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GM Farmer Wins Landmark Canola Contamination Case

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Agriculture in the News

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Report Highlights:

A farmer accused of contaminating his neighbor's organic crops with genetically modified canola has won a landmark case in the West Australian Supreme Court. The decision could have wide-reaching implications for the production of both genetically modified and organic crops in Australia and coexistence between the two.

Background

Until 2010, the Government of Western Australia (WA) had placed a moratorium on the commercial cultivation of GM crops in WA. The moratorium was lifted prior to the 2010 season. Since that time, the number of farmers cultivating GM canola in WA has increased steadily. There were 317 farmers cultivating GM canola in 2010; 325 in 2011; 350 in 2012; and 406 in 2013. Almost 17% of all canola sown in WA in the 2013 season was a genetically modified variety.

The Gene Technology Act of 2000 established Australia's regulatory scheme for dealings with gene technology and genetically modified organisms (GMOs). The Commonwealth's [Gene Technology Regulator](#) serves the key role in assessing, regulating and licensing GMOs and enforcing license conditions. To date, biotech cotton, canola and carnation varieties are the only agricultural crops approved for commercial release into the environment in Australia.

Genetically modified foods must also be assessed, determined to be safe, and be approved before being sold for human consumption. The standards for such foods are developed by [Food Standards Australia New Zealand](#) (FSANZ) and are contained in the Food Standards Code. There are labeling requirements for genetically modified foods containing modified genetic material and/or novel protein, and for foods with altered characteristics.

Australia requires that if food products derived from GE contain more than one percent of biotech product, there must be prior approval from FSANZ before they can be sold. Such products must also be labeled to indicate that they contain biotech products. Currently approval has been granted for food products derived from biotech corn, cotton, soybean, sugar beet, potatoes, alfalfa and rice.

The Case

In a landmark court case on genetically modified (GM) canola and property rights, the Western Australian Supreme Court rejected claims by a certified organic farmer that a GM canola crop grown by his neighbor had "contaminated" an organic oats, rye and sheep farm. The organic farmer sought financial compensation and an injunction on the other farm from swathing GM crops in paddocks closest to his farm.

Michael Baxter was sued by his neighbour Steve Marsh, an organic certified farmer, who alleged his farm was contaminated by GM material blown onto his property from Mr Baxter's land. Mr Marsh claimed the contamination caused him to lose his organic certification on more than half his property for almost three years. Mr Baxter planted GM canola in two paddocks in 2010. The farmers' properties are separated by a single road and Mr Marsh's lawyers said the selection of both the crop location and the method of harvest contributed to the contamination of Mr Marsh's land. Mr Marsh's lawyers told the court that Mr Baxter's decision to harvest into swathes, rather than taking the seeds directly from the paddock using what is known as direct heading, created a foreseeable risk.

Baxter's lawyers told the court their client was simply exercising his right to grow a crop that is judged safe and legal by the State Government. They argued Mr Marsh's land could only be said to have sustained contamination if his own crops of wheat and oats had been genetically modified, or if the GM material had been mixed in with the end product of those crops, neither of which had happened. During the hearing, scientists had testified that Roundup Ready canola swathes were harmless to animals, people and land even if consumed.

The Court held in this case that there had been no unreasonable interference with the organic crops. It also found there was no legitimate contractual basis for the National Association of Sustainable Agriculture Australia (NASAA) to "decertify" Marsh's farm.

The following reasons were given for the decision:

- For private nuisance, his Honor assessed that it had not been shown that there had been any unreasonable interference by Mr. Baxter in the Marshes' use and enjoyment of their property.
- Mr. Baxter was not to be held responsible as a broadacre farmer merely for growing a lawful GM crop and choosing to adopt a harvest methodology which was entirely orthodox in its implementation.
- Nor could Mr. Baxter be held responsible, in law, for the reactions to the incursion of Marshes' organic certification body, NASAA, which in the circumstances presented to be an unjustifiable reaction to what had occurred.
- His Honor also rejected the Marshes' cause of action in common law negligence. The Marshes' action for exclusively a financial loss was without precedent. No basis in legal principle was presented to the Court to extend the law to the events in this case.
- Mr. Baxter had not been shown to have acted negligently, either by growing or then by swathing the lawfully grown GM canola in 2010.

The result occasioned an allied failure of the Marshes' claim for a permanent injunction to prevent Mr. Baxter from ever again swathing a canola crop on his closest paddocks to the Marshes' property.

Details of the judgment can be found at: [Judgment Summary](#); [Marsh v Baxter Full Judgment](#).

What Now

The case will be important in defining the legal framework for organic crops in Australia which operates under an industry standard – the Australian Standard for Organic and Biodynamic Products – which has not been adopted into legislation by the Australian Government and can therefore only be enforced at the industry level. The case also highlights contradictions in current Australian organic farming and certifying regulations and, by contrast, the United States, the European Union and Japan, which allow trace amounts of adventitious GMO content in organic crops, the Australian standard maintains a zero threshold tolerance for any dispersion of GM seeds or crops into organic crops.

Anti-GM campaigners in Australia said the verdict set a precedent because it leaves the use of GM crops “largely unrestricted.” [Australian Organic](#) wants to see a review of the laws and related codes affecting GM production to protect the interests of all farmers. Underpinning the code of practice for GM growing with legislation would help prevent issues like this happening in future. They said increasing land buffer zones between properties and changing harvesting practices would help to reduce genetic contamination risks.

[NASAA](#) remain resolute on its zero tolerance for GM crops but admits that the ruling means that they will have to “take a look” at their processes and procedures. The [Organic Federation of Australia](#) (OFA) are deeply concerned for the future of the organics industry indicating that “contamination is contamination” and expressing their opinion that the ruling could have catastrophic effects on the economic costs for the industry and the national economy.

The Pastoral and Graziers' Association of Western Australia however, view the case as “a big step forward” and said the outcome supported farmers who choose to grow GM canola.

Grain Producers Australia (GPA) said the Court's decision sent a “very clear message” about the validity and authority of the federal food safety regulator, Food Standards Australia New Zealand (FSANZ) and that the scientific role and authority of FSANZ and the Office of the Gene Technology Regulator were often lost during the emotional hype of the anti-GM debate. They expect that the Court's decision would prompt growers who may have been sitting on the fence with concerns about growing GM canola, to now start growing an “approved, legal crop.” GPA also said local organic standards which prescribed a zero tolerance for GMs, and contradicted global organic standards which allowed for an adventitious presence of up to 0.9 percent GM presence before certification is lost, now need to be reviewed.

A clearer framework for the coexistence of GM and organic crops in Australia could be developed following the case. Currently, coexistence of biotech, conventional, and organic crops has occurred in Australia since biotech cotton varieties were commercially grown in 1996. As part of any license to grow a biotech crop, OGTR stipulates the conditions under which the crop can be grown to ensure no cross-contamination with conventional or organic crops in the vicinity on a case-by-case basis. For license applications for environmental release of GMOs the Regulator must consult on the risk assessment and risk management plan with States and Territories, other Australian Government agencies, relevant local councils and the public.

Segregation and coexistence, along with other marketing and economic considerations, are managed through state specific regulations and industry protocols.

The [Agricultural Biotechnology Council of Australia](#) (ABCA) is using the case to emphasize their ongoing campaign on the subject of coexistence indicating that the strength and diversity of Australian agriculture brings great value to the country and that this exists because of the range of farming systems available to Australian farmers. Their view is that allowing only one system to flourish would seriously damage the farming sector as a whole and that now is the time for cooperation not conflict.

Media coverage

The following are a sample of media articles and media releases on the case:

- [Baxter wins GM case – The Land](#)
- [West Australian organic farmer loses court fight against GM neighbor – The Australian](#)
- [Baxter win a ‘step forward’: PGA - The Land](#)
- [CropLife Australia Media Release: Longstanding principles of coexistence in farming confirmed](#)
- [‘No Such Thing As GMO Contamination’ Rules Australian Court in Landmark Decision, Rebuffing Organic Activists - Forbes](#)
- [Can GM and organic farming co-exist? – ABC Rural \(Audio\)](#)
- [Safe Food Foundation Media Release: GM Farmer’s win is a loss for all organic farmers](#)
- [Australian Organic Media Release: GM legislation needs reviewing](#)
- [Landmark legal decision as WA Supreme Court dismisses anti-GM case – ABC PM](#)
- [GM crops: organic farmer loses court case over alleged contamination - The Guardian](#)
- [OFA response: Steve marsh case in WA detrimental to future of Australian organics](#)
- [NASSA firm on GM Stance](#)