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Court File No. T-2293-12

FEDERAL COURT
COUR FÉDÉRALE
FILED JAN - 7 2016 DEPOSE
SHELLY PROCYK
EDMONTON, AB

FEDERAL COURT

PROPOSED CLASS ACTION

BETWEEN:

PARADIS HONEY LTD., HONEYBEE ENTERPRISES LTD. and ROCKLAKE APIARIES LTD.

Plaintiffs

and

HER MAJESTY THE QUEEN, THE MINISTER OF AGRICULTURE AND AGRI-FOOD and THE CANADIAN FOOD INSPECTION AGENCY

Defendants

AMENDED STATEMENT OF CLAIM TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

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

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: _____

Issued by:_____
(Registry Officer)

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CLAIM

1. The Plaintiffs, Paradis Honey Ltd., Honeybee Enterprises Ltd. and Rocklake Apiaries Ltd., claim on their own behalf and on behalf of all class members ("the Class"), as defined below:

    a. An order pursuant to Rules 334.16(1) and 334.17 of the Federal Court Rules ("the Rules") certifying this action as a class proceeding and providing any ancillary directions;

    b. An order pursuant to Rules 334.12(3), 334.16(1)(e) and 334.17(b) appointing the Plaintiffs as the representative plaintiffs of the Class;

    c. Damages payable to the Plaintiffs and to the other Class members, in an amount equal to the losses and damages they sustained as a result of:

        i. the Defendants' negligence in imposing or enforcing a prohibition on, or denying import permits for, the importation into Canada of live honeybee packages from the continental United States after 2006 to the present day;

        ~~ii. The Defendants' acting without lawful authority by imposing a prohibition on, and denying import permits for, the importation into Canada of live honeybee packages from the continental United States after 2006 to the present day;~~

    d. Pre- and post-judgment interest pursuant to ss. 36 and 37 of the *Federal Courts Act*, R.S.C., 1985, c. F-7;

    e. Such further and other relief as this Honourable Court deems just.

THE PARTIES

2. The Plaintiff Paradis Honey Ltd. ("the Alberta Plaintiff") is a family-owned and family-run corporation registered in Alberta, whose main business is beekeeping and the production of honey and honeybee-related products on a commercial scale. The Alberta

Plaintiff maintains approximately 3,500 colonies.

3. The Plaintiff Honeybee Enterprises Ltd. ("the BC Plaintiff") is a British Columbia-registered corporation that operates a honey farm, pollination business and visitor attraction in Surrey, B.C. The BC Plaintiff maintains approximately 1,400 colonies.

4. The Plaintiff Rocklake Apiaries Ltd. ("the Manitoba Plaintiff") is a Manitoba-registered corporation in the business of beekeeping and honey production. The Manitoba Plaintiff maintains approximately 3,000 colonies.

5. The Defendant Her Majesty the Queen is joined herein in its own right and as responsible for the Minister of Agriculture and Agri-food and the Canadian Food Inspection Agency, all of whom will be collectively referred to as "the Crown."

6. The Defendant Minister of Agriculture and Agri-Food ("the Minister") is responsible for and has overall direction of the Defendant Canadian Food Inspection Agency ("the CFIA").

7. The CFIA is an agency of the federal Crown established by the *Canadian Food Inspection Agency Act* and is responsible for the administration and enforcement of the *Health of Animals Act* and associated regulations.

THE CLASS

8. The Plaintiff brings this claim for damages pursuant to Part 5.1 of the Rules on its own behalf and on behalf of other members of the class ("the Class") comprising all persons and corporate entities in Canada who keep or have kept more than 50 bee colonies at a time for commercial purposes since December 31, 2006 and who have been denied the opportunity to import live honeybee packages into Canada from the continental United States as a result of the Crown's prohibition on the importation of live honeybee packages from the continental United States after 2006.

FACTS RELIED UPON

A. Background of beekeeping industry

9. There are approximately 7,000 beekeepers keeping 600,000 colonies of honeybees in Canada. About 80%, or approximately 480,000 colonies are kept by commercial beekeepers to produce honey and to pollinate crops. About 20%, of Canadian beekeepers, or 1,400 beekeepers, are commercial beekeepers.

10. Canada's climate is challenging for beekeepers and a significant number of colonies are lost each winter. Canadian commercial beekeepers rely on imports of live bees to sustain or replenish their bee colonies as well as to increase their colonies.

11. Live bee imports generally take one of two forms: a "queen," which consists of a small box containing a queen honeybee with about a dozen bee attendants to keep her alive during transport; or a "package," which consists of a larger box containing a small colony made up of a queen bee and several thousand worker bees.

12. Unlike a queen, a bee package constitutes a ready-made colony, which can be productive and generate revenue in the year it is purchased.

13. Although live bees including bee packages can be purchased for import from a variety of countries including Australia, New Zealand and Chile, this is costlier and such bees are not acclimatized to North American conditions and are subject to higher losses. The least expensive and most productive source of live bee imports into Canada has been the United States by a significant margin.

B. The Crown's regulation of bee imports from the US

14. Commencing in the late 1980s, the import of live bees into Canada from the United States was restricted due to concern about the presence of mites and other pests on the bees. From that time until 2004, imports from the continental United States ("the US") of live bees in any form were prohibited by the *Honeybee Prohibition Order, 1987*, and its successor orders, enacted pursuant to s. 20(1) of the *Animal Disease and Protection*

Regulations, CRC c. 296 ("the *ADPR*"), as well as the *Honeybee Prohibition Regulations, 1991*, and its successor regulations, enacted pursuant to s. 14 of the *Health of Animals Act*, SC 1990, c. 21 ("the *HAA*"). Sections 20 of the *ADPR* and 14 of the *HAA* provide that

> *ADPR*:
> 20(1) Notwithstanding anything in this Part, the Minister may, by order, impose such conditions respecting the importation of an animal from the United States as he deems advisable to prevent the introduction of communicable disease into Canada or into any other country from Canada.
>
> *HAA*:
> 14 The Minister may make regulations prohibiting the importation of any animal or other thing into Canada, any part of Canada or any Canadian port, either generally or from any place named in the regulations, for such period as the Minister considers necessary for the purpose of preventing a disease or toxic substance from being introduced into or spread within Canada.

15. The Crown's restrictions on the importation of bees are ostensibly based on risk assessments conducted by the Defendant CFIA respecting the risks of disease or toxic substances resulting from allowing the importation of live bees from the United States. The last risk assessment and associated industry consultation was conducted by the CFIA in 2003 ("the 2003 Risk Assessment").

16. In 2004, following the 2003 Risk Assessment, the prohibition on live bee imports from the continental U.S. was continued by the *Honeybee Importation Prohibition Regulations, 2004*, SOR/2004-136 ("*HIPR*-2004"), subject to an exception which allowed the Minister to issue an import permit to import queens.

17. The Minister's authority to issue such a permit arises pursuant to s. 64 of the *HAA* and ss. 12 and 160(1.1) of the *Health of Animals Regulation* ("the *HAR*"), promulgated pursuant to the *HAA* The Minister was authorized to issue such a permit where the Minister was satisfied that this "would not, or would not be likely to, result in the introduction into Canada, the introduction into another country from Canada or the spread within Canada, of a vector, disease or toxic substance."

18. Between 2004 and 2006 the Crown from time to time used the Minister's discretion under s. 160(1.1) of the *HAR* to grant permits for the importation of queens from the US. The importation of packages remained subject to the prohibition contained in the *HIPR*-2004.

19. The prohibition on the import of bees under *HIPR*-2004 expired on December 31, 2006 and has not been renewed by Regulation or formal Ministerial Order or Directive.

20. Notwithstanding the expiry of the prohibition under *HIPR*-2004, the Defendants since January 1, 2007 have continued to enforce a complete prohibition on the import of bee packages from the United States and have communicated to the beekeeping industry that no permits will be granted for the importation of packages from the US. A total prohibition ("the Prohibition") on such packages remains in place and constitutes a *de facto* ministerial order or directive for which there is no lawful authority.

21. After 2006, the Crown continued to grant permits for the importation of US queens pursuant to the Minister's discretion under s. 160(1.1) of the *HAR*.

22. The Defendants have conducted no risk assessment with respect to the importation of live bees from the US since 2003. The 2003 Risk Assessment is, and was as of January 1, 2007, out of date and does not constitute a reasonable or legitimate basis for the Prohibition or the Minister's exercise of discretion or *de facto* ministerial order or directive.

23. Prior to 2004, the Defendant CFIA undertook to conduct annual reviews of the health of Canadian bees as part of its assessment of whether the continuation of a prohibition on bee imports from the United States was warranted. The CFIA has not conducted such reviews since 2004 and the last such review is out of date and also does not constitute a reasonable or legitimate basis for the Prohibition or the Minister's exercise of discretion or *de facto* ministerial order or directive.

A. Negligence

24. The Plaintiff relies upon the *Crown Liability and Proceedings Act*, RSC 1985, c. C-50,

especially ss. 3 and 23.

25. The stated purpose of restrictions on the importation of bees from the United States, whether by regulation or exercise of Ministerial discretion, is and has been to promote the health and interests of the Canadian bee industry and Canadian beekeepers by protecting them from risks associated with the importation of bees from the United States. Similarly, the stated purpose of the exception from the Prohibition for queens contained in *HIPR*-2004 was to assist the Canadian bee industry and Canadian beekeepers by providing access to an enhanced supply of queens to allow them to replenish bee stocks after winter losses. Consistent with this stated purpose the Crown engaged in consultation with the industry respecting its proposed restrictions.

26. The Defendants owed a duty of care to the Plaintiffs and the Class with respect to restrictions on the importation of honeybees from the United States, which duty of care arose from, *inter alia*:

    a. The implied and express purpose of the *HAA* and the Regulations including the *HAR* and *HIPR*-2004 is to regulate bee imports for the good and the economic interests of Canadian beekeepers and the Canadian beekeeping industry;

    b. The Crown's repeated representations to the Canadian beekeeping industry and commercial beekeepers that it regulated bee imports for the purpose of protecting the beekeeping industry and in particular the economic viability of the beekeeping industry, particulars of which include:

        i. The Crown's representations to commercial beekeepers that the immediate economic impact to them of closing the border to U.S. honeybee imports in 1987 was justified by the threat posed by honeybee pests to the long-term survival of the commercial beekeeping industry;

        ii. The Crown's representations to commercial beekeepers that it would continue the border closure in the face of their economic hardship only for so long as justified by the risks posed by the honeybee pest situation to the commercial beekeeping industry;

iii. The Crown's representations to commercial beekeepers that it would continuously monitor and update its information with respect to the honeybee pest situation to determine when the border closure was no longer necessary and justified;

iv. The Crown's representations to commercial beekeepers that the 2003 Risk Assessment justified lifting the border closure to U.S. queen imports in 2004, but continuing the border closure to U.S. package imports until December 31, 2006 as a precautionary measure;

b.1 The Crown's duty under ss. 12 and 160 of the *HAR* to receive and assess applications for import permits for U.S. packages from commercial beekeepers after December 31, 2006;

c. The Crown's actions regarding the importation of live bees from the US, including the Prohibition and the partial relaxation of the Prohibition by *HIPR-2004*, which were mainly aimed at fostering and protecting the viability of the beekeeping industry, particulars of which include:

i. The Crown's decision to prohibit honeybee imports into Canada from the U.S. in 1987 on the basis that it was an emergency measure required by the survival of the commercial beekeeping industry, notwithstanding the acknowledged economic hardship this would cause certain commercial beekeepers and beekeeping regions;

ii. The Crown's decision to continue the prohibition on honeybee imports into Canada from the U.S. until 2004 on the basis that it continued to be justified by the honeybee pest situation and the risk it posed to the commercial beekeeping industry;

iii. The Crown's decision to allow imports of U.S. queens starting in 2004 on the basis that the economic hardship suffered by certain groups of commercial beekeepers from the prohibition on U.S. honeybee imports outweighed the declining risk posed by varroa mite and other pests;

iv. The Crown's decision to continue the prohibition on U.S. packages until December 31, 2006, two years after U.S. queen imports were permitted, as a precautionary measure;

v. The Crown's decision to allow the Prohibition to lapse on December 31, 2006 under the *HIPR*-2004, resulting in the importation of U.S. packages becoming subject to the general import permit system that governed U.S. queen imports, as set out in ss. 12 and 160 of the *HAR*;

vi. The Crown's decision after December 31, 2006 not to receive and assess applications for U.S. packages without updating its information regarding the honeybee pest situation, and its refusal to update this information without the approval of the Canadian Honey Council, which was dominated by certain commercial beekeeping factions ("the Faction"); and

vii. The Crown's submission of its regulatory authority with regard to the regulation of U.S. package imports to the Canadian Honey Council;

d. The Crown's knowledge of the economic hardship suffered by certain beekeepers and beekeeping regions as a result of the continuation of the Prohibition;

d.1 The fact that the Crown knew or ought to have known that the Canadian Honey Council did not represent the interests of the commercial beekeeping industry as a whole and, in particular, that the interests of the Faction were in conflict with the interests of certain groups or regions of commercial beekeepers with regard to the issue of U.S. package imports;

d.2 The fact that the Crown knew or ought to have known that the Canadian Honey Council's stance on U.S. package imports was influenced by the Faction's purposes outside of the regulatory scheme, including, but not limited to: preservation of market share, reduction of cross-border competition, monopoly over the market for honeybee packages, and higher profits at the expense of other groups of commercial beekeepers;

e. The Crown's actions to alleviate the economic hardship suffered by certain beekeepers and beekeeping regions by measures such as partially relaxing the prohibition on the importation of queens from the US in 2004;

f. The Crown's extensive consultation and cooperation with the beekeeping industry and beekeepers on US bee import policy, particulars of which include:

i. Prior to December 31, 2006, consultation and co-operation with the Canadian Honey Council, commercial beekeepers as represented by each of the provincial associations, individual commercial beekeepers, the governments of each of the provinces, and other stakeholders of the commercial beekeeping industry with regard to U.S. honeybee import measures;

ii. After December 31, 2006, consultation and co-operation with, and submission of its regulatory authority to, the Canadian Honey Council; and

g. Other factors that may prove relevant.

27. The Crown owed a duty of care to each of the Plaintiffs and the Class with respect to restrictions on the importation of honeybees from the United States including to:

a. Take reasonable steps to avoid causing foreseeable economic hardship and other harms to the Plaintiffs and the Class without legal justification;

b. Not to continue the Prohibition after 2006 without lawful authority or lawful purpose;

c. Not to unreasonably, or without lawful authority or lawful purpose, deny the Plaintiffs or the Class import permits to import US packages;

d. Take reasonable care to act on timely and proper information in determining whether to allow imports of US packages;

e. Conduct timely monitoring, investigation, research and assessment of the beekeeping industry in Canada in determining whether to allow imports of US packages;

f. Not impose a blanket prohibition on the import of US packages under the guise of Ministerial discretion;

g. Not to abdicate its responsibilities under the *HAA* or the *HAR* but to exercise its own judgment and discretion;

h. After December 31, 2006, receive and assess applications for import permits for U.S. packages under ss. 12 and 160 of the *HAR*;

i. After December 31, 2006, if the Crown was going to deny import permits for U.S. packages, deny them on the basis of the statutory conditions set out under ss. 12 and 160 of the *HAR* and not for purposes outside of the statutory scheme; and

j. After December 31, 2006, if the Crown was going to continue the Prohibition as a matter of policy, continue it under the statutory authority set out by s. 14 of the *HAA*, including by enacting a regulation setting out a specific time period in which it would remain in effect, and not by adopting it on an *ad hoc* policy basis indefinitely.

28. The Crown breached its duty of care to the Plaintiff and the Class on or after January 1, 2007, by:

a. Improperly, and without lawful authority, continuing the Prohibition after the expiry of the prohibition period set out in the *HIPR*-2004 on December 31, 2006;

b. Improperly, and without lawful authority, denying the Plaintiffs and the Class on a blanket basis the opportunity to seek or obtain import permits for bee packages from the US;

c. Representing to the Plaintiffs and the Class that all applications for import permits for US packages would not be considered or would be automatically denied;

d. Basing its decisions to maintain the Prohibition on outdated and inaccurate information including the 2003 Risk Assessment;

e. Failing to conduct timely monitoring, research, investigation, assessment or consultation with respect to the ongoing necessity for the Prohibition;

f. Failing to conduct and obtain a current Risk Assessment with respect to the importation of bee packages from the US;

g. Misusing or failing to exercise ministerial responsibility and discretion under the *HAA* and *HAR* with respect to permitting or denying the import of bee packages from the US, particulars of which include:

    i. Delegating or submitting its regulatory decision making authority to the Canadian Honey Council when it knew or ought to have known that Canadian Honey Council was dominated by the Faction, which did not act in the best interests of the commercial beekeeping industry as a whole, and acted instead for improper purposes contrary to the statutory scheme as set out in paragraph 26(d.2);

h. Abdicating its responsibilities to conduct proper and timely risk assessment and exercise its independent judgment with respect to permitting or denying the import of bee packages from the US, particulars of which include:

    i. Refusing to update its knowledge and information regarding the honeybee pest situation without the approval of the Canadian Honey Council;

    ii. Refusing to receive or assess applications for import permits for U.S. packages without the approval of the Canadian Honey Council;

    iii. Refusing to reconsider or revisit its decision to continue the Prohibition without the approval of the Canadian Honey Council;

    iv. Refusing to consult with or hear from any stakeholders in the commercial beekeeping industry other than those represented by the dominant voting

bloc of the Canadian Honey Council; and

v. Closing its mind to honeybee research not endorsed or approved by the Canadian Honey Council, or not in support of the Canadian Honey Council's stance on U.S. package imports;

i. Denying import permits for U.S. packages for improper purposes contrary to the statutory scheme set out in ss. 12 and 160 of the *HAR*; and

j. Maintaining the Prohibition on an *ad hoc* basis contrary to the statutory scheme set out in s. 14 of the *HAA.*

29. The Crown knew, or ought to have known, that the Crown's negligence and the improper continuation of the Prohibition would cause loss and damage to the Plaintiff and Class, who relied on package imports to sustain and grow their beekeeping operations and business.

30. As a result of the Crown's negligence, the Plaintiffs and Class have suffered the following loss or damage:

a. Higher costs of importing packages from overseas;

b. Higher costs of building colonies from queens rather than packages, including higher labour, chemical, overwintering and other input costs;

c. Higher losses of colonies, and attendant costs of replacing lost colonies;

d. Loss of productivity and sales;

e. Loss of opportunity to replenish, maintain or grow honeybee colonies;

f. Diminution of value of property owned;

g. Losses associated with business failures; and

h. Such other loss or damage as may be proven at a trial of the common issues, or trials for individual members of the Class.

31. Wherefore, the Plaintiff seeks on its own behalf and the behalf of the Class:

    a. General, pecuniary and non-pecuniary damages for negligence in the amount of $200 million;

    b. Interest pursuant to the *Judicature Act*; and

    c. Such further or other relief as counsel may advise and this Honourable Court may allow.

32. The Plaintiff proposes that this action be tried at Edmonton, Alberta.

DATED at Edmonton, Alberta, Canada, this 5th day of January.

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