

QUAKER ECO-BULLETIN

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Patenting of Higher Life Forms in Canada

by Anne Mitchell

Patenting of the inventions of biotechnology, and biotechnology in general, are controversial issues. Patenting is a central feature of economic development within the biotechnology sector. Harvard University is appealing a challenge by the Canadian government and several others to Harvard's application to patent their tumor-prone mouse that is used in cancer research, OncoMouse, in Canada. The challenge has reached the Supreme Court of Canada and the hearing will begin in May 2002.

Quakers in Canada are in the forefront of this debate, asking *What is it in nature and in human knowledge that we have the right to own?*

What is it in nature and in human knowledge that we have the right to own?

Quakers will join with the Canadian Council of Churches, along with the Evangelical Fellowship of Canada, as interveners before the Supreme Court on this case.

The principle argument being put forward by Quakers and the faith groups is around the interpretation of the term "invention" and whether Parliament intended that higher life forms should be patentable subject matter when the Patent Act was passed in Canada in the late 1800s. Further, the faith groups argue that the policy decision as to whether life forms should be included in patentable subject matter in Canada should be left to Parliament.

There are many arguments put forward for extending the scope of patent protection to include plants and animals. These include the importance of continued research and development and symmetry with trade partners. Canada's current policy is seen as potentially discouraging investment in their biotechnology sector which is growing quickly and is estimated to be valued at \$50 billion (Canadian) by 2005. The Canadian patent law is already being extended in fact if not in law. This can be seen in the Monsanto Canada Inc. versus Schmeiser case where Monsanto was recently successful in a challenge against Saskatchewan farmer Percy Schmeiser for unlicensed use of their herbicide-resistant (Roundup-Ready) canola (Canadian Patent no. 1,313,830).

Canada is a signatory of the World Trade Organization's (WTO) Agreement on Trade-Related Aspects of Intellectual

Property Rights (TRIPS). Article 27 of this agreement provides for excluding plants and animals from patent protection. However, there is increasing pressure from their major trade partners to eliminate the use of this exception. The United States, Australia and the European Union allow the patenting of higher life forms. Will Canada be able to withstand pressure from the United States should it decide not to extend patenting to plants and animals? Will this lead to yet another example of a multinational corporation taking legal action against a sovereign country? Will this be another example of the WTO attempting to overrule the laws of Canada?

Why Are Friends Concerned?

There are many arguments against extending patent protection. One, which the Canadian Council of Churches will be arguing before the Supreme Court of Canada, is the ethics of treating life as a mere commodity for sale in the marketplace. What does this do to our understanding of our relationship to the Earth, to God, to each other and to other species? Is it right to manipulate the blueprint of life of either humans or other species? Who owns genetic information? For what purposes? Is it right to alter the genetic makeup of food and animals to produce in them certain qualities which we desire? Is this technology the only way to solve a problem, for example, hunger in the world? What are the potential long-term health and environmental impacts? What problems are we passing on to future generations?

A second, equally persuasive argument considers the social implications of an unequal distribution of the wealth defined by these patents. This is particularly the case for developing countries with the intellectual property protection of crop plants. The conservation of biological diversity is one of the most pressing global environmental issues. This was recognized by Canada and Canada was one of the first countries to sign and ratify the United Nations Convention on Biological Diversity in 1992. One of the important issues related to the goals of the Convention is the equitable access to the benefits of biodiversity. This relates directly to the patenting of life forms particularly in regard to agriculture. Patents on genetic makeup of crops and livestock could further concentrate eco-

conomic power in large agricultural businesses and facilitate appropriation by them of genetic resources and knowledge of them developed over millennia by indigenous and local communities, particularly in the developing world. The monopoly ownership and appropriation of economic benefits of biodiversity through patenting contradicts the goal of equitable sharing of benefits of genetic resources of biodiversity.

The Canadian Yearly Meeting of the Religious Society of Friends first addressed this issue in session in August 2000. The Yearly Meeting decided to write to the Prime Minister expressing their concerns and asking the Government of Canada to appeal the decision of the lower court to allow Harvard's patent application for the OncoMouse to stand in Canada. The letter further stated that such a change to the interpretation of the Patent Act should only be made by Parliament after full, public debate.

CYM brought this concern to the Canadian Council of Churches and in May 2001, the governing board of the Canadian Council of Churches decided that this case was significant enough that the CCC would investigate intervening before the Supreme Court of Canada.

During the year, from CYM 2000 to CYM 2001, many Meetings in Canada considered this issue. Ottawa Monthly Meeting held a retreat in January 2001 and the focus of the St Lawrence Regional Gathering in May 2001 also focused on what it is in nature that we have the right to own. The biotechnology working group of the Canadian Council of Churches also considered this issue.

At the 2001 session of CYM, the Yearly Meeting agreed to support the CCC should it decide to seek intervener status on this case. The Canadian Council of Churches, along with the Evangelical Fellowship of Canada did seek intervener status, which was granted in the fall of 2001. Harvard University appealed the decision to allow the faith groups to intervene. Their appeal was not successful and the faith groups submitted their factum to the Supreme Court in March 2002. The case will open in the Supreme Court of Canada in May 2002.

What Can Friends Do?

Funds are now being sought to cover legal fees for the faith groups' intervention and for an outreach and education program in Canada on these issues. So far, we have raised over \$15,000 of the \$25,000 required. Donations for the oncomouse legal fund can be sent to the Canadian Council of Churches, 159 Roxborough Drive, Toronto, Ontario, M4W 1X7. Mark the cheque "OncoMouse"

For More information

What is it in nature and in human knowledge that we have the right to own?
St Lawrence Regional Gathering of the Religious Society of Friends, (Quakers), May 2001.

Canadian Council of Churches - www.ccc-cce.ca

Rural Advancement Foundation International - www.rafi.org

Canadian Institute for Environmental Law and Policy - www.cielap.org

The Quakers in Canada - www.quaker.ca

Union of Concerned Scientists - www.ucsusa.org

Quaker Eco-Bulletin (QEB) is published bi-monthly as an insert in *BeFriending Creation* by **Quaker Eco-Witness**, a project of **Friends Committee on Unity with Nature (FCUN)**.

Quaker Eco-Witness (QEW) promotes government and corporate policies to help restore and protect Earth's biological integrity. It works within and through the Religious Society of Friends for policies that enable human communities to relate in mutually enhancing ways to the ecosystems of which they are a part. This witness seeks to be guided by the Spirit and grounded in reverence for Earth's communities of life as God's creation.

QEB's purpose is to inform the **QEW** network to advance Friends' witness on government and corporate policy as it relates to the ecosystems that sustains us. Each issue is an article about timely legislative or corporate policy issues affecting our society's relationship to the earth.

Friends are invited to contact us about writing an article for *QEB*. Submissions are subject to editing and should:

- Provide background information that reflects the complexity of the issue and is respectful toward other points of view.
- Explain why the issue is a Friends' concern.
- Describe the positions of other faith-based and secular environmental groups on the issue.
- Relate the issue to legislation or corporate policy.
- Provide sources for additional information.

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