

# Harvesting Issues Tested

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Recent significant trends in the Australian agricultural industry include an increase in organic farming and the commercialisation of genetically modified ("GM") crops - trends often portrayed as being polar opposites.

The potential conflict between organic farming and GM crops was central to the Western Australia case of *Marsh v Baxter* [2014] WASC 187. Touted by some as a "test case" in the use of GM crops, the case received both national and international attention.

The plaintiff, Stephen Marsh, grew organic wheat on his property, "Eagle Rest". Mr Marsh had obtained organic certification from the National Association of Sustainable Agriculture (Australia) Limited ("NASAA") in 2006.

The defendant, Michael Baxter, was the owner of the neighbouring farm, "Sevenoaks", and was trialing GM canola.

In late 2010, Mr Baxter harvested the GM canola by swathing, a process of cutting the crop and placing it in windrows for drying. Strong winds carried GM canola seeds from Sevenoaks onto Eagle Rest, causing 70% of Eagle Rest to be decertified by NASAA.

Mr Marsh's claim to the Supreme Court of Western Australia was for Mr Baxter to pay damages in the amount of \$85,000.00 and for an injunction restraining Mr Baxter from growing GM canola near Eagle Rest in the future. Both claims were rejected.

The Supreme Court of Western Australia found that there had been no unreasonable interference by Mr Baxter in Mr Marsh's use and enjoyment of Eagle Rest and that Mr Baxter had not acted negligently in either growing or swathing the GM canola.

It was determined by the Court that the GM canola had not caused any physical damage to Eagle Rest. The only loss sustained (if Mr Baxter had indeed breached the duty of care owed to Mr Marsh) was economic loss arising from the decertification of part of Eagle Rest, which the Supreme Court of Western Australia concluded was insufficient in the circumstances.

Mr Marsh has appealed the decision of the Supreme Court of Western Australia, and the matter is currently before the Court of Appeal. The decision of the Court of Appeal is expected in the near future and is likely to be the subject of significant commentary both within the agricultural industry and the community more generally.

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