

## **Four Ontario farmers help clarify the cost of seed patent infringement**

This letter follows Sean Pratt's February 24, 2011, article in the Western Producer titled Farmers see damage judgment reduced.

I would first like to say that the article covered the issues in a very accurate, fair and balanced manner.

I feel that it is import to reply, nevertheless, with a couple of addition points.

I must first make it perfectly clear that we agree that patent infringement is a very serious matter and should be avoided at all times. The Court's decisions make it clear that infringement of a seed patent is illegal and never pays. Just the same, if infringement occurs, a farmer should only have to pay what is deserved.

Monsanto is correct in pointing out that the four farmers who faced off against Monsanto, and who were successful at the Court of Appeal, had to pay more than just the awards granted by the Court. They paid their own legal costs – including trial and appeal costs – plus some of Monsanto's costs and interest. They also had their names dragged through the mud in the press.

Such facts only reinforce the point that Mr. Rivett, Mr. Kerkhoff and the Janssens brothers should be commended for sticking to their guns while resolving the matters. It is my hope that, in future situations involving seed patent infringement, farmers will not have to go through the cost, time and stress of a trial and appeal in order to achieve a fair resolution. It is my hope that future farmers, who face litigation against such a large and powerful corporation, will be equipped to enter into settlement discussions on a more level playing field – because these test cases now provide an idea of how the Court will likely decide the matter.

Make no mistake; it is an intimidating process to stand up to a huge corporation like Monsanto. To do so takes great courage. Not since the Schmeiser case has any farmer in Canada elected to do so – until these men stepped forward. All others, and there have been many, have instead taken a deal and agreed to keep the terms a secret. We will never know the details of these settlements and no farmer will ever benefit by knowing what was assessed – whether it be fair or unfair – because Monsanto has always demanded confidentiality. These four farmers refused to bury the matter – and effectively financed a public resolution of the issues to the benefit of all farmers.

These four farmers offered to settle payments to Monsanto from the outset – and for amounts very near what the Court eventually ordered them to pay. Monsanto demanded significantly more. They never denied infringement and were honest and forthright throughout the process. Call their actions a “mistake”, call it wrong, call it what you will. Infringement happened and they faced up to the consequences. What they could not accept, however, was to suffer an outcome disproportionate to the harm caused.

All they asked for, and the court agreed, was to pay what was deserved.

– Kurtis R. Andrews, lawyer with Donald R. Good Professional Corporation, counsel for Charles Rivett, Alan Kerkhof, Lawrence Janssens and Ronald Janssens, and is author of *Accounting of Profits to Remedy Biotechnology Patent Infringement*, see: [http://ohlj.ca/english/documents/47-4\\_DeBeer-FINAL.pdf](http://ohlj.ca/english/documents/47-4_DeBeer-FINAL.pdf) .