

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

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,  
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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***

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 BC

Third Parties

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

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

NO : 500-06-000016-960

SUPERIOR COURT  
Class action

---

DOMINIQUE HONHON

Plaintiff

-vs-

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

Defendants

-and-

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

PETITIONER

-and-

FONDS D'AIDE AUX RECOURS COLLECTIFS

-and-

LE CURATEUR PUBLIC DU QUÉBEC

Mis-en-cause

---

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

NO : 500-06-000068-987

SUPERIOR COURT  
Class action

---

DAVID PAGE

Plaintiff

-vs-

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

Defendants

-and-

FONDS D'AIDE AUX RECOURS COLLECTIFS

-and-

LE CURATEUR PUBLIC DU QUÉBEC

Mis-en-cause

**JOINT MOTION RECORD**  
**VOLUME I OF VIII**  
(Joint Committee Motion to Allocate 2019 Excess Capital)

May 8, 2023

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

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

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

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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

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THE GOVERNMENT OF NUNAVUT AND THE GOVERNMENT OF THE YUKON TERRITORY

Intervenors

**Proceeding under the *Class Proceedings Act, 1992***

**AMENDED NOTICE OF MOTION  
(Joint Committee Amended Motion to Allocate 2019 Excess Capital)**

The Joint Committee will make an amended motion to be heard before Justice Perell on Tuesday the 30<sup>th</sup> day of May, 2023 at 11:00 a.m. EDT at a date to be set in Toronto, Ontario by judicial videoconference.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

**THE MOTION IS FOR:**

1. — ~~An order varying the order of this Court dated February 18, 2021 (the “2019 Financial Sufficiency Phase One Order”) by allocating \$2,559,000 of additional assets of the 1986-1990 Hepatitis C Settlement Trust Fund (the “Trust Fund”) to meet ongoing liabilities, such that paragraph 3 states:~~

**THIS COURT ORDERS** ~~that the Trustee holds between \$195,037,000 and \$201,019,000 of actuarially unallocated money and assets as at December 31, 2019 (the “2019 Excess Capital”):~~

2. — ~~An order varying the 2019 Financial Sufficiency Phase One Order to reflect the reduction of 2019 Excess Capital in the HCV Special Distribution Benefit Account as a result of the recognition of additional liabilities, such that paragraph 4 states:~~

**THIS COURT ORDERS** ~~that as at December 31, 2019, the financial status of the three notional accounts of the Trust Fund is as follows:~~

HCV Regular Benefit Account	Excess Capital of between \$191,757,000 and \$197,910,000
HCV Special Distribution Benefit Account	Excess Capital of between \$25,159,000 and \$26,090,000
HCV Late Claims Benefit Account	Insufficient Capital of between \$21,879,000 and \$22,981,000

3. — ~~An order varying the 2019 Financial Sufficiency Phase One Order to reflect the reduction of 2019 Excess Capital in the HCV Special Distribution Benefit Account as a result of the recognition of these additional liabilities, such that paragraph 5 states:~~

~~THIS COURT ORDERS~~ that \$22,981,000 be reallocated from the HCV Special Distribution Benefit Account to the HCV Late Claims Benefit Account effective January 1, 2020, so that the HCV Late Claims Benefit Account will be financially sufficient to meet the projected maximum liabilities of the HCV Late Claims Benefit Plan and the HCV Special Distribution Benefit Account will have excess capital of between \$2,178,000 and \$3,109,000, as at January 1, 2020.

1. An order pursuant to the Allocation Provision (defined below) of the 1986-1990 Hepatitis C Settlement Agreement (the “**Settlement Agreement**”) that ~~\$193,421,000~~ **\$158,514,000<sup>1</sup>** of the 2019 Excess Capital be allocated to create discrete benefits payable as retroactive and prospective special distributions for claimants approved under the Transfused HCV Plan, 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) **\$54,684,000** for class members, family members, late claim class members and late claim 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 in an amount equal to 6.8% of the combined value of their award under the applicable section and any applicable 2013 Special Distribution Benefit, indexed to January 1, 2020;
- (b) **\$71,812,000** for family members and late claim family members entitled to a loss of guidance, care and companionship award under section 6.02 of the Plans in an amount equal to 50% of the combined value of their award under the section and any applicable 2013 Special Distribution Benefit, indexed to January 1, 2020;
- (c) **\$6,653,000** for class members and late claim class members entitled to the 2013 Special Distribution Benefit for lost or diminished pension benefits in an amount equal to an additional 4% of their annual loss of income payment under section 4.02 of the Plans capped at \$200,000 per annum before 2014 and \$200,000 per annum indexed from and after 2014; and

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<sup>1</sup> The allocations requested are expressed in 2020 dollars.



- (d) ~~\$60,272,000~~ **\$25,365,000** for class members, dependants, late claims class members and late claim dependants entitled to loss of services in the home under sections 4.03 or 6.01(2),(3) of the Plans for the years ~~2014~~ 2019 and following in an amount equal to ~~\$2~~ \$1 per hour (1999 dollars), indexed to January 1, 2020, for each compensable hour lost as provided under these sections and any applicable 2013 Special Distribution Benefit;

(subparagraphs (a) to (d) collectively, the “**2019 Special Distribution Benefits**”).

2. A declaration that the 2019 Special Distribution Benefits, with the exception of the benefit at subparagraph ~~4~~ 1(c), shall be indexed from 2020 dollars to the 1<sup>st</sup> day of January of the year in which they are paid using the Canadian Pension Index in the manner consistent with the provision at section 7.02 of the Plans.

3. An order allocating ~~\$1,520,000~~ **\$1,400,000** of the 2019 Excess Capital for payment of the costs associated with administering the 2019 Special Distribution Benefits.

4. An order that ~~\$192,763,000~~ **\$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 annual 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) ~~\$191,661,000~~ **\$156,634,000** plus the amount of 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 investment income earned on that sum from and after January 1, 2020 to date of transfer from the HCV Late Claims Benefit Account.

5. An order that the 2019 Special Distribution Benefits created under paragraph ~~4~~ 1, any indexing provided under paragraph ~~5~~ 2, and the costs allocated for the administration provided under paragraph ~~6~~ 3 be paid from and accounted for under the HCV Special Distribution Benefit Account.

6. A declaration that the remaining 2019 Excess Capital not allocated to create and pay out the 2019 Special Distribution Benefits as provided for by paragraphs ~~4 and 5~~ 1 and 2 and/or the related administrative costs as provided for by paragraph ~~6~~ 3 be retained in the HCV Regular Benefit Account of the Trust Fund, subject to future motions made pursuant to the Allocation Provision of the Settlement Agreement.
7. An order that to the extent a class member, family member, dependant, late claims class member, late claims family member or late claims dependant 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.
8. A declaration that nothing in the orders requested shall in any way amend the Settlement Agreement nor modify or affect the financial obligations and the monthly payments of any of the Provincial and Territorial Governments.
9. A declaration that the terms of this Order shall not be effective unless and until corresponding orders/judgment with no material differences are obtained from the Supreme Court of British Columbia and the Superior Court of Québec.
10. Such further and other relief as counsel may request and this Honourable Court may direct.

**THE GROUNDS FOR THE MOTION ARE:**

***Variation of the 2019 Financial Sufficiency Phase One Orders***

1. Following completion of the work on phase one of the triennial financial sufficiency review triggered December 31, 2019, the Courts issued orders declaring that, after taking into account the required capital, the Trust Fund was financially sufficient and held actuarially unallocated assets exceeding liabilities as at December 31, 2019 by an amount between \$197,596,000 and \$203,578,000 (the “**2019 Financial Sufficiency Phase One Orders**”).
2. As a result of the discovery of an additional liability of the Trust Fund to the class members

for unpaid retroactive 2013 Special Distribution Benefits, the Courts subsequently ordered a restatement of the liabilities of the Trust as at December 31, 2019 (the “2019 Financial Sufficiency Phase One Restatement Orders”). Following this restatement of liabilities, the Trust Fund holds actuarially unallocated assets in excess of liabilities as at December 31, 2019 of between \$195,037,000 and \$201,019,000.

3. Following this restatement of liabilities and the reallocation between the HCV Special Distribution Benefit Account and the HCV Late Claims Benefit Account that was ordered to ensure the sufficiency of each account, the status of the notional accounts as at January 1, 2020 is as follows:

<u>HCV Regular Benefit Account</u>	<u>Excess Capital of between \$191,757,000 and \$197,910,000</u>
<u>HCV Special Distribution Benefit Account</u>	<u>Excess Capital of between \$2,178,000 and \$3,1090,000</u>
<u>HCV Late Claims Benefit Account</u>	<u>Excess Capital of between \$1,102,000 and \$0.00</u>

~~2. Subsequent to the making of the 2019 Financial Sufficiency Phase One Orders, it was confirmed that there were \$2,559,000 in additional liabilities to some approved class members and family members for certain benefits that had mistakenly not been issued by the preceding Administrator, making the amount by which the Trust assets exceeded the liabilities as calculated by the actuaries for the parties overstated.~~

~~3. Once the liabilities of the Trust are restated to reflect this additional liability in the financial position of the Trust Fund as at December 31, 2019, the total 2019 Excess Capital is reduced to be between \$195,037,000 and \$201,019,000 and the corresponding balance of the HCV Special Distribution Benefit Account is reduced to be between \$2,178,000 and \$3,109,000 as at January 1, 2020.~~

### ***Request for Allocation of the 2019 Excess Capital***

4. A provision in respect of actuarially unallocated assets agreed to by the parties and incorporated into the Settlement Agreement at the time of the settlement approvals (the “**Allocation Provision**”), permits the supervising courts in Ontario, British Columbia and Québec (the “**Courts**”) to exercise their unfettered discretion to allocate any actuarially unallocated assets (“**Excess Capital**”), *inter alia*, for the benefit of approved class members and/or family members<sup>2</sup> in such manner as the Courts determine is reasonable in all of the circumstances, provided there is no discrimination based upon where the class member received blood or resides.

5. The Allocation Provision provides the possibility for approved class members to obtain benefits from Excess Capital above and beyond the scheduled benefits contained in the Regular Benefit Plans and the possibility for the FPT Governments to access Excess Capital before the termination of the administration.

6. While the Allocation Provision provides the opportunity to bridge compensatory gaps or obtain additional compensation up to the limits available at law, it cannot be used to alter the bargain or amend the Settlement Agreement.

7. Following the identification of the 2013 Excess Capital, the Courts used the Allocation Provision to create discrete benefits for approved class members and family members (the “**2013 Special Distribution Benefits**”) to address compensatory shortfalls in the Settlement Agreement. Because there was a limit on the amount of 2013 Excess Capital available for allocation, a number of compensatory shortfalls in the Settlement Agreement remain.

8. The Joint Committee requests the Courts to exercise their unfettered discretion to allocate ~~\$194,941,000~~ of 2019 Excess Capital, ~~inclusive of costs of administration~~, pursuant to the Allocation Provision for the benefit of approved class members and family members to further address compensatory shortfalls in respect of the following four heads of damages addressed, in part, by the creation of the 2013 Special Distribution Benefits:

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

- (a) fixed payments for non-pecuniary general damages and/or death benefits;
- (b) family member payments for loss of guidance, care and companionship;
- (c) lost or diminished pension benefits; and
- (d) compensation for loss of services of the class member in the home.

9. These four heads of damages addressed in the Joint Committee's applications, which form the core of any damages award, seek to further address the compensatory concerns previously communicated to the Joint Committee and the Courts, which class members continue to identify as falling short of compensating for the losses and damages suffered.

10. While the allocation of 2013 Excess Capital addressing these same compensatory shortfalls is not determinative of whether the Joint Committee's recommendations should be accepted, it does eliminate several of the questions previously at issue in that the Courts have already determined that allocations in respect of these particular heads of damages:

- (a) are permissible allocations pursuant to the Allocation Provision of the Settlement Agreement;
- (b) do not amend the Settlement Agreement;
- (c) do not increase the burden on the defendants under the Settlement Agreement; and
- (d) are non-discriminatory based upon where the class member received blood or resides.

11. Provisions in the Settlement Agreement and Plans, such as the deduction of collateral benefits in the calculation of income loss reducing the actual income/support loss recoverable, compensation under tort or statute law not made available under contract law of the Settlement Agreement, and awards being inclusive of prejudgment interest, will continue to suppress the compensation available to approved class members and family members under the Plans. These ongoing compromises in respect of how damages may be calculated and awarded under the Plans should alleviate any concern that class members or family members will be overcompensated if the recommended allocations are granted.

### **The Modified Allocation Request**

12. The Joint Committee's original applications requested the Courts to exercise their unfettered discretion to allocate \$194,941,000 of 2019 Excess Capital, inclusive of costs of administration, pursuant to the Allocation Provision for the benefit of approved class members and family members based on the Joint Committee's four recommendations set out at that time.

13. Regular monthly financial reporting has shown a deterioration in the assets of the Trust Fund since the 2019 phase one financial sufficiency was completed. Given the decrease in the Trust Fund's assets, the Joint Committee asked Eckler to extrapolate the 2019 phase one financial sufficiency of the Trust to June 30, 2022. Eckler confirmed that there was reduced 2019 Excess Capital available to fund the 2019 allocation benefits being requested. Eckler concluded that the amount available as at June 30, 2022 is approximately \$174,000,000, which equates to approximately \$161,000,000 as at December 31, 2019.

14. Given the reduced amount of 2019 Excess Capital available in 2022, the Joint Committee has amended its applications to request that the Courts allocate only \$159,914,000 of the 2019 Excess Capital, which equates to \$172,000,000 when extrapolated to June 2022. In order to accommodate this reduction, the Joint Committee has modified Recommendation 4 as addressed below. No modifications are requested in respect of Recommendations 1, 2 or 3.

***Recommendation 1 – 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 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, and payable retroactively and prospectively as a special distribution.***

15. 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 in the future based upon further progression of their disease. 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.

16. These non-pecuniary general damage and death benefit awards under the Settlement

Agreement were an area of compromise for many approved class members and family members. The fixed payments for these heads of damage under the settlement were set lower than damage awards at law would permit to ensure that the fixed settlement amount would be sufficient to distribute across all of the heads of damages sought to be addressed and to meet the claims of the unknown number of class members who would come forward and be approved.

17. Non-pecuniary general damages seek to compensate for intangible losses, like pain and suffering and loss of enjoyment and loss of expectation of life. Many approved class members spoke about the nature and effects of their infection and its chronic and progressive harm, including the impacts on physical and mental wellbeing, daily living and family dynamics at the earlier town hall consultation sessions, many more wrote concerning them, and some testified to them at the 2013 allocation hearings. The uniform view expressed was that the awards did not adequately compensate for the life-altering, chronic, progressive and life-threatening nature of hepatitis C.

18. The administrative database records that the deaths of at least 487 approved class members before January 1, 1999 and 745 approved class members since January 1, 1999 were caused by hepatitis C.

19. The Medical Modelling Working Group indicates that, notwithstanding the higher efficacy of direct-acting anti-viral agents, the following proportion of the surviving class members already have or are predicted to go on to develop the following disease states by 2070:

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

20. At the time the Settlement Agreement was approved, the benefit payable for non-pecuniary general damages based on cumulative disease levels was \$225,000 in 1999 dollars as compared to

the \$260,684 limit on non-pecuniary general damages set by the Supreme Court of Canada in the trilogy of cases decided in 1978, after adjustment for inflation to 1999 dollars. Following the creation of 2013 Special Distribution Benefit, the combined benefit payable based on cumulative disease levels was \$328,537 in 2014 dollars as compared to the 2014 adjusted trilogy limit of \$350,712.

21. The recommended 6.8% allocation would, while abiding the trilogy limit, address the remaining difference making the combined benefit payable based on cumulative disease levels \$387,797 in 2020 dollars as compared to the 2020 adjusted trilogy limit of \$389,744.

22. The discrete benefit that would be payable in respect of disease level fixed payments if this recommended allocation is approved is as follows:

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

23. The discrete benefit that would be payable in respect of the other fixed payments if this recommended allocation is approved is as follows:

<b>Fixed Payment Type</b>	<b>6.8% Allocation</b> of fixed payment + any applicable 2013 Special Distribution Benefit (2020 dollars)
\$50,000 non-pecuniary general damages option for approved co-infected hemophiliac class members who may be unable to establish that their disease level is caused by HCV because of their co-infection	\$5,487
\$50,000 death benefit option for approved class members whose death prior to January 1, 1999 was caused by HCV	\$5,487



\$120,000 death benefit option for approved class members whose death prior to January 1, 1999 was caused by HCV, including the entitlements of their family members and dependants	\$13,169
\$72,000 death benefit option for approved co-infected hemophiliac class members whose death prior to January 1, 1999 is not proven to be caused by HCV, including the entitlements of their family members and dependants	\$7,901

24. Approximately 4,926 approved class members eligible for disease level fixed payments under the Plans and, approximately 487 estates, 1,816 family members and 30 co-infected hemophiliac class members eligible for the other fixed payment options under the Plans would benefit retroactively from the recommended allocation. Approved class members whose disease continues to progress and other in-progress and/or future claims that are subsequently approved would also benefit prospectively if the recommended allocation is granted.

***Recommendation 2 – 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 in an amount equal to 50% of the combined value of their award under the Plans and any applicable 2013 Special Distribution Benefit, indexed to January 1, 2020, and payable retroactively and prospectively as a special distribution.***

25. Approved family members of an approved class member whose death was caused by his or her infection with HCV are entitled under the Plans to be paid loss of guidance, care and companionship awards, provided they do not choose one of the joint fixed payment options described above.

26. The loss of guidance, care and companionship awards were an 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 in order to ensure the fixed amount that was available for settlement was sufficient to cover all class members and family members who come forward and are approved, as well as all of the areas of compensation sought to be addressed by the settlement.

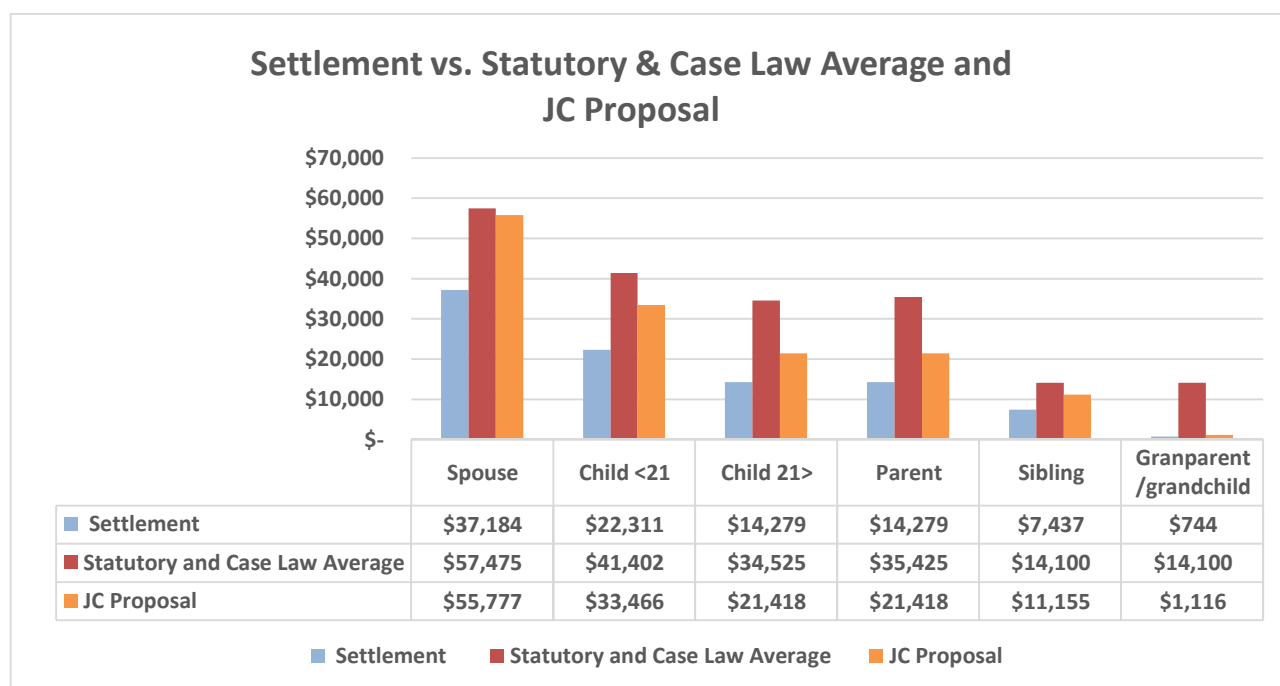
27. While Canadian law has long recognized that no amount of money can replace the value of a lost life, these types of damages are awarded to give recognition and compensation for the seriousness of the family's loss. Many family members spoke about the quantum of these awards

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.

28. The Courts previously held that addressing this compensatory shortfall was a permissible use of the Allocation Provision and ordered the creation of a discrete benefit of \$4,600, indexed, for parents and children age 21 years or older as one of the 2013 Special Distribution Benefits. The allocation requested at that time was limited to only parents and adult children because of the limit on the amount of 2013 Excess Capital available and the number of other compensatory shortfalls that were sought to be addressed. This allocation of 2013 Excess Capital addressed a disparity in the benefits payable among the various groups of family members entitled to an award under the settlement, but it did not address the broader compensatory shortfall of undervalued loss of guidance, care and companionship benefits under the settlement generally. The available 2019 Excess Capital provides the opportunity to do so.

29. Some provinces and territories have legislation that fixes the quantum for awards for loss of guidance, care and companionship, bereavement or grief while the quantum is set by the courts on a case-by-case basis in the others. 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 Plans and any applicable 2013 Special Distribution Benefit, although a true direct comparison is difficult due to differing rules in each jurisdiction.

30. 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:



31. The discrete benefit that would be payable in respect of loss of guidance, care and companionship if this recommended allocation is approved is as follows:

<b>Family Member</b>	<b>50% allocation of loss of guidance, care and companionship awards + any applicable 2013 Special Distribution Benefit for Child &gt; 21 and Parent (2020 dollars)</b>
<b>Spouse</b>	\$18,593
<b>Child &lt; 21</b>	\$11,155
<b>Child 21 &gt;</b>	\$7,139
<b>Parent</b>	\$7,139
<b>Sibling</b>	\$3,718
<b>Grandparent/grandchild</b>	\$372

32. Approximately 7,874 approved family members eligible for loss of guidance, care and companionship would be entitled to benefit retroactively from the recommended allocation, if granted. Additional family members would benefit prospectively as loss of guidance, care and companionship claims are approved following the death of approved class members caused by

their HCV infection, and as current in-progress and future class members and their family members subsequently qualify.

***Recommendation 3 - Allocate \$6,653,000 of 2019 Excess Capital to increase the discrete benefit created to compensate for lost or diminished pension benefits by an additional 4% of the annual loss of income payment capped at \$200,000 per annum before 2014 and \$200,000 per annum indexed thereafter, payable retroactively and prospectively as a special distribution.***

33. The Plans provide that persons 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. The settlement does not however contain any provision to compensate for loss of employment benefits, including loss or diminishment of pension.

34. Loss of income awards were an area of significant compromise for virtually all of the approved class members who suffer an income loss. In particular, the deductions from income required in the calculations of the loss and the failure to compensate lost pension and employment benefits departed from ordinary damages principles. These compromises were made to help ensure the fixed settlement amount would be sufficient to fund benefits to all class members who came forward and were approved.

35. Because of the fixed amount of 2013 Excess Capital available and the competing interests of other benefits sought to be addressed, the Joint Committee recommended a discrete benefit for lost or diminished pension benefits in the 2013 allocation applications in an amount smaller than the amount that was recommended by the actuaries. The Courts held that creating a lost or diminished pension benefit was a permissible use of the Allocation Provision and ordered the creation of a discrete benefit in an amount equal to 10% of an approved class member's annual loss of income capped at \$200,000 as one of the 2013 Special Distribution Benefits.

36. Because the replacement value of this loss was not addressed in full by the allocation of 2013 Excess Capital, the Joint Committee asked Eckler to again consider the reasonable allocation for lost or diminished pension benefits. Eckler notes that although the employer's contribution rate to the Canadian Pension Plan has risen to 5.45% since the last allocation hearing and is set to increase yet again in 2025, it is their opinion 14% of income continues to be a reasonable and appropriate proxy for lost or diminished pension benefits.

37. The claims data from the most recent three-year review period shows that 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 if the recommended increase for loss or diminishment of pension benefits is granted.

38. Approximately 338 approved class members entitled to loss of income payments under the Plans would be eligible to benefit retroactively and, to the extent their loss is ongoing, prospectively from this recommended increase to the lost or diminished pension benefit. There are currently approximately 1,234 living approved class members at disease levels 2 and 3 and 163 at disease level 4 who are not currently receiving loss of income payments who may benefit from this recommended allocation prospectively if their disease condition and employment situation warrant, along with in-progress and future claimants who are subsequently approved.

***Modified Recommendation 4 – Allocate ~~\$60,272,000~~ \$25,365,000 of the 2019 Excess Capital to create a discrete benefit for approved class members and dependants who are entitled to loss of services in the home in an amount equal to ~~\$2~~ \$1 per hour (1999 dollars), indexed to January 1, 2020, for the compensable hours of lost services from and after ~~2014~~ 2019 recoverable under the Plans and any applicable 2013 Special Distribution Benefit, payable retroactively and prospectively as a special distribution.***

39. This is a reduction from the original recommendation, both in terms of the hourly rate increase (now \$1.00 instead of \$2.00 in 1999 dollars) and the effective date of the increase (now from 2019 instead of from 2014). In 2020 dollars, this would be an hourly increase of \$1.49, making the hourly rate payable \$19.34.

40. 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 disabled from doing so because of their HCV. Approved dependants who were living with the infected class member at the time of the class member's death may also claim lost services if the death was caused by the infection with HCV. 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 until the death of their last dependant.

41. Many written and oral communications to the Joint Committee from infected persons and their dependants received before the 2013 allocation hearings indicated that the limit of 20 hours per week and the rate of \$12 per hour were inadequate to permit them to replace the services that they had lost. Many also described how vital the loss of services payments are to their family's survival. The claims data showed at the time approximately 95% of approved class members provided significantly in excess of 20 hours per week of services in the home pre-disability.

42. Because of the limits on the 2013 Excess Capital available and the competing interests of the other benefits it was seeking to address, the Joint Committee recommended only a 2 hour per week benefit to supplement loss of services in the home. The available 2019 Excess Capital provides the opportunity to further address this shortfall.

43. The Courts held that this was a permissible allocation under the Allocation Provision, accepted the recommendation, and ordered the creation of a discrete benefit of 2 hours per week payable retroactively and prospectively to those approved class members and dependants approved for the maximum number of hours recoverable for loss of services in the home.

44. Given the significant disparity between the losses that approved class members and dependants report experiencing and the amounts that they are receiving to compensate for these lost services and given that this disparity was only addressed in part by the 2013 Special Distribution Benefit created, the Joint Committee asked Eckler to once again investigate the current cost of replacing these services.

45. Eckler's investigation into the cost to replace these services revealed regional differences in rates as detailed in the Eckler 2019 Allocation Report. Nevertheless, it is Eckler's opinion that the current rate is insufficient to cover replacement services in many jurisdictions and that providing an additional \$2 per hour benefit for compensable hours of lost services results in a reasonable rate of compensation, which broadly reflects the actual replacement cost of services in the home. Eckler specifically notes that sales tax on invoices for these services that range from 5-15% across the country have not been included in the rates reported.

46. Brown Economic Consulting Inc. ("**Brown**"), an economic consulting firm in Alberta, publishes annually a survey of Canadian "Housekeeping Replacement Rates" by jurisdiction and a "Housekeeping Damages Calculator" to assist with estimating pecuniary loss. The rates that

Brown has published are somewhat higher than the median range set out in Eckler's 2019 Allocation Report for all jurisdictions and above the high range in Eckler's report in some jurisdictions. Brown also specifically notes that the rates included in its published table do not include provincial sales tax or GST payable on these services.

47. The Joint Committee chose to modify this recommendation as the preferred alternative to fit within the reduced amount of 2019 Excess Capital available, having regard for the competing interests of the other benefits it is seeking to address at this time and because the hourly rate under Modified Recommendation 4 is within the range of hourly rates for these types of services across the country, albeit less than the median in Canada (\$20.22).

48. The claims data from 2016 to 2019 ~~the most recent three year review period~~ shows that 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. ~~As such, most loss of service claimants would be entitled to approximately an additional \$3,400 a year (2020 dollars) if this allocation is granted.~~ Because of the limits on the 2019 Excess Capital available and the competing interests of the other benefits sought to be addressed at this time, the Joint Committee only seeks to have this allocation made retroactive to 2019 ~~this recommended allocation is only sought to be made retroactive to losses suffered in the year 2014 and following.~~ Based upon the Joint Committee's Modified Recommendation 4, persons entitled to loss of services benefits would be entitled to approximately an additional \$1,700 a year (2020 dollars) for the year 2019 and following if this allocation is granted as modified.

49. ~~Approximately 728~~ 575 approved class members receiving ~~entitled to~~ loss of services under the Plans as of December 31, 2019 ~~have been paid these benefits since 2014 and would be~~ eligible to benefit retroactively from 2019 and prospectively from this modified recommended allocation. There are currently approximately 1,234 living approved class members at disease levels 2 and 3 and 163 at disease level 4 who are not currently receiving loss of services payments who may benefit from this allocation prospectively if they become disabled from performing these services, as well as about 140 loss of income claimants and loss of support claimants eligible once the class member reaches age 65, and an as yet unquantified number of dependants of the 3,282 living class members who may benefit from this award following the class member's death provided it is caused by HCV. Additionally, in-progress and future claimants who are subsequently

approved for this benefit would benefit prospectively from this award.

***Logistics and Costs of Implementing the Recommended Allocations as Modified***

50. The decision to recommend allocations that address many of the same compensatory shortfalls as were addressed in part by the 2013 Special Distribution Benefits allows, for the most part, employment of the same methodologies and systems that have already been successfully implemented in the administration.

51. From the approved class member's perspective, for the most part, no action would be required on their part to initiate their entitlement. The Administrator would identify, calculate and distribute these discrete benefits based upon the data that is already contained in the claims database for the majority of approved class members and family members. It is recognized that, with the passage of time since some approved class members and family members received benefits, there will be costs for locator services and logistics related to personal representatives and estates required in some cases.

52. From the Administrator's perspective, protocols and standard operating procedures already created in the course of implementing the 2013 Special Distribution Benefits would, for the most part apply to these recommended allocations, resulting in operating efficiencies and cost effectiveness. Any adjustments that would be required are thought to be relatively minor.

53. The structural accommodations previously made to the CLASS database to accommodate the 2013 Special Distribution Benefits would also accommodate the allocations under consideration. Minimal costs will be incurred for a small amount of dedicated programming time required to create additional coding to ensure the integrity of the payment records in the database.

54. Based on the current fee per service structure approved by the Courts for the ongoing administration of the retroactive 2013 Special Distribution Benefits in place since 2017, the Administrator has estimated the administration costs to implement, calculate and distribute the appropriate retroactive payments for the recommended allocations. Eckler has estimated the present value of the administration fee for prospective payments based on the fixed fee of \$5,000 per annum that was approved by the Courts for the prospective component of the 2013 Special Distribution Benefits in place since 2017.



55. As Modified Recommendation 4 eliminates the retroactive aspect of the original recommendation before service year 2019, there is a reduction to the Administrator's cost estimate in the amount of \$120,000, inclusive of taxes. This reduction is reflected in the table of implementation and administration costs detailed below.

56. In addition to these direct costs of the administration there are various service providers, including the Joint Committee, Eckler, the Auditors, and the Trustee, who will also perform work implementing, overseeing, recording and auditing the 2019 Special Distribution Benefits if granted, the costs of which should be allocated from 2019 Excess Capital and not borne by the PT Governments.

57. The total cost of implementation and administration of the recommended allocations is estimated to be ~~only a little less than~~ 0.098% of the value of the recommended allocations, inclusive of taxes. The estimated costs are detailed as follows:

<b>Item</b>	<b>Costs</b>	<b>Sales Tax Rate</b>	<b>Costs with Tax</b>
Retroactive Payment Cost	784,000	13%	890,000
	<u>681,415</u>		<u>770,000</u>
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	300,000	10.6%	330,000
<b>Total</b>	<b>\$1,350,000</b>		<b>\$1,520,000</b>
	<b><u>\$1,247,415</u></b>		<b><u>\$1,400,000</u></b>

#### ***Other Materials Relied Upon***

58. The 1986-1990 Hepatitis C Settlement Agreement, the Transfused HCV Plan, the Hemophiliac HCV Plan, and the Funding Agreement.

59. The HCV Late Claims Benefit Plan.
60. Decisions/Judgments regarding the settlement approval:
- (a) *Parsons v. Canadian Red Cross Society*, [1999] O.J. No. 3572;
  - (b) *Honhon v. The Attorney General of Canada*, 1999 CanLII 11813 (QC CS) and *Honhon v. The Attorney General of Canada*, 1999 CanLII 11242 (QC CS)~~[1999]~~ Q.J. No. 4370 (S.C.); and
  - (c) *Endean v. Canadian Red Cross Society*, 1999 CanLII 6357 (BC SC)~~[1999]~~ B.C.J. No. 2180 (S.C.).
61. Approval Orders:
- (a) Order of the Superior Court of Ontario, made October 22, 1999;
  - (b) Judgment of the Québec Superior Court, made November 19, 1999 approving the modifications set forth in “Annexe F”; and
  - (c) Order of the Supreme Court of British Columbia, made October 28, 1999.
62. 2013 Financial Sufficiency Phase One Orders:
- (a) Order of the Superior Court of Ontario, dated July 10, 2015;
  - (b) Judgment of the Québec Superior Court, dated July 16, 2015; and
  - (c) Order of the Supreme Court of British Columbia, dated July 23, 2015.
63. Decisions/Judgments regarding 2013 Special Distribution Benefits allocation:
- (a) *Parsons v. Canadian Red Cross Society*, 2016 ONSC 4809;
  - (b) *Honhon c. Procureur général du Canada*, 2016 QCCS 3884 (CanLII)~~2018 QCCS 331~~; and
  - (c) *Endean v. Canadian Red Cross Society*, made August 16, 2016.
64. 2013 Special Distribution Benefits Allocation Orders:
- (a) Order of the Superior Court of Ontario, dated August 15, 2016;

- (b) Judgments of the Québec Superior Court, dated August 15, 2016 and February 15, 2017; and
  - (c) Order of the Supreme Court of British Columbia, dated August 16, 2016.
65. HCV Late Claims Benefit Plan Orders:
- (a) Order of the Superior Court of Ontario, dated November 28, 2017;
  - (b) Judgment of the Québec Superior Court, dated November 29, 2017; and
  - (c) Order of the Supreme Court of British Columbia, dated December 19, 2017.
66. 2013 Special Distribution Benefits Implementation Orders:
- (a) Order of the Superior Court of Ontario, dated December 12, 2017;
  - (b) Judgment of the Québec Superior Court, dated November 29, 2017; and
  - (c) Order of the Supreme Court of British Columbia, dated December 19, 2017.
67. 2016 Financial Sufficiency Phase One Orders:
- (a) Order of the Superior Court of Ontario, dated May 30, 2018;
  - (b) Judgment of the Québec Superior Court, dated May 18, 2018; and
  - (c) Order of the Supreme Court of British Columbia, dated May 8, 2018.
68. 2019 Financial Sufficiency Phase One Orders:
- (a) Order of the Superior Court of Ontario, dated February 18, 2021;
  - (b) Judgment of the Québec Superior Court, dated January 25, 2021; and
  - (c) Order of the Supreme Court of British Columbia, dated March 15, 2021.
69. Rule 59.06(2)(a) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, which permits an order to be varied on the ground of facts discovered after it was made.
70. *The Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended.
71. *The Fatal Accidents Act*, RSA 2000, c. F-8, s. 8(2), and *Survival of Actions Act*, RSA 2000,

c. S-27.

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

73. *The Fatal Accidents Act*, RSS 1978, c. F-11, s. 4.1, and *The Survival of Actions Act*, SS 1990-91, c. S-66.1.

74. *Fatal Accidents Act*, RSY 2002, c. 86, s. 3.01(2), and *Survival of Actions Act*, RSY 2002, c. 212.

75. *Family Compensation Act*, RSBC 1996, c. 126.

76. *Fatal Accidents Act*, RSNB 2012, c. 104, and *Survival of Actions Act*, RSNB 2011, c. 227.

77. *Fatal Accidents Act*, RSNL 1990, c. F6, and *Survival of Actions Act*, RSNL 1990, c. S-32.

78. *Fatal Accidents Act*, RSNWT 1988, c.F-3.

79. *Fatal Injuries Act*, RSNS 1989, c. 163, and *Survival of Actions Act*, RSNS 1989, c. 453.

80. *Fatal Accidents Act*, RSNWT (Nu) 1988, c.F-3.

81. *Family Law Act*, RSO 1990, c. F.3.

82. *Fatal Accidents Act*, RSPEI 1988, c. F-5, and *Survival of Actions Act*, RSPEI 1988, c. S-11.

83. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

***Newly Delivered Materials***

1. 2019 Phase Two Financial Sufficiency - Special Distribution Benefit Allocation:

- (a) Affidavits of Heather Rumble Peterson, made May 12, 2022 and March 23, 2023;  
and
- (b) Affidavits of Euan Reid, made May 13, 2022 and December 19, 2022.

***Previously Delivered Materials***

- 2. 2019 Phase One Financial Sufficiency-Phase One:
  - ~~(a) — Report of the Joint Committee on Financial Sufficiency of the 1986–1990 Hepatitis C Trust as at December 31, 2019;~~
  - (a) Affidavit of Richard Border, made November 25, 2020; and
  - ~~(c) — Affidavit of Dr. Murray Krahn, made November 18, 2020;~~
  - ~~(d) — Affidavit of Dr. Vince Bain, made November 25, 2020; and~~
  - (b) Affidavit of Peter Gorham, made December 10, 2020.
  
- ~~3. — 2016 Financial Sufficiency Phase One:~~
  - ~~(a) — Report of the Joint Committee on Financial Sufficiency of the 1986–1990 Hepatitis C Trust as at December 31, 2016;~~
  - ~~(b) — Affidavit of Richard Border, made February 28, 2018;~~
  - ~~(c) — Affidavit of Dr. Murray Krahn, made February 28, 2018; and~~
  - ~~(d) — Affidavit of Dr. Vince Bain, made February 26, 2018.~~
  
- 4. 2013 Phase Two Financial Sufficiency – Allocation: Actuarial Evidence:
  - (a) Affidavit #5 of Richard Border, made October 14, 2015;
  - (b) Affidavit of Peter Gorham, made January 29, 2016;
  - (c) Affidavit #6 of Richard Border, made March 31, 2016; and
  - (d) Affidavit of Peter Gorham, made April 19, 2016.

5. 2013 Phase Two Financial Sufficiency – Allocation: Class Member Submissions-Special

~~Distribution Benefits Allocation:~~

~~(a) — Affidavit #13 of Heather Rumble Peterson, made October 16, 2015;~~

~~(b) — Affidavit #5 of Richard Border, made October 14, 2015;~~

(a) Affidavit #1 of Chya Mogerman, made October 16, 2015;

(b) Affidavit of Alan Melamud, made October 15, 2015;

(c) Affidavit of Shelley Woodrich, made October 15, 2015;

(d) Affidavit of Arnaud Sauv -Dagenais, made October 15, 2015;

~~(g) — Affidavit #6 of Richard Border, made March 31, 2016;~~

~~(h) — Affidavit #15 of Heather Rumble Peterson, made April 1, 2016;~~

~~(i) — Affidavit #2 of Dr. Vince Bain, made March 31, 2016;~~

~~(j) — Affidavit #5 of Dr. Murray Krahn, made April 1, 2016;~~

(e) Affidavit #13 of Lise Carmichael, made April 1, 2016;

(f) Affidavit #2 of Shelley Woodrich, made April 1, 2016;

(g) Affidavit #2 of Arnaud Sauv -Dagenais, made April 1, 2016; ~~and~~

(h) Affidavit #1 of Julie-Lynn Davis, made April 1, 2016; and

(i) Affidavit of Shelley Woodrich, made June 16, 2016.

~~5. — 2013 Financial Sufficiency Phase One:~~

~~(a) — Report of the Joint Committee on Financial Sufficiency of the 1986-1990 Hepatitis  
C Trust as at December 31, 2013;~~

~~(b) — Affidavit of Dr. Murray Krahn, made March 16, 2015;~~

~~(c) — Affidavit of Richard Border, made March 11, 2015; and~~

~~(d) — Affidavit of Dr. Vince Bain, made March 11, 2015.~~

6. Such further and other evidence as counsel may advise and this Honourable Court may permit.

March 23, 2023~~May 13, 2022~~

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Counsel for The Public Guardian and  
 Trustee



**Filed: see page 2 for the Court's stamp**

Court File No. 98-CV-141369 CP00

*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

BETWEEN:

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*



- 2 -

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**

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CANADA  
PROVINCE DE QUÉBEC  
DISTRICT DE MONTRÉAL

NO : 500-06-000016-960

COUR SUPÉRIEURE  
Recours Collectifs

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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 member  
du Comité conjoint

REQUÉRANT

-et-

FONDS D'AIDE AUX RECOURS COLLECTIFS

-et-

LE CURATEUR PUBLIC DU QUÉBEC

Mis-en-cause

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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

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**FRESH AS AMENDED NOTICE OF APPLICATION**

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**Name of Applicant:** British Columbia Joint Committee Member

**TO:** The Attorney General of Canada

**AND TO:** His Majesty the King in Right of the Province of British Columbia

**AND TO:** Fund Counsel

TAKE NOTICE that an application will be made by the British Columbia Joint Committee Member to the Honourable Chief Justice Hinkson on May 30, 2023 at 8:00am PDT by judicial videoconference for the order(s) set out in Part 1 below.

**PART 1: ORDERS SOUGHT**

1. An order pursuant to the Allocation Provision (defined below) of the 1986-1990 Hepatitis C Settlement Agreement (the “**Settlement Agreement**”) that **\$158,514,000<sup>1</sup>** of the 2019 Excess Capital be allocated to create discrete benefits payable as retroactive and prospective special distributions for claimants approved under the Transfused HCV Plan, 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) **\$54,684,000** for class members, family members, late claim class members and late claim 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 in an amount equal to 6.8% of the combined value of their award under the applicable section and any applicable 2013 Special Distribution Benefit, indexed to January 1, 2020;
  - (b) **\$71,812,000** for family members and late claim family members entitled to a loss of guidance, care and companionship award under section 6.02 of the Plans in an amount equal to 50% of the combined value of their award

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<sup>1</sup> The allocations requested are expressed in 2020 dollars.

- 5 -

under the section and any applicable 2013 Special Distribution Benefit, indexed to January 1, 2020;

- (c) **\$6,653,000** for class members and late claim class members entitled to the 2013 Special Distribution Benefit for lost or diminished pension benefits in an amount equal to an additional 4% of their annual loss of income payment under section 4.02 of the Plans capped at \$200,000 per annum before 2014 and \$200,000 per annum indexed from and after 2014; and
- (d) **\$25,365,000** for class members, dependants, late claims class members and late claim dependants entitled to loss of services in the home under sections 4.03 or 6.01(2),(3) of the Plans for the years 2019 and following in an amount equal to \$1 per hour (1999 dollars), indexed to January 1, 2020, for each compensable hour lost as provided under these sections and any applicable 2013 Special Distribution Benefit;

(subparagraphs (a) to (d) collectively, the “**2019 Special Distribution Benefits**”).

2. A declaration that the 2019 Special Distribution Benefits, with the exception of the benefit at subparagraph 1(c), shall be indexed from 2020 dollars to the 1<sup>st</sup> day of January of the year in which they are paid using the Canadian Pension Index in the manner consistent with the provision at section 7.02 of the Plans.
3. An order allocating **\$1,400,000** of the 2019 Excess Capital for payment of the costs associated with administering the 2019 Special Distribution Benefits.
4. An order that **\$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 annual 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 investment income earned on that sum from and after January 1, 2020 to date of transfer from the HCV Regular Benefit Account; and

- 6 -

- (b) **\$1,102,000** plus the amount of investment income earned on that sum from and after January 1, 2020 to date of transfer from the HCV Late Claims Benefit Account.
5. An order that the 2019 Special Distribution Benefits created under paragraph 1, any indexing provided under paragraph 2, and the costs allocated for the administration provided under paragraph 3 be paid from and accounted for under the HCV Special Distribution Benefit Account.
  6. A declaration that the remaining 2019 Excess Capital not allocated to create and pay out the 2019 Special Distribution Benefits as provided for by paragraphs 1 and 2 and/or the related administrative costs as provided for by paragraph 3 be retained in the HCV Regular Benefit Account of the Trust Fund, subject to future motions made pursuant to the Allocation Provision of the Settlement Agreement.
  7. An order that to the extent a class member, family member, dependant, late claims class member, late claims family member or late claims dependant 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.
  8. A declaration that nothing in the orders requested shall in any way amend the Settlement Agreement nor modify or affect the financial obligations and the monthly payments of any of the Provincial and Territorial Governments.
  9. A declaration that the terms of this Order shall not be effective unless and until corresponding orders/judgment with no material differences are obtained from the Ontario Superior Court of Justice and the Superior Court of Québec.
  10. Such further and other relief as counsel may request and this Honourable Court may direct.

## PART 2: FACTUAL BASIS

### Variation of the 2019 Financial Sufficiency Phase One Orders

1. Following completion of the work on phase one of the triennial financial sufficiency review triggered December 31, 2019, the Courts issued orders declaring that, after taking into account the required capital, the Trust Fund was financially sufficient and held actuarially unallocated assets exceeding liabilities as at December 31, 2019 by an amount between \$197,596,000 and \$203,578,000 (the “**2019 Financial Sufficiency Phase One Orders**”).

**Affidavit #39 of Heather Rumble Peterson, made May 12, 2022 (“Peterson Affidavit #39”) at paras. 16 and 19 and Exhibits S, T, and U.**

2. As a result of the discovery of an additional liability of the Trust Fund to the class members for unpaid retroactive 2013 Special Distribution Benefits, the Courts subsequently ordered a restatement of the liabilities of the Trust as at December 31, 2019 (the “**2019 Financial Sufficiency Phase One Restatement Orders**”). Following this restatement of liabilities, the Trust Fund holds actuarially unallocated assets in excess of liabilities as at December 31, 2019 of between \$195,037,000 and \$201,019,000.

**Affidavit #43 of Heather Rumble Peterson, made March 23, 2023 (“Peterson Affidavit #43”) at paras. 5-7 and Exhibit “A”.**

3. Following this restatement of liabilities and the reallocation between the HCV Special Distribution Benefit Account and the HCV Late Claims Benefit Account that was ordered to ensure the sufficiency of each account, the status of the notional accounts as of January 1, 2020 is as follows:

HCV Regular Benefit Account	Excess Capital of between \$191,757,000 and \$197,910,000
HCV Special Distribution Benefit Account	Excess Capital of between \$2,178,000 and \$3,109,000
HCV Late Claims Benefit Account	Excess Capital of between \$1,102,000 and \$0.00

**Peterson Affidavit #43 at para. 8.**

### **Request for Allocation of the 2019 Excess Capital**

4. A provision in respect of actuarially unallocated assets agreed to by the parties and incorporated into the Settlement Agreement at the time of the settlement approvals (the “**Allocation Provision**”), permits the supervising courts in Ontario, British Columbia and Québec (the “**Courts**”) to exercise their unfettered discretion to allocate any actuarially unallocated assets (“**Excess Capital**”), *inter alia*, for the benefit of approved class members and/or family members<sup>2</sup> in such manner as the Courts determine is reasonable in all of the circumstances, provided there is no discrimination based upon where the class member received blood or resides.

**Peterson Affidavit #39 at paras. 2 and 7, Exhibits A, B and C.**

5. The Allocation Provision provides the possibility for approved class members to obtain benefits from Excess Capital above and beyond the scheduled benefits contained in the Regular Benefit Plans and the possibility for the FPT Governments to access Excess Capital before the termination of the administration.

**Peterson Affidavit #39 at para. 29.**

6. While the Allocation Provision provides the opportunity to bridge compensatory gaps or obtain additional compensation up to the limits available at law, it cannot be used to alter the bargain or amend the Settlement Agreement.

**Peterson Affidavit #39 at para. 32.**

7. Following the identification of the 2013 Excess Capital, the Courts used the Allocation Provision to create discrete benefits for approved class members and family members (the “**2013 Special Distribution Benefits**”) to address compensatory shortfalls in the Settlement Agreement. Because there was a limit on the amount of 2013 Excess Capital available for allocation, a number of compensatory shortfalls in the Settlement Agreement remain.

**Peterson Affidavit #39 at paras. 10, 12, 58, 78, 92, 103 and Exhibits G, H, I, M, N, O.**

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



8. The Joint Committee requests the Courts to exercise their unfettered discretion to allocate 2019 Excess Capital pursuant to the Allocation Provision for the benefit of approved class members and family members to further address compensatory shortfalls in respect of the following four heads of damages addressed, in part, by the creation of the 2013 Special Distribution Benefits:

- (a) fixed payments for non-pecuniary general damages and/or death benefits;
- (b) family member payments for loss of guidance, care and companionship;
- (c) lost or diminished pension benefits; and
- (d) compensation for loss of services of the class member in the home.

**Peterson Affidavit #39 at para. 30, Reid Affidavit #1, Exhibit A, paras. 24, 28 and Table at p 9.**

9. These four heads of damages addressed in the Joint Committee's applications, which form the core of any damages award, seek to further address the compensatory concerns previously communicated to the Joint Committee and the Courts, which class members continue to identify as falling short of compensating for the losses and damages suffered.

**Peterson Affidavit #39 at para. 42.**

10. While the allocation of 2013 Excess Capital addressing these same compensatory shortfalls is not determinative of whether the Joint Committee's recommendations should be accepted, it does eliminate several of the questions previously at issue in that the Courts have already determined that allocations in respect of these particular heads of damages:

- (a) are permissible allocations pursuant to the Allocation Provision of the Settlement Agreement;
- (b) do not amend the Settlement Agreement;
- (c) do not increase the burden on the defendants under the Settlement Agreement; and

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- (d) are non-discriminatory based upon where the class member received blood or resides.

**Peterson Affidavit #39 at para. 31.**

11. Provisions in the Settlement Agreement and Plans, such as the deduction of collateral benefits in the calculation of income loss reducing the actual income/support loss recoverable, compensation under tort or statute law not made available under contract law of the Settlement Agreement, and awards being inclusive of prejudgment interest, will continue to suppress the compensation available to approved class members and family members under the Plans. These ongoing compromises in respect of how damages may be calculated and awarded under the Plans should alleviate any concern that class members or family members will be overcompensated if the recommended allocations are granted.

**The Modified Allocation Request**

12. The Joint Committee's original applications requested the Courts to exercise their unfettered discretion to allocate **\$194,941,000** of 2019 Excess Capital, inclusive of costs of administration, pursuant to the Allocation Provision for the benefit of approved class members and family members based on the Joint Committee's four recommendations set out at that time.

**Peterson Affidavit #43 at paragraph. 12**

13. Regular monthly financial reporting has shown a deterioration in the assets of the Trust Fund since the 2019 phase one financial sufficiency was completed. Given the decrease in the Trust Fund's assets, the Joint Committee asked Eckler to extrapolate the 2019 phase one financial sufficiency of the Trust to June 30, 2022. Eckler confirmed that there was reduced 2019 Excess Capital available to fund the 2019 allocation benefits being requested. Eckler concluded that the amount available as at June 30, 2022 is approximately **\$174,000,000**, which equates to approximately **\$161,000,000** as at December 31, 2019.

**Peterson Affidavit #43 at paras. 9-11; Affidavit #2 of Euan Reid, made December 19, 2022 ("Reid Affidavit #2").**

14. Given the reduced amount of 2019 Excess Capital available in 2022, the Joint Committee has amended its applications to request that the Courts allocate only **\$159,914,000** of the 2019 Excess Capital, which equates to **\$172,000,000** when extrapolated to June 2022. In order to accommodate this reduction, the Joint Committee has modified Recommendation 4 as addressed below. No modifications are requested in respect of Recommendations 1, 2 or 3.

**Peterson Affidavit #43 at paras. 12-14.**

***Recommendation 1 – 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 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, and payable retroactively and prospectively as a special distribution.***

**Peterson Affidavit #39 at para. 60, Reid Affidavit #1 at Exhibit A, Table at p. 9.**

15. 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 in the future based upon further progression of their disease. 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.

**Peterson Affidavit #39 at para. 55.**

16. These non-pecuniary general damage and death benefit awards under the Settlement Agreement were an area of compromise for many approved class members and family members. The fixed payments for these heads of damage under the settlement were set lower than damage awards at law would permit to ensure that the fixed settlement amount would be sufficient to distribute across all of the heads of damages sought to be addressed and to meet the claims of the unknown number of class members who would come forward and be approved.

**Peterson Affidavit #39 at para. 56.**

17. Non-pecuniary general damages seek to compensate for intangible losses, like pain and suffering and loss of enjoyment and loss of expectation of life. Many

approved class members spoke about the nature and effects of their infection and its chronic and progressive harm, including the impacts on physical and mental wellbeing, daily living and family dynamics at the earlier town hall consultation sessions, many more wrote concerning them, and some testified to them at the 2013 allocation hearings. The uniform view expressed was that the awards did not adequately compensate for the life-altering, chronic, progressive and life-threatening nature of hepatitis C.

**Peterson Affidavit #39 at para. 57.**

18. The administrative database records that the deaths of at least 487 approved class members before January 1, 1999 and 745 approved class members since January 1, 1999 were caused by hepatitis C.

**Peterson Affidavit #39 at para. 67.**

19. The Medical Modelling Working Group indicates that, notwithstanding the higher efficacy of direct-acting anti-viral agents, the following proportion of the surviving class members already have or are predicted to go on to develop the following disease states by 2070:

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

**Peterson Affidavit #39 at para. 67; Affidavit #7 of Murray Krahn, made November 19, 2020, Tables 1 and 12.**

20. At the time the Settlement Agreement was approved, the benefit payable for non-pecuniary general damages based on cumulative disease levels was \$225,000 in 1999 dollars as compared to the \$260,684 limit on non-pecuniary general

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damages set by the Supreme Court of Canada in the trilogy of cases decided in 1978, after adjustment for inflation to 1999 dollars. Following the creation of 2013 Special Distribution Benefit, the combined benefit payable based on cumulative disease levels was \$328,537 in 2014 dollars as compared to the 2014 adjusted trilogy limit of \$350,712.

**Peterson Affidavit #39 at paras. 61, 62.**

21. The recommended 6.8% allocation would, while abiding the trilogy limit, address the remaining difference making the combined benefit payable based on cumulative disease levels \$387,797 in 2020 dollars as compared to the 2020 adjusted trilogy limit of \$389,744.

**Peterson Affidavit #39 at para. 63; Reid Affidavit #1 at Exhibit A, paras 38, 39 and Table at p 12.**

22. The discrete benefit that would be payable in respect of disease level fixed payments if this recommended allocation is approved is as follows:

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

**Peterson Affidavit #39 at para. 65; Reid Affidavit #1, Exhibit A, para. 38.**

23. The discrete benefit that would be payable in respect of the other fixed payments if this recommended allocation is approved is as follows:

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Fixed Payment Type	6.8% Allocation of fixed payment + any applicable 2013 Special Distribution Benefit (2020 dollars)
\$50,000 non-pecuniary general damages option for approved co-infected hemophiliac class members who may be unable to establish that their disease level is caused by HCV because of their co-infection	\$5,487
\$50,000 death benefit option for approved class members whose death prior to January 1, 1999 was caused by HCV	\$5,487
\$120,000 death benefit option for approved class members whose death prior to January 1, 1999 was caused by HCV, including the entitlements of their family members and dependants	\$13,169
\$72,000 death benefit option for approved co-infected hemophiliac class members whose death prior to January 1, 1999 is not proven to be caused by HCV, including the entitlements of their family members and dependants	\$7,901

**Peterson Affidavit #39 at para. 70.**

24. Approximately 4,926 approved class members eligible for disease level fixed payments under the Plans and, approximately 487 estates, 1,816 family members and 30 co-infected hemophiliac class members eligible for the other fixed payment options under the Plans would benefit retroactively from the recommended allocation. Approved class members whose disease continues to progress and other in-progress and/or future claims that are subsequently approved would also benefit prospectively if the recommended allocation is granted.

**Peterson Affidavit #39 at paras. 68, 71.**

***Recommendation 2 – 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 in an amount equal to 50% of the combined value of their award under the Plans and any applicable 2013 Special Distribution Benefit, indexed to January 1, 2020, and payable retroactively and prospectively as a special distribution.***

**Peterson Affidavit #39 at para. 79, Reid Affidavit #1, Exhibit A, Table p 9.**

25. Approved family members of an approved class member whose death was caused by his or her infection with HCV are entitled under the Plans to be paid loss of guidance, care and companionship awards, provided they do not choose one of the joint fixed payment options described above.

**Peterson Affidavit #39 at para. 73.**

26. The loss of guidance, care and companionship awards were an 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 in order to ensure the fixed amount that was available for settlement was sufficient to cover all class members and family members who come forward and are approved, as well as all of the areas of compensation sought to be addressed by the settlement.

**Peterson Affidavit #39 at para. 74.**

27. While Canadian law has long recognized that no amount of money can replace the value of a lost life, these types of damages are awarded to give recognition and compensation for the seriousness of the family's loss. 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.

**Peterson Affidavit #39 at para. 75.**

28. The Courts previously held that addressing this compensatory shortfall was a permissible use of the Allocation Provision and ordered the creation of a discrete benefit of \$4,600, indexed, for parents and children age 21 years or older as one of the 2013 Special Distribution Benefits. The allocation requested at that time was limited to only parents and adult children because of the limit on the amount of 2013 Excess Capital available and the number of other compensatory shortfalls that were sought to be addressed. This allocation of 2013 Excess Capital addressed a disparity in the benefits payable among the various groups of family members entitled to an award under the settlement, but it did not address the

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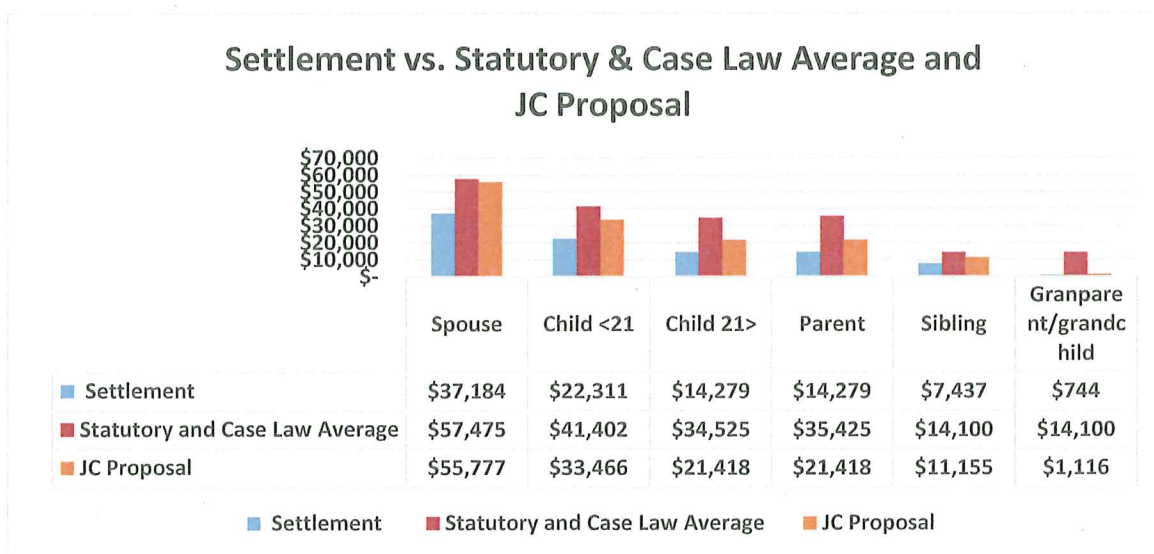
broader compensatory shortfall of undervalued loss of guidance, care and companionship benefits under the settlement generally. The available 2019 Excess Capital provides the opportunity to do so.

**Peterson Affidavit #39 at paras. 76, 77, 78 and Exhibits G, H, I.**

29. Some provinces and territories have legislation that fixes the quantum for awards for loss of guidance, care and companionship, bereavement or grief while the quantum is set by the courts on a case-by-case basis in the others. 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 Plans and any applicable 2013 Special Distribution Benefit, although a true direct comparison is difficult due to differing rules in each jurisdiction.

**Peterson Affidavit #39 at paras. 81, 82 and Exhibit Z.**

30. 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:



**Peterson Affidavit #39 at para. 86.**



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31. The discrete benefit that would be payable in respect of loss of guidance, care and companionship if this recommended allocation is approved is as follows:

<b>Family Member</b>	<b>50% allocation of loss of guidance, care and companionship awards + any applicable 2013 Special Distribution Benefit for Child &gt; 21 and Parent (2020 dollars)</b>
<b>Spouse</b>	\$18,593
<b>Child &lt; 21</b>	\$11,155
<b>Child 21 &gt;</b>	\$7,139
<b>Parent</b>	\$7,139
<b>Sibling</b>	\$3,718
<b>Grandparent/grandchild</b>	\$372

**Peterson Affidavit #39 at para. 80, Reid Affidavit #1, Exhibit A, para. 43.**

32. Approximately 7,874 approved family members eligible for loss of guidance, care and companionship would be entitled to benefit retroactively from the recommended allocation, if granted. Additional family members would benefit prospectively as loss of guidance, care and companionship claims are approved following the death of approved class members caused by their HCV infection, and as current in-progress and future class members and their family members subsequently qualify.

**Peterson Affidavit #39 at para. 87.**

***Recommendation 3 - Allocate \$6,653,000 of 2019 Excess Capital to increase the discrete benefit created to compensate for lost or diminished pension benefits by an additional 4% of the annual loss of income payment capped at \$200,000 per annum before 2014 and \$200,000 per annum indexed thereafter, payable retroactively and prospectively as a special distribution.***

**Peterson Affidavit #39 at para. 94, Reid Affidavit #1, Exhibit A, Table p. 9.**

33. The Plans provide that persons 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. The settlement does not however contain any provision to compensate for loss of employment benefits, including loss or diminishment of pension.

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**Peterson Affidavit #39 at paras. 89 and 90.**

34. Loss of income awards were an area of significant compromise for virtually all of the approved class members who suffer an income loss. In particular, the deductions from income required in the calculations of the loss and the failure to compensate lost pension and employment benefits departed from ordinary damages principles. These compromises were made to help ensure the fixed settlement amount would be sufficient to fund benefits to all class members who came forward and were approved.

**Peterson Affidavit #39 at para. 91.**

35. Because of the fixed amount of 2013 Excess Capital available and the competing interests of other benefits sought to be addressed, the Joint Committee recommended a discrete benefit for lost or diminished pension benefits in the 2013 allocation applications in an amount smaller than the amount that was recommended by the actuaries. The Courts held that creating a lost or diminished pension benefit was a permissible use of the Allocation Provision and ordered the creation of a discrete benefit in an amount equal to 10% of an approved class member's annual loss of income capped at \$200,000 as one of the 2013 Special Distribution Benefits.

**Peterson Affidavit #39 at paras 92, 93 and Exhibits G, H, I.**

36. Because the replacement value of this loss was not addressed in full by the allocation of 2013 Excess Capital, the Joint Committee asked Eckler to again consider the reasonable allocation for lost or diminished pension benefits. Eckler notes that although the employer's contribution rate to the Canadian Pension Plan has risen to 5.45% since the last allocation hearing and is set to increase yet again in 2025, it is their opinion 14% of income continues to be a reasonable and appropriate proxy for lost or diminished pension benefits.

**Peterson Affidavit #39 at para. 95, Reid Affidavit #1, Exhibit A, paras. 46-50.**

37. The claims data from the most recent three-year review period shows that 75% of those with current income loss claims would be entitled to up to an additional

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\$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 if the recommended increase for loss or diminishment of pension benefits is granted.

**Peterson Affidavit #39 at para. 96.**

38. Approximately 338 approved class members entitled to loss of income payments under the Plans would be eligible to benefit retroactively and, to the extent their loss is ongoing, prospectively from this recommended increase to the lost or diminished pension benefit. There are currently approximately 1,234 living approved class members at disease levels 2 and 3 and 163 at disease level 4 who are not currently receiving loss of income payments who may benefit from this recommended allocation prospectively if their disease condition and employment situation warrant, along with in-progress and future claimants who are subsequently approved.

**Peterson Affidavit #39 at para. 97.**

***Modified Recommendation 4 – Allocate \$25,365,000 of the 2019 Excess Capital to create a discrete benefit for approved class members and dependants who are entitled to loss of services in the home in an amount equal to \$1 per hour (1999 dollars), indexed to January 1, 2020, for the compensable hours of lost services from and after 2019 recoverable under the Plans and any applicable 2013 Special Distribution Benefit, payable retroactively and prospectively as a special distribution.***

**Peterson Affidavit #43 at para. 14, Reid Affidavit #2, Exhibit A, pp. 5-6.**

39. This is a reduction from the original recommendation, both in terms of the hourly rate increase (now \$1.00 instead of \$2.00 in 1999 dollars) and the effective date of the increase (now from 2019 instead of 2014). In 2020 dollars, the hourly rate payable would be \$19.34.

**Peterson Affidavit #43 at para. 14, Reid Affidavit #2, Exhibit A at para. 15.**

40. 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 disabled from doing so because of their HCV. Approved dependants who were living with the infected

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class member at the time of the class member's death may also claim lost services if the death was caused by the infection with HCV. 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 until the death of their last dependant.

**Peterson Affidavit #39 at para. 99.**

41. Many written and oral communications to the Joint Committee from infected persons and their dependants received before the 2013 allocation hearings indicated that the limit of 20 hours per week and the rate of \$12 per hour were inadequate to permit them to replace the services that they had lost. Many also described how vital the loss of services payments are to their family's survival. The claims data showed at the time approximately 95% of approved class members provided significantly in excess of 20 hours per week of services in the home pre-disability.

**Peterson Affidavit #39 at paras. 100, 101.**

42. Because of the limits on the 2013 Excess Capital available and the competing interests of the other benefits it was seeking to address, the Joint Committee recommended only a 2 hour per week benefit to supplement loss of services in the home. The available 2019 Excess Capital provides the opportunity to further address this shortfall.

**Peterson Affidavit #39 at para. 103.**

43. The Courts held that this was a permissible allocation under the Allocation Provision, accepted the recommendation, and ordered the creation of a discrete benefit of 2 hours per week payable retroactively and prospectively to those approved class members and dependants approved for the maximum number of hours recoverable for loss of services in the home.

**Peterson Affidavit #39 at para. 104 and Exhibits G, H, I.**

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44. Given the significant disparity between the losses that approved class members and dependants report experiencing and the amounts that they are receiving to compensate for these lost services and given that this disparity was only addressed in part by the 2013 Special Distribution Benefit created, the Joint Committee asked Eckler to once again investigate the current cost of replacing these services.

**Peterson Affidavit #39 at para. 106.**

45. Eckler's investigation into the cost to replace these services revealed regional differences in rates as detailed in the Eckler 2019 Allocation Report. Nevertheless, it is Eckler's opinion that the current rate is insufficient to cover replacement services in many jurisdictions and that providing an additional \$2 per hour benefit for compensable hours of lost services results in a reasonable rate of compensation, which broadly reflects the actual replacement cost of services in the home. Eckler specifically notes that sales tax on invoices for these services that range from 5-15% across the country have not been included in the rates reported.

**Peterson Affidavit #39 at para. 107, Reid Affidavit #1, Exhibit A, paras 52-54.**

46. Brown Economic Consulting Inc. ("**Brown**"), an economic consulting firm in Alberta, publishes annually a survey of Canadian "Housekeeping Replacement Rates" by jurisdiction and a "Housekeeping Damages Calculator" to assist with estimating pecuniary loss. The rates that Brown has published are somewhat higher than the median range set out in Eckler's 2019 Allocation Report for all jurisdictions and above the high range in Eckler's report in some jurisdictions. Brown also specifically notes that the rates included in its published table do not include provincial sales tax or GST payable on these services.

**Peterson Affidavit #39 at para. 108 and Exhibit AA.**

47. The Joint Committee chose to modify this recommendation as the preferred alternative to fit within the reduced amount of 2019 Excess Capital available, having regard for the competing interests of the other benefits it is seeking to address at this time and because the hourly rate under Modified Recommendation

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4 is within the range of hourly rates for these types of services across the country, albeit less than the median in Canada (\$20.22).

**Peterson Affidavit #43 at para. 15 and Exhibits B and C.**

48. The claims data from 2016 to 2019 shows that 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. Because of the limits on the 2019 Excess Capital available and the competing interests of the other benefits sought to be addressed at this time, the Joint Committee only seeks to have this allocation made retroactive to 2019. Based upon the Joint Committee's Modified Recommendation 4, persons entitled to loss of services benefits would be entitled to approximately an additional \$1,700 a year (2020 dollars) for the year 2019 and following if this allocation is granted as modified.

**Peterson Affidavit #39 at paras. 105 and 109.**

**Peterson #43 at para. 16.**

49. Approximately 575 approved class members receiving loss of services under the Plans as of December 31, 2019 would be eligible to benefit retroactively from 2019 and prospectively from this modified recommended allocation. There are currently approximately 1,234 living approved class members at disease levels 2 and 3 and 163 at disease level 4 who are not currently receiving loss of services payments who may benefit from this allocation prospectively if they become disabled from performing these services, as well as about 140 loss of income claimants and loss of support claimants eligible once the class member reaches age 65, and an as yet unquantified number of dependants of the 3,282 living class members who may benefit from this award following the class member's death provided it is caused by HCV. Additionally, in-progress and future claimants who are subsequently approved for this benefit would benefit prospectively from this award.

**Peterson Affidavit #39 at para. 110.**

**Peterson Affidavit #43 at para. 16.**

***Logistics and Costs of Implementing the Recommended Allocations as Modified***

50. The decision to recommend allocations that address many of the same compensatory shortfalls as were addressed in part by the 2013 Special Distribution Benefits allows, for the most part, employment of the same methodologies and systems that have already been successfully implemented in the administration.

**Peterson Affidavit #39 at para. 113.**

51. From the approved class member's perspective, for the most part, no action would be required on their part to initiate their entitlement. The Administrator would identify, calculate and distribute these discrete benefits based upon the data that is already contained in the claims database for the majority of approved class members and family members. It is recognized that, with the passage of time since some approved class members and family members received benefits, there will be costs for locator services and logistics related to personal representatives and estates required in some cases.

**Peterson Affidavit #39 at paras. 114 and 120.**

52. From the Administrator's perspective, protocols and standard operating procedures already created in the course of implementing the 2013 Special Distribution Benefits would, for the most part apply to these recommended allocations, resulting in operating efficiencies and cost effectiveness. Any adjustments that would be required are thought to be relatively minor.

**Peterson Affidavit #39 at para. 115.**

53. The structural accommodations previously made to the CLASS database to accommodate the 2013 Special Distribution Benefits would also accommodate the allocations under consideration. Minimal costs will be incurred for a small amount of dedicated programming time required to create additional coding to ensure the integrity of the payment records in the database.

**Peterson Affidavit #39 at para. 119.**

54. Based on the current fee per service structure approved by the Courts for the ongoing administration of the retroactive 2013 Special Distribution Benefits in

place since 2017, the Administrator has estimated the administration costs to implement, calculate and distribute the appropriate retroactive payments for the recommended allocations. Eckler has estimated the present value of the administration fee for prospective payments based on the fixed fee of \$5,000 per annum that was approved by the Courts for the prospective component of the 2013 Special Distribution Benefits in place since 2017.

**Peterson Affidavit #39 at paras. 116, 117 and Exhibit BB; Reid Affidavit #1, Exhibit A, para. 60.**

55. As Modified Recommendation 4 eliminates the retroactive aspect of the original recommendation before service year 2019, there is a reduction to the Administrator's cost estimate in the amount of \$120,000, inclusive of taxes. This reduction is reflected in the table of implementation and administration costs detailed below.

**Peterson Affidavit #43 at para. 17.**

56. In addition to these direct costs of the administration there are various service providers, including the Joint Committee, Eckler, the Auditors, and the Trustee, who will also perform work implementing, overseeing, recording and auditing the 2019 Special Distribution Benefits if granted, the costs of which should be allocated from 2019 Excess Capital and not borne by the PT Governments.

**Peterson Affidavit #39 at para. 121.**

57. The total cost of implementation and administration of the recommended allocations is estimated to be a little less than 0.09% of the value of the recommended allocations, inclusive of taxes. The estimated costs are detailed as follows:

Item	Costs	Sales Tax Rate	Costs with Tax
Revised Retroactive Payment Cost	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



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Other Service Cost	300,000	10.6%	330,000
<b>Total</b>	<b>\$1,247,415</b>		<b>\$1,400,000</b>

**Peterson Affidavit #39 at paras. 121 and 123; Reid Affidavit #1, Exhibit A, para. 64.**

**Peterson Affidavit #43 at para. 17.**

### **PART 3: LEGAL BASIS**

58. The 1986-1990 Hepatitis C Settlement Agreement, the Transfused HCV Plan, the Hemophiliac HCV Plan, and the Funding Agreement.
59. The HCV Late Claims Benefit Plan.
60. Decisions/Judgments regarding the settlement approval:
  - (a) *Parsons v Canadian Red Cross Society*, [1999] OJ No 3572;
  - (b) *Honhon v The Attorney General of Canada*, 1999 CanLII 11813 (QC CS) and *Honhon v. The Attorney General of Canada*, 1999 CanLII 11242 (QC CS); and
  - (c) *Endean v Canadian Red Cross Society*, 1999 CanLII 6357 (BC SC).
61. Approval Orders:
  - (a) Order of the Superior Court of Ontario, made October 22, 1999;
  - (b) Judgment of the Québec Superior Court, made November 19, 1999 approving the modifications set forth in “Annexe F”; and
  - (c) Order of the Supreme Court of British Columbia, made October 28, 1999.
62. 2013 Financial Sufficiency Phase One Orders:
  - (a) Order of the Superior Court of Ontario, dated July 10, 2015;
  - (b) Judgment of the Québec Superior Court, dated July 16, 2015; and
  - (c) Order of the Supreme Court of British Columbia, dated July 23, 2015.

63. Decisions/Judgments regarding 2013 Special Distribution Benefits allocation:
- (a) *Parsons v Canadian Red Cross Society*, 2016 ONSC 4809;
  - (b) *Honhon c Procureur général du Canada*, 2016 QCCS 3884 (CanLII); and
  - (c) *Endean v Canadian Red Cross Society*, made August 16, 2016.
64. 2013 Special Distribution Benefits Allocation Orders:
- (a) Order of the Superior Court of Ontario, dated August 15, 2016;
  - (b) Judgments of the Québec Superior Court, dated August 15, 2016 and February 15, 2017; and
  - (c) Order of the Supreme Court of British Columbia, dated August 16, 2016.
65. HCV Late Claims Benefit Plan Orders:
- (a) Order of the Superior Court of Ontario, dated November 28, 2017;
  - (b) Judgment of the Québec Superior Court, dated November 29, 2017; and
  - (c) Order of the Supreme Court of British Columbia, dated December 19, 2017.
66. 2013 Special Distribution Benefits Implementation Orders:
- (a) Order of the Superior Court of Ontario, dated December 12, 2017;
  - (b) Judgment of the Québec Superior Court, dated November 29, 2017; and
  - (c) Order of the Supreme Court of British Columbia, dated December 19, 2017.
67. 2016 Financial Sufficiency Phase One Orders:
- (a) Order of the Superior Court of Ontario, dated May 30, 2018;
  - (b) Judgment of the Québec Superior Court, dated May 18, 2018; and
  - (c) Order of the Supreme Court of British Columbia, dated May 8, 2018.
68. 2019 Financial Sufficiency Phase One Orders:
- (a) Order of the Superior Court of Ontario, dated February 18, 2021;

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- (b) Judgment of the Québec Superior Court, dated January 25, 2021; and
  - (c) Order of the Supreme Court of British Columbia, dated March 15, 2021.
69. *The Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended; *Class Proceedings Act*, RSBC 1996, c. 50, as amended.
  70. *The Fatal Accidents Act*, RSA 2000, c. F-8, s. 8(2), and *Survival of Actions Act*, RSA 2000, c. S-27.
  71. *The Fatal Accidents Act*, CCSM c. F50, s. 3.1(2).
  72. *The Fatal Accidents Act*, RSS 1978, c. F-11, s. 4.1, and *The Survival of Actions Act*, SS 1990-91, c. S-66.1.
  73. *Fatal Accidents Act*, RSY 2002, c. 86, s. 3.01(2), and *Survival of Actions Act*, RSY 2002, c. 212.
  74. *Family Compensation Act*, RSBC 1996, c. 126.
  75. *Fatal Accidents Act*, RSNB 2012, c. 104, and *Survival of Actions Act*, RSNB 2011, c. 227.
  76. *Fatal Accidents Act*, RSNL 1990, c. F6, and *Survival of Actions Act*, RSNL 1990, c. S-32.
  77. *Fatal Accidents Act*, RSNWT 1988, c.F-3.
  78. *Fatal Injuries Act*, RSNS 1989, c. 163, and *Survival of Actions Act*, RSNS 1989, c. 453.
  79. *Fatal Accidents Act*, RSNWT (Nu) 1988, c.F-3.
  80. *Family Law Act*, RSO 1990, c. F.3.
  81. *Fatal Accidents Act*, RSPEI 1988, c. F-5, and *Survival of Actions Act*, RSPEI 1988, c. S-11.

82. Such further and other grounds as counsel may advise and this Honourable Court may permit.

#### **PART 4: MATERIAL TO BE RELIED ON**

##### ***Newly Delivered Materials***

1. 2019 Phase Two Financial Sufficiency Allocation:
  - (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; and
  - (d) Affidavit #2 of Euan Reid, made December 19, 2022.

##### ***Previously Delivered Materials***

2. 2019 Phase One Financial Sufficiency:
  - (a) Affidavit #10 of Richard Border, made November 25, 2020; and
  - (b) Affidavit #6 of Peter Gorham, made December 10, 2020.
3. 2013 Phase Two Financial Sufficiency – Allocation: Actuarial Evidence:
  - (a) Affidavit #5 of Richard Border, made October 14, 2015;
  - (b) Affidavit of Peter Gorham, made January 29, 2016;
  - (c) Affidavit #6 of Richer Border, made March 31, 2016; and
  - (d) Affidavit of Peter Gorham, made April 19, 2016.
4. 2013 Phase Two Financial Sufficiency – Allocation: Class Member Submissions:
  - (a) Affidavit #1 of Chya Mogerman, made October 16, 2015;
  - (b) Affidavit #1 of Alan Melamud, made October 15, 2015;
  - (c) Affidavit #1 of Shelley Woodrich, made October 15, 2015;

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- (d) Affidavit #1 of Arnaud Sauv -Dagenais, made October 15, 2015;
- (e) Affidavit #13 of Lise Carmichael, made April 1, 2016;
- (f) Affidavit #2 of Shelley Woodrich, made April 1, 2016;
- (g) Affidavit #2 of Arnaud Sauv -Dagenais, made April 1, 2016;
- (h) Affidavit #1 of Julie-Lynn Davis, made April 1, 2016; and
- (i) Affidavit of Shelley Woodrich, made June 16, 2016.

5. Such further and other evidence as counsel may advise and this Honourable Court may permit.

- This matter is within the jurisdiction of a master.
- This matter is not within the jurisdiction of a master.


TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed application response;

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- (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: 30/Mar/2023



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Signature of lawyer  
for applicant

David Loukidelis, KC

Jamie Thornback  
signing for

David Loukidelis, K.C.,  
with permission

*To be completed by the court only:*

Order made

- in the terms requested in paragraphs ..... of Part 1 of this notice of application
- with the following variations and additional terms:

.....  
 .....  
 .....

Date: .....

Signature of  Judge  Master

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## APPENDIX

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### THIS APPLICATION INVOLVES THE FOLLOWING:

*[The following information is provided for data collection purposes only and is of no legal effect.]*

- discovery: comply with demand for documents
- discovery: production of additional documents
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts

## SCHEDULE "A"

Court File No. 98-CV-141369 CP00ONTARIO  
SUPERIOR COURT OF JUSTICE

B E T W E E N :

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 HER MAJESTY THE QUEENKING IN RIGHT OF ONTARIO  
and THE ATTORNEY GENERAL OF CANADA

Defendants

and

~~HER~~HIS MAJESTY THE QUEENKING IN THE RIGHT OF THE PROVINCE OF ALBERTA, ~~HER~~  
HIS MAJESTY THE QUEENKING IN  
THE RIGHT OF THE PROVINCE OF SASKATCHEWAN, ~~HER~~  
HIS MAJESTY THE QUEENKING IN THE RIGHT OF THE  
PROVINCE OF MANITOBA, ~~HER~~  
HIS MAJESTY THE QUEENKING IN THE RIGHT OF THE PROVINCE OF NEW BRUNSWICK  
~~BRUNSWICK~~, ~~HER~~HIS MAJESTY THE QUEENKING IN THE RIGHT OF THE PROVINCE OF PRINCE  
EDWARD ISLAND,  
~~HER~~HIS MAJESTY THE QUEENKING IN THE RIGHT OF THE PROVINCE OF NOVA SCOTIA ~~HER~~  
HIS MAJESTY THE QUEEN  
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

Intervenor

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 HER MAJESTY THE QUEENKING IN RIGHT OF ONTARIO

Defendants

and

~~HER~~HIS MAJESTY THE QUEENKING IN THE RIGHT OF THE PROVINCE OF ALBERTA, ~~HER~~  
HIS MAJESTY THE QUEENKING IN  
~~THE RIGHT OF THE PROVINCE OF SASKATCHEWAN, HER MAJESTY THE QUEEN~~KING IN THE  
RIGHT OF THE  
PROVINCE OF SASKATCHEWAN,  
HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF MANITOBA, ~~HER~~  
HIS MAJESTY THE QUEENKING IN THE RIGHT OF THE PROVINCE OF NEW  
BRUNSWICK, ~~HER~~  
HIS MAJESTY THE QUEENKING IN THE RIGHT OF THE PROVINCE OF PRINCE EDWARD ISLAND  
~~HER~~HIS MAJESTY THE QUEENKING IN THE RIGHT OF THE PROVINCE OF NOVA SCOTIA ~~HER~~



HIS MAJESTY THE QUEEN  
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***

No. C965349  
Vancouver Registry

**In the Supreme Court of British Columbia**

Between:

**Anita Endean, as representative plaintiff**

Plaintiff

and:

**The Canadian Red Cross Society  
~~Her~~His Majesty the ~~Queen~~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,  
~~Her~~His Majesty the ~~Queen~~King in Right of Canada, and  
~~Her~~His Majesty the ~~Queen~~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**

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**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 member  
du Comité conjoint**

REQUÉRANT

-et-

**FONDS D'AIDE AUX RECOURS COLLECTIFS**

-et-

**LE CURATEUR PUBLIC DU QUÉBEC**

Mis-en-cause

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**CANADA  
PROVINCE DE QUÉBEC  
DISTRICT DE MONTRÉAL**

**NO : 500-06-000068-987**

**COUR SUPÉRIEURE  
Recours Collectifs**

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**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

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**FRESH AS AMENDED NOTICE OF APPLICATION**  
**(Joint Committee Motion to Allocate 2019 Excess Capital)**

**Name of Applicant:** British Columbia Joint Committee Member

**TO:** The Attorney General of Canada

**AND TO:** ~~Her~~His Majesty the ~~Queen~~King in ~~the~~ Right of the Province of British Columbia

**AND TO:** Fund Counsel

TAKE NOTICE that an application will be made by the British Columbia Joint Committee Member to the Honourable Chief Justice Hinkson on ~~a date to be set~~ May 30, 2023 at 8:00am PDT by judicial videoconference for the order(s) set out in Part 1 below.

**PART 1: ORDERS SOUGHT**

~~1. An order varying the order of this Court dated February 18, 2021 (the “2019 Financial Sufficiency Phase One Order”) by allocating \$2,559,000 of additional assets of the 1986-1990 Hepatitis C Settlement Trust Fund (the “Trust Fund”) to meet ongoing liabilities, such that paragraph 3 states:~~

~~**THIS COURT ORDERS** that the Trustee holds between \$195,037,000 and \$201,019,000 of actuarially unallocated money and assets as at December 31, 2019 (the “2019 Excess Capital”).~~

~~2. An order varying the 2019 Financial Sufficiency Phase One Order to reflect the reduction of 2019 Excess Capital in the HCV Special Distribution Benefit Account as a result of the recognition of additional liabilities, such that paragraph 4 states:~~

~~**THIS COURT ORDERS** that as at December 31, 2019, the financial status of the three notional accounts of the Trust Fund is as follows:~~

<del>HCV Regular Benefit Account</del>	<del>Excess Capital of between \$191,757,000 and \$197,910,000</del>
<del>HCV Special Distribution Benefit Account</del>	<del>Excess Capital of between \$25,159,000 and \$26,090,000</del>

HCV Late Claims Benefit Account	Insufficient Capital of between \$21,879,000 and \$22,981,000
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~~3. An order varying the 2019 Financial Sufficiency Phase One Order to reflect the reduction of 2019 Excess Capital in the HCV Special Distribution Benefit Account as a result of the recognition of these additional liabilities, such that paragraph 5 states:~~

~~**THIS COURT ORDERS** that \$22,981,000 be reallocated from the HCV Special Distribution Benefit Account to the HCV Late Claims Benefit Account effective January 1, 2020, so that the HCV Late Claims Benefit Account will be financially sufficient to meet the projected maximum liabilities of the HCV Late Claims Benefit Plan and the HCV Special Distribution Benefit Account will have excess capital of between \$2,178,000 and \$3,109,000, as at January 1, 2020.~~

1. ~~4.~~ An order pursuant to the Allocation Provision (defined below) of the 1986-1990 Hepatitis C Settlement Agreement (the "**Settlement Agreement**") that ~~\$193,421,000~~ ~~158,514,000~~<sup>1</sup> of the 2019 Excess Capital be allocated to create discrete benefits payable as retroactive and prospective special distributions for claimants approved under the Transfused HCV Plan, 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) **\$54,684,000** for class members, family members, late claim class members and late claim 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 in an amount equal to 6.8% of the combined value of their award under the applicable section and any applicable 2013 Special Distribution Benefit, indexed to January 1, 2020;
  - (b) **\$71,812,000** for family members and late claim family members entitled to a loss of guidance, care and companionship award under section 6.02 of the Plans in an amount equal to 50% of the combined value of their award

<sup>1</sup> The allocations requested are expressed in 2020 dollars.

under the section and any applicable 2013 Special Distribution Benefit, indexed to January 1, 2020;

- (c) **\$6,653,000** for class members and late claim class members entitled to the 2013 Special Distribution Benefit for lost or diminished pension benefits in an amount equal to an additional 4% of their annual loss of income payment under section 4.02 of the Plans capped at \$200,000 per annum before 2014 and \$200,000 per annum indexed from and after 2014; and
- (d) ~~\$60,272,000~~ 25,365,000 for class members, dependants, late claims class members and late claim dependants entitled to loss of services in the home under sections 4.03 or 6.01(2),(3) of the Plans for the years ~~2014~~ 2019 and following in an amount equal to ~~\$21~~ per hour (1999 dollars), indexed to January 1, 2020, for each compensable hour lost as provided under these sections and any applicable 2013 Special Distribution Benefit;

(subparagraphs (a) to (d) collectively, the “**2019 Special Distribution Benefits**”).

- 2. ~~5.~~ A declaration that the 2019 Special Distribution Benefits, with the exception of the benefit at subparagraph ~~4~~1(c), shall be indexed from 2020 dollars to the 1<sup>st</sup> day of January of the year in which they are paid using the Canadian Pension Index in the manner consistent with the provision at section 7.02 of the Plans.
- 3. ~~6.~~ An order allocating ~~\$1,520,000~~ 1,400,000 of the 2019 Excess Capital for payment of the costs associated with administering the 2019 Special Distribution Benefits.
- 4. ~~7.~~ An order that ~~\$192,763,000~~ 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 annual 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) ~~\$191,661,000~~156,634,000 plus the amount of 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 investment income earned on that sum from and after January 1, 2020 to date of transfer from the HCV Late Claims Benefit Account.
5. ~~8.~~ An order that the 2019 Special Distribution Benefits created under paragraph ~~41~~41, any indexing provided under paragraph ~~52~~52, and the costs allocated for the administration provided under paragraph ~~63~~63 be paid from and accounted for under the HCV Special Distribution Benefit Account.
6. ~~9.~~ A declaration that the remaining 2019 Excess Capital not allocated to create and pay out the 2019 Special Distribution Benefits as provided for by paragraphs ~~41~~41 and ~~52~~52 and/or the related administrative costs as provided for by paragraph ~~63~~63 be retained in the HCV Regular Benefit Account of the Trust Fund, subject to future motions made pursuant to the Allocation Provision of the Settlement Agreement.
7. ~~10.~~ An order that to the extent a class member, family member, dependant, late claims class member, late claims family member or late claims dependant 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.
8. ~~11.~~ A declaration that nothing in the orders requested shall in any way amend the Settlement Agreement nor modify or affect the financial obligations and the monthly payments of any of the Provincial and Territorial Governments.
9. ~~12.~~ A declaration that the terms of this Order shall not be effective unless and until corresponding orders/judgment with no material differences are obtained from the

~~Supreme Ontario Superior~~ Court of ~~British Columbia Justice~~ and the Superior Court of Québec.

10. ~~13.~~ Such further and other relief as counsel may request and this Honourable Court may direct.

## PART 2: FACTUAL BASIS

### Variation of the 2019 Financial Sufficiency Phase One Orders

1. Following completion of the work on phase one of the triennial financial sufficiency review triggered December 31, 2019, the Courts issued orders declaring that, after taking into account the required capital, the Trust Fund was financially sufficient and held actuarially unallocated assets exceeding liabilities as at December 31, 2019 by an amount between \$197,596,000 and \$203,578,000 (the “**2019 Financial Sufficiency Phase One Orders**”).

**Affidavit #39 of Heather Rumble Peterson, made May 12, 2022 (“Peterson Affidavit #39”) at paras. 16 and 19 and Exhibits S, T, and U.**

~~2. Subsequent to the making of the 2019 Financial Sufficiency Phase One Orders, it was confirmed that there were \$2,559,000 in additional liabilities to some approved class members and family members for certain benefits that had mistakenly not been issued by the preceding Administrator, making the amount by which the Trust assets exceeded the liabilities as calculated by the actuaries for the parties overstated.~~

~~**Peterson Affidavit #39 at para. 21.**~~

~~3. Once the liabilities of the Trust are restated to reflect this additional liability in the financial position of the Trust Fund as at December 31, 2019, the total 2019 Excess Capital is reduced to be between **\$195,037,000** and **\$201,019,000** and the corresponding balance of the HCV Special Distribution Benefit Account is reduced to be between **\$2,178,000** and **\$3,109,000** as at January 1, 2020.~~

2. As a result of the discovery of an additional liability of the Trust Fund to the class members for unpaid retroactive 2013 Special Distribution Benefits, the Courts



subsequently ordered a restatement of the liabilities of the Trust as at December 31, 2019 (the “2019 Financial Sufficiency Phase One Restatement Orders”). Following this restatement of liabilities, the Trust Fund holds actuarially unallocated assets in excess of liabilities as at December 31, 2019 of between \$195,037,000 and \$201,019,000.

**Affidavit #43 of Heather Rumble Peterson, made March 23, 2023 (“Peterson Affidavit #43”) at paras. 5-7 and Exhibit “A”.**

3. Following this restatement of liabilities and the reallocation between the HCV Special Distribution Benefit Account and the HCV Late Claims Benefit Account that was ordered to ensure the sufficiency of each account, the status of the notional accounts as of January 1, 2020 is as follows:

<u>HCV Regular Benefit Account</u>	<u>Excess Capital of between \$191,757,000 and \$197,910,000</u>
<u>HCV Special Distribution Benefit Account</u>	<u>Excess Capital of between \$2,178,000 and \$3,109,000</u>
<u>HCV Late Claims Benefit Account</u>	<u>Excess Capital of between \$1,102,000 and \$0.00</u>

**Peterson Affidavit #3943 at para. 23, Affidavit #1 of Euan Reid, made May 13, 2022 (“Reid Affidavit #1”), Exhibit A, para. 3-8.**

### **Request for Allocation of the 2019 Excess Capital**

4. A provision in respect of actuarially unallocated assets agreed to by the parties and incorporated into the Settlement Agreement at the time of the settlement approvals (the “**Allocation Provision**”), permits the supervising courts in Ontario, British Columbia and Québec (the “**Courts**”) to exercise their unfettered discretion to allocate any actuarially unallocated assets (“**Excess Capital**”), *inter alia*, for the benefit of approved class members and/or family members<sup>42</sup> in such manner as

<sup>42</sup> For simplicity and brevity, the terms approved class members, family members and dependants have been used throughout, however they should be taken to include approved late claim class members, late claim family members and late claim dependants, as applicable.

the Courts determine is reasonable in all of the circumstances, provided there is no discrimination based upon where the class member received blood or resides.

**Peterson Affidavit #39 at paras. 2, and 7 and Exhibits A, B and C.**

5. The Allocation Provision provides the possibility for approved class members to obtain benefits from Excess Capital above and beyond the scheduled benefits contained in the Regular Benefit Plans and the possibility for the FPT Governments to access Excess Capital before the termination of the administration.

**Peterson Affidavit #39 at para. 29.**

6. While the Allocation Provision provides the opportunity to bridge compensatory gaps or obtain additional compensation up to the limits available at law, it cannot be used to alter the bargain or amend the Settlement Agreement.

**Peterson Affidavit #39 at para. 32.**

7. Following the identification of the 2013 Excess Capital, the Courts used the Allocation Provision to create discrete benefits for approved class members and family members (the “**2013 Special Distribution Benefits**”) to address compensatory shortfalls in the Settlement Agreement. Because there was a limit on the amount of 2013 Excess Capital available for allocation, a number of compensatory shortfalls in the Settlement Agreement remain.

**Peterson Affidavit #39 at paras. 10, 12, 58, 78, 92, 103 and Exhibits G, H, I, M, N, O.**

8. The Joint Committee requests the Courts to exercise their unfettered discretion to allocate ~~\$194,941,000~~ of 2019 Excess Capital, ~~inclusive of costs of administration,~~ pursuant to the Allocation Provision for the benefit of approved class members and family members to further address compensatory shortfalls in respect of the following four heads of damages addressed, in part, by the creation of the 2013 Special Distribution Benefits:

- (a) fixed payments for non-pecuniary general damages and/or death benefits;
- (b) family member payments for loss of guidance, care and companionship;
- (c) lost or diminished pension benefits; and

(d) compensation for loss of services of the class member in the home.

**Peterson Affidavit #39 at para. 30, Reid Affidavit #1, Exhibit A, paras. 24, 28 and Table at p 9.**

9. These four heads of damages addressed in the Joint Committee's applications, which form the core of any damages award, seek to further address the compensatory concerns previously communicated to the Joint Committee and the Courts, which class members continue to identify as falling short of compensating for the losses and damages suffered.

**Peterson Affidavit #39 at para. 42.**

10. While the allocation of 2013 Excess Capital addressing these same compensatory shortfalls is not determinative of whether the Joint Committee's recommendations should be accepted, it does eliminate several of the questions previously at issue in that the Courts have already determined that allocations in respect of these particular heads of damages:

- (a) are permissible allocations pursuant to the Allocation Provision of the Settlement Agreement;
- (b) do not ~~require the amendment of~~ amend the Settlement Agreement;
- (c) do not increase the burden on the defendants under the Settlement Agreement; and
- (d) are non-discriminatory based upon where the class member received blood or resides.

**Peterson Affidavit #39 at para. 31.**

11. Provisions in the Settlement Agreement and Plans, such as the deduction of collateral benefits in the calculation of income loss reducing the actual income/support loss recoverable, compensation under tort or statute law not made available under contract law of the Settlement Agreement, and awards being inclusive of prejudgment interest, will continue to suppress the compensation available to approved class members and family members under the Plans. These

ongoing compromises in respect of how damages may be calculated and awarded under the Plans should alleviate any concern that class members or family members will be overcompensated if the recommended allocations are granted.

### The Modified Allocation Request

12. The Joint Committee's original applications requested the Courts to exercise their unfettered discretion to allocate \$194,941,000 of 2019 Excess Capital, inclusive of costs of administration, pursuant to the Allocation Provision for the benefit of approved class members and family members based on the Joint Committee's four recommendations set out at that time.

#### Peterson Affidavit #43 at paragraph. 12

13. Regular monthly financial reporting has shown a deterioration in the assets of the Trust Fund since the 2019 phase one financial sufficiency was completed. Given the decrease in the Trust Fund's assets, the Joint Committee asked Eckler to extrapolate the 2019 phase one financial sufficiency of the Trust to June 30, 2022. Eckler confirmed that there was reduced 2019 Excess Capital available to fund the 2019 allocation benefits being requested. Eckler concluded that the amount available as at June 30, 2022 is approximately \$174,000,000, which equates to approximately \$161,000,000 as at December 31, 2019.

#### Peterson Affidavit #43 at paras. 9-11; Affidavit #2 of Euan Reid, made December 19, 2022 ("Reid Affidavit #2").

14. Given the reduced amount of 2019 Excess Capital available in 2022, the Joint Committee has amended its applications to request that the Courts allocate only \$159,914,000 of the 2019 Excess Capital, which equates to \$172,000,000 when extrapolated to June 2022. In order to accommodate this reduction, the Joint Committee has modified Recommendation 4 as addressed below. No modifications are requested in respect of Recommendations 1, 2 or 3.

**Peterson Affidavit #3943 at paras. 72, 88, 98 and 111-12-14.**

***Recommendation 1 – 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 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, and payable retroactively and prospectively as a special distribution.*

**Peterson Affidavit #39 at para. 60, Reid Affidavit #1 at Exhibit A, Table at p. 9.**

15. ~~12.~~ 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 in the future based upon further progression of their disease. 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.

**Peterson Affidavit #39 at para. 55.**

16. ~~13.~~ These non-pecuniary general damage and death benefit awards under the Settlement Agreement were an area of compromise for many approved class members and family members. The fixed payments for these heads of damage under the settlement were set lower than damage awards at law would permit to ensure that the fixed settlement amount would be sufficient to distribute across all of the heads of damages sought to be addressed and to meet the claims of the unknown number of class members who would come forward and be approved.

**Peterson Affidavit #39 at para. 56.**

17. ~~14.~~ Non-pecuniary general damages seek to compensate for intangible losses, like pain and suffering and loss of enjoyment and loss of expectation of life. Many approved class members spoke about the nature and effects of their infection and its chronic and progressive harm, including the impacts on physical and mental wellbeing, daily living and family dynamics at the earlier town hall consultation sessions, many more wrote concerning them, and some testified to them at the 2013 allocation hearings. The uniform view expressed was that the awards did not adequately compensate for the life-altering, chronic, progressive and life-threatening nature of hepatitis C.

**Peterson Affidavit #39 at para. 57.**

18. ~~15.~~ The administrative database records that the deaths of at least 487 approved class members before January 1, 1999 and 745 approved class members since January 1, 1999 were caused by hepatitis C.

**Peterson Affidavit #39 at para. 67.**

19. ~~16.~~ The Medical Modelling Working Group indicates that, notwithstanding the higher efficacy of direct-acting anti-viral agents, the following proportion of the surviving class members already have or are predicted to go on to develop the following disease states by 2070:

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%

**Peterson Affidavit #39 at para. 67; Affidavit #7 of Murray Krahn, made November 19, 2020, Tables 1 and 12.**

20. ~~17.~~ At the time the Settlement Agreement was approved, the benefit payable for non-pecuniary general damages based on cumulative disease levels was \$225,000 in 1999 dollars as compared to the \$260,684 limit on non-pecuniary general damages set by the Supreme Court of Canada in the trilogy of cases decided in 1978, after adjustment for inflation to 1999 dollars. Following the creation of 2013 Special Distribution Benefit, the combined benefit payable based on cumulative disease levels was \$328,537 in 2014 dollars as compared to the 2014 adjusted trilogy limit of \$350,712.

**Peterson Affidavit #39 at paras. 61, 62.**

21. ~~18.~~—The recommended 6.8% allocation would, while abiding the trilogy limit, address the remaining difference making the combined benefit payable based on cumulative disease levels \$387,797 in 2020 dollars as compared to the 2020 adjusted trilogy limit of \$389,744.

**Peterson Affidavit #39 at para. 63; Reid Affidavit #1 at Exhibit A, paras 38, 39 and Table at p 12.**

22. ~~19.~~—The discrete benefit that would be payable in respect of disease level fixed payments if this recommended allocation is approved is as follows:

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

**Peterson Affidavit #39 at para. 65; Reid Affidavit #1, Exhibit A, para. 38.**

23. ~~20.~~—The discrete benefit that would be payable in respect of the other fixed payments if this recommended allocation is approved is as follows:

<b>Fixed Payment Type</b>	<b>6.8% Allocation of fixed payment + any applicable 2013 Special Distribution Benefit (2020 dollars)</b>
\$50,000 non-pecuniary general damages option for approved co-infected hemophiliac class members who may be unable to establish that their disease level is caused by HCV because of their co-infection	\$5,487
\$50,000 death benefit option for approved class members whose death prior to January 1, 1999 was caused by HCV	\$5,487
\$120,000 death benefit option for approved class members whose death prior to January 1, 1999 was caused by HCV, including the entitlements of their family members and dependants	\$13,169

\$72,000 death benefit option for approved co-infected hemophiliac class members whose death prior to January 1, 1999 is not proven to be caused by HCV, including the entitlements of their family members and dependants	\$7,901
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**Peterson Affidavit #39 at para. 70.**

24. ~~21.~~ Approximately 4,926 approved class members eligible for disease level fixed payments under the Plans and, approximately 487 estates, 1,816 family members and 30 co-infected hemophiliac class members eligible for the other fixed payment options under the Plans would benefit retroactively from the recommended allocation. Approved class members whose disease continues to progress and other in-progress and/or future claims that are subsequently approved would also benefit prospectively if the recommended allocation is granted.

**Peterson Affidavit #39 at paras. 68, 71.**

***Recommendation 2 – 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 in an amount equal to 50% of the combined value of their award under the Plans and any applicable 2013 Special Distribution Benefit, indexed to January 1, 2020, and payable retroactively and prospectively as a special distribution.***

**Peterson Affidavit #39 at para. 79, Reid Affidavit #1, Exhibit A, Table p 9.**

25. ~~22.~~ Approved family members of an approved class member whose death was caused by his or her infection with HCV are entitled under the Plans to be paid loss of guidance, care and companionship awards, provided they do not choose one of the joint fixed payment options described above.

**Peterson Affidavit #39 at para. 73.**

26. ~~23.~~ The loss of guidance, care and companionship awards were an 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 in order to ensure the fixed amount that was available for settlement was sufficient to cover all class members and family members who come forward and are



approved, as well as all of the areas of compensation sought to be addressed by the settlement.

**Peterson Affidavit #39 at para. 74.**

27. ~~24.~~ While Canadian law has long recognized that no amount of money can replace the value of a lost life, these types of damages are awarded to give recognition and compensation for the seriousness of the family's loss. 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.

**Peterson Affidavit #39 at para. 75.**

28. ~~25.~~ The Courts previously held that addressing this compensatory shortfall was a permissible use of the Allocation Provision and ordered the creation of a discrete benefit of \$4,600, indexed, for parents and children age 21 years or older as one of the 2013 Special Distribution Benefits. The allocation requested at that time was limited to only parents and adult children because of the limit on the amount of 2013 Excess Capital available and the number of other compensatory shortfalls that were sought to be addressed. This allocation of 2013 Excess Capital addressed a disparity in the benefits payable among the various groups of family members entitled to an award under the settlement, but it did not address the broader compensatory shortfall of undervalued loss of guidance, care and companionship benefits under the settlement generally. The available 2019 Excess Capital provides the opportunity to do so.

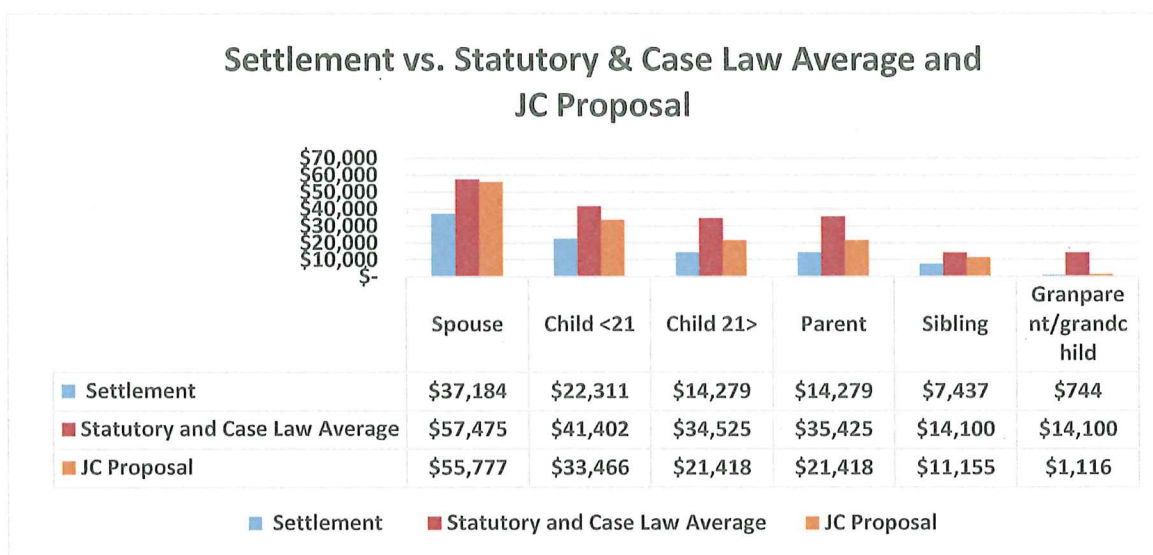
**Peterson Affidavit #39 at paras. 76, 77, 78 and Exhibits G, H, I.**

29. ~~26.~~ Some provinces and territories have legislation that fixes the quantum for awards for loss of guidance, care and companionship, bereavement or grief while the quantum is set by the courts on a case-by-case basis in the others. 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 Plans and any applicable 2013 Special Distribution Benefit, although a true direct comparison is difficult due to differing rules in each jurisdiction.

**Peterson Affidavit #39 at paras. 81, 82 and Exhibit Z.**

30. ~~27.~~ 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:



**Peterson Affidavit #39 at para. 86.**

31. ~~28.~~ The discrete benefit that would be payable in respect of loss of guidance, care and companionship if this recommended allocation is approved is as follows:

Family Member	50% allocation of loss of guidance, care and companionship awards + any applicable 2013 Special Distribution Benefit for Child > 21 and Parent (2020 dollars)
Spouse	\$18,593
Child < 21	\$11,155
Child 21 >	\$7,139
Parent	\$7,139
Sibling	\$3,718

Grandparent/grandchild	\$372
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**Peterson Affidavit #39 at para. 80, Reid Affidavit #1, Exhibit A, para. 43.**

32. ~~29.~~ Approximately 7,874 approved family members eligible for loss of guidance, care and companionship would be entitled to benefit retroactively from the recommended allocation, if granted. Additional family members would benefit prospectively as loss of guidance, care and companionship claims are approved following the death of approved class members caused by their HCV infection, and as current in-progress and future class members and their family members subsequently qualify.

**Peterson Affidavit #39 at para. 87.**

***Recommendation 3 - Allocate \$6,653,000 of 2019 Excess Capital to increase the discrete benefit created to compensate for lost or diminished pension benefits by an additional 4% of the annual loss of income payment capped at \$200,000 per annum before 2014 and \$200,000 per annum indexed thereafter, payable retroactively and prospectively as a special distribution.***

**Peterson Affidavit #39 at para. 94, Reid Affidavit #1, Exhibit A, Table p. 9.**

33. ~~30.~~ The Plans provide that persons 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. The settlement does not however contain any provision to compensate for loss of employment benefits, including loss or diminishment of pension.

**Peterson Affidavit #39 at paras. 89 and 90.**

34. ~~31.~~ Loss of income awards were an area of significant compromise for virtually all of the approved class members who suffer an income loss. In particular, the deductions from income required in the calculations of the loss and the failure to compensate lost pension and employment benefits departed from ordinary damages principles. These compromises were made to help ensure the fixed settlement amount would be sufficient to fund benefits to all class members who came forward and were approved.

**Peterson Affidavit #39 at para. 91.**

35. ~~32.~~ Because of the fixed amount of 2013 Excess Capital available and the competing interests of other benefits sought to be addressed, the Joint Committee recommended a discrete benefit for lost or diminished pension benefits in the 2013 allocation applications in an amount smaller than the amount that was recommended by the actuaries. The Courts held that creating a lost or diminished pension benefit was a permissible use of the Allocation Provision and ordered the creation of a discrete benefit in an amount equal to 10% of an approved class member's annual loss of income capped at \$200,000 as one of the 2013 Special Distribution Benefits.

**Peterson Affidavit #39 at paras 92, 93 and Exhibits G, H, I.**

36. ~~33.~~ Because the replacement value of this loss was not addressed in full by the allocation of 2013 Excess Capital, the Joint Committee asked Eckler to again consider the reasonable allocation for lost or diminished pension benefits. Eckler notes that although the employer's contribution rate to the Canadian Pension Plan has risen to 5.45% since the last allocation hearing and is set to increase yet again in 2025, it is their opinion 14% of income continues to be a reasonable and appropriate proxy for lost or diminished pension benefits.

**Peterson Affidavit #39 at para. 95, Reid Affidavit #1, Exhibit A, paras. 46-50.**

37. ~~34.~~ The claims data from the most recent three-year review period shows that 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 if the recommended increase for loss or diminishment of pension benefits is granted.

**Peterson Affidavit #39 at para. 96.**

38. ~~35.~~ Approximately 338 approved class members entitled to loss of income payments under the Plans would be eligible to benefit retroactively and, to the

extent their loss is ongoing, prospectively from this recommended increase to the lost or diminished pension benefit. There are currently approximately 1,234 living approved class members at disease levels 2 and 3 and 163 at disease level 4 who are not currently receiving loss of income payments who may benefit from this recommended allocation prospectively if their disease condition and employment situation warrant, along with in-progress and future claimants who are subsequently approved.

**Peterson Affidavit #39 at para. 97.**

**Modified Recommendation 4 – Allocate ~~\$60,272,000~~25,365,000 of the 2019 Excess Capital to create a discrete benefit for approved class members and dependants who are entitled to loss of services in the home in an amount equal to ~~\$21~~ per hour (1999 dollars), indexed to January 1, 2020, for the compensable hours of lost services from and after ~~2014~~2019 recoverable under the Plans and any applicable 2013 Special Distribution Benefit, payable retroactively and prospectively as a special distribution.**

**Peterson Affidavit #~~39~~43 at para. ~~105~~14, Reid Affidavit #~~12~~, Exhibit A, **Table p. ~~9~~ pp. 5-6**.**

39. This is a reduction from the original recommendation, both in terms of the hourly rate increase (now \$1.00 instead of \$2.00 in 1999 dollars) and the effective date of the increase (now from 2019 instead of 2014). In 2020 dollars, the hourly rate payable would be \$19.34.

**Peterson Affidavit #43 at para. 14, Reid Affidavit #2, Exhibit A at para. 15.**

40. ~~36.~~ 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 disabled from doing so because of their HCV. Approved dependants who were living with the infected class member at the time of the class member's death may also claim lost services if the death was caused by the infection with HCV. 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 until the death of their last dependant.

**Peterson Affidavit #39 at para. 99.**

41. ~~37.~~ Many written and oral communications to the Joint Committee from infected persons and their dependants received before the 2013 allocation hearings indicated that the limit of 20 hours per week and the rate of \$12 per hour were inadequate to permit them to replace the services that they had lost. Many also described how vital the loss of services payments are to their family's survival. The claims data showed at the time approximately 95% of approved class members provided significantly in excess of 20 hours per week of services in the home pre-disability.

**Peterson Affidavit #39 at paras. 100, 101.**

42. ~~38.~~ Because of the limits on the 2013 Excess Capital available and the competing interests of the other benefits it was seeking to address, the Joint Committee recommended only a 2 hour per week benefit to supplement loss of services in the home. The available 2019 Excess Capital provides the opportunity to further address this shortfall.

**Peterson Affidavit #39 at para. 103.**

43. ~~39.~~ The Courts held that this was a permissible allocation under the Allocation Provision, accepted the recommendation, and ordered the creation of a discrete benefit of 2 hours per week payable retroactively and prospectively to those approved class members and dependants approved for the maximum number of hours recoverable for loss of services in the home.

**Peterson Affidavit #39 at para. 104 and Exhibits G, H, I.**

44. ~~40.~~ Given the significant disparity between the losses that approved class members and dependants report experiencing and the amounts that they are receiving to compensate for these lost services and given that this disparity was only addressed in part by the 2013 Special Distribution Benefit created, the Joint Committee asked Eckler to once again investigate the current cost of replacing these services.

**Peterson Affidavit #39 at para. 106.**

45. ~~41.~~ Eckler's investigation into the cost to replace these services revealed regional differences in rates as detailed in the Eckler 2019 Allocation Report. Nevertheless, it is Eckler's opinion that the current rate is insufficient to cover replacement services in many jurisdictions and that providing an additional \$2 per hour benefit for compensable hours of lost services results in a reasonable rate of compensation, which broadly reflects the actual replacement cost of services in the home. Eckler specifically notes that sales tax on invoices for these services that range from 5-15% across the country have not been included in the rates reported.

**Peterson Affidavit #39 at para. 107, Reid Affidavit #1, Exhibit A, paras 52-54.**

46. ~~42.~~ Brown Economic Consulting Inc. ("**Brown**"), an economic consulting firm in Alberta, publishes annually a survey of Canadian "Housekeeping Replacement Rates" by jurisdiction and a "Housekeeping Damages Calculator" to assist with estimating pecuniary loss. The rates that Brown has published are somewhat higher than the median range set out in Eckler's 2019 Allocation Report for all jurisdictions and above the high range in Eckler's report in some jurisdictions. Brown also specifically notes that the rates included in its published table do not include provincial sales tax or GST payable on these services.

**Peterson Affidavit #39 at para. 108 and Exhibit AA.**

47. [The Joint Committee chose to modify this recommendation as the preferred alternative to fit within the reduced amount of 2019 Excess Capital available, having regard for the competing interests of the other benefits it is seeking to address at this time and because the hourly rate under Modified Recommendation 4 is within the range of hourly rates for these types of services across the country, albeit less than the median in Canada \(\\$20.22\).](#)

**[Peterson Affidavit #43 at para. 15 and Exhibits B and C.](#)**

48. ~~43.~~ The claims data from ~~the most recent three-year review period~~ 2016 to 2019 shows that 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. ~~As such, most loss of service claimants would be entitled to approximately an additional \$3,400 a year (2020 dollars) if this recommended allocation is granted.~~ Because of the limits on the 2019 Excess Capital available and the competing interests of the other benefits sought to be addressed at this time, ~~this recommended allocation is only sought to be~~ the Joint Committee only seeks to have this allocation made retroactive to ~~losses suffered in~~ 2019. Based upon the Joint Committee's Modified Recommendation 4, persons entitled to loss of services benefits would be entitled to approximately an additional \$1,700 a year (2020 dollars) for the year ~~2014~~ 2019 and following if this allocation is granted as modified.

**Peterson Affidavit #39 at paras. 105 and 109.**

**Peterson #43 at para. 16.**

49. ~~44.~~ Approximately ~~728~~ 575 approved class members ~~entitled to receiving~~ loss of services under the Plans as of December 31, 2019 ~~have been paid these benefits since 2014 and~~ would be eligible to benefit retroactively from 2019 and prospectively from this modified recommended allocation. There are currently approximately 1,234 living approved class members at disease levels 2 and 3 and 163 at disease level 4 who are not currently receiving loss of services payments who may benefit from this allocation prospectively if they become disabled from performing these services, as well as about 140 loss of income claimants and loss of support claimants eligible once the class member reaches age 65, and an as yet unquantified number of dependants of the 3,282 living class members who may benefit from this award following the class member's death provided it is caused by HCV. Additionally, in-progress and future claimants who are subsequently approved for this benefit would benefit prospectively from this award.

**Peterson Affidavit #39 at para. 110.**

**Peterson Affidavit #43 at para. 16.**



***Logistics and Costs of Implementing the Recommended Allocations as Modified***

50. ~~45.~~—The decision to recommend allocations that address many of the same compensatory shortfalls as were addressed in part by the 2013 Special Distribution Benefits allows, for the most part, employment of the same methodologies and systems that have already been successfully implemented in the administration.

**Peterson Affidavit #39 at para. 113.**

51. ~~46.~~—From the approved class member's perspective, for the most part, no action would be required on their part to initiate their entitlement. The Administrator would identify, calculate and distribute these discrete benefits based upon the data that is already contained in the claims database for the majority of approved class members and family members. It is recognized that, with the passage of time since some approved class members and family members received benefits, there will be costs for locator services and logistics related to personal representatives and estates required in some cases.

**Peterson Affidavit #39 at paras. 114 and 120.**

52. ~~47.~~—From the Administrator's perspective, protocols and standard operating procedures already created in the course of implementing the 2013 Special Distribution Benefits would, for the most part apply to these recommended allocations, resulting in operating efficiencies and cost effectiveness. Any adjustments that would be required are thought to be relatively minor.

**Peterson Affidavit #39 at para. 115.**

53. ~~48.~~—The structural accommodations previously made to the CLASS database to accommodate the 2013 Special Distribution Benefits would also accommodate the allocations under consideration. Minimal costs will be incurred for a small amount of dedicated programming time required to create additional coding to ensure the integrity of the payment records in the database.

**Peterson Affidavit #39 at para. 119.**

54. ~~49.~~ Based on the current fee per service structure approved by the Courts for the ongoing administration of the retroactive 2013 Special Distribution Benefits in place since 2017, the Administrator has estimated the administration costs to implement, calculate and distribute the appropriate retroactive payments for the recommended allocations. Eckler has estimated the present value of the administration fee for prospective payments based on the fixed fee of \$5,000 per annum that was approved by the Courts for the prospective component of the 2013 Special Distribution Benefits in place since 2017.

**Peterson Affidavit #39 at paras. 116, 117 and Exhibit BB; Reid Affidavit #1, Exhibit A, para. 60.**

55. As Modified Recommendation 4 eliminates the retroactive aspect of the original recommendation before service year 2019, there is a reduction to the Administrator's cost estimate in the amount of \$120,000, inclusive of taxes. This reduction is reflected in the table of implementation and administration costs detailed below.

**Peterson Affidavit #43 at para. 17.**

56. ~~50.~~ In addition to these direct costs of the administration there are various service providers, including the Joint Committee, Eckler, the Auditors, and the Trustee, who will also perform work implementing, overseeing, recording and auditing the 2019 Special Distribution Benefits if granted, the costs of which should be allocated from 2019 Excess Capital and not borne by the PT Governments.

**Peterson Affidavit #39 at para. 121.**

57. ~~51.~~ The total cost of implementation and administration of the recommended allocations is estimated to be ~~only 0.08%~~ a little less than 0.09% of the value of the recommended allocations, inclusive of taxes. The estimated costs are detailed as follows:

Item	Costs	Sales Tax Rate	Costs with Tax
<u>Revised</u> Retroactive Payment Cost	<del>784,000</del> <u>681,415</u>	13%	<del>890,000</del> <u>770,000</u>
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	300,000	10.6%	330,000
<b>Total</b>	<b><del>\$1,350,000</del> <u>1,247,415</u></b>		<b><del>\$1,520,000</del> <u>1,400,000</u></b>

Peterson Affidavit #39 at paras. 121 and 123; Reid Affidavit #1, Exhibit A, para. 64.

Peterson Affidavit #43 at para. 17.

### PART 3: LEGAL BASIS

58. ~~52.~~ The 1986-1990 Hepatitis C Settlement Agreement, the Transfused HCV Plan, the Hemophiliac HCV Plan, and the Funding Agreement.

59. ~~53.~~ The HCV Late Claims Benefit Plan.

60. ~~54.~~ Decisions/Judgments regarding the settlement approval:

- (a) *Parsons v. Canadian Red Cross Society*, [1999] ~~Q.J.O.J~~ No. 3572;
- (b) *Honhon v. The Attorney General of Canada*, 1999 CanLII 11813 (QC CS) and *Honhon v. The Attorney General of Canada*, [1999] ~~Q.J. No. 4370 (S.C. CanLII 11242 (QC CS)~~; and
- (c) *Endean v. Canadian Red Cross Society*, [1999] ~~B.C.J. No. 2180 (S.C. CanLII 6357 (BC SC))~~.

61. ~~55.~~ Approval Orders:

- (a) Order of the Superior Court of Ontario, made October 22, 1999;
- (b) Judgment of the Québec Superior Court, made November 19, 1999 approving the modifications set forth in “Annexe F”; and
- (c) Order of the Supreme Court of British Columbia, made October 28, 1999.

62. ~~56.~~ 2013 Financial Sufficiency Phase One Orders:

- (a) Order of the Superior Court of Ontario, dated July 10, 2015;
- (b) Judgment of the Québec Superior Court, dated July 16, 2015; and
- (c) Order of the Supreme Court of British Columbia, dated July 23, 2015.

63. ~~57.~~ Decisions/Judgments regarding 2013 Special Distribution Benefits allocation:

- (a) *Parsons v. Canadian Red Cross Society*, 2016 ONSC 4809;
- (b) *Honhon c. Procureur général du Canada*, ~~2018~~2016 QCCS ~~331~~3884 ([CanLII](#)); and
- (c) *Endean v. Canadian Red Cross Society*, made August 16, 2016.

64. ~~58.~~ 2013 Special Distribution Benefits Allocation Orders:

- (a) Order of the Superior Court of Ontario, dated August 15, 2016;
- (b) Judgments of the Québec Superior Court, dated August 15, 2016 and February 15, 2017; and
- (c) Order of the Supreme Court of British Columbia, dated August 16, 2016.

65. ~~59.~~ HCV Late Claims Benefit Plan Orders:

- (a) Order of the Superior Court of Ontario, dated November 28, 2017;
- (b) Judgment of the Québec Superior Court, dated November 29, 2017; and
- (c) Order of the Supreme Court of British Columbia, dated December 19, 2017.

66. ~~60.~~ 2013 Special Distribution Benefits Implementation Orders:

- (a) Order of the Superior Court of Ontario, dated December 12, 2017;
- (b) Judgment of the Québec Superior Court, dated November 29, 2017; and
- (c) Order of the Supreme Court of British Columbia, dated December 19, 2017.

67. ~~61.~~ 2016 Financial Sufficiency Phase One Orders:

- (a) Order of the Superior Court of Ontario, dated May 30, 2018;
- (b) Judgment of the Québec Superior Court, dated May 18, 2018; and
- (c) Order of the Supreme Court of British Columbia, dated May 8, 2018.

68. ~~62.~~ 2019 Financial Sufficiency Phase One Orders:

- (a) Order of the Superior Court of Ontario, dated February 18, 2021;
- (b) Judgment of the Québec Superior Court, dated January 25, 2021; and
- (c) Order of the Supreme Court of British Columbia, dated March 15, 2021.

~~63. Rule 59.06(2)(a) of the Rules of Civil Procedure, R.R. ORRO 1990, Reg. 194, which permits an order to be varied on the ground of facts discovered after it was made; Rule 13-1(17) in the Supreme Court Civil Rules, B.C. Reg. 168/2009, which permits an order to be amended to provide for any matter that should have been but was not adjudicated on.~~

69. ~~64.~~ *The Class Proceedings Act, 1992*, S.O. SO 1992, c. 6, as amended; *Class Proceedings Act*, RSBC 1996, c. 50, as amended.

70. ~~65.~~ *The Fatal Accidents Act*, RSA 2000, c. F-8, s. 8(2), and *Survival of Actions Act*, RSA 2000, c. S-27.

71. ~~66.~~ *The Fatal Accidents Act*, CCSM c. F50, s. 3.1(2).

72. ~~67.~~ *The Fatal Accidents Act*, RSS 1978, c. F-11, s. 4.1, and *The Survival of Actions Act*, SS 1990-91, c. S-66.1.

73. ~~68.~~ *Fatal Accidents Act*, RSY 2002, c. 86, s. 3.01(2), and *Survival of Actions Act*, RSY 2002, c. 212.
74. ~~69.~~ *Family Compensation Act*, RSBC 1996, c. 126.
75. ~~70.~~ *Fatal Accidents Act*, RSNB 2012, c. 104, and *Survival of Actions Act*, RSNB 2011, c. 227.
76. ~~71.~~ *Fatal Accidents Act*, RSNL 1990, c. F6, and *Survival of Actions Act*, RSNL 1990, c. S-32.
77. ~~72.~~ *Fatal Accidents Act*, RSNWT 1988, c.F-3.
78. ~~73.~~ *Fatal Injuries Act*, RSNS 1989, c. 163, and *Survival of Actions Act*, RSNS 1989, c. 453.
79. ~~74.~~ *Fatal Accidents Act*, RSNWT (Nu) 1988, c.F-3.
80. ~~75.~~ *Family Law Act*, RSO 1990, c. F.3.
81. ~~76.~~ *Fatal Accidents Act*, RSPEI 1988, c. F-5, and *Survival of Actions Act*, RSPEI 1988, c. S-11.
82. ~~77.~~ Such further and other grounds as counsel may advise and this Honourable Court may permit.

#### **PART 4: MATERIAL TO BE RELIED ON**

##### ***Newly Delivered Materials***

1. 2019 ~~Special Distribution Benefit~~ Phase Two Financial Sufficiency Allocation:
  - (a) Affidavit #39 of Heather Rumble Peterson, made May 12, 2022; ~~and~~
  - (b) Affidavit #43 of Heather Rumble Peterson, made March 23, 2023;
  - (c) Affidavit #1 of Euan Reid, made May 13, 2022; and
  - (d) ~~(b)~~ Affidavit ~~of #12~~ of Euan Reid, made ~~May 13~~ December 19, 2022.

### **Previously Delivered Materials**

1. ~~2-~~2019 ~~Financial Sufficiency~~ Phase One Financial Sufficiency:
  - ~~(a) Report of the Joint Committee on Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2019;~~
  - ~~(a)~~ ~~(b)~~ Affidavit #10 of Richard Border, made November 25, 2020; and
  - ~~(c) Affidavit of Dr. Murray Krahn, made November 18, 2020;~~
  - ~~(d) Affidavit of Dr. Vince Bain, made November 25, 2020; and~~
  - ~~(b)~~ ~~(e)~~ Affidavit #6 of Peter Gorham, made December 10, 2020.
  
2. ~~3-2016~~2013 Phase Two Financial Sufficiency ~~Phase One:~~ Allocation: Actuarial Evidence:
  - ~~(a) Report of the Joint Committee on Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2016;~~
  - ~~(a)~~ ~~(b)~~ Affidavit #5 of Richard Border, made ~~February 28, 2018~~October 14, 2015;
  - ~~(b)~~ Affidavit of Peter Gorham, made January 29, 2016;
  - ~~(c)~~ Affidavit ~~of Dr. Murray Krahn~~#6 of Richer Border, made ~~February 28~~March 31, 20182016; and
  - ~~(d)~~ Affidavit of ~~Dr. Vince Bain~~Peter Gorham, made ~~February 26~~April 19, 20182016.
  
3. ~~4-~~2013 ~~Special Distribution Benefits~~Phase Two Financial Sufficiency – Allocation: Class Member Submissions:
  - ~~(a)~~ Affidavit ~~#13 of Heather Rumble Peterson~~1 of Chya Mogerman, made October 16, 2015;
  - ~~(b) Affidavit #5 of Richard Border, made October 14, 2015;~~
  - ~~(c) Affidavit #1 of Chya Mogerman, made October 16, 2015;~~
  - ~~(b)~~ ~~(d)~~ Affidavit #1 of Alan Melamud, made October 15, 2015;

- ~~(c) (e)-Affidavit #1 of Shelley Woodrich, made October 15, 2015;~~
- ~~(d) (f)-Affidavit #1 of Arnaud Sauvé-Dagenais, made October 15, 2015;~~
- ~~(g)-Affidavit #6 of Richard Border, made March 31, 2016;~~
- ~~(h)-Affidavit #15 of Heather Rumble Peterson, made April 1, 2016;~~
- ~~(i)-Affidavit #2 of Dr. Vince Bain, made March 31, 2016;~~
- ~~(j)-Affidavit #5 of Dr. Murray Krahn, made April 1, 2016;~~
- ~~(e) (k)-Affidavit #13 of Lise Carmichael, made April 1, 2016;~~
- ~~(f) (l)-Affidavit #2 of Shelley Woodrich, made April 1, 2016;~~
- ~~(g) (m)-Affidavit #2 of Arnaud Sauvé-Dagenais, made April 1, 2016; and~~
- ~~(h) (n)-Affidavit #1 of Julie-Lynn Davis, made April 1, 2016.; and~~

~~5. 2013 Financial Sufficiency Phase One:~~

- ~~(a) Report of the Joint Committee on Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2013;~~
- ~~(b) Affidavit of Dr. Murray Krahn, made March 16, 2015;~~
- ~~(c) Affidavit of Richard Border, made March 11, 2015; and~~
- ~~(i) (d)-Affidavit of Dr. Vince Bain Shelley Woodrich, made ~~March 11~~ June 16, ~~2015~~ 2016.~~

- ~~4. 6.-Such further and other evidence as counsel may advise and this Honourable Court may permit.~~

~~The applicant estimates that the application will take 2 days.~~

- This matter is within the jurisdiction of a master.
- This matter is not within the jurisdiction of a master.



TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed application response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

~~Date: June 21, 2022~~

Date:     /Mar/2023

\_\_\_\_\_  
Signature of lawyer  
for applicant

David Loukidelis, ~~Q.C.~~KC

*To be completed by the court only:*

Order made

- in the terms requested in paragraphs ..... of Part 1 of this notice of application
- with the following variations and additional terms:

.....  
 .....  
 .....

Date: ..... Signature of  Judge  Master

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## APPENDIX

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THIS APPLICATION INVOLVES THE FOLLOWING:

*[The following information is provided for data collection purposes only and is of no legal effect.]*

- discovery: comply with demand for documents
- discovery: production of additional documents
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts

**CANADA  
PROVINCE DE QUÉBEC  
DISTRICT DE MONTRÉAL**

**NO : 500-06-000016-960**

**CANADA  
PROVINCE DE QUÉBEC  
DISTRICT DE MONTRÉAL**

**NO : 500-06-000068-987**

**COUR SUPÉRIEURE  
Actions collectives**

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**DOMINIQUE HONHON**

Requérante

**COUR SUPÉRIEURE  
Actions collectives**

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**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

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**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**

(Article 10.01(1) de la Convention de Règlement telle que modifiée par l'Annexe F  
approuvée par cette Cour le 19 novembre 1999)

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Court File No. 98-CV-141369 CP00

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN :**

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, HER MAJESTY THE QUEEN IN RIGHT  
OF ONTARIO and  
THE ATTORNEY GENERAL OF CANADA

Defendants

and

HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF ALBERTA  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF  
SASKATCHEWAN,  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF MANITOBA,  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NEW  
BRUNSWICK  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF PRINCE  
EDWARD ISLAND,  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NOVA  
SCOTIA  
HER MAJESTY THE QUEEN 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***

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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  
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO  
Defendants

and

HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF ALBERTA,  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF  
SASKATCHEWAN,  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF MANITOBA,  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NEW  
BRUNSWICK,  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF PRINCE  
EDWARD ISLAND  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NOVA  
SCOTIA  
HER MAJESTY THE QUEEN 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***

No. C965349  
Vancouver Registry

**In the Supreme Court of British Columbia**

Between:

**Anita Endean, as representative plaintiff**

Plaintiff

and:

**The Canadian Red Cross Society  
Her Majesty the Queen 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,  
Her Majesty the Queen in Right of Canada, and  
Her Majesty the Queen in Right of the Province of British Columbia**

Third Parties

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

**À L'HONORABLE CHANTAL CORRIVEAU JUGE DÉSIGNÉE POUR ENTENDRE LES  
DEMANDES DANS LES PRÉSENTS DOSSIERS, LE REQUÉRANT EXPOSE  
RESPECTUEUSEMENT CE QUI SUIT :**

**CONTEXTE ET HISTORIQUE**

1. En novembre 1999, les tribunaux de la Colombie-Britannique, de l'Ontario et du Québec (« les Tribunaux ») ont approuvé le Règlement relatif à l'Hépatite C 1986-1990 (« la Convention de règlement») entérinant ainsi une entente intervenue entre les diverses parties impliquées et permettant d'indemniser certaines personnes infectées par le virus de l'Hépatite C à la suite de transfusions reçues durant la période d'échelonnant entre le 1<sup>er</sup> janvier 1986 et le 1<sup>er</sup> juillet 1990 (collectivement « les Ordonnances d'Approbation »), copie des Ordonnances d'Approbation étant annexée comme Exhibit A, B et C à la déclaration assermentée d'Heather Rumble Peterson signée le 12 mai 2022 et dont copie est jointe au soutien de la présente demande comme **Pièce R-1** (« Affidavit Peterson (R-1) »);
2. La Convention de Règlement contient un Accord de financement. La Convention de Règlement et l'Accord de financement prévoient la création d'un fonds en fiducie financé par les gouvernements fédéraux, provinciaux et territoriaux pour un montant de règlement totalisant, mais n'excédant pas, approximativement 1,207 milliards de dollars, incluant les

intérêts depuis le 1<sup>er</sup> avril 1998 (le « Fonds en fiducie »). Le gouvernement fédéral s'est acquitté de son obligation envers le Fonds en fiducie en payant en entier sa part, soit 8/11 du montant de règlement. Les gouvernements provinciaux et territoriaux s'acquittent de leur obligation envers le Fonds en fiducie en payant périodiquement leur part, soit 3/11 du montant de règlement, tel que déterminé périodiquement;

3. L'article 10.01 de la Convention de Règlement requiert de rendre compte aux Tribunaux, tous les trois ans, sur le caractère suffisant au point de vue financier du Fonds en fiducie. S'il n'est pas suffisant du point de vue financier à quelque moment que ce soit ou si une insuffisance du point de vue financier est anticipée, les Tribunaux peuvent modifier les modalités des Régime à l'intention des transfusés infectés par le VHC et Régime à l'intention des hémophiles infectés par le VHC (les « Régimes Réguliers »);
4. Les Ordonnances d'Approbation permettent au Comité conjoint ou à toute partie de s'adresser aux Tribunaux lorsqu'il existe *des fonds et autre élément d'actifs détenus par le fiduciaire et qui n'ont pas fait l'objet d'une attribution actuarielle* (« Capital excédentaire ») et ils octroient aux Tribunaux un pouvoir discrétionnaire absolu pour décider ce qu'il advient d'un tel Capital excédentaire;
5. En effet, chacune des Ordonnances d'Approbation contient des dispositions parallèles qui se lisent ainsi :

"(...)

*(b) dans le cadre du libre exercice de leur pouvoir discrétionnaire, ordonner, de temps à autre, sur demande de toute partie ou du Comité conjoint, que les fonds et les autres éléments d'actifs détenus par le fiduciaire en vertu de la Convention de règlement et qui ne font pas l'objet d'une attribution actuarielle soient en tout ou en partie:*

*(i) attribués aux membres de recours collectifs et/ou aux membres de la famille;*

*(ii) attribués de toute manière dont on peut raisonnablement s'attendre qu'elle bénéficie aux membres des recours collectifs et/ou membres de la famille, même si l'attribution ne prévoit pas le versement d'une indemnité aux membres des recours et/ou aux membres de la famille;*

*(iii) payés, en tout ou en partie, aux gouvernements FPT, à certains ou à une seul d'entre eux, compte tenu de la source des fonds et des autres éléments d'actif que comprend le fonds en fiducie; et/ou*

*(iv) conservés, en tout ou en partie, dans le fonds en fiducie;*

*De la manière que, dans le cadre du libre exercice de leur pouvoir discrétionnaire, les tribunaux estimeront raisonnable en tenant compte de toutes les circonstances, pourvu que, dans la distribution, aucune discrimination n'ait lieu selon l'endroit où le membre du recours collectif a reçu du sang ou selon l'endroit où il réside;*

"(...)"

lesquelles se trouvent à l'Annexe F approuvée par jugement rendu par la Cour supérieure du Québec le 19 novembre 1999, dans l'ordonnance d'approbation de la Colombie-Britannique

au paragraphe 5, et dans l'ordonnance d'approbation de l'Ontario au paragraphe 9(b), (collectivement, les « **Dispositions d'attribution** »);

6. À l'issue de la réévaluation des aspects financiers du Fonds au 31 décembre 2013, les Tribunaux ont rendu jugement sur les demandes d'attribution présentées par le Comité conjoint et le gouvernement fédéral en vertu des Dispositions d'attribution et alloué un total de 172 032 000,00 \$ (163 532 000,00 \$ plus 8 500 000,00\$) de Capital excédentaire pour la création d'indemnités de distribution spéciale en faveur des membres des recours et des membres de la famille ainsi qu'un Régime d'indemnisation pour les réclamations tardives (collectivement les « Indemnités de distribution spéciale 2013 »), tel que plus amplement décrit aux paragraphes 8 à 12 de l'Affidavit Peterson (R-1), aux Exhibits G, H et I y étant annexés (les « Ordonnances d'Allocation») ainsi qu'aux ordonnances subséquentes annexées comme Exhibit J, K, L, M, N et O à l'Affidavit Peterson (R-1);
7. Les gouvernements provinciaux et territoriaux ne participent aucunement au financement des Indemnités de distribution spéciale 2013 qui sont entièrement payés par les actifs détenus dans le Fonds en fiducie, tel qu'il appert au paragraphe 13 de l'Affidavit Peterson (R-1);
8. À l'issue de la réévaluation triennale subséquente au 31 décembre 2016, et malgré l'existence d'un Capital excédentaire entre 173 600 000\$ et 187 500 000,00 \$, le Comité conjoint n'a pas présenté de demande d'attribution afin de suivre l'évolution du Régime pour les réclamations tardives nouvellement mis en œuvre, tel qu'il appert des paragraphes 14 et 15 de l'Affidavit Peterson (R-1) et des Exhibits P, Q et R y étant annexés;

#### **A- LA RÉÉVALUATION DES ASPECTS FINANCIERS DU FONDS AU 31 DÉCEMBRE 2019 – PHASE 1**

9. Le 21 janvier 2021, cette Cour a rendu jugement sur la demande du membre du Comité conjoint aux fins de réévaluer les aspects financiers du Fonds à la date du 31 décembre 2019, déclarant notamment qu'à cette date, le montant de Capital excédentaire se situait entre 197 596 000 \$ et 203 578 000 \$, tel qu'il appert des paragraphes 16, 19 et 20 de l'Affidavit Peterson (R-1) et des Exhibits S, T et U y étant annexés;
10. Après que ce jugement ait été rendu, le Comité conjoint a reçu confirmation qu'un certain nombre de paiements d'une valeur totalisant 2 559 000 \$ qui devaient avoir été effectués par l'Administrateur précédent et qui ont été considérés comme tels dans l'évaluation actuarielle des obligations financières, n'avaient pas été versés, le tout ayant pour effet de surévaluer la valeur des actifs ne faisant pas l'objet d'une attribution actuarielle au 31 décembre 2019, tel qu'il appert plus amplement des paragraphes 21 à 23 de l'Affidavit Peterson (R-1);
11. Lors de la préparation de la présente demande, le Comité conjoint a validé avec les actuaires Eckler Ltd (« Eckler ») l'impact de cette situation à l'égard des conclusions de leur rapport d'évaluation actuarielle du Fonds à la date du 31 décembre 2019<sup>1</sup>, dont les résultats

<sup>1</sup> *Actuarial Report to the Joint Committee Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2019* préparé par Richard Border, FIA, FCIA et Euan Reid, FIA, FCIA (Eckler Ltd) en date du 25 novembre 2020 et déposé



sont repris aux paragraphes 7 et 8 du rapport préparé par Eckler Ltd et daté du 28 février 2022 dont copie est annexée comme Exhibit A à la déclaration assermentée d'Euan Reid portant la date du 13 mai 2022 jointe au soutien des présentes comme **Pièce R-2** (le « Rapport d'Allocation 2019 »);

12. Compte tenu de ce qui précède, les Tribunaux ont rendu (...) de nouvelles ordonnances déclaratoires correspondant aux paragraphes 8, 9 10 et 13 du jugement (...) du 21 janvier 2021 afin d'actualiser de la façon suivante les évaluations (...) qui y sont mentionnées :

- (8) **DÉCLARE** qu'à la date d'évaluation du 31 décembre 2019, les actifs ne faisant pas l'objet d'une attribution actuarielle et détenus par le Fiduciaire s'élèvent à une somme entre **195 037 000 \$** et **201 019 000 \$**;
- (9) **DÉCLARE** qu'à la date d'évaluation du 31 décembre 2019, la situation financière de chacun des trois (3) comptes théoriques du Fonds en fiducie est la suivante :

Compte pour les indemnités régulières	Capital excédentaire entre 191 757 000 \$ et 197 910 000 \$
Compte pour les Indemnités de distribution spéciale	Capital excédentaire entre <b>25 159 000 \$</b> et <b>26 090 000 \$</b>
Compte pour les réclamations tardives	Capital insuffisant entre 21 879 000 \$ et 22 981 000 \$

- (10) **ORDONNE** qu'un montant de 22 981 000\$ soit réalloué du Compte pour les Indemnités de distribution spéciale en faveur du Compte des Réclamations tardives en date du 1er janvier 2020, de façon à permettre au Compte pour les Réclamations tardives d'être financièrement suffisant pour satisfaire au montant maximum de ses obligations financières estimées, laissant un capital excédentaire entre **2 178 000 \$** et **3 109 000 \$** au Compte pour les Indemnités de distribution spéciale à la date du 1<sup>er</sup> janvier 2020;  
(...)
- (13) **RÉSERVE** aux parties le droit de présenter une demande pour la tenue d'une audition conjointe devant la Cour supérieure du Québec, la Cour supérieure de l'Ontario et de la Cour suprême de la Colombie-Britannique, à être fixée à une date ultérieure, afin de décider si les actifs ne faisant pas l'objet d'une attribution actuarielle et détenus par le Fiduciaire qui s'élèvent à une somme entre **195 037 000 \$** et **201 019 000 \$** à la date d'évaluation du 31 décembre 2019 devraient être alloués en tout ou en partie en vertu de l'Annexe F du Règlement sur l'Hépatite C 1986-1990;

(ci-après les « Ordonnances d'actualisation de la Réévaluation financière 2019 – Phase 1 »), dont copie est jointe au soutien des présentes comme « Exhibit A » de l'affidavit

comme pièce R-2 - Exhibit A au soutien de la demande du Comité conjoint ayant fait l'objet du jugement rendu par cette Cour le 21 janvier 2021;

complémentaire souscrit par Heather Rumble Peterson en date du 23 mars 2023 dont copie est jointe au soutien de la présente demande modifiée comme Pièce R-3 (« Affidavit complémentaire Peterson (R-3) »);

13. (...)

13A. Suite aux Ordonnances d'actualisation de la Réévaluation financière 2019 – Phase 1 incluant le transfert des sommes du Compte pour les Indemnités de distribution spéciale vers le Compte des Réclamations tardives de façon à permettre à ce dernier d'être financièrement, les trois (3) comptes théoriques du Fonds en fiducie présentaient les soldes suivants au 1<sup>er</sup> janvier 2020 :

<u>Compte pour les indemnités régulières</u>	<u>Capital excédentaire entre</u> 191 757 000 \$ et 197 910 000 \$
<u>Compte pour les Indemnités de distribution spéciale</u>	<u>Capital excédentaire entre</u> 2 178 000 \$ et 3 109 000 \$
<u>Compte pour les réclamations tardives</u>	<u>Capital excédentaire entre</u> 1 102 000 \$ et 0 \$

le tout tel qu'il appert du paragraphe 8 de l'Affidavit complémentaire Peterson (R-3);

## **B - L'ANALYSE DES RÉCLAMATIONS APPROUVÉES À CE JOUR**

14. La base de données CLASS utilisée par l'Administrateur ainsi que les rapports mensuels et annuels fournis par l'Administrateur au Comité conjoint constituent les principales sources à partir desquelles les données concernant les réclamations des membres peuvent être analysées, tel qu'il appert du paragraphe 24 de l'Affidavit Peterson (R-1);
15. Selon les données utilisées pour la réévaluation 2019 des aspects financiers du Fonds, il y avait 5 369 membres du groupe dont les réclamations ont été approuvées en vertu des Régimes Réguliers (incluant 487 membres décédés avant le 1<sup>er</sup> janvier 1999 et 1 600 autres décédés après le 1<sup>er</sup> janvier 1999) ainsi que 16 membres dont les réclamations ont été approuvées en vertu du Régime d'indemnisation pour les réclamations tardives à la date d'évaluation du 31 décembre 2019;
16. Au 31 décembre 2021, 3 membres de plus ont été reconnus en vertu des Régimes Réguliers et 25 autres l'ont été en vertu du Régime pour les réclamations tardives, tel qu'il appert du paragraphe 25 de l'Affidavit Peterson (R-1) et des Exhibits X et Y y étant annexés;
17. Les données font également état de 9 383 membres de la famille dont les réclamations ont été approuvées en vertu des Régimes Réguliers et 108 membres de la famille dont les réclamations ont été approuvées en vertu du Régime pour les réclamations tardives à la date d'évaluation du 31 décembre 2019;
18. Au 31 décembre 2021, 142 membres de la famille de plus ont été reconnus en vertu des Régimes Réguliers et 58 autres l'ont été en vertu du Régime pour les réclamations tardives, tels qu'il appert du paragraphe 26 de l'Affidavit Peterson (R-1) et des Exhibits X et Y y étant annexés;

- 
19. Au 31 décembre 2019, la base de données de l'Administrateur fait état d'un montant total de 1 117 527 111,00 \$ ayant été versé à l'ensemble des membres reconnus des recours et des membres reconnus de la famille<sup>2</sup>;
20. Depuis cette date, selon les rapports annuels 2021 préparés par l'Administrateur, un montant additionnel de 78 888 225,00 \$ leur a été versé, tel qu'il appert du paragraphe 27 de l'Affidavit Peterson (R-1) et des Exhibits V et W y étant annexés;
21. Ainsi, au 31 décembre 2021, 1 196 415 317,00\$ ont été versés en faveur d'environ 5 413 membres reconnus des recours et 9 961 membres reconnus de la famille depuis le début de l'administration des réclamations, tel qu'il appert du paragraphe 28 de l'Affidavit Peterson (R-1);
- 21A. Les rapports du Fiduciaire transmis au Comité conjoint indiquent qu'au 31 décembre 2022, 1 221 876 852 \$ ont été versés en indemnité aux membres approuvés des recours et membres de leur famille depuis la mise en œuvre de la Convention règlement. L'augmentation de 104 349 741 \$ par rapport au 31 décembre 2019 représente les indemnités versées du 1<sup>er</sup> janvier 2020 au 31 décembre 2022, tel qu'il appert du paragraphe 3 de l'Affidavit complémentaire Peterson (R-3);
- 21B. Le plus récent rapport trimestriel du Fiduciaire transmis au Comité conjoint indique qu'au 31 décembre 2022, le solde de l'obligation financière maximale contractée par les provinces et territoires au terme de la Convention de règlement (incluant les intérêts) s'élevait à 73 596 832,31 \$, tel qu'il appert du paragraphe 4 de l'Affidavit complémentaire Peterson (R-3);

### C - LA DEMANDE D'ATTRIBUTION DU CAPITAL EXCÉDENTAIRE 2019

22. Les Dispositions d'attribution autorisent spécifiquement les Tribunaux, dans le cadre du libre exercice de leur pouvoir discrétionnaire, à attribuer le Capital excédentaire *inter alia* en faveur des membres reconnus des recours et/ou des membres reconnus de la famille, de la manière qu'ils trouveront raisonnable en toute circonstance pourvu que, dans la distribution, aucune discrimination n'ait lieu selon l'endroit où le membre du recours collectif a reçu du sang ou selon l'endroit où il réside;
23. Les Dispositions d'attribution prévoient la possibilité pour les membres des recours de recevoir, à même le Capital excédentaire, des indemnités allant au-delà de ce qui est prévu aux Régimes Réguliers ainsi que la possibilité pour les gouvernements fédéral, provinciaux et territoriaux d'accéder au Capital excédentaire avant la fin de la Convention de règlement;
24. Bien que les Dispositions d'attribution offrent la possibilité de combler les écarts ou obtenir une indemnisation supplémentaire dans les limites prévues par la loi, elles ne peuvent être utilisées pour modifier le compromis ou amender la Convention de règlement;

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<sup>2</sup> Les expressions « membre(s) reconnu(s) des recours », « membre(s) reconnu(s) de la famille » et « personne(s) à charge reconnue(s) » utilisées dans la présente demande doivent être considérées comme incluant « membre(s) reconnu(s) des recours pour réclamations tardives », « membre(s) reconnu(s) de la famille suite à une réclamation tardive » et « personne(s) à charge reconnue(s) suite à une réclamation tardive », selon le cas.

- 
25. La trame factuelle des négociations ayant mené à l'inclusion des Dispositions d'attribution dans la version finale de la Convention de règlement ayant reçu l'approbation des Tribunaux a été relatée en détails dans le cadre de l'audition conjointe tenue à Toronto en juin 2016 visant à disposer des demandes d'attribution de Capital excédentaire présentées par le Comité conjoint et le Procureur général du Canada à l'égard du Capital excédentaire établi à la date d'évaluation du 31 décembre 2013 (le « Capital excédentaire 2013 »);
26. Au terme de cette audition conjointe, après avoir actualisé le montant approximatif du Capital excédentaire 2013 disponible, les Tribunaux ont utilisé les Dispositions d'attribution pour créer les Indemnités de distribution spéciale 2013 visant notamment à permettre aux réclamants n'ayant pu réclamer en temps opportun de pouvoir le faire et aux membres reconnus et leur famille de recevoir une indemnisation additionnelle, tel que plus amplement décrit aux paragraphes 8 à 12 de l'Affidavit Peterson (R-1), des Ordonnances d'Allocation (Exhibits G, H et I) ainsi que des ordonnances subséquentes annexées à l'Affidavit Peterson (R-1) comme Exhibits J, K et L ainsi que M, N et O;
27. Toutefois, étant donné le montant limité du Capital excédentaire 2013, il subsiste toujours certaines lacunes quant à l'indemnisation des membres des recours et de leur famille, tel qu'il appert des paragraphes 36 à 42, 58, 78, 91, 92, 102 et 103 de l'Affidavit Peterson (R-1) et des Exhibits G, H, I, M N et O y étant annexés;
28. Le Comité conjoint demande donc aux Tribunaux d'exercer leur discrétion prévue aux Dispositions d'attribution et d'attribuer une (...) portion du Capital excédentaire 2019 (...) afin de permettre de combler davantage les lacunes qui subsistent à l'égard des quatre chefs d'indemnisation suivants ayant été partiellement rehaussés par la création des Indemnités de distribution spéciale 2013 :
- a) les paiements forfaitaires pour les dommages généraux non pécuniaires et/ou les prestations de décès;
  - b) les paiements forfaitaires aux membres de la famille à titre de dommages généraux non-pécuniaires pour la perte de conseils, de soin et de compagnie;
  - c) le remplacement de la perte ou de la diminution de prestations de retraite; et
  - d) l'indemnisation pour la perte de services domestiques effectués par les membres reconnus des recours;
29. Reconnaissant que ces quatre chefs d'indemnisation regroupent les composantes principales en matière d'octroi de dommages-intérêts, les recommandations proposées à leur égard visent à répondre aux préoccupations antérieurement exprimées au Comité conjoint et aux Tribunaux dans le cadre de l'audition conjointe de juin 2016 et que les membres des recours continuent d'exprimer à l'administrateur quant au caractère inadéquat de l'indemnisation qui leur est versée par rapport au préjudice et/ou à la perte qu'ils ont subi et dont ils subissent encore les conséquences à chaque jour, tel qu'il appert des paragraphes 36 à 42 de l'Affidavit Peterson (R-1);
30. Bien que l'attribution du Capital excédentaire 2013 à l'égard de ces mêmes chefs d'indemnisation ne soit pas déterminante quant à l'approbation ou le rejet des recommandations du Comité conjoint faisant l'objet de la présente demande, les Ordonnances d'Allocation 2013 ont été l'occasion pour les Tribunaux de considérer et de

décider de certaines questions préalablement soulevées et débattues;

31. Les Tribunaux ont en effet déjà statué qu'une attribution de Capital excédentaire à l'égard de ces chefs d'indemnisation spécifiques :
- a) est une attribution permise en vertu des Dispositions d'attribution contenues à la Convention de règlement tel qu'approuvée par les Tribunaux;
  - b) ne requiert pas d'amender la Convention de règlement;
  - c) n'augmente pas le fardeau des défendeurs au terme de la Convention de règlement; et
  - d) n'est pas discriminatoire selon l'endroit où le membre du recours collectif a reçu du sang ou selon l'endroit où il réside;

tel qu'il appert des Ordonnances d'Allocation dont copie est annexée à l'Affidavit Peterson (R-1) comme Exhibits G, H et I;

32. Encore aujourd'hui, certaines dispositions ou caractéristiques de la Convention de règlement et des divers Régimes, tel que la liste des déductions imposées dans la formule de calcul de la perte de revenu sont toujours applicables et ont pour effet de réduire significativement le montant de l'indemnisation payable par rapport à la perte financière réelle;
33. Les compromis ainsi enchâssés dans la Convention de règlement et les divers Régimes continueront d'empêcher toute surindemnisation à l'égard des membres des recours, tel qu'il appert des paragraphes 72, 88, 98 et 111 de l'Affidavit Peterson (R-1);

### **LES RECOMMANDATIONS DU COMITÉ CONJOINT POUR L'ATTRIBUTION DU CAPITAL EXCÉDENTAIRE 2019**

- 33A. Dans sa demande initiale en date du 26 mai 2022, le Comité conjoint recommandait d'attribuer une somme de 194 941 000\$ de capital excédentaire 2019 au bénéfice des membres. Toutefois, pour plus de prudence et compte tenu de la diminution de la valeur des actifs du Fonds en fiducie depuis que la Phase 1 de la Réévaluation financière 2019 a été complétée, le Comité conjoint a subséquemment mandaté Eckler pour extrapoler au 30 juin 2022 les résultats antérieurement obtenus pour la Phase 1, le tout tel qu'il appert des paragraphes 9 à 11 de l'Affidavit complémentaire Peterson (R-3);
- 33B. Au terme de cet exercice, Eckler a conclu qu'à la date du 30 juin 2022, c'est un capital excédentaire réduit évalué à approximativement 174 000 000\$ qui était disponible pour financer les indemnités de distribution spéciale 2019 proposées, le tout tel qu'il appert plus amplement du rapport complémentaire préparé par Eckler en date du 10 novembre 2022 dont copie est jointe comme Exhibit A à l'affidavit de Euan Reid souscrit en date du 19 décembre 2022 et produit au soutien de la présente demande modifiée comme Pièce R-4 (« Rapport complémentaire Eckler (R-4) »);
- 33C. Étant donné le montant réduit de Capital Excédentaire 2019 en 2022, le Comité conjoint a été contraint de modifier la recommandation numéro 4 et recommande maintenant aux

Tribunaux de limiter l'attribution de Capital Excédentaire 2019 à seulement 159 914 000\$ (équivalent à 172 000 000\$ lorsqu'extrapolé au 30 juin 2022), le tout tel qu'il appert plus amplement aux paragraphes 12 et 13 de l'Affidavit complémentaire Peterson (R-3);

34. Pour élaborer les quatre recommandations qu'il formule dans la présente demande modifiée, le Comité conjoint a été guidé par les mêmes principes directeurs qu'il avait suivi pour les fins de sa première demande d'attribution à l'égard du Capital excédentaire de 2013, tel qu'il appert plus amplement des paragraphes 33 à 35 de l'Affidavit Peterson (R-1);
35. Le Comité conjoint a également tenu compte des enseignements contenus dans les motifs exprimés par les Tribunaux dans les Ordonnances d'Allocation;
36. Les choix du Comité conjoint et les montants d'attribution proposés sont fondés sur le travail significatif d'investigation, d'analyse et d'évaluation effectué par Eckler et par l'Administrateur, tel qu'expliqué plus amplement aux paragraphes 44 à 53 de l'Affidavit Peterson (R-1) ainsi que sur le Rapport complémentaire Eckler (R-4) tel qu'il appert de l'Affidavit complémentaire Peterson (R-3);

**RECOMMANDATION 1 - CONCERNANT LES DOMMAGES GÉNÉRAUX NON-PÉCUNIAIRES :**  
***Attribuer 54 684 000,00\$ du Capital excédentaire 2019 pour majorer de 6,8% la valeur combinée des paiements forfaitaires pour les dommages-intérêts généraux non pécuniaires et/ou les prestations de décès payables en vertu des Régimes et de l'Indemnité de distribution spéciale 2013 octroyées à leur égard, indexée au 1<sup>er</sup> janvier 2020, payable rétroactivement et prospectivement à titre de distribution spéciale.***

37. Les membres reconnus des recours qui étaient vivants au 1<sup>er</sup> janvier 1999 ont droit aux paiements forfaitaires pour les dommages généraux non pécuniaires en fonction de leur niveau de maladie au moment de l'approbation de leur réclamation et dans le futur, selon l'évolution de leur maladie. Les successions, les membres de la famille et les personnes à charge des membres reconnus qui sont décédées avant le 1<sup>er</sup> janvier 1999 ont droit à des prestations de décès si le décès du membre infecté reconnu a été causé par le VHC tel qu'il appert du paragraphe 55 de l'Affidavit (R-1);
38. Ces dommages généraux non pécuniaires et prestations de décès prévus à la Convention de règlement ont fait l'objet de compromis pour plusieurs membres reconnus des recours et membres reconnus de la famille. Les montants d'indemnisation prévus à ce chapitre ont été fixés à un niveau inférieur à celui qui est permis par la loi et la jurisprudence en semblable matière pour s'assurer que le montant du règlement global négocié avec les défendeurs puisse être réparti équitablement entre tous les chefs d'indemnisation prévus à la Convention de règlement et répondre à toutes les réclamations des membres des recours qui seraient reconnus et dont le nombre était inconnu tel qu'il appert du paragraphe 56 de l'Affidavit (R-1);
39. Les dommages-intérêts généraux non pécuniaires visent à indemniser les pertes intangibles tels que la souffrance, la perte de jouissance de la vie et la perte d'expectative de vie. Or, lors des consultations menées en 2015 auprès des membres des recours, plusieurs se sont exprimés à propos de la nature et des effets de leur infection au VHC, de son caractère

chronique et des impacts de la détérioration progressive de leurs capacités sur leur bien-être physique et mental, leur vie au quotidien et sur la dynamique familiale<sup>3</sup>, tel qu'il appert du paragraphe 57 de l'Affidavit (R-1);

40. Plusieurs membres ont aussi transmis leurs observations écrites à ce sujet et d'autres ont témoigné à l'audition conjointe de juin 2016<sup>4</sup>. L'opinion unanime exprimée par l'ensemble de ces membres est à l'effet que l'indemnisation payable selon les termes de la Convention de règlement n'indemnise pas adéquatement les conséquences graves causées par l'infection au VHC qu'ils ont contractée suite à une transfusion, tel qu'il appert du paragraphe 57 de l'Affidavit (R-1);
41. La base de données de l'administrateur révèle que l'hépatite C aurait contribué de façon significative au décès d'au moins 487 membres reconnus décédés avant le 1<sup>er</sup> janvier 1999 et d'au moins 745 autres membres reconnus décédés après le 1<sup>er</sup> janvier 1999 tel qu'il appert du paragraphe 67 de l'Affidavit (R-1);
42. Le Dr Murray Krahn et son équipe dont le rapport a été déposé au soutien de la demande de réévaluation des aspects financiers du Fonds au 31 décembre 2019 (le Rapport MMWG<sup>5</sup>) mentionnent que, malgré l'efficacité accrue des agents antiviraux à activité directe, une proportion significative de la cohorte des membres reconnus toujours vivants a déjà développé ou développera probablement les pathologies et niveaux de maladies suivants avant 2070 :

Niveau de maladie	Cumulatif	Transfusés	Hémophiles
<b>Niveau 5</b> Cirrhose	19.7%	16.2%	30.7%
<b>Niveau 6</b> Cirrhose décompensée	9.3%	7.4%	15.5%
<b>Niveau 6</b> Cancer hépatocellulaire	3.8%	2.9%	6.6%
<b>Niveau 6</b> Mortalité liée au foie	13.9%	11.7%	21%

tel qu'il appert du paragraphe 67 de l'Affidavit Peterson (R-1);

43. Au moment de l'approbation de la Convention de règlement, le montant maximum payable de façon cumulative sur la base des niveaux de maladies était de 225 000,00\$ pour ceux qui atteignaient le niveau le plus élevé de maladie en dollars de 1999 comparativement au plafond de 260 284,00 \$ établi par la Cour suprême du Canada dans les trois arrêts rendus

<sup>3 4</sup> Cette preuve a été communiquée aux défenderesses et déposées lors de l'audition de la Demande du Comité conjoint pour l'attribution du Capital excédentaire 2013 et est alléguée à nouveau au soutien de la présente demande.

<sup>5</sup> "Estimating the Prognosis of Canadians Infected with the Hepatitis C Virus Through The Blood Supply, 1986-1990: The Seventh Revision of Hepatitis C Prognostic Model Based on the Post-Transfusion Hepatitis C Compensation Claimant Cohort", by Karen Bremner BSc, Yeva Sahakyan MD MPH MSc, Qilong Yi MD MSc PhD, William Wong PhD and Murray Krahn MD MSc FRCPC, dated November 18, 2020, tableaux 1 et 12.

en 1978, une fois rajusté pour l'inflation en dollars de 1999, tel qu'il appert du paragraphe 61 de l'Affidavit (R-1);

44. Suite à l'attribution de l'Indemnité de distribution spéciale 2013, la valeur combinée maximale de l'indemnisation au titre de dommages généraux non pécuniaires est de 328 537,00\$ en dollars de 2014 comparativement à 350 712,00\$ pour la valeur rajustée en dollars 2014 du plafond établi par la trilogie de la Cour suprême, tel qu'il appert du paragraphe 62 de l'Affidavit (R-1);
45. La distribution recommandée de Capital excédentaire 2019 représentant une augmentation de 6,8% de cette indemnité cumulative actuellement payable selon les niveaux de maladie atteints par les membres reconnus porterait le montant maximum d'indemnisation à ce chapitre à 387 797,00\$ comparativement à 389 744,00\$ pour la valeur rajustée en dollars 2020 du plafond établi par la trilogie de la Cour suprême tel qu'il appert du paragraphe 63 de l'Affidavit (R-1) et du paragraphe 39 du Rapport d'Allocation 2019 (R-2 Exhibit A);
46. Le montant de distribution recommandée qui serait versé pour ce chef d'indemnisation selon le niveau de maladie atteint par le membre reconnu des recours est le suivant :

Niveau de maladie	Distribution spéciale de 6.8% (du paiement forfaitaire initial + Indemnité de distribution spéciale 2013 en dollars de 2020)	Total cumulatif
Niveau 1	1 097 \$	1 097 \$
Niveau 2	2 195 \$	3 292 \$
Niveau 3	3 292 \$	6 584 \$
Niveau 5	7 133 \$	13 717 \$
Niveau 6	10 974 \$	24 691 \$

tel qu'il appert du paragraphe 65 de l'Affidavit (R-1) et du paragraphe 38 du Rapport d'Allocation 2019 (R-2 Exhibit A);

47. Le montant de distribution recommandée qui serait versé à l'égard des autres paiements forfaitaires prévus à la Convention de règlement serait le suivant :

Type de paiement forfaitaire	Distribution spéciale de 6.8% (du paiement forfaitaire initial + Indemnité de distribution spéciale 2013 en dollars de 2020)
Option de 50,000 \$ pour dommages généraux non pécuniaires pour les hémophiles co-infectés reconnus qui ne sont pas en mesure d'établir à cause de leur co-	5 487 \$



infection que leur niveau de maladie est dû au VHC	
Option de 50,000 \$ en prestation de décès à l'égard des membres reconnus des recours dont le décès survenu avant le 1 <sup>er</sup> janvier 1990 est dû au VHC	5 487 \$
Option de 120 000 \$ en prestation de décès pour les membres reconnus des recours dont le décès survenu avant le 1 <sup>er</sup> janvier 1990 est dû au VHC, en règlement intégral de toutes les réclamations des membres de la famille et des personnes à charge	13 169 \$
Option de 72 000 \$ en prestation de décès pour les hémophiles co-infectés dont le décès est survenu avant le 1 <sup>er</sup> janvier 1999 sans qu'il soit nécessaire d'établir qu'il a été causé par le VHC, en règlement intégral de toutes les réclamations des membres de la famille et des personnes à charge	7 901 \$

tel qu'il appert des paragraphes 69 et 70 de l'Affidavit Peterson (R-1);

48. Approximativement 4 926 membres reconnus des recours et éligibles pour les paiements forfaitaires selon le niveau de maladie en vertu des Régimes et approximativement 487 successions, 1 816 membres de la famille et 30 hémophiles co-infectés éligibles pour les autres options de paiements forfaitaires prévus en vertu des Régimes bénéficieraient de cette recommandation de façon rétroactive. De plus, les membres reconnus dont la maladie continue de progresser ainsi que les membres qui seront reconnus d'ici la fin de l'administration de la Convention de règlement pourront bénéficier de cette distribution spéciale additionnelle de façon prospective, si elle est approuvée, tel qu'il appert des paragraphes 68 et 71 de l'Affidavit (R-1);

**RECOMMANDATION 2 – CONCERNANT LA PERTE DE CONSEIL, PERTE DE SOIN ET DE COMPAGNIE : *Attribuer 71 812 000,00\$ du Capital excédentaire 2019 pour une majoration de 50% la valeur combinée des montants forfaitaires payables aux membres de la famille pour perte de conseil, perte de soin et de compagnie en vertu des Régimes et de l'Indemnité de distribution spéciale 2013 octroyées pour les parents et les enfants de 21 ans et plus, indexée au 1<sup>er</sup> janvier 2020, payable rétroactivement et prospectivement à titre de distribution spéciale;***

49. En vertu des Régimes, les membres reconnus de la famille d'un membre infecté dont le décès a été causé par le VHC sont éligibles à une indemnisation pour perte de conseil, de soin et de compagnie sous forme d'un montant forfaitaire, à moins qu'ils ne choisissent l'une des deux options conjointes de 120 000 \$ ou de 72 000 \$ mentionnées précédemment dans le tableau au paragraphe 48 des présentes, tel qu'il appert du paragraphe 73 de l'Affidavit Peterson (R-1);
50. La perte de conseil, de soin et de compagnie est une catégorie d'indemnisation qui a fait l'objet de compromis pour la majorité des membres de la famille. Les montants d'indemnisation prévus à ce chapitre ont été fixés à un niveau inférieur à ceux prévus par la

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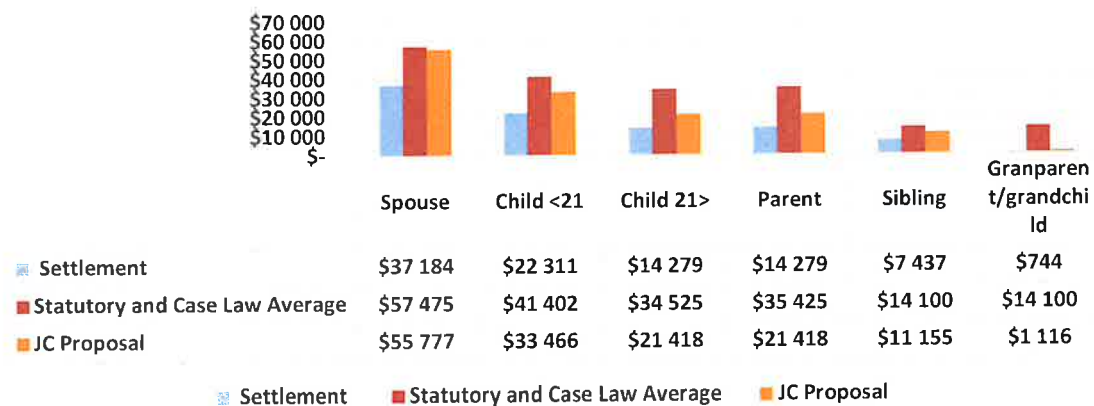
loi et/ou accordés selon la jurisprudence à travers le pays en semblable matière pour que le montant du règlement global négocié avec les défendeurs puisse couvrir l'ensemble des réclamations des membres des recours et des membres de la famille dont les réclamations seraient approuvées (leur nombre étant inconnu) et offrir une indemnisation acceptable sous les autres les chefs d'indemnisation prévus à la Convention de règlement tel qu'il appert du paragraphe 74 de l'Affidavit Peterson (R-1);

51. Bien qu'il soit établi depuis longtemps qu'aucune somme d'argent ne peut remplacer adéquatement la perte d'une vie, ces indemnités sont accordées afin de reconnaître et d'indemniser les membres de la famille en fonction de la gravité de la perte de l'un d'entre eux;
52. Lors des rencontres effectuées auprès des membres en 2015, de nombreux membres reconnus de la famille ont soulevé la question de l'insuffisance de ces montants et plusieurs autres ont transmis des observations écrites ou témoigné lors de l'audition sur la demande d'allocation du Capital excédentaire 2013. La conclusion unanime de ces membres de la famille, indépendamment de leur lien filial avec le/la défunt(e) est que les montants payables sont inadéquats pour indemniser leur perte, tel qu'il appert du paragraphe 75 de l'Affidavit Peterson (R-1);
53. Les Tribunaux ont déjà établi qu'en vertu des Disposition d'attribution, il était permis d'octroyer une indemnité de distribution spéciale à partir du capital excédentaire pour majorer les montants payables sous ce chef d'indemnisation et ont créé une Indemnité de distribution spéciale 2013 pour majorer de 4 600 \$ indexés le montant de l'indemnisation prévue en faveur des parents et des enfants âgés de 21 et plus comme le recommandait le Comité conjoint, tel qu'il appert des paragraphes 76 et 77 de l'Affidavit Peterson (R-1) et des Ordonnances d'Allocation (Exhibits G, H et I) y étant annexées;
54. Or, la recommandation formulée par le Comité conjoint dans sa demande d'attribution du Capital excédentaire 2013, était tributaire du montant de capital excédentaire alors disponible et tenait également compte de la nécessité de répondre à plusieurs autres doléances exprimées par les membres reconnus des recours à l'égard de divers chefs d'indemnisation payables en vertu des Régimes;
55. L'indemnité de distribution spéciale 2013 créée au bénéfice des parents et des enfants âgés de 21 ans a permis de répondre à la disparité qui existait à leur égard par rapport aux autres membres de la famille sans toutefois remédier à la sous-évaluation généralisée de la perte de conseil, de soin et de compagnie dans son ensemble. Le montant de Capital excédentaire 2019 permet de le faire maintenant tel qu'il appert du paragraphe 78 de l'Affidavit Peterson (R-1);
56. Dans certaines provinces canadiennes, le montant d'indemnisation pour la perte de conseil, de soin et de compagnie incluant le chagrin et le deuil est prévu par législation alors que dans d'autres, le montant est laissé à la discrétion des tribunaux qui en fixent la valeur au cas par cas;
57. Bien que ni les lois ni la jurisprudence ne permettent d'atteindre une uniformité à travers le pays, de façon générale, les montants accordés pour la perte de conseil, de soin et de compagnie en vertu de ces lois et en vertu de la jurisprudence sont supérieurs aux montants prévus par la Convention de règlement, même en tenant compte des montants majorés en

2013, bien qu'une véritable comparaison directe soit difficile en raison des règles différentes dans chaque juridiction, tel qu'il appert des paragraphes 79 à 82 de l'Affidavit Peterson (R-1) et de l'Exhibit Z y étant annexé;

58. Le tableau suivant illustre les différences entre les montants d'indemnisation prévus à la Convention de règlement pour la perte de conseil, de soin et de compagnie par rapport à la moyenne de ceux octroyés en vertu de la loi ou de la jurisprudence, en dollars 2020 :

### Convention de règlement vs. moyenne selon législation & jurisprudence et recommandation du Comité conjoint



tel qu'il appert du paragraphe 86 de l'Affidavit Peterson (R-1);

59. Le montant de distribution spéciale qui serait versé si cette recommandation était approuvée serait le suivant :

Membre de la famille	Majoration de 50% (du montant initial pour perte de conseil, de soin et de compagnie + Indemnité de distribution spéciale pour les parents et enfants de 21 ans et plus en dollars de 2020)
Conjoint(e)	18 593 \$
Enfants de moins de 21 ans	11 155 \$
Enfants de 21 ans et plus	7 139 \$
Parents	7 139 \$
Frères/soeurs	3 718 \$
Grands-parents/Petits-enfants	372 \$

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tel qu'il appert du paragraphe 80 de l'Affidavit Peterson (R-1) et du paragraphe 43 du Rapport d'Allocation 2019 (R-2 Exhibit A);

60. Approximativement 7 874 membres reconnus de la famille éligibles à l'indemnisation pour perte de conseil, de soin et de compagnie bénéficieraient de cette allocation recommandée de façon rétroactive. De plus, d'autres membres de la famille dont la réclamation pour perte de conseil, de soin et de compagnie sera approuvée suite au décès d'un membre reconnu causé par son infection au VHC de même que ceux dont la réclamation est en cours de traitement ou qui le sera dans le futur avant la fin de l'administration de la Convention de règlement pourront bénéficier de cette distribution spéciale additionnelle de façon prospective, si elle est approuvée, tel qu'il appert du paragraphe 87 de l'Affidavit Peterson (R-1);

**RECOMMANDATION 3 – CONCERNANT LA DIMINUTION OU PERTE DE PRESTATION DE RETRAITE : *Attribuer 6 653 000,00\$ du Capital excédentaire 2019 pour majorer de 4% l'Indemnité de distribution spéciale 2013 octroyée pour indemniser la diminution ou perte de prestation de retraite calculée sur la perte de revenu annuel avant 2014 (le revenu annuel maximum admissible étant de 200 000 \$) et avec indexation à partir du 1<sup>er</sup> janvier 2014, payable rétroactivement et prospectivement à titre de distribution spéciale;***

61. En vertu des Régimes, à partir du Niveau 4 de la maladie (avec fibrose envahissante), les membres peuvent réclamer pour la perte de revenu causée par leur infection au VHC jusqu'à l'âge de 65 ans, dans la mesure où ils n'ont pas réclamé d'indemnisation au chapitre de la perte de services domestiques pour la même période. Bien qu'elle prévoie une indemnisation pour la perte de revenu, la Convention de règlement ne contient pas de disposition concernant la diminution ou la perte de prestation de retraite résultant de cette perte de revenu suite à leur infection au VHC tel qu'il appert des paragraphes 89-90 de l'Affidavit Peterson (R-1);
62. L'indemnisation de la perte de revenu a fait l'objet de compromis de la part de l'ensemble des membres des recours ayant subi une telle perte. En particulier, les déductions effectuées dans le calcul de la perte de revenu indemnisable et l'absence de compensation pour la diminution ou la perte de prestation de retraite diffèrent des règles générales applicables en matière d'indemnisation. Ces compromis ont été faits pour permettre que le montant global du règlement s'avère suffisant pour pouvoir verser les indemnités prévues à l'ensemble des membres des recours qui seraient reconnus ainsi qu'à leur famille tel qu'il appert du paragraphe 91 de l'Affidavit Peterson (R-1);
63. Étant donné le montant de Capital excédentaire 2013 disponible lors de la demande d'attribution précédente, le Comité conjoint a dû recommander aux Tribunaux d'attribuer à ce titre une somme calculée à partir d'un pourcentage moins élevé que celui qui était suggéré par les actuaires à partir des données disponibles. À cet égard, les Tribunaux ont alors statué que la création d'une indemnité de distribution spéciale afin d'indemniser la diminution ou la perte de prestation de retraite était permise en vertu des Dispositions d'attribution et ont approuvé la recommandation du Comité conjoint de créer une telle indemnité de distribution spéciale équivalente à 10% de la perte de revenu annuel plafonné à 200 000\$ comme l'une des Indemnités de distribution spéciale 2013, tel qu'il appert des paragraphes

92-93 de l’Affidavit (R-1) et et des Ordonnances d’Allocation (Exhibits G, H et I) y étant annexées;

64. Puisque la valeur de remplacement de cette perte n’a pu être entièrement atteinte à partir du Capital excédentaire 2013 alors disponible, le Comité conjoint a requis Eckler de calculer à nouveau la valeur de remplacement adéquate pour cette perte tel qu’il appert du paragraphe 95 de l’Affidavit Peterson (R-1).
65. Dans son rapport au soutien de la Demande du Comité conjoint pour l’attribution du Capital excédentaire 2013, Eckler recommandait un taux de 14% du revenu annuel comme étant un équivalent raisonnable pour indemniser la diminution ou la perte de prestations de retraite découlant de la perte de revenu. Malgré que le taux de cotisation de l’employeur au Régime de pensions du Canada ait augmenté de 5,45% depuis l’audition de 2016 et devrait augmenter encore en 2025, Eckler est d’avis que sa recommandation antérieure de 14% est toujours appropriée dans les circonstances, le tout tel qu’il appert plus amplement des paragraphes 46-50 du Rapport d’Allocation 2019 (R-2 Exhibit A);
66. Si l’augmentation de 4% recommandée à ce titre par le Comité conjoint est approuvée, selon les données de l’administrateur pour la plus récente révision triennale, 75% des membres reconnus qui subissent actuellement une perte de revenu pourraient recevoir une indemnité additionnelle pouvant atteindre jusqu’à 2 000 \$ par année, 15% pourraient recevoir une indemnité additionnelle entre 2 000 \$ et 4 000 \$ par année et 10% pourraient recevoir une indemnité additionnelle entre 4 000 \$ et 8 000 \$ par année, si l’attribution recommandée à ce titre est accordée, tel qu’il appert du paragraphe 96 de l’Affidavit Peterson (R-1);
67. Approximativement 338 membres reconnus ayant droit à l’indemnité de remplacement de revenu en vertu des Régimes pourraient bénéficier rétroactivement de cette distribution ainsi que prospectivement dans la mesure où leur perte de revenu subsiste. Il y a actuellement approximativement 1 234 membres reconnus toujours vivants ayant atteint les niveaux de maladie 2 et 3 ainsi que 163 autres au niveau de maladie 4 qui pourraient éventuellement bénéficier de cette indemnité de distribution spéciale si leur maladie évolue et que leur statut d’emploi le requiert, de même que tous les membres dont la réclamation est en cours de traitement ou qui sera approuvée d’ici la fin de la Convention de règlement, tel qu’il appert du paragraphe 97 de l’Affidavit Peterson (R-1).

**RECOMMANDATION 4 MODIFIÉE - CONCERNANT LA PERTE DE SERVICES DOMESTIQUES :**  
***Attribuer 25 365 000,00\$ (au lieu de 60 272 000\$) du Capital excédentaire 2019 pour créer une indemnité de distribution spéciale aux membres approuvés qui ont droit à l’indemnité pour pertes de services domestiques, équivalente (...) à une majoration de 1,00 \$ de l’heure (en dollars 1999), avec indexation à compter du 1<sup>er</sup> janvier 2020, pour les heures indemnissables à titre de perte de services domestiques pour les années 2019 et suivantes en vertu des Régimes et en vertu de l’Indemnité de distribution spéciale 2013 octroyée à ce titre, payable rétroactivement et prospectivement à titre de distribution spéciale;***

- 67A. Il s’agit d’une réduction par rapport à la Recommandation 4 initiale, tant sur l’augmentation du taux horaire (1,00\$ au lieu de 2,00\$ en dollars de 1999) qu’à l’égard de la date d’entrée en vigueur de cette augmentation (2019 au lieu de 2014). En dollars 2020, le taux horaire

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payable serait de 19,34\$, tel qu'il appert du paragraphe 14 de l'Affidavit complémentaire Peterson (R-3);

68. Les membres reconnus ayant atteint les niveaux de maladie 4, 5 et 6 peuvent réclamer une indemnisation pour les tâches domestiques qu'ils ne sont plus en mesure d'accomplir à cause de leur infection au VHC. Les personnes à charge reconnues qui vivaient avec le membre reconnu infecté au moment de son décès peuvent également réclamer l'indemnisation pour pertes de services domestique si le décès a été causé par l'infection au VHC;
69. La perte de services domestiques est payable durant toute la durée de vie du membre reconnu des recours si son invalidité subsiste et ensuite, payable à ses personnes à charge jusqu'à la survenance du premier des événements suivants : la date de décès présumée du membre reconnu décédé calculée selon Statistique Canada sans tenir compte de l'infection du VHC ou le décès de la dernière personne à sa charge, tel qu'il appert du paragraphe 99 de l'Affidavit Peterson (R-1);
70. Plusieurs représentations orales et écrites formulées aux membres du Comité conjoint par les membres reconnus et leurs personnes à charge avant l'audition sur la demande d'allocations antérieure exprimaient à quel point la limite de 20 heures par semaine et de 12 \$/heure rendait cette indemnisation inadéquate par rapport aux pertes effectivement subies à ce titre. Plusieurs ont décrit l'importance vitale de cette indemnisation sur la survie financière de leur famille. Les données de l'époque témoignaient du fait qu'environ 95% des membres reconnus éligibles fournissaient bien plus de 20 heures par semaine de services domestiques avant leur invalidité, tel qu'il appert des paragraphes 100 et 101 de l'Affidavit Peterson (R-1);
71. En raison des limites du Capital excédentaire 2013 disponible et des autres chefs de sous-indemnisation auquel il souhaitait remédier, le Comité conjoint a recommandé une indemnité de distribution spéciale permettant seulement de hausser de 2 heures le maximum du nombre d'heures indemnisable par semaine. Le Capital excédentaire 2019 disponible constitue une opportunité pour pouvoir remédier davantage à cette sous-indemnisation persistante, tel qu'il appert du paragraphe 103 de l'Affidavit Peterson (R-1);
72. Les Tribunaux ont statué qu'une telle recommandation pouvait être autorisée en vertu des Dispositions d'attribution, ont approuvé la demande du Comité conjoint et ont ordonné la création d'un bénéfice additionnels de 2 heures par semaine payable rétroactivement et prospectivement en faveur des membres reconnus et leurs personnes à charge, tel qu'il appert du paragraphe 104 de l'Affidavit Peterson (R-1) et des Ordonnances d'Allocation (Exhibits G, H et I) y étant annexées;
73. Dans ce contexte, le Comité conjoint a demandé à Eckler une fois de plus d'évaluer la valeur de remplacement de cette perte subie au niveau des services domestiques, tel qu'il appert du paragraphe 106 de l'Affidavit Peterson (R-1);
74. Dans son rapport, Eckler explique que son analyse a révélé l'existence de différences régionales au niveau des taux applicables. Néanmoins, Eckler est d'avis que le taux actuel de 12 \$/heure est insuffisant pour obtenir des services de remplacement dans plusieurs juridictions canadiennes et qu'une augmentation de 2 \$/heure à l'égard des heures indemnisables pour la perte de services domestiques résulterait en un taux raisonnable qui

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reflèterait mieux ce qu'il en coûte réellement pour obtenir de tels services. Eckler note également que la taxe de vente sur les factures de tels services se situant entre 5% et 15% à travers le pays n'est pas incluse dans les taux considérés, tel qu'il appert des paragraphes 52 à 54 du Rapport d'Allocation 2019 (R-2 Exhibit A) et du paragraphe 107 de l'Affidavit Peterson (R-1);

75. Brown Economic Consulting Inc., une firme de consultants basée en Alberta publie chaque année un sondage à l'égard des taux de remplacement des services domestiques au pays, par juridiction, ainsi qu'un outil appelé « Housekeeping Damages Calculator » permettant d'estimer cette perte pécuniaire. Les taux publiés par cette firme de consultant sont un peu supérieurs à la moyenne de l'ensemble des taux mentionnés par Eckler pour le Canada et supérieurs aux taux les plus élevés rapportés par Eckler pour certaines juridictions. Les taux publiés par cette firme de consultants n'incluent pas les taxes applicables, tel qu'il appert du paragraphe 108 de l'Affidavit Peterson (R-1) et de l'Exhibit AA y étant annexé;
- 75A. Le Comité conjoint a choisi de modifier cette recommandation parce qu'il s'agit selon lui de l'alternative préférable pour s'ajuster au montant réduit de Capital excédentaire 2019 disponible, compte tenu des autres besoins concurrents auxquels il tente de répondre dans la présente demande modifiée et étant donné que le taux suggéré se situe dans la fourchette des taux horaires pour ces types de services à travers le pays, quoiqu'inférieure à la moyenne médiane au Canada de 20,22\$ rapportée au paragraphe 53 du Rapport d'Allocation 2019 (R-2 Exhibit A), tel qu'il appert du paragraphe 15 de l'Affidavit complémentaire Peterson (R-3);
- 75B. Selon les données 2016 à 2019 utilisées pour la Réévaluation financière 2019, 96% des membres approuvés ayant droit à l'indemnité pour perte de services reçoivent le maximum prévu de 20 heures/semaine majoré des 2h additionnelles par semaine octroyées à titre d'Indemnité de distribution spéciale 2013. Afin d'atteindre la réduction de Capital excédentaire 2019 disponible et à cause des autres besoins auxquels il tente de répondre également, le Comité conjoint demande que cette attribution ne soit effective qu'à compter du 1<sup>er</sup> janvier 2019;
- 75C. Sur la base de la Recommandation 4 modifiée, sous réserve de leur éligibilité à l'indemnité pour perte de services, les membres approuvés pourraient recevoir un montant additionnel d'environ 1 700,00\$ par année (en dollars 2020) pour l'année 2019 et les suivantes, si cette recommandation est approuvée tel que modifiée, tel qu'il appert du paragraphe 16 de l'Affidavit complémentaire Peterson (R-3);
76. Approximativement 575 membres reconnus (...) recevant l'indemnisation pour perte de services domestiques en vertu des Régimes au 31 décembre 2019 (...) bénéficieraient de cette recommandation modifiée de façon rétroactive à partir du 1<sup>er</sup> janvier 2019 et de façon prospective. De plus approximativement 1 234 membres reconnus présentement au niveau de maladie 2 et 3 et 163 autres au niveau de maladie 4 qui ne reçoivent pas cette indemnisation actuellement pourraient également bénéficier de cette recommandation prospectivement si leur maladie progresse et/ou s'ils deviennent incapables d'accomplir les tâches domestiques qu'ils effectuent eux-mêmes présentement, tel qu'il appert du paragraphe 110 de l'Affidavit Peterson (R-1) et du paragraphe 16 de l'Affidavit complémentaire Peterson (R-3);

77. De même, environ 140 membres reconnus bénéficiant actuellement de l'indemnisation pour perte de revenus ou perte de soutien et qui deviendront éligibles à l'indemnisation pour la perte de services à compter de leur 65<sup>e</sup> anniversaire de naissance réel ou présumé ainsi qu'un nombre indéterminé pour le moment de personnes à charge des quelque 3 282 membres reconnus toujours vivants qui pourraient éventuellement être éligibles à cette indemnisation au moment du décès du membre reconnu si son décès est causé par l'infection au VHC pourront bénéficier de cette recommandation si elle est approuvée en plus de ceux dont la réclamation est en cours de traitement et/ou qui sera acceptée dans le futur, tel qu'il appert du paragraphe 110 de l'Affidavit Peterson (R-1).;

#### **LOGISTIQUE ET COÛT MODIFIÉ DE MISE ŒUVRE DES RECOMMANDATIONS D'ATTRIBUTION**

78. La décision du Comité conjoint de recommander l'attribution de Capital excédentaire 2019 à l'égard des mêmes chefs d'indemnisation que ceux ayant été partiellement rehaussés par le biais des Indemnités de distribution spéciale 2013 permet en grande partie d'utiliser les mêmes méthodes et systèmes ayant été utilisés antérieurement avec succès pour leur mise en œuvre, tel qu'il appert du paragraphe 113 de l'Affidavit Peterson (R-1);
79. Du point de vue des membres reconnus des recours, pour la grande partie d'entre eux, aucune action additionnelle ne sera exigée de leur part pour obtenir les Indemnités de distribution spéciale recommandées à laquelle ils seraient éligibles. L'administrateur serait ainsi en mesure d'identifier, de calculer et de payer ces Indemnités de distribution spéciale recommandées sur la base des données qui sont actuellement contenues dans la base de données pour la majorité des membres reconnus et des membres reconnus de la famille. Il est acquis que suite au passage du temps depuis le dernier paiement effectué à l'égard de certains membres reconnus et membres reconnus de la famille ayant reçu une indemnisation par le passé, il y aura des coûts de localisation et de logistique pour identifier les représentants personnels et les liquidateurs de succession dans certains cas, tel qu'il appert aux paragraphes 114 et 120 de l'Affidavit Peterson (R-1);
80. Du point de vue de l'Administrateur, les protocoles et les procédures standard d'opération déjà créés pour la mise en œuvre des Indemnités de distribution spéciale 2013 pourraient, pour la plupart, être applicables aux Indemnités de distributions spéciales recommandées. Les ajustements qui seraient nécessaires sont considérés comme étant mineurs, le tout permettant d'atteindre une efficacité opérationnelle et une certaine rentabilité, tel qu'il appert du paragraphe 115 de l'Affidavit Peterson (R-1);
81. Les modifications structurelles effectuées dans la base de données CLASS pour la mise en œuvre des Indemnités de distribution spéciale 2013 pourraient aussi permettre d'implanter les indemnités de distribution spéciale recommandées. Des frais minimes seraient nécessaires pour la programmation de nouveaux codes spécifiques afin d'assurer l'intégrité des relevés de paiement dans la base de données, tel qu'il appert du paragraphe 119 de l'Affidavit Peterson (R-1).;
82. À partir de la grille de services approuvés par les Tribunaux pour l'administration des Indemnités de distribution spéciale 2013 et applicable depuis 2017, l'Administrateur a estimé les coûts d'administration pour mettre en œuvre, calculer et effectuer les paiements rétroactifs des Indemnités de distributions spéciales recommandées. Eckler a, pour sa part,



calculé la valeur actuelle des coûts d'administration des paiements prospectifs sur la base des frais annuels actuels de 5 000 \$ également approuvés par les Tribunaux pour l'administration des Indemnités de distribution spéciale 2013, tel qu'il appert des articles 116 et 117 de l'Affidavit Peterson (R-1) et de l'Exhibit BB y étant joint, ainsi que du paragraphe 60 du Rapport d'Allocation 2019 (R-2 Exhibit A);

- 82A.** Le fait que la Recommandation 4 modifiée ne prévoit plus la rétroactivité initialement prévue au 1<sup>er</sup> janvier 2014 entraîne une réduction des coûts d'administration de 120 000,00\$ taxes incluses;
83. En sus de ces frais directs pour l'administration des Indemnités de distribution spéciale recommandées, plusieurs autres intervenants incluant le Comité conjoint, Eckler, les Auditeurs et le Fiduciaire fourniront des services dans le but de mettre en œuvre, superviser et auditer les Indemnités de distribution spéciale recommandées si elles sont approuvées, tel qu'il appert du paragraphe 121 de l'Affidavit Peterson (R-1);
84. L'ensemble des coûts afférents aux indemnités de distribution spéciale recommandées doit être également pris en charge par le Capital excédentaire 2019 de façon à ne pas affecter les obligations des gouvernements provinciaux et territoriaux prévues aux Régimes;
85. Le coût total estimé pour la mise en œuvre et l'administration des Indemnités de distribution spéciale recommandées représentant un peu moins de 0,09% de leur valeur totale, taxes incluses, se détaille comme suit :

Item	Coûts	Taux de taxes applicables	Coûts, taxes incl.
<u>Versements rétroactifs pour les recommandations 1, 2 et 3 seulement</u>	<u>681 415</u>	13%	<u>770 000</u>
Coûts de programmation	14 000	13%	20 000
Coûts d'administration pour les Indemnités de distribution spéciale 2013 non versées	50 000	13%	60 000
Versements prospectifs	127 000	13%	140 000
Coût d'administration relative aux successions	75 000	13%	80 000
Autres services	300 000	10.6%	330 000
<b>Total</b>	<b><u>1 247 415\$</u></b>		<b><u>1 400 000\$</u></b>

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le tout tel qu'il appert plus amplement du paragraphe 17 de l'Affidavit complémentaire Peterson (R-3);

86. En résumé, le Comité conjoint requiert de cette Honorable Cour qu'elle approuve les quatre recommandations proposées et ordonne l'attribution d'un montant de 159 914 000,00\$ de Capital excédentaire 2019 en faveur des membres reconnus des recours et des membres reconnus de la famille en vertu du Régime à l'intention des Transfusés infectés par le VHC, du Régime à l'intention des Hémophiles infectés par le VHC (« les Régimes Réguliers ») ainsi que des membres reconnus des recours pour réclamations tardives et membres reconnus de la famille suite à une réclamation tardive en vertu du Régime d'indemnisation pour les réclamations tardives (collectivement les « Régimes ») de la façon suivante :
- (a) 54 684 000,00 \$ 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 sont éligibles aux 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 pour la création d'une indemnité de distribution spéciale d'un montant équivalent à 6,8% de la valeur combinée de leur indemnité en vertu de l'article qui leur est applicable et de l'Indemnité de distribution spéciale 2013, indexé au 1er janvier 2020;
  - (b) 71 812 000,00 \$ en faveur des membres de la famille et des membres de la famille suite à une réclamation tardive qui sont éligibles à l'indemnisation pour la perte de conseil, de soin et de compagnie prévue à l'article 6.02 des Régimes pour la création d'une indemnité de distribution spéciale d'un montant équivalent à 50% de la valeur combinée de leur indemnisation prévue à cet article et de l'Indemnité de distribution spéciale 2013 lorsqu'applicable, indexé au 1er janvier 2020;
  - (c) 6 653 000,00 \$ en faveur des membres des recours et des membres des recours pour réclamation tardive éligibles à l'Indemnité de distribution spéciale 2013 accordée pour la diminution ou la perte de prestation de retraite pour la création d'une indemnité de distribution spéciale additionnelle d'un montant équivalent à 4% de leur perte de revenu annuel prévue à l'article 4.02 des Régimes, plafonné à 200 000,00 \$ par année avant 2014 et 200 000,00\$ plus indexation par année à compter de 2014; et
  - (d) 25 365 000,00 \$ en faveur des membres des recours, des personnes à charge, des membres des recours pour réclamations tardives et des 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, pour la création d'une Indemnité de distribution spéciale d'un montant équivalent à une majoration de 1,00 \$ de l'heure (en dollars 1999), avec indexation à compter du 1<sup>er</sup> janvier 2020, pour les heures indemnissables à titre de perte de services domestiques pour les années 2019 et suivantes, en sus de l'Indemnité de distribution spéciale 2013 octroyée à ce titre et payable prospectivement;

(collectivement les « Indemnités de distributions spéciale 2019 »)

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87. Le Comité conjoint requiert de cette Cour une déclaration à l'effet que les Indemnités de distribution spéciale 2019 à l'exception de celle prévue au sous-article (c) ci-dessus doivent être indexées à partir du 1<sup>er</sup> janvier 2020 (en dollars de 2020) jusqu'au 1<sup>er</sup> janvier de l'année de leur versement à l'aide de l'indice de pension et conformément à la méthode prévue à l'article 7.02 des Régimes;
88. Le Comité conjoint requiert également de cette Cour qu'elle ordonne qu'un montant de 1 400 000,00 \$ de Capital excédentaire 2019 soit alloué pour le paiement des coûts d'administration des Indemnités de distribution spéciale 2019;
89. Afin de permettre le rééquilibrage des trois comptes théoriques du Fonds en fiducie et leur suffisance respective en vue du paiement des Indemnités de distribution spéciales 2019, le Comité conjoint requiert de cette Cour qu'elle ordonne qu'un montant de 157 736 000,00 \$ de Capital excédentaire 2019 plus tout revenu de placement gagné sur cette somme à compter du 1<sup>er</sup> 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 transféré 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 1<sup>er</sup> 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 1<sup>er</sup> janvier 2020 jusqu'à la date du transfert à partir du Compte pour les réclamations tardives;
- conformément au paragraphe 20 du Rapport complémentaire Eckler (R-4);
90. Le Comité conjoint requiert également une ordonnance afin 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;
91. Le Comité conjoint demande également à la Cour d'ordonner que le solde du Capital excédentaire 2019 ne faisant pas l'objet d'une attribution ou d'une ordonnance au terme du présent jugement soit conservé dans le Compte des Indemnités régulières du Fonds en fiducie, sujet à tout autre demande future en vertu des Dispositions d'attribution prévues à la Convention de règlement;
92. Le Comité conjoint demande aussi à la Cour d'ordonner 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;
93. Le Comité conjoint recommande également à la Cour de déclarer que rien dans le jugement à intervenir n'aura 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

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94. Une demande similaire a été déposée auprès de la Cour supérieure de l'Ontario et le sera sous peu auprès de la Cour suprême de la Colombie-Britannique;
95. La présente requête est bien fondée en faits et en droit;

**POUR CES MOTIFS, PLAISE À LA COUR :**

**ACCUEILLIR** la présente Demande modifiée du requérant;

(...);

(...);

(...);

(...);

**ORDONNER** 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 et des membres reconnus de la famille en vertu du Régime à l'intention des Transfusés infectés par le VHC, du Régime à l'intention des Hémophiles infectés par le VHC (« les Régimes Réguliers ») ainsi que des membres reconnus des recours pour réclamations tardives et membres reconnus de la famille suite à une réclamation tardive en 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;

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- 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 même 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<sup>er</sup> 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 »)

**ORDONNER** 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<sup>er</sup> 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;

**ORDONNER** 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;

**ORDONNER** 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<sup>er</sup> janvier 2020 jusqu'à la date du transfert (calculé en appliquant le taux de rendement annuel des actifs investis du Fonds en

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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;

**ORDONNER** 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;

**DÉCLARER et ORDONNER** que le solde du Capital excédentaire 2019 ne faisant pas l'objet d'une attribution ou ordonnance au terme du (...) jugement à être rendu 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;

**ORDONNER** à l'Administrateur, selon le jugement à être rendu, 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;

**DÉCLARER** que rien dans le jugement à être rendu n'aura 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;

**ORDONNER** toute autre mesure que cette Honorable Cour juge juste et appropriée dans les circonstances;

**DÉCLARER** que le jugement à être rendu ne prendra effet qu'à partir du moment où un jugement similaire aura été rendu par les Tribunaux de l'Ontario et de la Colombie-Britannique;

**LE TOUT** sans frais.

Montréal, le 30 mars 2023

*Savonitto & Ass. inc.*

**SAVONITTO & ASS. INC.**

Procureur requérant Me Michel Savonitto, ès qualités  
de membre du Comité conjoint

### DÉCLARATION ASSERMENTÉE

Je, soussignée, **Martine Trudeau**, avocate, exerçant ma profession au sein de l'étude Savonitto & Ass. inc. sise au 468, rue St-Jean, Bureau 400 en les cité et district de Montréal, affirme solennellement ce qui suit :

1. J'assiste le requérant dans ses fonctions de membre du Comité conjoint pour la Province de Québec selon la Convention de règlement relative à l'Hépatite C 1986-1990 intervenue dans les présents dossiers, et plus spécifiquement dans le cadre de la présente demande;
2. Tous les faits allégués à la présente demande sont vrais.

ET J'AI SIGNÉ.



MARTINE TRUDEAU

Affirmé solennellement devant moi  
à Montréal, ce 30 mars 2023



Monique  
Poissant

51688

*Monique Poissant # 51688*

Monique Poissant # 51688

Commissaire à l'assermentation pour le Québec



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**AVIS DE PRÉSENTATION**

**Me Nathalie Drouin**  
**Me Andréane Joannette-Laflamme**  
**PROCUREUR GÉNÉRAL DU CANADA/  
ATTORNEY GENERAL OF CANADA**  
Complexe Guy Favreau Tour Est  
200, boul. René Lévesque Ouest, 5<sup>e</sup> étage  
Montréal (Québec) H2Z 1X4  
[nathalie.drouin@justice.gc.ca](mailto:nathalie.drouin@justice.gc.ca)  
[Andreane.Joannette-Laflamme@justice.gc.ca](mailto:Andreane.Joannette-Laflamme@justice.gc.ca)  
[notificationpgc-agc.civil@justice.gc.ca](mailto:notificationpgc-agc.civil@justice.gc.ca)

**Me Louise Comtois**  
**BERNARD, ROY (JUSTICE-  
QUÉBEC)**  
Ministère de la Justice du Québec  
Service du contentieux  
1, rue Notre-Dame Est  
Bureau 8.00  
Montréal (Québec) H2Y 1B6  
[louise.comtois@justice.gouv.qc.ca](mailto:louise.comtois@justice.gouv.qc.ca)  
[bernardroy@justice.gouv.qc.ca](mailto:bernardroy@justice.gouv.qc.ca)

**Me Mason Poplaw**  
**Me Kim Nguyen**  
**McCARTHY TÉTRAULT**  
1000, rue de la Gauchetière Ouest  
Bureau 2500  
Montréal (Québec) H3B 0A3  
[mpoplaw@mccarthy.ca](mailto:mpoplaw@mccarthy.ca)  
[knguyen@mccarthy.ca](mailto:knguyen@mccarthy.ca)

**PRENEZ AVIS** que la présente *Demande modifiée du Comité conjoint pour attribuer les fonds et autres éléments d'actifs du Fonds en fiducie du Règlement relatif à l'hépatite C 1986-1990* ne faisant pas l'objet d'une allocation actuarielle au 31 décembre 2019 sera présentée devant l'Honorable Chantal Corriveau, j.c.s. de la Cour supérieure du Québec, district de Montréal, siégeant dans et pour le district judiciaire de Montréal, au Palais de justice de Montréal situé au 1, rue Notre-Dame Est, à Montréal, province de Québec, **le 30 mai 2023 à 11h00 de l'avant-midi.**

**VEUILLEZ AGIR EN CONSÉQUENCE.**

Montréal, le 30 mars 2023

*Savonitto & Ass. inc.*

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**SAVONITTO & ASS. INC.**

Procureur requérant Me Michel Savonitto, ès qualités  
de membre du Comité conjoint

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### INVENTAIRE DES PIÈCES MODIFIÉ

- PIÈCE R-1 (en liasse) :** Déclaration assermentée de Heather Rumble Peterson en date du 12 mai 2022 et ses Exhibits A à Z, AA et BB;
- PIÈCE R-2 (en liasse) :** Déclaration assermentée de Euan Reid, actuaire chez Eckler Ltd, en date du 13 mai 2022 et ses Exhibits A (Rapport d'Allocation 2019) à E;
- PIÈCE R-3 (en liasse) :** Déclaration assermentée complémentaire de Heather Rumble Peterson en date du 23 mars 2023 et ses Exhibits A et B;
- PIÈCE R-4 (en liasse) :** Déclaration assermentée de Euan Reid, actuaire chez Eckler Ltd, en date du 19 décembre 2022 et son Exhibit A (Rapport complémentaire pour l'allocation du capital excédentaire 2019 du 10 novembre 2022).

Montréal, le 30 mars 2023

*Savonitto & Ass. inc.*

**SAVONITTO & ASS. INC.**

Procureur requérant Me Michel Savonitto, ès qualités  
de membre du Comité conjoint

Court File No. 98-CV-141369

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

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, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO and  
THE ATTORNEY GENERAL OF CANADA

Defendants

and

HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF ALBERTA, HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF SASKATCHEWAN, HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF MANITOBA, HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NEW BRUNSWICK, HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF PRINCE EDWARD ISLAND, HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NOVA SCOTIA HER MAJESTY THE QUEEN 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  
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendants

and

HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF ALBERTA, HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF SASKATCHEWAN, HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF MANITOBA, HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NEW BRUNSWICK, HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF PRINCE EDWARD ISLAND HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NOVA SCOTIA HER MAJESTY THE QUEEN 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*

This is the 39<sup>th</sup> Affidavit  
of Heather Rumble Peterson in the BC Action  
and was made on May 12, 2022  
No. C965349  
Vancouver Registry

**In the Supreme Court of British Columbia**

Between:

**Anita Endean, as representative plaintiff**

Plaintiff

and:

**The Canadian Red Cross Society  
Her Majesty the Queen 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,  
Her Majesty the Queen in Right of Canada, and  
Her Majesty the Queen 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 OF QUÉBEC**  
**DISTRICT OF MONTRÉAL**

**NO : 500-06-000016-960**

**SUPERIOR COURT**  
**Class action**

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**DOMINIQUE HONHON**

Plaintiff

-vs-

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

Defendants

-and-

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

**PETITIONER**

-and-

**FONDS D'AIDE AUX RECOURS COLLECTIFS**

-and-

**LE CURATEUR PUBLIC DU QUÉBEC**

Mis-en-cause

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**CANADA**  
**PROVINCE OF QUÉBEC**  
**DISTRICT OF MONTRÉAL**

**NO : 500-06-000068-987**

**SUPERIOR COURT**  
**Class action**

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**DAVID PAGE**

Plaintiff

-vs-

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

Defendants

-and-

**FONDS D'AIDE AUX RECOURS COLLECTIFS**

-and-

**LE CURATEUR PUBLIC DU QUÉBEC**

Mis-en-cause

AFFIDAVIT OF HEATHER RUMBLE PETERSON  
(Sworn May 12, 2022)

1. I am a partner in the firm Strosberg Sasso Sutts LLP. I was a member of the counsel team that litigated *Parsons et al. v. The Canadian Red Cross Society et al.* in Ontario and I have worked on the implementation and ongoing supervision of the 1986-1990 Hepatitis C Settlement Agreement (the “**Settlement Agreement**”) over the last 20+ years on behalf of Harvey Strosberg, a member of the Joint Committee. Throughout, I have been actively involved in the work undertaken on each triennial financial sufficiency review. I was provided access to the Administrator’s database for the phase one 2019 financial sufficiency review and have worked closely with the medical modelers, actuaries and Administrator on settlement and data-related issues. I also performed a significant number of database queries in preparation for the Joint Committee’s 2019 phase one financial sufficiency report to the Courts and in preparation for these applications. Additionally, in preparation for these applications, I have had ongoing communications with the actuaries for the Joint Committee and with the Administrator. As such, I have personal knowledge of the facts deposed except where stated to be on information and belief and, where so stated, I verily believe them to be true.

2. The actuarially unallocated asset provision agreed to by the parties and incorporated into the Settlement Agreement at the time of the settlement approvals (the “**Allocation Provision**”), permits the supervising courts in Ontario, British Columbia and Québec (the “**Courts**”) to exercise their unfettered discretion to allocate any actuarially unallocated assets (“**Excess Capital**”) for the benefit of approved class members and/or family members in such manner as the Courts determine is reasonable in all of the circumstances, provided there is no discrimination based upon where the class member received blood or resides.

3. Following the identification of the 2013 Excess Capital, the Courts used the Allocation Provision to create discrete benefits for approved class members and family members, including equivalent benefits for class members and family members who had missed the claims application deadline. Because there was a limit on the amount of 2013 Excess Capital available for allocation, a number of compensatory shortfalls in the Settlement Agreement remain.

4. I swear this affidavit in support of the Joint Committee's applications to have the Courts exercise their unfettered discretion to allocate the 2019 Excess Capital for the benefit of approved class members and family members<sup>1</sup> to address four compensatory shortfalls in the Settlement Agreement, which were addressed in part by the Courts' earlier allocation of the 2013 Excess Capital.

## **BACKGROUND**

### **The Allocation Provision of the Settlement Agreement**

5. The factual matrix giving rise to the Settlement Agreement and the Allocation Provision is set out in my prior affidavits, filed in support of the Joint Committee's applications to allocate the 2013 Excess Capital, so I will not repeat it here.

6. For ease of reference, the Allocation Provision of the Settlement Agreement is set out in the following orders/judgments of the Courts:

- (a) consent order granted by Winkler, J. in Ontario dated October 22, 1999;

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<sup>1</sup> For brevity and simplicity, the terms approved class members, family members and dependants have been used throughout, however they should be taken to include approved late claim class members, late claim family members and late claim dependants, as applicable.

- (b) consent orders granted by Smith, J. in British Columbia dated October 28, 1999; and
- (c) judgment of Morneau, J. in Québec dated November 19, 1999 approving the modifications set forth in “Annexe F”;  
(collectively, the “**Approval Orders**”).

Annexed and marked as **Exhibit “A”** is the Approval Order that issued in Ontario with Schedule 1, the Settlement Agreement, only. Given the length of the order/judgments, I have annexed and marked as **Exhibit “B”** the order issued in British Columbia without attachments and as **Exhibit “C”** the judgment issued in Québec with Annexe F only.

7. The Allocation Provision (paragraph 9 of the Ontario Approval Order, paragraph 5 of the BC Approval Order, and Annexe F of the Québec Approval Order) provides that the Courts may, in their unfettered discretion, determine that all or any portion of Excess Capital held by the Trustee be:

- (a) allocated for the benefit of approved class members or family members or in any manner that may be reasonably expected to benefit them;
- (b) paid to all or some of the Federal, Provincial and Territorial Governments (the “**FPT Governments**”); or
- (c) retained in the Trust Fund.

### **The 2013 Financial Sufficiency Review**

8. Following the filing of the application records for the phase one financial sufficiency review triggered December 31, 2013, the Courts declared that the Trust was financially sufficient. For the first time, the Courts also declared that the Trustee held 2013



Excess Capital as at December 31, 2013. Annexed and marked as **Exhibit “D”** is the 2013 financial sufficiency phase one order that issued in Ontario. A substantially similar order/judgment was issued in British Columbia and Québec. They are annexed and marked as **Exhibits “E”** and **“F”**, respectively.

9. The Joint Committee and the Federal Government each brought applications to have the Courts apply the Allocation Provision to allocate the 2013 Excess Capital.

10. The Courts 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. The Courts rejected two other allocations requested by the Joint Committee and dismissed the Federal Government’s applications to have the 2013 Excess Capital allocated to Canada. Annexed and marked as **Exhibits “G”**, **“H”** and **“I”** are the orders/judgment that issued in Ontario, British Columbia and Québec, respectively (the **“2013 Special Distribution Benefits Allocation Orders”**).

11. As a step toward implementation of the 2013 Special Distribution Benefits Allocation Orders, the Courts 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”**). 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 the risk of insufficient funds – a holdback of 25% on the amount

of each benefit payable pending a finding of financial sufficiency. Given the length of the orders/judgment, I have annexed and marked as **Exhibit “J”** the HCV Late Claims Benefit order that issued in Ontario, with Schedule A, the HCV Late Claims Benefit Plan, only, and as **Exhibits “K”** and **“L”** the order/judgment that issued in British Columbia and Québec, respectively, without attachments.

12. On subsequent applications brought by the Joint Committee, the Courts allocated 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 in paragraph 10 above, the **“2013 Special Distribution Benefits”**). 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. Annexed and marked as **Exhibits “M”**, **“N”** and **“O”** are the 2013 Special Distribution Benefits implementation orders/judgment that issued in Ontario, British Columbia, and Québec, respectively.

13. 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”**).

### **The 2016 Financial Sufficiency Review**

14. Following the subsequent triennial financial sufficiency review triggered on December 31, 2016, the Courts declared that overall the Trust had sufficient assets to meet its long-term liabilities, although the HCV Late Claims Benefit Account was found to be insufficient. The Courts held that the Trust had actuarially unallocated assets of between \$173,600,000 and \$187,500,000 million as at December 31, 2016. Annexed and marked as **Exhibits “P”, “Q” and “R”** are copies of the 2016 financial sufficiency phase one orders/judgment that issued in Ontario, British Columbia and Québec, respectively.

15. The Joint Committee did not seek an allocation of the actuarially unallocated assets on that occasion, permitting the newly implemented HCV Late Claims Benefit Plan to operate for a time so as to gain a better sense of the take-up rate and any additional funding that might be required. The Federal Government did not seek an allocation of actuarially unallocated assets on that occasion either.

### **The 2019 Financial Sufficiency Review**

16. The current triennial financial sufficiency review was triggered as at December 31, 2019. Following completion of their phase one financial sufficiency work, Eckler Ltd. (“**Eckler**”), the actuaries retained by the Joint Committee, and the actuaries retained by the Federal Government, Morneau Shepell (“**Morneau**”), both expressed the opinion in their reports filed that overall the Trust was financially sufficient to meet its expected liabilities as at December 31, 2019. They also both expressed the opinion that, after taking into account sufficient monies to protect the approved class members from major adverse experience or

catastrophe, the Trustee held Excess Capital. Eckler opined that there is \$197,596,000 Excess Capital, while Morneau opined there is \$203,578,000 Excess Capital.

17. The actuaries offered these opinions despite concluding that:
- (a) the PT Notional Fund is insufficient to pay 3/11ths of the total liabilities and will be exhausted by the year 2030; and
  - (b) the HCV Late Claims Benefit Account is financially insufficient as at December 31, 2019 by between \$21,879,000 (Eckler) and \$22,981,000 (Morneau).

18. Neither the insufficiency nor the shortfall identified by the actuaries is an impediment to these applications to allocate the 2019 Excess Capital. The actuarial reports make clear that both the insufficiency and the shortfall are accounted for before the 2019 Excess Capital is realized.

### **The 2019 Financial Sufficiency Phase One Orders**

19. By orders/judgment granted between January and March 2021 (collectively, the **“2019 Financial Sufficiency Phase One Orders”**), 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 the transfer of \$22,981,000 of excess assets from the HCV Special Distribution Benefit Account to the HCV Late Claims Benefit Account as at January 1, 2020 to eliminate the insufficiency; and,

- (d) declared that as at December 31, 2019 the Trustee held actuarially unallocated assets of between **\$197,596,000** and **\$203,578,000**.

Annexed and marked as **Exhibits “S”, “T” and “U”**, are the 2019 Financial Sufficiency Phase One Orders that issued in Ontario, British Columbia and Québec, respectively.

20. Having addressed the insufficiency of the HCV Late Claims Benefit Account in the 2019 Financial Sufficiency Phase One Orders, the Courts also ordered the removal of the 25% restriction or holdback on benefit payments under the HCV Late Claims Benefit Plan and directed the immediate payout of amounts that were held back and the payment of full benefits going forward.

#### **The Liabilities of the Trust Require Restatement Due to Facts Subsequently Discovered**

21. Following the issuance of the 2019 Financial Sufficiency Phase One Orders, an additional sufficiency liability of **\$2,559,000** was confirmed by the Administrator of the settlement. In particular, the Administrator confirmed that retroactive 2013 Special Distribution Benefits owing to some approved class members and/or family members that it had been asked to investigate following the 2019 phase one sufficiency work had mistakenly not been issued by the preceding Administrator.

22. The Joint Committee requests that the liabilities of the Trust as at December 31, 2019 be restated in order to reflect this additional liability in the financial position of the Trust Fund to ensure that the Trust Fund’s liabilities are accurately recorded and the risks approved class members are exposed to are appropriately managed.

23. When the liabilities are restated to take into account this increase, the 2019 Excess Capital held by the Trustee is reduced to between **\$195,037,000** and **\$201,019,000** as at December 31, 2019 and the excess assets of the HCV Special Distribution Benefit Account are reduced to between \$2,178,000 and \$3,109,000 as at January 1, 2020. The Joint Committee requests that the 2019 Financial Sufficiency Phase One Orders be varied accordingly.

### **Claims Experience**

24. The administration database utilized by the Administrator which was provided to me and to the medical modelers and the actuaries for the 2019 phase one work is the primary source for the claims data. The Administrator also provides the Joint Committee with monthly and annual administrative reports which include statistics on the claims, class members and claims payments. Annexed and marked as **Exhibit “V”** is the Summary of Payments table from the December 2021 administrative report for the Regular Benefit Plans and as **Exhibit “W”** the Summary of Payments table from the December 2021 administrative report for the HCV Late Claims Benefit Plan. Annexed and marked as **Exhibit “X”** is the Claims Received Summary from the revised 2021 annual administrative report for the Regular Benefit Plans and as **Exhibit “Y”** the Claims Received Summary from the 2021 annual administrative report for the HCV Late Claims Benefit Plan.

25. The administration database used for the 2019 phase one work records approximately **5,369** class members approved under the Regular Benefit Plans (including 3,282 alive, 487 who had died before January 1, 1999 and 1,600 who have died since 1999) as at December 31, 2019. The corresponding database for the HCV Late Claims Benefit Plan records **16** approved class members as at that date. Since December 31, 2019, the 2021 annual administrative reports (Exhibits “X” and “Y”) show an additional **3** class members have been

approved under the Regular Benefit Plans and an additional **25** class members have been approved under the HCV Late Claims Benefit Plan up to December 31, 2021.

26. The administration database used for the 2019 phase one work also records approximately **9,383** approved family members under the Regular Benefit Plans as at December 31, 2019, while the corresponding database for the HCV Late Claims Benefit Plan records **108** family members approved as at that date. Since December 31, 2019, the 2021 annual administrative reports (Exhibits “X” and “Y”) show an additional **142** family members have been approved under the Regular Benefit Plans and an additional **58** family members have been approved under the HCV Late Claims Benefit Plan up to December 31, 2021.

27. As of December 31, 2019, the administration database records **\$1,117,527,111** in benefit payments have been processed for approved class members and their family members (\$1,022,196,868 from the HCV Regular Benefit Account, \$93,505,782 from the HCV Special Distribution Benefit Account and \$1,824,461 from the HCV Late Claims Benefit Account). The monthly administrative reports for December 2021 (Exhibits “V” and “W”) show an additional **\$78,888,225** in benefit payments have been processed for approved class members and their family members (\$57,912,990 from the HCV Regular Benefit Account, \$8,576,398 from the HCV Special Distribution Benefit Account and \$12,398,837 from the HCV Late Claims Benefit Account) through to December 31, 2021.

28. Overall, this equates to **\$1,196,415,337** in benefit payments (\$1,080,109,858 from the HCV Regular Benefit Account, \$102,082,181 from the HCV Special Distribution Benefit Account and \$14,223,298 from the HCV Late Claims Benefit Account) processed for approximately **5,413** approved class members and **9,691** family members under the Plans and as

2013 Special Distribution Benefits from inception of the claims administration to December 31, 2021.

### **REQUEST FOR ALLOCATION OF THE 2019 EXCESS CAPITAL**

29. The Allocation Provision added to the Settlement Agreement by agreement of the parties provides the possibility for approved class members to gain benefits from Excess Capital above and beyond the scheduled benefits contained in the Plans and the possibility for the FPT Governments to access Excess Capital before the termination of the administration.

30. By these applications, the Joint Committee requests the Courts to exercise their unfettered discretion to allocate **\$194,941,000** of 2019 Excess Capital, inclusive of costs of administration, pursuant to the Allocation Provision for the benefit of approved class members and family members to further address compensatory shortfalls in the Settlement Agreement in respect of the following four heads of damages, which were addressed, in part, by the creation of the 2013 Special Distribution Benefits:

- (a) fixed payments for non-pecuniary general damages and/or death benefits;
- (b) family member payments for loss of guidance, care and companionship;
- (c) lost or diminished pension benefits; and
- (d) compensation for loss of services of the class member in the home.

31. While the allocation of 2013 Excess Capital addressing these same compensatory shortfalls is not determinative of whether the Joint Committee's recommendations should be accepted, it does eliminate several of the questions previously at issue in that the Courts have already determined that allocations in respect of these particular heads of damages:



- (a) are permissible allocations pursuant to the Allocation Provision of the Settlement Agreement;
- (b) do not require the amendment of the Settlement Agreement;
- (c) do not increase the burden on the defendants under the Settlement Agreement;  
and
- (d) are non-discriminatory based upon where the class member received blood or resides.

32. The Courts' decisions at that time also addressed impermissible allocations under the Allocation Provision holding that it cannot be used to alter the bargain or amend the Settlement Agreement. The allocations recommended for allocation of the 2019 Excess Capital do not cross that line.

### **The Joint Committee's Guiding Principles**

33. In its deliberations on what recommendations to make concerning the allocation of the 2019 Excess Capital, the Joint Committee continued to be guided by the principles it had adopted for its applications for allocation of the 2013 Excess Capital, that is to:

- (a) address compensation thought to be most compromised in comparison to damages law;
- (b) prioritize class member/family member input to the extent it is consistent with the principles of damages law;
- (c) address issues that class members have brought to the attention of the Administrator to the extent they are consistent with the principles of damages law;

- (d) benefit the class as broadly as possible to the extent this is not inconsistent with the factors outlined above;
- (e) consider the administrative burden of implementation on class members; and
- (e) consider the costs of administering the benefit.

34. In addition, the Joint Committee was guided by the directive in the 2013 Special Distribution Benefits Allocation Orders that stated late claims class members not be treated differently.

35. These principles, with the exception of the burdens and costs, are addressed in the next sections and the recommendation sections that immediately follow. The rationale for the recommended allocations is also set out in the recommendation sections. The burdens, logistics and administrative costs of implementation of the recommended allocations are subsequently addressed separately in paragraphs 112 to 123.

### **Input From Class Members and the Administrator**

36. When Excess Capital was first identified in the 2013 financial sufficiency review, the Joint Committee prioritized hearing directly from as many members of the class as possible. It consulted extensively with class members by means of several in-person sessions, three of which were also webcast over the internet. The Joint Committee also reviewed hundreds of written submissions from class members filed as part of the evidentiary record on the Joint Committee's 2013 allocation applications and, also, in support of these applications. It also had the benefit of hearing from those class members who testified at the 2013 allocation hearings.

37. 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. (“**Epiq**”), 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.

38. Initially, I consulted with Joe Bottrell, who was the HCV administration project manager for Epiq until his recent death. Subsequently, I engaged in further discussions with Jason Lobo, the HCV assistant project manager, and Jennifer Langlotz and Jennifer McSheffrey, the lead nurses for the HCV administration at Epiq, who have day-to-day direct contact with class members and claimants.

39. The Administrator hears from claimants, class members and family members concerning the benefits that they may be entitled to from time to time during the course of claims administration. The HCV administration team informed me that generally no new concerns regarding the nature of the benefits that are available have been communicated to them with any regularity, however some of the same concerns with the quantum of some of the benefits as have been communicated in the past continue to be raised by claimants and class members, from time to time.

40. The nurses specifically informed me that the following discrete benefits provided under the 2013 Special Distribution Benefits Allocation Orders were well received by class members and family members and seem to address these needs based on the input that they have received:

- (a) the increased cost of care allowance for disease level 6 approved class members to date has proved sufficient to meet those claims that have exceeded the original limit;

- (b) the out-of-pocket allowance for family members' attendance on HCV medical visits has been both well received and well utilized;
- (c) the election for extended loss of services payments to permanently disabled dependants has been exercised by those claimants who are eligible; and
- (d) the election for disease level payments and other benefits for living co-infected hemophiliacs who originally took the \$50,000 alternative benefit under section 4.08 of the Hemophiliac HCV Plan was exercised by many of the class members it was meant to benefit. Efforts to locate a few remaining class members that may yet be eligible are ongoing.

41. The nurses also informed me that claimants, approved class members and newly approved 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, the nurses informed me that 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 four heads of damages addressed in the Joint Committee's applications, which form the core of any damages award, seek to further address the concerns previously communicated to the Joint Committee and the Courts, which class members continue to identify as falling short of compensating for the losses and damages suffered.

43. The Joint Committee anticipates giving approved class members notice of these applications (and any application by the Federal Government) and the opportunity to comment

on the recommendations through written submissions for consideration and presentation to the Courts in advance of the hearings.

### **Estimates are Based on Input from Eckler and the Administrator**

44. Eckler has played a significant role in investigating the assumptions underlying the recommended allocations, analyzing claims data, providing their actuarial analysis, calculating the liabilities and estimating the allocations of 2019 Excess Capital and required capital needed to implement the recommendations. The Eckler 2019 Allocation Report is appended to the affidavit of Euan Reid, filed in support of these applications. Mr. Reid is one of the principals at Eckler.

45. Mr. Bottrell and IT personnel at Epiq who work on the CLASS database were involved in providing updated information from the claims database concerning the class members, the benefit payments and in estimating the administration costing associated with implementation of the recommended allocation benefits.

### **Explanation of Temporal Dollar Value of Benefit Amounts and Benefit Indexation and Accounting**

46. For simplicity and clarity, when I refer to benefits amounts in the recommendation sections that follow I am referring to the benefits in **1999 dollars** as they appear in the Regular Benefit Plans, unless I indicate otherwise. The approximate conversion rate for 1999 dollars to 2020 dollars is 1.487 (rounded from the rate Eckler has provided at page 12 of the Eckler 2019 Allocation Report in Mr. Reid's affidavit).

47. The payments under the Regular Benefit Plans are accounted for in the HCV Regular Benefit Account. All FPT Governments contribute to the payment of these benefits and to the costs of their administration.

48. The 2013 Special Distribution Benefits are expressed in 2014 dollars, which is the year immediately following the end date of that review and the start date of the next triennial financial sufficiency review period.

49. Except as provided in paragraph 50 below, the payments for 2013 Special Distribution Benefits are accounted for in the HCV Special Distribution Benefit Account. The PT Governments do not contribute to the payment of these benefits or to the costs of their administration.

50. The amounts payable under the HCV Late Claims Benefit Plan are identical to the benefits payable under the Regular Benefit Plans after indexing to 2014 dollars plus the 2013 Special Distribution Benefits that are included within the HCV Late Claims Benefit Plan itself.

51. The payments for these combined benefits under the HCV Late Claims Benefit Plan are accounted for in the HCV Late Claims Benefit Account. The PT Governments do not contribute to the payment of these benefits or to the costs of their administration.

52. The 2019 Special Distribution Benefits recommended by the Joint Committee are expressed in **2020 dollars**, which is the year immediately following the end date of that review and the start date of the next triennial financial sufficiency review period. If granted, it is proposed that the 2019 Special Distribution Benefits for all Plans be accounted for in the HCV Special Distribution Benefit Account. These applications expressly provide that the PT

Governments will not be required to contribute to the 2019 Special Distribution Benefits nor to the costs of their administration.

53. Most of the amounts payable under the Plans are indexed to the year in which they are actually paid using the Canadian Pension Index (section 7.02 of the Plans). Similarly, most of the 2013 Special Distribution Benefits are indexed to the year in which they are actually paid as provided for in the 2013 Special Distribution Benefits Allocation Orders. If granted, it is proposed that most of the 2019 Special Distribution Benefits also be indexed to the year in which they are paid.

#### **THE JOINT COMMITTEE'S FOUR RECOMMENDATIONS**

54. Similar to the circumstances at the time of the original settlement approval hearings and the 2013 allocation hearings, the discrete benefits recommended by the Joint Committee herein are limited by the funds available, so not all shortcomings in compensation to approved class members and family members under the Settlement Agreement have been addressed fully at this time.

#### **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**

55. 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 in the future based upon further 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).

56. These non-pecuniary general damage and death benefit awards under the Settlement Agreement were an area of compromise for many approved class members and family members. The fixed payments for these heads of damage under the settlement were set lower than damage awards at law would permit to ensure that the fixed settlement amount would be sufficient to distribute across all of the heads of damages sought to be addressed and to meet the claims of the unknown number of class members who would come forward and be approved.

57. Non-pecuniary general damages seek to compensate for intangible losses, like pain and suffering and loss of enjoyment and loss of expectation of life. Many approved class members spoke about the nature and effects of their infection and its chronic and progressive harm, including the impacts on physical and mental wellbeing, daily living and family dynamics at the earlier town hall consultation sessions, many more wrote concerning them, and some testified to them at the 2013 allocation hearings. The uniform view expressed was that the awards did not adequately compensate for the life-altering, chronic, progressive and life-threatening nature of hepatitis C.

58. Based on the amount of 2013 Excess Capital available and the competing interests of the other benefits sought to be addressed at the time, the Joint Committee recommended a percentage increase for fixed payments that would move approved class members closer to the upper limit of compensation for non-pecuniary general damages set by the Supreme Court of Canada in 1978, yet not attain it. The available 2019 Excess Capital provides an opportunity to address this remaining shortfall.

59. The Courts previously held that addressing this compensatory shortfall was a permissible use of the Allocation Provision, accepted the allocation recommended by the Joint Committee and ordered the creation of a discrete benefit equal to 8.5% of fixed payments for



non-pecuniary general damages and death benefits as one of the 2013 Special Distribution Benefits.

60. By these applications, 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.

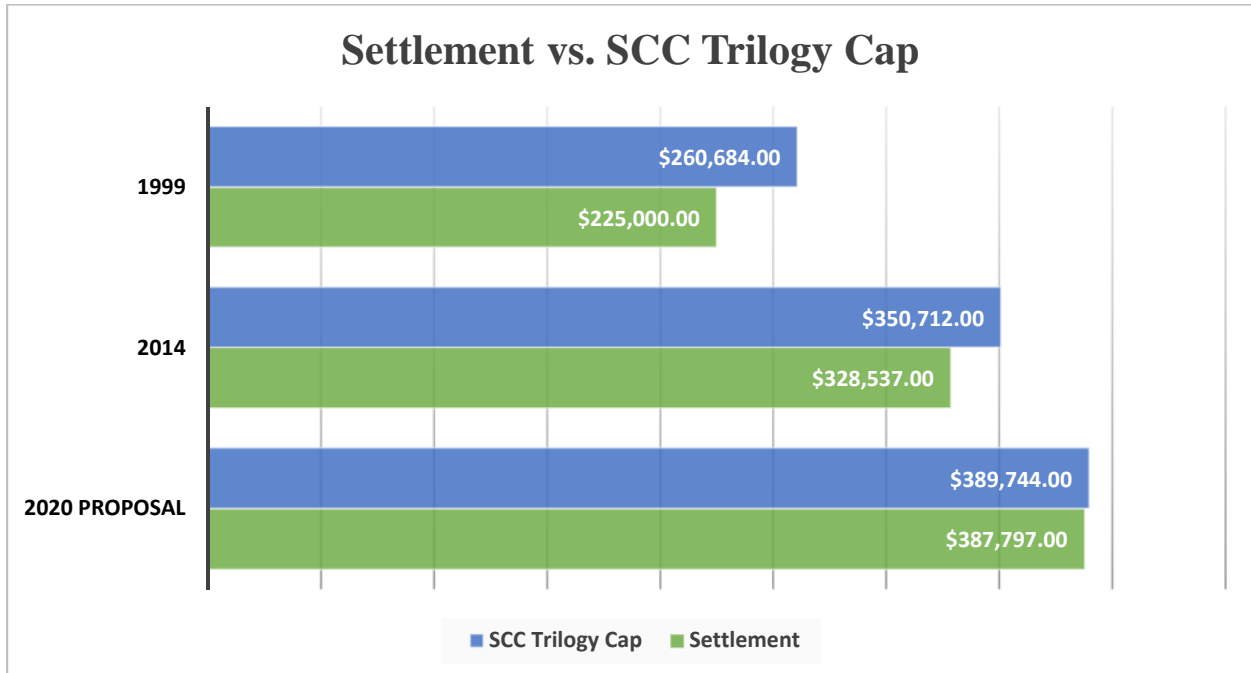
61. The maximum amount payable to approved class members for the cumulative disease level fixed payments for non-pecuniary general damages under the Regular Benefit Plans is a total of \$225,000 for those who attain disease level 6. Mr. Reid has advised that this cumulative amount is 15.9% below the \$260,684 limit on non-pecuniary general damages set by the Supreme Court of Canada in the trilogy of cases in 1978, after adjustment for inflation to 1999 dollars.

62. Following the Courts' creation of a 2013 Special Distribution Benefit equal to 8.5% of the fixed payments for non-pecuniary general damages, indexed to January 1, 2014, Mr. Reid advises the combined benefits payable based on cumulative disease levels are \$328,537 in 2014 dollars as compared to the 2014 adjusted trilogy limit of \$350,712.

63. The recommended 6.8% allocation would, while abiding the trilogy limit, address the remaining difference between the combined amounts payable based on the cumulative disease levels and the trilogy. Mr. Reid advises the recommended allocation of 6.8% would

make these combined benefits payable based on cumulative disease levels \$387,797 in 2020 dollars as compared to the 2020 adjusted trilogy limit of \$389,744.

64. In summary, the compensation shortfall under the settlement relative to the Supreme Court of Canada trilogy cap historically and under the Joint Committee's recommendation is as follows:



65. 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:

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

66. The Joint Committee makes this recommendation based not only on the life altering impact of the disease communicated by class members, but also on the evidence from the report of the Medical Modelling Working Group (“**MMWG**”) attached to the affidavit of Dr. Murray Krahn and from the affidavit of Dr. Vince Bain, each filed in support of the phase one 2019 financial sufficiency review, one aspect of which I summarize below.

67. The administrative database records that the deaths of at least 487 approved class members who died before January 1, 1999 and 745 approved class members who died since January 1, 1999 were caused by hepatitis C. The MMWG 2019 medical model (summarized at Table 13 of the 2019 MMWG Report) predicts the long-term prognosis for the 3,393 approved class members alive as of May 31, 2019. Notwithstanding the higher efficacy of direct-acting anti-viral agents, the following proportion of the surviving class members already have or are predicted to go on to develop the following disease states by 2070:

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

68. All approved class members alive on January 1, 1999, with the exception of those who were later determined to be Health Canada negative, would be entitled to benefit from this recommended allocation. This equates to approximately **4,926** approved class members eligible for disease level payments under the Plans through December 2021 who would benefit

retroactively from the allocation requested. The allocation would also benefit prospectively those approved class members whose disease continues to progress, as well as those claimants with in-progress claims and/or future claimants who are subsequently approved.

69. The other fixed payments included within the recommended 6.8% allocation are as follows:

- (a) a \$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) 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 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) an alternative death benefit option for 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: a fixed payment of \$72,000 to be shared among them (section 5.01(4) Hemophiliac HCV Plan and 5.01(4)(hemo) HCV Late Claims Benefit Plan).

The previous 8.5% allocation of 2013 Excess Capital also applied to each of these fixed payments.

70. If granted, the amounts payable for the discrete benefit created in relation to these fixed payments would be as follows:

Fixed Payment Type	<b>6.8% Allocation</b> 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 death benefit option for approved class members whose death prior to January 1, 1999 was caused by HCV	\$5,487
\$120,000 death benefit option for approved class members whose death before January 1, 1999 was caused by HCV	\$13,169
\$72,000 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

71. The estates of all approved class members whose death before January 1, 1999 was caused by hepatitis C, with the exception of those who were later disqualified or determined to be Health Canada negative, would be entitled to benefit from this recommended allocation, as would 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, **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.

72. There are several provisions in the Plans that 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:

- (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
- (c) the benefits under the Plans are inclusive of prejudgment interest (section 4.09), unlike the award set by the Supreme Court of Canada in the trilogy cases.

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

73. Approved family members of an approved class member whose death was caused by his or her infection with HCV 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).

74. The loss of guidance, care and companionship awards under the Plans were an 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 in order to ensure the fixed amount that was available for settlement was sufficient to cover all class members and family members who come forward and are approved, as well as all of the areas of compensation sought to be addressed by the settlement.

75. While Canadian law has long recognized that no amount of money can replace the value of a lost life, these types of damages are awarded to give recognition and compensation for the seriousness of the family's loss. 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.

76. The Courts previously held that addressing this compensatory shortfall was a permissible use of the Allocation Provision, accepted the allocation recommended by the Joint Committee, and ordered the creation of a discrete benefit of \$4,600, indexed, for parents and children age 21 or older for loss of guidance, care and companionship as one of the 2013 Special Distribution Benefits.

77. The allocation requested at that time was limited to only parents and adult children because of the limit on the amount of 2013 Excess Capital available for allocation and the number of other compensatory shortfalls that the Joint Committee was asking the Courts to address. These awards to parents and adult children were first addressed because the Joint Committee believed their benefits were out of step with the grid of benefits created for loss of guidance, care and companionship payable to the other groups of family members under the settlement.

78. While this prior allocation of 2013 Excess Capital addressed a disparity between the benefits payable among the various groups of family members entitled to an award under the settlement, it did not address the broader compensatory shortfall of undervalued loss of guidance, care and companionship benefits under the settlement generally. The available 2019 Excess Capital provides the opportunity to address this disparity.

79. By these applications, 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 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.

80. 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:

<b>Family Member</b>	<b>50% allocation on loss of guidance, care and companionship + 2013 Special Distribution Benefit for Child &gt;21 and Parent (in 2020 dollars)</b>
<b>Spouse</b>	\$18,593
<b>Child &lt; 21</b>	\$11,155
<b>Child 21 &gt;</b>	\$7,139
<b>Parent</b>	\$7,139
<b>Sibling</b>	\$3,718
<b>Grandparent/grandchild</b>	\$372

81. In some provinces and territories, legislation fixes the quantum for awards for loss of guidance, care and companionship, bereavement or grief while the quantum is set by the courts on a case-by-case basis in the others. 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.



82. 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.

83. 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:

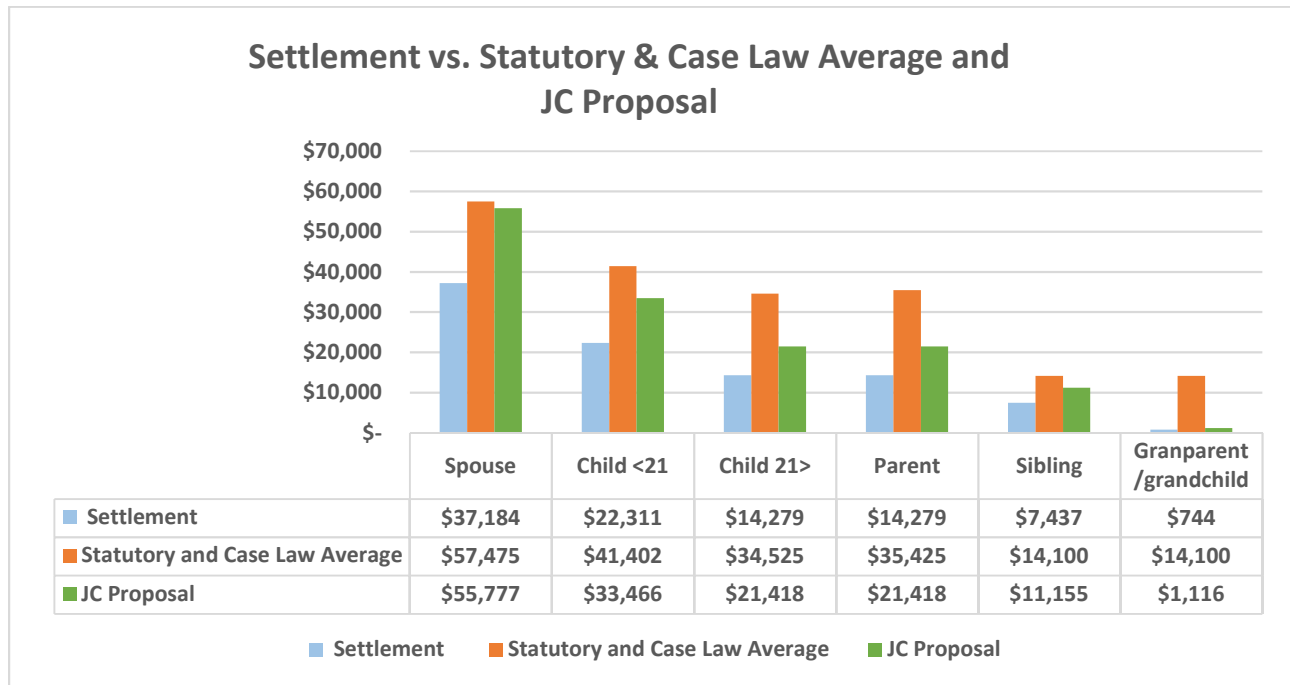
<b>Family Member</b>	Plans including the allocation of 2013 Excess Capital (1999 dollars)	Plans including the allocation of 2013 Excess Capital (2020 dollars)	<b>Combined benefits plus recommended allocation of 2019 Excess Capital (2020 dollars)</b>	Alberta statute	Manitoba statute	Sask. statute	Yukon statute
<b>Spouse</b>	\$25,000	\$37,184	<b>\$55,777</b>	\$82,000	\$42,301	\$60,000	\$75,000
<b>Child &lt; 21</b>	\$15,000	\$22,311	<b>\$33,466</b>	\$49,000	\$42,301	\$30,000	\$45,000
<b>Child 21 &gt;</b>	\$9,600	\$14,279	<b>\$21,418</b>	\$49,000	\$14,100	\$30,000	\$45,000
<b>Parent</b>	\$9,600	\$14,279	<b>\$21,418</b>	\$82,000 divided if two	\$42,301	\$30,000	\$37,500 each or \$75,000 if only one
<b>Sibling</b>	\$5,000	\$7,437	<b>\$11,155</b>		\$14,100		
<b>Grandparent/ grandchild</b>	\$500	\$744	<b>\$1,116</b>		\$14,100		

84. 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:

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

85. Annexed and marked as **Exhibit “Z”** is a report prepared for the Alberta Government released in September 2021 that compares these types of awards nationwide and is the basis for the information set out in the preceding charts.

86. 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:



87. All approved family members who elected a loss of guidance, care and companionship award under the Plans would be entitled to benefit from this recommended allocation. This equates to approximately **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.

88. The operative provisions of the Plans contain limitations on loss of guidance, care and companionship awards. Under the Plans 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. The awards under the Plans are also inclusive of prejudgment interest which would not be the case in traditional court awards. The fact of these uncompensated losses militates against any argument

that approved family members will be overcompensated if the Courts grant the recommended allocation.

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

89. The Regular Benefit Plans provide that persons 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.

90. The settlement does not however contain any provision to compensate for loss of employment benefits, including loss or diminishment of pension, suffered as a result of approved class members being disabled from working due to their infection with HCV.

91. 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 and the deductions from income required in the calculations of the loss departed from ordinary damages principles. These compromises were made to help ensure the fixed settlement amount would be sufficient to fund benefits to all class members who came forward and were approved.

92. The Joint Committee asked Eckler to investigate the creation of a lost or diminished pension benefit funded from the 2013 Excess Capital. Eckler opined in its report prepared for the 2013 allocation hearings 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. The Joint Committee however only recommended 10% of income loss be allocated at that time because of the fixed amount of 2013 Excess Capital available and the competing interests of other benefits it sought to address. The available 2019 Excess Capital provides the opportunity to address this.

93. The Courts held that this was a permissible use of the Allocation Provision and ordered the creation of a discrete benefit in an amount equal to 10% of an approved class member's annual loss of income capped at \$200,000 to address lost or diminished pension benefits as one of the 2013 Special Distribution Benefits.

94. By these applications, 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 their annual loss of income payment capped at \$200,000 per annum before 2014 and \$200,000 per annum indexed thereafter, 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, depending on the actual amount of a claimant's annual income loss payment.

95. Because the replacement value of this loss was not addressed in full by the allocation of 2013 Excess Capital, the Joint Committee asked Eckler to again consider the reasonable allocation for lost or diminished pension benefits. Eckler notes that although 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, it is their opinion 14% of income continues to be a reasonable and appropriate proxy for lost or diminished pension benefits.

96. Based on the income loss payment information recorded in the administration database that I have reviewed, 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, if the allocation recommended is granted.

97. All approved class members entitled to receive loss of income awards would be eligible to benefit from this recommended allocation to address the difference between the 10% benefit created by the 2013 Special Distribution Benefit and the 14% recommended by Eckler as the reasonable equivalent rate for lost or diminished pension benefits. As at December 31, 2019, the administration database records approximately **338** approved loss of income claimants under the Plans who would be entitled to benefit retroactively and, to the extent their loss is ongoing, prospectively from this recommended increase to the lost or diminished pension benefit. This allocation may also benefit prospectively some of the approximately:

- (a) **1,234** living approved class members under age 65 at disease levels 2 and 3 who may yet progress in their disease and experience income loss;
- (b) **163** living approved class members under age 65 at disease level 4 or higher who have not yet claimed loss of income benefits who may yet experience an income loss; and
- (c) in-progress and future claimants who later qualify under the Plans and experience an income loss.

98. The operative provisions to calculate income loss under the Settlement Agreement require the deduction of collateral benefits from the income loss calculation,

therefore even 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)). The operative provisions also require the employee contribution of 4.95% of yearly pensionable earnings for CPP to be deducted from their income loss, yet these class members receive no entitlement to a CPP pension in respect of this deduction (section 4.02(2)(e)). These ongoing compromises in damages recoverable for this pecuniary loss supports the reasonableness of the increase to lost or diminished pension benefit that is requested and militates against any argument that approved class members will be overcompensated if the recommended allocation is granted.

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

99. 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 disabled from doing so because of their HCV (section 4.03). Approved class members may claim lost services 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 (section 4.03). 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).

100. 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 granted extends the timeframe benefits are payable for permanently disabled dependants.) 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.

101. Many written and oral communications to the Joint Committee from approved class members and their dependants received before the 2013 allocation hearings indicated that the number of hours and the amounts paid in respect of this loss were inadequate to permit them to replace the services that they had lost. Many also described how vital the loss of services payments are to their family's survival.

102. Before the 2013 allocation hearings, Kevin O'Connell, project manager for the Administrator at the time, advised that the claims data from the preceding three years showed approximately 95% of approved class members provided in excess of 20 hours per week of services in the home, and on average provided about 47 hours of services in the home per week pre-disability.

103. Because of the limits on the 2013 Excess Capital available and the competing interests of the other benefits it was seeking to address, the Joint Committee recommended only a 2 hour per week benefit to supplement loss of services in the home. The available 2019 Excess Capital provides the opportunity to further address this shortfall.

104. The Courts held that this was a permissible allocation under the Allocation Provision, accepted the recommendation, and ordered the creation of a discrete benefit of 2 hours per week payable retroactively and prospectively to those class members and dependants approved for the maximum number of hours recoverable for loss of services of the approved class member in the home.



105. By these applications, the Joint Committee recommends that the Courts allocate **\$60,272,000** of the 2019 Excess Capital 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 equal to \$2 per hour, indexed to January 1, 2020, for the compensable hours of lost services from and after 2014 under the sections and any applicable 2013 Special Distribution Benefit, payable retroactively and prospectively as a special distribution. The Joint Committee was required to limit the retroactive component of the allocation that is being recommended to those years from and after 2014 because of the limits on the 2019 Excess Capital available and the competing interests of the other benefits it is seeking to address at this time.

106. Given the significant disparity between the losses that approved class members and dependants report experiencing and the amounts that they are receiving to compensate for these lost services and given that this disparity was only addressed in part by the 2013 Special Distribution Benefit created, the Joint Committee asked Eckler to once again investigate the current cost of replacing these services.

107. Eckler's investigation revealed regional differences in rates for these services. Nevertheless, it is Eckler's opinion that the current rate is insufficient to cover replacement services in many jurisdictions and that providing a \$2 per hour benefit for compensable hours of lost services results in a reasonable rate of compensation, which broadly reflects the actual replacement cost of services in the home. Eckler specifically notes that sales tax on invoices for these services that range from 5-15% across the country have not been included in the rates reported (Appendix A at page 15 of the Eckler 2019 Allocation Report).

108. Brown Economic Consulting Inc. ("**Brown**"), an economic consulting firm in Alberta, publishes annually a survey of Canadian "Housekeeping Replacement Rates" by

jurisdiction and a “Housekeeping Damages Calculator” to assist with estimating pecuniary loss. The rates that Brown has published are somewhat higher than the median range set out in Eckler’s 2019 Allocation Report for all jurisdictions and above the high range in Eckler’s 2019 Allocation Report in some jurisdictions. Brown also specifically notes that the rates included in its published table do not include provincial sales tax or GST payable on these services. Annexed and marked as **Exhibit “AA”** is a copy of Brown’s 2021 table of Housekeeping Replacement Rates.

109. The claims data from the most recent three-year review period shows that 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. As such, most loss of service claimants would be entitled to approximately an additional \$3,400 a year (2020 dollars) if this recommended allocation is granted.

110. The administration database records approximately **728** approved loss of services claimants under the Plans as of December 31, 2019 who would be entitled to benefit retroactively and, to the extent their loss is ongoing, prospectively from this recommended allocation. Additionally, as at December 31, 2019, the following may qualify prospectively for this award:

- (a) **163** alive approved class members 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 following their death; and
- (b) **1,234** alive approved class members 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;

- (c) **140** current loss of income and loss of support claimants who may switch to loss of services once the class member reaches or would have reached age 65; and
- (d) an as yet undetermined number of dependants of the 3,282 living approved class members, some of whom may subsequently die as a result of their HCV infection.

As well, in progress and future claimants who later qualify under the Plans and experience a loss of services would also benefit from the recommended allocation.

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

#### **Logistics and Costs of Implementing the Recommended Allocations**

112. The Joint Committee considered both the burdens and the logistics of approved class members and family members triggering entitlement to the recommended allocations and the Administrator identifying, calculating, distributing and recording them. The costs of implementation of the recommended allocations were considered as well. All of these considerations factored into the Joint Committee's decision to recommend these four specific allocations to the Courts.

113. The decision to recommend allocations that address many of the same compensatory shortfalls as were addressed in part by the 2013 Special Distribution Benefits allows, for the most part, employment of the same methodologies and systems that have already been successfully implemented. Both the Joint Committee and the Administrator believe this

will make the implementation of these additional allocations simpler and more cost effective, if they are approved.

114. From the class member's perspective, for the most part, no additional action would be required on their part to initiate their entitlement. The Administrator would identify, calculate and distribute the discrete benefits based upon the data that is already contained in the claims database for the majority of approved class members and family members. Experience with the administration of the 2013 Special Distribution Benefits has shown that there will be approved class members and family members to be located as well as deaths and other changed circumstances that will however mean some class members will be required to take additional steps to facilitate the distribution.

115. From the Administrator's perspective, standard operating procedures already created in the course of implementing the 2013 Special Distribution Benefits would for the most part apply to these recommended allocations. Any adjustments that would be required are thought to be relatively minor at this point.

116. The Administrator has estimated the administration costs to implement, calculate and distribute the appropriate retroactive payments for the recommended allocations to the approved class members, their estates, dependants and family members who are so entitled. These estimated costs are based on the current fee per service structure approved by the Courts for the ongoing administration of the retroactive 2013 Special Distribution Benefits in place since 2017. Annexed and marked as **Exhibit "BB"** is the Administrator's chart of these estimated costs.

117. Eckler has estimated the present value of the administration fee 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.

118. Eckler has compiled an implementation budget (at page 21 of its 2019 Allocation Report) that includes these estimated administration costs as well as the additional costs discussed below.

119. 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.

120. 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 totaling \$75,000 has been included in the implementation budget to address additional costs that may arise in this regard.

121. In addition to these direct costs of the administration there are various service providers, including the Joint Committee, Eckler, the Auditors, and the Trustee, who will also perform work implementing, overseeing, recording and auditing the 2019 Special Distribution Benefits if granted, the costs of which should be allocated from 2019 Excess Capital and not borne by the PT Governments. A line item totaling \$300,000 has been included in the implementation budget for these additional anticipated costs.

122. Finally, a line item totaling \$170,000 has been included to account for the various provincial sales taxes and the GST required to be paid on the forgoing costs.

123. The total estimated cost to implement and administer the recommended 2019 Special Distribution Benefits is **\$1,520,000**, an amount which is only 0.08% of the value of the recommended allocations.

### **Future Considerations**

124. While the 2019 Excess Capital is undoubtedly a large amount of money and while the Joint Committee is effectively seeking to have almost all allocated for the benefit of the approved class members and family members, the Joint Committee does not believe that the allocations requested fully addresses all of the shortfalls in compensation under the Plans. Should there be significant 2019 Excess Capital that is not allocated or actuarially unallocated assets

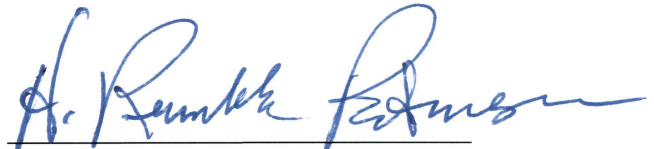
realized in the future, the Joint Committee may wish to make additional recommendations at that time.

SWORN BEFORE ME at the City of Windsor, in the County of Essex, this 12th day of May, 2022.



Commissioner for taking affidavits

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HEATHER RUMBLE PETERSON

1870102

Shelley Lynn Woodrich, a Commissioner, etc.,  
Province of Ontario, for Strosberg Sasso Sutts **LLP**,  
Barristers and Solicitors.  
Expires February 22, 2025.

THE ATTACHED IS EXHIBIT "A" TO THE AFFIDAVIT OF  
HEATHER RUMBLE PETERSON SWORN BEFORE ME  
THIS 12<sup>TH</sup> DAY OF MAY, 2022



\_\_\_\_\_  
COMMISSIONER FOR TAKING AFFIDAVITS

Shelley Lynn Woodrich, a Commissioner, etc.,  
Province of Ontario, for Strosberg Sasso Suttis LLP,  
Barristers and Solicitors.  
Expires February 22, 2025.



**SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUDGE JUSTICE )  
WARREN K. WINKLER )  
FRIDAY, THE 22<sup>ND</sup> DAY  
OF OCTOBER, 1999

**B E T W E E N:**  
DIANNA LUCAS PARSONS, MICHAEL HERBERT CRUICKSHANKS,  
DAVID ELLIOTT 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,  
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO  
and THE ATTORNEY GENERAL OF CANADA

**Defendants**

and  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF ALBERTA,  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF SASKATCHEWAN,  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF MANITOBA,  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NEW BRUNSWICK,  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE  
PROVINCE OF PRINCE EDWARD ISLAND,  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NOVA SCOTIA,  
HER MAJESTY THE QUEEN 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  
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

**Defendants**

and  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF ALBERTA,  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF SASKATCHEWAN,  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF MANITOBA,

HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NEW BRUNSWICK,  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE  
PROVINCE OF PRINCE EDWARD ISLAND,  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NOVA SCOTIA,  
HER MAJESTY THE QUEEN 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*

## JUDGMENT

THIS MOTION, made by the representative plaintiffs, for judgment pursuant to subsection 29(2) of the *Class Proceedings Act, 1992, as amended*, (the "Act") approving the settlement of the Ontario Class Actions was heard on August 18, 19, 20, October 21 and 22, 1999 at Toronto, Ontario.

ON READING the following:

- (a) the notice of motion returnable August 18, 1999;
- (b) the Agreement;
- (c) the affidavits of R. Douglas Elliott, sworn July 10, 1999, August 16 and October 12, 1999;
- (d) the affidavits of Margaret Woltz, sworn July 7, 1999, August 11 and August 16, 1999;
- (e) the affidavit of Sharon D. Matthews, sworn July 9, 1999;
- (f) the affidavit of Dr. Frank H. Anderson, sworn July 8, 1999, as well as the cross-examination thereon by written interrogatories and answers thereto;

- (g) the affidavit of Jacob Levi, sworn July 9, 1999 and the transcript of the August 4, 1999 cross-examination of Jacob Levi and Murray Segal and the exhibits marked on the cross-examination;
- (h) the Eckler Partners letter, dated October 13, 1999;
- (i) the affidavits of Andrew Wister, Robert S. Hogg, Dianna Parsons, James Kreppner, and David Page, all sworn July 8, 1999;
- (j) the affidavit of Dr. Irwin Walker, sworn July 9, 1999;
- (k) the affidavits of David L. Robins, sworn July 9, 1999, August 12 and October 15, 1999;
- (l) the affidavit of Ron Etherington, sworn August 12, 1999;
- (m) the affidavit of Tracey Goegan, sworn August 3, 1999;
- (n) the affidavit of Dr. Nancy Oliveri, sworn October 5, 1999;
- (o) the reports of PricewaterhouseCoopers LLP dated August 6, 1999 and August 16, 1999;
- (p) the order of Mr. Justice Winkler dated August 10, 1999;
- (q) the written undertakings of Peterson Worldwide LLC and Reed Consulting, Ltd. carrying on business as Peterson Worldwide LLC of Canada agreeing to be bound by this judgment;
- (r) the written undertaking of Royal Trust Company agreeing to be bound by this judgment;
- (s) the written undertaking of TD Asset Management Inc. agreeing to be bound by this judgment;

- (t) the judgments of Madame Justice Morneau of the Superior Court of Quebec dated September 21, 1999 and the English translation thereof;
- (u) the reasons of Mr. Justice Kenneth Smith of the Supreme Court of British Columbia dated October 1, 1999; and
- (v) the reasons of Mr. Justice Winkler dated September 22, 1999,

AND ON HEARING the *viva voce* evidence of:

- (w) Joseph Hache and Joseph Hache, Jr.;
- (x) Deborah Last and Charles Beresford;
- (y) Bonnie and Paulette Patterson;
- (z) David Kerbel;
- (aa) Hon Ming Ho;
- (bb) Cynthia-Lee Belford;
- (cc) Irene Omman
- (dd) Mark Rambin; and
- (ee) Klaus Schaefer,

AND ON HEARING the submissions of counsel for the following:

- (ff) the representative plaintiffs;
- (gg) Her Majesty the Queen in the Right of Ontario, the Attorney General of Canada and The Canadian Red Cross Society (the "CRCS");
- (hh) Hubert Fullarton and Tracy Goegan, intervenors in this motion for judgment, by order of Mr. Justice Winkler made on June 23, 1999 (the

“June 23, 1999 Order”), said counsel, William P. Dermody having undertaken to this Court on August 10, 1999, that he would put forward to the Court the substance of the objections made by persons who have objected to the proposed settlement as reported in the PricewaterhouseCoopers LLC reports;

- (ii) the Hepatitis C Society, the Canadian Hemophilia Society, the Thalassemia Foundation of Canada, Dominique Honhon and Anita Endean, who were given leave to appear as friends of the court in this motion for judgment by the June 23, 1999 Order;
- (jj) Her Majesty the Queen in the Right of the Province of Alberta, Her Majesty the Queen in the Right of the Province of Saskatchewan, Her Majesty the Queen in the Right of the Province of Manitoba, Her Majesty the Queen in the Right of the Province of New Brunswick, Her Majesty the Queen in the Right of the Province of Prince Edward Island, Her Majesty the Queen in the Right of the Province of Nova Scotia, Her Majesty the Queen 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;
- (kk) the Children’s Lawyer; and
- (ll) the Public Guardian and Trustee,

AND ON BEING ADVISED:

- (mm) that the parties agreed to this settlement on the basis that the PT Governments have the option to make periodic payments in accordance with Sections 4.02 and 4.04 of the Funding Agreement, in which event there will be no PT Government money or assets remaining in the Trust that are actuarially unallocated;
- (nn) that Harvey T. Strosberg, Q.C., counsel to the Ontario Transfused Class Action, has accepted an appointment to the Joint Committee;
- (oo) that Bonnie A. Tough, counsel to the Ontario Hemophiliac Class Action, has accepted an appointment to the Joint Committee; and
- (pp) of the consent of the Class Action Plaintiffs and the FPT Governments to the modifications set forth in paragraph 9 of this judgment,

AND WITHOUT ANY ADMISSION OF LIABILITY ON THE PART OF THE  
FPT GOVERNMENTS.

1. THIS COURT ORDERS AND DECLARES that since the Ontario Class Actions have been stayed against the CRCS by the order of Mr. Justice Blair made on July 20, 1998 in action no. 98-CL-002970 (Toronto) (the "Stay"), the Stay having been subsequently extended by further orders of the Court made on August 19, 1998, October 5, 1998, January 18, 1999, May 5, 1999 and July 28, 1999, nothing in this judgment is to have the effect of prejudicing the CRCS.

2. THIS COURT ORDERS AND DECLARES that for the purposes of this judgment, the following definitions apply:

- (a) **Agreement** means the 1986-1990 Hepatitis C Settlement Agreement between the Parties made as of June 15, 1999, which is annexed as Schedule 1 to this judgment.
- (b) **Claimants' Data** means all data, records, medical, personal and financial information, files, addresses, claims payment history, and all other information of any nature and kind whether in paper, recorded or electronic form or in any other medium including all individual personal identifying and non-personal identifying information and any compilation, selection, co-ordination or arrangement of individual information into an original, derivative or collective work or works capable of being reviewed, perceived, reproduced or otherwise communicated directly or indirectly with the aid of a machine or device or capable of being fixed in any tangible medium of expression now known or later developed or transmitted or displayed even for a transitory period.
- (c) **Class Actions** means collectively the Transfused Class Actions and the Hemophiliac Class Actions.
- (d) **Class Members** means collectively the Transfused Class Members and the Hemophiliac Class Members, and **Family Class Members** means collectively the Transfused Family Class Members and the Hemophiliac Family Class Members.
- (e) **Court** means the Superior Court of Justice for Ontario, and **Courts** has the meaning set out in Section 1.01 of the Agreement.
- (f) **Funding Agreement** means the Funding Agreement between the Parties made as of June 15, 1999, which is annexed as Schedule 2 to this judgment.
- (g) **Hemophiliac Class Actions** means collectively the **Ontario Hemophiliac Class Action**, which means *Kreppner et al. v. Canada et al.* Action no. 98-CV-146405 (Toronto), the **British Columbia Hemophiliac Class Action** which means *Mitchell et al. v. Canada et al.* Action no. A981187 (Vancouver) and the **Quebec Hemophiliac Class Action** which means *Page et al. v. Canada et al.* Action no. 500-06-000068-987 (Montreal).
- (h) **Hemophiliac Class Members** means collectively the Ontario Hemophiliac Class Members, the class certified in the British Columbia Hemophiliac Class Action and the class certified in the Quebec Hemophiliac Class Action, and the **Hemophiliac Family Class Members** means collectively the Ontario Hemophiliac Family Class Members, and for the British Columbia Hemophiliac

Class Action and the Quebec Hemophiliac Class Action, the Family Members as defined in Section 1.01 of the Hemophiliac HCV Plan.

- (i) **Investment Consultant** means the investment advisor appointed by the Courts and its successors appointed from time to time pursuant to the provisions of Article Ten of the Agreement to consult on the investment and management of the assets of the Trust Fund.
- (j) **Investment Manager** means the investment advisor appointed by the Courts and its successors appointed from time to time pursuant to the provisions of Article Ten of the Agreement to manage the investment of the whole or any portion of the assets of the Trust Fund.
- (k) **Ontario Class Actions** means collectively the Ontario Transfused Class Action and the Ontario Hemophiliac Class Action.
- (l) **Ontario Class Members** means collectively the Ontario Transfused Class Members and the Ontario Hemophiliac Class Members, and **Ontario Family Class Members** means collectively the Ontario Transfused Family Class Members and the Ontario Hemophiliac Family Class Members.
- (m) **Ontario Hemophiliac Class Members** means the members of the class certified in the Ontario Hemophiliac Class Action as amended by paragraph 7 of this judgment.
- (n) **Ontario Hemophiliac Family Class Members** means the members of the family class certified in the Ontario Hemophiliac Class Action as amended by paragraph 8 of this judgment.
- (o) **Ontario Transfused Class Members** means the members of the class certified in the Ontario Transfused Class Action as amended by paragraph 5 of this judgment.
- (p) **Ontario Transfused Family Class Members** means the members of the family class certified in the Ontario Transfused Class Action as amended by paragraph 6 of this judgment.
- (q) **Party** means any one of the FPT Governments or the Class Action Plaintiffs.
- (r) **Transfused Class Actions** means collectively the **Ontario Transfused Class Action**, which means *Parsons et al. v. Canada et al.* Action no. 98-CV-141369 (Toronto), the **British Columbia Transfused Class Action** which means *Endean et al. v. Canada et al.* Action no. C965349 (Vancouver) and the **Quebec Transfused Class Action** which means *Honhon et al. v. Canada et al.* Action no. 500-06-000016-900 (Montreal).



- (s) **Transfused Class Members** means collectively the Ontario Transfused Class Members, the class certified in the British Columbia Transfused Class Action and the class certified in the Quebec Transfused Class Action, and **Transfused Family Class Members** means collectively the Ontario Transfused Family Class Members and for the British Columbia Transfused Class Action and the Quebec Transfused Class Action, the Family Members as defined in Section 1.01 of the Transfused HCV Plan.

In this judgment, all other defined terms which are denoted with initial capital letters shall have the meanings ascribed to them in the Agreement and/or the Funding Agreement.

3. THIS COURT ORDERS AND DECLARES that Her Majesty the Queen in the Right of the Province of Alberta, Her Majesty the Queen in the Right of the Province of Saskatchewan, Her Majesty the Queen in the Right of the Province of Manitoba, Her Majesty the Queen in the Right of the Province of New Brunswick, Her Majesty the Queen in the Right of the Province of Prince Edward Island, Her Majesty the Queen in the Right of the Province of Nova Scotia, Her Majesty the Queen 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 be and are hereby granted leave to intervene in this motion as added parties for the limited purpose of being bound by and they thereby are bound by this judgment, that they receive both the burden and the benefit of this judgment and that the title of proceedings in this judgment and in these actions be and are hereby amended accordingly.

4. THIS COURT ORDERS that this judgment shall be issued, entered and then filed in the Ontario Transfused Class Action Court file numbered 98-CV-141369 and the Ontario Hemophiliac Class Action Court file numbered 98-CV-146405.

5. THIS COURT ORDERS AND DECLARES that the definition of the "Class" certified in the Ontario Transfused Class Action by order dated June 23, 1998 and amended by order dated May 11, 1999 be and is hereby further amended to be:

- (a) all persons who received Blood (as defined in Section 1.01 of the Transfused HCV Plan) collected by the CRCS contaminated with HCV during the Class Period and who are or were infected for the first time with HCV and who are:
- (i) presently or formerly resident in Ontario and received Blood in Ontario and who are or were infected with post-transfusion HCV;
  - (ii) resident in Ontario and received Blood in any other Province or Territory of Canada other than the Province of Quebec and who are or were infected with post-transfusion HCV;
  - (iii) resident elsewhere in Canada and received Blood in Canada, other than in the Provinces of British Columbia and Quebec, and who are or were infected with post-transfusion HCV;
  - (iv) resident outside Canada and received Blood in any Province or Territory of Canada, other than in the Province of Quebec, and who are or were infected with post-transfusion HCV; and
  - (v) resident anywhere and received Blood in Canada and who are or were infected with post-transfusion HCV and who are not included as class members in the British Columbia Transfused Class Action or the Quebec Transfused Class Action;

- (b) all persons, resident anywhere, who received Blood (as defined in Section 1.01 of the Hemophiliac HCV Plan) in Canada during the Class Period, who have or had Thalassemia Major and who are or were infected with HCV and who are not included as class members in the British Columbia Transfused Class Action or the Quebec Transfused Class Action;
- (c) the Spouse of a person referred to in subparagraph (a) or (b) who is or was infected with HCV by such person; and
- (d) the child of a person referred to in subparagraph (a), (b) or (c) who is or was infected with HCV by such person.

6. THIS COURT ORDERS AND DECLARES that the definition of the "Family Class" certified in the Ontario Transfused Class Action by order dated May 11, 1999 be and is hereby amended to be:

- (a) the Spouse, child, grandchild, parent, grandparent or sibling of an Ontario Transfused Class Member;
- (b) the Spouse of a child, grandchild, parent or grandparent of an Ontario Transfused Class Member;
- (c) a former Spouse of an Ontario Transfused Class Member;
- (d) a child or other lineal descendant of a grandchild of an Ontario Transfused Class Member;
- (e) a person of the opposite sex to an Ontario Transfused Class Member who cohabited for a period of at least one year with that Ontario Transfused

Class Member immediately before the Ontario Transfused Class Member's death;

- (f) a person of the opposite sex to an Ontario Transfused Class Member who was cohabiting with that Ontario Transfused Class Member at the date of the Ontario Transfused Class Member's death and to whom that Ontario Transfused Class Member was providing support or was under a legal obligation to provide support on the date of the Ontario Transfused Class Member's death; and
- (g) any other person to whom an Ontario Transfused Class Member was providing support for a period of at least three years immediately prior to the Ontario Transfused Class Member's death.

7. THIS COURT ORDERS AND DECLARES that the definition of the "Class" certified in the Ontario Hemophiliac Class Action by order dated May 11, 1999 be and is hereby amended to be:

- (a) all persons who have or had a congenital clotting factor defect or deficiency, including a defect or deficiency in Factors V, VII, VIII, IX, XI, XII, XIII or von Willebrand factors; and who received or took Blood (as defined in Section 1.01 of the Hemophiliac HCV Plan) during the Class Period and who are:
  - (i) presently or formerly a resident in Ontario and received or took Blood in Ontario and who are or were infected with HCV;

- (ii) resident in Ontario and received or took Blood in any other Province or Territory of Canada other than Quebec and who are or were infected with HCV;
  - (iii) resident elsewhere in Canada and received or took Blood in Canada, other than in the Provinces of British Columbia and Quebec, and who are or were infected with HCV;
  - (iv) resident outside Canada and received or took Blood in any Province or Territory in Canada, other than in the Province of Quebec, and who are or were infected with HCV; and
  - (v) resident anywhere and received or took Blood in Canada, who are or were infected with HCV and who are not included as class members in the British Columbia Hemophiliac Class Action or the Quebec Hemophiliac Class Action;
- (b) the Spouse of a person referred to in subparagraph (a) who is or was infected with HCV by such person; and
  - (c) the child of a person referred to in subparagraph (a) or (b) who is or was infected with HCV by such person.

8. THIS COURT ORDERS AND DECLARES that the definition of the "Family Class" certified in the Ontario Hemophiliac Class Action by order dated May 11, 1999 be and is hereby amended to be:

- (a) the Spouse, child, grandchild, parent, grandparent or sibling of an Ontario Hemophiliac Class Member;

- (b) the Spouse of a child, grandchild, parent or grandparent of an Ontario Hemophiliac Class Member;
- (c) a former Spouse of an Ontario Hemophiliac Class Member;
- (d) a child or other lineal descendant of a grandchild of an Ontario Hemophiliac Class Member;
- (e) a person of the opposite sex to an Ontario Hemophiliac Class Member who cohabited for a period of at least one year with that Ontario Hemophiliac Class Member immediately before the Ontario Hemophiliac Class Member's death;
- (f) a person of the opposite sex to an Ontario Hemophiliac Class Member who was cohabiting with that Ontario Hemophiliac Class Member at the date of the Ontario Hemophiliac Class Member's death and to whom that Ontario Hemophiliac Class Member was providing support or was under a legal obligation to provide support on the date of the Ontario Hemophiliac Class Member's death; and
- (g) any other person to whom an Ontario Hemophiliac Class Member was providing support for a period of at least three years immediately prior to the Ontario Hemophiliac Class Member's death.

9. THIS COURT ORDERS AND ADJUDGES that the Agreement, annexed hereto as Schedule 1, and the Funding Agreement, annexed hereto as Schedule 2, both made as of June 15, 1999 are fair, reasonable, adequate, and in the best interests of the Ontario Class Members and the Ontario Family Class Members in the Ontario Class

Actions and this good faith settlement of the Ontario Class Actions is hereby approved on the terms set out in the Agreement and the Funding Agreement, both of which form part of and are incorporated by reference into this judgment, subject to the following modifications, namely:

- (a) those persons who meet the description at subparagraph (b) of the definition of Ontario Transfused Class Members shall be entitled to meet the required proof for compensation and to receive benefits under the Hemophilic HCV Plan, *mutatis mutandis*, as if they were Primarily-Infected Hemophiliacs and they are deemed, for the purpose of the Agreement and the Hemophilic HCV Plan, to be Primarily-Infected Hemophiliacs except that the proviso in Section 4.01(5) of the Hemophilic HCV Plan shall not apply, and their Spouses or children who meet the description at subparagraph (c) or (d) of the definition of Ontario Transfused Class Members and their Ontario Transfused Family Class Members shall also be entitled to meet the required proof for compensation and to receive benefits under the Hemophilic HCV Plan except that the proviso in Section 4.01(5) of the Hemophilic HCV Plan shall not apply;
- (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 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), 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 Act;



- (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 than the medical model used in the Eckler actuarial report found at Volume 3 of the Motion Record, Tab 5, page 508 and following;
  - (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;
- (d) the amount to be paid or payable by the FPT Governments, pursuant to the Agreement and the Funding Agreement, shall be reduced by \$10,533,000, as of September 30, 1999, being the \$10,000,000 representing the estimated present value of the excess costs to the Trust Fund of resolving any action or actions instituted or prosecuted by all persons who opt out of a Class Action or are deemed to opt out of a Class Action and all other persons who claim over or bring a third party claim or make any claim or demand or take any action or proceeding against any FPT Government in any way relating to or arising from (i) in the case of a Transfused Class Member or Transfused Family Class Member

under the Transfused HCV Plan, the infection of a Primarily-Infected Person with HCV during the Class Period or, (ii) in the case of a Transfused Class Member, Transfused Family Class Member, Hemophiliac Class Member or Hemophiliac Family Class Member under the Hemophiliac HCV Plan, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including, in each case, the infection of a Secondarily-Infected Person) (collectively, the "Opt Out Plaintiffs") and the sum of \$533,000, representing the actuarially calculated present value of one-third of the costs of defending actions prosecuted by the Opt Out Plaintiffs. For greater certainty, any person who is a Class Member as presently defined may participate in the Plans created by the Agreement;

- (e) no person may opt out a person under a disability from either one of the Ontario Class Actions without the leave of this Court after notice to the Public Guardian and Trustee and/or the Children's Lawyer as appropriate;
- (f) upon delivery to the Trustee of a copy of a final judgment (as defined in Section 1.07 of the Agreement) obtained by an Opt Out Plaintiff against the FPT Governments or some or one of them or minutes of settlement entered into by an Opt Out Plaintiff and the FPT Governments or some or one of them and a copy of a final order of a Court approving the minutes of settlement, the FPT Governments or their designate shall be paid out of the Trust Fund:

- (i) as at the date of said judgment or settlement, an amount equal to the amount that the Opt Out Plaintiff would have been entitled to receive from the Trust Fund had he or she qualified under a Plan; and
- (ii) a one-time lump sum amount, to be approved by one of the Courts, in satisfaction of the amount that the Opt Out Plaintiff may thereafter have become entitled to receive from the Trust Fund from time to time had he or she qualified under a Plan, calculated in accordance with a protocol to be approved by the Courts;

provided however that in no circumstances shall the amount to be paid from the Trust Fund to the FPT Governments or some or one of them exceed the amount of the judgment or settlement paid to the Opt Out Plaintiff by the FPT Governments or some or one of them plus interest thereon;

- (g) no other amount shall be paid out of the Trust Fund to settle any action prosecuted by any Opt Out Plaintiff or to pay any judgment in any action prosecuted by any Opt Out Plaintiff or to indemnify the FPT Governments or some or one of them from any judgment or settlement of any action instituted or prosecuted by any Opt Out Plaintiff; and
- (h) the provisions of Section 11.02 of the Agreement and Section 6.03 of the Funding Agreement are inoperative and superceded by the provisions of subparagraphs 9(d), (e), (f) and (g) of this judgment.

10. THIS COURT ORDERS AND DECLARES that the Ontario Transfused Class Members and the Ontario Transfused Family Class Members who qualify pursuant to the provisions of:

- (a) the Transfused HCV Plan shall be paid in accordance with the provisions of the Transfused HCV Plan;
- (b) the Hemophiliac HCV Plan shall be paid in accordance with the provisions of the Hemophiliac HCV Plan as provided in subparagraph 9(a) of this judgment.

11. THIS COURT ORDERS AND DECLARES that the Ontario Hemophiliac Class Members and the Ontario Hemophiliac Family Class Members who qualify pursuant to the provisions of the Hemophiliac HCV Plan shall be paid in accordance with the provisions of the Hemophiliac HCV Plan.

12. THIS COURT DECLARES that:

- (a) If an Ontario Class Member or Ontario Family Class Member was receiving any medical, ancillary medical, health or drug benefits from any of the PT Governments on April 1, 1999, the receipt of payments pursuant to a Plan will not affect the quantity, nature or duration of any corresponding benefits that any Ontario Class Member or Ontario Family Class Member receives from any of the PT Governments after April 1, 1999, except to the extent that such benefits are related to the said

Ontario Class Member's infection with HCV in which case they are recoverable exclusively under Sections 4.06 and 4.07 of a Plan.

- (b) The receipt of any payments pursuant to a Plan will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to an Ontario Class Member or Ontario Family Class Member pursuant to any legislation of any PT Government referred to in Appendix A to a Plan, provided that the receipt of loss of income or loss of support payments pursuant to Sections 4.02 and 6.01 of a Plan may have such an effect.
- (c) The receipt of any payments pursuant to a Plan will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to an Ontario Class Member or Ontario Family Class Member pursuant to any social benefit programs of the Federal Government such as old age security and Canada Pension Plan, because such payments either are not considered or, if considered, are otherwise exempted in the calculation of benefits under such legislation, provided that the receipt of loss of income or loss of support payments pursuant to Section 4.02 or 6.01 of a Plan may have such an effect.

13. THIS COURT DECLARES that, save and except for any payment made under subparagraph 9(f), no subrogation payment of any nature or kind shall be paid, directly or indirectly, under the Plans, and without restricting the generality of this provision, that:

- (a) no FPT Government and no department of an FPT Government providing employment insurance, health care, hospital, medical and prescription services, social assistance or welfare will be paid under a Plan;
- (b) no municipality and no department of a municipality will be paid under a Plan;
- (c) no person exercising a right of subrogation will be paid under a Plan; and
- (d) no Ontario Class Member or Ontario Family Class Member will be paid compensation if the claim is being asserted as a subrogated claim or if the Ontario Class Member or Ontario Family Class Member will hold any money paid under a Plan in trust for any other party exercising a right of subrogation or, except as provided in Section 8.02 of a Plan, if a payment under a Plan will lead to a reduction in other payments for which the Ontario Class Member or Ontario Family Class Member would otherwise qualify.

14. ~~THIS COURT ORDERS that Peterson Worldwide LLC, a limited liability company incorporated under the laws of the State of Illinois and Reed Consulting, Ltd., an Ontario corporation, carrying on business as Peterson Worldwide LLC of Canada, be and are hereby appointed, with joint and several liability, as the Administrator of the Plans with further order of the Courts on the terms and conditions and with the powers, rights, duties and responsibilities set out in Schedule B.~~

Amended by Order dated May 10, 2000. (See page 22A)

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14. THIS COURT ORDERS that Crawford Adjusters Canada Incorporated/Expertises Crawford Canada Incorporée and Garden City Group Inc. be and are hereby appointed, with joint and several liability, as the Administrator of the Plans until further order of the Courts on the terms and conditions and with powers, rights, and duties and responsibilities set out in Schedule 3.

15. THIS COURT ORDERS that Royal Trust Company be and is hereby appointed as the Trustee of the Trust until further order of the Courts on the terms and conditions and with the powers, rights, duties and responsibilities set out in Schedule 4 which are approved on an interim basis only.
16. THIS COURT ORDERS that the Investment Manager shall manage the investment of the whole or any portion of the assets of the Trust but only in accordance with the investment guidelines set out in Schedule 5 annexed hereto which are approved on an interim basis only.
17. THIS COURT ORDERS that TD Asset Management Inc. be and is hereby appointed as the Investment Manager until further order of the Courts on the terms and conditions and with the powers, rights, duties and responsibilities set out in Schedule 6 annexed hereto which are approved on an interim basis only.
18. THIS COURT ORDERS AND DECLARES that by further order the Courts will appoint an Investment Consultant on the terms and conditions and with the powers, rights, duties and responsibilities set out in Schedule 7 annexed hereto which are approved on an interim basis only.
19. THIS COURT DECLARES that the Joint Committee shall be comprised of four persons: one Class Action Counsel to the Ontario Transfused Class Action appointed by this Court; one Class Action Counsel to the British Columbia Transfused Class Action



appointed by the Supreme Court of British Columbia; one Class Action Counsel to the Quebec Transfused Class Action appointed by the Superior Court of Quebec; and one Class Action Counsel to the Hemophiliac Class Actions appointed by the Courts.

20. THIS COURT ORDERS that Harvey T. Strosberg, Q.C. be and is hereby appointed to the Joint Committee as the Class Action Counsel to the Ontario Transfused Class Action until further order of this Court with the duties and responsibilities set out in the Agreement.

21. THIS COURT ORDERS that Bonnie A. Tough be and is hereby appointed to the Joint Committee as the Class Action Counsel to the Hemophiliac Class Actions until further order of the Courts with the duties and responsibilities set out in the Agreement.

22. THIS COURT ORDERS that, as soon as practicable after their appointments, the Trustee, the Investment Manager, the Investment Consultant and Fund Counsel shall consult each with the other and review the terms and conditions of their appointments, the investment guidelines and their interim powers, rights, duties and responsibilities and shall report to the Courts with their recommendations, if any, as to amendments to the terms and conditions of their appointments and their interim powers, rights, duties and responsibilities.

23. THIS COURT ORDERS AND DECLARES that the Joint Committee shall report to the Courts on or before June 30, 2000 and at least semi-annually thereafter until further order of the Courts.

24. THIS COURT DECLARES that, on September 30, 1999, the Contribution Amount as defined in the Funding Agreement was \$1,187,985,360.

25. THIS COURT DECLARES that, on the Approval Date, pursuant to Section 4.01(1) and 4.02(1) of the Funding Agreement, the Federal Government shall pay to the Trustee the amount due and owing as at September 30, 1999, being the sum of \$846,327,527, plus interest from and after September 30, 1999 to the date of payment in accordance with the Funding Agreement plus or minus any adjustment as provided in the Funding Agreement.

26. THIS COURT DECLARES that:

- (a) If any income taxes under the *Income Tax Act*, R.S.C. 1985, Chap.1 (5<sup>th</sup> Supp.), as amended, (the "*Income Tax Act (Canada)*") or the equivalent provisions of the income tax act of any Province or Territory are paid by the Trustee in respect of income of the Trust, the FPT Government to which the taxes were paid will pay an amount equivalent to the amount so paid to the Trustee and such amount will thereafter form part of the Trust Fund;
- (b) The amount of compensation paid to or received by a Class Member or Family Class Member pursuant to a Plan will not be required to be included

in the taxable income of the recipient thereof under the *Income Tax Act* (Canada) or the equivalent provisions of the income tax act of any Province or Territory, provided however, that this provision will not apply in respect of any amount or compensation paid to or received by a person other than the person that, but for any assignment of any amount of compensation payable under a Plan, would be the person entitled to the compensation under the Plan or in respect of any tax payable under Part XIII of the *Income Tax Act* (Canada) or the equivalent provisions of the income tax act of any Province or Territory by any Class Member or Family Class Member or any amount required to be withheld by the Trustee or the Administrator on account of such tax in respect of any compensation paid or received under a Plan.

27. THIS COURT ORDERS AND DECLARES that, pursuant to subsection 26(7) of the Act and Section 10.01 of the Agreement, Mr. Justice Winkler shall supervise the execution of this judgment and the distribution, pursuant to the Plans and that, without limiting the generality of the foregoing, this Court may issue judgments or orders, in such form as are necessary, to implement and enforce the provisions of the Agreement, the Plans, the Funding Agreement and this judgment and may retain any advisor this Court in its discretion considers necessary and the costs of so doing shall be an expense of the Trust Fund.

28. THIS COURT DECLARES that, from time to time, it may:
- (a) remove the Fund Counsel for the Ontario Class Actions and appoint a replacement;
  - (b) remove its appointee of Class Action Counsel for the Ontario Transfused Class Action to the Joint Committee and appoint a replacement;
  - (c) remove any Referee/Arbitrator for the Ontario Class Actions and appoint a replacement;
  - (d) hear motions opposing the confirmation of the Referee's reports for the Ontario Class Actions;
  - (e) approve any costs incurred or to be incurred by Fund Counsel appointed for the Ontario Class Actions and its appointee as Class Action Counsel for the Ontario Transfused Class Action to the Joint Committee; and
  - (f) award costs of any motions opposing the confirmation of the Referee's reports for the Ontario Class Actions.

29. THIS COURT ORDERS AND DECLARES that the Children's Lawyer and the Public Guardian and Trustee:

- (a) shall be given notice of any motions to this Court for approval, amendment or rescission of protocols; and
- (b) may apply to this Court for advice and directions as he, she, it or they deem necessary.

30. ~~THIS COURT ORDERS AND DECLARES that this judgment is binding on all Ontario Class Members, including minors, unborn persons and persons under a disability, and all Ontario Family Class Members, including minors, unborn persons and persons under a disability, unless an Ontario Class Member or an Ontario Family Class~~

~~Member opts out of an Ontario Class Action by filing a written notice with the Administrator on or before June 30, 2000 or unless an Ontario Family Class Member is deemed to opt out in accordance with the provisions of this judgment.~~

31. THIS COURT ORDERS AND DECLARES that if an Ontario Class Member opts out of an Ontario Class Action each of his or her Ontario Family Class Members are deemed to have opted out of the Ontario Class Action in his or her capacity as an Ontario Family Class Member.

32. THIS COURT ORDERS that the Administrator shall, on or before September 1, 2000, report to this Court and advise as to the names of those persons who have opted out of the Ontario Class Actions.

33. THIS COURT ORDERS AND DECLARES that each Ontario Class Member, unless the Ontario Class Member opts out in accordance with the provisions of this judgment, and each Ontario Family Class Member unless the Ontario Family Class Member opts out or is deemed to have opted out in accordance with the provisions of this judgment, has released each of the Releasees from any and all actions, causes of actions, liabilities, claims and demands whatsoever of every nature or kind for damages, contribution, indemnity, costs, expenses and interest which any such Ontario Class Member or Ontario Family Class Member ever had, now has or may hereafter have in any way relating to or arising from (i) in the case of each Ontario Transfused Class Member and Ontario Transfused Family Class Member under the Transfused HCV Plan,

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30. THIS COURT ORDERS AND DECLARES that this judgment is binding on all Ontario Class Members, including minors, unborn persons and persons under a disability, and all Ontario Family Class Members, including minors, unborn persons and person under a disability, unless an Ontario Class Member or an Ontario Family Class Member opts out of an Ontario Class Action by filing a written notice with the Administrator on or before January 31, 2001 or unless an Ontario Family Class Member is deemed to opt out in accordance with the provisions of this judgment.

the infection of a Primarily-Infected Person with HCV during the Class Period or (ii) in the case of each Ontario Transfused Class Member, Ontario Transfused Family Class Member, Ontario Hemophiliac Class Member and Ontario Hemophiliac Family Class Member under the Hemophiliac HCV Plan, the infection of a Primarily-Infected Hemophiliac with HCV from Blood including, in each case, the infection of a Secondly-Infected Person, whether such claims were made or could have been made in any proceeding including the Ontario Class Actions.

34. THIS COURT ORDERS AND DECLARES that the Ontario Class Members and the Ontario Family Class Members, unless the Ontario Class Member opts out in accordance with the provisions of this judgment, or the Ontario Family Class Member opts out or is deemed to opt out in accordance with the provisions of this judgment, separately and severally, have fully, finally and forever released each of the Releasees, separately and severally, and in each and every capacity that such actions, causes of actions, liabilities, claims or demands referred to in paragraph 33 of this judgment may be asserted against any Releasee.

35. THIS COURT ORDERS AND DECLARES that the Ontario Class Members and the Ontario Family Class Members, unless the Ontario Class Member opts out in accordance with the provisions of this judgment, or the Ontario Family Class Member opts out or is deemed to opt out in accordance with the provisions of this judgment, are deemed to agree that they will not make any claim or demand or take any actions or proceedings against any Releasee or any other person in which any claim

could arise against any Releasee for damages and/or contribution and/or indemnity and/or other relief over under the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1, as amended, or its counterpart in other jurisdictions, the common law or any other statute of Ontario or any other jurisdiction in any way relating to or arising from (i) in the case of each Ontario Transfused Class Member and Ontario Transfused Family Class Member under the Transfused HCV Plan, the infection of a Primarily-Infected Person with HCV during the Class Period, or (ii) in the case of each Ontario Transfused Class Member, Ontario Transfused Family Class Member, Ontario Hemophiliac Class Member and Ontario Hemophiliac Family Class Member under the Hemophiliac HCV Plan, the infection of a Primarily-Infected Hemophiliac with HCV from Blood, including, in each case, the infection of a Secondarily-Infected Person, provided that the foregoing excludes the CRCS.

36. THIS COURT ORDERS AND DECLARES that at the option of the FPT Governments or their representatives, each Ontario Class Member and Ontario Family Class Member receiving payment under one of the Plans will either,

- (a) pursue any claims as described in Section 11.01(c) of the Agreement that the Ontario Class Member or Ontario Family Class Member has against the CRCS, and assign to the FPT Governments the proceeds received by the Ontario Class Member or Ontario Family Class Member from any such claim, or
- (b) within the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, proceedings relating to the CRCS, prove, vote and otherwise act



- to promote those claims as described in Section 11.01(c) of the Agreement that the Ontario Class Member or Ontario Family Class Member has against the CRCS in accordance with directions given to the Ontario Class Member or Ontario Family Class Member by the FPT Governments or their representatives, or, at the request of the FPT Governments or their representatives grant to the FPT Governments and their representatives such proxies or other forms of assignment as are necessary for the FPT Governments to vote and otherwise act to promote any such claim of the Ontario Class Member or Ontario Family Class Member, or
- (c) enter into a release of all of such claims against the CRCS substantially in the form of the releases attached as appendices to the Plans.

37. THIS COURT ORDERS AND DECLARES that the FPT Governments' obligations and liabilities pursuant to Article Four of the Agreement, the Funding Agreement and this judgment constitute the consideration for the releases and other matters referred to in this judgment and such consideration is in full and final settlement and satisfaction of any and all claims referred to therein and the Ontario Class Members and the Ontario Family Class Members, unless the Ontario Class Member opts out in accordance with the provisions in this judgment, or the Ontario Family Class Member opts out or is deemed to opt out in accordance with the provisions of this judgment are limited to the compensation payable pursuant to the Plans, as funded, pursuant to the Funding Agreement and this judgment as their only recourse on account of any and all

such actions, causes of actions, liabilities, claims and demands referred to in paragraph 33 of this judgment.

38. THIS COURT ORDERS AND DECLARES that, pursuant to subsection 26(10) of the Act, Sections 10.01(1)(o) and 12.03 of the Agreement and Section 10.02 of the Funding Agreement, but subject to the provisions of subparagraph 9(b) and (c) of this judgment, once the Plans and the Program have been fully administered in accordance with the Agreement and all obligations under this judgment have been satisfied, and the Courts have declared that the Plans and the Program have been fully administered in accordance with the Agreement, any assets remaining in the Trust Fund will be the sole property of the FPT Governments and shall be paid and transferred to the FPT Governments.

39. THIS COURT ORDERS AND DECLARES that, unless the Ontario Class Member opts out in accordance with the provisions of this judgment, or the Ontario Family Class Member opts out or is deemed to opt out in accordance with the provisions of this judgment, this judgment and the Agreement are binding upon all the Ontario Class Members and all the Ontario Family Class Members who are minors, unborn persons or persons under a disability, that the requirements of rule 7.08(4) of the Rules of Civil Procedure are dispensed with and that no additional court approval is necessary relating to any payment made to or for the benefit of any Ontario Class Member or Ontario Family Class Member who is a minor, an unborn person or a person under a disability.

40. THIS COURT ORDERS AND DECLARES that all information in any form whatsoever received, obtained, compiled or created by the Administrator, Trustee, Investment Manager, Investment Consultant and Auditors as a result of his, her, their or its involvement with the Agreement, Funding Agreement, administration of the Plans and the implementation of this judgment including the Claimants' Data is to be held in confidence and is to be used or disseminated solely for the purposes of administration of the Plans and the implementation of this judgment and is not to be used or disseminated for any other purposes whatsoever without an order of the Courts.

41. THIS COURT ORDERS AND DECLARES that the Administrator, Trustee, Investment Manager, Investment Consultant and Auditors do not have and shall not obtain any interest of any nature or kind in the Claimants' Data and in any information received, obtained, compiled or created by him, her, them or it in the course of the performance of his, her, their or its duties, in the course of administration of the Plans and in the implementation of this judgment.

42. THIS COURT ORDERS AND DECLARES that the Trustee shall hold in trust for the Class Members and Family Class Members legal title to the Claimants' Data received, obtained, compiled or created by the Administrator, Trustee, Investment Manager, Investment Consultant and Auditors.

43. THIS COURT ORDERS AND DECLARES that the Administrator, Investment Manager, Investment Consultant, Joint Committee and members of the Joint

Committee have no right, authority or ability to pledge the credit of the Trust Fund or in any way to encumber the Trust Fund.

44. THIS COURT ORDERS AND DECLARES that no person may bring any action or take any proceedings against the Administrator, Trustee, Investment Manager, Investment Consultant, Auditors, Fund Counsel, Joint Committee or members of the Joint Committee or their employees, agents, partners, associates, representatives, successors or assigns for any matter in any way relating to the Agreement, the Funding Agreement, the administration of the Plans or the implementation of this judgment, except with the leave of the Courts.

45. THIS COURT ORDERS AND DECLARES that the Ontario Class Members and the Ontario Family Class Members shall be given notice of the certification of the Ontario Class Actions and of this judgment in a manner which shall be directed by this Court by further order.

46. THIS COURT DECLARES that by further order it shall:

- (a) appoint Fund Counsel for the Ontario Class Actions on the terms and conditions and with the powers, rights, duties and responsibilities to be particularized;
- (b) appoint Referees/Arbitrators for the Ontario Class Actions on the terms and conditions and with the powers, rights, duties and responsibilities to be particularized; and

- (c) make all other necessary and ancillary orders for the implementation of the Agreement, the Funding Agreement and this judgment and the ongoing supervision thereof.

47. THIS COURT DECLARES that the Courts shall appoint a firm of Auditors on the terms and conditions and with the powers, rights, duties and responsibilities to be particularized and make all other necessary and ancillary orders for the implementation of the Agreement, the Funding Agreement and the Approval Orders and the ongoing supervision thereof.

48. THIS COURT ORDERS that the title of proceedings in this judgment shall be as follows:

BETWEEN:	<p>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</p>	Court file # 98-CV-141369
	and	
	<p>THE CANADIAN RED CROSS SOCIETY, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO and THE ATTORNEY GENERAL OF CANADA</p>	Plaintiffs  Defendants
	and	
	<p>HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF ALBERTA, HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF SASKATCHEWAN, HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF MANITOBA, HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NEW BRUNSWICK, HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF PRINCE EDWARD ISLAND, HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NOVA SCOTIA, HER MAJESTY THE QUEEN 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</p>	Interveners
	Proceeding under the Class Proceedings Act, 1992	
BETWEEN:	<p>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</p>	Court File No. 98-CV-148405
	and	
	<p>THE CANADIAN RED CROSS SOCIETY, THE ATTORNEY GENERAL OF CANADA and</p>	Plaintiffs

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendants

and

HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF ALBERTA,  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF SASKATCHEWAN,  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF MANITOBA,  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NEW BRUNSWICK,  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE  
PROVINCE OF PRINCE EDWARD ISLAND,  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NOVA SCOTIA,  
HER MAJESTY THE QUEEN 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

Intervenor

Proceeding under the Class Proceedings Act, 1992

49. THIS COURT ORDERS that the title of proceedings in action number 98-CV-141369 shall be as follows:

Court file # 98-CV-141369

BETWEEN:

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,  
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO  
and THE ATTORNEY GENERAL OF CANADA

Defendants

and

HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF ALBERTA,  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF SASKATCHEWAN,  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF MANITOBA,  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NEW BRUNSWICK,  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE  
PROVINCE OF PRINCE EDWARD ISLAND,  
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NOVA SCOTIA,  
HER MAJESTY THE QUEEN 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

Intervenor

Proceeding under the Class Proceedings Act, 1992

50. THIS COURT ORDERS that the title of proceedings in action number 98-CV-146405 shall be as follows:

Court File No. 98-CV-146405

BETWEEN:

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

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendants

and  
 HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF ALBERTA,  
 HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF SASKATCHEWAN,  
 HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF MANITOBA,  
 HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NEW BRUNSWICK,  
 HER MAJESTY THE QUEEN IN THE RIGHT OF THE  
 PROVINCE OF PRINCE EDWARD ISLAND,  
 HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NOVA SCOTIA,  
 HER MAJESTY THE QUEEN 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*

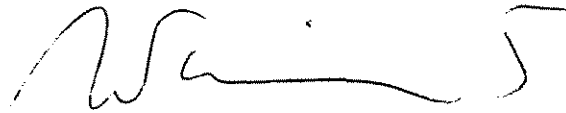
51. THIS COURT ORDERS that the fees and disbursements of :
- (a) the solicitors for the Class Action Plaintiffs in the Ontario Transfused Class Action;
  - (b) the solicitors for the Class Action Plaintiffs in the Ontario Hemophilic Class Action; and
  - (c) the solicitors for the intervenors and for the friends of the Court in the Ontario Class Actions;
- and all matters relating thereto be dealt with by this Court on December 9 and 10, 1999.

52. THIS COURT ORDERS AND ADJUDGES that, save as aforesaid, the Ontario Transfused Class Action and the Ontario Hemophilic Class Action be and are hereby dismissed without costs.

ENTERED AT/INSCRIT A TORONTO  
 ON/BOOK NO:  
 LE/DANS LE REGISTRE NO.:

DEC 14 1999

AS DOCUMENT NO.:  
 A TITRE DE DOCUMENT NO.:  
 PER/PAR: *A. Vancin*



JUSTICE

**JANUARY 1, 1986 - JULY 1, 1990 HEPATITIS C SETTLEMENT AGREEMENT**

**MADE AS OF**

**15 June 1999**



**JANUARY 1, 1986 - JULY 1, 1990 HEPATITIS C SETTLEMENT****Document****Tab****Settlement Agreement**

Schedule A - Transfused HCV Plan

A

Schedule B - Hemophiliac HCV Plan

B

Schedule C - Program

C

Schedule D - Funding Agreement

D

Schedule E - Social Benefits Legislation

E

**1986-1990 HEPATITIS C SETTLEMENT AGREEMENT**

**MADE AS OF**

**15 June 1999**

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**1986-1990 HEPATITIS C SETTLEMENT AGREEMENT**

THIS AGREEMENT is made as of 15 June 1999

**B E T W E E N:**

**THE ATTORNEY GENERAL OF CANADA** ("Canada"), **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA** ("British Columbia"), **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA** ("Alberta"), **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF SASKATCHEWAN** ("Saskatchewan"), **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF MANITOBA** ("Manitoba"), **HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** ("Ontario"), **LE GOUVERNEMENT DU QUEBEC** ("Québec"), **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK** ("New Brunswick"), **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NOVA SCOTIA** ("Nova Scotia"), **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF PRINCE EDWARD ISLAND** ("PEI"), **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEWFOUNDLAND** ("Newfoundland"), **THE GOVERNMENT OF THE NORTHWEST TERRITORIES** ("Northwest Territories"), **THE GOVERNMENT OF NUNAVUT** ("Nunavut"), **THE GOVERNMENT OF THE YUKON TERRITORY** ("Yukon Territory"), (collectively, the "FPT Governments"),

- and -

**ANITA ENDEAN**, plaintiff in the British Columbia Transfused Class Action (the "British Columbia Transfused Plaintiff"), **MARTIN HENRY GRIFFEN** and **ANNA KARDISH**, plaintiffs in the Ontario Transfused Class Action

(the "Ontario Transfused Plaintiffs"), **DOMINIQUE HONHON**, plaintiff in the Québec Transfused Class Action (the "Québec Transfused Plaintiff"), **CHRISTOPHER FORREST MITCHELL**, plaintiff in the British Columbia Hemophiliac Class Action (the "British Columbia Hemophilia Plaintiff"), **JAMES KREPPNER**, and **BARRY ISAAC**, plaintiffs in the Ontario Hemophiliac Action (the "Ontario Hemophilia Plaintiffs") and **DAVID PAGE**, plaintiff in the Québec Hemophiliac Class Action (the "Québec Hemophilia Plaintiff") (collectively, the "Class Action Plaintiffs").

WHEREAS:

- A.** On 21 June 1996 the Québec Transfused Plaintiff commenced Action No. 500-06-000016-960 in the Superior Court of the Province of Québec for the District of Montreal against Canada, Québec, the CRCS and others (the "Québec Transfused Class Action"); on 19 September 1996 the British Columbia Transfused Plaintiff commenced Action No. C965349 in the Vancouver Registry of the Supreme Court of British Columbia against Canada, British Columbia and the CRCS (the "British Columbia Transfused Class Action"); and on 10 February 1998 the Ontario Transfused Plaintiffs commenced Action No. 98-CV-141369 in the Ontario Court (General Division), at Toronto, against Canada, Ontario and the CRCS (the "Ontario Transfused Class Action") (collectively, the "Transfused Class Actions").
- B.** On 24 April 1998 the Ontario Hemophilia Plaintiffs commenced Action No. 98-CV-146405 in the Ontario Court (General Division), at Toronto, against the CRCS and Canada (the "Ontario Hemophiliac Class Action"); on 1 May 1998 the British Columbia Hemophilia Plaintiff commenced Action No. A981187 in the Vancouver Registry of the Supreme Court of British Columbia against the CRCS and Canada (the "British Columbia Hemophiliac Class Action"); and on 7 May 1998 the Québec Hemophilia Plaintiff commenced Action No. 500-06-000068-987 in the Superior Court of the Province of Québec for the District of Montréal against the CRCS, Canada and Québec (the "Québec Hemophiliac Class Action") (collectively, the "Hemophiliac Class Actions").
- C.** The FPT Governments deny the allegations raised in the Class Actions and nothing in this Agreement will be construed as an admission of liability by any FPT Government.
- D.** The FPT Governments and the Class Action Plaintiffs, subject to the Approval Orders, have agreed to settle the Class Actions upon the terms contained in this Agreement.

E. So as to be bound by the Approval Orders in the Ontario Transfused Class Action and the Ontario Hemophiliac Class Action, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, PEI, Newfoundland, the Northwest Territories, Nunavut and the Yukon Territory may intervene therein.

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the premises and the covenants and agreements herein contained, the Parties agree that all actions, causes of actions, liabilities, claims and demands whatsoever of the Class Members in any way relating to or arising from, in the case of Transfused Class Members, the infection of a Primarily-Infected Person with HCV during the Class Period and, in the case of Hemophiliac Class Members, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including, in each case, the infection of a Secondarily-Infected Person) will be finally settled based on the terms and conditions set forth herein upon delivery of the Approval Orders:

## **ARTICLE ONE INTERPRETATION**

### **1.01 Definitions**

In this Agreement, in addition to the terms defined in the description of the Parties and in the recitals set out above:

“**Administrator**” means the administrator appointed by the Courts and its successors appointed from time to time pursuant to the provisions of Articles Five and Ten.

“**Agreement**” means this agreement, including its recitals and Schedules, as amended, supplemented or restated from time to time.

“**Approval Date**” means the date when the last Approval Order becomes final, provided there are no material differences in the Approval Orders.

“**Approval Orders**” means the judgments or orders of the Courts to be granted approving this Agreement as being a good faith, fair, reasonable and adequate settlement of the Class Actions pursuant to the class proceedings legislation in British Columbia, Ontario and Québec.

“**Arbitrator**” means a person appointed as an arbitrator by the Courts pursuant to the provisions of Article Ten hereof and Article Ten of a Plan.

“**Auditors**” means the auditors appointed by the Courts and their successors appointed from time to time pursuant to the provisions of Articles Eight and Ten.



“**Blood**” means Blood as defined in the Transfused HCV Plan or, in relation to hemophiliacs, as defined in the Hemophiliac HCV Plan.

“**Business Day**” means a day other than a Saturday or a Sunday or a day observed as a holiday under the laws of the Province or Territory in which the person to whom notice is given is situated or the federal laws of Canada applicable in the said Province or Territory.

“**Claim**” means a claim made and a claim that may be made in the future pursuant to the provisions of a Plan.

“**Class Action Counsel**” means the respective counsel for each of the Class Action Plaintiffs.

“**Class Actions**” means, collectively, the British Columbia Transfused Class Action, the Ontario Transfused Class Action (which includes all Class Members as defined in the Transfused HCV Plan who are not included in the British Columbia Transfused Class Action or the Québec Transfused Class Action), the Québec Transfused Class Action, the British Columbia Hemophiliac Class Action, the Ontario Hemophiliac Class Action (which includes all Class Members as defined in the Hemophiliac HCV Plan who are not included in the British Columbia Hemophiliac Class Action or the Québec Hemophiliac Class Action) and the Québec Hemophiliac Class Action.

“**Class Members**” means, collectively, the Transfused Class Members and the Hemophiliac Class Members.

“**Class Period**” means the period from and including 1 January 1986 to and including 1 July 1990.

“**Contribution Amount**” has the meaning set out in Section 1.01 of the Funding Agreement.

“**Courts**” means, collectively, the Supreme Court of British Columbia, the Superior Court of Justice for Ontario and the Superior Court of Québec.

“**CRCS**” means The Canadian Red Cross Society and its successors.

“**Disbursements**” has the meaning set out in Section 1.01 of the Funding Agreement.

“**Family Members**” means the Family Members as defined in both of the Plans.

“**Federal Government**” means the government of Canada.

“**Fund Counsel**” means the counsel appointed by the Courts and its successors appointed from time to time pursuant to the provisions of Articles Seven and Ten.

**“Funding Agreement”** means an agreement in the form attached hereto as Schedule D.

**“HCV”** means the Hepatitis C virus.

**“Hemophiliac Class Members”** means Class Members as defined in the Hemophiliac HCV Plan.

**“Hemophiliac HCV Plan”** has the meaning set out in Section 3.02.

**“HIV”** means the human immunodeficiency virus.

**“HIV Secondarily-Infected Persons”** means persons who are entitled to receive compensation under the Program.

**“Investment Advisors”** means the investment advisors appointed by the Courts and their successors appointed from time to time pursuant to the provisions of Article Ten.

**“Joint Committee”** means a committee of four persons comprised of one Class Action Counsel from each of the Transfused Class Actions and one Class Action Counsel from the Hemophiliac Class Actions.

**“Parties”** means each of the FPT Governments, the British Columbia Transfused Plaintiff, the Ontario Transfused Plaintiffs, the Québec Transfused Plaintiff, the British Columbia Hemophilia Plaintiff, the Ontario Hemophilia Plaintiffs and the Québec Hemophilia Plaintiff.

**“Plans”** means, collectively, the Hemophiliac HCV Plan and the Transfused HCV Plan.

**“Primarily-Infected Person”** has the meaning set out in Section 1.01 of the Transfused HCV Plan.

**“Primarily-Infected Hemophiliac”** has the meaning set out in Section 1.01 of the Hemophiliac HCV Plan.

**“Program”** means the program described in Schedule C hereto which devolved from the Federal/Provincial/Territorial Assistance Program for HIV Secondarily-Infected Persons announced by the FPT Governments on 15 December 1998.

**“Provinces”** means, collectively, British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, PEI and Newfoundland.

**“Referee”** means a person appointed as a referee by the Courts pursuant to the provisions of Article Ten hereof and Article Ten of a Plan.

“**Releasees**” means, individually and collectively,

- (a) each of the FPT Governments,
- (b) each of the past, present, and future ministers and employees of each FPT Government,
- (c) each of the past and present agents of each FPT Government,
- (d) the Canadian Blood Agency,
- (e) the Canadian Blood Committee or its members,
- (f) each operator of a hospital or health care facility at which a Primarily-Infected Person or Primarily-Infected Hemophiliac received or took Blood, or a HCV Infected Person received treatment, care or advice in any way relating to or arising from the infection of the HCV Infected Person with HCV,
- (g) each health caregiver who treated or provided care or advice to a HCV Infected Person in any way relating to or arising from the infection of the HCV Infected Person with HCV, and
- (h) any person engaged in the business of collecting, manufacturing, purchasing, processing, supplying or distributing Blood,

including their respective past, present, and future parent, subsidiary and affiliated corporations, employees, agents, officers, directors, shareholders, volunteers, representatives, executors, administrators, successors and assigns. Each of the FPT Governments is a trustee for the purpose of asserting the benefit of the covenants set forth in Section 11.01 for those persons listed in (b) to (h) inclusive and holds the benefit of those covenants on their behalf as well as on its own behalf. For greater certainty, the CRCS is not a Releasee.

“**Secondarily-Infected Person**” has the meaning set out in Section 1.01 of the Transfused HCV Plan or the Hemophiliac HCV Plan, as applicable.

“**Settlement Amount**” has the meaning set out in Section 1.01 of the Funding Agreement.

“**Term**” means the period from and including the Approval Date to the date when this Agreement is terminated pursuant to the provisions of Section 12.03.

“**Territories**” means, collectively, the Northwest Territories, Nunavut and the Yukon Territory.

**“Transfused Class Members”** means Class Members as defined in the Transfused HCV Plan.

**“Transfused HCV Plan”** has the meaning set out in Section 3.01.

**“Trust”** has the meaning set out in Section 1.01 of the Funding Agreement.

**“Trust Fund”** means the trust fund to be established pursuant to the Funding Agreement.

**“Trustee”** means the trustee appointed by the Courts and its successors appointed from time to time pursuant to the provisions of Articles Six and Ten.

## **1.02 Headings**

The division of this Agreement into Articles and Sections and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms “herein”, “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Schedules are to Articles, Sections and Schedules of this Agreement.

## **1.03 Extended Meanings**

In this Agreement words importing the singular number include the plural and *vice versa*, words importing any gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations and governmental authorities. The term “including” means “including without limiting the generality of the foregoing”.

## **1.04 No Contra Proferentem**

The Parties acknowledge that their respective legal counsel have reviewed and participated in settling the terms of this Agreement and they agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party is not applicable in interpreting this Agreement.

## **1.05 Statutory References**

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as enacted on the date hereof or as the same may from time to time be amended, re-enacted or replaced and includes any regulations made thereunder.

**1.06 Day for any Action**

If any day on or by which any action required to be taken hereunder is not a Business Day, such action must be taken on or by the next succeeding day which is a Business Day.

**1.07 Final Order**

For the purposes of this Agreement a judgment or order becomes final when the time for appealing or seeking leave to appeal the judgment or order has expired without an appeal being taken or leave to appeal being sought or, in the event that an appeal is taken or leave to appeal is sought, when such appeal or leave to appeal and such further appeals as may be taken have been disposed of and the time for further appeal, if any, has expired.

**1.08 Currency**

All references to currency herein are to lawful money of Canada.

**1.09 Schedules**

The following are the Schedules to this Agreement:

- Schedule A - Transfused HCV Plan;
- Schedule B - Hemophiliac HCV Plan;
- Schedule C - Program;
- Schedule D - Funding Agreement; and
- Schedule E - Social Benefits Legislation.

**1.10 Obligations of the FPT Governments**

It is understood that the FPT Governments will not have any obligations relating to the ongoing operations of the Plans except for their obligations as set out in Article Four of this Agreement and in the Funding Agreement.

## **ARTICLE TWO PURPOSES AND EFFECT OF AGREEMENT**

### **2.01 Purposes**

The purposes of this Agreement are (i) to establish the Transfused HCV Plan and the Hemophiliac HCV Plan, (ii) to settle the Class Actions and (iii) to provide for payment by the FPT Governments of the Contribution Amount to the Trustee and the payment by the Trustee of the Disbursements, in accordance with and as provided in the Funding Agreement.

### **2.02 Binding Effect**

On the Approval Date this Agreement will become effective and be binding on and after the Approval Date on all the FPT Governments and all the Class Members including the Class Action Plaintiffs. Each Approval Order will constitute approval of this Agreement in respect of all Class Members (including minors and mentally incompetent persons) in each jurisdiction so that no additional court approval of any payment to be made to any Class Member will be necessary.

### **2.03 Effective in Entirety**

The Approval Orders must be issued with respect to this Agreement in its entirety (including all the Schedules) so that none of the provisions of this Agreement will become effective unless all the provisions of this Agreement become effective.

## **ARTICLE THREE PLANS AND PROGRAM**

### **3.01 Transfused HCV Plan**

On the Approval Date, the plan to provide compensation to persons who were infected with HCV through a Blood transfusion received in Canada during the Class Period and secondarily-infected spouses, secondarily-infected children and certain family members, all in the form attached hereto as Schedule A (the "Transfused HCV Plan"), will become effective.

### **3.02 Hemophiliac HCV Plan**

On the Approval Date, the plan to provide compensation to persons who are hemophiliacs, who received or took Blood during the Class Period and who were infected with HCV and secondarily-infected spouses, secondarily-infected children and certain family members, all in the form attached hereto as Schedule B (the "Hemophiliac HCV Plan"), will become effective.

### **3.03 Program**

The FPT Governments have established the Program to provide HIV Secondarily-Infected Persons with a lump-sum payment of \$240,000 per HIV Secondarily-Infected Person. Such payments will be made out of the Trust to a maximum of 240 payments. A description of the Program is set out in Schedule C attached hereto.

## **ARTICLE FOUR FPT GOVERNMENTS**

### **4.01 Funding Agreement**

The Parties will enter into the Funding Agreement.

### **4.02 Social Benefits**

(1) If a Class Member was receiving any medical, ancillary medical, health or drug benefits on 1 April 1999, the receipt of payments pursuant to a Plan will not affect the quantity, nature or duration of any corresponding benefits that any Class Member receives after such date except to the extent that such benefits are related to the Class Member's infection with HCV in which case they are recoverable exclusively under Sections 4.06 and 4.07 of the Plans.

(2) The receipt of any payments pursuant to a Plan will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to a Class Member pursuant to any legislation of any PT Government referred to in Schedule E hereto, provided that the receipt of loss of income or loss of support payments pursuant to Sections 4.02 and 6.01 of the Plans may have such an effect. The receipt of any payments pursuant to a Plan will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to a Class Member pursuant to any social benefit programs of the Federal Government such as old age security and Canada Pension Plan, as such payments either are not considered or, if considered, are otherwise exempted in the calculation of benefits under such legislation, provided that the receipt of loss of income or loss of support payments pursuant to Section 4.02 or 6.01 of a Plan may have such an effect.

### **4.03 No Additional Liability**

On and after the Approval Date, the only obligations and liabilities of any of the FPT Governments, including their respective past, present and future ministers and employees and their past and present agents, and their respective successors, under this Agreement are their obligations and liabilities under this Article Four and the Funding Agreement. For greater certainty, none of the FPT Governments will be liable to provide any additional funds if the

amount of funds to be provided by the FPT Governments pursuant to this Article Four and the Funding Agreement are insufficient to make all the payments to be made pursuant to this Agreement including, for greater certainty, the Plans and the Funding Agreement.

## **ARTICLE FIVE THE ADMINISTRATOR**

### **5.01 Appointment of Administrator**

The Courts will appoint an Administrator to administer the Plans with such powers, rights, duties and responsibilities as are determined by the Joint Committee and approved by the Courts.

### **5.02 Administrator's Duties**

Subject to obtaining the approval of the Courts, the Administrator's duties and responsibilities will include the following:

- (a) establishing and staffing "The 1986-1990 Hepatitis C Claims Centre";
- (b) developing, installing and implementing systems and procedures for receiving, processing, evaluating and making decisions respecting Claims including making all necessary inquiries (including consulting medical personnel) to determine the validity of any Claim and requiring any claimant to have a medical examination;
- (c) reporting to the Joint Committee and the Courts respecting Claims received and being administered;
- (d) providing personnel in such reasonable numbers as are required for the performance of its duties, and training and instructing them;
- (e) keeping or causing to be kept accurate accounts of its activities and its administration of the Plans, preparing such financial statements, reports and records as are required by the Joint Committee, Fund Counsel and the Courts, in form and content as directed by the Courts, and submitting them to the Joint Committee, Fund Counsel and the Courts monthly or so often as the Courts direct;
- (f) receiving and responding to all enquiries and correspondence respecting Claims, supplying claim forms, reviewing and evaluating all Claims, making decisions in respect of Claims, giving notice of its decision, receiving compensation payments on behalf of the Class Members out of the Trust and forwarding the compensation in accordance with the provisions of the Plans within a reasonable



period of time and communicating with a claimant, in either English or French, as the claimant elects;

(g) assisting in the completion of claim forms and attempting to resolve any disputes with claimants;

(h) maintaining a database with all information necessary to permit the Courts to evaluate the financial viability and sufficiency of the Trust Fund from time to time; and

(i) such other duties and responsibilities as the Courts may from time to time by order direct.

### **5.03 Decisions of the Administrator**

The Administrator will give notice of its decision in respect of a Claim to a claimant promptly after the decision is made. A decision of the Administrator in respect of a Claim will, subject to the claimant's right to refer the decision to a Referee or an Arbitrator pursuant to provisions of the Plans, be final and binding upon the claimant and the Administrator.

### **5.04 Fees**

The fees, disbursements and other costs of the Administrator will be paid out of the Trust in a time, in a manner and in an amount approved by the Courts.

## **ARTICLE SIX THE TRUSTEE**

### **6.01 Appointment of Trustee**

The Courts will appoint a Trustee to act as the trustee of the Trust with such powers, rights, duties and responsibilities as the Courts direct. Without limiting the generality of the foregoing, the duties and responsibilities of the Trustee will include its duties and responsibilities as set out in the Funding Agreement and the Trustee will be obliged to act in accordance with the provisions of the Funding Agreement.

## **6.02 Fees**

The fees, disbursements and other costs of the Trustee will be paid out of the Trust in a time, in a manner and in an amount approved by the Courts.

## **ARTICLE SEVEN FUND COUNSEL**

### **7.01 Appointment of Fund Counsel**

The Courts will appoint Fund Counsel with such powers, rights, duties and responsibilities as the Courts direct. Without limiting the generality of the foregoing, the duties and responsibilities of the Fund Counsel will include:

- (a) defending decisions made by the Administrator;
- (b) defending and advancing the interests of the Trust;
- (c) receiving financial statements and actuarial and other reports relating to the financial sufficiency of the Trust Fund from time to time; and
- (d) if deemed necessary or desirable by Fund Counsel, making applications to the Courts pursuant to Section 10.01.

### **7.02 Fees**

The fees, disbursements and other costs of the Fund Counsel will be paid out of the Trust in a time, in a manner and in an amount approved by the Courts.

## **ARTICLE EIGHT THE AUDITORS**

### **8.01 Appointment of Auditors**

The Courts will appoint Auditors with such powers, rights, duties and responsibilities as the Courts direct. Without limiting the generality of the foregoing, the duties and responsibilities of the Auditors will include (i) to audit the accounts of the Administrator for the Plans and the Trust in accordance with generally accepted auditing standards on an

annual basis and (ii) to file the financial statements of the Administrator for the Plans and the Trust together with the Auditors' report thereon with the Courts and deliver a copy thereof to the Joint Committee, the Trustee and the Fund Counsel within 60 days after the end of each financial year of the Plans and the Trust.

#### **8.02 Fees**

The fees, disbursements and other costs of the Auditors will be paid out of the Trust in a time, in a manner and in an amount approved by the Courts.

### **ARTICLE NINE JOINT COMMITTEE**

#### **9.01 Appointment of Joint Committee**

The Courts will appoint a Joint Committee with such powers, rights, duties and responsibilities as the Courts direct.

#### **9.02 Joint Committee's Duties**

Without limiting the generality of the foregoing, the duties and responsibilities of the Joint Committee will include:

- (a) recommending from time to time persons for appointment by the Courts pursuant to the provisions of Article Ten;
- (b) establishing protocols, which must be approved by the Courts, for the Administrator, Trustee, Referees and Arbitrators for the administration of this Agreement and for the processing and payment of Claims, and rescinding or amending any of such protocols with the approval of the Courts;
- (c) receiving and assessing information received from the Administrator, the Trustee, the Auditors and Fund Counsel and applying to the Courts for advice and direction;
- (d) retaining actuaries to determine the financial sufficiency of the Trust Fund from time to time;
- (e) receiving advice from the Investment Advisors on the investment of the assets of the Trust; and
- (f) making applications to the Courts pursuant to Section 10.01(1).

Decisions of the Joint Committee will require the approval of all members of the Joint Committee.

### **9.03 Fees**

The fees, disbursements and other costs of the Joint Committee will be paid out of the Trust in a time, in a manner and in an amount approved by the Courts.

## **ARTICLE TEN SUPERVISION BY THE COURTS**

### **10.01 Supervising Role of the Courts**

(1) The Courts will issue judgments or orders in such form as is necessary to implement and enforce the provisions of this Agreement and will supervise the ongoing performance of this Agreement including the Plans and the Funding Agreement. Without limiting the generality of the foregoing, the Courts will:

- (a) appoint and, if necessary, remove the Administrator;
- (b) appoint and, if necessary, remove the Trustee;
- (c) appoint and, if necessary, remove the Fund Counsel;
- (d) appoint and, if necessary, remove the Auditors;
- (e) appoint and, if necessary, remove any member of the Joint Committee;
- (f) appoint and, if necessary, remove any Referee or Arbitrator;
- (g) appoint and, if necessary, remove any Investment Advisor;
- (h) approve, rescind or amend the protocols submitted by the Joint Committee or any Class Action Counsel;
- (i) on application of any Party or the Joint Committee made within 180 days after (i) 31 December 2001 and (ii) each third anniversary of such date, and on application of the Joint Committee or any Class Action Counsel or the Fund Counsel made at any time, assess the financial sufficiency of the Trust Fund and determine, among other things, (A) whether the restrictions on payments of amounts in full in the Plans should be varied or removed in whole or in part, and (B) whether the terms of the Plans

should be amended due to a financial insufficiency or anticipated financial insufficiency of the Trust Fund;

- (j) hear motions opposing confirmation of any Referee's reports;
- (k) on application of the Joint Committee, approve the terms of investment guidelines for the assets of the Trust;
- (l) on application of the Administrator, Fund Counsel, the Auditors, any Class Action Counsel, the Joint Committee or the Trustee, provide advice and direction;
- (m) approve any amendment or supplement to, or restatement of, this Agreement agreed to in writing by the FPT Governments and the Joint Committee;
- (n) approve any costs incurred or to be incurred in administering this Agreement including, for greater certainty, the Plans, the Program (up to a maximum of \$2 million) and the Funding Agreement and the defence costs payable out of the Trust pursuant to Section 11.02 hereof; and
- (o) declare this Agreement to be terminated and, if applicable, order that any assets remaining in the Trust Fund be the sole property of and transferred to the FPT Governments.

(2) All matters to be determined by the Courts pursuant to Section 10.01(1) will take effect only upon the date when the last judgment or order of the Courts becomes final without any material differences in the three judgments or orders.

## **ARTICLE ELEVEN RELEASES**

### **11.01 Releases**

The Approval Orders will declare that:

- (a) each Class Member has released each of the Releasees from any and all actions, causes of actions, liabilities, claims and demands whatsoever of every nature or kind for damages, contribution, indemnity, costs, expenses and interest which any such Class Member ever had, now has or may hereafter have in any way relating to or arising from (i) in the case of each Transfused Class Member, the infection of a Primarily-Infected Person with HCV during the Class Period or (ii) in the case of each Hemophiliac Class Member, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including, in each case, the infection of a Secondarily-Infected

Person) whether such claims were made or could have been made in any proceeding including the Class Actions;

(b) the Class Members, separately and severally, fully, finally and forever release each of the Releasees, separately and severally, and in each and every capacity that such actions, causes of actions, liabilities, claims or demands may be asserted against any Releasee;

(c) the Class Members are deemed to agree that they will not make any claim or demand or take any actions or proceedings against any Releasee or any other person in which any claim could arise against any Releasee for damages and/or contribution and/or indemnity and/or other relief over under the provisions of the *Negligence Act* (Ontario) or its counterpart in other jurisdictions, the common law or any other statute of Ontario or any other jurisdiction in any way relating to or arising from (i) in the case of each Transfused Class Member, the infection of a Primarily-Infected Person with HCV during the Class Period, or (ii) in the case of each Hemophiliac Class Member, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including, in each case, the infection of a Secondarily-Infected Person), provided that the foregoing excludes the CRCS;

(d) at the option of the FPT Governments or their representatives, each Class Member receiving payment under one of the Plans will either,

- (i) pursue any claims as described in Section 11.01(c) that the Class Member has against the CRCS, and assign to the FPT Governments the proceeds received by the Class Member from any such claims, or
- (ii) within the *Companies' Creditors Arrangement Act* (Canada) proceedings relating to the CRCS, prove, vote and otherwise act to promote those claims as described in Section 11.01(c) that the Class Member has against the CRCS in accordance with directions given to the Class Member by the FPT Governments or their representatives, or, at the request of the FPT Governments or their representatives grant to the FPT Governments and their representatives such proxies or other forms of assignment as are necessary for the FPT Governments to vote and otherwise act to promote any such claim of the Class Member, or
- (iii) enter into a release of all of such claims against the CRCS substantially in the form of the releases attached as appendices to the Plans.

(e) the FPT Governments' obligations and liabilities pursuant to Article Four hereof and the Funding Agreement constitute the consideration for the releases and other matters referred to in Sections 11.01(a) to (d) inclusive and such consideration

is in full and final settlement and satisfaction of any and all claims referred to therein and the Class Members are limited to the compensation payable pursuant to the Plans as funded, in whole or in part, pursuant to the Funding Agreement as their only recourse on account of any and all such actions, causes of actions, liabilities, claims and demands.

### **11.02 Claims by Opt-Outs and Others**

If any person who opts out of a Class Action or any Class Member who is not bound by the provisions of this Agreement or any other person who claims over or brings a third party claim makes any claim or demand or takes any action or proceeding against any FPT Government in any way relating to or arising from (i) in the case of a Transfused Class Member, the infection of a Primarily-Infected Person with HCV during the Class Period or, (ii) in the case of a Hemophiliac Class Member, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including, in each case, the infection of a Secondarily-Infected Person), the amount payable by a FPT Government to the person who opts out of a Class Action or Class Member who is not bound by the provisions of this Agreement or person who claims over or brings a third party claim pursuant to either a final judgment of a court in a contested action or a settlement approved by one of the Courts and an amount equal to one-third of the defence costs (including costs of counsel, disbursements and applicable taxes) arising out of any action (whether an FPT Government has been successful in defending the action or not) or settlement and approved by one of the Courts will be paid out of the Trust.

### **11.03 Dismissal of Actions**

Each of the Class Actions will be dismissed on the Approval Date in accordance with the terms of the Approval Orders.

### **11.04 Cessation of Litigation**

(1) Upon execution of this Agreement, the Class Action Plaintiffs and Class Action Counsel will cooperate with the FPT Governments to obtain approval of this Agreement and general participation by Class Members in the Plans.

(2) Each Class Action Counsel will undertake, within five Business Days after the Approval Date, not to commence or assist or advise on the commencement or continuation of any action or proceeding against any of the Releasees, or against any person who may claim contribution or indemnity from any of the Releasees in any way relating to or arising from (i) in the case of a Transfused Class Member, the infection of a Primarily-Infected Person with HCV during the Class Period or (ii) in the case of a Hemophiliac Class Member, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including, in each case, the infection of a Secondarily-Infected Person), provided that nothing in the Agreement

will prevent any Class Action Counsel from advising any person to obtain independent legal advice before deciding whether to opt out of a Class Action.

(3) Each Class Member who has commenced any action or proceeding as described in Section 11.04(2), other than the Class Actions, must consent to a dismissal of such action or proceeding without costs before receiving any payment under a Plan.

## **ARTICLE TWELVE CONDITIONS, AMENDMENT AND TERMINATION**

### **12.01 Agreement Conditional**

This Agreement will not be effective unless and until it is approved by the Court in each of the Class Actions, and if such approvals are not granted without any material differences therein, this Agreement will be thereupon terminated and none of the Parties will be liable to any of the other Parties hereunder.

### **12.02 Amendments**

Except as expressly provided in this Agreement, no amendment or supplement may be made to the provisions of this Agreement and no restatement of this Agreement may be made unless agreed to by the FPT Governments and all members of the Joint Committee in writing and any such amendment, supplement or restatement is approved by the Courts without any material differences.

### **12.03 Termination**

(1) This Agreement will continue in full force and effect until the date on which the Courts have declared this Agreement to be terminated.

(2) Any of the FPT Governments or the Joint Committee may apply for a declaration pursuant to Section 12.03(1).

(3) After this Agreement is terminated by the Courts, any assets remaining in the Trust will be the sole property of and transferred to the FPT Governments.



**ARTICLE THIRTEEN  
GENERAL**

**13.01 Notices**

Any notice or other communication to be given in connection with this Agreement will be given in writing and will be given by personal delivery or by electronic communication addressed to the recipient as follows:

- (a) to The Attorney General of Canada:

Justice Canada, Department of Health  
Brooke Claxton Building, 2nd Floor  
Tunney's Pasture  
P. O. Box: Postal Locator: 0902D  
Ottawa, Ontario  
K1A 0K9

Attention: Senior General Counsel  
Facsimile No.: (613) 957-1327

- (b) to Her Majesty the Queen In Right of the Province of British Columbia:

c/o Ministry of the Attorney General  
6th Floor, 1001 Douglas Street  
Victoria, B.C.  
V8W 2C5

Attention: Supervising Counsel  
Facsimile No.: (250) 356-9154

- (c) to Her Majesty the Queen In Right of the Province of Alberta:

c/o Alberta Justice  
Civil Law Branch, 5th Floor  
9833 - 109th Street  
Edmonton, Alberta  
T5K 2E8

Attention: Minister of Health and Wellness  
Facsimile No.: (780) 415-0961

Attention: Minister of International and Intergovernmental  
Relations

(d) to Her Majesty the Queen In Right of the Province of Saskatchewan:

c/o Saskatchewan Justice  
Civil Law Division  
9th Floor  
1874 Scarth Street  
Regina, Saskatchewan  
S4P 3V7

Attention: Darryl Bogdasavich, Q.C.  
Facsimile No.: (306) 787-0581

(e) to Her Majesty the Queen In Right of the Province of Manitoba:

Manitoba Justice  
Suite 730  
405 Broadway  
Winnipeg, Manitoba  
R3C 3L6

Attention: Director of Legal Services  
Facsimile No.: (204) 948-2041

(f) to Her Majesty the Queen In Right of Ontario:

c/o Ministry of the Attorney General for Ontario  
Director, Crown Law Office Civil  
8th Floor, 720 Bay Street  
Toronto, Ontario  
M5G 2K1

Facsimile No.: (416) 326-4181

(g) to Le Gouvernement du Québec:

c/o La Procureure Générale du Québec  
1 est, rue Notre-Dame, 8 ième étage  
Montreal, Québec  
H2Y 1B6

Attention: Robert Monette  
Facsimile No.: (514) 873-7074

(h) to Her Majesty the Queen In Right of the Province of New Brunswick:

c/o Department of Justice  
Legal Services Branch  
Room 444, Centennial Building  
670 King Street  
P. O. Box 6000  
Fredericton, New Brunswick  
E3B 5H1

Attention: William A. Anderson  
Facsimile No.: (506) 453-3275

(i) to Her Majesty the Queen In Right of the Province of Nova Scotia:

Department of Health  
P. O. Box 488  
Halifax, Nova Scotia  
B3J 2R8

Attention: Deputy Minister of Health  
Facsimile No.: (902) 424-0559

(j) to Her Majesty the Queen In Right of the Province of Prince Edward Island:

Department of Community Affairs and Attorney General  
P. O. Box 2000, 11 Kent Street, 1st Floor  
Charlottetown, Prince Edward Island  
C1A 7N8

Attention: Adele MacLeod  
Facsimile No.: (902) 368-4563

(k) to Her Majesty the Queen In Right of the Province of Newfoundland:

Department of Justice  
Confederation Building  
P. O. Box 8700  
St. John's, Newfoundland  
A1B 4J6

Attention: Mrs. Lynn Spracklin, Q.C.  
Deputy Attorney General  
Facsimile No.: (709) 729-2129

(l) to The Government of the Northwest Territories:

Government of the Northwest Territories  
Legislative Assembly (2)  
P. O. Box 1320  
Yellowknife, Northwest Territories  
X1A 2L9

Attention: The Honourable Floyd Roland  
Minister of Health and Social Services  
Facsimile No.: (867) 873-0399

(m) to The Government of Nunavut:

Department of Justice  
Government of Nunavut  
P. O. Box 800  
Iqaluit, NT  
X0A 0H0

Attention: Nora Sanders  
Deputy Minister of Justice  
Facsimile No.: (867) 979-5977

(n) to The Government of the Yukon Territory:

c/o Yukon Justice  
Legal Services, 2nd Floor  
Andrew Philipsen Law Centre  
2130 Second Avenue  
Whitehorse, Yukon  
Y1A 5C3

Attention: Director of Legal Services  
Facsimile No.: (867) 393-6379

(o) to Anita Endean:

c/o Camp Church & Associates  
4th Floor, Randall Building  
555 West George Street  
Vancouver, British Columbia  
V6B 1Z5

Attention: J.J. Camp, Q.C.  
Facsimile No.: (604) 689-7554

(p) to Martin Henry Griffen and Anna Kardish:

c/o Gignac, Sutts  
600 Westcourt Place  
251 Goyeau Street  
Windsor, Ontario  
N9A 6V4

Attention: Harvey T. Strosberg, Q.C.  
Facsimile No.: (519) 258-9527

(q) to Dominique Honhon:

c/o Pierre R. Lavigne  
220-440 Laurier Avenue, West  
Ottawa, Ontario  
K1R 7X6

Facsimile No.: (613) 782-2445

and to:

Marchand, Magnan, Melanson, Forget  
Ste. 1640  
600 rue de la Gauchetiere  
Montreal, Québec  
H3B 4L8

Attention: Michel Savonitto  
Facsimile No.: (514) 861-0727

(r) to Christopher Forrest Mitchell:

c/o Blake, Cassels & Graydon  
Three Bentall Centre, Suite 2600  
595 Burrard Street  
Vancouver, British Columbia  
V7X 1L3

Attention: Marvin R. V. Storrow  
Facsimile No.: (604) 631-3309

(s) to James Kreppner and Barry Isaac:

c/o Hodgson Tough Shields DesBrisay O'Donnell  
36 Toronto Street, Suite 550  
Toronto, Ontario  
M5C 2C5

Attention: Bonnie A. Tough  
Facsimile No.: (416) 304-6406

(t) to David Page:

c/o Petit Blaquiére Dagenais  
5929, Transcanadienne, Suite 230  
Ville St-Laurent, Québec  
H4T 1Z6

Attention: Jean Blaquiére  
Facsimile No.: (514) 744-8003

or to such other address, individual or electronic communication number as a Party may from time to time advise by notice given pursuant to this Section. Any notice or other communication will be exclusively deemed to have been given, if given by personal delivery, on the day of actual delivery thereof and, if given by electronic communication, on the day of transmittal thereof if transmitted during normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not so transmitted.

### **13.02 Entire Agreement**

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and cancels and supersedes any prior or other understandings and agreements between the Parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings, covenants or collateral agreements, express, implied or statutory between the Parties with respect to the subject matter hereof other than as expressly set forth in this Agreement.

### **13.03 Class Action Counsel Fees**

The fees, disbursements, costs, GST and other applicable taxes of Class Action Counsel will be paid out of the Trust. Fees will be fixed by the Court in each Class Action on the basis of a lump sum, hourly rate, hourly rate increased by a multiplier or otherwise, but not on the basis of a percentage of the Settlement Amount.

### **13.04 Benefit of the Agreement**

This Agreement will enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of the Parties.

### **13.05 Counterparts**

This Agreement may be executed in English or French in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement.

SIGNED, SEALED AND DELIVERED ) THE ATTORNEY GENERAL OF CANADA  
 in the presence of: )  
 )  
 )  
 )  
 ) By: "Ivan G. Whitehall"  
 ) Name: I. G. Whitehall, Q.C.  
 ) Office: Chief General Counsel

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) HER MAJESTY THE QUEEN IN THE RIGHT  
 ) OF THE PROVINCE OF BRITISH COLUMBIA  
 )  
 )

) By: "Penny Priddy"

) Name: Honourable Penny Priddy, Minister of

) Office: Health and Minister Responsible for Seniors  
 )

) HER MAJESTY THE QUEEN IN THE RIGHT  
 ) OF THE PROVINCE OF ALBERTA  
 )  
 )

) By: "Halvar Jonson"

) Name: H. C. Jonson

) Office: Minister of Health and Wellness  
 )

) And: "S. McClellan"

) Name: Hon. Shirley McClellan, Minister of

) Title: International & Intergovernmental Affairs  
 )

) HER MAJESTY THE QUEEN IN THE RIGHT  
 ) OF THE PROVINCE OF SASKATCHEWAN  
 )  
 )

) By: "Pat Atkinson"

) Name: Pat Atkinson

) Office: Minister of Health  
 )

) HER MAJESTY THE QUEEN IN THE RIGHT  
 ) OF THE PROVINCE OF MANITOBA  
 )  
 )

) By: "Eric Stefanson"

) Name: Honourable Eric Stefanson

) Office: Minister of Health  
 )

) HER MAJESTY THE QUEEN IN RIGHT  
 ) OF ONTARIO  
 )  
 )

) By: "Jeffrey C. Lozon"

) Name: Jeffrey C. Lozon

) Office: Deputy Minister of Health



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) LE GOUVERNEMENT DU QUEBEC  
)  
)  
) By: "P. Marois"  
) Name: Pauline Marois  
) Office: Ministre d'État à la Santé et aux Services sociaux  
)  
)  
) And: "J. Facal"  
) Name: Joseph Facal, Ministre délégué aux  
) Office: affaires intergouvernementales canadiennes  
)  
) HER MAJESTY THE QUEEN IN THE RIGHT  
) OF THE PROVINCE OF NEW BRUNSWICK  
)  
)  
) By: "Ann Breault"  
) Name: Ann Breault, Minister of  
) Office: Health and Community Services  
)  
) HER MAJESTY THE QUEEN IN THE RIGHT  
) OF THE PROVINCE OF NOVA SCOTIA  
)  
)  
) By: "James A. Smith"  
) Name: Dr. James A. Smith  
) Office: Minister of Health  
)  
) HER MAJESTY THE QUEEN IN THE RIGHT  
) OF THE PROVINCE OF PRINCE EDWARD  
) ISLAND  
)  
)  
) By: "Mildred Dover"  
) Name: Mildred Dover, Minister of  
) Office: Health and Social Services  
)

Deborah E. Fry  
Deputy Minister

) HER MAJESTY THE QUEEN IN THE RIGHT  
) OF THE PROVINCE OF NEWFOUNDLAND  
)  
)  
)

) By: "Joan Aylward"  
) Name: Joan Marie Aylward  
) Office: Minister of Health and Community Services  
)  
)

Tim Murphy  
Assistant Deputy Minister

) And: "B. Tobin"  
) Name: Brian Tobin  
) Office: Premier  
)  
)

) THE GOVERNMENT OF  
) THE NORTHWEST TERRITORIES  
)  
)

) By: "Floyd K. Roland"  
) Name: Floyd K. Roland  
) Office: Minister of Health and Social Services  
)  
)

) THE GOVERNMENT OF NUNAVUT  
)  
)

) By: "Edward Picco"  
) Name: Edward Picco  
) Office: Minister of Health and Social Services  
)  
)

) THE GOVERNMENT OF THE YUKON  
) TERRITORY  
)  
)

) By: "David Sloan"  
) Name: David Sloan  
) Office: Minister, Health and Social Services  
)  
)

"J. J. Camp"  
as to the signature of  
Anita Endean

) "Anita Endean"  
) Anita Endean  
)  
)

)  
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**SCHEDULE A**

**TRANSFUSED HCV PLAN**

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**SCHEDULE A**  
**TRANSFUSED HCV PLAN**

**ARTICLE ONE**  
**INTERPRETATION**

**1.01 Definitions**

**“Administrator”** means the Administrator appointed from time to time by the Courts pursuant to the Settlement Agreement.

**“Approval Date”** means the date when the judgments or orders of the Courts approving the Settlement Agreement become final and, as a result, this Plan becomes effective.

**“Approved Dependant”** means a Dependant whose Claim made pursuant to Section 3.06 has been accepted by the Administrator.

**“Approved Family Member”** means a Family Member referred to in clause (a) of the definition of Family Member in this Section 1.01 whose Claim made pursuant to Section 3.07 has been accepted by the Administrator.

**“Approved HCV Infected Person”** means a HCV Infected Person whose Claim made pursuant to Section 3.01 or 3.02, as the case may be, has been accepted by the Administrator.

**“Approved HCV Personal Representative”** means a HCV Personal Representative whose Claim made pursuant to Section 3.05 has been accepted by the Administrator.

**“Arbitrator”** means a person appointed as an arbitrator by the Courts pursuant to the provisions of Section 10.02 hereof and Article Ten of the Settlement Agreement.

**“Average Industrial Wage in Canada”** means the Average Weekly Earnings (all Industries), as published in Statistics Canada’s on-line statistical data base created from The Canadian Socio-Economic Information Management System (CANSIM) data base or any successor data base, for the most recent period for which such information is published at the date the determination provided for in Section 4.02 or 6.01 is to be made.

**“Blood”** means whole blood and the following blood products: packed red cells, platelets, plasma (fresh frozen and banked) and white blood cells. Blood does not include Albumin 5%, Albumin 25%, Factor VIII, Porcine Factor VIII, Factor IX, Factor VII, Cytomegalovirus Immune Globulin, Hepatitis B Immune Globulin, Rh Immune Globulin, Varicella Zoster Immune Globulin, Immune Serum Globulin, (FEIBA) FEVIII Inhibitor



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Bypassing Activity, Autoplex (Activate Prothrombin Complex), Tetanus Immune Globulin, Intravenous Immune Globulin (IVIG) and Antithrombin III (ATIII).

**“Business Day”** means a day other than a Saturday or a Sunday or a day observed as a holiday under the laws of the Province or Territory in which the person to whom notice is given is situated or the federal laws of Canada applicable in the said Province or Territory.

**“Child”** includes:

- (a) an adopted child;
- (b) a child conceived before and born alive after his or her parent’s death; and
- (c) a child to whom a person has demonstrated a settled intention to treat as a child of his or her family;

but does not include a foster child placed in the home of a HCV Infected Person for valuable consideration.

**“Claim”** means a claim made and a claim that may be made in the future pursuant to the provisions of this Plan.

**“Class Action Counsel”** has the meaning set out in Section 1.01 of the Settlement Agreement.

**“Class Members”** means, collectively, all Primarily-Infected Persons, all Secondarily-Infected Persons, all HCV Personal Representatives and all Family Members but excludes, for greater certainty, all persons who opt out of a Class Action.

**“Class Period”** means the period from and including 1 January 1986 to and including 1 July 1990.

**“Cohabit”** means to live together in a conjugal relationship, whether within or outside marriage.

**“Compensable HCV Drug Therapy”** means interferon or ribavirin, used alone or in combination, or any other treatment that has a propensity to cause adverse side effects and that has been approved by the Courts for compensation.

**“Courts”** means, collectively, the Supreme Court of British Columbia, the Superior Court of Justice for Ontario and the Superior Court of Québec.

**“Dependant”** means a Family Member of a HCV Infected Person referred to in clauses (a) and (c) of the definition of a Family Member in this Section 1.01 to whom that HCV Infected Person was providing support or was under a legal obligation to provide support on the date of the HCV Infected Person’s death.

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“EAP” means the HIV Extraordinary Assistance Plan announced by the government of Canada on 14 December 1989.

“Family Member” means:

- (a) the Spouse, Child, Grandchild, Parent, Grandparent or Sibling of a HCV Infected Person;
- (b) the Spouse of a Child, Grandchild, Parent or Grandparent of a HCV Infected Person;
- (c) a former Spouse of a HCV Infected Person;
- (d) a Child or other lineal descendant of a Grandchild of a HCV Infected Person;
- (e) a person of the opposite sex to a HCV Infected Person who Cohabited for a period of at least one year with that HCV Infected Person immediately before his or her death;
- (f) a person of the opposite sex to a HCV Infected Person who was Cohabiting with that HCV Infected Person at the date of the HCV Infected Person’s death and to whom that HCV Infected Person was providing support or was under a legal obligation to provide support on the date of the HCV Infected Person’s death; and
- (g) any other person to whom a HCV Infected Person was providing support for a period of at least three years immediately prior to the HCV Infected Person’s death.

unless any person described above opts out of the Class Action in which he or she would otherwise be a Class Member.

“FPT Governments” means, collectively, (i) the government of Canada, (ii) the governments of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland (collectively, the “Provinces”) and (iii) the governments of the Northwest Territories, Nunavut and the Yukon Territory (collectively, the “Territories”).

“Fund Counsel” has the meaning set out in Section 1.01 of the Settlement Agreement.

“Grandchild” means the Child of a Child.

“Grandparent” means the Parent of a Parent.

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**“Guardian”** includes a litigation guardian, guardian *ad litem* and other representative of a minor or mentally incompetent in litigation proceedings.

**“HCV”** means the Hepatitis C virus.

**“HCV Antibody Test”** means a blood test performed in Canada using a commercially available assay acceptable to the Administrator demonstrating that the HCV antibody is present in the blood of a person.

**“HCV Infected Person”** means a Primarily-Infected Person or a Secondarily-Infected Person.

**“HCV Personal Representative”** means the Personal Representative of a HCV Infected Person (whether deceased, a minor or mentally incompetent) who does not opt out of a Class Action.

**“HIV”** means the human immunodeficiency virus.

**“HIV Secondarily-Infected Person”** means a person who is entitled to receive compensation under the Program attached as Schedule C to the Settlement Agreement.

**“Joint Committee”** has the meaning set out in Section 1.01 of the Settlement Agreement.

**“MPTAP”** means the HIV Multi-Provincial/Territorial Assistance Program announced by the governments of the Provinces and Territories on 15 September 1993.

**“Nova Scotia Compensation Plan”** means the Nova Scotia HIV Assistance Program introduced in 1993 which provides financial assistance and other benefits to persons infected in Nova Scotia by HIV through the Canadian blood supply.

**“Opted-Out HCV Infected Person”** means an Opted-Out Primarily-Infected Person or a person who would otherwise be a Secondarily-Infected Person but is not because he or she opts out of the Class Action in which he or she would otherwise be a Class Member.

**“Opted-Out Primarily-Infected Person”** means a person who would otherwise be a Primarily-Infected Person but is not because he or she opts out of the Class Action in which he or she would otherwise be a Class Member.

**“Parent”** includes a person who has demonstrated a settled intention to treat a Child as a child of his or her family.

**“PCR Test”** means a polymerase chain reaction test result from a commercially available assay acceptable to the Administrator demonstrating that HCV is present in a sample of blood of the person.

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**“Pension Index”** has the meaning set out in Section 7.02.

**“Personal Representative”** includes, if a person is deceased, an executor, administrator, estate trustee, trustee or liquidator of the deceased or, if the person is a minor or mentally incompetent, the tutor, committee, Guardian or curator of the person.

**“Plan”** means this Transfused HCV Plan including its Appendices, as amended, supplemented or restated from time to time.

**“Primarily-Infected Person”** means a person who received a Blood transfusion in Canada during the Class Period and who is or was infected with HCV unless:

- (a) it is established on the balance of probabilities by the Administrator that such person was not infected for the first time with HCV by a Blood transfusion received in Canada during the Class Period;
- (b) such person used non-prescription intravenous drugs, and such person has failed to establish on the balance of probabilities that he or she was infected for the first time with HCV by a Blood transfusion received in Canada during the Class Period; or
- (c) such person opts out of the Class Action in which he or she would otherwise be a Class Member.

**“Prime Rate”** means the rate of interest per annum established and reported by the Bank of Montreal, or such other bank as the Courts may direct, to the Bank of Canada from time to time as a reference rate of interest for the determination of interest rates that the Bank of Montreal, or such other bank as the Courts may direct, charges to customers of varying degrees of creditworthiness in Canada for Canadian dollar loans made by it in Canada.

**“Referee”** means a person appointed as a referee by the Courts pursuant to the provisions of Section 10.02 hereof and Article Ten of the Settlement Agreement.

**“Secondarily-Infected Person”** means:

- (a) a Spouse of a Primarily-Infected Person or Opted-Out Primarily-Infected Person who is or was infected with HCV by such Primarily-Infected Person or Opted-Out Primarily-Infected Person provided the Claim of the Spouse is made:
  - (i) before the expiration of three years from the date the Primarily-Infected Person first makes a Claim, his or her HCV Personal Representative makes the first Claim on his or her behalf or the Opted-Out Primarily-Infected Person opts out;

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- (ii) in accordance with the provisions of Section 3.05(1), where a HCV Personal Representative makes the first Claim on behalf of a Primarily-Infected Person who is deceased; or
- (iii) in accordance with the provisions of Section 3.08, where the Primarily-Infected Person has not made a Claim; or
- (b) a Child of a HCV Infected Person or Opted-Out HCV Infected Person who is or was infected with HCV by such HCV Infected Person or Opted-Out HCV Infected Person;

but does not include:

- (c) such Spouse or Child, if he or she used non-prescription intravenous drugs, and fails to establish on the balance of probabilities that he or she is or was infected for the first time with HCV by:
  - (i) such Primarily-Infected Person or Opted-Out Primarily-Infected Person in the case of a Spouse; or
  - (ii) such HCV Infected Person or Opted-Out HCV Infected Person in the case of a Child; or
- (d) such Spouse or Child if he or she opts out of the Class Action in which he or she would otherwise be a Class Member.

**“Settlement Agreement”** means the agreement made as of 15 June 1999 between the FPT Governments and the plaintiffs in the Class Actions.

**“Sibling”** means a Child of one or both of the Parents of a HCV Infected Person.

**“Spouse”** means:

- (a) either of a man and a woman who,
  - (i) are married to each other;
  - (ii) have together entered into a marriage that is voidable or void, in good faith on the part of the person asserting a right under this Plan;
  - (iii) have Cohabited for at least two years; or
  - (iv) have Cohabited in a relationship of some permanence if they are the natural Parents of a Child; or
- (b) either of two persons of the same sex who have lived together in a close personal relationship that would constitute a conjugal relationship if they were not of the same sex,
  - (i) for at least two years; or

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- (ii) in a relationship of some permanence if they are the Parents of a Child.

**“Term”** means the period commencing on the Approval Date and ending on the date that this Plan is terminated by the Courts.

**“Traceback Procedure”** means a targeted search for and investigation of the donor and/or the units of Blood received by a HCV Infected Person.

**“Trust”** means the trust to be established by the FPT Governments pursuant to the Funding Agreement attached as Schedule D to the Settlement Agreement.

**“Trust Fund”** means the fund to be established by the FPT Governments pursuant to the Funding Agreement attached as Schedule D to the Settlement Agreement.

## **1.02 Headings**

The division of this Plan into Articles and Sections and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or interpretation of this Plan. The terms “hereof”, “hereunder” and similar expressions refer to this Plan and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Schedules are to Articles, Sections and Schedules of this Plan.

## **1.03 Extended Meanings**

In this Plan words importing the singular number include the plural and *vice versa*, words importing any gender include all genders and words importing persons include individuals, partnerships, associates, trusts, unincorporated organizations, corporations and governmental authorities. The term “including” means “including without limiting the generality of the foregoing”.

## **1.04 Statutory References**

In this Plan, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as enacted on the date hereof or as the same may from time to time be amended, re-enacted or replaced and includes any regulations made thereunder.

## **1.05 Day for any Action**

If any day on or by which any action required to be taken hereunder is not a Business Day, such action must be taken on or by the next succeeding day which is a Business Day.

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**1.06 Residence**

A Class Member is deemed to be resident in the Province or Territory where he or she ordinarily resides or, if the Class Member resides outside of Canada, in the Province or Territory where the relevant Primarily-Infected Person or Opted-Out Primarily-Infected Person first received a Blood transfusion during the Class Period. A HCV Personal Representative will be deemed to be resident in the Province or Territory where the relevant HCV Infected Person is, or was deemed to be, resident.

**1.07 Currency**

All references to currency herein are to lawful money of Canada.

**1.08 Appendices**

The following are the Appendices to this Plan:

- Appendix A - Social Benefits Legislation;
- Appendix B - Release;
- Appendix C - Reference Rules; and
- Appendix D - Arbitration Rules.

**ARTICLE TWO  
PURPOSE AND EFFECT OF PLAN**

**2.01 Purpose**

The purpose of this Plan is to provide compensation to Class Members on the terms and subject to the conditions set out herein.

**2.02 Binding Effect**

This Plan is binding on all Class Members.

**ARTICLE THREE  
REQUIRED PROOF FOR COMPENSATION**

**3.01 Claim by Primarily-Infected Person**

(1) A person claiming to be a Primarily-Infected Person must deliver to the Administrator an application form prescribed by the Administrator together with:

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- (a) medical, clinical, laboratory, hospital, The Canadian Red Cross Society, Canadian Blood Services or Hema-Québec records demonstrating that the claimant received a Blood transfusion in Canada during the Class Period;
- (b) an HCV Antibody Test report, PCR Test report or similar test report pertaining to the claimant;
- (c) a statutory declaration of the claimant including a declaration (i) that he or she has never used non-prescription intravenous drugs, (ii) to the best of his or her knowledge, information and belief, that he or she was not infected with Hepatitis Non-A Non-B or HCV prior to 1 January 1986, (iii) as to where the claimant first received a Blood transfusion in Canada during the Class Period, and (iv) as to the place of residence of the claimant, both when he or she first received a Blood transfusion in Canada during the Class Period and at the time of delivery of the application hereunder.

(2) Notwithstanding the provisions of Section 3.01(1)(a), if a claimant cannot comply with the provisions of Section 3.01(1)(a), the claimant must deliver to the Administrator corroborating evidence independent of the personal recollection of the claimant or any person who is a Family Member of the claimant establishing on a balance of probabilities that he or she received a Blood transfusion in Canada during the Class Period.

(3) Notwithstanding the provisions of Section 3.01(1)(c), if a claimant cannot comply with the provisions of Section 3.01(1)(c) because the claimant used non-prescription intravenous drugs, then he or she must deliver to the Administrator other evidence establishing on a balance of probabilities that he or she was infected for the first time with HCV by a Blood transfusion in Canada during the Class Period.

### **3.02 Claim by Secondarily-Infected Person**

(1) A person claiming to be a Secondarily-Infected Person must deliver to the Administrator an application form prescribed by the Administrator together with:

- (a) evidence demonstrating on the balance of probabilities that the claimant was infected with HCV for the first time by a Spouse who is a Primarily-Infected Person or an Opted-Out Primarily-Infected Person or by a Parent who is an HCV-Infected Person or an Opted-Out HCV Infected Person including a statutory declaration of the claimant declaring that (i) he or she never used non-prescription intravenous drugs and (ii) to the best of his or her knowledge, information and belief, he or she was not infected with Hepatitis Non-A Non-B or HCV prior to 1 January 1986;
- (b) an HCV Antibody Test report, a PCR Test report or similar test report pertaining to the claimant; and



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- (c) the evidence required by Sections 3.01 and 3.03 in respect of his or her Spouse or Parent, as the case may be, unless the required evidence has already been delivered by the Spouse or Parent in respect of his or her personal Claim.

(2) Notwithstanding the provisions of Section 3.02(1)(a), if a claimant cannot comply with the provisions of Section 3.02(1)(a) because the claimant used non-prescription intravenous drugs, the claimant may still qualify for compensation if the claimant can deliver to the Administrator other evidence establishing on a balance of probabilities that the claimant was infected for the first time with HCV by his or her Spouse who is a Primarily-Infected Person or Opted-Out Primarily-Infected Person or Parent who is a HCV Infected Person or Opted-Out HCV Infected Person notwithstanding the claimant's non-prescription intravenous drug use.

### **3.03 Additional Proof**

If requested by the Administrator, a person claiming to be a HCV Infected Person must also provide to the Administrator:

- (a) all medical, clinical, hospital or other such records in his or her possession, control or power;
- (b) a consent authorizing the release to the Administrator of such medical, clinical, hospital records or other health information as the Administrator may request;
- (c) a consent to a Traceback Procedure;
- (d) a consent to an independent medical examination;
- (e) income tax returns and other records and accounts pertaining to loss of income; and
- (f) any other information, books, records, accounts or consents to examinations as may be requested by the Administrator to determine whether or not a claimant is a HCV Infected Person or to process the Claim.

If any person refuses to provide any of the above information, documentation or other matters in his or her possession, control or power, the Administrator must not approve the Claim.

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### **3.04 Traceback Procedure**

(1) Notwithstanding any other provision of this Agreement, if the results of a Traceback Procedure demonstrate that one of the donors or units of Blood received by a HCV-Infected Person or Opted-Out HCV Infected Person before 1 January 1986 is or was HCV antibody positive or that none of the donors or units of Blood received by a Primarily-Infected Person or Opted-Out Primarily Infected Person during the Class Period is or was HCV antibody positive, subject to the provisions of Section 3.04(2), the Administrator must reject the Claim of such HCV Infected Person and all Claims pertaining to such HCV Infected Person or Opted-Out HCV Infected Person including Claims of Secondarily-Infected Persons, HCV Personal Representatives, Dependents and Family Members.

(2) A claimant may prove that the relevant Primarily-Infected Person or Opted-Out Primarily-Infected Person was infected, for the first time, with HCV by a Blood transfusion received in Canada during the Class Period or that the relevant Secondarily-Infected Person or Secondarily-Infected Person who opted out of the Class Action in which he or she would otherwise be a Class Member was infected for the first time with HCV by his or her Spouse who is a Primarily-Infected Person or Opted-Out Primarily-Infected Person or Parent who is a HCV Infected Person or Opted-Out HCV Person, notwithstanding the results of the Traceback Procedure. For greater certainty, the costs of obtaining evidence to refute the results of a Traceback Procedure must be paid by the claimant unless otherwise ordered by a Referee, Arbitrator or Court.

### **3.05 Claim by HCV Personal Representative of HCV Infected Person**

(1) A person claiming to be the HCV Personal Representative of a HCV Infected Person who has died must deliver to the Administrator, within three years after the death of such HCV Infected Person or within two years after the Approval Date, whichever event is the last to occur, an application form prescribed by the Administrator together with:

- (a) proof that the death of the HCV Infected Person was caused by his or her infection with HCV;
- (b) unless the required proof has already been previously delivered to the Administrator:
  - (i) if the deceased was a Primarily-Infected Person, the proof required by Sections 3.01 and 3.03; or
  - (ii) if the deceased was a Secondarily-Infected Person, the proof required by Sections 3.02 and 3.03; and
- (c) the original certificate of appointment of estate trustee, grant of probate or of letters of administration or notarial will (or a copy thereof certified to be

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a true copy by a lawyer or notary) or such other proof of the right of the claimant to act for the estate of the deceased as may be required by the Administrator.

(2) A person claiming to be the HCV Personal Representative of a HCV Infected Person who is a minor or incompetent must deliver to the Administrator an application form prescribed by the Administrator together with:

- (a) unless the required proof has already been previously delivered to the Administrator:
  - (i) if the HCV Infected Person is a Primarily-Infected Person, the proof required by Sections 3.01 and 3.03; or
  - (ii) if the HCV Infected Person is a Secondarily-Infected Person, the proof required by Sections 3.02 and 3.03; and
- (b) the court order or power (or a copy thereof certified to be a true copy by a lawyer or notary) or such other proof of the right of the claimant to act for the HCV Infected Person as may be required by the Administrator.

(3) Notwithstanding the provisions of Section 3.01(1)(b), if a deceased Primarily-Infected Person was not tested for the HCV antibody or HCV the HCV Personal Representative of such deceased Primarily-Infected Person may deliver, instead of the evidence referred to in Section 3.01(1)(b), evidence of any one of the following:

- (a) a liver biopsy consistent with HCV in the absence of any other cause of chronic hepatitis;
- (b) an episode of jaundice within three months of a Blood transfusion in the absence of any other cause; or
- (c) a diagnosis of cirrhosis in the absence of any other cause.

For greater certainty, nothing in this Section will relieve any claimant from the requirement to prove that the death of the Primarily-Infected Person was caused by his or her infection with HCV.

(4) Notwithstanding the provisions of Section 3.02(1)(b), if the HCV Personal Representative of a deceased Secondarily-Infected Person cannot comply with the provisions of Section 3.02(1)(b), the HCV Personal Representative must deliver to the Administrator other evidence establishing on a balance of probabilities that such deceased Secondarily-Infected Person was infected with HCV.

(5) For the purposes of Sections 3.05 (1) and (2), the statutory declaration required by Sections 3.01(1)(c) and 3.02(1)(a) must be made by a person who is or was

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sufficiently familiar with the HCV Infected Person to declare that to the best of his or her knowledge, information and belief the HCV Infected Person did not use non-prescription intravenous drugs and was not infected with Hepatitis Non-A Non-B or HCV prior to 1 January 1986. If such a statutory declaration cannot be provided because the HCV Infected Person used non-prescription intravenous drugs, the HCV Personal Representative must deliver to the Administrator other evidence establishing on a balance of probabilities that the Primarily-Infected Person was infected for the first time with HCV by a Blood transfusion in Canada during the Class Period or the Secondly-Infected Person was infected for the first time with HCV by his or her Spouse who is or was a Primarily-Infected Person or Opted-Out Primarily-Infected Person or by a Parent who is or was a HCV Infected Person or an Opted-Out HCV Infected Person.

(6) If requested by the Administrator, the HCV Personal Representative must also provide to the Administrator:

- (a) all medical, clinical, hospital or other such records in his or her possession, control or power;
- (b) a consent authorizing the release to the Administrator of such medical, clinical, hospital records or other health information as the Administrator may request;
- (c) a consent to a Traceback Procedure;
- (d) a consent to an independent medical examination;
- (e) income tax returns and other records and accounts pertaining to loss of income; and
- (f) any other information, books, records, accounts or consents to examinations as may be requested by the Administrator to determine whether or not a person is a HCV Infected Person or to process the Claim.

If any HCV Personal Representative refuses to provide any of the above information, documentation or other matters in his or her possession, control or power, the Administrator must not approve the Claim.

### **3.06 Claim by Dependant**

A person claiming to be a Dependant of a HCV Infected Person who has died must deliver to the Administrator, within two years after the death of such HCV Infected Person or within two years after the Approval Date or within one year of the claimant attaining his or her age of majority, whichever event is the last to occur, an application form prescribed by the Administrator together with:

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- (a) proof as required by Sections 3.05(1)(a) and (b) (or, if applicable, Section 3.05(3) or (4)) and 3.05(5) and (6), unless the required proof has been previously delivered to the Administrator; and
- (b) proof that the claimant was a Dependant of the HCV Infected Person.

### **3.07 Claim by Family Member**

A person claiming to be a Family Member referred to in clause (a) of the definition of Family Member in Section 1.01 of a HCV Infected Person who has died must deliver to the Administrator, within two years after the death of such HCV Infected Person or within two years after the Approval Date or within one year of the claimant attaining his or her age of majority, whichever event is the last to occur, an application form prescribed by the Administrator together with:

- (a) proof as required by Sections 3.05(1)(a) and (b) (or, if applicable, Section 3.05(3) or (4)) and 3.05(5) and (6), unless the required proof has been previously delivered to the Administrator; and
- (b) proof that the claimant was a Family Member referred to in clause (a) of the definition of Family Member in Section 1.01 of the HCV Infected Person.

### **3.08 First Claim Deadline**

Except as otherwise expressly provided in this Agreement, no person may make a Claim for the first time under this Plan after 30 June 2010 unless:

- (a) the Claim is made within one year of the person attaining his or her age of majority; or
- (b) the Claim is made within the three year period following the date upon which the person first learned of his or her infection with HCV and the Court having jurisdiction over the person grants leave to the person to apply for compensation.

## **ARTICLE FOUR COMPENSATION TO APPROVED HCV INFECTED PERSONS**

### **4.01 Fixed Payments**

(1) Each Approved HCV Infected Person will be paid the amounts set out below as compensation for damages:

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- (a) the amount of \$10,000 as compensation for damages upon his or her Claim being approved by the Administrator;
- (b) the amount of \$20,000, provided that payment of \$5,000 will be postponed and will only be paid in accordance with the provisions of Section 7.03(2), upon delivering to the Administrator a PCR Test report;
- (c) unless waived pursuant to the provisions of Section 4.01(3), the amount of \$30,000 upon delivering to the Administrator evidence demonstrating that he or she has (i) developed fibrous tissue in the portal areas of the liver with fibrous bands extending out from the portal area but without any bridging to other portal tracts or to central veins (i.e., non-bridging fibrous) or (ii) received Compensable HCV Drug Therapy or (iii) has met or meets a protocol for Compensable HCV Drug Therapy notwithstanding that such treatment was not recommended or, if recommended, has been declined;
- (d) the amount of \$65,000 upon delivering to the Administrator evidence demonstrating that he or she has (i) developed fibrous bands in the liver extending or bridging from portal area to portal area with the development of nodules and regeneration (i.e., cirrhosis), or (ii) in the absence of a liver biopsy demonstrating the presence of cirrhosis, a diagnosis of cirrhosis as follows:
  - A. hepato-splenomegaly and peripheral manifestations of liver disease such as gynecomastia in males, testicular atrophy, spider angiomas, protein malnutrition, palm or nail changes none of which are attributable to any cause other than cirrhosis, and/or
  - B. portal hypertension evidenced by splenomegaly, abnormal abdominal and chest wall veins, or esophageal varices, or ascites none of which are attributable to any cause but cirrhosis;and
  - C. abnormal tests blood tests for a minimum of three months demonstrating:
    - a. polyclonal increase in gamma globulins on a serum protein electrophoresis with decreased albumin;

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- b. significantly decreased platelet count not attributable to any other cause such as auto-immune causes; and
- c. prolonged INR or Prothrombin time not attributable to any other cause.

or (iii) porphyria cutanea tarda which has failed to respond to a trial of phlebotomy, drug therapy, or the treatment of HCV and which is causing significant disfigurement and disability or (iv) thrombocytopenia (low platelets) unresponsive to therapy, and which is associated with purpura or other spontaneous bleeding, or which results in excessive bleeding following trauma or a platelet count below  $30 \times 10^9$  per ml or (v) glomerulonephritis not requiring dialysis, which in any such case is caused by his or her infection with HCV; and

- (e) the amount of \$100,000 upon delivering to the Administrator evidence demonstrating that he or she has had a liver transplant or has developed (i) decompensation of the liver or (ii) hepatocellular cancer or (iii) B-cell lymphoma or (iv) symptomatic mixed cryoglobulinemia or (v) glomerulonephritis requiring dialysis or (vi) renal failure, which in any such case is caused by his or her infection with HCV.

(2) Each Approved HCV Infected Person who delivers to the Administrator evidence demonstrating that he or she has developed fibrous tissue in the portal areas of the liver with fibrous bands bridging to other portal areas or to central veins but without nodular formation or nodular regeneration (i.e., bridging fibrous) will be entitled to be paid (i) the compensation pursuant to Sections 4.01(1)(a) and (b) to the extent that he or she has not already received those amounts and (ii), unless waived pursuant to the provisions of Section 4.01(3), the compensation pursuant to Section 4.01(1)(c) to the extent that he or she has not already received that amount.

(3) If an Approved HCV Infected Person described in Section 4.01(1)(c) delivers to the Administrator proof that his or her infection with HCV has caused the Approved HCV Infected Person to be regularly unable to perform:

- (a) the substantial duties of his or her usual employment, occupation or profession such that the Approved HCV Infected Person works no more than 20% of his or her usual work week; or
- (b) the substantial household duties that he or she would normally provide in his or her home such that the Approved HCV Infected Person performs no more than 20% of the household services that he or she would normally provide;

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he or she may waive payment of the amount of \$30,000 payable pursuant to Section 4.01(1)(c) and elect to be paid instead the compensation provided for under Section 4.02 or 4.03, as the case may be. This election must be made by notice in writing in the form prescribed by the Administrator delivered to the Administrator at any time prior to receipt of the said \$30,000. A person who has elected to receive the compensation payable under Section 4.02 or 4.03 is not entitled to be paid the said amount of \$30,000 pursuant to Section 4.01(1)(c) at any time thereafter under any circumstances whatsoever.

(4) The amounts payable under Section 4.01(1) are cumulative. For example, an Approved HCV Infected Person who proves that he or she has a condition described in Section 4.01(1)(d) will be entitled to be paid the \$10,000 referred to in Section 4.01(1)(a), the \$15,000 and the postponed amount up to \$5,000 referred to in Section 4.01(1)(b) and, unless waived pursuant to the provisions of Section 4.01(3), the \$30,000 referred to in Section 4.01(1)(c), as well as the \$65,000 referred to in Section 4.01(1)(d).

(5) The medical evidence to be delivered pursuant to this Article Four is such medical evidence as is generally accepted by the medical profession and approved by the Courts.

#### **4.02 Compensation for Loss of Income**

(1) Each Approved HCV Infected Person who normally had Earned Income (as defined below, except as provided in Section 4.02(2)(f)) who:

- (a) elects to be paid compensation for loss of income instead of \$30,000 pursuant to Section 4.01(3); or
- (b) delivers to the Administrator:
  - (i) evidence demonstrating the he or she has developed fibrous tissue in the portal areas of the liver with fibrous bands bridging to other portal areas or to central veins but without nodular formation or nodular regeneration (i.e., bridging fibrous);
  - (ii) the evidence referred to in Section 4.01(1)(d); or
  - (iii) the evidence referred to in Section 4.01(1)(e); and

who delivers to the Administrator proof satisfactory to the Administrator that his or her infection with HCV caused loss of income will be paid compensation for past, present and future loss of income.

(2) Each Approved HCV Infected Person who is entitled to receive compensation for past, present or future loss of income caused by his or her infection with HCV will be paid, subject to the provisions of Section 7.03, an amount each



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calendar year equal to 70% of his or her Annual Loss of Net Income for such year until he or she attains the age of 65 years determined in accordance with the following provisions:

- (a) "Annual Loss of Net Income" for a year means the excess of the Approved HCV Person's Pre-claim Net Income for such year over his or her Post-claim Net Income for such year.
- (b) "Pre-claim Net Income" of an Approved HCV Infected Person for a year means an amount determined as follows:
  - (i) an amount equal to the average of the person's three highest consecutive years of Earned Income preceding the HCV Infected Person's entitlement to compensation under this Section 4.02 multiplied by the ratio that the Pension Index for the year bears to the Pension Index for the middle year of the foregoing three consecutive years, or, if the Approved HCV Infected Person or the Administrator demonstrates on a balance of probabilities that his or her Earned Income for such year would have been higher or lower than such average but for the HCV Infected Person's infection with HCV, such higher or lower amount, (the applicable amount being hereinafter referred to as the "Pre-claim Gross Income"), provided that the amount determined under this Section 4.02(2)(b)(i) will not exceed \$75,000 multiplied by the ratio that the Pension Index for the year bears to the Pension Index for 1999, minus
  - (ii) the Ordinary Deductions that would be payable by the Approved HCV Infected Person on the amount determined under Section 4.02(2)(b)(i) on the assumption that such amount was the Approved HCV Infected Person's only income for such year.
- (c) "Post-claim Net Income" of an Approved HCV Infected Person for a year means an amount determined as follows:
  - (i) the total of (A) the Approved HCV Infected Person's Earned Income for the year or, if the Administrator demonstrates on a balance of probabilities that the Approved HCV Infected Person's Earned Income for such year would have been higher than such amount but for the person claiming a level of impairment greater than the person's actual level of impairment, such Earned Income as determined by the Administrator, (B) the amount paid or payable to the person in respect of the Canada Pension Plan or the Québec Pension Plan on account of illness or disability for the year, (C) the amount paid or payable to the person in respect of Unemployment Insurance and/or Employment Insurance for the year, (D) the amount paid or payable to the person for income replacement under

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a sickness, accident or disability insurance plan for the year, and (E) the amount paid or payable to the person pursuant to the EAP, MPTAP and/or the Nova Scotia Compensation Plan, (such total being hereinafter referred to as the "Post-claim Gross Income"), provided that the amount determined under this Section 4.02(2)(c)(i) will not exceed the proportion of the amount determined under Section 4.02(2)(b)(i) for such year that the Approved HCV Infected Person's Post-claim Gross Income for such year is of such person's Pre-claim Gross Income for such year, minus

- (ii) the Ordinary Deductions that would be payable by the Approved HCV Infected Person on the amount determined under Section 4.02(2)(c)(i) on the assumption that such amount were such person's only income for such year.
- (d) "Earned Income" means taxable income for the purposes of the *Income Tax Act* (Canada) from an office or employment or from the carrying on of an active business and any taxable income for purposes of the *Income Tax Act* (Canada) of a corporation from the carrying on of an active business to the extent that the person establishes to the satisfaction of the Administrator that the person has a significant shareholding in such corporation and that such income is reasonably attributable to the activities of such person.
- (e) "Ordinary Deductions" means income taxes, Unemployment Insurance and/or Employment Insurance and Canada Pension Plan and/or Québec Pension Plan deductions applicable in the Province or Territory where the person is resident.
- (f) Notwithstanding any of the foregoing, an Approved HCV Infected Person who was not working prior to his or her infection with HCV and who was infected either before he or she attains 18 years of age or, if the person had attained 18 years of age, while the person was in full-time attendance at an accredited education institution in Canada and at a time when the person was yet to enter the workforce on a permanent and full-time basis, will be deemed to have Pre-claim Gross Income for the year which includes the date he or she attains 18 years of age and each subsequent year or, if the person had already attained 18 years of age, the year of completion of full-time attendance at an accredited education institution and each subsequent year, in an amount equal to the then most recently available Average Industrial Wage in Canada (such amount will be prorated for the year in which the person attains 18 years of age or, completes full-time attendance at an accredited education institution for the number of days in the year in which the person has attained 18 years of age or, completes full-time attendance at an accredited education institution), or, if such person demonstrates on a balance of probabilities that his or her

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Earned Income for such year would have been higher than such amount, such higher amount.

- (g) For the purposes of all income tax calculations required under this Section 4.02(2), the only deductions and tax credits that apply to the Approved HCV Infected Person which will be taken into account will be his or her alimony and maintenance payments deduction, basic personal tax credit, married person's or equivalent to married tax credit, disability tax credit, Unemployment or Employment Insurance premium tax credit and Canada Pension Plan or the Québec Pension Plan contribution tax credit.

#### **4.03 Compensation for Loss of Services in the Home**

(1) Each Approved HCV Infected Person who normally performed household duties in his or her home and who:

- (a) elects to be paid compensation for the loss of such services instead of \$30,000 pursuant to Section 4.01(3); or
- (b) delivers to the Administrator:
  - (i) evidence demonstrating he or she has developed fibrous tissue in the portal areas of the liver with fibrous bands bridging to other portal areas or to central veins but without nodular formation or nodular regeneration (i.e., bridging fibrous);
  - (ii) the evidence referred to in Section 4.01(1)(d); or
  - (iii) the evidence referred to in Section 4.01(1)(e); and

who delivers to the Administrator proof satisfactory to the Administrator that his or her infection with HCV caused his or her inability to perform his or her household duties will be paid compensation for the loss of such services.

(2) The amount of the compensation for the loss of services in the home pursuant to Section 4.03(1) is \$12 per hour to a maximum of \$240 per week.

(3) Notwithstanding any of the provisions hereof, an Approved HCV Infected Person cannot claim compensation for loss of income and compensation for the loss of services in the home for the same period.

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#### **4.04 Compensation for Costs of Care**

An Approved HCV Infected Person who establishes to the satisfaction of the Administrator that on the balance of probabilities he or she has any of the conditions referred to in Section 4.01(1)(e) and delivers to the Administrator evidence satisfactory to the Administrator that he or she has incurred costs for care due to such condition that are not recoverable by or on behalf of the claimant under any public or private health care plan is entitled to be reimbursed for all reasonable costs so incurred provided:

- (a) the amount of compensation payable for care costs in any calendar year cannot exceed \$50,000;
- (b) the care was recommended by the claimant's treating physician;
- (c) the amount of compensation will not include any costs described in Sections 4.03 or 4.06; and
- (d) if the costs are incurred outside of Canada, the amount of compensation cannot exceed the lesser of the amount of compensation payable if the costs had been incurred in the Province or Territory where the claimant resides or is deemed to reside and the actual costs.

#### **4.05 Compensation for HCV Drug Therapy**

An Approved HCV Infected Person who delivers evidence satisfactory to the Administrator that he or she has received Compensable HCV Drug Therapy is entitled to be paid \$1,000 for each completed month of therapy.

#### **4.06 Compensation for Uninsured Treatment and Medication**

An Approved HCV Infected Person who delivers to the Administrator evidence satisfactory to the Administrator that he or she has incurred or will incur costs for generally accepted treatment and medication due to his or her HCV infection which are not recoverable by or on behalf of the claimant under any public or private health care plan is entitled to be reimbursed for all reasonable past, present or future costs so incurred, to the extent that such costs are not costs of care or compensation for loss of services in the home, provided:

- (a) the costs were incurred on the recommendation of the claimant's treating physician; and
- (b) if the costs are incurred outside of Canada, the amount of compensation cannot exceed the lesser of the amount of compensation payable if the costs had been incurred in the Province or Territory where the claimant resides or is deemed to reside and the actual costs.

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#### **4.07 Compensation for Out-of-Pocket Expenses**

An Approved HCV Infected Person who delivers to the Administrator evidence satisfactory to the Administrator that he or she has incurred or will incur out-of-pocket expenses due to his or her HCV infection that are not recoverable by or on behalf of the claimant under any public or private health care plan is entitled to be reimbursed for all reasonable costs so incurred provided:

- (a) out-of-pocket expenses will include (i) expenses for travel, hotels, meals, telephone and other similar expenses attributable to seeking medical advice or generally accepted medication or treatment due to his or her HCV infection and (ii) medical expenses incurred in establishing a Claim; and
- (b) the amount of the expenses cannot exceed the amount therefor in the guidelines in the Regulations issued under the *Financial Administration Act* (Canada) from time to time.

#### **4.08 Compensation for HIV Secondarily-Infected Persons**

An Approved HCV Infected Person who is also a HIV Secondarily-Infected Person may not receive any compensation under this Article Four unless and until his or her entitlement to compensation hereunder exceeds a total of \$240,000 and then he or she will be entitled to be compensated for all amounts payable under this Article Four in excess of \$240,000.

#### **4.09 Compensation is Inclusive**

For greater certainty, the amounts payable to Approved HCV Infected Persons under this Article Four are inclusive of any prejudgment interest or other amounts that may be claimed by Approved HCV Infected Persons.

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**ARTICLE FIVE**  
**COMPENSATION TO APPROVED HCV PERSONAL REPRESENTATIVES**

**5.01 Compensation if Deceased Prior to 1 January 1999**

(1) If a HCV Infected Person died prior to 1 January 1999 and his or her HCV Personal Representative delivers to the Administrator the evidence required under Article Three within the period set out in Section 3.05, the Approved HCV Personal Representative is entitled to be reimbursed for the uninsured funeral expenses incurred up to a maximum of \$5,000 and, subject to the provisions of Section 5.01(2), the Approved HCV Personal Representative will be paid the amount of \$50,000 in full satisfaction of any and all Claims that the HCV Infected Person would have had under this Plan if he or she had been alive on or after 1 January 1999. This \$50,000 payment to the Approved HCV Personal Representative is in addition to the Claims of Dependents and other Family Members pursuant to Article Six and will not affect the personal Claim of a Spouse or Child who is also a HCV Infected Person.

(2) Instead of the \$50,000 payment pursuant to Section 5.01(1), if the Approved HCV Personal Representative of a HCV Infected Person who died prior to 1 January 1999 and all the deceased HCV Infected Person's Dependents and other Family Members having Claims under this Plan agree to be paid \$120,000 in full satisfaction of all their Claims pursuant to this Plan (including all potential Claims pursuant to Article Six), such amount will be paid jointly to them, but such payment will not affect the personal Claim of a Spouse or Child who is also a HCV Infected Person.

(3) Notwithstanding the provisions of Sections 5.01(1) and (2), if the deceased HCV Infected Person was also a HIV Secondarily-Infected Person who died prior to 1 January 1999, no amount will be payable pursuant to Section 5.01(1) unless, and then only to the extent that, the Claims of the Approved HCV Personal Representative and the deceased HCV Infected Person's Dependents and other Family Members pursuant to Article Six exceed an aggregate of \$240,000 and no amount will be payable pursuant to Section 5.01(2).

**5.02 Compensation if Deceased After 1 January 1999**

(1) If a HCV Infected Person died or dies on or after 1 January 1999 and the evidence required under Article Three has been submitted to the Administrator by him or her prior to his or her death or by his or her HCV Personal Representative after his or her death and within the period set out in Section 3.05, the Approved HCV Personal Representative will be paid (i) the uninsured funeral expenses incurred up to a maximum of \$5,000 and (ii) whether or not the evidence required under Section 3.05(1)(a) is provided, the amount of all Claims payable under Article Four to which the deceased HCV Infected Person would have been entitled for the period up to his or her death if he or she had not died (to the extent such amounts have not otherwise been paid pursuant to this Plan), but such payments are in addition to the Claims of Dependents and Family

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Members pursuant to Article Six and will not affect the personal Claim of a Spouse or Child who is also a HCV Infected Person.

(2) Notwithstanding the provisions of Section 5.02(1), if the deceased HCV Infected Person was also a HIV Secondarily-Infected Person, no amount will be payable pursuant to Section 5.02(1) unless, and then only to the extent that, the Claims of the Approved HCV Personal Representative and the deceased HCV Infected Person's Dependants and other Family Members pursuant to Article Six exceed an aggregate of \$240,000.

## **ARTICLE SIX COMPENSATION TO APPROVED DEPENDANTS AND APPROVED FAMILY MEMBERS**

### **6.01 Compensation to Approved Dependants**

(1) If a HCV Infected Person dies and the death was caused by his or her infection with HCV, the Approved Dependants of such HCV Infected Person will be entitled to be compensated for their loss of support. The loss of support is an amount each calendar year equal to 70% of the deceased HCV Infected Person's Annual Loss of Net Income for such year until he or she would have attained the age of 65 years determined in accordance with 4.02(2), provided, however, that the annual amount payable under this provision will be reduced by an amount equal to 30% of the net amount as calculated to allow for the personal living expenses of the HCV Infected Person, and provided further that, for purposes of calculating the annual amount payable under this provision, "Post-claim Net Income" will be computed without reference to clauses (A), (C) and (D) of the definition of "Post-claim Net Income" and that the words "the person" and "on account of illness or disability for the year" in clause (B) and the words "the person" in clause (E) of the definition of "Post-claim Net Income" were replaced with the words "the Dependants as a result of the death of the person".

(2) If a HCV Infected Person dies and the death was caused by his or her infection with HCV, the Approved Dependants of such HCV Infected Person living with such HCV Infected Person at the time of his or her death will be entitled to be compensated for the loss of the services of the HCV Infected Person in the home at the rate of \$12 per hour to a maximum of \$240 per week.

(3) The amounts payable pursuant to Sections 6.01(1) or (2) will be allocated as the Approved Dependants may agree or, failing any agreement, as the Administrator so determines based on the extent of support received by each of the Dependants prior to the death of the HCV Infected Person. Notwithstanding any of the provisions hereof, the Approved Dependants of a HCV Infected Person whose death was caused by his or her

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infection with HCV cannot claim compensation for loss of support and compensation for the loss of services in the home for the same period.

## **6.02 Compensation to Approved Family Members**

Each Approved Family Member of a HCV Infected Person whose death was caused by his or her infection with HCV will be paid the applicable amount set out below for loss of guidance, care and companionship:

- (a) \$25,000 for the Spouse;
- (b) \$15,000 for each Child under the age of 21 years at the date of death of the HCV Infected Person;
- (c) \$5,000 for each Child 21 years or older at the date of the death of the HCV Infected Person;
- (d) \$5,000 for each Parent;
- (e) \$5,000 for each Sibling;
- (f) \$500 for each Grandparent; and
- (g) \$500 for each Grandchild.

The above amounts may be reduced on a proportionate basis pursuant to the provisions of Section 5.01(3) or 5.02(2) if the relevant deceased HCV Infected Person was also a HIV Secondarily-Infected Person.

## **6.03 Limitation**

Dependants and other Family Members of a HCV Infected Person will only be entitled to make Claims pursuant to Sections 6.01 and 6.02 (or, in lieu thereof, under Section 5.01(2)) and they will not be entitled to make any other Claims or to any additional or other compensation. Nothing in this Section will affect the personal Claim of a Spouse or Child who is also a HCV Infected Person.

## **ARTICLE SEVEN ADJUSTMENT OF COMPENSATION PAYMENTS**

### **7.01 Periodic Re-assessment by Administrator**

(1) An Approved HCV Infected Person or the Approved Dependants may apply to the Administrator to have the compensation payable pursuant to Article Four or Section 6.01, respectively, re-assessed periodically but not more frequently than every



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two years unless the Administrator is satisfied that there are exceptional circumstances that require a more frequent re-assessment.

(2) The Administrator may at any time and from time to time re-assess the compensation payable to any Approved HCV Infected Person or the Approved Dependents if the Administrator determines that there has been a material change in circumstances.

### **7.02 Compensation Indexed to Pension Index**

The amount of all of the payments to be made pursuant to Articles Four (other than Sections 4.02, 4.06 and 4.07), Five and Six will be adjusted on the first day of January of each calendar year during the Term commencing on 1 January 2000 to the amounts set out in those Articles multiplied by the ratio that the Pension Index as defined in the *Canada Pension Plan Act* for the calendar year of such adjustment bears to that Pension Index for 1999.

### **7.03 Periodic Re-assessment by Courts**

(1) The Joint Committee must apply to the Courts within 180 days after (i) 31 December 2001 and (ii) each third anniversary of such date to determine whether, among other things, the restriction on the payment of \$5,000 in Section 4.01(1)(b), the 70% limitation in Sections 4.02 and 6.01 and the \$75,000 limitation in Sections 4.02 and 6.01 should be amended (i.e., either increased or decreased) or removed in whole or in part.

(2) If the Courts decide to amend the restrictions referred to in Section 7.03(1) to increase the amount of any payments, then the amendment will be made strictly in accordance with the following priorities:

- (a) firstly, the Plan will be amended by deleting the restriction upon payment contained in Section 4.01(1)(b) requiring the postponement of payment of \$5,000 and by providing that the full amount of \$20,000 will be paid. Each person entitled to receive a payment that has been postponed for his or her account in accordance with Section 4.01(1)(b) will thereupon be paid the amount postponed plus interest thereon at the Prime Rate commencing on the date of payment of the \$15,000 under Section 4.01(1)(b);
- (b) secondly, after the amendment referred to in Section 7.03(2)(a) has been made and all amounts payable under that Section have been paid, the Plan will then be amended by deleting the words "70% of" from Sections 4.02 and 6.01 and substituting the percentage that is to be recovered. Thereafter, these restrictions will again be amended until such time as they are deleted. Each person who previously received compensation pursuant to Section 4.02 or 6.01 will be paid the difference between the amount that he or she

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received and the amount that he or she would have received had the substituted percentage been in place, together with interest on the difference at the Prime Rate commencing on the date of payment of the reduced amount, as amended from time to time; and

- (c) thirdly, after the amendments referred to in Sections 7.03(2)(a) and (b) have been made and all amounts payable under those Sections have been paid, the Plan will then be amended by amending or deleting the words "provided that the amount determined under this Section 4.02(2)(b)(i) will not exceed \$75,000 multiplied by the ratio that the Pension Index for the year bears to the Pension Index for 1999" in the definition of "Pre-claim Net Income" in Section 4.02(2)(b) and the words "provided that the amount determined under this Section 4.02(2)(c)(i) will not exceed the proportion of the amount determined under Section 4.02(2)(b)(i) for such year that the Approved HCV Infected Person's Post-claim Gross Income for such year is of such person's Pre-claim Gross Income for such year" in the definition of "Post-claim Net Income" in Section 4.02(2)(c). Thereafter, such restriction will again be amended until such time as it is deleted. Once an amendment has been made, each person who previously received compensation pursuant to Section 4.02 or 6.01 will be paid the difference between the amount that he or she received and the amount that he or she would have received had the amendment or deletion been in place, together with interest on the difference at the Prime Rate commencing on the date of payment of the reduced amount, as varied from time to time.

(3) Notwithstanding the provisions of Section 7.03(1), in the event of a material change in circumstances, the Joint Committee, any Class Action Counsel or the Fund Counsel may apply to the Courts at any time to assess the financial viability and sufficiency of the Trust Fund and whether the restriction on the payment of \$5,000 under Section 4.01(1)(b), the 70% limitation in Sections 4.02 and 6.01 and the \$75,000 limitation in Sections 4.02 and 6.02 should be amended (i.e., either increased or decreased) or removed in whole or in part.

#### **7.04 Interest**

Interest will not accrue on amounts payable under this Plan except as specifically provided in Section 7.03(2). Interest payable under this Plan must be calculated on the basis of simple interest, not compound interest. There will be no interest paid on the Pension Index adjustment component of any payment.

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### **7.05 Set-Off**

In the absence of fraud, any amount paid pursuant to this Plan is not refundable in the event that it is later determined that the recipient was not entitled to receive or be paid all or part of the amount so paid, but the recipient may be required to account for any amount that he or she was not entitled to receive against any future payments that he or she would otherwise be entitled to receive pursuant to this Plan.

### **7.06 Payments to Public Trustee**

Notwithstanding any of the other provisions of this Plan, any amount payable to a minor or mentally incompetent person hereunder will be paid to the Public Trustee or Public Curator or such other person as the law provides in the Province or Territory where the minor or mentally incompetent person resides or is deemed to reside. The Public Trustee or Public Curator or such other person as the law provides will determine the manner of payment of such amount to or for the benefit of the minor or mentally incompetent person.

## **ARTICLE EIGHT CHARACTER OF PAYMENTS**

### **8.01 Canadian Income Taxes**

The amount of compensation paid to or received by a Class Member pursuant to this Plan will not be required to be included in the taxable income of the recipient thereof under the *Income Tax Act* (Canada) or the income tax act of any Province or Territory, provided, however, that this provision will not apply in respect of any amount of compensation paid to or received by a person other than the person that, but for any assignment of any amount of compensation payable under this Plan, would be the person entitled to the compensation under this Plan or in respect of any tax payable Part XIII of the *Income Tax Act* (Canada) or the equivalent provisions of the income tax act of any Province or Territory by any Class Member or any amount required to be withheld by the Trustee or Administrator on account of such tax in respect of any compensation paid or received under this Plan.

### **8.02 Social Benefits**

(1) If a Class Member was receiving any medical, ancillary medical; health or drug benefits on 1 April 1999, the receipt of payments pursuant to this Plan will not affect the quantity, nature or duration of any corresponding benefits that any Class Member receives after such date except to the extent that such benefits are related to the Class Member's infection with HCV in which case they are recoverable exclusively under this Plan as provided in Sections 4.06 and 4.07.

(2) The receipt of any payments pursuant to this Plan will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to

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a Class Member pursuant to any legislation of any PT Government referred to in Appendix A hereto, provided that the receipt of loss of income or loss of support payments pursuant to Section 4.02 or 6.01 may have such an effect. The receipt of any payments pursuant to this Plan will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to a Class Member pursuant to any social benefit programs of the government of Canada such as old age security and Canada Pension Plan, as such payments either are not considered or, if considered, are otherwise exempted in the calculation of benefits under such legislation, provided that the receipt of loss of income or loss of support payments pursuant to Section 4.02 or 6.01 may have such an effect.

(3) Any benefit conferred under Section 8.02(1) or (2) cannot be assigned by the Class Member.

### **8.03 Collateral Benefits**

(1) If a Class Member is or was entitled to be paid compensation under this Plan and is or was also entitled to be paid compensation under an insurance policy or other plan or claim in any way relating to or arising from the infection of a HCV Infected Person with HCV, the compensation payable under this Plan will be reduced by the amount of the compensation that the Class Member is entitled to be paid under the insurance policy or other plan or claim.

(2) Notwithstanding the provisions of Section 8.03(1), life insurance payments received by any Class Member will not be taken into account for any purposes whatsoever under this Plan.

### **8.04 Subrogation**

No subrogation payment of any nature or kind will be paid, directly or indirectly, under this Plan, and without restricting the generality of this provision:

- (a) no FPT Government and no department of an FPT Government providing employment insurance, health care, hospital, medical and prescription services, social assistance or welfare will be paid under this Plan;
- (b) no municipality and no department of a municipality will be paid under this Plan;
- (c) no person exercising a right of subrogation will be paid under this Plan; and
- (d) no claimant will be paid compensation if the claim is being asserted as a subrogated Claim or if the claimant will hold any money paid under this Plan in trust for any other party exercising a right of subrogation or, except as provided in Section 8.02, if a payment under this Plan will lead

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to a reduction in other payments for which the claimant would otherwise qualify.

#### **8.05 No Assignment**

Any amount payable under this Plan cannot be assigned, without the written consent of the Administrator.

### **ARTICLE NINE ADMINISTRATION**

#### **9.01 Administrator**

The Administrator will be responsible for the processing of all Claims and for obtaining funds from the Trust on behalf of Class Members under this Plan and distributing such funds as compensation payable to Class Members under this Plan. No payments will be made to any Class Member under this Plan unless and until the Class Member, or if the Class Member is deceased, a minor or mentally incompetent, his or her Personal Representative, duly executes and delivers to the Administrator a valid and binding release in the form attached to this Plan as Appendix B and consents to the dismissal without costs to any party of any action or other proceeding in any way relating to or arising from the infection of a Primarily-Infected Person with HCV during the Class Period (including the infection of a Secondarily-Infected Person) commenced against any Releasee (as defined in the form of release attached hereto as Appendix B) including the Class Actions as provided in the Approval Orders as defined in the Settlement Agreement.

### **ARTICLE TEN DISPUTE RESOLUTION**

#### **10.01 Reference to Referee or Arbitrator**

A person making a Claim may, within 30 days after he or she receives notice of the Administrator's decision respecting his or her Claim, refer that decision to, at his or her option, a Referee or an Arbitrator by filing with the Administrator a notice requiring a reference or arbitration and setting out the objection to its decision and the reasons in support of the objection. If no notice requiring a reference or arbitration is filed within the 30 day period, the Administrator's decision will be automatically confirmed and be final and binding.

#### **10.02 Rosters of Referees and Arbitrators**

The Courts will appoint rosters of Referees and of Arbitrators. The rosters of Referees and of Arbitrators will include persons resident in each of the Provinces and Territories. Each Referee and Arbitrator will be paid only for the actual services he or

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she performs and in accordance with a tariff established by the Courts. The fees and disbursements of the Referees and Arbitrators will be paid out of the Trust in a time, in a manner and in an amount approved by the Courts. Each Referee and Arbitrator may exercise all of the jurisdiction and powers granted to him or her hereunder.

### **10.03 Forwarding Claims**

Upon receipt of a notice requiring a reference or arbitration, the Administrator will forward to a Referee or Arbitrator, as the case may be, in the Province or Territory where the claimant resides or is deemed to reside and to the Fund Counsel the following:

- (a) a copy of the Claim and the notice requiring a reference or arbitration, as the case may be;
- (b) a copy of all the written submissions and material in support of the submissions and other evidence pertaining to the Claim in the possession of the Administrator;
- (c) a copy of the Administrator's decision; and
- (d) such other information or material as the Referee, Arbitrator or Fund Counsel may request.

### **10.04 Conduct of Reference and Arbitration**

(1) A reference will be conducted in accordance with the provisions of Appendix C hereto.

(2) An arbitration will be conducted in accordance with the provisions of Appendix D hereto.

### **10.05 Payment of Claims**

After a decision of a Referee or Arbitrator becomes final and binding, any amount directed to be paid will be paid promptly.

**APPENDIX A**  
**SOCIAL BENEFITS LEGISLATION**

Newfoundland:

*Social Assistance Act*, RSN 1990 cS-17 as amended

Nova Scotia:

*Social Assistance Act*, R.S., c.432  
*Family Benefits Act*, R.S., c.158  
*Disabled Persons' Allowance Act*, R.S. 1954, c.70

Prince Edward Island:

*Welfare Assistance Act*

New Brunswick:

*Family Income Security Act*

Québec:

*Loi sur La Securite du Revenu*  
(Act respecting income security) LRQ cS. 3.1.1.

Ontario:

*Social Assistance Reform Act*, 1997, S.O. 1997, c.25  
*Ontario Works Act*, 1997, S.O. 1997, c.25  
*Ontario Disability Support Program Act*, 1997, S.O. 1997, c.25

Manitoba:

*The Employment and Income Assistance Act*, CCSM, E-98  
*The Municipal Act*, CCSM, M225

Saskatchewan:

*Saskatchewan Assistance Act*

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Alberta:

*Social Development Act*, R.S.A. 1980, cs-16

*Assured Income for the Severely Handicapped Act*, R.S.A. 1980 CA-48

*Widows Pension Act*, S.A. 1983, W-75

British Columbia:

*B.C. Benefits (Income Assistance) Act*, R.S. c.27

*B.C. Benefits (Youth Works) Act*, R.S. c. 28

*Disability Benefits Program Act*, R.S. c.97

Yukon:

*Social Assistance Act*

North West Territories & Nunavut:

*Social Assistance Act*, R.S. N.W.T. 1988 cs-10 as duplicated for Nunavut by s. 29(1) of the *Nunavut Act*



**APPENDIX B**

**FULL AND FINAL RELEASE**

In this Release:

“Releasees” means, individually and collectively,

- (a) each of the FPT Governments,
- (b) each of the past, present, and future ministers and employees of each FPT Government,
- (c) each of the past and present agents of each FPT Government,
- (d) the Canadian Blood Agency,
- (e) the Canadian Blood Committee or its members,
- (f) each operator of a hospital or health care facility at which a Primarily-Infected Person received Blood, or a HCV Infected Person received treatment, care or advice in any way relating to or arising from the infection of the HCV Infected Person with HCV,
- (g) each health caregiver who treated or provided care or advice to a HCV Infected Person in any way relating to or arising from the infection of the HCV Infected Person with HCV, and
- (h) any person engaged in the business of collecting, manufacturing, purchasing, processing, supplying or distributing Blood,

including their respective past, present, and future parent, subsidiary and affiliated corporations, employees, agents, officers, directors, shareholders, volunteers, representatives, executors, administrators, successors and assigns. Each of the FPT Governments is a trustee for the purpose of asserting the benefit of this Release for those persons listed in (b) to (h) inclusive and holds the benefit of this Release on their behalf as well as on its own behalf. For greater certainty, the CRCS is not a Releasee.

“Releasor” means the undersigned on behalf of the undersigned and his or her heirs, administrators, executors, Personal Representatives and successors.

In this Release initially capitalized terms not defined in this Release have the meanings set out in the Settlement Agreement, including its Schedules. Words importing the singular number include the plural and *vice versa*, words importing any gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations and governmental authorities. The term “including” means “including without limiting the generality of the foregoing”.

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THIS RELEASE WITNESSES that in consideration of the right of the Releasor to participate in the Transfused HCV Plan and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

### **1. Direct Release**

(a) The Releasor fully and forever releases, acquits and discharges each of the Releasees from any and all actions, causes of action, liabilities, claims and demands, whatsoever of every nature or kind for damages, contribution, indemnity, costs, expenses and interest which the Releasor ever had, now has or may hereafter have in any way relating to or arising from the infection of a Primarily-Infected Person with HCV during the Class Period (including the infection of a Secondarily-Infected Person) whether such claims were made or could have been made in any proceeding including the Class Actions as provided in the Approval Orders.

(b) The Releasor agrees that the same consideration is in full and final settlement and satisfaction of any and all such claims now and in the future.

### **2. Cessation of Litigation**

(a) The Releasor hereby consents to the dismissal without costs of any claim or proceeding of any kind directly or indirectly against any Releasee in any way relating to or arising from the infection of a Primarily-Infected Person with HCV during the Class Period (including the infection of a Secondarily-Infected Person) including the Class Actions as provided in the Approval Orders. A Releasee may not claim the benefit of any of the provisions of this Release unless and until the Releasee consents to the dismissal without costs of such claim or proceeding to be so dismissed by the Releasor.

(b) The Releasor undertakes not to now or at any time hereafter:

- (i) commence;
- (ii) assist in;
- (iii) acquiesce in; or
- (iv) permit the Releasor's name to be used in

any claim or proceeding of any kind directly or indirectly against any Releasee in any way relating to or arising from the infection of a Primarily-Infected Person with HCV during the Class Period (including the infection of a Secondarily-Infected Person).

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### 3. Complete Bar

The Releasor agrees that this Release is a complete defence to any claim or proceeding of any kind brought by the Releasor directly or indirectly against any Releasee in any way relating to or arising from the infection of a Primarily-Infected Person with HCV during the Class Period (including the infection of a Secondarily-Infected Person) and this Release will forever be a complete bar to the commencement or prosecution of any such claim or proceeding, and the Releasor does hereby consent to the dismissal without costs of any such future claim or proceeding.

### 4. Claims For Contribution or Indemnity

The Releasor undertakes not to make any claim or demand or take any actions or proceedings against any Releasee or any other person in any way relating to or arising from the infection of a Primarily-Infected Person with HCV during the Class Period (including the infection of a Secondarily-Infected Person). For greater certainty, the Releasor will not make any claim or demand or take any actions or proceedings in which any claim could arise against any Releasee for damages and/or contribution and/or indemnity and/or other relief over under the provisions of the *Negligence Act* (Ontario) or its counterpart in other jurisdictions, the common law or any other statute of this or any other jurisdiction in any way relating to or arising from the infection of a Primarily-Infected Person with HCV during the Class Period (including the infection of a Secondarily-Infected Person) and the Releasor also hereby consents to a dismissal without costs of any such claim or proceeding which results in such a claim being made, provided that the foregoing excludes claims against the CRCS.

### 5. Claims Against the CRCS

At the option of the FPT Governments or their representatives, the Releasor will either,

- (a) pursue his or her claims against the CRCS in any way relating to or arising from the infection of a Primarily-Infected Person with HCV during the Class Period (including the infection of a Secondarily-Infected Person) and assign to the FPT Governments the proceeds received by the Releasor from any such claims, or
- (b) within the *Companies Creditors Arrangement Act* (Canada) proceedings relating to the CRCS, prove, vote and otherwise act to promote such claims that the Releasor has against the CRCS in accordance with directions given to the Releasor by the FPT Governments or their representatives or, at the request of the FPT Governments or their representatives, grant to the FPT Governments and their representatives such proxies or other forms of assignment as are necessary for the FPT Governments to vote and otherwise act to promote any such claim of the Releasor, or

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- (c) enter into a release of all of such claims against the CRCS substantially in the form of this Release.

THE RELEASOR HEREBY ACKNOWLEDGES that this Release is made with a denial of liability by the Releasees and nothing in it nor any action of any Releasee will be construed as an admission of liability by any Releasee.

THE RELEASOR HEREBY DECLARES that the Releasor has had the opportunity to seek independent legal advice with respect to the terms and effect of this Release and the undersigned fully understands and accepts each and every term and condition of this Release and that this Release is given voluntarily for the purpose of making a full and final compromise and settlement of all claims and other matters in any way relating to or arising from the infection of a Primarily-Infected Person with HCV during the Class Period (including the infection of a Secondarily-Infected Person) whether such claims were made or could have been made in any proceeding including the Class Actions.

THIS RELEASE will be governed by and construed in accordance with the laws of the Province of ● and the laws of Canada applicable therein.

IN WITNESS WHEREOF the undersigned has executed this Release.

DATED ●, 19●.

SIGNED, SEALED AND DELIVERED  
in the presence of:

\_\_\_\_\_  
Witness

)  
)  
)  
)  
)

\_\_\_\_\_  
● (s)

## APPENDIX C

### REFERENCE RULES

#### 1. Powers of Referee

A Referee will have the power:

- (a) to establish the procedure to be followed during the reference;
- (b) to determine the location where the reference will be conducted;
- (c) to order production of documents and examinations for discovery, if necessary;
- (d) to summon and enforce the attendance of witnesses and to compel them to give oral or written evidence on oath in the same manner as a court of record in civil cases;
- (e) to accept oral or written evidence as the Referee in his or her discretion considers proper, whether admissible in a court of law or not;
- (f) to mediate the differences at any stage in the proceedings and, if mediation is unsuccessful, to continue with the reference; and
- (g) to determine the subject matter of the reference and, in the exercise of his or her discretion, to award costs, in accordance with a tariff to be established by the Courts.

#### 2. Conduct of Reference

The only parties to the reference will be the claimant and the Fund Counsel. The Referee must adopt the simplest, least expensive and most expeditious manner of conducting the reference. The Referee must begin the reference within 30 days after being appointed. The language of the reference will be in English or French, as requested by the claimant.

#### 3. Report of Referee

The Referee must give a written report within 30 days of the completion of the reference which will be automatically confirmed and be final and binding unless the claimant serves and files a notice of motion with the Court having jurisdiction in the Class Action in which he or she is a Class Member opposing confirmation within 30 days of the delivery of the Referee's report, provided, however, that if the amount in issue is less than \$10,000 the Referee will be deemed to have carried on an arbitration and the report will be deemed to be an arbitration award.

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**4. Appearances on a Motion Opposing Confirmation of a Referee's Report**

The claimant, the Fund Counsel and each Class Action Counsel will each have the right, but not the obligation, to appear on any motion and oppose or support confirmation of a Referee's report.

## APPENDIX D

### ARBITRATION RULES

#### Jurisdiction and Scope

1. The Arbitrator will apply the rules and procedures of the *Arbitration Act* of the Province or Territory in which the Arbitration is conducted, if any, to any Arbitration conducted hereunder except to the extent they are modified by the express provisions of these Rules.
2. Each party acknowledges that it will not apply to the courts of any jurisdiction to attempt to enjoin, delay, impede or otherwise interfere with or limit the scope of the Arbitration or the powers of the Arbitrator; provided, however, that the foregoing will not prevent either party from applying to the courts for a determination with respect to any matter or challenge provided for in the *Arbitration Act* referred to in Section 1 of these Rules.
3. Each party further acknowledges that the award of the Arbitrator will be final and conclusive and there will be no appeal therefrom whatsoever to any court, tribunal or other authority.
4. The Arbitrator has the jurisdiction to deal with all matters relating to an appeal from a decision of the Administrator (a "Dispute") including, without limitation, the jurisdiction:
  - (a) to determine any question of law, including equity;
  - (b) to determine any question of fact, including questions of good faith, dishonesty or fraud;
  - (c) to determine any question as to the Arbitrator's jurisdiction;
  - (d) to request that the parties enter into mediation;
  - (e) to order any party to furnish further details, whether factual or legal, of that party's case;
  - (f) to proceed with the Arbitration notwithstanding the failure or refusal of any party to comply with these Rules or with the Arbitrator's orders or directions or to attend any meeting or hearing, but only after giving that party written notice that the Arbitrator intends to do so;
  - (g) to receive and take into account such written or oral evidence tendered by the parties as the Arbitrator determines is relevant, whether or not admissible in law;

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- (h) to make one or more interim awards including, without limitation, orders to secure any amount relating to the Dispute; and
- (i) to order the parties to produce to the Arbitrator and to each other for inspection and to supply copies of any documents or classes of documents in their possession, power or control that the Arbitrator determines to be relevant.

### **Place of Arbitration**

5. The Arbitration will be conducted in the Province or Territory in which the claimant resides at a location determined from time to time by the Arbitrator pursuant to Section 6 of these Rules.

### **Meetings**

6. The Arbitrator will determine the time, date and location of meetings for the Arbitration and will give all the parties 15 days' prior written notice of such meetings.

7. The parties to the Arbitration will be the claimant and the Fund Counsel. The claimant may be represented or assisted by any person during the Arbitration. Where the claimant is represented by another person, the claimant will provide notice in writing of such representation to the Fund Counsel and to the Arbitrator at least five days prior to any Arbitration proceeding.

8. The award of the Arbitrator must be made within 30 days of the completion of the Arbitration.

### **Disclosure/Confidentiality**

9. All information disclosed, including all statements made and documents produced, in the course of the Arbitration will be held in confidence and no party will rely on, or introduce as evidence in any subsequent proceeding, any admission, view, suggestion, notice, response, discussion or position of either the claimant or the Fund Counsel or any acceptance of a settlement proposal or recommendation for settlement made during the course of the Arbitration, except (i) as required by law or (ii) to the extent that disclosure is reasonably necessary for the establishment or protection of a party's legal rights against a third party or to enforce the award of the Arbitrator or to otherwise protect a party's rights under these Rules.

### **Miscellaneous**

10. The parties may modify any period of time provided for in these Rules by mutual agreement.



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11. The language of the Arbitration will be English or French, as requested by the claimant.
12. Nothing contained in these Rules prohibits a party hereto from making an offer of settlement relating to a Dispute during the course of an Arbitration.
13. In determining the allocation between the parties of the costs of the Arbitration, the Arbitrator may invite submissions as to costs and may consider, among other things, an offer of settlement made by a party to the other party prior to or during the course of an Arbitration. The Arbitrator, in the exercise of his or her discretion, may award costs in accordance with a tariff to be established by the Courts..
14. The award will be rendered in writing and will contain a recital of the facts upon which the award is made and the reasons therefor.

**SCHEDULE B**

**HEMOPHILIAC HCV PLAN**

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**SCHEDULE B**  
**HEMOPHILIAC HCV PLAN**

**ARTICLE ONE**  
**INTERPRETATION**

**1.01 Definitions**

**“Administrator”** means the Administrator appointed from time to time by the Courts pursuant to the Settlement Agreement.

**“Approval Date”** means the date when the judgments or orders of the Courts approving the Settlement Agreement become final and, as a result, this Plan becomes effective.

**“Approved Dependant”** means a Dependant whose Claim made pursuant to Section 3.05 has been accepted by the Administrator.

**“Approved Family Member”** means a Family Member referred to in clause (a) of the definition of Family Member in this Section 1.01 whose Claim made pursuant to Section 3.06 has been accepted by the Administrator.

**“Approved HCV Infected Person”** means a HCV Infected Person whose Claim made pursuant to Section 3.01 or 3.02, as the case may be, has been accepted by the Administrator.

**“Approved HCV Personal Representative”** means a HCV Personal Representative whose Claim made pursuant to Section 3.04 has been accepted by the Administrator.

**“Arbitrator”** means a person appointed as an arbitrator by the Courts pursuant to the provisions of Section 10.02 hereof and Article Ten of the Settlement Agreement.

**“Average Industrial Wage in Canada”** means the Average Weekly Earnings (all Industries), as published in Statistics Canada’s on-line statistical data base created from The Canadian Socio-Economic Information Management System (CANSIM) data base or any successor data base, for the most recent period for which such information is published at the date the determination provided for in Section 4.02 or 6.01 is to be made.

**“Blood”** means whole blood and blood products including packed red cells, platelets, plasma (fresh frozen and banked), white blood cells and cryoprecipitate and clotting factor products including Factor VII, Factor VIII and Factor IX, supplied, directly or indirectly, by the Canadian Red Cross Society. Blood does not include Albumin 5%,

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Albumin 25 %, Cytomegalovirus Immune Globulin, Hepatitis B Immune Globulin, Rh Immune Globulin, Varicella Zoster Immune Globulin, Immune Serum Globulin, Tetanus Immune Globulin, Intravenous Immune Globulin (IVIG) and Antithrombin III (ATIII).

**“Business Day”** means a day other than a Saturday or a Sunday or a day observed as a holiday under the laws of the Province or Territory in which the person to whom notice is given is situated or the federal laws of Canada applicable in the said Province or Territory.

**“Child”** includes:

- (a) an adopted child;
- (b) a child conceived before and born alive after his or her parent’s death; and
- (c) a child to whom a person has demonstrated a settled intention to treat as a child of his or her family;

but does not include a foster child placed in the home of a HCV Infected Person for valuable consideration.

**“Claim”** means a claim made and a claim that may be made in the future pursuant to the provisions of this Plan.

**“Class Action Counsel”** has the meaning set out in Section 1.01 of the Settlement Agreement.

**“Class Members”** means, collectively, all Primarily-Infected Hemophiliacs, all Secondarily-Infected Persons, all HCV Personal Representatives and all Family Members but excludes, for greater certainty, all persons who opt out of a Class Action.

**“Class Period”** means the period from and including 1 January 1986 to and including 1 July 1990.

**“Cohabit”** means to live together in a conjugal relationship, whether within or outside marriage.

**“Compensable HCV Drug Therapy”** means interferon or ribavirin, used alone or in combination, or any other treatment that has a propensity to cause adverse side effects and that has been approved by the Courts for compensation.

**“Courts”** means, collectively, the Supreme Court of British Columbia, the Superior Court of Justice for Ontario and the Superior Court of Québec.

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**“Dependant”** means a Family Member of a HCV Infected Person referred to in clauses (a) and (c) of the definition of a Family Member in this Section 1.01 to whom that HCV Infected Person was providing support or was under a legal obligation to provide support on the date of the HCV Infected Person’s death.

**“EAP”** means the HIV Extraordinary Assistance Plan announced by the government of Canada on 14 December 1989.

**“Family Member”** means:

- (a) the Spouse, Child, Grandchild, Parent, Grandparent or Sibling of a HCV Infected Person;
- (b) the Spouse of a Child, Grandchild, Parent or Grandparent of a HCV Infected Person;
- (c) a former Spouse of a HCV Infected Person;
- (d) a Child or other lineal descendant of a Grandchild of a HCV Infected Person;
- (e) a person of the opposite sex to a HCV Infected Person who Cohabited for a period of at least one year with that HCV Infected Person immediately before his or her death;
- (f) a person of the opposite sex to a HCV Infected Person who was Cohabiting with that HCV Infected Person at the date of the HCV Infected Person’s death and to whom that HCV Infected Person was providing support or was under a legal obligation to provide support on the date of the HCV Infected Person’s death; and
- (g) any other person to whom a HCV Infected Person was providing support for a period of at least three years immediately prior to the HCV Infected Person’s death.

unless any person described above opts out of the Class Action in which he or she would otherwise be a Class Member.

**“FPT Governments”** means, collectively, (i) the government of Canada, (ii) the governments of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland (collectively, the **“Provinces”**) and (iii) the governments of the Northwest Territories, Nunavut and the Yukon Territory (collectively, the **“Territories”**).



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**“Fund Counsel”** has the meaning set out in Section 1.01 of the Settlement Agreement.

**“Grandchild”** means the Child of a Child.

**“Grandparent”** means the Parent of a Parent.

**“Guardian”** includes a litigation guardian, guardian *ad litem* and other representative of a minor or mentally incompetent in litigation proceedings.

**“HCV”** means the Hepatitis C virus.

**“HCV Antibody Test”** means a blood test performed in Canada using a commercially available assay acceptable to the Administrator demonstrating that the HCV antibody is present in the blood of a person.

**“HCV Infected Person”** means a Primarily-Infected Hemophiliac or a Secondarily-Infected Person.

**“HCV Personal Representative”** means the Personal Representative of a HCV Infected Person (whether deceased, a minor or mentally incompetent) who does not opt out of a Class Action.

**“HIV”** means the human immunodeficiency virus.

**“HIV Secondarily-Infected Person”** means a person who is entitled to receive compensation under the Program attached as Schedule C to the Settlement Agreement.

**“Joint Committee”** has the meaning set out in Section 1.02 of the Settlement Agreement.

**“MPTAP”** means the HIV Multi-Provincial/Territorial Assistance Program announced by the governments of the Provinces and Territories on 15 September 1993.

**“Nova Scotia Compensation Plan”** means the Nova Scotia HIV Assistance Program introduced in 1993 which provides financial assistance and other benefits to persons infected in Nova Scotia by HIV through the Canadian blood supply.

**“Opted-Out HCV Infected Person”** means an Opted-Out Primarily-Infected Hemophiliac or a person who would otherwise be a Secondarily-Infected Person but is not because he or she opts out of the Class Action in which he or she would otherwise be a Class Member.

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**“Opted-Out Primarily-Infected Hemophiliac”** means a person who would otherwise be a Primarily-Infected Hemophiliac but is not because he or she opts out of the Class Action in which he or she would otherwise be a Class Member.

**“Parent”** includes a person who has demonstrated a settled intention to treat a Child as a child of his or her family.

**“PCR Test”** means a polymerase chain reaction test result from a commercially available assay acceptable to the Administrator demonstrating that HCV is present in a sample of blood of the person.

**“Pension Index”** has the meaning set out in Section 7.02.

**“Personal Representative”** includes, if a person is deceased, an executor, administrator, estate trustee, trustee or liquidator of the deceased or, if the person is a minor or mentally incompetent, the tutor, committee, Guardian or curator of the person.

**“Plan”** means this Hemophiliac HCV Plan including its Appendices, as amended, supplemented or restated from time to time.

**“Primarily-Infected Hemophiliac”** means a person who (i) has or had a congenital clotting factor defect or deficiency including a defect or deficiency in Factors V, VII, VIII, IX, XI, XII, XIII or von Willebrand factors, (ii) received or took Blood during the Class Period and (iii) is or was infected with HCV unless:

- (a) such person used non-prescription intravenous drugs, and such person has failed to establish on the balance of probabilities that he or she was infected for the first time with HCV by Blood; or
- (b) such person opts out of the Class Action in which he or she would otherwise be a Class Member.

**“Prime Rate”** means the rate of interest per annum established and reported by the Bank of Montreal, or such other bank as the Courts may direct, to the Bank of Canada from time to time as a reference rate of interest for the determination of interest rates that the Bank of Montreal, or such other bank as the Courts may direct, charges to customers of varying degrees of creditworthiness in Canada for Canadian dollar loans made by it in Canada.

**“Referee”** means a person appointed as a referee by the Courts pursuant to the provisions of Section 10.02 and Article Ten of the Settlement Agreement.

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**“Secondarily-Infected Person”** means:

- (a) a Spouse of a Primarily-Infected Hemophiliac or Opted-Out Primarily-Infected Hemophiliac who is or was infected with HCV by such Primarily-Infected Hemophiliac or Opted-Out Primarily-Infected Hemophiliac provided the Claim of the Spouse is made:
  - (i) before the expiration of three years from the date the Primarily-Infected Hemophiliac first makes a Claim, his or her HCV Personal Representative makes the first Claim on his or her behalf or the Opted-Out Primarily-Infected Hemophiliac opts out;
  - (ii) in accordance with the provisions of Section 3.04(1), where a HCV Personal Representative makes the first Claim on behalf of a Primarily-Infected Hemophiliac who is deceased; or
  - (iii) in accordance with the provisions of Section 3.07, where the Primarily-Infected Hemophiliac has not made a Claim; or
- (b) a Child of a HCV Infected Person or Opted-Out HCV Infected Person who is or was infected with HCV by such HCV Infected Person or Opted-Out HCV Infected Person;

but does not include:

- (c) such Spouse or Child, if he or she used non-prescription intravenous drugs, and fails to establish on the balance of probabilities that he or she is or was infected for the first time with HCV by:
  - (i) such Primarily-Infected Hemophiliac or Opted-Out Primarily-Infected Hemophiliac in the case of a Spouse; or
  - (ii) such HCV Infected Person or Opted-Out HCV Infected Person in the case of a Child; or
- (d) such Spouse or Child if he or she opts out of the Class Action in which he or she would otherwise be a Class Member.

**“Settlement Agreement”** means the agreement made as of 15 June 1999 between the FPT Governments and the plaintiffs in the Class Actions.

**“Sibling”** means a Child of one or both of the Parents of a HCV Infected Person.

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**“Spouse”** means:

- (a) either of a man and a woman who,
  - (i) are married to each other;
  - (ii) have together entered into a marriage that is voidable or void, in good faith on the part of the person asserting a right under this Plan;
  - (iii) have Cohabited for at least two years; or
  - (iv) have Cohabited in a relationship of some permanence if they are the natural Parents of a Child; or
- (b) either of two persons of the same sex who have lived together in a close personal relationship that would constitute a conjugal relationship if they were not of the same sex,
  - (i) for at least two years; or
  - (ii) in a relationship of some permanence if they are the Parents of a Child.

**“Term”** means the period commencing on the Approval Date and ending on the date that this Plan is terminated by the Courts.

**“Trust”** means the trust to be established by the FPT Governments pursuant to the Funding Agreement attached as Schedule D to the Settlement Agreement.

**“Trust Fund”** means the fund to be established by the FPT Governments pursuant to the Funding Agreement attached as Schedule D to the Settlement Agreement.

## **1.02 Headings**

The division of this Plan into Articles and Sections and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or interpretation of this Plan. The terms “hereof”, “hereunder” and similar expressions refer to this Plan and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Schedules are to Articles, Sections and Schedules of this Plan.

## **1.03 Extended Meanings**

In this Plan words importing the singular number include the plural and *vice versa*, words importing any gender include all genders and words importing persons include individuals, partnerships, associates, trusts, unincorporated organizations, corporations and governmental authorities. The term “including” means “including without limiting the generality of the foregoing”.

#### **1.04 Statutory References**

In this Plan, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as enacted on the date hereof or as the same may from time to time be amended, re-enacted or replaced and includes any regulations made thereunder.

#### **1.05 Day for any Action**

If any day on or by which any action required to be taken hereunder is not a Business Day, such action must be taken on or by the next succeeding day which is a Business Day.

#### **1.06 Residence**

A Class Member is deemed to be resident in the Province or Territory where he or she ordinarily resides or, if the Class Member resides outside of Canada, in the Province or Territory where the relevant Primarily-Infected Hemophiliac or Opted-Out Primarily-Infected Hemophiliac first received or took Blood during the Class Period. An HCV Personal Representative will be deemed to be resident in the Province or Territory where the relevant HCV Infected Person, is or was deemed to be, resident.

#### **1.07 Currency**

All references to currency herein are to lawful money of Canada.

#### **1.08 Appendices**

The following are the Appendices to this Plan:

- Appendix A - Social Benefits Legislation;
- Appendix B - Release;
- Appendix C - Reference Rules; and
- Appendix D - Arbitration Rules.

### **ARTICLE TWO PURPOSE AND EFFECT OF PLAN**

#### **2.01 Purpose**

The purpose of this Plan is to provide compensation to Class Members on the terms and subject to the conditions set out herein.

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## **2.02 Binding Effect**

This Plan is binding on all Class Members.

### **ARTICLE THREE REQUIRED PROOF FOR COMPENSATION**

#### **3.01 Claim by Primarily-Infected Hemophiliac**

(1) A person claiming to be a Primarily-Infected Hemophiliac must deliver to the Administrator an application form prescribed by the Administrator together with:

- (a) medical, clinical, laboratory, hospital, The Canadian Red Cross Society, Canadian Blood Services or Hema-Québec records demonstrating that (i) the claimant has or had a congenital clotting factor defect or deficiency and (ii) the claimant received or took Blood during the Class Period;
- (b) an HCV Antibody Test report, PCR Test report or similar test report pertaining to the claimant;
- (c) a statutory declaration of the claimant including a declaration (i) that he or she has never used non-prescription intravenous drugs, (ii) as to where the claimant first received or took Blood during the Class Period, and (iii) as to the place of residence of the claimant, both when he or she first received or took Blood during the Class Period and at the time of delivery of the application hereunder.

(2) Notwithstanding the provisions of Section 3.01(1)(a), if a claimant cannot comply with the provisions of Section 3.01(1)(a)(i) or (ii), the claimant must deliver to the Administrator corroborating evidence independent of the personal recollection of the claimant or any person who is a Family Member of the claimant establishing on a balance of probabilities that he or she has or had a congenital clotting factor defect or deficiency and received or took Blood during the Class Period.

(3) Notwithstanding the provisions of Section 3.01(1)(c), if a claimant cannot comply with the provisions of Section 3.01(1)(c) because the claimant used non-prescription intravenous drugs, then he or she must deliver to the Administrator other evidence establishing on a balance of probabilities that he or she was infected for the first time with HCV by Blood.

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### **3.02 Claim by Secondarily-Infected Person**

- (1) A person claiming to be a Secondarily-Infected Person must deliver to the Administrator an application form prescribed by the Administrator together with:
- (a) evidence demonstrating on the balance of probabilities that the claimant was infected with HCV for the first time by a Spouse who is a Primarily-Infected Hemophiliac or an Opted-Out Primarily-Infected Hemophiliac or by a Parent who is an HCV-Infected Person or an Opted-Out HCV Infected Person including a statutory declaration of the claimant declaring that he or she has never used non-prescription intravenous drugs;
  - (b) an HCV Antibody Test report, a PCR Test report or similar test report pertaining to the claimant; and
  - (c) the evidence required by Sections 3.01 and 3.03 in respect of his or her Spouse or Parent, as the case may be, unless the required evidence has already been delivered by the Spouse or Parent in respect of his or her personal Claim.
- (2) Notwithstanding the provisions of Section 3.02(1)(a), if a claimant cannot comply with the provisions of Section 3.02(1)(a) because the claimant used non-prescription intravenous drugs, the claimant may still qualify for compensation if the claimant can deliver to the Administrator other evidence establishing on a balance of probabilities that the claimant was infected for the first time with HCV by his or her Spouse who is a Primarily-Infected Hemophiliac or Opted-Out Primarily-Infected Hemophiliac or Parent who is a HCV Infected Person or Opted-Out HCV Infected Person notwithstanding the claimant's non-prescription intravenous drug use.

### **3.03 Additional Proof**

If requested by the Administrator, a person claiming to be a HCV Infected Person must also provide to the Administrator:

- (a) all medical, clinical, hospital or other such records in his or her possession, control or power;
- (b) a consent authorizing the release to the Administrator of such medical, clinical, hospital records or other health information as the Administrator may request;
- (c) a consent to an independent medical examination;

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- (d) income tax returns and other records and accounts pertaining to loss of income; and
- (e) any other information, books, records or accounts or consents to examinations as may be requested by the Administrator to determine whether or not a claimant is a HCV Infected Person or to process the Claim.

If any person refuses to provide any of the above information, documentation or other matters in his or her possession, control or power, the Administrator must not approve the Claim.

### **3.04 Claim by HCV Personal Representative of HCV Infected Person**

(1) A person claiming to be the HCV Personal Representative of a HCV Infected Person who has died must deliver to the Administrator, within three years after the death of such HCV Infected Person or within two years after the Approval Date, whichever event is the last to occur, an application form prescribed by the Administrator together with:

- (a) proof that the death of the HCV Infected Person was caused by his or her infection with HCV;
- (b) unless the required proof has already been previously delivered to the Administrator:
  - (i) if the deceased was a Primarily-Infected Hemophiliac, the proof required by Sections 3.01 and 3.03; or
  - (ii) if the deceased was a Secondarily-Infected Person, the proof required by Sections 3.02 and 3.03; and
- (c) the original certificate of appointment of estate trustee, grant of probate or of letters of administration or notarial will (or a copy thereof certified to be a true copy by a lawyer or notary) or such other proof of the right of the claimant to act for the estate of the deceased as may be required by the Administrator.

(2) A person claiming to be the HCV Personal Representative of a HCV Infected Person who is a minor or incompetent must deliver to the Administrator an application form prescribed by the Administrator together with:



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- (a) unless the required proof has already been previously delivered to the Administrator:
  - (i) if the HCV Infected Person is a Primarily-Infected Hemophiliac, the proof required by Sections 3.01 and 3.03; or
  - (ii) if the HCV Infected Person is a Secondarily-Infected Person, the proof required by Sections 3.02 and 3.03; and
- (b) the court order or power (or a copy thereof certified to be a true copy by a lawyer or notary) or such other proof of the right of the claimant to act for the HCV Infected Person as may be required by the Administrator.

(3) Notwithstanding the provisions of Sections 3.01(1)(b), if a deceased Primarily-Infected Hemophiliac died before 1 January 1999 and was not tested for the HCV antibody or HCV, the HCV Personal Representative of such deceased Primarily-Infected Hemophiliac may deliver, instead of the evidence referred to in Section 3.01(1)(b), evidence of any one of the following:

- (a) the Primarily-Infected Hemophiliac had tested positive for HIV prior to his or her death;
- (b) a liver biopsy consistent with HCV in the absence of any other cause of chronic hepatitis;
- (c) an episode of jaundice within three months of using or taking Blood in the absence of any other cause; or
- (d) a diagnosis of cirrhosis in the absence of any other cause.

For greater certainty, nothing in this Section will relieve any claimant from the requirement to prove that the death of the Primarily-Infected Hemophiliac was caused by his or her infection with HCV except as otherwise provided in Section 5.01(4).

(4) Notwithstanding the provisions of Section 3.02(1)(b), if the HCV Personal Representative of a deceased Secondarily-Infected Person cannot comply with the provisions of Section 3.02(1)(b), the HCV Personal Representative must deliver to the Administrator other evidence establishing on a balance of probabilities that such deceased Secondarily-Infected Person was infected with HCV.

(5) For the purposes of Sections 3.04 (1) and (2), the statutory declaration required by Sections 3.01(1)(c) and 3.02(1)(a) must be made by a person who is or was sufficiently familiar with the HCV Infected Person to declare that to the best of his or her

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knowledge, information and belief the HCV Infected Person did not use non-prescription intravenous drugs. If such a statutory declaration cannot be provided because the HCV Infected Person used non-prescription intravenous drugs, the HCV Personal Representative must deliver to the Administrator evidence establishing on a balance of probabilities that the Primarily-Infected Hemophiliac was infected with HCV by Blood or the Secondarily-Infected Person was infected for the first time with HCV by his or her Spouse who is or was a Primarily-Infected Hemophiliac or Opted-Out Primarily-Infected Hemophiliac or by a Parent who is or was a HCV Infected Person or an Opted-Out HCV Infected Person.

(6) If requested by the Administrator, the HCV Personal Representative must also provide to the Administrator:

- (a) all medical, clinical, hospital or other such records in his or her possession, control or power;
- (b) a consent authorizing the release to the Administrator of such medical, clinical, hospital records or other health information as the Administrator may request;
- (c) a consent to an independent medical examination;
- (d) income tax returns and other records and accounts pertaining to loss of income; and
- (e) any other information, books, records or accounts or consents to examinations as may be requested by the Administrator to determine whether or not a person is a HCV Infected Person or to process the Claim.

If any HCV Personal Representative refuses to provide any of the above information, documentation or other matters in his or her possession, control or power, the Administrator must not approve the Claim.

### **3.05 Claim by Dependant**

A person claiming to be a Dependant of a HCV Infected Person who has died must deliver to the Administrator, within two years after the death of such HCV Infected Person or within two years after the Approval Date or within one year after the claimant attaining his or her age of majority, whichever event is the last to occur, an application form prescribed by the Administrator together with:

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- (a) proof as required by Sections 3.04(1)(a) and (b) (or, if applicable, Section 3.04(3) or (4)) and 3.04(5) and (6), unless the required proof has been previously delivered to the Administrator; and
- (b) proof that the claimant was a Dependant of the HCV Infected Person.

### **3.06 Claim by Family Member**

A person claiming to be a Family Member referred to in clause (a) of the definition of Family Member in Section 1.01 of a HCV Infected Person who has died must deliver to the Administrator, within two years after the death of such HCV Infected Person or within two years after the Approval Date or within one year after the claimant attaining his or her age of majority, whichever event is the last to occur, an application form prescribed by the Administrator together with:

- (a) proof as required by Sections 3.04(1)(a) and (b) (or, if applicable, Section 3.04(3) or (4)) and 3.04(5) and (6), unless the required proof has been previously delivered to the Administrator; and
- (b) proof that the claimant was a Family Member referred to in clause (a) of the definition of Family Member in Section 1.01 of the HCV Infected Person.

### **3.07 First Claim Deadline**

Except as otherwise expressly provided in this Agreement, no person may make a Claim for the first time under this Plan after 30 June 2010 unless:

- (a) the Claim is made within one year of the person attaining his or her age of majority; or
- (b) the Claim is made within the three year period following the date upon which the person first learned of his or her infection with HCV and the Court having jurisdiction over the person grants leave to the person to apply for compensation.

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**ARTICLE 1.FOUR  
COMPENSATION TO APPROVED HCV INFECTED PERSONS**

**4.01 Fixed Payments**

(1) Each Approved HCV Infected Person will be paid the amounts set out below as compensation for damages:

- (a) the amount of \$10,000 as compensation for damages upon his or her Claim being approved by the Administrator;
- (b) the amount of \$20,000, provided that payment of \$5,000 will be postponed and will only be paid in accordance with the provisions of Section 7.03(2), upon delivering to the Administrator a PCR Test report;
- (c) unless waived pursuant to the provisions of Section 4.01(3), the amount of \$30,000 upon delivering to the Administrator evidence demonstrating that he or she has (i) developed fibrous tissue in the portal areas of the liver with fibrous bands extending out from the portal area but without any bridging to other portal tracts or to central veins (i.e., non-bridging fibrous) or (ii) received Compensable HCV Drug Therapy or (iii) has met or meets a protocol for Compensable HCV Drug Therapy notwithstanding that such treatment was not recommended or, if recommended, has been declined;
- (d) the amount of \$65,000 upon delivering to the Administrator evidence demonstrating that he or she has developed (i) fibrous bands in the liver extending or bridging from portal area to portal area with the development of nodules and regeneration (i.e., cirrhosis), or (ii) in the absence of a liver biopsy demonstrating the presence of cirrhosis, a diagnosis of cirrhosis as follows:
  - A. hepato-splenomegaly and peripheral manifestations of liver disease such as gynecomastia in males, testicular atrophy, spider angiomas, protein malnutrition, palm or nail changes none of which are attributable to any cause other than cirrhosis; and/or
  - B. portal hypertension evidenced by splenomegaly, abnormal abdominal and chest wall veins, or esophageal varices, or

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ascites none of which are attributable to any cause but cirrhosis;  
and

- C. abnormal tests blood tests for a minimum of three months demonstrating: which is caused by his or her HCV; and
- a. polyclonal increase in gamma globulins on a serum protein electrophoresis with decreased albumin;
  - b. significantly decreased platelet count not attributable to any other cause such as auto-immune causes; and
  - c. prolonged INR or Prothrombin time not attributable to any other cause.

or (iii) porphyria cutanea tarda which has failed to respond to a trial of phlebotomy, drug therapy, or the treatment of HCV and which is causing significant disfigurement and disability or (iv) thrombocytopenia (low platelets) unresponsive to therapy, and which is associated with purpura or other spontaneous bleeding, or which results in excessive bleeding following trauma or a platelet count below  $30 \times 10^9$  per ml. or (v) glomerulonephritis not requiring dialysis, which in any such case is caused by his or her infection with HCV; and

- (e) the amount of \$100,000 upon delivering to the Administrator evidence demonstrating that he or she has had a liver transplant or has developed (i) decompensation of the liver or (ii) hepatocellular cancer or (iii) B-cell lymphoma or (iv) symptomatic mixed cryoglobulinemia or (v) glomerulonephritis requiring dialysis or (vi) renal failure, which in any case is caused by his or her infection with HCV.

(2) Each Approved HCV Infected Person who delivers to the Administrator evidence demonstrating that he or she has developed fibrous tissue in the portal areas of the liver with fibrous bands bridging to other portal areas or to central veins but without nodular formation or nodular regeneration (i.e., bridging fibrous) will be entitled to be paid (i) the compensation pursuant to Sections 4.01(1)(a) and (b) to the extent that he or she has not already received those amounts and (ii), unless waived pursuant to the provisions of Section 4.01(3), the compensation pursuant to Section 4.01(1)(c) to the extent that he or she has not already received that amount.

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(3) If an Approved HCV Infected Person described in Section 4.01(1)(c) delivers to the Administrator proof that his or her infection with HCV has caused the Approved HCV Infected Person to be regularly unable to perform:

- (a) the substantial duties of his or her usual employment, occupation or profession such that the Approved HCV Infected Person works no more than 20% of his or her usual work week; or
- (b) the substantial household duties that he or she would normally provide in his or her home such that the Approved HCV Infected Person performs no more than 20% of the household services that he or she would normally provide;

he or she may waive payment of the amount of \$30,000 payable pursuant to Section 4.01(1)(c) and elect to be paid instead the compensation provided for under Section 4.02 or 4.03, as the case may be. This election must be made by notice in writing in the form prescribed by the Administrator delivered to the Administrator at any time prior to receipt of the said \$30,000. A person who has elected to receive the compensation payable under Section 4.02 or 4.03 is not entitled to be paid the said amount of \$30,000 pursuant to Section 4.01(1)(c) at any time thereafter under any circumstances whatsoever.

(4) For example, an Approved HCV Infected Person who proves that he or she has a condition described in Section 4.01(1)(d) will be entitled to be paid the \$10,000 referred to in Section 4.01(1)(a), the \$15,000 and the postponed amount up to \$5,000 referred to in Section 4.01(1)(b) and, unless waived pursuant to the provisions of Section 4.01(2), the \$30,000 referred to in Section 4.01(1)(c), as well as the \$65,000 referred to in Section 4.01(1)(d).

(5) The evidence to be delivered pursuant to this Article Four is such medical evidence as is generally accepted by the medical profession and approved by the Courts provided that evidence that a Primarily-Infected Hemophiliac who is an Approved HCV Infected Person has developed a condition referred to in Section 4.01(1)(c)(i), (d) or (e) or 4.01(2) may be established on a balance of probabilities by the delivery of the opinion of a medically qualified expert based on non-invasive testing and diagnosis.

#### **4.02 Compensation for Loss of Income**

(1) Each Approved HCV Infected Person who normally had Earned Income (as defined below, except as provided in Section 4.02(2)(f)) who:

- (a) elects to be paid compensation for loss of income instead of \$30,000 pursuant to Section 4.01(3); or

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- (b) delivers to the Administrator:
  - (i) evidence demonstrating the he or she has developed fibrous tissue in the portal areas of the liver with fibrous bands bridging to other portal areas or to central veins but without nodular formation or nodular regeneration (i.e., bridging fibrous);
  - (ii) the evidence referred to in Section 4.01(1)(d); or
  - (iii) the evidence referred to in Section 4.01(1)(e); and

who delivers to the Administrator proof satisfactory to the Administrator that his or her infection with HCV caused loss of income will be paid compensation for past, present and future loss of income.

(2) Each Approved HCV Infected Person who is entitled to receive compensation for past, present or future loss of income caused by his or her infection with HCV will be paid, subject to the provisions of Section 7.03, an amount each calendar year equal to 70% of his or her Annual Loss of Net Income for such year until he or she attains the age of 65 years determined in accordance with the following provisions:

- (a) "Annual Loss of Net Income" for a year means the excess of the Approved HCV Person's Pre-claim Net Income for such year over his or her Post-claim Net Income for such year.
- (b) "Pre-claim Net Income" of an Approved HCV Infected Person for a year means an amount determined as follows:
  - (i) an amount equal to the average of the person's three highest consecutive years of Earned Income preceding the HCV Infected Person's entitlement to compensation under this Section 4.02 multiplied by the ratio that the Pension Index for the year bears to the Pension Index for the middle year of the foregoing three consecutive years, or, if the Approved HCV Infected Person or the Administrator demonstrates on a balance of probabilities that his or her Earned Income for such year would have been higher or lower than such average but for the HCV Infected Person's Infection with HCV, such higher or lower amount, (the applicable amount being hereinafter referred to as the "Pre-claim Gross Income"), provided that the amount determined under this Section 4.02(2)(b)(i) will not

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exceed \$75,000 multiplied by the ratio that the Pension Index for the year bears to the Pension Index for 1999, minus

- (ii) the Ordinary Deductions that would be payable by the Approved HCV Infected Person on the amount determined under Section 4.02(2)(b)(i) on the assumption that such amount was the Approved HCV Infected Person's only income for such year.
- (c) "Post-claim Net Income" of an Approved HCV Infected Person for a year means an amount determined as follows:
- (i) the total of (A) the Approved HCV Infected Person's Earned Income for the year or, if the Administrator demonstrates on a balance of probabilities that the Approved HCV Infected Person's Earned Income for such year would have been higher than such amount but for the person claiming a level of impairment greater than the person's actual level of impairment, such Earned Income as determined by the Administrator (B) the amount paid or payable to the person in respect of the Canada Pension Plan or the Québec Pension Plan on account of illness or disability for the year, (C) the amount paid or payable to the person in respect of Unemployment Insurance and/or Employment Insurance for the year, (D) the amount paid or payable to the person for income replacement under a sickness, accident or disability insurance plan for the year, and (E) the amount paid or payable to the person pursuant to the EAP, MPTAP and/or the Nova Scotia Compensation Plan, (such total being hereinafter referred to as the "Post-claim Gross Income"), provided that the amount determined under this Section 4.02(2)(c)(i) will not exceed the proportion of the amount determined under Section 4.02(2)(b)(i) for such year that the Approved HCV Infected Person's Post-claim Gross Income for such year is of such person's Pre-claim Gross Income for such year, minus
  - (ii) the Ordinary Deductions that would be payable by the Approved HCV Infected Person on the amount determined under Section 4.02(2)(c)(i) on the assumption that such amount were such person's only income for such year.
- (d) "Earned Income" means taxable income for the purposes of the *Income Tax Act* (Canada) from an office or employment or from the carrying on of an active business and any taxable income for purposes of the *Income Tax Act* (Canada) of a corporation from the carrying on of an active business to the extent that the person establishes to the satisfaction of the Administrator



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that the person has a significant shareholding in such corporation and that such income is reasonably attributable to the activities of such person.

- (e) “Ordinary Deductions” means income taxes, Unemployment Insurance and/or Employment Insurance and Canada Pension Plan and/or Québec Pension Plan deductions applicable in the Province or Territory where the person is resident.
- (f) Notwithstanding any of the foregoing, an Approved HCV Infected Person who was not working prior to his or her infection with HCV and who was infected either before he or she attains 18 years of age or, if the person had attained 18 years of age, while the person was in full-time attendance at an accredited education institution in Canada and at a time when the person was yet to enter the workforce on a permanent and full-time basis, will be deemed to have Pre-claim Gross Income for the year which includes the date he or she attains 18 years of age and each subsequent year or, if the person had already attained 18 years of age, the year of completion of full-time attendance at an accredited education institution and each subsequent year, in an amount equal to the then most recently available Average Industrial Wage in Canada (such amount will be prorated for the year in which the person attains 18 years of age or completes full-time attendance at an accredited education institution for the number of days in the year in which the person has attained 18 years of age or completes full-time attendance at an accredited education institution), or, if such person demonstrates on a balance of probabilities that his or her Earned Income for such year would have been higher than such amount, such higher amount.
- (g) For the purposes of all income tax calculations required under this Section 4.02(2), the only deductions and tax credits that apply to the Approved HCV Infected Person which will be taken into account will be his or her alimony and maintenance payments deduction, basic personal tax credit, married person’s or equivalent to married tax credit, disability tax credit, Unemployment or Employment Insurance premium tax credit and Canada Pension Plan or the Québec Pension Plan contribution tax credit.

#### **4.03 Compensation for Loss of Services in the Home**

(1) Each Approved HCV Infected Person who normally performed household duties in his or her home and who:

- (a) elects to be paid compensation for the loss of such services instead of \$30,000 pursuant to Section 4.01(3); or

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- (b) delivers to the Administrator:
- (i) evidence demonstrating he or she has developed fibrous tissue in the portal areas of the liver with fibrous bands bridging to other portal areas or to central veins but without nodular formation or nodular regeneration (i.e., bridging fibrous);
  - (ii) the evidence referred to in Section 4.01(1)(d); or
  - (iii) the evidence referred to in Section 4.01(1)(e); and

who delivers to the Administrator proof satisfactory to the Administrator that his or her infection with HCV caused his or her inability to perform his or her household duties will be paid compensation for loss of such services.

(2) The amount of the compensation for the loss of services in the home pursuant to Section 4.03(1) is \$12 per hour to a maximum of \$240 per week.

(3) Notwithstanding any of the provisions hereof, an Approved HCV Infected Person cannot claim compensation for loss of income and compensation for loss of services in the home for the same period.

#### **4.04 Compensation for Costs of Care**

An Approved HCV Infected Person who establishes to the satisfaction of the Administrator that on the balance of probabilities he or she has any of the conditions referred to in Section 4.01(1)(e) and delivers to the Administrator evidence satisfactory to the Administrator that he or she has incurred costs for care due to such condition that are not recoverable by or on behalf of the claimant under any public or private health care plan is entitled to be reimbursed for all reasonable costs so incurred provided:

- (a) the amount of compensation payable for care costs in any calendar year cannot exceed \$50,000;
- (b) the care was recommended by the claimant's treating physician;
- (c) the amount of compensation will not include any costs described in Sections 4.03 or 4.06; and
- (d) if the costs are incurred outside of Canada, the amount of compensation cannot exceed the lesser of the amount of compensation payable if the costs

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had been incurred in the Province or Territory where the claimant resides or is deemed to reside and the actual costs.

#### **4.05 Compensation for HCV Drug Therapy**

An Approved HCV Infected Person who delivers evidence satisfactory to the Administrator that he or she has received Compensable HCV Drug Therapy is entitled to be paid \$1,000 for each completed month of therapy.

#### **4.06 Compensation for Uninsured Treatment and Medication**

An Approved HCV Infected Person who delivers to the Administrator evidence satisfactory to the Administrator that he or she has incurred or will incur costs for generally accepted treatment and medication due to his or her HCV infection which are not recoverable by or on behalf of the claimant under any public or private health care plan is entitled to be reimbursed for all reasonable past, present or future costs so incurred, to the extent that such costs are not costs of care or compensation for loss of services in the home, provided:

- (a) the costs were incurred on the recommendation of the claimant's treating physician; and
- (b) if the costs are incurred outside of Canada, the amount of compensation cannot exceed the lesser of the amount of compensation payable if the costs had been incurred in the Province or Territory where the claimant resides or is deemed to reside and the actual costs.

#### **4.07 Compensation for Out-of-Pocket Expenses**

An Approved HCV Infected Person who delivers to the Administrator evidence satisfactory to the Administrator that he or she has incurred or will incur out-of-pocket expenses due to his or her HCV infection that are not recoverable by or on behalf of the claimant under any public or private health care plan is entitled to be reimbursed for all reasonable costs so incurred provided:

- (a) out-of-pocket expenses will include (i) expenses for travel, hotels, meals, telephone and other similar expenses attributable to seeking medical advice or generally accepted medication or treatment due to his or her HCV infection and (ii) medical expenses incurred in establishing a Claim; and

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- (b) the amount of the expenses cannot exceed the amount therefor in the guidelines in the Regulations issued under the *Financial Administration Act* (Canada) from time to time.

#### **4.08 Compensation for HIV Infected Persons**

(1) An Approved HCV Infected Person who is also a HIV Secondarily-Infected Person may not receive any compensation under this Article Four unless and until his or her entitlement to compensation hereunder exceeds a total of \$240,000 and then he or she will be entitled to be compensated for all amounts payable under this Article Four in excess of \$240,000.

(2) Notwithstanding any of the provisions of this Plan (including Section 4.08(1)), a Primarily-Infected Hemophiliac who is an Approved HCV Infected Person who is also infected with HIV may elect to be paid \$50,000 in full satisfaction of all his or her past, present or future Claims pursuant to this Plan (including all potential Claims of his or her Dependents or other Family Members pursuant to Article Six) but such payment will not affect the personal Claim of a Spouse or Child who is also a HCV Infected Person. Evidence that an Approved HCV Infected Person has received payments under MPTAP or EAP or the Nova Scotia Compensation Plan will be proof that he or she also has HIV.

#### **4.09 Compensation is Inclusive**

For greater certainty, the amounts payable to Approved HCV Infected Persons under this Article Four are inclusive of any prejudgment interest or other amounts that may be claimed by Approved HCV Infected Persons.

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**ARTICLE FIVE  
COMPENSATION TO APPROVED HCV PERSONAL REPRESENTATIVES**

**5.01 Compensation if Deceased Prior to 1 January 1999**

(1) If a HCV Infected Person died prior to 1 January 1999 and his or her HCV Personal Representative delivers to the Administrator the evidence required under Article Three within the period set out in Section 3.04, the Approved HCV Personal Representative is entitled to be reimbursed for the uninsured funeral expenses incurred up to a maximum of \$5,000 and, subject to the provisions of Sections 5.01(2) and (3), the Approved HCV Personal Representative will be paid the amount of \$50,000 in full satisfaction of any and all Claims that the deceased HCV Infected Person would have had under this Plan if he or she had been alive on or after 1 January 1999. This \$50,000 payment to the Approved HCV Personal Representative is in addition to the Claims of Dependents and other Family Members pursuant to Article Six and will not affect the personal Claim of a Spouse or Child who is also a HCV Infected Person.

(2) Instead of payment pursuant to Section 5.01(1), if a HCV Infected Person died prior to 1 January 1999 and his or her HCV Personal Representative delivers to the Administrator the evidence required under Article Three within the period set out in Section 3.04 and the Approved HCV Personal Representative of such HCV Infected Person and all the deceased HCV Infected Person's Dependents and other Family Members having Claims under this Plan agree to be paid \$120,000 in full satisfaction of all their Claims pursuant to this Plan (including all potential Claims pursuant to Article Six), such amount will be paid jointly to them, but such payment will not affect the personal Claim of a Spouse or Child who is also a HCV Infected Person.

(3) Notwithstanding the provisions of Section 5.01(1) and (2), if the deceased HCV Infected Person was also an HIV Secondarily-Infected Person who died prior to 1 January 1999, no amount will be payable pursuant to Section 5.01(1) unless, and then only to the extent that, the Claims of the Approved HCV Personal Representative and the deceased HCV Infected Person's Dependents and other Family Members pursuant to Article Six exceed an aggregate of \$240,000, and no amount will be payable pursuant to Section 5.01(2).

(4) Instead of payment pursuant to either Section 5.01(1) or (2), if a Primarily-Infected Hemophiliac was also infected with HIV and died prior to 1 January 1999 and his or her HCV Personal Representative and all the deceased Primarily-Infected Hemophiliac's Dependents and other Family Members having Claims under this Plan agree to be paid \$72,000 in full satisfaction of all their Claims pursuant to this Plan (including all Claims pursuant to Article Six), such amount will be paid jointly to them upon receipt of the following:

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- (a) the original certificate of appointment of estate trustee, grant of probate or of letters of administration or notarial will (or a copy thereof certified to be a true copy by a lawyer or notary) or such other proof of the right of the claimant to act for the estate of the deceased as may be required by the Administrator;
- (b) the evidence referred to in Section 3.01(1)(a);
- (c) the evidence referred to in Section 3.04(3)(a), (b), (c) or (d);
- (d) a statutory declaration referred to in Section 3.04(4); and
- (e) any evidence required by the Administrator pursuant to Section 3.04(5).

Such payment will not affect the personal Claim of a Family Member who is also a HCV Infected Person.

#### **5.02 Compensation if Deceased After 1 January 1999**

(1) If a HCV Infected Person died or dies on or after 1 January 1999 and the evidence required under Article Three has been submitted to the Administrator by him or her prior to his or her death or by his or her HCV Personal Representative after his or her death and within the period set out in Section 3.04, the Approved HCV Personal Representative will be paid (i) the uninsured funeral expenses incurred up to a maximum of \$5,000 and (ii) whether or not the evidence required under Section 3.04(1)(a) is provided, the amount of all Claims payable under Article Four to which the deceased HCV Infected Person would have been entitled for the period up to his or her death if he or she had not died (to the extent such amounts have not otherwise been paid pursuant to this Plan), but such payments are in addition to the Claims of Dependants and Family Members pursuant to Article Six and will not affect the personal Claim of a Family Member who is also a HCV Infected Person.

(2) Notwithstanding the provisions of Section 5.02(1), if the deceased HCV Infected Person was also a HIV Secondarily-Infected Person, no amount will be payable pursuant to Section 5.02(1) unless, and then only to the extent that, the Claims of the Approved HCV Personal Representative and the deceased HCV Infected Person's Dependants and other Family Members pursuant to Article Six exceed an aggregate of \$240,000.

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**ARTICLE SIX  
COMPENSATION TO APPROVED DEPENDANTS AND  
APPROVED FAMILY MEMBERS**

**6.01 Compensation to Approved Dependants**

(1) If a HCV Infected Person dies and the death was caused by his or her infection with HCV, the Approved Dependants of such HCV Infected Person will be entitled to be compensated for their loss of support. The loss of support is an amount each calendar year equal to 70% of his or her Annual Loss of Net Income for such year until he or she would have attained the age of 65 years determined in accordance with Section 4.02(2) provided, however, that the annual amount payable under this provision will be reduced by an amount equal to 30% of the net amount as calculated to allow for the personal living expenses of the HCV Infected Person, and provided further that, for purposes of calculating the annual amount payable under this provision, "Post-claim Net Income" will be computed without reference to clauses (A), (C) and (D) of the definition of "Post-claim Net Income" and that the words "the person" and "on account of illness or disability for the year" in clause (B) and the words "the person" in clause (E) of the definition of "Post-claim Net Income" will be replaced with the words "the Dependants as a result of the death of the person"

(2) If a HCV Infected Person dies and the death was caused by his or her infection with HCV, the Approved Dependants of such HCV Infected Person living with such HCV Infected Person at the time of his or her death will be entitled to be compensated for the loss of the services of the HCV Infected Person in the home at the rate of \$12 per hour to a maximum of \$240 per week.

(3) The amounts payable pursuant to Sections 6.01(1) or (2) will be allocated as the Approved Dependants may agree, or failing any agreement, as the Administrator so determines based on the extent of support received by each of the Dependants prior to the death of the HCV Infected Person. Notwithstanding any of the provisions hereof, the Approved Dependants of a HCV Infected Person whose death was caused by his or her infection with HCV cannot claim compensation for loss of support and compensation for the loss of services in the home for the same period.

**6.02 Compensation to Approved Family Members**

Each Approved Family Member of a HCV Infected Person whose death was caused by his or her infection with HCV will be paid the applicable amount set out below for loss of guidance, care and companionship:

(a) \$25,000 for the Spouse;

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- (b) \$15,000 for each Child under the age of 21 years at the date of death of the HCV Infected Person;
- (c) \$5,000 for each Child 21 years or older at the date of the death of the HCV Infected Person;
- (d) \$5,000 for each Parent;
- (e) \$5,000 for each Sibling;
- (f) \$500 for each Grandparent; and
- (g) \$500 for each Grandchild.

The above amounts may be reduced on a proportionate basis pursuant to the provisions of Section 5.01(3) or 5.02(2) if the relevant deceased HCV Infected Person was also a HIV Secondarily-Infected Person.

### **6.03 Limitation**

Dependants and other Family Members of a HCV Infected Person will only be entitled to make Claims pursuant to Sections 6.01 and 6.02 (or, in lieu thereof, under Section 5.01(2) or (3)) and they will not be entitled to make any other Claims or to any additional or other compensation. Nothing in this Section will affect the personal Claim of a Spouse or Child who is also a HCV Infected Person.

## **ARTICLE SEVEN ADJUSTMENT OF COMPENSATION PAYMENTS**

### **7.01 Periodic Re-assessment by Administrator**

(1) An Approved HCV Infected Person or the Approved Dependants may apply to the Administrator to have the compensation payable pursuant to Article Four or Section 6.01, respectively, re-assessed periodically but not more frequently than every two years unless the Administrator is satisfied that there are exceptional circumstances that require a more frequent re-assessment.

(2) The Administrator may at any time and from time to time re-assess the compensation payable to any Approved HCV Infected Person or the Approved



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Dependants if the Administrator determines that there has been a material change in circumstances.

## **7.02 Compensation Indexed to Pension Index**

The amount of all of the payments to be made pursuant to Articles Four (other than Sections 4.02, 4.06 and 4.07), Five and Six will be adjusted on the first day of January of each calendar year during the Term commencing on 1 January 2000 to the amounts set out in those Articles multiplied by the ratio that the Pension Index as defined in the *Canada Pension Plan Act* for the calendar year of such adjustment bears to that Pension Index for 1999.

## **7.03 Periodic Re-assessment by Courts**

(1) The Joint Committee must apply to the Courts within 180 days after (i) 31 December 2001 and (ii) each third anniversary of such date to determine whether, among other things, the restriction on the payment of \$5,000 in Section 4.01(1)(b), the 70% limitation in Sections 4.02 and 6.01 and the \$75,000 limitation in Sections 4.02 and 6.01 should be amended (i.e., either increased or decreased) or removed in whole or in part.

(2) If the Courts decide to amend the restrictions referred to in Section 7.03(1) to increase the amount of any payment, then the amendment will be made strictly in accordance with the following priorities:

- (a) firstly, the Plan will be amended by deleting the restriction upon payment contained in Section 4.01(1)(b) requiring the postponement of payment of \$5,000 and by providing that the full amount of \$20,000 will be paid. Each person entitled to receive a payment that has been postponed for his or her account in accordance with Section 4.01(1)(b) will thereupon be paid the amount postponed plus interest thereon at the Prime Rate commencing on the date of payment of the \$15,000 under Section 4.01(1)(b);
- (b) secondly, after the amendment referred to in Section 7.03(2)(a) has been made and all amounts payable under that Section have been paid, the Plan will then be amended by deleting the words "70% of" from Sections 4.02 and 6.01 and substituting the percentage that is to be recovered. Thereafter, these restrictions will again be amended until such time as they are deleted. Each person who previously received compensation pursuant to Section 4.02 or 6.01 will be paid the difference between the amount that he or she received and the amount that he or she would have received had the substituted percentage been in place, together with interest on the

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difference at the Prime Rate commencing on the date of payment of the reduced amount, as amended from time to time; and

- (c) thirdly, after the amendments referred to in Sections 7.03(2)(a) and (b) have been made and all amounts payable under those Sections have been paid, the Plan will then be amended by amending or deleting the words “provided that the amount determined under this Section 4.02(2)(b)(i) will not exceed \$75,000 multiplied by the ratio that the Pension Index for the year bears to the Pension Index for 1999” in the definition of “Pre-claim Net Income” in Section 4.02(2)(b) and the words “provided that the amount determined under this Section 4.02(2)(c)(i) will not exceed the proportion of the amount determined under Section 4.02(2)(b)(i) for such year that the Approved HCV Infected Person’s Post-claim Gross Income for such year is of such person’s Pre-claim Gross Income for such year” in the definition of “Post-claim Net Income” in Section 4.02(2)(c). Thereafter, such restriction will again be amended until such time as it is deleted. Once an amendment has been made, each person who previously received compensation pursuant to Section 4.02 or 6.01 will be paid the difference between the amount that he or she received and the amount that he or she would have received had the amendment or deletion been in place, together with interest on the difference at the Prime Rate commencing on the date of payment of the reduced amount, as varied from time to time.

(3) Notwithstanding the provisions of Section 7.03(1), in the event of a material change in circumstances, the Joint Committee, any Class Action Counsel or the Fund Counsel may apply to the Courts at any time to assess the financial viability and sufficiency of the Trust Fund and whether the restriction on the payment of \$5,000 under Section 4.01(1)(b), the 70% limitation in Sections 4.02 and 6.01 and the \$75,000 limitation in Sections 4.02 and 6.02 should be amended (i.e., either increased or decreased) or removed in whole or in part.

#### **7.04 Interest**

Interest will not accrue on amounts payable under this Plan except as specifically provided in Section 7.03(2). Interest payable under this Plan must be calculated on the basis of simple interest, not compound interest. There will be no interest paid on the Pension Index adjustment component of any payment.

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**7.05 Set-Off**

In the absence of fraud, any amount paid pursuant to this Plan is not refundable in the event that it is later determined that the recipient was not entitled to receive or be paid all or part of the amount so paid, but the recipient may be required to account for any amount that he or she was not entitled to receive against any future payments that he or she would otherwise be entitled to receive pursuant to this Plan.

**7.06 Payments to Public Trustee**

Notwithstanding any of the other provisions of this Plan, any amount payable to a minor or mentally incompetent person hereunder will be paid to the Public Trustee or Public Curator or such other person as the law provides in the Province or Territory where the minor or mentally incompetent person resides or is deemed to reside. The Public Trustee or Public Curator or such other person as the law provides will determine the manner of payment of such amount to or for the benefit of the minor or mentally incompetent person.

**ARTICLE EIGHT  
CHARACTER OF PAYMENTS**

**8.01 Canadian Income Taxes**

The amount of compensation paid to or received by a Class Member pursuant to this Plan will not be required to be included in the taxable income of the recipient thereof under the *Income Tax Act* (Canada) or the income tax act of any Province or Territory, provided, however, that this provision will not apply in respect of any amount of compensation paid to or reserved by a person other than the person that, but for any assignment of any amount of compensation payable under this Plan, would be the person entitled to the compensation under this Plan or in respect of any tax payable under Part XIII of the *Income Tax Act* (Canada) or the equivalent provisions of the income tax act of any Province or Territory by any Class Member or any amount required to be withheld by the Trustee or Administration on account of such tax in respect of any compensation paid or received under this Plan.

**8.02 Social Benefits**

(1) If a Class Member was receiving any medical, ancillary medical, health or drug benefits on 1 April 1999, the receipt of payments pursuant to this Plan will not affect the quantity, nature or duration of any corresponding benefits that any Class Member receives after such date except to the extent that such benefits are related to the Class Member's infection with HCV in which case they are recoverable exclusively under this Plan as provided in Sections 4.06 and 4.07.

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(2) The receipt of any payments pursuant to this Plan will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to a Class Member pursuant to any legislation of any PT Government referred to in Appendix A hereto provided that the receipt of loss of income or loss of support payments pursuant to Section 4.02 or 6.01 may have such an effect. The receipt of any payments pursuant to this Plan will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to a Class Member pursuant to any social benefit programs of the government of Canada such as old age security and Canada Pension Plan as such payments either are not considered or, if considered, are otherwise exempted in the calculation of benefits under such legislation, provided that the receipt of loss of income or loss of support payments pursuant to Section 4.02 or 6.01 may have such an effect.

(3) Any benefit conferred under Section 8.02(1) or (2) cannot be assigned by the Class Member.

### **8.03 Collateral Benefits**

(1) If a Class Member is or was entitled to be paid compensation under this Plan and is or was also entitled to be paid compensation payable under an insurance policy or other plan or claim in any way relating to or arising from the infection of a HCV Infected Person with HCV, the compensation under this Plan will be reduced by the amount of the compensation that the Class Member is entitled to be paid under the insurance policy or other plan or claim.

(2) Notwithstanding the provisions of Section 8.03(1), life insurance payments received by any Class Member will not be taken into account for any purposes whatsoever under this Plan.

### **8.04 Subrogation**

No subrogation payment of any nature or kind will be paid, directly or indirectly, under this Plan, and without restricting the generality of this provision:

- (a) no FPT Government and no department of an FPT Government providing employment insurance, health care, hospital, medical and prescription services, social assistance or welfare will be paid under this Plan;
- (b) no municipality and no department of a municipality will be paid under this Plan;

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- (c) no person exercising a right of subrogation will be paid under this Plan; and
- (d) no claimant will be paid compensation if the claim is being asserted as a subrogated Claim or if the claimant will hold any money paid under this Plan in trust for any other party exercising a right of subrogation, or, except as provided in Section 8.02, if a payment under this Plan will lead to a reduction in other payments for which the claimant would otherwise qualify.

#### **8.05 No Assignment**

Any amount payable under this Plan cannot be assigned without the written consent of the Administrator.

### **ARTICLE NINE ADMINISTRATION**

#### **9.01 Administrator**

The Administrator will be responsible for the processing of all Claims and for obtaining funds from the Trustee on behalf of Class Members under this Plan and distributing such funds as compensation payable to Class Members under this Plan. No payments will be made to any Class Member under this Plan unless and until the Class Member, or if the Class Member is deceased, a minor or mentally incompetent, his or her Personal Representative, duly executes and delivers to the Administrator a valid and binding release in the form attached to this Plan as Appendix B and consents to the dismissal without costs to any party of any action or other proceeding in any way relating to or arising from the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including the infection of a Secondarily-Infected Person) commenced against any Releasee (as defined in the form of release attached hereto as Appendix B) including the Class Actions as provided in the Approval Orders as defined in the Settlement Agreement.

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## **ARTICLE TEN DISPUTE RESOLUTION**

### **10.01 Reference to Referee or Arbitrator**

A person making a Claim may, within 30 days after he or she receives notice of the Administrator's decision respecting his or her Claim, refer that decision to, at his or her option, a Referee or an Arbitrator by filing with the Administrator a notice requiring a reference or arbitration and setting out the objection to its decision and the reasons in support of the objection. If no notice requiring a reference or arbitration is filed within the 30 day period, the Administrator's decision will be automatically confirmed and be final and binding.

### **10.02 Rosters of Referees and Arbitrators**

The Courts will appoint rosters of Referees and of Arbitrators. The rosters of Referees and of Arbitrators will include persons resident in each of the Provinces and Territories. Each Referee and Arbitrator will be paid only for the actual services he or she performs and in accordance with a tariff established by the Courts. The fees and disbursements of the Referees and Arbitrators will be paid out of the Trust in a time, in a manner and in an amount approved by the Courts. Each Referee and Arbitrator may exercise all of the jurisdiction and powers granted to him or her hereunder.

### **10.03 Forwarding Claims**

Upon receipt of a notice requiring a reference or arbitration, the Administrator will forward to a Referee or Arbitrator, as the case may be, in the Province or Territory where the claimant resides or is deemed to reside and to the Fund Counsel the following:

(a) a copy of the Claim and the notice requiring a reference or arbitration, as the case may be;

(b) a copy of all the written submissions and material in support of the submissions and other evidence pertaining to the Claim in the possession of the Administrator;

(c) a copy of the Administrator's decision; and

(d) such other information or material as the Referee, Arbitrator or Fund Counsel may request.

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#### **10.04 Conduct of Reference and Arbitration**

(1) A reference will be conducted in accordance with the provisions of Appendix C hereto.

(2) An arbitration will be conducted in accordance with the provisions of Appendix D hereto.

#### **10.05 Payment of Claims**

After a decision of a Referee or Arbitrator becomes final and binding, any amount directed to be paid will be paid promptly.

**APPENDIX A****SOCIAL BENEFITS LEGISLATION**

## Newfoundland:

*Social Assistance Act*, RSN 1990 cS-17 as amended

## Nova Scotia:

*Social Assistance Act*, R.S., c.432

*Family Benefits Act*, R.S., c.158

*Disabled Persons' Allowance Act*, R.S. 1954, c.70

## Prince Edward Island:

*Welfare Assistance Act*

## New Brunswick:

*Family Income Security Act*

## Québec:

*Loi sur La Securite du Revenu*

(Act respecting income security) LRQ cS. 3.1.1.

## Ontario:

*Social Assistance Reform Act*, 1997, S.O. 1997, c.25

*Ontario Works Act*, 1997, S.O. 1997, c.25

*Ontario Disability Support Program Act*, 1997, S.O. 1997, c.25

## Manitoba:

*The Employment and Income Assistance Act*, CCSM, E-98

*The Municipal Act*, CCSM, M225

## Saskatchewan:

*Saskatchewan Assistance Act*



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## Alberta:

*Social Development Act*, R.S.A. 1980, cs-16  
*Assured Income for the Severely Handicapped Act*, R.S.A. 1980 CA-48  
*Widows Pension Act*, S.A. 1983, W-75

## British Columbia:

*B.C. Benefits (Income Assistance) Act*, R.S. c.27  
*B.C. Benefits (Youth Works) Act*, R.S. c. 28  
*Disability Benefits Program Act*, R.S. c.97

## Yukon:

*Social Assistance Act*

## North West Territories &amp; Nunavut:

*Social Assistance Act*, R.S. N.W.T. 1988 cs-10 as duplicated for Nunavut by s.  
29(1) of the *Nunavut Act*

## APPENDIX B

### FULL AND FINAL RELEASE

In this Release:

“Releasees” means, individually and collectively,

- (a) each of the FPT Governments,
- (b) each of the past, present, and future ministers and employees of each FPT Government,
- (c) each of the past and present agents of each FPT Government,
- (d) the Canadian Blood Agency,
- (e) the Canadian Blood Committee or its members,
- (f) each operator of a hospital or health care facility at which a Primarily-Infected Hemophiliac received or took Blood, or a HCV Infected Person received treatment, care or advice in any way relating to or arising from the infection of the HCV Infected Person with HCV,
- (g) each health caregiver who treated or provided care or advice to a HCV Infected Person in any way relating to or arising from the infection of the HCV Infected Person with HCV,
- (h) any person engaged in the business of collecting, manufacturing, purchasing, processing, supplying or distributing Blood,

including their respective past, present, and future parent, subsidiary and affiliated corporations, employees, agents, officers, directors, shareholders, volunteers, representatives, executors, administrators, successors and assigns. Each of the FPT Governments is a trustee for the purpose of asserting the benefit of this Release for those persons listed in (b) to (h) inclusive and holds the benefit of this Release on their behalf as well as on its own behalf. For greater certainty, the CRCS is not a Releasee.

“Releasor” means the undersigned on behalf of the undersigned and his or her heirs, administrators, executors, Personal Representatives and successors.

In this Release initially capitalized terms not defined in this Release have the meanings set out in the Settlement Agreement, including its Schedules. Words importing the singular number include the plural and *vice versa*, words importing any gender include all genders and words importing persons include individuals, partnerships, associations,

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trusts, unincorporated organizations, corporations and governmental authorities. The term "including" means "including without limiting the generality of the foregoing".

THIS RELEASE WITNESSES that in consideration of the right of the Releasor to participate in the Hemophiliac HCV Plan and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

### **1. Direct Release**

(a) The Releasor fully and forever releases, acquits and discharges each of the Releasees from any and all actions, causes of action, liabilities, claims and demands, whatsoever of every nature or kind for damages, contribution, indemnity, costs, expenses and interest which the Releasor ever had, now has or may hereafter have in any way relating to or arising from the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including the infection of a Secondarily-Infected Person) whether such claims were made or could have been made in any proceeding including the Class Actions as provided in the Approval Orders.

(b) The Releasor agrees that the same consideration is in full and final settlement and satisfaction of any and all such claims now and in the future.

### **2. Cessation of Litigation**

(a) The Releasor hereby consents to the dismissal without costs of any claim or proceeding of any kind directly or indirectly against any Releasee in any way relating to or arising from the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including the infection of a Secondarily-Infected Person) including the Class Actions as provided in the Approval Orders. A Releasee may not claim the benefit of any of the provisions of this Release unless and until the Releasee consents to the dismissal without costs of such claim or proceeding to be so dismissed by the Releasor.

(b) The Releasor undertakes not to now or at any time hereafter:

- (i) commence;
- (ii) assist in;
- (iii) acquiesce in; or
- (iv) permit the Releasor's name to be used in

any claim or proceeding of any kind directly or indirectly against any Releasee in any way relating to or arising from the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including the infection of a Secondarily-Infected Person).

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### 3. Complete Bar

The Releasor agrees that this Release is a complete defence to any claim or proceeding of any kind brought by the Releasor directly or indirectly against any Releasee in any way relating to or arising from the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including the infection of a Secondarily-Infected Person) and this Release will forever be a complete bar to the commencement or prosecution of any such claim or proceeding, and the Releasor does hereby consent to the dismissal without costs of any such future claim or proceeding.

### 4. Claims For Contribution or Indemnity

The Releasor undertakes not to make any claim or demand or take any actions or proceedings against any Releasee or any other person in any way relating to or arising from the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including the infection of a Secondarily-Infected Person). For greater certainty, the Releasor will not make any claim or demand or take any actions or proceedings in which any claim could arise against any Releasee for damages and/or contribution and/or indemnity and/or other relief over under the provisions of the *Negligence Act* (Ontario) or its counterpart in other jurisdictions, the common law or any other statute of this or any other jurisdiction in any way relating to or arising from the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including the infection of a Secondarily-Infected Person) and the Releasor also hereby consent to a dismissal without costs of any such claim or proceeding which results in such a claim being made, provided that the foregoing excludes claims against the CRCS.

### 5. Claims Against the CRCS

At the option of the FPT Governments or their representatives, the Releasor will either,

- (a) pursue his or her claims against the CRCS in any way relating to or arising from the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including the infection of a Secondarily-Infected Person), and assign to the FPT Governments the proceeds received by the Releasor from any such claims, or
- (b) within the *Companies' Creditors Arrangement Act* (Canada) proceedings relating to the CRCS, prove, vote and otherwise act to promote such claims that the Releasor has against the CRCS in accordance with directions given to the Releasor by the FPT Governments or their representatives or, at the request of the FPT Governments or their representatives, grant to the FPT Governments and their representatives

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such proxies or other forms of assignment as are necessary for the FPT Governments to vote and otherwise act to promote any such claim of the Releasor, or

- (c) enter into a release of all of such claims against the CRCS substantially in the form of this Release.

THE RELEASOR HEREBY ACKNOWLEDGES that this Release is made with a denial of liability by the Releasees and nothing in it nor any action of any Releasee will be construed as an admission of liability by any Releasee.

THE RELEASOR HEREBY DECLARES that the Releasor has had the opportunity to seek independent legal advice with respect to the terms and effect of this Release and the undersigned fully understands and accepts each and every term and condition of this Release and that this Release is given voluntarily for the purpose of making a full and final compromise and settlement of all claims and other matters in any way relating to or arising from the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including the infection of a Secondarily-Infected Person) whether such claims were made or could have been made in any proceeding including the Class Actions.

THIS RELEASE will be governed by and construed in accordance with the laws of the Province of ● and the laws of Canada applicable therein.

IN WITNESS WHEREOF the undersigned has executed this Release.

DATED ●, 19●.

SIGNED, SEALED AND DELIVERED )  
 in the presence of: )  
 )  
 )  
 )

\_\_\_\_\_ (s)  
 ●

\_\_\_\_\_  
 Witness

## APPENDIX C

### REFERENCE RULES

#### 1. Powers of Referee

A Referee will have the power:

- (a) to establish the procedure to be followed during the reference;
- (b) to determine the location where the reference will be considered;
- (c) to order production of documents and examinations for discovery, if necessary;
- (d) to summon and enforce the attendance of witnesses and to compel them to give oral or written evidence on oath in the same manner as a court of record in civil cases;
- (e) to accept oral or written evidence as the Referee in his or her discretion considers proper, whether admissible in a court of law or not;
- (f) to mediate the differences at any stage in the proceedings and, if mediation is unsuccessful, to continue with the reference; and
- (g) to determine the subject matter of the reference and, in the exercise of his or her discretion, to award costs, in accordance with a tariff to be established by the Courts.

#### 2. Conduct of Reference

The only parties to the reference will be the claimant and the Fund Counsel. The Referee must adopt the simplest, least expensive and most expeditious manner of conducting the reference. The Referee must begin the reference within 30 days after being appointed. The language of the reference will be in English or French, as requested by the claimant.

#### 3. Report of Referee

The Referee must give a written report within 30 days of the completion of the reference which will be automatically confirmed and be final and binding unless the claimant serves and files a notice of motion with the Court having jurisdiction in the Class Action in which he or she is a Class Member opposing confirmation within 30 days of the delivery of the Referee's report, provided, however, that if the amount in issue is

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less than \$10,000 the Referee will be deemed to have carried on an arbitration and the report will be deemed to be an arbitration award.

**4. Appearances on a Motion Opposing Confirmation of a Referee's Report**

The claimant, the Fund Counsel and each Class Action Counsel will each have the right, but not the obligation, to appear on any motion and oppose or support confirmation of a Referee's report.

## APPENDIX D

### ARBITRATION RULES

#### Jurisdiction and Scope

1. The Arbitrator will apply the rules and procedures of the *Arbitration Act* of the Province or Territory in which the Arbitration is conducted, if any, to any Arbitration conducted hereunder except to the extent they are modified by the express provisions of these Rules.
2. Each party acknowledges that it will not apply to the courts of any jurisdiction to attempt to enjoin, delay, impede or otherwise interfere with or limit the scope of the Arbitration or the powers of the Arbitrator; provided, however, that the foregoing will not prevent either party from applying to the courts for a determination with respect to any matter or challenge provided for in the *Arbitration Act* referred to in Section 1 of these Rules.
3. Each party further acknowledges that the award of the Arbitrator will be final and conclusive and there will be no appeal therefrom whatsoever to any court, tribunal or other authority.
4. The Arbitrator has the jurisdiction to deal with all matters relating to an appeal from a decision of the Administrator (a "Dispute") including, without limitation, the jurisdiction:
  - (a) to determine any question of law, including equity;
  - (b) to determine any question of fact, including questions of good faith, dishonesty or fraud;
  - (c) to determine any question as to the Arbitrator's jurisdiction;
  - (d) to request that the parties enter into arbitration;
  - (e) to order any party to furnish further details, whether factual or legal, of that party's case;
  - (f) to proceed with the Arbitration notwithstanding the failure or refusal of any party to comply with these Rules or with the Arbitrator's orders or directions or to attend any meeting or hearing, but only after giving that party written notice that the Arbitrator intends to do so;



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- (g) to receive and take into account such written or oral evidence tendered by the parties as the Arbitrator determines is relevant, whether or not admissible in law;
- (h) to make one or more interim awards including, without limitation, orders to secure any amount relating to the Dispute; and
- (i) to order the parties to produce to the Arbitrator and to each other for inspection and to supply copies of any documents or classes of documents in their possession, power or control that the Arbitrator determines to be relevant.

### **Place of Arbitration**

5. The Arbitration will be conducted in the Province or Territory in which the claimant resides at a location determined from time to time by the Arbitrator pursuant to Section 6 of these Rules.

### **Meetings**

6. The Arbitrator will determine the time, date and location of meetings for the Arbitration and will give all the parties 15 days' prior written notice of such meetings.

7. The parties to the Arbitration will be the Claimant and the Fund Counsel. The claimant may be represented or assisted by any person during the Arbitration. Where the claimant is represented by another person, the claimant will provide notice in writing of such representation to the Fund Counsel and to the Arbitrator at least five days prior to any Arbitration proceeding.

8. The award of the Arbitrator must be made within 30 days of the completion of the Arbitration.

### **Disclosure/Confidentiality**

9. All information disclosed, including all statements made and documents produced, in the course of the Arbitration will be held in confidence and no party will rely on, or introduce as evidence in any subsequent proceeding, any admission, view, suggestion, notice, response, discussion or position of either the claimant or the Fund Counsel or any acceptance of a settlement proposal or recommendation for settlement made during the course of the Arbitration, except (i) as required by law or (ii) to the extent that disclosure is reasonably necessary for the establishment or protection of a party's legal rights against a third party or to enforce the award of the Arbitrator or to otherwise protect a party's rights under these Rules.

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**Miscellaneous**

10. The parties may modify any period of time provided for in these Rules by mutual agreement.

11. The language of the Arbitration will be English or French, as requested by the claimant.

12. Nothing contained in these Rules prohibits a party hereto from making an offer of settlement relating to a Dispute during the course of an Arbitration.

13. In determining the allocation between the parties of the costs of the Arbitration, the Arbitrator may invite submissions as to costs and may consider, among other things, an offer of settlement made by a party to the other party prior to or during the course of an Arbitration. The Arbitrator, in the exercise of his or her discretion, may award costs in accordance with a tariff to be established by the Courts.

14. The award will be rendered in writing and will contain a recital of the facts upon which the award is made and the reasons therefor.

**SCHEDULE C**

**FEDERAL/PROVINCIAL/TERRITORIAL ASSISTANCE PROGRAM  
FOR HIV SECONDARILY-INFECTED INDIVIDUALS**

**FEDERAL/PROVINCIAL/TERRITORIAL ASSISTANCE PROGRAM  
FOR HIV SECONDARILY-INFECTED INDIVIDUALS**

1. APPLICATION PROGRAM CRITERIA

On March 27, 1998, Federal/Provincial Health Ministers announced a \$1.1 billion financial assistance package to assist persons infected with Hepatitis C from the Canadian blood system. This assistance package also includes assistance to HIV/AIDS secondarily infected persons who are first order relatives of primary EAP recipients.

The criteria for application to the Federal / Provincial / Territorial Assistance Program for HIV Secondarily Infected Individuals are:

- relationship defined: partner or child of primarily infected person who is an approved Extraordinary Assistance Plan (EAP) recipient;
- to be HIV positive, resulting from the relationship with the primary EAP recipient;
- to have legal status in Canada at the date of infection (diagnosis date - first HIV positive test).

HIV/AIDS secondarily infected persons are entitled to receive \$240,000 tax free in one lump sum payment upon receipt of signed RELEASE.

2. PARAMETERS FOR A MEDICAL EVALUATION

Route of HIV/AIDS Transmission

The HIV virus is transmitted through sexual intercourse (vaginal, anal and rarely oral), from a mother to her fetus/infant (during pregnancy, child birth or breast feeding), and parenterally (such as in the sharing of drug injection equipment, the transfusion of HIV-infected blood or blood products, and the transplantation of a variety of tissues and organs).

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## Assessment

The onus of providing proof that the eligibility criteria are met rests on the applicant. Applicants are required to provide proof that they became HIV infected as a result of their sexual relationship with a primary EAP recipient or from a primary EAP mother to her fetus/infant.

Applicants must also provide consent of EAP recipient (or estate representative), to have access to the EAP recipient's personal information collected under the EAP.

Applicants must complete an application form (Form A - Adult; Form B - Minor; Form C - Estate) and are asked to submit Form D to their physician.

In assessing an applicant's eligibility, the medical reviewer takes into consideration all evidence put forward by the applicant. When an applicant provides information as to the existence of a risk factor other than his/her sexual relationship with a primary EAP recipient, it is incumbent on this individual to provide information which would discount that risk factor. If he/she fails to do so, the medical reviewer has to take into consideration the impact of this risk factor on the application. This may require that the medical reviewer consider statistical evidence as to the extent of the risks of HIV acquisition associated with this factor as opposed to the risk associated with the risk of having acquired HIV as a result of a sexual relationship with a primary EAP recipient (or mother to fetus/infant).

## Presence of other risk factors

In the AIDS Quarterly Surveillance Update: AIDS in Canada, there is a pre-defined hierarchy of risk used to assign each AIDS case to one "exposure category". For example, if the only risk behaviour is that the man has had sex with other men, the case would be assigned to the "men who have sex with men" (MSM) exposure category. If the same person also had a blood transfusion, for instance in 1983, he would still be assigned to the "MSM" exposure category, since homosexual contact is considered to be a more significant risk factor for HIV transmission than is a blood transfusion in 1983.

This risk hierarchy is used in the United States, the United Kingdom, the European Centre for the Epidemiological Monitoring of AIDS also known as INSERM, and Australia. In addition, it is used by the World Health Organization, the Pan-American Health Organization, Centers for Disease Control and Prevention in Atlanta, and the Public Laboratory Service in the UK.

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If an individual is in two "at risk groups" for example "men who have sex with men" and "IV drug use", these are factors which must be considered by the medical reviewer in his assessment of that person's application. The applicant must provide information to discount the existence of other risk factors. The medical reviewer cannot without any such evidence, take upon himself the task of discounting the implications of other risk factors.

The applicant's physician(s) is required to indicate whether there exists other risks for HIV infection. In this respect, the Program Administrator relies on the integrity of the applicant's physician(s) to report the existence of other risks.

Entitlement to a benefit is not based on a mere possibility of becoming HIV infected as a result of a sexual relationship with a primary EAP recipient, but rather on a conclusion, arrived at on a balance of probability by the medical reviewer, that an individual was so infected. Where, on the basis of the evidence before him/her, the medical reviewer cannot conclude on a balance of probability that the applicant was HIV infected as a result of a sexual relationship with a primary EAP recipient, or from a primary EAP mother to her fetus/infant, he/she recommends rejection of the application.

#### Summary of Medical Paramters

In carrying out an applicant's evaluation, the medical reviewer assesses on a balance of probabilities, whether the applicant became HIV infected as a result of their sexual relationship with the primary EAP recipient or from a primary EAP mother to her fetus/infant. To make a recommendation, he/she looks at the following:

1. The stated relationship of the applicant to the EAP-primary.
2. The duration/time of relationship and proof submitted to confirm relationship.
3. If there was a sexual contact, what evidence is supplied.
4. Consideration of LCDC data on "Probabilities of HIV transmission".
5. For mother to fetus/infant infection, consider the date of transfusion(s) by the mother and the child's birth (secondary).
6. Consideration of EAP-primary date of blood transfusion, secondary sexual relationship and compare this in temporal sequence to determine if secondary is asymptomatic, symptomatic or has AIDS; consistent in temporal sequence with the timing of receipt of blood by EAP-primary.
7. Consideration of other risk factors present and the risk of having acquired the infection by these means and the evidence supplied by the applicant to discount

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other risk factors.

8. Consideration of clinical information (CD-4 counts and viral load measurements) and drug therapies as provided by the applicant and his/her physician(s).
9. Consideration of information (medical history, physical examination, laboratory examination, etc.) obtained during physical examination as may be requested by the medical reviewer.

May 21, 1999

**SCHEDULE D**  
**FUNDING AGREEMENT**

**MADE AS OF**

**15 JUNE 1999**



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**FUNDING AGREEMENT**

THIS AGREEMENT is made as of 15 June 1999

**B E T W E E N:**

**THE ATTORNEY GENERAL OF CANADA ("Canada"), HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA ("British Columbia"), HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA ("Alberta"), HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF SASKATCHEWAN ("Saskatchewan"), HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF MANITOBA ("Manitoba"), HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO ("Ontario"), LE GOUVERNEMENT DU QUÉBEC ("Québec"), HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK ("New Brunswick"), HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NOVA SCOTIA ("Nova Scotia"), HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF PRINCE EDWARD ISLAND ("PEI"), HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEWFOUNDLAND ("Newfoundland"), THE GOVERNMENT OF THE NORTHWEST TERRITORIES ("Northwest Territories"), THE GOVERNMENT OF NUNAVUT ("Nunavut"), THE GOVERNMENT OF THE YUKON TERRITORY ("Yukon Territory"), (collectively, the "FPT Governments"),**

-and-

**ANITA ENDEAN, plaintiff in the British Columbia Transfused Class Action (the**

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“British Columbia Transfused Plaintiff”), **MARTIN HENRY GRIFFEN** and **ANNA KARDISH**, plaintiffs in the Ontario Transfused Class Action (the “Ontario Transfused Plaintiffs”), **DOMINIQUE HONHON**, plaintiff in the Québec Transfused Class Action (the “Québec Transfused Plaintiff”), **CHRISTOPHER FORREST MITCHELL**, plaintiff in the British Columbia Hemophiliac Class Action (the “British Columbia Hemophilia Plaintiff”), **JAMES KREPPNER** and **BARRY ISAAC**, plaintiffs in the Ontario Hemophiliac Action (the “Ontario Hemophilia Plaintiffs”) and **DAVID PAGE**, plaintiff in the Québec Hemophiliac Class Action (the “Québec Hemophilia Plaintiff”) (collectively, the “Class Action Plaintiffs”).

**WHEREAS:**

A. On 21 June 1996 the Québec Transfused Plaintiff commenced Action No. 500-06-000016-960 in the Superior Court of the Province of Québec for the District of Montreal against Canada, Québec, the CRCS and others (the “Québec Transfused Class Action”); on 19 September 1996 the British Columbia Transfused Plaintiff commenced Action No. C965349 in the Vancouver Registry of the Supreme Court of British Columbia against Canada, British Columbia and the CRCS (the “British Columbia Transfused Class Action”); and on 10 February 1998 the Ontario Transfused Plaintiffs commenced Action No. 98-CV-141369 in the Ontario Court (General Division), at Toronto, against Canada, Ontario and the CRCS (the “Ontario Transfused Class Action”) (collectively, the “Transfused Class Actions”).

B. On 24 April 1998 the Ontario Hemophilia Plaintiffs commenced Action No. 98-CV-146405 in the Ontario Court (General Division), at Toronto, against the CRCS and Canada (the “Ontario Hemophiliac Class Action”); on 1 May 1998 the British Columbia Hemophilia Plaintiff commenced Action No. A981187 in the Vancouver Registry of the Supreme Court of British Columbia against the CRCS and Canada (the “British Columbia Hemophiliac Class Action”); and on 7 May 1998 the Québec Hemophilia Plaintiff commenced Action No. 500-06-000068-987 in the Superior Court of the Province of Québec for the District of Montréal against the CRCS, Canada and Québec (the “Québec Hemophiliac Class Action”) (collectively, the “Hemophiliac Class Actions”).

C. Pursuant to the Settlement Agreement, the FPT Governments agreed to enter into this Agreement to provide for the payment by the FPT Governments of certain amounts

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in relation to the funding, in whole or in part, of the Disbursements (including payments under the Plans), on and subject to the terms set out in this Agreement.

D. The FPT Governments have agreed to establish the Trust for the purpose, among other things, of receiving such amounts from time to time from the FPT Governments and thereafter holding, investing and distributing such amounts and any other funds subsequently received by the Trust, on and subject to the terms set out in this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the premises and the covenants and agreements herein contained, the Parties agree as follows:

## ARTICLE ONE INTERPRETATION

### 1.01 Definitions

In this Agreement, in addition to the terms defined in the description of the Parties set out above:

**“Administrative Costs”** as at any time means the amounts as at such time referred to in paragraphs (c), (d), and (e) (other than Program Costs) of the definition of Other Fees and Disbursements in this Section 1.01 and Administrative Costs without any reference to a time means those amounts that if paid would constitute Administrative Costs as at any time.

**“Administrator”** means the administrator appointed by the Courts and its successors appointed from time to time pursuant to the provisions of the Settlement Agreement.

**“Agreement”** means this agreement including its recitals, as amended, supplemented or restated from time to time.

**“Approval Date”** means the date when the judgments or orders of the Courts approving the Settlement Agreement become final and, as a result, this Agreement becomes effective.

**“Auditors”** means the auditors appointed by the Courts and their successors appointed from time to time pursuant to the provisions of the Settlement Agreement.

**“Blood”** means Blood as defined in the Transfused HCV Plan or, in relation to hemophiliacs, as defined in the Hemophiliac HCV Plan.

**“Business Day”** means a day other than a Saturday or a Sunday or a day observed as a holiday under the laws of the Province or Territory in which the person to whom such

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notice is given is situated or the federal laws of Canada applicable in the said Province or Territory.

**“Class Action Counsel”** means the respective counsel for each of the Class Action Plaintiffs.

**“Class Actions”** has the meaning set out in Section 1.01 of the Settlement Agreement.

**“Class Members”** means, collectively, the Transfused Class Members and the Hemophiliac Class Members.

**“Class Period”** means the period from and including 1 January 1986 to and including 1 July 1990.

**“Contribution Account”** has the meaning set out in Section 4.03.

**“Contribution Account Balance”** of an FPT Government as at any time means an amount equal to the sum of the Proportionate Contributions plus the Proportionate Interest Amount minus the Proportionate Disbursements, each of such FPT Government as at such time.

**“Contribution Amount”** as at any time means an amount equal to the sum of \$1.118 billion plus the Total Interest Amount as at such time.

**“Courts”** means, collectively, the Supreme Court of British Columbia, the Superior Court of Justice for Ontario and the Superior Court of Québec.

**“Dependants”** has the meaning set out in Section 1.01 of the Transfused HCV Plan and the Hemophiliac HCV Plan.

**“Disbursements”** as at any time means an amount equal to the sum of the Plan Disbursements plus the Other Fees and Disbursements, each as at such time, and Disbursements without any reference to a time means those amounts that if paid would constitute Plan Disbursements or Other Fees and Disbursements as at any time.

**“EAP”** means the HIV Extraordinary Assistance Plan announced by the Federal Government on 14 December 1989.

**“Expert Costs”** as at any time means the amounts as at such time referred to in paragraph (d) of the definition of Other Fees and Disbursements in this Section 1.01 and Expert Costs without any reference to a time means those amounts that if paid would constitute Expert Costs as at any time.

**“Federal Government”** means the government of Canada.

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**“Fund Counsel”** means the counsel appointed by the Courts and its successors appointed from time to time pursuant to the provisions of the Settlement Agreement.

**“Fund Year”** means the period from 1 April to 31 March in the immediately succeeding year except for the initial period which will commence on the Approval Date and end at the close of business on 31 March 2000 and the last period which will commence on 1 April and end on the last day of the Term.

**“HCV”** means the Hepatitis C virus.

**“HCV Infected Person”** has the meanings set out in Section 1.01 of both of the Plans.

**“Hemophiliac Class Members”** means Class Members as defined in the Hemophiliac HCV Plan.

**“Hemophiliac HCV Plan”** means the plan attached as Schedule B to the Settlement Agreement.

**“HIV”** means the human immunodeficiency virus.

**“HIV Secondarily-Infected Persons”** means persons who are entitled to receive compensation under the Program.

**“Interest Calculation Date”** means the last day of an Interest Period.

**“Interest Period”** means the calendar quarterly period commencing on the first days of January, April, July and October in each year during the Term with the first period commencing on 1 April 1998 provided that, if the Term ends prior to the end of an Interest Period, such Interest Period will end on the last day of the Term.

**“Investment Advisors”** means the investment advisors appointed by the Courts and their successors appointed from time to time pursuant to the provisions of the Settlement Agreement.

**“Joint Committee”** has the meaning set out in Section 1.01 of the Settlement Agreement.

**“Opted-Out Primarily-Infected Hemophiliac”** has the meaning set out in Section 1.01 of the Hemophiliac HCV Plan.

**“Opted-Out Primarily-Infected Person”** has the meaning set out in Section 1.01 of the Transfused HCV Plan.

**“Other Fees and Disbursements”** as at any time means the aggregate of the following amounts, to the extent that they have been paid prior to or as at such time:

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- (a) an amount equal to the aggregate of all Program Disbursements, provided the amount determined under this (a) will at no time exceed \$57.6 million;
- (b) an amount equal to the total of (i) the aggregate of all amounts paid by any FPT Government, in respect of either a final judgment of a court in a contested action or a settlement approved by one of the Courts, to any person who opted out of a Class Action or a Class Member who is not otherwise bound by the provisions of the Settlement Agreement or any other person who claims over or brings a third party claim against any FPT Government in any way relating to or arising from, in the case of a Transfused Class Member, the infection of a Primarily-Infected Person with HCV during the Class Period or, in the case of a Hemophiliac Class Member, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including, in each case, the infection of a Secondarily-Infected Person) and (ii) the aggregate of all amounts each of which is an amount equal to one-third of the defence costs (including costs of counsel, disbursements and applicable taxes) arising out of any action (whether an FPT Government has been successful in defending an action or not) or settlement and approved by one of the Courts;
- (c) an amount equal to the aggregate of all fees, costs, disbursements and applicable taxes (other than income taxes) of counsel representing any of the Class Action Plaintiffs, as approved by the Court in which the Class Action was commenced;
- (d) an amount equal to the aggregate of all amounts paid pursuant to contracts between any of the FPT Governments with experts or consultants entered into at the request of counsel representing any of the Class Action Plaintiffs; and
- (e) as approved by the Courts, an amount equal to the aggregate of all costs of administering the Settlement Agreement and Schedules including the fees, disbursements and other costs of the Administrator, the Trustee, the Auditors, the Fund Counsel, the Referees, the Arbitrators, the Investment Advisors, the members of the Joint Committee, the costs of any application to the Courts pursuant to the Settlement Agreement, and the Program Costs, including the fees, disbursements and other costs of the Program Administrator, to a maximum of \$2 million,

and Other Fees and Disbursements without any reference to a time means those amounts that if paid would constitute Other Fees and Disbursements as at any time.

**“Parties”** means the FPT Governments and the Class Action Plaintiffs.

**“Plan Disbursements”** as at any time means the aggregate of all amounts that have been paid under the Plans prior to or as at such time and Plan Disbursements without any



reference to a time means those amounts that if paid would constitute Plan Disbursements as at any time.

**"Plans"** means, collectively, the Hemophiliac HCV Plan and the Transfused HCV Plan.

**"Primarily-Infected Hemophiliac"** has the meaning set out in Section 1.01 of the Hemophiliac HCV Plan.

**"Primarily-Infected Person"** has the meaning set out in Section 1.01 of the Transfused HCV Plan.

**"Program"** means the Program attached as Schedule C to the Settlement Agreement.

**"Program Administrator"** means the person who administers the Program and its successor from time to time under contract with Health Canada.

**"Program Costs"** at any time means the amounts as at such time which are costs of administering the Program and Program Costs without any reference to a time means those amounts that if paid would constitute Program Costs as at any time.

**"Program Disbursements"** at any time means the amounts as at such time paid under the Program to HIV Secondarily-Infected Persons and Program Disbursements without any reference to a time means those amounts that if paid would constitute Program Disbursements as at any time.

**"Program Disbursements and Costs"** as at any time means an amount equal to the sum of the Program Disbursements plus the Program Costs, each as at such time, and Program Disbursements and Costs without any reference to a time means those amounts that if paid would constitute Program Disbursements and Costs as at any time.

**"Proportionate Contributions"** of an FPT Government as at any time means an amount equal to:

- (a) in the case of the Federal Government, an amount equal to (i) \$851,978,925.40 plus (ii) an amount equal to 8/11 of the amount by which (A) the Total Interest Amount as at the date the Federal Government makes its required contribution under Section 4.02(1) (for purposes of applying the definition of Interest Period to this calculation, such date will be deemed to be the last day of the Term) exceeds (B) the Total Interest Amount as at 31 March 1999, minus (iii) the Withheld Amount, and
- (b) in the case of a PT Government, the amount of all contributions made by such PT Government to the Trust prior to or as at such time.

**"Proportionate Disbursements"** of an FPT Government as at any time means an amount equal to:

- (a) in the case of the Federal Government, 8/11 (i.e., 72.7273%) of the Disbursements as at such time, and

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- (b) in the case of a PT Government, the Sharing Proportion of such PT Government as at such time multiplied by  $\frac{3}{11}$  (i.e., 27.2727%) of the Disbursements as at such time.

**“Proportionate Interest Amount”** of an FPT Government as at any time means the aggregate of all amounts each of which is an amount determined as at each Interest Calculation Date occurring prior to or as at such time equal to the Treasury Bill Rate for the Interest Period ending on such Interest Calculation Date multiplied by the proportion that the number of days in the Interest Period (including the first and last days of the Interest Period) is of 365 days or 366 days, as the case may be, and multiplied by the average of the Proportionate Principal Amount as at the first day of such Interest Period and the Proportionate Principal Amount as at such Interest Calculation Date.

**“Proportionate Principal Amount”** of an FPT Government as at any time is an amount determined as at such time equal to the sum of the Proportionate Contributions of such FPT Government as at such time plus the Proportionate Interest Amount of such FPT Government as at the immediately preceding Interest Calculation Date minus an amount equal to the Proportionate Disbursements of such FPT Government as at the first-mentioned time.

**“Provinces”** means, collectively, British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, PEI and Newfoundland.

**“PT Governments”** means the governments of the Provinces and Territories.

**“Secondarily-Infected Person”** has the meaning set out in Section 1.01 of the Transfused HCV Plan or the Hemophilic HCV Plan, as applicable.

**“Settlement Agreement”** means the agreement made as of 15 June 1999 between the FPT Governments and the Class Action Plaintiffs and its recitals and Schedules, as amended, supplemented or restated from time to time.

**“Settlement Amount”** as at any time means an amount equal to the sum of the amount of the Trust Fund as at such time plus the amount of the remaining obligations, if any, of the FPT Governments under Section 4.01 and minus the amount by which the estimated Other Fees and Disbursements as at the end of the Term exceeds the Other Fees and Disbursements as at such time.

**“Sharing Proportion”** of a PT Government as at any time means the proportion that the sum of:

- (i) the aggregate amount of the Disbursements (other than Program Disbursements and Costs and Administrative Costs) as at such time which are payable in relation to persons who were resident in the Province or Territory (as determined pursuant to Section 1.07(1)(a)) of such PT Government; plus

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- (ii) the aggregate amount of the Program Disbursements and Costs as at such time which are payable in relation to persons who were resident in the Province or Territory (as determined pursuant to section 1.07(1)(b)) of such PT Government, and, for this purpose, Program Costs will be considered to be paid in relation to persons who were resident in a Province or Territory in proportion to the Program Disbursements paid in relation to persons who were resident in such Province or Territory; plus
- (iii) the aggregate of amounts each of which is an amount determined in respect of each Fund Year ending prior to or as at such time equal to the amount determined when the Administrative Costs as at the end of such Fund Year which were paid in such Fund Year is multiplied by the quotient obtained when the population of the Province or Territory using estimated census data from Statistics Canada on July 1 of such Fund Year is divided by the aggregate population of all the Provinces and Territories using estimated census data from Statistics Canada as at such date;

is of the aggregate of the Disbursements (other than Administrative Costs) as at such time and the Administrative Costs as at such time which were paid in a Fund Year ending prior to or as at such time.

**“Spouse”** has the meaning set out in Section 1.01 of the Transfused HCV Plan or the Hemophiliac HCV Plan, as applicable.

**“Term”** means the period from and including the Approval Date to the date when the Settlement Agreement is terminated.

**“Territories”** means, collectively, the Northwest Territories, Nunavut and the Yukon Territory.

**“Total Interest Amount”** as at any time means the aggregate of all amounts each of which is an amount determined as at each Interest Calculation Date occurring prior to or as at such time equal to the Treasury Bill Rate for the Interest Period ending on such Interest Calculation Date multiplied by the proportion that the number of days in the Interest Period (including the first and last days of the Interest Period) is of 365 days or 366 days, as the case may be, and multiplied by the average of the Total Principal Amount as at the first day of such Interest Period and the Total Principal Amount as at such Interest Calculation Date.

**“Total Principal Amount”** as at any time is an amount determined as at such time equal to the sum of \$1.118 billion plus an amount equal to the Total Interest Amount as at the immediately preceding Interest Calculation Date minus an amount equal to the sum of the Other Fees and Disbursements plus the Plan Disbursements, each as at the first-mentioned time.

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**“Transfused Class Members”** means Class Members as defined in the Transfused HCV Plan.

**“Transfused HCV Plan”** means the plan attached as Schedule A to the Settlement Agreement.

**“Treasury Bill Rate”** means, for each Interest Period, the money market yield of the three-month Federal Government treasury bill for the first day of such Interest Period as determined and, from time to time, published by the Bank of Canada, provided that, if the first day of an Interest Period is not a Business Day, the Treasury Bill Rate will be determined as if the first day of the Interest Period were the next following Business Day.

**“Trust”** means the Trust to be created pursuant to this Agreement.

**“Trustee”** means the trustee appointed by the Courts from time to time pursuant to the provisions of the Settlement Agreement.

**“Trust Fund”**, at any time, means each of the following money and other assets that are at such time held by the Trustee pursuant to this Agreement:

- (a) the funds received by the Trustee on trust from time to time from the FPT Governments;
- (b) any investments in which such funds may from time to time be invested;
- (c) any proceeds of disposition of any investments; and
- (d) all income, interest, profit, gains and accretions and additional assets, rights and benefits of any kind or nature whatsoever arising, directly or indirectly, from or in connection with or accruing to any of the foregoing.

**“Withheld Amount”** means an amount equal to the sum of the Expert Costs plus the Program Disbursements and Costs plus an amount equal to the aggregate of all fees, costs, disbursements and applicable taxes of Class Action Counsel, each as at the Approval Date, which have been paid by the FPT Governments prior to or on the Approval Date.

## 1.02 Headings

The division of this Agreement into Articles and Sections and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms “herein”, “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Appendices are to Articles, Sections and Appendices of this Agreement.

### **1.03 Extended Meanings**

In this Agreement words importing the singular number only include the plural and *vice versa*, words importing any gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations and governmental authorities. The term “including” means “including without limiting the generality of the foregoing”.

### **1.04 No Contra Proferentum**

The Parties acknowledge that their respective legal counsel have reviewed and participated in settling the terms of this Agreement and they agree that any rules of construction to the effect that any ambiguity is to be resolved against the drafting party is not applicable in interpreting this Agreement.

### **1.05 Statutory References**

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as enacted on the date hereof or as the same may from time to time be amended, re-enacted or replaced and includes any regulations made thereunder.

### **1.06 Day for any Action**

If any day on or by which any action required to be taken hereunder is not a Business Day, such action must be taken on or by the next succeeding day which is a Business Day.

### **1.07 Residence**

- (1) For the purposes of determining the liability of each of the Provinces and Territories hereunder:
  - (a) with respect to Disbursements (other than Program Disbursements and Costs), a person will be deemed to be resident in the Province or Territory where the relevant Primarily-Infected Person or Opted-Out Primarily-Infected Person or Primarily-Infected Hemophiliac or Opted-Out Primarily-Infected Hemophiliac, as the case may be, was ordinarily resident when he or she first received or took Blood during the Class Period, and, for this purpose, if the relevant Primarily-Infected Person or Opted-Out Primarily-Infected Person or Primarily-Infected Hemophiliac or Opted-Out Primarily-Infected Hemophiliac was not resident in Canada when he or she first received or took Blood during the Class Period, he or she will be deemed to have been resident in the Province or Territory where he or she first received or took Blood during the Class Period, and

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- (b) with respect to Program Disbursements and Costs, a person will be deemed to be resident in the Province or Territory where the relevant HIV primarily-infected person was ordinarily resident when he or she first applied for compensation under the EAP.

(2) For purposes of this Agreement, ordinarily resident means the place where the person, in the settled routine of his or her life, regularly, normally or customarily lives. In making this determination, all relevant factors will be considered. Notwithstanding the above, a person will be deemed to be resident in the Province or Territory in which he or she has a permanent home available to him or her, or, if the person has no permanent home available to him or her in any Province or Territory or a permanent home available to him or her in more than one Province or Territory, in any such Province or Territory in which he or she has an habitual abode, or, if the person has no habitual abode in any such Province or Territory or an habitual abode in more than one such Province or Territory, in any such Province or Territory where his or her Spouse is ordinarily resident or, if the person has no such Spouse resident in any such Province or Territory or if the Spouse is ordinarily resident in more than one such Province or Territory, in any such Province or Territory where the majority of his or her Dependants are ordinarily resident, or, if the person has no such Dependants or the majority of such Dependants are not ordinarily resident in any one such Province or Territory, in any such Province or Territory in which the person has the closest personal property and social ties.

### **1.08 Currency**

All references to currency herein are to lawful money of Canada.

## **ARTICLE TWO PURPOSES AND EFFECT OF AGREEMENT**

### **2.01 Purpose**

The purpose of this Agreement is to (i) provide for the establishment of the Trust for the benefit of Class Members and other persons entitled to be paid out of the Trust in accordance with this Agreement and the Settlement Agreement, (ii) provide for the payment of the Contribution Amount to the Trust, (iii) provide that the Federal Government is severally liable to pay an amount equal to the Proportionate Contribution of the Federal Government to the Trust on or prior to the Approval Date representing  $\frac{8}{11}$  (i.e., 72.7273%) of the Contribution Amount as at the time of such payment minus the Withheld Amount, (iv) provide that each PT Government is severally liable to pay to the Trust a portion of  $\frac{3}{11}$  (i.e., 27.2727%) of the Contribution Amount as at the time that the liability is being determined, (v) provide that the several liability of each PT Government is based on the Sharing Proportion of the PT Governments as at the time that the liability is being determined, and (vi) provide for the payment of the Disbursements out of the Trust, in the manner set out in this Agreement.

## **2.02 Binding Effect**

On the Approval Date this Agreement will become effective and be binding on and after the Approval Date on all the FPT Governments and all the Class Members including the Class Action Plaintiffs.

## **ARTICLE THREE SETTLEMENT AMOUNT**

### **3.01 Settlement Amount**

The Administrator will be entitled to receive amounts from the Trustee from time to time on behalf of Class Members pursuant to this Agreement, provided that in no event will the Administrator be entitled to receive any amount on behalf of the Class Members pursuant to this Agreement as at any time in excess of the Settlement Amount as at such time.

### **3.02 Canadian Income Taxes**

(1) If any income taxes under the *Income Tax Act* (Canada) or the equivalent provisions of the income tax act of any Province or Territory are paid by the Trustee in respect of income of the Trust, the FPT Government to which the taxes were paid will pay an amount equivalent to the amount so paid to the Trustee and such amount will thereafter form part of the Trust Fund.

(2) The amount of compensation paid to or received by a Class Member pursuant to a Plan will not be required to be included in the taxable income of the recipient thereof under the *Income Tax Act* (Canada) or the equivalent provisions of the income tax act of any Province or Territory, provided however, that this provision will not apply in respect of any amount of compensation paid to or received by a person other than the person that, but for any assignment of any amount of compensation payable under a Plan, would be the person entitled to the compensation under the Plan or in respect of any tax payable under Part XIII of the *Income Tax Act* (Canada) or the equivalent provisions of the income tax act of any Province or Territory by any Class Member or any amount required to be withheld by the Trustee or the Administrator on account of such tax in respect of any compensation paid or received under a Plan.

### **3.03 No Additional Liability**

For greater certainty, subject to Section 3.02, neither the Administrator nor any of the Class Members will have any recourse if the Settlement Amount as at any time is insufficient to fund Plan Disbursements to be paid at or after such time.

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## ARTICLE FOUR CONTRIBUTION AMOUNT

### 4.01 Liability to Pay

(1) The Federal Government is severally liable to make the single payment provided for in Section 4.02(1) (representing 8/11 (i.e., 72.7273%) of the Contribution Amount as at the date of such payment minus the Withheld Amount). Subject to Section 3.02 of this Agreement, the Federal Government will not be liable to pay any further amounts pursuant to this Agreement.

(2) The several liability of each of the PT Governments under this Agreement added together will equal 3/11 (i.e., 27.2727%) of the Contribution Amount as at the time that the liability is being determined.

(3) Each PT Government will be severally liable to pay a proportion of the Contribution Amount as at the time that the liability is being determined, such liability to be determined in accordance with Section 4.01(4). Subject to Section 3.02 of this Agreement, no PT Government will be liable to pay any further amounts pursuant to this Agreement as at the time that the liability is being determined.

(4) Each PT Government will be severally liable to pay the Sharing Proportion of such PT Government as at the time that the liability is being determined multiplied by 3/11 (i.e., 27.2727%) of the Contribution Amount as at the time that the liability is being determined.

(5) Notwithstanding any other provision of this Agreement, for purposes of this Agreement, each FPT Government will be considered to have paid the Trustee hereunder as at any time an amount equal to the sum of the Proportionate Contributions and the Proportionate Interest Amount of such PT Government as at such time. For greater certainty, the crediting of the Proportionate Interest Amount of a PT Government as against the required contributions of such PT Government is intended to give PT Governments credit for interest at the Treasury Bill Rate for any advance contributions (such deemed interest being computed after their share of Disbursements).

### 4.02 Payment

(1) On or prior to the Approval Date, the Federal Government will transfer an amount equal to the Proportionate Contribution of the Federal Government by electronic fund transfer to an account therefore specified by the Trustee in full satisfaction of all its liabilities and obligations to pay any part of the Contribution Amount hereunder.

(2) Subject to Section 4.01, each PT Government will make payments to the Trustee (by way of lump-sum or periodic payments or any combination thereof) such that the Contribution Account of such PT Government has at all times a positive or zero balance.



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#### **4.03 Contribution Account**

(1) The Trustee will establish a separate journal account for each of the FPT Governments (a "Contribution Account").

(2) The amount standing to the credit of a Contribution Account of an FPT Government as at any time will be the Contribution Account Balance of such FPT Government as at such time.

#### **4.04 Calculation and Notice of Payments**

(1) The Sharing Proportion of each PT Government will be calculated by the PT Governments from time to time. The PT Governments will notify the Trustee of the Sharing Proportions within one month following the Approval Date and upon any changes therein.

(2) The Administrator will notify the Trustee and each of the FPT Governments of the Plan Disbursements to be made in respect of the preceding month within five Business Days after the end of each month. The notice from the Administrator will set out the facts upon which the calculation of such Plan Disbursements is based and the residence information set out in the statutory declaration declared by each claimant.

(3) The Program Administrator will notify the Trustee and each of the FPT Governments of the Program Disbursements to be made in respect of the preceding month within five Business Days after the end of each month. The notice from the Program Administrator will set out the facts upon which the calculation of such Program Disbursements is based and the residence information set out in the application of each claimant.

(4) The Trustee will notify each of the FPT Governments of the amounts to be paid pursuant to paragraphs (b) (c), (d) and (e) of the definition of Other Fees and Disbursements in Section 1.01 in respect of the preceding month within five Business Days after the end of each month.

#### **4.05 No Additional Liability**

For greater certainty, subject to Section 3.02, no FPT Government will be liable to pay any additional amounts pursuant to this Agreement if the Contribution Amount as at any time is insufficient to fund the Disbursements as at such time.

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## **ARTICLE FIVE SETTLEMENT OF TRUST**

### **5.01 Settlement of the Trust**

The FPT Governments will settle on and pay to the Trustee the sum of \$100 for the purpose of creating and settling the Trust. The Trustee will accept such sum on trust to deal with the same, and all other assets at any time forming part of the Trust Fund, upon the trusts and subject to the terms contained in this Agreement.

### **5.02 Nature of the Trust**

The Trust will be trust established for the following purposes:

- (a) to acquire the funds payable by each of the FPT Governments pursuant to the provisions of Article Four;
- (b) to hold the Trust Fund;
- (c) to make the Disbursements pursuant to the provisions of Article Six;
- (d) to invest cash in investments pursuant to the provisions of Article Seven;  
and
- (e) to do such other acts and things as are incidental to the foregoing, and to exercise all powers that are necessary or useful to carry on the activities of the Trust or to carry out the provisions of this Agreement.

### **5.03 Legal Entitlements**

The legal ownership of the assets of the Trust and the right to conduct the business of the Trust will be, subject to the specific limitations contained herein, vested exclusively in the Trustee and the Class Members and other beneficiaries of the Trust have no right to compel or call for any partition, division or distribution of any of the assets of the Trust except in an action to enforce the provisions of the Settlement Agreement. No Class Member or any other beneficiary of the Trust will have or is deemed to have any right of ownership in any of the assets of the Trust.

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## **ARTICLE SIX DISBURSEMENTS**

### **6.01 Monthly Payments for Plans**

(1) Within eight Business Days after the end of each month, the Administrator on behalf of the Class Members will requisition from the Trustee an amount equal to the amount of all Plan Disbursements to be paid by the Administrator pursuant to the Plans in respect of the immediately preceding month as set out in the notice given pursuant to Section 4.04(2).

(2) Within 10 Business Days after the end of each month, the Trustee will transfer an amount equal to the amount requisitioned by the Administrator pursuant to Section 6.01(1) to the Administrator on behalf of the Class Members by electronic fund transfer to an account specified by the Administrator.

### **6.02 Monthly Payments for Program**

(1) Within eight Business Days after the end of each month, the Program Administrator on behalf of HIV Secondarily-Infected Persons will requisition from the Trustee an amount equal to the amount of all Program Disbursements to be made to HIV Secondarily-Infected Persons pursuant to the Program in respect of the immediately preceding month as set out in the notice given pursuant to Section 4.04(3).

(2) Within 10 days after the end of each month, the Trustee will transfer an amount equal to the amount requisitioned by the Program Administrator pursuant to Section 6.02(1) to the Program Administrator on behalf of the HIV Secondarily-Infected Persons by electronic fund transfer to an account specified by the Program Administrator, provided that the aggregate amount of such disbursements cannot exceed \$57.6 million.

### **6.03 Payments for Actions and Settlements**

If any amount is payable by any FPT Government pursuant to either a final judgment of a court in a contested action or a settlement approved by one of the Courts to any person who opted out of a Class Action or a Class Member who is not otherwise bound by the provisions of the Settlement Agreement or any other person who claims over or brings a third party claim against any FPT Government in any way relating to or arising from, in the case of a Transfused Class Member, the infection of a Primarily-Infected Person with HCV during the Class Period or, in the case of a Hemophiliac Class Member, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including, in each case, the infection of a Secondarily-Infected Person) and an FPT Government delivers to the Trustee:

- (a) a notarized copy of a final judgment (as defined in Section 1.07 of the Settlement Agreement) or minutes of settlement and a notarized copy of an order of a Court approving the minutes of settlement; and/or

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- (b) a notarized copy of an order of a Court approving the defence costs (including costs of counsel, disbursements and applicable taxes (other than income taxes)) arising out of any action or settlement,

in the month following the receipt of such documents the Trustee will transfer an amount equal to the amount payable pursuant to the final judgment or minutes of settlement plus one-third of all defence costs (whether an FPT Government has been successful in defending an action or not) as so approved to the applicant FPT Government in trust by electronic fund transfer to an account specified by the applicant FPT Government.

#### **6.04 Payments to Class Action Counsel**

If a notarized copy of an order of the Court in which a Class Action was commenced approving the fees, costs, disbursements and applicable taxes (other than income taxes) of Class Action Counsel representing the Class Action Plaintiff in such Class Action is delivered to the Trustee, in the month following the receipt of such documents the Trustee will transfer an amount equal to the aggregate amount of such fees, costs, disbursements and taxes by electronic fund transfer to an account specified by such Class Action Counsel.

#### **6.05 Payments for Administration Costs**

If a notarized copy of an order of a Court approving any of the costs of administering the Settlement Agreement, including the costs referred to in paragraphs (d) and (e) of the definition of Other Fees and Disbursements in Section 1.01 is delivered to the Trustee, in the month following the receipt of such documents the Trustee will pay an amount equal to the amount of such costs to or to the order of the payee thereof as set out in the Court Order by cheque or, if requested by such payee, by electronic fund transfer to an account specified by the payee. For greater certainty, a Court may approve specific costs or the terms of any commitment under which costs will be payable on an ongoing basis and, in the latter case, such costs will be payable by the Trustee in the month following delivery of an invoice therefor.

### **ARTICLE SEVEN INVESTMENTS**

#### **7.01 Investment**

(1) The Trustee will invest the assets of the Trust in accordance with the investment instructions delivered to the Trustee from time to time by the Joint Committee within the investment guidelines approved by the Courts.

(2) In investing the assets of the Trust, the Joint Committee will:

- (a) invest in the best interests of the beneficiaries of the Trust with a view to achieving a maximum rate of return without undue risk of

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loss, having regard to the ability of the Trust to meet its financial obligations;

- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, having regard to the overall rate of return and risk of loss of the entire portfolio of investments held by the Trust; and
- (c) recommend the names of recognized professional investment and asset management advisors for appointment as the Investment Advisors.

## ARTICLE EIGHT INCOME AND CAPITAL

### 8.01 Disbursements

All Disbursements paid out of the Trust will be considered to have been paid first out of the income of the Trust and next out of the capital of the Trust.

### 8.02 Additions to Capital

Any income of the Trust not paid as Disbursements in a Fund Year will at the end of such Fund Year be added to the capital of the Trust.

### 8.03 Tax Elections

For each taxation year of the Trust, the Trustee will file any available elections and designations under the *Income Tax Act* (Canada) and equivalent provisions of the income tax act of any Province or Territory and take any other reasonable steps such that the Trust and no other person is liable to taxation on the income of the Trust, including the filing of an election under subsection 104(13.1) of the *Income Tax Act* (Canada) and equivalent provisions of the income tax act of any Province or Territory for each taxation year of the Trust and the amount to be specified under such election will be the maximum allowable under the *Income Tax Act* (Canada) or the income tax act of any Province or Territory, as the case may be.

## ARTICLE NINE RECORDS, REPORTING AND FINANCIAL STATEMENTS

### 9.01 Records

The Trustee will keep such books, records and accounts as are necessary or appropriate to document the assets of the Trust and each transaction of the Trust. Without limiting the generality of the foregoing, the Trustee will keep, at its principal

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office in Toronto, records of all transactions of the Trust and a list of the assets held in trust and a record of the Contribution Account Balance for each Contribution Account from time to time.

### **9.02 Quarterly Reporting**

The Trustee will deliver to the Administrator, the Fund Counsel, the Joint Committee and each of the FPT Governments, within 30 days after the end of each calendar quarter, a quarterly report setting forth the assets held as at the end of such quarter in the Trust Fund (including the term, interest rate or yield and maturity date of each investment) and a record of the Contribution Account Balance for each Contribution Account during such quarter.

### **9.03 Annual Reporting**

The Auditors will deliver to the Administrator, the Trustee, the Fund Counsel, the Joint Committee, each of the FPT Governments and the Courts, within 60 days after the end of each Fund Year:

- (a) the audited financial statements of the Trust for the most recently completed Fund Year together with the report of the Auditors thereon; and
- (b) a report setting forth a summary of the assets held in trust as at the end of the Fund Year for the Trust Fund and the Disbursements made during the preceding Fund Year.

## **ARTICLE TEN AMENDMENT AND TERMINATION**

### **10.01 Amendment**

No amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by the FPT Governments and the Joint Committee and approved by the Courts.

### **10.02 Termination**

(1) This Agreement and the Trust will terminate on the date on which the Courts declare the Settlement Agreement to be terminated pursuant to the provisions of the Settlement Agreement.

(2) As soon as practicable after the termination of the Trust, the Trustee will transfer the assets in the Trust Fund to the FPT Governments in accordance with this provision. The amount to be paid to each FPT Government will be determined as follows:

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- (a) if the amount of the Trust Fund is equal to or exceeds the aggregate of amounts each of which is an amount determined in respect of each FPT Government equal to the Contribution Account Balance of such FPT Government as at the time the determination is being made, each FPT Government will be paid an amount equal to the amount of its Contribution Account Balance as at such time and the excess, if any, will be distributed among the FPT Governments in proportion to the average of the Contribution Account Balance of each FPT Government at the end of each month over the term of this Agreement, or
- (b) if the amount of the Trust Fund is less than the aggregate of amounts each of which is an amount determined in respect of each FPT Government equal to the Contribution Account Balance of such FPT Government as at the time the determination is being made, the amount of the Trust Fund will be distributed among the FPT Governments in proportion to the Contribution Account Balance of each FPT Government as at such time.

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(3) For purposes of this Section 10.02, the Contribution Account Balance of each FPT Government as at the time the determination is being made will be adjusted as follows:

- (a) the Contribution Account Balance of the Federal Government as at such time will be increased by an amount that reflects the amount by which the Contribution Account Balance of the Federal Government would be increased if the Federal Government's contribution under Section 4.02(1) had been increased on the date of such payment by 3/11 (i.e., 27.2727%) of the Withheld Amount, and
- (b) the Contribution Account Balance of each PT Government as at such time will be reduced by an amount that reflects the amount by which the Contribution Account Balance of such PT Government would be reduced if such PT Government's contributions to the Trust under this Agreement were reduced by the Sharing Proportion of such PT Government as at such time multiplied by 3/11 (i.e., 27.2727%) of the Withheld Amount (such reduction of contributions being made to the first contribution or contributions of such PT Government).

## ARTICLE ELEVEN GENERAL

### 11.01 Notices

Any notice or other communication to be given in connection with this Agreement will be given in writing and will be given by personal delivery or by electronic communication addressed to the recipient as follows:

- (a) to the Attorney General of Canada:

Justice Canada, Department of Health  
Brooke Claxton Building, 2nd Floor  
Tunney's Pasture  
P. O. Box: Postal Locator: 0902D  
Ottawa, Ontario  
K1A 0K9

Attention:                   Senior General Counsel  
Facsimile No.:           (613) 957-1327



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- (b) to Her Majesty the Queen In Right of the Province of British Columbia:

c/o Ministry of the Attorney General  
6th Floor, 1001 Douglas Street  
Victoria, B.C.  
V8W 2C5

Attention: Supervising Counsel  
Facsimile No.: (250) 356-9154

- (c) to Her Majesty the Queen In Right of the Province of Alberta:

c/o Alberta Justice  
Civil Law Branch, 5th Floor  
9833 - 109th Street  
Edmonton, Alberta  
T5K 2E8

Attention: Minister of Health and Wellness  
Facsimile No.: (780) 415-0961

Attention: Minister of International and  
Intergovernmental Relations

- (d) to Her Majesty the Queen In Right of the Province of Saskatchewan:

c/o Saskatchewan Justice  
Civil Law Division  
9th Floor  
1874 Scarth Street  
Regina, Saskatchewan  
S4P 3V7

Attention: Darryl Bogdasavich, Q.C.  
Facsimile No.: (306) 787-0581

- (e) to Her Majesty the Queen In Right of the Province of Manitoba:

Manitoba Justice

Suite 730  
405 Broadway  
Winnipeg, Manitoba  
R3C 3L6

Attention: Director of Legal Services  
Facsimile No.: (204) 948-2041

- 24 -

(f) to Her Majesty the Queen In Right of Ontario:

c/o Ministry of the Attorney General for Ontario  
Director, Crown Law Office Civil  
8th Floor, 720 Bay Street  
Toronto, Ontario  
M5G 2K1

Facsimile No.: (416) 326-4181

(g) to Le Gouvernement du Québec:

c/o La Procureure Générale du Québec  
1 est, rue Notre-Dame, 8 ième étage  
Montreal, Québec  
H2Y 1B6

Attention: Robert Monette  
Facsimile No.: (514) 873-7074

(h) to Her Majesty the Queen In Right of the Province of New Brunswick:

c/o Department of Justice  
Legal Services Branch  
Room 444, Centennial Building  
670 King Street  
P. O. Box 6000  
Fredericton, New Brunswick  
E3B 5H1

Attention: William A. Anderson  
Facsimile No.: (506) 453-3275

(i) to Her Majesty the Queen In Right of the Province of Nova Scotia:

Department of Health  
P. O. Box 488  
Halifax, Nova Scotia  
B3J 2R8

Attention: Deputy Minister of Health  
Facsimile No.: (902) 424-0559

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- (j) to Her Majesty the Queen In Right of the Province of Prince Edward Island:

Department of Community Affairs and Attorney General  
P. O. Box 2000  
11 Kent Street, 1st Floor  
Charlottetown, Prince Edward Island  
C1A 7N8

Attention: Adele MacLeod  
Facsimile No.: (902) 368-4563

- (k) to Her Majesty the Queen In Right of the Province of Newfoundland:

Department of Justice  
Confederation Building  
P. O. Box 8700  
St. John's, Newfoundland  
A1B 4J6

Attention: Mrs. Lynn Spracklin, Q.C.  
Deputy Attorney General  
Facsimile No.: (709) 729-2129

- (l) to The Government of the Northwest Territories:

Government of the Northwest Territories  
Legislative Assembly (2)  
P. O. Box 1320  
Yellowknife, Northwest Territories  
X1A 2L9

Attention: The Honourable Floyd Roland  
Minister of Health and Social Services  
Facsimile No.: (867) 873-0399

- (m) to The Government of Nunavut:

Department of Justice  
Government of Nunavut  
P. O. Box 800  
Iqaluit, NT  
X0A 0H0

Attention: Nora Sanders  
Deputy Minister of Justice  
Facsimile No.: (867) 979-5977

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(n) to The Government of the Yukon Territory:

c/o Yukon Justice  
Legal Services, 2nd Floor  
Andrew Philipsen Law Centre  
2130 Second Avenue  
Whitehorse, Yukon  
Y1A 5C3

Attention: Director of Legal Services  
Facsimile No.: (867) 393-6379

(o) to Anita Endean:

c/o Camp Church & Associates  
4th Floor, Randall Building  
555 West George Street  
Vancouver, British Columbia  
V6B 1Z5

Attention: J.J. Camp, Q.C.  
Facsimile No.: (604) 689-7554

(p) to Martin Henry Griffen and Anna Kardish:

c/o Gignac, Sutts  
600 Westcourt Place  
251 Goyeau Street  
Windsor, Ontario  
N9A 6V4

Attention: Harvey T. Strosberg, Q.C.  
Facsimile No.: (519) 258-9527

(q) to Dominique Honhon:

c/o Pierre R. Lavigne  
220-440 Laurier Avenue, West  
Ottawa, Ontario  
K1R 7X6

Facsimile No.: (613) 782-2445

and to:

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Marchand, Magnan, Melanson, Forget  
Ste. 1640  
600 rue de la Gauchetiere  
Montreal, Québec  
H3B 4L8

Attention: Michel Savonitto  
Facsimile No.: (514) 861-0727

(r) to Christopher Forrest Mitchell:

c/o Blake, Cassels & Graydon  
Three Bentall Centre, Suite 2600  
595 Burrard Street  
Vancouver, British Columbia  
V7X 1L3

Attention: Marvin R. V. Storrow  
Facsimile No.: (604) 631-3309

(s) to James Kreppner and Barry Isaac:

c/o Hodgson Tough Shields DesBrisay O'Donnell  
36 Toronto Street, Suite 550  
Toronto, Ontario  
M5C 2C5

Attention: Bonnie A. Tough  
Facsimile No.: (416) 304-6406

(t) to David Page:

c/o Petit Blaquière Dagenais  
5929, Transcanadienne, Suite 230  
Ville St-Laurent, Québec  
H4T 1Z6

Attention: Jean Blaquiere  
Facsimile No.: (514) 744-8003

or to such other address, individual or electronic communication number as a Party may from time to time advise by notice given pursuant to this Section. Any notice or other communication will be exclusively deemed to have been given, if given by personal delivery, on the day of actual delivery thereof and, if given by electronic communication, on the day of transmittal thereof if transmitted during normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not so transmitted.

**11.02 Benefit of the Agreement**

This Agreement will enure to the benefit of and be binding upon the respective successors and assigns of the Parties.

**11.03 Counterparts**

This Agreement may be executed in English or French in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same agreement.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement.

SIGNED, SEALED AND DELIVERED ) THE ATTORNEY GENERAL OF  
 ) CANADA  
 in the presence of: )  
 )  
 )  
 ) By: \_\_\_\_\_  
 ) Name:  
 ) Office:  
 )  
 )  
 ) HER MAJESTY THE QUEEN IN THE  
 ) RIGHT OF THE PROVINCE OF BRITISH  
 ) COLUMBIA  
 )  
 )  
 ) By: \_\_\_\_\_  
 ) Name:  
 ) Office:  
 )  
 )  
 ) HER MAJESTY THE QUEEN IN THE  
 ) RIGHT OF THE PROVINCE OF ALBERTA  
 )  
 )  
 ) By: \_\_\_\_\_  
 ) Name:  
 ) Office:  
 )  
 )  
 ) And: \_\_\_\_\_  
 ) Name:  
 ) Office:

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) HER MAJESTY THE QUEEN IN THE  
) RIGHT OF THE PROVINCE OF  
) SASKATCHEWAN

)  
)

) By: \_\_\_\_\_  
) Name:  
) Office:

) HER MAJESTY THE QUEEN IN THE  
) RIGHT OF THE PROVINCE OF  
) MANITOBA

)  
)

) By: \_\_\_\_\_  
) Name:  
) Office:

) HER MAJESTY THE QUEEN IN  
) RIGHT OF ONTARIO

)  
)

) By: \_\_\_\_\_  
) Name:  
) Office:

) LE GOUVERNMENT DU QUÉBEC

)  
)

) By: \_\_\_\_\_  
) Name:  
) Office:

) And: \_\_\_\_\_  
) Name:  
) Office:

)  
)

) HER MAJESTY THE QUEEN IN THE  
) RIGHT OF THE PROVINCE OF NEW  
) BRUNSWICK

)  
)

) By: \_\_\_\_\_  
) Name:  
) Office:

)

- 30 -

) HER MAJESTY THE QUEEN IN THE  
) RIGHT OF THE PROVINCE OF NOVA  
) SCOTIA

)  
)  
) By: \_\_\_\_\_  
) Name:  
) Office:

) HER MAJESTY THE QUEEN IN THE  
) RIGHT OF THE PROVINCE OF PRINCE  
) EDWARD ISLAND

)  
)  
) By: \_\_\_\_\_  
) Name:  
) Office:

) HER MAJESTY THE QUEEN IN THE  
) RIGHT OF THE PROVINCE OF  
) NEWFOUNDLAND

)  
)  
)  
) By: \_\_\_\_\_  
) Name:  
) Office:

) And: \_\_\_\_\_  
) Name:  
) Office:

) THE GOVERNMENT OF  
) THE NORTHWEST TERRITORIES

)  
)  
) By: \_\_\_\_\_  
) Name:  
) Office:

) THE GOVERNMENT OF NUNAVUT

)  
)  
) By: \_\_\_\_\_  
) Name:  
) Office:



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) THE GOVERNMENT OF THE YUKON  
) TERRITORY

) By: \_\_\_\_\_

) Name:

) Office:

\_\_\_\_\_  
as to the signature of  
Anita Endean

) \_\_\_\_\_  
Anita Endean

\_\_\_\_\_  
as to the signature of  
Martin Henry Griffen

) \_\_\_\_\_  
Martin Henry Griffen

\_\_\_\_\_  
as to the signature of  
Anna Kardish

) \_\_\_\_\_  
Anna Kardish

\_\_\_\_\_  
as to the signature of  
Dominique Honhon

) \_\_\_\_\_  
Dominique Honhon

\_\_\_\_\_  
as to the signature of  
Christopher Forrest Mitchell

) \_\_\_\_\_  
Christopher Forrest Mitchell

\_\_\_\_\_  
as to the signature of  
James Kreppner

) \_\_\_\_\_  
James Kreppner

\_\_\_\_\_  
as to the signature of  
Barry Isaac

) \_\_\_\_\_  
Barry Isaac

\_\_\_\_\_  
as to the signature of  
David Page

)  
)  
)  
)  
)  
)  
)

\_\_\_\_\_  
David Page

**SCHEDULE E**  
**SOCIAL BENEFITS LEGISLATION**

Newfoundland:

*Social Assistance Act*, RSN 1990 cS-17 as amended

Nova Scotia:

*Social Assistance Act*, R.S., c.432

*Family Benefits Act*, R.S., c.158

*Disabled Persons' Allowance Act*, R.S. 1954, c.70

Prince Edward Island:

*Welfare Assistance Act*

New Brunswick:

*Family Income Security Act*

Québec:

*Loi sur La Securite du Revenu*

(Act respecting income security) LRQ cS. 3.1.1.

Ontario:

*Social Assistance Reform Act*, 1997, S.O. 1997, c.25

*Ontario Works Act*, 1997, S.O. 1997, c.25

*Ontario Disability Support Program Act*, 1997, S.O. 1997, c.25

Manitoba:

*The Employment and Income Assistance Act*, CCSM, E-98

*The Municipal Act*, CCSM, M225

Saskatchewan:

*Saskatchewan Assistance Act*

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Alberta:

*Social Development Act*, R.S.A. 1980, cs-16

*Assured Income for the Severely Handicapped Act*, R.S.A. 1980 CA-48

*Widows Pension Act*, S.A. 1983, W-75

British Columbia:

*B.C. Benefits (Income Assistance) Act*, R.S. c.27

*B.C. Benefits (Youth Works) Act*, R.S. c. 28

*Disability Benefits Program Act*, R.S. c.97

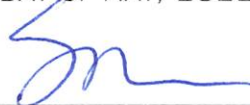
Yukon:

*Social Assistance Act*

North West Territories & Nunavut:

*Social Assistance Act*, R.S. N.W.T. 1988 cs-10 as duplicated for Nunavut by s. 29(1) of the *Nunavut Act*

THE ATTACHED IS EXHIBIT "B" TO THE AFFIDAVIT OF  
HEATHER RUMBLE PETERSON SWORN BEFORE ME  
THIS 12TH DAY OF MAY, 2022



\_\_\_\_\_  
COMMISSIONER FOR TAKING AFFIDAVITS

**Shelley Lynn Woodrich, a Commissioner, etc.,**  
**Province of Ontario, for Strosberg Sasso Sutts LLP,**  
Barristers and Solicitors.  
Expires February 22, 2025.



No. C965349  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

Anita Endean, as representative plaintiff

Plaintiff

The Canadian Red Cross Society  
Her Majesty the Queen 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,  
Her Majesty the Queen in Right of Canada, and Her Majesty the Queen  
in Right of the Province of British Columbia

Third Parties

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

**ORDER**

BEFORE THE HONOURABLE	)	THURSDAY, THE 28 <sup>TH</sup> DAY
	)	
MR. JUSTICE K. SMITH	)	OF OCTOBER, 1999

THE APPLICATION of the representative plaintiff coming on for hearing on August 18, 19, 20, 1999 and October 28, 1999 for an order pursuant to Section 35 of the *Class Proceedings Act*, R.S.B.C. 1996 c.50 (the "Act") and on hearing J.J. Camp, Q.C. and Sharon Matthews for the representative plaintiff, Paul Rosenberg, counsel for class members infected between January 1, 1986 and July 31, 1986, Marvin Storrow, Q.C., David Neave and David Gruber, counsel for the representative plaintiff in Supreme Court of British Columbia Action

No.A981187; John Haig, Q.C. for the defendant and third party The Attorney General of Canada/Her Majesty the Queen in Right of Canada; D. Clifton Prowse and Keith Johnston for the defendant and third party Her Majesty the Queen in Right of the Province of British Columbia; Christine Cunningham for the Public Trustee of British Columbia; Ward Branch for the defendant the Canadian Red Cross Society ("CRCS"); John Ankenman for the third party Prince George Regional Hospital and Peter Willcock for the third parties Dr. William Galliford, Dr. Robert Hart Dykes, Dr. Peter Houghton and Dr. John Doe AND ON READING

- (a) the affidavits of R. Douglas Elliott sworn July 10, 1999 and the affidavits of R. Douglas Elliott sworn August 16, 1999 and October 12, 1999 in Ontario Superior Court of Justice Action No. 18-CV-141369;
- (b) the affidavit of Bruce Lemer sworn July 13, 1999;
- (c) the affidavits of Margaret Woltz sworn July 7, 1999 and August 11, 1999 and the affidavit of Margaret Woltz sworn August 16, 1999 in Ontario Superior Court of Justice Action No. 98-CV-141369;
- (d) the affidavit of Sharon D. Matthews sworn July 9, 1999;
- (e) the affidavit of Dr. Frank H. Anderson sworn July 8, 1999;
- (f) the affidavit of Jacob Levi sworn July 9, 1999 and the transcript of the August 4, 1999 cross-examination of Jacob Levi and Murray Segal in Ontario Superior Court of Justice Action No. 98-CV-141369 and the exhibits marked on the cross-examination;
- (g) the affidavit of Andrew Wister sworn July 8, 1999;
- (h) the affidavit of Robert S. Hogg sworn July 8, 1999;
- (i) the affidavit of Dianna Parsons sworn July 8, 1999;

- (j) the affidavit of James Kreppner sworn July 8, 1999;
- (k) the affidavit of David Page sworn July 8, 1999;
- (l) the affidavit of Dr. Irwin Walker sworn July 9, 1999;
- (m) the affidavits of David L. Robins sworn July 9, 1999, August 12, 1999 and October 15, 1999 in Ontario Superior Court Action No. 98-CV-141369;
- (n) the affidavit of Ron Etherington sworn August 12, 1999;
- (o) the affidavit of John Dawson sworn August 6, 1999;
- (p) the affidavit of Ian V. Woodcock sworn August 17, 1999;
- (q) the affidavit of Nancy Oliveri sworn October 5, 1999 in Ontario Superior Court of Justice Court Action No. 98-CV-141369;
- (r) the affidavit of Bonnie A. Tough sworn October 26, 1999;
- (s) the reports of PricewaterhouseCoopers LLP dated August 6, 1999 and August 16, 1999;
- (t) the written undertakings of Peterson Worldwide LLC, Reed Consulting, Ltd. carrying on business as Peterson Worldwide LLC of Canada, Royal Trust Company and TD Asset Management Inc. to be bound by this Order;
- (u) the written undertaking of TD Asset Management Inc. agreeing to be bound by this order;
- (v) the judgment of Madame Justice Morneau of the Superior Court of Quebec dated September 21, 1999 and the English translation thereof;
- (w) the reasons of Mr. Justice Kenneth Smith of the Supreme Court of British Columbia dated October 1, 1999; and



- (x) the reasons of Mr. Justice Winkler of the Ontario Superior Court of Justice dated September 22, 1999;
- (y) the letter of Eckler Partners dated October 13, 1999;

AND ON BEING ADVISED:

- (z) that Harvey T. Strosberg, Q.C., counsel to the Ontario Transfused Class Action, has been appointed to the Joint Committee;
- (aa) that Bonnie A. Tough, counsel to the Ontario Hemophiliac Class Action, is prepared to accept an appointment to the Joint Committee and has been appointed by Mr. Justice Winkler of the Ontario Superior Court of Justice;
- (bb) that J.J. Camp, Q.C. is prepared to accept an appointment to the Joint Committee;
- (cc) that the parties agreed to this settlement on the basis that the PT Governments have the option to make periodic payments in accordance with Sections 4.02 and 4.04 of the Funding Agreement, in which event there will be no PT Government money or assets remaining in the Trust that are actuarially unallocated; and
- (dd) of the consent of the Class Action Plaintiffs and the FPT Governments to the modifications set forth in paragraph 5 of this Order;

AND ON HEARING oral presentations of the following persons:

- (ee) Peter Madsen,
- (ff) Theresa Innes, and
- (gg) Leslie Gibbenhuck;

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 19, 1998, October 5, 1998, January 18, 1999, May 5, 1999 and July 28, 1999;

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 Mr. Justice K. Smith made May 22, 1997;

AND WITHOUT any admission of liability on the part of the FPT Governments;

1. THIS COURT ORDERS AND DECLARES that for the purposes of this Order, the following definitions shall apply:

- (a) **Agreement** means the 1986-1990 Hepatitis C Settlement Agreement between the Parties made as of June 15, 1999;
- (b) **Administrator** has the meaning set out in Section 1.01 of the Agreement;
- (c) **Arbitrators** has the meaning set out in Section 1.01 of a Plan;
- (d) **Auditors** has the meaning set out in Section 1.01 of the Agreement;
- (e) **Approval Date** means the date when the last Approval Order becomes final, provided there are no material differences in the Approval Orders;
- (f) **Approval Orders** means the judgments or orders of the Courts to be granted approving the Agreement as being a good faith, fair, reasonable and adequate settlement of the Class Actions pursuant to the class proceedings legislation in British Columbia, Ontario and Quebec;

- (g) **B.C. Class Actions** means collectively the B.C. Transfused Class Action and the B.C. Hemophiliac Class Action;
- (h) **B.C. Class Members** means collectively the B.C. Transfused Class Members and the B.C. Hemophiliac Class Members;
- (i) **B.C. Family Members** means collectively the B.C. Transfused Family Members and the B.C. Hemophiliac Family Members;
- (j) **B.C. Hemophiliac Class Action** means *Mitchell v. CRCS*, Action No.A981187, Vancouver Registry;
- (k) **B.C. Hemophiliac Class Members**
- (i) are hemophiliacs, and thus have had a blood clotting or factor defect or deficiency, including a defect or deficiency in factors V, VII, VIII, IX, I, XII, XIII and the von Willebrand factor;
  - (ii) received Blood (as defined in Section 1.01 of the Hemophiliac HCV Plan) which was collected, supplied or distributed by the CRCS during the Class Period; and
  - (iii) who became infected with Hepatitis C;
  - (iv) are the Spouses of the persons referred to in subparagraphs (i) to (iii) and who are or were infected with Hepatitis C by such persons;
  - (v) are the children of the persons referred to in subparagraphs (i) to (iii) and who are or were infected with Hepatitis C by such persons;
  - (vi) are the personal representatives of all persons referred to in subparagraphs (i) to (iii) and who have become deceased as a result of being infected with the Hepatitis C virus as a result of receiving Blood during the Class Period; and

- (vii) are the executors or administrators of all persons referred to in subparagraphs (i) to (iii) and who have become deceased subsequent to being infected with the Hepatitis C virus as a result of receiving Blood during the Class Period;
- (l) **B.C. Hemophiliac Family Members** means the Family Members of a B.C. Hemophiliac Class Member as the term Family Member is defined in Section 1.01 of the Hemophiliac HCV Plan;
- (m) **B.C. Thalassemic Class Members** means British Columbia residents who have or had thalassaemia major and received Blood in British Columbia during the Class Period and who have tested positive for the antibodies to the Hepatitis C virus;
- (n) **B.C. Transfused Class Action** means *Endean v. CRCS*, Action No.C965349, Vancouver Registry;
- (o) **B.C. Transfused Class Members** means the members of the B.C. Transfused Class as amended by this order as follows:
- British Columbia residents who:
- (i) received Hepatitis C positive Blood during the Class Period in British Columbia (the "Transfusion") and were infected with the Hepatitis C virus as a result of the Transfusion and have tested positive for the antibody to the Hepatitis C virus;
- (ii) have or had thalassaemia major and received Blood in British Columbia during the Class Period and who have tested positive for the antibody to the Hepatitis C virus ("**B.C. Thalassemic Class Members**")
- (iii) have been infected with the Hepatitis C virus by a spouse or parent who was infected with the Hepatitis C virus as a result of receiving Blood during the Class Period or by a spouse or parent who is a B.C. Thalassemic Class Member;

- (iv) are the personal representatives of all residents of British Columbia who have become deceased subsequent to becoming infected with the Hepatitis C virus as a result of receiving Blood during the Class Period or are the personal representatives of B.C. Thalassemic Class Members who have died subsequent to becoming infected with the Hepatitis C virus; and
- (v) are the executors or administrators of the estates of all residents of British Columbia who have become deceased subsequent to being infected with the Hepatitis C virus as a result of receiving Blood during the Class Period or are the executors or administrators of the estates of B.C. Thalassemic Class Members who have died subsequent to becoming infected with the Hepatitis C virus;
- (p) **B.C. Transfused Family Members** means the Family Member of a B.C. Transfused Class Member as the term Family Members is defined in Section 1.01 of the Transfused HCV Plan;
- (q) **Blood** has the same meaning as set out in Section 1.01 of the Agreement;
- (r) **CRCS** means The Canadian Red Cross Society;
- (s) **Claimants' Data** means all data, records, medical, personal and financial information, files, addresses, claims payment history, and all other information of any nature and kind whether in paper, recorded or electronic form or in any other medium including all individual personal identifying and non-personal identifying information and any compilation, selection, co-ordination or arrangement of individual information into an original, derivative or collective work or works capable of being reviewed, perceived, reproduced or otherwise communicated directly with the aid of a machine or device or

capable of being fixed in any tangible medium of expression now known or later developed or transmitted or displayed even for a transitory period;

- (t) **Class Actions** means collectively the Transfused Class Actions and the Hemophiliac Class Actions;
- (u) **Class Action Counsel** means the counsel for the representative plaintiff(s) in each of the respective Class Actions;
- (v) **Class Action Plaintiffs** means the representative plaintiffs in each of the respective Class Actions;
- (w) **Class Members** means collectively the Transfused Class Members and the Hemophiliac Class Members, and **Family Class Members** means collectively the Transfused Family Class Members and the Hemophiliac Family Class Members;
- (x) **Class Period** means the period from January 1, 1986 to July 1, 1990, inclusive;
- (y) **Court** means the Supreme Court of British Columbia and **Courts** has the meaning set out in Section 1.01 of the Agreement;
- (z) **Family Class Members** means collectively the Transfused Family Class Members and the Hemophiliac Family Class Members;
- (aa) **Federal Government** means the Government of Canada;
- (bb) **FPT Governments** means collectively the Federal Government and the Government of each Province and Territory in Canada;
- (cc) **Funding Agreement** means the Funding Agreement between the Parties made as of June 15, 1999;
- (dd) **HCV** means the Hepatitis C virus;

- (ee) **Hemophiliac Class Actions** means collectively the B.C. Hemophiliac Class Action, the **Ontario Hemophiliac Class Action** which means *Kreppner et al. v. Canada et al.* Action No.98-CV-146405 (Toronto) and the **Quebec Hemophiliac Class Action** which means *Page et al. v. Canada et al.* Action no. 500-06-000068-987 (Montreal);
- (ff) **Hemophiliac Class Members** means collectively the Ontario Hemophiliac Class Members, the class certified in the British Columbia Hemophiliac Class Action and the class certified in the Quebec Hemophiliac Class Action, and the **Hemophiliac Family Class Members** means collectively the Ontario Hemophiliac Family Class Members, and for the British Columbia Hemophiliac Class Action and the Quebec Hemophiliac Class Action, the Family Members as defined in Section 1.01 of the Hemophiliac HCV Plan;
- (gg) **Hemophiliac HCV Plan** means the plan which is Schedule B to the Agreement;
- (hh) **Investment Consultant** means the investment advisor appointed by the Courts and its successors appointed from time to time pursuant to the provisions of Article 10 of the Agreement to consult on the investment and management of the assets of the Trust Fund;
- (ii) **Investment Manager** means the investment advisor appointed by the Courts and its successors appointed from time to time pursuant to the provisions of Article 10 of the Agreement to manage the investment of the whole or any portion of the assets of the Trust Fund;
- (jj) **Joint Committee** has the meaning set out in Section 1.01 of the Agreement;
- (kk) **Ontario Transfused Class Members** means the members of the class certified in the Ontario Transfused Class Action;
- (ll) **Ontario Transfused Family Class Members** means the members of the family class certified in the Ontario Transfused Class Action;

- (mm) **Party** means any one of the Class Action Plaintiffs or any one of the FPT Governments;  
and **Parties** means collectively the Class Action Plaintiffs and the FPT Governments;
- (nn) **Personal Representative** has the meaning set out in Section 1.01 of the Plans
- (oo) **Plan** means either the Hemophiliac HCV Plan or the Transfused HCV Plan, and **Plans** means collectively the Hemophiliac HCV Plan and the Transfused HCV Plan;
- (pp) **Primarily Infected Hemophiliac** has the meaning set out in Section 1.01 of the Hemophiliac HCV Plan;
- (qq) **Primarily Infected Person** has the meaning set out in Section 1.01 of the Transfused HCV Plan;
- (rr) **Program** means the program devolved from the Federal/Provincial/Territorial Assistance Program for HIV Secondarily-Infected Persons announced by the FPT Governments on December 15, 1998 described in Schedule C to the Agreement;
- (ss) **PT Governments** means collectively the Government of each Province and Territory in Canada;
- (tt) **Referee** has the meaning set out in Section 1.01 of a Plan;
- (uu) **Releasees** means, individually and collectively
- (i) each of the FPT Governments,
  - (ii) each of the past, present and future ministers and employees of each FPT Government,
  - (iii) each of the past and present agents of each FPT Government,
  - (iv) the Canadian Blood Agency,
  - (v) the Canadian Blood Committee or its members,



- (vi) each operator of a hospital or health care facility at which a Primarily-Infected Person (as defined in Section 1.01 of the Transfused HCV Plan) or Primarily-Infected Hemophiliac (as defined in Section 1.01 of the Hemophiliac HCV Plan) received or took Blood, or a Transfused Class Member or a Hemophiliac Class Member received treatment, care or advice in any way relating to or arising from the infection of the Transfused Class Member or Hemophiliac Class Member with HCV,
- (vii) each health caregiver who treated or provided care or advice to a Transfused Class Member or Hemophiliac Class Member in any way relating to or arising from the infection of the Transfused Class Member or Hemophiliac Class Member with HCV, and
- (viii) any person engaged in the business of collecting, manufacturing, purchasing, processing, supplying or distributing Blood, including their respective past, present and future parent, subsidiary and affiliated corporations, employees, agents, officers, directors, shareholders, volunteers, representatives, executors, administrators, successors and assigns, but the CRCS is not a Releasee;
- (ix) **Secondarily Infected Person** has the meaning set out in Section 1.01 of the Transfused HCV Plan of the Hemophiliac HCV Plan, as applicable;
- (x) **Spouse** has the meaning set out in Section 1.01 of either Plan;
- (vv) **Term** means the period from and including the Approval Date to the date when the Agreement is terminated;
- (ww) **Transfused Class Actions** means collectively the B.C. Transfused Class Action, the **Ontario Transfused Class Action** which means *Parsons et al. v. Canada et al.* Action

No.98-CV-141369 (Toronto) and the **Quebec Transfused Class Action** which means *Honhon et al. v. Canada et al.* Action no. 500-06-000016-900 (Montreal);

- (xx) **Transfused Class Members** means collectively the Ontario Transfused Class Members, the B.C. Transfused Class Members and the class certified in the Quebec Transfused Class Action, and **Transfused Family Class Members** means collectively the Ontario Transfused Family Class Members and for the British Columbia Transfused Class Action and the Quebec Transfused Class Action, the Family Members as the term Family Members is defined in Section 1.01 of the Transfused HCV Plan;
- (yy) **Transfused HCV Plan** means the plan which is Schedule A to the Agreement;
- (zz) **Trust** means the trust to be created pursuant to the Funding Agreement;
- (aaa) **Trustee** means the trustee appointed by the Courts pursuant to the provisions of the Agreement; and
- (bbb) **Trust Fund** means the trust fund to be established pursuant to this Order, the Agreement and the Funding Agreement.

2. THIS COURT FURTHER ORDERS AND DECLARES that in this Order, all other defined terms which are denoted with capital letters shall have the meanings ascribed to them in the Agreement and/or the Funding Agreement.

3. THIS COURT FURTHER ORDERS that the Fourth Further Amended Certification Order made May 22, 1997 and November 3, 1997 as amended by the orders of Smith, J. made February 27, 1998; June 24, 1998; July 10, 1998, Consent Order dated February 19, 1999 and the order of Smith, J. made May 18, 1999 be further amended as follows:

- (a) by adding a new subparagraph b. after subparagraph a. on page 4 which reads as follows:
- "b. have or had thalassemia major and received whole blood and blood products in British Columbia during the Expanded Material Time and who have tested positive for the antibody to the Hepatitis C virus ("B.C. Thalassemic Class Members")"
- (b) by renumbering subparagraphs b., c., d., as c., d., and e., respectively;
- (c) by adding the words "or by a spouse or a parent who is a B.C. Thalassemic Class Member" after the words "Expanded Material Time" in the re-numbered subparagraph c. on page 4;
- (d) by adding the words "or are the personal representatives of B.C. Thalassemic Class Members who have died subsequent to becoming infected with the Hepatitis C virus" after the words "Expanded Material Time" to the re-numbered subparagraph d. on page 4;
- (e) by substituting the words "subsequent to becoming" for "as a result of being" to the re-numbered subparagraph d. on page 4; and
- (f) by adding the words "or are the executors or administrators of the estates of B.C. Thalassemic Class Members who have died subsequent to becoming infected with the Hepatitis C virus" after the words "Expanded Material Time" to the re-numbered subparagraph e. on page 4.

4. AND THIS COURT FURTHER ORDERS THAT the amendments described in paragraph 3 be incorporated in a consolidated Fifth Further Amended Certification Order in the form annexed to this Order as Schedule 8.

5. THIS COURT FURTHER ORDERS AND ADJUDGES that the Agreement annexed as Schedule 1 to this Order and the Funding Agreement annexed as Schedule 2 to this Order are fair, reasonable, adequate and in the best interests of the B.C. Transfused Class Members and this good faith settlement of the B.C. Transfused Class Action is approved on the terms set out in the Agreement and the Funding Agreement, both of which form part of and are incorporated by reference into this Order, subject to the following modifications:

- (a) B.C. Thalassemic Class Members, British Columbia residents who have been infected by a spouse or parent who is a B.C. Thalassemic Class Member, the executors or administrators of the estates of B.C. Thalassemic Class Members who died subsequent to becoming infected with HCV and the personal representatives of B.C. Thalassemic Class Members who died subsequent to becoming infected with HCV shall be entitled to meet the required proof for compensation and to receive benefits under the Hemophilic HCV Plan, *mutatis mutandis*, as if they were Hemophilic Class Members except that the proviso in Section 4.01(5) of the Hemophilic HCV Plan shall not apply to the persons described in this subparagraph receiving benefits under the Hemophilic HCV Plan;
- (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 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 5(b), 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 34(5) of the Act;

(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 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;
  - (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;
- (d) the amount to be paid or payable by the FPT Governments, pursuant to the Agreement and the Funding Agreement, shall be reduced by \$10,533,000, as of September 30, 1999, being the \$10,000,000 representing the estimated present value of the excess costs to the Trust Fund of resolving any action or actions instituted or prosecuted by all persons who opt out of a Class Action or are deemed to opt out of a Class Action and all other persons who claim over or bring a third party claim or make any claim or demand or take any action or proceeding against any FPT Government in any way relating to or arising from (i) in the case of a Transfused Class Member or Transfused Family Class Member under the Transfused HCV Plan, the infection of a Primarily-Infected Person with HCV during the Class Period or, (ii) in the case of a Transfused Class Member, Transfused

Family Class Member, Hemophiliac Class Member or Hemophiliac Family Class Member under the Hemophiliac HCV Plan, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including, in each case, the infection of a Secondarily-Infected Person) (collectively the "**Opt Out Plaintiffs**") and the sum of \$533,000, representing the actuarially calculated present value of one-third of the costs of defending actions prosecuted by the Opt Out Plaintiffs. For greater certainty, any person who is a Class Member as presently defined may participate in the Plans created by the Agreement;

- (e) no person may opt out an infant or a person who is mentally incompetent from the B.C. Transfused Class Actions, without the leave of this Court after notice to the Public Trustee;
- (f) upon delivery to the Trustee of a copy of a final judgment (as defined in Section 1.07 of the Agreement) obtained by an Opt Out Plaintiff against the FPT Governments or some or one of them or minutes of settlement entered into by an Opt Out Plaintiff and FPT Governments or some or one of them and a copy of a final order of a Court approving the minutes of settlement, the FPT Governments or their designate shall be paid out of the Trust Fund:
  - (i) as at the date of judgment or settlement, an amount equal to the amount that the Opt Out Plaintiff would have been entitled to receive from the Trust Fund had he or she qualified under a Plan;

and

- (ii) a one-time lump sum amount, to be approved by one of the Courts, in satisfaction of the amount that the Opt Out Plaintiff may thereafter have become entitled to receive from the Trust Fund from time to time had he or she qualified under a Plan, calculated in accordance with a protocol to be approved by the Courts;

provided however that in no circumstances shall the amount to be paid from the Trust Fund to the FPT Governments or some or one of them exceed the amount of the judgment or settlement paid to the Opt Out Plaintiff by the FPT Governments or some or one of them plus interest thereon;

- (g) no other amount shall be paid out of the Trust Fund to settle any action prosecuted by any Opt Out Plaintiff or to pay any judgment in any action prosecuted by any Opt Out Plaintiff or to indemnify the FPT Governments or some or one of them from any judgment or settlement of any action instituted or prosecuted by any Opt Out Plaintiff; and
- (h) the provisions of Section 11.02 of the Agreement and Section 6.03 of the Funding Agreement are inoperative and superseded by the provisions of subparagraphs 5(d), (e), (f) and (g) of this order.



6. THIS COURT FURTHER ORDERS:

- (a) the B.C. Transfused Class Members and their Family Members who qualify pursuant to the provisions of the Transfused HCV Plan shall be paid in accordance with the provisions of the Transfused HCV Plan;
- (b) the B.C. Thalassemic Class Members, British Columbia residents who have been infected by a spouse or parent who is a B.C. Thalassemic Class Member and their Family Members, the executors or administrators of the estates of B.C. Thalassemic Class Members who died subsequent to becoming infected with HCV and the personal representatives of B.C. Thalassemic Class Members who died subsequent to becoming infected with HCV who qualify pursuant to the provisions of the Hemophiliac HCV Plan shall be paid in accordance with the provisions of the Hemophiliac HCV Plan as provided in subparagraph 5(a) of this Order.

7. THIS COURT FURTHER ORDERS AND DECLARES that:

- (a) if a B.C. Transfused Class Member or B.C. Transfused Family Member was receiving any medical, ancillary medical, health or drug benefits from any of the PT Governments on April 1, 1999, the receipt of payments pursuant to a Plan will not affect the quantity, nature or duration of any corresponding benefits that any B.C. Transfused Class Member or B.C. Transfused Family Member receives from any of the PT Governments after April 1, 1999 except to the extent that such benefits are related to the B.C. Transfused Class Member's infection with HCV in which case they are recoverable exclusively under Sections 4.06 and 4.07 of a Plan;

- (b) the receipt of any payments pursuant to a Plan will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to a B.C. Transfused Class Member or a B.C. Transfused Family Member pursuant to any legislation of any PT Government referred to in Appendix A to a Plan, provided that the receipt of loss of income or loss of support payments pursuant to Sections 4.02 and 6.01 of a Plan may have such an effect; and
- (c) the receipt of any payments pursuant to a Plan will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to a B.C. Transfused Class Member or B.C. Transfused Family Member pursuant to any social benefit programs of the Federal Government such as old age security and Canada Pension Plan, as such payments either are not considered or, if considered, are otherwise exempted in the calculation of benefits under such legislation, provided that the receipt of loss of income or loss of support payments pursuant to Section 4.02 or 6.01 of a Plan may have such an effect.

8. THIS COURT FURTHER ORDERS AND DECLARES that save and except any payment made under subparagraph 5(f) of this Order, no subrogation payment of any nature or kind shall be paid, directly or indirectly, under the Plans, and without restricting the generality of this provision:

- (a) no FPT Government and no department of an FPT Government providing employment insurance, health care, hospital, medical and prescription services, social assistance or welfare will be paid under a Plan;
- (b) no municipality and no department of a municipality will be paid under a Plan;

- (c) no person exercising a right of subrogation will be paid under a Plan; and
- (d) no B.C. Transfused Class Member or B.C. Transfused Family Member will be paid compensation if the claim is being asserted as a subrogated claim or if the B.C. Transfused Class Member or B.C. Transfused Family Member will hold any money paid under a Plan in trust for any other party exercising a right of subrogation or, except as provided in Section 8.02 of a Plan, if a payment under a Plan will lead to a reduction in other payments for which the B.C. Transfused Class Member or B.C. Transfused Family Member would otherwise qualify.

9. THIS COURT FURTHER ORDERS that Peterson Worldwide LLC, a limited liability company incorporated under the laws of the State of Illinois and Reed Consulting, Ltd., an Ontario corporation, carrying on business as Peterson Worldwide LLC in Canada, be and are appointed, with joint and several liability, as the Administrator of the Plans until further order of the Courts on the terms and conditions and with the powers, rights, duties and responsibilities set out in Schedule 3.

10. THIS COURT FURTHER ORDERS that Royal Trust Company be and is appointed as the Trustee of the Trust until further order of the Courts on the terms and conditions and with the powers, rights, duties and responsibilities set out in Schedule 4 which are approved on an interim basis only.

11. THIS COURT FURTHER ORDERS that the Investment Manager shall manage the investment of the whole or any portion of the assets of the Trust Fund but only in accordance with the investment guidelines annexed as Schedule 5 which are approved on an interim basis only.

12. THIS COURT FURTHER ORDERS that TD Asset Management Inc. be and is appointed as the Investment Manager until further order of the Courts on the terms and conditions and with the powers, rights, duties and responsibilities set out in Schedule 6 annexed to this Order which are approved on an interim basis only.

13. THIS COURT DECLARES that by further order the Courts will appoint an Investment Consultant on the terms and conditions and with the powers, rights, duties and responsibilities set out in Schedule 7 annexed to this Order which are approved on an interim basis only.

14. THIS COURT FURTHER ORDERS that the Joint Committee shall be comprised of four persons, one Class Action Counsel to the B.C. Transfused Class Action appointed by this Court, one Class Action Counsel to the Ontario Transfused Class Action appointed by the Ontario Superior Court of Justice, one Class Action Counsel to the Quebec Transfused Class Action appointed by the Superior Court of Quebec and one Class Action Counsel to the Hemophiliac Class Actions appointed by the Courts.

15. THIS COURT FURTHER ORDERS that J.J. Camp, Q.C. be and is appointed to the Joint Committee as the Class Action Counsel to the B.C. Transfused Class Action until further order of this Court and with the duties and responsibilities set out in the Agreement.

16. THIS COURT FURTHER ORDERS that Bonnie A. Tough be and is appointed to the Joint Committee as the Class Action Counsel to the Hemophiliac Class Actions until further order of the Courts and with the duties and responsibilities set out in the Agreement.

17. THIS COURT FURTHER ORDERS that William A. Ferguson be and is appointed as the Fund Counsel to the B.C. Class Actions until further order of this Court and with the duties and responsibilities set out in the Agreement.

18. THIS COURT FURTHER ORDERS that, as soon as practicable after their appointments, the Trustee, the Investment Manager, the Investment Consultant and Fund Counsel shall consult each with the other and review the terms and conditions of their appointments, the investment guidelines and their interim powers, rights, duties and responsibilities and shall report to the Courts with their recommendations, if any, as to amendments to the terms and conditions of their appointments and their interim powers, rights, duties and responsibilities.

19. THIS COURT FURTHER ORDERS AND DECLARE that the Joint Committee shall report to the Courts on or before June 30, 2000 and at least semi-annually thereafter until further order of the Courts.

20. THIS COURT DECLARES that, on September 30, 1999, the Contribution Amount as defined in the Funding Agreement was \$1,187,985,360.

21. THIS COURT DECLARES that, on the Approval Date, pursuant to Section 4.01(1) and 4.02(1) of the Funding Agreement, the Federal Government shall pay to the Trustee the amount due and owing as at September 30, 1999, being the sum of \$846,327,527, plus interest from and after September 30, 1999 to the date of payment in accordance with the Funding Agreement plus or minus any adjustment as provided in the Funding Agreement.

22. THIS COURT FURTHER DECLARES that:

- (a) if any income taxes under the *Income Tax Act*, R.S.C. 1985, Chap.1 (5<sup>th</sup> Supp.) As amended (the "*Income Tax Act (Canada)*") or the equivalent provisions of the income tax act of any Province or Territory are paid by the Trustee in respect of income of the Trust, the FPT Government to which the taxes were paid will pay an amount equivalent to the amount so paid to the Trustee and such amount will thereafter form part of the Trust Fund;
- (b) the amount of compensation paid to or received by a Class Member or Family Class Member pursuant to a Plan will not be required to be included in the taxable income of the recipient thereof under the *Income Tax Act (Canada)* or the equivalent provisions of the income tax act of any Province or Territory provided, however, that this provision will not apply in respect of any amount or compensation paid to or received by a person other than the person that, but for any assignment of any amount of compensation payable under a Plan, would be the person entitled to the compensation under the Plan or in respect of any tax payable under Part XIII of the *Income Tax Act (Canada)* or the equivalent provisions of the income tax act of any Province or Territory by any Class Member or Family Class Member or any amount required to be withheld by the Trustee or the Administrator

on account of such tax in respect of any compensation paid or received under a Plan.

23. THIS COURT FURTHER ORDERS AND DECLARES that, pursuant to Section 33(4) of the Act and Section 10.01 of the Agreement, this Court shall supervise the execution of this Order and, without limiting the generality of the foregoing, this Court may issue judgments or orders, in such form as are necessary, to implement and enforce the provisions of the Agreement, the Plans, the Funding Agreement and this Order and may retain any advisor this Court in its discretion considers necessary and the costs of doing so shall be an expense of the Trust.

24. THIS COURT DECLARES that from time to time it may:

- (a) remove the Fund Counsel for the B.C. Class Actions and appoint a replacement;
- (b) remove its appointee of Class Action Counsel for the B.C. Transfused Class Action to the Joint Committee and appoint a replacement;
- (c) remove any Referee/Arbitrator for the B.C. Class Actions and appoint a replacement;
- (d) hear appeals of the Referee's reports for the B.C. Class Actions;
- (e) approve any fees, disbursements and other costs incurred or to be incurred by Fund Counsel appointed for the B.C. Class Actions and Class Action Counsel for the B.C. Transfused Class Action to the Joint Committee; and
- (f) award costs pertaining to any appeals of Referee's reports for the B.C. Class Actions.

25. THIS COURT FURTHER ORDERS that the British Columbia Public Trustee:

- (a) shall be given notice of any motions to this Court for approval, amendment or rescission of protocols; and
- (b) may apply to this Court for advice and directions as he or she deems necessary.

26. THIS COURT FURTHER ORDERS AND DECLARES that this Order is binding on all B.C. Transfused Class Members, including infants and mentally incompetent persons, unless a B.C. Transfused Class Member opts out of the B.C. Transfused Class Action by filing a written notice with the Administrator on or before June 30, 2000.

27. THIS COURT FURTHER ORDERS that any opt out notices received by Camp Church & Associates prior to the date of this Order have no force and effect and Camp Church & Associates shall notify the makers of such opt out notices at their last known address of the terms of paragraphs 25 and 26 of this Order;

28. THIS COURT FURTHER ORDERS that the Administrator shall, on or before September 1, 2000, report to this Court and advise as to the names of those persons who have opted out of the B.C. Transfused Class Action.

29. THIS COURT FURTHER ORDERS AND DECLARES that each B.C. Transfused Class Member, unless the B.C. Transfused Class Member opts out in accordance with the provisions of this Order, has released each of the Releasees from any and all actions, causes of actions, liabilities, claims and demands whatsoever of every nature or kind for damages,



contribution, indemnity, costs, expenses and interest which any such B.C. Transfused Class Member ever had, now has or may hereafter have in any way relating to or arising from (i) in the case of each B.C. Transfused Class Member under the Transfused HCV Plan, the infection of a Primarily-Infected Person with HCV during the Class Period or (ii) in the case of each B.C. Thalassemic Class Member, British Columbia residents who have been infected by a spouse or parent who is a B.C. Thalassemic Class Member, the executors or administrators of the estates of B.C. Thalassemic Class Members who died subsequent to becoming infected with HCV and the personal representatives of B.C. Thalassemic Class Members who died subsequent to becoming infected with HCV under the Hemophiliac HCV Plan, including, in each case, the infection of a Secondarily-Infected Person, whether such claims were made or could have been made in any proceeding including the B.C. Class Actions.

30. THIS COURT FURTHER ORDERS AND DECLARES that the B.C. Transfused Class Members, unless the B.C. Transfused Class Member opts out in accordance with the provisions of this Order, separately and severally, have fully, finally and forever released each of the Releasees, separately and severally, and in each and every capacity and that no such actions, causes of actions, liabilities, claims or demands referred to in paragraph 28 of this Order may be asserted against any Releasee.

31. THIS COURT FURTHER ORDERS AND DECLARES that the B.C. Transfused Class Members, unless the B.C. Transfused Class Member opts out in accordance with the provisions of this Order, are deemed to agree that they will not make any claim or demand or take any actions or proceedings against any Releasee or any other person in which any claim could arise against any Releasee for damages and/or contribution and/or indemnity and/or other relief

over under the provisions of the *Negligence Act*, R.S.B.C. 1996 c. 333 or its counterpart in other jurisdictions, the common law or any other statute of British Columbia or any other jurisdiction in any way relating to or arising from (i) in the case of each B.C. Transfused Class Member under the Transfused HCV Plan, the infection of a Primarily-Infected Person with HCV during the Class Period, or (ii) in the case of each B.C. Thalassemic Class Member, the infection of a Primarily-Infected Person with HCV, including in each case, the infection of a Secondarily-Infected Person provided that the foregoing excludes the CRCS.

32. THIS COURT FURTHER ORDERS AND DECLARES that at the option of the FPT Governments or their representatives, each B.C. Transfused Class Member receiving payment under one of the Plans will either:

- (a) pursue any claims as described in Section 11.01(c) of the Agreement that the B.C. Transfused Class Member has against the CRCS, and assign to the FPT Governments the proceeds received by the B.C. Transfused Class Member or from any such claim; or
- (b) within the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 proceedings relating to the CRCS, prove, vote and otherwise act to promote those claims as described in Section 11.01(c) of the Agreement that the B.C. Transfused Class Member has against the CRCS in accordance with directions given to the B.C. Transfused Class Member by the FPT Governments or their representatives, or, at the request of the FPT Governments or their representatives, grant to the FPT Governments and their representatives such proxies or other forms of assignment as are necessary for the FPT Governments to vote and otherwise act to promote any such claim of the B.C. Transfused Class Member, or

- (c) enter into a release of all of such claims against the CRCS substantially in the form of the releases attached as appendices to the Plans.

33. THIS COURT FURTHER DECLARES that the FPT Governments' obligations and liabilities pursuant to Article Four of the Agreement, the Funding Agreement and this Order constitute the consideration for the releases and other matters referred to in this Order and such consideration is in full and final settlement and satisfaction of any and all claims referred to and the B.C. Transfused Class Members, unless the B.C. Transfused Class Member opts out in accordance with the provisions in this Order, are limited to the compensation payable pursuant to the Plans, as funded, pursuant to the Funding Agreement and this Order, as their only recourse on account of any and all such actions, causes of actions, liabilities, claims and demands referred to in paragraph 28 of this Order.

34. THIS COURT FURTHER ORDERS AND DECLARES that, pursuant to Section 34(5) of the Act and Sections 10.01 (1)(o) and 12.03 of the Agreement and Section 10.02 of the Funding Agreement, but subject to the provisions of subparagraph 5(b) and (c) of this Order, once the Plans and the Program have been fully administered in accordance with the Agreement and all obligations under this Order have been satisfied, and the Courts have declared that the Plans and the Program have been fully administered in accordance with the Agreement, any assets remaining in the Trust Fund will be the sole property of the FPT Governments and shall be paid and transferred to the FPT Governments.

35. THIS COURT FURTHER ORDERS AND DECLARES that, unless the B.C. Transfused Class Member opts out in accordance with the provisions of this Order, this Order and

the Agreement are binding upon all B.C. Transfused Class Members who are infants or persons who are mentally incompetent.

36. THIS COURT FURTHER ORDERS AND DECLARES that all information in any form whatsoever received, obtained, compiled or created by the Administrator, Trustee, Investment Manager, Investment Consultant and Auditors as a result of his, her, their or its involvement with the Agreement, Funding Agreement, administration of the Plans and the implementation of this Order including the Claimants' Data is to be held in confidence and is to be used or disseminated solely for the purposes of administration of the Plans and the implementation of this Order and is not to be used or disseminated for any other purposes whatsoever without an order of the Courts.

37. THIS COURT FURTHER ORDERS AND DECLARES that the Administrator, Trustee, Investment Manager, Investment Consultant and Auditors do not have and shall not obtain any interest of any nature or kind in the Claimants' Data and in any information received, obtained, compiled or created by him, her, them or it in the course of the performance of his, her, their or its duties, in the course of administration of the Plans and in the implementation of this Order.

38. THIS COURT FURTHER ORDERS AND DECLARES that the Trustee shall hold in trust for the Class Members and Family Class Members legal title to the Claimants' Data received, obtained, compiled or created by the Administrator, Trustee, Investment Advisor, Investment Consultant and Auditors.

39. THIS COURT FURTHER ORDERS AND DECLARES that the Administrator, Investment Manager, Investment Consultant, Joint Committee and members of the Joint Committee have no right, authority or ability to pledge the credit of the Trust Fund or in any way to encumber the Trust Fund.

40. THIS COURT FURTHER ORDERS AND DECLARES that no person may bring any action or take any proceedings against the Administrator, Trustee, Investment Manager, Investment Consultant, Auditors, Fund Counsel, Joint Committee or members of the Joint Committee or their employees, agents, partners, associates, representatives, successors or assigns for any matter in any way relating to the Agreement, the Funding Agreement, the administration of the Plans or the implementation of this Order, except with the leave of the Courts.

41. THIS COURT FURTHER ORDERS AND DECLARES that the B.C. Transfused Class Members shall be given notice of settlement of this class proceeding and of this Order in a manner which shall be directed by this Court by further order.

42. THIS COURT DECLARES that by further order it shall:

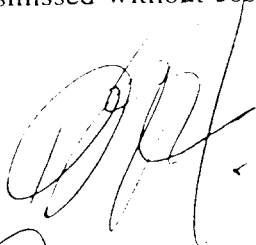
1. appoint Referees/Arbitrators for the B.C. Class Actions on the terms and conditions and with the powers, rights, duties and responsibilities to be particularized; and
2. make all other necessary and ancillary orders for the implementation of the Agreement, the Funding Agreement and this Order and the ongoing supervision thereof.

43. THIS COURT DECLARES that the Courts shall appoint a firm of Auditors on the terms and conditions and with the powers, rights, duties and responsibilities to be particularized and make all other necessary and ancillary orders for the implementation of the Agreement, the Funding Agreement and the Approval Orders and the ongoing supervision thereof.

44. THIS COURT FURTHER ORDERS that the fees and disbursements of the solicitors for the Class Action Plaintiffs in the B.C. Class Actions and all matters relating thereto shall be dealt with by this Court at a hearing on a date and time to be directed.

45. THIS COURT FURTHER ORDERS AND ADJUDGES that, save as aforesaid, this action be and is dismissed without costs.

BY THE COURT



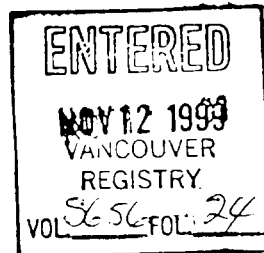
B. Messing  
DISTRICT REGISTRAR

CONSENTED TO AND APPROVED AS TO FORM:

[Signature]  
Counsel for the Plaintiff

[Signature]  
Counsel for the Defendant and Third Party  
Her Majesty The Queen In Right of the  
Province of British Columbia

John R. Klais  
Counsel for the Defendant and Third Party  
The Attorney General of Canada



THE ATTACHED IS EXHIBIT "C" TO THE AFFIDAVIT OF  
HEATHER RUMBLE PETERSON SWORN BEFORE ME  
THIS 12TH DAY OF MAY, 2022



\_\_\_\_\_  
COMMISSIONER FOR TAKING AFFIDAVITS

Shelley Lynn Woodrich, a Commissioner, etc.,  
Province of Ontario, for Strosberg Sasso Sutts LLP,  
Barristers and Solicitors.  
Expires February 22, 2025.

CANADA

PROVINCE DE QUÉBEC  
DISTRICT DE MONTRÉAL

NO: 500-06-000016-960

**COUR SUPÉRIEURE**

Le 19 novembre 1999

**SOUS LA PRÉSIDENCE DE  
L'HONORABLE NICOLE MORNEAU, J.C.S.**

**DOMINIQUE HONHON**, 3, Place Bretagne,  
Hull, Québec,

**Requérante**

**c.**

**PROCUREUR GÉNÉRAL DU CANADA**,  
Complexe Guy-Favreau, Tour est, 200,  
boul. René-Lévesque ouest, 9<sup>e</sup> étage,  
Montréal, Québec

**et**

**PROCUREUR GÉNÉRAL DU QUÉBEC**, 1,  
rue Notre-Dame est, 8<sup>e</sup> étage, Montréal,  
Québec

**et**

**SOCIÉTÉ CANADIENNE DE LA CROIX-  
ROUGE**, 2170, boul. René-Lévesque ouest,  
Montréal, Québec

**Intimés**

**et**

**FONDS D'AIDE AUX RECOURS  
COLLECTIFS**, 1, rue Notre-Dame est,  
bureau 10.31, Montréal, Québec

**et**

**LE CURATEUR PUBLIC DU QUÉBEC**,  
600, boul. René-Lévesque ouest, suite 500,  
Montréal, Québec

**Mis en cause**

J.M. 1242

**JUGEMENT**



NO: 500-06-000016-960

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**LE TRIBUNAL** est saisi d'une requête visant à obtenir une ordonnance additionnelle d'approbation d'une transaction présentée par la requérante, Dominique Honhon;

**CONSIDÉRANT** que le Tribunal a rendu un jugement le 21 septembre 1999 accueillant la requête en approbation d'une transaction présentée par la requérante, Dominique Honhon;

**CONSIDÉRANT** l'entente intervenue entre les parties modifiant la Convention relative à l'Hépatite C 1986-1990 et ses annexes datée du 15 juin 1999 (ci-après la « Convention de règlement »), contenue à l'Annexe F de la Convention de règlement:

**CONSIDÉRANT** que les parties ont convenu que les gouvernements PT possèdent l'option de verser des montants périodiques en conformité avec les articles 4.02 et 4.04 de l'Accord de financement de telle sorte que, dans cette éventualité, il ne restera dans le Fonds en Fiducie aucune somme d'argent ou actif des gouvernements PT qui ne serait alloué actuariellement;

**CONSIDÉRANT** la nature avantageuse des modifications contenues à l'Annexe F de la Convention de règlement;

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**CONSIDÉRANT** que les modifications à la Convention de règlement prévues à l'Annexe F sont également soumises pour approbation dans les provinces de l'Ontario et de la Colombie-Britannique, avec les adaptations nécessaires pour respecter les spécificités de chacune des juridictions;

**CONSIDÉRANT** que le Tribunal a pris connaissance du projet de jugement à être rendu par l'honorable juge Warren K. Winkler sur une requête similaire présentable en Ontario;

**CONSIDÉRANT** que les modifications prévues à l'Annexe F tiennent compte de la spécificité du droit applicable dans la province de Québec;

**CONSIDÉRANT** qu'il est dans l'intérêt des membres et de la justice que le Tribunal entérine les modifications à la Convention de règlement contenues à l'Annexe F de la Convention de règlement, lesquelles sont à l'avantage des membres;

**CONSIDÉRANT** que la requérante demande d'être dispensée de donner l'avis prévu à l'article 1025 du Code de procédure civile compte tenu de la nature avantageuse des modifications pour les membres et afin d'éviter d'imposer à ceux-ci tout délai additionnel;

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**PAR CES MOTIFS, LE TRIBUNAL :**

**ACCUEILLE** la requête en approbation additionnelle d'une transaction présentée par la requérante;

**PREND ACTE** du consentement des parties aux modifications à la Convention de règlement contenues à l'Annexe F;

**ENTÉRINE** les modifications à la Convention de règlement contenues à l'Annexe F;

**DISPENSE** la requérante de publier l'avis prévu à l'article 1025 du Code de procédure civile compte tenu de la nature avantageuse desdites modifications pour les membres du recours collectif;

**DÉCLARE** que le groupe, dont les membres seront liés par le jugement, est défini comme suit :

- « i des personnes ayant reçu, au Québec, une transfusion de sang, tel que ci-après défini, entre le 1er janvier 1986 et le 1er juillet 1990 inclusivement et qui sont ou ont été infectées par le virus de l'Hépatite C;

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- ii d'un époux ou d'un conjoint infecté indirectement par le virus de l'Hépatite C par un époux ou un conjoint qui est une personne décrite au paragraphe (i);
- iii d'un enfant infecté indirectement par le virus de l'Hépatite C par un parent qui est une personne décrite aux paragraphes (i) et (ii); ou
- iv d'un membre de la famille d'une personne décrite aux paragraphes (i), (ii) ou (iii);

le sang étant défini comme suit :

le sang total et les produits sanguins suivants : les concentrés de globules rouges, les plaquettes, le plasma (frais congelé et stocké) et les globules blancs. Le sang ne comprend pas l'albumine à 5%, l'albumine à 25%, le facteur VIII, le facteur VIII porcin, le facteur IX, le facteur VII, l'immunoglobuline anti-cytomégalovirus, l'immunoglobuline anti-hépatitique B, l'immunoglobuline anti Rh, l'immunoglobuline antivaricelleuse-antizostérienne, l'immunoglobuline sérique, (FEIBA) FEVIII inhibitor Bypassing Activity, Autoplex (complexe prothrombine), l'immunoglobuline antitétanique, l'immunoglobuline intraveineuse (IVIG) et l'antithrombine III (ATIII); »

**DÉCLARE** que la Convention de règlement relatif à l'Hépatite C 1986-1990, intervenue en date du 15 juin 1999 ainsi que ses annexes « A », « B », « C », « D », « E » et « F » ci-après décrites :

- Annexe « A » : Régime à l'intention des transfusés infectés par le VHC;
- Annexe « B » : Régime à l'intention des hémophiles infectés par le VHC;
- Annexe « C » : Programme d'aide financière fédéral/ provincial/ territorial pour les personnes indirectement infectées par le VIH;
- Annexe « D » : Accord de financement;

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- Annexe « E » Législation sur les prestations sociales;
- Annexe « F » : Modifications numéro 1 à la Convention de règlement ;

et l'Accord de financement (ci-après appelée « **Convention de règlement** ») sont justes, raisonnables et ont été conclus dans le meilleur intérêt des membres du recours collectif des transfusés infectés par le VHC;

**APPROUVE** la Convention de règlement et  
**ORDONNE** aux parties et aux membres liés par la Convention de règlement de s'y conformer;

**DÉCLARE** qu'à la date d'approbation, le gouvernement fédéral doit payer au fiduciaire, en vertu des paragraphes 4.01 (1) et 4.02 (1) de l'Accord de financement, le montant dû et échu en date du 30 septembre 1999, soit la somme de 846 327 527,00 \$, plus les intérêts courus entre cette date et la date de paiement, conformément à l'Accord de financement, plus ou moins de tout ajustement prévu par cet accord.

**ORDONNE ET DÉCLARE** que le présent jugement n'affectera en aucune façon la Société canadienne de la Croix-Rouge étant donné que les présentes procédures en recours collectif ont été suspendues contre celle-ci par un jugement de

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l'honorable juge Blair de la Cour supérieure de l'Ontario daté du 20 juillet 1998, rendu en vertu de la *Loi sur les arrangements avec les créanciers des compagnies* (S.R.C. 1985, ch. C-36) dans une action portant le numéro 98-CL-002970, pareille suspension ayant été prolongée par des ordonnances ultérieures de la même Cour et datées des 19 août 1998, 5 octobre 1998, 18 janvier 1999, 5 mai 1999 et du 28 juillet 1999;

**DÉCLARE** que les honoraires et déboursés des procureurs de la requérante seront déterminés à une date ultérieure;

**DÉCLARE** que la Cour procédera ultérieurement à la nomination des personnes appropriées aux postes décrits à la Convention de règlement ;

**NOMME** Me Pierre R. Lavigne au comité conjoint comme le conseiller aux recours collectifs des transfusés (Québec) et ce, jusqu'à ordre contraire d'un tribunal, selon les termes et conditions et avec les devoirs et responsabilités décrits à ladite Convention de règlement:

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**DÉCLARE** que le mis en cause, le Curateur public du Québec, pourra, par requête pour directives et instructions, s'adresser à cette Cour, selon qu'il le juge approprié;

**DISPENSE** le mis en cause, le Curateur public du Québec, d'obtenir l'autorisation du tribunal requise pour transiger en faveur de chacune des personnes qu'il représente, pour quelque indemnisation que ce soit en vertu de la Convention de règlement, nonobstant l'article 36 de la *Loi sur le curateur public* (L.R.Q., c. C-81) et **DÉCLARE** que le présent jugement équivaut à l'autorisation requise en vertu de l'article 36 de la *Loi sur le curateur public*;

**DÉCLARE** que la Convention de règlement constitue une transaction au sens de l'article 2631 du *Code civil du Québec* liant toutes les parties et tous les membres liés par ce règlement;

**ORDONNE ET DÉCLARE** que soit donné aux membres des recours collectifs et aux membres de leur famille un avis du présent jugement, de la manière à être déterminée par la Cour à une date ultérieure;

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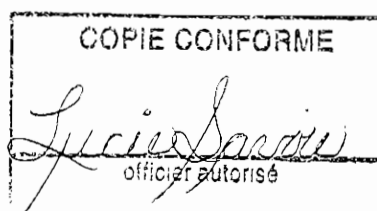
**DÉCLARE** que la date limite pour s'exclure du groupe visé par le règlement sera la date que fixera ultérieurement le Tribunal après avoir approuvé les avis à être publiés:

**DÉCLARE** que, sous réserve de l'article 1008 du *Code de procédure civile du Québec*, tout membre du groupe ci-avant décrit qui ne s'est pas exclu en présentant au gestionnaire des réclamations une formule d'exclusion dûment remplie dans le délai d'exclusion, sera lié par la présente Convention de règlement et le présent jugement d'approbation:

**ORDONNE ET DÉCLARE,**  
conditionnellement à l'approbation de la Convention de règlement par l'honorable juge Smith en Colombie-Britannique et le l'honorable juge Winkler en Ontario, qu'à l'exception de ce qui est prévu ci-avant, le recours collectif institué par madame Dominique Honhon est rejeté sans frais :

**DÉCLARE** que la soussignée demeurera saisie du présent dossier à moins de contrordre du Juge en chef:

*Nicole Morneau J.C.S.*  
NICOLE MORNEAU, J.C.S.





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Me Michel Savonitto  
Marchand, Magnan, Melançon, Forget  
Me Pierre R. Lavigne  
**Procureurs de la requérante**

Me André Lespérance  
Me Nathalie Drouin  
Côté & Ouellet  
**Procureurs du Procureur général du Canada**

Me Robert Monette  
Me Dany Leduc  
Bernard Roy & Ass.  
**Procureurs du Procureur général du Québec**

Me Robert E. Charbonneau  
McMaster, Gervais  
**Procureurs de la Société canadienne de la Croix-Rouge**

Me Louise Ducharme  
**Procureur du Fonds d'aide aux recours collectifs**

Me Hélène Laberge  
**Procureur du Curateur public du Québec.**

*L.S.*

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COUR SUPÉRIEURE

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**DOMINIQUE HONHON**

**Requérante**

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**

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**ANNEXE F**

L.S.

## ANNEXE F

## MODIFICATION NUMÉRO 1 – 2 NOVEMBRE 1999

La Convention de règlement est modifiée comme suit :

1. Par l'ajout au paragraphe 10.01 de la Convention de règlement des alinéas suivants:

« p.1) Dans le cadre du libre exercice de leur pouvoir discrétionnaire, ordonner, de temps à autre, sur demande de toute partie ou du Comité conjoint, que les fonds et les autres éléments d'actif détenus par le fiduciaire en vertu de la Convention de règlement et qui ne font pas l'objet d'une attribution actuarielle soient en tout ou en partie :

- (i) attribués aux membres des recours collectifs et/ou aux membres de la famille;
- (ii) attribués de toute manière dont on peut raisonnablement s'attendre qu'elle bénéficie aux membres des recours collectifs et/ou aux membres de la famille, même si l'attribution ne prévoit pas le versement d'une indemnité aux membres des recours collectifs et/ou aux membres de la famille;
- (iii) payés, en tout ou en partie, aux gouvernements FPT, à certains ou à un seul d'entre eux, compte tenu de la source

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des fonds et des autres éléments d'actif que comprend le fonds en fiducie; et/ou

(iv) conservés, en tout ou en partie, dans le fonds en fiducie;

de la manière que, dans le cadre du libre exercice de leur pouvoir discrétionnaire, les tribunaux estimeront raisonnable en tenant compte de toutes les circonstances, pourvu que, dans la distribution, aucune discrimination n'ait lieu selon l'endroit où le membre du recours collectif a reçu du sang ou selon l'endroit où il réside;

« p.2) Dans le cadre du libre exercice de leur pouvoir discrétionnaire qui leur est conféré par l'alinéa p.1) ci-devant, les tribunaux peuvent prendre en considération, mais sans être liés par aucun d'entre eux, notamment les facteurs suivants :

- (i) le nombre de membres des recours collectifs et de membres de la famille;
- (ii) l'expérience du fonds en fiducie;
- (iii) le fait que les indemnités prévues par les régimes peuvent, dans certains cas, ne pas refléter le régime de responsabilité en matière extra-contractuelle;
- (iv) l'article 1036 du *Code de procédure civile du Québec*;
- (v) la question de savoir si l'intégrité de la Convention de règlement sera maintenue et si les versements des indemnités prévues dans les régimes seront assurés;

L.S.

- (vi) la question de savoir si la progression de la maladie est très différente de celle prévue dans le modèle médical utilisé dans le rapport actuariel Eckler;
- (vii) le fait que les membres des recours collectifs et les membres de la famille assument le risque d'insuffisance du fonds en fiducie;
- (viii) le fait que les contributions des gouvernements FPT sont limitées en vertu de la Convention de règlement;
- (ix) la source des fonds et des autres éléments d'actif que comprend le fonds en fiducie;
- (x) tout autre fait que les tribunaux estiment important. »

2. Les paragraphes 11.02 de la Convention de règlement et 6.03 de l'Accord de financement sont abrogés et remplacés par ce qui suit:

« 11.02 (1) Le montant à payer ou payable par les gouvernements FPT en vertu de la Convention de règlement et de l'Accord de financement doit être réduit de 10,533,000\$, en date du 30 septembre 1999; soit la somme de 10,000,000 \$ représentant la valeur actualisée estimée du coût excédentaire pour le fonds en fiducie du règlement des actions intentées ou poursuivies par ceux qui s'excluent ou qui sont réputés s'exclure d'un recours collectif et par ceux qui intentent une action récursoire ou en garantie ou qui présentent une réclamation, une demande ou toute autre procédure contre un gouvernement FPT dont l'objet ou la cause est, de quelque manière

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que ce soit : (i) dans le cas d'un membre d'un recours collectif des transfusés ou d'un membre de la famille aux termes du Régime à l'intention des transfusés infectés par le VHC, l'infection d'une personne directement infectée par le VHC pendant la période visée par les recours collectifs; ou (ii) dans le cas d'un membre d'un recours collectif des transfusés ou des hémophiles ou d'un membre de la famille des transfusés ou des hémophiles aux termes du Régime à l'intention des hémophiles infectés par le VHC, l'infection d'un hémophile ou d'un transfusé directement infecté par le VHC provenant du sang (y compris, dans chaque cas, l'infection d'une personne indirectement infectée) (collectivement appelés les personnes qui s'excluent); et la somme de 533.000\$ représentant la valeur actualisée du tiers des coûts liés à la défense contre les actions poursuivies par les personnes qui s'excluent. Pour plus de certitude, toute personne qui est membre d'un recours collectif ci-avant défini peut participer aux régimes créés par la Convention de règlement.

- « 11.02 (2) Sur remise au fiduciaire d'une copie d'un jugement final (tel que défini au paragraphe 1.07 de la Convention de règlement) obtenu par une personne qui s'exclut contre les gouvernements FPT, certains ou un seul d'entre eux, ou d'une transaction conclue par une personne qui s'exclut et les gouvernements FPT, certains ou un seul d'entre eux, et d'une copie de l'ordonnance finale d'un

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tribunal homologuant une transaction, les gouvernements FPT ou leurs mandataires doivent recevoir à partir du fonds en fiducie :

- (i) suivant la date de ce jugement ou de ce règlement, un montant égal au montant que la personne qui s'exclut aurait eu droit de recevoir du fonds en fiducie s'il avait été admissible à un régime; et
- (ii) un versement forfaitaire, sur approbation de l'un des tribunaux, en vue de couvrir le montant que la personne qui s'exclut aurait pu être en droit de recevoir de temps à autre du fonds en fiducie s'il avait été admissible à un régime, ce montant devant être calculé conformément à un protocole devant être approuvé par les tribunaux;

pourvu, cependant, que dans aucun cas, le montant devant être versé à partir du fonds en fiducie aux gouvernements FPT, à certains ou à un seul d'entre eux n'excède le montant du jugement ou du règlement versé à la personne qui s'exclut par les gouvernements FPT, certains ou un seul d'entre eux, plus les intérêts courus sur ce montant.

« 11.02 (3) Aucun autre montant ne doit être payé à partir du fonds en fiducie pour régler une action poursuivie par une personne qui s'exclut, pour satisfaire à un jugement obtenu sur une action intentée par une personne qui s'exclut ou pour indemniser les gouvernements FPT, certains ou un seul d'entre eux de tout jugement ou de tout

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règlement intervenu par suite de toute action intentée ou poursuivie par une personne qui s'exclut.»

**Le Régime à l'intention des transfusés (Annexe A) est modifié comme suit :**

3. Le sous-paragraphe a) de la définition de « Personne directement infectée » au paragraphe 1.01 est modifié comme suit :

- remplacer le «;» par un «.» à la fin du sous-paragraphe a);
- et
- ajouter la phrase suivante à la fin dudit sous-paragraphe a) :  
« Une personne atteinte ou ayant été atteinte de thalassémie majeure n'est pas visée par le présent sous-paragraphe a); »

4. Par l'ajout d'un paragraphe 4.10 :

« Les personnes directement infectées atteintes de thalassémie majeure ont le droit de présenter les preuves requises à des fins d'indemnisation et de recevoir les indemnités prévues par le Régime à l'intention des hémophiles infectés par le VHC, *mutatis mutandis*, comme si elles étaient des hémophiles directement infectés, et elles sont réputées être, pour les fins de la Convention et du Régime à l'intention des hémophiles infectés par le VHC, des hémophiles directement infectés, sous réserve que la condition figurant au paragraphe 4.01(5) du Régime à l'intention des hémophiles infectés par le VHC ne



s'applique pas, et leur conjoint et leurs enfants qui sont des personnes indirectement infectées au sens du régime à l'intention des transfusés ainsi que les membres de la famille ont également le droit de présenter les preuves requises à des fins d'indemnisation et de recevoir les indemnités prévues par le Régime à l'intention des hémophiles infectés par le VHC, sous réserve que la condition figurant au paragraphe 4.01(5) du Régime à l'intention des hémophiles infectés par le VHC ne s'applique pas. »

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L.S.

PARSONS et al.  
KREPPNER et al.

vs. THE CANADIAN RED CROSS  
SOCIETY et al.

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

Plaintiffs

Defendants

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
PROCEEDINGS COMMENCED AT TORONTO

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**JOINT MOTION RECORD**  
**VOLUME I OF VIII**  
**(Joint Committee Motion to Allocate**  
**2019 Excess Capital)**

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Members of the Joint Committee