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“The *Monsanto v Schmieser* case: A European perspective”

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ABSTRACT

The decision of the Supreme Court of Canada in *Monsanto v. Schmeiser* is a land mark case with implications for intellectual property and biotechnology. The decision has the potential to set a precedent that could be followed by other courts around the world.

The Europe, the *de facto* moratorium on growing GM crops is slowly being lifted which has resulted in the issues surrounding this case receiving great attention.

The patenting of plants in Europe, although still an issue, has in the main been resolved by case law (Decision G01/98) in 2000 and Article 9 of the EC Directive on the Legal Protection of Biotechnological Inventions (44/98/EC).

The main issues now being raised within the EU revolves around the interface between different legal regimes, that of intellectual property and liability legislation. Under patent law using a patented invention without the authorisation of the patent holder infringes the patent, regardless of whether this was done intentionally or not (e.g. strict liability). In contrast, the recent EC Directive (2004/35/EC) on environmental liability with regard to the prevention and remedying of environmental damage, which includes which includes potential adverse effects of the release of GM crops into the environment, adopts the principle that the polluter pays. Further proposals regarding the liability for economic

damage which may result from adverse effects of GM crops are currently being considered.

This paper will highlight the proposed approaches to issues of liability that may be imposed on the farming community and the producers of GM crops by different legal regimes.

Key Words: Intellectual Property; Liability; Co-existence: