

**IN THE SUPREME COURT OF WESTERN AUSTRALIA  
COMMERCIAL AND MANAGED CASES LIST**

**No. CIV 1561 of 2012**

B E T W E E N

**STEPHEN WILLIAM MARSH**

First Plaintiff

**SUSAN GENEVIEVE MARSH**

Second Plaintiff

and

**MICHAEL OWEN BAXTER**

Defendant

**WITNESS STATEMENT OF STEPHANIE GOLDFINCH**

I, Stephanie Jane Goldfinch of 8 Duke Street, Bridgewater in the State of South Australia, food safety and organic auditor, state:

1. I am presently employed as a food safety and organic auditor with AUS-QUAL Pty Ltd. Before joining AUS-QUAL in 2011, I worked for NASAA Certified Organic Pty Ltd (**NCO**), wholly owned subsidiary of the National Association for Sustainable Agriculture, Australia (**NASAA**), and other organisations in the area of organic certification.
  - a. From about 1991 to 1996, I was employed by NASAA as a Certification Officer (**CO**).
  - b. From about 2002 to 2008, I was employed by the International Organic Accreditation Service, an independent not-for-profit organisation based in the United States and Europe that provides various services including verifying the competence of organic certifiers and the implementation of organic standards.
  - c. From about 2008 to early 2009, I was employed by NASAA as Technical Manager and then as acting Executive Officer (**EO**).
  - d. In early 2009, NASAA transferred its organic certification business to NCO. Following that transfer, I became employed by NCO rather than NASAA, although my position and responsibilities as EO of NCO remained substantially the same.

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2. I have a number of educational qualifications relevant to my work in organic certification. I obtained a degree in Applied Science (Natural Resource Management) from the University of Adelaide in 1999. I also obtained completed a Certificate in First Line Management from TAFE SA in 1996 and a Diploma of Quality Auditing from SAI Global in 2012.

### **MY ROLE AS THE EO**

3. As the EO of NASAA/NCO, I had general responsibility for management of the company, including for matters such as liaison with the Board, staffing matters, budgetary and financial matters, service delivery to clients, responding to complaints and so on. In particular, I was responsible for the management and oversight of the certification business.

### **THE CERTIFICATION PROCESS**

4. While I was EO at NASAA/NCO, the certification business system operated as follows:
  - a. A farmer would apply to be certified by NASAA/NCO. (NCO operates NASAA certification on behalf of NASAA.)
  - b. NASAA/NCO would assess whether the farmer's operation complied with the Standards. If so, NASAA/NCO would offer the farmer a contract. Once entered into, a Certificate would be provided.
  - c. NASAA/NCO certification of the farmer's operation, embodied in the contract with the farmer, would continue subject to ongoing compliance and periodic inspection and review. An operation would usually be inspected at least once annually.
  - d. Following a review, NASAA/NCO might assess an operation as no longer complying with the Standards in one or more respects. If so, NASAA/NCO might require the farmer to undertake certain remedial action, or it might suspend or decertify an operation in part or whole. Any such requirement would be reflected by an amendment to the schedule of the farmer's contract with NASAA/NCO.
5. While I was employed as EO at NCO, the process leading up to the making of a certification decision usually involved several persons who performed different roles.

- a. The Inspection Coordinator (an employee of NCO) would arrange for an inspector (a contractor, rather than an employee of NCO) to inspect the farm and provide an inspection report to NCO. The inspector would then conduct an inspection and provide their report.
- b. A Certification Officer (an employee of NCO), or in some cases two COs, would make an initial assessment of whether the operation complied with (or continued to comply with) the Standards, based on the information in the inspector's report and other relevant sources. The CO would record their assessment in a "post inspection review sheet".
- c. In a simple case, the CO assessment would determine whether NCO certified or decertified the operation, as relevant. As EO, I would sign off on the CO's assessment, and would sign a letter to a farmer recording the decision of NCO, but I would not otherwise be involved in the assessment process.
- d. However, in a complex or unusual case, I might become more involved in the assessment process. Sometimes, the Board, Standards Committee or some of its members might also be consulted regarding whether operations comply with the Standards.
- e. In light of the assessment results, a contract officer (an employee of NCO) would communicate with the farmer about any necessary amendments to their contract with NASAA/NCO.

#### **GM CONTAMINATION ON EAGLE REST**

6. In December 2010 Steve Marsh contacted me (as NCO's representative) and informed me that he believed that genetically modified (**GM**) canola was present on his farm (**Eagle Rest**).
7. On 2 December 2010, I received two faxes from Mr Marsh.
  - a. The first fax, dated 1 December 2010, stated that Mr Marsh had observed canola material on four paddocks of Eagle Rest, that he had tested the canola using the "Trait RUR Test", and that the test results suggested the canola was GM. I refer to *Fax from Stephen Marsh to NASAA regarding contamination* [TB 0291].
  - b. The second fax, dated 2 December 2010, stated that five paddocks of Eagle Rest (paddocks 7, 8, 9, 10 and 12) had now been contaminated by hundreds of canola swaths, and that Mr

Marsh's sheep had been eating the canola. I refer to *Fax from Stephen Marsh to Stephanie Goldfinch of NASAA regarding contamination* [TB 0292].

8. On or about 2 December 2010 NCO arranged for Kathe Purvis, an inspector engaged by NCO, to conduct an inspection of Eagle Rest and to collect a sample of canola for testing.
9. On 4 December 2010, Ms Purvis conducted that inspection and collected a sample of canola for testing (the **first sample**). Shortly afterwards Ms Purvis provided her report to NCO. I refer to *NASAA Inspection of Eagle Rest* [TB 0293-0309].
10. On 7 December 2010, I received a telephone call from Mr Marsh. He stated that the contamination had now spread into paddock 13. I took notes of that telephone conversation. I refer to *Handwritten File Notes of NASAA* [not tendered].
11. On 8 December 2010, I received two faxes from Mr Marsh.
  - a. The first fax concerned decertification of Mr Marsh's sheep stock. I refer to *Letter from Steve Marsh to Stephanie Goldfinch of NASAA regarding decertification* [TB 0319].
  - b. The second fax was of an aerial photo said to be marked to show the extent of the contamination. I refer to *Map of Eagle Rest showing extent of contamination* [TB 0320].

## **SUSPENSION OF CERTIFICATION**

12. On 8 December 2010 Luke (Wenpeng) You, a NCO CO, reviewed the inspection report provided by Ms Purvis, the information provided by Mr Marsh and recorded his assessment in an inspection review sheet. I refer to *NASAA Post Inspection Review Sheet* [TB 0314-0317].
13. On or about 10 December 2010, I also conducted a review of Mr Marsh's certification, using the review process set out above. I refer *NASAA Post Inspection Review Sheet* [TB 0314-0317].
14. I considered that the case was unusual because the contamination of Mr Marsh's operation appeared not to have been due to any actions of the certified farmer. That is why two people were involved in the review process.
15. As a result of this review process NCO decided to suspend certification of the affected paddocks on Eagle Rest. I signed off on that decision for NCO, on the basis of the information supplied by Mr Marsh

and the inspector. Suspension of certification allows time for further investigation (for example whilst waiting for test results and any further contamination developments). By letter dated 10 December 2010, NCO informed Mr Marsh of its decision. I refer to *Letter from Stephanie Goldfinch of NASAA to Stephen and Sue Marsh regarding suspension of certification* [TB 0323-0324].

16. As a result of the decision, NCO amended the Schedule to Mr Marsh's contract. I refer to *Letter from Stephanie Goldfinch of NASAA to Stephen and Sue Marsh regarding revision to the schedule* [TB 0321-0322].
17. On 13 December 2010, I received another fax from Mr Marsh. The fax contained a diagram of Eagle Rest, said to mark the extent of the contamination. I refer to *Fax from Stephen Marsh to Stephanie Goldfinch of NASAA of Map of Eagle Rest* [TB 0318].
18. On or about 14 December 2010, Ms Purvis sent the first sample to Dairy Technical Services Laboratories (DTS) in Melbourne for testing. The first sample was posted to DTS via Australia Post in an "Express Post" package.
19. It became necessary to arrange for the collection and testing of another canola sample from Eagle Rest because NCO became aware that Australia Post had lost track of the package containing the first sample. It had not been received by DTS in a timeframe expected for an Express post item. Communications with Australia Post at this time failed to find the package.
20. DTS advised NCO that the package containing the first sample was received several weeks later on 10 January 2011. This was subsequently authorised for testing by NCO and the laboratory results received 25 February 2011 confirmed the first sample was Roundup Ready Canola. I refer to *Letter from Sharon Riddle of NASAA to Stephen and Sue Marsh regarding test results of canola plant sample* [TB 0369-0370].
21. On or about 21 December 2010, NCO arranged for Claire Coleman, another inspector engaged by NCO, to conduct a further inspection of Eagle Rest, principally to collect a further sample of canola for testing.
22. On 21 December 2010, Ms Coleman attended Eagle Rest and collected a sample of canola for testing (the **second sample**). Shortly afterwards Ms Coleman provided her report to NCO. I refer to *NASAA*

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*Inspection Checklist and Report (Extra Announced Inspection)*[TB 0325-0331] and *NASAA Visit Confirmation and Exit Interview* [TB 0332].

23. On or about 22 December 2010, NCO staff arranged for a courier to pick up the second sample from Ms Coleman and deliver it to DTS for testing. It was received by DTS on 23 December 2010, just prior to Christmas.
24. On 29 December 2010, NCO received a report from DTS that indicated that the analysis showed the second sample was Roundup Ready Canola. I refer to *Letter from Stephanie Goldfinch of NASAA to Stephen Marsh regarding changes to certification* [TB 0337-0338].

#### **DECERTIFICATION OF EAGLE REST**

25. The DTS test results of the second sample together with the two inspection reports confirmed that there was GM contamination on Eagle Rest. As such Mr Marsh's operation was in breach of the NASAA Standard in various respects. In particular, the presence of GM canola in paddocks 7 to 13 of Eagle Rest meant that these paddocks no longer complied with standard 3.2.9 of the NASAA Standard.
26. On or about 29 December 2010 I formed the view, based on the evidence outlined above, that portions of Eagle Rest should be decertified on the basis on non-compliance with the Standards.
27. The following factors were important to the decision to decertify parts of Eagle Rest:
  - a. The extent of the presence of GM canola. The inspection reports noted an extensive incidence of canola swathe plants over large parts of the farm, swath plant material with seed pods cracked and numerous seed scattered on the ground, and evidence of sheep having eaten canola heads.
  - b. Ms Purvis' report noted that at the time of the inspection a strong southerly wind was blowing and canola plants in one paddock were blowing like tumbleweed. According to the report, the paddock of origin (where the GM canola was indicated by Mr Marsh to have been planted in the neighbouring farm) was visible from the Marsh's property.
  - c. Because of those facts I concluded that there was an unacceptable risk of contamination of parts of the property from the GM canola.

d. I considered whether only a part, rather than the whole, of each affected paddock should be decertified. Given the report that there was evidence that sheep had eaten canola material, and given the possibility of wind dispersal, I considered there was a real possibility that parts of the affected paddocks where canola had not been sighted were also affected. In addition, while it might be theoretically possible to de-certify only part of a paddock, the basic unit for certification of a farm is a paddock, because a paddock has precise boundaries. When certification is given or revoked by reference to paddocks, both the farmer and the certifier know precisely what is certified and what is not. Also, I have observed that farming routines operate on the basis of paddocks rather than sub-paddocks. For example, when sheep graze in a paddock they have access to all of it. It is not practicable to graze sheep on part of a paddock. Accordingly I formed the view that it was appropriate to certify the whole of each affected paddock.

28. I considered that there was really no option but to decertify the affected paddocks, given those facts.

29. By letter dated 29 December 2010, NCO advised Mr Marsh of its decision to decertify the affected paddocks at Eagle Rest, and attached the DTS laboratory report of the second sample and a copy of an amended Schedule to Mr Marsh's contract. I refer to *Letter from Stephanie Goldfinch of NASAA to Stephen Marsh regarding changes to certification* [TB 0337-0338].

30. In my experience at NASAA/NCO and otherwise, I am not aware of any case similar to what occurred on Eagle Rest. That is to say, I am not aware of any case where an operation has been contaminated by GM material otherwise than due to the actions of the relevant farmer.

I have read the contents of this my witness statement and the documents referred to in it and I am satisfied that it is correct and that this is the evidence-in-chief which I wish to give at the trial of the proceeding.

**Stephanie Goldfinch**

Dated: 25 February 2013