

*Patent Act*

legislated in 1969 and became Section 41(4) of the Patent Act. This, of course, is the section that is at risk now.

Since that time, multinational corporations have attacked compulsory licensing and they have stepped up the attack in recent years. I recall being a part of the Canadian delegation to the United Nations a couple of years ago. While we were in New York, American multinational companies took the occasion to lobby Canadian legislators. I must say that I was ashamed by the behaviour of Conservative members of that delegation who simply listened respectfully to the multinationals and said: "Yes, sir, you are unhappy with what we are doing with pharmaceuticals, we will change it". This occurred very soon after the 1984 election, so Conservative members said to the multinationals: "Just give us a chance. It will not take us long to do what you want but we have only just come into office. We can assure you that you will get the kind of legislation that you want". Of course, what they were saying was that the interests of American multinationals would be put ahead of the interests of the Canadian people.

I am getting ahead of my chronology somewhat. In 1984, the federal Government appointed Professor Harry Eastman of the University of Toronto to head a commission of inquiry on the pharmaceutical industry. His report, which was released in May of 1985, recommended that we retain compulsory licensing. However, he proposed that patent holders be guaranteed four years of exclusivity and freedom from competition and that companies that actually do research in Canada be able to receive royalties higher than the current 4 per cent. Again, that was something of a compromise but one which did maintain the principle that compulsory licensing would be, if modified, nonetheless continued.

Since the introduction of compulsory licensing in 1969, drug companies have still, of course, enjoyed enormous growth and very adequate profits. The idea that this measure created a difficulty for them is not supported by any factual investigation. On that, the Eastman Report said:

An overall summary of the comparison of the growth and development of the pharmaceutical industry in Canada relative to that of the United States yields the straightforward conclusion that growth has been more buoyant in Canada than it has been in the United States since 1967.

If compulsory licensing had completely ruined the industry, this would not be the case. The idea that we should adopt the American model for growth is simply not borne out.

Again, the Eastman Report said:

Compulsory licensing has not had a discernible negative impact on the profitability and rate of growth of the pharmaceutical industry in Canada as a whole.

That is pretty clear as well.

We have seen pharmaceutical companies take legal action to try to get even higher profits by challenging the compulsory licensing provisions. A decision was made in November, 1985 involving a multinational drug company's challenge to this section of the Patent Act under the Charter of Rights. At that time, the Federal Court stated that there was no information to demonstrate that compulsory licensing was denying either

the multinational companies or their Canadian subsidiaries a reasonable return on their investments. So much for the contention that compulsory licensing has been harmful to the industry and the contention that there has been any unfairness.

On June 30, 1986, the former Minister of Consumer and Corporate Affairs released the Government's draft amendments to the Patent Act outlining the provisions we are studying today. These provisions were, of course, brought in under a great deal of pressure. I already noted the example of drug companies lobbying parliamentarians directly. Of course, we know that they have lobbied the American Government and have managed to get President Reagan to take up the issue, indeed at the highest level, with the Prime Minister (Mr. Mulroney) himself.

The issue was discussed at the 1985 and 1986 so-called Shamrock Summits. We know that the Prime Minister agreed to knuckle under to the American pressure at that time. The pressure continued as the Government did not respond fast enough. In early April, 1986, the United States Trade Representative, Clayton Yeutter, rapped Canada's knuckles for failing to honour the commitments made by the Government through the Prime Minister by saying that the drug issue "—should have been resolved a long time ago. We've been exercising uncommon patience. But even our patience ultimately begins to wear thin". That was pretty heavy-handed indeed, and I am sorry to see that anyone would respond to it.

In late April when President Reagan's plan for so-called fast-track free trade negotiations with Canada ran into trouble, the drug industry in the United States actively lobbied committee members to go along with the President and the Canadian Government. We have seen how the talks on free trade have been brought into play in this issue as well. On several occasions in 1986, the Government appeared to be on the brink of giving in to pressure but backed away. Ultimately, the Government did capitulate.

The Bill before us raises many questions. The commission of inquiry into the pharmaceutical industry found that profit levels of multinationals were higher than in most home countries including Switzerland, West Germany, the United Kingdom, France and Japan, all major producers in the industry. The one exception to that was the United States which has had among the highest drug prices in the world. Of course, Canada provides tax incentives to research which are among the most generous in the world.

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The manner in which this legislation is supposed to operate assumes that decisions are made a certain way within the companies as to where they will do their research and where they will produce their product. Drug manufacturing breaks down into two phases. The first is the making of the active ingredients, the chemicals themselves. Then there is the preparation of the final formulation, including combining the active ingredients with various inactive ingredients: colourings,