

## Neoliberalism, Conflict of Interest, and the Governance of Health Research in Canada

In late 2009 controversy arose over the appointment of Dr. Bernard Prigent, Vice-President of Medical Affairs for Pfizer Canada, to the Governing Council (GC) of the Canadian Institutes of Health Research (CIHR). As of December 24, 2009, 4330 people had signed a petition to rescind the appointment on conflict-of-interest (COI) grounds. The story attracted considerable media attention<sup>1</sup> and debates between critics and defenders of the appointment<sup>2</sup>. The House of Commons Standing Committee on Health held two hearings on whether to recommend that the government rescind the appointment<sup>3</sup>. In a split vote the committee upheld the appointment.

COI has many definitions applicable in diverse settings, but in essence, a conflict is present when a person is obliged or inclined to pursue interests that compete in fundamental ways. I should not sit on a jury where I am biased towards or against a defendant because my interests conflict with my duty to seek justice impartially. I cannot simultaneously be a governor of the Toronto Maple Leafs and the Montreal Canadiens. The test is not whether my interest in X *invariably* conflicts with my interest in Y; it is that there is a reasonable likelihood of the interests colliding in non-trivial ways.

Public institutions present a special case because their “shareholders” are the populace and their mandates and obligations are not defined by the marketplace. The duty of public institutions is to serve the public interest – a notoriously difficult concept to pin down with precision. In the case of large and diverse institutions such as the CIHR, there may be multiple mandates that sometimes conflict with each other. Where this is the case, there is a duty to clarify the hierarchy of interests and to act in accord with it. Rarely are all interests entirely aligned; the

preference of nurses for day shifts must be subordinated to the requirement of 24/7 care in hospitals.

Importantly, there are those who argue that there is no distinct public interest; there are only particular interests and it is the balance and interplay among them that defines the common good. This view is represented by the neoliberal Chicago School of Economics and others who are deeply suspicious of government, regulation, broad democratic agendas, and social engineering. The opposing and by far the majority view – that the public interest is more than the sum of and exchanges among individual interests – is the foundation of a wide range of political theories, from Burkean conservatism to social democracy to communitarianism. The nuances of these opposing positions cannot be addressed here; suffice it to say that the difference is highly relevant to the Prigent case.

Dr. Prigent is a long-time drug company executive; there is no doubt about his primary obligation to Pfizer's shareholders and his organizational superiors. Nor is Pfizer's primary obligation mysterious: it exists to make money for its shareholders. If the choice is between improving the health of the population and making money, it must choose the latter. If sales decline because a competitor's superior product supplants its own, it must regard this as a failure. It has an obvious interest in the flow of public research money to science that may lead to drug development and an obvious interest in diverting investments away from science that may reveal the comparative ineffectiveness of a drug or challenge the pharmacological therapeutic paradigm.

The CIHR is funded by taxpayers who clearly benefit from science that from time to time threatens drug company profits. Hormone replacement therapy for menopausal women and Vioxx were huge commercial successes. They were by any reasonable account public interest failures. It logically follows that pharma's interests must, from time to time, conflict with the public interest.

And if that is true, the Prigent appointment is defensible only on the neoliberal understanding of COI. The core of that theory is that it rarely, if ever exists at the governance level of public institutions, and when it does, the remedy is simply to declare rather than avoid it.

That position has been articulated by Dr. Alain Baudet, the President of the CIHR. At the Standing Committee hearings he said explicitly that the interests of industry and the CIHR should be “aligned.” The interests of pharma are the public interest; commercialization and profit in themselves define the successful translation of science into public benefit. The moral arbiter of commercialization is not a set of ethical principles, but the health care marketplace. If an industry that spends up to 40% of its revenues on marketing persuades physicians, pharmacists and the public to prescribe, purchase and consume a product of minimal therapeutic value, the outcome is a success because a lot of money changes hands. If independent scientific and clinical evidence persuades these same constituencies to reduce their consumption of that same product, it is a setback to the commercialization agenda, and therefore a failure. Dr. Baudet’s defence of the appointment has the virtue of clarity: the intent is to obliterate any perceived conflict between the mission of his agency and the commercialization imperative.

Only inhabitants of this alternative moral universe could fail to see the real and apparent ethical flaws inherent in appointing a pharma executive to the CIHR GC. Pharma is not just any commercial entity; it has a long and sinister history of documented assaults on scientific integrity and honest marketing<sup>4</sup>. Nothing prevents the CIHR from seeking advice from commercial interests. Governments regularly communicate with registered lobbyists unconflicted by dual loyalties but do not appoint them to the Cabinet. Should a lobbyist be elected to Parliament and achieve Cabinet status, she cannot remain an

active officer of a private corporation. Dr. Prigent is an active Pfizer executive, and as a GC member he can influence the direction of scientific activity in Canada by virtue of the Council's power over the establishment and termination of its Institutes and other special programs.

The appointment and its underlying logic reflect a failure not only of basic ethics and intellectual rigour, but of accounting. Those who promote the alignment of the CIHR and pharmaceutical agendas are bedazzled by half of the financial statements – the assets and revenues – but are blind to the liabilities and expenditures. Yes, pharma invests in R&D, creates and sustains scientific and marketing jobs, makes profits, and pays taxes. But there is also a great deal of off-label drug use (recently estimated as 20% of all sales, or over \$5 billion in Canada), avoidable adverse drug reactions, and consumption of expensive new drugs that are no better than the cheaper ones they have replaced. The US Food and Drug Administration estimates that only a fifth all new drugs submitted for approval have the potential to add any therapeutic value<sup>5</sup>. The public subsidizes the very marketing that creates these market distortions because it is a tax deductible expense. By the government's own calculations, the price of generic drugs in New Zealand is less than a quarter of the cost in Canada; drugs still under patent are 20% cheaper<sup>6</sup>.

These phenomena are for society at large economic failures, not successes. Only industry's interests are served by high prices, expanded use irrespective of therapeutic benefit, longer patents, and a happy head office in (usually) another country. The potential for conflict is obvious, and actual conflicts are legion. The assumption that these interests invariably align with the public interest is demonstrably untenable.

On general grounds, then, the appointment constitutes a clear COI unless the concept itself is to be abandoned as a serious ethical guide to governance structure and behaviour. The

selection of a Pfizer Canada official adds yet another layer of troublesome ethical conduct. The government, with the active and apparently unanimous approval of the GC, has chosen to honour a company with a recent history of repeat offences against scientific and marketing integrity. Pfizer has recently paid \$2.3 billion in criminal fines and penalties for illegally marketing four drugs, which is merely the latest in a series of malfeasances dating from 2002<sup>7</sup>. Dr. Prigent is nowhere on record as having opposed or distanced himself from Pfizer's felonies. The truncated hearings on his appointment (limited to a total of two hours) left no time to ask Dr. Prigent's defenders whether they thought the company's transgressions were relevant to his fitness to serve.

The final irony is that Canada appears to be moving in the opposite direction from the US. Having witnessed the impact of systematic inattention to both the appearance and reality of COI, the Obama administration has removed numerous registered lobbyists from public boards<sup>8</sup>. More discouraging than the Prigent appointment in itself is the adamant refusal of either government or the CIHR itself to acknowledge that the appointment raises even the possibility of COI. It is one thing to make and defend a decision; it is quite another to refuse to reflect on it or to engage the debate constructively.

The CIHR could have sent any of its GC members to defend the appointment before the Standing Committee on Health. It chose Dr. Jean Rouleau, Dean of Medicine at the Université de Montréal, whose own research has been funded by Pfizer and who has negotiated a Pfizer grant to his faculty. Neither he nor CIHR thought that these relationships created either the appearance or reality of COI. And herein lies the root of the problem: a notion of COI so stripped of its meaning that those who violate it are as oblivious to their compromised status as the emperor was unaware of his nakedness. In the end, what is most disturbing

about l'affaire Prigent is what it tells us about the pervasiveness of ethical obtuseness among our political and scientific leadership.

- <sup>1</sup> Munro M. Scientists protest appointment of Pfizer boss to health panel. Ottawa Citizen, December 7, 2009, <http://www.ottawacitizen.com/technology/Scientists+protest+appointment+Pfizer+boss+health+panel/2313837/story.html>
- <sup>2</sup> Lewis S. Where there's smoke, there's Pfizer: Sparks fly over recent CIHR appointment; Sharma A. Appointment of Dr. Bernard Prigent to the Canadian Institutes of Health Research (CIHR) Governing Council (GC); Baylis F. An intractable conflict of interest; Lewis S. Well I declare: The emasculation of conflict-of-interest. Longwoods Publishing, <http://longwoods.com/home.php?cat=116>.
- <sup>3</sup> Canada. Parliament. House of Commons, Standing Committee on Health. Evidence of Proceedings, meeting no. 47, November 30, 2009 <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4275165&Language=E&Mode=1&Parl=40&Ses=2> and meeting no. 49, December 7, 2009 <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4319116&Language=E&Mode=1&Parl=40&Ses=2>
- <sup>4</sup> Fraud and the pharmaceutical industry. <http://www.uow.edu.au/~bmartin/dissent/documents/health/pharmfraud.html>.
- <sup>5</sup> United States General Accounting Office. New drug development: Science, business, regulatory, and intellectual property issues cited as hampering drug development efforts. Report GAO-07-49, November 2006. <http://www.gao.gov/new.items/d0749.pdf>.
- <sup>6</sup> Patented Medicine Price Review Board. Non-Patented Prescription Drug Prices Reporting. Canadian and Foreign Price Trends. Ottawa: PMPRB, June 2006.
- <sup>7</sup> O'Reilly C, Capaccio T. Pfizer agrees to record criminal fine in fraud probe. Bloomberg News, September 2, 2009. [http://www.bloomberg.com/apps/news?pid=20601103&sid=a4h7V5lc\\_xXM](http://www.bloomberg.com/apps/news?pid=20601103&sid=a4h7V5lc_xXM).
- <sup>8</sup> Editorial, No place for (registered) lobbyists. December 3, 2009, [http://www.nytimes.com/2009/12/04/opinion/04fri4.html?\\_r=1&th&emc=th](http://www.nytimes.com/2009/12/04/opinion/04fri4.html?_r=1&th&emc=th).