

Court File No. T-2293-12

**FEDERAL COURT
PROPOSED CLASS ACTION**

BETWEEN:

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

Plaintiffs
(Respondent)

-and-

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

Defendants
(Applicants)

NOTICE OF MOTION
(Defendants' Motion to Strike under Rule 221(1)(a) of the *Federal Courts Rules*)

TAKE NOTICE THAT, on behalf of the named Defendants, counsel and agent for the Deputy Attorney General of Canada will make a motion to the Court in writing under Rule 369 of the *Federal Courts Rules*.

THE MOTION IS FOR:

1. An Order that the Plaintiffs' Statement of Claim ("Claim") be struck without leave to amend pursuant to Rule 221(1)(a) of the *Federal Courts Rules*.

2. If this motion is successful in whole or in part, an award of costs in favour of the Defendants.
3. Such further and other relief as this Honourable Court deems appropriate and just.

THE GROUNDS FOR THE MOTION ARE:

1. The Plaintiffs' Claim seek damages against the Defendants on the grounds that the Defendants acted without lawful authority and/or were negligent by prohibiting or refusing to issue permits for the importation of live honeybee packages into Canada from the continental United States ("US").
2. The corporate Plaintiffs are in the business of beekeeping for commercial and business purposes and allege that they suffered economic loss as a result of the Defendants' alleged acting without lawful authority and negligence.
3. It is plain and obvious that the allegation in the Claim that the Defendants acted without lawful authority is not a cause of action recognized in law or an allegation in respect of which damages are available.
4. Having regard to the relevant statutory regime, including but not limited to sections 14 and 64(1) the *Health of Animals Act*, SC 1990 c 21, sections 10, 12 and 160 the *Health of Animals Regulations*, CRC c 296 and section 24.1 of the Import Reference Document dated January 25, 2007, it is plain and obvious that the Defendants have lawful authority to prohibit or refuse to issue permits for the importation of live honeybees into Canada from the US and to otherwise regulate those matters.
5. Having regard to the relevant statutory regime, including but not limited to the *Health of Animals Act* and the *Health of Animals Regulations*, it is plain and obvious that the Defendants do not owe a private law duty of care to the Plaintiffs.

6. It is plain and obvious that the relevant statutory regime, including but not limited to the *Health of Animals Act* and the *Health of Animals Regulations*, does not create a private law duty of care on the Defendants to take care not to harm the private, economic interests of the Plaintiffs when carrying out their regulatory duties and exercising their regulatory powers related to the importation of animals into Canada.

7. Rather, under the relevant statutory regime, including but not limited to the *Health of Animals Act* and the *Health of Animals Regulations*, the Defendants carry out their regulatory duties and exercise their regulatory powers in the broader public interest.

8. It is plain and obvious that the Defendants were not otherwise in a close and direct relationship of proximity with the Plaintiffs such that a private law duty of care arose and any such private law duty of care is incompatible with the Defendants' duties to act in the broader public interest.

9. The Defendants' conduct, which is impugned in the Plaintiff's Claim, is confined to performing their regulatory duties and exercising their regulatory authority.

10. In addition or in the alternative, any supposed or *prima facie* private law duty of care arising under the relevant statutory regime or otherwise is negated by broader policy considerations.

11. If this motion succeeds, in whole or in part, an award of costs would be appropriate having regard to Rules 400 and 401 of the *Federal Courts Rules*.

12. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used in support of this motion:

(a) the pleadings filed herein;

(b) such further and other material as counsel for the Defendants may advise and this Honourable Court may permit.

DATED at the City of Edmonton, in the Province of Alberta, this 8th day of November, 2013.

William F. Pentney
Deputy Attorney General of Canada

Per: 
Jaxine Oltean

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Department of Justice Canada

Per: 
Marlon Miller

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AND TO: FIELD LLP
c/o Jon Faulds, Q.C., Dan Carroll, Q.C., Lily Nguyen
Counsel for the Plaintiffs