

CORRESPONDENCE

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Grass Roots Regulation of a Private Enterprise Market Economy

TO THE EDITOR

I have read with great interest Mr. David G. Kilgour's article in the December 1967 issue of the *Review*.¹ This is a penetrating and sometimes profound analysis of the purpose, effect, and inter-relationship of the federal laws regulating trade, particularly combines, mergers, monopolies, patents, trade marks, copyrights, designs and unfair competition.

Mr. Kilgour says, referring to the Copyright, Industrial Design and Patent Acts:² "Usually they are treated as incentive legislation But the incentive effect of the Canadian statutes is virtually nil for the simple reason that the overwhelming majority of authors and inventors protected by them are not Canadians but foreigners who get their incentive elsewhere."

According to the December 1967 issue of *Industrial Property*,³ a monthly review published by the United International Bureaux for the Protection of Intellectual Property,⁴ in the year 1966 Canada issued 24,417 patents of which 23,195 were issued to foreigners and 1,222, or about five per cent to Canadians. However, the patents granted to foreigners originated from more than thirty other countries. 16,614 were granted to United States nationals. In the same period the United States of America granted 68,406 patents of which 54,634 were issued to United States nationals and 13,772 to foreigners, of which latter 938 or about thirteen per cent were granted to Canadians. Figures of issued patents in the United Kingdom are not available, but in 1966, 58,471 complete specifications were filed, of which 24,848 were filed by nationals and 33,623 by foreigners. No less than 433 or seven point eight per cent of the latter were filed by Canadians.

¹ Grass Roots Regulation of a Private Enterprise Market Economy (1967), 45 Can. Bar Rev. 764.

² *Ibid.*, at p. 771. ³(1967), Vol. 12, Annex.

⁴ Commonly called BIRPI.

The above figures show that a high proportion of inventions patented in Canada originated abroad. This is because Canada's geographical position and its natural resources and industrial potential make it a promising field for the exploitation of new inventions. However, considering that Canada's population and economic power is less than ten per cent of that of the United States and a much smaller proportion of that of the more important industrial countries of the world combined, Canadians are contributing substantially to technical and industrial development.

It is true that by comparison with more populous and industrially developed nations, this contribution may seem small. However, Canada is part of a world community. The International Convention for the Protection of Industrial Property signed at Paris, March 20th, 1883,⁵ and subsequently revised and extended is one of the earliest and most successful examples of international co-operation. Most of the countries of the world now belong to international unions relating to intangible industrial and intellectual property. The latest of these is the Universal Copyright Convention set up under the auspices of the UNESCO signed at Geneva,⁶ September 6th, 1952, and adhered to by Canada, the United States, Great Britain and the more important publishing countries of the world. Incidentally, this Convention requires works to be protected to bear the symbol © accompanied by the name of the copyright proprietor and the year of first publication and it is noted that *The Canadian Bar Review* copyright marking does not comply with this requirement.

The point I wish to make is that the purpose of the patent laws is to encourage invention. If it is assumed that new inventions are beneficial to mankind, then it matters not whether the invention originated in Canada or the United States or Thailand, so long as it is not concealed, but is made available to the public so that the public can benefit from it. The combined effect of all the patent systems has been largely responsible for technical innovation on a larger scale and at a faster tempo than ever before in history, and Canadians have not only benefitted from this but have also contributed to it.

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⁵ Fox, *Canadian Patent Law and Practice* (3rd ed., 1948), p. 1232.

⁶ Can. T.S. 1962/13, or Fox, *The Canadian Law of Copyright and Industrial Designs* (2nd ed., 1967), p. 778.

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