“Monsanto Company is a leading global provider of technology-based solutions and agricultural products that improve farm productivity and food quality.”¹

It is Monsanto’s position that Mr. Schmeiser knew infringed its patent on Roundup Ready technology when he planted his fields with seeds he had saved which he knew to be glyphosate-resistant without paying a licensing fee to use the patented gene. Officials at Monsanto believed that by bringing this case to trial the Supreme Court of Canada would have the opportunity to set a precedent on intellectual property protection that would continue to make investment and innovation in genetic engineering a profitable venture. “More than 30,000 Canadian farmers have chosen our technology because of the economic and environmental benefits it brings,” said Carl Casale, executive vice president of Monsanto. "We believe [that this case] is good… for farmers and Canadians, all of who benefit from the innovative work that is going on across the country to produce more abundant, high quality food.”²

Article from The Leader-Post by Kevin Hursh, January 21, 2004:

Don’t Pity Poor Percy

Poor, downtrodden Percy. Some of those evil Roundup Ready canola seeds blew onto his property from passing trucks and now the huge multi-national monster known as Monsanto is trying to crush him like a bug.

What a hero for farmers everywhere. What an international icon. What a David taking on Goliath.

What a crock.

Many people love to cheer for the underdog and many people love to see anyone put the screws to large agri-business. But the Schmeiser / Monsanto Supreme Court case has lost any semblance of rational perspective.

Monsanto has no interest in going after farmers who by accident have Roundup Ready canola on their land. In fact, the accidental spread of the crop is a worry and embarrassment for the company.

¹ [http://www.monsanto.com](http://www.monsanto.com)
Most of the news stories don’t mention the fact that Schmeiser had over a thousand acres of canola, which by independent analysis, was shown to be well over 90 per cent Roundup Ready. He isn’t quite the innocent bystander portrayed in many media reports.

Percy has become an international star by dragging the issue through the court system. That was his choice. How sorry should we feel about his mounting court costs? No one seems to be saying how many dollars misguided environmental bleeding hearts have contributed to his campaign. His stardom may actually be a net benefit, with all the limelight an added bonus.

Patenting plant genes is an interesting issue and one that is worthy of debate, but unfortunately the Schmeiser case has generated all sorts of misconceptions about agriculture.

Herbicide tolerant crops and genetically modified crops are not synonymous. Herbicide tolerance has often been achieved through conventional plant breeding methods. CLEARFIELD canola is a prime example. CLEARFIELD lentils are now being developed and again this is through conventional plant breeding. They will not be considered GM (genetically modified).

Some people seem to believe that if Schmeiser wins the Supreme Court challenge, GM crop development will stop. That’s not the case.

Certainly, Canada will no longer look like a hospitable nation in which to invest research dollars, but there are other ways for companies to get paid for GM crops. The top one on the list is hybrids and the canola industry is already moving in that direction. With hybrids, the crop a farmer produces is not suitable as seed. Thus, to use a hybrid system, a farmer has to buy new seed each year.

If patenting of genes is struck down by the Supreme Court, companies may still be able to patent the processes by which they developed GM crops. And the country still has protection for new crop varieties under Plant Breeders’ Rights legislation.

It’s also interesting to note that some companies make their new herbicide resistance traits widely available, because they make their money off the sale of that specific herbicide. Herbicides can still be patented, even if plant genes can’t be.

Let’s explode another fallacy. No matter the outcome of the Schmeiser case, there will continue to be many cropping options where the farmer has a contractual obligation to use purchased pedigreed seed. In many of these contracts, all of the crop has to be returned, and the farmer is not allowed to save seed.

These contracts are good for farmers or they wouldn’t sign them. Personally, I’ve already signed two such contracts for the upcoming growing season. One is for a GM crop and one is conventional. Both have to be Identity Preserved from other production.

This type of contract exists beyond canola. Even for the market development programs of the Canadian Wheat Board or special contracts such as spring wheat grown for Warburton’s, the farmer is required to purchase pedigreed seed.
Cheer for the underdog if you want, but Percy Schmeiser isn’t doing anything to improve the bottom line on my farm.

Article from the National Post by Ben Chapman, October 5, 2002:
Roundup roundup

Farmers are planting more GE crops and pesticide use is down, but that won't stop Saskatchewan's Percy Schmeiser and his anti-biotech campaign

Percy Schmeiser, Canadian canola farmer and international genetically engineered (GE) crop martyr, has again lost in a court of law. A panel of three federal court judges recently dismissed an appeal against an earlier conviction for knowingly planting patent-protected GE canola on his Bruno, Sask. farm.

Unfortunately, this may only further his standing in the court of public opinion.

Big-bad multinational Monsanto dragged Mr. Schmeiser into court after it suspected that he had been growing a GE Roundup Ready variety of canola without paying the licensing fees that thousands of other Canadian farmers had willingly paid. A Canadian federal court ruled in 2001 that he had indeed infringed Monsanto's patent.

Mr. Schmeiser stood by his defense that the GE canola was blown into his field by passing seed trucks and then cross-pollinated his crop, resulting in the detectable traits; at least until a few months ago, when Mr. Schmeiser took a new tack, declaring that he had indeed deliberately planted the Roundup Ready canola, but that, as a farmer, it was his right to brown-bag seed or purchase it from a neighbor.

In his original decision, Mr. Justice Andrew MacKay ruled that Mr. Schmeiser "knew or ought to have known" that he had saved and planted seed that was Roundup tolerant, and had therefore infringed Monsanto's Roundup Ready patented technology. Judge MacKay pointed to independent tests that showed 1,030 acres of Mr. Schmeiser's canola were 95% to 98% tolerant to Roundup herbicide. At such a high level of tolerance, Judge MacKay ruled the seed could only be of commercial quality and could not have arrived in Mr. Schmeiser's field by accident.

The appeal panel unanimously rejected all of Mr. Schmeiser's 17 points of contention, leaving only the Supreme Court of Canada as the last refuge for legal appeals. Of course, this won't prevent Mr. Schmeiser from touring the world -- he recently returned from Australia -- preaching against the evils of multinationals. After all, the court of public opinion has a much lower standard for admissibility of evidence, one that seems to decrease exponentially the further one travels from home. Mr. Schmeiser has been on a public relations whirlwind since the initial lawsuit was filed against him in 2000. He has been to Africa, India, New Zealand and Australia.
twice. He has touted the terror and fear that Monsanto has allegedly directed at him, including the purported use of a herbicide bomb on his acreage to discover if his crop was really Roundup resistant. All this in the name of fighting the biotech companies that are supposedly enslaving him and others.

Except that this year, some 70% of canola grown in Canada is expected to be derived from GE varieties, chosen by farmers of their own accord. Overall, the use of genetically engineered crops in North America continues to increase. Some 35% of corn and 30% of soybeans grown in Canada will be from genetically engineered varieties this year. In the United States, about 75% of soybeans, 70% of cotton and 30% of field corn will be GE.

Part of the reason is a 46 million-pound reduction in pesticide use in the United States in 2001 because of genetically engineered crops such as cotton, canola, soy and field corn.

Such crops helped American farmers reap an additional 14 billion pounds of food and improve farm income. The most recent study from the Washington-based National Center for Food and Agricultural also predicted that if the 32 other biotech crop varieties still under development were planted, they would reduce pesticide use by 117 million pounds per year, bringing total pesticide reduction for all biotech crops to 163 million pounds annually. Field corn resistant to rootworm, which could be approved in the United States in the next few weeks, could replace 14 million pounds of insecticides used on this crop each year (the complete report, commissioned with a grant from The Rockefeller Foundation and later expanded with industry funding, was reviewed by nearly 70 plant biotechnology scientists from 20 academic and government institutions and is available at www.ncfap.org).

Closer to home, Mr. Schmeiser's own production organization, the Canola Council of Canada, published a study in 2000 demonstrating that planting herbicide-tolerant canola resulted in a 29% reduction of chemical use, increased yields and contributed to a net gain of $5.80 an acre. In short, certain genetically engineered crops, on certain farms, can help farmers produce safe, affordable food while minimizing the environmental impact.

But that isn't what Percy Schmeiser or the anti-GE campaign would have you believe. Stompin' Tom Connors sang a song that, if it weren't for copyright laws (not that Mr. Schmeiser has shown much respect for legally protected things), would probably become Mr. Schmeiser's theme. A line of the lyrics reads: "I'm a poor, poor farmer, what am I going to do?" Now that he has been instructed to pay Monsanto's court fees of $153,000, he really will be. Mr. Schmeiser has been preaching a tale of corporate omnipotence, but only after getting caught with his hand in the cookie jar. His rants against corporate rule have nothing to do with the safety of genetically engineered foods. It appears that good old Percy, practical as are most farmers, wanted to use a product that worked but didn't want to pay for the technology.
As several African countries approached mass starvation conditions in recent weeks, a debate raged over the safety of GE crops and whether U.S. food aid containing GE corn was safe or suitable. Those African countries have now agreed to accept the same food eaten routinely by Canadian and Americans, but not without considerable effort debunking the mythologies spread by Mr. Schmeiser and others. As the World Summit for Sustainable Development wrapped up recently, a group of African and Asian farmers presented three NGOs, including Greenpeace, with a trophy comprising dried cow dung on a piece of wood. The award, aptly entitled the "Bullshit Trophy," was handed over to the organizations for their contribution to the "preservation of poverty." Percy Schmeiser had my vote long ago. The courts apparently agree.

*Benjamin Chapman is a graduate student with the Food Safety Network at the University of Guelph.*

**Article from the Montreal Gazetter by Joe Schwarcz, November 9, 2002:**

*When excuses won’t fly: No seed of doubt in canola trial. Farmer claim’s he’s victim of corporate cruelty but explanations don’t stand up to scrutiny.*

Way back in Grade 6, a couple of friends and I did something that I'm not proud of. We shot a bird.

I had pestered my parents to allow me to buy a BB gun, which we then used to take potshots at cans on a fence in the back yard.

One day, a sparrow had the misfortune of taking a break on the same fence. Without thinking, my friend aimed and fired.

I’m sure he never expected to hit the bird, but did. As luck would have it, a nosy neighbor witnessed the crime and called the police. By the time they arrived we had put the bird out of its misery with a hail of BBs and laid it to rest in an unmarked grave.

Unfortunately for us, the neighbor had spied on the funeral as well. The creature was quickly exhumed and the police officer now had in hand the bird that should have been in the bush.

At this point we offered an explanation. We had been shooting at a target and the bird happened to fly by. This didn't pass muster.

The sleuth quickly determined the bird had been riddled with about a dozen pellets, quite uncharacteristic of a fly-by incident.

This necessitated yet another story. We did shoot the bird, we admitted, but for humanitarian reasons. "It was the kind that eats the rice in China," my friend volunteered.

The police decided that we needed a tour of the police station. Finally our parents were called and we were released into their custody. I never saw the gun again.
I was reminded of this dark historical moment when I began to look into the fascinating legal case of Monsanto, the giant agrochemical company, vs. Percy Schmeiser, an unknown Saskatchewan canola farmer.

Today, Schmeiser is no longer unknown; he travels around the world lecturing to anyone who cares to listen (and pay) about the evils of genetic modification and the corporate brutality to which he has been subjected. But there's more to the story.

After many years of research, Monsanto developed a variety of canola that was resistant to the herbicide glyphosate (Roundup).

This plant produces the seeds from which canola oil is pressed and is an important crop in Canada. Indeed, the name derives from "Canadian oil."

Roundup Ready canola offers several advantages to the farmer. Fields can be sprayed with glyphosate to kill weeds without harming the crop. This reduces the number of herbicide applications needed and reduces the need for tilling. There is therefore less soil erosion, a significant saving in herbicide costs as well as in diesel fuel. Canadian farmers obviously think there is a benefit since acreage devoted to genetically modified canola has been increasing every year.

The introduction of Roundup Ready canola presented Monsanto with a problem: How do you make a profit from the invention?

This is not a simple question to answer. Traditionally, farmers grow crops and keep the seeds from the best plants for use during the next growing season. According to this practice, a farmer would only have to buy the modified seeds once.

But if this were the case, Monsanto could not recoup its investment, let alone make a profit. And profit, of course, is what the game is about.

So Monsanto came up with a plan. Any farmer wishing to plant Roundup Ready canola had to sign an agreement to buy fresh seed every year. If you want to use the technology, Monsanto said, you have to pay for it. Not at all an unreasonable business move. And more than 30,000 Canadian farmers agree.

Naturally, the company monitors the use of its product. In 1998 it had reason to suspect that Schmeiser's field harbored Monsanto canola. When the farmer refused to pay for the technology, Monsanto sued.

At trial, Schmeiser admitted the presence of the plants, but said they were unwanted and must have grown from seeds that had blown off passing trucks.
But curiously, he never contacted the company to complain. Later, he would explain that he didn't even know about the existence of such seeds. Another curiosity, since the company had advertised widely and held information sessions in his area.

When Monsanto introduced its shipping records, it became clear that no truck had passed in the vicinity.

Schmeiser now suggested that the plants resulted from cross-pollination from neighboring farms. Not likely, either, since the nearest farm was 8 kilometers away. Also, the pollen (or the seed from the trucks) would have had to have an amazing property, unknown even to Monsanto: the ability to organize the canola plants produced into neat rows!

Admittedly, cross-pollination is a legitimate concern for farmers who do not want modified canola in their fields. But Monsanto has a clear policy: it has no intention of taking action against growers affected by such accidental pollen drift and is willing to work with farmers to address the problem.

Based on the evidence, the judge ruled Schmeiser "knew or ought to have known" that he had violated Monsanto's patented technology. There simply was no reasonable explanation for how his fields became "contaminated" with 95-98 percent Roundup Ready canola, planted in regular rows yet!

The farmer appealed the judgment and introduced a novel nuance. Yes, he explained, he knowingly grew Monsanto's canola but it was his right to acquire seeds in any way he chose and what he planted was his business.

The Federal Court of Appeal wasn't biting and dismissed all Schmeiser's appeals. He would now like to take the matter to the Supreme Court of Canada.

There would appear to be some interesting similarities between our "bird hunt" and Schmeiser's canola episode.

But in the end, when confronted by the eyewitness testimony and the pellet-riddled sparrow that "eats the rice in China," we recognized that we had better make a clean breast of it.

The only appealing we did was to our parents to avoid punishment. The appeal was rejected.