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	September 25, 2023 25 septembre 2023	
	Adam Young	
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FORM 301

Court File No. \_\_\_\_\_

# **FEDERAL COURT**

BETWEEN:

**BEDEQUE FARMS LTD.**

**APPLICANT**

– and –

**ATTORNEY GENERAL OF CANADA**

**RESPONDENT**

## **NOTICE OF APPLICATION**

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Charlottetown, Prince Edward Island.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: September 25, 2023

Issued by:

Sir Louis Henry Davies Law Courts  
42 Water Street  
Box 2000  
Charlottetown, Prince Edward Island  
C1A 7N8

**TO: Attorney General of Canada**  
Atlantic Regional Office  
Department of Justice Canada  
Suite 1400, Duke Tower  
5251 Duke Street  
Halifax, Nova Scotia B3J 1P3

## APPLICATION

This is an application for judicial review under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7. The Applicant seeks judicial review in respect of two decisions by the Canadian Food Inspection Agency (the “**CFIA**”). In the first decision, a CFIA inspector rejected, on the basis of a visual inspection alone, the seed potatoes planted by the Applicant in a field that forms part of Provincial Parcel Number 223354 in Middleton, Prince Edward Island (the “**Applicant’s seed potatoes**”). In the second decision, a CFIA inspection manager either declined to reconsider the inspector’s initial decision or, having reconsidered the inspector’s initial decision, decided to affirm it.

The inspector’s decision was communicated to the Applicant on July 28, 2023. The inspection manager’s decision was communicated to the Applicant on August 25, 2023.

### **The Applicant makes application for:**

1. An order quashing and setting aside the inspector’s decision and the inspection manager’s decision (collectively, the “**Decisions**”);
2. An order directing the CFIA to inspect, through laboratory tests rather than only visually, the Applicant’s seed potatoes; or, in the alternative, an order directing the CFIA to inspect the Applicant’s seed potatoes with directions from the Court;
3. An order for costs in favour of the Applicant; and
4. An order for such other relief as this Honourable Court may determine appropriate.

**The grounds for the application are:**

1. The CFIA is responsible for the administration and enforcement of the *Seeds Act*, RSC 1985, c S-8. The President of the CFIA is empowered to designate persons as "inspectors" for the purpose of enforcing and administering this statute.
2. The *Seeds Regulations*, CRC, c 1400 provide that the inspection of seed potatoes shall be made either visually or through laboratory tests or both.
3. A CFIA inspector inspected the Applicant's seed potatoes.
4. The inspector performed the inspection visually.
5. The inspector rejected the Applicant's seed potatoes. The stated reason for this rejection was "Mosaic in excess of standard".
6. The Applicant requested that a laboratory test be performed on the Applicant's seed potatoes. The CFIA inspector indicated that the CFIA could likely arrange for samples of the Applicant's seed potatoes to be taken to a laboratory.
7. The CFIA has nevertheless neglected or refused to perform its own laboratory tests on the Applicant's seed potatoes.
8. The Applicant itself has arranged for laboratory tests to be performed on the Applicant's seed potatoes. These laboratory tests indicate that the Applicant's seed potatoes are free from disease. The Applicant has presented these test results, along with other relevant evidence, to the CFIA.
9. The CFIA inspection manager, having received this new evidence from the Applicant, nevertheless declined to reconsider the

inspector's initial decision or, having reconsidered the inspector's initial decision, decided to affirm it.

10. The CFIA failed to observe a principle of natural justice, procedural fairness, or other procedure that it was required by law to observe.
11. The CFIA made erroneous findings of fact in a perverse or capricious manner or without regard to the material before it.
12. The CFIA erred in law.
13. The CFIA considered irrelevant considerations and ignored relevant considerations.
14. The Decisions are unreasonable.
15. The Decisions are arbitrary and not based on a cogent chain of reasoning.
16. The Decisions are not responsive to key arguments and evidence presented by the Applicant.
17. The Applicant had a legitimate expectation that the CFIA would perform its own laboratory tests on the Applicant's seed potatoes.
18. The inspector's decision and the inspection manager's decision form part of a continuous course of conduct by the CFIA.
19. *Seeds Act*, RSC 1985, c S-8.
20. *Seeds Regulations*, CRC, c 1400.
21. *Canadian Food Inspection Agency Act*, SC 1997, c 6.

**The application will be supported by the following material:**

1. The within Notice of Application;
2. An affidavit of a representative of the Applicant and/or affidavit(s) of other affiant(s);
3. The certified tribunal record; and
4. Other material as counsel may advise and this Honourable Court may permit.

**The Applicant requests the CFIA to send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the CFIA to the Applicant and to the Registry:**

1. The certified record relied on by the CFIA in making the Decisions; and
2. All other documents and materials in the CFIA's possession relating to the Decisions.

**DATED** at Charlottetown, Prince Edward Island, this 25<sup>th</sup> day of September, 2023.



**JAMES C. TRAVERS, K.C.**

**J. CURTIS DOYLE**

**STEWART MCKELVEY**

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