

*MONSANTO CANADA INC. V. SCHMEISER**2004 S.C.C.D.J. LEXIS 31 (S.C.C. May 21, 2004)*

The Supreme Court of Canada ruled that a farmer infringed Monsanto's patents by using genetically modified canola seeds of unknown origin containing patented genes and cells, but that no damages were owed because the farmer's profits were no different than they would have been if he had planted and harvested ordinary canola.

Monsanto owns and licenses a patent on the genes and cells that confer resistance to certain herbicides, including one called Roundup. Canola seeds containing the patented genes and cells are sold as Roundup Ready. Monsanto discovered that 95-98% of the 1998 canola crop of Percy Schmeiser, a Canadian farmer who did not hold a license to the patent, consisted of Roundup Ready plants.

Although the origin of the plants on Schmeiser's property is unclear, the court acknowledged that the Roundup Ready could have blown onto his farm from a neighboring property. In any event, the court determined that Schmeiser then collected, saved, and planted the seeds, eventually cultivating and selling a crop of canola composed mostly of Roundup Ready plants. When Monsanto discovered the crop, initially from samples taken on public road allowances bordering Schmeiser's fields, it brought suit for patent infringement.

In ruling for Monsanto, the Canadian Supreme Court first affirmed the legitimacy of the Roundup patent. Though Canadian law forbids patenting higher organisms, the court held that the Monsanto patent was correctly limited to the genes and cells conferring herbicide resistance. The court also dismissed Schmeiser's argument that, if the patents were thus narrowly construed, his possession of whole plants couldn't violate Monsanto's patents. Instead, the court held that Monsanto's right to control the use of its gene extended to plants containing it: "Infringement through use is thus possible even where the patented invention is part of, or composes, a broader unpatented structure or process." Such a construction does not violate the prohibition on patenting whole organisms, but simply affirms an inventor's exclusive control over the use and distribution of her invention.

Though the court largely ruled in Monsanto's favor, it took pains to emphasize that it was concerned not with "the innocent discovery by farmers of 'blow-by' patented plants on their land" but only with the farmers' subsequent commercial use of those plants. Additionally, the court rejected any claim of damages for Monsanto, holding that the company would only be entitled to recoup profits Schmeiser earned from the invention. Because Schmeiser took no steps to benefit from the Roundup Ready plants—he did not use Roundup weed killer or alter his farming techniques—his profits were "precisely what they would have been had [he] planted and harvested ordinary canola."