Millership's Amended Fed. Case...

Hi all,

Below is my Amended Statement of Claim that I'm filing today (August 12, 2005) in the Federal Court of Canada (through the mail from Kamloops, BC) in my anti-public water fluoridation case against Her Majesty the Queen (the Attorney General of Canada).

I've got them this time, I might not stop public water fluoridation in Canada, but I will lower it's optimal level to 0.5 mg/L from 0.8 - 1.0 mg/L and lower the maximum allowable concentration of fluoride allowed in drinking water in Canada to 1.0 mg/L from 1.5 mg/L.

I've got them by the evidence, and I'll also be able to garner damages from the Queen (Canada) for all the dental fluorosis fluoride poisoning that occurred in fluoridated communities (0.8 - 1.0 mg/L) in Canada since 1994 to today, because of the precedent I set in my Supreme Court of British Columbia case (2003) on damages and because the evidence in my Federal case against the Queen is irrefutable, because of her servants negligence in not lowering Canada's fluoride guideline, as recommended by the Health Canada report by Dr. Locker in 1999, etc.

Enjoy your read, and I recommend other people use my case as an example of how to do your own case.

Later, Kevin James Millership
Canada

PS: I'll keep you all informed of my/our progress!

Court File No. T-1070-05

FEDERAL COURT – TRIAL DIVISION

PROPOSED CLASS ACTION

BETWEEN:

KEVIN JAMES MILLERSHIP

PLAINTIFF

- and -

HER MAJESTY THE QUEEN

DEFENDANT

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Court Rules, 1998*, serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this amended statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the *Federal Court Rules, 1998*, 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 DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Dated: _____

Issued by: _____

(Registry Officer)

Address of local office:

3rd Floor
701 West Georgia Street
Vancouver BC V7Y 1B6

To:

Attorney General of Canada
c/o Deputy Attorney General of Canada
840 Howe Street
Vancouver BC V6Z 2S9

CLAIM

1. The plaintiff seeks in the public interest and on behalf of the Class Members as hereinafter defined,

    a) damages in an amount exceeding $50,000 for the class;

    b) a declaration that public water fluoridation treatment programs in Canada, administered at 0.8 - 1.0 milligram of the drug fluoride per liter of drinking water (0.8 - 1.0 mg/L), is unconstitutional under sections 7 and 15 of the *Canadian Charter of Rights and Freedoms, Constitution Act of Canada, 1982*;

    c) an order of *Mandamus* requiring the defendant to enjoin and outlaw all public water fluoridation treatment programs in Canada administered at 0.8 - 1.0 mg/L;

    d) an order of *Mandamus* requiring the defendant to amend the government of Canada's *Guideline for Canadian Drinking Water Quality* for fluoride to show the "optimal" or "optimum" fluoride level in drinking water for dental health as $\leq$0.5 mg/L, and the maximum allowable concentration (MAC) of fluoride in drinking water for public health as $\leq$ 1 mg/L;

    e) comparable orders on behalf of the Class Members as hereinafter defined;

    f) costs; and

    g) such other relief as this court thinks just.

2. The plaintiff, Kevin Millership (“Mr. Millership”), is a 34 year old seasonal first-aid attendant. He resides in Penticton, British Columbia.

3. The defendant is referred to herein as “Canada” or “the government.”

4. Mr. Millership was born on June 18, 1971 in Kamloops, British Columbia and lived there until he graduated from high school in 1989.

5. The City of Kamloops began administering the drug fluoride into their public drinking water supply in 1963 to treat their citizen’s dental decay (a mass-medication known as “public water fluoridation”), up until 2001, when the citizen’s of Kamloops voted to end this community medical treatment.

6. Mr. Millership was diagnosed with “very mild [dental] fluorosis” at the age of 29 by his dentist Dr. Hugh Thomson of Kamloops, BC. Dental fluorosis is a negative health effect of public water fluoridation. Fluoride can poison children, causing dental fluorosis, the hypo-mineralization of their forming tooth enamel (dental fluorosis) that shows up in its mild forms as white opaque spots on teeth with light staining from food, and in its more severe forms as heavily stained (yellow, brown or black) teeth with pitted and corroded surfaces. Mr. Millership’s dental fluorosis was caused by the fluoride added to the public drinking water supply of Kamloops between 1971 and 1978.

7. Mr. Millership claims that the government of Canada is strictly liable for the harm done to the Class Members due to the deleterious health effects of fluoride medicated municipal, military base, and Indian Reserve, public drinking water

supplies in Canada under section 3 of the *Crown Liability and Proceedings Act* and based on the intentional tort imposing strict liability on the government of Canada on the basis of the legal rule enunciated in the legal decision commonly referred to as the rule in *Rylands v. Fletcher* to the extent that:

a. public water fluoridation in Canada, administered at 0.8 - 1.0 mg/L, is inherently poisonous or deleterious to the human body;

b. the effect to the citizens of Canada is due to the non-natural use of the lands of Canada; and,

c. public water fluoridation in Canada, administered at 0.8 - 1.0 mg/L, is not for the general benefit of the community given the increased intake of other fluoride sources by Canadians, besides water, such as toothpaste and food, and given the lack of conclusive empirical data establishing that 0.8 - 1.0 mg/L of fluoride in water is medically helpful in the reduction of dental decay in Canada in 2005.

8. Mr. Millership claims that citizens of Canada are entitled to receive municipal, military base, and Indian reserve, treated public drinking water flowing through their respective properties that is potable, i.e. safe to drink and fit for domestic purposes without further treatment. In this manner, he claims that the government has intentionally allowed the continued contamination of public drinking water supplies in Canada with the drug fluoride, administered at the Federal-Provincial-Territorial Committee on Drinking Water's out-dated and unsafe 1996 optimal level (i.e., 0.8 - 1.0 mg/L), without an articulated, supportable or balanced position establishing that the effects of fluoride, administered at that high of level, into the human body are demonstrably justified given the public interest in having public water fluoridation in Canada continue in such a way to minimize the increase in dental fluorosis.

9. Mr. Millership resides in Canada, and many citizens owning property or residing on property in Canada are physically susceptible to the deleterious, physical and emotional effects of public water fluoridation administered at 0.8 - 1.0 mg/L. The plaintiff claims the administration of the drug fluoride, at 0.8 - 1.0 mg/L, into municipal, military base, and Indian reserve, public drinking water supplies in Canada, is an interference with the citizens of Canada's use and enjoyment of their land and, therefore, a nuisance. In this regard, the plaintiff claims:

    a. there is a substantial interference with or damage to the lands of the citizens of Canada by public water fluoridation administered at 0.8 - 1.0 mg/L;

    b. the medication and/or allowable medication by the government of Canada, in the manner described above, is not an inevitable result of the use of lawful authority on the part of the government. In this regard, the plaintiff claims that had the government had proper and comprehensive testing conducted on the deleterious effects of fluoride administered at 0.8 - 1.0 mg/L into municipal, military base, and Indian reserve, public drinking water supplies in Canada, and had the government brought this testing home to the citizens of Canada, and were municipal governments, military bases, and Indian reserves, informed of the results stemming therefrom, the damages caused to the Class Members would not of resulted.

10. Mr. Millership further claims that public water fluoridation in Canada, administered at 0.8 - 1.0 mg/L, is done in violation of the legal rights of citizens of Canada:

    a. to "*life, liberty, and security of the person*" under section 7 of the *Canadian Charter of Rights and Freedoms*; and,

b. to be "…*equal before and under the law...without discrimination...*" under section 15 of the *Canadian Charter of Rights and Freedoms*.

and says, as a consequence of the above mentioned rights violations not being demonstrably justified in a free and democratic society, the citizens of Canada are entitled to the following remedies under the *Charter of Rights and Freedoms*, the *Crown Liability and Proceedings Act*, the *Criminal Code* and the common law:

i. that the sections of provincial and territorial *Acts* and *Regulations* in Canada that authorize public water fluoridation to be administered at 0.8 - 1.0 mg/L are a violation of s. 7 of the *Charter*, and are thus of no legal force or effect pursuant to the *Constitution Act of Canada, 1982* and on the grounds of paramountcy;

ii. that the sections of provincial and territorial *Acts* and *Regulations* in Canada that authorize public water fluoridation to be administered at 0.8 - 1.0 mg/L are a violation of s. 15 of the *Charter*, and are thus of no legal force or effect pursuant to the *Constitution Act of Canada, 1982* and on the grounds of paramountcy; and,

iii. that Canada pay the Class Members as hereinafter defined a sum of money to make the Class Members whole vis-à-vis their damages, pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms* and s. 3 of the *Crown Liability and Proceedings Act.*

11. Mr. Millership claims that Canada has jurisdiction, authority and influence and materially contributes to the regulation of environmental matters, including the use of the drug fluoride in public drinking water supplies in Canada, through a variety of bureaucratic organizations that the government controls, such as Health Canada, or plays a material part in, such as the Federal-Provincial-Territorial Committee on Drinking Water.

12. Mr. Millership claims that Canada can make laws in relation to health for the Peace, Order and Good Government of Canada under section 91 of the *Constitution Act, 1867* and claims that public water fluoridation in Canada, administered at 0.8 - 1.0 mg/L, has deleterious effects on the public health of Canadians and as such is a national concern and national emergency that must be enjoined and outlawed forthwith by Canada as a matter of law under section 4 of the *Department of Health Act*.

13. Mr. Millership claims that Canada, through her servants Ms. Giddings and Mr. Green of Health Canada and the Federal-Provincial-Territorial Committee on Drinking Water (the "Committee"), has negligently allowed the continued administration of the drug fluoride into municipal, military base, and Indian reserve, public drinking water supplies in Canada, in quantities and at levels noxious and poisonous to the bodies of the citizens of Canada (i.e., 0.8 - 1.0 mg/L), causing the damages pled herein to the Class Members, the particulars of which include but are not limited to the following:

    a. Ms. Giddings and Mr. Green continuing to administer and/or allowing the continued administration of the drug fluoride into municipal, military base, and Indian reserve, public drinking water supplies in Canada, at the Committee's 1996 optimal level (0.8 - 1.0 mg/L), even though it was officially declared un-safe by Health Canada's 1999 commissioned report by Dr. David Locker;

b. Ms. Giddings and Mr. Green continuing to administer and/or continuing to materially contribute to the administration of the drug fluoride into municipal, military base, and Indian reserve, public drinking water supplies in Canada, in amounts sufficient to poison Canadians (i.e., 0.8 - 1.0 mg/L), causing the deleterious biological and psychological effects to the Class Members;

c. Ms. Giddings and Mr. Green failing to initiate Health Canada's Food Basket survey for fluoride, as order by the Committee at their May 2000 Meeting, a total fluoride exposure survey urgently needed by the Committee in order for them to conduct their mandated continual review of their 1996 fluoride guideline's optimal level (0.8 - 1.0 mg/L) for public water fluoridation in Canada;

d. Ms. Giddings and Mr. Green failing to reasonably analyze the testing done on the dose-response relationships between fluoride, dental fluorosis, and the drug fluoride administered at 0.8 - 1.0 mg/L into public drinking water supplies in Canada, in the past, and failing to take the reasonably prudent measures necessary to ensure that the continued administration of the drug fluoride into public drinking water supplies in Canada, at the optimal level contained in Canada's *Guideline for Canadian Drinking Water Quality*, was not, and is not, deleterious to the public health of the citizens of Canada;

e. Ms. Giddings and Mr. Green failing to reasonably appraise themselves of the scientific research data and perspectives to continually update their decision to administer and/or materially contribute to the administration of the drug fluoride into pubic drinking water supplies in Canada at the

optimal fluoride level contained in Canada's *Guideline for Canadian Drinking Water Quality*, to ensure that it does not negatively effect the public health of the citizens of Canada;

f. Ms. Giddings and Mr. Green failing to act reasonably by way of their awareness of the epidemic levels of dental fluorosis fluoride poisoning occurring in Canada today (≤75% of children in fluoridated communities in Canada get dental fluorosis when a level of 10% dental fluorosis is considered a problem). In this regard, any past decision or future decision by Health Canada or the Committee to use fluoride in public drinking water supplies in Canada, at the optimal level recommended by the Committee in 1996 (0.8 - 1.0 mg/L) and contained in Canada's *Guideline for Canadian Drinking Water Quality*, for the public purpose of dental care, is unreasonable given the foreseeable harm to the Class Members.

all the above being in the operational sphere of the government of Canada.

14. Mr. Millership claims the government of Canada:

a. owe the citizens of Canada a duty of care not to administer or materially contribute to the administration of deleterious substances, such as the drug fluoride, into public drinking water supplies in Canada, at levels that cause harm;

b. breached the standard of care of the reasonably prudent person by continuing to administer and/or allowing the continued administration of the drug fluoride into public drinking water supplies in Canada, at the level of 0.8 - 1.0 mg/L, with the

foreseeable knowledge, since 1994, that administering and/or allowing the continued administration of the drug fluoride, at this level, into public drinking water supplies in Canada, causes deleterious public health effects in Canada;

c. failed in their duty to act for Canadians on the recommendations of Health Canada's 1999 Update report of the Committee's 1996 fluoride guideline, a report which found that actual intakes of fluoride in Canada are larger than recommended intakes to avoid moderate dental fluorosis, and as such, efforts are required to reduce the fluoride intakes of children in Canada to reduce and/or eliminate dental fluorosis in Canada, and finding that, new and more flexible guidelines for administering the drug fluoride into public drinking water supplies in Canada are needed, guidelines that take into account total fluoride intake, besides just water, prevalence of decay and dental fluorosis, with 0.5 mg/L probably being the optimal level and 1.0 mg/L being the MAC level for Canada today; and,

d. caused the Class Members dental fluorosis.

causing the Class Members to sustain damages, the particulars of which are articulated below.

15. As a consequence of the sole negligence of Canada, by her acts or omissions, Mr. Millership claims that the Class Members have sustained and will continue to sustain, pecuniary, non-pecuniary and special damages, expenses, the particulars of which include but are not limited to the following:

a. loss of enjoyment and solace of life;

b. depression, anxiety and social embarrassment;

c. the ongoing medical dental degenerative condition known as dental fluorosis;

d. loss of human capital;

e. costs of future care;

f. ongoing medical; and,

g. therapeutic care.

16. Mr. Millership claims that despite public water fluoridation in Canada being used in the public interest or the benefit of the many over the individual, he says this possible state of affairs does not obviate, negate, relieve or discharge the government's duty of care owed to the citizens of Canada to act reasonably to prevent the harmful effects of fluoride medicated public drinking water supplies in Canada affecting the bodies of the citizens of Canada who are particularly susceptible to the negative health effects of public water fluoridation in Canada administered at 0.8 - 1.0 mg/L. In this regard, the plaintiff pleads and relies on the '*thin skull principle*'.

17. Mr. Millership claims that despite any agreement, contract or cessation of authority or jurisdiction, whether lawful or otherwise, by or between Canada and the governments of the provinces, territories, and Indian reserves, of Canada, whereby Canada exercised rights or obligations over water, waste management, environmental protection, environmental assessment, health, public works, fluoride or otherwise, does not obviate, relieve or discharge the duty of Canada to guard against and take care to act reasonably to prevent the harmful effects of public water fluoridation treatment programs in Canada affecting the bodies and minds of the citizens of Canada. In this regard, the plaintiff relies on the legal doctrine commonly referred to as *delegatus non potest delegatum*.

18. Wherefore Mr. Millership brings this claim in the public interest on behalf of a class defined as follows:

> the citizen's of Canada with dental fluorosis who lived in a municipality, on a military base, or on an Indian reserve, in Canada, that administered the drug fluoride into their public drinking water supply at the level of 0.8 - 1.0 milligram of fluoride per liter of water (0.8 - 1.0 mg/L), between the year 1994 and today.

The plaintiff proposes that this action be tried at Vancouver, British Columbia.

August 12, 2005

_____

Kevin James Millership
Plaintiff

THIS AMENDED STATEMENT OF CLAIM is filed by Kevin Millership whose place of residence is 107-3004 South Main Street, British Columbia, V2A 5J6. Telephone (250) 493-0510

August 12, 2005

Dear Federal Court of Canada registry,

Here is my Amended Statement of Claim (Court File No. T-1070-05), please stamp and file and send my stamped copy to this address please:

Kevin Millership
880 Pine Springs Road
Kamloops, BC
V2B 6R2
Tele: (250) 579-5480

Thank-you very much,

Yours truly, _____
Kevin Millership
Plaintiff

PS: I hope your able to serve Her Majesty the Queen for me again, if not please send her copy of my Amended Statement of Claim to the Kamloops address listed above. Thank-you.

Court File No. _____

FEDERAL COURT – TRIAL DIVISION

BETWEEN:

KEVIN JAMES MILLERSHIP

PLAINTIFF

AND:

HER MAJESTY THE QUEEN

DEFENDANT

AFFIDAVIT OF KEVIN JAMES MILERSHIP

I, Kevin James Millership, a seasonal occupational first-aid attendant living in Penticton, British Columbia, Canada, SWEAR THAT:

1) I am the plaintiff in this action.

2) I have conducted a diligent search of my records and have made appropriate inquires of others to inform myself in order to make this affidavit.

3) This affidavit discloses, to the full extent of my knowledge, information and belief, all the documents relevant to any matter in issue in the action that are in my possession, power or control.

4) The plaintiff claims that Federal Crown servants in Health Canada and the Federal-Provincial-Territorial Subcommittee/Committee on Drinking Water (original called a Subcommittee now called a "Committee") erred in 1996 by setting the Guideline for Canadian Drinking Water Quality (the "guideline") for the "optimal" (or "optimum") fluoride level in public drinking water to treat the dental decay of consumers in Canada at 0.8 – 1.0 milligrams of fluoride per liter (0.8 - 1.0 mg/L).

5) The plaintiff claims that evidence contained in this Affidavit clearly shows that Canada's "optimal" fluoride level in drinking water to treat dental decay is 0.0 mg/L today and in 1996 because of the increased exposure to other sources of

fluoride in Canada (such as fluoridated toothpaste and pesticides) since the 1940's when Federal Crown servants originally set Canada's "optimal" fluoride level in public drinking water at 1 mg/L to medically treat the dental decay of Canadians.

6) Fluoride has been added to the public drinking water supplies of Canada to treat dental decay since 1945 and today almost 14 million Canadians are medicated daily by fluoridated public water supplies in Canada in a medical procedure officially called public water fluoridation (hereinafter referred to as "fluoridation").

7) The Federal Crown's original medical reason behind fluoridation when it started in Canada in 1945 was to incorporate the fluoride from the fluoridated drinking water into children's teeth well they form in their gums, to strengthen their teeth against dental decay by forming a "fluoride-shield" over them to protect them against dental decay. This "fluoride-shield" theory has since been debunked by science.

8) Federal Crown servants no longer promote the "fluoride-shield" ("systemic-effect") theory behind fluoridation's so-called effectiveness in preventing dental decay. They now promote the "topical-effect" theory, i.e. that swallowed fluorides are absorbed into a person's bloodstream, transported to the person's saliva glands to be excreted in their saliva over decayed teeth to bind with and re-mineralize them.

9) Fluoride is a binary compound of the negatively charged element fluorine with positively charged elements such as the calcium in teeth and water. Fluoride is found naturally in some, but not all, fresh water bodies in Canada, and usually at very low levels (British Columbia's mean fresh water fluoride level, <0.2 mg/L).

10) The Plaintiff claims that the evidence provided in this Affidavit clearly shows that close to 14 million Canadians are over-medicated and poisoned daily with fluoride from fluoridated public drinking water in Canada and that this deleterious condition has been allowed to continue unabated since the 1970s in Canada by the Crown.

11) The Plaintiff claims that Federal Crown servants, in particular Michele Giddings, Acting Manager of Water Quality and Microbiology Division for Health Canada and Federal voting member of the Committee, have unlawfully failed and unreasonably delayed in lowering Canada's guideline for the "optimal" fluoride level in drinking water to treat dental decay to 0.0 mg of fluoride per liter of drinking water and as such have endangered and harmed and continue to endanger and harm the public health of almost 14 million Canadians daily contrary to law.

12) The Plaintiff claims that the failure of the government of Canada to act in above regard prevents municipalities such as Prince George (British Columbia), Edmonton (Alberta), Saskatoon (Saskatchewan), Winnipeg (Manitoba), Toronto (Ontario), Quebec City (Quebec), St. John (New Brunswick), Charlottetown (Prince Edward Island), Halifax (Nova Scotia), Corner Brook (Newfoundland), Yellowknife (Yukon) and all other municipalities in Canada who practice public water fluoridation from knowing the true "optimal" fluoride level for their public drinking water supplies, a level that the Plaintiff claims is 0.0 milligrams of fluoride per liter of drinking water according to the evidence contained in this affidavit.

13) The Plaintiff intends to show this Court the negligence of Federal Crown servants in Health Canada and the Committee in setting Canada's guideline for the "optimal" fluoridation level at 0.8 – 1.0 mg/L in 1996. The Plaintiff's evidence includes:

a. An email called "Comments and Clarifications on MOE Fluoride Report" from D. Green, acting Secretary of the Committee and Health Canada employee, to Dr. David Locker (response included) (**Exhibit A**);

b. Health Canada's 1999 report called "Benefits and Risks of Water Fluoridation – An Update of the 1996 Federal-Provincial Subcommittee Report" (the "Locker Report") by Dr. David Locker (**Exhibit B**);

c. the Sub/Committee's 1996 guideline called "Fluoride" as found in the Crown's Guidelines for Canadian Drinking Water Quality (**Exhibit C**);

d. Sub/Committee meeting Notes and Minutes (1997 – 2001) (**Exhibit D**);

e. Health Canada's 1994 report called "Investigation of inorganic fluoride and its effects on the occurrence of dental caries and dental fluorosis in Canada" (**Exhibit E)**

f. The City of Calgary's 1998 fluoridation review called "The City of Calgary Water Fluoridation Review" (**Exhibit F**);

g. The World Health Organization's 1970 report called "Fluorides and Health" (**Exhibit G**)

h. The US National Academy of Science's 1977 report "Drinking Water and Health" (**Exhibit H**)

i. Health Canada's 1977 report called "Environmental Fluoride" (**Exhibit I**);

j. A 2001 article in the Journal of the Canadian Dental Association by Dr. David Locker called "The Science and Ethics of Water Fluoridation" (**Exhibit J**);

Exhibit A. Email of the Committee's Secretary D.G. Green to Dr. David Locker

14) The Plaintiff claims that this email from the Secretary of the Federal-Provincial-Territorial Sub/Committee on Drinking Water (the "Committee") D. G. Green to Dr. David Locker, author of Health Canada's 1999 fluoridation report "Risks and Benefits of Water Fluoridation – An Update of the 1996 Federal Provincial Sub-committee Report" (the "Locker Report") proves that Federal Crown servants in the Committee and Health Canada, namely Michele Giddings and D. G. Green, were negligent in setting the "optimal" fluoride level in drinking water for Canada in 1996 at 0.8 – 1.0 mg/L and are negligent in maintaining 0.8 – 1.0 mg/L as the "optimal" fluoride level in drinking water for Canada today because this email clearly shows that the Committee's 1996 guideline for fluoride in drinking water in Canada was not and is not based on "sound science" according to Dr. Locker.

15) D. G. Green tells Dr. Locker in his email that he was asked by the Committee to review Dr. Locker's 1999 fluoridation report (the "Locker Report") and get clarification of the report's "recommendations or conclusions". He reviewed the Locker Report and told Dr. Locker he found it interesting and "scientifically sound and supportable." He told Dr. Locker that he thinks he "would support any recommendations" Dr. Locker has "regarding fluoride levels in drinking water" but he suggested to Dr. Locker to "clarify" his recommendations.

16) D. G. Green wanted clarification in regards to the Committee's recommendations regarding the optimum level of fluoride in drinking water as he found it "difficult to find reference to it" in the Locker Report. He tells Dr. Locker that the Committee's "position is published and should be quoted with any recommendations concerning this optimum level" and that their position is, "If it is desired that water supplies be fluoridated as a public health measure for the prevention of dental caries, an optimal fluoride concentration of 0.8 – 1.0 mg/L should be maintained."

17) D. G. Green also wanted clarification on the discussion in the Locker Report on the "maximum acceptable concentration for fluoride". He tells Dr. Locker that the "difference between the optimum (0.8 – 1.0 mg/L) and suggested maximum 1.0 mg/L" that the Locker Report suggests based on science "is too close and normal operations for fluoridation would not be able to maintain this level". He tells Locker

that Committee members also noted that lowering the maximum from 1.5 mg/L to 1 mg/L "is not the message they wanted to see in the Territories".

18) D. G. Green noted to Dr. Locker that the Locker Report found that "new and more flexible guidelines are needed" and asked if Dr. Locker "recommend the optimum range be expanded to 0.5 to 1.2 mg/L as suggested by Ismail (1994) knowing the concerns of provincial regulatory agencies as identified in the paragraph above?" He tells Dr. Locker that he should "state what the current optimum range is" and then clearly state what he recommends for Canada's optimum fluoridation range.

19) D. G. Green concludes by asking if Dr. Locker recommended that the maximum acceptable concentration (the "MAC") "value be left at 1.5 mg/L or lowered to 1.0 mg/L as originally recommended by the Secretariat's evaluator in 1998?"

Response

20) Dr. Locker responds to D. G. Green by stating his "opinion is that we have moved from am period of certainty with respect to guidelines re: water fluoridation to one of uncertainty."

21) He tells D. G. Green that during "the period of certainty, rates of dental decay in children were universally high, there was negligible consumption of fluoride from other sources, the prevalence of dental fluorosis was low and there was little concern about the aesthetic effects of fluorosis." And that consequently, "it was possible to specify a single optimal rate." He tells D. G. Green that the optimal rate for fluoridation was based on the work of Dean in the 1930s and that the "level was set at 1.00ppm" which was extended in the late 1950s "to 1.0 to 1.2ppm to take into account of variations in water consumption in different climatic zones."

22) He tells D. G. Green that he thinks "we have now entered a period of uncertainty with respect to establishing optimal levels" because in "many (but not all) communities decay rates in children have declined substantially and there has been a corresponding reduction in the benefit to be obtained from water fluoridation."

23) Moreover, he tells D. G. Green that "fluoride is now available from multiple sources and there are concerns about excessive intakes in children." He tells him that dental fluorosis "rates have risen and changing aesthetic sensibilities may mean that these are increasingly unacceptable to the lay population."

24) He states to D. G. Green that under "these conditions it is not possible to specify an optimal level of fluoride in the water supply that is universally applicable. Rather the optimal level needs to be flexible to take account of local variations."

25) Dr. Locker tells D. G. Green that he agrees "with the emerging opinion that not all communities need fluoridation" and that "where fluoridation is needed or desirable the level should be set after taking into account rates of decay, ingestion of fluoride from other sources, fluorosis rates and the community's values regarding the balance between caries and fluorosis."

26) Concluding that the concept of an "optimum" fluoridation range (be it 0.8 – 1.0 mg/L or any other "optimum" range) "is a politically useful one even though we have little credible evidence to allow us to specify what that range should be." And finding that "even if a range is appropriate the problem is that we do not know where to set the level for any particular community."

27) Locker tells D. G. Green that his opinion "is that a level of 0.5 to 0.6 would be appropriate for most communities in Canada" but that "credible scientific evidence on which to base standards and guidelines is lacking" hence his "unwillingness to make firm recommendations until that evidence is available." He tells D. G. Green that his "opinion is that policies and guidelines regarding water fluoridation need to be based on sound scientific evidence" and thinks it "inappropriate to make recommendations when that evidence is not available" and that the "best we can do is to acknowledge the uncertainties surrounding this issue."

28) He tells D.G. Green that it was "unfortunate that in the past we have been seriously misled by previous reports that have been insufficiently critical of the evidence base on which policy has been established."

29) Dr. Locker notes to D. G. Green that the "four studies conducted to date in Canada indicate that there is little if anything to be gained from fluoridating the water supply" and concludes that "from a scientific point of view" he thinks "it is better to acknowledge the uncertainty surrounding the issue of fluoridation rather than claim that policy and guidelines are based on sound evidence when this is not the case."

30) With respect to the maximum allowable concentration (MAC) of fluoride in drinking water, Locker told D. G. Green that "it is probably the case that 1.5 ppm is far too high from a dental health perspective." And concluded that "the 1996 report

indicates that this maximum level was based not on dental health considerations but political/economic ones."

Exhibit B. Health Canada's 1999 fluoridation report "Benefits and Risks of Water Fluoridation" by Dr. David Locker

31) The Plaintiff claims that Health Canada's 1999 public water fluoridation report "Benefits And Risks of Water Fluoridation, An Update of the 1996 Federal-Provincial Sub-committee Report" (the "Locker Report") by Dr. David Locker clearly shows the negligence of Federal Crown servants in Health Canada and the Committee in maintaining 0.8 – 1.0 mg/L as the "optimal" fluoride level in drinking water for Canada today because this report found that the actual intakes (AI) of fluoride in Canada are "larger than recommended intakes for formula fed infants and those living in fluoridated communities." It found that efforts "are required to reduce intakes among the most vulnerable age group, children aged 7 months to 4 years" as "children of this age who are consuming the maximum dose are at risk of moderate levels of dental fluorosis and are consuming amounts only 20% less than that at which skeletal fluorosis is possible if maintained over long periods."

32) The plaintiff claims that the government of Canada has made no effort to reduce the intake of fluoride by formula fed infants in Canada and those living in fluoridated communities in Canada, as the Locker Report recommend, and as a consequence dental fluorosis fluoride poisoning rates in Canada are at epidemic levels ($\leq$ 75%).

33) The Locker Report recommended that efforts "are required to reduce intakes" of fluoride by formula fed infants and by children living in "optimally" fluoridated (0.8 – 1.0 mg/L) communities because the "actual intakes" (AI) of fluoride of formula fed infants and children living in "optimally" fluoridated communities are at the level to put them at "risk for moderate dental fluorosis" - a negative health effect never to occur with fluoridation, hence the reason for the MAC in the 1940s.

34) Recommendations regarding optimal daily intakes of fluoride for treating dental decay and the MAC for fluoride in drinking water were based on dose-response data published in the 1940's by Dr. Dean. Optimal intakes (OI) are those derived from water fluoridated at 0.8 to 1.2ppm, assuming no other sources of fluoride except food. Maximum intakes (MI) were based on consumption of water at 1.6ppm, the level before moderate fluorosis appears. Actual total daily intakes (AI) are derived from the amount of fluoride present in water, food, breast milk, air, soil and toothpaste. Locker found that AI rates in Canada are higher than the OI rate.

35) Locker found that while water fluoridation, infant formula, fluoride supplements and fluoridated toothpastes are risk factors for dental fluorosis, efforts to reduce children's exposure to fluorides in Canada during the years of enamel formation to avoid dental fluorosis have only focused on discretionary sources and that reducing fluoride levels in infant formulas, changing practices of preparing formula to avoid the use of fluoridated water, reducing the use of fluoride supplements, ensuring the availability of low fluoride toothpastes and increasing compliance with appropriate toothbrushing practices in early childhood have been recommended by a number of authorities but, he concluded that these strategies of reducing fluoride intakes "involve altering the practices and behaviors of commercial organizations and individuals" and "their likelihood of success is at best questionable."

Dental Fluorosis

36) The Locker Report concluded that clearly, "the simplest way of reducing the prevalence of fluorosis in child populations is to cease to fluoridate community water supplies."

37) The Plaintiff claims that the government of Canada is criminally negligent and liable for all damages in maintaining their 1996 guideline for fluoride in drinking water when dental fluorosis rates due to fluoride poisoning are at epidemic levels in Canada (20 to 75%) with up to 18.8% of the cases being moderate dental fluorosis.

38) According to the Locker Report, any attempt to reduce dental fluorosis rates in Canada by focusing on "discretionary sources" is "at best questionable". Locker found that ceasing to fluoridate community water supplies was the "simplest way to reduce dental fluorosis." The plaintiff claims that the government of Canada has yet to do anything concrete or of real value to reduce fluoride intakes of Canadians.

39) The Locker Report found that dental fluorosis has increased in both fluoridated and non-fluoridated communities and that North American studies suggest rates of "20 to 75% in the former and 12 to 45% in the latter." Locker found that although largely confined to the 'very mild' and 'mild' categories of the condition, "they are of concern insofar as they are discernable to the lay population and may impact on those so affected." He also found that fluorosis "at this level is discernable by children aged 10 years and over and can lead to embarrassment, self-consciousness and a decrease in satisfaction with the appearance of the teeth."

40) Locker concluded that his report "confirms and expands previous surveys which have shown that lay people can detect fluorosis and both professionals and lay people view the more severe forms as having negative consequences for children."

41) Locker found that if the description of the 'very mild' and 'mild' dental fluorosis is reviewed, "it is by no means certain that they are insignificant to the individuals affected." And he goes on to state that these "terms were coined in the 1930s when concerns with and appearances were less marked than at the present time". He states that consequently, "these professional-based judgments may need to be modified in the light of contemporary patient concerns." Concluding that certainly, "the assumption that 'very mild' and 'mild' forms of fluorosis are acceptable, which underlines much current thinking about fluoridation, may need to be reconsidered."

42) The Plaintiff claims that the government of Canada's view on very mild and mild dental fluorosis is that it is an acceptable consequence of public water fluoridation in Canada. Their view will never change because they see mild forms of dental fluorosis as just a "cosmetic effect", case closed, even though this cosmetic effect (fluoride poisoning) can lead to embarrassment, self-consciousness and a decrease in satisfaction with the appearance of the teeth of the Canadian individuals affected.

43) Dental fluorosis fluoride poisoning is a significant public health problem in Canada. Locker concluded that dental fluorosis fluoride poisoning "has not been viewed as a public health problem in the past but may become so in the future." The plaintiff claims that the government of Canada is doing nothing about this epidemic disease.

Optimum level

44) In regards to the "optimum" level of fluoride in drinking water, Locker concludes that the "limited information that is currently available suggests that there is no longer one fixed concentration that can be considered effective." He goes on to state that "since fluoride is available from a number of sources, the absence of water fluoridation does not mean that the population is not exposed to levels of fluoride effective in terms of reducing dental decay." Rather he reports, "water fluoridation should be targeted to areas where the prevalence of decay is unacceptably high."

45) Locker found that the amount of fluoride recommended for each community in Canada should be based on "the prevalence of caries and fluorosis in each community, exposure to other sources of fluoride and the prospects for reducing exposure to discretionary sources."

46) The Plaintiff claims that the amount of fluoride recommended for each community in Canada to treat dental decay (0.8 – 1.0 mg/L) by the Committee does not take in account "the prevalence of caries and fluorosis in each community, exposure to other sources of fluoride and the prospects for reducing exposure to discretionary sources" as the Locker Report recommends it should. Nor does it take into consideration the "values of the community in terms of the trade-off between reductions in caries and increases in fluorosis" as Locker found needed to be considered. Locker found that relatively high levels of dental fluorosis "might have been acceptable forty years ago when reductions in caries of 10 or more tooth surfaces were being achieved, but may not be acceptable in an ere in which reductions in decay of only 1 tooth surface can be expected." The Committee's 1996 guideline for fluoride in water is out of date and set to high for Canada.

Effectiveness

47) Locker found that "Canadian studies do not provide systematic evidence that water fluoridation is effective in reducing decay in contemporary child populations" and that the "few studies of communities where fluoridation has been withdrawn do not suggest significant increases in dental caries as a result." And reported that "an emerging body of professional opinion is claiming that not all communities need to be fluoridated."

48) The Locker Report found that the standards regarding optimal levels of fluoride in the water supply were developed on the basis of epidemiological data collected more than fifty years ago and that the optimal level of 1.0ppm was chosen, largely on an "arbitrary basis, to achieve the maximum reduction in dental caries and the minimum prevalence of fluorosis." He found that "re-examination of the early dose response data suggests that levels as low as 0.6 ppm would have achieved approximately the same reduction in the prevalence of dental decay."

49) The Plaintiff claims that since the Locker Report found that "0.6 ppm" (0.6 mg/L) of fluoride in drinking water "would have achieved approximately the same reduction in the prevalence of dental decay" as 1 mg of fluoride per liter of drinking water - and at a time when there were "no other sources of fluoride except food" (1940s) - a level under 0.6 mg of fluoride per liter of drinking water is the so-called "optimal" fluoride level in drinking water for treating tooth decay because there are other sources of fluoride, besides food, ingested today in Canada (toothpaste, etc.) and these other sources of fluoride give substantial or optimal amounts of fluoride.

50) The Locker Report found that "new and more flexible guidelines are needed which take into account the changing prevalence of dental caries, access to other sources of fluoride and contemporary concerns with the cosmetic effects of fluoride."

51) The Plaintiff claims the Committee has negligently failed to act on the Locker Report's advice to draft "new and more flexible guidelines" for fluoride in drinking water "which take into account the changing prevalence of dental caries, access to other sources of fluoride and contemporary concerns with the cosmetic effects of fluoride." Guidelines that would be far lower then the Committee's 1996 guidelines.

52) The Plaintiff claim that the Committee is negligent in maintaining their 1996 guideline for fluoride level in drinking water at 0.8 – 1.0 mg/L to treat dental decay because the Locker Report found that 0.6 mg/L was in fact the true "optimal" amount of fluoride in drinking water to treat dental decay (if no other sources of fluoride are ingested besides from food) – not the arbitrarily set 1 mg/L that was declared as "optimal" in the 40s – and he found that levels "as low as 0.5 ppm may be optimal in some communities" in Canada - after taking into account of the prevalence of dental decay, access to other sources of fluoride, and concerns surrounding the disfiguring effect of dental fluorosis fluoride poisoning.

MAC

53) Locker found that the Committee's guideline for fluoride's MAC in drinking water was "far too high from a dental health perspective." He states that the "MAC for fluoride in the water supply was established in 1978 and set at 1.5mg/L" and that the "MAC for fluoride was calculated in the 1996 report based on a tolerable daily intake (TDI) of fluoride of 122 micrograms/kg body weight for a child aged 22-26 months." This TDI value was taken from a 1994 report produced under contract to Health Canada. The age 22-26 months is the period of greatest risk for the development of fluorosis in the anterior permanent teeth. An intake of 122 micrograms/kg body weight was considered to be unlikely to result in moderate to severe fluorosis. Locker found that using this "TDI in a formula to calculate the MAC produced a value of 1.0 mg/L."

54) The Plaintiff claims that the Committee is negligent in maintaining their 1996 guideline for the maximum allowable concentration (MAC) of fluoride in drinking water at 1.5 mg/L because the Locker Report found that it should be 1 mg/L.

55) Locker reported that in setting their 1996 guideline, the Committee felt that "a reduction in the MAC from 1.5 to 1.0 mg/L was not considered to significantly decrease the risk of negative health effects since the total daily intake of fluoride of communities with 1.5 mg/L in the water supply is below the estimated 200 micrograms/kg body weight associated with skeletal fluorosis."

56) The Plaintiff claims that the MAC for fluoride in drinking water was originally set to protect children from the negative health effect of moderate dental fluorosis, not the negative health effect of skeletal fluorosis as the Committee theorized.

57) The MAC for fluoride in drinking water was set at 1.5 mg/L in the 40s because this value was "below the level of 1.7 ppm at which moderate fluorosis begins to appear." Locker found that the MAC was maintained by the government of Canada at 1.5 mg/L in 1978 and in 1996 "in order to avoid the excessive costs associated with meeting the lower guideline of 1.0 mg/L"

58) The Locker Report concludes that "the water supply is not the only source of fluoride to which children are exposed" and consequently, "in communities where the level is 1.5 mg/L, children in the vulnerable age range are at increased risk of exceeding the maximum recommended daily intake" and that if "the 1978 guideline is to be maintained, then efforts to reduce exposure to discretionary sources of fluoride need to be undertaken in those communities where fluoride levels exceed the 1.0 mg/L calculated on the basis of the 1994 TDI."

59) The Plaintiff claims that the government of Canada has made no efforts to reduce the exposure to discretionary sources of fluoride in communities in Canada that exceed the 1.0 mg/L MAC calculated on the basis of the 1994 TDI by Locker.

Bone Strength

60) Furthermore, Locker found that fluoridation in Canada "has the potential" to "adversely affect the bone strength" of Canadians. He found that "there are factors other than intermittent and total exposure that may influence the bone effects of long-term or lifetime exposure to such levels of fluoride: 1. progressive accumulation in the skeletal system in the form of fluorapatite that is less resorptive than hydroxilapatitie and therefore alters the remodeling cycle that in turn may result in impaired biomechanical properties, 2. exposure extended to more than 30 years, 3. substantial individual variations in the resorption from the stomach, and 4. renal insufficiency (the risk of which increases with age) that may result in

increased fluoride retention in bone. Therefore, while serum fluoride levels induced by drinking water treated for caries prevention may not reach an osteoanabolic threshold, a long-term (>30 years) fluoride accumulation in bone has the potential to lead to a fluoride content which may adversely affect bone strength."

Exhibit C. The Committee's 1996 guideline for fluoride called "Fluoride"

61) The plaintiff claims that the Committee's 1996 guideline for fluoride in drinking water called "Fluoride" (the "guideline"), as contained in the Canadian Guidelines for Drinking Water Quality, proves the Committee's negligence in setting this guideline because they state in their guideline that "It is apparent from the data in Table 1 that some children who consume drinking water containing 0.8-1.0 mg/L fluoride may have total daily fluoride intakes that exceed the TDI."

62) The Committee disregarded the fact that some children consuming drinking water containing 0.8 – 1.0 mg/L exceed their TDI (TDI = total daily intake of fluoride that is "unlikely to produce moderate to severe dental fluorosis" in children) by stating that "estimates of total daily fluoride intake by Canadian children may not reflect current intake because of recent initiatives to control fluoride intake from toothpaste ingestion" and by finding that "the selection of a lower concentration range would not significantly reduce the risk of fluoride-induced health effect, but would reduce the beneficial effects of fluoridated drinking water."

63) The plaintiff claims that the government of Canada is negligent in allowing the Committee to set the guideline for fluoride in drinking water in Canada at a level of 0.8 – 1.0 mg/L in 1996 because the Committee found it was higher than the TDI. The Locker Report found that initiatives to control fluoride intake from toothpaste were "questionable at best" and haven't reduced fluoride intakes below the TDI.

Exhibit D. Committee Notes and Minutes (1997-2000)

64) The Plaintiff claims that the Notes and Minutes of the Committee (1997-2000) prove that Federal Crown servants in Health Canada and the Committee have negligently failed to reduce the "optimal" fluoride level in drinking water for Canada (as contained in their 1996 guideline) because the Committee's notes report that the Locker Report found that "exposure to fluoride is 5 to 10 times higher than it was 30 years ago" when fluoridation was basically the only source of fluoride for Canadians and that it concluded that "it would be prudent to lower the

recommended optimal level." G. Jenkins, a Consultant for the Committee and past Chair, stated to the Committee at their October 23-24 Meeting that with "so much uncertainty" about fluoridation's cumulative deleterious effect on bones, namely skeletal fluorosis, "there isn't any justification to continue to add fluoride at the rate that we were, given the increased exposure from other sources."

65) G. Jenkins noted at the Committee's May 2000 meeting that some communities in Canada "have ceased fluoridation of their drinking water supplies and have retained the benefits of fluoridation from food exposures."

66) He also noted at the Committee's May 2000 meeting that Ontario had lowered it's "optimal" fluoridation range to "0.5-0.8 mg/L" from 0.8 – 1.0 mg/L after completing a provincial consolation process begun after the province was "flooded with information from around North America" about fluoridation. G. Jenkins noted that Ontario reduced its optimal fluoridation rate to 0.5 – 0.8 mg/L because it "felt most uncomfortable about the increased exposure to fluoride from sources other than drinking water" and that Ontario found that "overexposure to fluoride causes a range of problems from skeletal disease to the mottling of teeth." Ontario was concerned with "what happens to bones in the body other then teeth."

67) The plaintiff claims the government of Canada is not uncomfortable about the increased exposure to fluoride from other sources and will never, without help from this Court, lower their "optimal" public water fluoridation level for Canada.

68) The Committee was told that "Health Canada will include fluoride exposure in the next food basket survey". They asked the Secretary D. G. Green to find out "whether results from the Food Basket survey can be received sooner by September 1, 2000" and voted that the Committee "may want to re-examine the fluoride guideline once the data gaps have been filled and the results of the food basket study have been released." The Committee's Secretary D. G. Green "agreed to find out whether results from the Food Basket survey can be received sooner."

69) At the Committee's October 2000 meeting the Committee Members "stood by their earlier decision to wait until the results of Health Canada's Food Basket survey are known before re-assessing the current Canadian guideline."

70) The Plaintiff claims that the government of Canada is negligent in the above regards because they have to date failed to initiate the Food Basket survey as of June, 2005

even though the Committee asked to receive it as soon as possible at their May 2000 meeting. The Committee's Secretary told them that it would be available in approximately 2 years after that meeting and suggested that the Committee "wait until the food basket study comes out before looking at the guideline again."

71) G. Jenkins noted at the Committee's May 2000 meeting that "the need for more information on the amounts of fluoride in foods" and found that the recommended level of fluoride in drinking water "may fluctuate depending on these amounts."

72) The plaintiff claims that the government of Canada has negligently failed to initiate the Food Basket survey to ascertain the actual intake (AI) of fluoride in Canada today to check if the Committee's 1996 guideline for fluoride in drinking water is still safe and effective for Canadians. The Committee noted that the Locker Report rose "concerns that exposure to fluoride is 5 to 10 times higher now than it was 30 years ago" and noted that Locker recommended that the defendant "include fluoride in the next Health Canada food basket survey" and that "once the food basket survey is complete, the Subcommittee might want to look at its guideline again."

73) The Committee called for "Action" on the following two points in October 2000:

1. "M. Giddings to ask the Canadian Food Inspection Agency if there is a limit on the amount of fluoride in water used for food processing."

2. "Subcommittee to wait for the results of the Health Canada Food Basket Survey before revisiting fluoride guideline."

74) The plaintiff claims that neither of the two above calls for "Action" by the Committee has been fulfilled by the government of Canada.

Exhibit E. Health Canada's 1994 report "Investigation of inorganic fluoride and its effects on the occurrence of dental caries and dental fluorosis in Canada"

75) The plaintiff claims that the 1994 Health Canada report "Investigation of Inorganic Fluoride and its Effects on the Occurrence of Dental Caries and Dental Fluorosis in Canada" proves the Committee's negligence in setting their 1996 guideline for fluoride in drinking water at 0.8 – 1.0 mg/L to treat dental decay and in setting 1.5 mg/L as the MAC because this report found that in Canada it "is perhaps safe to say

that fluoride ingestion in an optimally fluoridated area today (1 ppm) is comparable to that in a community with 2 ppm fluoride during Dean's time."

76) The plaintiff claims that the government of Canada is negligent in not immediately enjoining fluoridation in Canada when Health Canada reported in 1994 that "optimally fluoridated areas" in Canada (1 ppm or 1 mg/L) are "comparable to that in a community with 2 ppm fluoride" during the Dean's time (1940s) because levels over 1.6 ppm fluoride in drinking water in Dean's time caused moderate dental fluorosis, a negative health effect never to occur with fluoridation, hence the reason for Dean setting the MAC for fluoride in drinking water at 1.5 mg/L in the 40s.

77) This Health Canada report concluded that current estimates of the prevalence of dental fluorosis and caries show that for many children, "the point of fluoride ingestion which was considered optimal has been surpassed."

78) The plaintiff claims that it isn't surprising that this report found that "many children" ingest more fluoride than is "considered optimal" because this report found that "the average dietary fluoride intake for six-year-old children was 0.86 mg/day in non-fluoridated areas, which is considered nearly optimal." And found that "the average 2-3-year-old would ingest slightly more fluoride from dentifrice alone (0.56 mg/day) than was initially recommended as a supplement in low fluoride areas." So, just eating an average diet in Canada and/or using fluoride toothpaste gives children almost or over the "optimal" amount of fluoride. Locker found that the fluoride intake from toothpaste "decreases progressively in school-aged children, it is still substantial up to 10 years of age." And reported that by the age of 3, "93%" of children used fluoride toothpaste.

79) The plaintiff claims that the defendant is criminally negligent and liable for all damages caused by public water fluoridation in Canada for not reducing Canada's guideline for fluoride in drinking water to take into account the fact that most children in Canada already ingest more than the recommended "optimal" amount of fluoride to treat dental decay from their diet and fluoride toothpaste alone and adding more fluoride by way of fluoridation will only further poison these kids and cause epidemic levels of dental fluorosis in Canada like we see today in Canada.

Exhibit F. "The City of Calgary Water Fluoridation Review" (1998)

80) The Committee voted at their April, 1998 meeting to have their Secretariat assess the "City of Calgary Water Fluoridation Review" and make "a recommendation on the need to re-evaluate" the range for fluoridation contained in their 1996 guideline.

81) The "City of Calgary Water Fluoridation Review" (the "Calgary Review") unanimously recommended that "water fluoridation in Calgary should not continue at its present concentration of 1 ppm. Should it continue at all, then the fluoride concentration in drinking water should decrease to at most .5 - .7 ppm."

82) The plaintiff claims that the Committee's Secretariat improperly assessed the Calgary Review because with a proper assessment they would have recommended to the Committee that their 1996 guideline be likewise reduced to 0.5 – 0.7 mg/L.

Total Fluoride Intake

83) The Calgary Review found that the "total fluoride intake" in the 1940's in North America was "about .5 – 1 mg/day but that by the 1990's the "total fluoride intake from various sources is estimated to be almost 10 times higher (3-9 mg/day)."

Skeletal Fluorosis

84) Crippling skeletal fluorosis occurs when 10 – 20 mg of fluoride has been ingested on a daily basis for at least 10 years and the Calgary Review found that the "total fluoride intake" in Canada "represents a potential risk of mild to moderate skeletal fluorosis in adult populations drinking water fluoridated at 1 ppm over long periods of time."

DMFT rates

85) The Calgary Review found that the 1985 DMFT (decayed missing or filled tooth) rate for 13 year old children in fluoridated Edmonton was 2.80 and for non-fluoridated Calgary 2.995. They found that this difference between DMFT rates was "not statistically significant" and this insignificant difference was explained away by the authors of the study by stating that "all the children in Calgary in 1985 were rated as 'fluoridated' due to exposure to fluoride from other sources (toothpaste, dental treatments, etc.) even though fluoride was not added to the water."

86) The plaintiff claims that the government of Canada is criminally negligent and liable for all damages caused by fluoridation in Canada because they know and knew since the early 1990s that non-fluoridated communities in Canada are rated as "fluoridated" due to exposure to fluoride from other sources such as toothpaste.

Exhibit G. The 1970 World Health Organization report "Fluorides and Health"

87) The plaintiff claims that the World Health Organization's 1970 report entitled "Fluorides and Human Health" back up the finding of the Calgary Review that there is a "potential risk" of mild to moderate skeletal fluorosis in adult populations drinking water fluoridated at 1 ppm over long periods of time in Canada.

88) It reported that at "levels of ingestion – from 2 to 8 mg daily – when signs of fluorosis appear in teeth mineralized during the ingestion…and over a number of years, skeletal fluorosis may arise, characterized by an increased density of bone…and "in certain regions in India, changes typical of skeletal fluorosis have been stated to occur at estimated lower dosages (Singh et al., 1962b)."

89) Early cases of skeletal fluorosis are usually in young adults whose only complaints are vague pains noted most frequently in the small joints of the hands and feet, in the knee joints and in the joints of the spine. The report states that cases of sketetal fluorosis are frequent in the endemic dental fluorosis areas and "may be misdiagnosed as rheumatoid or osteoarthritis." In the later cases of this debilitating disease, there is an obvious stiffness of the spine, with limitation of movements. There is difficulty in walking, due partly to the stiffness and limitations of the movements of various joints and partly to the neurological lesions of advanced cases. Similarly, some of the patients complain of dyspnoea (trouble breathing) on exertion because of the rigidity of the thoracic cage.

90) The plaintiff claims that the cases of arthritis in Canada – a disease that is still without a cause - are really misdiagnosed mild to moderate skeletal fluorosis.

Exhibit H. National Academy of Sciences "Drinking Water and Health (1977)

91) The plaintiff claims that the US National Academy of Science also backs up the Calgary Review's finding of a "potential risk" of skeletal fluorosis in those drinking water with 1 mg/L of fluoride in it by reporting in their 1997 publication "Drinking

Water and Health" that "a retention of 2 mg/day" of fluoride "would mean than an average individual would experience skeletal fluorosis" after 40 years.

92) Around 50% of all ingested fluorides per day are retained in the skeleton and on average Canadians living in fluoridated communities in Canada are ingesting 4 plus mg/day, meaning they are retaining 2 plus mg/day of fluoride in their skeletons and are risk of contraction mild to moderate skeletal fluorosis in 40 years.

Exhibit I. Health Canada's 1977 report called "Environmental Fluoride"

93) The plaintiff claims that the National Research Council of Canada also backs up the Calgary Review in it's finding of a "potential risk" of skeletal fluorosis in those drinking water with 1 mg/L of fluoride in it by reporting in their 1977 fluoride review "Environmental Fluoride" that the "…maximum total fluoride intake by adults should not exceed 3.2 mg per day."

94) The plaintiff claims that the government of Canada is negligent in allowing average total intakes of fluoride by adults in Canada to get higher than the maximum total intake by adults recommended by the NRC of Canada (3.2 mg per day).

95) The NRC report found that "the traditional diet of Newfoundland adults contributes 2.74 mg of fluoride per day in areas where drinking water is fluoride-free." And found that generally, "the North American situation is impossible to assess, because of the lack of information pertaining to the fluoride content of foodstuffs supplied by today's large-scale food distributors." A situation that yet to improve in Canada.

96) This report also highlights the discrimination of public water fluoridation because it found that "some indoor workers (not doing heavy manual labor) will consume one liter of fluoridated beverages per day, while some of their similarly-employed colleagues regularly consume as much as three liters." And they point out that laborers exposed to outdoor summer conditions "would undoubtedly ingest still more as would individuals subject to chronic polydipsia'. Furthermore, this report found that "undesirable side-effects (i.e. dermatological, gastro-intestinal, and neurological symptoms) were seen in one percent of a group of children and pregnant women ingesting 1.0 – 1.2 mg fluoride per day in tablet form." And that the "same symptoms have since been observed in people who had adverse reactions after using fluoride-containing toothpaste."

Exhibit J. "The Science and Ethics of Water Fluoridation"

97) In 2001, the Journal of the Canadian Dental Association published an article on fluoridation in Canada by Dr. Howard Cohen and Dr. David Locker (the author of the "Locker Report") entitled "The Science and Ethics of Water Fluoridation". It reported that advocates of water fluoridation, "in seeking to strike a balance between competing values, are attempting to reconcile irreconcilables: the demands of moral autonomy cannot be made compatible with what could be regarded as the involuntary medication of populations."

98) These doctors found that truthfulness entails a proper appraisal of the benefits and risks of water fluoridation and that currently, "the benefits of water fluoridation are exaggerated by the use of misleading measures of effect such as percent reductions" and that the "risks are minimized by the characterized of dental fluorosis as a "cosmetic" problem." Yet a study of the psychosocial impact of fluorosis found that "10 to 17 year olds were able to recognize very mild fluorosis and mild fluorosis and register changes in satisfaction with the color and appearance of teeth." They report that the "most dramatic finding" of the above study "was that the strength of association of [fluorosis] score with psychological behavioral impact was similar to that of overcrowding and overbite, both considered key occlusal traits driving the demand for orthodontic care." They conclude that in "the absence of a full account of benefits and risks, communities cannot make a properly informed decision whether or not to fluoridate, and if so at what level, on the basis of their own values regarding the balance of benefits and risks."

99) This article by Canadian mainstream dental researchers found that in "the absence of comprehensive, high-quality evidence with respect to the benefits and risks of water fluoridation, the moral status of advocacy for this practice is, at best, indeterminate, and could perhaps be considered immoral."

100) They claim that ethically, "it cannot be argued that past benefits, by themselves, justify continuing the practice of fluoridation." That this position "presumes the constancy of the environment in which policy decisions are made" and that questions of "public health policy are relative, not absolute, and different stages of progress not only will have, but ought to have, different needs and different means of meeting those needs." Standards regarding the optimal level of fluoride in the water supply were developed on the basis of epidemiology data collected more than 50 years ago and Drs. Cohen and Locker found that there "is a need for new guidelines for water fluoridation that are based on sound, up-to-date science and sound ethics." They concluded by clearly stating that in "this context, we would

argue that sound ethics presupposes sound science."

101) The plaintiff claims that the government of Canada has not listened to and acted upon the recommendations contained in Health Canada's 1999 Locker Report, prompting Dr. Locker to co-author this above article in order to further clarify the opinion of mainstream dental researchers in Canada today, namely that the advocacy of public water fluoridation at the level of 0.8 – 1.0 mg/L – as recommended, promoted and maintained by the defendant – is "immoral" due to the increase in the total intake (TI) of fluoride in Canada and the damages caused by the TI in terms of increased rates and severity of dental fluorosis fluoride poisoning and due to the potential risk of contracting sketetal fluorosis and decreasing bone strength that is associated with fluoridation at the "optimal" level as set out in the Committee's 1996 guideline for fluoride in drinking water (0.8 – 1.0 mg/L).

102) Drs. Locker and Cohen conclude by calling for "new guidelines for water fluoridation that are based on sound, up-to-date science and sound ethics." This conclusion joins the conclusions of the Locker Report and the Calgary Review that likewise call for new – lower - guidelines for fluoride in drinking water in Canada.

103) The Plaintiff claims that Health Canada and the Committee has used erroneous findings of fact made in a perverse and capricious manner without regard for the material evidence before them to set Canada's guideline for fluoride in drinking water at 0.8 – 1.0 mg/L in 1996 and asks this Court for a *writ of mandamus* ordering Federal Crown servants in Health Canada and the Committee to change Canada's guideline for fluoride in drinking water to 0.0 milligrams of fluoride per liter of water for the "optimal" fluoride level for dental health and 1 mg/L for the MAC.

Sworn before me at the City of Vancouver, British Columbia on June 21, 2005.

_____
Commissioner for Taking Affidavits

_____
Kevin James Millership
Plaintiff

Court File No. _____

FEDERAL COURT – TRIAL DIVISION

BETWEEN:

KEVIN JAMES MILLERSHIP

PLAINITFF

AND:

HER MAJESTY THE QUEEN

DEFENDANT

NOTICE OF CONSTITUTIONAL QUESTION

The Plaintiff intends to question the constitutional validity of public water fluoridation in Canada as authorized and purportedly authorized by various provincial and territorial statues and regulations, including but not limited to:

1. section 523(3) of the *Local Government Act* (British Columbia);
2. section 12 of the *Potable Water Regulation* (AR 277/2003) under the *Alberta Environmental Protection and Enhancement Act* (Alberta);
3. section 144 *Urban Municipality Act* (Saskatchewan);
4. the *Drinking Water Safety Act* and *Public Health Act* (Manitoba)
5. section 2 of the *Fluoridation Act* R.S.O. 1990 (Ontario);
6. regulations 197 and 200 under the *Health Act* (New Brunswick)
7. section 57 to 60 of the *Public Health Act* (Quebec)

and including the statues and/or regulations of Nova Scotia, Newfoundland Labrador, Prince Edward Island, Yukon, Nunavut and the Northwest Territories that authorize or purportedly authorize public water fluoridation in those provinces or territory by municipal bylaw or order in council, and with or without the assent of the electors.

Examples of provincial statues and regulations that authorize public water fluoridation are as follows. Section 523(3) of the *Local Government Act* (British Columbia) reads:

Health protection authority

523 (1) Subject to the *Health Act*, a council may, by bylaw,

(a) regulate for the purposes of maintaining, promoting or preserving public health or maintaining sanitary conditions, and

(b) undertake any other measure it considers necessary for those purposes

(2) A provision of a bylaw under subsection (1) that regulates is not valid until approved by the Minister of Health, who may consider and deal with it accordingly.

(3) As a limit on subsection (1), a council must not fluoridate the water supply unless the bylaw has received the assent of the electors.

Section 12 of the *Potable Water Regulation* (AR 277/2003) (Alberta) reads:

12 Where fluoride is added to a waterworks system, the
(a) application of fluoride,
(b) monitoring of fluoride,
(c) reporting of fluoride,
(d) design of fluoridation equipment, and
(e) operation of the fluoridation equipment
must be in accordance with the requirements specified in the Standards and Guidelines for Municipal Waterworks, Wastewater and Strom Drainage Systems, published by the Department, as amended or replaced from time to time.

And section 2(1) and 2(2) of the *Fluoridation Act* (Ontario) read:

Establishment of system

2. (1) Where a local municipality or local board thereof owns or operates a waterworks system, the council of the municipality may by by-law establish, maintain and operate, or require the local board to establish, maintain and operate, a fluoridation system in connection with the waterworks system."

Vote as to establishment of system

(2) The council may, before passing a by-law under subsection (1), submit to the electors of the municipality a question to the following effect:

Are you in favor of the fluoridation of the public water supply of this municipality?

and, where the question receives the affirmative vote of a majority of the electors who vote on the question, the council shall pass the by-law, or, where the question does not receive the affirmative vote of a majority of the electors who vote on the questions, the council shall not pass the by-law until the question has again been submitted to the electors of the municipality and it has received the affirmative vote of a majority of the electors who vote on it."

The question is to be argued on a day set by the Registry for the Federal Court – Trial Division, at Vancouver, British Columbia.

The following are the material facts giving rise to the constitutional question:

1. Section 523(3) of the *Local Government Act* and other provincial and territorial Acts and regulations authorize or purportedly authorize municipal governments to administer the drug fluoride into their municipal drinking water supplies to treat their citizen's dental decay (a community-wide medical procedure called public water fluoridation);

2. Public water fluoridation mass-medicates individuals in Canada with the drug fluoride without their individual informed consent being given;

3. Public water fluoridation has serious risks to public health including dental fluorosis fluoride poisoning and has little or no benefit in regards to reducing the dental decay of Canadians in the year 2005.

The following is the legal basis for the constitutional question:

1. The Plaintiff intends to argue that section 523(3) of the *Local Government Act* and all other sections of provincial and territorial Acts and regulations that authorize or purportedly authorize public water fluoridation in Canada by bylaw with or without the assent of the electors are of no force or effect pursuant to section 52 of the *Constitution Act, 1982*, on two bases. First, for violation of section 7 of the *Canadian Charter of Rights and Freedoms* and the substantive requirements of the rule of law and second, for violation of section 15 of the *Canadian Charter of Rights and Freedoms* and the substantive requirements of the rule of law.

Charter of Rights and Freedoms, section 7

2. The Plaintiff argues that section 523(3) of the *Local Government Act* and all other sections of provincial and territorial Acts that authorize public water fluoridation by bylaw with or without the assent of the electors are contrary to section 7 of the *Canadian Charter of Rights and Freedoms* (the "*Charter*").

3. Section 7 of the *Charter* reads:

Legal Rights

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

4. The Plaintiff argues that public water fluoridation ("fluoridation") deprives Canadians of their right to "*liberty*" under section 7 of the *Charter* because public water fluoridation is a mass-medication of a population with the drug fluoride without the informed consent of the individuals so affected. Informed Consent is a "*liberty*" interested protected by section 7 of the *Charter* and the Plaintiff argues that fluoridation medicates individuals without their informed consent even if they assented as an elector in a municipal fluoridation referendum because Canadians aren't accurately informed of the relative risks and benefits of fluoridation today to give their informed consent. Furthermore, an individual can only give their legal informed consent to be medicated to a doctor, not a state, as the Plaintiff claims is the case with public water fluoridation by referendum. Moreover, the Plaintiff argues that fluoridation medicates individuals without their informed consent if they:

    a. don't know they are being medicated by fluoride in the public drinking water, with figures as high as 51% of a fluoridated population not knowing what fluoridation is;

    b. didn't vote in the fluoridation referendum, which can be as high as 40 to 60% according to municipal election results;

    c. didn't have a chance to vote in the fluoridation referendum because it was held in the past or they weren't eligible to vote in it due to age, citizenship or incarceration;

    Public water fluoridation medicates a whole population regardless if they need to be medicated and regardless if they gave their informed consent to be medicated and being medicated with any drug, be it fluoridated water, fluoride pills, or fluoride drops, without informed consent, which the Plaintiff argues is the case with public water fluoridation in Canada, violates their "*liberty*" interest protected by section 7 of the *Charter*.

5. Individual Canadians and their doctors have the right to decide what, if any, drugs to take. The Plaintiff claims that individual Canadians have no constitutional or common law right to vote in a municipal referendum for what drugs (be it fluoride or any other drug) other individual Canadians and their families take, as the Plaintiff argues is in the case with public water fluoridation in Canada. The doctrine of informed consent, which the Plaintiff argues is violated by fluoridation, is deeply rooted in our common law as reported in *Fleming v. Reid* [1991] 82 D.L.R. (4th) 309-10:

    > "The right to determine what shall, or shall not, be done with one's own body, and to be free from non-consensual medical treatment, is a right deeply rooted in our common law. This right underlies the doctrine

> of informed consent. With very limited exceptions, every person's body is considered inviolate, and, accordingly, every competent adult has the right to be free from unwanted medical treatment. The fact that serious risks or consequences may result from a refusal of medical treatment does not vitiate the right to medical self-determination. The doctrine of informed consent ensures the freedom of individuals to make choices about their medical care. It is the patient, not the doctor, who ultimately must decide if treatment – any treatment – is to be administered."

6. The Plaintiff argues that public water fluoridation is a non-consensual medical treatment, a medical treatment that prevents individuals from making choices about their medical care thus violating their right to medical self-determination. The Plaintiff argues that common law dictates that it is the patient, not the voter in a fluoridation referendum, who ultimately must decide if treatment – any treatment – is to be administered and thus voting to medicate an individual by fluoridation is unlawful.

7. The Plaintiff further argues that fluoridation deprives Canadians of their right to "*security of the person*" under section 7 of the *Charter* because fluoridation poisons Canadians with fluoride causing dental fluorosis, a disease from fluoride poisoning, and its corresponding deleterious effects on the physical and psychological integrity of the Canadian so afflicted.

8. As reported in *Blencoe v. British Columbia* 190 D.L.R. (4^{th}) 540:

> "[55] In the criminal context, this Court has held that state interference with bodily integrity and serious state-imposed psychological stress constitute a breach of an individual's security of the person. In this context, security of the person has been held to protect both the physical and psychological integrity of the individual."

9. The Plaintiff argues that public water fluoridation is state interference with bodily integrity causing physical disease and serious state-imposed psychological stress because the state passes the legislation to authorize fluoridation, the state holds the fluoridation referendum, the state administers fluoridation and fluoridation causes dental fluorosis which causes serious psychological stress. The Plaintiff claims that it is known by the government of Canada that fluoridation causes dental fluorosis at epidemic levels and that dental fluorosis causes serious psychological stress in the individuals so afflicted and as such, the Plaintiff argues that fluoridation constitutes a breach of an individual's security of the person.

<u>*Charter of Rights and Freedoms*, section 15</u>

10. The Plaintiff argues that section 523(3) of the *Local Government Act* and all other provincial and territorial Acts that authorize fluoridation in

Canada by bylaw with or without the assent of the electors are contrary to section 15 of the *Canadian Charter of Rights and Freedoms*.

11. Section 15 of the *Charter* reads:

Equality Rights

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethic origin, colour, religion, sex, age or mental or physical disability."

12. The Plaintiff argues that public water fluoridation in Canada violates Canadian's right "to the *equal protection and equal benefit of the law without discrimination…based on…age or mental or physical disability*" because Canadian children who use fluoridated toothpaste and eat an average diet today already receive the recommended "optimal" amount of ingested fluoride per day to treat dental decay, and by adding fluoridation on top of these other sources of fluoride will overdose these children with fluoride to their detriment, causing dental fluorosis fluoride poisoning.

13. Dental fluorosis falls under the definition of "disability" in the *Canadian Human Rights Act* which includes "disfigurement" as a disability because dental fluorosis disfigures children's teeth causing social embarrassment.

14. The Plaintiff further argues that fluoridation discriminates against all Canadians, regardless of age, because people in Canada today eating an average diet and brushing their teeth with fluoridated toothpaste already ingest the so-called "optimal" amount of fluoride per day that was found in the 1940s by the government to treat dental decay. Fluoride levels in food and beverages have increased 5 to 10 times in Canada since the 1970s giving almost the "optimal" amount of fluoride alone purportedly need to treat dental decay and adding the amount of fluoride ingested from fluoridated toothpaste, an amount for children equal to or greater than the "optimal" amount fluoride the government recommends to treat dental decay, and the Plaintiff argues fluoridation treatments are unnecessary, deleterious, and unconstitutional under section 15 of the *Charter*.

Dated at the City of Vancouver, Province of British Columbia, this 21st day of June 2005.

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