

## Macdonald-Laurier Institute Media Release

### Modernizing Canada's pharmaceutical patent system: An opportunity for more investment and jobs

#### *New papers recommend changes to Canada's patent regime*

January 24, 2012, Ottawa, ON - Canada's complacency in intellectual property (IP) is threatening its relative position in the global pharmaceutical industry and changes are needed in IP protection to re-establish Canada as a global competitor. According to two new papers published today, understanding the role of patents and modernizing our pharmaceutical patent system could yield many benefits for Canadians, including the opportunity to increase investment and employment as well as reduce trade frictions in order to gain expanded access to foreign markets.

In "The Role of Patents: A Primer", leading Canadian health economist Professor Brian Ferguson (University of Guelph) provides a comprehensive review of research regarding patents and alternatives. He finds that there are many alternatives to patents, but most research seems to indicate that even with the costs and flaws of the patent system, none have proven themselves superior to patents for encouraging pharmaceutical R&D. Such R&D is indispensable for the discovery of new therapeutic drugs.

Professor Kristina Lybecker (Colorado College) then examines the significant differences that exist across national legal frameworks for the protection of pharmaceutical intellectual property (IP) in "Intellectual Property Law and the Pharmaceutical Industry: An Analysis of the Canadian Framework". In this study, she finds that IP protection across Canada, the United States, the European Union, South Korea, Japan, Australia, and Brazil varies greatly.

By comparing international norms and policies in each country, Lybecker evaluates the characteristics of the legal framework that will best encourage pharmaceutical industry growth. She applies these lessons to Canada and provides four specific recommendations that will strengthen Canada's intellectual property protection and encourage pharmaceutical innovation:

1. **Canada needs orphan drug legislation to encourage R&D for rare diseases:** Canada is one of the few industrialized nations lacking a policy for rare diseases. Such legislation in Canada would define a "rare disease" and encourage Canadian firms to intensify their research and develop efforts to discover new therapies for these diseases.
2. **Canada needs more expansive data exclusivity protection:** Currently, innovative drugs are protected from generic competition through the protection of innovator data for eight years. Strengthening data exclusivity laws will give innovative firms the incentives to produce the data required for regulatory approval, facilitating the research process and encouraging additional investment.
3. **Canada should extend patent protection to accommodate for delays from regulatory approval:** Canada fails to provide an extra period of patent protection as compensation for time lost due to regulatory approval delays. The restoration of a patent term extension of zero to five years, as in other countries, would lengthen the effective patent life of innovative therapies, increasing the incentives to invest in the research and development costs that these treatments require.

4. **Canada should strengthen its anti-counterfeiting legislation:** Criminal sanctions in concert with regulatory provisions will protect Canada from the threat of fraudulent medicines, safeguarding the health of patients and defending the innovative pharmaceutical industry from the theft of intellectual property.

Lybecker concludes, "Canada would benefit from strengthening pharmaceutical intellectual property protection. Pharmaceutical patents protect process and product innovations and incentivize therapies that have enhanced and extend lives on a global scale. This innovation necessitates protection and this protection necessitates a trade-off. Patents provide that, market exclusivity in exchange for continued investment in innovation."

*Brian Ferguson is Professor of Economics at the University of Guelph and Kristina Lybecker is an Assistant Professor of Economics at Colorado College in Colorado Springs. They are authors of Economics of Intellectual Property Protection in the Pharmaceutical Sector*