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Game Farming Class Action Lawsuit Goes Ahead

In our last issue we mentioned that the Alberta Elk Association (AEA) had made some comments about the claim being put forward in the class action lawsuit that were unsubstantiated. Specifically, the AEA suggested that there was no evidence to support the possibility of disease transmission to domestic livestock, wildlife and humans; that game farmers who joined the class action would be at personal risk; and that claims of this nature had been tried before and lost. Lawyers for the case demanded a retraction and the publication of a letter (see below) that clarified the issues raised by the AEA, both of which were published in the *Alberta Elk* November 2002 newsletter. More than sufficient numbers of game farmers have now joined the class action.

Potential Class Action: The Real Story

By Clint G. Docken, Q.C.

There are three key facts game farmers should know regarding the pending class action lawsuit concerning the alleged negligence of the CFIA and the importation of Cervids from the U.S. to Canada. The three facts concern the following issues:

1. Scientific studies evidencing the transmission of various diseases among the Cervid populations;
2. Costs awards in Saskatchewan class action legislation; and
3. Success of class actions in similar circumstances.

Scientific Studies: Numerous studies published as early as the 1970s documenting the risk of disease transmission to domestic livestock, wild life and humans from infected cervids; for example:

- * Libke, K. G., and A. M. Walton. Presumptive paratuberculosis in a Virginia white-tailed deer. *Journal of Wildlife Diseases*. 1975. 11.4:552-3.
- * Williams, E. S., and S. Young. Chronic wasting disease of captive mule deer: A spongiform encephalopathy. *Journal of Wildlife Diseases*. 1980. 16:89-98.
- * Williams, E. S., and S. Young. Spongiform encephalopathy of Rocky Mountain elk. *Journal of Wildlife Diseases*. 1982. 18:465-71.
- * Tessaro, Stacy V. The existing and potential importance of brucellosis and tuberculosis in Canadian wildlife: A review. *Canadian Veterinary Journal*. 1986. 27:119-24.
- * Fanning A., and S. Edwards. Mycobacterium bovis infection in human beings in contact with elk (*Cervus elaphus*) in Alberta, Canada. *Lancet*. 1991. 338:1253-5.

The Saskatchewan Class Actions Act: The proposed claim is a class action to be filed in the name of a single representative plaintiff in Saskatchewan. The Saskatchewan Class Actions Act does not subject the representative plaintiff to costs except if the judge determines the lawsuit was frivolous and vexation. No representative plaintiff has ever had costs awarded against them under this act. Individuals who are members of the class, but not named in the Statement of Claim, cannot be subject to any court ordered costs award.

Successful Class Actions: The proposed claim is based on the same legal cause of action against the federal government (namely its failure to fulfill its duties) as was advanced in the Hepatitis C litigation. This class action resulted in a successful settlement of the claim for an amount in excess of \$1 billion. The settlement of the Hepatitis C class action concluded within two years from the date it was filed.





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