



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

September 26, 2000

The Rt. Hon. Jean Chrétien
Prime Minister of Canada
Room 309-S
House of Commons
Parliament Buildings
Wellington Street
Ottawa, Ontario K1A 0A6

FAX 613-941-6900

Dear Mr. Chrétien:

We at the Canadian Environmental Law Association are writing to you regarding an appeal in the "Oncomouse" patent case, between Harvard College and the federal Commissioner for Patents. We urge the federal government to instruct its counsel to appeal this case to the next level of court, which is the Supreme Court of Canada.

A decision was rendered on August 3, 2000 by the Federal Court of Appeal, granting Harvard College the patents for all mammals, except humans, containing the "oncogene". This was a split decision, with the dissenting judgment agreeing with CELA's intervention that patenting of mammals is for Parliament to consider and not within the existing definition of "invention" under the *Patent Act*.

We were granted standing to intervene in the hearing before the Federal Court of Appeal. Therefore, we have closely read that court's decision and the applicable law.

We think that not only does the decision raise significant policy concerns, but it was wrong in law. We suggest that patenting of mammals raises numerous ethical, ecological, legal and health issues which need to be weighed by Parliament. We argued in the Federal Court of Appeal that the Patent Commissioner and the Federal Court, trial division, were both correct in denying the patents to Harvard College for the oncomouse.

We would add that Harvard College already has intellectual property protection for the oncogene, the process, the test to detect the oncogene and other aspects of utilizing this biotechnology. We submit that the extension of the patent to the living mammal is unnecessary, inappropriate, and wrong in law.

We suggest that the two majority judges of the Federal Court of Appeal erred in law as to the patent issues of "reproducibility" (because the mouse will reproduce as a normal mammal with inheritance by normal mendelian genetics principles), and as to "composition of matter" (because the mammal is determined by its genetic makeup almost none of which is "invented" by Harvard College).

This patent will extend to all living non-human mammals containing an "oncogene" from a mouse to a whale. The patenting of whole mammals in this way also raises many unexamined implications for agriculture, breeding practices and ownership of livestock, and would overturn existing breeding laws and principles, when for example, farmers find themselves unwittingly in possession of "patented" mammals.

CELA submits that the federal government should continue its support for your Patent Commissioner's decision and continue this appeal to the next court.

Furthermore, CELA submits that the issue of "patenting" life forms must be examined by Parliament, and safeguards, rules, boundaries, practices and limits must be established in law. It is unacceptable to have life form patenting proceed without such an examination. CELA would appreciate being involved in such a process and would request the issue be considered by a parliamentary standing committee. However, if an appeal is not filed, these patents will be issued and the opportunity for a full legislative review of this important matter will have been lost. In the meantime, an appropriate boundary was set by the Patent office and Commissioner in allowing Harvard College several aspects of patent protection for their technology, but denying a patent on the mammal.

Please seriously consider instructions for an appeal before the time limit for appeal expires on October 2, 2000.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

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cc: Hon. Paul Martin – Minister of Finance
Hon. David Anderson – Minister of Environment
Hon. John Manley – Minister Industry
Hon. Alan Rock – Minister of Health
Hon. Ralph Goodale – Minister of Natural Resources
Hon. Jane Stewart – Minister of Human Resources