

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**CANWEST MEDIAWORKS INC.**

**Applicant**

**- and -**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**AFFIDAVIT OF MICHAEL McBANE  
(sworn August 9, 2006)**

**I, MICHAEL McBANE, of the City of Ottawa, in the Province of Ontario, AFFIRM THAT:**

1. I am and have been the National Coordinator of the Canadian Health Coalition (hereafter referred to as "the Coalition") since 1995 and as such have knowledge of the facts to which I hereinafter depose.
2. The Coalition is dedicated to preserving and enhancing Canada's public health system for the benefit of all Canadians. Founded in 1979, the Coalition includes organizations representing unions, seniors, women, churches, students, consumers and health care professionals from across Canada.
3. Much of the work of the Coalition is intended to inform public opinion, stimulate informed discussion and debate, and influence public policy and law. A website maintained by the Coalition is a key means whereby we communicate with our members and the broader community about a diversity of issues, from drug safety issues to wait times. I believe that our web site [[www.medicare.ca](http://www.medicare.ca)] is one the best sources of up-to-date and topical information about Canada's health system. It is also the repository for a substantial library of archival material. In addition to the internet, the Coalition has

organized national and regional conferences, hosted round-table discussions, circulated petitions, organized public service announcements, coordinated and placed newspaper ads and responded to literally hundreds of public speaking requests on the subjects of health and health care. Myself and members of the Coalition's Board of Directors often provide national and regional media with analysis and comment concerning Canada's health care system.

4. The Coalition was accorded *amicus* standing by the Supreme Court of Canada in the recent *Chaoulli* case, and appeared before the Court to present oral argument.
5. The Coalition has also made numerous presentations to parliamentary and legislative committees, met with provincial and federal politicians as well as first nations leaders, organized teach-ins and lobby sessions on Parliament Hill and otherwise engaged in public advocacy intended to promote, not only the maintenance of the public health care system, but its expansion to include universal and publicly funded homecare and pharmacare programs for Canada.
6. The failure of Canada's publicly funded health care system to provide universal access to prescription drugs is one of the most significant deficiencies of this social program, and in this regard Canada lags behind most other OECD countries. Moreover, while Canada has established some regulation of pharmaceutical product pricing, this has failed to prevent drug prices from rising more quickly than any other health care system cost, and at a pace that significantly exceeds the OECD average.
7. There is a strong consensus among the groups that comprise our Coalition that a national pharmacare program is urgently needed. The priority of such an initiative was recommended by the Commission on the Future of Health Care (the Romanow Commission) and subsequently taken up by Canada's First Ministers who adopted a National Pharmaceutical Strategy (NPS) in the September 2004 Health Accord. The goal of the NPS is better health outcomes through: a) more equitable access to

pharmaceuticals for Canadians; b) safer, more effective drugs; c) better evidence for drug utilization; and d) greater value for money invested in drug therapy.

8. To influence the course of this important political commitment the Coalition distributed a policy paper describing the essential features of a pharmacare program for Canada: *More for Less: A National Pharmacare Strategy*, which is attached as Exhibit A to this affidavit. Our proposals aim to make prescription drugs accessible, safe, cost effective, and affordable. A key element of this policy framework calls for a strengthening of current controls on drug advertising to include mandatory filtering of broadcast ads from the United States, and drug company promotional activities directed towards doctors and other health care providers. In addition, the strategy identifies the need for greater efforts by federal officials to enforce current controls on drug advertising.

9. Our call for a national pharmacare program is also a reflection of the recommendations of the Romanow Commission that, in addition to recognizing the need to expand medicare to include greater coverage for necessary pharmaceutical products, also recommended the establishment of a national drug agency that would perform a number of important functions, including:

*Decisions about adding prescription drugs to public insurance plans would be guided by consistent principles. These include: ensuring that prescription drugs provide real benefits, they are safe; they are used efficiently; and that there are measurable clinical and economic advantages in choosing one drug over another. It would ensure that health professionals and patients have objective and understandable information to guide their choices about treatments. 1*

10. Direct-to-consumer drug advertising (DTCA) threatens the public policy objectives of a national pharmaceutical program and drives up prescription drugs costs by promoting 'new' costlier products that are usually no more effective than older treatments. It fails to provide the impartial, objective information patients need for informed health care

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1 Commission on the Future of Health Care, Final Report, page 203

decisions. DTCA also compromises public safety by encouraging the use of drugs before risks are fully recognized.

11. Because of the potential impact of the CanWest challenge to the regulation of DTCA, the Coalition, and a number of other non-governmental organizations which share our concerns about this issue, have been corresponding and meeting to discuss this case and whether to seek leave to intervene.
12. A substantial portion of the evidence that has been introduced by the parties has been circulated among members of this ad hoc group, which subsequently met with counsel to discuss the nature and extent of this evidence. On the basis of this review and advice, a number of groups decided to retain and instruct counsel to prepare a joint application for intervener standing. These groups include: the Canadian Health Coalition, Canadian Federation of Nurses Unions, Women and Health Protection, the Communications, Energy and Paperworkers Union of Canada, The Society for Diabetic Rights, and Terence Young, who is the founder of Drug Safety Canada.
13. The purpose of our intervention would be to provide assistance to the court with respect to certain issues that are relevant to the legal questions engaged by the CanWest application with respect to which the proposed interveners have a unique perspective or expertise, including:
  - i) the impact of DTCA on women, and particularly younger women who have been the target group for several recent pharmaceutical ad campaigns in Canada;
  - ii) the impact of DTCA on consumers and particular patient groups, such as the Society for Diabetic Rights, which represent individuals who are

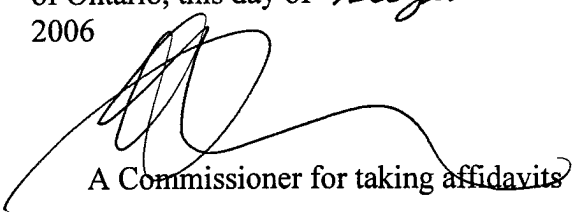
particularly affected by the advertising and promotional activities of the pharmaceutical industry concerning drugs upon which they depend;

- iii) the impact of DTCA on demand for and the price of pharmaceutical products that are covered by employee health benefit plans, and the consequential effect of rising drug costs on access to necessary health care services for workers, and on labour management relations;
- iv) the adequacy and appropriateness of Health Canada's enforcement policies and practices concerning current controls on DTCA; and
- v) the appropriate interpretation of the Charter of Rights and Freedoms in relation to provisions of the *Food and Drugs Act* that are impugned by the Applicants.

14. The Coalition has a genuine and substantial interest in the outcome of this case and seeks to intervene in order to assist the Court in deciding questions relating to our expertise in health care issues.

15. I make this affidavit in support of our application for intervener status in the matter of *CanWest MediaWorks v. Canada* and for no other purpose.

**AFFIRMED BEFORE ME AT**  
the City of Ottawa, in the Province  
of Ontario, this day of *August*  
2006

  
A Commissioner for taking affidavits

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MICHAEL McBANE