

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

DIANNA LOUISE PARSONS, deceased
by her Estate Administrator, William John Forsyth,
MICHAEL HERBERT CRUICKSHANKS,
DAVID TULL, MARTIN HENRY GRIFFEN, ANNA KARDISH,
ELSIE KOTYK, Executrix of the Estate of Harry Kotyk, deceased
and ELSIE KOTYK, personally

Plaintiffs

and

THE CANADIAN RED CROSS SOCIETY, HIS MAJESTY THE KING IN RIGHT OF ONTARIO and
THE ATTORNEY GENERAL OF CANADA

Defendants

and

HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF ALBERTA
HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF SASKATCHEWAN,
HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF MANITOBA,
HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF NEW BRUNSWICK
HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF PRINCE EDWARD ISLAND,
HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF NOVA SCOTIA
HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF NEWFOUNDLAND,
THE GOVERNMENT OF THE NORTHWEST TERRITORIES,
THE GOVERNMENT OF NUNAVUT and THE GOVERNMENT OF THE YUKON TERRITORY

Intervenors

Proceeding under the Class Proceedings Act, 1992

Court File No. 98-CV-146405

B E T W E E N:

JAMES KREPPNER, BARRY ISAAC, NORMAN LANDRY, as Executor of the Estate of the late
SERGE LANDRY, PETER FELSING, DONALD MILLIGAN, ALLAN GRUHLKE, JIM LOVE and
PAULINE FOURNIER as Executrix of the Estate of the late PIERRE FOURNIER

Plaintiffs

and

THE CANADIAN RED CROSS SOCIETY, THE ATTORNEY GENERAL OF CANADA and
HIS MAJESTY THE KING IN RIGHT OF ONTARIO

Defendants

and

HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF ALBERTA,
HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF SASKATCHEWAN,
HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF MANITOBA,
HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF NEW BRUNSWICK,
HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF PRINCE EDWARD ISLAND
HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF NOVA SCOTIA
HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF NEWFOUNDLAND,
THE GOVERNMENT OF THE NORTHWEST TERRITORIES,
THE GOVERNMENT OF NUNAVUT AND THE GOVERNMENT OF THE YUKON TERRITORY

Intervenors

Proceeding under the Class Proceedings Act, 1992

In the Supreme Court of British Columbia

Between:

Anita Endean, as representative plaintiff

Plaintiff

and:

**The Canadian Red Cross Society
HIS MAJESTY THE KING in Right of the Province of
British Columbia, and The Attorney General of Canada**

Defendants

and:

**Prince George Regional Hospital, Dr. William Galliford,
Dr. Robert Hart Dykes, Dr. Peter Houghton, Dr. John Doe,
HIS MAJESTY THE KING in Right of Canada, and
HIS MAJESTY THE KING in Right of the Province of British Columbia**

Third Parties

Proceeding under the *Class Proceedings Act*, R.S.B.C. 1996, C. 50

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

NO : 500-06-000016-960

COUR SUPÉRIEURE
Recours Collectifs

DOMINIQUE HONHON

Requérante

-c-

PROCUREUR GÉNÉRAL DU CANADA
PROCUREUR GÉNÉRAL DU QUÉBEC
SOCIÉTÉ CANADIENNE DE LA CROIX-ROUGE

Intimés

-et-

ME MICHEL SAVONITTO, es-qualité de membre du
Comité conjoint

REQUÉRANT

-et-

FONDS D'AIDE AUX RECOURS COLLECTIFS

-et-

LE CURATEUR PUBLIC DU QUÉBEC

Mis-en-cause

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

NO : 500-06-000068-987

COUR SUPÉRIEURE
Recours Collectifs

DAVID PAGE

Requérant

-c-

PROCUREUR GÉNÉRAL DU CANADA
PROCUREUR GÉNÉRAL DU QUÉBEC
SOCIÉTÉ CANADIENNE DE LA CROIX-ROUGE

Intimés

-et-

FONDS D'AIDE AUX RECOURS COLLECTIFS

-et-

LE CURATEUR PUBLIC DU QUÉBEC

Mis-en-cause

**FACTUM/SUBMISSIONS/WRITTEN ARGUMENT
OF THE JOINT COMMITTEE
(FUND SUFFICIENCY 2019 – ALLOCATION OF EXCESS CAPITAL)**

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PART I - OVERVIEW

1. The Joint Committee brings these unopposed applications,¹ requesting the supervising Courts to exercise their unfettered discretion to allocate about \$160 million (2020 dollars) in actuarially unallocated assets (“**Excess Capital**”) for the benefit of approved class members and family members.² The Excess Capital is entirely the result of the investment strategy undertaken by the Trustee on the recommendation of the Joint Committee. Draft orders/judgments are attached as **Schedule D** (Ontario), **Schedule E** (Québec), and **Schedule F** (British Columbia).

2. The four discrete benefits recommended by the Joint Committee, described further below, are objectively reasonable. A summary of the cost associated with each recommendation, including administration, is as follows (2020 dollars):³

Cost of 2019 Allocation Benefits by Benefit					
No.	\$000	Retroactive increase to benefits already paid	Increase in sufficiency liabilities for future benefits	Increase in required capital	Total
1	Increase all lump sum payments by 6.8%.	44,614	8,219	1,851	54,684
2	Increase loss of guidance, care and companionship payments to approved family members by 50%.	37,503	28,010	6,299	71,812
3	Loss of Income: increase compensation for lost pension benefits by 4% from 10% to 14% of net loss of income (to a maximum pension of \$28,000 per year, indexed from 2014).	4,280	1,940	433	6,653
4	Increase loss of services rate from \$12/hour to \$13/hour (1999 dollars) at and after 2019. (No changes to the pre-2019 rate.)	-	20,736	4,629	25,365
	Administration Expense Allowance				1,400
	Total Cost of 2019 Allocation Benefits	86,397	58,905	13,212	159,914

¹ Ontario Amended Notice of Motion, Applicants’ Motion Record (“**MR**”), Vol I, Tab 1, p 1; Québec Demande Modifiée, MR, Vol I, Tab 3, p 28; BC Amended Notice of Application, MR, Vol I, Tab 2, p 94

² For simplicity and brevity, the terms approved class members, family members and/or dependants have been used, however they should be taken to include approved late claim class members, late claim family members and/or late claim dependants, as applicable.

³ Affidavit of Euan Reid affirmed December 19, 2022 (“**Second Eckler Affidavit**”), MR, Vol II, Tab 7, Ex A, p 770, para 17

Extrapolated to 2022 dollars, this is a cost of \$172 million, with the Excess Capital valued at \$174 million.⁴ The Joint Committee proposes that the remaining \$2 million be retained in the Trust Fund for possible future recommended allocations.

3. If the first recommendation is approved, a discrete benefit of 6.8% on fixed payments would be provided to approved class members at every disease level. With this increase, the cumulative compensation for a class member reaching disease level 6 would still be below the cap on general damages for pain and suffering imposed by the Supreme Court of Canada in its trilogy of cases. It is also proposed that the death benefit fixed payments to estates, and/or shared by family members and dependants of approved class members who died before January 1, 1999 as a result of Hepatitis C Virus (“**HCV**”), as well as the fixed payment to hemophiliacs co-infected with HIV who are unable to establish their disease level, also be subject to a 6.8% discrete benefit.

4. Under the second recommendation, every category of family member approved for the fixed payment for the loss of guidance, care and companionship of a class member whose death was caused by HCV would receive a discrete benefit equivalent to 50% of the currently applicable award. This would bring these payments closer to but still below average awards for family members under statute and case law.

5. The third recommendation is an increase to the discrete pension benefit equivalent to 4% calculated on the approved class member’s actual annual net income loss of up to \$200,000 per annum, indexed from and after 2014 (making the maximum pension benefit increase \$8,000 per annum, indexed from 2014). This increase would achieve a total of 14% of pre-tax loss of income, which Eckler Ltd. (“**Eckler**”) previously opined was an appropriate proxy for compensation for diminished

⁴ Second Eckler Affidavit, MR, Vol II, Tab 7, Ex A, p 770, para 18

pension due to disability, but which could not be afforded at the time the 2013 Allocation Benefits were awarded. Eckler remains of the opinion that this additional 4% is reasonable.

6. Loss of services, which these Courts previously recognized were vital to class members' survival and inadequate to actually replace the work, would be further addressed by the fourth recommendation of an hourly rate increase, bringing that rate closer to but still below the median national hourly cost for housekeeping services.

7. The proposed allocations are permitted under the Courts' interpretation of the Allocation Provision and build upon the discrete benefits previously awarded by the Courts in each of these four areas. These allocations are also reasonable in all the circumstances and take class members, their estates and family members another step closer to bridging compensatory gaps under the 1986-1990 Hepatitis C Settlement Agreement (the "**Settlement Agreement**"), while staying within the limits of the law. Consideration of the optional factors the Courts may, but are not obliged to, consider in exercising their discretion leads to the same conclusion: it is just and equitable for the Courts to exercise their unfettered discretion for the benefit of approved class members and family members in the manner proposed.

PART II - FACTS

8. In their decisions/judgment regarding Phase Two of the 2013 Financial Sufficiency Review, the Courts reviewed extensively:

- (a) the factual matrix leading up to the Settlement Agreement and the Allocation Provision, which was added by consent order as an amendment to the Settlement Agreement to secure the Courts' approval of the settlement;
- (b) the benefits available under the Settlement Agreement; and
- (c) the pathology and treatment of HCV.

As such, these matters will not be repeated here.

9. For convenience, the Allocation Provision is reproduced in full below. It is followed by a summary of the outcome of the 2013 Financial Sufficiency Review and of Phase One of the 2019 Financial Sufficiency Review.⁵ Next, we review the change to the financial position of the Trust Fund that has occurred since the Phase One 2019 Financial Sufficiency Review, which required the Joint Committee to revise its fourth recommendation relating to loss of services. Evidence supporting the Joint Committee's four recommended allocations and their associated administrative costs follows, together with evidence that is relevant to the optional factors the Courts may consider in exercising their unfettered discretion. Lastly, we review the reallocation of Excess Capital between the notional accounts of the Trust Fund that is required to give effect to the Joint Committee's recommendations and ensure that each account remains financially sufficient.

A. The Allocation Provision

10. The Allocation Provision is set out in paragraph 9 of the Ontario Approval Order,⁶ paragraph 5 of the BC Approval Order⁷, and Annexe F of the Québec Approval Judgment.⁸ It is followed by a provision describing the factors the Courts may, but are not bound to, consider in exercising their discretion. Those provisions state:⁹

⁵ A Phase One financial sufficiency review as at December 31, 2016 was also conducted. The Courts declared that the Trust had sufficient assets to meet its long-term liabilities overall, and ordered the rebalancing of the Notional Accounts because the HCV Late Claims Benefit Account was found to be insufficient. Due to the relatively recent implementation of the HCV Late Claims Benefit Plan, the Joint Committee did not seek an allocation so that it could gain a better sense of the take-up rate and any additional funding that might be required once the Plan had been operating for some time. See, Affidavit of Heather Rumble Peterson sworn May 12, 2022 ("**First Peterson Affidavit**"), MR, Vol I, Tab 4, p 134, paras 14-15; also, the 2016 Phase One orders/judgment of the Courts: First Peterson Affidavit, MR, Vol II, Tab 4, Ex P, p 622 (Ontario); Ex Q, p 628 (British Columbia); and Ex R, p 636 (Québec).

⁶ Consent approval order granted by Winkler, J dated October 22, 1999: First Peterson Affidavit, MR, Vol I, Tab 4, Ex A, p 171

⁷ Consent approval orders granted by Smith, J dated October 28, 1999: First Peterson Affidavit, MR, Vol I, Tab 4, Ex B, p 384

⁸ Judgment of Morneau, J dated November 19, 1999 approving the modifications set forth in "Annexe F": First Peterson Affidavit, MR, Vol I, Tab 4, Ex C, p 418

⁹ Annexe F of the Québec approval judgment is the French version of these provisions.

...

(b) in their unfettered discretion, the Courts may order, from time to time, at the request of any Party or the Joint Committee, that all or any portion of the money and other assets that are held by the Trustee pursuant to the Agreement and are actuarially unallocated be:

- (i) allocated for the benefit of the Class Members and/or the Family Class Members in the Class Actions;
- (ii) allocated in any manner that may reasonably be expected to benefit Class Members and/or the Family Class Members even though the allocation does not provide for monetary relief to individual Class Members and/or Family Class Members;
- (iii) paid, in whole or in part, to the FPT [Federal, Provincial and Territorial] Governments or some or one of them considering the source of the money and other assets which comprise the Trust Fund; and/or
- (iv) retained, in whole or in part, within the Trust Fund;

in such manner as the Courts in their unfettered discretion determine is reasonable in all of the circumstances provided that in distribution there shall be no discrimination based upon where the Class Member received Blood or based upon where the Class Member resides.

(c) in exercising their unfettered discretion under [subparagraph 9(b) of the Ontario Approval Order, 5(b) of the BC Approval Order and Annexe F, para 1 annexed to the Québec Approval Order, the Courts may consider, but are not bound to consider, among other things, the following:

- (i) the number of Class Members and Family Class Members;
- (ii) the experience of the Trust Fund;
- (iii) the fact that the benefits provided under the Plans do not reflect the tort model;
- (iv) [section 26(10) of the Ontario Class Proceedings Act, 1992, section 34(5) of the British Columbia Class Proceedings Act, section 1036 of the Québec *Code of Civil Procedure*];
- (v) whether the integrity of the Agreement will be maintained and the benefits particularized in the Plans ensured;
- (vi) whether the progress of the disease is significantly different that the medical model used in the Eckler actuarial report appended as Exhibit "A" to the affidavit of Sharon D. Matthews sworn July 9, 1999;

- (vii) the fact that the Class Members and Family Class Members bear the risk of insufficiency of the Trust Fund;
- (viii) the fact that the FPT Governments' contributions under the Agreement are capped;
- (ix) the source of the money and other assets which comprise the Trust Fund; and
- (x) any other facts the Courts consider material.

B. The 2013 Financial Sufficiency Review

11. At Phase One of the financial sufficiency review triggered on December 31, 2013, the Courts declared that the Trust was financially sufficient and, for the first time, declared that the Trustee held Excess Capital as at December 31, 2013 (the "**2013 Excess Capital**").¹⁰

12. At Phase Two of the 2013 Financial Sufficiency Review, the Joint Committee and the Federal Government each brought applications to have the Courts apply the Allocation Provision to allocate the 2013 Excess Capital. These Courts:

- (a) exercised their unfettered discretion pursuant to the Allocation Provision and allocated \$163,532,000 of the 2013 Excess Capital for the benefit of approved class members and family members for the creation of seven discrete benefits payable by way of special distribution;
- (b) rejected two other allocations requested by the Joint Committee; and
- (c) dismissed the Federal Government's applications.¹¹

13. Four of the seven discrete benefits the Courts approved in relation to 2013 Excess Capital are directly relevant to the current proposed recommendations and may be summarized as follows (with references to the Courts' discussion of each recommendation):

¹⁰ First Peterson Affidavit, MR, Vol I, Tab 4, p 131, para 8; see also, the 2013 Phase One orders/judgments of the Courts: First Peterson Affidavit, Vol II, Tab 4, Ex D, p 437 (Ontario); Ex E, p 444 (British Columbia); and Ex F, p 452 (Québec)

¹¹ First Peterson Affidavit, MR, Vol I, Tab 4, p 132, paras 9-10; see also, the 2013 Special Distribution Benefits Allocation orders/judgment of the Courts: First Peterson Affidavit, MR, Vol II, Tab 4, Ex G, p 457 (Ontario); Ex H, p 470 (British Columbia); and Ex I, p 484 (Québec)

- (a) Recommendation 2 – an 8.5% increase for all fixed payments.¹²
- (b) Recommendation 3 – a \$4,600 increase in loss of guidance, care and companionship compensation to family members, limited to parents and children aged 21 and older.¹³
- (c) Recommendation 5 - an amount equivalent to 10% pre-tax loss of income to compensate for loss of pension benefits, subject to a maximum pension of \$20,000 per year, indexed from 2014.¹⁴
- (d) Recommendation 6 – an increase of 2 hours to the maximum number of compensable hours per week for loss of services.¹⁵

14. The Courts subsequently issued orders approving the discrete benefit plan for approved class members and family members who missed the earlier deadline (the “**HCV Late Claims Benefit Plan**”).¹⁶ Like the Transfused HCV Plan and the Hemophiliac HCV Plan appended to the Settlement Agreement (the “**Regular Benefit Plans**”, together with the HCV Late Claims Benefit Plan, the “**Plans**”), the HCV Late Claims Benefit Plan contains a restriction or cap on the maximum income loss recoverable absent a court order/judgment further raising the cap to a higher amount or removing the cap altogether. The HCV Late Claims Benefit Plan contained an additional restriction to address

¹² The Courts’ 2013 Phase Two allocation benefit decisions: Perell, J, MR, Vol VIII, Tab 27, p 2912 para 13(2), pp 2929-2931 para 107, p 2946 para 185; Hinkson, CJ, MR, Vol VIII, Tab 29, pp 2992-2996 para 22 (which adopted para 107 of Perell, J’s decision), p 3003 para 53; Corriveau, J, MR, Vol VIII, Tab 28, pp 2972-2973 paras 166-171

¹³ The Courts’ 2013 Phase Two allocation benefit decisions: Perell, J, MR, Vol VIII, Tab 27, p 2912 para 13(3), pp 2929-2931 para 107, p 2946 para 185; Hinkson, CJ, MR, Vol VIII, Tab 29, p 2992-2996 para 22 (which adopted para 107 of Perell, J’s decision), pp 3003-3004 para 54; Corriveau, J, MR, Vol VIII, Tab 28, p 2973 paras 172-174

¹⁴ The Courts’ 2013 Phase Two allocation benefit decisions: Perell, J, MR, Vol VIII, Tab 27, p 2912 para 13(5), pp 2929-2931 para 107, p 2946 p185; Hinkson, CJ, MR, Vol VIII, Tab 29, p 2992-2996 para 22 (which adopted para 107 of Perell, J’s decision), p 3004 para 55; Corriveau, J, MR, Vol VIII, Tab 28, pp 2974-2975 paras 187-194

¹⁵ The Courts’ 2013 Phase Two allocation benefit decisions: Perell, J, MR, Vol VIII, Tab 27, p 2912 para 13(6), pp 2929-2931 para 107, p 2946 p185; Hinkson, CJ, MR, Vol VIII, Tab 29, p 2992-2996 para 22 (which adopted para 107 of Perell, J’s decision), p 3004 paras 56-57; Corriveau, J, MR, Vol VIII, Tab 28, pp 2976-2977 paras 207-214

¹⁶ The Courts’ orders/judgments approving the HCV Late Claims Benefit: First Peterson Affidavit, Vol II, Tab 4, Ex J, p 519 (Ontario); Ex K, p 585 (British Columbia); and Ex L, p 591 (Québec) (the complete copy of the HCV Late Claims Benefit Plan is included only in Ex J)

the risk of insufficient funds – a holdback of 25% on the amount of each benefit payable pending a finding of financial sufficiency.¹⁷

15. The Courts also approved subsequent applications brought by the Joint Committee, allocating an additional \$8,500,000 of the 2013 Excess Capital for the creation of two further discrete benefits available on the election of discrete groups of approved class members (together with the seven discrete benefits mentioned above, the “**2013 Special Distribution Benefits**”).¹⁸ At the same time, the Courts also directed the establishment of three notional Accounts within the Trust Fund to facilitate the implementation of the 2013 Special Distribution Benefits, namely, the HCV Regular Benefit Account, the HCV Special Distribution Benefit Account and the HCV Late Claims Benefit Account.¹⁹

16. The Provincial and Territorial Governments (the “**PT Governments**”) do not contribute to nor do they have any liability or responsibility for the 2013 Special Distribution Benefits, which are funded and paid entirely from the assets in the Trust Fund. Under the Settlement Agreement, the PT Governments are obliged to pay a 3/11ths share of the liabilities as they arise to a maximum of 3/11ths of \$1.118 billion, plus Treasury bill rate interest (the “**PT Notional Fund**”).²⁰

C. Phase One of the 2019 Financial Sufficiency Review

17. The triennial financial sufficiency review giving rise to these applications was triggered as at December 31, 2019. Following completion of their phase one financial sufficiency work, the actuaries retained by the Joint Committee, Eckler, and the actuaries retained by the Federal Government, Morneau Shepell (“**Morneau**”), both expressed the opinion that overall, the Trust was financially sufficient to meet its expected liabilities as at December 31, 2019. They also both expressed the

¹⁷ First Peterson Affidavit, MR, Vol I, Tab 4, p 132, para 11

¹⁸ First Peterson Affidavit, MR, Vol I, Tab 4, p 133, para 12

¹⁹ The Courts’ Special Distribution Benefits implementation orders/judgment: First Peterson Affidavit, MR, Vol II, Tab 4, Ex M, p 596 (Ontario); Ex N, p 605 (British Columbia); and Ex O, p 614 (Québec)

²⁰ First Peterson Affidavit, MR, Vol I, Tab 4, p 133, para 13

opinion that, after taking into account sufficient monies to protect the approved class members from major adverse experience or catastrophe (“**Required Capital**”), the Trustee held Excess Capital. Eckler opined that there was \$197,596,000 Excess Capital, while Morneau opined there was \$203,578,000 Excess Capital.²¹

18. By orders/judgment granted between January and March 2021 (collectively, the “**2019 Financial Sufficiency Phase One Orders**”),²² among other things, the Courts:

- (a) declared the Trust Fund to be financially sufficient overall as at December 31, 2019;
- (b) declared that the HCV Regular Benefit Account and the HCV Special Distribution Benefit Account had excess assets while the HCV Late Claims Benefit Account had insufficient assets as at December 31, 2019;
- (c) ordered \$22,981,000 of excess assets to be transferred from the HCV Special Distribution Benefit Account to the HCV Late Claims Benefit Account as at January 1, 2020 to eliminate the insufficiency;
- (d) declared that as at December 31, 2019 the Trustee held actuarially unallocated assets of between \$197,596,000 and \$203,578,000; and
- (e) ordered the 25% holdback on benefits payable under the HCV Late Claims Benefit Plan to be removed and directed the immediate payout of amounts that were held back (plus interest) and the payment of full benefits going forward.²³

19. After the 2019 Financial Sufficiency Phase One Orders were issued, it was discovered that the previous Administrator mistakenly did not issue retroactive 2013 Special Distribution Benefits to some approved class members and/or family members, creating an additional sufficiency liability to

²¹ First Peterson Affidavit, MR, Vol I, Tab 4, pp 134-135, paras 16-17

²² The Courts’ 2019 Financial Sufficiency Phase One orders/judgment: First Peterson Affidavit, MR, Vol II, Tab 4, Ex S, p 641 (Ontario); Ex T, p 651 (British Columbia); and Ex U, p 656 (Québec)

²³ First Peterson Affidavit, MR, Vol I, Tab 4, pp 135-136, paras 19-20

the class members in the amount of \$2,559,000. In its initial 2019 Phase Two applications, the Joint Committee requested the liabilities of the Trust in the Phase One orders/judgment be restated.²⁴

20. The Joint Committee recently requested the Courts to consider its restatement request in advance of the 2019 Phase Two allocation hearing.²⁵ The Courts did so and restated the Trust's liabilities as of December 31, 2019.²⁶ With the liabilities restated, the Trust Fund held actuarially unallocated assets in excess of liabilities of between **\$195,037,000** and **\$201,019,000** as at December 31, 2019 and the notional account balances were adjusted accordingly.

D. Change in the Trust's Financial Position After the 2019 Phase One Financial Sufficiency Review

21. The financial markets declined after the 2019 Phase One Financial Sufficiency Review was completed, substantially reducing the value of the Trust Fund's invested assets. For that reason, the Joint Committee asked Eckler to extrapolate the results of the 2019 Phase One Financial Sufficiency Review of the Trust to June 30, 2022. Eckler concluded that the amount of 2019 Excess Capital as at June 30, 2022 is about \$174,000,000 in 2022 dollars, equivalent to \$161,000,000 in 2020 dollars.²⁷

22. Given the reduced amount of 2019 Excess Capital available in 2022, the Joint Committee amended its applications and now requests the Courts to allocate only **\$159,914,000** (2020 dollars) of the 2019 Excess Capital.²⁸

23. After considering the competing interests of the other benefits that are sought to be addressed at this time, the Joint Committee decided to modify Recommendation 4 relating to loss of services to fit within the reduced amount of 2019 Excess Capital. These modifications include the reduction of

²⁴ First Peterson Affidavit, MR, Vol I, Tab 4, p 136, para 21

²⁵ Affidavit of Heather Rumble Peterson sworn March 23, 2023 ("**Second Peterson Affidavit**"), MR, Vol II, Tab 6, p 733, paras 6-7

²⁶ The Courts' restatement orders/judgments regarding the 2019 Financial Sufficiency Phase One orders/judgment: Second Peterson Affidavit, MR, Vol II, Tab 6, Ex A, p 739 (Ontario); Ex A, p 744 (British Columbia); and Ex A, p 751 (Québec)

²⁷ Second Peterson Affidavit, MR, Vol II, Tab 6, p 734, paras 9-11

²⁸ Second Peterson Affidavit, MR, Vol II, Tab 6, p 735, para 13

the hourly rate increase (now \$1.00 instead of \$2.00) and the elimination of the retroactive component of the benefit (now from 2019 instead of 2014). Converting \$1.00/hour into 2020 dollars, the recommended increase would be \$1.49/hour, making the hourly rate payable under this special distribution benefit \$19.34.²⁹ These modifications, which included the elimination of the retroactive component, also resulted in administrative cost savings of about \$120,000 (including taxes).³⁰

E. Notice to Class Members

24. Notice of the amended applications has been provided by the Administrator to class members through mail, email and the settlement website. Class members were advised of their ability to comment upon the Joint Committees' recommendations and to make written submissions and convey their own requests prior to the hearings.³¹

F. Claims Experience

25. As of December 31, 2019, there were:³²

- (a) 5,369 class members approved under the Regular Benefit Plans. Of those, 3,282 were alive, 487 had died before January 1, 1999 and 1,600 had died subsequently;
- (b) 9,383 approved family members under the Regular Benefit Plans;
- (c) 16 approved class members under the HCV Late Claims Benefit Plan; and
- (d) 108 approved family members under the HCV Late Claims Benefit Plan.

26. By the end of 2021, an additional 3 class members and 142 family members were approved under the Regular Benefit Plans and an additional 25 class members and 58 family members were

²⁹ Second Peterson Affidavit, MR, Vol II, Tab 6, p 735, paras 14-15

³⁰ Second Peterson Affidavit, MR, Vol II, Tab 6, p 736, para 17

³¹ Second Peterson Affidavit, MR, Vol II, Tab 6, p 737, para 19

³² First Peterson Affidavit, MR, Vol I, Tab 4, pp 137-138, paras 24-26

approved under the HCV Late Claims Benefit Plan. In total, there were **5,413** approved class members and **9,691** approved family members under the Plans as of December 31, 2021.³³

27. Since inception, the benefit payments processed under the Plans and as 2013 Special Distribution are as follows:³⁴

Year-End	Regular Benefit Account	Special Distribution Benefit Account	Late Claims Benefit Account	Total since inception
Dec 31, 2019	\$1,022,196,868	\$93,505,782	\$1,824,461	\$1,117,527,111
Dec 31, 2021	\$1,080,109,858	\$102,082,181	\$14,223,298	\$1,196,415,337

28. As of December 31, 2022, approximately \$1,221,876,852 in benefits had been paid to class members and their family members since the inception of the Trust.³⁵ This is about \$104 million or about 9.3% more than the \$1.118 billion capped liability of the governments under the Settlement Agreement.³⁶

G. The 2019 Excess Capital is the Product of Investment Strategy

29. The 2019 Excess Capital available for allocation is the product of the investment strategy undertaken by the Trustee, on the instructions of the Joint Committee, of the approximately \$846 million Canada paid on settlement approval in full satisfaction of its fixed liability under the Settlement Agreement. As the Courts found in their 2013 Allocation Decisions, but for this investment strategy of Canada's up-front money, there would have been a \$348 million *deficit* at December 31, 2013.³⁷

³³ First Peterson Affidavit, MR, Vol I, Tab 4, pp 137-138, paras 25-26

³⁴ First Peterson Affidavit, MR, Vol I, Tab 4, p 138, paras 27-28

³⁵ Second Peterson Affidavit, MR, Vol II, Tab 6, p 732, para 3

³⁶ The Courts' 2013 Phase Two allocation benefit decisions: Perell, J, MR, Vol VIII, Tab 27, p 2927, para 98; Hinkson, CJ, MR, Vol VIII, Tab 29, pp 2992-2996, para 22; Corriveau, J, MR, Vol VIII, Tab 28, p 2955, para 34

³⁷ The Courts' 2013 Phase Two allocation benefit decisions: Perell, J, MR, Vol VIII, Tab 27, p 2938, para 133; explicitly adopted by Hinkson, CJ, MR, Vol VIII, Tab 29, pp 2997-2998, para 29; see also, Corriveau, J, MR, Vol VIII, Tab 28, p 2965 at para 96

30. The actuaries estimate that the fixed liability of the provincial and territorial governments, which “pay as you go”, will expire in 2030,³⁸ leaving only the invested assets of the Trust Fund to satisfy the claims of class members and family members thereafter. As of December 31, 2022, the remaining unpaid liability (plus interest) of the provincial and territorial governments, reflected in the PT Notional Fund was \$73,596,832.31.³⁹

H. The Joint Committee’s Recommendations

GUIDING PRINCIPLES

31. In considering possible allocations, the Joint Committee continued to be guided by the principles it adopted for its applications for allocation of the 2013 Excess Capital, namely:

- (a) address compensation most compromised compared to damages law;
- (b) prioritize class member/family member input;
- (c) address issues that class members have brought to the Administrator’s attention;
- (d) benefit the class as broadly as possible;
- (e) consider the administrative burden of implementation on class members; and
- (f) consider the costs of administering the benefit.

The Joint Committee was also guided by the Courts’ directive that late claims class members not be treated differently.⁴⁰

Class Member Input

32. In connection with the 2013 allocation hearings, the Joint Committee held seven consultation sessions in Vancouver, Toronto, and Montreal, which were webcast live over the Internet, seeking

³⁸ First Eckler Affidavit, MR, Vol II, Tab 5, p 705, para 17, second bullet; see also, Affidavit of Peter Gorham sworn December 10, 2020, MR, Vol III, Tab 9, Ex C, p 912, para 48

³⁹ Second Peterson Affidavit, MR, Vol II, Tab 6, p 732, para 4

⁴⁰ The Courts’ 2013 Phase Two allocation benefit decisions: Perell, J, MR, Vol VIII, Tab 27, pp 2946-2947, paras 190-191; Hinkson, CJ, MR, Vol VIII, Tab 29, p 3003, para 51

class member input. More than 740 submissions by class members were filed at those hearings, as well as written submissions from the Canadian Hemophilia Society, Action Hepatitis Canada and the Manitoba Public Guardian and Trustee.⁴¹

33. Further consultation sessions were not held with class members in preparation for the current applications. On this occasion, the Joint Committee consulted with members of the HCV administration team at Epiq Class Action Services Canada Inc., the Administrator of the Settlement Agreement, to learn of recent class member communications regarding the availability, suitability or sufficiency of the benefits generally and/or any benefit(s) specifically. The lead nurses, who have day-to-day contact with claimants and approved class members and newly approved class members, advised that class members regularly communicate that their personal injury, income loss and/or loss of services awards are inadequate and that this significantly impacts their personal and family well-being and, in some cases, results in hardship. Similarly, newly approved family members frequently communicate to them that the loss of guidance, care and companionship awards they received are inadequate for the loss they have suffered.⁴²

THE ONGOING FIXED SUM CONSTRAINT

34. Similar to the circumstances at the time of the original settlement approval⁴³ and at the 2013 allocation hearings, the discrete benefits recommended below by the Joint Committee are necessarily constrained by the amount of funds available for allocation.⁴⁴ Indeed, as discussed above, the Joint

⁴¹ The Courts' 2013 Phase Two allocation benefit decisions: Perell, J, MR, Vol VIII, Tab 27, pp 2938-2939, paras 138-139, 143; see also, First Peterson Affidavit, MR, Vol I, Tab 4, p 141, para 36

⁴² First Peterson Affidavit, MR, Vol I, Tab 4, pp 141-143, paras 37-39, 42

⁴³ As Justice Smith put it, "However, this is not a situation where the parties have negotiated the global settlement amount by estimating its constituent parts, as is the usual case in litigation. Here, the global amount was predetermined, and the benefits payable had to be made to fit within it." Courts' 1999 settlement approval decisions: Smith, J, MR, Vol VIII, Tab 26, p 2902, para 22. This passage was quoted in the Courts' 2013 Phase Two allocation benefit decisions: Perell, J, MR, Vol VIII, Tab 27, p 2936, para 120; Chief Justice Hinkson, MR, Vol VIII, Tab 29, pp 2996-2997, para 25; and referenced by Justice Corriveau, MR, Vol VIII, Tab 28, pp 2957-2958, para 54

⁴⁴ First Peterson Affidavit, MR, Vol I, Tab 4, p 146, para 54

Committee was recently required to modify its fourth recommendation to make it fit within the reduced Excess Capital available as a result of the decline in the financial markets.

35. As benefits must be made to “fit” the amount available, not all shortcomings in compensation to approved class members and family members under the Settlement Agreement have been fully addressed by these recommendations,⁴⁵ but they do bring class members and family members closer to bridging the compensatory gaps in these four areas.

Recommendation 1 – Provide a Discrete Benefit for Approved Class Members and Family Members who are entitled to Fixed Payments for Non-Pecuniary General Damages or Death Benefits

36. Under the Plans, approved class members alive on January 1, 1999 are entitled to fixed payments for non-pecuniary general damages based upon their disease level at the time of their approval and the subsequent progression of their disease (sections 4.01, 4.08, 5.02). Estates, family members and dependants of approved class members who died *before* January 1, 1999 are entitled to death benefits if the death was caused by HCV (section 5.01). Non-pecuniary general damages seek to compensate for intangible losses, like pain and suffering arising from the injury, loss of enjoyment and loss of expectation of life.⁴⁶

37. These non-pecuniary general damage and death benefit awards were an area of significant compromise for many approved class members and family members. The fixed payments for these heads of damage were set lower than damage awards at law would permit, specifically, the limit set by the Supreme Court of Canada in a trilogy of cases decided in 1978 (the “**SCC Trilogy Cap**”).⁴⁷

⁴⁵ First Peterson Affidavit, MR, Vol I, Tab 4, p 146, para 54

⁴⁶ First Peterson Affidavit, MR, Vol I, Tab 4, p 146-147, paras 55 and 57

⁴⁷ *Andrews v. Grand & Toy Alberta Ltd.*, 1978 CanLII 1 (SCC), [1978] 2 S.C.R. 229, *Thornton v. Prince George Board of Education*, 1978 CanLII 12 (SCC), [1978] 2 S.C.R. 267 and *Arnold v. Teno*, 1978 CanLII 2 (SCC), [1978] 2 S.C.R. 287; cited in the Courts’ 2013 Phase Two allocation benefit decisions: Perell, J, MR, Vol VIII, Tab 27, pp 2929-2931, para 107; adopted by Hinkson, CJ, MR, Vol VIII, Tab 29, pp 2992-2996, para 22; cited by Corriveau, J MR, Vol VIII, Tab 28, p 2972, para 169

38. Many class members spoke about the nature and effects of their infection and its chronic and progressive harm, including the impacts on their physical and mental well-being, daily living and family dynamics at the town hall consultation sessions convened by the Joint Committee to inform its 2013 allocation recommendations. Many more class members made written submissions, and some testified about these impacts at the 2013 allocation hearings. The uniform view expressed was that the awards do not adequately compensate for the life-altering, chronic, progressive, and life-threatening nature of hepatitis C.⁴⁸

39. Despite the efficacy of direct-acting anti-viral agents used more recently in the treatment of hepatitis C, the 2019 medical model of the Medical Modelling Working Group, (“**MMWG**”) predicts that by 2070, the proportion of the 3,393 approved class members who were alive as of May 31, 2019 who had developed or are predicted to develop *advanced* disease states are as follows:⁴⁹

Disease Level	Cumulative	Transfused	Hemophiliac
Disease level 5 Cirrhosis	19.7%	16.2%	30.7%
Disease level 6 Decompensated cirrhosis	9.3%	7.4%	15.5%
Disease level 6 Hepatocellular cancer	3.8%	2.9%	6.6%
Disease level 6 Liver-related mortality	13.9%	11.7%	21%

This is not materially different from the 2013 medical model.⁵⁰

⁴⁸ First Peterson Affidavit, MR, Vol I, Tab 4, p 147, para 57; see also, Schedule C - Class Member Submissions 2013 allocation hearing

⁴⁹ First Peterson Affidavit, MR, Vol I, Tab 4, p 150, para 67

⁵⁰ The 2013 medical model for class members alive as of August 31, 2013 predicted that by 2070: (a) 19.9% of class members will have already developed or will develop cirrhosis; (b) 12.1% will have already developed or will develop decompensated cirrhosis; (c) 4.3% have will already developed or will develop hepatocellular cancer; and (d) 14.7% will have already experienced or will experience liver-related mortality. See, the Courts’ 2013 Phase Two allocation benefit decisions: Perell, J, MR, Vol VIII, Tab 27, p 2926, para 90

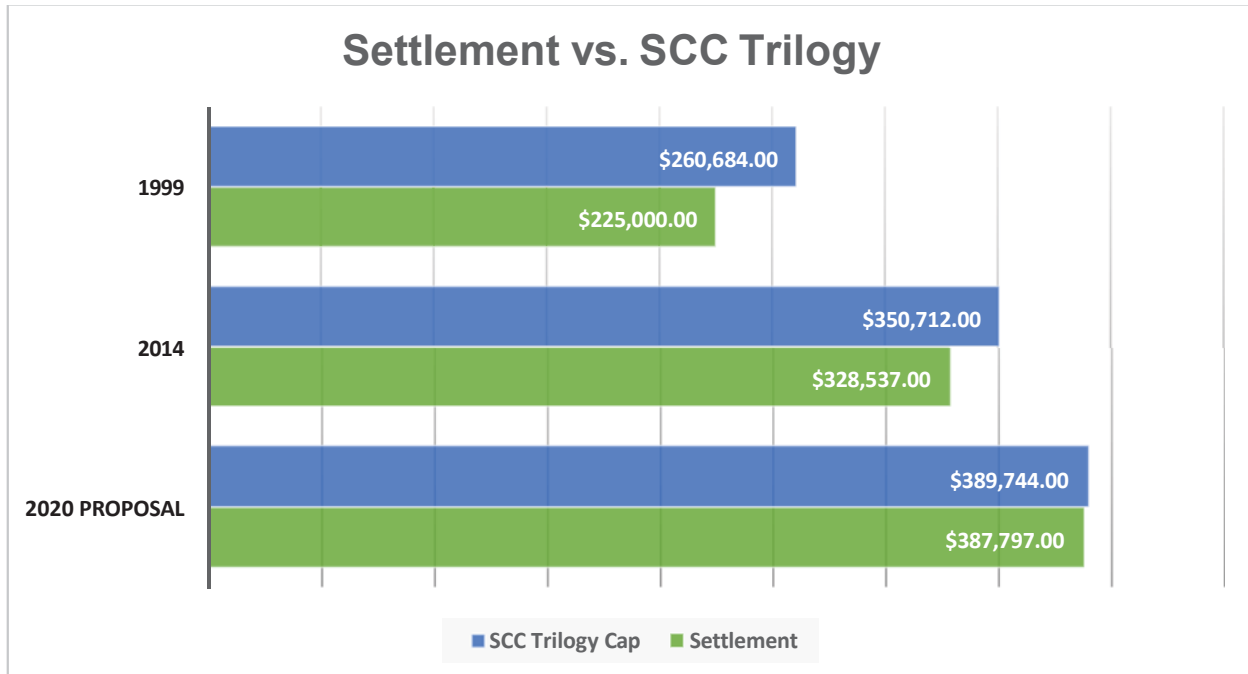
40. Under the Regular Benefit Plans, the maximum amount payable for the cumulative disease level fixed payments for non-pecuniary general damages for class members who attain disease level 6 was a total of \$225,000 (1999 dollars). This was 15.9% below the inflation-adjusted SCC Trilogy Cap of \$260,000 (1999 dollars). Following the Courts' creation of a 2013 Special Distribution Benefit equal to 8.5% of the fixed payments for non-pecuniary general damages, the maximum amount payable was \$328,537 (2014 dollars) compared to the SCC Trilogy Cap of \$350,712 (2014 dollars).

41. The Joint Committee recommends that the Courts allocate **\$54,684,000** of the 2019 Excess Capital to increase the discrete benefit for approved class members and family members entitled to fixed payments for non-pecuniary general damages and death benefits under sections 4.01, 4.08, 5.01 and 5.02 of the Plans by an amount equal to **6.8%** of the combined value of their fixed payment under the Plans and any applicable 2013 Special Distribution Benefit, indexed to January 1, 2020, payable retroactively and prospectively as a special distribution.⁵¹ If approved, the combined benefits payable based on cumulative disease levels would be \$387,797 (2020 dollars), nearing the SCC Trilogy Cap of \$389,744.

42. Below, the compensation shortfall relative to the SCC Trilogy Cap is depicted under the Settlement Agreement, following the 8.5% increase under the 2013 Special Distribution Benefits, and under the Joint Committee's current proposal:⁵²

⁵¹ First Peterson Affidavit, MR, Vol I, Tab 4, p 148, para 60

⁵² First Peterson Affidavit, MR, Vol I, Tab 4, p 149, para 64



43. If the recommended allocation is granted, approved class members would be entitled to a discrete benefit in the following amounts based on their current cumulative disease level and any progression in disease level that may hereafter occur:⁵³

Disease Level	6.8% Allocation on fixed payment + 2013 Special Distribution Benefit (in 2020 dollars)	Cumulative Total
Disease level 1	\$1,097	\$1,097
Disease level 2	\$2,195	\$3,292
Disease level 3	\$3,292	\$6,584
Disease level 5	\$7,133	\$13,717
Disease level 6	\$10,974	\$24,691

44. This recommended allocation would benefit **4,926** approved class members (or their estates) eligible for disease level payments under the Plans through December 2021,⁵⁴ who would receive retroactive payments. The allocation would also benefit prospectively those approved class members

⁵³ First Peterson Affidavit, MR, Vol I, Tab 4, p 149, para 65

⁵⁴ This excludes those who were later disqualified or determined to be Health Canada negative.

whose disease continues to progress, as well as those claimants with in-progress claims and/or future claimants who are subsequently approved.⁵⁵

45. The other payments included within the recommended 6.8% allocation are the following fixed payments to which the 2013 Special Distribution Benefit allocation were also applied:⁵⁶

- (a) the \$50,000 alternative to disease level payments for approved living hemophiliac class members co-infected with HIV who may be unable to establish that their disease level is caused by HCV because of their co-infection (section 4.08 Hemophiliac HCV Plan and 4.08 (hemo) HCV Late Claims Benefit Plan);
- (b) the two death benefit options for estates, dependants and family members of approved class members whose death prior to January 1, 1999 was caused by HCV: a fixed payment of \$50,000 to the estate with independent loss of guidance, care and companionship claims for family members and dependants; or, a fixed payment of \$120,000 to be shared among the estate, family members and dependants (sections 5.01(1),(2) Plans); and
- (c) the \$72,000 alternative death benefit option to be shared among the estates, dependants and family members of approved hemophiliac class members co-infected with HIV whose death prior to January 1, 1999 is not proven to be caused by HCV (section 5.01(4) Hemophiliac HCV Plan and 5.01(4)(hemo) HCV Late Claims Benefit Plan).

46. If granted, the amounts payable in relation to these fixed payments would be as follows:⁵⁷

Fixed Payment Type	6.8% Allocation on fixed payment + applicable 2013 Special Distribution Benefit (in 2020 dollars)
\$50,000 non-pecuniary general damages option for approved living co-infected hemophiliac class members	\$5,487
\$50,000 estate death benefit option for approved class members whose death prior to January 1, 1999 was caused by HCV	\$5,487
\$120,000 shared death benefit option for approved class members whose death before January 1, 1999 was caused by HCV	\$13,169

⁵⁵ First Peterson Affidavit, MR, Vol I, Tab 4, p 150, para 68

⁵⁶ First Peterson Affidavit, MR, Vol I, Tab 4, p 151, para 69

⁵⁷ First Peterson Affidavit, MR, Vol I, Tab 4, p 151, para 70

\$72,000 shared death benefit option for approved co-infected hemophiliac class members whose death before January 1, 1999 is not proven to be caused by HCV	\$7,901
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47. This recommended allocation would benefit the estates of all approved class members whose death before January 1, 1999 was caused by hepatitis C, and/or their approved family members and dependants who elected the joint fixed payment options. All co-infected hemophiliac class members who did not initially elect or subsequently re-elect to receive the disease level fixed payments would also be eligible to benefit from this recommendation. This equates to approximately **487** estates,⁵⁸ **1,816** family members and **30** co-infected hemophiliac class members eligible for these other fixed payment options under the Plans through December 2021. The allocation would also benefit prospectively those claimants with in-progress claims and/or future claimants who are subsequently approved and elect in favour of these options.⁵⁹

48. Several provisions in the Plans militate against approved class members being overcompensated for the pain and suffering and loss of amenities and enjoyment of life that they have suffered as a result of their infection with hepatitis C should the recommended allocation for fixed payments be approved.⁶⁰

- (a) unlike a one-time damages assessment, the sequential disease level payments are triggered by medical proof of the progression in the disease such that an approved class member can never be paid beyond the disease level he/she has clinically attained (section 4.01);
- (b) the benefits under the Plans are reduced by any collateral benefit associated with hepatitis C that the approved class member is entitled to, including insurance payments other than life insurance and compensatory government programs such as those offered by some of the Provinces (section 8.03); and

⁵⁸ This excludes those who were later disqualified or determined to be Health Canada negative.

⁵⁹ First Peterson Affidavit, MR, Vol I, Tab 4, p 152, para 71

⁶⁰ First Peterson Affidavit, MR, Vol I, Tab 4, p 152, para 72

(c) the benefits under the Plans are inclusive of prejudgment interest (section 4.09), unlike the award set in the SCC Trilogy Cap cases.

Recommendation 2 – Provide a Discrete Benefit for Approved Family Members who are entitled to Loss of Guidance, Care and Companionship Awards

49. Canadian law has long recognized that no amount of money can replace the value of a lost life. These Courts reiterated this truth in their decisions on the 2013 Allocation Benefits.⁶¹ Damages for loss of guidance, care and companionship are awarded to give recognition and compensation for the seriousness of the family's loss.⁶²

50. Under the Plans, approved family members of an approved class member whose death was caused by his or her infection with Hepatitis C are entitled to be paid loss of guidance, care and companionship awards, provided they do not choose one of the joint fixed payment options described above (section 6.02).⁶³

51. The loss of guidance, care and companionship awards under the Plans were another area of compromise for the majority of family members. These benefit levels were set below the amounts often awarded under this head of damages across the country.⁶⁴

52. Many family members spoke about the quantum of these awards at the earlier town hall consultation sessions and many more wrote concerning them prior to the 2013 allocation hearings. The uniform view expressed, regardless of the level of familial relationship to the deceased, was that the awards were inadequate.⁶⁵

⁶¹ The Courts' 2013 Phase Two allocation benefit decisions: Corriveau, J, MR, Vol VIII, Tab 28, p 2973, para 174; Perell, J, MR, Vol VIII, Tab 27, p 2919, para 46; adopted by Hinkson, CJ, MR, Vol VIII, Tab 29, p 2991, para 19

⁶² First Peterson Affidavit, MR, Vol I, Tab 4, p 154, para 75

⁶³ First Peterson Affidavit, MR, Vol I, Tab 4, p 153, para 74

⁶⁴ First Peterson Affidavit, MR, Vol I, Tab 4, p 153, para 74

⁶⁵ First Peterson Affidavit, MR, Vol I, Tab 4, p 154, para 75; see also, Schedule C - Class Member Submissions 2013 allocation hearing

53. To partially address this compensatory shortfall, the Joint Committee recommended, and the Courts approved, the creation of a discrete benefit of \$4,600, indexed, for parents and children ages 21 years or older for loss of guidance, care and companionship as one of the 2013 Special Distribution Benefits. The Joint Committee's recommendation was limited to parents and adult children since the benefits payable to these two categories of family members were out of step with the grid of benefits payable to the other groups of family members. The fixed amount of excess capital available and competing interests of other benefits did not permit the broader compensatory shortfalls to be addressed for other categories of family members at that time.⁶⁶

54. The Joint Committee recommends that the Courts allocate **\$71,812,000** of the 2019 Excess Capital to create a discrete benefit for approved family members entitled to loss of guidance, care and companionship awards under section 6.02 of the Plans in an amount equal to 50% of the combined value of their award under that section and any applicable 2013 Special Distribution Benefit, indexed to January 1, 2020, payable retroactively and prospectively as a special distribution.⁶⁷

55. If granted, the amounts payable to approved family members for the discrete benefit to be created for loss of guidance, care and companionship would be as follows:⁶⁸

Family Member	50% allocation on loss of guidance, care and companionship + 2013 Special Distribution Benefit for Child 21 and over and Parent (2020 dollars)
Spouse	\$18,593
Child under 21	\$11,155
Parent or Child 21 and over	\$7,139
Sibling	\$3,718
Grandparent/grandchild	\$372

⁶⁶ First Peterson Affidavit, MR, Vol I, Tab 4, p 154, paras 76-77

⁶⁷ First Peterson Affidavit, MR, Vol I, Tab 4, p 155, para 79

⁶⁸ First Peterson Affidavit, MR, Vol I, Tab 4, p 155, para 80

56. In some provinces and territories, legislation fixes the quantum for awards for loss of guidance, care and companionship, bereavement or grief. In others, the quantum is set by the courts on a case-by-case basis. In those provinces and territories that fix the quantum of these types of awards, family members can deal with the tragedy without the requirement of proving their suffering, or the closeness of the relationship – an approach that aligns with the administration under the Settlement Agreement.⁶⁹

57. While neither legislation nor common law provides uniformity across the country, generally the loss of guidance, care and companionship awards under both the statutory schemes and the case law significantly exceed those under the Regular Benefit Plans and applicable 2013 Special Distribution Benefit, although a true direct comparison is difficult due to differing rules in each jurisdiction.⁷⁰

58. The following chart compares the combined benefits for loss of guidance, care and companionship plus the applicable 2013 Special Distribution Benefit, those combined benefits plus the recommended allocation of 2019 Excess Capital, and the four fixed quantum statutory awards in Canada.⁷¹

Family Member	Plans including the allocation of 2013 Excess Capital (1999 dollars)	Plans including the allocation of 2013 Excess Capital (2020 dollars)	Combined benefits plus recommended allocation of 2019 Excess Capital (2020 dollars)	Alberta statute	Manitoba statute	Sask. statute	Yukon statute
Spouse	\$25,000	\$37,184	\$55,777	\$82,000	\$42,301	\$60,000	\$75,000
Child under 21	\$15,000	\$22,311	\$33,466	\$49,000	\$42,301	\$30,000	\$45,000
Child 21 and over	\$9,600	\$14,279	\$21,418	\$49,000	\$14,100	\$30,000	\$45,000

⁶⁹ First Peterson Affidavit, MR, Vol I, Tab 4, p 155, para 81

⁷⁰ First Peterson Affidavit, MR, Vol I, Tab 4, p 156, para 82

⁷¹ First Peterson Affidavit, MR, Vol I, Tab 4, p 156, para 83

Parent	\$9,600	\$14,279	\$21,418	\$82,000 divided if two	\$42,301	\$30,000	\$37,500 each or \$75,000 if only one
Sibling	\$5,000	\$7,437	\$11,155		\$14,100		
Grandparent /Grandchild	\$500	\$744	\$1,116		\$14,100		

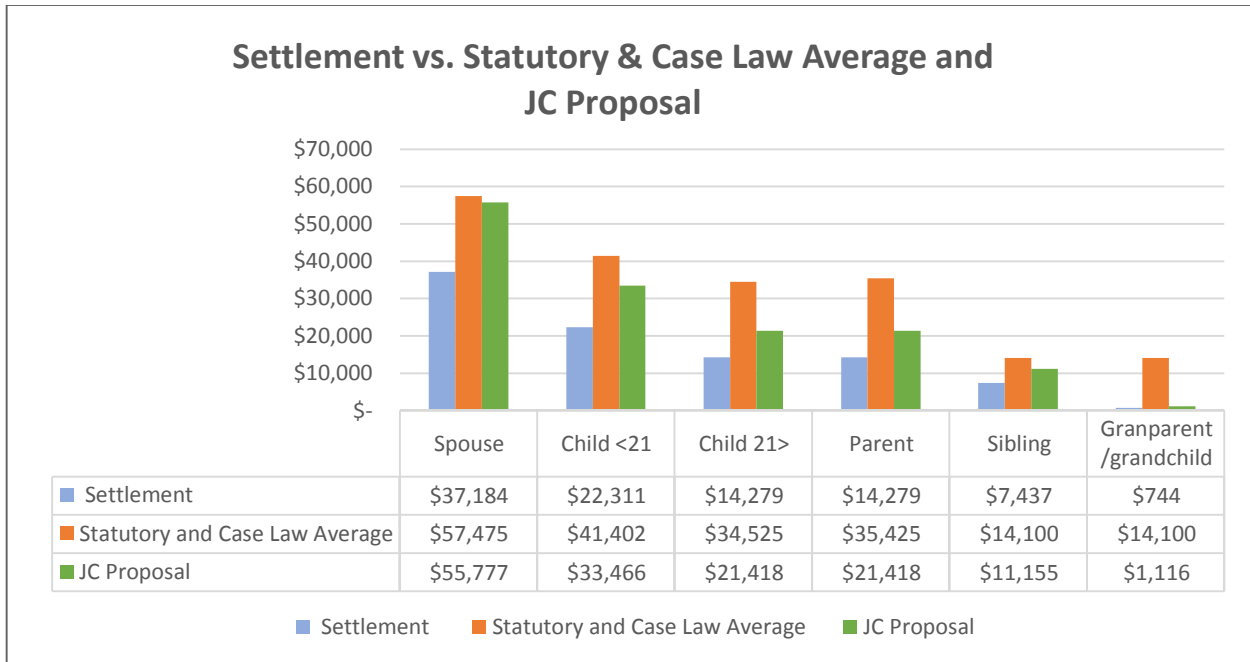
59. The following chart compares the combined benefits for loss of guidance, care and companionship plus the applicable 2013 Special Distribution Benefit, those combined benefits plus the recommended allocation of 2019 Excess Capital, and the average awards in those provinces where this litigation was commenced and where the quantum of awards are determined by the courts:⁷²

Family Member	Plans including the allocation of 2013 Excess Capital (1999 dollars)	Plans including the allocation of 2013 Excess Capital (2020 dollars)	Combined benefits plus recommended allocation of 2019 Excess Capital (2020 dollars)	British Columbia Courts	Ontario Courts	Québec Courts
Spouse	\$25,000	\$37,184	\$55,777	\$15,000	\$59,027	\$69,000
Child < 21	\$15,000	\$23,311	\$33,466	\$35,000	\$46,511	\$42,000
Child 21 and over	\$9,600	\$14,279	\$21,418	\$35,000	\$46,511	\$42,000
Parent	\$9,600	\$14,279	\$21,418	\$7,250	\$51,527	\$38,400
Sibling	\$5,000	\$7,437	\$11,155			
Grandparent/ Grandchild	\$500	\$744	\$1,116			

60. The following graph summarizes the amount currently payable under the settlement for loss of guidance, care and companionship in 2020 dollars versus the combined average under statute and case law compared to the Joint Committee's proposal:⁷³

⁷² First Peterson Affidavit, MR, Vol I, Tab 4, p 157, para 84; see also, First Peterson Affidavit, MR, Vol II, Tab 4, Ex Z, p 669 - Review of Family Member Damages Prepared for the Alberta Government,

⁷³ First Peterson Affidavit, MR, Vol I, Tab 4, pp 157-158, para 86



61. This recommended allocation would benefit about **7,874** approved family members eligible for loss of guidance, care and companionship awards through December 2021. The group of family members who would benefit from this recommended allocation will also continue to grow as approved class members die from their infections and the claims of their family members are approved and as current in-progress and future claimants subsequently qualify.⁷⁴

62. Uncompensated losses under the Plans militate against approved family members being overcompensated for loss of guidance, care and companionship if the recommended allocation is approved. Under the Plans:⁷⁵

- (a) these awards are only available following the death of an approved class member caused by HCV, while for many family members legislation in Ontario would permit such an award where a significant personal injury occurred; and
- (b) these awards are inclusive of prejudgment interest which would not be the case in traditional court awards.

⁷⁴ First Peterson Affidavit, MR, Vol I, Tab 4, p 158, para 87

⁷⁵ First Peterson Affidavit, MR, Vol I, Tab 4, p 158, para 88

Recommendation 3 - Increase the Discrete Benefit created for Approved Class Members who are entitled to Lost or Diminished Pension Benefits

63. Under the Plans, class members who reach disease level 4 bridging fibrosis or the more severe medical conditions at higher disease levels are entitled to recover their loss of income caused by their HCV infection to age 65, provided that they are not claiming loss of services in the home for the same time period (section 4.02). Persons at disease level 3 who are at least 80% disabled due to their infection with HCV can elect to recover loss of income earlier if they forfeit the \$30,000 disease level 3 fixed payment.⁷⁶

64. Loss of income awards under the Settlement Agreement were an area of significant compromise for virtually all of the approved class members who suffered an income loss. In particular, the failure to compensate lost pension and employment benefits as well as the deductions from income required in the calculations of the loss departed from ordinary damages principles.⁷⁷ As Justice Perell held, “The loss of income and loss of support benefits available under the Plans represented the single largest compromise from the tort model.”⁷⁸

65. In its report prepared for the 2013 allocation hearings, Eckler opined that 14% of income would be a reasonable proxy for lost or diminished pension benefits, based on a 10% employer’s share of a pension benefit and a 4.95% employer’s share of Canadian Pension Plan (“CPP”) contribution or similar provisions under the Québec Pension Plan.⁷⁹ Given the amount of excess capital available and the competing interests of other benefits, the Joint Committee only recommended, and the Courts approved as one of the 2013 Special Distribution Benefits, the creation of a discrete benefit in an

⁷⁶ First Peterson Affidavit, MR, Vol I, Tab 4, p 159, para 89

⁷⁷ First Peterson Affidavit, MR, Vol I, Tab 4, p 159, paras 90-91; see also, Schedule C – Class Member Submissions 2013 allocation hearing

⁷⁸ The Courts’ 2013 Phase Two allocation benefit decisions: Perell, J, MR, Vol VIII, Tab 27, p 2929-2931 para 107; Chief Justice Hinkson adopted this passage at MR, Vol VIII, Tab 29, pp 2992-2996, para 22

⁷⁹ Affidavit of Richard Border affirmed October 14, 2015, MR, Vol III, Tab 10, Ex A, p 1053, para 55; see also, First Eckler Affidavit, MR, Vol II, Tab 5, p 714, para 47

amount equal to 10% of an approved class member's annual loss of income, capped at \$20,000 per year maximum pension benefit.⁸⁰

66. In its report prepared for the 2019 allocation hearing, Eckler notes that the employer's contribution rate to CPP has risen to 5.45% since the last allocation hearing and is set to increase yet again in 2025. Eckler opines that 14% of income continues to be a reasonable and appropriate proxy for lost or diminished pension benefits, having regard for the very wide range of pension arrangements offered by employers.⁸¹

67. The Joint Committee recommends that the Courts allocate **\$6,653,000** of 2019 Excess Capital to increase the discrete benefit created to compensate for lost or diminished pension benefits by an amount equal to an additional **4%** of an approved class member's actual annual net loss of income payment which is capped at \$200,000 per annum, indexed from 2014, for this loss of pension benefit calculation, payable retroactively and prospectively as a special distribution benefit. For greater certainty, based on this formula, the additional annual lost or diminished pension benefit would be an amount of up to \$8,000, indexed from 2014, depending on the actual amount of a claimant's annual net income loss payment.⁸²

68. If the recommended allocation is granted, based on the net income loss payments currently being paid under the Plans about 75% of those with current income loss claims would be entitled to up to an additional \$2,000 per annum, 15% would be entitled to an additional amount between \$2,000 and \$4,000 per annum, and 10% would be entitled to an additional amount between \$4,000 and \$8,000 per annum for loss or diminishment of pension benefits. About **338** approved loss of income claimants under the Plans would be entitled to benefit retroactively and, to the extent their loss is ongoing,

⁸⁰ First Peterson Affidavit, MR, Vol I, Tab 4, pp 159-160, paras 92-93

⁸¹ First Peterson Affidavit, MR, Vol I, Tab 4, p 160, para 95; see also, First Eckler Affidavit, MR, Vol II, Tab 5, p 714, para 50

⁸² First Peterson Affidavit, MR, Vol I, Tab 4, p 160, para 94

prospectively from this recommended increase to the lost or diminished pension benefit. This allocation may also benefit prospectively approximately **1,397** living approved class members under the age of 65 who are either at disease levels 2 and 3 whose disease level may yet progress and cause them to suffer income loss or those at disease level 4 or higher who have not yet claimed or yet experienced income loss, as well as in progress and future claimants.⁸³

69. The provisions of the Plans regarding the calculation of income loss militate against approved class members being overcompensated for loss of income/loss of pension benefits:⁸⁴

(a) collateral benefits received by the class member are required to be deducted from income, so the percentage for lost or diminished pension benefits is calculated on an artificially reduced loss of income that falls short of full compensation for many class members (section 4.02(2)(c)); and

(b) the employee contribution of 4.95% of yearly pensionable earnings for CPP is required to be deducted from income loss even though these class members are not entitled to actually receive the benefit of a CPP pension in respect of this deduction (section 4.02(2)(e)).

Recommendation 4 – Provide a Discrete Benefit for Approved Class Members and Approved Dependants who are entitled to awards for Loss of Services

70. Under the Plans, approved class members at disease level 4 or higher may seek compensation for the services that they can no longer provide in the home if they are disabled from doing so because of their HCV (section 4.03). These may also be claimed earlier at disease level 3 if the class member is at least 80% disabled and forfeits the \$30,000 fixed payment for that disease level. Approved dependants who were living with the approved class member at the time of the class member's death may claim lost services if the death was caused by the infection with HCV (section 6.01).⁸⁵

⁸³ First Peterson Affidavit, MR, Vol I, Tab 4, p 161, paras 96-97

⁸⁴ First Peterson Affidavit, MR, Vol I, Tab 4, pp 161-162, para 98

⁸⁵ First Peterson Affidavit, MR, Vol I, Tab 4, p 162, para 99

71. Loss of services claims are payable to approved class members for their lifetime so long as they remain disabled, and thereafter to their dependants until the earlier of the statistical lifetime of the deceased calculated without regard to their HCV infection or the death of their last dependant. (One of the 2013 Special Distribution Benefits extends the timeframe benefits are payable for permanently disabled dependants.)⁸⁶

72. Under the Regular Benefit Plans, loss of services in the home are compensated to a maximum of 20 hours per week at the rate of \$12 per hour (1999 dollars). The current rate in 2020 dollars is \$17.85/hr. Before the 2013 allocation hearings, about 95% of approved class members provided more than 20 hours per week of services in the home and, on average, provided about 47 hours of services in the home per week prior to their disability.⁸⁷

73. The Joint Committee proposed, and the Courts approved as one of the 2013 Special Distribution Benefits, a 2 hour per week discrete benefit to supplement loss of services in the home under all Plans, payable retroactively and prospectively.

74. In their written and oral submissions made at the 2013 Allocation applications,⁸⁸ class members and their family members continued to stress the vitality of these payments to their existence and that this benefit falls short, both in terms of the number of hours compensated and the rate paid.

75. The Joint Committee recommends that the Courts allocate **\$25,365,000** of the 2019 Excess Capital as a special distribution to create a discrete benefit for approved class members and dependants who are entitled to loss of services in the home under section 4.03 and 6.01 for the compensable hours

⁸⁶ First Peterson Affidavit, MR, Vol I, Tab 4, p 162, para 100

⁸⁷ First Peterson Affidavit, MR, Vol I, Tab 4, pp 162-163, paras 100 and 102

⁸⁸ Schedule C - Class Member Submissions 2013 allocation hearing; see also, the Courts' 2013 Phase Two allocation benefit decisions: Perell, J, MR, Vol VIII, Tab 27, pp 2929-2931 para 107; expressly adopted by Hinkson, CJ, MR, Vol VIII, Tab 29, pp 2992-2996, para 22; Corriveau, J, MR, Vol VIII, Tab 28, p 2976, para 208

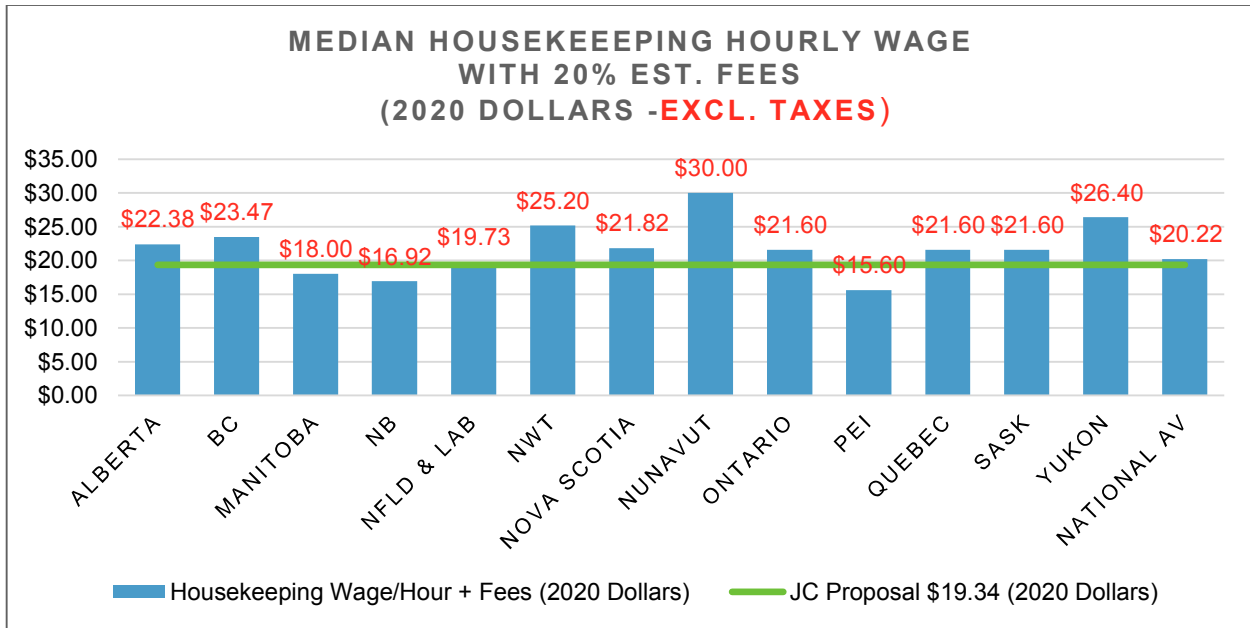
of lost services under those sections and any applicable 2013 Special Distribution Benefit, equal to \$1.00 per hour (1999 dollars), indexed to January 1, 2020, incurred at and after 2019.⁸⁹

76. In its report prepared for the 2019 allocation hearing, Eckler reviewed the Government of Canada's Job Bank website, which publishes wage data by occupation and region. It sets out low, median and high hourly wages for home support workers, housekeepers and related occupations across the country. Eckler noted that fees charged by housekeeping agencies typically allow for administration costs, Employment Insurance, CPP/QPP, workers compensation insurance premiums, vacation pay and other employee benefit costs, which it estimated to add at least 20% to the wage costs.⁹⁰ When these fees are added, the median hourly wage nationally was \$20.22 (2020 dollars). As the rate under the Plans is \$17.85 (2020 dollars), Eckler concluded that it is insufficient to cover the worker's wages in many jurisdictions. It further noted that these hourly wages do not include sales tax on invoices for these services, which range from 5-15% across the country. Below is a graphical representation of median hourly wages across the country plus 20% in fees.⁹¹

⁸⁹ Second Peterson Affidavit, MR, Vol II, Tab 6, p 735, para 14; Second Eckler Affidavit, MR, Vol II, Tab 7, pp 769-770, paras 11, 15 and 17

⁹⁰ First Eckler Affidavit, MR, Vol II, Tab 5, p 716, paras 52-54

⁹¹ First Eckler Affidavit, MR, Vol II, Tab 5, p 716, para 54

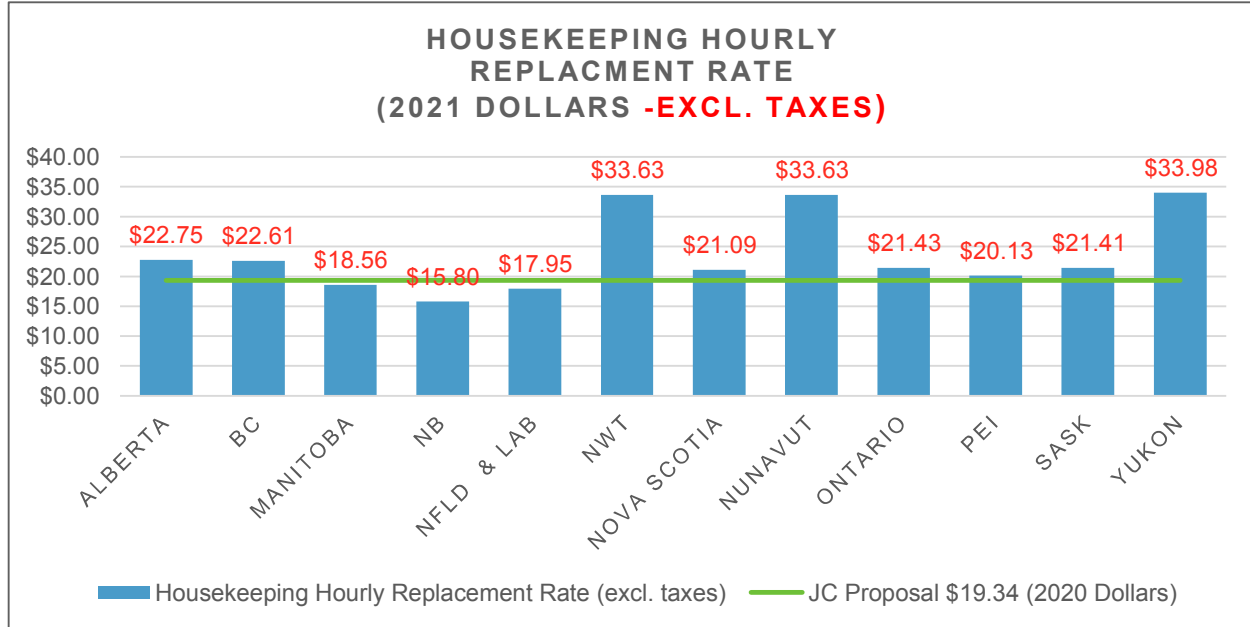


77. It is Eckler’s opinion that the proposed benefit of a \$1 per hour increase, equivalent to an hourly rate of \$13 (1999 Dollars) or \$19.34 (2020 dollars) is reasonable.⁹²

78. The reasonableness of the proposed hourly rate increase finds further support in the data published by Brown Economic Consulting Inc. (“**Brown**”), an economic consulting firm in Alberta. It publishes annually a survey of Canadian “Housekeeping Replacement Rates” by jurisdiction (excluding Québec) and a “Housekeeping Damages Calculator” to assist with estimating pecuniary loss. Brown also specifically notes that the rates in its published table do not include provincial sales tax or GST payable on these services. The rates published by Brown in 2021 dollars are somewhat higher than the median range for most jurisdictions and, in some jurisdictions, are above the high range noted in Eckler’s 2019 Allocation Report. The national average under Brown’s data is \$23.58, excluding tax. Depicted below is a graphical representation of the hourly housekeeping replacement

⁹² First Eckler Affidavit, MR, Vol II, Tab 5, p 716, para 54; see also, Second Eckler Affidavit, MR, Vol II, Tab 7, p 769, para 15

wage across the country published by Brown.⁹³



79. It is noteworthy that in the three provinces where the supervising courts are located, the housekeeping replacement costs (excluding taxes) still exceed the hourly rate payable for loss of services, even after the recommended increase is applied.

80. Approximately 96% of loss of service claimants receive the maximum 20 hour loss of services benefit and the 2013 Special Distribution Benefit of 2 hours per week.⁹⁴ As such, most loss of service claimants would be entitled to approximately an additional \$1,700 a year (2020 dollars).⁹⁵ About 575 approved loss of services claimants will be entitled to benefit from this modified recommendation.⁹⁶ This allocation may also benefit prospectively about 1,537 approved class members who are (1) at disease level 4 or higher not currently receiving the loss of services or loss of income benefit, some of whom may yet experience loss of services and claim in the future or whose dependants may claim

⁹³ First Peterson Affidavit, MR, Vol II, Tab 4, Ex AA, p 689 – Brown Economic Consulting Housekeeping Damages Calculator

⁹⁴ First Peterson Affidavit, MR, Vol I, Tab 4, p 165, para 109

⁹⁵ Second Peterson Affidavit, MR, Vol II, Tab 6, p 736, para 16

⁹⁶ Second Peterson Affidavit, MR, Vol II, Tab 6, p 736, para 16

following their death; (2) at disease levels 2 and 3 whose disease level may yet progress and loss of services may be claimed by them, or by their dependants following their death if it is caused by HCV; (3) currently receiving loss of income or loss of support, who may switch to loss of services once the class member reaches or would have reached age 65. In addition, an as yet undetermined number of dependents of approved class members, some of whom may subsequently die as a result of their HCV infection, as well as in progress and future claimants who may later qualify and experience loss of services.⁹⁷

81. The operative provision under the Plans further limits the majority of claimants from recovering the full measure of the actual hours of services that they have lost, which militates against any argument that approved class members and dependants will be overcompensated if the Courts grant this recommended allocation.⁹⁸

I. Logistics and Costs of Implementing the Recommended Allocations

82. As the recommended allocations address many of the same compensatory shortfalls partially addressed by the 2013 Special Distribution Benefits, the same methodologies and systems that have already been successfully implemented can be largely employed, making implementation simpler and more cost-effective. Standard operating procedures created for implementing the 2013 Special Distribution Benefits would largely apply and any required adjustments are relatively minor.⁹⁹

83. For the majority of approved class members and family members, no additional action would be required. The Administrator would identify, calculate and distribute the discrete benefits based on data already contained in the claims database. Experience with administering the 2013 Special Distribution Benefits has shown, however, that some approved class members and family members

⁹⁷ First Peterson Affidavit, MR, Vol I, Tab 4, pp 165-166, para 110

⁹⁸ First Peterson Affidavit, MR, Vol I, Tab 4, p 166, para 111

⁹⁹ First Peterson Affidavit, MR, Vol I, Tab 4, pp166-167, paras 113 and 115

will need to be located and deaths and other changed circumstances will require additional steps to facilitate the distribution.¹⁰⁰

84. The Administrator estimated the administration costs to implement, calculate and distribute the appropriate retroactive payments for the recommended allocations based on the current fee per service structure approved by the Courts in 2017 for the ongoing administration of the retroactive 2013 Special Distribution Benefits.¹⁰¹ With the elimination of the retroactive component of the modified recommendation concerning loss of services, there are reductions associated with the Administrator's original cost estimate in the amount of \$120,000 (inclusive of applicable taxes).

85. Eckler has estimated the present value of the administration fees for prospective payments to be \$127,000 based on the fixed fee of \$5,000 per annum approved by the Courts for the prospective component of the 2013 Special Distribution Benefits in place since 2017. Eckler has compiled an implementation budget that includes these estimated administration costs as well as the additional costs discussed below.¹⁰²

86. The structural accommodations previously made to the CLASS database to accommodate the 2013 Special Distribution Benefits will also accommodate the allocations under consideration. Minimal dedicated programming time would be required to create additional coding to ensure the integrity of the payment records in the database. Such recording is a significant requirement for future financial sufficiency review work. A line item totaling \$14,000 has been included in the implementation budget to account for this work.¹⁰³

¹⁰⁰ First Peterson Affidavit, MR, Vol I, Tab 4, pp 166-167, paras 112 and 114

¹⁰¹ First Peterson Affidavit, MR, Vol I, Tab 4, p 167, para 116 and MR, Vol II, Ex BB, p 692 – Administrator's estimated costs of Administration

¹⁰² First Peterson Affidavit, MR, Vol I, Tab 4, p 168, paras 117-118; see also, First Eckler Affidavit, MR, Vol II, Tab 5, Ex A, p 720, para 59-64

¹⁰³ First Peterson Affidavit, MR, Vol I, Tab 4, p 168, para 119

87. The provisions of the Plans, the court approved protocols and the Administrator's standard operating procedures have been used successfully in respect of claims for deceased class members and family members across the country over the course of the administration, including for the implementation of the 2013 Special Distribution Benefits. The Joint Committee and the Administrator believe that they are adequate for the most part to address the various scenarios that will arise if these recommendations are implemented. However, there will be those who have died in circumstances where their estates have been wound up, where the executor of the estate may be deceased, or where they may have died intestate. As a precaution, a line item totalling \$75,000 has been included in the implementation budget to address additional costs that may arise in this regard.¹⁰⁴

88. The revised cost of administration amounts to \$1,400,000, inclusive of taxes, is detailed as follows:¹⁰⁵

Item	Costs	Sales Tax Rate	Costs with Tax
Revised retroactive Payment Costs	681,415	13%	770,000
Programming Change Cost	14,000	13%	20,000
Missed 2013 Special Distribution Benefits	50,000	13%	60,000
Future Payment Cost	127,000	13%	140,000
Estate Administration Cost	75,000	13%	80,000
Other Service Cost ¹⁰⁶	300,000	10.6%	330,000
Total	\$1,247,415		\$1,400,000

¹⁰⁴ First Peterson Affidavit, MR, Vol I, Tab 4, p 168, para 120

¹⁰⁵ Second Peterson Affidavit, MR, Vol II, Tab 6, p 736, para 17

¹⁰⁶ This includes various service providers such as the Joint Committee, Eckler, the Auditors, and the Trustee, who will perform work implementing, overseeing, recording and auditing the 2019 Special Distribution Benefits if granted.

89. Since the 2019 Allocation Benefits will be created from Excess Capital, none of the associated administrative costs would be borne by the provinces and territories. All administration costs associated with the 2019 Allocation Benefits will be charged to the existing Special Distribution Benefit Account.¹⁰⁷

J. Rebalancing of Notional Accounts

90. The Joint Committee proposes that all 2019 Allocation Benefits be paid from the existing notional Special Distribution Benefit Account.

91. A reallocation of Excess Capital between the notional HCV Regular Benefit Account, HCV Special Distribution Benefit Account and HCV Late Claims Benefit Account will be required to maintain the sufficiency of all three accounts. The required amounts of rebalancing are shown in the table below, with all figures as at December 31, 2019.¹⁰⁸

\$000	Total Fund	Regular Benefit Account	Special Distribution Benefit Account	Late Claims Benefit Account
Restated Excess Capital as at December 31, 2019	195,037	191,757	2,178	1,102
Cost of 2019 Allocation Benefits, including Required Capital and administration costs	(159,914)	0	(159,914)	0
Reallocation of 2019 Excess Capital among Notional Accounts	0	(156,634)	157,736	(1,102)
Remaining Excess Capital	35,123	35,123 ¹⁰⁹	0	0

¹⁰⁷ Second Eckler Affidavit, MR, Vol II, Tab 7, Ex A, p 771, para 22

¹⁰⁸ Second Eckler Affidavit, MR, Vol II, Tab 7, Ex A, p 771, para 20

¹⁰⁹ After taking into account the change in the Trust's financial position after the 2019 Phase One Financial Sufficiency Review, this amount is approximately \$2,000,000 in 2022 dollars. See, Second Eckler Affidavit, MR, Vol II, Tab 7, Ex A, p 770, para 18

The figures in the table above assume that all the remaining Excess Capital is retained in the Regular Benefit Account.¹¹⁰

92. The table above shows that, effective December 31, 2019, \$156,634,000 should be reallocated from the HCV Regular Benefit Account to the HCV Special Distribution Benefit Account, and \$1,102,000 from the HCV Late Claims Benefit Account to the HCV Special Distribution Benefit Account.¹¹¹ These reallocations are reflected in the draft orders and judgment.

PART III - ISSUES AND THE LAW

93. These applications raise the following issues:

- a. Are the requested allocations of Excess Capital permissible under the Allocation Provision?
- b. Should the Courts exercise their unfettered discretion to order the requested allocations of Excess Capital?

94. The Joint Committee submits the answer to both questions is yes.

A. The Allocations are Permissible

95. These Courts held that under the Allocation Provision, there are only two restrictions on their unfettered discretion to allocate actuarially unallocated assets. The allocation must be reasonable and must not discriminate based upon where the Class Member resides or received blood. Absent the consent of the parties, an allocation must not involve an amendment to the Settlement Agreement.¹¹²

¹¹⁰ Alternative allocations that apply some of the remaining Excess Capital to the Special Distribution Benefit Account or the Late Claims Benefit Account would also be possible. See, Second Eckler Affidavit, MR, Vol II, Tab 7, Ex A, p 771, para 21

¹¹¹ Second Eckler Affidavit, MR, Vol II, Tab 7, Ex A, p 771, para 23

¹¹² The Courts' 2013 Phase Two allocation benefit decisions: Perell, J, MR, Vol VIII, Tab 27, p 2941, paras 157-158; Hinkson, CJ, MR, Vol VIII, Tab 29, pp 2998-2999, paras 30-31; Corriveau, J, MR, Vol VIII, Tab 28, p 2962, para 74

The Allocations Do Not Discriminate nor Involve Amendments to the Settlement Agreement

96. The proposed allocations do not discriminate and do not require an amendment to the Settlement Agreement. They are precisely the type of allocations the Courts concluded were permissible and appropriate under the Allocation Provision and follow in those footsteps.

The Allocations are Reasonable

97. The proposed allocations are also demonstrably reasonable and fulfil one of the purposes of the Allocation Provision identified by Justice Perell: to bridge compensatory gaps or obtain other additional compensation up to the limits available at law.

As described above, virtually every head of compensation, and most particularly the compensation for income losses, was below what would have been recoverable as a head of damage had the Class Members' individual claims been successfully litigated against other than the Canadian Red Cross. For some Class Members, compensation available under tort or statute law was not made available under the contract law of the Settlement Agreement. Contrary to the submission of Canada, while from its perspective, the provision's purpose was to provide an opportunity to obtain excess capital early, from the perspective of the Class Members, the purpose of the excess capital allocation provision was not to preserve the gaps in compensation, its purpose was to provide an opportunity to bridge those compensatory gaps or to obtain other additional compensation up to the limits that might have been available at law.

Further, as described above, the factual circumstances reveal that the governments' contribution of \$1.118 billion for compensation was never intended by either party to be the equivalent of full compensation at law for the Class Members' injuries...¹¹³

98. Each of the proposed discrete benefits addresses compensatory shortfalls in the Settlement Agreement and remain within the limits of the law.

Recommendation 1 – As demonstrated in paragraph 42, the cumulative compensation for approved class members reaching disease level 6 would still be below the SCC Trilogy Cap on general damages for pain and suffering.

¹¹³ The Courts' 2013 Phase Two allocation benefit decisions: Perell, J, MR, Vol VIII, Tab 27, p 2944, paras 173-174 and p 2945, para 183

Recommendation 2 – As demonstrated in paragraph 60, the amount payable to approved family members for loss of guidance, care and companionship would still be below the combined average award under statute and case law.

Recommendation 3 – As noted in paragraphs 65 and 66, the proposed increase achieves the 14% of pre-tax loss of income Eckler previously opined, and continues to opine, is a reasonable proxy for compensation for diminished pension due to disability for those who suffer a loss of income, the single largest compromise from the tort model under the Settlement Agreement.

Recommendation 4 – As demonstrated in paragraph 76, the hourly rate payable for loss of services in the home would still be below both the national median cost and the median cost in each of the provinces in which the supervising Courts are located.

B. The Courts Should Exercise Their Discretion to Approve the Proposed Allocations

99. Upon concluding that the proposed allocations are permissible and reasonable, the Courts may exercise their unfettered discretion to approve the discrete benefits proposed for the benefit of approved class members and family members without further analysis. This was the approach of Justice Perell and Chief Justice Hinkson in their decisions.

The Optional Factors Also Favour Approval

100. In her decision, Justice Corriveau considered the nine factors listed after the Allocation provision, which the Courts may, but are not required to, consider in exercising their unfettered discretion under the Allocation Provision.¹¹⁴

¹¹⁴ The Courts' 2013 Phase Two allocation benefit decisions: Corriveau, J, MR, Vol VIII, Tab 28, p 2962, para 75; Perell, J, MR, Vol VIII, Tab 27, pp 2916-2917, para 30; Hinkson, CJ, MR, Vol VIII, Tab 29, p 2998, para 31

101. A consideration of the optional factors also favours the Courts exercising their discretion in favour of approving the proposed allocations. Each of these factors (cited to Justice Corriveau's decision), is discussed below.

102. **(i) The number of class members and family class members.**¹¹⁵ As noted in paragraph 26, there were 5,413 approved class members and 9,691 approved family members under the Plans as of December 31, 2021. The number of approved class members and family members, both under the Regular Plans and the HCV Late Claims Benefit Plan, will continue to grow over time, as they always have. This growth has been factored into the actuarial calculation of Excess Capital to ensure that the funds sought to be allocated in these applications will not deprive future approved claimants of equivalent compensation.

103. While the number of class members and family members approved to date is lower than projected at settlement approval, the Joint Committee submits this factor is neutral when such numbers are considered in the context of financial sufficiency. It is clear that the \$1.118 billion fixed settlement amount was insufficient to pay even this lower number of approved class members and family members the benefits owed to them under the Regular Plans. A higher number of approved class members and family members would only increase the funding *deficit* of the FPT Governments.

104. **(ii) The experience of the Trust Fund.**¹¹⁶ As noted in paragraphs 29-30, the 2019 Excess Capital is entirely the product of the investment strategy undertaken by the Trustee, on the instructions of the Joint Committee, of Canada's upfront money paid in full satisfaction of its fixed liability under the Settlement Agreement. But for this investment strategy, there would have been a \$348 million *deficit* at December 31, 2013 instead of excess capital of about \$256 million. As of December 31,

¹¹⁵ The Courts' 2013 Phase Two allocation benefit decisions: Corriveau, J, MR, Vol VIII, Tab 28, pp 2963-2964, paras 82-92

¹¹⁶ The Courts' 2013 Phase Two allocation benefit decisions, Corriveau, J, MR, Vol VIII, Tab 28, pp 2964-2965, paras 92-98

2022, approximately \$1,221,876,852 in total had been paid to class members and their family members since the inception of the Trust, which is about \$104 million (9.3%) more than the \$1.118 billion capped liability of the governments under the Settlement Agreement.¹¹⁷

105. As noted in paragraphs 21-23, the value of the Trust Fund's invested assets declined following the completion of Phase One of the 2019 Financial Sufficiency Review due to the financial markets. The Joint Committee's amended allocation recommendations reflect the reduced 2019 Excess Assets available in the Trust Fund for allocation.

106. The Joint Committee submits this factor strongly favours allocating to class members and family members the investment returns in the form of 2019 Excess Assets.

107. **(iii) The fact that the benefits provided under the Plans do not reflect the tort model.**¹¹⁸

As noted at paragraph 97, virtually every head of compensation under the Settlement Agreement was below what would have been recoverable as a head of damage had class members individual claims been successfully litigated. The proposed benefits address this factor's acknowledged fact by moving closer to bridging the compensatory gap under the tort model in these four areas.

108. The Joint Committee submits this factor strongly favours allocating to class members and family members as proposed.

109. **(iv) Section 26(10) of the *Ontario Class Proceedings Act, 1992*, section 34(5) of the *British Columbia Class Proceedings Act*, section 1036 of the *Québec Code of Civil Procedure*.**¹¹⁹ This factor remains inapplicable.

¹¹⁷ See para 28

¹¹⁸ The Courts' 2013 Phase Two allocation benefit decisions: Corriveau, J, MR, Vol VIII, Tab 28, pp 2967-2968, paras 123-132

¹¹⁹ The Courts' 2013 Phase Two allocation benefit decisions: Corriveau, J, MR, Vol VIII, Tab 28, p 2968, para 133. Note, section 1036 of the Québec *Civil Code de procedure* was repealed and replaced by *Code of civil procedure*, chapter C-25.01, s.596 and section 34(5) of the British Columbia *Class Proceedings Act* was repealed in 2018 by S.B.C. 2018, c.49, s.19 and not replaced.

110. **(v) Whether the integrity of the Agreement will be maintained, and the benefits particularized in the Plans ensured.**¹²⁰ The actuarial calculation of 2019 Excess Capital ensures that the benefits payable under the Plans will be maintained. As an additional safeguard, the actuaries' calculations also factor in an additional provision, Required Capital, to protect class members from future major adverse experience or catastrophe.¹²¹ Similarly, the actuarial costing of the Joint Committee's proposed allocations also factors in Required Capital to ensure that the prospective payment of these discrete benefits will also be maintained.

111. The Joint Committee submits this factor favours approval of the proposed allocations, which do not affect the integrity of the Settlement Agreement or threaten the ability to make future payments under the Plans.

112. **(vi) Whether the progress of the disease is significantly different than the medical model used in the Eckler actuarial report appended as Exhibit "A" to the affidavit of Sharon D. Matthews sworn July 9, 1999.**¹²² In their decisions, the Courts considered the evidence regarding disease progression at the time of settlement approval and at the time of the 2013 Financial Sufficiency Review. Justices Perell and Corriveau described the pathology and treatment of HCV, and the effects of having a chronic, progressive and ultimately life-threatening disease.¹²³ Chief Justice Hinkson adopted Justice Perell's decision on these points.¹²⁴ As Justice Corriveau found, despite newer treatments which may clear the virus for some, they do not erase the consequences of having lived

¹²⁰ The Courts' 2013 Phase Two allocation benefit decisions: Corriveau, J, MR, Vol VIII, Tab 28, p 2969, paras 134-135

¹²¹ See discussion of Required Capital, Affidavit of Richard Border affirmed November 25, 2020, MR, Vol II, Tab 8, p 784, para 18; see also, First Eckler Affidavit, MR, Vol II, Tab 5, Ex A, p 705, para 17, fifth bullet

¹²² The Courts' 2013 Phase Two allocation benefit decisions: Corriveau, J, MR, Vol VIII, Tab 28, pp 2965-2967, paras 99-122

¹²³ The Courts' 2013 Phase Two allocation benefit decisions: Perell, J, MR, Vol VIII, Tab 27, pp 2924-2926, paras 73-91; Corriveau, J, MR, Vol VIII, Tab 28, pp 2966-2967, paras 105-122

¹²⁴ The Courts' 2013 Phase Two allocation benefit decisions: Hinkson, CJ, MR, Vol VIII, Tab 29, p 2992, para 21

with the disease for a number of decades and victims remain at risk.¹²⁵ Similarly, Justice Perell found that direct-acting antiviral drugs do not “guarantee a return to good health because the Class Members’ livers have been damaged over a course of some 30 years of chronic and progressive viral infection. The mental health issues linger and cured or not, Class Members have an elevated risk of hepatocellular cancer and are vulnerable to a subsequent liver insult.”¹²⁶

113. As noted in paragraph 39, the disease progression under the 2013 medical model and 2019 medical model is not materially different.

114. The Joint Committee submits this factor also favours approval of the proposed allocations.

115. **(vii) The fact that the Class Members and Family Class Members bear the risk of insufficiency of the Trust Fund.**¹²⁷ The Courts expressly acknowledged this fact, noting that because the FPT Governments’ liability was capped under the Settlement Agreement, class members took on the risk that \$1.118 billion was insufficient for full compensation under the Regular Plans.¹²⁸

116. The Joint Committee submits this factor strongly favours approval of the proposed allocations. As class members solely bore the risk that the Trust Fund would be insufficient, it is just that they reap the rewards arising from bearing that risk. The risk of insufficiency - the acknowledged funding *deficit* - would have materialized, but for class members bearing the investment risk, which produced the 2019 Excess Capital available for allocation.

117. **(viii) The fact that the FPT Governments’ contributions under the Agreement are capped.**¹²⁹ The FPT Governments’ capped liability under the Settlement Agreement has shielded them from having to make up the \$348 million funding *deficit* for benefits payable under the Regular Plans.

¹²⁵ The Courts’ 2013 Phase Two allocation benefit decisions: Corriveau, J, MR, Vol VIII, Tab 28, p 2967, paras 118 and 121

¹²⁶ The Courts’ 2013 Phase Two allocation benefit decisions: Perell, J, MR, Vol VIII, Tab 27, p 2926, para 89

¹²⁷ The Courts’ 2013 Phase Two allocation benefit decisions: Corriveau, J, MR, Vol VIII, Tab 28, p 2969, paras 136-138

¹²⁸ The Courts’ 2013 Phase Two allocation benefit decisions: Perell, J, MR, Vol VIII, Tab 27, pp 2927-2928, para 100; Corriveau, J, MR, Vol VIII, Tab 28, p 2969, para 140

¹²⁹ The Courts’ 2013 Phase Two allocation benefit decisions: Corriveau, J, MR, Vol VIII, Tab 28, p 2969, paras 136-138

118. The Joint Committee submits this factor strongly favours approval of the proposed allocations of Excess Capital.

119. **(ix) The source of the money and other assets which comprise the Trust Fund.**¹³⁰ The upfront money Canada paid into the Trust Fund in full satisfaction of its liability was exhausted long ago. The current money and other assets of the Trust Fund sought to be allocated as Excess Capital is comprised entirely of investment returns earned through the investment strategy undertaken by the Trustee on the instructions of the Joint Committee.

120. In summary, apart from neutral and inapplicable factors, all of the optional factors the Courts may consider favour the Courts' exercising their discretion to approve the proposed allocations of Excess Capital.

PART IV - ORDER REQUESTED

121. The Joint Committee respectfully requests the Courts to exercise their unfettered discretion and grant these applications and approve the draft orders/judgment in the form attached.

ALL OF WHICH THE JOINT COMMITTEE RESPECTFULLY SUBMITS

This 8th day of May, 2023.



FOR Kathryn Podrebarac



FOR Harvey Strosberg, KC



FOR Michel Savonitto and Martine Trudeau

¹³⁰ The Courts' 2013 Phase Two allocation benefit decisions: Corriveau, J, MR, Vol VIII, Tab 28, pp 2969-2970, paras 139-146

A handwritten signature in blue ink, appearing to read "H. Remondino F. Amador".

FOR David Loukidelis, KC

Members of the Joint Committee

Schedule A

1. *Andrews v. Grand & Toy Alberta Ltd.*, 1978 CanLII 1 (SCC), [1978] 2 S.C.R. 229
2. *Arnold v. Teno*, 1978 CanLII 2 (SCC), [1978] 2 S.C.R. 287
3. *Endean v. Canadian Red Cross Society*, 1999 CanLII 6357 (BC SC)
4. *Endean v. Canadian Red Cross Society*, 2016 BCSC 1506
5. *Honhon v. The Attorney General of Canada*, 1999 CanLII 11813 (QC CS)
6. *Honhon v. The Attorney General of Canada*, 1999 CanLII 11242 (QC CS)
7. *Honhon c. Procureur général du Canada*, 2016 QCCS 3884 (CanLII)
8. *Parsons v. Canadian Red Cross Society*, [1999] O.J. No. 3572
9. *Parsons v. Canadian Red Cross Society*, 2016 ONSC 4809
10. *Thornton v. Prince George Board of Education*, 1978 CanLII 12 (SCC), [1978] 2 S.C.R. 267

Schedule B

Class Proceedings Act, 1992, S.O. 1992, c. 6, s. 26(10)

Class Proceedings Act, RSBC 1996, c. 50, s. 34(5) (repealed and not replaced)

Code of civil procedure, c.C.-25 Article 1036 (repealed and replaced by Code of civil procedure, chapter C-25.01, s.596)

The Fatal Accidents Act, RSA 2000, c .F-8, s. 8(2)

Survival of Actions Act, RSA 2000, c. S-27, s. 2, 5

The Fatal Accidents Act, CCSM c. F50, s. 3.1(2)

The Fatal Accidents Act, RSS 1978, c. F-11, s. 4.1

The Survival of Actions Act, SS 1990-91, c. S-66.1, s. 3

Fatal Accidents Act, RSY 2002, c. 86, s. 3.01(2)

Survival of Actions Act, RSY 2002, c. 212, s. 2

Family Compensation Act, RSBC 1996, c. 126, s. 2, 3(1)

Fatal Accidents Act, RSNB 2012, c. 104, s. 3

Survival of Actions Act, RSNB 2011, c. 227, s. 3

Fatal Accidents Act, RSNL 1990, c. F6, s. 6

Survival of Actions Act, RSNL 1990, c. S-32, s. 2, 9

Fatal Accidents Act, RSNWT 1988, c.F-3, s. 2, 3

Fatal Injuries Act, RSNS 1989, c. 163, s. 5

Survival of Actions Act, RSNS 1989, c. 453, s. 2, 6

Fatal Accidents Act, RSNWT (Nu) 1988, c.F-3, s. 2, 3

Family Law Act, RSO 1990, c. F.3, s. 61

Fatal Accidents Act, RSPEI 1988, c. F-5, s. 6

Survival of Actions Act, RSPEI 1988, c. S-11, s. 4

Class Proceedings Act, 1992, S.O. 1992, c. 6, s. 26(10)

Return of unclaimed amounts

(10) Any part of an award for division among individual class members that remains unclaimed or otherwise undistributed after a time set by the court shall be returned to the party against whom the award was made, without further order of the court. 1992, c. 6, s. 26 (10).

Class Proceedings Act, RSBC 1996, c. 50, s. 34(5) (repealed and not replaced)

Repealed

34 [Repealed 2018-49-19.]

Code of civil procedure, c.C.-25 Article 1036 (repealed and replaced by Code of civil procedure, chapter C-25.01, s.596)

596. A debtor from whom arrears are claimed may plead a change, after judgment, in his condition or in that of his creditor and be released from payment of the whole or a part of them.

However, in no case where the arrears claimed have been due for over six months may the debtor be released from payment of them unless he shows that it was impossible for him to exercise his right to obtain a review of the judgment fixing the support.

The Fatal Accidents Act, RSA 2000, c .F-8, s. 8(2)

(2) If an action is brought under this Act, the court, without reference to any other damages that may be awarded and without evidence of damage, shall award damages for grief and loss of the guidance, care and companionship of the deceased person of

- (a) subject to subsection (3), \$82 000 to the spouse or adult interdependent partner of the deceased person,
- (b) \$82 000 to the parent or parents of the deceased person to be divided equally if the action is brought for the benefit of both parents, and
- (c) \$49 000 to each child of the deceased person.

Survival of Actions Act, RSA 2000, c. S-27, s. 2, 5

Cause of action survives for benefit of estate

2 A cause of action vested in a person who dies after January 1, 1979 survives for the benefit of the person's estate.

Recovery of damages

5(1) If a cause of action survives under section 2, only those damages that resulted in actual financial loss to the deceased or the deceased's estate are recoverable.

(2) Without restricting the generality of subsection (1), the following are not recoverable:

- (a) punitive or exemplary damages;
- (b) damages for loss of expectation of life, pain and suffering, physical disfigurement or loss of amenities;

- (c) damages in relation to future earnings, including damages for loss of earning capacity, ability to earn or chance of future earnings.
- (3) Subsection (2)(c) applies only to causes of action that arise after the coming into force of this section.

The Fatal Accidents Act, CCSM c. F50, s. 3.1(2)

Amount of damages

3(2) Subject to subsection (3), in every such action such damages as are proportional to the pecuniary loss resulting from the death shall be awarded to the persons respectively for whose benefit the action is brought .

The Fatal Accidents Act, RSS 1978, c. F-11, s. 4.1

Damages for bereavement for death on or after August 1, 2004

4.1(1) In this section:

- (a) “child” does not include a grandchild;
- (b) “parent” does not include a grandparent.

The Survival of Actions Act, SS 1990-91, c. S-66.1, s. 3

Cause of action survives for benefit of estate

3 A cause of action vested in a person who dies after the coming into force of this Act survives for the benefit of that person's estate.

Fatal Accidents Act, RSY 2002, c. 86, s. 3.01(2)

(2) In every action brought under this Act there shall be awarded, without reference to any other damages that may be awarded and without evidence of damage, damages for grief and the loss of guidance, care and companionship in the amounts of

- (a) \$75,000 to the deceased’s spouse, unless the deceased and the spouse were living separately and apart when the deceased died;
- (b) \$37,500 to each of the deceased’s parents or, if the action is brought for the benefit of one of them only, \$75,000 to that parent; and
- (c) \$45,000 to each of the deceased’s daughters and sons.

Survival of Actions Act, RSY 2002, c. 212, s. 2

2 Causes of action of deceased person

(1) All causes of action vested in a person who dies after the commencement of this Act, survive for the benefit of the person’s estate.

(2) The rights conferred by subsection (1) are in addition to and not in derogation of any rights conferred by the Fatal Accidents Act. [S.Y. 2002, c. 212, s. 2]

Family Compensation Act, RSBC 1996, c. 126, s. 2, 3(1)

Action for death by wrongful act, neglect or default

2 If the death of a person is caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not resulted, have entitled the party injured to maintain an action and recover damages for it, any person, partnership or corporation which would have been liable if death had not resulted is liable in an action for damages, despite the death of the person injured, and although the death has been caused under circumstances that amount in law to an indictable offence.

Procedures for bringing action

3 (1) The action must be for the benefit of the spouse, parent or child of the person whose death has been caused, and must be brought by and in the name of the personal representative of the deceased.

Fatal Accidents Act, RSNB 2012, c. 104, s. 3

Action for wrongful death

3 If the death of a person is caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the deceased to maintain an action and recover damages in respect of them, the person who would have been liable, if death had not ensued, is liable for damages, despite the death of the deceased, even if the death was caused in circumstances amounting in law to culpable homicide.

Survival of Actions Act, RSNB 2011, c. 227, s. 3

Cause of action survives for benefit of estate

3(1) All causes of action vested in a person who dies after April 1, 1969, survive for the benefit of the estate.

3(2) The rights conferred by subsection (1) are in addition to and not in derogation of any rights conferred by the *Fatal Accidents Act*.

Fatal Accidents Act, RSNL 1990, c. F6, s. 6

Damages

6. (1) In an action brought under this Act the court may award the damages it considers proportional to the injury resulting from the death to the parties for whose benefit the action was brought, and the amount so recovered shall be divided among those parties in the shares that the court directs.

(2) The damages awarded under subsection (1) may include an amount to compensate for the loss of care, guidance and companionship that a person for whose benefit the action is brought might reasonably have expected to receive from the deceased if the death had not occurred.

(3) Where the defendant is advised to pay money into court, the defendant may pay in compensation a lump sum to all persons entitled under this Act for his or her wrongful act, neglect or default, without specifying the shares into which it is to be divided by the court.

(4) Where the sum is not accepted and an issue is taken by the plaintiff as to its sufficiency, and the court considers it sufficient, the defendant shall be entitled to a judgment on that issue.

(5) One action only may be taken for and in respect of the same subject matter of a complaint.

Survival of Actions Act, RSNL 1990, c. S-32, s. 2, 9

Causes of action to survive

2. Actions and causes of action

- a) vested in a person who has died; or
- (b) existing against a person who has died,

shall survive for the benefit of or against his or her estate.

Rights under Fatal Accidents Act

9. The rights conferred by this Act for the benefit of the estate of a deceased person are in addition to and not in derogation of rights conferred by the *Fatal Accidents Act* and so much of this Act as relates to causes of action against the estate of a deceased person applies in relation to causes of action under that Act as it applies in relation to other causes of action not expressly excepted from the operation of this Act.

Fatal Accidents Act, RSNWT 1988, c.F-3, s. 2, 3

Liability for damages

2. Where the death of a person is caused by a wrongful act, neglect or default that, if death had not resulted, would have entitled the person injured to maintain an action and recover damages in respect of the injury, the person who would have been liable if death had not resulted is liable to an action for damages, notwithstanding the death of the person injured and although the death was caused under circumstances amounting in law to culpable homicide.

Action

3. (1) An action brought under this Act

- (a) shall be for the benefit of the spouse, parent or child of the person whose death was caused by a wrongful act, neglect or default; and
- (b) subject to section 8, must be brought by and in the name of the executor or administrator of the deceased.

Award of damages

(2) In an action brought under this Act, a judge may award damages that are proportional to the injury resulting from the death of the deceased to the persons for whom and for whose benefit the action is brought.

Division of damages

(3) The damages awarded under subsection (2) shall, after deduction of the costs not recovered from the defendant, be divided among the persons for whom and for whose benefit the action is brought in the shares that may be determined at the trial.

Fatal Injuries Act, RSNS 1989, c. 163, s. 5

Damages

5 (1) Every action brought under this Act shall be for the benefit of the spouse, common-law partner, parent or child of such deceased person and the jury may give such damages as they think proportioned to the injury resulting from such death to the persons respectively for whose benefit such action was brought, and the amount so recovered, after deducting the costs not recovered, if any, from the defendant, shall be divided among such persons in such shares as the jury by their verdict find and direct.

(2) In subsection (1), "damages" means pecuniary and non-pecuniary damages and, without restricting the generality of this definition, includes

- (a) out-of-pocket expenses reasonably incurred for the benefit of the deceased;
- (b) a reasonable allowance for travel expenses incurred in visiting the deceased between the time of the injury and the death;
- (c) where, as a result of the injury, a person for whose benefit the action is brought provided nursing, housekeeping or other services for the deceased between the time of the injury and the death, a reasonable allowance for loss of income or the value of the services; and
- (d) an amount to compensate for the loss of guidance, care and companionship that a person for whose benefit the action is brought might reasonably have expected to receive from the deceased if the death had not occurred.

(3) In assessing the damage in any action there shall not be taken into account any sum paid or payable on the death of the deceased, whether by way of pension or proceeds of insurance, or any future premiums payable under any contract of assurance or insurance.

(4) In an action brought under this Act where funeral expenses have been incurred by the parties for whose benefit the action is brought, damages may be awarded for reasonable necessary expenses of the burial of the deceased, including transportation and things supplied and services rendered in connection therewith. R.S., c. 163, s. 5; 2000, c. 29, s. 11.

Survival of Actions Act, RSNS 1989, c. 453, s. 2, 6

Subsisting cause of action survives death

2 (1) Except as provided in subsection (2), where a person dies, all causes of action subsisting against or vested in him survive against or, as the case may be, for the benefit of his estate.

Certain causes of action do not survive

(2) A cause of action does not survive death when the action is for

(a) adultery;

(b) inducing a spouse to leave or remain apart from his or her spouse. R.S., c. 453, s. 2.

Fatal Injuries Act

6 The rights conferred by this Act are in addition to and not in derogation of any rights conferred by the *Fatal Injuries Act*. R.S., c. 453, s. 6.

Fatal Accidents Act, RSNWT (Nu) 1988, c.F-3, s. 2, 3

Liability for damages

2. Where the death of a person is caused by a wrongful act, neglect or default that, if death had not resulted, would have entitled the person injured to maintain an action and recover damages in respect of the injury, the person who would have been liable if death had not resulted is liable to an action for damages, notwithstanding the death of the person injured and although the death was caused under circumstances amounting in law to culpable homicide.

Action

3. (1) An action brought under this Act

(a) shall be for the benefit of the spouse, parent or child of the person whose death was caused by a wrongful act, neglect or default; and

(b) subject to section 8, must be brought by and in the name of the executor or administrator of the deceased. Award of damages (2) In an action brought under this Act, a judge may award damages that are proportional to the injury resulting from the death of the deceased to the persons for whom and for whose benefit the action is brought. Division of damages (3) The damages awarded under subsection (2) shall, after deduction of the costs not recovered from the defendant, be divided among the persons for whom and for whose benefit the action is brought in the shares that may be determined at the trial.

Family Law Act, RSO 1990, c. F.3, s. 61

Right of dependants to sue in tort

61 (1) If a person is injured or killed by the fault or neglect of another under circumstances where the person is entitled to recover damages, or would have been entitled if not killed, the spouse, as defined in Part III (Support Obligations), children, grandchildren, parents, grandparents, brothers and sisters of the person are entitled to recover their pecuniary loss resulting from the injury or death from the person from whom the person injured or killed is

entitled to recover or would have been entitled if not killed, and to maintain an action for the purpose in a court of competent jurisdiction. R.S.O. 1990, c. F.3, s. 61 (1); 1999, c. 6, s. 25 (25); 2005, c. 5, s. 27 (28).

Damages in case of injury

- (2) The damages recoverable in a claim under subsection (1) may include,
- (a) actual expenses reasonably incurred for the benefit of the person injured or killed;
 - (b) actual funeral expenses reasonably incurred;
 - (c) a reasonable allowance for travel expenses actually incurred in visiting the person during his or her treatment or recovery;
 - (d) where, as a result of the injury, the claimant provides nursing, housekeeping or other services for the person, a reasonable allowance for loss of income or the value of the services; and
 - (e) an amount to compensate for the loss of guidance, care and companionship that the claimant might reasonably have expected to receive from the person if the injury or death had not occurred. R.S.O. 1990, c. F.3, s. 61 (2).

Contributory negligence

- (3) In an action under subsection (1), the right to damages is subject to any apportionment of damages due to contributory fault or neglect of the person who was injured or killed. R.S.O. 1990, c. F.3, s. 61 (3).

Fatal Accidents Act, RSPEI 1988, c. F-5, s. 6

6. Benefit to dependants

- (1) Every proceeding under this Act shall be for the benefit of the dependants.

Damages for loss of pecuniary benefit

- (2) Subject to subsection (3) and section 7, in every proceeding under this Act, such damages as are attributable to the loss of pecuniary benefit or reasonable expectation of pecuniary benefit by the dependants resulting from the death of the deceased shall be awarded to the dependants for whose benefit the proceeding is brought.

Additional damages

- (3) Where a proceeding has been brought under this Act, there may be included in the damages awarded
- (a) an amount sufficient to cover the reasonable expenses of the funeral and the disposal of the body of the deceased; and
 - (b) where the proceeding is brought or continued by the personal representative, an amount not exceeding \$500 toward the expenses of taking out administration of the estate in this province; and
 - (c) an amount to compensate for the loss of guidance, care and companionship that the claimant might reasonably have expected to receive from the deceased if the deceased had not died, unless any sum has been recovered under the Survival of Actions Act R.S.P.E.I. 1988, Cap. S-11 for such expenses. 1978, c.7, s.6; 1992, c.24, s.1.

Survival of Actions Act, RSPEI 1988, c. S-11, s. 4

4. Survival of action for benefit of estate

(1) A cause of action vested in a person who dies survives for the benefit of the person's estate. Saving for Fatal Accidents Act claims

(2) The rights conferred by this Act for the benefit of the estates of deceased persons are in addition to and not in derogation of any right of action for the benefit of the dependants of deceased persons conferred by the Fatal Accidents Act R.S.P.E.I. 1988, Cap. F-5. 1978, c.21, s.4; 1987, c.6 s.20; 2020, c.84, s.4.

Schedule C

Class Members' Submissions on 2013 Allocation

Recommendation One – Fixed Payments

1. Compendium of Class Member Submissions 2013 allocation: MR, Vol VII, Tab 23, p 2832, para 6
2. Compendium of Class Member Submissions 2013 allocation: MR, Vol VII, Tab 23, p 2833, para 7
3. Compendium of Class Member Submissions 2013 allocation: MR, Vol VII, Tab 23, p 2833, para 8
4. Compendium of Class Member Submissions 2013 allocation: MR, Vol VII, Tab 23, p 2833, para 9
5. Compendium of Class Member Submissions 2013 allocation: MR, Vol VII, Tab 23, p 2834, para 10
6. Compendium of Class Member Submissions 2013 allocation: MR, Vol VII, Tab 23, p 2834, para 11
7. Compendium of Class Member Submissions 2013 allocation: MR, Vol VII, Tab 23, p 2835, para 12
8. Compendium of Class Member Submissions 2013 allocation: MR, Vol VII, Tab 23, p 2835, para 13
9. Affidavit of Alan Melamud, sworn October 15, 2015 (“**Melamud Affidavit**”), MR, Vol IV, Tab 14, Ex A, p 1405
10. Melamud Affidavit, MR, Vol IV, Tab 14, Ex A, p 1405
11. Melamud Affidavit, MR, Vol IV, Tab 14, Ex A, p 1653
12. Affidavit of Arnaud Sauv -Dagenais, sworn October 15, 2015 (“**First Sauv -Dagenais Affidavit**”), MR, Vol V, Tab 15, ASD-2, p 1906
13. First Sauv -Dagenais Affidavit, MR, Vol V, Tab 15, ASD-2, pp 1909-1910
14. First Sauv -Dagenais Affidavit, MR, Vol V, Tab 15, ASD-2, p 2014
15. First Sauv -Dagenais Affidavit, MR, Vol V, Tab 15, ASD-2, pp 2019-2020
16. First Sauv -Dagenais Affidavit, MR, Vol V, Tab 15, ASD-2, p 2077-2078
17. Affidavit of Chya R. Mogerma, made October 16, 2015 (“**Mogerma Affidavit**”), MR, Vol VI, Tab 16, Ex A, p 2212
18. Affidavit of Shelley Woodrich, affirmed October 16, 2015 (“**First Woodrich Affidavit**”), MR, Vol VI, Tab 17, Ex A, p 2380
19. First Woodrich Affidavit, MR, Vol VI, Tab 17, Ex A, p 2386
20. Affidavit of Lise Carmichael-Yanish, sworn April 1, 2016 (“**Carmichael-Yanish Affidavit**”), MR, Vol VII, Tab 18, Ex A, p 2531
21. Carmichael-Yanish Affidavit, MR, Vol VII, Tab 18, Ex A, p 2635-2636
22. Affidavit of Shelley Woodrich, affirmed April 1, 2016 (“**Second Woodrich Affidavit**”), MR, Vol VII, Tab 19, p 2565
23. Affidavit of Arnaud Sauv -Dagenais, sworn April 1, 2016 (“**Second Sauv -Dagenais Affidavit**”), MR, Vol VII, Tab 20, Ex A, p 2599

Recommendation One - continued

24. Affidavit of Julie Davis, sworn April 1, 2016 (“**Davis Affidavit**”), MR, Vol VII, Tab 21, Ex A, p 2640
25. Davis Affidavit, MR, Vol VII, Tab 21, Ex A, p 2658-2659
26. Davis Affidavit, MR, Vol VII, Tab 21, Ex A, p 2691-2693

Recommendation Two - Family Member Loss of Guidance, Care and Companionship

27. Compendium of Class Member Submissions 2013 allocation: MR, Vol VII, Tab 23, p 2835, para 14 - General
28. Compendium of Class Member Submissions 2013 allocation: MR, Vol VII, Tab 23, p 2836, para 15 - Child
29. Compendium of Class Member Submissions 2013 allocation: MR, Vol VII, Tab 23, p 2836, para 16 - Child
30. Compendium of Class Member Submissions 2013 allocation: MR, Vol VII, Tab 23, p 2836, para 17 - Child
31. Compendium of Class Member Submissions 2013 allocation: MR, Vol VII, Tab 23, p 2837, para 18 - Child
32. Compendium of Class Member Submissions 2013 allocation: MR, Vol VII, Tab 23, p 2838, para 19 - Parent
33. Compendium of Class Member Submissions 2013 allocation: MR, Vol VII, Tab 23, p 2838, para 20 - Child
34. Compendium of Class Member Submissions 2013 allocation: MR, Vol VII, Tab 23, p 2839, para 21 – Child
35. Melamud Affidavit, MR, Vol IV, Tab 14, Ex A, p 1249 – General [14(p)], grandchild [14(q)]
36. Melamud Affidavit, MR, Vol IV, Tab 14, Ex A, p 1321-1322 - Sibling
37. Melamud Affidavit, MR, Vol IV, Tab 14, Ex A, p 1339-1340 – Grandchild
38. Melamud Affidavit, MR, Vol IV, Tab 14, Ex A, p 1403 - Grandchild
39. Melamud Affidavit, MR, Vol IV, Tab 14, Ex A, p 1405 - Child
40. Melamud Affidavit, MR, Vol IV, Tab 14, Ex A, p 1406 Grandchild
41. Melamud Affidavit, MR, Vol IV, Tab 14, Ex A, p 1480 - Child
42. Melamud Affidavit, MR, Vol IV, Tab 14, Ex A, p 1496 – Sibling, Parent
43. Melamud Affidavit, MR, Vol IV, Tab 14, Ex A, p 1546 – Child, Grandchild
44. Melamud Affidavit, MR, Vol IV, Tab 14, Ex A, p 1548 – Spouse, Child, Grandchild
45. Melamud Affidavit, MR, Vol IV, Tab 14, Ex A, p 1563 – Child, Grandchild
46. Melamud Affidavit, MR, Vol IV, Tab 14, Ex A, p 1651 – Spouse
47. Melamud Affidavit, MR, Vol IV, Tab 14, Ex A, p 1692- Child
48. Melamud Affidavit, MR, Vol IV, Tab 14, Ex A, p 1704 – Sibling
49. First Sauvé-Dagenais Affidavit, MR, Vol V, Tab 15, ASD-2, p 1825 – General
50. First Sauvé-Dagenais Affidavit, MR, Vol V, Tab 15, ASD-2, p 2026-2027 – General
51. First Sauvé-Dagenais Affidavit, MR, Vol V, Tab 15, ASD-2, p 1885-1886 - Spouse

Recommendation Two - continued

52. First Sauv -Dagenais Affidavit, MR, Vol V, Tab 15, ASD-2, p 1928-1929 – Spouse, Children, Grandchildren
53. First Sauv -Dagenais Affidavit, MR, Vol V, Tab 15, ASD-2, p 2007-2008 – Spouse
54. First Sauv -Dagenais Affidavit, MR, Vol V, Tab 15, ASD-2, p 1890-1891 – Grandchildren
55. First Sauv -Dagenais Affidavit, MR, Vol V, Tab 15, ASD-2, p 1932 - Grandchildren
56. First Sauv -Dagenais Affidavit, MR, Vol V, Tab 15, ASD-2, p 2030-2031 – Grandchildren
57. First Sauv -Dagenais Affidavit, MR, Vol V, Tab 15, ASD-2, p 2036 - Grandchild
58. First Sauv -Dagenais Affidavit, MR, Vol V, Tab 15, ASD-2, p 2076 – Grandchild
59. First Sauv -Dagenais Affidavit, MR, Vol V, Tab 15, ASD-2, p 2077-2078 – Grandchild
60. First Sauv -Dagenais Affidavit, MR, Vol V, Tab 15, ASD-2, p 2015 - Sibling
61. First Sauv -Dagenais Affidavit, MR, Vol V, Tab 15, ASD-2, p 2045-2046 - Sibling
62. Mogerman Affidavit, MR, Vol VI, Tab 16, Ex A, p 2029 – Child
63. Mogerman Affidavit, MR, Vol VI, Tab 16, Ex A, p 2033 - Child
64. Mogerman Affidavit, MR, Vol VI, Tab 16, Ex A, p 2036 –2037 Child [(i)] , Spouse[(j) and(k)], Parent and Sibling [(l)]
65. Mogerman Affidavit, MR, Vol VI, Tab 16, Ex A, p 2060 – Child, Spouse
66. Mogerman Affidavit, MR, Vol VI, Tab 16, Ex A, p 2094 - Child
67. Mogerman Affidavit, MR, Vol VI, Tab 16, Ex A, p 2122 – Child, Sibling
68. Mogerman Affidavit, MR, Vol VI, Tab 16, Ex A, p 2127-2128 – Child, Grandchild
69. Mogerman Affidavit, MR, Vol VI, Tab 16, Ex A, p 2129 – Child
70. Mogerman Affidavit, MR, Vol VI, Tab 16, Ex A, p 2153 - Grandchild
71. Mogerman Affidavit, MR, Vol VI, Tab 16, Ex A, p 2179 - Grandchild
72. Mogerman Affidavit, MR, Vol VI, Tab 16, Ex A, p 2195 – Child, Spouse
73. First Woodrich Affidavit, MR, Vol VI, Tab 17, Ex A, p 2340 – Spouse, Child, Grandchild
74. First Woodrich Affidavit, MR, Vol VI, Tab 17, Ex A, p 2349 – Spouse, Child
75. First Woodrich Affidavit, MR, Vol VI, Tab 17, Ex A, p 2386 - Sibling
76. First Woodrich Affidavit, MR, Vol VI, Tab 17, Ex A, p 2396 - Grandchild
77. First Woodrich Affidavit, MR, Vol VI, Tab 17, Ex A, p 2402 - Grandchild
78. First Woodrich Affidavit, MR, Vol VI, Tab 17, Ex A, p 2440 – Spouse, Step-children, Grandchildren
79. Carmichael-Yanish Affidavit, MR, Vol VII, Tab 18, Ex A, p 2550 - Child
80. Carmichael-Yanish Affidavit, MR, Vol VII, Tab 18, Ex A, p 2532 - Grandchild
81. Carmichael-Yanish Affidavit, MR, Vol VII, Tab 18, Ex A, p 2530 – Sibling
82. Second Woodrich Affidavit, MR, Vol VII, Tab 19, p 2574-2579 – Spouse
83. Second Woodrich Affidavit, MR, Vol VII, Tab 19, p 2566 - Grandchild
84. Second Sauv -Dagenais Affidavit, MR, Vol VII, Tab 20, Ex A, pp 2593-2594 – General
85. Second Sauv -Dagenais Affidavit, MR, Vol VII, Tab 20, Ex A, p 2596-2597
86. Second Sauv -Dagenais Affidavit, MR, Vol VII, Tab 20, Ex A, p 2620 - Children
87. Second Sauv -Dagenais Affidavit, MR, Vol VII, Tab 20, Ex A, p 2586-2587 - Grandchildren

Recommendation Two - continued

88. Second Sauvé-Dagenais Affidavit, MR, Vol VII, Tab 20, Ex A, p 2621-2622 – Grandchildren
89. Second Sauve-Dagenais Affidavit, MR, Vol VII, Tab 20, Ex A, p 2599-2602 – Parents, Grandparents
90. Davis Affidavit, MR, Vol VII, Tab 21, Ex A, p 2691-2693 – General
91. Davis Affidavit, MR, Vol VII, Tab 21, Ex A, p 2735 – General
92. Davis Affidavit, MR, Vol VII, Tab 21, Ex A, p 2678 – Parents
93. Davis Affidavit, MR, Vol VII, Tab 21, Ex A, p 2714 – Children
94. Davis Affidavit, MR, Vol VII, Tab 21, Ex A, p 2635 – Grandchildren
95. Davis Affidavit, MR, Vol VII, Tab 21, Ex A, p 2719 – Grandchildren
96. Davis Affidavit, MR, Vol VII, Tab 21, Ex A, p 2720 - Grandchildren

Recommendation Three – Lost or Diminished Pension Benefit

97. Compendium of Class Member Submissions 2013 allocation: MR, Vol VII, Tab 23, p 2840, para 25
98. Compendium of Class Member Submissions 2013 allocation: MR, Vol VII, Tab 23, p 2841, para 28
99. Compendium of Class Member Submissions 2013 allocation: MR, Vol VII, Tab 23, p 2841, para 29
100. First Sauvé-Dagenais Affidavit, MR, Vol V, Tab 15, ASD-2, p 2072
101. Davis Affidavit, MR, Vol VII, Tab 21, Ex A, p 2662-2663

Recommendation Four - Loss of Services in the Home

102. Compendium of Class Member Submissions 2013 allocation: MR, Vol VII, Tab 23, p 2841, para 30
103. Compendium of Class Member Submissions 2013 allocation: MR, Vol VII, Tab 23, p 2842, para 31
104. Compendium of Class Member Submissions 2013 allocation: MR, Vol VII, Tab 23, p 2842, para 32
105. Compendium of Class Member Submissions 2013 allocation: MR, Vol VII, Tab 23, p 2843, para 33
106. Compendium of Class Member Submissions 2013 allocation: MR, Vol VII, Tab 23, p 2843, para 34
107. Compendium of Class Member Submissions 2013 allocation: MR, Vol VII, Tab 23, p 2843, para 35
108. Melamud Affidavit, MR, Vol IV, Tab 14, Ex A, p 1244
109. Melamud Affidavit, MR, Vol IV, Tab 14, Ex A, p 1462
110. Melamud Affidavit, MR, Vol IV, Tab 14, Ex A, p 1489
111. Melamud Affidavit, MR, Vol IV, Tab 14, Ex A, p 1649
112. First Sauvé -Dagenais Affidavit, MR, Vol V, Tab 15, ASD-2, p 1926
113. Mogerman Affidavit, MR, Vol VI, Tab 16, Ex A, p 2026, para 13(m)
114. Mogerman Affidavit, MR, Vol VI, Tab 16, Ex A, p 2031, para 15(h) and (i)

Recommendation Four - continued

115. Mogerman Affidavit, MR, Vol VI, Tab 16, Ex A, p 2035, para 17(c)
116. Mogerman Affidavit, MR, Vol VI, Tab 16, Ex A, p 2158
117. Mogerman Affidavit, MR, Vol VI, Tab 16, Ex A, p 2166
118. Mogerman Affidavit, MR, Vol VI, Tab 16, Ex A, p 2212
119. First Woodrich Affidavit, MR, Vol VI, Tab 17, Ex A, p 2380
120. Second Sauvé-Dagenais Affidavit, MR, Vol VII, Tab 20, Ex A, p 2619

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE) , THE
PAUL M. PERELL) DAY OF , 2023

B E T W E E N :

DIANNA LOUISE PARSONS, MICHAEL HERBERT CRUICKSHANKS, DAVID TULL,
MARTIN HENRY GRIFFEN, ANNA KARDISH, ELSIE KOTYK, Executrix of the Estate of Harry Kotyk,
deceased and ELSIE KOTYK, personally

Plaintiffs

and

THE CANADIAN RED CROSS SOCIETY, HIS MAJESTY THE KING IN RIGHT OF ONTARIO and
THE ATTORNEY GENERAL OF CANADA

Defendants

and

HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF ALBERTA,
HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF SASKATCHEWAN,
HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF MANITOBA,
HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF NEW BRUNSWICK,
HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF PRINCE EDWARD ISLAND,
HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF NOVA SCOTIA,
HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF NEWFOUNDLAND,
THE GOVERNMENT OF THE NORTHWEST TERRITORIES,
THE GOVERNMENT OF NUNAVUT and THE GOVERNMENT OF THE YUKON TERRITORY

Intervenors

Proceeding under the *Class Proceedings Act, 1992*

Court File No. 98-CV-146405

B E T W E E N:

JAMES KREPPNER, BARRY ISAAC, NORMAN LANDRY, as Executor of the Estate of the late
SERGE LANDRY, PETER FELSING, DONALD MILLIGAN, ALLAN GRUHLKE, JIM LOVE and
PAULINE FOURNIER as Executrix of the Estate of the late PIERRE FOURNIER

Plaintiffs

and

THE CANADIAN RED CROSS SOCIETY, THE ATTORNEY GENERAL OF CANADA and
HIS MAJESTY THE KING IN RIGHT OF ONTARIO

Defendants

and

HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF ALBERTA,
HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF SASKATCHEWAN,
HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF MANITOBA,
HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF NEW BRUNSWICK,
HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF PRINCE EDWARD ISLAND,
HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF NOVA SCOTIA,
HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF NEWFOUNDLAND,
THE GOVERNMENT OF THE NORTHWEST TERRITORIES,
THE GOVERNMENT OF NUNAVUT and THE GOVERNMENT OF THE YUKON TERRITORY

Intervenors

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
(Allocation of 2019 Excess Capital)**

THIS MOTION made by the Joint Committee amended notice of motion dated March 23, 2023 for orders in respect of actuarially unallocated assets of the 1986-1990 Hepatitis C Trust Fund was heard May 30, 2023 at a special joint hearing of the Superior Court of Ontario, Supreme Court of British Columbia and Superior Court of Québec (the "**Courts**") by judicial videoconference,

ON READING the motion records filed, including the:

- a) Amended Notice of Motion dated March 23, 2023
- b) Affidavits of Heather Rumble Peterson made May 12, 2022 and March 23, 2023;
- c) Affidavits of Euan Reid made May 13, 2022 and December 19, 2022;
- d) Affidavit of Richard Border made November 25, 2020; and
- e) Affidavit of Peter Gorham made December 10, 2020,

AND ON HEARING the submissions of the Joint Committee on behalf of the Class Members, counsel for the Attorney General of Canada, counsel for His Majesty the King in Right of Ontario, counsel for the Intervenors and Ontario Fund Counsel,

AND ON BEING ADVISED by counsel for the Attorney General of Canada, His Majesty the King in Right of Ontario and the Intervenors that they take no position on the motion and by Ontario Fund Counsel that they consent to the relief sought,

1. **THIS COURT ORDERS** that **\$158,514,000** (2019 dollars) of the 2019 Excess Capital be allocated to create the following discrete benefits (the "**2019 Special Distribution Benefits**") which, with the exception of subparagraph 1(c) below, shall be indexed from 2020 dollars to the 1st day of January of the year in which they are paid using the Canadian Pension Index and paid to claimants approved under the Transfused HCV Plan and the Hemophiliac HCV Plan (collectively, the "**Regular Benefit Plans**") and the HCV Late Claims Benefit Plan (together with the Regular Benefit Plans, the "**Plans**") as follows:

- a) a 6.8% increase to fixed payments, being:

- i. \$1,097 (2020 dollars) for any class member or late claims class member who has qualified or who hereafter qualifies for the fixed payment under section 4.01(1)(a) of the Plans;
- ii. \$2,195 (2020 dollars) for any class member or late claims class member who has qualified or who hereafter qualifies for the fixed payment under section 4.01(1)(b) of the Plans;
- iii. \$3,292 (2020 dollars) for any class member or late claims class member who has qualified or who hereafter qualifies for the fixed payment under section 4.01(1)(c) of the Plans;
- iv. \$7,133 (2020 dollars) for any class member or late claims class member who has qualified or who hereafter qualifies for the fixed payment under section 4.01(1)(d) of the Plans;
- v. \$10,974 (2020 dollars) for any class member or late claims class member who has qualified or who hereafter qualifies for the fixed payment under section 4.01(1)(e) of the Plans;
- vi. \$5,487 (2020 dollars) for any class member or late claims class member who has qualified or who hereafter qualifies for the fixed payment under section 4.08(2) of the Hemophiliac HCV Plan or section 4.08(2)(Hemo) of the HCV Late Claims Benefit Plan, provided the class member or late claims class member did not elect the alternative 2013 Special Distribution Benefit for hemophiliac claimants that replaces benefits under said sections;
- vii. \$5,487 (2020 dollars) for any class member or late claims class member who has qualified or who hereafter qualifies for the fixed payment under section 5.01(1) of the Plans;
- viii. \$13,169 (2020 dollars) for any class member or late claims class member who has qualified or who hereafter qualifies for the fixed payment under section 5.01(2) of the Plans; and

ix. \$7,901 (2020 dollars) for any class member or late claims class member who has qualified or who hereafter qualifies for the fixed payment under section 5.01(4) of the Hemophiliac HCV Plan or section 5.01(4)(Hemo) of the HCV Late Claims Benefit Plan;

b) a 50% increase to loss of guidance, care and companionship family member payments, being:

i. \$18,593 (2020 dollars) for any family member or late claims family member who has qualified or who hereafter qualifies as a Spouse under section 6.02(a) of the Plans;

ii. \$11,155 (2020 dollars) for any family member or late claims family member who has qualified or who hereafter qualifies as a Child under the age of 21 under section 6.02(b) of the Plans;

iii. \$7,139 (2020 dollars) for any family member or late claims family member who has qualified or who hereafter qualifies as a Child 21 years of age or older under section 6.02(c) of the Plans;

iv. \$7,139 (2020 dollars) for any family member or late claims family member who has qualified or who hereafter qualifies as a Parent under section 6.02(d) of the Plans;

v. \$3,718 (2020 dollars) for any family member or late claims family member who has qualified or who hereafter qualifies as a Sibling under section 6.02(e) of the Plans;

vi. \$372 (2020 dollars) for any family member or late claims family member who has qualified or who hereafter qualifies as a Grandparent under section 6.02(f) of the Plans; and

vii. \$372 (2020 dollars) for any family member or late claims family member who has qualified or who hereafter qualifies as a Grandchild under section 6.02(g) of the Plans;

- (c) an amount equivalent to 4% of the annual loss of income payments made to any class member or late claim class member who has qualified or who hereafter qualifies under section 4.02(2) of the Plans, subject to a cap of \$8,000 per annum on the amount payable hereunder for those years prior to 2014 and \$8,000 per annum indexed for the years 2014 and following; and
- (d) a \$1.49 (2020 dollars) per hour increase in the hourly rate payable pursuant to sections 4.03(2) and 6.01(2) of the Plans, payable to any class member, dependant, late claim class member, or late claim dependant who has qualified or who hereafter qualifies under said sections on their loss of services incurred for the years 2019 and following.

2. **THIS COURT ORDERS** that **\$1,400,000** (2019 dollars) of the 2019 Excess Capital be allocated for the payment of the costs associated with administering the 2019 Special Distribution Benefits.

3. **THIS COURT ORDERS** that **\$157,736,000** (2019 dollars) of the 2019 Excess Capital plus the amount of any investment income earned on that sum from and after January 1, 2020 to date of transfer (calculated by applying the rate of return for the invested assets of the Trust Fund net of investment expenses) be transferred to the HCV Special Distribution Benefit Account of the Trust Fund as follows:

- (a) \$156,634,000 plus the amount of any investment income earned on that sum from and after January 1, 2020 to date of transfer from the HCV Regular Benefit Account; and
- (b) \$1,102,000 plus the amount of any investment income earned on that sum from and after January 1, 2020 to date of transfer from the HCV Late Claims Benefit Account.

4. **THIS COURT ORDERS AND DECLARES** that to the extent an approved class member, family class member, dependant, late claims class member, late claims family class member, or late claims dependant, as those terms are defined under section 1.01 of the Plans, qualifies for a 2019 Special Distribution Benefit payment, the Administrator shall make the payment to him/her or such other legal representative as may be provided for by the Plans,

the court approved protocols and/or the standard operating procedures in place for the administration of the Plans without the necessity of a further claim or request from the person so entitled.

5. **THIS COURT ORDERS** that the 2019 Special Distribution Benefits created under paragraph 1 and the costs allocated for their administration under paragraph 2 be paid from and accounted for solely under the HCV Special Distribution Benefit Account.

6. **THIS COURT ORDERS AND DECLARES** that all remaining 2019 Excess Capital not allocated to create and/or pay out the 2019 Special Distribution Benefits as provided for by paragraph 1 and/or the related administrative costs as provided for by paragraph 2 be retained in the HCV Regular Benefit Account of the Trust Fund, subject to any future motions made pursuant to the allocation provision of the Settlement Agreement.

7. **THIS COURT ORDERS AND DECLARES** that nothing contained in this Order shall in any way amend the Settlement Agreement or modify or affect the financial obligations and the monthly payments of any of the Provincial and Territorial Governments.

8. **THIS COURT DECLARES** that the terms of this Order shall not be effective unless and until a corresponding order/judgment with no material differences is obtained from each of the Supreme Court of British Columbia and the Superior Court of Québec.

PERELL, J.

PARSONS et al.
KREPPNER et al.

Plaintiffs

vs. THE CANADIAN RED CROSS
SOCIETY et al.

Defendants

Court File No. 98-CV-141369 CP00
98-CV-146405

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT TORONTO

**ORDER
(Allocation of 2019 Excess Capital)**

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Members of the Joint Committee

COUR SUPÉRIEURE

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

No : 500-06-000016-960
500-06-000068-987

DATE : _____

SOUS LA PRÉSIDENTE DE : L'HONORABLE CHANTAL CORRIVEAU, J.C.S.

500-06-000016-960

DOMINIQUE HONHON

Requérante

c.

PROCUREUR GÉNÉRAL DU CANADA

Et

PROCUREUR GÉNÉRAL DU QUÉBEC

Et

SOCIÉTÉ CANADIENNE DE LA CROIX-ROUGE

Intimés

Et

ME MICHEL SAVONITTO, ès qualités de membre du Comité conjoint

REQUÉRANT

Et

FONDS D'AIDE AUX RECOURS COLLECTIFS

Et

LE CURATEUR PUBLIC DU QUÉBEC

Mis en cause

500-06-000068-987**DAVID PAGE**

Requérant

c.

PROCUREUR GÉNÉRAL DU CANADA

et

PROCUREUR GÉNÉRAL DU QUÉBEC

et

SOCIÉTÉ CANADIENNE DE LA CROIX-ROUGE

Intimés

et

FONDS D'AIDE AUX RECOURS COLLECTIFS

et

LE CURATEUR PUBLIC DU QUÉBEC

Mis en cause

**JUGEMENT SUR LA DEMANDE MODIFIÉE DU COMITÉ CONJOINT POUR ATTRIBUER
LES FONDS ET AUTRES ÉLÉMENTS D'ACTIFS QUI NE FONT PAS L'OBJET D'UNE
ATTRIBUTION ACTUARIELLE AU 31 DÉCEMBRE 2019**

- [1] **ATTENDU QUE** la Cour est saisie de la *Demande modifiée du Comité conjoint pour attribuer les fonds et autres éléments d'actifs qui ne font pas l'objet d'une attribution actuarielle au 31 décembre 2019* portant la date du 30 mars 2023 présentée par Me Michel Savonitto, *ès qualités* de membre du Comité conjoint pour le Québec;
- [2] **ATTENDU QU'**une audition fut tenue à l'égard de cette demande le 30 mai 2023 par visio-conférence de façon conjointe devant la soussignée, le Juge en chef Hinkson de la Cour suprême de la Colombie-Britannique et le juge Perell de la Cour supérieure de l'Ontario, ces derniers étant saisis de demandes au même effet en vertu de la Convention de règlement relative à l'hépatite C 1986-1990 qu'ils supervisent avec la soussignée;
- [3] **CONSIDÉRANT** les allégations de la demande et les pièces déposées à l'appui de celle-ci, notamment :
- Les déclarations solennelles (incluant les exhibits joints) de Heather Rumble Peterson souscrites en date du 12 mai 2022 et du 23 mars 2023 (Pièces R-1 et R-3)
 - Les déclarations solennelles (incluant les rapports d'expert joints) de Euan Reid de la firme Eckler Ltd souscrites en date du 13 mai 2022 et du 19 décembre 2022 (Pièces R-2 et R-4)
 - Les déclarations solennelles (incluant les rapports d'expert joints) de Richard Border de la firme Eckler Ltd souscrite en date du 25 novembre 2020 et de Peter Gorham

de la firme JDM Actuarial Expert Services Inc. souscrite en date du 10 décembre 2020 (déposées antérieurement au dossier de la Cour);

- [4] **CONSIDÉRANT** que la demande n'est pas contestée par les Intimés et après avoir reçu et entendu les représentations des procureurs du Comité conjoint au nom des membres des actions collectives assujetties à la Convention de règlement relative à l'hépatite C 1986-1990 et celles des procureurs du Procureur général du Canada;
- [5] **PAR CES MOTIFS, LE TRIBUNAL :**
- [6] **ACCUEILLE** la Demande modifiée du Requérent;
- [7] **ORDONNE** qu'une somme de 158 514 000,00 \$ (dollars 2019) du Capital excédentaire 2019 soit attribuée pour la création d'indemnités de distribution spéciale payables de façon rétroactive et prospective tel que ci-après spécifié en faveur des membres reconnus des recours, des membres reconnus de la famille et personnes à charge tel que définis à l'article 1.01 du Régime à l'intention des Transfusés infectés par le VHC, et du Régime à l'intention des Hémophiles infectés par le VHC (« les Régimes Réguliers ») ainsi que des membres reconnus des recours pour réclamations tardives, membres reconnus de la famille suite à une réclamation tardive et personnes à charge tel que définis à l'article 1.01 du vertu du Régime d'indemnisation pour les réclamations tardives (collectivement les « Régimes ») de la façon suivante :
- (a) une indemnité de distribution spéciale d'un montant équivalent à 6,8% de la valeur combinée des paiements forfaitaires pour dommages généraux non pécuniaires et prestation de décès prévus aux articles 4.01, 4.08, 5.01 et 5.02 des Régimes (selon l'article qui leur est applicable) et de l'Indemnité de distribution spéciale 2013, en faveur des membres des recours, membres de la famille, membre des recours pour réclamations tardives et membres de la famille suite à une réclamation tardive qui y sont éligibles, et correspondant aux montants suivants :
- i. 1 097 \$ (en dollars 2020) pour tout membre des recours ou membre des recours pour réclamations tardives qui était ou qui sera dorénavant éligible au versement de la somme forfaitaire prévue à l'article 4.01(1)(a) des Régimes;
 - ii. 2 195 \$ (en dollars 2020) pour tout membre des recours ou membre des recours pour réclamations tardives qui était ou qui sera dorénavant éligible au versement de la somme forfaitaire prévue à l'article 4.01(1)(b) des Régimes;
 - iii. 3 292 \$ (en dollars 2020) pour tout membre des recours ou membre des recours pour réclamations tardives qui était ou qui sera dorénavant éligible au versement de la somme forfaitaire prévue à l'article 4.01(1)(c) des Régimes;
 - iv. 7 133 \$ (en dollars 2020) pour tout membre des recours ou membre des recours pour réclamations tardives qui était ou qui sera dorénavant éligible au versement de la somme forfaitaire prévue à l'article 4.01(1)(d) des Régimes;
 - v. 10 974 \$ (en dollars 2020) pour tout membre des recours ou membre des recours pour réclamations tardives qui était ou qui sera dorénavant

- éligible au versement de la somme forfaitaire prévue à l'article 4.01(1)(e) des Régimes;
- vi. 5 487 \$ (en dollars 2020) pour tout membre des recours ou membre des recours pour réclamations tardives qui était ou qui sera dorénavant éligible au versement de la somme forfaitaire prévue à l'article article 4.08(2) du Régime à l'intention des hémophiles infectés par le VHC ou à l'article 4.08(2)(Hemo) du Régime d'indemnisation pour les réclamations tardives, en autant que le membre des recours ou membre des recours pour réclamations tardives n'aie pas choisi de se prévaloir de l'Indemnité de distribution spéciale 2013 octroyé en faveur des hémophiles et qui remplace l'indemnisation prévue à ces articles;
 - vii. 5 487 \$ (en dollars 2020) pour tout membre des recours ou membre des recours pour réclamations tardives qui était ou qui sera dorénavant éligible au versement de la somme forfaitaire prévue à l'article 5.01(1) des Régimes;
 - viii. 13 169 \$ (en dollars 2020) pour tout membre des recours ou membre des recours pour réclamations tardives qui était ou qui sera dorénavant éligible au versement de la somme forfaitaire prévue à l'article 5.01(2) des Régimes; et
 - ix. 7 901 \$ (en dollars 2020) pour tout membre des recours ou membre des recours pour réclamations tardives qui était ou qui sera dorénavant éligible au versement de la somme forfaitaire prévue à l'article 5.01(4) du Régime à l'intention des hémophiles infectés par le VHC ou à l'article 5.01(4)(hemo) du Régime d'indemnisation pour les réclamations tardives;
- (b) une indemnité de distribution spéciale d'un montant équivalent à 50% de la valeur combinée de l'indemnisation pour la perte de conseil, de soin et de compagnie prévue à l'article 6.02 des Régimes et de l'indemnité de distribution spéciale 2013, lorsqu'applicable, en faveur des membres de la famille et des membres de la famille suite à une réclamation tardive qui sont éligibles à l'indemnisation et correspondant aux montants suivants :
- i. 18 593 \$ (en dollars 2020) pour tout membre de la famille ou membre de la famille suite à une réclamation tardive, reconnu ou qui sera reconnu en tant que Conjoint selon l'article 6.02(a) des Régimes;
 - ii. 11 155 \$ (en dollars 2020) pour tout membre de la famille ou membre de la famille suite à une réclamation tardive, reconnu ou qui sera reconnu en tant qu'Enfant de moins de 21 ans à la date du décès de la personne infectée par le VHC, selon l'article 6.02(b) des Régimes;
 - iii. 7 139 \$ (en dollars 2020) pour tout membre de la famille ou membre de la famille suite à une réclamation tardive, reconnu ou qui sera reconnu en tant qu'Enfant de 21 ans ou plus à la date du décès de la personne infectée par le VHC, selon l'article 6.02(c) des Régimes;

- iv. 7 139 \$ (en dollars 2020) pour tout membre de la famille ou membre de la famille suite à une réclamation tardive, reconnu ou qui sera reconnu en tant que Parent selon l'article article 6.02(d) des Régimes;
 - v. 3 718 \$ (en dollars 2020) pour tout membre de la famille ou membre de la famille suite à une réclamation tardive, reconnu ou qui sera reconnu en tant qu'Enfant de mêmes parents selon l'article 6.02(e) des Régimes;
 - vi. 372 \$ (en dollars 2020) pour tout membre de la famille qui était ou qui sera dorénavant éligible, en tant que Grand-parent, au versement de la somme forfaitaire prévue à l'article 6.02(f) des Régimes; et
 - vii. 372 \$ (en dollars 2020) pour tout membre de la famille ou membre de la famille suite à une réclamation tardive, reconnu ou qui sera reconnu en tant que Petit-enfant selon l'article 6.02(g) des Régimes;
- (c) une indemnité de distribution spéciale additionnelle pour la diminution ou la perte de prestation de retraite d'un montant équivalent à 4% des paiements annuels pour perte de revenu versés ou à être versés à tout membre des recours et membre des recours pour réclamations tardives éligibles en vertu de l'article 4.02(2) des Régimes et des Indemnités de distribution spéciale 2013, plafonné à 8 000,00 \$ par année avant 2014 et 8 000,00\$ plus indexation par année à compter de 2014; et
- (d) un montant de 1,49 \$ de l'heure (en dollars 2020) pour chaque heure indemnisable pour perte de services domestiques à compter du 1^{er} janvier 2019, incluant celles octroyées à titre d'Indemnité de distribution spéciale 2013, pour les membres des recours, les personnes à charge, les membres des recours pour réclamations tardives et les personnes à charge reconnues suite à une réclamation tardive qui sont éligibles à l'indemnisation pour la perte de services domestiques en vertu des articles 4.03(2) ou 6.01(2), des Régimes ;

(les sous-articles (a) à (d) collectivement, les « **Indemnités de distribution spéciale 2019** »)

- [8] **ORDONNE** que les Indemnités de distribution spéciale 2019 soient versées aux membres des recours et membres des recours pour réclamations tardives qui y ont droit, avec indexation à partir de dollars 2020 jusqu'au 1^{er} janvier de l'année de leur versement à l'aide de l'indice de pension, à l'exception de l'Indemnité de distribution spéciale 2019 prévue au sous-article (c) ci-dessus;
- [9] **ORDONNE** qu'un montant de 1 400 000,00 \$ (en dollars 2019) de Capital excédentaire 2019 soit alloué pour le paiement des coûts d'administration des Indemnités de distribution spéciale 2019;
- [10] **ORDONNE** qu'un montant de 157 736 000,00 \$ (en dollars 2019) de Capital excédentaire 2019 plus tout revenu de placement gagné sur cette somme à compter du 1^{er} janvier 2020 jusqu'à la date du transfert (calculé en appliquant le taux de rendement annuel des actifs investis du Fonds en fiducie, déduction faite des frais de placement) soit transférer dans le Compte pour les Indemnités de distribution spéciale de la façon suivante :

- a) 156 634 000,00 \$ plus le montant de revenu gagné sur cette somme depuis le 1er janvier 2020 jusqu'à la date du transfert à partir du Compte pour les Indemnités régulières; et
- b) 1 102 000,00 \$ plus le montant de revenu gagné sur cette somme depuis le 1er janvier 2020 jusqu'à la date du transfert à partir du Compte pour les réclamations tardives;
- [11] **ORDONNE** que les Indemnités de distribution spéciales 2019, ainsi que les indexations qui s'y rattachent et les frais d'administration soient acquittés et comptabilisés à partir du Compte pour les Indemnités de distribution spéciale;
- [12] **DÉCLARE et ORDONNE** que le solde du Capital excédentaire 2019 ne faisant pas l'objet d'une attribution ou ordonnance au terme du présent jugement doit être conservé dans le Compte des Indemnités régulières du Fonds en fiducie, sujet à toute autre demande future en vertu des Dispositions d'attribution prévues à la Convention de règlement;
- [13] **ORDONNE** à l'Administrateur d'effectuer les paiements à titre d'Indemnité de distribution spéciale 2019 en faveur des personnes qui y ont droit ou tout autre représentant légal, conformément aux dispositions des Régimes, des protocoles approuvés par les Tribunaux et/ou des procédures standard d'opération mises en place pour l'administration des Régimes et des Indemnités de distribution spéciale et sans qu'il soit nécessaire pour elles/eux de présenter une autre réclamation ou demande à cet égard;
- [14] **DÉCLARE** que rien dans le présent jugement n'a pour effet d'amender la Convention de règlement ou de modifier ou affecter de quelque façon que ce soit les obligations financières et les paiements mensuels des gouvernements provinciaux et territoriaux;
- [15] **DÉCLARE** que le présent jugement ne prendra effet qu'à partir du moment où un jugement similaire aura été rendu par la Cour supérieure de l'Ontario et la Cour suprême de la Colombie-Britannique;
- [16] **LE TOUT** sans frais.

CHANTAL CORRIVEAU, j.c.s

Me Martine Trudeau
Me Michel Savonitto
Savonitto & Ass. inc.
Pour Me Michel Savonitto *ès qualités* de membre du Comité conjoint

Me Nathalie Drouin
Me Andréane Joannette-Laflamme
Procureure générale du Canada/Attorney general of Canada
Ministère de la Justice Canada
Pour le Procureur général du Canada

Me Louise Comtois
Bernard Roy (Justice-Québec)
Pour le Procureur général du Québec

Me Mason Poplaw
Me Kim Nguyen
McCarthy, Tétrault
Conseillers juridiques du Fonds

No. C965349
Vancouver Registry

In the Supreme Court of British Columbia

Between:

Anita Endean, as representative plaintiff

Plaintiff

and:

**The Canadian Red Cross Society
His Majesty the King in Right of the Province of
British Columbia, and The Attorney General of Canada**

Defendants

and:

**Prince George Regional Hospital, Dr. William Galliford,
Dr. Robert Hart Dykes, Dr. Peter Houghton, Dr. John Doe,
His Majesty the King in Right of Canada, and
His Majesty the King in Right of the Province of British Columbia**

Third Parties

Proceeding under the *Class Proceedings Act*, R.S.B.C. 1996, C. 50

**ORDER MADE AFTER APPLICATION
(Allocation of 2019 Excess Capital)**

BEFORE THE HONOURABLE
CHIEF JUSTICE HINKSON

)
)
)

ON THE APPLICATION of the Joint Committee dated June 21, 2022 and amended April 4, 2023 for orders in respect of actuarially unallocated assets of the 1986-1990 Hepatitis

C Trust Fund having been heard at a special joint hearing of the Supreme Court of British Columbia, Superior Court of Ontario and the Superior Court of Québec (the "**Courts**") on May 30, 2023 by judicial videoconference;

AND ON HEARING the submissions of the Joint Committee on behalf of the Class Members, counsel for the Attorney General of Canada, counsel for His Majesty the King in Right of British Columbia, counsel for the Intervenors and British Columbia Fund Counsel;

UPON BEING ADVISED that the Attorney General of Canada, His Majesty the King in Right of the Province of British Columbia, and British Columbia Fund Counsel, and the Intervenors do not oppose this order;

UPON READING the materials filed, including:

- (a) Affidavit #39 of Heather Rumble Peterson, made May 12, 2022;
- (b) Affidavit #43 of Heather Rumble Peterson, made March 23, 2023;
- (c) Affidavit #1 of Euan Reid, made May 13, 2022;
- (d) Affidavit #2 of Euan Reid, made December 19, 2022;
- (e) Affidavit #10 of Richard Border made November 25, 2020; and
- (f) Affidavit #6 of Peter Gorham, made December 10, 2020;

AND THIS ACTION BEING STAYED AGAINST the defendant the Canadian Red Cross Society by the Order of Mr. Justice Blair made on July 20, 1998 in Ontario Superior Court of Justice Action No. 98-CL-002970 (Toronto) and subsequently extended by further orders made on August 18, 1998, October 5, 1998, January 18, 1999, May 5, 1999, July 28, 1999 and February 25, 2000;

AND THIS ACTION BEING STAYED AGAINST the third parties Prince George Regional Hospital, Dr. William Galliford, Dr. Robert Hart Dykes, Dr. Peter Houghton and Dr. John Doe by order of Justice K. Smith, made May 22, 1997.

THIS COURT ORDERS that:

1. \$158,514,000 of the 2019 Excess Capital be allocated to create the following discrete benefits (the “**2019 Special Distribution Benefits**”) which, with the exception of subparagraph 1(c) below, shall be indexed from 2020 dollars to the 1st day of January of the year in which they are paid using the Canadian Pension Index and paid to claimants approved under the Transfused HCV Plan and the Hemophiliac HCV Plan (collectively, the “**Regular Benefit Plans**”) and the HCV Late Claims Benefit Plan (together with the Regular Benefit Plans, the “**Plans**”) as follows:

- (a) a 6.8% increase to fixed payments, being:
 - (i) \$1,097 (2020 dollars) for any class member or late claims class member who has qualified or who hereafter qualifies for the fixed payment under section 4.01(1)(a) of the Plans;
 - (ii) \$2,195 (2020 dollars) for any class member or late claims class member who has qualified or who hereafter qualifies for the fixed payment under section 4.01(l)(b) of the Plans;
 - (iii) \$3,292 (2020 dollars) for any class member or late claims class member who has qualified or who hereafter qualifies for the fixed payment under section 4.01(1)(c) of the Plans;
 - (iv) \$7,133 (2020 dollars) for any class member or late claims class member who has qualified or who hereafter qualifies for the fixed payment under section 4.01(1)(d) of the Plans;
 - (v) \$10,974 (2020 dollars) for any class member or late claims class member who has qualified or who hereafter qualifies for the fixed payment under section 4.01(1)(e) of the Plans;
 - (vi) \$5,487 (2020 dollars) for any class member or late claims class member who has qualified or who hereafter qualifies for the fixed payment under section 4.08(2) of the Hemophiliac HCV Plan or

section 4.08(2)(Hemo) of the HCV Late Claims Benefit Plan, provided the class member or late claims class member did not elect the alternative 2013 Special Distribution Benefit for hemophiliac claimants that replaces benefits under said sections;

- (vii) \$5,487 (2020 dollars) for any class member or late claims class member who has qualified or who hereafter qualifies for the fixed payment under section 5.01(1) of the Plans;
 - (viii) \$13,169 (2020 dollars) for any class member or late claims class member who has qualified or who hereafter qualifies for the fixed payment under section 5.01(2) of the Plans; and
 - (ix) \$7,901 (2020 dollars) for any class member or late claims class member who has qualified or who hereafter qualifies for the fixed payment under section 5.01(4) of the Hemophiliac HCV Plan or section 5.01(4)(hemo) of the HCV Late Claims Benefit Plan;
- (b) a 50% increase to loss of guidance, care and companionship family member payments, being:
- (i) \$18,593 (2020 dollars) for any family member or late claims family member who has qualified or who hereafter qualifies as a Spouse under section 6.02(a) of the Plans;
 - (ii) \$11,155 (2020 dollars) for any family member or late claims family member who has qualified or who hereafter qualifies as a Child under the age of 21 under section 6.02(b) of the Plans;
 - (iii) \$7,139 (2020 dollars) for any family member or late claims family member who has qualified or who hereafter qualifies as a Child 21 years of age or older under section 6.02(c) of the Plans;
 - (iv) \$7,139 (2020 dollars) for any family member or late claims family member who has qualified or who hereafter qualifies as a Parent under section 6.02(d) of the Plans;

- (v) \$3,718 (2020 dollars) for any family member or late claims family member who has qualified or who hereafter qualifies as a Sibling under section 6.02(e) of the Plans;
 - (vi) \$372 (2020 dollars) for any family member or late claims family member who has qualified or who hereafter qualifies as a Grandparent under section 6.02(f) of the Plans; and
 - (vii) \$372 (2020 dollars) for any family member or late claims family member who has qualified or who hereafter qualifies as a Grandchild under section 6.02(g) of the Plans;
- (c) an amount equivalent to 4% of the annual loss of income payments made to any class member or late claim class member who has qualified or who hereafter qualifies under section 4.02(2) of the Plans, subject to a cap of \$8,000 per annum on the amount payable hereunder for those years prior to 2014 and \$8,000 per annum indexed for the years 2014 and following; and
- (d) a \$1.49 (2020 dollars) per hour increase in the hourly rate payable pursuant to sections 4.03(2) and 6.01(2) of the Plans, payable to any class member, dependant, late claim class member, or late claim dependant who has qualified or who hereafter qualifies under said sections on their loss of services incurred for the years 2019 and following.
2. \$1,400,000 of the 2019 Excess Capital be allocated for the payment of the costs associated with administering the 2019 Special Distribution Benefits.
3. \$157,736,000 of the 2019 Excess Capital plus the amount of any investment income earned on that sum from and after January 1, 2020 to date of transfer (calculated by applying the rate of return for the invested assets of the Trust Fund net of investment expenses) be transferred to the HCV Special Distribution Benefits Account of the Trust Fund as follows:

- (a) \$156,634,000 plus the amount of any investment income earned on that sum from and after January 1, 2020 to date of transfer from the Regular Benefits Account; and
 - (b) \$1,102,000 plus the amount of any investment income earned on that sum from and after January 1, 2020 to date of transfer from the HCV Late Claims Benefit Account.
4. To the extent an approved class member, family class member, dependant, late claims class member, late claims family class member, or late claims dependant, as those terms are defined under section 1.01 of the Plans, qualifies for a 2019 Special Distribution Benefit payment, the Administrator shall make the payment to him/her or such other legal representative as may be provided for by the Plans, the court approved protocols and/or the standard operating procedures in place for the administration of the Plans without the necessity of a further claim or request from the person so entitled.
 5. The 2019 Special Distribution Benefits created under paragraph 1 and the costs allocated for their administration under paragraph 2 be paid from and accounted for solely under the HCV Special Distribution Benefits Account.
 6. All remaining 2019 Excess Capital not allocated to create and/or pay out the 2019 Special Distribution Benefits as provided for by paragraph 1 and/or the related administrative costs as provided for by paragraph 2 be retained in the Regular Benefits Account of the Trust Fund, subject to any future motions made pursuant to the allocation provision of the Settlement Agreement.
 7. Nothing contained in this Order shall in any way amend the Settlement Agreement or modify or affect the financial obligations and the monthly payments of any of the Provincial and Territorial Governments.
 8. The terms of this Order shall not be effective unless and until a corresponding order/judgment with no material differences is obtained from each of the Superior Court of Ontario and the Superior Court of Québec.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

British Columbia Joint Committee Member

David Loukidelis, K.C.

By the Court

Registrar

No. C965349
Vancouver Registry

In the Supreme Court of British Columbia

Between

Anita Endean, as representative plaintiff

Plaintiff

and

**The Canadian Red Cross Society,
His Majesty the King in Right of the Province of British
Columbia, and The Attorney General of Canada**

Defendants

and

**Prince George Regional Hospital, Dr. William Galliford,
Dr. Robert Hart Dykes, Dr. Peter Houghton,
Dr. John Doe, His Majesty the King in Right of Canada,
and His Majesty the King in Right of the
Province of British Columbia**

Third Parties

Proceeding under the *Class Proceedings Act*, R.S.B.C 1996, C. 50

ORDER MADE AFTER APPLICATION

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VIA AGENT

PARSONS et al.
KREPPNER et al.

Plaintiffs

vs. THE CANADIAN RED CROSS
SOCIETY et al.

Defendants

Court File No. 98-CV-141369 CP00
98-CV-146405

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT TORONTO

**FACTUM/SUBMISSIONS/WRITTEN ARGUMENT
OF THE JOINT COMMITTEE**

**(FUND SUFFICIENCY 2019 – ALLOCATION OF
EXCESS CAPITAL)**

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