

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

CANADA  
PROVINCE OF SASKATCHEWAN

**STATEMENT OF CLAIM**

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

BETWEEN:

LARRY HOFFMAN and  
DALE BEAUDOIN

PLAINTIFFS

AND:

MONSANTO CANADA INC. and  
AVENTIS CROPS SCIENCE CANADA HOLDING INC.

DEFENDANTS

BROUGHT UNDER *THE CLASS ACTIONS ACT*

**NOTICE TO DEFENDANT**

1. The Plaintiff may enter judgment in accordance with this Statement of Claim or such judgment as may be granted pursuant to the Rules of Court, unless:

within 20 days if you were served in Saskatchewan;  
within 30 days if you were served elsewhere in Canada or  
in the United States of America;  
within 40 days if you were served outside Canada and the  
United States of America

(excluding the day of service) you serve a Statement of Defence on the Plaintiff and file a copy thereof in the office of the Local Registrar of the Court for the judicial centre above-named.

2. In many cases a Defendant may have a trial of the action held at a judicial centre other than the one at which the Statement of Claim is issued. Every Defendant should consult his lawyer as to his rights.

3. This Statement of Claim is to be served within 6 months from the date on which it is issued.

4. This Statement of Claim is issued at the above-named judicial centre on the 10<sup>th</sup> day of January, A.D. 2002.

  
**C. RITCHIE**  
DEPUTY LOCAL REGISTRAR  
(Deputy) Local Registrar

(Deal)

## CLAIM

### The Plaintiffs

1. The Plaintiff, Larry Hoffman, is a certified organic farmer and resides at Spalding, Saskatchewan. Through a partnership, Larry Hoffman farms approximately 2400 acres of certified organic farmland in the Rural Municipality of Spalding No. 368, in the Province of Saskatchewan.

2. The Plaintiff, Dale Beaudoin, is a certified organic farmer and resides near Maymont, Saskatchewan. Dale Beaudoin farms approximately 600 acres of certified organic farmland in the Rural Municipality of Mayfield No. 406, in the Province of Saskatchewan.

3. The Plaintiffs bring this action on behalf of all organic grain farmers in Saskatchewan who were certified organic 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”):

- (a) Organic Crop Improvement Association International, Inc. (“OCIA”);
- (b) Pro-Cert Organic Systems (“Pro-Cert”);
- (c) Canadian Organic Certification Cooperative Ltd. (“COCC”);
- (d) International Certification Services – Farm Verified Organics (“ICS-FVO”);
- (e) Saskatchewan Organic Certification Association (“SOCA”); and
- (f) Organic Producers Association of Manitoba Co-op Ltd. (“OPAM”)

4. The Plaintiffs reserve the right to amend their Claim, if necessary, to facilitate the opting-in of Canadian certified organic grain farmers residing outside of Saskatchewan.

### The Defendants

5. The Defendant, Monsanto Canada Inc. (“Monsanto Canada”), is a corporation incorporated pursuant to the *Canada Business Corporations Act*, having a principal place of business and registered office in Mississauga, Ontario. Monsanto Canada

is a subsidiary of Monsanto Company, a corporation pursuant to the laws of the State of Delaware, United States of America, having a principal place of business in St. Louis, Missouri, United States of America.

6. The Defendant, Aventis CropScience Canada Holding Inc. (“Aventis Canada”) is a corporation incorporated pursuant to the *Canada Business Corporations Act*, having a principal place of business and registered office in Regina, Saskatchewan. Aventis Canada was previously known as AgrEvo Canada Inc. (“AgrEvo Canada”) having changed its name on April 17, 2000. Aventis Canada is a subsidiary of Aventis S.A., a corporation pursuant to the laws of France, having a principal place of business in Strasbourg, France.

### **Organic Food Production**

7. Organic food production involves growing crops and livestock without the use of synthetic pesticides, fertilizers and genetically modified (“GM”) organisms. Food and fiber products can be labeled “Certified Organic” only if the production and processing procedures have been verified to comply with accepted organic standards by recognized certifying bodies such as the Organic Certifiers. The producers of certified organic products presently receive substantial price premiums over conventional products of the same grade. They also presently enjoy enhanced access to international food markets.

8. Each of the Organic Certifiers list genetically modified organisms (“GMOs”) as prohibited substances. As defined by the Canadian General Standards Board’s *Organic Agriculture Standards*, approved by the Standards Council of Canada, GMOs mean:

All organisms, and products thereof, produced through techniques of genetic engineering and modification including, but not restricted to recombinant DNA, cell fusion, encapsulation, macro and micro injection, gene deletion or magnification, and other techniques for altering the genetic composition of living organisms in ways, or with results, that do not occur in nature through mating or through traditional breeding techniques such as conjugation, hybridization, or transduction.

The Organic Certifiers use similar definitions.

9. An organic field must be managed without the use of prohibited substances. A field must be free from use of prohibited substances such as herbicides typically for a

period of at least three years before it will be permitted to be certified as organic by any of the Organic Certifiers.

10. In order to sell grain within the certified organic grain market, an audit trail is necessary to ensure adherence to the certification standards. Organic grain crops are processed and marketed separately from conventional grain crops. Certified organic products are subject to testing by regulators for the presence of prohibited substances including GMOs. Contamination of organic products by prohibited substances such as GMOs can result in the rejection of shipments and substantial losses to organic farmers.

11. Certified organic grain production is a fast-growing industry, serving a growing and lucrative market. Presently there are approximately 1,000 certified organic grain farmers in Saskatchewan. Certified organic grain can be sold in the organic grain market at a premium well in excess of conventional grain.

#### **The Introduction of Roundup Ready Canola by Monsanto**

12. Using recombinant DNA and genetic engineering, Monsanto Company developed a gene that, when inserted in a plant such as canola, renders that plant resistant to glyphosate-based herbicides such as Roundup. Roundup herbicide is marketed and sold by Monsanto Canada. The technology allows a non-organic farmer to spray his fields with a glyphosate-based herbicide such as Roundup, killing weeds but not the canola.

13. Monsanto Company obtained a patent in the United States and in Canada for the gene and at all material times, licensed Monsanto Canada to market, distribute, license and sell the gene technology in Canada.

14. Because canola plants containing the genetic modification have a “novel trait” the Canadian Food Inspection Agency required them to be approved by through its Plant Health and Production Division, Plant Biosafety Office.

15. After having conducted “confined” field trials in Canada between 1992 and 1995 in Alberta, Saskatchewan, Manitoba and Ontario, Monsanto Canada sought, and was granted, approval for the “unconfined release” of canola containing the GM gene conferring the glyphosate resistance in canola. In 1995, the Canadian Food Inspection Agency’s Decision Document DD95-02 granted approval to Monsanto Canada for the “unconfined release” into the environment of the GM canola.

16. Commercial sales of GM canola by Monsanto began in 1996 under the trademark "Roundup Ready". Monsanto entered into agreements with seed companies to produce canola with the genetic modification and then entered into contracts directly with growers, described as "Technology User Agreements", permitting growers to grow Roundup Ready canola.

17. The Plaintiffs state that Roundup Ready canola is a GMO and a prohibited substance within the meaning of the certification standards of the Organic Certifiers.

#### **Introduction of Genetically-modified Liberty Link Canola by Aventis Canada**

18. AgrEvo Canada, as Aventis Canada was formerly known, developed a gene using recombinant DNA that, when incorporated into a canola plant, gave the canola plant resistance to glufosinate ammonium based herbicides and kanamycin based herbicides. Aventis Canada markets and sells a glufosinate ammonium based herbicide in Canada under the trade name Liberty.

19. Canola plants containing Aventis Canada's genetic modification were field tested in Canada under confined conditions in Saskatchewan and Alberta between 1990 and 1994, Manitoba between 1991 and 1994 and Ontario between 1993 and 1994. Aventis Canada sought, and was granted, approval by the Canadian Food Inspection Agency for the "unconfined release" of the GM canola into the environment. The approval was given in 1995 pursuant to the Canadian Food Inspection Agency's Decision Document DD95-01.

20. In 1995 Aventis Canada began to market and sell the GM canola under the trademark "Liberty Link" canola and licensed other seed companies to incorporate the gene into their canola and sell it to growers. The genetic insert allowed non-organic farmers to grow canola and spray that canola with a glufosinate ammonium based herbicide such as Liberty Herbicide.

21. The Plaintiffs state that Liberty Link canola is a GMO and a prohibited substance within the meaning of the certification standards of the Organic Certifiers.

#### **Contamination of the Environment by Genetically-modified Canola**

22. The Defendants' genetic modifications were incorporated into open-pollinated varieties of canola. Pollen from the open-pollinated varieties of canola marketed and/or licensed and/or sold by Monsanto Canada and Aventis Canada can pollinate conventional canola, conferring the genetic modification upon the seed of the formerly

conventional canola. Due to this natural process of cross-pollination, conventional canola plants can produce seeds which contain GMOs. These seeds can germinate and produce further generations of canola that contain the genetic material of GM canola, by their own progeny and also by further cross-pollination.

23. Farmers in Saskatchewan were induced to buy Monsanto Canada's GM canola or Aventis Canada's GM canola, because of advertised superior weed control that could be achieved by being able to spray Roundup or Liberty herbicide, as the case may be, on a growing canola crop to kill weeds but not the canola.

24. The use of GM canola in Western Canada has grown such that by the year 2000, half of all the canola grown in Western Canada (amounting to approximately 6.05 million acres) was either a Roundup Ready or Liberty Link GM variety.

25. The Plaintiffs state that between 1995 and 2001, with respect to Aventis Canada and Liberty Link, and between 1996 and 2001, with respect to Monsanto Canada and Roundup Ready, farmers purchasing either variety were not warned about the potential harm to neighbouring crops caused by GM volunteer canola. In particular, no warnings were given to farmers to keep a buffer zone to minimize the flow of pollen to surrounding crops, to ensure that all farm trucks transporting the seed were properly and securely tarped, to thoroughly clean all farm machinery before leaving a field where the GM crop was being grown, or to warn neighbors that GM volunteers might emanate from the GM crop.

26. Since its introduction into the environment of Western Canada, GM canola has widely proliferated and has been found growing on land on which it was never intended to be grown. The contamination has reached a level such that very few, if any, pedigreed seed growers in Saskatchewan will warrant their canola seed to be GMO-free and few, if any, grain farmers in Saskatchewan could warrant their canola crop, even if planted with GMO-free seeds, to be free of GMO contamination.

27. As a result of widespread contamination by GM canola few, if any, certified organic grain farmers are now growing canola. The crop, as an important tool in the crop rotations of organic farmers, and as an organic grain commodity, has been lost to certified organic farmers in Saskatchewan. It is likely that the domestic and foreign market demand for organic canola will be met primarily by foreign organic growers who can warrant their crops to be free of GMO contamination.

### **Genetically-modified Wheat**

28. The Defendant, Monsanto Canada, has sought, and has been granted, approval to conduct confined field trials of GM wheat. Field trials were carried out by Monsanto Canada on multiple test plots located in Manitoba in 1998, and in Manitoba, Alberta and Saskatchewan in 1999, 2000, and 2001. The wheat, which will be known as Roundup Ready wheat, like the product Roundup Ready Canola, is genetically-modified by the insertion of a gene that confers glyphosate resistance to the wheat in which the gene has been infused.

29. The Plaintiffs state that Roundup Ready wheat is a GMO and a prohibited substance within the meaning of the certification standards of the Organic Certifiers.

30. Pollen from GM wheat can fertilize conventional wheat, conferring the genetic modification upon the progeny of the conventional wheat.

31. If introduced on a commercial scale, GM wheat could, by natural means and cultivation, eventually spread in the rural environment of Saskatchewan as extensively as GM canola. If GM wheat is released into the Saskatchewan environment on such an unconfined and commercial basis, organic grain farmers will suffer irreparable harm.

32. Presently wheat is the most important grain grown by certified organic grain growers, and is their largest export. If wheat becomes contaminated to the extent that canola has, certified organic grain farmers in Saskatchewan will likely lose their ability to farm organically.

33. The Defendant, Monsanto Canada, unless restrained by this Honourable Court, intends to release its GM wheat into the Saskatchewan environment on an unrestricted basis, without regard to the damage its gene may cause to wheat crop values and certified organic grain farmers.

### **Liability of Monsanto Canada and Aventis Canada for the Introduction of Genetically-modified Canola Into the Saskatchewan Environment**

34. The Plaintiffs state that the Defendants owed a duty to certified organic grain farmers to ensure that their GM canola would not infiltrate and contaminate farmland where it was not intended to be grown. The Plaintiffs state that the Defendants knew, or ought to have known, that the introduction of GM canola into the Saskatchewan environment without any, or in the alternative, proper, safeguards would result in GM

canola infiltrating and contaminating the environment, seed supplies, and property of certified organic grain growers.

35. Further, or in the alternative, the Defendants ought to have warned growers purchasing their products of cross-pollination, and advised them of farming practices designed to limit the spread of the gene, such as the keeping of an adequate buffer strip around land where GM canola was being grown.

36. The Plaintiffs state that the Defendants failed and/or neglected to ensure that their GM canola would not infiltrate and contaminate farmland, that they failed and/or neglected to warn growers about cross-pollination and further, that they failed to and/or neglected to advise growers of farming practices that would limit the spread of their GM canola. By such failure and/or neglect, the Defendants have breached their duties to certified organic grain farmers as set out in paragraphs 34 and 35 hereof. The Plaintiffs therefore state that the Defendants are liable in negligence for the damages incurred by certified organic grain farmers represented in this action.

37. Further, or in the alternative, the Plaintiffs state that the Defendants are liable to certified organic grain farmers represented in this action on the basis of strict liability, having engaged in a non-natural use of land, and allowing the escape of something likely to do mischief and damage.

38. Further, or in the alternative, the Plaintiffs state that the introduction of GM canola into the Saskatchewan environment by the Defendants created a nuisance that has interfered with certified organic grain farmers' use and enjoyment of their land. The Plaintiffs therefore state that the Defendants are liable in nuisance for any damages caused to certified organic grain farmers represented in this action from the introduction of GM canola and its unconfined release in the Saskatchewan environment.

39. Further, or in the alternative, the Plaintiffs state that the Defendant's GM canola has trespassed on lands farmed by certified organic grain growers. The Plaintiffs therefore state that certified organic grain farmers represented in this action are entitled to damages from the Defendants in trespass for the introduction of GM canola and its unconfined release in the Saskatchewan environment.

40. Further, or in the alternative, the Plaintiffs state that the Defendants' genetic modifications are "pollutant", within the meaning of *The Environmental Management Protection Act* (Saskatchewan) ("EMPA"), that has caused loss or damage to certified



organic grain farmers because of its discharge into the Saskatchewan environment. The Plaintiffs state that at the time of its first discharge, the genetic modification was owned by the Defendants or, in the alternative, the Defendants were persons having control of the pollutant. The Plaintiffs therefore state that the Defendants are liable to certified organic grain farmers represented in this action pursuant to Section 13(3) of the EMPA for the damage sustained by them as the result of the introduction into the Saskatchewan environment of GM canola.

41. Further, or in the alternative, the Plaintiffs state that the testing and unconfined release of GM canola into the Saskatchewan environment was a “development” within the meaning of *The Environmental Assessment Act* (Saskatchewan) (“EAA”). The Defendants were therefore required to conduct and submit an environmental impact assessment for ministerial approval prior to proceeding. The Defendants failed to conduct and submit the required assessment and failed to obtain ministerial approval as required by the EAA. Pursuant to section 23 of the EAA, the Defendants are therefore liable for any loss or damage sustained by certified organic grain farmers represented by this action from the “development” without proof of negligence or intention. The Plaintiffs further rely upon the reverse burden of proof stipulated in section 23 of the EAA respecting whether the “development” caused such loss or damage.

42. Further, or in the alternative, the Plaintiffs state that confined field trials of GM wheat on test plots located in Saskatchewan by Monsanto Canada are a “development” within the meaning of EAA, requiring Monsanto Canada to conduct and submit an environmental impact assessment for ministerial approval. Because Monsanto has not conducted and submitted an environmental impact assessment, nor obtained ministerial approval, its operation of the test plots in Saskatchewan is contrary to the EAA and unlawful.

#### **The Losses Sustained by Certified Organic Grain Growers from the Introduction of Genetically-modified Canola**

43. Because of the extensive GMO contamination of canola by genes introduced into the environment by the Defendants few, if any, certified organic grain growers in Saskatchewan will include canola in their crop rotations and risk contamination.

44. The Plaintiffs each grew certified organic canola but have discontinued this practice because of environmental contamination by GM canola. Their damages, and the damages of the class they represent, derive from loss of revenues caused by:

- (a) loss of canola as a crop to be used within their regular rotations; and/or
- (b) loss of opportunity to participate in the certified organic canola market.

**Claim**

45. Wherefore, the Plaintiffs (and the class they represent) claim against the Defendants, jointly and severally:

- (a) a declaration that the genetic modifications inserted into canola by the Defendants are “pollutants” within the meaning of the EMPA;
- (b) a declaration that the testing and release into the environment of Saskatchewan by the Defendants of the genetic modifications inserted into canola by the Defendants was a “development” within the meaning of the EAA that required the Defendants to conduct and submit an environment impact assessment for ministerial approval prior to proceeding;
- (c) 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 canola in Saskatchewan by the Defendants;
- (d) a declaration that confined field trials of genetically modified wheat by Monsanto Canada 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;
- (e) an interlocutory and/or permanent injunction prohibiting Monsanto Canada from conducting further confined field trials of genetically modified wheat on test plots located in Saskatchewan without conducting and submitting an environmental impact assessment for ministerial approval as required by the EAA;
- (f) an interlocutory and/or permanent injunction otherwise restraining the Defendant, Monsanto Canada, from proceeding further with its confined field trials of genetically-modified wheat on test plots located in Saskatchewan

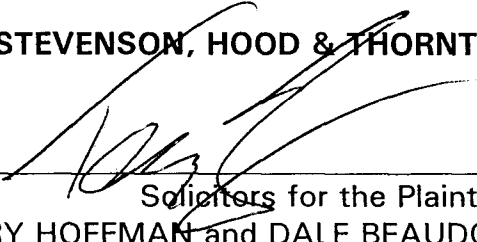
and/or from releasing its genetically-modified wheat, on an unconfined/commercial basis, into the Saskatchewan environment;

- (g) interest pursuant to the *Pre-Judgment Interest Act*; and
- (h) such further relief as to this Honourable Court may seem just.

DATED at the City of Saskatoon, in the Province of Saskatchewan, this 10<sup>th</sup> day of January, A.D. 2002.

**PRIEL, STEVENSON, HOOD & THORNTON**

Per: \_\_\_\_\_

  
Solicitors for the Plaintiffs

LARRY HOFFMAN and DALE BEAUDOIN

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This document was prepared by : PRIEL, STEVENSON, HOOD & THORNTON, Barristers and Solicitors, 500-321A 21<sup>st</sup> 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.