

A-169-14



**APPEAL**

**(Court File No.)**

**FEDERAL COURT OF APPEAL**

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

**Appellants  
(Plaintiffs)**

**and**

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

**Respondents  
(Defendants)**

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**NOTICE OF APPEAL**

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TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Appellants. The relief claimed by the Appellants appears on the following pages.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the Appellants. The Appellants request that this appeal be heard at Edmonton, Alberta.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a Notice of Appearance in Form 341 prescribed by the Federal Courts Rules and serve it on the Appellants' solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS of being served with this Notice of Appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a Notice of Cross-appeal in Form 341 prescribed by the Federal Courts Rules instead of serving and filing a Notice of Appearance.

Copies of the Federal Courts 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 OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

(Date) ORIGINAL SIGNED BY  
JENNIFER SORVISTO  
A SIGNÉ L'ORIGINAL

Issued by: \_\_\_\_\_  
(Registry Officer)


Address of local office:

Edmonton Local Office  
Scotia Place  
10060 Jasper Avenue  
Tower 1, Suite 530  
Edmonton, Alberta T5J 3R8

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 MAR 28 2014 A.D. 20  

Dated this    day of MAR 28 2014

  
JENNIFER SORVISTO  
REGISTRY OFFICER  
A SIGNÉ DU GÉNÉRAL

TO:

Jaxine Oltean / Marlon Miller  
Counsel for the Respondents (Defendants)

Department of Justice Canada  
Prairie Region, Edmonton Office  
300, 10423 – 101 Street  
Edmonton, AB T5H 0E7

Telephone: (780) 495-7324 / (306) 975-3003  
Facsimile: (780) 495-8491  
File No. 2-151501

## APPEAL

1. **THE APPELLANTS APPEAL** to the Federal Court of Appeal from the order (“the Order”) of the Honourable Mr. Justice Scott dated March 5, 2014 by which he granted the Respondents’ motion to strike the Appellants’ Statement of Claim and Proposed Class Proceeding (“Statement of Claim”) in its entirety without leave to amend and ordered costs against the Appellants.
2. The Appellants commenced an action in Federal Court against the Respondents for regulatory negligence for refusing to accept, consider or grant any applications for import permits on U.S. honeybee packages after December 31, 2006, when the regulatory prohibition on such imports expired and U.S. honeybee package imports became subject to the general system whereby animal importers could import regulated animals if they obtained an import permit.
3. The Appellants filed and served the Statement of Claim on December 28, 2012 and the matter has proceeded as a specially managed proceeding under the direction of Justice Scott.
4. On September 12, 2013, the Appellants served and filed a Notice of Motion for Certification of the Statement of Claim as a class proceeding. On October 1, 2013, Justice Scott directed that the certification motion be suspended to allow the Respondents to file a motion to strike the Plaintiffs’ Statement of Claim as disclosing no cause of action. Justice Scott rejected the Plaintiffs’ submission that their Certification Motion and the Respondents’ proposed motion be heard together.
5. On November 8, 2013, the Respondents filed their motion (“the Strike Motion”) to strike the Statement of Claim in its entirety. The Strike Motion was brought on the ground that the Appellants could not establish that the Respondents owed them a duty of care.
6. Justice Scott heard the Strike Motion by way of written representations. In his reasons for the Order, he concluded that it was beyond doubt that the Appellants could not establish that the Respondents owed them a duty of care.
7. The Motions Judge also ordered costs against the Appellants on the basis that the no-costs rule (“No-Costs Rule”) pertaining to class proceedings set out at s. 334.39 of the *Federal Courts Rules*, SOR/98-106, did not apply until such time as the Statement of Claim was actually certified as a class proceeding.
8. **THE APPELLANTS ASK** that the Federal Court of Appeal:
  1. set aside the Order in its entirety and dismiss the Respondents’ motion to strike;
  2. direct that no costs are payable by any party to the other in either the current proceedings or the proceedings below, pursuant to the No-Costs Rule; and


3. order any other remedy this Honourable Court may deem appropriate.

9. **THE GROUNDS OF APPEAL** are as follows:

1. The Motions Judge erred in citing and applying the test to strike a claim in that he failed to consider whether the Statement of Claim could be saved by amendment and failed to consider the Appellants' proposed amendments, instead treating the Appellants' proposed amendments as an improper breach of procedure.
2. The Motions Judge erred in finding that the parties did not have a relationship of proximity by:
  - i. assessing the relationship in accordance with the general scheme of the *Health of Animals Act*, SC 1990, c 21, without considering the particular scheme created by the provisions and regulations aimed at honeybee importation or the Respondents' representations and interactions with the Appellants; and
  - ii. considering only the stated purpose of the statute, without considering the actual or effective purpose of the statutory and regulatory scheme.
3. The Motions Judge erred in finding that any *prima facie* duty of care was negated by policy considerations and in particular:
  - i. Erred in finding the Respondents' actions amounted to a "true policy" decision subject to "true policy" immunity by misconstruing the authority set out in ss. 12 and 160(1.1) of the *Health of Animals Regulations*, CRC, c 296 -- which requires animal importers to obtain permits and authorizes the Respondents to issue them when certain conditions were met -- as tantamount to the regulation-making power set out in s. 14 of the *Health of Animals Act* to enact a complete prohibition on animal imports for a specified period of time;
  - ii. Erred in finding that the test for a "bad faith" policy exception necessarily required that the Appellants identify an individual Crown employee who engaged in abuse of public office; and
  - iii. Erred by failing to consider whether the particular regulatory scheme aimed at honeybee importation and the interactions between the parties negated a finding of indeterminate liability.
4. The Motions Judge erred in awarding costs against the Appellants on the basis that the No-Costs Rule does not apply until certification is granted, contrary to the Federal Court of Appeal's direction in *Campbell v. Canada (Attorney General)*,

2012 FCA 45, that the No-Costs Rule applies as soon as a certification motion naming the Respondents as parties is filed.

March 28, 2014



**Field LLP**

2000 – 10235 101 Street  
Edmonton, AB T5G 3G1  
Telephone: (780) 423-3003  
Facsimile: (780) 428-9329

Attention:  
Daniel P. Carroll, LLM, QC  
P. Jonathan Faulds, LLM, QC  
Lily L.H. Nguyen

SOR/2004-283, ss. 35 and 38