

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

BILL SAUER

Plaintiff

- and -

THE ATTORNEY GENERAL OF CANADA on behalf of
THE MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by
THE MINISTER OF AGRICULTURE, JOHN DOE, JANE ROE, and
RIDLEY INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**AMENDED
FRESH AS 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 an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or 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 is sixty days. Instead of serving and filing a statement of defence, you may serve and file

AMENDED THIS 26 January 2005.
PURSUANT TO
MODIFIÉ CE
CONFORMÉMENT À
RÈGLE/LA RÈGLE 26.02 ()
THE ORDER OF
L'ORDONNANCE DU
DATED / FAIT LE
REGISTRAR
GREFFIER
SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE

a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local Legal Aid office.

IF YOU PAY THE PLAINTIFF'S CLAIM and \$50,000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$100.00 for costs and have the costs assessed by the court.

Date: April 8th, 2005.

Issued by: "A. Vaiciulenas"

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393 University Avenue
10th Floor
Toronto, Ontario M5G 1T3

TO: **Justice Canada**
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Solicitors for the Defendant The Attorney General of Canada

AND TO: **Borden Ladner Gervais LLP**
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Solicitors for the Defendant Ridley Inc.

CLAIM

1. The Plaintiff, as representative of a class of persons who as at May 20, 2003 were resident in Canada (except the province of Québec) and farmed cattle including, but not limited to, cow-calf, backgrounder, purebred, veal, feedlot and dairy producers, claims:
 - a) general damages for each of \$100,000 for pain, suffering and loss of enjoyment of life;
 - b) damages for each for real and substantial past, present and future loss of income, as well as diminution of value of livestock, business interests and real property. Full particulars of these damages for each member of the class will be provided after the common issues trial of this action. Should this action not be certified as a class action, full particulars of these damages for the plaintiff will be provided before the trial of this action;
 - c) aggravated damages for each of \$100,000;
 - d) punitive damages from the corporate defendants of \$100,000,000;
 - e) pre-judgment interest pursuant to section 128 of the *Courts of Justice Act*, R.S.O. 1990, chap. C-43, as amended;
 - f) post-judgment interest pursuant to section 129 of the *Courts of Justice Act*, R.S.O. 1990, chap. C-43, as amended;
 - g) costs of this action on a substantial indemnity basis; and
 - h) such further and other relief as this Honourable Court may deem just.

Procedural Relief Requested

2. The identities of all persons who may be necessary and proper parties are not yet available to the Plaintiff.
3. The Plaintiff seeks leave to add these necessary and proper persons, whose identities are not yet known to them, as Defendants in this action upon the discovery of their names and the particulars of their acts and omissions relevant to issues in this action.
4. The Plaintiff requests an order certifying this action as a class proceeding and appointing Bill Sauer as the representative plaintiff of the Class.
5. The Plaintiff requests an order requiring that the interests, if any, of the Crown in Right of the Provinces of Canada be represented by independent counsel in this action, and that counsel for the Plaintiff be expressly and specifically relieved of any obligation to represent any subrogated interests in this action.

Parties

6. The Plaintiff, Bill Sauer (hereinafter "Bill") resides in the Town of Niagara Falls, in the Province of Ontario. At all material times Bill was engaged in the commercial farming of cattle.
7. Table 1.1 of Statistics Canada's 2001 Census of Agriculture indicates that there were 86,388 cattle farms (both dairy and beef) in Canada reporting total gross farm receipts greater than \$2,499. A reasonable estimate of class size is therefore 100,000 considering that there may be more than one class member on some farms.
8. Approximately 25,000 of the intended class members are resident in Ontario.

9. The Defendant, the Attorney General of Canada on behalf of Her Majesty the Queen in Right of Canada as represented by the Minister of Agriculture (hereinafter “HMQ”), was at all material times under a public and statutory duty and assumed both policy and operational responsibilities for ensuring the safety of all animal feed in Canada, including regulating and controlling its contents, importation, conditions of manufacture, testing, labelling requirements, advertising and conditions of use.
10. John Doe and Jane Roe (hereinafter “the Bureaucrats”) were servants of HMQ at material times who were under a duty to ensure the safety of all animal feed in Canada, including regulating and controlling its contents, importation, conditions of manufacture, testing, labelling requirements, advertising and conditions of use, and for whose wrongful acts HMQ is vicariously liable. The identities of the Bureaucrats are not currently known to the Plaintiff, and HMQ has refused an ATIP request to provide their identities.
11. The Defendant Ridley Inc. is a corporation incorporated pursuant to the laws of Manitoba, which manufactures and/or distributes animal feed products. The registered office of Ridley Inc. is located at 17 Speers Road, Winnipeg, Manitoba. The operations office of Ridley Inc. is currently located at 424 North Riverfront Drive, Mankato, Minnesota, U.S.A. Ridley Inc. owns and operates a stockfeed manufacturing plant in Mitchell, Ontario and carries on business in Ontario.
12. Ridley Inc. was formerly known as Ridley Canada Ltd. The name change was effected by Articles of Amendment dated November 10, 1998. Ridley Canada Ltd. was formerly known as Feed-Rite Ltd. The name change was effected by Articles of Amendment dated May 15, 1997. As successor to Feed-Rite Ltd. and Ridley Canada Ltd., Ridley Inc. is responsible in law for all wrongs and liabilities of Feed-Rite Ltd. and Ridley Canada Ltd. At all material times John Keniry was Chairman of Feed-Rite Ltd., Ridley Canada Ltd., and Ridley Inc.

13. Ridley Corporation Limited (hereinafter "Ridley Australia") is a corporation incorporated pursuant to the laws of Australia and is Australia's largest stockfeed manufacturer and producer. The head office of Ridley Australia is located at Level 10, 12 Castlereagh Street, Sydney, New South Wales, Australia. At all material times John Keniry was Chairman of Ridley Australia.
14. Ridley Australia owns 69% of its subsidiary, Ridley, Inc. Shares of Ridley Inc. are traded publicly on the Toronto Stock Exchange using the symbol RCL.
15. Ridley Australia purchased 100% of Feed-Rite Ltd., a corporation incorporated pursuant to the laws of Manitoba, in 1994. Feed-Rite Ltd. became Ridley Canada Ltd. in May of 1997 and subsequently Ridley Canada Ltd. became Ridley Inc. in November of 1998. At all material times Ridley Australia owned 100% of Feed-Rite Ltd. and Ridley Canada Ltd.
16. The Managing Director and CEO of Ridley Australia, Matthew Bickford-Smith, is a Director of Ridley Australia and a Director of Ridley Inc. The Chairman of Ridley Australia, John Keniry, is a Director of Ridley Australia, a Director of Ridley Inc., and is Chairman of Ridley Inc. Ridley Inc., Ridley Canada Ltd. and Feed-Rite Ltd. shall hereinafter be collectively referred to as "Ridley". At all material times John Keniry was Chairman of Ridley.
17. At all material times Ridley Australia had one or more Directors in common with Ridley.
18. The defendant corporation can only act through its employees, directors, officers and agents and is vicariously liable for their acts and omissions.

Factual Background

19. This action relates to bovine spongiform encephalopathy (hereinafter “BSE”), also popularly known as ‘mad cow disease’, a wasting disease of cattle.
20. BSE is one of a family of transmissible spongiform encephalopathies. The infectious agent that causes BSE is a naked protein consisting of approximately 250 amino acids. Such disease-causing proteins are called prions and include, for example, the etiologic agents responsible for scrapie in sheep and Creutzfeldt-Jakob disease in humans.
21. BSE is transmitted to cattle when healthy cattle eat the remains of infected cattle or other ruminants (cud chewers). The BSE prion is absorbed intact into the blood through the digestive tract. As little as one milligram or less of infected feed is necessary to trigger BSE in a cow. The only other known method of infection is parenteral, where the BSE prion is introduced directly into the bloodstream.
22. BSE prions are found in far higher concentrations in the brain and spinal cord of infected cattle and other ruminants than in other tissues. This was common knowledge in the scientific community in Canada in 1988.
23. In 1988 it was common knowledge in the scientific community in Canada that BSE was transmitted by meat and bonemeal from infected ruminants being incorporated into cattle feed. Healthy cattle fed the contaminated feed contracted the disease as a result.
24. In 1988 it was common knowledge in the scientific community in Canada that calves were particularly susceptible to infection from eating feed contaminated with the BSE prion.

25. In 1988 it was common knowledge in the scientific community in Canada that:
- a) since high-temperature rendering was unlikely to inactivate the BSE prion, a ruminant to ruminant feed ban was the only way to ensure the prevention of the spread of BSE to Canada;
 - b) in order to prevent the spread of BSE to Canada the importation of ruminant meat and bonemeal (hereinafter “MBM”) and feedstocks that might contain ruminant MBM should be restricted to countries that were known to be free of BSE; and
 - c) as the transmission of BSE to humans was possible it would be prudent to forbid the incorporation of bovine brain and spinal cord into food intended for human consumption, especially baby food.
26. This body of knowledge among the scientific community was largely a result of the uproar, publicity and research generated by the outbreak of ‘mad cow disease’ in Great Britain in the 1980s.
27. At the request of the British Government Mr. John Wilesmith, the Head of the Central Veterinary Laboratory (CVL) Epidemiology Department of Great Britain, concluded by the end of 1987 that the cause of the reported cases of BSE in Great Britain was the consumption of meat and bonemeal (hereinafter “MBM”) from infected animal carcasses which had been incorporated into cattle feed.
28. The British government subsequently enacted the Ruminant Feed Ban, which came into effect in Great Britain on July 18, 1988, banning the feeding of ruminant MBM to other ruminants. This action on the part of the British government to contain the spread of BSE was given significant and widespread attention in the world press.

29. On July 25th, 1988 the European Commission was officially informed of the ruminant feed ban, and the following day BSE was first discussed by the Standing Veterinary Committee in Brussels.
30. From the very first appearance of BSE, HMQ and the Bureaucrats have maintained close contact, both officially and unofficially, with researchers and government officials in the UK and Europe, as well as the United States.
31. On July 21, 1989 the United States enacted a law that prohibited the importation of live cattle from countries where a native case of BSE was confirmed. Initially this ban only affected the importation of live cattle from the United Kingdom (including Northern Ireland).
32. By the end of July of 1989 the United States, Israel, Australia, Sweden and New Zealand had imposed a total ban on the importation of live cattle from the United Kingdom ('UK').
33. In addition, Japan, Morocco, Canada and South Africa had all introduced requirements by this time that all live cattle imported from the UK be from herds certified as free of BSE. In Canada, this requirement was introduced in 1987.
34. In July of 1989 the European Union banned the importation from the UK of live cattle born before 18 July 1988, or born to dams in which BSE was suspected or officially confirmed. On March 1st of 1990 this ban was upgraded to include all live cattle other than those less than 6 months of age.
35. In November of 1989 the United States enacted an emergency ban on the importation of meat products (including meat and bonemeal) from countries with confirmed cases of BSE. This ban was made permanent in December of 1991.

36. Enforcing the laws enacted in 1989 and their successors, the United States banned the importation of live cattle and beef products from the United Kingdom (1989), Republic of Ireland (1989), Switzerland (1990), Oman (1990), France (1991), Portugal (1994), the Netherlands (1997), Luxembourg (1997) and Belgium (1997).
37. In 1997 the United States extended the import ban to include all the countries of Europe, whether a native case of BSE had been diagnosed or not.
38. In addition to all the countries of Europe, the United States currently bans the importation of live cattle, and restricts the trade in beef products, from Canada, Israel, Japan, and Oman.
39. In 1990, Canada banned the importation of live cattle from the UK and Ireland. All cattle that had been imported from the UK and Ireland between 1982 and 1990 were placed into a 'monitoring program'. The importation of ruminant MBM from the UK, used in the manufacture of cattle feed in Canada, was not banned.
40. In 1994 HMQ adopted a policy that the importation of cattle and beef would be banned from any country with a confirmed domestic case of BSE, in accordance with an identical policy in the United States. This policy was known colloquially as 'one cow and you're out'.
41. In 1997 HMQ required permits for the importation of animal protein from the UK and elsewhere.
42. In 1988 Agriculture Canada published a public notice for a proposed amendment to the Regulations to the *Feeds Act* R.S., c. F-7, s.1 (hereinafter "Feeds Act").

43. This public notice, entitled “036-AGR - Feeds Regulations: Minor Amendments” was included in the “Federal Regulatory Plan 1988”.
44. This public notice claimed that:
 - a) housekeeping changes to the Feeds Regulations will be conducted on a quarterly basis; and
 - b) the anticipated impact of the proposed changes was that “the Feeds Regulations will be current”.
45. In 1990, HMQ and the Bureaucrats promulgated Feeds Regulation SOR/90-73 (hereinafter “SOR/90-73”).
46. SOR/90-73 revoked the existing Schedule IV to the Feeds Regulations, which lists the permitted ingredients in animal feed, and replaced it in its entirety with a new Schedule IV consisting of some 65 pages as published in the Canada Gazette.
47. Among the provisions in the new Schedule IV were the following paragraphs:
 - a) 5.1.5 which specifically permitted the incorporation of non-rendered ruminant meat by-products, including brain and spinal cord, into cattle feed;
 - b) 5.1.6 which specifically permitted the incorporation of rendered ruminant meat by-products, including brain and spinal cord, into cattle feed;
 - c) 5.1.7 which specifically permitted the incorporation of rendered ruminant meat by-products, including brain and spinal cord, as well as rendered ruminant bonemeal into cattle feed;

- d) 5.1.8 which specifically permitted the incorporation of rendered ruminant tissues, including brain and spinal cord, into cattle feed; and
 - e) 5.1.9 which specifically permitted the incorporation of rendered ruminant tissues, including brain and spinal cord, as well as rendered ruminant bonemeal into cattle feed.
48. Paragraphs 5.1.6 to 5.1.9 inclusive were contained verbatim in the *Feeds Regulations, 1983* and numbered as paragraphs 5.1.5 to 5.1.8 respectively therein. The new paragraph 5.1.5 now permitted, for the first time, the incorporation of non-rendered ruminant meat by-products, including brain and spinal cord, into cattle feed.
49. Despite notice to the public provided in the Federal Regulatory Plan 1991 that once again “general housekeeping changes to the Feeds Regulations” would be made, no housekeeping changes to the Feeds Regulations were conducted on a quarterly basis. In fact, no such housekeeping changes to the Feeds Regulations have ever been made.
50. HMQ claimed in ‘The Agriculture Canada Annual Report 1988-1989’ that “Agriculture Canada’s activities in the livestock sector support the entire Canadian livestock industry. The department’s programs protect feed users and Canadian animals from disease.” and “Agriculture Canada’s Feed Program controls livestock feeds manufactured, imported and sold in Canada to protect users and the public from health hazards and marketing fraud.”
51. However, the Plaintiff states and the fact is that HMQ and the Bureaucrats consulted no scientists concerning the possible effects on health and safety of the feed ingredients listed in paragraphs 5.1.5 to 5.1.9 of Schedule IV to SOR/90-73 before it was promulgated.

52. In general, HMQ and the Bureaucrats conducted no health and safety assessment whatsoever of the feed ingredients listed in Schedule IV to SOR/90-73 before it was promulgated. In the specific, HMQ and the Bureaucrats conducted no health and safety assessment whatsoever of the feed ingredients listed in paragraphs 5.1.5 to 5.1.9 of Schedule IV to SOR/90-73 before it was promulgated.
53. HMQ and the Bureaucrats failed to consider BSE in the conception, design or implementation of paragraphs 5.1.5 to 5.1.9 of Schedule IV to SOR/90-73 before it was promulgated, despite direct knowledge by HMQ and the Bureaucrats that BSE was transmitted by the ingestion of contaminated MBM by healthy cattle.
54. HMQ and the Bureaucrats did consult with one or more feeds manufacturers concerning the potential commercial effects of SOR/90-73 before it was promulgated.
55. There is no mention of Regulation SOR/90-73, either directly or by analogy, in The Agriculture Canada Annual Report for the years 1988-1989 or 1989-1990.
56. In 1990 HMQ established BSE as a reportable disease in Canada, meaning that all suspected cases were required to be reported to a federal veterinarian.
57. In 1990 HMQ placed all cattle imported from the United Kingdom ("UK") and Ireland since 1982 in a 'monitoring program'. This was in concert with the decision to ban further cattle imports from these countries amid growing concerns about the spread of BSE through exported cattle.
58. In 1992 HMQ established a 'BSE surveillance system'.

59. In December 1993 a purebred cow in Alberta, imported from the UK in 1987, was diagnosed with BSE. HMQ instituted a trace on all cattle imported from the UK and Ireland.
60. 198 cattle were imported from the UK and Ireland into Canada between 1982 and 1990. At least 80 of these animals were potentially rendered after they were slaughtered (68) or died (12), and then entered the cattle feed system, despite HMQ purporting to have these animals in a 'monitoring program' since 1990.
61. At least 10 of these animals that potentially entered the cattle feed system were from herds in the UK that contained animals diagnosed as having BSE. This information was known to HMQ in 1990.
62. In contrast, Australia banned imports of live cattle from the UK and Ireland in 1988. A tracing program confirmed that Australia had imported 131 cattle from the UK and Ireland between 1980 and 1988. Imported cattle still alive were placed under quarantine surveillance and were not allowed to enter the animal or human food chain.
63. HMQ and the Bureaucrats failed to institute a ruminant feed ban in Canada prior to August 1997, despite the fact that from 1993 onward they had actual knowledge that cattle from the UK and Ireland were present in Canada, MBM from downer and dead cattle from the UK and Ireland was being and had been incorporated into cattle feed, and that ingestion of less than one milligram of infected MBM could cause BSE in a healthy cow.
64. The World Health Organization (hereinafter "WHO") sponsored a meeting of international experts who reviewed the public health issues related to BSE in Geneva on April 2-3, 1996. On April 3, 1996 a list of recommendations were

released by the WHO, including the recommendation that “all countries should ban the use of ruminant tissues in ruminant feed.”

65. A working group was subsequently formed in Australia that included members of the Stockfeed Manufacturers Association of Australia as well as representatives from the State and Territory governments. In May 1996 the animal feed industry in Australia placed a voluntary ban on the incorporation of ruminant MBM into ruminant feed. Ridley Australia took part in the working group discussions and agreed to participate in the voluntary MBM feed ban.
66. One of the foci of these discussions was the possible effect on the cattle industry of Australia, the world’s largest exporter of cattle and beef, should BSE be found in the Australian cattle herd. The potentially catastrophic economic effects on Australian cattle producers of international bans on the importation of Australian beef and cattle were specifically discussed.
67. On March 29, 1996 in the United States a joint statement was issued by the National Cattleman’s Beef Association, American Sheep Industry Association, National Milk Producers Association, American Veterinary Medical Association, American Association of Bovine Practitioners and the Association of American Veterinary Colleges announcing that they would immediately establish an aggressive, voluntary program to ensure that ruminant MBM was not used in ruminant feed products.
68. The US Department of Agriculture and the US Public Health Service announced their support for these voluntary measures. The US Food and Drug Administration announced that it would expedite regulations prohibiting the incorporation of ruminant MBM into ruminant feeds.

69. On July 25 of 1997 HMQ promulgated *Health of Animals Regulation*, SOR/97-362 (hereinafter “SOR/97-362”), which prohibited the feeding of protein derived from mammals to ruminants, with the exception of porcine- or equine-derived protein. A three months grace period was allowed so that suppliers could clear existing stocks. This ban on the feeding of ruminant remains to ruminants in Canada became effective as of October, 1997.
70. SOR/97-362 was modeled on the first ruminant feed ban enacted in the UK on July 18, 1988. It did not include the upgraded ruminant feed ban provisions current in the UK at the time of its promulgation. The UK ruminant feed ban had undergone a series of three major revisions since its inception in 1988. The version of the UK ruminant feed ban current at the time of the promulgation of SOR/97-362 on July 25, 1997 had been enacted in the UK in March 1996.
71. Ridley continued to incorporate ruminant MBM into their feed products manufactured in both Canada and the United States up to August of 1997.
72. On January 31, 2003, a cow in northern Alberta was identified at slaughter as a downer (hereinafter “the infected cow”). It had been sent to a provincially inspected abattoir, where the animal was condemned due to a post-mortem finding of pneumonia. The head was removed and sent to the Alberta provincial laboratory for BSE testing.
73. On May 16, 2003 the province made a preliminary diagnosis of BSE. This diagnosis was confirmed by the Canadian Food Inspection Agency’s National Centre for Foreign Animal Disease on May 18th and by the CVL international reference laboratory in Great Britain on May 20th.
74. In its “Summary of the Report of the Investigation of Bovine Spongiform Encephalopathy (BSE) in Alberta, Canada”, dated July 2, 2003, the Canadian

Food Inspection Agency (hereinafter “CFIA”), a federal agency created in 1997, found that “the most likely source of BSE for the infected cow would have been the consumption of feed containing meat and bonemeal (MBM) of ruminant origin contaminated with the BSE prion before the US and Canada implemented a feed ban in August 1997.”

75. The CFIA went on to say that it was able to confirm that the manufacturer of the feed product in question had ceased the incorporation of ruminant MBM into their feed products in August 1997, following the delisting of ruminant MBM from the permitted ingredients in animal feed.
76. The infected cow was born in March of 1997. It had been fed a calf starter ration containing ruminant MBM infected with the BSE prion. CFIA conducted a trace of the possible source of BSE in the infected cow and determined that the most likely source of the BSE prion was a product known as Feed-Rite 18% SR Calf Starter w/DCX manufactured at the Feed-Rite mill in St. Paul, Alberta in the spring of 1997.
77. The United States and Mexican borders were closed to Canadian beef and live cattle on May 21, 2003. Japan quickly followed suit. The market for live cattle in Canada collapsed immediately, losing some 70% of its value.
78. On 20 May 2003, Canada was struck with BSE. The discovery of one case of BSE in one cow, in one herd, in one province set off a series of events that devastated cattle producers across Canada. The industrialized world immediately closed its borders to Canadian cattle and beef, and a fully integrated North American market for beef products and live animals became de-integrated. Cattle prices spiralled downward, cattle herds grew beyond affordable levels, flourishing cow-calf operations were made unprofitable, and packers and processors were burdened with costly new processing regulations.

79. The total value of exports of Canadian cattle and beef in 2002 was approximately \$4 billion (\$1.9 billion in live cattle and \$2.1 billion in beef). Exports accounted for over 60% of the total Canadian beef and live cattle production in 2002.
80. The U.S. market re-opened to Canadian beef from cattle under 30 months of age in late August, 2003, followed shortly thereafter by the Mexican market. The dollar volume of sales of Canadian beef to these two countries has rebounded and is at near pre-BSE levels.
81. However, the export level for beef in 2004 was still 13% below the 2002 levels.
82. The United States modified the import ban on Canadian cattle to allow the importation of beef cattle intended for slaughter at the age of 30 months or less. Live cattle exports to the U.S. resumed on this basis on July 26, 2005.
83. Between May 2003 and November 2004, farm cash receipts for beef cattle plunged by close to \$5 billion from what they would have been had BSE not been discovered. A similar drop in cash receipts was experienced by the dairy sector.

Negligence of HMQ

Feeds Regulation SOR/90-73

84. The Plaintiff states and the fact is that HMQ and the Bureaucrats were grossly negligent in the design and promulgation of SOR/90-73.
85. The design, drafting and promulgation of SOR/90-73 were negligent bureaucratic operational decisions triggered by the discretionary policy decision of HMQ and the Bureaucrats to regulate pursuant to section 5 of the Feeds Act.

86. Once the policy decision to regulate was taken, HMQ and the Bureaucrats were under a duty to use all reasonable care in the actual operational decisions involved in the promulgation of SOR/90-73 including, but not limited to, design, drafting, publishing notice and consultation, as well as assessing and ensuring safety and efficacy. HMQ and the Bureaucrats failed to do so.
87. In the alternative, if the promulgation of SOR/90-73 was a policy decision, then it was not taken in the *bona fide* exercise of discretion. The *bona fide* exercise of discretion required that HMQ and the Bureaucrats take proper account of factors relevant to their statutory mandate in the crafting and promulgation of SOR/90-73. These factors include, but are not limited to, the safety, quality and efficacy of the feed ingredients listed in Schedule IV of SOR/90-73. HMQ and the Bureaucrats failed to take proper account of any of these factors into consideration in the crafting and promulgation of SOR/90-73 in general, and with regard to paragraphs 5.1.1 to 5.1.9 inclusive of Schedule IV in the specific, and thus failed to exercise their discretion in accordance with proper principles.
88. HMQ has admitted that HMQ and the Bureaucrats conducted no safety review whatsoever of the ingredients listed in Schedule IV to Regulation SOR/90-73 in general, and paragraphs 5.1.1 to 5.1.9 inclusive of Schedule IV in the specific, in the creation or promulgation of this Regulation. No issues of safety in general, and BSE in the specific, were considered.
89. HMQ's statutory mandate required at all material times that all animal feed ingredients used in Canada be safe and that livestock producers be protected against potential health hazards and contaminants in livestock products.
90. The Plaintiff states and the fact is that HMQ and the Bureaucrats ignored the perspective within which the Feeds Act and Feeds Regulations were intended to

operate by failing to conduct a safety assessment during the crafting and promulgation of Regulation SOR/90-73.

91. The Bureaucrats responsible for Regulation SOR/90-73 ignored their statutory mandate. As a matter of public policy liability should be imposed.
92. HMQ and the Bureaucrats were negligent in informing the public in the pre-publication of SOR/90-73 that the proposed changes in the Regulations were merely “housekeeping”, and that changes to the Regulations would be made on a quarterly basis. Neither of these claims has proven to be accurate. In 1991 HMQ and the Bureaucrats repeated the claim that housekeeping changes would be made to the Feeds Regulations on a regular basis. “Quarterly changes” necessarily connotes continuous active monitoring and improvement. No such process was initiated or applied.
93. Issues of safety required that continuous monitoring of feed ingredients take place. Parliament intended that continuous monitoring of the safety of feed ingredients would take place when the Feeds Act was passed in 1960.
94. The Plaintiff states that HMQ and the Bureaucrats failed to act in a reasonable manner in the *bona fide* exercise of discretion and were negligent in failing to have in place a continuous active monitoring and improvement mechanism for feed ingredients, as they indicated would be in place in the Federal Regulatory Plan 1988 and 1991.
95. There is no immunity provision in the Feeds Act limiting HMQ’s liability, or otherwise restricting the Plaintiff and the Class Members’ right to recovery in this action.

Importation of MBM

96. Despite banning the importation of live cattle from the UK in 1990, HMQ and the Bureaucrats failed to ban the importation of ruminant MBM from the UK until 1997.
97. The Plaintiff states that HMQ and the Bureaucrats were grossly negligent in allowing the importation of ruminant MBM for use in cattle feed from the UK and other countries after BSE had been found in these countries.
98. The Plaintiff states that HMQ and the Bureaucrats were grossly negligent in allowing the importation of cattle feed from the United States containing ruminant MBM following the Ruminant Feed Ban in the UK in 1988.

Monitoring Program

99. In 1990 HMQ placed all cattle imported from the UK and Ireland since 1982 in a 'monitoring' program. This was in response to a decision to ban any further cattle imports from these two countries amid growing concerns about the spread of BSE through exported cattle.
100. Somehow, despite instituting a monitoring program in 1990 on the 198 cattle imported from the UK and Ireland between 1982 and 1990, HMQ and the Bureaucrats allowed 80 of these animals, at least 10 of which came from herds known to have BSE and at least 2 of which were birth cohorts of animals diagnosed with BSE, to be rendered and enter the animal food chain between 1990 and 1994.
101. The most likely source of the first generation of BSE in Canadian cattle was one or more of the 80 British cattle that was slaughtered or died and entered the

Canadian animal feed system between 1991 and 1992, during the period when these British cattle were in the 'monitoring' program.

102. If the design or execution of the monitoring program were policy decisions, they were not taken in the *bona fide* exercise of discretion and constitute gross negligence on the part of HMQ and the Bureaucrats. A 'monitoring' program intended to prevent the spread of BSE to Canada that allows the monitored cattle to freely enter the human and cattle food chain is *prima facie* irrational.
103. The plaintiff states that once the policy decision was made in 1990 to monitor these 198 cattle, HMQ and the Bureaucrats had a duty to use all reasonable care to ensure that the monitoring system was effective in both design and execution, and that none of these cattle were allowed to enter the animal food chain. HMQ and the Bureaucrats failed to do so.
104. The plaintiff states that HMQ and the Bureaucrats were grossly negligent in allowing these 80 animals to be rendered and enter the animal food chain in Canada. HMQ believes and has stated that one or more of these animals are the most likely original source of BSE in Canada.

Health of Animals Regulation SOR/97-362 – Ruminant Feed Ban

105. HMQ adopted the British practice of establishing BSE as a reportable disease (1990) and instituting a 'surveillance system' (1992) but did not enact a ruminant feed ban in a timely manner, the cornerstone of BSE control in the UK.
106. The Plaintiff states that HMQ and the Bureaucrats were grossly negligent in not imposing a ruminant feed ban in or before April 1997, despite the actual knowledge of HMQ and the Bureaucrats that cattle imported from Great Britain

had been rendered and had entered the Canadian cattle food chain, and that at least one of the cattle imported from Great Britain had been diagnosed with BSE.

107. In a memorandum to the Minister of Agriculture dated December 7, 1993 the Bureaucrats informed the Minister of Agriculture of the finding of BSE in Alberta in a cow imported from the UK, the potential implications to Canada's international trade in live cattle and beef thereby, and the 'departmental position and next steps'.

108. In this memorandum the Bureaucrats wrote:

'In Denmark, a single animal imported from the UK was found positive for BSE. Considering the country's previous freedom from the disease, the fact that the diseased animal was imported, and the strict control measures resulting in the destruction of the herd, the OIE still considers Denmark to be free of BSE.

Similar action may be required by Canada to protect valuable export markets, including approximately \$1.2 billion of live cattle sold annually to the United States.'

109. However, the Bureaucrats failed to inform the Minister in this memorandum that:

- a) BSE is a feed borne disease;
- b) 80 cattle from the UK and Ireland with a high risk for BSE had entered the human and animal food chain in Canada since 1990;
- c) it was internationally recognized in the scientific community that the only effective means to prevent or control the spread of BSE was a ruminant feed ban, including the recommendation by the OIE in June 1992 that; 'By

far the simplest way to prevent BSE is to avoid the use of meat-and-bone meal, and any other sources of ruminant protein (except from milk), in cattle feed.....It would also prevent the recycling of infection from imported adult British cattle which may have been infected, but were too young to show clinical signs of BSE at the time of slaughter'; and

- d) Denmark had in place a ruminant feed ban as the cornerstone of its BSE control policy.
110. Subsequent memos to the Minister updating him on the steps taken by the Bureaucrats to deal with the concerns of Canada's trading partners over the initial finding of BSE in Canada in December 1993 referred back to this memo as the source of all necessary 'background' information.
111. HMQ and the Bureaucrats finally instituted a ban on the feeding of Specified Risk Material (SRM) of ruminants to ruminants with the promulgation of Regulation SOR/97-362 to the Health of Animals Act on July 25, 1997. SRM includes brain, spinal cord, eyes, tonsils and other tissues known to contain high concentrations of the BSE prion in infected cattle.
112. The Regulatory Impact Analysis Statement (RIAS) attached to SOR/97-362 when it was promulgated stated that the ruminant feed ban was being instituted in response to the WHO recommendation of April 3, 1996 that 'all countries ban the use of ruminant tissues in ruminant feed' as well as the fact that the United States was imposing a similar ruminant feed ban. No mention was made of the entry of 80 cattle from the UK and Ireland into the Canadian animal feed chain between 1990 and 1994.
113. The failure by HMQ and the Bureaucrats to institute a ruminant feed ban in Canada in a timely manner was not the result of a *bona fide* policy decision. The

114. The Bureaucrats failed in their duty to provide the Minister with the information necessary for him to fulfill his statutory mandate. The plaintiff pleads that this failure constitutes gross negligence.
115. SOR/97-362, incorporated the provisions of the ruminant feed ban enacted in the UK in July 1988. It did not incorporate any of the subsequent modifications to this original UK ruminant feed ban. The version of the UK feed ban current at the time of the promulgation of SOR/97-362 had been enacted in March of 1996.
116. SOR/97-362 failed to ban the use of SRM from ruminants, including brain and spinal cord, from being incorporated into pig and poultry feed. The UK had recognized the potential for the spread of BSE through the 'cross-feeding' of pig or poultry feed to cattle and had banned the use of ruminant SRM in **all** animal feed on September 25, 1990.
117. SOR/97-362 failed to require sampling or testing to ensure that cross-contamination of ruminant rations with ruminant MBM from rations intended for non-ruminants was not taking place. Nor did it institute requirements to prevent or minimize any such cross-contamination.
118. Towards the end of 1993 officials in the UK became concerned that cross-contamination was taking place in feed mills manufacturing multi-species rations, despite the ban on the use of ruminant SRM in animal feed that was in place. By September 1994 the UK had recognized that cross-contamination in feed mills was a serious problem, determining that 'where the same mill is used for ruminant and non-ruminant feed, some cross-contamination is inevitable'.

119. A Decision of the European Commission adopted on July 18, 1995 required routine monitoring of feed mills, and in particular of mills which produced both ruminant and non-ruminant feed, to include tests for the presence of animal protein.
120. On March 26, 1996 in order to prevent any further possibility of cross-contamination of cattle feed with MBM, or any possible cross-feeding of cattle with feed containing MBM, the UK banned the use of **all** meat and bonemeal of mammalian origin in farm animal feed.
121. The plaintiff states and the fact is that HMQ and the Bureaucrats failed to consider the modifications made to the original UK ruminant feed ban in the design, drafting and promulgation of SOR/97-362. In particular the plaintiff states that the failure of SOR/97-362 to ban the use of ruminant SRM in **all** animal feed constitutes gross negligence on the part of HMQ and the Bureaucrats.
122. The design, drafting and promulgation of SOR/97-362 were negligent bureaucratic operational decisions triggered by the discretionary policy decision of HMQ and the Bureaucrats to regulate pursuant to section 64 of the Health of Animals Act.
123. Once the policy decision to regulate was taken, HMQ and the Bureaucrats were under a duty to use all reasonable care in the actual operational decisions involved in the promulgation of SOR/97-362 including, but not limited to, design, drafting, publishing notice and consultation, as well as assessing and ensuring the efficacy of the regulation in controlling or preventing the spread of BSE. HMQ and the Bureaucrats failed to do so.
124. In the alternative, if the promulgation of SOR/97-362 was a policy decision, then it was not taken in the *bona fide* exercise of discretion. The *bona fide* exercise of

discretion required that HMQ and the Bureaucrats take proper account of factors relevant to their statutory mandate in the crafting and promulgation of SOR/97-362. These factors include, but are not limited to, the spread of BSE through cross-feeding of cattle with pig or poultry feed containing ruminant MBM and/or cross-contamination of cattle feed with ruminant MBM in feed mills which produce, or ship in bulk, multi-species rations. HMQ and the Bureaucrats failed to take proper account of these factors into consideration in the crafting and promulgation of SOR/97-362, and thus failed to exercise their discretion in accordance with proper principles.

125. HMQ has admitted, and the fact is, that SOR/97-362 was ineffective in preventing the spread of BSE in Canada. HMQ promulgated Regulation SOR/2006-147 on July 12, 2006. This regulation **finally** prohibited the feeding of ruminant SRM to **all** animals. At the time of promulgation Regulation SOR/2006-147 was scheduled to come into effect on July 12, 2007, some **17 years** after cross-feeding and cross-contamination concerns had been initially addressed in the UK by an amendment to the ruminant feed ban to prohibit the feeding of ruminant SRM to all animals.
126. The Plaintiff states and the fact is that HMQ and the Bureaucrats ignored the perspective within which the Feeds Act, Feeds Regulations, Health of Animals Act and Health of Animals Regulations were intended to operate by failing to consider issues of cross-feeding and cross-contamination in the prevention of the spread of BSE, and by failing to enact a ban on the feeding of ruminant SRM to all animals in a timely manner.
127. The failure of HMQ and the Bureaucrats to ban the feeding of ruminant SRM to all animals in a timely fashion constitutes gross negligence on the part of HMQ and the Bureaucrats, particularly in light of the fact that HMQ and the Bureaucrats had created the risk of BSE in Canada through negligently allowing

the remains of the 80 imported British cattle into the animal food chain in Canada in the first place.

General

128. There is no immunity provision in the Feeds Act, Health of Animals Act or the Animal Health Act limiting HMQ's liability, or otherwise restricting the Plaintiff and the Class Members' right to recovery in this action.
129. HMQ has publicly announced that, as a result of the promulgation of Regulation SOR/2006-147, Canada may now expect to achieve BSE-free status sometime in 2017.

Duty of Care

130. The cattle industry in Canada has long been recognized by HMQ as being important to Canada as a whole, contributing tens of thousands of jobs and about \$13 billion annually in farm cash receipts.
131. HMQ at material times undertook the duty to safeguard the Canadian food supply and prevent the entry and establishment of BSE in Canada. HMQ committed significant resources to this end.
132. The legislative authority relevant to the prevention and control of BSE in Canada at material times included the Health of Animals Act and Regulations (1990, c.21) as well as the Feeds Act and Regulations (R.S. 1985, c. F-9).
133. The purpose of the Health of Animals Act and Regulations is to prevent the introduction of animal diseases into Canada that either affect human health or could have a significant impact on the Canadian livestock industry.

134. The purpose of the Feeds Act and Regulations is to ensure that all animal feed sold in Canada is safe and properly labelled so that livestock producers are protected against potential health hazards.
135. The Plaintiff states and the fact is that at all material times HMQ and the Bureaucrats were under a duty of care to ensure the safety and quality of ingredients incorporated into animal feeds.
136. The Plaintiff and the Class Members were entitled to expect, and did expect, that HMQ and the Bureaucrats would use all reasonable skill in ensuring that the ingredients incorporated into cattle feed in Canada were safe. HMQ and the Bureaucrats failed to do so.
137. The Plaintiff and the Class Members were entitled to rely, and did rely, on the representations of HMQ and the Bureaucrats that “Agriculture Canada’s objective was to promote the growth, stability and competitiveness of the agri-food sector”, that their “programs protect feed users and Canadian animals from disease”, and that “Agriculture Canada’s Feed Program controls livestock feeds manufactured, imported and sold in Canada to protect users and the public from health hazards”. Such representations were made at length, for example, in The Agriculture Canada Annual Report 1988-1989 (pages 5 (para. 2) and 21 (paras. 1 and 5)). These representations are *prima facie* inaccurate.
138. The intent of Parliament was that the basic provisions of the Feeds Act required at all material times that livestock feeds be registered, be labelled to show their ingredients, and meet certain standards of quality and safety.
139. Parliament replaced the Feeding Stuffs Act with the Feeds Act in 1960 to permit many of the detailed requirements with respect to registration, standards,

packaging, labelling requirements and safety analysis of animal feed and feed ingredients to be established by regulation.

140. In 1988, 1989 and 1990 (as well as in the Regulatory Impact Analysis Statement to SOR/90-73) HMQ stated that:

The purpose of the Feeds Regulations is to **monitor and control all livestock feed used in Canada to ensure that it is safe, wholesome and properly labelled so that consumers and livestock producers are protected against potential health hazards from residues and contaminants in livestock products** and fraud in marketing.

(emphasis added)

141. The Plaintiff states that HMQ and the Bureaucrats were under a duty to conduct an assessment of the quality and safety of the proposed feeds ingredients listed in Schedule IV in general, and with reference to BSE in the specific, before the promulgation of SOR/90-73. This was not done.
142. It was in the reasonable contemplation of HMQ and the Bureaucrats that a failure on their part to take reasonable care in the proscription of permissible ingredients in cattle feed could lead to detrimental effects on the health of cattle, and to the livelihood and well-being of cattle producers thereby.
143. Further, in the specific, it was reasonably foreseeable in 1990 that permitting the feeding of ruminant remains to cattle in Canada could and would result in the transmission of BSE to healthy Canadian cattle.
144. Given the history of international bans and restrictions on the importation of cattle and beef products from Great Britain in the late 1980s, including the total ban on

the importation of live cattle and beef products imposed by the United States in 1989 from all countries with one or more native cases of BSE, it was reasonably foreseeable by HMQ and the Bureaucrats that the discovery of a cow infected with BSE in Canada could and would result in international bans and restrictions on the importation of Canadian beef and cattle.

145. Given the nature of the legislation enacted in the United States, HMQ and the Bureaucrats knew or ought to have known from at least November 1989 that a finding of BSE in the domestic herd in Canada would result in a ban of the importation of Canadian cattle and beef by the United States.
146. From at least May 17, 1994 HMQ and the Bureaucrats had actual knowledge that the probability of entry into Canada of BSE infected cattle through the 1982-1990 importation of cattle from the UK and Ireland was **very high**.
147. From at least May 17, 1994 HMQ and the Bureaucrats had actual knowledge that a single domestic case of BSE in Canada would:
 - a) prompt a trade embargo against Canadian exports of cattle, beef and dairy products for an indefinite period of time by some or all of importing countries, resulting in billions of dollars in losses to Canadian cattle producers;
 - b) result in loss of animals and production to individual producers;
 - c) result in a significant decrease in domestic consumption of beef and dairy products;
 - d) necessitate changes in rendering policies and industry measures; and

- e) cause political and public outcry that would be damaging to confidence in government programs.
148. Canadian farmers in general, and cattle producers in the specific, have traditionally enjoyed the support of the Canadian government in the form of financial, technical and scientific assistance. Cattle producers relied upon the technical and scientific expertise of Agriculture Canada at all material times and continue to rely upon the technical and scientific expertise of its successors, the CFIA and the Ministry of Agriculture and Agri-Food.
149. Mel McCrea relied on his reasonable belief that HMQ and the Bureaucrats would not have allowed ruminant MBM to be incorporated into cattle feed in the spring of 1997 when he purchased the Feed-Rite 18% SR Calf Starter w/DCX that contained the BSE prion. He believed that HMQ and the Bureaucrats had long since banned the incorporation of ruminant MBM into feed intended for consumption by cattle in Canada.
150. Clearly, there is sufficient proximity between HMQ and the Bureaucrats and cattle producers to impose a duty of care on HMQ and the Bureaucrats in this action. This is especially true given the power imbalance and necessary trust between cattle producers and HMQ, and the inherent vulnerability of cattle producers to damage from the negligent acts of the Defendants.
151. Additionally, the Plaintiff states that HMQ had a duty inherent in the general *parens patriae* public duty to provide for the peace, order and good government of Canada, to not allow ruminant MBM to be incorporated into cattle feed when HMQ and the Bureaucrats knew or ought to have known that the use of such MBM in cattle feed was dangerous and hazardous to the health of cattle and to the well-being of Canadian cattle producers thereby.

152. In the Minister's message to the Federal Regulatory Plan 1988, the Honourable Barbara McDougall, Minister responsible for Regulatory Affairs, wrote:

The purpose of regulation is to make our society work better, not to make things worse, and it is in everybody's interest to make sure that we do it as well as possible.

153. Paragraph 5 of the Guiding Principles, published annually as part of the Federal Regulatory Plan states:

Regulation entails social and economic costs and the government will evaluate these costs to ensure that benefits clearly exceed costs before proceeding with new regulatory proposals.

154. Paragraph 7 of The Citizen's Code of Regulatory Fairness, published annually as part of the Federal Regulatory Guide, states:

The government will ensure that officials responsible for developing, implementing or enforcing regulations are held accountable for their advice and actions.

155. Parliament has expressed the clear and unmistakable will that government actors in the context of the carrying out of their regulatory duties must be held accountable.

Standard of Care

156. The Parliament of Canada by enacting the Feeds Act, Animal Health Act, and the Health of Animals Act conferred upon HMQ and the Bureaucrats the power to make Regulations, but left the nature and scale on which this discretion was exercised to be determined by HMQ and the Bureaucrats.

Feeds Regulation SOR/90-73

157. The crafting and promulgation of Regulation SOR/90-73 to the Feeds Act were operational decisions stemming from the discretionary policy decision to regulate. HMQ and the Bureaucrats were required to use all reasonable care in ensuring that the feed ingredients listed in Schedule IV were safe. HMQ and the Bureaucrats failed to do so, and thereby breached the requisite standard of care.
158. In the alternative, the crafting and promulgation of SOR/90-73 were policy decisions by HMQ and the Bureaucrats that required the *bona fide* exercise of discretion. By not addressing safety considerations in general, and with respect to BSE in the specific, HMQ and the Bureaucrats irresponsibly, recklessly and irrationally failed to take proper account of factors relevant to their statutory mandate, and thereby breached the requisite standard of care.
159. The “housekeeping changes to the Feeds Regulations” that were to be conducted “on a quarterly basis” have, in fact, never been done.
160. The initial decision to implement continuous active monitoring and improvement to the Feeds Regulations was operational in nature. HMQ and the Bureaucrats were required to use all reasonable care in ensuring that an ongoing, active and effective monitoring system was in place, particularly as HMQ and the Bureaucrats had held out to the public that such a system would be in place. HMQ and the Bureaucrats failed to do so, and thereby breached the requisite standard of care.
161. In the alternative, the initial decision to publish HMQ’s intent to implement continuous active monitoring and improvement to the Feeds Regulations, and the subsequent decision to not implement active monitoring and improvement to the Feeds Regulations were policy decisions requiring the *bona fide* exercise of

discretion. HMQ and the Bureaucrats were required to take proper account of factors relevant to their statutory mandate in deciding to not ensure that an ongoing, active and effective monitoring system was in place, particularly as HMQ had held out to the public that such a system would be in place.

162. By failing to address safety considerations in general, and with respect to BSE in the specific, in the assessment of the need for ongoing monitoring of the Feeds Regulations HMQ and the Bureaucrats failed to take proper account of factors relevant to their statutory mandate, and thereby breached the requisite standard of care.

Monitoring Program

163. The decision by HMQ in 1990 to put in place a system to 'monitor' the 198 cattle imported from the UK and Ireland between 1982 and 1990 was a policy decision. Once the decision to monitor was made, HMQ was under a duty to ensure that the system of monitoring these 198 cattle was reasonable and was executed properly. HMQ and the Bureaucrats failed to do so.
164. A 'monitoring' system that allows 80 of 198 cattle, potentially infected with BSE, to be rendered and enter the animal food chain in Canada in the space of three and one-half years is *prima facie* irrational, unreasonable, improperly executed, and a breach of the requisite standard of care.
165. The plaintiff states that HMQ and the Bureaucrats were grossly negligent in allowing these 80 cattle to be rendered and enter the animal food chain between 1990 and 1993.

Importation of MBM

166. By failing to ban the importation of ruminant MBM from the UK and other countries where BSE was known to be endemic in a timely fashion, HMQ and the Bureaucrats failed to take proper account of factors relevant to their statutory mandate, and thereby breached the requisite standard of care.

Health of Animals Regulation SOR/97-362 – Ruminant Feed Ban

167. By failing to institute a ruminant feed ban in Canada in or before April 1997, although they had actual knowledge that cattle from the UK were present in Canada, MBM from downer and dead cattle from the UK was being and had been incorporated into cattle feed, and that ingestion of less than one milligram of infected MBM could cause BSE in a healthy cow, HMQ and the Bureaucrats breached the requisite standard of care.
168. Despite foreknowledge that the amplification and spread of BSE would have been extremely slow reaching a peak in 1996-97, just prior to the introduction of the feed ban in 1997, HMQ and the Bureaucrats failed to take the simple, necessary and obvious step of instituting a ruminant feed ban **before** the amplification and spread of BSE in Canada reached a peak in 1996-97.
169. HMQ has publicly stated that “in August 1997, in response to a WHO recommendation, the CFIA banned the feeding of specified mammalian protein to ruminants (*Health of Animals Regulations, Part XIV, Sections 162-171*).” The Plaintiff states that the delay of 17 months between the recommendation by the WHO and the enactment of a ruminant feed ban by HMQ in the circumstances of this action constitutes gross negligence on the part of HMQ and the Bureaucrats.

General

170. The Plaintiff states that HMQ and the Bureaucrats did not act in accordance with reasonable standards of regulatory rule-making and reasonable standards of administration and enforcement at the relevant times.
171. In the alternative the Plaintiff states that if HMQ and the Bureaucrats did act according to such standards at the relevant times, which is not admitted but is specifically denied, then:
- a) the standards themselves were negligent;
 - b) the standards were fraught with obvious risk;
 - c) the standards were such that anyone would be capable of finding them to be negligent or inadequate without the necessity of adjudging matters requiring expertise;
 - d) the standards failed to include obvious and reasonable precautions necessary to ensure that the ingredients permitted in animal feed did not cause harm; or
 - e) the standards which were in effect were negligently, inadequately or inconsistently enforced and/or applied by HMQ.
172. Further particulars of the wrongful acts and omissions of HMQ and the Bureaucrats cannot be provided by the Plaintiff until complete records have been produced by HMQ and the Plaintiff has had these records reviewed by appropriate experts competent to opine as to the nature and extent of HMQ and the Bureaucrats' regulatory oversights and other wrongs in the circumstances of this action, and the standards breached thereby.

Causation

173. The most likely source of BSE for the infected cow would have been the consumption of feed containing meat and bonemeal (MBM) of ruminant origin contaminated with the BSE prion before the US and Canada implemented a feed ban in August 1997.
174. HMQ has determined that the most likely source of BSE for the infected cow was Feed-Rite 18% SR Calf Starter w/DCX produced at the Feed-Rite mill in St. Paul, Alberta that contained ruminant MBM contaminated with the BSE prion.
175. HMQ has determined that Ridley complied with HMQ's ban on the incorporation of ruminant MBM into cattle feed in August of 1997.
176. But for HMQ and the Bureaucrats' negligence in permitting the incorporation of ruminant MBM into cattle feed in SOR/90-73, Ridley would not have incorporated ruminant MBM into their Feed-Rite 18% SR Calf Starter w/DCX product, and the infected cow would not have contracted BSE.
177. But for HMQ and the Bureaucrats' negligence in failing to implement a ruminant feed ban on or before 1996, Ridley would not have incorporated ruminant MBM into their Feed-Rite 18% SR Calf Starter w/DCX product, and the infected cow would not have contracted BSE.
178. The international bans on the importation of Canadian beef and cattle, for example those of the US and Mexico that commenced on May 21st, 2003, were the direct result of the confirmation of BSE in the infected cow on May 20th, 2003. But for the finding of BSE in the infected cow the United States, Mexico, Japan and others would not have banned the importation of Canadian cattle and beef in May of 2003.

179. It was reasonably foreseeable by HMQ and the Bureaucrats that carelessness on their part in ensuring the safety of permissible ingredients in cattle feed could have a detrimental effect on the health of Canadian cattle.
180. It was reasonably foreseeable by HMQ and the Bureaucrats that carelessness on their part in monitoring the 198 cattle imported from the UK and Ireland between 1982 and 1990 could result in some of these cattle being rendered and entering the animal food chain.
181. It was known by HMQ and the Bureaucrats that some of these 198 cattle were very likely to be infected by BSE, and if they entered the animal food chain in Canada that BSE could be transmitted to healthy Canadian cattle thereby.
182. HMQ has admitted that the most likely original source of BSE in Canada was one or more of the 80 imported cattle that were rendered and entered the animal food chain. The cow that was infected with BSE and rendered in the winter of 1996/1997, whose MBM was included in Feed-Rite 18% Calf Starter w/ DCX, most likely contracted BSE from eating feed contaminated with MBM from one of these 80 cattle.
183. It was reasonably foreseeable by HMQ and the Bureaucrats that failure to ban the incorporation of ruminant MBM into cattle feed on or before April 1997, including ruminant MBM imported from the UK, could and would result in the transmission of BSE to healthy cattle in Canada at the material times.
184. It was reasonably foreseeable by HMQ and the Bureaucrats that the failure to have in place an ongoing, active and effective monitoring system to ensure the continuous safety of the ingredients listed in Schedule IV of the Regulations to the Feeds Act at the material times could and would result in the incorporation of

ruminant MBM from infected cattle into cattle feed, and the transmission thereby of BSE to healthy cattle in Canada at the material times.

185. It was foreseen by HMQ and the Bureaucrats at all material times that the discovery of a cow infected with BSE in Canada could and would lead to international bans on the importation of Canadian beef and cattle.
186. From July 21, 1989 HMQ and the Bureaucrats knew or ought to have known that the finding of a confirmed domestic case of BSE would result in the banning of the importation of live Canadian cattle into the United States.
187. From November 1989 HMQ and the Bureaucrats knew or ought to have known that the finding of a confirmed domestic case of BSE would result in the banning of the importation of beef products into the United States.
188. In 1994, HMQ and the Bureaucrats negotiated a mutual 'one cow and you're out' policy with the United States. This policy called for the automatic banning of the importation of cattle and beef from any country determined by the CVL in England to have a single domestic case of BSE. This agreement provided that the US border would immediately and automatically close to Canadian cattle and beef, without any sort of assessment or review process beforehand, should even a single domestic case of BSE be found in the Canadian herd.
189. From 1988 until the commencement of this action, HMQ and the Bureaucrats knew or ought to have known the following:
 - a) BSE infected ruminant MBM was being brought into Canada and incorporated into cattle feed for domestic use;

- b) the incorporation of any and all ruminant MBM into cattle feed posed a high risk for the spread of BSE into healthy cattle;
- c) the finding of BSE in a Canadian cow could and would result in international sanctions and restrictions on the importation of Canadian cattle and/or beef; and
- d) international restrictions on the importation of Canadian cattle and/or beef could and would result in economic loss, loss of enjoyment of life, and mental distress to the Plaintiff and the Class Members.

190. Between May 20, 2003 and August 2007 there have been 11 cases of BSE identified as originating in the Canadian cattle herd. A table summarizing these cases is as follows:

DATE CONFIRMED	LOCATION AT BIRTH	MOST LIKELY CAUSE OF BSE
20 May 2003	Saskatchewan	Pre feed ban calf starter ration (spring 1997)
23 December 2003	Alberta	Pre feed ban dairy cow ration (spring 1997)
2 January 2005	Alberta	Pre feed ban dairy cow ration (spring 1997)
11 January 2005	Alberta	Cross contamination of feed at mill
22 January 2006	Alberta	Cross contamination of calf starter at mill
16 April 2006	British Columbia	Cross contamination of feed at mill or during transport
3 July 2006	Manitoba	Pre feed ban cattle feed
13 July 2006	Alberta	Cross contamination of Heifer Grower at

		mill
23 August 2006	Alberta	Pre feed ban cattle feed (1996-1998)
7 February 2007	Alberta	Cross contamination of feed at mill
2 May 2007	British Columbia	Cross contamination of feed at mill or during transport

191. It was reasonably foreseeable by HMQ and the Bureaucrats that a failure to adequately address cross-feeding and cross-contamination issues in the design and promulgation of SOR/97-362 could and would result in post-feed ban cases of BSE in Canada due to cross-feeding or cross-contamination.
192. It was reasonably foreseeable by HMQ and the Bureaucrats that such post-feed ban cases of BSE in the Canadian herd (six to date) could and would exacerbate, deepen or prolong international bans on the importation of Canadian live cattle and beef to the detriment of the Plaintiff and Class Members.
193. The Plaintiff states that the wrongs and breaches of legal obligations committed by HMQ and the Bureaucrats constitute gross negligence and have caused or materially contributed to the injuries and damages suffered by the Plaintiff and Class Members.

Breach of Duty to Warn of HMQ

194. The Feeds Act and the Health of Animals Act at all material times charged HMQ and the Bureaucrats with the duty of ensuring the safety of animal feed in Canada and in particular the absence of disease-causing agents.
195. At all material times, Canadian consumers and livestock producers were entitled to rely upon, and did rely upon, this guarantee of safety.

196. In furtherance of this duty, HMQ and the Bureaucrats affirmatively undertook in 1990 to catalogue the 198 cattle imported from the UK and Ireland between 1982 and 1990 and place them in a monitoring program designed to ensure that they were not rendered and did not enter the animal food chain in Canada.
197. Having undertaken the monitoring program in 1990, HMQ and the Bureaucrats were under a duty to carry out their responsibilities with all reasonable diligence. They failed to do so.
198. When BSE was diagnosed in a cow in Canada in December of 1993, HMQ and the Bureaucrats identified the cow as being one of the 198 cattle placed in the monitoring program in 1990. In December 1993 and January 1994 HMQ and the Bureaucrats conducted a trace of the remaining 197 cattle and discovered that 80 of these cattle had been rendered and entered the animal food chain between the time they were placed in the monitoring program in April of 1990 and December of 1993.
199. The Plaintiff states, and the fact is, that allowing 80 of 198 cattle that are being monitored in order to prevent the spread of BSE to the Canadian herd to be rendered and enter the animal food chain constitutes gross negligence on the part of HMQ and the Bureaucrats.
200. It was foreseeable by HMQ and the Bureaucrats that the rendering and subsequent entry of these 80 animals into the animal food chain posed a serious risk of the transmission of BSE to the Canadian herd, particularly as it was known to HMQ and the Bureaucrats from at least January of 1994 that two of these animals were from the same birth cohort as the animal diagnosed with BSE in December 1993, and at least 10 of them were from farms with one or more known cases of BSE.

201. HMQ and the Bureaucrats had actual knowledge from at least May 17, 1994 that there was a 100% chance that one or more of the 80 UK cattle that had entered the animal food chain in Canada had BSE.
202. HMQ and the Bureaucrats were under a duty to act as soon as they became aware of the circumstances in December 1993, which compromised the promise of safety upon which Canadian consumers and livestock producers relied.
203. This positive duty to act was enhanced because it was the gross negligence of HMQ and the Bureaucrats in the design and implementation of the monitoring program that created the hazard.
204. HMQ and the Bureaucrats had an immediate and imperative duty to:
 1. remedy the situation their negligence had created;
 2. warn those who were relying on the guarantee of safety that this safety may have been compromised;
 3. issue and enforce a recall notice of the potentially hazardous products; and
 4. institute a comprehensive ruminant feed ban so that the risk posed by the potential hazard would not multiply over time.
205. In early 1994 HMQ and the Bureaucrats ordered that the remaining 80 living cattle be exported or destroyed (37 had been exported while in the 'monitoring' program). No warning of any kind was given to Canadian cattle producers that BSE may have entered the cattle food chain in Canada. No recall was enacted or enforced. No ruminant feed ban was instituted until August of 1997; over three and one-half years after the positive duty to act had crystallized.

206. HMQ and the Bureaucrats knew or ought to have known in December 1993 that calves being fed calf starter infected with the BSE prion were particularly susceptible to contracting BSE.
207. HMQ and the Bureaucrats did not take the basic, expedient and common sense step in 1994 of requiring that calf starter be labelled so as to indicate that it contained ruminant MBM, or that it could pose the risk of transmission of BSE because it contained ruminant MBM.
208. Had HMQ and the Bureaucrats taken this simple, basic and expedient step in a timely fashion Mel McCrea would have been alerted in the spring of 1997 to the fact that Feed-Rite 18% Calf Starter w/ DCX contained ruminant MBM, and would never have bought the product.
209. HMQ and the Bureaucrats issued no warnings to cattle producers even though they knew that two of the 80 cattle that had been rendered came from the same birth cohort as the cow diagnosed with BSE, and more than 10 came from farms where BSE had been diagnosed, and thus posed an enhanced risk of passing on the BSE prion to calves that ate feed containing even a tiny portion of their rendered remains.
210. HMQ and the Bureaucrats issued no warnings to Canadian cattle producers although they knew that Canadian cattle producers were heavily dependent for their livelihood on the export market for cattle and beef and that a finding of BSE in the Canadian herd would cause immediate international bans on the importation of Canadian cattle and beef that would be economically catastrophic to Canadian cattle producers.

211. HMQ and the Bureaucrats issued no warnings although they knew or ought to have known that Canadian cattle producers relied on them to ensure that the cattle feed supply in Canada was safe.
212. HMQ and the Bureaucrats issued no warnings to Canadian cattle producers although they held themselves out to Canadian cattle producers and the Canadian public at large as being responsible for ensuring that the cattle feed supply in Canada was safe.
213. HMQ and the Bureaucrats issued no warnings to Canadian cattle producers despite the traditional special relationship of trust and dependence inhering between HMQ and Canadian farmers.
214. HMQ and the Bureaucrats issued no warnings to cattle producers despite their knowledge that BSE was an untreatable fatal disease of cattle, and which made cattle unsuitable for human consumption.
215. At no time between May 1994 and May 2003, a period of nine years, did HMQ and the Bureaucrats provide any direct and public communication of the nature of the economic risk to Canadian cattle producers created by HMQ and the Bureaucrats in allowing the remains of the 80 British cattle at issue to enter the animal food chain in Canada.
216. HMQ and the Bureaucrats had a statutory duty to inform Canadian cattle producers of the possible entry of BSE into the Canadian herd through the rendered remains of the 80 UK cattle, and the associated risks thereby. Section 8 of the Health of Animals Act states that: "No person shall conceal the existence of a reportable disease or toxic substance among animals." Section 3 states that: "This Act is binding on Her Majesty in right of Canada or a province."

217. HMQ and the Bureaucrats breached this clear statutory duty.
218. The failure of HMQ and the Bureaucrats to warn Canadian cattle producers denied the Plaintiff and the Class Members the opportunity to take measures to protect themselves against either BSE, or their economic vulnerability to the international bans on the importation of Canadian cattle and beef that were the foreseen and inevitable result of a finding of BSE in the Canadian herd.
219. The Plaintiff states that the decision to not warn Canadian cattle producers was a negligent operational decision by HMQ and the Bureaucrats. In the alternative if it was a policy decision it was arbitrary, unreasonable, irresponsible and not taken in the *bona fide* exercise of discretion.
220. The Plaintiff states that, having negligently mislaid the 80 cattle referred to above, HMQ and the Bureaucrats were under an enhanced duty to protect Canadian cattle producers from any negative consequences arising from their negligence, and had a duty to make all reasonable efforts to ensure that any possible damages to Canadian cattle producers that may have resulted thereby were mitigated.
221. The response of HMQ and the Bureaucrats was to do nothing. Despite calculating that, as a result of misplacing the 80 cattle, the amplification and spread of BSE would reach a peak between September of 1996 and March of 1997, HMQ and the Bureaucrats took no preventative measures whatsoever that might have limited the risk of injury to the Plaintiff and the Class Members.
222. Despite the fact that HMQ and the Bureaucrats knew or ought to have known that the gravity of the potential injury to the Plaintiff and the Class Members created by the negligent misplacing of the 80 cattle was extreme, HMQ and the Bureaucrats did nothing. No warning was issued. No trace of the remains of the

80 lost cattle into either the human or animal food chain was instituted. No feed ingredient labelling requirements, particularly for calf starter, were promulgated. No ruminant feed ban was instituted. The Plaintiff states that these failures to act constitute gross negligence on the part of HMQ and the Bureaucrats.

223. In Part C: Risk Estimation of the APFRAN 'Risk Assessment on Bovine Spongiform Encephalopathy in Cattle in Canada' a model for risk assessment is used that ignores the actual fates of these animals and the significant increased statistical probability for transmission of BSE that is created by the two birth cohort animals.
224. The Plaintiff states and the fact is that HMQ and the Bureaucrats were negligent in failing to perform adequate, if any, risk analyses at material times to determine the possibility of the spread of BSE to Canada.
225. The Plaintiff states and the fact is that one or more of the 80 imported British cattle whose remains were allowed to enter the cattle food chain in Canada between 1990 and 1994, were infected with BSE.
226. The Plaintiff states and the fact is that one or more of these infected animals were rendered and incorporated into calf starter or other cattle feed.
227. The Plaintiff states and the fact is that this contaminated feed was then fed to and infected other cattle with BSE.
228. The Plaintiff states and the fact is that one of these infected cattle died and was rendered in or about the fall of 1996 and the rendered remains of this animal were incorporated into the Feed-Rite 18% Calf Starter w/DCX at issue herein.

Misfeasance in Public Office

228a. At material times John Kellar (“Kellar”) was Associate Director, Disease Control Section, Animal Health Division, Food Production and Inspection Branch, of the Department of Agriculture and Agri-Food Canada (also referred to herein as “Agriculture Canada”).

228b. Kellar was responsible at material times for the development and implementation of Agriculture Canada’s disease control programs and initiatives with respect to BSE.

228c. From at least September 1993 Kellar had actual knowledge that:

1. BSE is transmitted to cattle when healthy cattle eat feed containing MBM from infected cattle;
2. Calves are particularly susceptible to developing BSE from eating calf starter rations containing MBM from infected cattle;
3. Cattle in which BSE is progressing towards overt disease, but the animals are not yet exhibiting clinical symptoms because of the extremely long incubation period associated with BSE, are capable of transmitting the disease to healthy cattle via the incorporation of their rendered remains (MBM) into cattle feed;
4. At least 80 cattle that had been imported into Canada from the UK and Ireland between 1982 and 1990 had gone to routine slaughter (68) or been rendered whole as deadstock (12);
5. Those portions of slaughtered cattle deemed unfit for human consumption and known to harbour the infectious agent causing BSE were routinely sold by abattoirs in Canada to rendering plants for conversion into MBM;

6. The rendered remains of these 80 cattle had entered the animal food chain in Canada;
7. Inspectors at federally inspected abattoirs in Canada had received no training whatsoever on recognizing the signs and symptoms associated with BSE prior to October 1992; and
8. The vast majority of these 80 cattle had gone to routine slaughter or been rendered whole as deadstock before federal inspectors had received any training on recognizing the signs and symptoms associated with BSE.

228d. Following the confirmation of BSE in a Salers cow imported from the UK by the CVL in Weybridge on December 7, 1993, Kellar had actual knowledge that one of this cow's birth cohort animals who had been fed the same calf starter ration as a calf in the UK had gone to routine slaughter at Intercontinental Packers in Saskatoon on October 4, 1992, and that portions of this cow's carcass known to transmit BSE had been rendered into MBM.

228e. In addition, Kellar had actual knowledge from at least May 17, 1994 when the APFRAN report entitled 'Risk Assessment on Past Importations of Cattle from France, Switzerland and the UK' was released internally by HMQ that there was a 100% statistical probability that one or more of the UK cattle whose remains had been rendered into MBM in Canada between 1990 and 1993 had BSE.

228f. Despite this knowledge, Kellar actively publicly denied the presence of BSE in Canada until May 20, 2003.

228g. Despite this knowledge, Kellar took no steps to inform Canadian cattle producers that BSE infected cattle had entered the animal food chain in Canada.

228h. The plaintiff pleads, and the fact is, that Kellar actively acted to conceal the presence of BSE in Canada from both the Canadian public and Canadian cattle producers.

228i. Section 8 of the Health of Animals Act states that:

No person shall conceal the existence of a reportable disease or toxic substance among animals.

228j. Section 3 of the Health of Animals Act states that:

This Act is binding on Her Majesty in right of Canada or a province.

228k. BSE was made a reportable disease pursuant to the Health of Animals Act by HMQ in 1990.

228l. Kellar knew that it was outside his statutory power as a servant of HMQ to conceal the presence of BSE in Canada at material times, and he did so in full knowledge that he was thereby contravening the provisions of the Health of Animals Act.

228m. Kellar's conduct in concealing the presence of BSE in Canada from Canadian cattle producers was both deliberate and unlawful

228n. Kellar concealed the presence of BSE in Canada from Canadian cattle producers with full knowledge that a single domestic case of BSE would likely prompt a trade embargo against Canadian exports of cattle and beef for an indefinite period of time by some or all importing countries, including and especially the United States.

- 228o. Kellar concealed the presence of BSE in Canada from Canadian cattle producers with full knowledge that such an embargo against Canadian exports of cattle and beef would cause losses counted in the billions of dollars to Canadian cattle producers.
- 228p. Kellar concealed the presence of BSE in Canada from Canadian cattle producers with full knowledge that such concealment could and would cause financial hardship to cattle producers by depriving them of any opportunity to take steps to protect themselves from the devastating economic consequences that followed the confirmation of BSE in a cow from Alberta on May 20, 2003.
- 228q. Kellar concealed the presence of BSE in Canada from Canadian cattle producers in the deliberate disregard of his official duty to reveal the presence of BSE in Canada, coupled with his knowledge that failure to do so was likely to, and in fact did, cause grave financial injury to Canadian cattle producers.
- 228r. Pursuant to section 3 of the Crown Liability and Proceedings Act, HMQ is vicariously liable for the misfeasance of Kellar and any and all damages that flow therefrom.
- 228s. There may be other Bureaucrats unknown to the Plaintiff at this time who actively, knowingly and wrongfully assisted Kellar in concealing the presence of BSE in Canada at material times.
- 228t. Further particulars of the misfeasance of Kellar and other servants of HMQ cannot be provided by the Plaintiff until complete records have been produced by HMQ and the Plaintiff has had these records reviewed by appropriate experts competent to opine as to the nature and extent of the Bureaucrats' misfeasance and other wrongs in the circumstances of this action.

Negligence of Ridley

229. The Plaintiff states and the fact is that Ridley was negligent in the manufacture and sale of Feed-Rite 18% SR Calf Starter w/DCX.
230. Ridley Australia actively participated in the discussions between representatives of state and territorial governments and livestock and feed industry representatives concerning the need for the voluntary banning of the feeding of ruminant MBM to ruminants in Australia.
231. These discussions were commenced after the announcement by the Australian government of its intention to ban the incorporation of ruminant MBM in cattle feed in April of 1996 as a result of the WHO meetings in Geneva and subsequent recommendations enumerated in a WHO press release dated April 3, 1996, including the recommendation that “all countries should ban the use of ruminant tissues in ruminant feed.”
232. The result of these discussions was that all Australian cattle feed manufacturers, including Ridley Australia, voluntarily ceased to incorporate ruminant MBM into their cattle feed products as of May 1996.
233. These discussions centred on the potentially catastrophic effects on the export market for Australian cattle and beef products should BSE be found in the Australian cattle herd. At the time of these discussions or sooner Ridley became fully aware of the equally potentially catastrophic effects on the export market for Canadian cattle, and the Canadian cattle industry thereby, should BSE be found in the Canadian cattle herd.

234. At all material times Ridley knew or ought to have known that a confirmed diagnosis of BSE in the Canadian cattle herd would lead to a ban on the importation of Canadian cattle and beef products into the United States.
235. At all material times Ridley Australia had one or more Directors in common with Ridley, and had the same Chairman as Ridley. John Keniry and Ridley were aware from at least May 1996 of the potential hazards and dangers of incorporating ruminant MBM into feed intended for cattle in North America, including the risk of transmission of BSE to healthy cattle.
236. Despite being aware of the hazardous nature of ruminant MBM when incorporated into cattle feed, Ridley continued to incorporate ruminant MBM into feed intended for cattle and calves in the North American market until prohibited by regulation in August of 1997.
237. In the specific, Ridley manufactured the product known as Feed-Rite 18% SR Calf Starter w/DCX at the Ridley mill in St. Paul, Alberta in or about the spring of 1997. 3.2% of this product was comprised of ruminant MBM that was supplied by a rendering plant in Edmonton, Alberta, processed at the Ridley mill in Rapid City, South Dakota and then shipped to St. Paul for incorporation into Feed-Rite 18% Calf Starter w/ DCX. This product contained the BSE prion that was transmitted to the infected cow on or about May of 1997.
238. Feed-Rite 18% Calf Starter w/ DCX containing ruminant MBM was marketed throughout Canada at all material times; specifically between May of 1996 when Ridley Australia ceased using ruminant MBM in their cattle feed products sold in Australia and October of 1997 when the ruminant feed ban came into effect in Canada.

239. The decision to incorporate ruminant MBM on or about the spring of 1997 into Feed-Rite 18% SR Calf Starter w/DCX was made in the face of the direct knowledge of the risks involved to Canadian cattle producers for the simple reason that ruminant MBM was then less expensive than soybeans or other vegetable products as a source of protein in cattle feed.
240. The Plaintiff states and the fact is that Ridley could have simply and easily manufactured and marketed a safe calf starter product at the material times by removing ruminant MBM from the formulation for Feed-Rite Calf Starter w/DCX and replacing it with readily available vegetable protein.

Duty of Care

241. The Plaintiff states and the fact is that at all material times Ridley owed a duty of care to the Plaintiff and the Class Members to use all due care in ensuring that its animal feed products were safe.
242. The Plaintiff states and the fact is that the Class Members were entitled to rely on the representations made by Ridley at material times that their products were safe, and were entitled to the reasonable expectation that Ridley would not knowingly market and sell dangerous products. This is especially true given the inherent knowledge imbalance concerning the details of manufacture between Ridley and cattle producers.
243. The Plaintiff states and the fact is that Ridley was aware from at least May of 1996 that the incorporation of ruminant MBM into cattle feed was potentially hazardous to the health of the cattle eating the feed, and was particularly unsafe when incorporated into feed intended for calves.

244. The Plaintiff states and the fact is that Ridley knew or ought to have known from at least November of 1989 that the finding of a domestic case of BSE in Canada would result in a ban on the importation of Canadian cattle and beef products into the United States.
245. Given the magnitude of the possible consequences to Canadian purchasers of Ridley cattle feed products should their cattle develop BSE, Ridley owed an enhanced duty to ensure that its products intended to be fed to cattle were safe and did not contain the BSE prion. Ridley breached this duty.
246. The Plaintiff states that, given the magnitude of the potentially catastrophic effects on all Canadian cattle producers known by Ridley, in the circumstances of this action Ridley owed a duty of care to all commercial farmers of cattle in Canada to make best efforts to ensure that their products intended to be fed to cattle were not contaminated with MBM containing the BSE prion. Ridley failed to do so.

Standard of Care

247. By participating in the voluntary MBM ban in Australia, Ridley Australia acknowledged that the standard of care as of at least May 1996 for feed manufacturers required that ruminant MBM not be incorporated into feed intended for ruminants.
248. In spite of their direct knowledge of the risks involved, Ridley carelessly, wilfully and recklessly continued to incorporate ruminant MBM into cattle feed in North America for 15 months following the commencement of the voluntary ban in Australia.

249. By willfully, knowingly and recklessly continuing to incorporate ruminant MBM into cattle feed in North America despite direct knowledge of the potentially catastrophic consequences for Canadian cattle producers, with full knowledge of the voluntary ban in the United States that had commenced in March of 1996, and with full knowledge of the voluntary ban in Australia, Ridley breached the standard of care owed to the Plaintiff and the Class members.
250. Ridley had a duty to provide their customers with safe products. They failed to do so. Ridley produced a calf starter ration at their mill in St. Paul, Alberta in the spring of 1997 that contained ruminant MBM contaminated with the BSE prion many, many months after Ridley was aware of the risks involved in the incorporation of MBM into cattle feed. This failure by Ridley to ensure that their products were safe led directly to the discovery of BSE in the infected cow, which had contracted BSE as a result of being fed this contaminated feed.
251. The Plaintiff states that the failure of Ridley to cease incorporating ruminant MBM into their feed products intended for consumption by cattle in North America in a timely fashion following the ruminant MBM ban in Australia in May of 1996 constitutes negligence on the part of Ridley.

Causation

252. HMQ has publicly stated that “the most likely source of BSE for the infected cow would have been the consumption of feed containing meat and bonemeal (MBM) of ruminant origin contaminated with the BSE prion before the US and Canada implemented a feed ban in August 1997.” (see paragraph 78)
253. HMQ has determined that the most likely source of BSE for the infected cow was Feed-Rite 18% SR Calf Starter w/DCX produced at the Feed-Rite mill in St. Paul, Alberta that contained ruminant MBM contaminated with the BSE prion.

254. Mel McCrea of Baldwinton, Saskatchewan was the original owner of the infected cow (it was born on his farm in March 1997) who purchased Feed-Rite Calf Starter in the spring of 1997 and fed it to the infected cow when it was a calf.
255. The Plaintiff states and the fact is that the infected cow contracted BSE as a calf from eating Feed-Rite Calf Starter that contained the BSE prion in the spring of 1997.
256. Mr. McCrea was aware in the spring of 1997 that the feeding of ruminant remains to cattle was a potential means of transmission of BSE, but he had no idea that the Feed-Rite Calf Starter he had purchased from the Feed-Rite dealer in Neilburg, Saskatchewan contained ruminant MBM. There was no label of any kind on the 25 kg. bags of Feed-Rite Calf Starter indicating that the product contained ruminant MBM.
257. Tags attached to the 25 kg. bags of Feed-Rite Calf Starter that Mr. McCrea purchased in the spring of 1997 set out the nutrient content of the feed but did not list the ingredients. The cost to Ridley of including a list of ingredients on these tags would have been nil.
258. Had Mr. McCrea known that Feed-Rite Calf Starter contained ruminant MBM in the spring of 1997, he would not have fed it to his calves. He would never have bought the product.
259. The Plaintiff states that the wrongs and breaches of legal obligations committed by Ridley have caused or materially contributed to the injuries and damages suffered by the Plaintiff and Class Members.
260. Ridley had direct knowledge of the potentially catastrophic economic consequences to Canadian cattlemen should BSE be discovered in Canada.

Much of the focus of the discussions in Australia in April and May of 1996, where representatives from Ridley were present, was on the potentially catastrophic economic consequences to Australian cattlemen should BSE be found in Australia. Further, the content of these discussions was made specifically available to Ridley Australia as the largest stockfeed manufacturer in Australia.

261. Feed-Rite Calf Starter was advertised by Ridley as a product that would enhance the health, growth and profitability of calves. It was advertised as a product that would reduce sickness in calves (coccidiosis), promote early weight gain and maturation, and enhance profitability. Mel McCrea relied on these representations as well as the reasonable expectation that Ridley would not market a product that was not safe for its intended use.
262. The Plaintiff states that the knowing and reckless incorporation of ruminant MBM into feed products intended for consumption by cattle in Canada by Ridley when it was fully aware of the dangers posed to Canadian cattle producers thereby, constitutes reckless and egregious conduct that warrants an award of punitive damages.

Damages

263. In dollar value, for 2002 as a whole, total cattle and beef exports reached approximately \$4 billion, the equivalent of \$11 million in sales each day. From June 2003 to May 2004 following the border closure, the total value of cattle and beef exports was estimated at \$1.4 billion, down 65% from the 2002 benchmark.
264. Prices for all cattle (slaughter animals, feeders, dairy and calves) plummeted well below economically viable levels for thousands of cattle producers.

265. Prices for slaughter cattle were hit hard. For example, the July 2003 price for slaughter cattle in Alberta was about 35% of the price before the borders closed. It has struggled upwards since then and in March 2004 amounted to 76% of prices seen in the spring of 2003.
266. Feeder cattle prices were also adversely affected. In Alberta, prices for feeder cattle fell about 40% and were still down more than 15% in April 2004.
267. Prices for dairy cattle suffered the greatest decline. For example, post-BSE prices for dairy cows in Alberta fell 63% from the average price in the first five months of 2003.
268. These collapses in prices were mirrored across the country.
269. Canadian cattle producers' cash receipts for cattle and calves during the third and fourth quarters of 2003 were cut in half, tumbling to \$2 billion from the \$3.9 billion recorded for the same period in 2002.
270. According to BMO Financial Group, between May 2003 and November 2004 Canadian beef cattle producers' cash receipts plunged by close to \$5 billion from what they would have been had BSE not been discovered in Canada.
271. According to the Statistics Canada report entitled 'Farm Cash Receipts' dated May 2007, Canadian cattle producers' cash receipts have plunged by more than \$9 billion between May 20, 2003 and January 1, 2007 from what they would have been had BSE not been discovered in the Canadian cattle herd.
272. The Plaintiff and the Class Members have suffered, and continue to suffer, severe and debilitating loss of income due to the collapse of the market in

Canada for beef and live cattle caused by the inability to market internationally both live cattle and beef products.

273. The Plaintiff and the Class Members have suffered, and continue to suffer, severe and debilitating loss of income caused by the inability to market internationally both live cattle and beef products.
274. The Plaintiff and the Class members have suffered, and continue to suffer, loss of business opportunities.
275. The Plaintiff and the Class Members have suffered a diminution in the value of their livestock.
276. The Plaintiff and the Class Members have suffered a diminution in the value of their cattle business.
277. The Plaintiff and the Class Members have suffered a diminution in the value of their real property.
278. The Plaintiff and the Class Members have suffered, and continue to suffer, loss of enjoyment of life.
279. The Plaintiff and the Class Members have suffered, and continue to suffer, emotional upset and mental distress.
280. The Plaintiff and the Class Members have suffered real and substantial loss of income, including past, present and future loss of income, because of their economic situation arising out of the aforesaid wrongs of the defendants. Full particulars of these damages will be provided following the trial of the Common

Issues in this action. Should this action not be certified as a Class Action, full particulars of Bill's damages will be provided before the trial of this action.

281. The Plaintiff and the Class Members have incurred and will continue to incur, both before and after trial, damages for expenses relating to their efforts to replace all or part of the income they have lost arising out of the aforesaid wrongs of the defendants. Full particulars of these damages will be provided following the trial of the Common Issues in this action.
282. The Plaintiff and the Class Members have received financial support from various governmental programs. Full particulars of this financial support will be provided following the trial of the Common Issues in this action. Should this action not be certified as a Class Action, full particulars of this financial support will be provided before the trial of this action.
283. The Plaintiff's and Class Members' claims for damages in this action represent the difference between the increased financial support, if any, provided by the Provincial and Federal governments to the Plaintiff and the Class Members, and the actual damages suffered by the Plaintiff and the Class Members. No double recovery is intended or sought in this action.

Service Outside of Ontario

284. This originating process may be served without an order of the Court outside Ontario in that the claim is:
 - (a) in respect of a tort committed in Ontario (Rule 17.02(g));
 - (b) in respect of damages sustained in Ontario arising from a tort or breach of duty wherever committed (Rule 17.02(h));

- (c) against a person outside Ontario who is a necessary or proper party to a proceeding brought against another person served in Ontario (Rule 17.02(o)); and
- (d) against a person carrying on business in Ontario (Rule 17.02(p)).

285. The Plaintiff proposes that this action be tried at Toronto.

DATED at Toronto this 8th day of April, 2005.

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Court file no. 05-CV-287428 CP [TORONTO]

BILL SAUER
Plaintiff

- and -

ATTORNEY GENERAL OF CANADA, RIDLEY INC. et al
Defendants

Ontario
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

AMENDED
FRESH as AMENDED
STATEMENT OF CLAIM

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