

Federal Court of Canada  
Trial Division



Section de première instance de  
la Cour fédérale du Canada  
Date : 19991125

Docket : T-398-99

OTTAWA, ONTARIO, THURSDAY, THIS 25TH DAY OF NOVEMBER, 1999

BEFORE: THE HONOURABLE MR. JUSTICE TEITELBAUM

**IN THE MATTER OF** Sections 18, 18.1 and 18.2 of the *Federal Court Act*, R.S.C. 1985, Chapter F-7.

**AND IN THE MATTER OF** the *Food and Drugs Act*, R.S.C. 1985, Chapter F-27 and Division 8 of the Regulations thereunder.

**AND IN THE MATTER OF** Section 55.2(4) of the *Patent Act and the Patented Medicines (Notice of Compliance) Regulations*, SOR/93/133.

BETWEEN:

**MERCK & CO., INC. and  
MERCK FROSST CANADA & CO.**

FEDERAL COURT OF CANADA COUR FÉDÉRALE DU CANADA	
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D. FLEMMING REGISTRY OFFICER - FONCTIONNAIRE DU GREFFE	
OTTAWA, ONTARIO	103

Applicants

- and -

**THE ATTORNEY GENERAL OF CANADA  
THE MINISTER OF HEALTH  
and NU-PHARM INC.**

Respondents

**REASONS FOR ORDER AND ORDER**

[1] The oral application for an interim order to stay the decision of McGillis, J. of November 23<sup>rd</sup>, 1999 is denied.

[2] It is trite law that, as in an application for an injunction, the applicant must show:

- (a) a serious issue
- (a) irreparable harm and
- (b) that the balance of convenience lies in favour of the applicant

[3] I have no evidence before me, other than statements of counsel for the applicant, of the irreparable harm that the applicant will suffer.

[4] What was said to me by counsel for the applicant, is, at this point, purely speculation.

[5] The hearing for a stay application is set down for December 2, 1999.

[6] At that time the parties will be in a better position to submit written evidence.

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J.F.C.C.