



Court File No.

T-2293-12

**FEDERAL COURT**

**PROPOSED CLASS ACTION**

**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

**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: DEC 28 2012

Issued by: ORIGINAL SIGNED BY  
(Registry Officer) JENNIFER SORVISTO  
A SIGNÉ L'ORIGINAL

Address of local office:  
Scotia Place  
10060 Jasper Avenue  
Tower 1, Suite 530  
Edmonton, Alberta T5J 3R8

TO:

Her Majesty the Queen  
c/o The Attorney General of Canada  
284 Wellington Street  
Ottawa, ON K1A 0H8

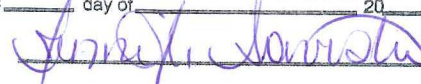
The Minister of Agriculture and Agri-food, Gerry Ritz  
1341 Baseline Road  
Ottawa, Ontario  
K1A 0C5

The Canadian Food Inspection Agency  
1400 Merivale Road  
Ottawa, Ontario  
K1A 0Y9

I HEREBY CERTIFY that the above document is a true copy of  
the original issued out of / filed in the Court on the

day of DEC 28 2012 A.D. 20

Dated this DEC 28 2012 day of 20



JENNIFER SORVISTO  
REGISTRY OFFICER  
AGENT DU GREFFE

## 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. Most colonies are kept by commercial beekeepers to produce honey and to pollinate crops.
10. Canada's climate is challenging for beekeepers and a significant number of colonies are lost each winter. Canadian 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* 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 that it regulated bee imports for the purpose of protecting the beekeeping industry and in particular the economic viability of the beekeeping industry;
  - 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;
  - 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;
  - 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 with the beekeeping industry and beekeepers



on US bee import policy;

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.

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 *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;
- 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.

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;

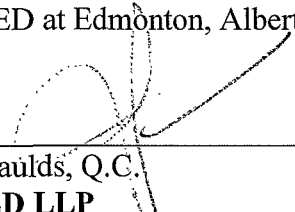
- c. Higher losses of colonies, and attendant costs of replacing lost colonies;
- d. Loss of productivity and sales;
- e. Loss of opportunity to replenish, maintain or grow honeybee colonies;
- f. Diminution of value of property owned;
- g. Losses associated with business failures; and
- h. Such other 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 28th day of December 2012.



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