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**“Defining Entitlements and Public Policy in Canada:
Monsanto v. Schmeiser”**

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ABSTRACT

In May 2004, the Supreme Court of Canada ruled in favor of Monsanto in a patent infringement case. In this case, a Saskatchewan canola farmer, Mr. Percy Schmeiser, was found to have infringed on Monsanto's patent, associated with herbicide resistant (RoundUp Ready) canola, when he was found to have possessed and replanted the seed. Mr. Schmeiser argued that seed transfer occurred inadvertently through pollen drift.

This decision has brought into conflict a farmer's entitlement to collect and replant seed and the inventor's entitlement to benefit from their invention. A farmer's right to gather seed for replanting maybe curtailed with this ruling because of the potential threat of litigation for infringement. This decision has wider implication for the allocation of resources (the combination of seed type and technology) and the distribution of benefits and costs to individuals in society.

In addition, the ruling of the court does bring into question the potential of viewing pollen drift as an externality. This could have implications for both inventor liability and farmer recourse to this externality. The externality potential of genetically modified seed could leave the inventor liable for damages. This could have an impact on the expected return for biotechnology investments.

Both of these situations will be analyzed using a welfare theory framework. The choice of entitlement protection, potential conflicts, and the resulting distribution of benefits and costs will be identified.