

## Percy Schmeiser and Schmeiser Enterprises Ltd:



Percy Schmeiser is a long time farmer and farm equipment dealer from the small rural community of Bruno Saskatchewan. In addition to this he was involved in local politics for almost twenty years. In 2000 he was sued by Monsanto Canada Inc. for alleged patent infringement.

The following are excerpts from relevant news articles detailing Mr. Schmeiser's position as reported on his personal website, <http://www.percyschmeiser.com>.

### **Excerpt from Vancouver Sun article by Dave Margoshes, August 14, 1999:**

"Percy Schmeiser was mad as hell, and decided he wasn't going to take it.

Schmeiser has been growing canola -- the yellow-blossomed oilseed that used to be known as rapeseed -- for 40 years, and he knows his stuff. He's been experimenting, developing his own varieties, using his own seed and generally prospering with canola, reaping the benefits derived from growing an increasingly popular crop.

So when Monsanto, the giant multinational agro-chemical company that is at the forefront of developing genetically modified foods, accused him of patent infringement and demanded restitution for its seeds, his pride was hurt. He chose to fight rather than roll over and take it."

"Monsanto, headquartered in St. Louis, makes the popular herbicide Roundup. Farmers all over the Prairies ---Schmeiser among them --- spray it on their fields, whereupon it kills every-thing growing there. Then they plant.

Using the controversial alchemy of genetic engineering, which has alarmed environmentalists and consumers, Monsanto has developed a canola seed completely immune to Roundup. That means a farmer can spray the herbicide over a planted field,

kill all the weeds growing there, but not hurt the crop -- as long as it comes from Monsanto's seed.

The company sells the seed -- about half the canola planted in Saskatchewan this year comes from it -- but keeps the rights to the DNA itself.

It means that, rather than save seeds from last year's crop to use this year, as many do -- and as Schmeiser traditionally does -- farmers have to buy new seed from Monsanto each year.

In order to protect its investment, Monsanto has been vigilant in rooting out frugal farmers who might be cheating and saving seed, or borrowing a bit of seed from neighbors.

Farmers buying Monsanto's seed must sign a contract promising to buy fresh seed every year. And they must let Monsanto inspect their fields."

**Excerpt from Macleans Magazine by Mark Nichols, May 17, 1999:**

"For 40 years, Percy Schmeiser has grown canola on his farm near Bruno, Sask., about 80 km east of Saskatoon, usually sowing each crop of the oil-rich plants with seeds saved from the previous harvest. And he has never, says Schmeiser, purchased seed from the St. Louis, Mo.-based agricultural and biotechnology giant Monsanto Co. Even so, he says that more than 320 hectares of his land is now "contaminated" by Monsanto's herbicide-resistant Roundup Ready canola, a man made variety produced by a controversial process known as genetic engineering. And, like hundreds of other North American farmer, Schmeiser has felt the sting of Monsanto's long legal arm: last August the company took the 68-year-old farmer to court, claiming he illegally planted the firm's canola without paying a \$37-per-hectare fee for the privilege. Unlike scores of similarly accused North American farmers who have reached out-of-court settlements with Monsanto, Schmeiser fought back. He claims Monsanto investigators trespassed on his land -- and that company seed could easily have blown on to his soil from passing canola-laden trucks. "I never put those plants on my land," says Schmeiser. "The question is, where do Monsanto's rights end and mine begin?"

**Excerpt from Western Producer article by Adrian Ewins, August 19, 1999:**

"The high profile legal battle between Monsanto and a Saskatchewan farmer will go to trial in Saskatoon next year.

The two sides will square off in federal court on June 5, 2000 to argue the company's lawsuit alleging that Percy Schmeiser grew Roundup Ready canola without a license.

The trial date was set at the end of an eventful week that has brought the issue of seed patenting to national attention by pitting a United States-based multinational corporation against a lone farmer from Bruno, Sask.

"The case found its way into the courts in August 1998, when Monsanto filed a statement of claim alleging Schmeiser illegally bought Roundup Ready seed from local growers in order to plant his 1997 crop, then retained some of that year's seed to plant in 1998.

Schmeiser said he planted his 1997 crop with seed saved from 1996, and insists that any Roundup Ready growing on his land was spread by wind or by grain trucks traveling on roads adjacent to his fields.

In the statement of claim, Schmeiser says Monsanto has libeled him by publicly accusing him of committing illegal acts, trespassing on his land in order to obtain seed samples and improperly obtaining samples of his seed from a local seed plant.

The statement also accuses Monsanto of "callous disregard" for the environment by introducing Roundup Ready into the area without proper controls, and of contaminating crops grown by Schmeiser."

On Aug. 10, 1999 mediation talks to settle the dispute without going to trial ended in failure.

The next day, Schmeiser launched a \$10 million lawsuit against Monsanto, accusing the company of a variety of wrongs, including libel, trespass and contamination of his fields with Roundup Ready."

"Schmeiser's lawsuit against Monsanto won't be dealt with until the original lawsuit has been resolved." We want to have the patent infringement hearings run their course, then we'll pursue this," said Schmeiser's lawyer Terry Zakreski."

**Excerpt from Saskatoon Star Phoenix article by Leslie Perreux, April 28, 1999:**

"Agrochemical giant Monsanto Co. has admitted its investigators went onto a Bruno farmer's land without permission to collect evidence against him."

"Monsanto admitted during recent secret court discovery testimony that it hired a Saskatoon private investigations company, founded by former RCMP officers, to go onto Percy Schmeiser's land and obtain canola samples.

The company also secretly obtained some of Schmeiser's seed from Humboldt Flour Mills, where Schmeiser was having his seed cleaned, according to documents filed this week in Federal Court."

"According to the court documents, Monsanto offered discounts to Humboldt Flour Mills in return for providing samples from targeted farmers. Humboldt Flour Mills officials couldn't be reached for comment Tuesday."

### **Excerpt from Western Producer article by Adrian Ewins, May 6, 1999:**

"The motion to dismiss the case states that Monsanto has admitted in court it has no evidence of anyone providing Roundup Ready seed to Schmeiser. However, Ray Mowling (President of Monsanto) said the issue of where the seed came from is not crucial.

"Our case is built on the fact that he knowingly used our seed and planted it," he said. "Where he got the seed is interesting but not a critical factor."

### **Excerpts from Washington Post article by Rick Weiss, May 2, 1999:**

"But while the vast majority of farmers approached by Monsanto have paid fines and agreed to allow the company to inspect their fields for years to come, Schmeiser last year became something of a folk hero in Canada by fighting back against the multinational giant. He has gained support of environmental groups and others around the world who oppose corporate restrictions on seed saving, which many subsistence farmers depend upon for survival."

"In testimony filed with the Federal Court of Canada -- part of Zakreski's motion to dismiss the case -- a Monsanto Representative reports that private investigators hired by the company in 1997 trespassed on Schmeiser's property to snip plant samples for DNA testing.

Moreover, according to documents and interviews, a Monsanto representative approached an employee of the Humboldt Flour Mill, where Schmeiser brought his harvested seed for cleaning, and asked for a sample of his harvest for DNA testing. The mill's manager at the time, Gary Pappenpoot, complied after checking with his boss -- a decision, he said Friday, he now regrets."

"Philip Angell, Monsanto's director of corporate communications, disputed the allegations against the company. Despite the sworn testimony, he said, it is still not completely clear that the investigators in 1997 actually crossed Schmeiser's property line. Even if they did, he said, trespassing is neither a criminal nor a civil offense in Saskatchewan --a legal interpretation Zakreski (Schmeiser's attorney) disputes.

Angell also said -- and Pappenpoot confirmed -- that the Humboldt mill routinely saved samples of farmer's seeds in case questions arose later about contamination or mix-ups. Angell said Monsanto attorneys were now trying to determine whether those saved samples technically still belonged to Schmeiser or to the mill, which would then have the right to share them with anyone it chose to."

## **Excerpt from Saskatoon Star Phoenix article by Leslie Perreaux, August 14, 1999:**

"Zakreski said the company's position in the lawsuit has frightening implications for farmers.

He noted the company has dropped its allegation that Schmeiser stole the seed. He said the company is now pursuing Schmeiser for simply using the seed, purposely or not.

"I don't think anyone who finds this innocently on their land should be responsible to Monsanto," he said.

"They seem to want to put the responsibility for identifying the DNA of crops on the farmer. That, if you think about, is very frightening."

## **Schmeiser: Monsanto lying about 98 percent of his crop being genetically modified**

Article courtesy of [CropChoice.com](http://CropChoice.com)

By Percy Schmeiser

May 24, 2002 – CropChoice guest commentary – Monsanto has been deceitful as part of its lawsuit against me for allegedly infringing the patent on its genetically modified Roundup Ready canola.

Two examples of its actions really stand out in my mind. One involves a 1998 court order allowing Monsanto to sample crops from my land. The other is its contention that the results of tests on one sample of my crop registered more than 95 percent positive for the presence of its patented genetics.

A recent meeting of farmers whom Monsanto has sued, investigated or harassed reminded me of the beginning of the nightmare I've been through with this company.

In August of 1998, the company got a court order allowing it to enter my land to take crop samples provided that the company or its agents notified my lawyer and me. They were to contact me so that I could accompany them during the collection of a sample. More importantly, I was to take half of the sample and have it tested; Monsanto would do the same with the other half of the sample.

Yet, when the time came, neither my lawyer nor I was notified. Agents from the Robinson Investigation firm, the hired henchman for Monsanto, showed up in my driveway with bags marked "Monsanto" and "Percy Schmeiser." They claimed that they had been out sampling my field that day and that the bags marked with my name were mine to have tested. Funny thing is, I'd been in and around the fields all day and hadn't

seen them. What's more, the land descriptions on the sample bags were for areas that I didn't even farm.

Incredibly, the judge didn't consider this during the trial. Before getting to the second example of Monsanto's deceit when it comes to obtaining evidence, I should mention that the Robinson Investigation firm, which Monsanto hired to take canola samples from farmers, is itself under investigation. During my trial, Monsanto made no apologies for the actions of the Robinson firm, which acted on "tips" and "rumors" that farmers were growing Roundup Ready canola without a license.

At times investigators from Robinson would wear Monsanto or Roundup Ready clothing when they called on farmers. Their first words to farmers were: "We're ex-RCMP [Royal Canadian Mounted Police] officers." It was intimidation!

And now, back to the issue of my seed.

Before sowing my 1998 crop, I took some of my seed to Humboldt Flour Mills for inoculation against diseases and insects. Later, I learned that the milling company had kept one sample, which it returned upon my request.

In 1999 Monsanto formally accused me of illegally planting its transgenic seed the year before. It based this accusation on what its agents claimed was Roundup-resistant canola that they found growing in the ditch next to my fields.

Feeling uneasy about the pending lawsuit, I took samples from all of my fields, plus what the flour mill had returned to me, to the University of Manitoba to be tested for the presence of Monsanto's patented genes. I had to send the samples there at my expense because Agriculture Canada, a government agency, refused to test my seed. Yet, it did testing for Monsanto at taxpayer expense.

The U. of Manitoba test results revealed no detectable level of modified genes in several of the samples; in two other samples they detected 2 percent and 8 percent. The samples taken from the field and the ditch where I first noticed the Roundup Ready canola volunteers growing had a 60 percent level of genetic contamination. Notably, those areas about land on which my neighbor planted Roundup Ready canola in 1996. Seed and or pollen from those canola plants, could quite easily have been transported to my field.

Months before the June 2000 trial began I received some shocking news. Monsanto announced that an employee of Saskatchewan Wheat Pool, which a year before had purchased Humboldt Flour Mills, found and turned over a sample of my seed from 1998. (Saskatchewan Wheat Pool was and is licensed to sell Monsanto's genetically modified canola seed.)

I phoned the employee, Morris Hofmann, to ask how he knew it was my seed. Hoffman replied: "You don't know."

At trial, Hofmann, a good friend to the local Monsanto representative, testified that he had found the sample. My lawyer, Terry Zakreski, pointed out that it would be difficult to know, after the passage of two years, the origin of the seed. To wit, I had not cleaned my saved (bin run) seed, full of chaff, that I delivered to Humboldt Flour Mills in 1998 for inoculation. The one-pound sample that the mill later returned to me was in the same condition. Contrast that with what Monsanto claimed Hofmann had discovered: 20 pounds of clean seed in Saskatchewan Wheat Pool bags.

I ran into Hofmann after the trial. He apologized to me for lying about supplying Monsanto with a sample of clean Roundup Ready canola seed for use in court. He told me that Monsanto had taken him on trips, to lunch and given him free products to use on his farm.

But he wasn't the only witness whom Monsanto wined and dined. Hofmann told me that Monsanto had a reception room where liquor and other refreshments were served to witnesses while the trial was happening.

## **Monsanto Continues Draconian Approach Over Contamination**

Despite all of my efforts to work out an arrangement with Monsanto because of the re-emergence of Roundup Ready Canola in my fields, they have refused to remove the canola plants from my field unless I sign an agreement that removes all my rights. The agreement that they wanted me to sign was asking me and my family members to waive their rights. Their property (the RR canola plants) continues to sit on my field, against my wishes. With the plants still sitting there, the pods are shelling and the canola is being scattered on my field again which will result in more Roundup Ready canola plants emerging in the future.

Because of the presence of these plants, I am restricted as to what I can seed on this field in 2006. I had planned to seed Mustard, and even Monsanto's lawyer is suggesting that I do not seed Mustard as it will be impossible to keep out or separate the canola from mustard.

Monsanto has admitted that the volunteer canola plants are theirs, but for them to remove them they want to be absolved of any responsibility for them. I have to absorb the costs of additional chemical (they will only pay for one removal) and removal costs as their agreement states that future costs of removal would be my responsibility. I also would lose any ability to sue Monsanto in the future.

Because of this contamination, I have lost control of what I want to seed on my land, and thus, control of my land. Monsanto's response? Sign this agreement waiving all of my rights and any claims against them and they will clean up the plants this one time.

Monsanto's response is completely unacceptable; they were the ones that polluted my land, but I am the one that has to give up my rights, my choices for crops that I want to seed, and I have to assume future costs for clean up if the contamination continues next year and beyond.

The only possible choice I have to is to sue Monsanto for the damage that they have caused to my fields. This is something that I am considering. But this whole issue could have been resolved if Monsanto would show some reason and not act in such a draconian manner.