

IN THE SUPREME COURT OF CANADA
(On Appeal from the Federal Court of Appeal)

B E T W E E N:

PERCY SCHMEISER and
SCHMEISER ENTERPRISES LTD.

APPELLANTS

A N D:

MONSANTO CANADA INC. and
MONSANTO COMPANY

RESPONDENTS

AFFIDAVIT OF MAUDE BARLOW

I, **MAUDE BARLOW**, of the City of Ottawa in the province of Ontario, **AFFIRM THAT:**

1. I am the national chairperson of the Council of Canadians (hereafter referred to as the “Council”) and, as such, have knowledge of the facts to which I hereafter depose.

The structure and objectives of the Council of Canadians

1. The Council was established in 1985 as a citizens’ watchdog group and was incorporated as a federal not-for-profit organization on August 11, 1986. It is currently comprised of more than 100,000 members, and has 72 chapters across the country. The Council does not accept funding from corporations or government, and is entirely sustained by volunteer energy and the financial assistance of its members.

2. The primary objectives of the Council, as set out in its “Statement of Purpose”, are safeguarding social programs, promoting economic justice, renewing democracy, asserting Canadian sovereignty, preserving the environment and advancing alternatives to corporate-style free trade. The Council has been at the forefront of both national and international campaigns to defend public services such as healthcare and stop the trend toward privatization.

3. The Council conducts research, publishes reports, convenes seminars and public events, maintains a sophisticated website and carries out other public information activities aimed at bringing issues of concern to the general public. The Council is one of the most frequently quoted organizations in Canada on matters relating to public services, trade policy and political sovereignty.

The Interests and Expertise of the Council Relevant to the Issues Before This Court

4. Among the Council's diverse programs are several that are relevant to the questions before the Supreme Court of Canada in this case, including issues concerning bio-technology, intellectual property rights, the viability of Canada's farm economy, biodiversity, the environment and public health, and globalization. An overview of the Council's key areas of activity is attached as Exhibit "A" to this affidavit. One of the Council's campaign staff is assigned exclusively to work on biotechnology issues.

5. A synthesis of the concerns that motivated the Council's interest in this proceeding are summed up by the following excerpt taken from a soon to be published report being prepared by its staff, concerning seeds and bio-diversity:

The earth's agricultural bio-diversity is the product of generations of effort by people to tailor plants to their needs. A quarter of a century ago, Canada had a public seed system in the full sense of the word. Our seed supply was the product of a free flow of seeds among farmers and formal breeders, within Canada and abroad. By this time, the rather loose process of farm-level plant breeding had given way to centralized breeding programs capable of harnessing seeds to meet national objectives, but these programs still belonged to the public and the seeds they produced were still in the public domain. Consequently, plant breeding could be reoriented and reorganized through political change. And, just as importantly, farmers, gardeners or innovative plant breeders were free to work with the seeds to move agriculture in alternative directions.

Over the past twenty-five years the Canadian seed system has been radically transformed. Our government is on the cusp of turning over our public seed system, and the options for the future that go with it, to a handful of transnational corporations. Through patents and other intellectual property regimes, corporate tactics, and government manoeuvring, our public goods are being destroyed to make way for private profit and the seed saving and plant breeding practices at the heart of our seed system are being criminalized. The future of Canadian agriculture is, as a result, increasingly in

the hands of a few pesticide corporations that control the seed industry and whose interests hardly reflect the diverse aspirations of the Canadian people.

- 4 In addition to carrying out and publishing critical analyses of topical issues, such as intellectual property rights, food safety, bio-diversity and environmental protection, the Council is involved in a number of activities intended to heighten public awareness about, and stimulate public policy and regulatory responses to the challenges presented by biotechnology – these include:
 - a campaign to persuade a major Canadian food retailer to adopt a genetically engineered (GE) free marketing policy, which was launched in 1999;
 - a campaign to persuade Parliamentarians and responsible Ministers, to establish a mandatory labelling for all foods containing GE, such as the one now being planned by the European Union, which was launched in 2001;
 - Campaign to stop the introduction of GE wheat in Canada (launched in fall 2003)
 - Campaign to ban the patenting of lifeforms (launched in winter 2003)
 - Coordinated the creation of GE Alert - network of Canadian scientists against GE foods.
 - Coordinated Biojustice 2002 - grassroots gathering against genetic engineering
 - Coordinated the Planting Seeds of Doubt Tour 2003 - prairie tour of 11 farming communities to discuss the potentially imminent introduction of GE wheat in Canada

- 5 In 2001 the Council organized an important international conference titled “Science and the Public Good” which brought together several leading scientists and experts from the around the world working on issues related to biotechnology, bio-diversity, intellectual property and the environment. Over 1500 people attended this scientific symposium, which involved 16 leading scientists such as Dr. Árpád Pusztai, Ph.D., (former, Senior Research Fellow, Rowett Research Institute, U.K), Dr. Susan Bardocz, Ph.D., (former head of research unit, Rowett Research Institute, U.K), Dr. Katherine Barrett, Ph.D.(Science and Environmental Health Network , U.S.A.), Dr. Ann Clark, Ph.D (Professor of Plant Agriculture, University of Guelph), Dr. Michele Brill-Edwards, MD, FRCPC (Department of Pediatrics, University of Ottawa), and Dr. Edwin Daniel, Ph.D., FRSC (Professor Emeritus of Medicine, McMaster University and Chair, Working Group on Genetics and Biotechnology, Science for Peace, University of Toronto). Several prominent consumer advocates such as Dr. Michael Hansen

(Consumer Policy Institute, U.S.A.), Adolfo E. Boy (Rural Reflexion Group and Transgenic Alert Net, Argentina), and Ralph Nader (U.S. Presidential Candidate for the Green Party) shared information, adding to the debate on genetic engineering. Topics ranging from the ecological and health risks associated with genetic engineering to whistleblowing were discussed.

- 6 The Council believes that the resolution by this Court of the issues before it will have far reaching implications for both Canadian and international policy and law concerning matters that are of enormous public policy importance. These issues have been a key focus for the Council's work for the past several years, and its engagement with Canadians across Canada has provided it with particular insights and expertise concerning the public interest concerns that at large in this case.

- 7 In addition, the Council has taken a keen interest in a recent complaint made by Canada and the United States invoking the dispute procedures of the World Trade Organization, and concerning European regulations relating to genetically modified organisms. We believe that international trade disciplines concerning intellectual property, food safety and other matters represent the new context within, which disputes such as the present one, need to be understood. Its long-standing commitment to working on issues of trade liberalization and globalization is accorded the Council and expertise that I believe would also be of assistance to this Court.

- 8 I make this Affidavit in support of an application by the Council of Canadians for standing as an intervener in the appeal that will be determined by the Supreme Court of Canada in this matter.

SWORN BEFORE ME at the City)
of Saskatoon, in the Province of)
Saskatchewan, this _____ day of)
October, A.D. 2002.)
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)
_____)

A Commissioner

Maude Barlow