

Patently necessary: improving global access to essential medicines

It's the time of year for round-ups and retrospectives. For backward glances, forward glances and resolutions. And for reflections on the same. We're over the hump of millennial news hype (remember the Y2K problem?), but whether an apocalyptic mood has passed, or has merely become chronic, probably comes down to each person's resilience before the headlines of the day. Having emerged from the bloodiest century in human history we are well launched into more of the same as wars smoulder and retaliatory violence flares in hot spots of conflict around the world.

This is also the time of year when that rather tired little notion of a "time capsule" tends to reappear on editorial pages, as commentators ponder which trends and events would convey to someone in an alien future a sense of the present day. Leaving aside SARS, leaving aside the war in Iraq, there are other memorabilia from the domestic front of a frequently surprising year: same-sex marriage, marijuana liberalization, Commons approval of the use of human embryos in stem-cell research, the latter days of a Prime Minister's reign as peculiarly stretched as the lifespan of Bilbo Baggins, and the uneasy union of kissing cousins on the political right.

Sifting through the events of 2003, it strikes us that this has been a year marked by ideologic division and a lack of consensus. For some issues, for some people, there is no scope for compromise, as the intense public controversy surrounding same-sex marriage has demonstrated. (Will stem-cell research legislation also fly into a storm when the Senate reads this legislation in the new year?) Other debates — notably those centred on the war in Iraq — have been marked by a painful ambivalence.

Interesting, then, that one of the most important pieces of legislative business, the one that could have the most profound effect on the greatest number of lives, has caused no political divisions, engendered relatively little controversy, and opened no cracks in the social ore. This is the federal government's pledge to amend the Patent Act to allow the export of generic versions of patented drugs to countries that are unable to manufacture their own supply. This decision follows the unanimous and hard-won decision of the World Trade Organization in August to relax patent protections on essential medicines. It also follows the desperate pleas of Stephen Lewis, the UN Special Envoy on HIV/AIDS in Africa, for affluent nations to take de-

cisive humanitarian action against the pandemic of AIDS.

With the first reading of Bill C-56¹ in November, Canada became the first country with a well-developed generic pharmaceuticals industry to begin implementing the WTO decision. The final form of this legislation may well prove to be a model for others to follow; all the more important, then to get the model right.

It is sad, therefore, to see on closer scrutiny a piece of legislation that may prove to be more restrictive than the WTO deal itself, and less progressive in spirit than the Doha declaration of November 2001, which prepared the ground. The proposed Canadian legislation specifies countries that are eligible to apply for the import of Canadian generics. Why are countries such as East Timor and Turkmenistan not on the list? Bill C-56 also specifies a range of pharmaceuticals eligible for patent exemption. The WTO agreement requires no such limitation (a point much struggled over at the negotiating table). Third, the proposed Canadian legislation gives brand-name pharmaceutical companies a clear advantage in their so-called "right of first approval," which in effect amounts to 2 chances to match the price offered by a generic manufacturer. This provision, to the dismay of Médecins Sans Frontières and other humanitarian organizations, will reduce the incentive for generic companies to enter bids and hence undermine the competition necessary to drive the price of essential medicines down. We hope the bill will pass, but in a strengthened form.

In the long night of December 2002 to August 2003, when the WTO's negotiations on drug patents were unresolved, an estimated 2.4 million Africans died of AIDS, malaria and tuberculosis. As Canadian parliamentarians take a breather over the holidays, as the Liberal government retools its machinery under a new leader, as industry leaders and lobbyists regroup and strategize, the clock of suffering and death keeps ticking for the uncounted millions of people in developing countries afflicted by treatable infectious disease. If we can salvage just one political achievement for the year 2003, let it be the will to pass an amendment to the Patent Act that sets a worthy standard for the world. — *CMAJ*

Reference

1. Bill C-56, *An Act to amend the Patent Act and the Food and Drugs Act*, 2d sess, 37th Parl, 2002-2003 (1st reading 6 Nov 2003).