Berry's 2018 AgriStability application, more specifically, the non-payment of its 2018 negative margin. Mac Berry claimed to be entitled to 70% of the calculated negative margin of $44,721.00, being $31,304.70. Mac Berry argued, among other things, that it had provided more than 10 years of actual production figures, and there was therefore no need to use any other production figures (provincial averages) to determine if Mac Berry would have been eligible for crop insurance. It submitted that, based on its figures, Mac Berry would not have been eligible to receive crop insurance benefits and, therefore, it should not be penalized for not being a part of that program. Further, that Mac Berry's data had been relied upon for their AgriStability claim in 2017, which resulted in a negative margin payment.

[10] By letter dated November 8, 2019, the Applicant's appeal was denied. The AgriStability Appeals division letter states, "your application was processed according to the rules set out in the AgriStability Program Guidelines, and there is no authority that allows for an exception to the Guidelines in this case". The letter then quotes a portion of s 3.8.1 of the Guidelines, which states that the Applicant's deemed benefit would be calculated based on information provided by the Administrator, and that if an applicant had no AgriInsurance history, their claim would be determined as if it were a new entry into the AgriInsurance program, which may require the use of provincial or regional averages rather than the usual individual underwriting process. The letter stated that the Applicant's request "is in contravention to the program rules outlined above".

[11] On February 20, 2020, Mac Berry submitted a second appeal to AgriStability. It contested AgriStability's decision to claw back part of the benefit paid in respect of 2017 as well as the denial of 2018 negative margin benefit. Mac Berry explained why it had not subscribed to AgriInsurance, including that it had looked at becoming a "new entrant" five years before but, given the young age of its blueberry bushes, the purchase was not justified as AgriInsurance coverage would not have covered a loss until the bushes matured, 12-15 years in the future. Based on Mac Berry's 10-year calculation for 2017 and 2018, which had been provided to AgriStability, Mac Berry would not have been entitled to any AgriInsurance benefits. Further, if Mac Berry were treated as a new entrant to AgriInsurance (per the Guidelines), they would not be eligible for any benefit because their production level was greater than the minimum 70% coverage level. Mac Berry submitted that it should not have its negative margin benefit reduced by any deemed AgriInsurance indemnity, which would have been $0 in any event. Mac Berry submitted again that the Guidelines state that provincial averages "may" be used rather than requiring the use of provincial or regional averages. In Mac Berry's case, resorting to averages was unnecessary, as Mac Berry had already provided reliable production data for use in the calculation.

[12] By letter of March 12, 2020, AgriStability upheld both the refusal of the 2017 (claw back) and 2018 (negative program margin) AgriStability applications stating, "No evidence was found that program rules were improperly applied in the calculation of your AgriStability benefit, and as a result your appeal has been closed".

[13] On May 31, 2019, AgriStability sent Mac Berry its 2018 AgriStability COB Notice. On June 23, 2020, AgriStability sent Mac Berry a 2018 Revised COB Notice, adjusting its Program Year Margin to a loss of $70,258.00. On July 15, 2020 (resent on September 8, 2020), Mac Berry submitted a third appeal of AgriStability's determination of Mac Berry's negative margin benefit. Mac Berry submitted that the revised larger negative Program Year Margin warranted an even larger negative margin payment, in the amount of $49,180.60, and repeated its previous arguments made in support of its position.

[14] By letter of September 22, 2020 AgriStability again denied Mac Berry's appeal. That decision is the subject of this application for judicial review.

Relevant Guidelines

AgriStability: Growing Forward 2- Program Guidelines

Definitions

Administrator
Provincial or Federal body or agency that administers the Program for a specific province or territory.

Minimum AgriInsurance Coverage Level
Coverage on each insurable commodity at the 70% level; or at the lowest level offered where it exceeds 70%, subject to provincial exemptions.

Production Margin
The difference between allowable income and allowable expenses, as defined by Program Guidelines and subject to the adjustments set out in Program Guidelines.

Program Year Margin
The Production Margin for the Current Program Year.

Reference Margin
The amount determined under clause 4.5.

3.8 Payments for negative margins

In addition to any amount payable under clause 3.7, if a participant's Program Year Margin is less than zero (negative margin), the participant will be eligible to receive payments for that part of the margin decline that falls within the negative margin providing that, in that Program Year the participant has:

1. incurred a negative margin resulting from any peril beyond the participant's control;

2. followed Sound Management Practices;

3. a Reference Margin greater than zero, or had a Production Margin (as determined for the purposes of calculating the Reference Margin) greater than zero in at least two of the three Program Years used in calculating the Reference Margin, including Program Years for which Production Margins were estimated under clause 3.13.2 of the Agreement, but excluding Program Years which were excluded under clause 3.13.1 of the Agreement.

Payments will be calculated based on 70 percent of that part of the Program Year Margin decline that falls within the negative margin, less any amounts adjusted under clause 3.8.1.

3.8.1 Deemed AgriInsurance benefits

Participants who did not participate in an AgriInsurance program at the Minimum AgriInsurance Coverage Level will have their negative margin benefit reduced by seventy percent of the deemed AgriInsurance benefit (deemed benefit), which represents the indemnity that a Participant would have received had they participated in AgriInsurance, less the premium that a participant would have paid to participate in AgriInsurance.

……

For purposes of calculating the deemed benefit, a participant that has not purchased any coverage amounts from AgriInsurance will have coverage, premium, loss and benefit for each insurable commodity deemed at the Minimum AgriInsurance Coverage Level. A participant that has purchased AgriInsurance coverage, but less than the Minimum AgriInsurance Coverage Level, will have coverage, premium, loss and benefit for each insurable commodity deemed at the Minimum AgriInsurance Coverage Level net of the coverage actually taken.

> AgriInsurance agencies will calculate the deemed benefit based on information provided by the Administrator, following the standard rules used to set coverage, premium and loss within AgriInsurance programs as they existed at the time that coverage would have been obtained. AgriInsurance agencies may contact the participant in order to obtain additional information needed to calculate the deemed benefit. The Administrator will determine the applicable crop year for each crop to be imputed that corresponds to the participant's fiscal year.
>
> If a participant has no AgriInsurance history, coverage, premium and losses (if any) will be determined as for a new entry into the AgriInsurance program. This may require the use of "regional or provincial average" information rather than the usual individual underwriting process.
>
> If a participant has an AgriInsurance history, then those records will be used to establish coverage, premium and loss based on the standards used in the province or territory. If the historical information does not reflect current management practices and potential productive capacity, AgriInsurance agencies may adjust the coverage and premium.
>
> …….

Decision Under Review

[15] The September 22, 2020 AgriStability letter states as follows:

> Thank you for the letter dated September 8, 2020, requesting an appeal of your 2018 AgriStability Application. You have requested the Administration review the 2018 Negative Margin Calculation. The review of your appeal is now complete and after careful consideration, the Administration has determined that your application was processed according to the rules set out in the AgriStability Program Guidelines, and there is no authority that allows for an exception to the Guidelines in this case. Section 3.8.1. of the AgriStability Program Guidelines states:
>
>> "AgriInsurance agencies will calculate the deemed benefit based on information provided by the Administrator, following the standard rules used to set coverage, premium and loss within AgriInsurance programs as they existed at the time

> that coverage would have been obtained. AgriInsurance agencies may contact the participant in order to obtain additional information needed to calculate the deemed benefit. The Administrator will determine the applicable crop year for each crop to be imputed that corresponds to the participant's fiscal year.
>
> If a participant has no AgriInsurance history, coverage, premium and losses (if any) will be determined as for a new entry into the AgriInsurance program. This may require the use of "regional or provincial average" information rather than the usual individual underwriting process."

Participants who did not participate in an AgriInsurance program at the Minimum AgriInsurance Coverage Level will have their negative margin benefit reduced by seventy perfect of the deemed AgriInsurance (deemed benefit), which represents the indemnity that a participant would have received had they participated in AgriInsurance, less the premium that a participant would have paid to participate in AgriInsurance. Carrying coverage is a management decision and up to the individual producer on whether or not it would benefit their operation. AgriStability is part of the suite of risk management programs that provide coverage in cases of extreme volatility and disaster situations. As Production Insurance was available, and you did not insure your commodity at the 70% level, your negative margin benefit was reduced.

The Administration reviewed the documentation you provided and the circumstances surrounding your case. No evidence was found that program rules were improperly applied in the calculation of your AgriStability benefit, and as a result your appeal has been closed.

Thank you for your patience while this matter was under review.

Issue and standard of review

[16] Only one issue arises in this matter and it is whether the AgriStability decision was reasonable.

[17] The parties submit, and I agree, that the reasonableness standard of review applies to this judicial review of the merits of the AgriStability decision (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 23, 24).

[18] When conducting a judicial review using the reasonableness standard, the Court "must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99).

Analysis

Applicant's position

[19] Mac Berry submits that, based on the calculation method utilized by the AgriInsurance Guidelines, its 2018 actual yearly yield amount (2083 kg/acre) exceeded its guaranteed production level (2046 kg/acre). Accordingly, Mac Berry would not have qualified for an AgriInsurance benefit and no insurance amount (deemed AgriInsurance benefit) should have been deducted from Mac Berry's AgriStability negative margin benefit. Mac Berry also submits that because it provided its actual 10-year historic yield records to AgriStability, there was no reason to apply provincial yield averages in calculating the deemed insurance benefit and, in doing so, AgriStability erred at law.

Respondent's position

[20] The Respondent submits that Mac Berry fell within s 3.8.1 of the Guidelines, being a participant who has no AgriInsurance history, thereby "making the section operational". The Respondent submits that deviation from the Guidelines in relation to Mac Berry's 2018 application may have attracted judicial scrutiny. Instead, the provisions in the Guidelines were objectively applied and a reasonable decision was rendered. AgriStability did not commit any reviewable error.

[21] The Respondent further submits that Mac Berry's contention that, in light of the 10-year production data provided in support of its 2018 AgriStability application, it was unreasonable for AgriStability to continue to apply regional or provincial average information, rather than the usual individual underwriting process which is consistent with s 3.8.1, is untenable.

Analysis

[22] The parties appear to agree that s 3.8.1 of the Guidelines was engaged and that, pursuant to that provision AgriStability had the authority to make determinations as to the deemed AgriInsurance benefit for purposes of calculating Mac Berry's negative margin benefit. Where they disagree is whether AgriStability properly applied s 3.8.1, and whether it reasonably exercised its discretion in this case.

[23] This process started when Mac Berry submitted a 2018 AgriStability Interim Payment Application. This form required the applicant to check off “yes” or “no” answers to a number of questions, including:

> 2c) Did you produce commodities that were or could have been, insured under AgriInsurance (crop or production insurance)?

[24] Mac Berry ticked “yes”.

> Are the majority (more than half) of your insurable crop acres insured at 70% or higher?

[25] Mac Berry ticked “no”.

[26] Mac Berry also indicated that it had not and did not expect to receive any amounts in the 2018 program years for AgriInsurance and listed its anticipated crop production (in pounds) and price per pound.

[27] AgriStability submitted the affidavit of Ms. Tammy Abel, Director, Programs Branch of the Farm Income Programs Directorate, Agriculture and Agri-Food Canada, affirmed on January 11, 2021 in support of its response to Mac Berry’s judicial review application [Abel Affidavit]. Ms. Abel made the AgriStability decision under review. The Abel Affidavit states that AgriStability received Mac Berry’s “ultimate 2018 AgriStability Application” on January 23, 2018, a copy of which is attached as an exhibit to that affidavit. This includes a reference by Mac Berry to its 2017 negative margin claim, which had been paid by AgriStability. Mac Berry also explained why it did not carry AgriInsurance and why, even if it had, a benefit would not have

been payable in its particular circumstances. Mac Berry noted that, because it did not have this coverage, AgriInsurance would not have records of Mac Berry's actual crop production. Also included was Mac Berry's 10-year highbush blueberry production history and its calculation of its 2017 negative margin benefit.

[28] On May 31, 2019, AgriStability issued the final 2018 AgriStability COB Notice. This was the final positive margin calculation adjusted to reflect the interim payment of $34,313.83 and a further payment in the same amount for a total benefit of $68,627.66, and indicating a $0.00 payment at that time. The final COB includes a "2018 AgriStability Reference Margin, Applied Reference Margin and Program Year Margin Calculation Summary". Mac Berry's 2018 Program Year Margin was calculated to be a negative amount of $44,721.00. The footnote to this line item states:

> 3 You have a negative program year margin because your allowable expenses are greater than your allowable income. You could receive a payment for up to 70% of your negative program year margin if you have not already received the maximum annual payment. This COB shows only the positive margin portion of your AgriStability benefit. We will calculate your negative margin benefit later.

[29] A similar footnote appears on the next page of the calculation.

[30] The certified tribunal record [CTR] does not contain a subsequent calculation for a negative margin benefit. Nor does the Abel Affidavit address this.

[31] As indicated above, AgriStability's refusal of Mac Berry's appeal referred to s 3.8.1 of the Guidelines, quoting a portion thereof. The decision then states that participants who did not

participate in an AgriInsurance program at the Minimum AgriInsurance Coverage Level will have their negative margin benefit reduced by 70% of the deemed benefit, which represents the indemnity that a participant would have received had they participated in AgriInsurance. Further, that carrying coverage is a management decision and up to the individual producer on whether or not it would benefit their operation. “As Production Insurance was available and you did not insure your commodity at the 70% level, your negative margin benefit was reduced”. AgriStability states that Mac Berry’s documentation and circumstances were considered but “No evidence was found that program rules were improperly applied in the calculation of your AgriStability benefit, and as a result your appeal has been closed”.

[32] How AgriStability calculated the negative benefit cannot be determined from the record.

[33] It is apparent from Mac Berry’s submissions that it assumed that AgriStability requested AgriInsurance to assess its claim as if Mac Berry were a new entrant into the AgriInsurance Program, as contemplated by s 3.8.1. However, when the Court asked the Respondent why, in that case, there were no communications in the record between AgriStability and AgriInsurance on this issue, the response was that AgriInsurance had not been involved in the determination of the deemed benefit. Rather, that because the initial application indicated that Mac Berry’s blueberry crop was not insured under AgriInsurance, AgriStability itself made the determination.

[34] There is no doubt that AgriInsurance had the authority to calculate the deemed benefit based on s 3.8.1 which, depending on the circumstance, might include a discretionary decision to

contact a participant for additional information or to apply regional or provincial average information.

[35] If AgriStability stepped into the shoes of AgriInsurance, the problem that arises is that there is nothing in the record that explains how the deemed benefit in respect of Mac Berry’s 2018 year was actually calculated. In its “ultimate” application and in every subsequent appeal Mac Berry explained why it did not carry AgriInsurance and that even if it had carried crop insurance it would not have been entitled to a benefit. That is, it would not have received an AgriInsurance benefit even if it had participated in AgriInsurance at the minimum required level and, therefore, its deemed benefit should not have been reduced by 70%. It also submitted a 10-year history of production data and explained why, in its view, this data would give a more fair and accurate depiction of its situation than would a provincial average. There is nothing in the record to indicate that AgriStability considered this position but, having done so, interpreted and applied s 3.8.1 as automatically applying a 70% reduction because Mac Berry did not carry AgriInsurance, nor is there any supporting calculation of such a reduction.

[36] An AgriStability internal email string is found in the CTR but it sheds little light on the issue. It includes an email to Ms. Abel, from Allyson Krentz, dated June 4, 2020, which states:

> After reviewing the 2018 benefit calculation, it appears that there will NOT be an additional benefit going to the producer. The positive margin payment of $68,628.79 remains unchanged. The only change for 2018 would have been to the Negative Margin Payment – if there would have been one. However, we know that he was not entitled to one, as the imputed value is what made us aware of the code issue.

[37] I am unable to discern the meaning or significance, if any, of this communication in the context of the issue before me.

[38] Another internal AgriStability email string includes an email from Allyson Krentz, to a variety of recipients, dated September 14, 2020. This discusses a response to Mac Berry and states:

> The issues he raises in his letter are issues with how AgriInsurance has calculated his imputed value – which is something that cannot be disputed. I don't think we should be discussing how the imputed values are calculated or determined as it is based the methodology from AgriInsurance and their policies.

[39] So, on one hand I have the Respondent submitting that AgriStability itself decided that a negative margin payment was not payable (but the record does not indicate how AgriStability calculated the benefit or determined that Mac Berry's submissions did not engage the exercise of the s 3.8.1 discretion) and, on the other hand, I have unexplained AgriStability emails indicating that it was AgriInsurance who did the negative margin calculation (but the record does not include these calculations nor is it known if Mac Berry's submissions as to its actual crop yield and other submissions were forwarded to AgriInsurance by AgriStability to be considered when, and if, AgriInsurance determined the deemed benefit).

[40] Further, AgriStability's written submissions in response to this application for judicial review assert only that Mac Berry's position is untenable (with no explanation for this conclusion) and that "deviation from the Guidelines in relation to Mac Berry's application may have attracted judicial scrutiny". The Respondent does not make any submissions explaining why it takes issue with Mac Berry's understanding of the interpretation and application of that

section. The limited submission states only that Mac Berry "met the criteria outlined in section 3.8.1. of the Guidelines, being 'a participant [who] has no AgriInsurance history', thereby making the section operational". I note that the portion of s 3.8.1 that speaks to a lack of an AgriInsurance history states that "If a participant has no AgriInsurance history, coverage, premium and losses (if any) will be determined as for a new entry into the AgriInsurance program. This may require the use of 'regional or provincial average' information rather than the usual individual underwriting process". If this portion of s 3.8.1 has application to Mac Berry's circumstance, then this again raises the question of whether discretion with respect to the use of regional or provincial averages, rather than Mac Berry's own information, was exercised and, if so, if it was reasonably exercised.

[41] In my view, if AgriStability was permitted to and did step into the shoes of AgriInsurance in applying s 3.8.1 – and I make no finding in that regard – then AgriStability was required to engage with Mac Berry's submissions as to the manner in which the deemed benefit would be calculated, given Mac Berry's particular circumstances. It is true that Mac Berry did not carry AgriInsurance, but its point was that, even if it had, it would not have received a benefit. In Mac Berry's view, this should have factored into the interpretation and application of s 3.8.1. The AgriStability decision letter states that those who did not participate in the AgriInsurance program at the Minimum AgriInsurance Level would have their negative margin benefit reduced by 70% of the deemed benefit "which represents the indemnity that a participant *would have received* had they participated in AgriInsurance" (emphasis added). This is unresponsive to Mac Berry's submission that even if it had participated in AgriInsurance it would not have received the benefit.

[42] Similarly, the decision letter asserts that no evidence was found that the program rules were improperly applied in the calculation of Mac Berry's AgriStability benefit. Again, this is not responsive to Mac Berry's submissions.

[43] As noted above, a review of the record does not reveal AgriStability's decision making process.

[44] And, if AgriInsurance made the assessment on AgriStability's behalf then, again, the record does not permit me to determine if AgriInsurance exercised the discretion afforded to it pursuant to s 3.8.1 to calculate the deemed benefit or, indeed, how it determined that a negative margin benefit was not available to Mac Berry.

[45] AgriStability states in its decision letter that no evidence was found that program rules were improperly applied in the calculation of Mac Berry's AgriStability benefit and, as a result, Mac Barry's appeal was closed. To my mind, the difficulty in this reasoning is that neither the decision letter nor the record engage with Mac Berry's submissions. They do not indicate how Mac Berry's submissions were considered and assessed in view of s 3.8.1. They do not indicate if or why the s 3.8.1 discretionary provisions referred by Mac Berry were found not to be applicable, how (or by whom) the deemed benefit was calculated and, how this was applied to the negative margin assessment. Accordingly, I do not agree with the Respondent that the decision is "supported by logic, reason, and is justified in light of the facts and the law that constrain the decision-maker". Nor do I agree with the submission that the decision fell within an acceptable range of decision making. As stated by the Supreme Court in *Vavilov,* a court

applying the reasonableness standard does not “attempt to ascertain the ‘range’ of possible conclusions that would have been open to the decision maker” (*Vavilov* at para 83).

[46] Ultimately, Mac Berry’s position may or may not be viable. A more transparent or justified decision or decision making process may have supported AgriStability’s conclusion. Absent that, however, I find that the decision is not reasonable because it is not justified, intelligible or transparent. (*Vavilov* at paras 85, 95, 97, 99 and 105).

[47] That said, I strongly caution that in addition to a limited record, the submissions by both parties as to the interpretation and application of s 3.8.1 of the Guidelines were sparse, at best. Accordingly, this decision is reflective only of the limited record and analysis presented in this matter.

Costs

[48] The Respondent sought costs in the amount of $2500. The Applicant submitted that this was not a complex matter and that costs in the range of $1500 to $2000 would be appropriate. Exercising my discretion as set out in s 400 of the *Federal Courts Rules*, SOR/98-106, I find that a lump sum all-inclusive cost award of $1500 in Mac Berry’s favour is appropriate in the circumstances of this matter.

JUDGMENT IN T-1271-20

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted;
2. The decision pertaining to the calculation of Mac Berry's negative margin benefit will be returned for redetermination, taking these reasons into consideration; and
3. Mac Berry shall have its costs in a lump sum, all inclusion cost award of $1500.

"Cecily Y. Strickland"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1271-20
STYLE OF CAUSE:	MAC BERRY FARMS LIMITED v ATTORNEY GENERAL OF CANADA REPRESENTING THE MINISTER OF AGRICULTURE AND AGRI-FOOD CANADA
PLACE OF HEARING:	BY VIDEOCONFERENCE USING ZOOM
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JUDGMENT AND REASONS:	STRICKLAND J.
DATED:	FEBRUARY 24, 2022

APPEARANCES:

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