

MEDIA RELEASE

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MOUSE NOT PATENTABLE SAYS SUPREME COURT

The Canadian Council of Churches (CCC) and the Evangelical Fellowship of Canada (EFC) welcome the Supreme Court of Canada's decision not to allow the patenting of higher life forms in Canada. The CCC and the EFC intervened together before the Supreme Court of Canada to oppose the patenting of higher life forms.

"The extension of patentability to higher life forms would have been an expansion of patent law into new areas of huge significance for public policy in Canada," said Eric Beresford, representing the Canadian Council of Churches. "Such changes need full public debate and should take place in Parliament and not the courts. Harvard University modified life, they did not create it. They cannot own it as something they invented."

"Life forms are not tools or inventions, mice or humans are not technologies that should be owned by corporations or institutions" commented Bruce Clemenger, director of the EFC's Centre for Faith and Public Life. "This decision reflects a respect for higher life forms."

The case was between the Canadian Commissioner of Patents and the Fellows of Harvard University. Harvard University altered the genetic composition of a mouse so that it and its offspring would develop cancer more frequently and predictably— hence its nickname "the oncomouse." The Fellows of the university applied for a patent not only on the process by which the mouse is modified, but also over the gene introduced. This patent would apply both to the mouse itself and all of its offspring that contain the oncogene. The Canadian Commissioner of Patents granted patents over the process and the genetic composition of the mouse but denied it over the creature itself. The Federal Court Trial Division upheld the Commissioner's decision. The Federal Court of Appeal, in a two to one decision, overturned previous decisions and granted the patent on the mouse itself.

In its decision, the Supreme Court said that the Patent Act covered non-living mechanistic products or processes, not higher life forms. The Court stated, "Since patenting higher life forms would involve a radical departure from the traditional patent regime, and since the patentability of such life forms is a highly contentious matter that raises a number of extremely complex issues, clear and unequivocal legislation is required for higher life forms to be patentable."

“This is a very important and courageous decision by the Supreme Court,” said Karen Hamilton, General Secretary of the CCC. “To grant a patent over higher life forms would mean the patent holders have rights but no responsibilities for those life forms, treating living beings as intellectual property.”

“Life is not an invention and it should not be commercialized,” said Clemenger. “The Patent Act uses the language of machines and tools, not that of biological life. It was never intended to encompass life forms and we are pleased the Court recognized this.”

Harvard argued that the definition of patentable material was written many years ago and could not have anticipated the way technology would advance. Still, they believed the definition could be extended to cover the mouse as it was technically a “composition of matter.”

The EFC and the CCC agreed that patenting of higher life forms was not anticipated in the Patent Act. However, they argued that expanding the Act to allow for patenting would hold serious implications for the future of biotechnology. They said that the patenting of animals objectified life and created the possibility of future human patenting, pointing out that until the decision of the Federal Court of Appeal, mammals had not been considered patentable material. They believe that courts should proceed with caution when considering whether to extend patents over higher life forms. Questions of this nature should be addressed through full public debate, and that is the responsibility of Parliament.

The Canadian Council of Churches has prepared a study document on issues related to the Oncomouse and biopatenting: articles from six different Christian traditions, with discussion questions and Scripture references. This resource will be available before Christmas. It can be ordered through the Council and will be available on line at our web site.

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