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**“Reasonable Foreseeability and Liability
In Relation to Genetically Modified Organisms”**

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ABSTRACT

Reasonable foreseeability is one of the fundamental concepts on which liability is based in Canadian, American and English law. It is used to assess whether the defendant owed a duty of care to the plaintiff and whether a fault was committed that caused the injury suffered by the plaintiff. More precisely, a plaintiff must demonstrate that it was possible for the defendant to reasonably contemplate the general class of persons to which plaintiff belongs as a foreseeable victim of his actions (duty of care). The plaintiff must also show that the ‘reasonable person’ could have foreseen the risk of injury arising out of the activity (fault). Finally, the ‘type of injury’ suffered by the plaintiff must also have been reasonably foreseeable for the defendant at the time the activity was carried out (causation).

Reasonable foreseeability is well grounded in its application to tangential products, where historical knowledge exists about how liabilities develop and the extent of their effect, such as when an activity is clearly known to cause physical injury. Reasonable foreseeability becomes more problematic when applied to innovative products because

historical knowledge is not available to outline where and when liabilities may develop. Such uncertainty is a predominant hurdle affecting claims made on the part of organic farmers for alleged contamination of their land by genetically modified products. While the uncertainty of genetically modified organisms is most striking in relation to potential impacts on human health and the environment, the unique feature of present debates regarding genetically modified crops is that it greatly affects the possibility of liability claims for financial injury.

This paper seeks to show the relationship between reasonable foreseeability and innovations in biotechnology. It will examine how reasonable foreseeability can and has been applied to biotechnology. More specifically, it will comment on how uncertainties related to biotechnology developments affect – or may affect – reasonable foreseeability and, hence, liability resulting from the genetic modification of microbes, animals and plants. This examination will identify how social concern about liability from these innovative GM products has changed over time. It will also analyze how these social concerns may impact on the way reasonable foreseeability is – or should be - assessed in this area.

Key Words: Reasonable Foreseeability; Liability; Innovation