

PATENTED MEDICINE PRICES REVIEW BOARD

**IN THE MATTER OF the *Patent Act*,
R.S.C. 1985, c. P-4, as amended**

**AND IN THE MATTER OF
Alexion Pharmaceuticals Inc. (the “Respondent”)
and the medicine “Soliris”**

**RESPONDING MOTION RECORD OF BOARD STAFF
(Alleged Conflict of Isabel Jaen Raasch)**

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I N D E X

A. Affidavit of Isabel Jaen Raasch sworn September 11, 2015

Exhibit 1 – Extract from Gowlings website.

Exhibit 2 – Exhibit G to Affidavit of Anna Di Domenico.

Exhibit 3 – Letter from David Migicovsky dated August 28, 2015

PATENTED MEDICINE PRICES REVIEW BOARD

**IN THE MATTER OF the *Patent Act*,
R.S.C. 1985, c. P-4, as amended**

**AND IN THE MATTER OF
Alexion Pharmaceuticals Inc. (the “Respondent”)
and the medicine “Soliris”**

**AFFIDAVIT OF ISABEL JAEN RAASCH
(Sworn the 11th day of September, 2015)**

I, **Isabel Jaen Raasch**, of the City of Chelsea, Province of Quebec,

MAKE OATH AND SAY AS FOLLOWS:

1. I am the Director of Legal Services and General Counsel for the Patented Medicine Prices Review Board (“the Board”), and as such have knowledge of the matters hereinafter deposed to.
2. I commenced my employment at the Board on July 7, 2015.
3. Prior to my employment at the Board, I was a partner at Gowlings in the Ottawa office. I was a member of the intellectual property litigation practice group. To my knowledge, Mr. West and Mr. Ruby were not members of the intellectual property practice group while I was at Gowlings.

4. On May 19, 2015 I advised the managing partner of the Gowlings Ottawa Office that I was resigning as a partner and joining the Board as its General Counsel. My last day of work at Gowlings was on June 4, 2015.
5. While employed as a lawyer at Gowlings in Ottawa I had no knowledge of any of the matters related to this litigation or to the representation of Alexion by Gowlings in Toronto. While employed as a lawyer at Gowlings in Ottawa I have never acted for Alexion in any matter. While employed as a lawyer at Gowlings in Ottawa I had no information (confidential or otherwise) regarding Alexion.
6. Attached as **Exhibit 1** is an extract from the Gowlings website.
7. Although Messrs West and Ruby appear to object to my continued involvement on behalf of Board Staff with this litigation, I note that they have never communicated their objections in this regard to me personally.
8. I am advised by David Migicovsky who is one of the counsel for Board Staff in this litigation, that the first time he became aware of Alexion having any issue regarding my involvement in this litigation was when he received the Amended Response to the Statement of Allegations of Board Staff ("Amended Response") on July 20, 2015.

9. As a result of the receipt of Amended Response, on July 27, 2015 Mr. Migicovsky wrote the letter marked as Exhibit G to the Affidavit of Anna Di Domenico and attached as **Exhibit 2** to this Affidavit.
10. Attached as **Exhibit 3** is a copy of Mr. Migicovsky's letter of August 28, 2015 to Messrs Ruby and West.
11. As Director of Legal Services and General Counsel to the Board, I am the most senior in-house lawyer at the Board and am responsible for supervising all of the legal work related to Board Staff, including the supervision of other in-house lawyers, the instruction of outside counsel, and the provision of legal advice related to proceedings or proposed proceedings before the Board as well as other matters such as administrative, corporate and employment law. There are two other lawyers in the legal services branch of the Board, Ms. Shah and Ms. Lewis, who both report to me. In the course of our day-to-day work, Ms. Shah, Ms. Lewis and I have had discussions regarding this litigation.

SWORN BEFORE ME at the City of Ottawa, in the Province of Ontario on the 11th of September, 2015.

Original signature redacted

Commissioner for Taking Affidavits



Original signature redacted

Isabel Jaen Raasch

**THIS IS EXHIBIT "1" TO THE AFFIDAVIT
OF ISABEL JAEN RAASCH SWORN BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2015**

Original signature redacted

A COMMISSIONER FOR TAKING AFFIDAVITS



ABOUT US

ABOUT US

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**THIS IS EXHIBIT "2" TO THE AFFIDAVIT
OF ISABEL JAEN RAASCH SWORN BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2015**

Original signature redacted

A COMMISSIONER FOR TAKING AFFIDAVITS

THIS IS **EXHIBIT "G"** TO THE AFFIDAVIT
OF **ANNA DI DOMENICO**
SWORN BEFORE ME THIS 21ST DAY OF AUGUST, 2015

Original signature redacted

A Commissioner etc.



PERLEY-ROBERTSON, HILL & McDOUGALL LLP/s.r.l.

*Lawyers / Patent & Trade-Mark Agents
Avocats / Agents de brevets et de marques de commerce*

Reply to/Communiquez avec:
David Migicovsky
613 566 2802 dmigicovsky@perlaw.ca

July 27, 2015

BY EMAIL

Mr. Malcolm Ruby
Gowlings LLP
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, ON M5X 1G5

Dear Mr. Ruby:

Re: IN THE MATTER OF Alexion Pharmaceuticals Inc. and the medicine "Soliris"
Our Reference: PMPR010

We have received your Amended Response to the Statement of Allegations of Board Staff ("the Amended Response"). The Amended Response is replete with allegations which are irrelevant, scandalous, frivolous, vexatious and an abuse of process. Consequently, we will in due course, be serving you with a motion to strike and a request for the Board to extend the time for filing an Amended Reply until such time as the motion to strike has been determined.

We note that paragraphs 37 (h) and (i) of the Amended Response contain allegations directed at the involvement of Ms. Jaen Raasch in this matter. It is my understanding that prior to Ms. Jaen Raasch leaving Gowlings and joining the Patented Medicine Prices Review Board, Gowlings was advised that Ms. Jaen Raasch would be joining the Patented Medicine Prices Review Board as its General Counsel. I would have thought, therefore, that if you had any concerns about Ms. Jaen Raasch's involvement in this litigation, you would have raised the issue in advance rather than asserting same in the Amended Response. For the record, it is important to note the following facts:

1. Prior to joining the Patented Medicine Prices Review Board, Ms. Jaen Raasch was a partner in the Ottawa office of Gowlings and worked in the intellectual property department focussing on intellectual property litigation. We note from the Gowlings' website that Messrs. West and Ruby are located in the Toronto office and are not listed as being part of the intellectual property group at Gowlings.



2. Prior to Ms. Jaen Raasch joining the Patented Medicine Prices Review Board, she had no actual knowledge of any matters relating to this litigation or of the representation of Alexion by Gowlings.
3. Ms. Jaen Raasch has never acted as counsel in any matter involving Alexion.
4. Prior to joining the Patented Medicine Prices Review Board, Ms. Jaen Raasch had no information (confidential or otherwise) regarding Alexion or this litigation.
5. Ms. Jaen Raasch is in full compliance with the Law Society of Upper Canada Rules of Professional Conduct. We refer you, in particular, to Rule 3.14-18 and Commentary (1) which notes that the purpose of the rule is to deal with actual knowledge. The Commentary goes on to note that "imputed knowledge does not give rise to disqualification."
6. There is no suggestion in your letter of any actual prejudice to Alexion.

Given the above facts it is now incumbent upon you to either withdraw the assertions made in paragraphs 37 (h) and (i) of the Amended Response or to bring the appropriate motion so that this matter can be dealt with forthwith. A failure to do so shall be deemed an admission to the facts noted above and a waiver of any objections to Ms. Jaen Raasch's continued involvement in this matter.

Yours very truly,

Original signature redacted

David Migicovsky

20:llc

cc Alan West (by email)
Isabel Jaen Raasch (by email)
Parul Shah (by email)

**THIS IS EXHIBIT "3" TO THE AFFIDAVIT
OF ISABEL JAEN RAASCH SWORN BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2015**

Original signature redacted

A COMMISSIONER FOR TAKING AFFIDAVITS



PERLEY-ROBERTSON, HILL & McDOUGALL LLP/s.r.l.

*Lawyers / Patent & Trade-Mark Agents
Avocats / Agents de brevets et de marques de commerce*

Reply to/Communiquez avec:
David Migicovsky
613.566.2833 dmigicovsky@perlaw.ca

August 28, 2015

BY EMAIL

Mr. Malcolm Ruby/Mr. Alan West
Gowling Lafleur Henderson LLP
1 First Canadian Place
100 King Street West
Suite 1600
Toronto, ON M5X 1G5

Dear Mr. Ruby/Mr. West:

**Re: IN THE MATTER OF Alexion Pharmaceuticals Inc. and the medicine "Soliris"
Our Reference: PMPR010**

We are writing in response to the notice of motion regarding the alleged conflicts of interest and the affidavit of Anna Di Domenico ("the Di Domenico Affidavit") which was recently served upon us. We will respond to the motion by filing a responding motion record in due course. However, it is important that we set out our concerns arising from your motion materials under separate cover.

Exhibit D to the Di Domenico Affidavit is a copy of a letter dated July 17, 2015 from Alan West to the Chair of the Patented Medicine Prices Review Board concerning this litigation. Exhibit F to the Di Domenico Affidavit is a copy of an email dated July 23, 2015 from Mr. West to Ms. McGillivray regarding this matter. In our submission, it was inappropriate for Mr. West to be communicating directly with the Board regarding this matter. Even if it was appropriate for Mr. West to communicate directly with the Board, it was inappropriate to do so without copying counsel of record. This should not recur. Any future communication regarding this matter must be directed to counsel of record.

I can also confirm that the first time that I became aware of the two letters from Mr. West dated July 17 and 23, 2015 was when I was served with the Di Domenico Affidavit on August 21, 2015. My letter of July 27, 2015 regarding the alleged conflict was written solely in response to



paragraphs 37(h) and (i) of the Amended Response that Alexion served on July 20, 2015.

Yours very truly,

Original signature redacted

David Migicovsky

20:llc

cc Christopher Morris (by email)
Nathalie Beaulieu (by email)
Isabel Jaen Raasch (by email)
Parul Shah (by email)
Craig Anderson (by email)
Sharna Kraitberg (by email)
Anil Kapoor (by email)