

CanWest set to challenge ban on DTCA

CanWest Global Communication's bid to overturn Ottawa's ban on direct-to-consumer advertising (DTCA) of prescription drugs will face a stiff challenge after a court ruling has allowed a coalition of Canadian health and consumer groups and unions to intervene.

The Nov. 5th decision by the Ontario Superior Court means that CanWest will not only have to oppose Health Canada, which currently forbids public advertising of prescription drugs, but advocacy groups who fear that such advertising will lead to unsafe drug use and increased public health care costs. The case is scheduled to be heard in January or February, and will likely end up in the Supreme Court of Canada.

It is estimated that the annual Canadian drug advertising market is worth about half a billion dollars. The court decision means the coalition will be allowed to introduce evidence against lifting of DTCA and to cross-examine witnesses. Coalition members include the Women and Health Protection, Canadian Health Coalition, Medical Reform Group of Ontario, Canadian Federation of Nurses Unions, Canadian Energy and Paperworkers Union, Canadian Union of Public Employees, Drug Safety Canada and Society of Diabetic Rights.

"It's an important precedent in terms of an ad hoc coalition of groups applying for standing like this," said the group's lawyer Stephen Shrybman shortly after the November ruling.

Last December CanWest, which owns 11 of Canada's major daily newspapers including the *National Post*, a major television channel and other media outlets, launched a legal challenge to the federal law outlawing American-style prescription drug advertising, claiming that the regulation discriminates against its business interests. Betsy Chaly, CanWest director of corporate communications, said the basis

of the claim is that Health Canada regulations are contradictory to the Charter of Rights and Freedoms.

"In a nutshell really — because it's long and complicated — is that it's against freedom of expression," Chaly said. "From our perspective it's something that needs to be addressed especially with Canadians viewing television and journals, etcetera, coming from the [United] States that do allow DTCA. It's just the environment — it's time to look at this."

Coalition members, however, maintain that allowing DTCA would harm both the physical and fiscal health of Canadians. Citing the report of a senior FDA official who estimated that 35 000 to 45 000 Americans died from heart attacks due to the heavily-advertised and now withdrawn arthritic pain drug rofecoxib (Vioxx), they argue that the pharmaceutical industry is the last place to turn for reliable, unbiased and comprehensive information on medications (*Lancet* 2005;365 [9458]:475-481).

"Loosening the rules in any way will not be good for public health," says Women and Health Protection (WHP) Coordinator Anne Rochon Ford. "We feel there is a particular case to be made for the added impact on women, because women are prescribed more drugs and because women are often the targets of the advertising, there are specific campaigns directed very pointedly at girls and young women for certain drugs." The WHP group is urging people to tell their elected representatives, including the federal health minister, that they oppose legalizing DTCA.

The coalition's economic concern focuses on research showing that DTCA results in increased drug consumption particularly of newer, more expensive drugs (*CMAJ* 2003;169 [5]:405-12). That outcome, they say, will drive up costs of health benefit plans and threatens the sustainability of publicly funded health care.

"DTCA will basically destroy Medicare," says Mike McBane of the Canadian Health Coalition. "Drugs are



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CanWest Global, led by CEO Leonard Asper (above), argues that the ban on direct-to-consumer prescription drug advertising contradicts Canada's Charter of Rights and Freedoms.

the biggest threat to public health insurance programs in Canada — costs are completely out of control. Prescribing practices are out of control and they will get worse by a factor of 10 if they start saturation drug ads."

According to the Canadian Institute for Health Information, drugs are the fastest growing category of health care spending, with total expenditures estimated to have reached almost \$25 billion in 2005, an increase of 11% over the previous year.

Barbara Mintzes, researcher with the University of British Columbia's Centre for Health Services and Policy Research, says she is stunned at the timing of the CanWest challenge.

"The key surprising aspect of this case is that it comes at this point in time, after the Vioxx disaster and also after the US industry association has brought in

self-regulatory guidelines to limit its own advertising practices,” Mintzes stated in an e-interview from Amsterdam. “Secondly, the Institute of Medicine report on drug safety in the US drew a strong link between safety concerns and DTCA. They recommended a moratorium on any advertising to the public of drugs within their first two years on the market, within a US context in which a total ban was unlikely.”

DTCA is a live issue elsewhere as well. In Europe, a proposal to weaken the ban on advertising prescription-only medicines was overwhelmingly rejected by the European Parliament 2 years ago. The European Commission recently stated that it regrets that decision and called for a reform of the European pharmaceutical legislation.

However, in New Zealand — the only country other than the US that currently allows DTCA — the government is expected to ban DTCA after several reviews recommended rejecting it and the fact that many doctors in New Zealand oppose DTCA (*Br J Gen Pract* 2003;April: 342-5). — Alicia Priest, Victoria

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Quebec allows Vioxx

class-action suit

The Quebec Superior Court has set a worldwide precedent in granting plaintiffs class-action status in a suit against Merck Frosst Canada Ltd., the Canadian manufacturer of rofecoxib (Vioxx).

US parent Merck & Co. Inc., announced Sept. 30, 2004, a voluntary worldwide withdrawal of rofecoxib (Vioxx) after a study showed patients taking the anti-inflammatory drug on a long-term basis face twice the risk of a heart attack compared with patients receiving placebo (*CMAJ* 2004;171:1027-8).

The Nov. 9 Quebec court decision marks the first personal injury class-action suit authorized in the swirl of litigation surrounding rofecoxib. The Canadian class action was filed by 2 plaintiffs, who allege that they suffered heart attacks after using rofecoxib for more than

3 years. About 4000 Quebecers who used the drug between 1999 and 2004 may be represented in the suit.

Merck may seek a motion to de-authorize the class action on the grounds that each plaintiff's case is unique.

In the US, Merck is arguing each case separately and faces more than 42 000 lawsuits. So far, Merck has won 5 Vioxx cases and lost 4. A class-action suit on behalf of unions, health plans and over third-party payers who covered rofecoxib prescriptions has been authorized in the state of New Jersey.

Rofecoxib, a selective COX-2 inhibitor, nonsteroidal anti-inflammatory drug (NSAID) gained Canadian approval in 1999 for the treatment of acute and chronic symptoms of osteoarthritis, rheumatoid arthritis, acute pain and menstrual pain. IMS Health Canada reports that rofecoxib was the number 10 top-selling drug in Canada in 2003, with 3.3 million prescriptions written and retail sales totaling \$194 million.

Merck is expecting a decision from the US Food and Drug Administration by April on its application for approval of Arcoxia, its COX-2 inhibitor for people suffering from osteoarthritis. — Barbara Sibbald, *CMAJ*

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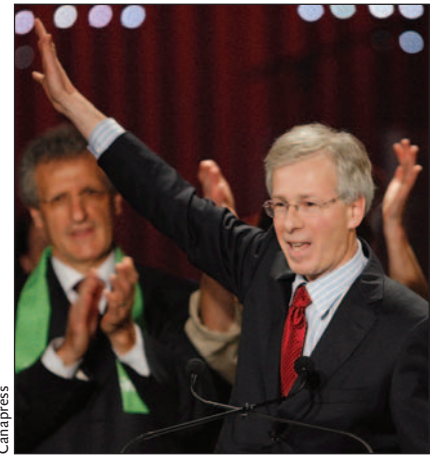
New Liberal leader

champions R&D boost

Scores of federal Liberals seemed to emerge from their leadership convention expressing a measure of incredulity about what they'd just done in selecting former cabinet minister Stéphane Dion to their party helm.

It took several curious turns of events for the erstwhile defender of federalism within Quebec, who'd cast himself as an environmental crusader, to top frontrunners Michael Ignatieff and Bob Rae.

Dion's health policies were certainly among the mysteries to Liberal delegates. Although the 51-year-old sociologist participated in the *CMAJ*'s survey of Liberal leadership hopefuls (*CMAJ* 2006;175:1189-90), he did not issue a health policy paper. In his sole cam-



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campaign statement on health, Dion reaffirmed opinions expressed to the *CMAJ* to the effect that access to health care shouldn't be “determined by the thickness of the patient's wallet” but that more private sector delivery of services shouldn't be ruled out-of-hand.

Dion said he also wants to improve Aboriginal health, increase health research promote healthy lifestyles and sports activities and strengthen the public health agency. “I want to have the strongest regulations against pollutants and against dangerous products. I want to put in place a better Canadian drug approval process, and better international cooperation on dealing with pandemics.”

During the campaign, Dion also vowed to use tax incentives to spur higher research outlays within the private sector, and more commercialization on federally funded research through mechanisms like a fund that would allow government scientists “to compete for new long-term funding over and above their existing research budgets when undertaking projects in conjunction” with small and medium-sized businesses. He also proposed devoting 5% of all federal research outlays to address the needs of developing countries, particularly with regard to health and the environment.

Dion also championed another fund to promote multidisciplinary environmental research, as well as one to fund research needs identified as national