

Q.B. No. 67 of A.D. 2002

C A N A D A
PROVINCE OF SASKATCHEWAN

IN THE COURT OF QUEEN'S BENCH
JUDICIAL CENTRE OF SASKATOON

BETWEEN:

LARRY HOFFMAN, L.B. HOFFMAN FARMS INC.
and DALE BEAUDOIN

PLAINTIFFS
(APPLICANTS)

AND:

MONSANTO CANADA INC. and
AVENTIS CROPSCIENCE CANADA HOLDING INC.

DEFENDANTS

BROUGHT UNDER *THE CLASS ACTIONS ACT*

NOTICE OF MOTION FOR CERTIFICATION

TAKE NOTICE that an application will be made by the Plaintiffs before the Honourable Madam Justice G.A. Smith at the Court of Queen's Bench, 520 Spadina Crescent East, Saskatoon, Saskatchewan, on a date and time to be fixed by the Local Registrar or so soon thereafter as counsel can be heard for orders pursuant to *The Class Actions Act*, *The Queen's Bench Act, 1998*, and *The Queen's Bench Rules*:

- (a) certifying this action as a class action;
- (b) defining the class as all organic grain farmers in Saskatchewan who were certified organic grain farmers at any time between January 1, 1996 and December 31, 2001, pursuant to any of the following certification organizations (collectively referred to as "organic certifiers"):
 - (1) Organic Crop Improvement Association International, Inc. ("OCIA");

- (2) Pro-Cert Organic Systems (“Pro-Cert”);
 - (3) Canadian Organic Certification Cooperative Ltd. (“COCC”);
 - (4) International Certification Services – Farm Verified Organics (“ICS – FVO”);
 - (5) Saskatchewan Organic Certification Association (“SOCA”); and
 - (6) Organic Producers Association of Manitoba Co-op Ltd. (“OPAM”);
- (c) appointing Larry Hoffman, L.B. Hoffman Farms Inc. and Dale Beaudoin as representative plaintiffs for class members within Saskatchewan;
- (d) stating the nature of the claims, and the relief claimed, to be as follows:
- (1) a declaration that canola containing the genetic modifications inserted into it by the Defendants is a “pollutant” within the meaning of *The Environmental Management Protection Act*, S.S. 1983-84, c.E-10.2 (the “EMPA”);
 - (2) a declaration that the testing and release into the environment of Saskatchewan by the Defendants of canola containing the genetic modifications of the Defendants was a “development” within the meaning of *The Environmental Assessment Act*, S.S. 1979-80, c.E-10.1 (the “EAA”) that required the Defendants to conduct and submit an environmental impact assessment for ministerial approval prior to proceeding;
 - (3) damages in negligence and/or under strict liability and/or nuisance and/or trespass and/or compensation under the EMPA, and/or liability under the EAA, for damage and loss sustained by certified organic grain farmers represented by this action, caused by the introduction of genetically-modified/transgenic (“GM”) canola in Saskatchewan by the Defendants;
 - (4) a declaration that confined field trials of GM wheat by the Defendant, Monsanto Canada Inc., on test plots located in Saskatchewan is a “development” within the meaning of the EAA, requiring the submission and ministerial approval of an environmental impact assessment prior to proceeding;

- (5) an interlocutory and/or permanent injunction prohibiting the Defendant, Monsanto Canada Inc., from conducting further confined field trials of GM wheat on test plots located in Saskatchewan without conducting and submitting an environmental impact assessment for ministerial approval as required by the EAA;
 - (6) an interlocutory and/or permanent injunction otherwise restraining the Defendant, Monsanto Canada Inc., from proceeding further with its confined field trials of GM wheat on test plots located in Saskatchewan and/or from releasing its GM wheat, on an unconfined/commercial basis, into the Saskatchewan environment;
 - (7) interest pursuant to the *Pre-Judgment Interest Act*; and
 - (8) such further relief as to this Honourable Court may seem just;
- (e) certifying the following issues as common issues:
- (1) what is the nature and the extent of the prohibition against GM crops and GM contaminated crops in organic grain production in Saskatchewan and the markets in which Saskatchewan organically-produced grain is sold;
 - (2) whether it is reasonably possible for organic grain farmers in Saskatchewan to produce organically-grown canola free from GM contamination as a result of widespread GM contamination caused by the Defendants' products;
 - (3) what is the economic impact on organic grain growers in Saskatchewan as a consequence of genetic contamination from GM crops marketed and sold by the Defendants;
 - (4) if GM wheat is introduced on a commercial scale into the Saskatchewan environment, whether contamination of conventionally-grown wheat can be anticipated;
 - (5) if such contamination occurs, what is the potential harm that would be caused to organic grain farmers in Saskatchewan and whether such harm would be irreparable;
 - (6) in respect of each Defendant:

- (i) to what extent has it sold GM canola in Western Canada;
 - (ii) what are the properties of its GM crops;
 - (iii) what dealings did it have with the Federal Government of Canada or the Provincial Government of Saskatchewan pertaining to the testing, licensing and release of its GM crops;
 - (iv) how did it license and/or sell its GM canola in Canada;
 - (v) what instructions and education did it give to farmers purchasing its product regarding use and containment;
 - (vi) whether it had any express, imputed or implied knowledge of the prohibition against GM crops and GM contamination in Canadian organic agriculture and the markets in which Canadian organic grain is sold;
 - (vii) whether it had any express, imputed or implied knowledge of how its GM canola could contaminate conventional canola if released on an unconfined basis;
- (7) whether the Defendants are responsible for any losses incurred by organic grain farmers in Saskatchewan caused as a result of the release of GM crops in negligence, nuisance, strict liability, or trespass;
- (8) in respect of *The Environmental Management Protection Act*:
- (i) whether the Defendants' products are "pollutants" within the meaning of the EMPA;
 - (ii) whether the pollutants have caused loss or damage to certified organic grain farmers;
 - (iii) whether and the extent to which it the pollutants have been discharged into the Saskatchewan environment;
 - (iv) whether the pollutants were owned by the Defendants or, in the alternative, whether the Defendants were persons having control of the pollutants;

- (v) whether the Defendants are liable to certified organic grain farmers pursuant to s. 13(3) of the EMPA for the damage sustained by them as a result of the introduction into the Saskatchewan environment of GM canola;
- (9) In respect of *The Environmental Assessment Act*:
- (i) whether the testing and unconfined release of GM canola into the Saskatchewan environment was a “development” within the meaning of the EAA;
 - (ii) whether the testing and proposed unconfined release of GM wheat into the Saskatchewan environment is a “development” within the meaning of the EAA;
 - (iii) whether the Defendants were required to conduct and submit an environmental impact assessment for ministerial approval prior to proceeding;
 - (iv) whether the Defendants failed to conduct and submit such assessment and failed to obtain ministerial approval as required by the EAA;
 - (v) whether the Defendants were liable for any loss or damage sustained by certified organic grain farmers pursuant to s. 23 of the EAA;
- (f) directing the manner in which, and the time within which, a class member may opt out of the class action;
 - (g) directing the manner in which, and the time within which, a person who is not a resident of Saskatchewan may opt into the class action;
 - (h) approving the form and method of notice to be given to the members of the class to notify them of the certification of the class proceedings;
 - (i) ordering that the Defendants pay the costs of any notice;
 - (j) such further orders as this Honourable Court considers appropriate.

ON THE FOLLOWING GROUNDS:

- (a) the pleadings herein disclose a cause of action against the Defendants;
- (b) there is an identifiable class or two or more persons;
- (c) the claims of the class members raise common issues respecting the within litigation;
- (d) a class action will be the preferable procedure for resolution of the common issues;
- (e) the Plaintiffs, Larry Hoffman, L.B. Hoffman Farms Inc. and Dale Beaudoin, are willing to be appointed as representative plaintiffs and;
 - (i) will fairly and adequately represent the interests of the class;
 - (ii) have produced a plan that sets out a workable method of advancing the action;
 - (iii) do not have, on the common issues, an interest that is in conflict with the interests of other class members;
- (f) *The Class Action Act*, S.S. 2001, c.C-12.01;
- (g) *The Queen's Bench Rules*, Rule 82;

AND FURTHER TAKE NOTICE that in support of the said application will be read:

- (a) the Affidavit of Larry Hoffman sworn the 15th day of November, 2002;
- (b) the Affidavit of Dale Beaudoin sworn the 21st day of November, 2002;
- (c) the Affidavit of Gary Smith, P.Ag., sworn the 19th day of November, 2002;
- (d) the Affidavit of J. Wallace Hamm, M. Sc., P.Ag., sworn the 11th day of September, 2002;
- (e) the Affidavit of Dr. Mae Wan Ho sworn December, 2002;
- (f) the Affidavit of Dr. Rene Van Acker sworn the 22nd day of October, 2002;

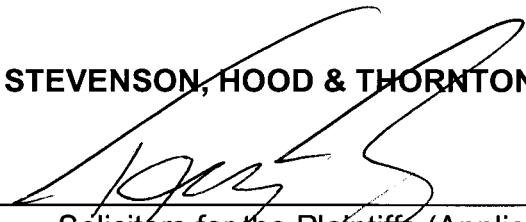
- (g) the Affidavit of Michael Marriage sworn the 14th day of November, 2002;
- (h) the pleadings and proceedings herein; and
- (i) such other materials as the Court will allow.

AND FURTHER TAKE NOTICE if you wish to oppose the motion an affidavit in response must be filed in the court office and served on each of the parties to this action, at least 7 days before the date set for hearing the motion;

DATED at Saskatoon, Saskatchewan, this 19th day of December, A.D. 2002.

PRIEL, STEVENSON, HOOD & THORNTON LLP

Per: _____


Solicitors for the Plaintiffs (Applicants)
LARRY HOFFMAN, L.B. HOFFMAN FARMS INC.
and DALE BEAUDOIN

To: Local Registrar

And to: McDougall Gauley
Attention: Richard W. Danyliuk
Solicitors for the Defendant (Respondent), Monsanto Canada Inc.

And to: MacPherson Leslie & Tyerman
Attention: Robert W. Leurer
Solicitors for the Defendant (Respondent), Aventis Cropscience Canada Holding Inc.

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This document was delivered by: PRIEL, STEVENSON, HOOD & THORNTON LLP, Barristers and Solicitors, 500-321A 21st Street East, Saskatoon, Saskatchewan S7K 0C1; Address for Service: Same as above; **Lawyer in Charge: Terry J. Zakreski** (File No. 34904000); Telephone: (306) 244-0132; Fax: (306) 653-1118.