Jordana Sanft
416-596-1083
jsanft@litigate.com

March 28, 2022

SCC Leave Denied in Alexion Pharmaceuticals Inc v Canada (Attorney General)

In our blog 2021 Year in Review & 2022 Trends to Watch for Pharmaceutical Patents, we identified *Alexion Pharmaceuticals Inc v Canada (Attorney General)* as an important case to watch in 2022 as leave to the Supreme Court was filed.

As a recap, in July 2021, the Federal Court of Appeal held that the Patented Medicine Prices Review Board's decision regarding the alleged excessive pricing of the drug SOLARIS was unreasonable. The FCA reversed the finding of the Federal Court and granted Alexion's application for judicial review, quashed the Board's decision, and remitted the matter for redetermination.

The FCA held that the PMPRB's mandate is to control patent abuse, not regulate reasonable pricing. Alexion was awarded its costs on the appeal and below. On September 29, 2021, the Attorney General of Canada sought leave to appeal to the Supreme Court of Canada.

On March 24, 2022, the leave application to the SCC was dismissed with costs.

The decision in this case is likely appreciated by innovator pharmaceutical manufacturers undergoing pricing review and negotiations with the PMPRB. This decision may also impact the PMBRB's mandate and the new PMPRB guidelines and regulations that continue to be postponed by the federal government.