THIS IS AN UNOFFICIAL ENGLISH TRANSLATION OF THE APPLICATION FILED TO THE FEDERAL COURT RECORD. IN CASE OF DISCREPANCY OR DOUBT, THE FRENCH VERSION TAKES PRECENDENCE AND HAS SOLE LEGAL VALUE.

Court File No:

FEDERAL COURT

(Forms 66 and 301)

BETWEEN:

LE RÉSEAU FADOQ,
MARC FERLAND, and
LIETTE HACALA MEUNIER

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

Notice of Application

(Writ of mandamus and declaratory judgment)

APPLICATION UNDER SECTION 18 OF THE FEDERAL COURTS ACT AND SECTIONS 18 TO 21 OF THE CANADA HEALTH ACT

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicants. The relief claimed by the applicants appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicants. The applicants request that this application be heard at (place where Federal Court of Appeal (or Federal Court) ordinarily sits).

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicants' solicitor, or where the applicants are self-represented, on the applicants, WITHIN 10 DAYS after being served with this notice of application.

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Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

_____
(Date)

Issued by: _____
(Registry Officer)

Address of local office: _____

TO:

Attorney General of Canada
Department of Justice Canada
Guy-Favreau Complex
East Tower, 9th Floor
200 René-Lévesque Boulevard West
Montréal, Quebec
H2Z 1X4

Minister of Health
House of Commons
Ottawa (Ontario)
Canada
K1A 0A6

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NOTICE OF APPLICATION
(WRIT OF MANDAMUS AND DECLARATORY JUDGMENT)

The present application is an application for judicial control concerning :

The Federal Minister of Health
Attorney General of Canada

For several years, the Federal Minister of Health has refused or neglected to act per articles 18 to 21 of the *Canada Health Act*, even though these articles force her to act. Indeed, she omits to deduct, from the cash contributions given to provinces by the Government of Canada, according to the *Canada Health Act*, the amounts billed as extra-billing fees or user-charges by physicians to Canadian patients, in contravention with the *Canada Health Act*.

FOR THESE REASONS, MAY IT PLEASE THE COURT :

GRANT the present application for judicial review;

GRANT Applicants public interest standing for the purposes of this litigation;

DECLARE that the Federal Health Minister is aware that extra-billing fees and user charges are being tolerated in Quebec and elsewhere in Canada, and have been for many years;

DECLARE that the Federal Health Minister has no discretion in the application of sections 18 to 21 of the *Canada Health Act* pertaining to remedies to be applied when a province tolerates extra-billing practices or user charges, as soon as the existence of such fees is brought to her attention;

ORDER the Federal Health Minister to enforce sections 18 to 21 of the *Canada Health Act* as per the conditions it provides across Canada, by deducting or retaining, against all provinces where the practice of extra-billing fees and user-charges exists, the amounts due as federal cash contributions according to the *Canada Health Act*, as long as the provinces allow or tolerate a practice of extra-billing fees or user-charges;

THE WHOLE with costs.

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1. The present is an application for judicial review regarding the Federal Minister of Health, the Honourable Jane Philpott, (hereafter: "**the Federal Minister**") failure to apply the terms of the *Canada Health Act* (R.S.C. (1985) c. C-6) (hereafter: "**CHA**") prohibiting extra-billing fees being billed by physicians to Canadian patients; these fees include user-charges and extra-billing on top of the usual remuneration given to physicians by the public provincial health care insurance;

2. This situation has been going on in Quebec for several years, during which the current Federal Minister and her predecessors have never intervened. The Federal Minister and her predecessors have intervened on several occasions in other provinces in the past, but several extra-billing practices have restarted in several provinces without the Federal Minister intervening;

3. The object of this application is to seek a writ of *mandamus* ordering the Federal Minister to apply the articles 18 to 20 of the CHA, which do not permit her any discretion, in order to withhold from the federal contribution payable to each province under the CHA the equivalent of the sum payed illegally by patients through the illegal extra-billing of user-charges and extra-billing fees by physicians;

4. Particularly in the case of Quebec, the remedy which is seeked is an application for writ of *mandamus* ordering the Federal Minister to withhold, in the transfer payments due to the province for the 2014-2015 financial year, any amount which could be determined by the Federal Minister over the course of the application of the CHA;

5. The motivations of the application are exposed in detail below. They will be briefly summarized in the following paragraphs;

6. This application for writ of *mandamus* is lodged by the *Réseau FADOQ* (hereafter: "**the FADOQ**"), a non-profit organization which defends the rights and interests of the elderly in Quebec; thousands of its members are forced to pay illegal extra-billing fees (paragraphs 40 to 46);

7. This application is also lodged by Mrs. Liette Hacala Meunier (hereafter: "**Mrs. Hacala Meunier**") and Mr. Marc Ferland (hereafter: "**Mr. Ferland**"), members of the FADOQ which have payed and still have to pay extra-billing fees when they receive medical services which are covered by the provincial health insurance plan (paragraphs 47 to 58);

8. This application is directed toward the Attorney General of Canada, acting in the presents for the Federal Minister, and directly towards the Federal

Minister herself (paragraphs 59 to 62);

9. An analysis of the history of the CHA, adopted in its current version in 1984, reveals that, since 1957, the federal and provincial public authorities wish to offer to Canadian citizens an accessible and public health care system, as well as avoid that the fees incurred by the users hinder their access to medical care (paragraphs 63 to 72);

10. Due to certain changes in the conditions of the cash transfers by the Federal Government starting in 1977 and the following years, most of the provinces allowed extra-billing fees to be billed to patients (paragraphs 70 to 72);

11. In order to analyse the consequences of this situation, the Government of Canada asked Justice Emmett Hall, author of the report “Commission royale d’enquête sur les services de santé” of 1964 and 1965, who was at the origin of the Canadian health system, to evaluate the situation and report on it;

12. In his report which was tabled in 1980, Justice Hall recommended the prohibition of all billing of extra-billing fees (also called “hospitality fees”) to patients (paragraphs 73 to 78);

13. In the parliamentary debates surrounding the adoption of the CHA in 1984, the legislator’s intention was extremely clear: the law’s goal is to prevent all forms of extra-billing and user-charges (paragraphs 79 to 99);

14. In order to achieve this objective, the law, as adopted, took away all discretion from the Federal Minister, obliging the Federal Minister, as soon as a province allows extra-billing fees or user-charges, to withhold the estimated amount of extra-billing according to a procedure which is specified by regulation (paragraphs 100 to 123);

15. Indeed, in the years following the adoption of the CHA, important sums were withheld against certain provinces until the practice of extra-billing or user-charges was ceased (paragraphs 124 to 143);

16. In Quebec, the *Health Insurance Act* (RLRQ, c. A-29) (hereafter: “**HIA**”) was adopted in conformity with the CHA, prohibiting the billing of extra-billing fees and user-charges (paragraphs 144 to 149);

17. The only exception which is applied pursuant to the HIA has allowed physicians to bill the actual cost of certain medications administered to patients in private clinics, including the costs of intrauterine devices

(paragraphs 147 to 155);

18. However, a certain number of physicians have started billing their patients for fees going way above the actual cost of these medications, which contravenes to the prohibitions of extra-billing fees according to the HIA (paragraphs 147 to 155);

19. Even though the Government of Canada has somewhat preoccupied itself of the situation, it has never intervened in Quebec;

20. Several class actions have been lodged against the Government of Quebec due to the illegal extra-billing fees collected by physicians (paragraphs 158 to 180);

21. To this day, the Government of Quebec has had to pay more than 16 million dollars to repay the Quebec patients which were victims of this abuse (paragraphs 159 and 167);

22. However, the billing of extra-billing fees has increased and continued despite the class actions; it continues to this day;

23. For several years now, numerous reports, notices and intervention requests have been submitted to Government of Quebec in order to cease extra-billing-fees, without any success to this day (paragraphs 181 to 211);

24. In 2013, the Quebec National Assembly has even adopted an unanimous resolution demanding the immediate end of extra-billing fees (paragraph 212);

25. In January 2015, the *Quebec College of Physicians* adopted very strict remedies in its *Code of ethics of physicians* (RLRQ, c. M-9, r.17) (hereafter: "**CEQ**") in order to prohibit extra-billing fees other than the actual cost of medication (paragraphs 213 to 227);

26. The practice of extra-billing is well known in the Quebec media, as well as the absence of the Government of Canada in the control of this practice (paragraphs 228 to 233);

27. In June 2015, the Minister of Health and Social Services (hereafter: "**the Quebec Minister**"), Doctor Gaétan Barrette, publicly announced that he would not prohibit extra-billing fees but that he would regulate them with a certain profit margin for the physicians, which clearly contravenes the CHA (paragraphs 251 and 252);

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28. The Quebec Minister has adopted, by a questionable and not very democratic parliamentary procedure, amendments to the law in order to give himself permission by regulation to set the amounts of extra-billing fees payable by Quebec patients (paragraphs 234 to 255);

29. This way of proceeding and the subsequent adoption of the law have provoked a major outcry and a general opposition all-around Quebec (paragraph 256);

30. The Government of Quebec's intention to regulate, by regulation, the practice of extra-billing fees directly and clearly contravenes to the CHA;

31. Outside of Quebec, the practice of extra-billing fees is increasing everywhere (paragraphs 258 to 266);

32. Nevertheless, the Federal Minister is aware of the situation of extra-billing fees, having herself called-out this situation in 2012, particularly in regards to the severe consequences this situation brings upon the most disadvantaged Canadians (paragraphs 267 to 293);

33. Several sources have brought the situation elsewhere in Canada to the attention of the Federal Minister (paragraphs 258, 259, 263, 264);

34. The present application meets all the criteria for an application for writ of *mandamus* (paragraphs 294 to 349);

35. The Federal Minister is obliged to act pursuant to the CHA as soon as she is made aware of the existence of a practice of extra-billing or user-charges (paragraphs 294 to 296);

36. The FADOQ submits that it has the interest required for the purpose of this litigation pursuant to public interest, as well as the fact that several thousands of its members have to pay illegal extra-billing fees which clearly contravene to the CHA (paragraphs 298 to 205 and 308);

37. The two other Applicants, Mrs. Hacala Meunier and Mr. Ferland, have the interest required for the purpose of this litigation in the public interest as well as a special interest, as they have to pay illegal extra-billing fees in order to obtain several insured medical services (paragraphs 305 to 308);

38. The Federal Minister, who is well aware of the situation, refuses or neglects to act (paragraphs 309 to 316);

39. The balance of convenience is greatly in favor of the Applicants: the

payment of extra-billing fees would cause the downfall of one of the pillars of the Canadian health care system, as well as several other consequences (paragraphs 326 to 349);

1. The litigants

1.1. Description of the Applicants

40. The FADOQ, formerly the Fédération de l'Âge d'Or du Québec, was founded on March 3rd 1962, for the purpose of creating a group of individuals fighting against the isolation of the elderly. The FADOQ is constituted according to the *Companies Act* (RLRQ c.C-38) since June 16th 1970 ;

41. According to their letter patents, produced herewith as **Exhibit R-1**, the FADOQ's particular goals are to:

> *Raise public awareness to the problems and needs of elderly persons and become an element of representation of this real entity that are the elderly persons, representing them before the various public and private bodies, in order to bring them to take note of the actions, rights and needs of the elderly persons of Quebec.*

42. Therefore, the FADOQ's objective is to support and improve the quality of life of elderly persons aged 50 or older, by promoting their rights and their contribution to society;

43. In order to do so, the FADOQ implicates itself in the community and represents its members in many social issues;

44. Since its establishment, the FADOQ has become quite big and it is now composed of affiliated organisations. To this day, the FADOQ has more than 405 000 members across Quebec and it constitutes the largest volunteer association of elderly persons in Canada;

45. Thousands of members of the FADOQ have to pay illegal extra-billing fees to obtain certain types of medical care, such as eye drops for macular degeneration, colonoscopies, vasectomies, etc.;

46. The FADOQ is authorised to act in the present according to a resolution of its Board of Directors, adopted on February 17th 2016, the whole as it appears more fully from the excerpt of the transcription of this reunion, produced herewith as **Exhibit R-2**;

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47. Mr. Ferland, born on March 5th 1937 and aged 79 years old at the moment of the present application, underwent, in September 2013, two eye surgeries for cataracts;

48. Following these surgical interventions, Mr. Ferland suffered from complications, for which ophthalmology consultations were necessary;

49. In February 2014, Mr. Ferland underwent a vitrectomy because of these complications;

50. Since this intervention, Mr. Ferland has had to present himself, once or twice per month, to follow-up visits during which the ophthalmologist would impose the payment of a fee of $40 for the eye drops necessary to do an eye exam, the whole as it appears more fully from the invoices, a copy of which is produced in bulk herewith as **Exhibit R-3**;

51. On April 4th and August 11th 2014, Mr. Ferland lodged two complaints at the *Quebec College of Physicians* in order to report the illegal extra-billing fees, the whole as it appears from the complaints, a copy of which is produced in bulk herewith as **Exhibit R-3**;

52. After having lodged the two complaints against his treating ophthalmologist, Mr. Ferland is obliged to change treating physicians;

53. Following the investigation, on December 7ht 2015, the Office of the *Syndic des médecins du Québec* concludes towards Mr. Ferland that "[TRANSLATION] the fees which were claimed for the eye drops was disproportionate", the whole as it appears from **Exhibit R-3**;

54. To this day, even after having changed treating physicians, Mr. Ferland has to pay for eye drops, which only cost a few dollars in reality;

55. Mrs. Hacala Meunier, born on November 10th 1951 and aged 64 years old at the moment of the present application, suffers from retinopathy, which requires frequent consultations with an ophthalmologist;

56. Within these consultations, Mrs. Hacala Meunier has to receive eye drops for eye exams, for which she is asked to pay $30, regardless the amount of eye drops that are applied, when the real cost of these eye drops is of a few dollars, the whole as it appears from **Exhibit R-4,** a copy of which is produced in bulk herewith;

57. To this day, Mrs. Hacala Meunier always has to pay these illegal extra-billing fees, the whole as it appears from **Exhibit R-4,** a copy of which is

produced in bulk herewith;

58. Mrs. Hacala Meunier and Mr. Ferland are members of the FADOQ;

1.2. Description of the Respondent, Attorney General of Canada

59. The Respondent, Attorney General of Canada, acts in the presents as a representative of the Federal Minister of Health;

60. The Federal Minister, is responsible for the application of the *Act relating to cash contributions by Canada and relating to criteria and conditions in respect of insured health services and extended health care services*, better known under the short-form *Canada Health Act* (hereafter: "**CHA**");

61. The Federal Minister is responsible of verifying the conformity of the provinces to the CHA and in the case of contraventions to the law, estimating the amounts which must be withheld from the cash contributions to the provinces for the insured health services and the complimentary services which are provided;

62. According to article 23 of the CHA, the governments of the provinces must annually establish a report on the application of the CHA, which must include, for example, all the information regarding the ways in which the provincial health care insurance system and the province have satisfied the conditions for granting and payment set out in the CHA;

2. The *Canada Health Act*

2.1. History of the CHA

2.1.1. The precursors

63. Public health insurance implicating a financial participation from the federal government, as well as the respect of specific conditions by the provinces, dates from 1957;

64. In 1957 and 1966, the *Hospital Insurance and Diagnostic Services Act* (L.C. (1957) c. C-28) and the *Medical Care Act* (L.C. (1966) c. C-64) were adopted. These laws provide that the federal government offer the provinces to refund approximately half of the insured health services;

65. In counterpart, the provinces have to commit themselves to guarantee the insured health services and to respect certain conditions within their public health insurance system;

66. In particular, in 1966, the *Medical Care Act* provided that, in order to receive the contributions as described in the previous paragraph, the provinces had to respect the following four principles:

> *[TRANSLATION] First, the range of advantages must incorporate, generally speaking, all the services provided by physicians, may they be general practitioners or specialists.*
>
> *Second, the plan must be universal; in other words, it must cover all the residents of a province, under identical conditions for all.*
>
> *Third, only one plan instituted for the whole population can properly benefit from the federal cash contribution.*
>
> *Fourth, each provincial plan must grant the total transfer of advantages to individuals who temporarily depart from a province or move to another province.*
>
> the whole as it appears more fully from the excerpts of Justice Hall's report from 1980, a copy of which is produced herewith as **Exhibit R-5**;

67. However, the principle of accessibility was not defined in the laws referred to in paragraph 64;

68. The *Hospital Insurance and Diagnostic Services Act,* as well as the *Medical Care Act* provided that the fees incurred by the users of the services were not to hinder or prevent, directly or indirectly, the accessibility to services, putting the concern of accessibility to health services at the heart of all preoccupations;

69. As it appears from the News Bulletin revised on May 16th 2005 by the Parliamentary Information and Research Service:

> *[TRANSLATION] These two laws did not prohibit the provinces from asking for a financial participation from patients; however, since the federal contributions were proportional to the public provincial expenses, there were no benefits for the provincial governments to impose direct fees to patients. Indeed, the revenues obtained from such fees would have had as a consequence to reduce the federal cash contribution. This implicit mechanism of reduction therefore strongly discouraged the provinces of adopting any kinds of direct fees to patients, such as extra-billing and user-charges,*

the whole as it appears from **Exhibit R-6**, at page 5;

70. In 1977, this mechanism was replaced by a global financing approach based on cash transfers and tax point transfers, as part of the Established Programs Financing (EPF), the whole as it appears more fully from **Exhibit R-6**;

71. Although the two federal laws and their conditions were maintained, the implicit mechanism of deduction of federal contributions was eliminated: the federal funding was no longer based on the expenses of provincial governments, which left room for extra-billing and user-charges being billed by the physicians and dentists in provinces;

72. This led to a multiplication of fees being imposed directly to patients and this led, for example, to Newfoundland, New-Brunswick, Quebec, Ontario, Saskatchewan, Alberta and British-Columbia requesting user-charges; extra-billing was then authorised in a vast majority of provinces, the whole as it appears from **Exhibit R-6,** page 5;

2.1.2. The Hall Report

73. In 1979, Justice Emmett M. Hall was named Special Commissioner by the Minister of National Health and Welfare of the time, David Crombie, and he was mandated to examine the condition of the health services;

74. In particular, Justice Hall's mandate consisted in analysing the degree of achievement reached in areas pertaining to health, such as transferability, adequate accessibility, universal and total protection, public administration, adequate compensation and consistency of conditions, evaluating the necessity of other key principles to the health insurance system and study the nature and scale of the revisions that need to be brought upon the law on hospitalisation insurance and diagnostic services, as well as the law on medical services, the whole as it appears more fully from the excerpt of Justine Hall's report produced herewith as **Exhibit R-5**, at page 2;

75. In the report submitted by Justice Hall following his analysis in 1980 he states his findings, particularly:

> *[TRANSLATION] Unwealthy individuals, to whom we ask to pay an additional fee, will say that they require the services of a physician less often, and/or that they do not rush themselves to receive treatment because of the cost of medical care; and the proportion of individuals who act in this manner is much greater with the poor than with the wealthy,*

the whole as it appears from **Exhibit R-5**, at page 25;

76. As mentioned in the report, a copy of which is produced herewith as **Exhibit R-5**, at page 26, extra-billing fees are inacceptable since they place a heavy burden on citizens and contravene the principle of accessibility to health care;

77. These observations led Justice Hall to conclude that additional fees, such as the fees billed to patients on top of the compensation physicians received according to the provincial health care systems should be banned, since they could lead to the destruction of our universal health care system:

[TRANSLATION] If we consider as a right the practice of additional fees, and if physicians exercise this practice at their own discretion, we will see, throughout the years, the discretion of the program, and this destruction will lead to the creation of a two-tier system incompatible with the level of society reached by Canadians,

the whole as it appears from **Exhibit R-5**, at page 28;

78. In the eyes of the Federal Government, this situation seemed to constitute a threat to the principle of universal and free access to health services throughout the country; the government therefore reaffirmed its engagement to the principle of universal health care and it strongly focused on the criteria of economic equity in order to justify its intervention, the whole as it appears more fully **Exhibit R-6**;

2.2. The legislator's intentions

79. Following the Hall report, the Government of Canada introduced bill C-3 in 1983, which became the CHA once it was adopted;

80. In the context of the present procedures, it’s particularly relevant to understand the legislator’s intentions in the adoption of this bill;

81. In 1983, in a document entitled « Pour une assurance-santé universelle : la politique du gouvernement du Canada ([TRANSLATION]: For universal health care: the Government of Canada’s policy)», the Minister of National Health and Welfare at the time, Monique Bégin, presented the observations of the situation and the major goals of the CHA, which was then a bill, the whole as it appears more fully from a copy of the official document, produced herewith as **Exhibit R-7**;

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82. More precisely, the official government document stated the following observation :

> *[TRANSLATION] It is obvious that the breaches in the protection plan will continue to broaden if we do not do a concerted new effort in order to save the principle of universal health care.*
> *[…]*
> *The Government of Canada believes that a civilised and rich country like ours must not leave the sick to carry the financial burden of health care. By benefiting from an insurance which is paid in advance, we can all benefit from security and serenity. The ailment that reaches us all on one day or another is already tough enough to bear: the cost of medical care must be supported by the entire society. This is why the Government of Canada wishes to reaffirm, with the new Canada Health Act, its commitment to the essential principle of universal health care,*

the whole as it appears from **Exhibit R-7**, page 7;

83. Furthermore, this official document criticized the old laws on health, mentioning that:

> *[TRANSLATION] At the time where they were enforced, the people concerned well understood what the conditions meant and they understood that it signified an evolution towards a universal health insurance plan. The conditions were not precise enough in order to foresee all eventualities. Reasonable access, for example, is only defined in a general manner and* ***the wording is not precise enough for a single amount of additional fees*** *or user-charges to clearly constitute a violation to the Medical Care Act* [added emphasis];

the whole as it appears from **Exhibit R-7**, pages 34-35;

84. This document concludes that :

> *[TRANSLATION] The new Canada Health Act, which will be presented to the Parliament in the fall of 1983, will be the next step in a long progression in order to guarantee all residents of Canada with access to health insurance services which will be paid by anticipation,*

the whole as it appears from **Exhibit R-7**, page 37;

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85. This document opened the way to the CHA, in which the national principles were reaffirmed but additional restrictions were specifically added in a way to deter the imposition of all forms of direct fees to patients and to offer citizens of all provinces the access to health care without any financial obstacle;

86. The CHA's goal is therefore to make the prohibition of extra-billing and user-charges more coercive, with the addition of non-discretionary dispositions in the law, as was debated in the House of Commons;

87. Indeed, on January 16th 1984, as part of the parliamentary debates surrounding the adoption of the CHA, the Honourable Monique Bégin, then Minister of National Health and Welfare, mentions the objectives of the new law :

> *[TRANSLATION] The new law does not provide any big changes. Essentially, it reinforces the five current modalities of our health insurance plan which have been applied to the services in Hospitals for the past 25 years and for the past 15 years for visits at physicians' offices. It specifies that two problems are becoming more and more urgent:* ***over-billing by physicians and specialists*** *and the application of a ticket system by the provinces,* ***which is against the law****. In this context, the federal government will deduct a dollar for every dollar billed to patients. This, in a couple words, is what the law provides.* [added emphasis];

the whole as it appears more fully from the official report, Debates of the House of Commons, a copy of which is produced herewith as **Exhibit R-8**, at page 426;

88. That same day, she mentioned: "[TRANSLATION] Nevertheless, why do we have to adopt a Canadian law on health? For a very simple reason. **We do not want any extra-billing**", the whole as it appears from the excerpts of the parliamentary debates of January 17th 1984, a copy of which is produced herewith as **Exhibit R-8**, at page 448;

89. She added that : "[TRANSLATION] […] **we hope that this will be the end of extra-billing, additional fees and all disbursements imposed to users of the system**", the whole as it appears from **Exhibit R-8**, at page 448 [added emphasis];

90. On January 17th 1984, as part of the parliamentary debates surrounding the adoption of the CHA, Gerald Regan, Minister of Foreign Trade, expressed

himself regarding the problematic of extra-billing and user-charges:

> *[TRANSLATION […] Every year, it is undeniable, the cost of extra-billing increases, the tendency of using a ticket system increases and the number of competent authorities openly and publicly supporting the use of the latter is increasing […].*

the whole as it appears from **Exhibit R-8**, at page 487;

91. On January 20th 1984, during the same parliamentary debates, David Weatherhead, liberal MP from Scarborough-West, explained the penalties which will be applicable in case of non-respect of the CHA following its adoption, the whole as it appears from **Exhibit R-8**;

92. Regarding the application of articles 7 to 12 of the current CHA, he explained that :

> *[TRANSLATION] […] If a province does not respect one of the two conditions for the contributions, the law specifies that the federal cash contribution can be reduced. This is a discretionary measure that must be preceded by consultations with the provinces […].*

the whole as it appears from **Exhibit R-8**, at page 611;

93. Regarding the application of the articles concerning extra-billing and user-charges, articles 18 to 20 of the current CHA, he mentions that :

> *[TRANSLATION] […] If a province does not respect the contribution conditions regarding extra-billing and user-charges, the law indicates that there will be a* ***non-discretionary reduction*** *of the federal cash contribution corresponding to the amount billed as extra-billing or user-charges […].*[added emphasis];

the whole as it appears from **Exhibit R-8**, at page 611;

94. That same day, David Weatherhead also talks about the accessibility and universality of health care:

> *[TRANSLATION] […] Studies show, as we all know, that a ticket system and* ***extra-billing constitute an obstacle for the poor, the elderly persons and large families****. It goes directly against the fundamental principle according to which the cost of medical care must be assumed by society, so the sick aren't penalised financially […].*[added emphasis];

the whole as it appears from **Exhibit R-8**, at page 610;

95. On April 9th 1984, during the debates surrounding the adoption of the CHA, Warren Allmand, liberal MP, recalled that:

> *[TRANSLATION] I wish to remind the House, like many MPs before me, that this Bill's goal is to prevent extra-billing and the imposition of user-charges. Extra-billing consists in requesting fees above the ones already planned in the health insurance plan.* ***Extra-billing can be practiced in many ways.*** *In regards to user-charges, this is what hospitals and other medical establishments ask for in addition to the costs already assumed by the health insurance plan. It seems that extra-billing and user-charges have totalised an amount between 120 and 130 million dollars last year, which represents an increase of 20% since the last two years. We could say, of course, that this is not a lot compared to what the health insurance plan costs, but this is enormous for simple citizens, since it prevents them from having a free access to health care.* [added emphasis];

the whole as it appears from **Exhibit R-9**, at page 2838;

96. That day, the CHA was adopted unanimously by the House of Commons, the whole as it appears from **Exhibit R-9**, at pages 2868 and 2869;

97. On April 17th 1984, the CHA was adopted, without modifications, by the Senate, the whole as it appears from **Exhibit R-9** at page 3163;

98. Subsequently, on April 1st 1996, the CHA was linked to the Canada Health and Social Transfer (CHST), which united the transfers of the Established Programs Financing (EPF) and the Canada Assistance Plan (CAP). The provinces had to respect all the requirements established by the CHA in order to be admissible to the totality of the cash transfers from the CHST;

99. Since April 1st 2004, the CHA has been linked to the Canada Health Transfer (CHT) but the provinces remain subject to the respect of the requirements under the CHA;

2.3. The CHA as adopted in 1984

100. The CHA is a Canadian Federal legislation adopted in 1984, which establishes the conditions and criterias to which the provinces and territories have to conform themselves in order to receive the entirety of the

federal transfers for insured health services and the additional services provided (hereafter: "**contribution**");

101. In general terms, the legislation forces provinces to establish and maintain public health insurance plans for their residents. It prohibits the use of extra-billing and user-charges in the offer of medical services, the desired goal and effect being to maintain the national standards for the delivery of public health care;

102. Article 3 of the CHA outlines the law's goal:

> *It is hereby declared that the primary objective of Canadian health care policy is to protect, promote and restore the physical and mental well-being of residents of Canada and to facilitate reasonable access to health services* ***without financial or other barriers*** [added emphasis];

103. The five principles of the CHA form the cornerstone of the Canadian health care system. These five principles, outlined at article 7 and explained at articles 8 to 12, are the following:

> ***8 (1)*** *In order to satisfy the criterion respecting* ***public administration****,*
>
> *(a) the health care insurance plan of a province must be administered and operated on a non-profit basis by a public authority appointed or designated by the government of the province;*
>
> *(b) the public authority must be responsible to the provincial government for that administration and operation; and*
>
> *(c) the public authority must be subject to audit of its accounts and financial transactions by such authority as is charged by law with the audit of the accounts of the province.*
>
> *[…]*
>
> ***9*** *In order to satisfy the criterion respecting* ***comprehensiveness****, the health care insurance plan of a province must insure all insured health services provided by hospitals, medical practitioners or dentists, and where the law of the province so permits, similar or additional services rendered by other health care practitioners.*

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10 *In order to satisfy the criterion respecting* ***universality****, the health care insurance plan of a province must entitle one hundred per cent of the insured persons of the province to the insured health services provided for by the plan on uniform terms and conditions.*

11 (1) *In order to satisfy the criterion respecting* ***portability****, the health care insurance plan of a province*

(a) must not impose any minimum period of residence in the province, or waiting period, in excess of three months before residents of the province are eligible for or entitled to insured health services;

(b) must provide for and be administered and operated so as to provide for the payment of amounts for the cost of insured health services provided to insured persons while temporarily absent from the province on the basis that

[…]

(c) must provide for and be administered and operated so as to provide for the payment, during any minimum period of residence, or any waiting period, imposed by the health care insurance plan of another province, of the cost of insured health services provided to persons who have ceased to be insured persons by reason of having become residents of that other province, on the same basis as though they had not ceased to be residents of the province.

[…]

12 (1) *In order to satisfy the criterion respecting* ***accessibility****, the health care insurance plan of a province*

(a) must provide for insured health services on uniform terms and conditions and on a basis that does ***not impede or preclude, either directly or indirectly whether by charges made to insured person****s or otherwise, reasonable access to those services by insured persons;*

(b) must provide for payment for insured health services in accordance with a tariff or system of payment authorized by the law of the province;

> *(c) must provide for reasonable compensation for all insured health services rendered by medical practitioners or dentists; and*
>
> *[…]*
>
> ***(2)** In respect of any province in which extra-billing is not permitted, paragraph (1)(c) shall be deemed to be complied with if the province has chosen to enter into, and has entered into, an agreement with the medical practitioners and dentists of the province that provides*
>
> *(a) for negotiations relating to compensation for insured health services between the province and provincial organizations that represent practising medical practitioners or dentists in the province;*
>
> *(b) for the settlement of disputes relating to compensation through, at the option of the appropriate provincial organizations referred to in paragraph (a), conciliation or binding arbitration by a panel that is equally representative of the provincial organizations and the province and that has an independent chairman; and*
>
> *(c) that a decision of a panel referred to in paragraph (b) may not be altered except by an Act of the legislature of the province.* [added emphasis];

104. The principle of accessibility is of critical importance. To this effect, the CHA expressively recognizes, in its preamble, that continuous access to quality health care, without a financial obstacle or other obstacles, remains determinant for the safekeeping and amelioration of the health and well-being of Canadians;

105. More precisely, article 12 of the CHA states that the accessibility condition presumes that the provincial health care insurance plans offer insured health services according to uniform terms, and that they do not impede, directly or indirectly, especially through patient billing, a satisfactory access to services;

106. In regards to the financing of provincial health care systems, article 5 of the CHA indicates that the Government of Canada pays to each province, for each fiscal year, a full cash contribution as a transfer, subject to the respect of the conditions contained in the CHA;

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107. The conditions for granting which must be satisfied by the provinces and territories in order to obtain payment of the federal contribution are found at articles 7 to 13, 18 and 19 of the CHA;

108. Article 18 of the CHA indicates that a province will only be given, during a fiscal year, the full cash contribution referred to in article 5 if, under its health insurance plan, it does not allow, for that fiscal year, payments regarding insured health services which were subjected to extra-billing by physicians or dentists;

109. Extra-billing is defined as the following, according to article 2 of the CHA:

> *extra-billing means the billing for an insured health service rendered to an insured person by a medical practitioner or a dentist in an amount in addition to any amount paid or to be paid for that service by the health care insurance plan of a province;*

110. Article 19 paragraph 1 of the CHA indicates that a province will only be given, during a fiscal year, the full cash contribution referred to in article 5 if, under its health insurance plan, it does not allow, for that fiscal year, the charging of any user-charges;

111. User-charges are defined as the following, according to article 2 of the CHA :

> *user charge means any charge for an insured health service that is authorized or permitted by a provincial health care insurance plan that is not payable, directly or indirectly, by a provincial health care insurance plan, but does not include any charge imposed by extra-billing;*

112. In case the provinces fail to comply to articles 18 and 19, the paragraphs 1 and 2 of article 20 of the CHA indicate:

> *(1) Where a province fails to comply with the condition set out in section 18,* ***there shall be deducted*** *from the cash contribution to the province for a fiscal year an amount that the Minister, on the basis of information provided in accordance with the regulations, determines to have been charged through extra-billing by medical practitioners or dentists in the province in that fiscal year or, where information is not provided in accordance with the regulations, an amount that the Minister estimates to have been so charged.*

> *(2) Where a province fails to comply with the condition set out in section 19,* ***there shall be deducted*** *from the cash contribution to the province for a fiscal year an amount that the Minister, on the basis of information provided in accordance with the regulations, determines to have been charged in the province in respect of user charges to which section 19 applies in that fiscal year or, where information is not provided in accordance with the regulations, an amount that the Minister estimates to have been so charged;* [added emphasis];

113. Paragraph 3 of article 20 of the CHA states that the Federal Minister must consult her counterpart responsible for health matters in the concerned province, before estimating the amount referred to in paragraph 1; the consultation is not on the principle of deduction, as it is non-discretionary according to the CHA, but rather on the amount of the deduction;

114. Furthermore, article 21 of the CHA states that all deduction of a cash contribution referred to in paragraph 20 can be applied to the fiscal year during which the originating facts took place or in the two following fiscal years;

115. Hence, paragraphs 1 and 2 of article 20 of the CHA force the Federal Minister to deduct from the cash transfers that must be given to provinces, according to article 5 of the CHA, an amount equal to the total of user-charges billed by physicians or dentists in the province during the fiscal year, in the case of a violation or articles 18 or 19 by a province;

116. The terms “there shall be deducted” clearly indicate that the Federal Minister is required, by a legal obligation of public character, to deduct from the cash transfer an amount equal to the user-charges billed to patients, once he observes the extra-billing being done by physicians or dentists in a province;

117. By opposition, article 15 of the CHA, which gives a discretionary power, is written in the following terms:

> *15 (1) Where, on the referral of a matter under section 14, the Governor in Council* ***is of the opinion*** *that the health care insurance plan of a province does not or has ceased to satisfy any one of the criteria described in sections 8 to 12 or that a province has failed to comply with any condition set out in section 13, the* ***Governor in Council may****, by order,*

> *(a) direct that any cash contribution to that province for a fiscal year be reduced, in respect of each default, by an amount* ***that the Governor in Council considers to be appropriate****, having regard to the gravity of the default; or*
>
> *(b)* ***where the Governor in Council considers it appropriate****, direct that the whole of any cash contribution to that province for a fiscal year be withheld* [added emphasis];

118. By the use of the terms "*the Governor in Council may*", the legislator wanted to render discretionary the Governor in Council's power to sanction a province for its failure to comply to one of the conditions of articles 8 to 12, while by the mention "*there shall be deducted*" at article 20, it is clear that the legislator's intention is to automatically and mandatorily deduct from the cash transfers an amount equal to the user-charges charged;

119. This absence of discretion for the Federal Minister, as provided in article 20, is consistent with the precise intentions of the legislator in regards to extra-billing, the whole as it appears from the parliamentary debates referred to above (paragraphs 63 to 99);

120. Furthermore, in Health Canada's Annual Report for 2014-2015, produced herewith as **Exhibit R-10**, more precisely pages 5 and 6, the same interpretation is done regarding articles 18 and 19 of the CHA as they do not leave any room for the Federal Minister's discretion:

> *The provisions of the Canada Health Act pertaining to extrabilling and user charges for insured health services in a province or territory are outlined in sections 18 to 21. If it can be confirmed that either extra-billing or user charges exist in a province or territory, a mandatory deduction from the federal cash transfer to that province or territory* ***is required*** *under the Act. The amount of such a deduction for a fiscal year is determined by the federal Minister of Health. This can be based on information provided by the province or territory in accordance with the Extra-billing and User Charges Information Regulations (described below). Section 20 of the Act requires the Minister to make an estimate of the amount of extra-billing and user charges where information is not provided in accordance with the regulations. This process requires the Minister to consult with the province or territory concerned;*
>
> *(…)*
>
> ***Mandatory Penalty Provisions***

> *Under the Act, provinces and territories that allow extra-billing and user charges are subject to* ***mandatory dollar-for-dollar deductions*** *from the federal transfer payments under the CHT. In plain terms, this means that when it has been determined that a province or territory has allowed $500,000 in extra-billing by physicians, the federal cash contribution to that province or territory will be reduced by that same amount;* [added emphasis];

121. The same interpretation has always prevailed since the adoption of the CHA;

122. Even though the amount that must be deducted has to be estimated by the Federal Minister, the CHA is clear as it says that the Federal Minister has the legal obligation to deduct an amount from the cash transfer when its notes that a province contravenes to articles 18 and 19 of the CHA;

123. If the Government of Canada possesses some discretion to retain cash contributions owed to a province when his intervention is backed by article 15 of the CHA, the Federal Minister does not possess any discretion when the failure at issue ensues from extra-billing or from the imposition of user-charges. The Federal Minister must then automatically deduct from the federal cash contribution the estimated amount of extra-billing or user-charges tolerated or permitted by the provinces;

2.4. Application of the CHA

124. Since the adoption of the CHA, the Federal Minister and her predecessors have deducted, on numerous occasions, amounts equivalent to the extra-billing or user-charges; the largest amounts are listed at paragraphs 125 to 131;

125. Between 1984 and 1987, the Federal Minister has deducted, in connection to extra-billing, a total of $244 732 000 from the cash contributions to provinces, the whole as it appears from **Exhibit R-10**, page 14;

126. This amount was however reimbursed in June 1987 since the provinces established that they no longer accepted over-billing or user-charges, in accordance with article 20 paragraph 5 of the CHA;

127. Due to extra-billing from 1992-1993 to 1995-1996, a total of $2 025 000 was deducted from the cash contribution intended for British-Colombia since physicians outside of the public health insurance plan asked for an amount superior to the one patients could recuperate from the public health

insurance plan, the whole as it appears from **Exhibit R-10**, at page 14;

128. Due to extra-billing fees requested in clinics offering surgery services, ophthalmology services and abortions, the Federal Minister has deducted a total amount of $3 585 000 between November 1995 and June 1996 from the cash contribution intended for Alberta, the whole as it appears from **Exhibit R-10**, pages 14-15;

129. Due to the presence of user-charges in surgery and ophthalmology clinics in Manitoba, an amount of $2 055 000 was deducted from the cash contributions from November 1995 to December 1998, the whole as it appears from **Exhibit R-10**, page 15;

130. Between 1998 and 2015, the Federal Minister intervened in order to reduce her contributions several times and in several provinces, particularly in British-Columbia, Newfoundland and Labrador, Manitoba and Nova Scotia, the whole as it appears from **Exhibit R-10**, pages 16-17;

131. At the time of the publishing of Health Canada's Annual Report for 2014-2015, a total of $10 112 447 was deducted from the cash contributions due to provinces in regards to the dispositions on extra-billing and user-charges since 1987, the whole as it appears from **Exhibit R-10**, page 15;

132. The Federal Minister and her predecessors' interventions following contraventions to the CHA all had as a result a complete cessation of the extra-billing fees and user-charges calling for the intervention, therefore ensuring to the patients from concerned provinces the access to medical services required by their health state regardless of their paying capacity;

133. The withholding of cash contributions has always been a sufficient incentive in order to force provinces to comply and honour their commitments;

134. These withholdings were done by the Government of Canada without the necessity of a judicial application, since the government can deduct the amounts billed illegally from the amounts due to provinces by itself;

135. In order to comply to the CHA, the provinces must give an annual report to the Federal Minister, in accordance with article 13 of the CHA and article 5 of the *Extra-billing and User Charges Information Regulations* (SOR/86-259);

136. The Ministry of Health and Social Services of Quebec (hereafter : "**MHSS**") has communicated this report every year since 1984;

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137. In its reports, including in the last one, from 2014-2015, the MHSS has always indicated that: "**Physicians from Quebec do not practice over-billing**", the whole as it appears from the annual reports published by Health Canada since the report of 2002-2003, a copy of which is produced herewith as **Exhibit R-10**, at page 62, and as **Exhibit R-11** [added emphasis];

138. As will be determined below, the Government of Quebec's declaration, as transmitted by the MHSS, does not correspond to the reality and it does not constitute an exact information regarding Quebec's situation;

139. The Federal Minister and her predecessors have sometimes mentioned, in the annual reports regarding the CHA, the whole as it appears from **Exhibits R-10**, at pages 13 and 14, and **Exhibit R-11**, certain problematics concerning the application of the CHA in Quebec, yet they have never taken any concrete actions in order to prevent extra-billing, which has been tolerated or permitted for several years;

140. The Federal Minister and her predecessors have never deducted from the cash contributions to Quebec, despite the practice of extra-billing fees having been widely reported publicly for several years;

141. Indeed, the Federal Minister's employees, whose functions are to monitor the provincial and territorial health insurance plans, not only have the official reports transmitted by provinces as sources of information; they also have media reports, as well as the correspondence received from the public and non-governmental organisations, the whole as it appears from the copies of annual reports produced herewith as **Exhibits R-10**, page 12, and **R-11**;

142. As will be more fully explained hereafter, the problematic of extra-billing fees in Quebec has been the object of an important news coverage, which the Federal Minister could not ignore in order to justify her inaction;

143. The Federal Minister has failed, to this day, to deduct or retain any amount whatsoever against Quebec, despite the explicit obligations that are hers according to paragraphs 1 and 2 of article 20 of the CHA;

3. The situation in Quebec

3.1 Legislative framework

144. In Quebec, the HIA is the legal framework surrounding the provincial health insurance plan;

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145. The *Régie de l'assurance maladie du Québec* (hereafter: "**RAMQ**") is a public organisation established by the Government of Quebec which falls within the Quebec Minister's competence; he manages Quebec's health insurance plan accordingly to the requirements on public management of the CHA;

146. Under the HIA, the Quebec Minister can negotiate agreements with organisations representing all categories of health professionals in order to, for example, foresee the payment of different cash amounts as compensations or reimbursements, the whole as it appears from article 19, paragraph 2 of the HIA;

147. Article 22 of the HIA, before the adoption of Quebec Bill n°20 (hereafter: "**Bill 20**"), which was adopted on November 10th 2015, as will be further demonstrated at paragraphs 234 to 257, prohibits all individuals from requesting or receiving all payment from an individual for an insured service, a supply or any extra-billing fees for an insured service rendered by a professional subjected to the application of an agreement or a disengaged professional, excepted in the cases prescribed by an agreement and the conditions mentioned. Therefore, the billing of extra-billing fees is prohibited, unless addressed in an agreement;

148. Article 23 of the HIA, which is not modified by Bill 20, indicates that an agreement can not foresee an additional remuneration for insured services;

149. According to the HIA, the only fees that can be billed to a patient are the actual costs specifically addressed in the agreements;

150. In this optic, two agreements were concluded between the MHSS and the physicians' professional federations, the *Fédération des médecins omnipraticiens du Québec* (hereafter : « **FMOQ** ») and the *Fédération des médecins spécialistes du Québec* (hereafter : « **FMSQ** »), the whole as it appears more fully from excerpts of the agreements, produced herewith as **Exhibits R-12** and **R-13**;

151. According to the agreement contracted between the MHSS and the FMOQ, lodged in 2013, the whole as it appears from **Exhibit R-12**, section 1.1.4, general practitioners cannot ask a patient for any payment regarding the dispensing of medical services, except a cash compensation for the cost of the medication and anesthetics agents used, as well as an intrauterine device;

152. According to the agreement contracted between the MHSS and the FMSQ, lodged in 2006, the whole as it appears from **Exhibit R-13**, rule 2, 2.1,

specialists can only ask a patient for a cash compensation for certain practice fees determined by the rates; these fees include fees for medication and anesthetic agents;

153. These agreements, which are very restrictive, do not allow physicians to bill anything but the actual cost of products;

154. These agreements provide a noticeably premium remuneration for physicians when the services are rendered in a private clinic, in order to allow physicians to assume the costs of private clinics and prevent the patient having to pay any amount of money;

155. Despite the HIA and the agreements between the MHSS and the physicians' professional federations, extra-billing fees have been illegally charged by physicians to patients for insured services, the whole having brought on extra-billing according to the CHA;

156. Therefore, as examples of extra-billing fees, the following fees have been billed to Quebec patients:

a. The Respondent, Mr. Ferland, sees himself billed $40 as extra-billing fees for eye drops and Mrs. Hacala Meunier, $30 for similar eye drops, the whole as it appears from the receipts produced in bulk as **Exhibits R-3** and **R-4**;

b. Eye drops in order to treat macular degeneration have been billed $150 to $230 to patients, when these drops only cost several dollars to the ophthalmologist. These fees are billed every month;

c. A colonoscopy in a private clinic can go up to $515, which includes $170 for the administration of Fentanyl and $270 for Versed. The actual cost of these medications is largely under these amounts, being $35 for Fentanyl and $4 for Versed;

Several other fees have been charged to Quebec patients, the whole as it appears from the article of Le Devoir newspaper on November 24th 2011, entitled "Frais accessoires croissants en clinique privée", written by Amélie Daoust-Boisvert, a copy of which is produced herewith as **Exhibit R-14**, and the documentation regarding the extra-billing of extra-billing fees in Quebec, a copy of which is produced in bulk herewith as **Exhibit R-15**;

157. The Government of Quebec has been aware of the billing of extra-billing fees for several years but it refuses or omits to act;

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3.2 Legal actions undertaken by patients

158. Since 2002, several class actions have been lodged by the users of the health insurance plan who have been charged illegal extra-billing fees by Quebec physicians, the whole as will be more fully demonstrated in the following paragraphs;

159. In 2006, the Government of Quebec was condemned, following a class action, to pay 10 million dollars in damages, with interest and additional indemnity, because of the non-respect of the dispositions of the HIA which ban extra-billing fees, the whole as it appears from the decision *Association pour l'accès à l'avortement c. Québec (Procureur général)* (2006 QCCS 4694), a copy of which is produced herewith as **Exhibit R-16**;

160. In this case, the Judge criticised the Government of Quebec as it allowed the implementation of a system contravening to Quebec laws, as this system forced women to pay amounts of money in order to have access to an abortion, while it constitutes an insured service. The Judge expresses himself in the following way:

> [*TRANSLATION]*
>
> *[104] The Government of Quebec, which conserves the power to amend or repeal laws, cannot take political decisions which have as consequences to ensure that they are not respected or they are bypassed, either by the State or by its citizens.*
>
> *[105] The State cannot, for political or economic reasons, take measures which bring organisations, that it created and dictates their conduct, to be able to bypass laws or to allow the implementation of a system to contravene the laws.*
>
> *[106] The citizens cannot indirectly do what the law prohibits; it is the same for the State. Allowing private clinics to allow extra fees for insured services, while knowing that their survival is at stake, creates a system, which the law forbids.*
>
> *[107] Furthermore, the State knows very well that women do not pay in order to receive advice, an echography or medication. The State knows that women pay a supplement for insured services, but it closes its eyes and tolerates it. It is not enough to allow using different words that do not reflect the reality in order to solve a problem.*
>
> the whole as it appears from **Exhibit R-16**;

161. The Judge notes that the employees of the Federal Ministry of Health were worried, since 1995, by fees charged by private abortion clinics for insured medical services, but following several exchanges, nothing was done;

162. In conclusion to this action, the Government of Quebec had to reimburse the amount in excess which were paid by the patients, but no reimbursement was requested from the physicians;

163. On March 1, 2013, a second class action was certified and a settlement agreement binding the Quebec Attorney-General's office and the RAMQ was approved by the Superior Court of Quebec, the whole as it appears more fully from a copy of Justice Carole Hallée's reasons in *Lavoie c. Régie de l'assurance maladie du Québec*, 2013 QCCS 866, produced herewith as **Exhibit R-17**;

164. The Plaintiffs in *Lavoie*, *supra*, sought to claim damages for the cost of extra-billing fees and incidentals charged to patients normally covered by Quebec's public health insurance plan, namely for the cost of products required to undergo intra-vitreous injections and macular degeneration treatment;

165. The identifiable class of persons in *Lavoie*, *supra*, was defined as follows:

> "[TRANSLATION] *All beneficiaries of the Quebec public health insurance plan who have disbursed the extra-billing fees of products required to undergo intra-vitreous injections and macular degeneration treatment in the province of Quebec, provided said fees exceeded the real monetary value of the drugs and anesthetic agents used for the purposes of treatment*"

166. As part of the certification of the class in *Lavoie*, *supra*, Hallée, s.c.j., approved a settlement agreement by which the Government of Quebec would reimburse the losses of the injured class members up to a value of 115 $ per injection;

167. Quebec paid over to 6 000 000 $ in damages to reimburse the injured members of the class as per the settlement agreement approved in *Lavoie*, *supra*, the whole as it appears more fully from **Exhibit R-17** and an article titled "Dégénéresence maculaire – Québec devra rembourser plus de six millions de dollars à des patients" published in Le Devoir on January 17, 2013, produced jointly herewith as **Exhibit R-14**;

168. Once again, payment to injured patients was issued by the government of

Quebec, and not by the physicians who actually charged extra-billing fees. These physicians were not required to reimburse these fees;

169. On May 15, 2014, as extra-billing practices continued to increase, another class of injured patients moved to certify new class proceedings against the Quebec Attorney-General's office, the RAMQ, as well as many health clinics and physicians, the whole as it appears more fully from a copy of the Applicants' *Application to certify class action proceedings* dated June 30, 2015, produced herewith as **Exhibit R-18**;

170. The Plaintiffs seeking to certify the abovementioned class action proceedings allege that the MHSS and the RAMQ were negligent in that they tolerated illegal behaviors within the many spheres of Quebec's public health system, and that said illegal behaviors led to extra-billing fees to be unlawfully charged to members of the class despite the MHSS and the RAMQ being aware of this issue for many years;

171. The identifiable class of persons was defined as follows in Applicants' *Application to certify class action proceedings*, **Exhibit R-17**:

"[TRANSLATION] *All beneficiaries of the Quebec public health insurance plan who have disbursed sums of money to cover extra-billing fees illegally charged by a physician, an optometrist or a health clinic to cover costs of the drugs and anesthetic agents administered prior to or during the administration of an insured health service, or that postponed or cancelled treatment after being informed that extra-billing fees would be charged;*

172. The aforementioned proceedings were instituted on May 15, 2014, but have yet to be certified as a class action, but the alleged facts nonetheless show that extra-billing practices are being a recurrent problem of health care insurance in Quebec ;

173. Despite the institution of the aforementioned class action proceedings, the Government of Quebec has not acted against the physicians that practice extra-billing, and has neglected or omitted to remedy the issue of extra-billing fees;

174. The repeated institution of class action proceedings has not been enough to prevent further extra-billing, nor the generalization of extra-billing practices in Quebec;

175. Furthermore, these class action proceedings can only bring remedy to injured parties that have already been forced to pay extra-billing fees;

176. These class action proceedings cannot compensate those injured parties that were forced to postpone or cancel treatment due to their inability to disburse extra-billing fees after being informed said fees would be charged, and have had not deterred extra-billing practices in Quebec to this day;

177. No legal recourses or remedies are currently available for Quebec patients other than the application presently undertaken by Applicants to bring an end to illegal extra-billing practices and fees being illegally paid by patients in Quebec;

178. The aforementioned class action proceedings have received wide media coverage;

179. The Federal Minister should have been well aware of these proceedings and the unfettered extra-billing practices in Quebec, despite that the reports submitted yearly by the Government of Quebec did not mention the issue of extra-billing practices;

180. Despite these facts, the Federal Minister and her predecessors did not withhold any cash contributions directed to Quebec as per the CHA;

3.3 Reports, notices and calls to action directly sent to the Government of Quebec

181. In addition to have been directly tied to the issue of extra-billing and, in certain cases, bound to pay millions of dollars in damages to reimburse illegally charged extra-billing fees, the Government of Quebec was made aware of the existence of illegal extra billing practices, the whole as is more fully described in the following paragraphs;

182. On or about July 4, 2007, a working committee comprised of members of the Quebec College of Physicians, of the FMOQ and FMSQ (including now-Minister Gaétan Barrette, who was acting, at the time, as president of the FMSQ), the RAMQ and MHSS was tasked by the Quebec Minster, to "[TRANSLATION] analyse and document the issue of fees being billed for services, supplies or extra-billing fees to normally insured health services not coved by the Health Insurance Act (and its regulations) and the fee-for-service agreements between the [Quebec] Minister and the Quebec Federation of General Practitioners (FMOQ) and the Quebec Federation of Medical Specialists (FMSQ)", the whole as it appears more fully from page 2 and Schedule IV of a copy of the report submitted to the MHSS by the aforementioned committee dated October 1, 2007 (Chicoine Report), produced herewith as **Exhibit R-19**;

183. This initiative was further to a previous study submitted by the RAMQ on the issue of extra-billing fees, said study having concluded that some participating physicians charged extra-billing fees to patients to whom they administered normally insured health services in their private offices or clinics, said fees being intended to cover these offices' or clinics' operational costs, in violation to the Health Insurance Act's provisions, the whole as it appears more fully from Schedule IV for **Exhibit R-19**;

184. Medical office and clinic operational costs were distinctly negotiated as part of the fee-for-service agreements by the Government of Quebec with the Quebec Medical Federations;

185. As it appears more fully from pages I, III and 5, **Exhibit R-19**, the working committee reported, inter alia:

> [TRANSLATION] ***Extra-billing fees are increasingly being charged. These additional fees are charged to cover private office operational costs;*** *this issue had led to complaints, inquiries and disputes, etc.*
>
> […]
>
> *In the medium and long run, due to rising funding and access issues,* ***we believe that there will be an increase of the proportion of funding sought though direct billing practices****.*
>
> […]
>
> *Numerous billing practices exist outside recognized norms. Such problems are indicative of a much larger issue: lack of adequate funding to cover medical offices' and clinics' operational costs.*
>
> […]
>
> ***Extra-billing fees charged to patients cannot hope to solve the greater issue of covering operational costs without entering into conflict with the Canada Health Act's provisions*** [Added emphasis];

186. The working committee reported the following as to the particular issue of the different ways extra-billing fees are being charged:

> [TRANSLATION] *Different schemes to charge extra-billing fees have been progressively implemented as a consequence of medical offices' and clinics' funding issues.*

> *Some offices bill patients through third-party services that do not allow a patient to identify the physician who actually provided the insured health service. The RAMQ's representatives cited the difficulties in handling the increasing number of complaints filed by patients that could potentially lead to patients being reimbursed and physicians compensated for this shortfall.*
>
> ***The* [Quebec College of Physicians] *has also ascertained the rise of "innovative" billing models that clearly aim to charge fees destined to compensate operational costs. The Committee is concerned about the considerable variability of amounts billed for the same health services*** [Added emphasis]

187. The working committee issued several recommendations, the first being that the MHSS and the Medical Federations immediately negotiate tariffs to raise the amounts granted to medical offices and clinics to compensate the technical costs of services rendered in private settings, the whole as it appears more fully from page IV of **Exhibit R-19**;

188. The working committee also recommended that the Government of Quebec "[TRANSLATION] *review the feasibility of expanding the list of allowable medical expenses physicians can charge patients in the context of a relaxed application of the Canada Health Act"*, the whole as it appears more fully from page V of **Exhibit R-19**;

189. In light of the foregoing, the MHSS knew, since 2007, of the steadily increasing issue of extra-billing practices and extra-billing fees being charged to patients by Quebec physicians in clear violation of CHA's provisions and that charging such fees would only be possible following an amendment to the Act. The Act, however, has not been amended to this day;

190. Despite the above, in the reports submitted yearly to the Federal Minister, the MHSS has consistently declared that "[TRANSLATION] *Quebec physicians do not practice extra-billing*";

191. In February 2008, a working group tasked by the Government of Quebec with the assessment of the Quebec public health system's state of funding presided by Claude Castonguay submitted its report titled "En avoir pour notre argent", the whole as it appears more fully from a copy of said report, produced herewith as **Exhibit R-20**;

192. In this report, the working group recommended that new agreements with FMOQ and the FMSQ should include provisions aiming to eliminate extra-

billing fees in primary care clinics, as it appears more fully from **Exhibit R-20**, at page 34;

193. In 2010, the RAMQ submitted a report titled “Frais facturés aux personnes assures – Éléments de réflexion et pistes de solution”: this report was never made accessible to the general public;

194. However, this report raised sufficient concern for the then Quebec Minister, Dr. Réjean Hébert, to publicly state he wished to put extra-billing fees to the axe in 2012, the whole as it appears more fully from a copy of a report titled “Pas de frais pour les patients – parce que payer de sa santé n’a rien d’accessoire”, produced herewith as **Exhibit R-21**, at page 28;

195. In the spring of 2011, the Quebec College of Physicians asked the Government of Quebec to clarify its stance towards the fees physicians charge their patients. The College’s chief executive officer, Dr. Charles Bernard, described physician billing practices as a “systemic issue”, the whole as it appears more fully from an article titled “Le Collège des médecins presse Québec de clarifier les règles de facturation” published in *La Presse* on March 15, 2011, produced jointly herewith as **Exhibit R-14**;

196. In its 2011-2012 annual report, the Quebec Public Protector’s office voiced its concerns about the issue of extra-billing fees charged for macular degeneration treatment, the whole as it appears more fully from page 76 of a copy of said report, produced herewith as **Exhibit R-22;**

197. In recent years, the Quebec Public Protector has seen a steady rise in extra-billing practices and fees charged to patients prior to receiving insured health services, as discussed in further detail at paragraphs 201 and onward of the present application;

198. On or about June 3, 2013, *Médecins Québécois pour le Régime Public* (Quebec Doctors for Medicare) published a report on the issue of extra-billing practices, the whole as it appears more fully of a copy of said report, produced herewith as **Exhibit R-21**;

199. This report states that the Government of Quebec, the RAMQ and the Quebec College of Physicians are all well aware of the extra-billing practices, and that these institutions have neglected to deal with this issue, and that laxity in condemning such practices sends the message that it is possible to break the law with impunity, the whole as it appears more fully from page 23 of **Exhibit R-21**;

200. On April 16, 2015, due to an absence of political intervention, the Quebec

College of Physicians repeated its request for a clarified government stance towards fees physicians charge their patients (formerly requested in 2011; see paragraph 185 of the present application), the whole as it appears more fully from a copy of the Quebec College of Physicians' statement titled "*Frais facturés aux patients : Le Collège des médecins demande de nouveau au gouvernement de clarifier les règles*" dated April 16, 2015, produced herewith as **Exhibit R-23**;

201. On October 1, 2015, the Quebec Public Protector submitted a new report titled « *Avis sur les frais accessoires et les services sociaux* » which confirmed the steady rise of fees charged by physicians to patients for services normally insured by the province's public health care system, although said services are, in principle, publicly funded, the whole as it appears more fully from page 1 of a copy of said report, produced herewith as **Exhibit R-24**;

202. In response to the steady rise of extra-billing practices, the Quebec Public Protector concludes with the recommendation that the HIA be amended to ban extra-billing of normally insured health services in physicians' offices and health clinics, the whole as it appears more fully from page 8 of **Exhibit R-24**;

203. The Quebec Public Protector's office received numerous comments following its publication of **Exhibit R-24**, which led it to publish a letter to outline possible alternatives to rampant extra-billing practices, the whole as it appears more fully from a copy of said letter, produced herewith as **Exhibit R-25**;

204. From February 15 to August 2, 2015, the *Pointe-Saint-Charles Community Clinic* collected data from 527 respondents to compile a register of the extra-billing fees charged during medical consultations, the whole as it appears from a copy of the 2015 *Pointe-Saint-Charles Community Clinic* report titled "Facturation aux patients: Le portefeuille en prend pour son rhume", produced herewith as **Exhibit R-26**;

205. In November 2015, the *Pointe-Saint-Charles Community Clinic* made **Exhibit's R-26's** conclusions public regarding extra-billing practices. **Exhibit R-26** concludes as follows:

> "[TRANSLATION] *It is clear that* ***extra-billing is becoming a recurrently common practice****, especially among medical specialists. Gathered testimony show that* ***patients feel abused and harbour a sentiment of injustice*** *towards clinics where they must pay additional fees to receive insured health care services.*

> *In this light, it is impossible to agree with the Health and Social Services Minister's views on extra-billing practices, especially when the Minister claims that patients are now used to paying fees when consulting a physician and that, in his opinion, there is a general consensus on this issue."* [Added emphasis]
>
> The whole as it appears more fully from page 30 of **Exhibit R-26**;

206. **Exhibit R-26** also concludes, at pages 29 and 30, by recommending that the Quebec Minister reverse his decision to legalize extra-billing practices, and that the Federal government immediately intervene to clarify the issue of extra-billing, namely by enforcing the five conditions outlined in section 7 of the CHA;

207. In November 2015, the "Institut de recherche et d'informations socio-économiques" (IRIS) published a report on Quebec's professional orders. This study showed that physicians continued to charge extra-billing fees to their patients despite the Quebec College of Physicians' directives on this particular issue, the whole as it appears more fully from pages 6 and 7 of a copy of said report, produced herewith as **Exhibit R-27**;

208. On November 26, 2015, two petitions with a total of more than 10 500 signatures calling for a ban of extra-billing practices and public debates about the funding of health clinics were submitted to the National Assembly of Quebec, the whole as it appears more fully from a copy of the minutes of the National Assembly session held on November 26, 2015, and excerpts from the petitions submitted that same day, produced jointly herewith as **Exhibit R-28**;

209. Despite these numerous reports, notices and calls to action, the Government of Quebec refuses or neglects to act on the issue of extra-billing practices;

210. Owing to the public nature of the documents and exhibits produced herewith, the Federal Minister knew or ought to have known that extra-billing practices ran rampant in Quebec, despite the fact that in its annual statements, the Government of Quebec stated that Quebec physicians did not practice extra-billing;

211. Despite the information provided by these numerous stakeholders, the Federal Minister has yet to intervene or withhold cash contributions destined to Quebec;

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3.4 An Application in the National Assembly to Ban Extra Billing Practices

212. On June 13, 2013, MNA Amir Khadir introduced an application to ban extra-billing practices in the National Assembly. This following application was unanimously passed :

> [TRANSLATION] *That the National Assembly presses the Minister of Health and Social Services to put an end to extra-billing practices, namely by engaging in outreach and information campaigns to physicians and patients, by strictly enforcing the Health Insurance Act's provisions and banning annual subscription packages;*
>
> *That the Ministry of Health and Social Services be given a mandate to ensure coverage of all normally insured health care services.*
>
> The whole as it appears more fully from a copy of a said application, produced herewith as **Exhibit R-29**;

3.5 Changes brought to the Quebec Physicians' Code of Professional Ethics

213. In December of 2014, following the increase of complaints concerning the rates charged for certain medical services, the Quebec College of Physicians moved to amend the Quebec Physicians' *Code of Professional Ethics* (*Code of ethics of physicians*, CQLR c M-9, r 17) to regulate these practices, the whole as it appears more fully from page 4 of **Exhibit R-20**;

214. The Quebec College of Physicians' explanatory guide published in January 2015, produced herewith as **Exhibit R-30**, mentions at page 8:

> [TRANSLATION] *The mercantile aspect associated to certain health services has trumped, in certain cases, the medical and professional natures of the service provided, and have made it necessary to implement these new additions and amendments.*
>
> […]
>
> *Physicians must strive to ensure priority access to health care services is strictly based on a patient's medical needs.*

215. Sections 73, 76 and 79 of this draft regulation read as follows:

> [TRANSLATION] *73. A physician must refrain:*

> *(1) from seeking or obtaining undue profit from the prescription of apparatus, examinations, medications or treatments, save the professional fees paid for services rendered, directly or indirectly, by a company under his control or in which he takes part ;*
>
> *(2) from granting, in the practice of his profession, any benefit, commission or rebate to any person whatsoever;*
>
> *(3) from accepting, in his capacity as a physician or by using his title of physician, any commission, rebate or material benefit with the exception of customary presents and gifts of modest value.*
>
> *Notwithstanding subsection 73(1), a physician may profit from the sale or commercialization of prescribed medical equipment or tests he developed or help develop, directly or indirectly or by a company under his control or in which he takes part, in such case the physician must inform his patient.*
>
> *76. A physician must refrain, directly or indirectly, from leasing or selling apparatus or from selling any medication or product presented as having a benefit to health, except the apparatus installed or the medications and products administered by the physician directly.*
>
> *In addition, a physician may not claim disproportionate amounts as payment for the medical supplies required by the treatments administered by the physician.*
>
> *79. A physician who obtains a retribution or is part of an enterprise with an interest in healthcare or therapeutic or diagnostic services which is within his power to control and which manufactures or markets products having a benefit to health must so inform the persons to whom he prescribes them and the circles in which he promotes them.*

216. Decree 1113-2014 dated December 10, 2014, produced herewith as **Exhibit R-31**, provided that the new version of section 76 was to come into force on January 7, 2015, and that the new versions of sections 73 and 76 would later come into force on July 7, 2015;

217. The Quebec College of Physicians' explanatory guide published in January 2015, produced herewith as **Exhibit R-30**, mentions at pages 9 and 10:

> [TRANSLATION] *2.2. Profit and prescribing equipment, tests and drugs: a combination to be avoided*
>
> *It is strictly prohibited for a physician to receive financial gain other than*

> *professional fees when prescribing medical equipment, tests and drugs. This prohibition applies whether these additional benefits are directly or indirectly paid, or if granted by a company under the physician's control.*
>
> *This provision reaffirms the College's position that physicians should strive to safeguard their professional independence and avoid the consideration of financial gain when writing a prescription.*
>
> *The date that this new provision will come into force was postponed indefinitely.*
>
> *2.5 Medical supplies and administered treatment: beware of amounts claimed*
>
> *Over the past few years, fees billed by physicians for medical supplies, medical equipment and drugs they prescribe and administer have frequently made media headlines due to notable differences between amounts claimed and the real value of these products. The changes in the Code of Professional Ethics clarify that physicians are prohibited from filing disproportionate claims.*
>
> *While there are no set criteria guiding physician billing practices, the College recommends that claims be billed at cost price of medical supplies, to which reasonable additional administration fees may be added, such as storage and retention fees.*

218. On April 16, 2015, the Quebec College of Physicians released a statement to remind physicians that giving medical services outside publicly-funded health facilities does not allow them to charge their patients fees exceeding the cost price of administered drugs or supplies used for the purposes of treatment, such as bandages, eye drops or anesthetic agents. The College also reminded physicians that, in accordance with their *Code of Professional Ethics*, additional administration, storage and retention fees may be added to the cost price of prescribed drugs and supplies, but that these additional fees should be minimal in most clinical situations, the whole as it appears more fully from a copy of said statement, produced herewith as **Exhibit R-23**;

219. On June 17, 2015, despite the duties conferred to the Quebec Minister under the CHA and the HIA, Dr. Gaétan Barrette declared he sought to circumvent the Quebec College of Physicians' stance on extra-billing fees:

> [TRANSLATION] *It is possible for me to ask the College to defer the application of the new sections of its Code of Professional Ethics. I*

> *explored* [this possibility] *and the College responded that this would be foreseeable if the government issues a clear statement. Now, for me, as for a clear message, I could modify my amendment and say that these new sections could be applied retroactively to July 7.*
>
> The whole as it applies more fully from a copy of an article titled « *Feu vert aux frais accessoires* » published in *Le Devoir* on June 17, 2015, produced jointly herewith as **Exhibit R-14**;

220. That same day, Minister Barrette stated that he would allow clinics to charge extra-billing fees of up to 15 % of a service's cost price, the whole as it appears more fully from **Exhibit R-14**. This intent was confirmed many times by Minister Barrette after **Exhibit R-14's** publication, namely during the parliamentary commission sessions dedicated to Bill 20's detailed consideration, the whole as it appears more fully from a copy of the official transcripts of the parliamentary commission meeting held on September 30, 2015, produced herewith as **Exhibit R-32**;

221. This is when Minister Barrette publicly announced that he did not intend to ban extra-billing fees, and that he would rather regulate extra-billing practices, despite being illegal under the CHA;

222. On June 18, 2015, Minister Barrette issued the following statement:

> [TRANSLATION] *What people are calling extra-billing fees are additional fees charged directly to patients who consult health clinics or their physicians' private offices. Extra-billing fees have existed for many years and have yet to be properly regulated. This situation has led to abuses that the government must correct. We wish to end extra-billing, to normalize the issue and preserve our citizens' right to access to health services.*
>
> The whole as it appears more fully from a copy of the statement issued by the MHSS dated June 18, 2015, produced herewith as **Exhibit R-33**;

223. That same day, following Minister Barrette's statement, the Quebec College of Physicians issued its own statement, saying that the new versions of sections 73 and 79 of the Quebec Physicians' *Code of Professional Ethics* pertaining to extra-billing practices will be "flexibly" enforced, the whole as it appears more fully from a copy of said statement issued on June 18, 2015, produced herewith as **Exhibit R-34**;

224. On June 30, 2015, the Government of Quebec issued a decree to indefinitely postpone the date at which the new versions of sections 73 and 79 of the Quebec Physicians' *Code of Professional Ethics* would come into

force, the whole as it appears more fully from a copy of Decree 587-2015 dated June 30, 2015, produced herewith as **Exhibit R-35**;

225. On July 6, 2015, the Quebec College of Physicians issued a new statement indicating that, further to the Quebec Minister's intent to regulate, and not ban, extra-billing fees, the new version of section 76 of the Quebec Physicians' *Code of Professional Ethics* would also be "flexibly" enforced, the whole as it appears more fully of a copy of said statement issued on July 6, 2015, produced herewith as **Exhibit R-36**;

226. The Federal Minister was certainly aware or should have been aware of these issues by the wide media coverage received by the proposed amendments to come into force and the MHSS' stance towards these amendments;

227. The Federal Minister however did not act to call the MHSS to order;

3.6 The admissions made to the Media by the Government of Quebec

228. On February 4, 2013, then-Minister of Health and Social Services, Dr. Réjean Hébert, issued the following statement in which he expressed the wish :

[TRANSLATION] "*(…)* ***to abolish extra-billing fees. Extra-billing practices are becoming a backdoor approach to claim additional professional fees*** *(…)*" [Added emphasis]

The whole as it appears more fully from an article titled "Le ministre de la Santé met la hache dans les frais accessoires" published in *La Presse* on February 4, 2013, produced jointly herewith as **Exhibit R-14**;

229. In January 2014, Dr. Gaétan Barrette, who was then president of the FMSQ, admitted that physicians charge operating and equipment fees to their patients, the whole as it appears more fully from a copy of an article titled « Se prémunir contre les frais accessoires » published in *Le Devoir* on January 25, 2014, produced jointly herewith as **Exhibit R-14**;

230. On October 7, 2015, during a press conference, Minister Barrette confessed that extra-billing practices have existed in Quebec for many years, stating:

[TRANSLATION] *So, I will start by answering the question for a very simple reason: past governments, including those under Parti Québécois and Liberal leadership, are responsible for the current state of affairs*

pertaining to extra-billing practices, because the law was unclear (…)

The whole as it appears more fully from a copy of the press briefing issued at 2:00 PM on October 7, 2015, by Justice and Status of Women Minister Stéphanie Vallée and Health and Social Services Minister Gaétan Barrette, produced herewith as **Exhibit R-37**;

231. During this same press conference, when questioned by the press about his plan's consistency with the CHA's provisions, Minister Barrette blamed the Federal government's for its failure to take on this issue:

> [TRANSLATION] *That is to say… Yes, well, I'll send that one right back… I won't ask you the same question because you shouldn't be providing an answer, but I'd like to simply draw your attention to the fact that despite it* [extra-billing practices] *has existed for many years, I've never seen the Federal government intervene in Quebec (…)*

The whole as it appears more fully from a copy of said press briefing, **Exhibit R-37.**

232. These statements were issued publicly to the press and, as such, the Federal Minister should have been aware or made aware of their broadcast by her staff members;

233. Despite the snub Minister Barrette delivered to the Government of Canada, particularly to the Federal Minister, the Federal Minister failed or neglected to take action to call the Quebec Minister to order;

3.7 Quebec Bill n^{o} 20

234. On November 28, 2014, Minister Gaétan Barrette introduced Bill 20, *An Act to enact the Act to promote access to family medicine and specialized medicine services and to amend various legislative provisions relating to assisted procreation*, to the National Assembly;

235. During its presentation to the Assembly, Minister Barrette stated the purpose of this new bill was to optimize the Quebec public healthcare system's use of medical and financial resources to improve access to primary and specialist health services, the whole as it appears from a copy of the official transcripts of the parliamentary proceedings held on November 28, 2014, produced herewith as **Exhibit R-38**, at page 3826;

236. In their original form, Bill 20's provisions did not address directly or indirectly

the issue of extra-billing fees;

237. On March 18, 2015, during the public hearings on Bill 20, *Médecins Québécois pour le Régime Public* (Quebec Doctors for Medicare) expressed its concerns and propositions pertaining to this new draft law, namely:

> [TRANSLATION] *We ask the government and the RAMQ to see that the Health Insurance Act's provisions be properly enforced to guarantee that patients will not be charged fees that exceed the cost price of drugs required for treatment. Extra billing fees create financial barriers that are currently barring several general practitioners from accessing diagnostic and technical facilities, severely limiting their capacity to intervene (…)*

The whole as it appears more fully from page 9 of the official transcripts of the parliamentary commission meeting held on March 18, 2015, produced herewith as **Exhibit R-39**;

238. On March 24, 2015, during further public hearings on Bill 20, the *Association québécoise des retraité-e-s des secteurs public et parapublic* (Quebec Association of Retired Civil Servants) asked how Minister Barrette planned to address extra billing fees. Minister Barrette answered as follows:

> [TRANSLATION] *And I will start by… Not because I want to table the issue, but addressing them* [extra billing fees] *just isn't part of Bill 20's scope. And you're asking questions that I will not answer, because this issue isn't covered by Bill 20. Bill 20 does not address the issues of pricing, hospital accommodations and extra billing fees.*

The whole as it appears more fully from the official transcripts pages 55 and 56 of the official transcripts of the parliamentary commission meeting held on March 24, 2015, produced herewith as **Exhibit R-40**;

239. On March 26, 2015, following the general consultation and public hearings pertaining to Bill 20 held on February 24, 25, 26 and March 17, 18, 19, 24 and 25, 2015, the *Health and Social Services Parliamentary Commission* (hereinafter referred to as "**The Commission**") submitted its report;

240. On September 24, 2015, during another session of detailed consideration of Bill 20, the official opposition health critic, Ms. Diane Lamarre, ascertained that Minister Barrette's proposed amendments to sections 24.1 and 24.2 of Bill 20 deal with the topic of extra-billing fees, but that he decided not to submit these amendments prior to the Bill's detailed consideration. Ms.

Lamarre expressed her hope that Minister Barrette's intention was not to submit these amendments at this stage of Bill 20's parliamentary review, and that the issue of extra-billing fees should be addressed in a more transparent and equitable fashion, the whole as it appears more fully from a copy of the official transcripts of the parliamentary commission held on September 24, 2015, produced herewith as **Exhibit R-41**;

241. That same day, Minister Barrette answered Ms. Lamarre's concerns as follows:

> [TRANSLATION] *Mr. Chairman, it is the government's prerogative to submit or to withhold an amendment, the text of which was sent to the opposition parties as a courtesy a few months ago, and it remains our prerogative, as I am not beholden to disclose my intent. Just like the opposition parties chose not to submit their proposed amendments at the start of the* [Bill 20's] *detailed consideration. Therefore, Mr. Chairman, I would invite the members of the opposition to debate the amendment that I am proposing, that being the purpose of our being here today (…)*
>
> The whole as it appears more fully from **Exhibit R-41**.

242. Minister Barrette therefore avoided publicly debating the issue of extra-billing practices;

243. On September 29, 2015, despite the statement described in further detail at paragraph 241 of the present application, Minister Barrette declared the following during a subsequent session of detailed consideration of Bill 20 after submitting the draft text of section 25.2, a new provision pertaining to the legalization of extra-billing fees which would be allowed by subsequent Government regulations:

> [TRANSLATION] *It* [section 25.2] *is categorical, it bans all claims made by physicians for providing or allowing access to normally insured health services in all circumstances, except when authorized. In this regard, it… All types of claims made by physicians for providing or allowing access to normally insured health services, except when authorized. In this regard, it solves one of the Régie de l'assurance maladie's historical problems because the current situation stems from ambiguities in the law's application, as originally defined in 1970. It clarifies the issue. Everything is prohibited in all circumstances, unless prior authorization is granted. The goal is to send a clear message: it'll be a closed issue, unless, in certain cases, authorizations are granted, which is still unclear today; it's clear that it's unclear.* ***This is why there are instances of abuse. This is why there is abuse; this is why there are types of fees that are***

> ***charged that, in my opinion, can be considered illegal.*** *But, because the law isn't clear, well, it isn't clear, things happen and these things should be clarified. So, my sub-amendment, it says: "You can't do it anymore. Don't pull your hair out trying to come up with a way to do it, you can't do it.* ***And the only way to do it is when the government passes regulation to allow it.*** [Added emphasis]

The whole as it appears more fully from a copy of the official transcripts of the parliamentary commission held on September 29, 2015, produced herewith as **Exhibit R-42;**

244. On September 30, 2015, during another session of detailed consideration of Bill 20, Minister Barrette admitted that his proposed amendment on the issue of extra-billing fees would allow physicians to charge extra-billing fees at cost with a mark-up for profit in certain regulated instances:

> [TRANSLATION] *So, our amendment for… those extra-billing fees will be prohibited under any circumstances, period. So, it means that there could be none. It's possible that none would be allowed. But if there were some to be allowed, it would only through government regulation. And if there were some, Mr. Chairman,* [those fees' value would be determined] *after neutrally assessing an insured health service's cost price, and the professional fees or additional costs charged for these services.*
>
> […]
>
> *If this amendment had been debated, the discussions would have been centered on the fact that we are proposing an amendment that will put an end to "extra-billing" fees, and that will allow, in certain specific cases, physicians to charge some fees that will be ultra-regulated by law, that is cost price of the service plus a mark-up to deal with market fluctuation.*
>
> The whole as it appears more fully from a copy of the official transcripts of the parliamentary commission held on September 30, 2015, produced herewith as **Exhibit R-32;**

245. On October 6, 2015, during another of the Commission's sessions, Minister Barrette stated the following as to the issue of extra-billing fees:

> [TRANSLATION] *The issue is clear. It's threefold:* ***one, illegal fees are being charged; two, there have been instances of abuse;*** *three, Medicare's current "basket of care" is beyond Quebec's financial capacity. She said it… The Quebec Public Protector said so:* ***this has indubitably led to the multiplication of extra-billing fees. That's the situation.***

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> ***Illegally charged and abusive extra-billing fees are sometimes being charged, but these fees aren't what has impeded the public's right to access health services,*** *well, there are others…*
>
> […]
>
> *So, if I have to choose between investing 50 million for, you can think of whatever you want for "for" to mean here… I'll repeat this morning's exercise… Not the exercise, but this morning's argument: if I have to choose between investing 50 million more dollars to improve access to certain drugs to treat, say, cancer, that normally cost about 50 million dollars every year, and extra-billing fees paid by patients, that aren't necessarily, in most cases, that essential or, if they are, aren't cost prohibitive, I will choose to invest in cancer drugs and I will choose all the elements that will make it so that I can make a choice in favour of the quantity and quality of the care given to patients.*
>
> The whole as it appears more fully from a copy of the official transcripts of the parliamentary commission held on September 30, 2015, produced herewith as **Exhibit R-43**;

246. As it appears more fully from **Exhibit R-22**, the Quebec Public Protector's report was made public two days after Minister Barrette submitted his amendment and was highly critical of current extra-billing practices and the proposed legislative changes, more specifically because of the repercussions of such practices on the more vulnerable members of society and that they could lead to a breach of their fundamental rights;

247. On November 10, 2015, *An Act to enact the Act to promote access to family medicine and specialized medicine services and to amend various legislative provisions relating to assisted procreation* was passed and received Royal Assent even though it included provisions allowing the regulation of extra-billing fees;

248. Further to the Act's assent, section 22 of the HIA now provides:

> *No payment may be charged to or received from any insured person, directly or indirectly, for costs incurred for insured services provided by a health professional who is subject to the application of an agreement or by a professional who has withdrawn. Such costs include those related to*
>
> *(1) the operation of a private health facility or a specialized medical centre within the meaning of the Act respecting health services and*

> *social services;*
>
> *(2) services, supplies, medications and equipment required to provide an insured service, as well as to perform diagnostic tests related to such a service*
>
> *Such costs do not include those related to services not considered insured that are required before, during or after the provision of an insured service.*
>
> *In addition, directly or indirectly requiring an insured person to pay for access to an insured service, and granting an insured person privileged access to such a service in exchange for payment, are prohibited.*
>
> ***Despite the prohibitions set out in the ninth and eleventh paragraphs, the Government may, by regulation, prescribe the cases and conditions in and on which a payment is authorized.*** [Added emphasis]

249. The purpose of these amendments to the HIA was therefore to legalize extra-billing fees in the Quebec healthcare system;

250. As stated by Minister Barrette, ministerial regulation that will follow these amendments will be passed without the benefit of democratic debate, will allow physicians to charge extra-billing fees to their patients that exceed the cost price of drugs and anesthetic agents, contrary to what was originally agreed upon;

251. On June 17, 2015, as it appears more fully from the article titled “Feux vers aux frais accessoires”, produced jointly as **Exhibit R-14**, Minister Barrette stated the following during an interview to *Le Devoir:*

> [TRANSLATION] *I could very well say that, starting now, all services will be fully covered by the Quebec public health insurance plan. But I recently assessed – I’ve been at it for a month now – the cost of coverage can add up to at least 50 million dollars. Can I bring all these services back to the public system? On budgetary grounds, the answer is no.*
>
> […]
>
> *Paying to receive care in some circumstances is clearly something that is generally accepted as we are speaking today. At some point, we have to stop being collectively hypocritical and keep putting our heads in the sand.*

> *It exists, people use it and most people who use it are happy with the concept.*

252. Minister Barrette's solution to limit abuse is to standardize extra-billing fees charged to patients by strictly regulating the concept, the whole as it appears more fully from the article titled "Feux vers aux frais accessoires", produced jointly as **Exhibit R-14;**

253. In the same article, Minister Barrette admits that it is already within the RAMQ's power to fine physicians that charge their patients abusive fees, but also argues that the RAMQ has never used these powers because of the law's lack of clarity as to extra-billing practices;

254. This is how Minister Barrette justifies the inclusion of amendments to Bill 20 that go above and beyond the sole clarification of the legal status of extra billing fees, in that they permit extra-billing practices pursuant to standard that have yet to be determined. The previous version of the HIA was, however, quite clear: extra-billing fees could not be charged to patients. Only the cost price of drugs could be charged to patients, which generally represents very small sums of money;

255. Based on Minister Barrette's statements, the Quebec Public Protector states at page 5 of its supplemental report, **Exhibit R-24**:

> [TRANSLATION] *By eventually introducing legislative and regulatory changes, the Minister of Health and Social Services is considering tasking a committee to determine what constitutes "acceptable" extra billing fees. An independent expert appointed by the Minister would then determine the associated tariffs. As a consequence, office- or clinic-based physicians would be allowed to charge these "acceptable" extra billing fees to their patients, said fees being equivalent to the service's cost price plus a 10 to 15 % mark-up to cover administrative and storage fees.*

256. Further to the statement issued by Minister Barrette on June 17, 2015, and his intent to amend the HIA, many groups and associations, including *Médecins québécois pour un régime public*, the *Coalition Solidarité Santé*, the *Association des retraitées et retraités de l'éducation et des autres services publics du Québec*, the *Confédération de syndicats nationaux*, the *Conseil pour la protection des malades*, **Applicant FADOQ**, the *Fédération interprofessionnelle de la santé du Québec,* the *Fédération de la santé du Québec*, the *Clinique communautaire Pointe-Saint-Charles* and the *Alliance des patients pour la santé*, have spoken out against the extra-billing fees, the whole as it appears more fully from an article titled "*Frais facturés aux patients : tirs groupés contre l'amendement Barrette*" published by *Radio-*

Canada on September 14, 2015, produced jointly herewith as **Exhibit R-14**, and the press release issued on September 14, 2015, produced herewith as **Exhibit R-44**;

257. The Federal minister should have been aware or made aware of these public interventions. The Federal minister however did not make any comment, nor did she intervene following these sorties to remind the government of Quebec's stance on extra-billing fees was in direct violation of the CHA's provisions;

4. The situation as seen in the rest of Canada

258. On June 7, 2007, the *Globe and Mail* reported:

The lack of penalties - the B.C. fine was only $29,019 - comes despite federal government concerns about the proliferation of private clinics across the country. The Health Canada documents reveal a list of 33 for-profit MRI clinics operating in six provinces, and the government worries that if appropriate safeguards are not in place, patients could receive preferred access to medically necessary services by paying out of pocket

The whole at is appears more fully from an article titled "B.C. only province fined for violating Health Act" written by Lisa Priest and published in the Globe and Mail on June 7, 2007, produced jointly herewith as **Exhibit R-14**;

259. On June 18, 2012, the *Toronto Star* reported:

[…] the commission has no authority to pursue the clinics for refunds of payouts made by the province of nearly $500,000 and its main objective is to stop the clinics from continuing it current billing practices. But he added he hopes that a court-ordered injunction could have the teeth to force the clinics to change its billing

The whole as it appears more fully form a copy of an article titled "Private B.C. hospital told to stop extra billing" written by Petti Fong and published by the *Toronto Star* on June 18, 2012, produced jointly herewith as **Exhibit R-14;**

260. On March 25, 2014, a study submitted by the *Ontario Health Coalition*, a group dedicated to protect and uphold the basis of a publicly-funded universal healthcare system, came to the following conclusions:

The Minister of Health has the power to more effectively monitor and curtail the extra-billing and user fees that are proliferating in the existing private

clinics in Ontario. This will be a continual challenge as clinics adapt to new regulations and oversight and find ways to circumvent the Canada Health Act and Ontario legislation to increase their revenues and their profits. Regardless, the Minister has an obligation to set a much less tolerant tone than she has done to date, and can much more effectively use the resources of her Ministry to take action against the clinics that are violating medical ethics and undermining Public Medicare

The whole as it appears more fully from page 213 and 227 of said report, produced herewith as **Exhibit R-45**;

261. On September 29, 2014, Prince Edward's Island's *The Guardian* quoted the president of the *P.E.I. Health Coalition*, Ms. Mary Boyd, as saying:

As soon as you start undermining healthcare like that and you get a chain of reaction, you're going to get a two-tier system where there will be extra billing of patients and double dipping.

The whole as it appears more fully from a copy of an article titled "Charlottetown activist fears uprooting of health care" published by *The Guardian* on September 29, 2014, produced jointly herewith as **Exhibit R-14;**

262. On March 3, 2016, the *Saskatoon StarPhoenix* reported:

Along with patients, you pull the doctors and pull the other technicians out of the public system and that tends to actually increase wait times," Meili said, pointing to provinces like Alberta, where private MRIs exist but wait times remain.

In 2008, Premier Brad Wall said requiring a fee for MRI scans, seems to be outside the CHA.

The whole as it appears more fully from an article titled "Saskatoon experts highly doubtful private MRI clinics will reduce wait time" written by Morgan Modjeski and published by the *Saskatoon StarPhoenix* on March 3, 2016, produced jointly herewith as **Exhibit R-14**;

263. On March 30, 2016, the *Hill Times* reported:

Charging patients at the point of care for medically necessary services strikes at the heart of the principle that access to health care should be based on need rather than ability to pay.

[…]

Extra billing in Ontario, private MRIs in Saskatchewan and user fees in Quebec: violations of the Canada Health Act are on the rise across the country […] [Added emphasis]

The whole as it appears more fully from an article titled "Time for feds to enforce Canada Health Act as extra billing, user fees on rise" written by Ryan Meili and published by the *Hill Times* on March 30, 2016, produced jointly herewith as **Exhibit R-14**;

264. In this same article, Mr. Meili also states that all calls made to the Federal government to enforce the CHA's provisions have been ignored, the whole as it appears more fully of **Exhibit R-14**;

265. Paragraphs 258 to 264 of the present application show that charging extra-billing fees to patients has become a generalized and nationwide threat to Canadian patients' right to access insured health services while flagrantly breaching the CHA;

266. As it appears more fully from paragraphs 258, 259, 263, 264, and the following paragraphs of the present application, despite the multiple calls made by numerous groups to the Federal minister to address the issue of extra-billing fees, the Federal minister has failed or neglected to act;

5. The Federal Health Minister's awareness of the situation

267. The Federal minister is aware that many provinces are in breach of the CHA, and have been for many years, by tolerating extra-billing practices and user-charges;

268. As of January 6, 1995, then-Federal Minister of National Health and Welfare, Ms. Diane Marleau, stressed the importance of ensuring universal access to health services and the negative impacts of extra-billing fees charged to patients:

[TRANSLATION] *More specifically, and more directly, I consider that fees charged by private clinics for medically necessary services are a serious problem that must be addressed. In my opinion, these fees are disguised user fees; as such, they violate the Canada Health Act's principle of accessibility.*

The whole as it appears more fully from pages 175 to 177 of a copy of the CHA's annual report, produced herewith as **Exhibit R-10**;

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269. In March 2012, a report was submitted by *Standing Senate Committee on Social Affairs, Science, and Technology* (hereinafter : "**the Standing Senate Committee**") following its review of the implementation of the 2004 "10-Year Plan to Strengthen Health Care", the whole as it appears more fully from a copy of said report, produced herewith as **Exhibit R-46**;

270. The Federal government was made aware of the existence of extra-billing fees being charged across Canada by the Standing Senate Committee's report, particularly in the case of colonoscopy services considered insured health services by the Canada Health Act:

> *However, many of the written submissions received by the committee expressed concern over the federal government's enforcement of the Canada Health Act. In particular, written submissions focused on how private for-profit health-care clinics were extra-billing for services provided under the Canada Health Act, by charging access fees for those services. For example, they highlighted a study in the Canadian Journal of Gastroenterology that found that 31.7 per cent of patients in private clinics were being charged for access to colonoscopy services covered under the Canada Health Act.*
>
> The whole as it appears more fully from page 81 of **Exhibit R-46**.

271. Because of the significant presence of extra-billing fees, the Standing Senate Committee also recommended that the Federal government take play a more proactive part in enforcing the CHA across Canada:

> […] *They therefore called upon the federal government to take a more proactive role in enforcing the Canada Health Act, including extra billing and user fees, as it is the government's main accountability leaver in health care. Furthermore, they recommended the establishment of an accountability framework that requires provinces and territories to proactively investigate clinics for compliance with the Act.*
>
> The whole as it appears more fully from page 81 of **Exhibit R-46**.

272. The particular issue of extra-billing fees being charged in Quebec has received wide media coverage and has been denounced by many groups in the past years, the whole as it appears more fully from **Exhibit R-14**;

273. The Federal Minister was aware or should have been aware that extra-billing fees had been allowed or tolerated in Quebec for many years, and that the situation has been worsening;

274. Moreover, on September 23, 2015, a letter sent by Mr. Jean-Pierre Ménard, counsel for Applicants, to then-Federal Health Minister Rona Ambrose to remind the Ministry of the many breaches of the CHA the government of Quebec had tolerated over the years and the legislative changes being considered by the Quebec Minister of Health and Social Services Gaétan Barrette to formally legalize and regulate extra-billing fees, the whole as it appears more fully from a copy of Mr. Ménard's letter to Minister Ambrose, produced herewith as **Exhibit R-47**;

275. **Exhibit R-47** was left unanswered;

276. Following the ballot held October 19, 2015, Ms. Jane Philpott was appointed Federal Minister of Health;

277. On December 3, 2015, another letter was sent by Mr. Jean-Pierre Ménard, counsel for Applicants, this time to now-Federal Minister Jane Philpott, to appraise her of Quebec's current situation regarding the issue of extra-billing fees, the whole as it appears more fully from a copy of Mr. Ménard's letter to Minister Philpott, produced herewith as **Exhibit R-48**;

278. No action was undertaken by the Federal minister following Federal minister the receipt of **Exhibit R-40** ;

279. Moreover, Minister Philpott was, however, well aware of the issue of extra-billing fees currently plaguing Canada, the whole as it appears more fully from a copy of her Internet page dated July 18, 2012, produced herewith as **Exhibit R-49**:

> ***Perhaps the principle most at risk of being affected would be that of « accessibility ». The CHA status that insured persons must have "reasonable access" to insured services "on uniform terms and conditions and on a basis that does not impede or preclude, either directly or indirectly whether by charges made to insured persons or otherwise".*** *The abandonment of this condition releases private business and health care providers from any obligation to be concerned about protecting access to essential services. It is not difficult to imagine how some parts of society could suffer as a result.*
>
> *[…]*
>
> *The core principles of the Canada Health Act are in fact the glue that holds together the very system of Canadian medicare. Without conditions, equitable access to essential services can no longer be guaranteed.*

> *Canadian health care services will be released to the open market. This may be desirable for those who can afford such services or those with services to sell.* ***But it will almost certainly add to the burden of those who are poor and otherwise disadvantaged. In the current political economy of Canada, the future of medicare and its beneficiaries is uncertain at best***; [Added emphasis]

280. Over the past years, many groups and organizations have publicly denounced extra-billing practices and called for a Federal intervention to stymie the issue. Due to the wide media coverage garnered by these calls, the Federal minister's failure to take action and respond to the issue of extra-billing by enforcing the CHA's provisions remains inexplicable;

281. On June 21, 2013, an awareness campaign was launched by *Médecins Québécois pour le régime public* (Quebec Doctors for Medicare) to denounce extra-billing fees, identifying this practice of charging additional fees to patients as an unacceptable barrier to universal access to healthcare services, namely for those less fortunate members of society, the whole as it appears more fully from a copy of *Médecins Québécois pour le régime public's* press release issued on June 21, 2013, produced herewith as **Exhibit R-50**;

282. On January 26, 2014, *Médecins Québécois pour le régime public*, along with five other groups dedicated to the defense of patients' rights, held a press conference during which they urged the Quebec Minister to put an end to extra-billing practices, the whole as it appears from copies of the press releases issued on January 26, 2014, produced jointly herewith as **Exhibit R-51**;

283. On November 16, 2014, illegal extra-billing practices were denounced, yet again, by five social justice associations, specifically l'*Association des retraitées et retraités de l'éducation et des autres services publics du Québec*, *Médecins Québécois pour le régime public*, the C*oalition Solidarité Santé,* the *Conseil pour la protection des malades and the Clinique communautaire de Pointe-Saint-Charles*, the whole as it appears more fully from copies of the press releases issued on November 16, 2014, produced jointly herewith as **Exhibit R-52**;

284. On June 28 and 29, 2015, six groups united to denounce, yet again, Minister Barrette's intent to standardize and regulate extra billing fees through the amendments he wished to bring to Bill 20, as described in paragraphs 234 to 255 of the present application, the whole as it appears more fully from copies of the press releases issued on June 28 and 29, 2015, produced jointly herewith as **Exhibit R-53**;

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285. On September 14, 2015, many groups united once more to publicly denounce the standardization of extra billing fees introduced by Minister Barrette through Bill 20, specifically the Applicant **FADOQ**, *Médecins Québécois pour le régime public, the Coalition solidarité santé, the Clinique communautaire Pointe-St-Charles, AREQ, the Confédération des syndicats nationaux* (hereinafter referred to as the "**CSN**"), *the Conseil pour la protection des maladies*, the *Fédération interprofessionnelle de la santé du Québec* (hereinafter referred to as the "**FIQ**") and the *Fédération de la santé du Québec,* the whole as it appears more fully from copies of the press releases issued on September 14, 2015, produced jointly herewith as **Exhibit R-44**;

286. In the fall of 2015, a coalition of groups all seeking to put an end to extra-billing fees, comprised of the organizations mentioned in the preceding paragraph and the *Fédération de la Santé et des services Sociaux-CSN,* the *Fédération des profesionnelles-CSN,* the C*entrale des syndicats du Québec* and the *Grenier Verbauwhede* lawfirm (collectively hereinafter referred to as "**the Coalition**"), was born, the while as it appears more fully from a copy of the press release issued on November 5, 2015, produced herewith as **Exhibit R-54**;

287. On November 5, 2015, the Coalition, including Applicant **FADOQ**, called on the Federal Minister to take rapid action and to enforce the CHA's provisions which ban to extra-billing fees prior to the assent of Bill 20, the whole as it appears more fully from **Exhibit R-50**;

288. On January 14, 2016, a group comprised of organizations dedicated to defending the interests of seniors, including Applicant **FADOQ**, the *AREQ, the Association québécoise des retraité(e)s des secteurs public et parapublic du Québec, the Alliance des associations de retraitées, the Association québécoise des centres communautaires pour aînés, the Regroupement des popotes roulantes et autres services alimentaires bénévoles and the Regroupement interprofessionnel des intervenants retraités des services de santé,* called on the government of Quebec to ban extra-billing practices and the Government of Canada to enforce the CHA's provisions that prohibit said practices, the whole as it appears more fully from copies of the press releases issued on January 14, 2016, produced jointly herewith as **Exhibit R-55**, and an article written by Stéphanie Marin published by *La Presse* on January 14, 2016, produced jointly herewith as **Exhibit R-14**;

289. On January 19, 2016, the *Alliance des patients pour la santé*, an organization representing 25 associations and groups of Quebec patients,

petitioned the Federal Minister by letter to take action against extra-billing fees, the whole as it appears more fully from a copy of said letter, produced herewith at **Exhibit R-56**;

290. On January 21, 2016, because of the Government of Quebec's inaction, as described in further detail at paragraph 209 of the present application, *Médecins québécois pour un régime public* issued a statement to call, yet again, for government action against extra-billing fees and the threat these practices pose to the public nature of the province's healthcare system, the whole as it appears more fully from a copy of the press release issued on January 21, 2016, produced herewith as **Exhibit R-57**;

291. In light of the foregoing, and despite the many calls and petitions received by her office, it is clear that the Federal Minister was aware of the issue of extra-billing fees being charged in Quebec and is failing to meet her obligations under the CHA by failing to enforce its provisions and failing to withhold cash contributions destined to Quebec due to its rogue stance on extra-billing fees;

292. The issue of extra-billing fees has been denounced for many years, as described in further detail at paragraphs 267 to 290 of the present application, and the Federal Minister had sufficient time to enforce sections 18 to 20 of the CHA to withhold cash contributions destined to Quebec, either in part or in full, due to its non-compliance with the Act, but has failed or neglected to do so;

293. The Federal Minister has similarly shown towards other rogue Canadian provinces who tolerate or turn a blind eye to extra-billing fees being charged to Canadian patients;

6. Legal Remedy sought by Applicants: Application for writ of *mandamus*

a. Public interest obligation to act

294. As described in further detail at paragraphs 100 to 123 of the present application, the Federal Minsiter's duty is to enforce the CHA's provisions when made aware of extra-billing practices and user-charge surcharge by withholding from cash contributions normally payable under the Act to a rogue province an amount equal to the extra-billing fees charged by that province's physicians and dentists;

295. The Federal Minister is duty is owed as a public duty when a province allows or tolerates extra-billing fees and user-charges;

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296. The Federal Minister has no discretion in the application of CHA's provisions when a province's breach pertains to extra-billing fees or user-charges, as per sections 18 to 21 of the CHA;

b. The obligation existing towards the Applicants

297. The Applicants are within their rights to ask that the present application for judicial control be granted;

298. The Applicants seek to be granted public interest standing for the purposes of this litigation;

299. The Applicants have real stake and a genuine interest in this litigation's outcome, specifically in the Federal Minister being ordered to enforce sections 18 to 21 of the CHA and in seeing recurring extra billing practices banned, as these practices particularly affect the Applicants, Mrs. Hacala Meunier and Mr. Ferland, as well as a substantial amount of members of the FADOQ;

300. Extra-billing fees are particularly prevalent in types of treatment required by elderly persons, such as but not limited to macular degeneration treatment, colonoscopies and vasectomies, the whole as it appears more fully from an article of the newspaper *Le Devoir*, dated December 1st 2011, entitled "Frais accessoires – Gaétan Barrette fustige le minister Bolduc", a copy of which is produced herewith as **Exhibit R-14** and **Exhibit R-24**;

301. Applicant FADOQ, by the bias of its mission, has a real stake in this litigation's outcome, as the Federal Minister's failure to act has led to a steady increase of extra-billing practices which are detrimental to its members;

302. Other than supporting part of its legal fees, Applicant **FADOQ** derives no financial advantage by being involved in this litigation;

303. Applicant FADOQ has received weekly complaints, to date, from patients who have been forced to pay illegal extra-billing fees, and from patients who are unable to access medically necessary services because of these fees;

304. Applicant FADOQ therefore has a genuine interest in this litigation's outcome and in seeking legal remedy to ensure that the Federal Minister enforce the CHA's provisions;

305. Applicant FADOQ is within its rights to seek legal remedy due to Respondent's failure to act in accordance with the CHA;

306. The Applicants, Mrs. Hacala Meunier and Mr. Ferland, have a real stake in this litigation's outcome, as the Federal Minister's failure to act has led to a steady increase of extra-billing practise, since they have and continue to pay additional fees for health services required in order to treat their health conditions;

307. It is clear from the exact nature of the CHA that no one but the Applicants, Mrs. Hacala Meunier and Mr. Ferland, can have a more genuine and direct interest in order to request the Federal Minister's execution of her obligations per article 20 of the CHA;

308. Accordingly, all of the Applicants must be granted public interest standing for the purposes of this litigation;

c. There exists a clear right to obtain the execution of this obligation

309. The CHA does not grant any discretion to the Federal Minister as soon as there are extra-billing or user-charges;

310. The legislator's intentions are clear to the effect that the CHA does not allow any extra-billing or imposition of user-charges;

311. The CHA is also clear regarding the Respondent's duty to deduct the cash contributions of a province of an amount equal to the extra-billing or user-charges, as determined by regulation;

312. The Applicants have filled all pre-existing conditions in order to ask the execution of this duty, as will be demonstrated below;

313. As described in further detail at paragraph 287 of the present application, Applicant FADOQ has already petitioned the Federal minister to enforce the CHA's provisions and to put an end to extra-billing fees;

314. A long delay has elapsed since the moment where the Federal minister should have implemented her duties, without Federal minister having expressed any intention of conforming herself;

315. Despite all the request described at paragraphs 267 to 290, the Federal minister has never taken any measures in order to apply the CHA to Quebec;

316. The Federal minister has been requested many times to act in the present

matter and she has refused or neglected to do so;

d. The Applicants have no other adequate remedy

317. Class action proceedings lodged in the past, as described in further detail at paragraphs 158 to 180, did not suffice to force the government of Quebec to ban extra-billing fees and to proactively enforce this prohibition;

318. The complaints lodged at the *Quebec College of Physicians* do not allow the prevention or ban of extra-billing fees, since they are now processed in the optic of the impending adoption of a regulation allowing extra-billing fees, according to certain requirements, by the Government of Quebec;

319. No remedy other than the present application seeking an order of *mandamus* is therefore available in order to prevent the practice of extra-billing fees and user-charges;

320. There are no other reasonable and efficient ways to seize the Court of the issue of legal power which is raised by the Applicants in their application;

e. The solicited application will have an immediate practical effect

321. Despite the many calls to action and petitions made to the government of Quebec to ban extra-billing fees, extra-billing practices still are being tolerated in the province. The Federal Minister’s action is the only way to remedy the situation and to put an end to extra-billing practices in Quebec;

322. Should it be granted, this application will have the immediate practical effect of putting an end to extra billing practices and user fees not only in Quebec, but also elsewhere in Canada;

323. The past experience of the application of the CHA, in the cases were it was applied, confirm that each time the Federal Minister or her predecessors deducted amounts from a province’s cash contributions according to article 20 of the CHA, that province always took measures in order to cease these practices;

f. With regard to equity, nothing prevents the Applicants from obtaining the requested remedy

324. Petitioner FADOQ is beyond reproach that would preclude it from seeking the current application;

325. The issues raised by the present application are not frivolous and must be addressed by the courts;

g. The Balance of Convenience clearly favours the Applicants

326. Due to the facts alleged above, extra-billing fees have always existed and they are more and more present and detrimental to Canadians;

327. Extra-billing fees' most important and most damaging consequence is that it calls one the basic tenets of Canada's healthcare system into question;

328. The Federal Minister's failure to act translates into tolerating extra-billing fees charged by physicians and dentists, which creates a major breach in the Canadian public healthcare system;

329. Extra-billing fees reintroduce patients' financial ability to pay as a condition to access health services. However, the primary objective of the CHA is to protect and promote universal access to health services without financial or other barriers, urgency and gravity of care being the sole factors to condition access to health services;

330. Extra-billing practices are a clear violation of the CHA's principle of accessibility, for it creates a financial barrier to health services for those who cannot pay these additional fees;

331. Extra-billing fees violate the CHA's principles of universality and accessibility and favour the emergence of a two-tier health system that will offer a higher quality of care for the rich than for the poor, just as the Quebec Public Protector concludes in her report, produced herewith as **Exhibit R-22**, at pages 5 and 6;

332. As described in further detail at paragraph 201 of the present application, extra-billing fees charged to patients have steadily increased over the past years. It is probable that, should the present application be dismissed and the Federal Minister continue to fail or neglect to enforce the CHA's provisions, fees illegally charged to patients will continue to increase, which would, in turn, be furtherly detrimental to Canada's public healthcare system;

333. The Federal Minister's failure to enforce the CHA's provisions will lead to irreversible consequences, such as diluting Canadians' rights to access health services as per the conditions outlined by the CHA's provisions;

334. The Federal Minister's failure to enforce the CHA's provisions also

translates into physicians referring their patients towards private clinics for care, since contrarily to the practice in hospitals, physicians may charge fees because of the tolerance of the MHSS, without giving patients a choice;

335. Furthermore, in a survey conducted by the Léger firm in 2013, titled "Perception du système de santé par les patients Québécois", 34% of 1 501 respondents answered that, in the last two years, they were referred by a physician or by a member of a publicly-funded establishment to a private clinic, the whole as it appears more fully from a copy of said survey, produced herewith as **Exhibit R-58**;

336. Patients referred to these private clinics are forced to pay extra-billing fees if they wish to receive treatment made necessary by their condition, while said treatment would be free of charge if it was provided in a hospital;

337. Extra-billing practices lead to a reduction of services offered within hospital infrastructure when said services are offered in private settings, which in turn leads to further reduction of services made accessible to the general public;

338. For instance, as it appears more fully from the Quebec Public Protector's report, Exhibit **R-24**, page 7, ophthalmologists refer patients they see in outpatient clinics to their own medical clinics to receive Lucentis injections to treat macular degeneration, because Quebec hospitals no longer stock Lucentis;

339. Some privatized health services are, indeed, no longer offered in public hospitals, the whole as it appears more fully from a copy of the Association des cliniques médicales du Québec's report submitted to the Commissaire à la santé et au bien-être, produced herewith as **Exhibit R-59**;

340. The practice of extra-billing fees is extremely expensive for patients, since according to Quebec Minister's own declarations, an approximate amount of 50 million dollars is paid every year by Quebec users, as extra-billing fees, in order to have access to insured medical services (paragraph 245);

341. Extra-billing fees are moreso detrimental to certain patients: low and middle-income individuals, individuals without private medical or drug insurance, unemployed individuals, seniors facing a loss of autonomy, patients suffering from chronic conditions, victims of abuse or serious assault, mental health patients, physically or mentally disabled patients, patients suffering from autism spectrum disorders, patients suffering from addictions (alcohol, drugs, gambling), and homeless individuals, the whole

as it appears more fully from **Exhibit R-24**, at page 6;

342. The practice of extra-billing fees forces a certain number of patients to deprive themselves from medical care;

343. In the “Perception du système de santé par les patients québécois” survey, 29 % of 1 501 respondents said that they decided not to undergo medically necessary treatment because of the cost-prohibitive nature of the fees their physicians wished to charge them, the whole as it appears more fully from **Exhibit R-58**;

344. Should the present application for an order of *mandamus* be granted, provincial governments, including the government of Quebec, will be forced to take action to ban extra-billing practices, failing which their cash contributions will be withheld by the Federal Minister per article 20 of the CHA;

345. The Quebec Minister, like the Health Ministers of all other provinces, will have to choose between, on one side, the protection of patients’ fundamental rights, the respect and maintenance of the principles of the CHA, pillars of the Canadian medicare system, and, on the other side, a group of physicians’ interests;

346. By neglecting to act, the Federal Minister leaves Quebec and Canadian patients helpless, as they have to assume the payment of extra-billing fees;

347. Should the present application for an order of mandamus be dismissed, extra billing fees will continue to increase in Quebec to the great detriment of its population. Quebec patients will be forced to pay greater fees to access normally insured health services;

348. Should the present application for an order of mandamus be dismissed, the government of Quebec will continue to find ways to illegally circumvent the CHA’s application;

349. The dismissal of the present application for an order of mandamus will be a devastating and prejudicial blow to all Canadian patients, as it will allow extra-billing and user-charge practices to spread, unfettered, and will make it impossible to respect the condition of accessibility as provided in the CHA;

[…]

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Montréal, May 2nd, 2015

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