Based on a novel legal theory used nowhere else in the world, Canadian courts have revoked 24 patents on innovative medicines used by millions of people suffering from cancer, osteoporosis, diabetic nerve pain and other serious conditions. That legal theory, known as the “promise doctrine,” confounds the time-tested way innovators turn basic research into new treatments and cures. It arbitrarily requires information at the time a patent is filed that is typically shown much later through clinical trials. Canada’s new government must act to bring its laws back in line with global rules and norms.

**BREAKING PROMISES TO INNOVATORS**

To invest the substantial resources required over many years to research, develop and deliver new medicines to patients who need them, biopharmaceutical innovators need certainty and the ability to reliably secure and enforce patents. Canada’s “promise doctrine” undermines patent protection and removes a critical incentive that drives and sustains biopharmaceutical innovation. Today, biopharmaceutical innovators have no certainty as to how their patent applications will be read in Canada and whether the patents they rely on to make the risky investments needed to bring new treatments and cures to market will be upheld.

**HARMING PATIENTS**

After a string of misguided Canadian court judgments, biopharmaceutical innovators no longer know how to secure patents in Canada. They are even less able to maintain those limited rights. That harms patients everywhere by reducing incentives for investment in new treatments and cures, including for conditions such as Alzheimer’s that do not yet have effective therapies.

Canadian patients are already seeing the problem first-hand. Since the “promise doctrine” was introduced, the number of clinical trials conducted in Canada has decreased by 21 percent.1 Canadian patients are missing out on improvements to existing treatments, including new formulations and delivery methods that can make medicines easier to use.

**THREATENING JOBS AND ECONOMIES**

Past Canadian court actions and the potential for further losses in the world’s eighth largest market for branded pharmaceuticals are threatening jobs and economies on both sides of the border. The “promise doctrine” risks the future of Canada’s own multi-billion dollar biopharmaceutical sector and the broader competitiveness of an already fragile economy that is fast falling behind the curve. The Global Competitiveness Report, which assesses the

competitiveness of 144 counties, ranks Canada 24th in its capacity to innovate, behind the United Arab Emirates, Malaysia, and Qatar.\(^2\) Patent applications

are up around the world, but dropped 8.7 percent in Canada between 2006 and 2012.\(^3\) Research and development spending declined by more than 30 percent over roughly the same period and, according to World Bank data,\(^4\) Canada is in the bottom 25 percent of G20 countries for pharmaceutical patents filed by its own citizens.\(^5\)

### OUT OF STEP WITH THE WORLD

The “promise doctrine” is out of step with global rules and the way patent systems work in Europe, Japan, Mexico, the United States and elsewhere around the world. Canada’s new government has an opportunity to fix this problem and promote the further growth of its own innovative industries. Now is the time to act.

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