

**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 THE HCV
LATE CLAIMS BENEFIT PLAN, NOTICE CAMPAIGN, ADMINISTRATION BUDGET
AND APPOINTMENT OF LATE CLAIMS REFEREES**

(Section 10.01(1) of the Settlement Agreement as modified by Schedule F approved by this Court on November 19, 1999 and paragraph [260] of the judgment rendered in this case on August 15, 2016 and subsequent judgment rendered in this case on February 15, 2017 to reconcile the allocation orders)

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

A- CONTEXT

1. In their Orders/Judgments dated August 15, 2016, August 16, 2016 and February 15, 2017 (the "2016 Allocation Orders"), the supervising Courts approved the establishment of a discrete HCV Late Claims Benefit Plan and allocated Excess Capital in the amount of \$32,450,000 plus administrative costs of \$51,000 and required capital in an amount to be agreed upon by the Joint Committee and the Attorney General of Canada or directed by the Courts;
2. The plan was ordered to be for the benefit of Class Members as defined in section 1.01 of the Transfused HCV Plan or Hemophiliac HCV Plan (collectively, the "Plans") unable to claim under the Plans, because they did not apply prior to June 30, 2010 (the "First Claim Deadline") and do not meet the requirements of the exceptions to that deadline set out in section 3.08 of the Transfused HCV Plan/section 3.07 of the Hemophiliac HCV Plan and/or the applicable court approved protocols (the "Exceptions");
3. The stated purpose of the plan is to provide benefits that are not better or different than the benefits provided to other Class Members;
4. The 2016 Allocation Orders further provided that the terms of the plan shall be prepared by the Joint Committee for approval by the Courts;
5. At paragraph 190 of his decision dated August 15, 2016 and rendered in the Ontario sister-case of the present class action, Justice Perell suggested that the plan might include a new notice program and a new deadline for making claims for compensation. He also indicated that it might be necessary to introduce holdbacks depending on the take up by qualifying Class Members;

B- THE PROPOSED HCV LATE CLAIMS BENEFIT PLAN

6. The proposed HCV Late Claims Benefit Plan provides benefits (in 2014 Dollars) that are not better or different than the benefits provided to other Class Members, including the Special Distribution Benefits approved in the 2016 Allocation Orders, as appears from the **HCV Late Claims Benefit Plan** appended as Exhibit A to the affidavit #18 of Heather Rumble Peterson sworn on October 13, 2017 and filed in support thereof as **Exhibit R-1**;

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7. The HCV Late Claims Benefit Plan contains terms and conditions similar to the Plans, and is subject to the same court approved protocols and tariffs, with the necessary modifications, as more fully described in paragraph 10 of the affidavit of Heather Rumble Peterson (R-1);
 8. The Joint Committee circulated for comment a draft of the HCV Late Claims Benefit Plan to the Attorney General of Canada and to counsel for the provincial and Territorial governments and received input from various service providers and advice from a trust and estates lawyer which are reflected in the HCV Late Claims Benefit Plan, as more fully described in paragraphs 7-9 of the affidavit of Heather Rumble Peterson (R-1);
 9. Based on the trust and accounting advice received by the Joint Committee, the HCV Late Claims Account will be one of three accounts of the Trust Fund, as at December 31, 2013, held, invested and administered by the Trustee. The other two accounts will be the Special Distribution Benefits Account and the Regular Benefits Account. This technical aspect is substantially addressed in a distinct application (*The Joint Committee Application for the Implementation of the 2016 Allocation Orders*) to be heard by the Court at the same hearing date;
 10. For the purposes of implementing, administering, monitoring and supervising the HCV Late Claims Benefit Plan and the HCV Late Claims Account, the Administrator, Trustee, Fund Counsel, Auditors, Joint Committee, Investment Advisors, Referees, Arbitrators, Monitor, Late Claims Referees and Courts will perform the role and have the duties and responsibilities provided for in the Settlement Agreement (as modified by Schedule F), the 1999 Approval Orders, the court approved protocols, the order implementing the HCV Late Claims Benefit Plan, the HCV Late Claims Benefit Plan and the court approved protocols, with all the necessary adaptations, modifications and powers as may be required to do so;
 11. As one measure to ensure the sufficiency of the HCV Late Claims Account, section 7.03A of the HCV Late Claims Benefit Plan imposes an initial 25% holdback on payments to be made, subject to triennial financial sufficiency reviews undertaken concurrently with those required by the Settlement Agreement for the Plans;
 12. Each of the holdbacks may be amended or removed by the Courts, on application by the Joint Committee. The priority scheme for eliminating holdbacks set out in Section 7.03(2) requires all of the 25% holdbacks to be removed before the cap on Pre-Claim Gross Income, set out in 4.02(2)(b)(i), is amended or removed;

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13. Once the 25% restrictions in Section 7.03A have been removed and all postponed payments have been paid, Section 7.03(4) provides that, at the request of the Joint Committee, the Courts may, in their unfettered discretion, order that all or any portion of the HCV Late Claims Account that is actuarially unallocated be allocated for the benefit of the Approved Late Claim Class Members in a way that is not different or better than the way any other actuarially unallocated money and other assets held by the Trustee are allocated to Approved Transfused/Hemophiliac Plan Class Members under the Settlement Agreement;
 14. Section 9.03 provides that the HCV Late Claims Benefit Plan may only be amended on order of the Courts, on application of the Joint Committee;
 15. Section 2.05 provides that the HCV Late Claims Benefit Plan will continue until the Courts declare it to be terminated, on application of the Joint Committee. Any assets remaining in the HCV Late Claims Account on termination are to be allocated to Approved Late Claim Class Members, Approved Transfused/Hemophiliac Plan Class Members, and/or in such other manner as the supervising Courts direct;
 16. Because the Courts allocated those funds in favour of Late Claim Class Members and rejected Canada's competing application for those same funds, only Late Claim Class Members have a right and interest in how the HCV Late Claims Benefit Plan is administered or amended, how holdbacks are addressed, what happens in the event of financial insufficiency, and what happens to any funds/assets in the HCV Late Claims Account upon termination;
 17. None of the other governments has an interest in or obligation to the HCV Late Claims Benefit Plan or the HCV Late Claims Account;
 18. A new application deadline is not proposed in the HCV Late Claims Benefit Plan at this time. The experience in this settlement has been that Class Members miss deadlines and may have reasonable explanations for doing so, such as HCV-related illness. While it is hoped that the proposed notice plan will be effective, it is a virtual certainty that there will always be late Class Members if a new deadline is imposed. The eligibility criteria and guidelines are intended to ensure that those who have a reasonable explanation for being late will be entitled to apply, and those who do not will not;
 19. In order to be eligible to make a claim under the HCV Late Claims Benefit Plan, a person must meet the requirements in Appendix E to the HCV Late Claims Benefit Plan;

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20. A Late Claims Referee appointed by the Courts will determine on a summary basis whether a Late Claim application form under the HCV Late Claims Benefit Plan shall issue to the person making the Late Claim Request based upon the following guidelines:
- (a) Late Claim Requests by persons who did not receive timely notice of the First Claim Deadline and do not meet the requirements and/or timeframe of an applicable Exception should be allowed if, in the opinion of the Late Claims Referee, the Late Claim Request was made within a reasonable time after, the later of, such notice was acquired or the HCV Late Claims Benefit Plan came into force;
 - (b) Late Claims Requests by persons whose failure to meet the First Claim Deadline or the requirements and/or timeframe of an applicable Exception was due to matters that, in the opinion of the Late Claims Referee, should reasonably be considered to be beyond their control or are otherwise a reasonable explanation for their delay, should be allowed;
 - (c) Late Claim Requests made by persons who had notice of the First Claim Deadline or the requirements and/or timeframe of an applicable Exception before it expired should be disallowed unless they meet the exceptions in the preceding subparagraphs or, in the opinion of the Late Claims Referee, the timing of the receipt of such notice was inadequate for the purpose of making a Claim under the Plans; and
 - (d) any other Late Claim Requests and those where the Late Claims Referee is uncertain as to the appropriate application of the above guidelines shall be referred by the Late Claims Referee in writing to the appropriate Court to be dealt with summarily;
21. Where a Late Claim Request is denied by the Late Claims Referee, the Class Member may appeal to the appropriate Court, consistent with the Plans.

C- APPOINTMENT OF LATE CLAIMS REFEREES

22. In the interest of efficient and effective case management of Late Claims Requests and to ensure consistent application of the eligibility requirements nationally, the Joint Committee proposes:
- (a) Reva Devins, Vice-Chair of the Referees and Arbitrators who reports to the Courts annually as part of the Joint Committee's Annual Report, to determine all Late Claims Requests made in English (excluding those made in Quebec); and

(b) Christian Leblanc, Referee/Arbitrator appointed recently by the Superior Court of Québec, to determine all Late Claims Requests made in French, and those made in English in Quebec;

23. The Joint Committee recommends the approval of the proposed HCV Late Claims Benefit Plan including its appendices, in the form attached as Exhibit A to the affidavit of Heather Rumble Peterson (R-1) and the appointment of Reeva Devins and Christian Leblanc as Late Claims Referees to determine all Late Claims Requests as described above in paragraph 22;

D- THE LATE CLAIMS NOTICE PLAN

24. At paragraph 190 of his decision dated August 15, 2016, Justice Perell suggested that the plan might include a new notice program;

25. On this point, the Joint Committee retained BRAD, the Montreal based firm behind the successful DRAM settlement notice campaign and other Canadian class notice campaigns, to create a notice plan to reach late Class Members; copy of the proposed Notice Plan is appended as Exhibit B to the affidavit of Patrick Gervais dated October 11, 2017 and filed in support thereof as **Exhibit R-2**;

26. BRAD has proposed a two-phase approach. In phase 1, awareness is ignited. Phase 2 drives conversions, by having potentially eligible persons react by going to a new interactive website. BRAD has opined that television is the most effective media to reach most of the target demographic (age 35-60), as more fully described on pages 16-22 of exhibit R-2B;

27. It proposes to supplement the television campaign with social media, and support the notice campaign with a public relations campaign using a trained spokesperson to support the advertising, as more fully described on pages 23-28 of exhibit R-2B;

28. BRAD has provided three budgets for its proposed combined television and digital national campaign, ranging in cost from \$855,000 (Budget A) to \$987,400 (Budget C), which vary principally by the amount spent on media buys and public relations support and the estimated target reach (70% with Budget A vs 90% with Budget C), as more fully detailed on pages 32-37 of exhibit R-2B;

29. BRAD has also proposed a post-campaign budget of \$37,000 per year for the next two years, as described on page 38 of exhibit R-2B;

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30. Considering that the incremental cost of \$132,000 will allow for superior notice reach of 20% more of the target, the Joint Committee recommends the approval of Budget C of the proposed Notice Plan, in the amount of \$987,000 (plus applicable taxes) and of the post-campaign budget of \$37,000 per year (plus applicable taxes) for the next two years in order to maintain the campaign alive for this additional period, as explained in paragraph 23 of the affidavit of Heather Rumble Peterson (R-1);
31. Indeed, BRAD has opined that a successful national campaign cannot be achieved with a lesser budget of \$500,000, as this would preclude using television, the most effective media for the target demographic and message, and would restrict the campaign to the web, which is less effective at creating awareness, the critical first step, as explained on page 39 of exhibit R-2B;
32. The recommended approach to notice also has the potential to reach class members who are not late at the time of the campaign but become late in the next year or two, for example, not making a claim within 3 years of their HCV diagnosis, as mentioned in paragraph 23 of the affidavit of Heather Rumble Peterson (R-1);

E- THE ADMINISTRATION OF THE HCV LATE CLAIMS BENEFIT PLAN

33. The Administrator provided a proposal dated November 15, 2016 to administer the HCV Late Claims Benefit Plan in 2017 based on a fixed fee activity level contract, modeled after the hourly rate and efficiency factors in the adjustment mechanism for its contract to administer the settlement, as more fully appear from the **Late Claims Administration Proposal**, copy of which is appended as Exhibit B to the affidavit of Heather Rumble Peterson (R-1B);
34. Similar to its existing contract, the proposed fixed fee includes all aspects of the administration of the HCV Late Claims Benefit Plan as well as the time and expense of the appeals coordinator. It does not include travel expenses, expert fees, translation costs or notice plans, as explained in paragraphs 27-30 of the affidavit of Heather Rumble Peterson (R-1);
35. The Joint Committee recommends approval of this administration proposal, to be paid from the Excess Capital allocated by the Court for the Late Claims Benefit Plan;
36. Similar Joint Committee applications will be filed before the Superior court of Ontario and the Supreme court of British-Columbia;
37. 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 HCV Late Claims Benefit Plan including its appendices in the form attached as Exhibit A to the affidavit of Heather Rumble Peterson (R-1);

DECLARE that for the purposes of implementing, administering, monitoring and supervising the HCV Late Claims Benefits Plan and the HCV Late Claims Account, the Administrator, Trustee, Fund Counsel, Auditors, Joint Committee, Investment Advisors, Referees, Arbitrators, Monitor, Late Claims Referees and Courts shall perform the role and have the duties and responsibilities provided for in the Settlement Agreement (as amended by Schedule F), with all the necessary adaptations, modifications and powers as may be required to do so, and as will be provided for in this order, in the order approving the HCV Late Claims Benefit Plan, the HCV Late Claims Benefit Plan and the court approved protocols;

APPOINT Christian Leblanc as Late Claims Referees under the HCV Late Claims Benefits Plan for the Province of Québec, and such other persons as may be proposed by the Joint Committee and approved by the Court as a Late Claims Referee;

DECLARE the tariffs established by the Courts for the payment of referees, arbitrators and legal counsel representing class members on an appeal, shall apply to the HCV Late Claims Benefit Plan with any necessary adaptations and modifications as may be required;

APPROVE the Notice Plan (R-2B) in respect of the HCV Late Claims Benefit Plan in the form described as Budget C at a cost of \$987,400 (plus applicable taxes) together with the proposed post-campaign notice program, budgeted at \$37,000 per year (plus applicable taxes) for a period of two years following the notice campaign and direct that they be implemented as proposed;

AUTHORIZE the expenditure of funds from the Excess Capital allocated by the Court for the HCV Late Claims Benefit Plan to implement the Notice Plan and post-campaign notice program as approved by the Court;

APPROVE the Administrator's 2017 Late Claim Administration Proposal dated November 15, 2016 (R-1B), and direct that all costs relating thereto (plus applicable taxes) be paid from the Excess Capital allocated by the Court for the HCV Late Claims Benefit Plan;

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 of Heather Rumble Peterson made on October 13, 2017 including the following exhibits;

A: HCV Late Claims Benefit Plan (including Appendices A to E);

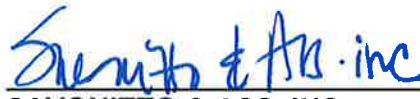
B : Budget Proposal for the administration of the HCV Late Claims Benefit Plan;

EXHIBIT R-2 : Affidavit of Patrick Gervais made on October 11, 2017 including the following exhibits :

A : Curriculum vitae of Patrick Gervais;

B : Notice Plan for the HCV Late Claims Benefit Plan prepared by BRAD.

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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Me Mason Poplaw
Me Kim Nguyen
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1000, rue de la Gauchetière Ouest
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TAKE NOTICE that the present *Application from the Joint Committee for the approval of the HCV Late Claims Benefit Plan, Notice campaign, Administration budget and Appointment of the Late Claims Referee* 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

N° : 500-06-000016-960

SUPERIOR COURT (Class Action
Province of Quebec
District of MONTREAL

DOMINIQUE HONHON

Plaintiff

-vs-

THE ATTORNEY GENERAL OF CANADA
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Defendants

-and-

ME MICHEL SAVONITTO, in the capacity of the Joint
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APPROVAL OF THE HCV LATE CLAIMS BENEFIT PLAN,
NOTICE CAMPAIGN, ADMINISTRATION BUDGET AND
APPOINTMENT OF LATE CLAIMS REFEREES
AND EXHIBIT R-1 AND R-2**

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