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### MEMORANDUM

To: Wilbur MacDonald, Chairperson,  
Legislative Assembly Standing Committee  
on Agriculture, Forestry and Environment,  
Public Consultations on Biotechnology and Prince Edward Island

From: Judy Haldemann  
Legislative Counsel

Date: March 15, 2005

Re: Whether GMOs may be banned in Prince Edward Island

Mr. Chairperson:

Your committee has been directed to consider questions and to seek public input on developments in the field of biotechnology and genetically modified organisms (GMOs); living modified organisms (LMOs), transgenic organisms and genetically engineered organisms (Terms of Reference). Your committee clerk Marion Johnston asked for a legal opinion from this office on whether it would be legal to ban GMOs in the province (by legislation).

The basic legal issue is whether or not there is any constitutional impediment to such a ban. As the committee is aware that there is activity in this area by the federal government, it is understandably concerned that Parliament may have already precluded any provincial legislation from creating a ban on GMOs.

**Constitutionally, both the provincial Legislature and Parliament can make laws respecting agriculture.**

Section 95 of the federal *Constitution Act, 1867* provides for concurrent powers of legislation respecting agriculture at the federal and provincial levels of government, as follows:

**95.** In each Province the Legislature may make Laws in relation to Agriculture in the Province, and to Immigration into the Province; and it is hereby declared that the Parliament of Canada may from Time to Time make Laws in relation to Agriculture in all or any of the Provinces, and to Immigration into all or any of the Provinces; and any Law of the Legislature of a Province relative to Agriculture or to Immigration shall have effect in and for the Province as long and as far only as it is not repugnant to any Act of the Parliament of Canada.

Section 95 means that both Parliament and a Provincial Legislature may make laws in respect of agriculture. You will note, however, that the section specifies that in the event of conflict between the laws of a province and of Parliament, ["as long and as far only as it is not repugnant to any Act of the Parliament of Canada"] the law made by Parliament will prevail. It is important to keep in mind that this also means that Parliament could later enact a statute that might render inoperative any provincial legislation that bans or restricts GMOs.

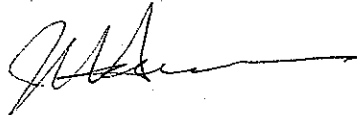
**Are there presently federal laws that would preclude the province from enacting a ban on GMOs?**

This is a very complicated and difficult field. There is conflicting terminology and there are various approaches to regulating this field. In addition to the terms stated in the Terms of Reference for the Committee, other phrases such as "plants with novel traits" and "novel foods" are used at the federal level. From a review of the Canadian Food Inspection Agency (CFIA) website, it appears that "plants with novel traits" (PNT) is the preferred term for the Canadian Food Inspection Agency. See : <http://www.inspection.gc.ca/english/plaveg/bio/pbobbve.shtml>

The most prominent legislation on the point of GMOs or PNTs are the federal *Seeds Act* and the *Plant Protection Act*. The *Seeds Act* provides a mechanism for registering seeds and for placing conditions on such registrations (such as limiting where they can be planted, buffer zones, etc.) Under that Act there is even a particular type of seed that is banned from planting in Atlantic Canada (as a condition on the registration). The *Plant Protection Act* has regulations dealing with PNTs. In addition the federal *Food and Drug Act* has regulations dealing with novel foods. But there does not appear to be a provision in these enactments or another federal law that would preclude a legislated ban on GMOs in the province.

**Conclusion**

In my opinion, there are no laws passed by Parliament and no federal regulations currently in force that would preclude the passage of provincial legislation that might ban or restrict the use of (planting of) GMOs in the province. Such legislation, if drafted, must be carefully crafted in its definitions and care must be taken to ensure that it would not conflict with or contradict any current federal legislation or regulations.



Judy Haldemann