



presentation

**To the House of
Commons Standing
Committee on Health**

**by James Clancy
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and General Employees**

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Introduction

Thank you, Madam Chairperson.

My name is James Clancy. I am the national president of the National Union of Public and General Employees (NUPGE).

The National Union is a family of 15 unions, with members in every province except Quebec. Taken together we are the second largest union in Canada.

Most of our 337,000 members work to deliver public services of every kind to the citizens of their home provinces.

We also have a large and growing number of members who work for private businesses.

I thank you, on their behalf, for the opportunity to appear before you this morning.

Why us? Why now?

The National Union has a direct interest in this study for many reasons. Our four main reasons are:

[1] We are the frontline workers

Many of our members work in Canada's health care system as front-line care providers, health professionals, administrators and researchers. These workers have given extraordinary service in bringing better health to Canadians. They are intimately involved in the health care system, working with patients on a daily basis. Based on the unique experiences of these workers we believe we can provide valuable input to almost any aspect of the health care system that this committee decides to examine.

[2] Everybody is talking about it

Soaring drug costs are a growing worry to more and more people. We found this in preparing for our participation and advocacy work with the Romanow Commission. We find it as we continue to listen to our members, one-on-one, in groups and at public meetings we host across the country. We find it in the regular public opinion research we do. Every source brings us the same message: somebody had better do something about the soaring cost of prescription drugs—and do it soon.

[3] Make it part of the bargain

The National Union holds regular meetings with our chief negotiators and benefit plan specialists across the country. We can no longer ignore the present and future damage the soaring cost of prescription drugs is doing to employee benefit plans. Bargaining to stop that damage is now a top issue at bargaining tables across the country.

[4] We simply can do better

The National Union has a long and proud history of working on progressive solutions to public policy problems with trade unions and social justice organizations around the world. Part of the solution to our prescription drug problem will also make part of a solution possible for others. This alone should be enough to spur us on.

Overview

I will not take any time today to review the figures and data demonstrating the surging cost of drugs in this country. The facts say it. And I'm sure you know the numbers and have heard from constituents about their experiences.

I will use my time to highlight three other aspects of this issue:

First, I will outline our union's collective bargaining experience as it relates to this issue and the potential health and economic impacts.

Second, I will set out some of the specific proposals we support in terms of directions for change.

Finally, I will speak to our need to respond with intelligence and compassion to the full-blown HIV/AIDS epidemic in Africa and its connection to the issue of the high cost of patented medicines.

I

Prescription drugs and hard bargaining

*Anyone who thinks we're ready
to lose our drug plans, or
bargain away everything else to
keep them, must think again.
Trade unions will fight tooth
and nail to ensure their
members, families and indeed
all Canadians are protected.*

Most union members have drug plans fully paid by their employer. This “golden era” is fading fast.

Canada has a mix of public and private coverage for prescription drugs.

The majority of drug costs are covered through employer-sponsored private group insurance plans.

In 1999, private insurance plans covered approximately 34% (3.4 billion) of all prescription drug costs.

And about 8 in 10 union members have private drug insurance.

But this “golden era” in coverage is about to come to an end.

Soaring drug costs and drug claims are putting a lot of pressure on these benefit plans.

Liberty Health and other insurers are forecasting double-digit increases for the next few years.

Most plan sponsors estimate that prescription drugs account for 70% to 90% of the cost of a typical plan. I don't believe you could find a plan sponsor who would tell you drugs are not the largest expenditure.

Why is the drug cost portion of health plans escalating out of control?

Looking for reasons

The reasons why include:

Physicians are prescribing more drugs and thus more claims are being made.

Hospital stays are shorter, and patients are now more than ever dependent on the coverage of their insurers for drug treatment.

Patent laws prevent the market entry of more sensibly priced generic drugs.

Some plan sponsors and experts have suggested that the increases have coincided with the introduction of drug ads in the US that have piqued consumers' interest in Canada.

Finally, Green Shield Canada has issued a report which shows that new drugs now account for more than 45% of the total cost of drug claims, up from 4.8% in 1997.

Let me put the cost of new drugs in perspective: according to Dr. Joel Lexchin, a professor in the school of health policy and management at York University, the average cost per claim of a patented drug introduced since 1997 is \$92.56 (Canadian), compared with \$78.79 for an older patented drug and \$22.94 for a generic drug.

New drugs are a lot more expensive but experts have repeatedly questioned their therapeutic value over existing medications.

Making the workers pay hurts everyone

Employers are responding at bargaining tables across the country by raising worker co-payments and deductibles, cutting benefits, putting caps on payments, introducing health spending accounts, or adjusting wage increases to offset the higher costs.

I suggest to you that this is about to become one of the most contentious issues at the bargaining table – superseding wages and job security in many cases – and if something isn't done soon it could become the bargaining issue of the decade.

Cutting benefits, limiting coverage etc. has an obvious impact from a health perspective as it means reduced access to medicines.

But all of this will also have an economic impact in several ways:

Without a comprehensive national public drug program, unions will continue to do their best at the bargaining table to force employers to absorb these rising costs. This means any current labour-cost advantage these employers have over their competition will be reduced. Though, in some instances, employers will simply pass the costs onto consumers in the form of higher prices; but

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this means these companies will lose whatever product cost-advantage they might have over their competitors.

The best approach is to simply make drugs more affordable.

Labour market flexibility will be weakened as rising drug costs become a potential barrier to job mobility. That is, as drug coverage becomes a higher priority for workers and their families, they will become less likely to change jobs, increasing the amount of “job lock.”

Health benefit plans are about to become a large and growing pitfall in contract negotiations and a key factor in strikes and lockouts in Canada. I believe the recent strikes at General Electric and Hershey Foods in the US over the cost of their benefit plans could be a harbinger of things to come in Canada if something isn't done soon. Additional labour relations strife, lost work days etc. would have an impact on the competitiveness of firms in Canada and the Canadian economy.

Benefit plans with spending accounts, managed formularies and enforced generic substitution programs make a small difference in curbing costs but they are not a comprehensive solution to the problem.

The best approach is to simply make drugs more affordable.

2

Prescriptions for change

*Evergreens for most Canadians
are Christmas trees.*

*“Evergreens” for drug
companies are unending
Christmas gifts.*

There are many necessary and possible ways to come to grips with the escalating problem of soaring drug costs. However, reform of our drug patent laws remains the one element essential to any effective prescription.

The effective reform of our drug patent laws will rest on two items:

- an end to the practice of “evergreening”
- a lowering of the patent protection period

The regulations actually provide an incentive for the brand-name companies to game the system.

End the practice of “evergreening”

Canada’s *Patented Medicines Notice of Compliance Regulations* provide brand-name drug companies with an automatic injunction whenever they claim a generic producer is infringing on their patent rights.

This gambit gives brand-name producers an instant way to block competitors and extend the life and the profit stream after the expiry of their basic 20-year patent on a drug.

A common strategy involves listing and litigating additional patents after the main patent on the active ingredient has expired.

The corporations with the patents merely have to file a patent dispute claim and this simple action gives them an automatic injunction against the generic drug maker while the dispute is slowly working its way through the legal system.

The case of AstraZeneca’s heartburn drug Losec is a good example. It has annual sales of \$430 million in Canada. The original patent on Losec expired in 1999 but there are still no generic versions on the Canadian market even though generics are available in the US and Europe.

According to the Patent Register, AstraZeneca has listed at least 10 additional patents on this drug. Each new patent gives AstraZeneca another way to allege infringement and trigger an automatic stay against the generic drug maker.

The regulations actually provide an incentive for the brand name companies to game the system.

And you don't have to just take my word for it – some of the brand name companies have admitted it. Consider this document produced by Pfizer which states:

“While the core patents still afford tremendous protection, newer claims can afford substantial market positions, or at a minimum, slow generic entry by a matter of years.”

Earlier this year the National Union led a coalition of unions, seniors and consumers in filing a complaint with the Competition Bureau of Canada, claiming this practice of evergreening is anti-competitive.

I have brought for each of you a copy of our formal brief submitted to the Competition Bureau.

As you may know, the Bureau has commenced an inquiry into the issue. While I'm slightly optimistic about the potential outcome of the Bureau's inquiry, I'm still asking that this Committee recommend an end to this practice.

Ending the “evergreening” practice alone would allow the generic manufacturers to produce more sensibly-priced drugs and thus reduce overall costs.

Indeed, the Canadian Generic Pharmaceutical Association has estimated that the delays caused by evergreening strategies have cost Canadians more than \$1 billion since their implementation in 1993.

And finally, with US President George Bush recently taking on this issue, Canada is now the only country in the world that allows companies to block generic competitors with repeated automatic injunctions.

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Lower the patent protection period

It would be a direct and courageous move to lower the 20 year patent protection period.

There is little evidence of the benefits that were supposed to flow to Canada from this protection.

Of the 450 new patented drugs that were introduced in Canada between 1996 and 2000, only 25 were classified as major therapeutic advances.

Promises to significantly spend more on research and development remain unmet. This claim was supported by a 2002 report done by the Patented Medicines Review Board, called: A Comparison of Pharmaceutical Research and Development Spending in Canada and Selected Countries.

Among other things, the report concluded that:

Despite some growth in overall R&D spending, Canada ranked behind other major industrialized countries in R&D spending by several measures;

The ratio of R&D to domestic sales in Canada remains well below values in the US and Europe. In 2000, the Canadian ratio was 10.1% while the aggregate ratio for the seven countries studied was nearly double that at 19%. *Only Italy had a lower ratio than Canada.*

Among major industrialized countries, Canada accounts for a share of total R&D that's roughly one-half of its share of total pharmaceutical sales; and

Measures of R&D spending relative to population and GDP also indicate low levels of R&D investment in Canada compared to other developed countries.

In addition, the data suggests that well over half the drugs approved in the last decade were simply variations of old drugs.

Of the 450 new patented drugs that were introduced in Canada between 1996 and 2000, only 25 were classified as major therapeutic advances by the Patent Medicines Review Board.

So, the true breakthroughs resulting from R&D are few and far between.

Finally, since R&D costs are expensed anyway, I sometimes wonder how the brand name companies have been able to go for so long claiming they need 20 year patent protection and high profits to fund research.

Other essential reforms

To further contain costs and improve access and effectiveness we also advocate the following directions for change recommended by Mr. Romanow, the National Forum on Health, Emmett Hall's Commission and others:

[1] The integration of all prescription drugs into a revised Canada Health Act.

Prescription drugs are as medically necessary as hospitals and physicians. And making prescription drugs more accessible now will reduce demand for more expensive health care services later.

We understand the implications of immediately integrating all drugs under the Canada Health Act. Thus, we support Mr. Romanow's proposal that the federal government move towards this ultimate goal in a gradual but deliberate way with the first step being the creation of a new Catastrophic Drug Transfer.

However, we would like the federal government to do a little more than what is suggested in Mr. Romanow's report under the notion of a Catastrophic Drug Transfer. We would like to see full coverage of prescription drugs for all children in Canada included in this first step.

You know, I have kids and I can tell you that it's sometimes tough for parents to get sick kids to take their medicine. But I'm sure it's a lot tougher for parents when their sick kids have no medicine to take. Can we really tell them the federal government can't afford it?

[2] Establish a new National Drug Agency to evaluate the effectiveness of new drugs, and ensure the quality and safety of all prescription drugs.

[3] Establish a new national formulary of prescription drugs to reduce disparities in coverage and contain costs.

[4] Continue the current restrictions on direct-to-consumer advertising. Marketing and advertising of patented medicines is already sky high at over a \$1.3 billion per year - more than what corporate drug makers spend on research and development.

More marketing and advertising will stimulate inappropriate demand and drive up system-wide costs. I know you received the same advice from the Saskatchewan Health Minister last week and I'm sure you've all seen or heard about the recent study published in the Canadian Medical Association Journal supporting this claim.

3

And countless thousands mourn

*We can no longer let our desire to
make money defeat our need to
be human.*

The agony in
Africa is not
inevitable. It is
preventable.
Canada can and
must do more.

Finally, and most importantly, if there is one thing I want this Committee to recommend and one immediate action I would like the federal government to take it is this: provide affordable life-saving drugs to Africans living with and dying of HIV/AIDS.

I'm not going to repeat all of the alarming statistics about this issue—but if you've heard them before, you know they can make your heart sink.

I do, however, want to stress this point: HIV/AIDS is not an impending doom for Africa; it's a calamity that has already arrived.

It has caused unprecedented destruction. It's not just a health crisis. It's also an economic and development crisis. It has killed millions of adults in the prime of their working and parenting lives. It has decimated workforces and orphaned millions of children. It sickens and kills farmers, curtailing the food supply, providing fertile ground for further infections.

But this is not only an African affair. We are all affected. We live in an increasingly interdependent world. Rich and poor, strong and weak are linked in a common destiny which decrees that one nation shall not enjoy lasting prosperity and stability unless others do too.

Certainly, and especially in the aftermath of the SARS crisis, it's necessary for Canada to demonstrate that we understand, and do not take for granted this fundamental principle of mutual dependence.

The agony in Africa is not inevitable. It is preventable. Canada can and must do more.

There's no doubt that the scale of the challenge posed by AIDS in Africa is unprecedented in human history. There's no magic bullet. No quick fix. But with Canada leading the way, a concerted effort by an engaged and committed international community could vastly ease the suffering of millions of Africans and help turn fear into hope.

Nothing stops us but us

The AIDS threat is real and obvious – to Africa and to us.

So real, all members of the United Nations – including Canada – pledged help two years ago.

So real, the World Trade Organization lowered its big stick and relaxed its patent protection rules to allow some developing countries to import AIDS drugs.

So real, the Canadian generic pharmaceutical manufacturer Apotex offered to provide HIV/AIDS drugs to developing countries in sub-Saharan Africa at cost.

And yet we do little. We allow the suffering to continue and the threat to build. Just because we can't seem to get around to changing one little clause in our Patent Act. It seems our desire to protect patent rights is greater than our desire to protect human rights.

There are no loopholes in our patent law: a patent on the manufacture of a drug gives the holder and only the holder the absolute and unchallenged right to produce that drug – no matter what. It's like saying your patent on a fire extinguisher gives you the right to stop anyone else from helping me keep my house from burning to the ground.

The fact that a Canadian generic drug company is ready to produce an AIDS drug at cost and send it to Africa doesn't matter. Our law will not allow anyone except the patent holders to make an AIDS drug in Canada and export it.

Whatever good that provision might be based on, it is not doing any good now – not here and not in Africa. In our world today, such a provision is shameful, harmful and immoral. A simple amendment to the Patent Act would remove it. We have waited too long to do it already. It is an idea whose time has come.

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sorry country,
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it will be done.

By taking the simple step of amending the Patent Act to remove restrictions on generic exports for health crises, Canada can show the world it is possible to protect the legal rights of pharmaceutical patentees, live up to commitments made under WTO agreements, and most importantly, show that it is possible to meet your moral obligations.

And when the bleak season sets in on Parliament Hill, and when certain people say: "Amend the Patent Act? Sorry, that's too ambitious, too challenging, it's the thin edge, it can't be done."

I urge each of you to say: "This is not a sorry country, we are not a sorry people, it can be done and it will be done."

We all look for those moments in life when we can make a difference. This is one of those moments.

I am aware the federal government has promised to take this action. We hope the government means what it is saying.

I urge each of you to encourage the government to act with a greater sense of urgency, hold the high ground of moral conviction, and not swim in the brackish waters of compromise – because the last thing Africa needs is a gift wrapped in red tape.

Meet the challenge. Make the change.

We are what we do

I know that each of you entered public life filled with the hope that you could effect positive change; that your efforts would amount to something better for us all.

Making this one simple change to the Patent Act is a chance to do just that. Maybe the clearest and most direct chance you will ever have.

It is a chance to make Canada a brighter beacon for good, at home and abroad.

Let's make the good that is in the heart of every Canadian serve the good of Africa as well. Let's not fail Africa. Let's not fail ourselves. Let's reach out today to prove a different world is possible.

Thank you.