

PolicyPennings by Dr. Daryll E. Ray

# Monsanto vs. Percy Schmeiser: The Canadian Supreme Court Rules

On May 21, 2004, the Canadian Supreme Court handed down a long awaited ruling in a case that pitted a Canadian canola farmer, Percy Schmeiser, against Monsanto. The ruling was decided on narrow grounds and gave something to both parties.

For over forty years Schmeiser has grown and bred his own variety of canola. In 1997, he found evidence of glyphosate tolerant (RoundUp Ready®) canola in his fields. He did nothing about it and saved seed from one of his fields for use in 1998.

Farmers who purchase glyphosate tolerant canola have to sign a license agreement agreeing not to save seed from one year to the next. Schmeiser, however, has never purchased canola requiring such an agreement so he was unconcerned about saving seed from his own field.

In 1998, Monsanto found evidence of their patented glyphosate tolerant genetic material in Schmeiser's canola and ended up suing him in court. The Canadian court found Schmeiser guilty of "selling or otherwise depriving the plaintiffs [Monsanto] of their exclusive right to use plants which the defendants [Schmeiser] know or ought to know are Roundup tolerant, or using the seeds from such plants." The court held that Monsanto had the right to retrieve their patented genetic material in Schmeiser's canola even though they could not prove how it got there. In addition, Schmeiser was ordered to pay Monsanto \$140,000 in damages and legal costs.

When the appeals court upheld the lower court ruling, Schmeiser appealed to the Canadian Supreme Court. Schmeiser and his supporters argued that Monsanto did not have a valid patent and thus he was not liable for any damages.

In its ruling the Canadian Supreme Court, by a 5-4 decision, upheld the validity of Monsanto's patent. However, the court also said that although Schmeiser had infringed on Monsanto's patent by growing RoundUp Ready® canola, he did not owe them either damages or court costs. The court said that in a case like this the amount of damages is measured by the extra profits derived from the use of the patented item. Because Schmeiser did not spray the field with glyphosate, he enjoyed no benefit and thus his profit was the same as if he has planted a non GMO canola. Thus Schmeiser owed Monsanto nothing.

This case may be the first to rule on the issues raised by GMO production but certainly it will not be the last. U.S. growers should note that this case is from Canada and U.S. courts might rule quite differently if a similar case were to come before them.

Among the issues left unanswered is whether or not a farmer might sue Monsanto for contamination if that farmer's crop were contaminated by pollen drift from nearby GMO crops.

*Daryll E. Ray holds the Blasingame Chair of Excellence in Agricultural Policy, Institute of Agriculture, University of Tennessee, and is the Director of the UT's Agricultural Policy Analysis Center. (865) 974-7407; Fax: (865) 974-7298; dray@utk.edu; <http://agpolicy.org>. Daryll Ray's column is written with the research and assistance of Harwood D. Schaffer, Research Associate with APAC.*

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