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*'To Champion The Development of Organic
Agriculture In A Democratic Manner'*

** Food For Life **

*'To preserve and protect certified organic
food and fibre production'*

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Organic farmers seek leave to reverse class certification decision

Today the certified organic farmers of Saskatchewan filed documents with the Court of Appeal for Saskatchewan in Regina, seeking leave to appeal Judge Gene Ann Smith's May 11, 2005 decision denying them class certification under Saskatchewan's Class Actions Act. The farmers are seeking compensation for losses due to contamination of organic fields and crops by Monsanto's and Bayer's genetically engineered canolas.

The leave to appeal documents identify numerous and serious errors in the lower court judge's decision justifying an appeal.

The appeal application outlines the grounds of the appeal, which include the following:

While the lower court judge correctly determined that the organic farmers' case disclosed causes of action for damages under the new *Environmental Management and Protection Act* and under *The Environmental Assessment Act*, she erred in determining that the Statement of Claim also did not disclose causes of action in negligence, nuisance, trespass, or under the previous *Environmental Management and Protection Act*.

The lower court judge erred in determining that there was insufficient "commonality" for there to be an identifiable class. In making this determination she used a more stringent test than required.

While the lower court judge correctly determined that some of the issues raised by the plaintiffs were common issues for the class, she erred in determining that most of the other proposed common issues were not suitable common issues.

The lower court judge erred in determining that a class action would not be the preferable procedure for the resolution of the common issues. In making this determination she overlooked the plaintiffs Litigation Plan calling for the division of liability and damages, failed to give sufficient weight to the advantages of class proceedings to try the common issues versus numerous individual claims, failed to give sufficient weight to the fact that a class action is the only realistic means available to organic farmers to bring their case to court, and incorrectly determined that a successful determination on the issue of liability would not affect Monsanto's and Bayer's future plans for GMOs.

The lower court judge erred in determining that representative plaintiffs Dale Beaudoin and Larry Hoffman would not fairly and adequately represent the interests of the class.

"We want to have our day in court," said Arnold Taylor, president of the Saskatchewan Organic Directorate and chair of the Organic Agriculture Protection Fund Committee. "Nothing has changed – I still can't seed canola. This year conditions on my farm are perfect for putting canola into my rotation, but I can't get canola seed that is not contaminated by GMOs, and even if I could, I can't guarantee that it won't get contaminated by wind-blown GMO canola pollen or seed."

Plaintiff Dale Beaudoin is determined to see this legal action through. "We have to take this bull by the horns and wrestle it down. This GMO canola hasn't just hurt a handful of us. Other organic farmers want to grow canola, and it could have been a real attractive market for us. We are in this for the long haul."

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For details of the class action suit, please see <http://www.saskorganic.com/oapf/index.html>