

Saskatchewan Certified Organic Farmers versus Monsanto and Bayer: The issues of loss, liability and compensation

Presentation to Danish Board of Technology

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Introduction:

On January 10, 2002 the certified organic farmers of Saskatchewan registered a class action at the Court of Queen's Bench in Saskatoon, against Monsanto Canada Inc. and Aventis CropScience Canada (now Bayer CropScience Inc.) seeking compensation for the loss of canola as a certified organic crop, and an injunction to prevent the introduction of GMO wheat as a commercial crop. On February 2, 2004 our statement of claim was amended to include compensation for the costs due to GMO canola contamination of certified organic crops and land. <http://www.saskorganic.com/oapf/pdf/amended-claim.pdf>

We are seeking compensation to members of the class for the damages and loss of revenues caused by:

- a) loss of canola as a crop to be used within their rotations
- b) loss of opportunity to participate in the certified organic canola market
- c) past and future cleanup costs caused by Roundup Ready or Liberty Link canola volunteers growing on the fields of organic farmers including costs of:
 - a. identifying Roundup Ready or Liberty Link canola volunteers
 - b. the mechanical and/or hand removal of any Roundup Ready or Liberty Link canola volunteers
 - c. cleaning Roundup Ready or Liberty Link canola seed from the seeds of other organic crops produced by organic farmers; and
 - d. additional equipment cleaning, segregation cost, crop monitoring, organic inspections or record-keeping

Background:

Saskatchewan is located in Western Canada's prairies. Saskatchewan has 45 percent of the arable land in Canada. Saskatchewan has the highest number of certified organic producers – over 1,000 – and the most certified organic land – approximately 1 million acres (or 404,680 hectares) -- of all Canadian provinces. Organic production is a growing segment of agriculture in Saskatchewan, increasing at a rate of approximately 20 percent each year.

Certified organic production is a sophisticated and highly developed form of agriculture. It is not simply farming without synthetic fertilizers and pesticides. It is an integrated method of building soil fertility, managing the agricultural eco-system in order to minimize pest and disease problems and maximize the health and nutritional quality of the food produced. Biodiversity is fundamental to certified organic farming. Using carefully planned crop rotations, organic production nurtures a complex web of soil organisms, varieties of crops and livestock species, to form an ecologically, economically and socially stable and productive system.

Certified organic grain farming is one of the few ways for family farms to survive in Canada. Low commodity prices and high chemical and fertilizer prices are forcing many conventional

family farmers out of business. In 2003 the average annual realized net farm income in Canada was negative \$1,000. Organic farmers do much better, as they have lower input costs and obtain premium prices for their products. Many farm families are converting to certified organic production so that they can continue farming, pass their farm and knowledge on to the next generation, and continue living in their own rural communities.

The Class Action:

The Saskatchewan Organic Directorate (SOD) is an incorporated non-profit membership organization that represents certified organic farmers. SOD's mission is "To champion the development of organic agriculture in a democratic manner" and our vision is "Food for Life".

SOD's GMO position paper on GMOs includes the statement, "The Precautionary Principle must be observed. This principle involves protection of the environment and human health taken in advance of potential damage, not after the potential or actual damage has occurred. Actions must be taken to control or eliminate practices, such as genetic modification / engineering using recombinant DNA and other transgenic techniques, that seem likely to harm the environment, human health or sound social relations, even if proof of harm is not definitive."

<http://www.saskorganic.com/oapf/pdf/pos-paper.pdf>

Aventis and Monsanto began selling their GMO canolas -- Liberty Link and RoundUp Ready -- in 1995 and 1996 respectively. By 1998, buyers were asking farmers for GMO-free certificates for certified organic canola.

Furthermore, it became impossible to obtain seed that was uncontaminated. The Agriculture and Agri-Food Canada study, *Isolation Effectiveness in Canola Seed Production* by R.K. Downey and H. Beckie, disclosed that growers producing certified canola seed in 2000-2001 for the conventional canola market could not prevent genetic contamination of their seed by genetically modified (GM) canolas. The contamination was so severe that the authors recommended that four varieties sold in the conventional canola market be withdrawn or Breeder and Foundation seed sources for the varieties be cleaned up. <http://www.saskorganic.com/oapf/pdf/canola-study.pdf>

The increasing level of contamination of organic crops led to certified organic farmers abandoning canola as a crop, as it became impossible to guarantee a product free of GMO contamination.

It was also clear that Monsanto was working on GMO wheat, and was preparing to introduce it as a commercial crop. Therefore we had to assess what legal options were available to protect our sector.

Wheat is central to crop rotations used by grain farmers in Saskatchewan. Certified organic wheat makes up a high volume of sales for organic farmers, commands a considerable premium price, and is in high demand by consumers because it is a staple. Indeed, bread made from wheat is known as the Staff of Life. The loss of wheat as a certified organic crop would be devastating. Certified organic grain production in Canada cannot survive without wheat.

After exhausting all other avenues to protect certified organic farmers from the effects of GMO canola contamination, and with the prospect of losing certified organic wheat as a crop, and on the basis of the organization's GMO position paper, SOD initiated a class action on behalf of all certified organic grain farmers in Saskatchewan.

Our statement of claim alleges that when Monsanto and Aventis introduced their GMO canolas they knew, or ought to have known, that the genetically engineered canola would spread and contaminate the environment; that the companies had no regard for the damage these crops would cause to organic agriculture, and that the loss of canola as an organic crop has robbed organic farmers of a high-paying and growing market.

We are convinced the same thing will happen to wheat if GMO wheat is introduced. Since wheat is the cornerstone of prairie agriculture and is essential for organic crop rotations, losing wheat to genetic contamination would devastate organic farming in Saskatchewan.

The legal action is being carried out under the Class Actions Act of Saskatchewan. There are two major stages to carrying out a class action: certification of the class action and the trial on the merits of the case. We are nearing the class certification hearing, which we expect to occur within the next several weeks.

The Organic Agriculture Protection Fund Committee of SOD was established to raise funds and to guide the legal action. The OAPF Committee has also been given a mandate to "lobby all levels of government against introduction of genetically engineered (GE) wheat, other genetically engineered crops, or any genetically engineered substance prohibited by certified organic standards."

Losses:

We are asking for compensation for the loss of canola as a certified organic crop grown in crop rotations and sold into the certified organic market. So far, the dollar amount of losses has been estimated only for purposes of having the action certified as a class action. A preliminary estimate of economic loss to class members for the loss of the ability to participate in the market for certified organic canola is approximately \$14 million. A more detailed economic analysis, which may show greater losses, will be prepared for trial.

We are also asking for compensation for economic losses that will continue to arise from contamination of organic crops by volunteer GMO canola.

"Volunteer" is the term to describe crop plants that grow like weeds in places where they were not planted. If you tour the Saskatchewan countryside in June, you will see roadside fields fringed with volunteer yellow canola flowers blooming in crops of wheat, barley, oats and flax as a result of seed having been blown from passing trucks onto the fields. Volunteers arise in fields due to a variety of circumstances:

- Seed is deposited onto neighbouring field by winds or spring run-off water
- Wild bird and animal droppings contain viable seed
- Seeds sprout after lying dormant in soil for many years.
- Seed blows off passing trucks transporting GMO canola.

- Rail cars that are not properly sealed spill seed along railway tracks, which blows in the wind and is eaten by wildlife.
- Canola swaths blow onto a neighbouring land.
- In Manitoba in the summer of 2002 a tornado picked up canola swaths and it literally rained GMO canola seeds for miles around.

Losses due to contamination by volunteer canola have not yet been estimated for the class. These losses include the costs of identifying and removing GMO canola from certified organic fields, removing all canola seed from shipments of certified organic grain, and the costs resulting from losing crops where canola seed cannot be separated from the organic crop. Contamination incidents may result in severe restrictions on the types of crops that can be grown on that land.

Possible outcomes of our legal action:

If we win our case, Monsanto Canada Inc. and Bayer CropScience Inc. will be liable for the losses due to GMO canola contamination, and they will be compelled by the Court to pay members of the class an amount determined by the Court.

If we lose our case for compensation, then no party will be deemed liable for the losses due to GMO canola. The farmers, who have lost their certified organic canola market, the ability to use canola in their organic crop rotation, and the possibility of growing and/or marketing other crops that are contaminated by volunteer canola plants, and consumers who are deprived of a source of certified organic canola products, will have to bear all the costs.

Regarding wheat, we are asking for an injunction against the commercial introduction of GMO wheat because contamination of certified organic wheat by GMO wheat would be inevitable, unavoidable, irreversible and devastating.

In the study, *An Environmental Assessment of Roundup Ready Wheat: Risks for Direct Seeding Systems in Western Canada*, by R.C. Van Acker, A. L. Brule-Babel and L. F. Friesen, (<http://www.cwb.ca/en/topics/biotechnology/report/pdf/070803a.pdf>), the authors indicate that if Roundup Ready wheat were to be released under the same regime as was in place for GMO canola, contamination of non-GMO wheat could not be prevented. Furthermore, they state that “management systems sufficient to achieve and maintain discrete segregation of the Roundup Ready trait in either wheat or canola have not yet been devised, modeled or tested.”

Our customers demand a product with no detectible GMO contamination. Contamination of wheat would result in the loss of wheat as an organic crop. Since wheat is central to certified organic grain production on the prairies, the losses that would result from GMO wheat are immeasurable.

If GMO wheat is introduced, the losses would include:

- the loss of the livelihoods of all certified organic grain producers,
- the demise of their farms,
- the loss of the knowledge base which organic farmers sustain and develop,
- the loss of future generations of certified organic grain producers,
- the loss of prairie culture which is embodied in family farming,

- the loss of rural communities which depend on family farmers,
- the loss to the world food supply of all Canadian certified organic grains grown on the prairies.

Believe me, organic producers in Canada would far rather be putting their time and energy into becoming even better farmers, passing their knowledge to new farmers and building up their own farms and communities. It is certainly hard to quantify the losses due to worry, stress, uncertainty and the time and energy that goes into fighting for our right to survive.

Conclusion:

You are going to be making crucial decisions about GMO crops in Denmark that will affect future generations of Danish people for all time.

Recently, the Auditor General of Canada criticized our federal government for the way it has handled the introduction of GMO crops. She said, “Our audit looked at the adequacy of the process the Canadian Food Inspection Agency follows to regulate plants with novel traits. Besides deficiencies in its standard operating procedures, we found that the Agency lacked sufficient documentary evidence to show how it evaluates the potential long-term environmental effects of these plants—something it is legally required to do before approving them for release into the Canadian environment. We also noted a risk that some plants with novel traits could be escaping regulation. We therefore concluded that there could be environmental risks that have not been assessed.” Auditor General's Opening Statement, March 2004 Report Press Conference - 30 March 2004

http://www.oag-bvg.gc.ca/domino/other.nsf/html/200403pc_e.html

Don't make the mistake that Canada made.

GMOs are living organisms that cannot be controlled by human institutions. GMOs do not know how to read. They cannot sign contracts. They cannot be imprisoned or fined. Like all life-forms, GMOs have an imperative to live and reproduce. Once released into the environment they cannot be confined.

You may be able to limit the spread of GMOs for the first few years, but you will not be able to control all of the genes all of the time. Sooner or later you will have a major contamination event or a cumulative series of smaller events that will overwhelm your system. The question is not, “How do we control GMOs” but “Do we let GMOs loose in our country, or not”.

If you introduce GMOs into Danish agriculture, you *will* contaminate your non-GMO and organic crops. Monetary compensation for economic losses will never undo the fact of contamination. Co-existence is impossible. You must make a choice.