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THE SUPREME COURT OF

WESTERN AUSTRALIA

CIV 1561 of 2012

STEPHEN WILLIAM MARSH

and

SUSAN GENEVIEVE MARSH

and

MICHAEL OWEN BAXTER

KENNETH MARTIN J

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON THURSDAY, 20 FEBRUARY 2014, AT 10.29 AM

MR R.M. NIALL SC, with him MS L.M. NICHOLS and MS C.M. PIERCE, appeared for the plaintiff.

MS P.E. CAHILL SC, with her MS F. VERNON, appeared for the defendant.

THE ASSOCIATE: In the Supreme Court of Western Australia, civil matter 1561 of 2012, Marsh v Baxter.

KENNETH MARTIN J: Ms Cahill.

CAHILL, MS: If I can call Dr Patrick Rudelsheim. There's no objections to his report, your Honour.

KENNETH MARTIN J: All right. Just let me retrieve his expert report. How many - was there just - - -

CAHILL, MS: Just the one, your Honour, of 2 October 2013.

KENNETH MARTIN J: Thank you. Just get that. Yes, I do. All right. Can we have Dr Rudelsheim.

RUDELSHEIM, PATRICK affirmed:

KENNETH MARTIN J: Yes, thanks, Dr Rudelsheim. Ms Cahill will ask you some questions.

CAHILL, MS: Dr Rudelsheim, could you please state your full name and address for the court?---My name is Patrick Rudelsheim; I am living in Hadibeddica 22, St Marcus Lark in Belgium.

Thank you. I am just going to provide you with a copy of your report. This is your report of 28 pages dated 2 October 2013 that you have prepared for the purposes of these proceedings?---Yes, it is.

And I think it's signed by you at the bottom of each page, is it, in the right-hand corner?---It is, and on page 3.

Thank you. Now, insofar as your report contains statements of facts, Doctor, are those statements true and correct?---To the best of my knowledge, yes.

And insofar as your report contains statements of your opinion, are those opinions honestly and reasonably held by you?---Yes, they are.

I tender the report, your Honour.

KENNETH MARTIN J: Yes. No objection? The report of Dr Rudelsheim which is dated 2 October 2013 will be exhibit 28.

CAHILL, MS: Thank you, your Honour. Thank you, Doctor.

KENNETH MARTIN J: Ms Nichols.

NICHOLS, MS: If your Honour pleases. Dr Rudelsheim, glyphosate is an extremely important herbicide to the agricultural industry worldwide, isn't it?---It is.

And, in fact, you give evidence at page 5 of your report that it's probably the most widely used herbicide in the world?---That's how it is now presented, yes.

And a threat to the utility of glyphosate is the development of resistance in weeds to which glyphosate is applied. That's correct, isn't it?---As for any other herbicide, yes.

Yes. And at page 9 of your report, you say that where Roundup-Ready crops have been grown, some incidence of weed resistance to glyphosate has occurred and has become an increasing problem in some regions. Are you aware that there has been reports of resistance to glyphosate in Australia?---Yes.

And, in fact, you mention some of those in your report, don't you?---Yes.

And you say, on that page also, that because of its broad spectrum post-emergence activity, it was often used as the sole method of weed control. This approach to weed control put tremendous selection pressure on weeds and as a result contributed to the evolution of weed populations predominated by resistant individuals. That's correct, isn't it?---That's correct.

All right. And you go on to say at page 10 of your report that:

As a result, growers of Roundup-Ready crops are increasingly being advised to include other herbicides with different complementary modes of action in combination with glyphosate and in some cases to revert to ploughing in their integrated weed management systems. And, at a macro level, these changes have already begun to influence the mix, total amount, cost and overall profile of herbicides to Roundup-Ready crops.

Now, Doctor, a very important - in fact, a critical management tool for farmers dealing with glyphosate resistance is to have an integrated weed management program. Isn't that right?---Yes.

In fact, it's absolutely essential for farmers practising agriculture prudently, who use glyphosate, to implement integrated weed management programs?---Yes. Adding to that, that the entire development of integrated weed management is relatively new. We come from a point where maybe people were, indeed, trying to address weed problems with one solution and that could be - beside it could be another solution. And, of course, one solution leads sooner to development and selection of resistance. So ways of integrated weed management have gradually replaced reliance on one solution.

Certainly. But it's true, isn't it, that it's absolutely critical for farmers to observe integrated weed management if they are to avoid and forestall the resistant - development of resistant weeds on weeds that are treated with glyphosate?---What you do with integrated weed management is not as much a development of it because as I said, also in the report, the development of it is a natural phenomenon. It's more the selection and the fact that a resistance becomes a problem in your management that you can address by resorting to integrated weed management.

And the importance of using integrated weed management strategies was well known in 2010, wasn't it?---It's better - better known, let's put it that way. It was already understood in 2010. I think it's gradually become more evident and I think there's more indications that people get guidance on how to do integrated weed management.

And you wouldn't disagree, would you, that in Australia in 2010, it was well understood in the agricultural community that the application of integrated weed management programs was critical to forestall resistance development to glyphosate?---Yes.

Now, the threat of resistance development in weeds, resistance to glyphosate, really occurs on two levels. I will just put this to you and see if you agree. On an individual farmer level, if a farmer consistently uses glyphosate on his farm or on paddocks on his farm but does not apply an integrated weed management program, the weeds on his farm may become resistant to glyphosate. That's correct, isn't it?---Again, pointing to the fact that you're selecting for that, so yes.

Yes, but there is another element, isn't there? Resistant traits may be inherited. That's correct, isn't it?---They are inherited.

Yes, and what that - the implication of that is that a resistant trait in a weed may be transferred from one population to another?---You mean of the same species?

Yes?---Yes.

And depending - and that usually happens by either pollen or seed transfer?---Essentially pollen transfer.

Yes, and depending on conditions in the receiving site, where there is cross-pollination between a resistant individual and a susceptible weed of the same species, the hybrid may be - may develop increased resistance?---The answer is yes, provided you're talking of the same species.

Yes?---And you're talking about the weed species and not of the crop species.

Yes, the weed species?---Yes.

And so in agricultural systems, subject to the conditions at the time, a very important principle is that what happens on one farm in relation to weed management may affect what happens on another?---It may but it also may not, and the point here is that, as I pointed out earlier, the fact of the presence of the resistance is a natural phenomenon. It can occur in any population, in any plant, at any location. The fact that you select for it is really going to depend on whether you use the herbicide or not. So it can already be present in that other paddock.

Indeed, but if - resistant individuals may pollinate and pollen from one farm may be transferred to another farm and that may increase the resistance of the weeds in the second farm to a particular herbicide, including glyphosate?---It will not to the point that if on the other farm you are not using the herbicide to select for that. The trait will not even be seen. It may be present - it may already be present. Actually, the opposite is also true. If you're on the other farm, let's say non-resistant, then that will also cross into the wild species in the farm that you're describing first. So, I mean, it's to something that is that imposing I would say.

But perhaps qualifying that proposition, if the farmer on the receiving farm, if I can put it that way, is using

glyphosate and has selected for weed resistant individuals, transfer of pollen from resistant individuals in the first farm may increase resistance on the second farm?---Well, no, because in that case the farm - by using - the farmer on the second farm, by using the herbicide, is already selecting for it himself or herself. So it's not something that will increase or not by that pollen flow.

Well, you don't disagree, do you, that - you agreed that resistant traits are inherited and the resistant gene is carried mostly by pollen?---Making the distinction between a crop species and a weed species.

With weed species?---Yes, we think in this case, for a weed species, pollen transfer could be one of the ways that you can transfer the trait. There are other ways.

And would you agree that it is therefore important in agricultural practice for farmers to observe integrated weed management systems, not only for weed resistant issues in their own farms but for weed resistant issues in neighbouring farms?---The integrated weed management, it has to do with what you can handle on your farm.

Yes?---So obviously it's a matter for each farmer to do that on his or her farm.

Yes, and it's very important to do that, isn't it?---It is very important, yes.

Yes, and one of the considerations might be that there could be an effect on a neighbouring farm, depending upon the conditions in the neighbouring farm?---The demonstration of the herbicide resistance in that farm will depend on how that's managed, yes. And even if - obviously, if you're not using that herbicide, it will not even be of importance that it's there or not.

Where a neighbour is using that herbicide, it may have an impact. It can't be ruled out, can it?---Yes, but as I pointed out before, if the neighbour is using that herbicide and is - even whether or not using an integrated weed management system, he or her are already influencing what's happening on that farm. So whether then you have an additional influx from somewhere else is less important.

But you may have an influx from somewhere else?---You may have and it may happen on your own farm.

Yes, indeed. You mentioned at page 10 of your report - sorry, I beg your pardon, on page 11 of your report that in

the context of Australia, that in 2003 the Australian Gene Technology Regulator issued a licence for the commercial release of Roundup-Ready canola, GT73. The regulation of gene technology in Australia is something you do know a little bit about, isn't it?---I do.

Yes. And you go on to mention that - at the bottom of page 11 that there were two concerns that regulators flagged. One was the potential - rather, in the context of the approval of Roundup-Ready canola, one was the potential for the development of herbicide resistant weeds if glyphosate was used inappropriately and the second was the possible economic and market impacts if Roundup-Ready canola spreads to adjoining farms. That's correct, isn't it?---These are the conclusions from the reports from OGTR, yes.

Yes. And tell me if you know this, on the question of economic and market impacts, the office of the OGTR was not actually attempting to regulate those impacts when it was approving Roundup-Ready canola, was it?---No.

No. And you're aware, aren't you, that the regulatory model, if I can put it in simple terms, in Australia is that Monsanto, for example, is licensed to deal in the relevant genetically modified canola product and it in turn licenses other users, growers and so on, on conditions of its licence and it's through the licence that Monsanto grants that the users of the technology are actually regulated. That's correct, isn't it?---Yes.

Yes. And can I ask you please to have a look at a document. If you will just go to folder 4 in the volume - volume 2 - - -

KENNETH MARTIN J: There are nine lever arch files there, Dr Rudelsheim. They should be numbered. Number 4 I think is the one counsel is asking you to look at.

NICHOLS, MS: Yes. If you can take - can you please go to page 1226, and you will find the page numbers on the bottom right-hand corner of the pages. In fact, Doctor, can you go to page 1225. Do you have that there?---Yes.

And can you see that that is a document entitled Roundup-Ready Canola Management Plan, 2010 Crop Management Plan?---Indeed.

That's a Monsanto document. If you can just have a quick look maybe through the first few pages and tell his Honour whether you have seen a document of that kind before, relating to the management of canola - Roundup-Ready

canola, I beg your pardon?---I have seen documents like this before.

Yes. And can I ask you please to have a look at page 1226 at the text at the top, under the heading Objective?---Yes.

Can you read that part to yourself, starting with Roundup-Ready Canola Crop Management Plan and perhaps just the first three numbered paragraphs. I will just give you a minute to do that?---Yes.

Do you agree that the propositions stated in those paragraphs are appropriate and sensible statements of principle concerning the regulation or management of Roundup-Ready technology?---I do.

Okay. And can you read the next part of the paragraph, please, starting "specifically, growers" and the dot points under that paragraph?---Yes.

And do you agree with the statement of principle in that paragraph in relation to the management of Roundup-Ready technology?---I do.

Yes. And can you please turn over the page and look at page 1227, at the top of the page, under the heading, Resistance Management Principles for Roundup-Ready Canola, and can you please read points 1 to 7?---Yes.

And do you agree that those are both appropriate and important management practices for farmers when dealing with Roundup-Ready canola?---They are.

Thank you. Can I ask you something about yourself, Doctor. Your CV is attached to your report, and I think it appears at page 24. Now, you mention in your CV that in 2003 you founded and became a general partner of a company called Perseus BVA, a service company focused on biosafety and related regulatory requirements. Now, can you - - -

KENNETH MARTIN J: Sorry. I'm just troubled - which paragraph, Ms Nichols?

NICHOLS, MR: I beg your pardon, your Honour. I think it's the fourth paragraph down, and it commences with the words "in 2003". What is the - Doctor, what is the principle work of the company, Perseus?---We're a service provider, and "service" means that we work on projects for clients in relation to biosafety and biotech regulation.

All right. And if you can describe, in broad terms, your client base, are they biotech companies who are seeking to gain approval for agricultural biotech products?---They can be. It's a mix of companies big and small, as well as academic groups, as well as governments that require specific reports.

All right. And, according to the publicly available information about that company, one of the things that your company does is to prepare regulatory submissions to obtain, defend and maintain appropriate permits for operations and products. Is that correct?---Yes. Operations and products. Yes.

And in that context, you would be frequently acting for agricultural biotech companies, is that correct?---They're part of the clientele. Yes.

Yes. And one the of things that your company does is to identify regulatory developments and areas for lobbying activities, is that correct?---Related to the regulatory files, yes.

Yes. And can you elaborate on the lobbying activities that your company does in that context?---They're a small part of the entire activity. They relate to specific data requirements, where it's not always clear what kind of data have to be presented. It's a new field, and there is a lot of development going on in terms of how to demonstrate safety, so our lobbying is purely related to the regulatory part of the product defence to make sure that people understand on what basis we can demonstrate safety.

So when you're engaging in lobbying activities, who would be the recipients of the lobbying activities?---Okay. It would be regulatory - regulatory agencies of the countries where the approvals need to be obtained.

Yes. And are you a member of a group called the Agricultural Biotechnology Regulatory Network?---I am.

And is that a network of regulatory consulting professionals who serve the agricultural biotechnology industry?---It is.

And is one of the purposes of that group to provide services to companies who are seeking to obtain commercial approval, agricultural biotech products?---It's one of the objectives. Yes.

Yes. And one of the roles that that group performs is to provide communications and public advocacy for those clients, is that right?---Not for the clients; for the specific products, yes.

I beg your pardon. And is part of your role to be involved in that advocacy?---Well, advocacy in the sense that - just as we described lobbying, it's a matter of demonstrating the safety of the product and how we can convince people that those files are a good way to do it.

Thank you. Now, just returning for a moment to your CV, you mention in the previous paragraph that in 1996 you became global head of biotechnology regulatory affairs for the AgroEvo Group, and after - then after the creation of Aventis SR due to the merger of Herc & Ronin Pullink, you became the global head of regulatory affairs for bioscience of Aventis Crop Science, and then following the Aventis CropScience - acquisition Aventis Crop Science by Bayer in 2002, you were confirmed in that position for Bayer CropScience. Now - so you commenced, by reason of a series of corporate mergers, in 2002, as the global head of regulatory affairs for bioscience of Bayer CropScience. Is that right?---Yes.

And what is your involvement today in Bayer CropScience?---None. Potentially as a client, but no other activity within Bayer CropScience.

All right. But did you continue in your role with Bayer CropScience into 2003?---No. I left the company in 2003.

2003. But you were at the company in 2002?---I was.

Yes. And Bayer CropScience is presently developing genetically modified wheat, isn't it?---I'm not aware of what they're developing. I don't think so, but - yes.

Not to - you don't know?---No.

All right. And you mention that Bayer CropScience is a potential client of your firm?---Potential. Yes.

Yes. Is it an existing client?---It's not a client at this moment.

All right. But you would like it to be a client?---I'm happy with every client that's interested in the safe development of its product. Yes.

All right. At page 11 of your report - just returning to that for a moment - you did mention that in 2003 the Australian Gene Technology Regulator issued a licence for the commercial release of Roundup-Ready canola GT73. Now, it's the case, isn't it, that in 2002, Bayer CropScience also applied to the AGTR for a licence to deal in Vigor, which is a hybrid GM canola, didn't it?---Yes.

And in 2003 that licence was granted by the Australian OGTR?---Yes.

Now, has that project - sorry, has that product been commercially developed in Australia?---I don't think so.

Right?---I think it's approved and there is a second one which is also approved to Bayer but I don't think it's commercially developed at this time.

And at the time of the application for that licence by Bayer CropScience, your position at Bayer CropScience was as global head of regulatory affairs, Bioscience, is that correct?---Yes, it is.

And so regarding the application for the licence, did you have senior responsibility for that application?---Absolutely.

So you were involved in the application process yourself?---I was supervising it, yes.

And so you were ultimately responsible for the submissions that were made to the OGTR on Bayer CropScience's behalf?---Yes.

And were you involved in public advocacy to regulatory authorities in connection with the application for that licence?---No, we did visit the authorities, just to explain what the data package is, but that would not be considered advocacy.

All right. Now, you don't mention anywhere in your report either that Bayer CropScience had made such an application in 2002 or that a licence was granted or that you were involved in that process, do you?---I don't.

Right?---It was not within the questions that was asked.

Yes. But did it occur to you that it might have been a relevant fact to disclose in your report?---Not necessarily because it was not related to the specific case of

Roundup-Ready canola. I must admit that through my experience, which actually predates very much the submission here in Australia, that actually we did get a lot of information on what was going on with the competing product, the Roundup-Ready canola, but that's it.

Table 4 on page 12 of your report, you pose some data which is entitled Summary Of Average Farm Economic Impacts In The Period 1996 To 2011 For GM Modified Herbicide-Tolerant Canola. Do you see that there?---I do.

All right. Now, you are aware, aren't you, that genetically modified canola was legalised for use in the State of Western Australia in 2010, aren't you? Is that correct?---Yes.

So are you aware that the first harvest of GM canola after that legalisation then would have happened in late 2010 or early 2011?---Yes.

Yes. So at most, if at all, that whatever data is behind report could only relate to 2010 or part of 2010 insofar as it concerned Australia, that's correct, isn't it?---Absolutely.

All right?---And I think this has also been raised - well, first of all, it has been raised within the publication that's referred to here. Secondly, it has been raised by one of the expert that I had to confer with, so it's understood that this was the first publication on this matter, also including information from Australia and it would be really interesting to see how this has evolved over more years of experience.

All right. But looking at the column on the far right hand side, under the row Australia, footnote 2 reads:

Mostly grain yields, especially Invigor canola.

And Invigor was the brand developed or approved for use by Bayer CropScience, wasn't it?---That's true.

And you referred to some data behind that study. You don't disagree, do you, that the data upon which the study to which you refer relied was a single survey conducted by Monsanto of herbicide-tolerant canola licensees in 2008?---Well, it's in a publication so it's all fairly transparent on how it's done.

But you don't disagree with that, do you?---I don't disagree.

So the data - - -?---The only thing I wanted to disagree is the fact that when you say the comparison is with the Invigor, that that's relating to the US and the Canada data. It's not relating to the Australian data because there was no Invigor yet here and there still isn't for the time being.

Well, it appears on footnote 2, in the column - in the row, rather that relates to Australia, doesn't it?---It's the second comment which is, "We are replacing China's intolerant canola in Australia.

All right. I think you are quite right about that. But you don't disagree the data behind that table you have produced was sourced from a study completed by Monsanto in 2008 which was a survey of herbicide tolerant canola licensees. You don't disagree with that, do you?---I don't disagree.

No?---It's written in the report.

Well, it's not disclosed in the report, is it?---In the report from Brookes and Barfoot.

The report is not attached to your report, is it?---Well - okay.

And you have not investigated that data yourself, have you?---No.

No. At page 9 of your report - - -

KENNETH MARTIN J: Sorry, just before we leave that, bearing in mind this will be poured over, no doubt, for generations. Is that a typo? Should that be Brookes rather than Brooked at the foot of 28?

NICHOLS, MS: I think it should, your Honour?---Brookes.

KENNETH MARTIN J: Brookes. And hence it ties into the Brookes and Barfoot fourth dot point reference as a source on 20 of 28.

NICHOLS, MS: It does, your Honour.

THE WITNESS: Yes.

KENNETH MARTIN J: All right. I just wanted to clear that up.

NICHOLS, MS: At page 9 of your report, Doctor, you say near the top of the page - - -

KENNETH MARTIN J: What page, Ms Nichols?

NICHOLS, MS: Page 9, your Honour.

KENNETH MARTIN J: Going back?

NICHOLS, MS: Yes. That under the heading Principal Rejection:

Some reject any form of genetic engineering and consequently oppose the introduction of genetically modified herbicide tolerant crops that represents the first large-scale of extremely successful deployment of this technology. In order to address this position, coexistent schemes have been suggested that allow the simultaneous use of different agricultural systems, such as conventional, based on genetic modification, organic or others. Although this may be a workable environment -

And just stopping there for the moment, you agree, don't you, that coexistence between different agricultural systems in the context of the relief of genetically modified canola is a workable paradigm?---Well, it addresses the - the fact of allowing different systems to be available, yes. Whether it - how workable it will be is still something that we need to see, depending on our experience.

Well, you said this may yield a workable environment, didn't you?---May yield, yes.

Sure. You don't disagree that coexistence between different agricultural systems is an appropriate value, do you?---Well, it's not what I would chose for but I understand that society may want it.

All right. Well, I will just remind you of - I don't need you to go to it, but I will just remind you of some text that you read a few moments ago in the Roundup-Ready Monsanto crop management plan and the text was this:

The crop management plan detailed strategies that can be implemented on farm to manage risks to the integrity of the grain crop supply chains and the sustainability of agricultural production. These strategies include -

enable, rather -

different production market systems to concurrently operate in a profitable and sustainable way in response to changing market and non-market climates.

?---Mm.

Now, a few moments ago you told his Honour that you thought that that was a valid and appropriate principle. Now, you are not changing your evidence, are you?---No, definitely not. And I'm not seeing any - any confusion between those two, in the sense that you can - my personal opinion is that I think we are overrating the importance of coexistence and the fact that we have different chains of supply. However, if that is what society wants and what the market wants, then we will work to it and make sure it's a workable system.

Certainly. You go on to say that in that - - -

KENNETH MARTIN J: Sorry, are we talking about canola now, or are we talking more generally?

NICHOLS, MS: Well, I asked the question in the context of the release of GM canola. That was the proposition with which I started.

KENNETH MARTIN J: If you are asking at 9 of 28 under the heading Principal Rejection.

NICHOLS, MS: Yes.

KENNETH MARTIN J: We have moved on - - -

NICHOLS, MS: I referred the witness - - -

KENNETH MARTIN J: Then you went to the document that's specific to canola.

NICHOLS, MS: Yes. It is, but my question was commenced with the proposition in the context of the release of genetically modified canola, do you say that coexistence is a workable solution? And then I referred the witness to the CMP document.

KENNETH MARTIN J: All right. So, just so everyone understands we are talking about coexistence of canola.

NICHOLS, MS: Yes.

KENNETH MARTIN J: All right.

NICHOLS, MS: You go on to say, Doctor, that the author of this report, which is you, wants to point out that in order to address the challenges that agriculture is facing, farmers should have access to the best techniques; they should be able to combine what is best for their fields and crops and ideally not be restricted by predefined management schemes that artificially impose limitations. Does the word "farmers" there include organic farmers in your opinion?---Sure. I see no reason why an organic farmer should not be able to choose for a genetically modified seed.

Well, but do you mean to include in that statement that farmers should be able to combine what is best for their fields and crops. Does that statement apply to organic farmers in your opinion?---Yes.

At page 10 of your report, under the heading halfway down the page Monopolies and Farmer Dependency, you state that:

There is concern over organisations gaining control of the food chain and agricultural production. If the same company develops the herbicide and the trait enabling the farmers to use the herbicide on crops, this could be seen as strengthening their market control. Farmers could be forced to buy the package, herbicide and herbicide tolerance, and thereby become more dependent on a single multinational player.

You go on to say that:

The market dynamics are difficult to picture, that farmers have never been forced to buy a product or package.

Now, when you say that the market dynamics are difficult to picture, you yourself have not researched the market dynamics existing in Australia, have you?---No.

No. And when you refer to the market, do you mean to include in that market in Australia for organic products?---Sure.

Yes. Before making your report, did you make any inquiries about the value in dollar terms of the organic market in Australia?---No. I did check the - I tried to find how much organic canola is growing in Australia.

But did you make any inquiries otherwise about the size of the organic market - - -?---No.

- - - in terms of - no, all right. I have nothing further, your Honour.

KENNETH MARTIN J: Yes. Thanks, Ms Nichols.

NICHOLS, MS: Thank you?---Thank you.

KENNETH MARTIN J: Ms Cahill.

CAHILL, MS: If it please, your Honour. Dr Rudelsheim, you were - it was put to you that integrated weed management was absolutely essential to address the issue of glyphosate resistance and you agreed with that. What do you understand to be integrated weed management?---Yes. Well, maybe first of all it's essential for any kind of management of resistance, not only glyphosate resistance. I think integrated weed management for me would be a combination of different techniques that you have at your availability to control weeds.

And what might those different techniques include?

NICHOLS, MS: Your Honour, it does not arise out of cross-examination but it's clear that the witness - - -

KENNETH MARTIN J: Aren't we clarifying the definition of integrated weed management?

NICHOLS, MS: Well, it's clear that the witness understands integrated weed management.

KENNETH MARTIN J: Yes.

NICHOLS, MS: And it has been explained in the report and it has been explained in the conferral memorandum between Mr McInerney and the doctor. So it's not a question of something being unclear.

KENNETH MARTIN J: What do you say, Ms Cahill?

CAHILL, MS: I'm not sure about that. I would have to go back to the conferral and understand what my friend is putting there and also what she says has already been articulated clearly in the report, such that it doesn't need clarification. My friend put to this witness that integrated weed management was absolutely essential.

KENNETH MARTIN J: Yes.

CAHILL, MS: Your Honour needs to understand what the witness means by that because it wasn't put to him.

KENNETH MARTIN J: Yes, all right. Well, I think given that it's - integrated weed management is of such importance, we should actually clarify so there's no doubt in anyone's mind what that actually entails as a concept. Ms Nichols, if there's anything arising out of this you need to cross-examine on, I will give you leave to cross-examine further.

NICHOLS, MS: Thank you, your Honour.

KENNETH MARTIN J: Yes, Ms Cahill.

CAHILL, MS: So what sort of techniques are you referring to?---Well, it's a combination of - or a choice, rather, of, on the one hand, herbicide uses - different herbicide uses based on different active substances, mechanical - - -

And why is the use of different herbicides an integrated weed management technique?---Yes. Well, because as you change during your rotation - you change the different types of herbicides - you will avoid that there is a build-up of resistance towards one, yes.

I see?---So that's an essential element. It can be mechanical applications that help you in reducing the number of weeds overall - - -

Can you describe, by way of example, some of those mechanical techniques?---Well, earlier harvesting or swathing, for instance, is actually one of the techniques that are used to reduce weeds developing. And not just resistance, I think overall the weed management, as such, is not the fact only of dealing with resistance. Certain techniques of land - preparing the land, yes, can help. So it is a combination of those different things. I think we see more and more development in this and it's becoming really a separate element and it's getting more and more sophisticated in terms of what farmers can do and how they can best prepare themselves, including, for instance, testing of the material or the weeds that are grown there to know what kind of resistances they have. I think - so there is a lot of that that helps people to anticipate and to make a good choice for what is really need for their - so that's the part of integration, is to say it's not just relying on let's spray something and let's see what survives; it's really knowing the field and understanding it and then choosing amongst different options what's the best for their management at that year in that field.

Now, you were asked about your work history and the - in particular, the client base that you have in your consultancy, and you mentioned that you do work for academic groups and governments. Taking those in turn, can you tell his Honour please by example the sorts of academic groups that you have worked for and the type of work that you have done for them?---Yes, okay. Well, academic groups, just like anyone involved in this field, they are obviously questioning what kind of regulatory requirements there are. Sometimes they have wonderful developments, at least in their own mind, but they want to understand what kind of regulatory consequences there are in terms of (indistinct) do I need to do a field trial or to export a material. So we're helping them to, on one hand, understand what those regulatory requirements are. The second point that we help them on is to get information together so that they can build a case that allows them to do a field trial or eventually go to commercial lease. I think what is changing, definitely in the last five, 10 years, is that whereas in the beginning, the first 10 years, early 90s, it was essentially big companies - big international companies that were involved in this field, including the company I was working for. We now see many more smaller companies. We see academic groups that are trying to bring products of their own developments to the market and they don't necessarily have that kind of regulatory support, so they are part of our clientele.

All right. And then the governments that you were referring to, which governments and what kind of work?---We have worked for European Commission. We are actually on a number of projects for European Commission. We are working for some governmental advisory bodies like the Dutch advisory body. We are doing a study on - actually, on field trials. So it can be very diverse.

Yes, and you have mentioned field trials. What other kinds of work do you do for government bodies?---We're not only looking at the - ag biotech part, yes, which would be, indeed, anything to do with field releases, environment, as well as fruit and feed. We're also looking at the industrial applications. So these are big fermentation plants that produce products that then go into enzymes and other proteins that go into a different product. As well as for the medical area; so where we are supporting, for instance, clinical trials with biotech products and they face similar questions and - well, slightly different but similar questions as the crop people would face.

Thank you. Nothing further, your Honour.

KENNETH MARTIN J: Yes. There's just a couple of questions I had and again I will give counsel the opportunity to question if there's anything arising out of this. At one point in your evidence you were asked about transfers of genes and you used the terminology "weed species." Could I just ask you what you mean by that term, weed species?---Yes. First, it starts with defining what a weed is and typically people say a weed is a plant that shows up somewhere where you don't want it.

Yes. Well, I have heard that before?---In particular, in fields of farmers because in essence you could also say that it might as well be a wonderful plant that you want to preserve. So it's always a very difficult one. I think what we are referring to here is a plant that shows up in a field that actually is really creating a nuisance for your production. Yes, it's not just the presence of it and I think, again, one of the elements of integrated weed management could be that if it's a plant that shows up in a field, you don't want it but it's not creating a nuisance, that you actually just leave it, yes, because it's not really harming your production. Farmers don't usually like that because they like to see a very clean field with no other species around but, okay, that's it. So - - -

It's more the word species that I'm interested in?---Yes.

And it is by reference to weeds. So take, for instance, the term "rye grass", or "Wimmera rye grass". Would that fall within the concept that you used of a species, or would the species be wider than rye grass?---No. Species would essentially be a type of a plant, so rye grass would be a species. And, obviously, you can have - you can have different - well, in one field or one production you could have different species that - the reason for making a distinction was that we really should make the difference between we have a resistant canola plant, and, obviously, that plant can share that resistance with plants that can cross-breed with that canola plant.

So in that context of canola, you would be talking, as the species, canola to canola?---Yes. Exactly.

And, in another context, when we're talking about rye grass, the species to species would be rye grass to rye grass?---Absolutely.

All right. I just wanted to understand that. Thank you. The second question: could you just help me by reference to pages 6 and 7 of your report - - -?---Sure.

- - - in respect to table 1 and the genetically modified transformation events algebraic data that I see there?---Yes.

Do I take it that canola is dealt with as the crop after sugar beet in that second column on page 6?---Yes.

And - all right. And then you address other crops such as Soya bean, cotton, (indistinct) potato, wheat, maize. And then if we go over the page - - -?---This is all maize.

That's all maize, is it?---(indistinct) it's all maize. Yes.

All right?---Yes.

And what are we - what is the correct terminology for the transformation events that you're identifying by reference to those numbers and letters? Is that the - - -?---These are the codes - especially the ones we're using at the international level - we're using this OACD unique identifier. So that, for instance, if you look at the - the column for - or the canola, and you have the 100073-7 - - -

Yes?---That's the internationally recognised code for that specific material, and we may know it as GT73 or RT73, because that's a little bit easier than the 100073-7, but, in essence, from a regulatory unit, it's the code 100073-7, which would be internationally.

So the correct terminology would be the international genetic code. Would that be the - - -?---It's just that it's very unpleasant to say.

All right?---Yes.

Thank you. That's helpful. Thank you?---Thank you.

Anything arising out of that?

CAHILL, MS: No.

KENNETH MARTIN J: All right. Yes. Dr Rudelsheim, thank you very much. That completes your evidence and you're now excused?---Thank you.

(THE WITNESS WITHDREW)

CAHILL, MS: Now, Mr Stretch is next, your Honour. And, overnight, we've reflected on your Honour's troubles from

yesterday. And I think this ought take care of it, your Honour: if we strike through 18(5) through to (8).

KENNETH MARTIN J: 18(5) through to (8) is struck through.

CAHILL, MS: 23(2) through to (5).

KENNETH MARTIN J: 23, sub (2) through to sub (5). Yes.

CAHILL, MS: 26(8) stays in because my friend withdrew her objection to that.

KENNETH MARTIN J: Quite so.

CAHILL, MS: And then if we strike through 27, subparagraph (8). As I understood it, your Honour was
- - -

KENNETH MARTIN J: Yes.

CAHILL, MS: - - - content for (5) through to (7) to remain in.

KENNETH MARTIN J: Correct. And we got rid of 27, sub para (3) yesterday, on my note.

CAHILL, MS: Yes. That's right. Would your Honour like me to just go through the whole set of excisions?

KENNETH MARTIN J: I think that might be helpful, just bearing in mind the extent of surgery that has occurred.

CAHILL, MS: I think my instructor might be happy for that as well, given that she's about to provide this to Mr Stretch. So 13(6) should be removed.

KENNETH MARTIN J: Yes.

CAHILL, MS: The words "common with other farmers" in 13(8) over the page.

KENNETH MARTIN J: Yes.

CAHILL, MS: The words "so that farmers" down to "wild radish" in 14(2).

KENNETH MARTIN J: Yes. So 14(2) reads "to late 1990s" full stop.

CAHILL, MS: Yes. And then "TT canola is resistant to the herbicide triazine".

KENNETH MARTIN J: Triazine.

CAHILL, MS: 18(1) is removed.

KENNETH MARTIN J: Yes.

CAHILL, MS: 18(5) through to (8) is removed.

KENNETH MARTIN J: Yes.

CAHILL, MS: In 20(3), the words commencing "and in 2011" down to the end of the sentence. 20, small(3). Almost made that same mistake.

KENNETH MARTIN J: 20, subpara (3).

CAHILL, MS: Yes. I beg your pardon.

KENNETH MARTIN J: Yes.

CAHILL, MS: And then - - -

KENNETH MARTIN J: So that subpara (3) of paragraph 20 will end "despite the challenging conditions" full stop.

CAHILL, MS: Exactly. Thank you, your Honour.

KENNETH MARTIN J: Yes.

CAHILL, MS: And then 20(3), subparas (2) through (5) go.

KENNETH MARTIN J: Yes.

CAHILL, MS: And 27, subpara (3) goes.

KENNETH MARTIN J: Yes.

CAHILL, MS: And 27, subpara (8) goes.

KENNETH MARTIN J: Yes.

CAHILL, MS: Thank you, your Honour.

KENNETH MARTIN J: All right.

CAHILL, MS: I call Mr Stretch.

KENNETH MARTIN J: Yes. Very well. If we can have Mr Stretch.

CAHILL, MS: (indistinct) I might have to go through that again with him when he's in the box. I will give it to him marked up, but just show him where it has been changed.

KENNETH MARTIN J: Would he perhaps need an opportunity to look at it quietly - - -

CAHILL, MS: It might be quick and easier.

KENNETH MARTIN J: - - - just to make sure he's happy with it?

CAHILL, MS: Yes.

KENNETH MARTIN J: All right. Why don't we do that. I will just break briefly so that you can go through that process, and then we will resume when you're ready. Just let me know.

CAHILL, MS: Thank you.

(Short adjournment)

KENNETH MARTIN J: Yes, please be seated. Now, are we ready for Mr Stretch?

CAHILL, MS: Yes. Thank you for that, your Honour.

KENNETH MARTIN J: All right.

STRETCH, DIGBY NOEL affirmed:

KENNETH MARTIN J: Yes, thank you. Ms Cahill.

CAHILL, MS: If it please, your Honour. Mr Stretch, can you please state your full name and address for the court?---Digby Noel Stretch, RMB 340, Kojonup, 6395.

Thanks, Mr Stretch. Now, I'm going to provide you with a copy of your statement of evidence that you read through a moment ago. It contains a number of amendments?---Thank you. Could I have a glass of water as well please.

KENNETH MARTIN J: Coming right up.

CAHILL, MS: Now, that's the witness statement that you looked at a moment ago outside court that I showed you?---I agree.

And it has got amendments in paragraph 13?---Yes.

Subparas (6) and (8), 14(2). Yes?---Yes.

18(1)?---Yes.

18(5) through to (8)?---Yes.

20 subparagraph (3)?---The second portion, yes.

Yes. 23 subparas (2) through (5)?---Yes.

27 subpara (3)?---Yes.

And 27 subpara (8)?---Agreed.

And the document finishes after paragraph 27 subparagraph (10) and is - contains a copy of your signature and the date of 2 September 2013?---Yes, that's correct.

Which was the date that you made the statement before it was amended a short time ago?---Agreed.

Now, do you swear that the contents of the statement as amended is true and correct?---I do.

Thank you. I tender that document, your Honour.

KENNETH MARTIN J: Yes, very well. The witness statement of Digby Noel Stretch, dated 2 September 2013, signed by him and amended in the fashion as articulated on the transcript then by senior counsel will be exhibit 29.

EXHIBIT 29 Defendants DATE 2/9/13
Amended witness statement of Digby Noel
Stretch

KENNETH MARTIN J: That's the evidence-in-chief?

CAHILL, MS: Yes. Yes, your Honour.

KENNETH MARTIN J: All right, thank you.
Cross-examination, Ms Nichols.

NICHOLS, MS: If your Honour pleases. Mr Stretch, you have been a canola farmer since about 1993. Is that right?---That's correct.

And since 2009 you've farmed Roundup-Ready genetically modified canola?---I have.

And you have been aware then that there are two national standards for canola delivery, which are defined by Grain Trade Australia. Is that correct?---Between GM canola and non-GM canola, yes.

That's right, isn't it? And there are two standards, one of which is called CS01 and that may contain any level of GM canola, provided it's an approved form of GM canola. Is that right?---I believe that to be correct. I couldn't tell you exactly whether it's CS01 or - - -

Yes, sure?--- - - - the nomenclature, but I believe that's correct.

And the second standard which you may know is CS01A is:

One which must contain not less than 0.9 per cent accidental presence of GM canola.

Do you recognise those two standards?---I recognise those numbers but not the actual nomenclature of the standards.

Certainly, and so you would be delivering to the first standard. You have done that since you grew GM canola in 2009?---We have been.

And you only grow GM canola now, so you don't deliver to the other standard, do you?---Not while I have been growing GM canola, no.

But before that time, did you deliver to the higher standard, if I can put it that way?---I delivered to the former standard for the non-GM canola stack, yes.

So you've - have you changed standards or not?---I'm growing a different type of canola.

Yes?---I haven't changed my standards. I've grown - - -

I beg your pardon, I put that badly. But you delivered to CS01 - you delivered to - if you accept the nomenclature, you deliver to CS01 now and when you - but when you were growing what I might call conventional canola, you delivered to the other standard. Is that correct?---Whichever the CS01 and 02 are, yes, we delivered to the correct standards at the time.

Yes. Now, grains from GM canola crops can only be received at certain grain handling sites, can't they?---That's correct.

And you're required when managing grain that you deliver to declare it as GM when it arrives at the grain handling depot, aren't you?---We do.

And are you required to observe segregation practices, meaning that it has got to be handled separately from any non-GM crop?---That's correct.

And the purpose of segregation in this context of GM canola and non-GM canola is to allow farmers to deliver and sell into two different markets, isn't it?---That's correct.

And are you aware that over the period of time since GM canola has been legal in the State of Western Australia, it has been possible during most of that time to obtain a price premium for delivery to the non-GM standard?---There has been a small premium for the non-GM canola, correct.

Yes. And a very important consideration for any farmer is being able to ensure that the product he is preparing on his farm will meet the specifications of the market into which he is delivering, isn't it?---I agree with that.

Yes. Your farm is located 53 kilometres south-west of Kojonup. Is that right?---That's the primary homestead, where we are, yes.

And Kojonup is in the south-west of Western Australia?---That's correct.

In the south-west of Western Australia there are some farmers who grow Roundup-Ready canola and some canola farmers who grow to the conventional variety. That's correct, isn't it?---That's correct.

And do you know the number of GM canola farmers in the south-west of Western Australia?---No, I don't know what number there is, no.

All right. Well, would you know that in 2010 there were 17 GM canola farmers in the Kojonup area?---No, I didn't know the number, no.

All right. But would you agree that presently there are far fewer farmers who grow GM canola in the Kojonup area than who grow non-GM canola?---I would only be guessing as

to where it goes but I assume there would probably be less growing GM canola than conventional canola.

All right?---I have no numbers.

And in the south-west of Western Australia there are organic farmers, aren't there?---I believe there would be.

And there are organic farmers in the Kojonup area as well?---Yes.

And I suppose you haven't taken the time to count those or you're not aware of the number of organic farmers in the Kojonup area?---I don't have a head count of those either, no.

Certainly. In 2009 you participated in a demonstration trial that was run by the Department of Agriculture Western Australia for the growing of Roundup-Ready canola. That's correct, isn't it?---I did.

And were there about 18 growers in that study?---My recollection would have said 17 but I stand to be corrected.

And that trial was designed and monitored by DAFWA. Is that correct?---The demonstration was monitored by DAFWA, yes.

Yes. And so as a participant in that trial, your compliance with the protocols attached to that trial was monitored by DAFWA?---It was.

And after the trials, did you provide some information to DAFWA about your experience that was subsequently published in the form of a case study?---I think I would have, yes.

Yes?---Yes.

And one of the things that you had to achieve when engaging in the trial was, insofar as you could, containment of the GM canola material within the boundaries of your property. Is that right?---We did, yes.

And you were required to do that, weren't you?---We were.

Yes. And one of the ways that you sought to achieve that was by choosing to grow the GM canola in that trial in a paddock on your farm located away from your neighbours. That's right, isn't it?---That's correct.

And that was a choice you made in order to achieve the containment of GM within your property?---I did.

Yes. And if there was an escape or an incident of escape during the trials, you were required to report it to DAFWA, weren't you?---We would have been, yes. Yes.

Yes. And you didn't have any escapes in your participation in the trial, did you?---No, I was very comfortable with - having ran that trial.

Yes?---It was - it ran as planned.

All right. And one of the things you were required to do and did do in the course of that trial was to discuss with your neighbours the fact that you were going to be growing GM canola on your property?---That's true.

And you were required to ascertain their views about that proposal for you to do that, weren't you? Yes?---I did, I did.

Thank you. Now, you give some evidence about your use of herbicides on your farm. When you spray herbicides on the crops on your farm, do you check first to see whether there is any neighbouring crop that might be affected by your spraying of herbicide?---That's standard practice, that we understand what's around when we're going out with boom sprays. Yes.

Yes. And, just to be clear, when I say neighbouring crop, what I mean is a crop on a neighbouring farm. Is that how you understood my question?---By "neighbouring", I understand to be over the road, by the fence, within - within reasonable area of where spray may drift to.

Yes. On another farmer's property?---On another farmer, or indeed on my own.

Yes. Indeed. And that being standard practice, one of the things you would do is that you would - you would check the weather on a day on which you were spraying, and, if there was wind of sufficient strength blowing in the direction of your neighbours property, you would refrain from spraying until the weather conditions change, wouldn't you?---We always take those conditions into account and act accordingly.

Yes. And you would also find out what crops your neighbour was growing? To - beg your pardon?---Yes. We keep an eye

on anything that will be within reasonable drift area from where we're working with boom sprays.

Yes. And it's prudent practice, isn't it, to check whether your neighbours within a reasonable distance might be growing crops that might be susceptible to a herbicide that you're spraying on your property?

CAHILL, MS: I rise, at this point, to object to the line of questioning on the grounds of relevance, your Honour.

KENNETH MARTIN J: I will allow the question on the basis that the evidence of Mr Stretch is fairly generalised neighbourhood evidence of practice with canola, and I think the generality of the line of cross-examination is permissible, given the nature of the evidence. So - - -

THE WITNESS: Can you repeat the question, please.

NICHOLS, MS: I will. It's prudent practice, isn't it, to check whether there are any crops growing on neighbouring farms within a reasonable distance of your farm that might be susceptible to any herbicides that you're spraying on your property?---We always keep aware of what we're doing out there, because we can be spraying a grass selective herbicide which would have an effect on a cereal crop, while we're working in a canola crop. So - - -

Yes?--- - - - obviously, we keep a very careful eye on neighbours, and on our own crops and those conditions.

Thank you. Can I just ask you some questions, briefly, about the problems you've had with weed management on your property?---Sure.

You gave some evidence that you had a significant problem with herbicide resistant rye grass in certain parts of your two farms, is that correct?---That's correct.

And is it correct that you really adopted some strategies, starting first with when you were growing conventional canola, you sprayed that crop with FOPs and DIMs, which are a group A herbicide?---They are - I think they are a group A, yes.

And after several years of use, you found that that crop is now resistant to those herbicides?---No. Not the crop; the weeds developed - - -

I beg your pardon?--- - - - resistance to those herbicides through regular exposure to that group of chemicals.

Thank you. And the next strategy you implemented, which you commenced in about 1997, was to use TT canola, which is resistant to triazine?---That was one of the strategies we used, yes.

And you found that it was effective in the early years, starting in about 1997, and you used it between 1997 and 2010. Is that correct?---That's correct.

KENNETH MARTIN J: So triazine, or triazine tolerant canola?

NICHOLS, MS: Triazine tolerant canola, to which you applied the herbicide triazine?---Yes. That's correct.

Thank you, your Honour. And you found, as you say at paragraph 17.2 of your statement, that with repeated use it had become largely ineffective?---Absolutely, which is commonplace with any chemical you use.

Yes. And so, at that point, you had resistance on your farm to two groups of herbicides: group A, which you've agreed were FOPs and DIMs; and to triazine, which - that's a group C herbicide, isn't it?---I would have to have a look in my chemical chart to tell you exactly which group that is.

All right. Certainly. But it's different to FOPs and DIMs, isn't it?---It's a different mode of action, yes.

Different mode of action. All right. And in 2010 you planted 250 hectares of Roundup-Ready canola?---That's correct.

And was that on the one farm, or both farms?---2010 was on the one farm.

All right. And - - -

KENNETH MARTIN J: Was that on Wayde Gulley or on Wendurrah?---That was Wayde Gulley, your Honour.

Wayde Gulley. Thank you.

NICHOLS, MS: And you say in your statement that 50 per cent of the paddocks on which you planted Roundup-Ready canola had a herbicide resistant rye grass problem?---In 2010?

2010?---Yes.

Yes?---Some paddocks certainly had a resistance issue and some did not, at that stage, that I was aware of.

Yes. All right. Just to be clear, I will read this to you. At paragraph 19.2 of your statement, you said that approximately 50 per cent of the Roundup-Ready canola was planted in paddocks where there was a herbicide resistant rye grass at Wayde Gulley?---Yes. I agree with that.

Yes. All right. At that point you had tried previously both FOPs and DIMs quite some time ago, and, more recently, triazine, when you were growing triazine tolerant canola?---Yes. Some of that area had been cropped for some time with FOPs and DIMs, and some of it was a new part of country that we had bought and added to Wayde Gulley, which hadn't been exposed to many chemical sprays at all.

Yes. And you say that in - at paragraph 20.2 of your statement, that, in your experience, if you had not grown Roundup-Ready canola - this is in 2010 - in those conditions, the herbicide resistant Wimmera rye grass would have taken over, and the alternative crop would have failed. That was your view at the time?---By failure, I define that as a production loss that wouldn't have covered the cost of growing it. Yes.

Yes. Now, it's true, therefore, isn't it, that at the time at which you grew the Roundup-Ready canola in 2010, in those paddocks that had that problem, they had quite a heavy weed burden?---The - yes. They had different levels of weed burden.

Yes?---- The paddocks that had been cropped for longer on the original part of Wayde Gulley there had a heavier weed burden than the new paddocks that were introduced.

But there were at least some that had a heavy weed burden?---Yes.

Now - and you've planted Roundup-Ready canola in each subsequent year, in 2011, 12, and 13?---That's correct.

And, each time, you've used glyphosate on the crop?---I have.

And have you used that as a pre-emergent as well as a post-emergent spray?---You wouldn't use glyphosate as a pre-emergent because it's a contact chemical that kills the plants that it's sprayed on, so the glyphosate has always been applied post-emergent to the crop.

All right. But do you use it as a knockdown as well?---We do use it as a knockdown. And if we're using GM canola in the process, we tend to use something like paraquat or SpraySeed to knock down in front of the crop.

Would you use paraquat or SpraySeed in addition to glyphosate as a knockdown - or before you plant the crop, to be clear?---If you would use the two, you would use what we call the double-knock procedure - - -

Yes?--- - - - where you get an early break to the season and you realise that the weeds are going to be very large by the time it's the appropriate time to seed. In that case, you go in with glyphosate as possibly your first hit, and then 10 to 14 days after that, you would go in with the paraquat or the SpraySeed spray to take out anything that's left.

And then once you've planted your crop, if there are late germinating rye grass, you can use glyphosate in-crop?---That's correct.

Yes. And you might apply all of those mechanisms on the same paddock?---You may do, but you would try not to use that extra Roundup at the start if you could.

But sometimes you do?---It's possible that you would.

Yes. Sometimes you have?---I would have to check my spray records to validate that.

All right.

KENNETH MARTIN J: So you try not to use the extra glyphosate at the start? Is that what - - -?---We try not to, your Honour, yes.

So in the double-knock context, is that what you were just talking about?---In a double-knock, in the year that we're growing GM canola, we try to make the Roundup application - the glyphosate application only to happen in the growth phase of the canola crop, so we don't - - -

Post-emergent?---Post-emergent. Yes. Yes.

I understand. All right. Thank you.

NICHOLS, MS: Just returning to the planting in 2010, you agreed earlier that at least some of the paddocks in which you planted Roundup-Ready canola had a heavy weed burden?---Yes.

Now, are you aware that - I withdraw that. Before you commenced growing Roundup-Ready canola, and, in fact, at the time at which you participated in the trials, you had to enter into a licence and stewardship agreement with Monsanto, didn't you?---We do.

And that's - adherence to that license and stewardship agreement is a condition of you growing Roundup-Ready canola, isn't it?---That's correct.

And part of that agreement is the Monsanto crop management plan, isn't it?---What we call the PRAMOG, I think, is where you're going.

Yes?---Yes.

And you were required to do some training and and become accredited before you were accepted to become a grower of Roundup-Ready canola, weren't you?---We did.

And as part of that process, did you have to read and understand the PRAMOG program?---Yes.

And the attached crop management plan?---Yes.

And in the crop management plan, Monsanto gave some advice about the application of glyphosate in a way that would forestall the development of weed-resistant, didn't it?---That's correct.

And one of the important pieces of advice that Monsanto gives is that in order to manage resistance, you should enter the Roundup-Ready phase of your rotation with a low weed burden. Do you recall that advice?---Absolutely.

And you accept that, at least in part, your planting of Roundup-Ready canola in 2010 did not adhere to that advice?---Low weed burden is a subjective - - -

Yes?---A subjective assessment of where you are at and I don't believe that the weed burden, even though it was higher than the other paddocks, was an excessive weed burden. And, in fact, that crop in that paddock that year, I believe would have out-yielded the other two paddocks.

But it was not a low weed burden, was it, Mr Stretch?---Very rarely would we be going in with a - well, I don't know quite how you would define low, medium and high for wheat burdens.

But did you - before you planted the crop in 2010, did you attempt to inquire about the level of resistance to glyphosate in the paddocks in which you sowed Roundup-Ready by doing a resistance test?---I haven't done a resistance test specific to Roundup, no.

All right. And you agreed earlier that at least in some of the paddocks to which you sowed Roundup-Ready in 2010, they were subject to a high weed burden. That's correct, isn't it?---Well, once again, the definition of high, I - I can't put a number on.

All right. But - - -?---Some - some paddocks have more weeds than others. All those paddocks, I believe, had a manageable weed spectrum for the program we were endeavouring to grow.

All right. Now, in your statement, you don't identify the particular paddocks in which you grew the Roundup-Ready canola, do you?---No, I haven't.

And you haven't attached to your statement or provided copies of your weed spraying history or your PRAMOG or your farm - any farm management plans, have you?---No.

All right. Mr Stretch, just a final question. Are you a member of the Pastoralists and Graziers Association of Western Australia?---I am.

And are you, in fact, the chairman of the Western Beef and Sheep Producers Committee of that - - -?---At present we call ourselves the PGA Livestock Committee, yes.

And is it the fact that the PGA has set up a defence fund to, in part, fund Mr Baxter's costs for the running of his defence in this case?---That's true, that the PGA set up that fund for that reason. And nowhere, to my knowledge, has the PGA put any of its own money into this.

All right. But the PGA is conducting that fund on behalf of Mr Baxter?---They are.

Yes. All right. I have nothing further, your Honour.

KENNETH MARTIN J: All right. Thank you, Ms Nichols.

CAHILL, MS: No re-examination, your Honour.

KENNETH MARTIN J: There's just one point of clarification that I would like to raise with you. In terms of the line of questioning from Ms Nichols about growing GM canola in

2010 and then growing subsequent crops in 2011, 2012, 2013, would they be on the same paddocks as 2010 or would you be different paddocks in those subsequent years?---No. No. For various agronomic reasons, we move different varieties of crops between paddocks so we will follow a canola paddock with a cereal paddock for different disease risks, different wheat spectrums for chemical controls to minimise the chance of building up any form of resistance.

All right. So on a seasonal basis, you have grown GM every year since 2010 but in different paddocks?---That's correct.

Yes. I understand. Thank you very much.

NICHOLS, MS: No, your Honour.

KENNETH MARTIN J: No. All right. Okay. That completes your evidence, Mr Stretch. You are excused. Thank you very much for assisting the court?---Thank you, your Honour.

(THE WITNESS WITHDREW)

CAHILL, MS: I call Mr Robinson. There's no objections to his statement, your Honour.

KENNETH MARTIN J: All right. Just give me a moment to retrieve his - yes, all right. Christopher Robinson.

ROBINSON, CHRISTOPHER DAVID affirmed:

KENNETH MARTIN J: Yes, Ms Cahill.

CAHILL, MS: Thank your, your Honour. Mr Robinson, please state your full name and residential address for the court?---Christopher David Robinson, RMB 414, Ash Road, Kojonup 6395.

Thank you, Mr Robinson. I am handing to you an amended statement of evidence that you have signed and dated on the last page, page 14, 18 February 2014. Yes?---Yes.

KENNETH MARTIN J: Sorry, 18 February 2014. It's signed. Thank you.

CAHILL, MS: Yes. And there are some underlined amendments that you included in your witness statement

previously provided - you included those amendments on 18 February?---Yes.

Mr Robinson, do you - - -

KENNETH MARTIN J: Sorry, Ms Cahill, I don't know that I have that amended document.

CAHILL, MS: I was assured your Honour - - -

KENNETH MARTIN J: Thank you. Just give me a moment to glance at that.

CAHILL, MS: Just a moment, please, Mr Robinson.

KENNETH MARTIN J: Right. Thank you.

CAHILL, MS: Mr Robinson, your statement with those amendments, do you affirm that the contents is true and correct?---Yes.

I tender that statement, your Honour.

KENNETH MARTIN J: Yes. There being no objection, the amended statement of evidence of Christopher Robinson which amends his original statement, originally dated 29 August 2013, now being updated by the amendments and dated 18 February 2014, will be exhibit 30.

EXHIBIT 30 Defendants DATE 18/02/2014
Amended statement of Christopher
Robinson

CAHILL, MS: Thank you, your Honour. No further questions.

KENNETH MARTIN J: Thank you. Cross-examination? Mr Niall?

NIALL, MR: Mr Robinson, you identify in paragraph 2 of your statement that you completed a Bachelor of Agribusiness from Curtin University in 2002. And I take it that your commencing as an agronomist at Kojonup Agricultural Supplies in 2003 was your first position as an agronomist?---Yes.

And you stayed at Kojonup Agricultural Supplies from 2003 until sometime in 2007. When in 2007 did you leave?---I left in February, the start of February some time.

Right. And you were working full-time as an agronomist between 2003 and the start of 2007 at Kojonup?---Yes.

And Kojonup Agricultural Supplies, what is that?---It's a retail store in - in Kojonup, supplies herbicides, seed and just farm merchandise to farmers.

All right. And how many agronomists did it employ in 2003?---Just one.

Right. Did you have any jobs in the retail side of the business?---In - sorry, what do you mean?

Well, the business was essentially a retail business, wasn't it, for farm supplies?---Yes.

And you were employed as an agronomist?---Yes.

In addition to that did you have a retail function?---Yes, I did help out in the - in the shop at times.

And part of your job at Kojonup, I take it, was to sell farm supplies to farmers?---Yes. And also give advice
- - -

Yes?--- - - - on how to grow their crops, I suppose.

Did your remuneration turn on the level of sales that you got, or was - - -?---No.

Thank you. Now, just looking at the period between 2003 to 2007, how many farmers did you provide agronomy advice to?---At least 50.

All right. And they were based in the Kojonup area. What sort of geographic area did you cover?---Most of them were in the Kojonup area, but surrounding shires, so a radius of about 80 to 100 kilometres, I suppose.

Yes. And, of those 50 farmers, they were principally combination of stock and broad acre cropping?---Yes.

And, typically, they were - when they were livestock, it was sheep farming?---Yes.

And for cropping, it was typically cereal crops of wheat? What were the main crops?---Wheat, barley, canola, oats, lupins - they were probably the main ones. Yes.

And it was typical, but each of the 50 farmers that you provided agronomy advice between 2003 and 2007, were rotating those crops amongst their - - -?---Amongst their farm. Yes.

Amongst their farm. Yes. but their principal ones would be, wouldn't it, wheat, barley and canola?---Yes.

What percentage of the - of your clients back then - what percentage of their cropping was canola cropping?---Percentage of actual cropping area would be somewhere between 25 to 50 per cent of their cropping area.

And what was the size of the farms? I mean, it may vary; I appreciate that. But what were the size of the farms that you were looking at with those 50 farmers?---Most of them around sort of 1000 to 1500 hectares.

Yes. So, in that respect, Mr Baxter was about typically sized?---Yes.

And they all had a variety of paddocks?---Yes.

And no doubt different names for their paddocks?---Yes.

And all had different rotation - - -?---Yes.

- - - modes?---Yes.

And I think Mr Baxter had about - you recall that, at some point, Mr Baxter also had Baxter's block?---Yes.

Yes. And he had about 20 paddocks, that sound about right, that he was cropping?---Probably not quite that many, but it would be - just somewhere between 15 to 20.

Yes. And that would be typical of the 50 farmers?---Yes.

So you were looking - between 2003 and 2007, you were looking after around about 500 to 750 paddocks?---Yes. Probably. Yes.

All of them with different rotations?---Yes.

And all of them using different herbicides in slightly different ways?---Yes.

And all having particular farming practices in terms of how they like to apply chemicals and in what order?---Yes.

But there were consistent themes, weren't there?---A lot of the farmers were very similar.

Yes. Now, you then went away from 2007, and when did you return?---I returned at the end of 2008.

All right. So - - -?---Sorry. I should say the reason. I was on and off back in - in Western Australia. I returned back to agronomy in end of 2008.

So from February 2007 through to the end of 2008, you weren't involved in any agronomy work. Is that right?---Only on my home farm.

And where is that?---In Kojonup.

So you went back to the land, so to speak, during '07, '08?---Just during the busy times, just to help out.

And then you say, I think, in your supplementary statement, or amended statement, that you returned as Mr Baxter's agronomist in January 2010?---Yes.

But you came back to agronomy in late 2008?---Yes.

So - - -?---2009 was my first year back - well, with the current company I'm with now.

All right. Well, I will just ask you about that. The current company you're with now is Farmanco?---Yes.

That's F-a-r-m-a-n-c-o?---Yes.

And where are they based?---Pretty much all through Western Australia. We've got officers spread just through Western Australia.

And you joined them in - commenced with them in 2009?---Yes. Yes.

And you've worked full-time as an agronomist, since the commencement of 2009, for Farmanco?---Yes.

And 2009 through to now, how many clients do you - farms do you look after?---Independent service, I probably - I think last time I counted was around 50.

And again - - -?---And then I deal with - two of my clients are minor retail stores as well, who contract myself to supply advice to - to their clients, as a service. And that's probably an additional - somewhere between 60 to

100, depending on the year, or clients I deal with through there.

So that sounds a very busy agronomy practice between 2009 to now?---Yes. Well, it has gotten busy. Yes.

And you're full - you've been full-time at it since 2009?---Yes.

And when you started in 2009 with 50 permanent clients again, Mr Baxter wasn't one of them?---Sorry. In 2009 I didn't have 50 then; I had about 35, but it has grown to 50 now.

Thank you. Well, you came back with 35 with Farmanco; Mr Baxter wasn't one of the?---Not in 2009. No.

You got him back as a client in January 2010?---Yes.

Had he stayed with Kojonup Agricultural Supplies, do you know?---I'm not sure.

And the period 2009/10, 35 farms, similar size to what we - what you described before?---Yes. Well, most of them probably a little bit bigger, but yes, you could say that.

So again, looking after hundreds of paddocks?---Yes.

Now, could I just provide you with a copy of your statement of 29 August, please. Just have a look at that document, Mr Baxter - Mr Robinson, and go through perhaps - just go through it quickly, or at your leisure, and come to the end of it. You will see your signature on 29 August?---Yes.

That's a statement that you signed on 29 August 2013?---Yes.

And you knew it was a statement for a proceeding in this court?---Yes.

And you knew it was important?---Yes.

And you knew it was important to get it accurate?---Yes.

Yes. What documents did you review for the purposes of preparing the first statement?---The first one?

Yes?---Did I review to look at - to prepare it?

Yes. Yes?---Probably previous cropping plans that we had done with Michael Baxter - - -

Yes?--- - - - and maybe any recommendations that I had written down.

All right. Well, let's just look at the cropping plans. You looked at some cropping plans; for what years did you look at?---Probably 12, 11 - 12, 11 and 10, and then probably some plans I did back in 2006, 5, and 4.

So you think you looked at 12, 11, 10, 6, 5 and 4?---Yes.

Any others?---No.

And where did you get access to those documents?---Those ones I've got on my computer.

And no-one provided you copy with them; you went back to your - - -?---Yes.

That's right?---Yes.

And you've also said some recommendations?---Yes.

And where were they?---They were in my - in a - like a filing cabinet with all my handwritten recommendations that I make.

And you - without looking at documents, you didn't have any independent recollection of the particular crop rotation in any particular paddock, did you?---Say that again.

Without looking at documents, when you came to do your statement, you didn't have any independent recollection of what paddock on Baxter's farm was cropped to what crop, did you?---No.

And you didn't have any recollection as to what chemicals had been applied in any particular year, did you?---No, not really.

Well, when you say "not really", you had no - - -?---I'm just trying to - I'm trying to understand what you're talking about.

Mr Robinson, you came to do a statement in August 2013?---Yes.

And what I'm suggesting to you is that you didn't have any memory of the paddocks in each year, how they were cropped, and what chemicals were used?---Yes. I do have memory of that.

Well, you could recall, could you, what chemicals were applied to what paddock, without looking at any notes?---I could go quite close, but not exactly.

But when you had looked at your report, you went back to look at your records, the farm plans, didn't you?---Yes.

But you say you had - apart from the farm plans, you had an independent memory of what was cropped on individual paddocks and what chemicals were used in individual years?---I would have to check to make sure I was right but I could have a - - -

A general idea?---A general idea of what happened, yes.

That was then; you had more than 750 paddocks a year to look at. You could remember that, could you?---I would go close, yes.

And so with that memory and with those notes, when you signed 29 August 2013, the statement was accurate, was it?---Yes, best of my ability, yes.

And you have got a good memory, I take it, if you can remember paddocks going back an eight year period and what chemicals were applied. Is your position you have got a good memory?---I believe I have, yes.

All right. Now, back in the period 2003 to 2007, how often would you visit the Baxter farm?---What dates are that, sorry?

'03 to '07?---It's a fair way back. Somewhere between four and eight times a year.

Yes, and did that stay right through? Is that about the time that you visit - have visited Mr Baxter since you've been his agronomist?---Yes.

Between four to eight times a year?---Yes.

All right?---A part of my idea - part of my contract with my clients are about six times and then there's always emergencies or something you need to visit.

So there would be six regular visits?---Yes, I plan for six, yes.

Plan for six, and there are always emergencies and that might be another couple of visits?---Yes.

And when you plan for visits, I take it you plan to do, what is it, a couple before the start of the year?---Plans?

Yes?---One and then we may amend it - - -

I'm sorry I - - -?--- - - - as it gets closer to seeding.

No, sorry, I'm a bit - - -

KENNETH MARTIN J: It's plans for plans.

NIALL, MR: Yes, I'm sorry. I will clarify the question. That was my fault, Mr Robinson?---Yes.

When you're looking at the number of visits that you do and you have just indicated to his Honour that you plan for the visits - - -?---Sorry, no, I plan - - -

And - yes?---Yes.

In terms of the number of visits or the timing of the visits - - -?---Yes.

- - - you do one at the start of the year, would you?---Yes.

To be clear, in what month?---Somewhere between February and March.

All right. Not before February?---No, I'm generally on holidays.

Yes. And in February and March, would you take a farm plan for your first visit?---We go out to the first - out to the farm to make the farm plan.

And what do you take with you? Do you take a draft farm plan?---I've got a computer. I've got a program that builds - that we use to build the farm plans and we sit down in the office and go through every paddock and make sure we got the right - what we need to do.

Yes. And so you sit there and you're making the plan at that February/March meeting?---Yes.

Is that right?---Yes.

And you carry with it, I suppose on the computer, the previous year's plans?---Yes.

And does the plan model that you use automatically update the current year by reference to the previous year? Does it bring up - - -?---No, it doesn't. No. It's what the data we enter into it, yes, earlier is what goes on to - and then it produces a report.

Okay. And so you do - in February/March, you have this meeting. You sit down with the farmer, you use this program, and you devise a plan?---Yes.

And then you go away, you formalise the plan, and send it back to the farmer. Is that how it works?---Yes, and a number of copies.

You post them, give them a hardcopy, or email or what's the - - -?---They get an emailed copy - - -

Yes?--- - - - in a PDF and then they get two or three copies posted to them.

All right. And when is that typically done?---When we make contact with the farmer and they say, "Yes, I'm happy with" - "That's the plan we want to do for the year." They indicate to me that they're happy to have it printed and sent to them.

So you would normally do the follow-up by telephone, would you?---Yes.

So you have one meeting, you go away, you have the plan, the plan gets agreed to and then it's sent to the farmer?---Yes.

So that's one visit. And then when is the next scheduled visit?---The next one is generally at the start of seeding; you get knocked down. To get knockdown plans right, make sure you're doing the right thing for knockdowns of weeds. And then another one is generally about three weeks afterwards, when canola reaches three to four leaf stage. And that's when you plan, like, a selective herbicide applications. Then we go again at around mid-tillering of the cereal crops. That's when we do selective sprays for radish in the cereals or broadleaf weeds. Then we go again around first node of the crop and that's where diseases start to move into the crops, so there's an inspection then. And then we do another one at around flag leaf emergences when also diseases are moving in. That's quite critical.

And you - what about at harvest time? You're not usually present at harvest?---Not really. I just tend to drive

around and visit my clients and see how their harvest is going and - - -

But you don't - that's not part of your planned visits at around - - -?---It's not chargeable time, no.

No?---Unless there's some sort of weed or something that needs looking at or they want to discuss something about the next year or - - -

And the product plan - paddock plans that you do for one year, I take it, would be updated in the following year to take into account the previous year's experience?---Yes.

So you would expect if there was something that happened or something that caused a requirement to change, you would expect to see a change in the following year's paddock plan, wouldn't you?---I'm sorry (indistinct) distracted me. What was that?

That's all right. I will ask it again. You're not the first, Mr Robinson. If something had happened during the season - - -?---Yes.

- - - do you amend your cropping plans during the season?---Yes, we do.

Yes, and that's recorded with your computer?---No, it's not. No.

Well, all right. What about the following year? If there was any changes and something that was noticeable, you would expect it to be reflected in the change for the following year, wouldn't you?---Yes, print it. We have it. We go through what has happened and make the - - -

Make the adjustments?---Make adjustments where appropriate.

Yes - - -

KENNETH MARTIN J: To the plan for the following year, is that - - -?---To the next year's plan.

To the next year's - - -?---But that's not actually recorded until we do next year's plan.

NIALL, MR: I understand?---When we sit down and discuss the paddocks again and where they went and what they did.

And if - in the case where you have got it pretty right, you wouldn't expect to see any changes in the following

year's plan, would you?---It's always changing - it seems to.

So if there's something that calls for a change, you will see it recorded in the following year's plan.

Correct?---Yes, I think I'm understanding what you're getting at.

Yes, all right. Now, I want to ask you some questions now about canola. So you've been an agronomist since 2003 in an area where obviously there's significant canola cropping?---Yes.

And did you yourself grow up on a farm?---Yes.

And that farm cropped canola?---Yes.

All right. In 2008 I think it was, when you went back to the farm, that was - canola was one of the crops?---Yes.

All right. Now, one of the things that you know about canola is that it's capable of producing volunteers?---Yes.

And a volunteer is what to your understanding?---It's - a volunteer is a plant grown from a seed from previous year's crop.

Yes. And so a volunteer always grows by seed?---Yes. Well, it can't grow from anything else.

And volunteers are found in a variety of different places - canola volunteers, aren't they?---Yes. We see them - - -

They are found in the paddock in which a canola crop is planted?---Yes.

Often the following year you will see some - - -?---The following year, yes.

- - - canola volunteers come up. You would find it in adjacent paddocks?---Yes, you can do. You don't see it often but you can do, yes.

Can do. Indeed, you could seed in adjacent paddocks, even where they're separated by a road. You have seen that, haven't you?---It can do. You don't see it very often but you can, yes, see it. Yes.

Yes. And along the roadside. You're familiar with canola volunteers on the roadside?---Yes.

And also around silos?---Yes, yes.

Yes?---From spillages, yes.

Yes. Well, you've seen that a lot?---Yes, you do see that, yes.

And around grain depots, again - - -?---Yes.

- - - if there's - - -?---If there's a spillage, yes, you will see it.

If there's a spillage and there's a - it lands on soil - - -?---It will grow.

It will grow. And in all of those circumstances, the volunteers often result from the movement of seed, don't they?---Yes.

So if seed moves from an initial plant and finds some other resting place and then grows as a plant?---Yes. However it is transported there.

And you see it, because it's involving seed and involving the movement of seed, you will often see - I withdraw that. You would often expect a movement of seed at particular times, wouldn't you, and the first time is obviously when they are seeding itself?---Very rarely you see it then. It's more after harvest.

Okay. Certainly - but seeding would be an opportunity where seed might get spilt?---Yes.

And it might get spread into adjacent paddocks?---Yes.

And, at harvest, again, that's a time where you would expect to see seed moving?---Yes.

And, for example, if there's swathing, that would be an opportunity for seed to be moved by the wind, wouldn't it?---Yes.

And that's something that you are familiar with?---Yes.

And then transport of the grain after harvest would be another opportunity for seed to get moved and result in volunteers?---Yes, if there's a spillage. Yes.

If there's a spillage. And what sort of - do the trucks transport the grain - are they open trucks?---No, they're closed.

They're closed.

KENNETH MARTIN J: Closed by a tarpaulin, usually?---Usually a tarp that rolls over the top.

NIALL, MR: Yes. With some opportunity for a bit of spillage around the corners?---No, not - generally, no. The trucks nowadays are pretty good, they do sit - - -

All right. But one of the means by which seed can be moved around and create volunteers is obviously the wind, isn't it?---Yes. Actually, it's by the wind but it won't actually blow the seed or blow the seed in a pod. The pod is what catches the wind.

So in the case of a swathe containing pods, the wind can catch and blow it?---Yes.

Now, in terms of your role as an agronomist, volunteer canolas are not a big problem, are they?---Generally not, no.

No. Because volunteer canolas are common?---Yes.

And they can be treated in a usual context by the application of herbicide?---Yes, there's a lot of herbicides that can control it.

So, a farmer faced with some canola volunteers in the paddock where, in year 1, he's grown canola and in year 2 he wants to plant wheat in that paddock?---Yes.

And he gets some volunteer canola plants, herbicides will kill it?---Yes.

And that sort of context, volunteers and the creation of canola volunteers has never been seen by you to be a particular problem?---No.

Now - - -?---We can treat it anyway.

Yes. Now, you have not had - well, perhaps I will rephrase that question. Have you ever had any organic farmers as clients?---No.

And you have never had any occasion to look at organic standards, have you?---No. I have never needed to look at them, no.

Now, I just want to ask you some questions about 2010 if I may. So you had been an agronomist in 2009, back at Farmanco?---Yes.

And at that point, genetically modified canola was prohibited for commercial planting in Western Australia?---Yes.

But there had been some trials?---Yes. There was one in Kojonup.

Did you follow that trial?---Yes.

And how did you do that?---Well, we just looked at it over time and talked to the people that were growing it.

Yes?---And just found out their experiences and where they are going and did it work.

And any problems, did you - - -?---No.

Did you talk to them about problems that they were having?---Not really, no.

So by the start of - when, to your knowledge, was the prohibition lifted?---I'm not sure when it was lifted but I would have known as it was announced because - - -

Was it something that you were expecting?---Yes.

And you were expecting it because, I take it, that your view was that once it was legalised, made lawful, the commercial exploitation, you had been looking to get some of your clients into it?---I saw it was going to be a valuable tool for my clients.

Yes. And you had done, obviously - as you have just said, paid attention to the trial that was being done. Did you do any other research on GM canola prior to its - - -?---We done a lot of work with that group and talking about how we would need to manage it and learning and make sure we get it right.

Yes. And perhaps if you just assist me with, when you say your group, who are you referring to there?---Sorry, Farmanco. In our group we have got seven agronomists -

well, now we have. Probably back then it was only about five.

Yes?---And we would have general visits with each other and car drives to look at different trials and as we were driving we would discuss all of the issues that we would need to do.

And one of the issues that you would have discussed late 2009 into early 2010, was the GM canola?---Well, it would have been, yes.

Yes?---Yes, well, everyone was talking about it.

So it was something that was well on your radar as potentially coming in in 2010?---Well, we were going to have clients interested in growing this, so we had to learn to make sure we were up to speed.

Yes. And you did that through talking - your own reading, did you?---Own reading - - -

Talking, listening?--- - - - listening, talking. Talking to other agronomists out of different grows. Talking to researchers, scientists that are dealing with it, the people that were producing the varieties. Yes.

So trying to build up a bit of knowledge about GM canola in anticipation of having to advise your clients in 2010 if that was the date about its use, about its roll-out?---If they were going to ask me, yes.

Yes?---If my clients wanted to get into the technology, I had to know.

And what you would have known by the end of 2009 was that GM canola was tolerant to glyphosate?---Yes.

And that was a significant change, wasn't it?---In terms of use?

Yes?---Yes.

Because up until that date, what you had is a number of naturally occurring canola strains, didn't you, before the GM canola?---Well, there was three types of canola.

So there was conventional canola?---Yes.

And what was its herbicide tolerance like?---It's pretty susceptible to most things other than group A herbicides and one group, which is Lontrel of Clopyralid.

Right. So just taking that, on conventional canola, a farmer could apply group As after the canola crop had emerged?---Yes.

For the controlling of weeds?---Just rye grass, yes.

Just rye grass, thank you?---Well, sorry, grasses.

And over - for so long as you have been aware of farming of canola, conventional canola was planted and type A herbicides were applied?---Yes.

And at some point in time it became pretty clear that some of the weeds were becoming resistant to group A?---Yes, after a number of doses and especially group A does develop resistance quite quickly, compared to other ones it was developing, yes.

Yes. And do you know when in Western - Great Southern, when it was developing, the resistance to group A?---Not particularly. It had developed before had started agronomy, yes.

So before 2003?---There was reports of it. Yes.

Yes. And then when it - once it got hold, the resistance to group A developed very quickly?---Yes.

And what that involves, doesn't it, Mr Robinson, is that as you apply more group A over time, it kills the grass weeds for which the chemicals are effective but it leaves standing the resistant weeds?---Yes. If you get a sublethal dose or - or one misses and you do - you do get survivors.

And you get survivors which then perpetuate itself and it grows quite quickly until you have got a population of grass on your property which you can't kill with group A?---Yes.

And so that's that first type of canola. And then you have got IT canola?---Yes.

And what is that?---Imidazolinone-resistant. So it's a clear fill - it's under the clear fill brand. So Imidazolinone-resistant, which is a group B herbicide.

Group B, yes?---Herbicide.

And was that used since you have started as an agronomist?---Yes.

And - - -?---Sorry, it was used slightly - two or three years before I started.

So about 2000, the IT canola?---Yes, somewhere in that area, yes.

So - and that meant that you could apply - and I'm not going to get the pronunciation right?---Imidazolinone.

Imidazolinone?---Yes. Just say Intervix, you be fine.

Intervix?---Yes.

Post-emergence. So Intervix has been around a long time, I take it?---Intervix - well, no, not Intervix brand. There has been a number of types of chemicals but it's all a part of that group.

Thank you. And that's IT canola?---Yes.

And there has been - - -?---Could I just add, what - conventional canola, it was very good for controlling grasses, but wild radish is the issue. There was no herbicides that could selectively control wild radish. And wild radish was a weed that germinated all through the year and so that's why they brought out IT and TT canola.

Right. So, thank you. So you have had a sort of broader benefit IT, because it could pick wild radish as well?---Yes. And that's - that's the benefit of IT over conventional.

Thank you. And TT canola?---Much the same.

That's Triazine tolerant?---Tolerant, yes.

So that means - and how long has that been around?---Yes, well and truly before I was there.

Yes. And that means that you can apply Triazine both pre-emergent and post-emergent crop?---Yes.

And that's effective in killing grasses?---And broad leaf.

And broad leaf?---Yes.

So it's a broad spectrum herbicide?---Very much broad spectrum.

And it has been very effective, the Atrazine?---Yes, over time. It's - it's slowly - I think it's activity is slowly going down now but it's still quite active.

Is that because of - when you say its activity is going down, you mean there's some resistance developing?---Yes. Yes.

KENNETH MARTIN J: You mean effectiveness is going down?---Yes.

NIALL, MR: And over time TT, Triazine tolerant herbicide - canola has been very effective when Atrazine has been applied for weed control?---Yes.

And the conventional IT and TT canola will all be killed if glyphosate is applied to it?---Yes. If the dose is lethal, yes.

If the dose is lethal. Thank you. And that was really the development of the GM, wasn't it, because the GM changed two genetic traits on the canola to enable glyphosate to be applied to it after the plant had emerged?---Yes. I think it had something to do with the diversification of metabolism of the - of the herbicide.

It affects the protein uptake, doesn't it?---Yes.

Protein creation, is that right?---Yes. I will have to read that up again.

But, anyway, that - that was a significant change because it enabled you to apply glyphosate after the emergence of the canola crop?---Yes. As weeds are germinating through the year - - -

Yes?--- - - - as they always do.

Yes. And as - it carried with it a risk because increased glyphosate use, if it was associated with Roundup canola would increase selection pressure for glyphosate-resistant weeds which might lead to the development of glyphosate-resistant weeds on your property?---Yes.

Apart from that difference, the trait and the glyphosate, everything else from what you read in 2000 - 2009 and 2010, was pretty much exactly the same for any of the other three

forms of canola. Is that right - in terms of how you grew it?---Yes, and fertiliser etcetera.

Fertiliser?---It's very similar.

Yes. And it looks exactly the same?---Yes. You just - well, yes, well, looks exactly the same. Might have slightly more vigor the - - -

And - - -?---Than TT, I should say.

Yes. And you are comparing it to TT because the TT strain has a bit of a toll on the production, doesn't it?---Yes. The TT - the TT gene, it reduces the efficiency of light uptake converting to energy. So it affects your yield somewhere between 10 to 20 per cent.

Yes?---So that's the cost to the farmer, but they - they need that particular technology to - to control weeds.

Right. But apart from that, in terms from an agronomy perspective, there was little difference between growing GM canola and growing TT canola or conventional canola?---Yes. You would probably spray it one more time with Roundup-Ready.

KENNETH MARTIN J: The GM canola?---The GM, sorry.

NIALL, MR: Now, would you have a look at this document please, Mr Robinson. I've got one for your Honour and one for the witness.

KENNETH MARTIN J: Thank you.

NIALL, MR: Now, you will see this is a Farmanco facts of March 2010, volume 30, issue 2. You're familiar with this document?---Well, I'm familiar with it is. Yes. I don't know this one specifically.

Yes. All right. Farmanco facts is an information brochure or pamphlet, or document provided by Farmanco, isn't it?---Yes. It's a newsletter article - - -

Newsletter. Thank you?--- - - - that we give to our - that we give to our clients.

All right. And how often is it published?---Once a month.

And in fact, you - and you would read it, I take it, when it comes out?---Yes. When I get a chance to. Yes. I do.

Yes. And in fact, have you written articles for it?---Yes.

Yes. And if you just go over to page - it's not numbered, Mr Robinson - page - there is numbered, I'm told, on the top right hand corner. Page 6?---Sorry. The staple (indistinct).

Yes?---Here we are. Sorry. Yes.

GM canola, Brent Pritchard, reviewed by Tim Trezice?---Yes.

So this is a document that was prepared by Farmanco, your employer, in March 2010. Now, who's Brent Pritchard?---He's an agronomist based in Albany.

Yes. And Tim Trezice?---He's an agronomist based in Kojonup.

And so are these two part of the group that you talked about speaking to?---Yes. Yes.

So you would have discussed, prior to March 2010, GM canola and the issues that are presented for agronomy?---Yes.

All right. And you will - - -?---In fact, I'm - before March. I think Brent only joined at the start of March. I'm not sure. I can't remember.

Thank you?---But be very close.

But Tim?---Tim, he was one of the original agronomists to start.

All right. And you see the summary there, if you just read the six dot points of the summary?---Yes.

That would have been - reflected your understanding in late 2009, wouldn't it?---Yes. I would have thought so.

Yes?---Yes.

Well, there's nothing there that stands out as surprising to you now, or would have then, correct?---Yes. No. It's all normal.

Yes. And you will see the third dot point

Resistant manage IW -

IWM, I'm sorry -

must be respected more than ever if entering into RR canola.

- - -?---Yes.

IWM, that means integrated weed management?---Yes.

And it has to be respected more than ever because of the risk of glyphosate resistance?---Yes.

By 2010, glyphosate resistance had been observed in Western Australia?---Yes. I think so. Yes. I know it's observed now anyway, but yes.

But in 2010?---I think there was the cases. Yes.

And in the great southern, it had been observed then?---I'm not sure. I don't think so.

Now, if you go over a few pages - sorry, Mr Robinson - over onto page 11, under Control of RR Canola Volunteers - do you see that, Mr Robinson?---Page 11, or - - -

I beg your pardon. Page 10. Control of RR Canola Volunteers. The first paragraph says:

The weediness of volunteer RR canola is no greater than that of other canola varieties -

And that was your understanding in 2009, wasn't it?---That's - I suppose you're saying that at the start of the growing of it.

Yes?---Yes.

And it says there that:

Areas that require monitoring for volunteers are the paddock that RR was grown -

You would agree with that?---Yes.

Paddocks immediately to where the RR was growing - you would agree with that as an area that you would need to monitor for volunteers?---Yes.

And then areas where there were seed spillage during transport?---Yes.

And then the bottom dot:

Areas where there could have been physical movement of seed, wind-blown swathes.

Do you see that?---Yes.

That would be another area where you would expect to look for - or monitor for volunteers?---Yes.

And that would have been your understanding towards the end of 2009?---Well, yes.

Well, there's nothing new about that proposition, is there?---Not really, no.

And there was nothing different between RR canola and TT canola, or IT canola, or conventional canola, in this respect?---No.

And then it goes onto say:

Herbicide options for the control of volunteers will depend on the normal factors affecting herbicide selection, such as weed size and type of crop or pasture -

And then it goes on to say:

The many non-chemical weed control option will also provide equivalent control of RR canola to traditional canola. These methods may include, but are not limited to, cultivation, seed collection, grazing and burning.

And again, that was your understanding by the end of 2009?---Yes.

Now, over - under the heading Pollen Movement, there's a reference to the permitted threshold for GM presence in non-GM canola is 0.9 per cent?---Yes.

Do you see that?---Yes.

Did you know that in 2009?---Yes.

And when it says "the permitted threshold", where did that come from?---It was further researchers that were developing - - -

Yes. But - - -?--- - - - developing their technology and allow it to be legalised, I think.

Did you understand there was some standard of 0.9 per cent?---Yes.

And did you know where that standard came from?---Not really. It was in the stewardship program that we had to follow.

All right. Apart from - - -

KENNETH MARTIN J: Can I just ask about that 0.9 per cent, because it has come up a few times. Is that by weight or by canola seed? So is that nine canola seeds out of 1000 canola seeds? Or what - how is the percentage calculated by reference to a subject matter?---Far as I understand, it would be by weight, because most of the quantities are by weight.

By weight?---Yes.

All right. Thank you. That answers my question.

NIALL, MR: So that would be a percentage within a seed - a quantity of seed?---Yes. So of a 10 tonne bowl, I think you're allowed 900 kilos, I suppose.

And your - the source for that, for you, was the Monsanto documents, was it?---Yes. They were the ones who did the development of it.

Yes. But you didn't have any idea of this 0.9 per cent, apart from what was in the Monsanto documents? Or did you know it from some other basis?---I'm not entirely sure where it come from, but it - I'm - I'm - it would have had to have come through our stewardship that we had to go through - - -

Okay?--- - - - when we were trying to do - to follow - well, (indistinct) of the stewardship program, we had to do, to grow it.

And then over on the next column, it says:

Where you are growing to deliver non-GM canola, there's requirement for a five metre separation of crops to reduce the risk of this contamination.

- - -?---Yes.

And that was the contamination referable to the 0.9 per cent?---Yes. Well, that - I don't know exactly that's to

do with that, but it was in the - the stewardship program specify that we need to have a buffer between crops.

And then - just look at the next paragraph, Mr Robinson. It says:

Where your GM crop is on a boundary fence, you will need to discuss management options for this scenario and also for the possibility of strong winds moving swathes into your own and your neighbour's paddocks.

Do you see that?---Yes.

And you knew about the possibility of strong winds moving swathes into your own and your neighbour's paddocks, didn't you?---Yes.

And you knew that it was important to discuss management options for that scenario, if you were thinking of planting GM crop on a boundary fence?---Well, to follow the stewardship program.

Was that all you had to do?---Yes - well, I didn't have to do that, no.

No. Thank you?---Yes.

It doesn't say there in the Farmanco document, "Just follow the stewardship agreement," does it?---I haven't read it entirely but I understand it, yes.

Well, just in the sentence I read to you, it said:

You will need to discuss management options for this scenario.

?---Yes.

Do you know whether that's contained in the Monsanto documents or not?---I don't think it is, no.

Then it says:

Officials from organisations such as Western Power, telephone companies and others may also access your property without notification or permission. This could lead to the accidental transfer of pollen or seed between paddocks.

Do you see that?---Yes.

Thank you. And by that stage, had you formed the view that you should recommend to Mr Baxter planting Roundup-Ready canola?---Only when we were sitting down, talking about his program and - - -

So you didn't - I'm sorry, I interrupted?---Sorry, what was that? When we sat down to do his program, we were just discussing and then it came to a point where we got to these paddocks that had (indistinct)

But you didn't go there with a view to growing Roundup-Ready - - -?---No, not at this stage. No, no, not at all.

And he identified some paddocks, did he, that he had an issue with?---In our discussions we identified some paddocks, yes.

Yes. How many?---There was quite a few but there was two main ones.

Yes. And the concern that Mr Baxter had, was it, was herbicide resistant rye grass?---In those paddocks?

Yes?---Well, the concerns in those paddocks was those paddocks had had a number of doses of clethodim and there was a building population of rye grass that in the past we were struggling to control with our group A herbicides.

So that was his concern?---Yes.

Yes, and - but you didn't discuss volunteers at that meeting, did you?---Volunteer canola - - -

Yes?---Roundup-Ready canola?

Yes?---I don't know. We would talk about controlling volunteers.

Yes. Well - - -?---There is a chance we would have, yes.

Yes. You didn't discuss at that meeting, did you, controlling volunteers on the Baxter property, did you?---On the Baxter block - - -

Yes?--- - - - or the Baxters' - - -

No, the Baxter - Seven Oaks?---You're saying we didn't discuss controlling the volunteers?

Yes?---I don't know. It's a long time ago. I - - -

There was - as far as you were aware - - -?---It comes up in - a quite constant question all the time. We are allowed to - we are - we get asked, "Can we control these volunteers," and you say, "Yes, we can."

And you didn't discuss the fact that his neighbour was an organic farmer, did you?---At that meeting?

Yes?---Yes, he did say.

He did. What did he say?---He said that he's an organic farmer.

Yes. What else did he say?---Is there a problem.

Yes, and you said what?---What did I say?

Yes?---I said, well, if we follow the stewardship program and follow the guidelines set by the people who set this to make it lawful, there shouldn't be a problem.

Yes, and you have got a good recollection of that, him saying that and you saying that, do you?---Not that good of a recollection.

Yes. Is it - - -?---But I remember talking about the fact he's got an organic grower over the road.

Yes. Did he tell you that the organic farmer over the road was worried about losing his organic certification?---No. I knew that he was opposed to it but I didn't know what meant to him.

Yes. And you didn't discuss organic standards at that meeting, did you?---No.

And you didn't have any knowledge of organic standards?---No.

And Mr Baxter didn't ask you anything about organic standards?---No, not that - no.

No. Now, But you say that there was a discussion about controlling volunteers and you said if you just followed the Monsanto plan, you'll be all right?

KENNETH MARTIN J: Sorry, I think you're conflating two different issues?---Yes, that wasn't what you discussed I don't think.

NIALL, MR: I apologise. Now, do you say that he raised this issue of an organic farmer and you said, "If you follow the plan, you'll be all right" - Monsanto plan?---The stewardship program was the guidelines of growing it.

Yes?---Which - in that there, I think he had to notify next-door canola growers, etcetera, that he was growing Roundup-Ready. And I think - and it was up to Michael Baxter to do that.

But you remember discussing that, do you?---Yes.

You said that to him?---He has to do that, yes.

What, follow the Monsanto agreement or go over and discuss it with your neighbour?---Follow the Monsanto - the guideline - the stewardship program. In there is the guidelines and in that there I think it says you need to let your neighbours - your next-door neighbours who are growing canola, you need to let them know.

Now, if you have got your statement there on 29 August in front of you. Do you see that? Have you got that - - -?---Yes, yes, sorry.

The first statement. Now, that discussion doesn't appear anywhere in your statement, does it?---Not that I know of, no.

All right. So you had no recollection of it when you had prepared the statement in August 2013?---I never thought of it.

You never thought of what you and Mr Baxter discussed about the decision to plant Roundup-Ready canola in early 2010?---No, not to put in here, no.

Well, you knew that one of the issues in the case was the decision to plant Roundup-Ready canola in 2010, didn't you?---Say that again, sorry.

You knew that one of the issues in the case was the decision of Mr Baxter to plant Roundup-Ready canola in 2010?---Yes.

But you didn't think it important to include a conversation that you had with Mr Baxter about that topic?---Well, I just never thought that it would come up. I've - it never comes on my mind.

Now, in your amended statement - if you go to paragraph 27. You see that, 27 subsection (1) - subparagraph (1)?---Yes, yes.

You have crossed out the words:

Prior to 2010 there were signs that the Wimmera rye grass on Seven Oaks had developed a resistance to -

And then you have replaced it:

Early in 2010 Michael Baxter informed me that clethodim had failed to control rye grass.

?---Yes.

When did you remember that conversation?---When did I remember it?

Yes?---When I wanted to amend this.

Well, when did you want to amend it?---Well, it was back on Sunday afternoon.

And you remembered the conversation?---I remember the conversation.

Yes. Is this the conversation that you have just given some evidence to his Honour about, where you discussed the organic neighbour?---Yes.

So you included this part of the conversation. Why didn't you make any reference to the discussion about the organic neighbour?---I'm not sure.

But you had remembered it at that stage?---I remember why we were growing Roundup-Ready though.

I beg your pardon?--- I remembered why we were growing - why we chose to grow Roundup-Ready.

When did you remember that conversation?---The one that's underlined?

Yes, yes?---Back on Sunday.

Did you look at any documents relating to that meeting?---No.

Are you able to explain to his Honour why in August 2013, at paragraph 27, you weren't able to make any reference to

a conversation and in February 2014 you have remembered a conversation? Are you able to explain that?---Not really, no, other than the fact that it just - it came to my mind then.

It just came to your mind?---Yes.

And what happened on Sunday that caused you to think about the conversation that you had in January 2010?---We were talking about - with Brian Bradley and that's just preparing - getting ready for - well, it was supposed to be for Tuesday and it has been put back - - -

Yes?--- - - - and he was just carrying a conversation.

And it was during the discussion with Mr Bradley that you remembered this conversation?---Yes, and he said to - he said you're allowed to make amendments to your statement and I said okay. And I thought about it, thought about - and then I said, "Well, I think I could change this."

And did you just - between signing your statement in August 2013 and last Sunday, did you discuss the conversation with Mr Baxter?---With - - -

Mr Baxter?---Did I - the conversation - this conversation with Mr Baxter?

Yes?---No.

You have never discussed that with Mr Baxter?---No.

Have you discussed the issues of planting Roundup-Ready canola in 2010 with Mr Baxter between August last year and this year?---Did I discuss the issues that happened back then?

Yes?---Not really, no.

When you say not really, did you discuss - - -?---Well, I can't really remember. I don't - genuinely not know.

You had discussed it with Mr Baxter or you hadn't?---I can't remember, no.

You didn't discuss this conversation with Mr Baxter?---No.

Now, you just said a few moments ago that you said to Mr Bradley that - "I think I could change it." What could you change?---I just went through and read it again to make

sure it was precise and if I was happy with it, and that's how I come across that change.

So is it the case that - in your amended statement of 27(1) and 27(2), that's what you could remember about the conversation or were there other parts that you could remember but you just didn't decide to include. Is that the position?---I just didn't remember the conversation - the entire conversation.

Your Honour, if that's a convenient time. I'm moving on to another topic.

KENNETH MARTIN J: Yes, it is. All right. Mr Robinson, we are just going to break for the luncheon adjournment. You need to be back here, if you would, shortly before 2.15 pm. You're under cross-examination at the moment so we would be grateful if you didn't discuss the case with anybody over the luncheon adjournment. And we will adjourn until 2.15 pm.

(LUNCHEON ADJOURNMENT)

KENNETH MARTIN J: Please be seated. Mr Niall.

NIALL, MR: Mr Robinson, I want to just take you back again to that conversation that you had in late February 2010 with Mr Baxter. That took place at the Baxters' home?---Yes.

And he didn't tell you that his neighbour was concerned about losing his organic certification, did he?---He (indistinct) he didn't want the Roundup-Ready growing on that farm.

Yes. But he didn't - Baxter didn't tell you anything about the neighbour losing certification?---Not that I know of. No.

And there was no discussion of organic standards?---No. Not that I know of. No.

No. And there was no discussion of organic standards?---No.

And you, at that point, didn't have any knowledge about organic standards, did you?---No.

In fact, your view was that if GM canola crops sprayed onto a neighbour's property, it was unlikely to affect the status of any crops, didn't you?---Yes.

Yes. And Mr Baxter didn't tell you that in 2008, Mr Marsh had come to see him with a volunteer canola plant, and that if it happened with a GM canola plant, his certification was at risk?---No. I'm not aware of that.

No. There was no discussion about a 2008 volunteer incident, was there?---Not that I know of. No.

No. And had he told you that, that is, that Marsh could lose his certification if the GM canola plant went on his property, and that there had been canola volunteers in the past; you would have told him that he had to be careful planting on the boundary, wouldn't you?---Yes.

And you would have told him that if you plant on the boundary, there was a risk of swathing material moving onto your neighbour's property?---Yes. A small risk. Yes.

Yes. And you would have told him that?---Yes.

And you didn't tell him that because those topics about certification wasn't raised, and there was no reason for you to tell him, was there?---No.

Now, at the conclusion of that meeting, you went away and formulated the 2010 paddock plan?---Yes. Well, we formulated that at the Baxters' house.

And then, in accordance with your usual practice, it was finalised?---Finalised. That's right.

Now, next to you, Mr Robinson, there's a series of folders. And if you go to folder - volume 4. And if you go to page 506 - sorry - 269 - 719. Sorry.

KENNETH MARTIN J: Sorry. What volume are we in? 4?

NIALL, MR: Doesn't even have that number. Volume 4. Did I say volume 3?

KENNETH MARTIN J: No. I'm in volume 4, and we start at 921.

NIALL, MR: Sorry. I was reading the wrong document. Volume 3.

KENNETH MARTIN J: Volume 3. Sorry, seven hundred and?

NIALL, MR: 719, your Honour.

KENNETH MARTIN J: 19.

NIALL, MR: Now, if we just look at that, starting at 719 and going through - - -

KENNETH MARTIN J: Just give him a moment. He's not there yet.

NIALL, MR: I'm sorry, Mr Robinson?---Yes.

KENNETH MARTIN J: 719.

NIALL, MR: So that the 2010 - or that's the commencement page of the 2010 paddock plan that you prepared for the Baxters?---Yes.

And if you go over to 723, do you see a rotation summary for 2010?---Yes.

Is there any reason why this table didn't include the earlier rotation summaries?---I don't think our computer program goes back that far, and I may have even started a new computer program.

Well, if you go back to, say, 2006 - so page 575?---Sorry. Is that in another file, is it?

Sorry.

KENNETH MARTIN J: Just go back in this one.

THE WITNESS: Yes.

NIALL, MR: That's a rotation summary, and it includes the previous paddock plans. Was that because you used a different program in 2010, or was - - -?---I think it was the same file, but because the rotation structure of the program only goes back two years or three years, like it does there.

But in 2010, it doesn't go back at all. Is that (indistinct) - - -?---Well, I didn't do his program, because I was away.

So that was - you were picking up, essentially, as the first year in 2010 of Mr - - -?---That I started. Yes.

Yes. I understand. So if you go back to 723, you will see that, if you look at Range, which is five from the bottom, that's canola Roundup-Ready?---Yes.

And if you look at Montys Paddock, that's canola, and it's called Beacon BL?---Yes.

Beacon is a - - -?---Variety.

- - - variety, and that is a TT canola?---Yes.

And if you go to - firstly to page 750, that's the suggested course for the Range paddock of planting RR, correct?---Yes.

And it has there, under mix 2 - that's the pre-plant knockdown, and you've recommended SpraySeed and trifluralin in there?---Yes.

And mix 3 is Talstar and Chlorpyrifos?---Yes. That's an insecticide?

And Talstar?---And insecticide.

So at mix 3, which is post-sewing, pre-emergent - - -?---Yes.

That's pre-emergent of the crop, I take it?---Yes. Straight after seeding, before the emergence.

Thank you. Then mix 4 is where you apply the Roundup-Ready?---Yes.

And that is between cot, which is cotyledon?---Cotyledon

Cotyledon?---That's when the first two cotyledon's come out - emerge.

And Two Leaf?---Yes.

And that's - so that's post-emergent, and you're spraying the glyphosate on top of it?---Yes. That's the recommended timing by NewFarm, I think, who make the herbicide.

And then again at mix 5, there's another post-emergence spray of glyphosate?---Yes.

Now, Roundup-Ready, do you know how much glyphosate per kilogram? Is it 690?---690. Yes.

So Roundup-Ready is 690 grams - - -?---Of active.

- - - of active per kilogram of product?---Yes.

And if you go over to page 742, you will see paddock Montys, do you see that?---Yes.

And that you've recommended Beacon BL, which you've described as the TT canola. And then at mix 2, you've got the atrazine and the glyphosate?---Yes.

So there you're using glyphosate as a pre-plant knockdown?---Yes.

And atrazine, and trifluralin as well?---Yes.

Another herbicide. Mix 3 is your insecticide again?---Yes.

And mix 4 is when you put the atrazine - - -?---Yes.

- - - which is your group C herbicide?---Yes.

And clethodim, which is a group A?---Yes.

And that's post-emergent?---Yes.

And that paddock is equal in size to Range paddock, so you can compare, in a sense, like with like, can't you?---In size? Yes.

In size. And they have both been planted canola, one RR and one TT?---Yes.

You say in your statement at paragraph 27, if you go to your amended statement, that prior - early in 2010, Mike Baxter informed me that clethodim, a group A chemical, had failed to control wimmera rye grass in certain paddocks including Range and Two Dams. Now, before you made that amendment, it referred to, in your original statement, prior to 2010, there were signs that the Wimmera rye grass had developed a resistance. Are you saying there were no signs prior to 2010 and you were entirely dependant upon which - what Mr Baxter had told you?---Yes, on what Michael Baxter had told me, that he was having not as good results from - the clethodim applications in the past.

But you didn't, yourself, review any documents which would have supported that?---No.

And you, yourself, didn't have any knowledge about whether clethodim had been, firstly, used?---Say that again, sorry.

You didn't have any knowledge, did you, as to whether clethodim had actually been used on Seven Oaks?---Yes. In 2003 to five or six, when I was there.

So - all right. Now - - -

KENNETH MARTIN J: Subpara (iii).

NIALL, MR: Thank you, your Honour. So in 2010, you were reliant on what Mr Baxter informed you about clethodim?---And my experience.

Now, your experience on Seven Oaks or your experience more generally?---The experience on Seven Oaks and through a range of my clients.

Now, you didn't think to test for resistance, did you?---I was quite happy that we considered that it was building resistance due to - due to the fact that multiple applications of clethodim that were used on the farm, combine that with a growing population of rye grass in those particular paddocks. In my experience that leads to resistance.

You didn't think it was necessary to test?---Not at - not at that stage, no.

But you hadn't had any experience on the farm for three years, had you?---I had had experience in those three years that I was there, or four years that I was there previously, and experience through the rest of my clients.

But you hadn't had any experience on Seven Oaks for those three years?---Yes. And - not on those three years away, no.

So you were just relying on what Mr Baxter was telling you?---Yes.

Now, if you go back to volume 3 for a moment, and - sorry, before you do that, Mr Baxter told you, did he, in 2000 - in early in 2010 that clethodim had failed to control in certain paddocks, and he identified a number of paddocks, did he?---Not that I know of. He just - he just identified that clethodim wasn't working as well on his farm.

So he didn't refer to any paddocks?---I can't recall them. He may have done.

Well, you say in your statement that he informed you that it failed to control rye grass in certain paddocks,

including Range and Two Dams. You don't remember that?---It's hard to say. No.

Well then, how do you say your statement in August 2013 - go to your first statement - you say in paragraph 27, that clethodim had failed to control rye grass in certain paddocks including Range and Two Dams and then, in your recent statement, you amend that to say that that's what Baxter had told you, but you have no recollection of that. Is that right?---I can just - what I can remember is all the scenarios and indications of those - the size of that paddock and the rye grass population, the way it was growing, and what he was telling me led to those paddocks being appropriate for Roundup-Ready.

Well, it's not what that led to. Your statement says he told you that it failed to control rye grass in certain paddocks, including Range and Two Dams. Is your evidence that that's not what he told you?---No, not that I know of. No.

How did it come to be that the reference to Range and Two Dams paddocks appears in your statement?---The reference to that?

Yes?---Because they are the ones we wanted to grow Roundup-Ready canola in.

No, that's not my question, Mr Robinson. How does it come to be in your statement, firstly, that you make reference in the first statement to Range and Two Dams and now, as of a couple of days ago, that you say he told you that it was failing to control in certain paddocks including Range and Two Dams. How does the reference to Range and Two Dams come to be there?---Because they were the paddocks that are - they were the paddocks that had an increasing amount of rye grass and they are the ones that they are showing signs of clethodim-resistance.

Did he tell you that?---Yes.

Well, a few moments ago, you said he didn't tell you that about - - -?---Well - - -

He didn't mention Range and Two Dams. Did he refer to them or not?---No.

Someone has told you that - or put in your statement the reference to Range and Two Dams, haven't they?---No, I put it in there but I assume that they - we talked about it.

Well, when did you assume that?---Back when we were in - 29 August, when I did the first statement.

Well, this statement is 18 February, two days ago. Did you make that assumption at that stage as well?---Yes.

So this doesn't record - this paragraph 27(1), is it the case that it doesn't record your conversation, it just records the assumptions that you have made about that conversation?---Yes.

And the reference to Range and Two Dams you have got there, is because you know they were the two paddocks that Roundup-Ready was planted?---No, no other paddocks that had an increasing level of rye grass.

Well, how do you know that given that you hadn't been on the farm before February 2010 for three years?---Because Michael informed me.

But he didn't identify those two paddocks, did he?---Well, he would have done, yes, otherwise we wouldn't have put them there.

What other paddocks did he identify?---That were problems?

Yes?---I know - I think Montys was a problem.

Yes, what else?---I think Hilly may have been a problem.

These are the paddocks you can remember him talking to you about?---Not entirely but I know they were problems at the time.

So was Range and Montys equally bad?---No, those were the two worst paddocks.

Yes. Based on what? Your assumption or what he told you?---What he told me and what I had come to recall.

But how does it come to be that he says these two paddocks are the worst ones when you can't recall what paddocks he mentioned?---Because, otherwise we wouldn't have put Roundup-Ready in those two paddocks.

So is your evidence that you get to the fact that you planted Roundup-Ready in 2010 Range and Two Dams, and you have worked back to reconstruct a conversation that you had. Is that how it works?---What would have led to us to go Roundup-Ready in there, because they were the paddocks that were increasing, they had increasing levels of rye

grass and they were signs that Michael Baxter had told me that clethodim wasn't working as well.

What about Mailbox, remember that?---Yes, I know that paddock.

What was the position in relation to that? Was that a badly affected one or a not a badly affected paddock?---That was a badly affected paddock, yes.

Yes How did that compare to Range?---It had been - I'm pretty sure it had been cut to hay the year before, so a lot of the rye grass burden had been removed.

So it wasn't a big - from your memory, it wasn't a significant problem like Range and Two Dams?---No.

No. Just go to page 723 please?---Yes.

Can you tell his Honour what recommendation you made in 2010 about Lyall's Mailbox?---What recommendation?

Yes?---In terms of what to grow there?

Yes?---Well, Roundup-Ready.

But it wasn't as bad - your evidence was a few minutes ago that it had been used to cut hay and it wasn't a significant problem?---At that stage my idea would be there's only so much - Roundup-Ready costs more to grow and there's only so much people can afford.

But that was the one that you were recommending, one of three, Lyall's Mailbox, wasn't it?---Yes.

Well, why were you recommending Lyall's Mailbox when you have just told to his Honour that it had been hay the year before and it wasn't a significant problem?---Because it still was - it wasn't as significant a problem as Range and Two Dams but it was a problem.

What about Montys?---Montys, there was problems there but we didn't go round there.

Well, how serious were the problems in Montys?---A lot less than Range and Two Dams.

Well, what about Montys compared to Lyall's Mailbox?---I don't think Montys was as bad either.

What was your understanding about the position as to group A resistance in Montys?---Sorry?

Sorry.

KENNETH MARTIN J: I think we might have had a chair malfunction?---Sorry, what was that?

You okay, Mr Robinson?---I apologise.

NIALL, MR: Comfortable?---Yes.

Sorry, I will rephrase the question or repeat the question. What was the position about resistance - group A resistance in Montys?---I don't know exactly but I would assume that it was on the increase as well.

Yes. Just have a look at page 742 please. You will see Montys paddock in 2010. You recommended a mix for atrazine and clethodim?---Yes.

So you recommended it in a paddock that you knew was resistant to clethodim?---Well, I would have recommended it to remove enough rye grass so he has a substantial yield out of it.

Well, when you say - but isn't that counter-productive, Mr Robinson, because you are using clethodim on a paddock that you know is resistant to clethodim?---Well, if you - and this is only a plan as well, don't forget. But if we had have used clethodim, we would - if there was a substantial amount of rye grass and we could feel that we could take, say, 50 per cent out, there's still an economic benefit in that.

But at the cost of increasing the resistance profile?---Yes, and then we would had to have - deal with it.

And how would you do that?---There's a number of ways you could deal with resistant rye grass.

For clethodim?---For the clethodim resistant rye grass.

What are they?---Well, just rotating to different chemicals.

Which ones?---Anything other than group A or anything that it's susceptible to.

So you could have dealt with the problem that you identify in paragraph 27 of your statement by simply rotating to other chemicals?---Not in canola, no. There's no other chemical in TT canola that you can rotate to unless you grow another crop and whether that's economic at the time I can't recall.

Now, where's Silo paddock located?---Silo paddock is on the corner of I think it's Glenorchy Road and the road that Michael Baxter lives on.

And what was planted in 2005?---I'm not sure without looking here.

What about in 2006? Can you remember what was planted in Silo in 2006?---No, not now.

Where's Back paddock located?---Back paddock is on the Baxter block - over the other block.

What was placed on Back paddock in '05?---I'm not sure.

And '06?---I'm not sure without looking.

Now, if you look at your amended statement at paragraph 27(3)?---What, sorry?

Paragraph 27 subparagraph (3)?---Yes.

You're there referring back in 2005 and 2006 about some observations that you had about clethodim. Do you see that?---Yes.

When did those observations come to you, Mr Robinson?---When they come to me?

Yes?---When I went back through my plans.

Yes. Through the plans that you prepared?---Prepared.

Yes, okay?---I knew that we grew TT canola in there.

And what made you go back to the 2005 and 2006 plans?---Just to see where we had grown canola because I knew we had had issues in certain paddocks in - on that - in that year.

But you couldn't remember what they were?---What (indistinct) the paddocks were, I don't know.

So did someone ask you to go and have a look at 2005 and 2006?---No, myself. I wanted to do that.

Did someone ask you to go and try and find some paddocks where there was a problem of Wimmera resistant rye grass?---No, I wanted to do that myself.

And when did you do that?---It would have been back on Monday when I amended it.

Why didn't - when did you make your amendments?---Monday - Monday morning.

And why didn't you do it back in August 2013 when you did your first statement?---Because at the time I didn't think it was required.

Well, what made you think it was required this week?---Just thinking about what the case is and I thought it was appropriate to add into it.

Yes. You thought you had better find some evidence of Wimmera resistant rye grass, did you?---No, I just thought it was to become important.

But it wasn't important back in August 2013?---Not that I know of, no. No.

What was your understanding - how has your understanding of the case changed between August 2013 and February 2014?---It hasn't changed anything at all.

Well, then why didn't you think it was important back in August 2013 when you prepared your first statement?---Because it didn't come to mind.

If you go to page 519 please. Perhaps if you start at page 516. Now, is that the plan that you had prepared for 2005?---Yes.

And that's what you had regard to when - in coming to the new paragraph 27(3) of your statement, was it?---Yes.

Yes. Now, if you go to page 519, clethodim is not listed as one of the chemical summaries, is it?---No.

And if you go over to page 552, you see there's the reference to Back paddock?---Yes.

And that's the Back paddock that you refer to in paragraph 27(3) of your statement, isn't it?---Yes, I don't - this is different to what I've got.

Is it? There's no reference to a plan there to clethodim, is there?---No.

Is this the plan prepared by you?---I'm not sure. It does look like something I would do but I - that's supposed to be in canola and I don't know why that's in barley there I think.

Well, they wouldn't have been in - you're making reference in paragraph 27(3) to two years. They wouldn't have been canola in both years, would they?---No, not that I know of.

So why would you expect that 2005 for Back paddock was canola?---I'm not sure. I was just asked - - -

Just asked what?---Hold on.

Just before you go to that, Mr Robinson, you were just asked what?---There was obviously canola in 2006.

No, my question was you were just asked?---Yes, you just asked me.

You were referring to a question that I asked you, not - - -?---Before.

Not that someone else had asked you?---No, that you had asked me just then.

Just go over to page 574. That's the cropping plan prepared by you for the 2006 year, isn't it?---Yes. Well, I think it is, yes.

Well, that's your name and number appearing on 574?---Yes.

And if you go over to page 577, you didn't recommend any clethodim for 2006, did you?---Well, not by that document, no.

Well, have a look at page - - -?---That's a plan though. It's not an actual - - -

Well, I thought a few moments ago you said to his Honour that when you went back to - prepared paragraph 27 subparagraph (3), you looked at the plans?---Say that again.

Cropping plans?---Yes.

Well, they are the plans that you prepare in February of each year, aren't they?---Yes, yes.

So they're going to identify what you intend to, or what you recommend, or what the farmer agrees to use in that coming year, is that not right?---What we plan to use, but they do - - -

Yes?--- - - - change through the year.

Well, the point I'm making is that when you planned the start of 2006, you didn't plan to use clethodim, did you?---We probably planned that to - to the plan - to the - what we were - when we have the inspection at (indistinct) stage, we probably planned to use it then; I just didn't put it in here.

Well, would that have been the case in 2005?---Yes.

So why wouldn't you add it when you start at 2006, to identify the adjustments that you make?---We just didn't add it in.

Go to 585. Now, that's the paddock plan for Silo in the '06 year, isn't it?---Sorry. 585?

Yes. Thank you, Mr Robinson?---Yes.

Yes. No reference to clethodim?---Not there.

No. Then how did you come to prepare 27, subparagraph (3) by reference to the use of clethodim in Back paddock and Silo?---Because nine times out of 10, we end up using clethodim on our - on our canola.

So you didn't use - find the material for 27(3) from paddock plans, is that the position?---Say that again, sorry.

You did not use paddock plans for the purposes of giving your evidence in 27, subparagraph (3)?---I would look back on the rotations. Yes.

But they don't record the chemicals that you used, do they?---Not there. Not the chemicals we planned to use, anyway.

You've got no recollection about what chemicals were used in Back and Silo in 2005 and 2006, do you?---I've got no records of it. No.

And you have no memory of it either?---Not at this stage. No.

So the statement there in 26(3) - go to it, Mr Robinson - about 10 to 30 per cent of the rye grass plants survive the sprays. Do you see that?---27?

27, subparagraph (3)?---Yes.

You say there, in two thousand and - read the paragraph to yourself, Mr Robinson?---Yes.

There are no records to support that, are there?---There's no written records, just what we're talked about and experience.

And you have no memory of what was planted or sprayed on those two paddocks in 2005/2006?---Only if I go back through this.

Well - - -?---And the chances are we would have used clethodim.

You just made up the figure of 10 to 30 per cent, didn't you?---Well, that's what I've been seeing on Michael's farm. When we have failures, that's what we see.

In what years?---In the years that I've worked there.

See, there was never a failure for atrazine, has there been?---Very hard to tell.

In what way?---When you've got a mixture of chemicals going on.

So you can't tell what your plants are resistant to, is that the point, when you've got a mixture?---Yes. But clethodim will only - atrazine will only control very, very small plants; won't control big plants, whereas clethodim is in the mixture to control the bigger plants.

But the point is, where you - as - what you said a few seconds ago, where you've got multiple chemicals, it's very difficult to tell which chemical the plant is resistant to?---You can identify what herbicides (indistinct) the activity by the sizes of plant and the way the plant is dying.

So you're there, watching the plant die, are you?---It takes a long time. It takes over three weeks for a plant to die. You see colour change after two weeks. You see (indistinct) will lie on the ground and full colour change after three.

What colour change did you observe in '05 and '06?---Clethodim is - clethodim would go - will go like a reddish - reddish colour from the green.

It would be fair to say, wouldn't it, Mr Robinson, that as at the start of 2010, you really had no idea which weeds were resistant to which chemicals that were being used on the Baxter property?---Going through Michael's history, we (indistinct) had some sort of idea.

You certainly couldn't rule out some level of resistance to glyphosate, could you?---No.

And when you moved over to recommend, in 2010, glyphosate - Roundup-Ready - I withdraw that. Now, in Mr Baxter's crop in 2010, the harvest occurred by swathing, didn't it?---Of?

Sorry. I will start that again; it's not fair. For the two Roundup-Ready paddocks in 2010, they were harvested by means of swathing?---Yes.

And Mr Baxter has grown other forms of canola for many years, hasn't he?---Yes.

And he has never swathed before?---Not that I know of. He may have.

Do you know when the decision was made to swath the two Roundup-Ready paddocks in 2010?---I do recall making decision towards - towards the end (indistinct) was about to happen, so later in the year.

Do you recall when that was?---Well, just prior to swathing, so it would have been October.

And where was that decision made?---Where? At Baxter's. Or - or it could have been over the phone.

Well, was at Baxter's, could have been over the phone; do you remember which it was?---I can't remember. No.

And he didn't show you a document that he had received from his neighbour, did he?---No.

Now, can you go to volume 1 at page 246?---What page, sorry?

Sorry. 246. You've never seen that document before, have you?---I can't remember it.

Just take your time to look through 246 through to 252?---Yes.

You've never seen that document before, have you?---No. I can't remember it. No.

And when you made the decision to - sorry, I withdraw that. When you and Mr Baxter discussed the decision to swath the 2010 canola - the Roundup-Ready canola crop, you didn't discuss the position of his neighbour, did you, Mr Marsh?---Position, as in, that he's organic?

Yes?---Not that I - I can't recall that.

Thank you. Now, I want to come to the plans for 2013, if I may, which is volume - I think it's volume 3 still. Volume 4. Sorry. If you start that document at page 1157. Is that the plan for 2013 that you prepared for Mr Baxter?---It looks like it, yes.

And you will see that - if you go to page - just pardon me one moment. Sorry. Page 1177. This is the crop plan for Mallet Hill. Now, do you recall whether that was one of the paddocks that Mr Baxter had identified as having trouble with herbicide resistant rye grass?---Mallet Hill hasn't, no.

So it's not, to your knowledge, a problem paddock?---No, it's not. It hasn't been in crop for a long time.

Now - well, when you say it hasn't been in crop, it was in crop in '11, '12 and '13?---Yes. And I don't think it has been in crop prior to that.

But they weren't actually cropped in '11, '12 and '13, is that what you are saying?---No, sorry, prior to '11 - - -

Prior?--- - - - I don't think it had a crop in it.

Now, this is - the recommendation of the crop plan identifies canola IT. Now, that's the tolerant - - -?---Imidazolinone.

Imidazolinone, thank you, Mr Robinson. Now, IT hadn't been planted on Seven Oaks for many years, isn't that right?---Yes.

So this was the first time that IT had been planted for many years?---I'm not sure but it probably might - would be, yes.

What was the reason to choose IT for Mallet Hill?---The particular variety of IT was quite a high yielder and IT at that point in time, and I still think it is now, is probably the highest economic, most profitable canola variety or canola type.

And you will see that what's recommended here is, in mix 1, glyphosate and propyzamide?---Propyzamide, yes.

Propyzamide is a herbicide?---Yes.

It's not a label for canola, is it?---No.

Why did you recommend using propyzamide against the label?---Because we know it's safe on canola. It's - - -

CAHILL, MS: I object on the grounds of relevance, your Honour.

KENNETH MARTIN J: Do you want the witness out to respond?

NIALL, MR: Yes, your Honour.

KENNETH MARTIN J: Right. Mr Robinson, would you mind just waiting outside for a few minutes. There's a legal matter we have got to address and I will try and have you back as soon as possible?---Now, your Honour?

Yes, thank you.

(THE WITNESS WITHDREW)

NIALL, MR: Your Honour, part of the defence is that the - - -

KENNETH MARTIN J: This can only go to nuisance, can't it, 2013.

NIALL, MR: Yes, your Honour. Yes, your Honour. And part of our defence - part of the defence, as we understand it, is likely to be reliance on independence agronomist advice. Now, I'm entitled to test with this witness the nature and

the character of the advice he is giving and has given on this farm in the relevant years.

KENNETH MARTIN J: Well, he has being asked, as I understand it, about non-GM canola planted on Mallet Hill. Non-GM canola is not controversial in terms of anything, as I understand it. GM-canola certainly is but, more particularly, your questions in terms of using propyzamide, which is not on the label for this particular variety of canola.

NIALL, MR: I will get the witness to explain that, your Honour, and that does require a little bit of explanation. But the evidence will be, I apprehend - - -

KENNETH MARTIN J: So it's challenging this witness's competence in terms of an advisor about what chemicals to use or not to use?

NIALL, MR: The legitimacy of the advice that he has given to this farmer in relation to the decision to recommend RR in 2010 in circumstances where we will be submitting to your Honour there was no testing, no proper foundation of resistance, completely - - -

KENNETH MARTIN J: Testing of the resistance of the wimmera rye grass - - -

NIALL, MR: Testing of the resistance - - -

KENNETH MARTIN J: - - - for its responsiveness to glyphosate.

NIALL, MR: Complete unsatisfactory basis for the recommendation of the two paddocks, particularly, your Honour, in circumstances where the location of the paddocks is a relevant issue and the ability to pick alternative paddocks.

KENNETH MARTIN J: Perfectly understand all that.

NIALL, MR: And then we move through, your Honour. So one has to see it as a whole package, in our respectful submission, and one comes to 2013 - and this is subject of some evidence we have led without objection by Mr McInerney, so it would come as no surprise to our learned friends that Mr McInerney identified it as being used off-label, that is, without the proper - and then, also, I want to ask the witness about the use of glyphosate crop topping. So it's part of the segue into the use of glyphosate crop topping which, your Honour, is

post-emergent. Your Honour has heard throughout the case that you can't use glyphosate on canola after it's emerged.

KENNETH MARTIN J: I think I heard some evidence both for and against that proposition at various points.

NIALL, MR: No. Everyone - non-GM canola - - -

KENNETH MARTIN J: Non-GM, no glyphosate.

NIALL, MR: That's right. This is - this is what I will ask the witness about. This is IT canola, non-GM.

KENNETH MARTIN J: Yes.

NIALL, MR: And glyphosate is being sprayed after harvest.

KENNETH MARTIN J: Yes.

NIALL, MR: After - before harvest but after germination.

KENNETH MARTIN J: Yes.

NIALL, MR: So that's - this is an exception to the rule that your Honour has heard which I wish to explore with the witness and it's used in a particular way.

KENNETH MARTIN J: Well, I will allow questioning about glyphosate, there's no problem with that. In terms of
- - -

NIALL, MR: Well, there's a relationship between the two, your Honour, because - - -

KENNETH MARTIN J: Propyzamide, I'm still to be convinced about why that is relevant in admissions context anyway.

NIALL, MR: Well, it provides a basis for us to challenge the legitimacy of the agronomist's advice that they are getting - that they are relying on and, secondly, the position of glyphosate 450, your Honour, being used as a crop topping, I'm going to ask the witness as to whether that is a permitted use of glyphosate on canola.

KENNETH MARTIN J: I have no problem with that.

NIALL, MR: Well, if it be the case that the witness agrees that neither that use nor propyzamide are authorised - and when I said off-label, what that goes to, your Honour, is that the AVPMA publishes a label for every restricted herbicide and it can only be used in - the label

is approved and its use can only be in accordance with that label. Now, the two issues I would seek to challenge - to address with the witness is the use of propyzamide and the use of glyphosate 450 as a crop topping approach to canola IT. And if they are both legitimate, your Honour, they also provided an alternative to Roundup-Ready canola in 2010.

Because this is one of the paddocks that Mr Baxter has identified as a problem paddock. Now, this witness says he didn't - doesn't understand it to be a problem paddock, but in Mr Baxter's evidence, paragraph 34 subparagraph (iv) he identifies Mallet Hill as a problem paddock - that is problem for glyphosate weed resistance. We are also entitled, if the - in terms of the negligence claim, your Honour, in our respectful submission, to - if the advice is that part of the duty of care was discharged by reference to the receipt of agronomist's advice and that agronomist's advice is part of a sequence of periods of advice including postdating the negligent act, we are entitled to test that with a view to your Honour forming some conclusions about the advice that was given in 2010.

KENNETH MARTIN J: All right.

NIALL, MR: If your Honour pleases.

KENNETH MARTIN J: Ms Cahill.

CAHILL, MS: Yes. I can't see how it could possibly be suggested that an attack on the reasonableness of advice given by an agronomist in 2013 can inform your Honour's assessment about the ability to rely upon that advice in 2010. What your Honour would need to, for the purposes of the negligence action, consider, if anything, is the reasonableness of the advice in 2010 and the appearance to Mr Baxter of that reasonableness - he wasn't questioned about any of this - as to whether the advice was so apparently unreasonable that he ought not to have relied upon it.

KENNETH MARTIN J: Advice in 2010.

CAHILL, MS: Indeed. And it wasn't - even the advice in 2013 wasn't touched upon in that way insofar as it went to nuisance. But I ask rhetorically, how could that be relevant to a claim in nuisance which seeks to restrain the - as we understand it - the sowing of RR canola permanently in the future, within one kilometre of - - -

KENNETH MARTIN J: In a kilometre.

CAHILL, MS: - - - the boundary and/or swathing. Now, surely there would have to be some evidence of inherent unreasonableness in any advice from an agronomist that went to those two acts in terms of their benefit to Mr Baxter and the reasonableness of performing those actions from here forward. To suggest that in some way there can be this collateral attack. It goes - the submission obviously extends into this whole attack that has been made upon Mr Baxter and what is put as allegedly his overuse of glyphosate. We will have something to say about that in closing but the point is this, how can these collateral attacks in any way affect or bear upon these central questions of whether or not it was a reasonable activity to plant RR canola on a boundary in 2010 and to swathe it? How could it be relevant to a claim for a permanent injunction to grow RR canola on a boundary from hence this time forward and swathe it?

And one only has to come back to identifying what the case is actually about, the touchstone of the pleading, paragraph 36 of the amended statement of claim, and remind ourselves about that to expose how far the plaintiff's case has strayed. The reason it has strayed is something that I'll be making a great deal about in closing submissions, your Honour, but we're at a late stage in the evidence. This is, we say, quite plainly irrelevant.

KENNETH MARTIN J: Yes, all right. I'm just rereading paragraph 36. Did you want to make any further submission, Mr Niall?

NIALL, MR: We will just make reference to paragraph 23 of the defence where in subparagraph (2)(e):

Baxter planted and swathed the RR canola after being advised to do so by an agronomist engaged by Baxter to advise him on the management of Seven Oaks.

That's a defence to the breach of duty and we're entitled to test this witness's practices.

KENNETH MARTIN J: I don't think you can second guess him though really, can you? I mean, if his advice was to plant opium or something like that you might well say that the recipient of the advice ought to be sceptical about what he's hearing. But if these are just on the ground valued assessments with all the facts by the farmer and his agronomist, it's very difficult to second guess him and then say the farmer shouldn't have relied on the advice. And Ms Cahill's point troubles me really, in terms of this

not being put to Mr Baxter about not acting on the advice for some reason. I mean, why shouldn't he act on the advice of - that ought to at least have been put to him, wouldn't it?

NIALL, MR: Well, no, your Honour. I'm just exploring with this witness his paddock plans, which he has provided through and up to the most recent one and presumably will continue to do so.

KENNETH MARTIN J: Yes.

NIALL, MR: And we're entitled, in our respectful submission, to explore with the witness the basis upon which he is providing advice in relation - - -

KENNETH MARTIN J: But you're seeking to undermine his advice ultimately, aren't you?

NIALL, MR: Yes, your Honour.

KENNETH MARTIN J: Yes.

NIALL, MR: We're seeking - in our submission, we would be saying it provides no foundation for the defence that the defendant seeks to make about the use of it and we'll do so on a number of bases in closing submission, including the nature of the evidence that this witness has given and including his competence and what he is advised on.

KENNETH MARTIN J: I don't see how you can open up a collateral war on the competence of someone who is not a part to the action in circumstances where your case is not that his advice is so demonstrably outrageous that no reasonable person receiving that advice would act on it. When he's ostensibly competent, he gives the advice - - -

NIALL, MR: The - - -

KENNETH MARTIN J: The advice is acted upon and then - but, again, come back Ms Cahill's point, it's not put to the recipient of the advice that it was so crazy he shouldn't have acted on it.

NIALL, MR: Well, it's not - with respect, that's not the test. The test is not whether it's so crazy that no-one could have relied on it. The defendant says we rely on an agronomist's advice. We will be submitting that proper instructions weren't given to the agronomist, the agronomist was proceeding on a false basis in a number of respects or an uninformed basis. We will be submitting

that the agronomist, on his evidence about his decision to recommend Roundup-Ready canola, had no proper foundation and it accorded with Mr Baxter's own view, which I put perfectly clearly to him, that the only thing he was interested in from 2008 was planting Roundup-Ready canola. And then it became available to him in 2010 and he jumped on the bandwagon as soon as he could.

KENNETH MARTIN J: All of that I understand.

NIALL, MR: We put all of those things - - -

KENNETH MARTIN J: And all of that I'm more than happy to hear argument about, but come back to this man, who is not on trial - - -

NIALL, MR: No, your Honour.

KENNETH MARTIN J: He's a witness, professional advisor.

NIALL, MR: But the defendant can't say, well, I'm going - - -

KENNETH MARTIN J: And now his competence is being - I understand the competence challenges that have gone to the advice in 2010 - - -

NIALL, MR: Yes, your Honour.

KENNETH MARTIN J: - - - all of which is in, but when you come to 2013 in a non-GM paddock, I mean, that's a long way away from the boundary.

NIALL, MR: Well, as we understand it, the defendant is still seeking to rely on advice going forward. That's the basis upon it on which he will act. Now, in our submission - - -

KENNETH MARTIN J: Well, I mean, but it would be advice about growing GM canola.

NIALL, MR: Well, part of the debate will be the choice of GM canola and non-GM canola. This is a non-GM canola paddock and it may be that the witness can say there was a very good reason for IT canola, using these products in this way, to deal with a paddock which Mr Baxter identifies as critical.

KENNETH MARTIN J: Well, if you can - - -

NIALL, MR: And - - -

KENNETH MARTIN J: If you can frame a question that directs his attention back to the 2010 decision by reference to the 2013 document in terms of that being a strategy that might have been deployed with these chemicals back in 2010, then I would allow that question. But as currently framed in terms of challenging the merits or demerits of 2013 advice about non-GM canola, it just seems to me framed in that way not to be relevant.

NIALL, MR: If your Honour pleases.

KENNETH MARTIN J: All right. So we will have Mr Robinson back.

ROBINSON, CHRISTOPHER DAVID:

KENNETH MARTIN J: Thanks, Mr Robinson. Mr Niall will ask you another question.

NIALL, MR: Mr Robinson, if I could just take you to page 1177?---Yes.

I'm just trying to understand a couple of things about this. So this is IT canola we've established and then as a mix 1, first knockdown, you have identified three herbicides. Correct?---Yes.

And then at mix 2 there's clethodim 240?---Yes.

And then mix 3, glyphosate 450. Now, this paddock was identified by Mr Baxter as a paddock where he believed there was a significant problem of herbicide resistant rye grass. Would this sequence of herbicide application deal with herbicide resistant rye grass?---Depends on what it's resistant to.

Well, what about if it was resistant to clethodim?---It would severely drop its numbers, yes.

KENNETH MARTIN J: Weed numbers?---Yes, weed numbers, sorry.

NIALL, MR: And just - the glyphosate 450 is being used and it's described as crop topping?---Yes.

Now, that is applied after the canola plant has grown and matured. Is that right?---Yes, it has matured, yes.

It's still growing?---It's at the end of its growth.

So it has produced seed pods?---Yes.

And it's - is it - - -?---It's around about, what - the timing is around about 50 per cent colour change of the crop. So as it's changing to a brown colour.

And won't the glyphosate kill the canola?---It's ready to be killed anyway, to be harvested.

So you can apply the herbicide glyphosate close enough to harvest - - -?---Yes.

- - - that you get the benefit of the crop?---Yes.

And the benefit of the glyphosate?---Yes. For - well, depends on (indistinct) asking it for.

Well, the benefit of the glyphosate is it will remove any late germinating rye grass?---Not entirely. It matures the crop faster as well, so you can harvest it earlier.

So it - does it do two things? Does it desiccate the crop?---Yes. Desiccates the crop.

And, secondly, it kills late germinating rye grass?---Some of the - because it depends how thick the crop is. If it's a thick canopy, the glyphosate won't penetrate the canopy and get the rye grass underneath. If it's a thin canopy then it can get through.

So it's - - -?---I think I said that right. So if it's a thick canopy it can't get through, or less of it gets through. If it's a thin canopy, more will get through, to get the rye grass.

Glyphosate has to touch the plant, doesn't it? It's a contact herbicide - to the leaf?---Yes.

So that's an example where you use glyphosate post-emergent?---Yes. Well, yes, at post - yes, post-emergent. Yes.

That was a mode that you could have adopted in 2010?---Not on - well, we could have done, if I - if we thought it was going to achieve the results that we were after.

Well, why did you do it in 2013?---I don't know if it was done. It was in the plan, but I don't know if it ended up being done.

Fair point, but why did you recommend it in 2013?---Because it could be an option that we could use during the year.

So is it within the label for glyphosate-450 to do crop topping in canola, Western Australia?---I know they're working on it; I'm not sure if it is yet. I think it's on the label of Roundup PowerMax, which is another type of glyphosate.

And in - - -

KENNETH MARTIN J: Roundup PowerMax, is that - - -?---Yes. It's a brand of glyphosate, and I think it was supposed to go on last year, but I don't know if they got to it or not.

NIALL, MR: So this could have been used - this method that you display at 1177 could have been used in 2010?---It could have been used - yes, it could have been used. Yes. But we would have overused - we would have used a lot of glyphosate in that year.

They're the only questions I have, if your Honour please. Thank you.

KENNETH MARTIN J: Yes. Thank you, Mr Niall.

CAHILL, MS: Can I just have a moment - - -

KENNETH MARTIN J: Any re-examination?

CAHILL, MS: Can I just have a moment?

KENNETH MARTIN J: Yes. By all means, Ms Cahill.

CAHILL, MS: Nothing in re-examination.

KENNETH MARTIN J: No re-examination? All right. Mr Robinson, that completes your evidence. You may be excused. Thank you.

(THE WITNESS WITHDREW)

CAHILL, MS: Your Honour, can I take you to Professor Powles' set of three reports.

KENNETH MARTIN J: Just let me clear the debris. Yes. I've got the three reports.

CAHILL, MS: Just the first one, 6 August 2012.

KENNETH MARTIN J: Yes.

CAHILL, MS: Your Honour will see, if you take up the last two pages, at the bottom of the second last page there's a part 15.

KENNETH MARTIN J: Yes.

CAHILL, MS: And if that is the three lines of part 15 there are struck through - - -

KENNETH MARTIN J: That's the question in italics?

CAHILL, MS: Yes.

KENNETH MARTIN J: Yes.

CAHILL, MS: And then over the page, reasons which, when your Honour comes to it, will seem obvious. Those two paragraphs are deleted, given the preface to the first paragraph.

KENNETH MARTIN J: Yes.

CAHILL, MS: I think with that deletion there's no objections to any of the statements.

KENNETH MARTIN J: All right. So that takes care of the first and all statements of Professor Powles.

NIALL, MR: That's so, your Honour. There are three.

KENNETH MARTIN J: Very good.

CAHILL, MS: So I will call Professor Powles.

KENNETH MARTIN J: Very good. We will have Professor Powles. Yes, Professor. Please come forward to the witness box if you wouldn't mind. Just indicate to my orderly if you would like to take the oath or the affirmation.

POWLES, STEPHEN BRUCE affirmed:

KENNETH MARTIN J: Ms Cahill.

CAHILL, MS: Thank you, your Honour. Professor Powles, your full name is Stephen Powles?---Stephen Bruce Powles.

Thank you. Your address is 10 Lifford Road, is it?---Yes.

Floreat in Western Australia. I'm just going to hand to you your three reports that you've prepared for the purposes of these proceedings. If you go to the first one, Professor, and to the last two pages?---Yes.

And you will see, at the bottom of the second last page, that the last three lines are deleted in red?---Yes.

And then over to the next page, the next two paragraphs are deleted, yes?---Correct.

That's for reasons to do with the admissibility of evidence. But, subject to that amendment, Professor, can I ask you about this report of 6 August 2012. Insofar as it contains statements of fact, are those statements true and correct?---Yes.

And insofar as this report contains statements of your opinion, are those opinions honestly and reasonably held?---Yes.

Thank you. Now, I will just tender them all in a group at the end, your Honour.

KENNETH MARTIN J: Yes, indeed.

CAHILL, MS: Your next report is a supplementary report, dated 4 November 2013?---Yes.

Yes?---Yes.

Signed by you on the last page?---Correct.

And, to the extent that this report - this supplementary report contains statements of fact, are they true and correct?---Yes.

And, to the extent it contains statements of your opinion, are those opinions held honestly and reasonably by you?---Yes.

Thank you. And then finally, your last supplementary report, dated 24 November 2013 - - -?---Yes.

- - - signed by you on the second page, yes?---Photographs?

Sorry. On the second page, you've signed? So - you might not have the front page. On the first page you've signed, have you? Yes?---Correct.

KENNETH MARTIN J: I think it's a one page report, is it not?

CAHILL, MS: Yes. Yes. Just had a cover page which was distracting me. And then there's three pages of photographs behind that?---Correct.

Thank you. Now, about this statement. To the extent that it contains statements of fact, are they true and correct?---Yes.

And, to the extent that it contains your opinions, are they honestly and reasonably held by you?---Yes.

Thank you. I tender those three reports, your Honour.

KENNETH MARTIN J: Yes. Very well. The three reports of Professor Powles, dated, respectively, 6 August 2012 as the first report, followed by the report of 4 November 2013 as the second, or supplementary report, as it's called; and then the final report, being the one page, of 24 November 2013, with some attached photographs, will be, respectively, exhibits 32A, 32B and 32C.

EXHIBIT 32A Defendants DATE 06/08/2012
First report of Professor Powles

EXHIBIT 32B Defendants DATE 04/11/2013
Second report of Professor Powles

EXHIBIT 32C Defendants DATE 24/11/2013
Third report of Professor Powles, one page, with attached photographs

CAHILL, MS: Thank you, your Honour. No further questions from me.

KENNETH MARTIN J: Very well. Cross-examination.

NIALL, MR: If your Honour pleases. Professor Powles, I just want to ask you some questions about glyphosate, if I may?---Yes.

In terms of its significance to agriculture and food production, could you place glyphosate in that sort of context as to how significant it is?---Glyphosate is important in what we might call broad acre crops; things like wheat, etcetera, where it is a part of the production

system. It's less important in some other food stuffs, but, for the broad acre crops, it's an important herbicide.

And, in terms of important herbicide, you would compare it in relation to food production to penicillin in relation to human health, wouldn't you?---I have - penicillin, of course, as you know, is extremely important to the sustainability of human health. And good herbicides, like glyphosate, are important to food production.

And glyphosate is a very rare - in the sense, it's a once in a generation or once in a lifetime herbicide, isn't it?---It's rare in the sense that it's a chemical that is as good as glyphosate is only found infrequently.

And its continued effectiveness is essential for broad acre cropping in Western Australia?---It certainly is important for ongoing crop sustainability.

And one of the risks of glyphosate use or continued use is over-reliance on glyphosate. Do you agree with that?---Over-reliance on glyphosate in this state, nation, and elsewhere in the world places its sustainability at risk.

Yes, and that's because if you overuse it, it increases selection pressure on naturally occurring glyphosate resistant weeds, which - is that right?---That is correct.

And that leads to the development of a population of glyphosate resistant weeds?---It can do so.

And then, correspondingly, the decreasing of the effectiveness of glyphosate?---It can do so.

And that process is called resistance or the development of herbicide resistance?---That is correct.

And glyphosate resistance is well established within Australia?---It is.

Including in Western Australia?---It is.

Including in the south of Western Australia?---It is. It should be pointed out that right now the great majority of weed populations remain susceptible to glyphosate with around about - probably around one per cent of fields in Western Australia containing some glyphosate resistant plants.

Once that has the potential to grow, it could grow exponentially, couldn't it?---Without - it can. It's all about how it's managed.

Yes. And the way you manage it is that you don't use it on an annual basis. Correct?---The best way to use it is with diversity.

Yes?---Now, that may involve not using it every year or certainly if you did use it every year, to use it with diverse practices.

But certainly using glyphosate year in, year out, every year over a decade in the same paddock would be poor agronomic practice?---In my view, yes.

And it would be agronomic practice which was significantly likely to increase the risk of glyphosate resistance?---Certainly, we - so in answer to your question - can you just say that question again for me please?

Yes, of course. Using it year in continuously over a decade is significantly likely to increase the risk of glyphosate resistance on that property?---Yes, it would be ameliorated by other practices of diversity.

But because other practices could reduce the weed burden and therefore compensate for the fact that some glyphosate resistant weeds might be killed in another way?---Yes, so therefore preventing seed production.

Now - but that itself requires, certainly on a herbicide approach, if the other mode of treatment is another herbicide, that also would need to be diversified?---No, there are both chemical and non-chemical ways to do so.

Yes, but just - I understand that but just looking at - if the other mode of action is a chemical mode of action, that too would need to be diversified?---Well, it would depend how often that alternative chemical or chemicals was used.

And you would say - in fact, you've said many times in relation to herbicide selection, if you're on a good thing don't stick to it?---Yes, sir.

And what you mean by that is that if you're getting good weed resistance - a good weed kill with a particular herbicide, you should stop using it and rotate it with another one. Correct?---Yes, that is a good practice to follow. Diversity is the important thing.

But also diversity before a problem is identified?---The more diversity, the better chance of sustainability.

And certainly if herbicide resistance is identified on a property, that means that you should be more diverse with all of your chemicals - all of your herbicides?---Diversity is something that should be strived for.

Now, when you say strive for, Professor Powles, it's more than an aspiration, isn't it?---It is within economic reality - - -

Well, when you say - - -?---- - - the amount of diversity that a farmer can implement.

Yes, but it's more than a question of aspiration or economic factors in circumstances - if you're using glyphosate every year on the same paddock, that is likely to have significant financial implications over a longer term, is it not?

KENNETH MARTIN J: Positive or negative?

NIALL, MR: Negative?---The economic analysis is confused on whether that is the most economically rational strategy or not.

All right. So if a farmer uses herbicide - glyphosate herbicide every year with the expectation that glyphosate resistance won't emerge for a long time, would not - and therefore continuing that practice, would not be acting reasonably from an agronomist's perspective?---No, a great majority of crop farmers in Australia are using glyphosate every year. They are using it with sufficient diversity that they have a good chance of it being sustainable.

And the diversity would require non-herbicide modes of killing weeds?---It would ideally have both chemical and non-chemical. Some would be relying on chemical diversity and some - by chemical I mean herbicide diversity, and some would be relying on the combination of chemical and non-chemical tools.

But without that level of diversity that you have just identified, either herbicide or non-herbicide, the - - -

CAHILL, MS: Well, sorry, I'm not sure that Professor Powles has identified a level of diversity. He has just identified diversity in his answer to your other - - -

KENNETH MARTIN J: This is the preface to the question I think, without that level it's objected to I think. I uphold the objection.

NIALL, MR: I will withdraw that question. Now, you identify in your - sorry, there's something else. You were asked in your first report at question 11:

The disadvantage, if any, to the agricultural industry of growing GM canola in the traditional grain growing areas of Western Australia.

Do you see that, Professor Powles?---Yes.

And you identify some disadvantages there. One disadvantage you would agree with, that it has the potential to increase glyphosate use?---Yes.

And that's a disadvantage, is it not?---It's a factor that needs to be managed.

Yes, and if it's not managed it's deleterious?---If it is not managed.

So the - in paragraph 11 you could add as a disadvantage the potential for increased use of glyphosate that's not managed?---It was all about the management and the degree of diversity.

Well, do you agree with the proposition, that you can add to a disadvantage the increased use of glyphosate if it's not managed?---Yes.

Now, could the witness be shown this, please. Are you able to identify that, Professor Powles?---In every way, that looks like canola.

Yes. Now, I just want to ask you some questions about the structure of canola by reference to that - - -

KENNETH MARTIN J: Sorry. Just for the transcript, Mr Niall, could you just identify - a reader of the transcript may not actually know what was actually being passed to Professor Powles.

NIALL, MR: Thank you, your Honour. I've handed to you, Professor Powles, a swath of canola. Perhaps you could describe its constituent parts to his Honour. Perhaps holding it up, and just so that you can - his Honour has heard - read quite a lot about it in this case. If you

could just identify the various constituent parts of the canola swath?---It's not a bouquet; it's the above ground parts of the mature canola plant, which, effectively, is a carcass at this point, with the mature seed pods, within which the canola seed matures. And much of that canola seed has already been shattered from those pods.

KENNETH MARTIN J: Thank you. And it's about, what, just over a metre high from - - -?---I would say that the - when the tap plant was in the field, it would have been of the order of a metre.

All right. Thank you very much.

NIALL, MR: Now, I just wanted - just while it's up, just to help - if it's some assistance, your Honour. You - the crop will be harvested when it's what colour?---Usually when it has lost the greenness and approaches the colour, not as brown as this one, but when it loses greenness.

And, each plant, does it have multiple stalks, or is it this multiple plants?---No. There are usually - it depends on the season, but there are usually multiple stalks.

Yes. And multiple stalks belonging to a single plant?---Yes. They can be single stalks.

And up the stalk of the - or the various stalks of the canola plant, come off the pods?---Correct. Secondary branches and pods, which contains these.

And each pod - could you give his Honour some indication of how many seeds might typically be found in a pod?---I'm guessing, but it's between 20 - depends on the season, whether it's a dry season or a good season, but between 20 to 80. It's a variable number.

KENNETH MARTIN J: 20 to 80 seeds per pod?---Yes.

And how many pods, likely, to a plant?---Yes. I - it really depends on the size of the plant, and I can't tell you those exact numbers. It varies according to the size of the plant, the conditions that prevail for the last month of the growing season.

Sure?---But there's a variable number, and there can be quite a few seeds within a pod.

NIALL, MR: And the seeds, when they're ripe, hold the oil which produces the - are ultimately pressed and produce the

canola oil, and that's - the seed is the product for which the plant is grown, is that right?---That's correct.

Now, the seeds, when they're mature at harvest time, what colour are they?---The seeds are very dark, usually a pepper colour.

And they've been described, I think - and seek your opinion on this - as like a mustard seed - - -?---Yes.

- - - in size and dimension?---They're in the same family as mustards, very often. They're a small round seed.

Brown towards the black?---Correct.

Thank you. And when they are harvested, the seeds, you would expect that the seeds would be fertile, in the sense that they, too, could germinate?---That's correct.

Now, I tender that, if your Honour pleases.

KENNETH MARTIN J: Yes. Very well. No objection, Ms Cahill?

CAHILL, MS: No, your Honour.

KENNETH MARTIN J: We will receive the swathed canola plant that has been identified in evidence by Professor Powles as exhibit 33.

EXHIBIT 33 Plaintiffs
Swathed canola plant, identified by
Professor Powles

NIALL, MR: Now, if I could just go back to your first report, Professor Powles, question number 4, but over the page. Now, in that paragraph, the middle paragraph, where you see "in some situations in the WA"?---Yes.

And you refer to what might happen if volunteers are - volunteer canola plants are growing in a pasture. You say:

Some volunteer canola seedling emergence occurs and is present as a component of the pasture sward.

So I take it by that reference to "sward", is just the grassy paddock?---So in Australian agriculture we often have a rotation between a crop one year and a pasture in the following year. In that pasture year, it's not a seeded pasture; it is what's called a volunteer pasture, in which, whatever species are in the soil can germinate,

and, typically, that is a - that pasture consists of many species, both desirable and undesirable species.

And in the case of volunteer canola seedlings, they would initially emerge as a small green plant, much like any other?---Correct.

And, across a paddock, they would be exceedingly difficult to identify as canola?---If the volunteer pasture is comprised of many species, yes, it is difficult to identify.

Thank you. And in terms of grazing, the pasture is obviously often, in broad acre agriculture, stock are then grazed on the paddock - on the pasture, and it becomes the feed for the - for the - - -?---That's correct.

Yes. Thank you. They're the only questions I have for Professor Powles. Thank you, your Honour.

KENNETH MARTIN J: Yes. Thank you, Mr Niall.

CAHILL, MS: Nothing, your Honour. Nothing in re-examination.

KENNETH MARTIN J: Yes. There's no re-examination?

CAHILL, MS: No.

KENNETH MARTIN J: Professor Powles, that completes your short evidence. Thank you very much for assisting the court. You're excused?---Thank you. Thank you.

(THE WITNESS WITHDREW)

CAHILL, MS: Your Honour, in relation to Mr Slee, who's our final witness, if I can hand up to your Honour an amended version of the witness statement - or, should I say, a struck through version.

KENNETH MARTIN J: Thank you.

CAHILL, MS: Your Honour will see in the executive summary on page 5 - - -

KENNETH MARTIN J: Yes.

CAHILL, MS: - - - in the second paragraph, the words "some sectors of the industry would have liked to see this standard become mandatory", which is deleted. And then
- - -

KENNETH MARTIN J: Yes. I see all the red crossings out.

CAHILL, MS: Yes. And then on page 9, should have the first four lines under section 3.

KENNETH MARTIN J: I see that.

CAHILL, MS: Over in page 10, the balance of the page after the - from where the quote "87 certifying agents" commences.

KENNETH MARTIN J: Yes.

CAHILL, MS: And then on page 11, the last sentence "as per chart one", and then the chart itself is removed.

KENNETH MARTIN J: I see that.

CAHILL, MS: And I think, with those deletions, there are no objections to the statement.

KENNETH MARTIN J: All right. What do we describe Mr Slee as in terms of his field of expertise?

CAHILL, MS: He is effectively a grain expert. He's the one who is - has had membership of various grain industry bodies; I think that's the best way you would describe it. His qualifications are set out at page 4, your Honour.

KENNETH MARTIN J: Yes, I see that.

CAHILL, MS: Just at the top.

KENNETH MARTIN J: All right. All right, if we could have Mr Jonathon Slee. I'm assuming that takes care of all the objections.

NIALL, MR: Yes, it does, your Honour.

SLEE, JONATHON WILLIAM sworn:

KENNETH MARTIN J: Yes, Ms Cahill?

CAHILL, MS: Thank you, your Honour. Mr Slee, your full name is Jonathon William Slee?---That's correct.

And can you state your residential address for the court, please?---That's 112 Roberts Road, Kelmscott, Western Australia.

Thank you. Now, I'm just going to hand you a copy of your witness statement, and I would just like you to leaf through it and just note the deletions at pages 5, then over to page 9, and then page 10, and then over to page 11. Now, Mr Slee, those deletions have been made because of arguments about admissibility of evidence - legal arguments - and I ask you this: with those amendments, are the statements of fact that are contained in your report true and correct?---Yes (indistinct)

And the opinions that you express in your report, are they honestly and reasonably held by you?---Yes, that's correct.

I tender that report, your Honour.

KENNETH MARTIN J: Yes, thank you. The expert report of Jonathon Slee dated 18 November 2013 with the excisions marked in red from that report and now tendered will be exhibit 34.

EXHIBIT 34 Defendants DATE 18/11/2013
Expert report of Jonathon Slee with the excisions marked in red

CAHILL, MS: Thank you. Now, Mr Slee, can I take you to paragraph - page 8 of your report, where you refer there to the Australia Certified Organic Standard?---Yes.

And can I show you this document. Is that a copy of the Australia Certified Organic Standard?---Yes, I believe so.

That's referred to at page 8 of your report?---Yes.

I tender that, your Honour.

KENNETH MARTIN J: Is this the standard referred to in the heading of section 2, Australian Certified Organic Standard 2010?

CAHILL, MS: You see down the bottom, the second half of the page, and it says Australian Certified Organic Standard ACOS, your Honour?

KENNETH MARTIN J: Yes.

CAHILL, MS: That's that document. Is that so, Mr Slee?---Yes, that's correct.

And can I ask you please to identify this document?

KENNETH MARTIN J: Well, I will just receive the standard.

CAHILL, MS: I'm sorry.

KENNETH MARTIN J: Since you are tendering it as exhibit 35.

EXHIBIT 35 Defendants
Standard referred to in heading of
section 2.

CAHILL, MS: What is that document, Mr Slee?---This is section 1 of the Australian Oilseed Federation Quality Standards And Technical Information.

And what is the significance of those standards?---These form the basis of our standards for all the oilseeds in - that are grown in Australia. They are generally used by industry as a receival standard but are often used as a trading and contract standard as well.

Thank you. I tender that document, your Honour.

KENNETH MARTIN J: No objection.

NIALL, MR: No, your Honour.

KENNETH MARTIN J: Very well. The Australian Oilseeds Federation Inc Quality Standards - - -

CAHILL, MS: I should just clarify before your Honour completes describing the exhibit. That's a version as at July 2009, is that right?---Yes, correct.

KENNETH MARTIN J: Where is this referred to in Mr Slee's report, is it?

CAHILL, MS: It's not referred to.

KENNETH MARTIN J: It's not. Okay.

CAHILL, MS: But you will see reference to it in other people's reports, your Honour, and we will direct you to that in closing.

KENNETH MARTIN J: All right. Very well. It will be exhibit 36.

EXHIBIT 36 Defendants
 Section 1 of Australian Oilseeds
 Federation Inc Quality Standards - 2009
 version.

CAHILL, MS: And then this document, Mr Slee. This is the same standard but the current version?---That's correct.

Thank you. I tender that, your Honour.

KENNETH MARTIN J: All right. The Australian Oilseeds Federation Incorporated Standard - this one designated as 2013/14 issue 12, 1 August 2013, will be exhibit 37.

EXHIBIT 37 Defendants
 Australian Oilseed Federation Inc
 Standard - 2013/14 issue 12 dated
 01/08/2103

CAHILL, MS: Thank you, your Honour, no further questions.

KENNETH MARTIN J: Thank you. Cross-examination?

NIALL, MR: Thank you, your Honour. Mr Slee, you prepared this report, which has just been admitted into evidence, as a result of a letter of instruction from Bradley Bayly Legal, is that correct?---That's correct.

And I want to hand you two of those - you received a number of letters of instruction, didn't you?---I did.

If I could hand up a set of two - that's across the bar table. Just - I will just get you to identify them, firstly, Mr Slee. If you got to the one first in time, it's 28 May 2012, do you see that?---Yes.

And was that a letter of instruction about your - well, at least a letter of introduction for the purpose of seeing whether you will provide expert evidence?---Yes.

And you will see there that a number of matters, some 15 matters were identified that would be addressed in an expert report. You see those, one to 15?---Yes, I do.

Right. Now, you didn't provide a report in response to this letter, did you?---No, there was - - -

Thank you. All right. I tender that, if your Honour pleases.

KENNETH MARTIN J: No objection, Ms Cahill?

CAHILL, MS: No, your Honour.

KENNETH MARTIN J: The Bradley Bayly letter to Mr Slee of 28 May 2012 will be exhibit 38.

EXHIBIT 38 Applicants DATE 28/05/2102
Bradley Bayly letter to Mr Slee

NIALL, MR: Now, subsequent to that on 22 August, did you receive another letter from Bradley Bayly seeking some - an expert report on a more limited range of issues?---Yes, I did.

And is that the letter of 22 August 2012 in front of you?---That's correct.

Right. And you will see the first question you were asked in the prefatory words:

In as far as the following matters are within your field of expertise, please comment on...

And there's five matters - seven matters to comment on. Do you see that?---Yes.

And the first one deals with standards to organic farming?---Yes.

And each - and two refers to again, organic standards?---yes.

Four, five, six and seven all relate to organic farmings or organic certification, don't they?---That's correct.

Right. I tender that, if your Honour pleases.

CAHILL, MS: No objection, your Honour.

KENNETH MARTIN J: Very well. The Bradley Bayly letter of 22 August 2012 to Mr Slee will be exhibit 39.

EXHIBIT 39 Applicants DATE 22/08/2102
Bradley Bayly letter to Mr Slee

NIALL, MR: And you regarded yourself as able to provide an expert opinion on those matters?---Yes.

Now, can I come to your report, Mr Slee, and take you over to your qualifications and experience. Do you see that?---Yes.

Now, if you look at Education, you identify three aspects of your education. None of those were in organic agriculture?---No, that's correct.

None of those - as part of those studies, you didn't have any formal education in relation to the development or understanding or critiquing of organic standards?---No, I haven't.

So you have got no education qualifications which are relevant to the seven questions that you were asked on 22 August, is that right?---I have qualifications in setting and reviewing of standards on that. I haven't had exposure to setting of organic standards.

No. My question was related to your agriculture. Were they - your education. Were they related to setting of standards, were they, specifically?---No, not specifically, no.

And certainly nothing to do with organic farming or organic agriculture, do you agree with that?---I agree with that.

Now, in industry positions you identify - or, perhaps, before I do that, I will do employment. Now for the last six years, you have been director of marketing Aus-Oils in Kojonup WA. What is Aus-Oils Propriety Limited?---We are a small oilseed processing facility.

And what sort of oils do you process?---Primarily canola oil but we are also trying to develop markets for organic camelina oil.

Yes. Aus-Oils Proprietary Limited is not a certified organic producer?---No. We haven't moved into commercial production of the camelina or that, so at this stage, there was no point getting certified to process the camelina.

And you have never - in any of your employment, you have never been involved in the process of obtaining certification under an organic standard?---Riverland Oilseeds that I worked for, for seven years, was certified as an organic processor for canola. They know - well, as far as I know, they no longer have that certification but I was involved in the annual audit and process for that.

And when were you involved in that annual audit?---Well, it would be seven years ago, I would say, approximately.

Just for one year?---There was two years that I was involved in the checking of the audit and the procedures that were in place for processing organics.

Now, you say you were involved in checking on the audit. What exactly were you involved in doing, Mr Slee?---It was more reviewing the in-house processing guidelines and policies that were in place.

So that was internal documentation?---It was.

So you weren't responsible, didn't have any involvement in determining compliance with organic standards by Riverland Oilseeds. So in your employment you have had no relevant experience in either applying organic standards or obtaining organic certification or dealing with organic standards; is that right?---That would be correct.

Thank you. Now, if you come down to industry positions, the grain - sorry, before I do that, Aus-Oils Proprietary Limited is not currently organic - is not certified organic?---That's correct.

And doesn't process - -purchase, process or sell any organic product?---We purchase organic product but we don't sell it as organic product.

Because you are not able to do so?---Can I correct myself there? We are able to sell organic product but not certified organic product.

Now, industry positions.

KENNETH MARTIN J: In Australia.

NIALL, MR: - - - in Australia - sorry, your Honour, you're - - -

KENNETH MARTIN J: Sorry.

NIALL, MR: And how much product do you sell as organic?---We're talking small amounts. Approximately two or 3000 litres per annum but, as I say, it's in - and this has only been in the last two years. We're in trial stages and it has not been - gone any further into the retail market or sold as certified organic or - - -

Or as organic?---It was - - -

No one will buy it as organic, will they, unless you're certified?---I couldn't answer that.

Okay. Thank you. Now, industry positions, you refer to the grain industry of Western Australia. What is that?---That's a body that some - it was made up of or is made up of what was originally six different organisations. It's a whole supply chain organisation which has members from breeding companies right through to end users or processors such as oilseed processors like myself but flour mills as well as the bulk handlers, marketers, farm input suppliers and grower representatives.

And how many members does it have?---Approximately 100.

And none of those are organic, certified organic?---I'm not aware that they are but I couldn't answer whether they are or not.

So as part of your position of the Grain Industry Association of Western Australia you don't have any involvement in either supervising, inspecting or considering organic agriculture in relation to the production of grains, do you?---No.

And that's also true of the Australian Oilseed Federation, isn't it? You don't have any involvement in the organic production of oilseeds as part of your positions on the Australian Oilseed Federation?---That's correct.

And Grain Trade Australia Standards Committee, 2008 to 2011, you didn't have any involvement in considering organic standards during those three years, did you?---No.

So it's fair to say that you've had no education, no employment and no industry positions which involve the consideration of, application of or study of organic standards. Do you agree with that?---Of organic standards, that's correct.

Thank you. Now, is this report your own work, Mr Slee?---Yes, it is.

You prepared it yourself?---Yes.

And the text in it you wrote?---There is a number of extracts from the different standards from that but, apart from them, yes, I wrote - - -

And you've identified the extracts, have you, in your report?---I believe so.

Yes. Could you give me an example of where you've identified in your report an extract from a standard?---So on page 6 in section 1 there's - paragraph 2, I've stated there an extract from the ACCC website.

I see that. Thank you. So you've got that in quotation marks and italics. Is that the - - -?---That's correct.

Yes. And so where you've quoted from other sources you've identified those sources, I take it?---I believe so but I couldn't - - -

Yes. Okay. Well, you sound uncertain?---I'm not completely certain that that's the case in it all the way through. I - - -

What was the process by which you prepared it?---Well, that - I got copies of all of the standards that I could find that were relevant to organics in Australia, as well as the EU regulations and standards that are in place there and similar for the US, United States.

So when you say you got all the standards you could find, how did you go about finding them?---Mainly, by a web search.

Yes. And when did you do that web search?---Prior to completing this report, so middle of last year.

Yes. And prior to that, had you ever read any organic standards?---Yes, I had read the organic - not the full organic standards but those that were relating to oilseed processing.

Which had you read?---I believe they were the NASAA standards but it's seven years ago so I couldn't guarantee it.

So prior to compiling your report which you did on - by an internet search, the last time you had read an organic standard was about seven years ago. Is that right?---That's correct.

And that was a single organic standard, the NASAA standard, you believe, but you're not sure. Is that your evidence?---That's correct, yes.

Do you know Mr Baxter personally?---I have met Mr Baxter.
I - - -

Does he - sorry?---I wouldn't say that I know him personally.

Does he sell his oils to Aus Oils?---I have purchased some canola from Mr Baxter this year. That is the first time, this harvest.

And how did that come about?---We were running very short of canola. I talked to our local transport company to see who was still harvesting canola just prior to Christmas and they put me in contact with Mr Baxter.

Did you suggest to your transport person you might ring up Mr Baxter?---I can't recall how the conversation exactly went.

Well, was it you who identified Mr Baxter or your transport person?---It was the transport company that identified Mr Baxter that was still harvesting canola at that point in time.

Just have a look at this bundle of documents, please. If you just look at the first document. It's a copy of your report, not the excised version but your report. Do you see that? Do you see that, Mr Baxter - Mr Slee?

KENNETH MARTIN J: Mr Slee?---Me?

NIALL, MR: Do you see that?---Yes. Yes.

Have you got - the first document in that bundle is a copy of your report, isn't it?---That is correct.

And you will see there's some highlighting throughout the document?---Yes.

All right. I just want to take you through these, if I may. If you go to page 6 do you see the green highlighting there? It starts at - next to the trade practices words. It says:

It helps to ensure that products that are being sold as organic are in fact organic.

Do you see that?---Yes, I do.

And then there's some more green and it goes right down to where it colours in pink. And then if you go to the

documents that are attached to that one and the first one, if you look at a document called "prime facts," do you see that?---Yes.

And what I suggest is that the bits in green or in your report have been copied directly from prime facts. Do you see that?---Yes, I do see that.

And what you've done is you've simply gone to this website, copied it and pasted it into your report, haven't you?---Yes, I would say that's - I've taken the extract from there.

Yes. You haven't attributed it in your report anywhere, have you?---I thought it was in my references at the rear of the report.

All right. So you thought it was appropriate to simply put it in without attribution and then just put in a reference at the end to it. Is that what you thought was the appropriate way to deal with - - -?---I would probably say that's an oversight, yes.

Mr Slee, an oversight? Would you like to reconsider that answer? Mr Slee, would you like to consider that that - reconsider the answer that you just gave that it was an oversight that you didn't identify those green passages by reference to the Primefacts document?---I believe I should have - by the looks of this, I should have referenced in the text more clearly that it was from Primefacts.

Well, when you say reference more clearly, what do you mean more clearly?---That it was an extract from the Primefacts.

Just go down to the bottom of that page and you've got some things in pink which go over to the next page. Starting with:

A DAFF export organic program.

Do you see that?---Yes.

The next document in the bundle should be a document that's headed Organic and Biodynamic Products, Department of Agriculture. Do you see that?---Yes.

Page 1 of 1. And the pink on your text should correspond, but correct me if I'm wrong, to the pink on that document?---Yes.

KENNETH MARTIN J: There's a number of lever arch files there on your left, Mr Slee. If you wouldn't mind grabbing one marked 6 and Mr Niall will tell you the page number.

NIALL, MR: Page 1791. Now, have you got 1791?---I have.

And that's Council Regulation 834 of 2007, correct?---That's correct.

And that's what you refer to in your report?---Yes. I believe so.

How did you find this document?---I believe it was from a web search.

And what were you looking for?---Organic production and labelling in Europe, but it's a long time ago now; I can't recall the exact search that I would have put in.

Now, apart from that search, do you - did you do any other searches in relation to the standards that operate in Europe?---Yes. I look at a number of the different certifying bodies that also had standards.

Yes. How many?---I couldn't recall. Probably - maybe three or four of the different bodies that were certifying.

And the way it works in Europe is this, isn't there? There's some regulations promulgated by the EU, and then, from that promulgation, various certifying bodies prepare standards under which they certify operators or farmers, that's correct?---Yes, using the regulations as the bare minimum, or the basis.

When you say bare minimum and basis, you're judging that on the few numbers that you looked at, or more generally?---On what I had read and that - that was the minimum standard required.

Yes. And you weren't able to find any certifying standard in Europe, that is, a certifying standard for the certification of a body, which had a 0.9 per cent adventitious level, correct?---The ones I looked at, which - one that I can recall was the one in the UK, the Soil Association did not - I could not find any mention of a tolerance or an adventitious presence level in there. I did find that there was mention allowable use of GM vaccines in those standards, which made me believe that there is a tolerance level applied.

Did you refer to that in your report?---No.

So you found a report - the - the National Soils Association - Soils Association Organic Standards. That is the largest certifying body in England, isn't it? Do you know that?---I believe so.

What do you base that belief on?---I'm not sure. It may have been off their website that I had read.

And it doesn't allow for any adventitious presence, does it?---In what I recall from reading, it doesn't mention that there's a zero or that. They - I believe it's worded similar, probably, to the Australian standards, that it's not compatible with organic farming. But as mentioned, I do believe in that did mention the allowable use of gene vaccines.

A vaccine. Yes?---Which led me to believe that there was a tolerance level within their standards. And there was no mention that if you use those vaccines, that you would be decertified. The use of those vaccines would mean the animal or livestock that that vaccine was on could not be sold as certified organic, but it would not impact on the certification of the property.

Perhaps if you go to volume 7.

KENNETH MARTIN J: Are we done with 6?

NIALL, MR: Yes. Thank you, your Honour.

KENNETH MARTIN J: All right. Close that up.

NIALL, MR: If you go to page 2078 - well, perhaps if you start at page 2042. Do you see 2042?---Yes.

That's the Soil Association Organic Standard that you looked at, is it?---Yes. That looks familiar.

Yes. If you go over to page 2078, you see 3.6?---Yes.

Could you read that?---Yes. That looks familiar.

Yes. Well, when you were asked what standards applied to the certification of organic farms and organic farm produce in Europe, and then in question 7 you were asked under European standards, what, if any, degree of tolerance is provided for the adventitious entry of GM plants on a certified organic farm, why didn't you make reference to

the Soil Association Organic Standard?---Because I believed that what was in law in EC was the basis that all the standards were off, and as mentioned before, I could not see and hear where it states a clear tolerance or - or not.

So you didn't make any reference to - to it, because it didn't clearly identify a tolerance?---There - as far as I'm aware, there's about 80 certifying bodies or - I'm not sure if it's that many, but a lot of certifying bodies in Europe, so I didn't - didn't use the certifying bodies. I used the EC regulations that to me appeared to be in law, rather than industry standard.

Well, you referred to those because they had a reference to a .9 per cent adventitious presence and that's what you wanted to identify in your report and nothing else; isn't that right?---No. That's not correct.

If you go to the closing declaration on 18 November, please. You - you will see there that you declared that all inquiries are desirable and appropriate, that no matters (indistinct) significant - which I regard as relevant have, to my knowledge, been withheld from the court. You didn't think it was appropriate to refer to the Soil Association Organic Standards, October 2013?---What I had read in there didn't change my opinion and still doesn't change my opinion.

Would you have a look at volume 6, please. This is the last document, your Honour. Volume 6. And you go to page 1814. This is a document - a recommendation to the European Commission of 13 July 2010 on guidelines for the development of national coexistence measures to avoid the unintended presence of GMOs in conventional organic crops. Are you familiar with that document?---I believe I have read it, but I'm - - -

All right. You referred it - to - in your report to 834 of 2007. You do that at page 11. Can you see that? In answer to question 6. You referred to production labelling governed by 834 of 2007?---Yes.

And then in paragraph 7, you say:

In the EU, the focus for adventitious presence is in the product rather than the farming systems. The EU uses the same rules for adventitious presence of GM for organic products as it does for its non GM market. The tolerance level is governed by -

And you refer to 1829 of 2003. You see that?---That's correct. Yes.

You were aware of this recommendation and you didn't make any reference to it. Why is that?---I'm trying to recall. I will need to read the actual recommendation.

Thank you. Do you see that?---Yes. I can't recall. I'm guessing that I left it out because it was classed as a recommendation.

You're guessing that. Just go over to - - -?---Yes. But I obviously can't recall why.

Well, perhaps if you look at number 3 on the first page. It says:

This is whereas -

1, 2, and then 3 -

it may be necessary for member states, public authorities to define in the areas where GMOs are cultivated, appropriate measures to allow consumers and producers choice between conventional, organic and GM production.

And then 4 and 5 I won't read to you. But if you go over to the annex, right in the middle of 1.1, it says - do you see that -

However, the potential loss of income for producers of particular agricultural products, such as organic products, is not necessarily limited to exceeding the labelling threshold set out in EU legislation at 0.9 per cent. In certain cases, and depending on market demand, on the respective provisions for national legislation, some member states have developed national standards for different types of GM free labelling. The presence of traces in GMOs in particular food, crops, even at a level below 0.9 per cent, may cause economic damages to operators who would wish to market them as not containing GMOs.

Now, you didn't see fit to bring that to the attention of the court?---I believe this is the first time I've actually laid eyes on the annex and read that section.

So you just had the recommendation; you didn't read on, and you didn't include it because it was just a recommendation?---Yes. I believe so.

I have no further questions.

KENNETH MARTIN J: All right. Thank you. Anything?

CAHILL, MS: No re-examination, your Honour.

KENNETH MARTIN J: All right. There's no re-examination. That completes your evidence, Mr Slee. You're excused. Thank you.

(THE WITNESS WITHDREW)

CAHILL, MS: Now, those are our witnesses, your Honour. I have a - just a question for my friend through your Honour. I understand that document 141 in the bundle has been tendered, and if that's so, there's nothing else in the bundle that we need to tender; we think it's all in. But before I close the defendant's case, I would just like to understand what the position is with my friend's leave that your Honour granted him in respect of the weather data.

KENNETH MARTIN J: Yes, which is an MFI, I believe.

CAHILL, MS: 24, I think it is. I'm not sure (indistinct) it is 24.

KENNETH MARTIN J: 24? 5? 25. Yes, the MFI.

NIALL, MR: If your Honour pleases. We're not in a position to adduce any further evidence in relation to that, and we don't seek to tender it absolutely.

KENNETH MARTIN J: All right. Well, that resolves that.

NIALL, MR: In relation to 141, our understanding is that that's already.

KENNETH MARTIN J: 141 is - let me just check that.

NIALL, MR: That was the administrative arrangements, your Honour. Your Honour will find it in volume 5. AQIS Administrative Arrangements for Approved Certifying Organisations.

KENNETH MARTIN J: Just check my note. I've got a tick next to that.

CAHILL, MS: That's the defendant's case, your Honour.

KENNETH MARTIN J: All right. Thank you. What I would like at some stage, just administratively, is an update at exhibit 3, which is the trial index - - -

CAHILL, MS: Yes.

KENNETH MARTIN J: - - - indicating, hopefully, unanimity on both sides in terms of every document in the index. And, obviously, the ones that have nothing next to them at all, of which, based on my observations about lack of tags, would be quite a few, will be thrown out of the trial bundle and they won't be part of the evidence in the case.

CAHILL, MS: Just on submissions, your Honour, your Honour raised the written submissions yesterday, I think it was, and you identified - I thought the question was directed exclusively to us, but it may not have been at the time, and I'm - that's why I'm checking. But each party would file and exchange written submissions on Wednesday afternoon. Is that the - - -

KENNETH MARTIN J: Well, we had tentatively explored the prospect that each side would do written submissions, which I think is sensible and would be welcome, and then in terms of timing, we didn't firm up on that, but simply from a selfish point of view, I would like to have a lot of time to read them or a bit of time anyway.

CAHILL, MS: If we come back on Thursday, which I think is the intention now, Wednesday afternoon won't be enough time I don't think so - - -

KENNETH MARTIN J: Wednesday afternoon, I think if I got them by noon on both sides - - -

CAHILL, MS: Yes.

KENNETH MARTIN J: - - - that would be satisfactory.

CAHILL, MS: Thank you. We're happy with that, your Honour.

KENNETH MARTIN J: That can be sent by email to my associate.

CAHILL, MS: Yes.

KENNETH MARTIN J: Mr Niall, would that work for you?

NIALL, MR: Yes, your Honour.

KENNETH MARTIN J: Yes, all right. Well, so that completes the evidence in the case on both sides.

NIALL, MR: Yes, your Honour.

KENNETH MARTIN J: Sorry, I've just - - -

CAHILL, MS: My friend's chronology is still - - -

KENNETH MARTIN J: Yes, we need the responses to the chronologies - - -

NIALL, MR: Yes.

KENNETH MARTIN J: - - - which haven't been tendered but which are foreshadowed. I have got the plaintiff's chronology. I've got the defendant's amendments to the plaintiff's chronology. It was foreshadowed the plaintiff would then respond and indicate its position. So perhaps we could just keep that open to be received at some quick point.

NIALL, MR: Your Honour, we have got just a couple of housekeeping matters to attend to. That's one of them. We can do that very shortly, not as I'm standing here.

KENNETH MARTIN J: Yes, indeed.

NIALL, MR: We have to deal with the witness statements. This is not so much to do with any further evidence or anything. The witness statements that need the excisions - - -

KENNETH MARTIN J: Yes.

NIALL, MR: - - - for the release to the public - - -

KENNETH MARTIN J: The intention is they would go up on the website.

NIALL, MR: Yes.

KENNETH MARTIN J: So obviously they would need to be cleaned up - - -

NIALL, MR: Yes, so we - - -

KENNETH MARTIN J: - - - in terms of the excisions.

NIALL, MR: Yes. We're working on that.

KENNETH MARTIN J: That can be done when there's time.

NIALL, MR: Hopefully shortly, your Honour. The submissions, I'm not sure whether your Honour has had yet a corrected version of the submissions. If not - - -

KENNETH MARTIN J: I haven't seen them but - - -

NIALL, MR: I haven't seen them either, your Honour, so
- - -

KENNETH MARTIN J: - - - it's not to say that I
(indistinct) looked.

NIALL, MR: But that's imminent. I just need to check one document, your Honour, in the trial bundle where our record is slightly inconsistent amongst us. This is document 86.

CAHILL, MS: That document is in - - -

NIALL, MR: Yes.

CAHILL, MS: - - - as far as we're concerned, your Honour.

NIALL, MR: Yes, it's in, your Honour. It was just a - we had a little bit of a - I think they're the only matters. 86 was Ms Denham's review document.

KENNETH MARTIN J: Yes.

NIALL, MR: I don't think - - -

KENNETH MARTIN J: And Ms Gore was asked about it as well.

NIALL, MR: Yes. I don't think there's any controversy about it, your Honour.

KENNETH MARTIN J: Yes, all right. So that one is agreed as being part of the materials that are in evidence.

NIALL, MR: They're the only matters if your Honour pleases.

KENNETH MARTIN J: All right. Thank you. Well, then that - - -

NIALL, MR: I'm sorry.

KENNETH MARTIN J: Sorry, Mr Niall.

NIALL, MR: I'm indebted to your Honour for sitting on late today.

KENNETH MARTIN J: Don't mention it. That completes the evidence in the case. The case now moves to a different phase, which is the receipt of the closing arguments by the parties. By agreement with the court and counsel, that will take place after a little interval in order for people to review their material and prepare some further written documentation. It will happen commencing at half past 10 here on next Thursday and will continue on as required into Friday, and at that point the trial will be completed. So that's next Thursday the 27th and Friday the 28th. So the court will adjourn until half past 10 on next Thursday, 27 February.

AT 4.39 PM THE MATTER WAS ADJOURNED UNTIL
THURSDAY, 27 FEBRUARY 2014

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