

Organic farmer, facing \$800,00 liability, ponders appeal after losing Australia “contamination” case

The GLP aggregated and excerpted this blog/article to reflect the diversity of news, opinion and analysis.

TWO out of three adjudicators have dismissed WA organic farmer Steve Marsh and wife Sue’s appeal, in the WA Supreme Court’s Court of Appeal, against Justice Ken Martin’s rejection of their damages claim against neighbour Mike Baxter.

But the third – Justice Carmel McLure – has left the door open to potentially appeal the headline grabbing legal test-case over Genetically Modified crops and land rights, to the High Court.

The Marshes now have 28 days in which to decide whether they’ll appeal the Appeal Court’s decision.

The Appeal Court handed down a majority 2-1 decision, rejecting the Marshes appeal against Justice Martin’s conclusive dismissal last year of their \$85,000 compensation claim for losses caused by GM canola landing on their Kojonup Eagle Rest property.

The judgment outlined 11 grounds of appeal. It also included Justice McLure’s somewhat controversial decision to back the organic farmers’ case, in stark contrast to her two colleagues.

Justice McLure’s ruling was largely shaped by a view that Mr Baxter’s decision to swath his GM canola crop, during the 2010 harvest, had supported the Marshes claims on the grounds of nuisance.

“With the sole exception of the 2010 GM canola crop, the respondent had harvested all his canola crops by direct heading,” her portion of the judgment said. “...direct heading is the better and more responsible practice when GM canola needs to be contained... the respondent would not have suffered appreciable prejudice to his own interests if he had direct headed his GM canola crop in 2010...Having regard to all relevant factors, the interference with the appellants’ use and enjoyment of Eagle Rest flowing from the escape of GM canola swaths from Sevenoaks in 2010 was both substantial and unreasonable and constituted a private nuisance.”

Read full, original post: [Door open for another appeal in GM case](#)