Percy Schmeiser VS. Monsanto Corporation

in

• Farmers and Farming [1]

Percy Schmeiser's Battle

CBC News Online - May 21, 2004

It was billed by some as a classic David-and-Goliath confrontation between a Saskatchewan family farmer and biotech giant Monsanto Canada - a case of the rights of the small farmer to continue a traditional way of farming. Others saw it as theft - a blatant attempt to take advantage of years of research and development of a better product, without paying for it.

For seven years, Percy Schmeiser has argued that seeds from Monsanto's patented genetically-modified canola landed on his 1,400 acre farm near Bruno, east of Saskatoon, by accident. Monsanto has altered the plant's genes to make the canola resistant to Roundup, a Monsanto weed killer. Monsanto patented the gene and the process of inserting it into the seed.

Percy Schmeiser Farmers usually use seeds from one year's crop to plant the next year's crop. But when they buy Roundup Ready canola from Monsanto, they have to agree to buy new seed every year. Monsanto says that's the only way they can recoup the money they've spent designing a better plant - the only way they can fund future research that will allow farmers to improve their crop yield.

Schmeiser argued that a company can't patent a plant - and he relied heavily on a previous case involving the question of whether higher life forms can be patented.

In the "Harvard Mouse" case, Canada's top court reinforced efforts to keep higher forms of life unpatented when it ruled that Harvard did not have a patent on its famous "OncoMouse," designed to quickly develop cancer. It took Harvard 17 years to develop the mouse. Canada stood alone on this issue, after the United States and Europe granted Harvard a patent.

Lower courts rejected Schmeiser's claim that the canola landed on his fields by accident, but didn't deal with the deeper issue of whether Monsanto can control use of a plant because it has patented a gene in the plant.

But Canada's highest court sided with Monsanto - in a five to four ruling. The court did agree with Schmeiser that the plant is a higher life form and cannot be patented, but said the patent does apply to the gene.

The ruling is the first in which the top court of any country has ruled on patent issues involving plants and seed genes. The case is considered extremely important to the biotechnology industry.

The ruling forces Schmeiser to turn over any remaining crops and seeds derived from Monsanto's product. But the court overturned a lower court ruling that he pay Monsanto the profits from his 1998 crop.

That 1998 crop began with what Schmeiser says was a discovery in a ditch by one of his fields a year earlier - canola plants. He says he did what most farmers do when he found those plants. He sprayed a herbicide on the wandering canola, but to his surprise and consternation, the herbicide did not kill the canola in the ditch. This is because the canola was designed to resist the weed killer. Scientifically, the Monsanto canola is called a "glyphosate-resistant plant."

Five farmers neighbouring Schmeiser used Monsanto seeds, paying the company a licensing fee of...
$15 an acre.

Schmeiser says he did a field test on three acres of his canola crop and discovered 60 per cent of the canola plants sprayed with Roundup herbicide survived in clumps, thickest in the ditch, thinner deeper into his canola crop. Schmeiser has claimed all along that the Monsanto canola must have blown onto his field, or fallen from passing trucks. Monsanto accused Schmeiser of stealing its seeds and sued him for illegally using its patented, genetically modified canola.

Percy Schmeiser

Many Canadian farmers want the Monsanto seeds, but while they can buy it for a price, Monsanto keeps the rights to the DNA itself. That's what makes the seed special and that's where Monsanto makes its money. Some 30,000 Canadian farmers use the special Monsanto canola seeds. It's estimated that 40 per cent of the canola grown in Canada is Monsanto's Roundup Ready canola.

As in human beings, the DNA of seed is passed along from generation to generation. If there were no control mechanisms in place, a farmer could conceivably buy Monsanto's special seed once, pass the seeds from year to year and never have to pay for it again.

So the problem for Monsanto is protecting its investment. Farmers buying Monsanto's seed must sign a contract promising to buy fresh seed every year. Then they must let Monsanto inspect their fields for cheating.

Randy Christenson, Monsanto's regional director in Western Canada when this story first unfolded in 1999, said the company has to be tough. "We've put years, years and years of research and time into developing this technology," he said. "So for us to be able to recoup our investment, we have to be able to be paid for that."

"I've been farming for 50 years, and all of a sudden I have this," Schmeiser said. "It's very upsetting and nerve-racking to have a multi-giant corporation come after you. I don't have the resources to fight this."

Monsanto first got a tip about Schmeiser on the toll-free snitch-line it set up for farmers to turn in neighbours they suspect of growing the seed without paying. Monsanto hired private investigators from a Saskatoon firm to check out the tips. Investigators patrolling grid roads took crop samples from Schmeiser's fields to check for Monsanto's DNA. Monsanto called its investigations "audits."

"Yes, we do have a group that do audit, they do make farm visits, but they do it in a way that is extremely respectful to the farmers," Christenson told CBC News. "We never, never, go on their property, never, without their permission."

Documents from earlier court proceedings showed that Monsanto ordered its investigators to trespass on Schmeiser's fields and collect samples. Monsanto agents paid a secret visit to the company that processes Schmeiser's seeds for planting. Gary Pappenfort, manager of the seed-processing company, said a representative of Monsanto visited him and asked if Schmeiser had some seed treated there. The Monsanto agent asked for a sample of his canola and Pappenfort gave some to him.

Schmeiser says nature has been moving DNA around for thousands of years. "It will blow in the wind," he said. "You can't control it. You can't put a fence around it and say that's where it stops. It might end up 10 miles, 20 miles away." He once told CBC News Online that seeds can blow onto his farm from as far away as North Dakota.

Scientists from Agriculture Canada say wind can blow seeds or pollen between fields, meaning the DNA of crops in one field often mixes with that in another. Seeds or pollen can also be blown off uncovered trucks and farm equipment. But Monsanto seems to be saying it's up to farmers to dig out any Monsanto crops blowing into their fields. Several judges have agreed.

In 1998, Edward Zilinski of Micado, Sask., traded seeds with a farmer from Prince Albert. This is an old farming tradition. But the seeds he got in return had Monsanto's DNA. Monsanto told Zilinski that
he and his wife owed the company more than $28,000 in penalties. "Farmers should have some rights of their own," Zilinski said.

Monsanto's actions have sparked the anger of many farmers in Western Canada. The Kram family in Raymore, Sask., said planes and a helicopter have buzzed their fields and agents dropped weed killer on their canola field, to see if the crops had the Monsanto gene. Monsanto said it had absolutely nothing to do with it.

"We are honestly disgusted with the way things are going," Elizabeth Kram said. "Who put the canola in? It is the farmer. It doesn't belong to Monsanto or anybody else and I don't see anybody else's name on the titles of all the land we own. It's my husband and myself. Nobody else. We're thoroughly pissed off."

In 2002, an Ontario report called for a review of the Federal Patent Act in order to avoid disputes over intellectual property that could keep doctors and researchers from developing treatments and tests.

In February 2003, the Canadian Biotechnology Advisory Committee - set up by the government to advise it on a wide range of biotechnology issues - released a series of recommendations on higher life forms and The Patent Act. Among them were:

* Higher life forms (i.e., plants, seeds and non-human animals) that meet the criteria of novelty, non-obviousness and utility be recognized as patentable.
* That a farmers' privilege provision be included in the Patent Act. It should specify that farmers are permitted to save and sow seeds from patented plants or to reproduce patented animals, as long as these progeny are not sold as commercial propagating material or in a manner that undermines the commercial value to its creator of a genetically engineered animal, respectively.
* That the Patent Act include provisions that protect innocent bystanders from claims of patent infringement with respect to adventitious spreading of patented seed, patented genetic material, or the insemination of an animal by a patented animal.

In the end, Schmeiser called the legal battle a victory, in part because the court ruled that Schmeiser would not have to pay Monsanto's legal costs.

"We did not expect this to go all the way to the Supreme Court of Canada," he said in the wake of the ruling. "We were fighting for the fundamental right of the farmer to save his seed and use it year after year."

Monsanto has welcomed the Supreme Court decision.

"The Supreme Court has set a world standard in intellectual property protection and this ruling maintains Canada as an attractive investment opportunity," the company said in a release on its website. "Patent protection encourages innovations that will lead to the next generation of value-added products for Canadian farmers."

The Supreme Court decision should clear up some of the confusion surrounding this issue. But in the end, the federal government will likely have to clarify the rules on patenting organisms by bringing The Federal Patent Act into the 21st Century.

Source URL: http://nwrage.org/content/percy-schmeiser-vs-monsanto-corporation

Links: