

**C A N A D A
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

NO : 500-06-000016-960

**SUPERIOR COURT
Class action**

DOMINIQUE HONHON

Plaintiff

-vs-

**THE ATTORNEY GENERAL OF CANADA
THE ATTORNEY GENERAL OF QUÉBEC
THE CANADIAN RED CROSS SOCIETY**

Defendants

-and-

**MICHEL SAVONITTO, in the capacity of the
Joint Committee member for the province
of Québec**

Petitioner

-and-

**FONDS D'AIDE AUX RECOURS
COLLECTIFS**

-and-

LE CURATEUR PUBLIC DU QUÉBEC

Mis-en-cause

**C A N A D A
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

NO : 500-06-000068-987

**SUPERIOR COURT
Class action**

DAVID PAGE

Plaintiff

-vs-

**THE ATTORNEY GENERAL OF CANADA
THE ATTORNEY GENERAL OF QUÉBEC
THE CANADIAN RED CROSS SOCIETY**

Defendants

-and-

**FONDS D'AIDE AUX RECOURS
COLLECTIFS**

-and-

LE CURATEUR PUBLIC DU QUÉBEC

Mis-en-cause

**APPLICATION FROM THE JOINT COMMITTEE FOR THE APPROVAL OF
MODIFICATIONS TO THE COURT APPROVED PROTOCOLS**

(Section 9.02(b) and 10.01(1) (h) of the Settlement Agreement)

TO THE HONOURABLE JUSTICE CHANTAL CORRIVEAU DESIGNATED TO HEAR MOTIONS IN THESE CASES, THE PETITIONER RESPECTFULLY SUBMITS:

A- CONTEXT

1. The 1986-1990 Hepatitis C Settlement Agreement provides for the Courts to approve, rescind or amend protocols for the administration of the Settlement Agreement proposed by the Joint Committee;
2. Currently, there are 13 court approved protocols which provide direction to the Administrator on reviewing and assessing the claims brought pursuant to the Transfused HCV Plan and the Hemophiliac HCV Plan;
3. Concurrently with this application, the Joint Committee is applying for court approval of the HCV Late Claims Benefit Plan. Section 2.01(2) of the proposed plan provides for the Courts to enjoy the same powers in respect of implementing, administering, monitoring and supervising as provided in the Settlement Agreement. If this plan is approved, each court approved protocol must be updated to address whether it applies to the HCV Late Claims Benefit Plan and if so, to reference the applicable sections of the HCV Late Claims Benefit Plan and to address the way in which it applies. The majority of the amendments proposed to the protocols are for that purpose;
4. Concurrently with this application, the Joint Committee is filing a distinct *Application to approve modifications to the Medical Evidence Court Approved Protocol with respect to the HCV Compensable Drug Therapy* to have the courts approve as Compensable HCV Drug Therapy, treatment with direct acting anti-viral agents ("DAA"), where the HCV Infected Person's treating physician certifies the HCV Infected Person suffered adverse side effects as a result of DAA treatment. If this application is granted, certain amendments to the Medical Evidence court approved protocol are necessary and appropriate. Those amendments are addressed in detail in the material supporting this other application;
5. Certain housekeeping amendments are also proposed. The existing court approved protocols were drafted at different times and they do not all use a consistent style nor always make use of the definitions in the Settlement Agreement, the Transfused HCV Plan and the Hemophiliac HCV Plan. In some cases, their titles are cumbersome or not appropriately descriptive. The Joint Committee has taken this opportunity to review them all and to propose amendments intended to utilize a consistent style, a clear statement at the beginning of each protocol as to which provisions of which Plans (including the proposed HCV Late Claims Benefit Plan, if approved) the protocol applies; to use the defined terms in the Plans for consistency and clarity, and to remove provisions which are out of date or no longer applicable;

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6. Finally, some substantive issues were identified in this review which do not fall into the general categories above. Those issues, and the amendments proposed are:
- (a) **Recent Diagnosis Exception to June 30, 2010 First Claim Deadline (A1) and Issuance of Claim Forms After June 30, 2010 First Claim Deadline (A2)** – these two protocols included transition provisions from a previous protocol that dealt with other deadlines in the Plans. The transition has taken place fully so those provisions no longer have any purpose. The Joint Committee proposes their deletion.
 - (b) **Non-Prescription Intravenous Drug Use (A5)** – the Joint Committee proposes adding language addressing the application of this protocol to persons with Thalassemia Major. When the Settlement Agreement was approved, the courts ordered that persons with Thalassemia Major would be subjected to the proof requirements and benefits under the Hemophiliac HCV Plan except section 4.01(5) of that Plan. At the time this protocol was first drafted, that was well understood and persons with Thalassemia Major were not expressly addressed. Given the passage of time, the Joint Committee thought it appropriate to expressly address their status in this protocol.
 - (c) **Uninsured Treatment and Medical Expenses and Out-of-Pocket Expenses (A8)** – the Administrator has recommended the deletion of the provision limiting the number of times per year a class member could claim these expenses to once per year or more often if the total claimed exceeds \$250 since it is no longer necessary for the purposes of efficiency and volume control in administration;
 - (d) **Loss of Services in the Home (A10)** - Concurrently with this application, the Joint Committee is filing a distinct *Application for the implementation of the 2016 Allocation Orders* seeking several conclusions, one of which is to order that alive permanently disabled dependants of an HCV Infected Person, who receive compensation for loss of services in the home, receive compensation for loss of services for their lifetime rather than to the life expectancy of the HCV Infected Person, to be paid out of excess capital. This modification is substantively addressed in this separate application.

(e) **Claims or Late Claims Involving Family Members and/or Dependants (A9):**

- (i) this protocol was previously titled "Claims Where One or More Family Member was a Minor or Mentally Incompetent", but it also applied to several types of claims involving family members and/or dependants who were neither under age nor mentally incompetent. The title and wording of the protocol has been cleaned up in this regard;
- (ii) this protocol did not address the duration of loss of support payments to a Child who was a Dependant at the time of the deceased's death. It has been clarified to provide the same duration as provided for loss of services (in the Loss of Services in the Home protocol), namely that the Child shall be presumed to be a Dependant until age 25 unless the Child provides the Administrator with evidence that some other period of loss is appropriate;
- (iii) this protocol provides for review in the event the Courts amend or remove the \$75,000 and/or the 70% restrictions on the calculations of loss of income (which affect loss of support payments governed by the protocol). Those restrictions have been amended (and in the case of the 70% restriction, removed) over the years and the Joint Committee is of the view that their amendment and/or removal do not affect the applicability of this protocol.
- (iv) concurrently in its *Application for the implementation of the 2016 Allocation Orders*, the Joint Committee seeks an order to permit Approved HCV Infected Persons co-infected with HIV who made an election under Section 4.08(2) of the Hemophiliac HCV Plan, to re-elect and receive all compensation and benefits to which they would be entitled under the Settlement Agreement as if that election had not been made, provided that the compensation they received prior to their re-election is indexed to the date of their re-election in accordance with Section 7.02 and deducted from the compensation to which they are entitled as a result of their re-election. If such an order is rendered by the Court, amendments made to this protocol address this re-election.

(f) **Deficient Claims/Late Claims, Claimants that Cannot be Located and Duplicate Claims (A11)** - this protocol directs the Administrator to use reasonable efforts through the internet to locate claimants whose contact information is no longer valid. The words "or other available means" have been added to provide greater flexibility;

as mentioned in the affidavit of Heather Rumble Peterson made on October 13, 2017 and file in support thereof as **Exhibit R-1**;

7. All the proposed modifications to the protocols appears in Appendices B1-B13 (black-lined versions) which is alleged in support thereof as **Exhibit R-2**;
8. The Joint Committee recommends approval of the proposed modifications in the forms set out as Appendices A1-A13 (clean versions) alleged in support thereof as **Exhibit R-3**;
9. Similar Joint Committee applications will be filed before the Superior court of Ontario and the Supreme court of British-Columbia.
10. The present application is well founded in facts and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT Petitioner's present application;

APPROVE the modifications to court approved protocols of the 1986-1990 Hepatitis C Settlement Agreement and of the proposed HCV Late Claims Benefit Plan in the forms set out in Appendices A-1 to A-13 (Exhibit R-3) and listed as follows

- A1 Recent HCV Diagnosis Exception to the June 30, 2010 First Claim Deadline
- A2 Issuance of Initial Claims Packages after the June 30, 2010 First Claim Deadline
- A3 Traceback Procedure Criteria
- A4 Eligibility and Traceback Requirements for Secondarily Infected Persons
- A5 Non-Prescription Intravenous Drug Use
- A6 Medical Evidence
- A7 Alternative to Biopsy Medical Evidence
- A8 Uninsured Medical Expenses and Treatment and Out-of-Pocket Expenses
- A9 Claims or Late Claims Involving Family Members and/or Dependants

- A10 Loss of Services in the Home
- A11 Deficient Claims/Late Claims, Claimants that Cannot be Located and Duplicate Claims/Late Claims
- A12 Payments to Approved Class Members and Approved Late Claim Class Members
- A13 Rules for References and Arbitrations

ORDER for such further and other relief as counsel may request and this Honourable Court may direct;

ORDER that the judgment to be rendered shall not be effective unless and until corresponding orders are made by the Supreme Court of British Columbia and the Ontario Superior Court of Justice;

THE WHOLE without costs.

Montréal, October 13, 2017



SAVONITTO & ASS. INC.

Attorneys for Petitioner

AFFIDAVIT

I, the undersigned, **MARTINE TRUDEAU**, lawyer, practicing in the law firm of Savonitto & Ass. Inc. located at 468, rue St-Jean Street, Suite 400, in the city and district of Montreal, solemnly affirm the following:

1. I assist the Member of the Joint Committee for Quebec acting as applicant for the purposes of this application;
2. All the facts alleged in this application are true.

AND I HAVE SIGNED



MARTINE TRUDEAU

**Affirmed before me
In Montreal this October 13, 2017**



**Line Gagnon #141094
Commissioner of oaths for Quebec**



LIST OF EXHIBITS

- EXHIBIT R-1:** Affidavit #19 of Heather Rumble Peterson made on October 13, 2017
- EXHIBIT R-2 :** Black-lined versions of the protocols showing the proposed modifications (assembled as Appendices B-1 to B-13)
- EXHIBIT R-3 :** Clean versions of the proposed revised protocols (assembled as Appendices A-1 to A-13)

Montréal, October 13, 2017



SAVONITTO & ASS. INC.
Attorneys for Petitioner

NOTICE FOR PRESENTATION

Me Nathalie Drouin
Me Stéphane Arcelin
**PROCUREUR GÉNÉRAL DU CANADA/
ATTORNEY GENERAL OF CANADA**
Complexe Guy Favreau Tour Est
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Me Serge Ghorayeb
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Service du contentieux
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Me Mason Poplaw
Me Kim Nguyen
McCARTHY TÉTRAULT
1000, rue de la Gauchetière Ouest
Bureau 2500
Montréal (Québec) H3B 0A3

TAKE NOTICE that the present *Application from the Joint Committee for the approval of modifications to the Court Approved Protocols* will be presented for adjudication before the Honourable Chantal Corriveau, J.C.S., at the joint hearing specifically scheduled to take place on November 22 and 23, 2017, in Toronto at a location to be determined.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, October 13, 2017


SAVONITTO & ASS. INC.
Attorneys for Petitioner

<p>N° : 500-06-000016-960</p> <p>SUPERIOR COURT (Class Action Province of Quebec District of MONTREAL</p>	
<p>DOMINIQUE HONHON</p>	<p>Plaintiff</p>
<p>-vs- THE ATTORNEY GENERAL OF CANADA THE ATTORNEY GENERAL OF QUEBEC THE CANADIAN RED CROSS SOCIETY</p>	<p>Defendants</p>
<p>-and- ME MICHEL SAVONITTO, in the capacity of the Joint Committee member for the province of Quebec</p>	<p>Petitioner</p>
<p>FONDS D'AIDE AUX RECOURS COLLECTIFS -and- LE CURATEUR PUBLIC DU QUÉBEC</p>	<p>Mis-en-cause</p>
<p>N° : 500-06-000068-987</p> <p>SUPERIOR COURT (Class Action Province of Quebec District of MONTREAL</p>	
<p>DAVID PAGE</p>	<p>Plaintiff</p>
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<p>APPLICATION FROM THE JOINT COMMITTEE FOR THE APPROVAL OF MODIFICATIONS TO THE COURT APPROVED PROTOCOLS & EXHIBITS R-1, R-2 AND R-3</p>	
<p>ORIGINAL</p>	
<p>Savonitto 468, St-Jean street, #400 Montreal (Quebec) H2Y 2S1 Tél. : 514-843-3125, #214 Fax. : 514-843-8344 email : mtrudeau@savonitto.com Notification : notification@savonitto.com</p>	
<p>Me Martine Trudeau ☎ : 20475</p>	<p>BS2448</p>