

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 DEFENCE

1. This Statement of Defence is filed by the Attorney General of Canada on behalf of Her Majesty the Queen in right of Canada ("HMQ"), the Minister of Agriculture and Agri-Food (the "Minister") and the Canadian Food Inspection Agency ("CFIA") (collectively the "Federal Crown").
2. Except where expressly admitted in this Statement of Defence, the Federal Crown denies all of the allegations in the Statement of Claim and puts the plaintiffs to the strict proof thereof.
3. The Federal Crown admits that the CFIA is a body corporate and an agent of HMQ created under the *Canadian Food Inspection Agency Act*, SC 1997 c 6 ("CFIA Act").

4. The Federal Crown admits that the CFIA is responsible for the administration and enforcement of the *Health of Animals Act*, SC 1990 c 21 and associated Regulations, pursuant to section 11 of the *CFIA Act*.

5. The Canada Border Services Agency ("CBSA") is also responsible for the enforcement of the *Health of Animals Act*, the associated Regulations made there under and related "program legislation", pursuant to section 11(5) of the *CFIA Act* and section 2 of the *Canada Border Services Agency Act* SC 2005 c 38.

6. The Federal Crown states that the CFIA is a "servant" under section 2 of the *Crown Liability and Proceedings Act*, RSC 1985 c C-50 as am ("*CLPA*").

7. The Federal Crown states that the Minister is not an entity capable of being sued and is not a proper party in this action. In this regard, the AGC pleads and relies on section 23 of the *CLPA*.

No right to damages

8. The Federal Crown states that the plaintiffs have no right or entitlement in law to damages for the defendants' alleged non-compliance with any of their public law duties. In any event, the Federal Crown specifically denies any such alleged non-compliance with their public law duties.

Federal Regulation of the Importation of Honeybees from the US

9. The Federal Crown specifically denies all of the allegations in the Statement of Claim that the Federal Crown acted or is acting without lawful authority. In this regard, the Federal Crown pleads and relies on the *Health of Animals Act*, the *Health of Animals Regulations*, CRC c 296 and the *Import Reference Document* bearing the date January 25, 2007 and policy number AHPD-DSAE-IE-2002-3-4, and as defined by section 10 of the *Health of Animals Regulations* ("Import Reference Document").

10. The Federal Crown states that at all material times it had, and continues to have, lawful authority, and a statutory and public duty, to control, restrict, prohibit or otherwise regulate the importation of honeybees into Canada from the US and elsewhere.
11. Under the *Health of Animals Act*, the *Health of Animals Regulations* and the Import Reference Document, the Federal Crown has lawful authority to refuse to issue a permit for the importation of honeybees into Canada from the US.
12. Under section 14 of the *Health of Animals Act*, the Minister is authorized to make regulations prohibiting the importation of any animal into Canada.
13. Under section 64(1) of the *Health of Animals Act*, the Governor in Council is authorized to make regulations for the purpose of protecting human and animal health through the control or elimination of diseases and toxic substances and generally for carrying out the purposes and provisions of the Act, including, but not limited to, regulations to prohibit or regulate the importation of animals in order to prevent the introduction of any vector, disease or toxic substance into Canada.
14. Under section 10 of the *Health of Animals Regulations*, honeybees are a “regulated animal”.
15. Under section 12(1)(a) and (b) of the *Health of Animals Regulations*, no person shall import a regulated animal except (a) in accordance with a permit issued by the Minister under section 160 of the Regulations or (b) in accordance with subsections (2) to (6) of the Regulations and all applicable provisions of the Import Reference Document.
16. Section 24.1 of the Import Reference Document provides that honeybees may only be imported into Canada in accordance with paragraph 12(1)(a) of the *Health of Animals Regulations*, that is, only in accordance with a permit issued by the Minister under section 160 of the *Health of Animals Regulations*.

17. Under section 160 of the *Health of Animals Regulations*, the Minister may issue a permit for the importation of honeybees into Canada only if the Minister is satisfied that, to the best of the Minister's knowledge and belief, the importation of honeybees from the US into Canada would not, or would not be likely to, result in the introduction into Canada, or the spread within Canada, of a vector, disease or toxic substance.

18. Since January 1, 2007, to the best of the Federal Crown's knowledge and belief, the Federal Crown has not been satisfied that the importation of live honeybee packages from the US would not, or would not be likely to, result in the introduction into Canada or the spread within Canada, of a vector, disease or toxic substance.

19. To the best of the Federal Crown's knowledge and belief, permitting the importation of live honeybee packages into Canada from the US would, or would be likely to, result in the introduction into Canada, or the spread within Canada, of vectors, diseases and toxic substances including, but not limited to, varroa mites, treatment-resistant varroa mites, tracheal mites, parasitic mite syndrome, small hive beetles, africanized honeybee genetics, collapsed colony disorder, acarine disease, American foulbrood, treatment-resistant American foulbrood, European foulbrood, nosematosis and other fungal and viral diseases.

Crown Sovereignty and Prerogative

20. In addition or in the alternative, by virtue of Crown Sovereignty and Prerogative the Federal Crown has lawful authority and the right to control both who and what enters its territorial borders.

Defence of statutory authority and statutory immunity in CLPA

21. In answer to the whole of the Statement of Claim, the Federal Crown pleads and relies on the defence of statutory authority, as well as its statutory immunity to liability in section 8 of the *CLPA*.

Federal Crown immune to direct liability in negligence

22. The Federal Crown states that pursuant to the *CLPA*, including sections 3 and 10, the Federal Crown is not directly liable in tort and the Federal Crown is immune to such claims. The *CLPA* limits the Federal Crown's tort liability to a vicarious liability only. As such, all of the allegations in the Statement of Claim which purport to enforce a direct liability in negligence against the Federal Crown do not disclose a cause of action recognized in law.

Limitations

23. With respect to Paradis Honey Ltd. ("Paradis"), some or all of Paradis' claims are barred by the *Limitations Act*, RSA 2000 c L-12, including section 3, and section 32 of the *CLPA*.

24. With respect to Honeybee Enterprises Ltd. ("Honeybee Enterprises"), some or all of Honeybee Enterprises' claims are barred by the *Limitation Act*, RSBC 1996 c 266, including section 3, and section 32 of the *CLPA*.

25. With respect to Rocklake Apiaries Ltd. ("Rocklake"), some or all of Rocklake's claims are barred by *The Limitation of Actions Act*, CCSM c L150, including section 2, and section 32 of the *CLPA*.

26. The Federal Crown also pleads and relies on the statutes, Codes and any other laws relating to prescription and limitation of actions in force, at the material time, in the following provinces: Saskatchewan, Ontario, Quebec, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, New Brunswick, Nunavut, Northwest Territories and Yukon.

Negligence: no duty of care

27. The Federal Crown states that no duty of care, as the plaintiffs allege or at all, arises under the common law, statutory law, including under the *Health of Animals Act* and the *Health of Animals Regulations*, or otherwise.

28. The Federal Crown states that the circumstances complained of in the Statement of Claim do not disclose reasonably foreseeable harm such that a duty of care on the Federal Crown arises.

29. In addition, the Federal Crown states that the Federal Crown and the plaintiffs do not have a relationship of proximity, or of sufficient proximity, under which any duty of care might arise in the circumstances complained of in the Statement of Claim.

30. The Federal Crown denies that, at all material times, the plaintiffs were owed a duty of care, as the plaintiffs allege or at all, by the Federal Crown or any of the Federal Crown's servants, agents or employees.

31. In particular, in answer to paragraph 26(a) of the Statement of Claim, the implied and express purpose of the *Health of Animals Act*, *Health of Animals Regulations* and the *Honeybee Importation Prohibition Regulation, 2004*, do not give rise to a private law duty of care.

32. In particular, in answer to paragraph 26(b) of the Statement of Claim and subparagraphs 26(b)(i), (ii), (iii) and (iv) of the Amended Statement of Claim, the Federal Crown denies it made any representations to the plaintiffs that could give rise to a duty of care as alleged or at all. Neither the purpose and intent of the scheme regulating the importation of animals nor the alleged conduct of the Federal Crown, creates a relationship of proximity that could give rise to a private law duty of care.

32.1 In further answer to paragraph 26(b) and in particular subparagraphs 26(b)(i), (ii), (iii) and (iv) of the Amended Statement of Claim, the Federal Crown states that any

representations, if they occurred, were communicated to satisfy a public duty to the agricultural industry as a whole for the general facilitation of international trade in the public's interest and for the protection of animals from pests and disease. The Federal Crown further states that if any duty arises in consideration of risks posed by honeybee pests and diseases, the monitoring of the risks and update of information concerning pests and diseases or the justifications for import conditions, such duty is a public duty. The Federal Crown denies that it owes a private law duty of care to the plaintiffs, or any other individual entrepreneurs.

32.2 In answer to paragraph 26(b.1) of the Amended Statement of Claim, the Federal Crown denies that there is a private law duty created by statute to receive and assess applications for import permits. The statutory scheme is intended to fulfill a public regulatory function in support of the purpose, intent and mandate of the *Health of Animals Act* to protect animals from pests and disease.

33. In particular, in answer to paragraph 26(c) of the Statement of Claim and subparagraphs 26(c)(i), (ii), (iii) and (iv) of the Amended Statement of Claim, the Federal Crown states that in carrying out its public, statutory duties, no duty of care to the plaintiffs arose as alleged by the plaintiffs, or at all.

33.1 In further answer to subparagraphs 26(c)(i), (ii), (iii) and (iv) of the Amended Statement of Claim, the Federal Crown states that any duty to balance the risk of disease with general facilitation of international trade is a public duty. The Federal Crown states that a private law duty to protect the plaintiffs who oppose the regulatory import restrictions, would conflict with a similarly imposed private law duty to protect those within the beekeeping industry who support the regulatory import restrictions. The conflict negates any private law duty of care to protect individual economic interests.

33.2 In answer to subparagraphs 26(c)(v) and (vi) of the Amended Statement of Claim, the Federal Crown denies that the plaintiffs accurately characterize the statutory

process. In further answer, the Federal Crown denies that a private law duty arises from the regulatory functions relating to the establishment of import conditions and assessment of risk to the satisfaction of the Minister under the statutory scheme.

33.3 In further answer to subparagraphs 26(c)(vi) and (vii), the Federal Crown denies the allegations of fact contained therein, and denies that a private law duty arises to any individual beekeeper in the circumstance alleged.

34. In particular, in answer to paragraph 26(d) of the Statement of Claim, the Federal Crown denies any knowledge of economic hardship, damages or losses suffered by the plaintiffs as a result of the refusal to issue import permits for bee packages from the US.

35. Moreover, the Federal Crown states that the refusal to issue import permits for bee packages from the US did not cause any economic hardship, damages or losses to the plaintiffs. Further, the Federal Crown states that any alleged economic hardship, damages or losses suffered by the plaintiffs, all of which is denied, was not foreseeable.

35.1 In answer to paragraphs 26(d.1) and (d.2) of the Amended Statement of Claim, the Federal Crown denies the allegations of fact contained therein, and denies that a private law duty arises to any individual beekeeper in the circumstance alleged therein. Specifically, the Federal Crown denies that any alleged knowledge of internal conflict within the national organization of commercial beekeepers creates a private law duty to individual members of that national organization or the plaintiffs.

35.2 In further answer to paragraphs 26(d.1) and (d.2), the Federal Crown states that the plaintiffs knew or ought to have known that the Canadian Honey Council purported to represent the interests of the commercial beekeeping industry, and if the plaintiffs' interests departed from the interests of other members of the Canadian Honey Council, such internal conflict does not create any duties, private or public, in the Federal Crown's exercise of regulatory functions.

36. In particular, in answer to paragraph 26(e) of the Statement of Claim, the Federal Crown denies that the Minister's exercise of discretion under section 1(2) of the *Honeybee Importation Prohibition Regulations, 2004* or under section 160 of the *Health of Animals Regulations* give rise to a duty of care as the plaintiffs allege or at all.

37. In particular, in answer to paragraph 26(f) of the Statement of Claim, the Federal Crown denies that any alleged consultation or cooperation with industry on US bee import policy gives rise to a duty of care as the plaintiffs allege, or at all.

37.1 In answer to subparagraphs 26(f)(i) and (ii) of the Amended Statement of Claim, the Federal Crown denies that any alleged consultation or cooperation with the entities, stakeholders and governments identified in those paragraphs of the Amended Statement of Claim, creates a private law duty of care to any of them in developing import conditions under the *Health of Animals Regulations*. In further answer, the Federal Crown denies that it submitted its regulatory control to the Canadian Honey Council.

38. In particular, in answer to paragraphs 27 of the Statement of Claim, the Federal Crown denies that it owed the plaintiffs a duty of care to do, or not do the things the plaintiffs allege in subparagraphs 27(a) – (g).

38.1 In answer to subparagraphs 27(h) – (j) of the Amended Statement of Claim, the Federal Crown denies that the plaintiffs accurately characterize the statutory process and denies the allegations of fact contained therein. The Federal Crown further denies it has a duty of care to enact specific prohibition regulation and denies that a private law duty is created by statute to receive and assess applications for import permits. The Federal Crown further states that developing import conditions to the satisfaction of the Minister is authorized through the *Health of Animals Act* and *Health of Animals Regulations* with the purpose to protect animals from pests and disease.

If duty of care, public policy negates same

39. In the alternative, if the Federal Crown owed the plaintiffs a duty of care as they allege or at all, which is denied, any such duty of care is negated by public policy considerations.

40. In addition, the Federal Crown's decisions on what animals can be imported into Canada, what conditions must be satisfied before any such importation is permitted are all policy and discretionary decisions of the Federal Crown which are not justiciable; are made in and for the public interest and any alleged duty of care is negated by such considerations.

If duty of care, no breach of standard of care

41. In the alternative, if the Federal Crown owed the plaintiffs a duty of care as alleged by the plaintiffs or at all, the Federal Crown did not breach any such duty or any standard of care related to any such duty.

42. The Federal Crown specifically denies all of the allegations in paragraph 28 of the Statement of Claim and denies that the defendants had or have any obligation to do or not do the things alleged therein and, if they did, denies that the defendants breached any of the obligations cited therein or at all.

42.1 In answer to subparagraph 28(g)(i) of the Amended Statement of Claim, the Federal Crown denies the allegations of fact contained therein, and specifically states that the regulatory decision over the development of import conditions for honeybees is grounded in regulatory provisions.

42.2 In answer to subparagraphs 28(h)(i) – (v) of the Amended Statement of Claim, the Federal Crown denies the allegations of fact contained therein. Specifically, the Federal Crown states that the regulatory decision over the development of import conditions was reviewed and updated with the assistance of scientific experts, including but not limited to members of the Canadian Association of Professional Apiculturists

and members of academia. The Federal Crown denies that it breached a private law duty as alleged, which is specifically denied to exist.

42.3 In answer to subparagraphs 28(i) and (j) of the Amended Statement of Claim, the Federal Crown denies that decisions on the development of import conditions or assessment of import permit applications are or were based on purposes outside the statutory scheme. The Federal Crown states that the Minister was and is not satisfied that, to the best of the Minister's knowledge and belief, the importation of honeybee packages would not, or would not be likely to, result in the introduction into Canada, or spread within Canada, of a vector, disease or toxic substance. The Federal Crown denies that it breached a private law duty as alleged, which is specifically denied to exist.

43. In response to paragraph 29 of the Statement of Claim, the Federal Crown specifically denies that the plaintiffs relied on live honey bee package imports from the United States to sustain and grow their beekeeping operations and business or otherwise.

Monetary Relief in Public Law/Abusive Administrative Action

43.1 In response to the Amended Statement of Claim as a whole, the Federal Crown denies that the pleadings give rise to alleged torts of monetary relief in public law or abusive administrative action, which are not causes of action known at law.

43.2 The Federal Crown further states that if the Court recognizes such causes of action, the Minister's regulatory decisions on the development of import conditions for honeybees and the denial of import permit applications for US honeybee packages are legally authorized under the *Health of Animals Act* and *Health of Animals Regulations*.

43.3 The Federal Crown further states that the Minister's decisions in administration of the Canadian animal import permit system are highly technical, involve competing policy considerations and flow from the Minister's regulatory experience in controlling

the entry and spread of disease in the interests of animal health. The Federal Crown states that the Minister's decisions should be should be afforded a broad measure of appreciation and deference. The Federal Crown states that the Minister's decisions fall within a range of acceptable and defensible outcomes based upon the Minister's review of the factors prescribed by section 160(1.1) of the *Health of Animals Regulations*.

43.4 The Federal Crown states that the Court should not exercise its discretion to grant monetary relief for the alleged damages suffered by the plaintiffs, given that it would not accord with the availability of other remedies the plaintiffs chose not to pursue, public law principles, and it is not warranted by the facts or policy considerations associated with this matter.

Damages

44. The Federal Crown denies that the plaintiffs suffered any of the losses or damages alleged in paragraph 30 of the Statement of Claim or any losses or damages at all.

45. In the alternative, if the plaintiffs suffered any of the losses or damages alleged in paragraph 30 of the Statement of Claim or any losses or damages at all, the Federal Crown specifically

(a) denies that those losses or damages were caused or contributed to in any way by any negligent or other acts or omissions of the Federal Crown as alleged in the Statement of Claim or at all;

(b) states that those losses or damages were caused wholly or in part by the plaintiffs' negligent or other acts and omissions;

(c) states that those losses or damages, or the extent of those losses and damages were not reasonably foreseeable; and

(d) states that the plaintiffs failed to mitigate their losses or damages.

46. The Federal Crown pleads and relies on the *Contributory Negligence Act*, RSA 2000 c C-27; the *Tortfeasors Act*, RSA 2000 c T-5; the *Negligence Act*, RSBC 1996 c 333; and *The Tortfeasors and Contributory Negligence Act*, CCSM c T90.

47. The Federal Crown pleads and relies on the statutes, Codes and any other laws relating to joint tortfeasors' and contributory negligence in force, at the material time, in the following provinces: Saskatchewan, Ontario, Quebec, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, New Brunswick, Nunavut, Northwest Territories and Yukon.

Provincial Acts regulating the movement of Honeybees

48. In addition to federal laws and regulations, the plaintiffs' businesses are also regulated by provincial laws and regulations.

49. The business of Paradis, set out in paragraph 2 of the Statement of Claim, is also regulated by the *Alberta Bee Act*, RSA 2000 c B-2. The Federal Crown pleads and relies on the *Alberta Bee Act* including section 7 of that Act, and the Regulations made under that Act, which prohibit the importation of bees into Alberta or otherwise restrict and regulate the entry of bees into Alberta.

50. The business of Honeybee Enterprises set out in paragraph 3 of the Statement of Claim is also regulated by the *British Columbia Bee Act*, RSBC 1996 c 29. The Federal Crown pleads and relies on the *British Columbia Bee Act* including section 10 of that Act, and the Regulations made under that Act, which prohibit the importation of bees into British Columbia or otherwise restrict and regulate the entry of bees into British Columbia.

51. The business of Rocklake set out in paragraph 4 of the Statement of Claim is also regulated by the *Manitoba Bee Act*, CCSM c B15. The Federal Crown pleads and

relies on the *Manitoba Bee Act* including section 6(2) of that Act and the Regulations made under that Act, which prohibit the importation of bees into Manitoba or otherwise restrict and regulate the entry of bees into Manitoba.

52. The Federal Crown also pleads and relies on the statutes, regulations and any laws relating to the regulation of bees in force, at the material time, in the following provinces: Saskatchewan, Ontario, Quebec, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, New Brunswick, Nunavut, Northwest Territories and Yukon.

53. The Federal Crown states that if the plaintiffs suffered any of the losses or damages alleged in paragraph 30 of the Statement of Claim, or otherwise, which is denied, the Federal Crown did not cause those damages since provincial statutes and regulations, in force where the plaintiffs carry on their business, also prohibit the entry or importation of honeybees from the US into their respective provinces.

54. The Federal Crown also pleads and relies upon the *Customs Act*, RSC 1985 c 1 (2nd. Supp.).

55. In response to paragraph 1(d) of the Statement of Claim, sections 36 and 37 of the *Federal Courts Act* RSC 1985 c F-7 do not apply to the Federal Crown.

56. The defendants are agreeable to the plaintiffs' proposal set out in paragraph 32 of their Statement of Claim.

DATED THIS 8th DAY OF FEBRUARY, 2013.

DATED THIS 15th DAY OF FEBRUARY, 2016


WILLIAM F. PENTNEY
Deputy Attorney General of Canada

Per: Original Signed by:
Jaxine Oltean,
Counsel for the Defendants

Department of Justice Canada
EPCOR Tower
10423 – 101 Street
Edmonton, AB T5H 0E7

Tel: (780) 495 – 7324
Fax: (780) 495 – 8419
Email: jaxine.oltean@justice.gc.ca

And per:


Marlon Miller,
Counsel for the Defendants

Department of Justice Canada
10th Floor, 123 – 2nd Avenue South
Saskatoon, SK S7K 7E6

Tel : (306) 975 – 4439 203-4193
Fax : (306) 975 – 6240
Email : marlon.miller@justice.gc.ca

TO: **Jon Faulds, Q.C., Counsel for the Plaintiffs**
Field LLP
10235 – 101 Street
Edmonton, AB T5J 3G1
Tel: (780) 423 – 3003
Fax: (780) 423 – 3829