

**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 II OF VIII
(Joint Committee Motion to Allocate 2019 Excess Capital)

May 8, 2023

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THE ATTACHED IS EXHIBIT "D" 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.

Court file # 98-CV-141369

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE JUSTICE)

FRIDAY THE 15th DAY

PAUL M. PERELL)

OF JULY 18th 2015

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

and

THE CANADIAN RED CROSS SOCIETY,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
and THE ATTORNEY GENERAL OF CANADA

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
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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*

THIS IS TO CERTIFY THAT THIS DOCUMENT, EACH PAGE OF WHICH IS STAMPED WITH THE SEAL OF THE SUPERIOR COURT OF JUSTICE AT TORONTO, IS A TRUE COPY OF THE DOCUMENT ON FILE IN THIS OFFICE

LA PRESENT ATTESTE QUE CE DOCUMENT, CHACUNE DES PAGES EST REVÊTUE DU SCAU DE LA COUR SUPÉRIEURE DE JUSTICE À TORONTO, EST UNE COPIE CONFORME DU DOCUMENT CONSERVÉ DANS CE BUREAU

DATED AT TORONTO THIS 15th DAY OF JULY 2015
DIT À TORONTO LE 15th JOUR DE JUIN DE 2015
REGISTERAR
GREFFIER
Plaintiffs



Defendants

-2-

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*

ORDER

THIS MOTION made by the Ontario Members of the Joint Committee by

Notice of Motion, dated March 16, 2015, was heard this day in writing.

-3-

AND ON READING the materials filed by the parties to the motion as follows:

- (a) “Report of the Joint Committee Relating to Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2013”;
 - (b) Affidavit of Dr. Murray Krahn, sworn March 16, 2015 and attached report, “Estimating the Prognosis of Canadians Infected with the Hepatitis C Virus Through the Blood Supply, 1986-1990, The Fifth Revision of Hepatitis C Prognostic Model Based on the Post-Transfusion Hepatitis C Compensation Claimant Cohort”;
 - (c) Affidavit of Richard Border, sworn March 11, 2015 and attached report, “Actuarial Report to the Joint Committee Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2013”;
 - (d) Affidavit of Dr. Vince Bain, sworn March 11, 2015;
-
- (e) Affidavit of Peter Gorham, sworn April 8, 2015 and attached report, “Actuarial Report Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust Fund as at 31 December 2013”;

(collectively, the “Reports”).

AND ON BEING ADVISED the Joint Committee and Canada consent to this order in respect of the 1986-1990 Hepatitis C Settlement Agreement 2013 Financial Sufficiency Review,

-4-

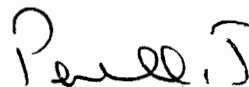
AND ON BEING ADVISED that neither Her Majesty the Queen in Right of the Province of Ontario nor the Intervenors take a position on this motion;

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

1. THIS COURT DECLARES that the Reports are hereby filed with the Court pursuant to the provisions of section 10.01(1)(i) of the January 1, 1986 to July 1, 1990 Hepatitis C Settlement Agreement.
2. ~~THIS COURT ORDERS AND DECLARES~~ that the assets of the Trust exceed the liabilities and therefore the Trust Fund is financially sufficient as at December 31, 2013 pursuant to section 10.01(1)(i) of the January 1, 1986 to July 1, 1990 Hepatitis C Settlement Agreement.
3. THIS COURT ORDERS AND DECLARES that as at December 31, 2013, assets of the Trust exceed the liabilities, after taking into account an amount to protect the class members from major adverse experience or catastrophe, by an amount between \$236,341,000 to \$256,594,000.

-5-

4. THIS COURT ORDERS that this order not be effective until similar orders have been made by the Superior Court of Quebec and the Supreme Court of British Columbia.



JUSTICE

1294778

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUL 29 2015

PER / PAR:


PARSONS et al.
KREPPNER et al.

vs. THE CANADIAN RED CROSS SOCIETY et al.

Plaintiffs

Defendants

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

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT TORONTO

ORDER

Podrebarac Barristers Professional Corporation
701 – 151 Bloor Street West
Toronto, ON M5S 1S4

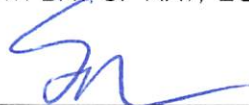
Kathryn Podrebarac LSUC # 35640P
Tel: 416.348.7502
Fax: 416.348.7505

Sutts, Strosberg LLP
Lawyers
600 Westcourt Place
251 Goyeau Street
Windsor ON N9A 6V4

Heather Rumble Peterson LSUC#: 24671V
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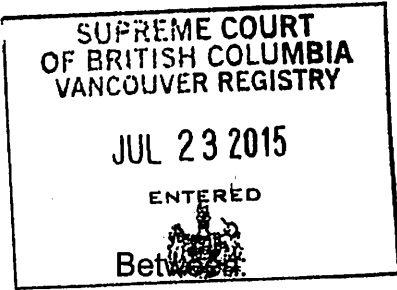
Lawyers representing the Joint Committee in Ontario

THE ATTACHED IS EXHIBIT "E" 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

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

ORDER MADE AFTER APPLICATION

BEFORE)	THE HONOURABLE)	JUL 23 2015
)	CHIEF JUSTICE HINKSON)	_____

ON THE APPLICATION of the British Columbia Joint Committee Member (dated 16/March/2015) coming on before the Honourable Chief Justice Hinkson in writing;

AND ON British Columbia Fund Counsel, the defendant the Attorney General of Canada, and the defendant Her Majesty the Queen in Right of the Province of British Columbia, all having been served with the application;

AND ON READING the materials filed by the parties to the application as follows:

- (a) Notice of Application of the British Columbia Joint Committee Member, dated March 16, 2015;
- (b) "Report of the Joint Committee Relating to Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2013";
- (c) Affidavit #4 of Dr. Murray Krahn, sworn March 16, 2015 and attached report, "Estimating the Prognosis of Canadians Infected with the Hepatitis C Virus Through the Blood Supply, 1986-1990, The Fifth Revision of Hepatitis C Prognostic Model Based on the Post-Transfusion Hepatitis C Compensation Claimant Cohort";
- (d) Affidavit #4 of Richard Border, sworn March 11, 2015 and attached report, "Actuarial Report to the Joint Committee Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2013";
- (e) Affidavit #1 of Dr. Vince Bain, sworn March 11, 2015;
- (f) Affidavit #4 of Peter Gorham, sworn April 8, 2015 and attached report, "Actuarial Report Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust Fund as at December 31, 2013".

AND ON being advised that the Joint Committee and Canada consent to this order in respect of the 1986-1990 Hepatitis C Settlement Agreement 2013 Financial Sufficiency Review;

AND ON being advised that British Columbia Fund Counsel and Her Majesty the Queen in Right of the Province of British Columbia take no position;

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 Superior Court of Justice Action No. 98-CL-002970 (Toronto) and subsequently extended by further

orders made on August 18, 1998, October 5, 1998, January 18, 1999, May 5, 1999, July 28, 1999 and February 25, 2000;

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

THIS COURT ORDERS that:

1. The Reports listed below are hereby filed with the Court pursuant to the provisions of Clause 10.01(1)(i) of the January 1, 1986-July 1, 1990 Hepatitis C Settlement Agreement:

- (a) "Report of the Joint Committee Relating to Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2013";
- (b) Affidavit #4 of Dr. Murray Krahn, sworn March 16, 2015 and attached report, "Estimating the Prognosis of Canadians Infected with the Hepatitis C Virus Through the Blood Supply, 1986-1990, The Fifth Revision of Hepatitis C Prognostic Model Based on the Post-Transfusion Hepatitis C Compensation Claimant Cohort";
- (c) Affidavit #4 of Richard Border, sworn March 11, 2015 and attached report, "Actuarial Report to the Joint Committee Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2013";
- (d) Affidavit #1 of Dr. Vince Bain, sworn March 11, 2015;
- (e) Affidavit #4 of Peter Gorham, sworn April 8, 2015 and attached report, "Actuarial Report Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust Fund as at 31 December 2013";

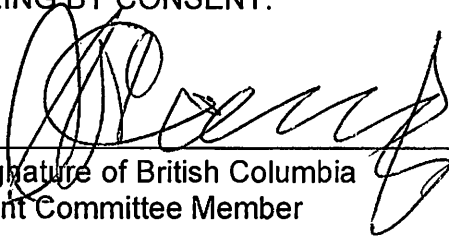
(collectively, the "Reports").

2. The assets of the Trust exceed the liabilities and therefore the Trust Fund is financially sufficient as at December 31, 2013 pursuant to section 10.01(1)(i) of the January 1, 1986 to July 1, 1990 Hepatitis C Settlement Agreement.

3. As at December 31, 2013, assets of the Trust exceed the liabilities, after taking into account an amount to protect the class members from major adverse experience or catastrophe, by an amount between \$236,341,000 to \$256,594,000.

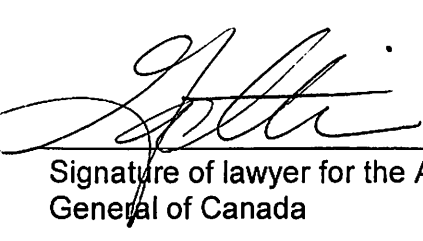
4. This order not be effective until similar orders have been made by the Superior Court of Québec and the Ontario Superior Court of Justice.

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



Signature of British Columbia
Joint Committee Member

J.J. Camp, Q.C.



Signature of lawyer for the Attorney
General of Canada

Andrea Gatti

SEE ATTACHED

Signature of lawyer for Her Majesty the
Queen in Right of the Province of British
Columbia

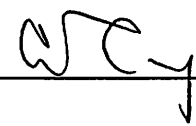
D. Clifton Prowse, Q.C.

SEE ATTACHED

Signature of British Columbia Fund
Counsel

Gordon J. Kehler


By the Court



Registrar

2. The assets of the Trust exceed the liabilities and therefore the Trust Fund is financially sufficient as at December 31, 2013 pursuant to section 10.01(1)(i) of the January 1, 1986 to July 1, 1990 Hepatitis C Settlement Agreement.

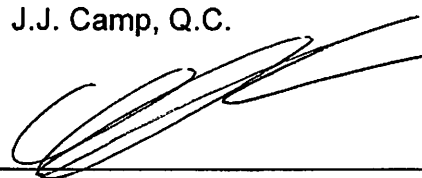
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Signature of British Columbia
Joint Committee Member

J.J. Camp, Q.C.



Signature of lawyer for Her Majesty the
Queen in Right of the Province of British
Columbia

D. Clifton Prowse, Q.C.

Signature of lawyer for the Attorney
General of Canada

Andrea Gatti

SEE ATTACHED

Signature of British Columbia Fund
Counsel

Gordon J. Kehler

2. The assets of the Trust exceed the liabilities and therefore the Trust Fund is financially sufficient as at December 31, 2013 pursuant to section 10.01(1)(i) of the January 1, 1986 to July 1, 1990 Hepatitis C Settlement Agreement.

3. As at December 31, 2013, assets of the Trust exceed the liabilities, after taking into account an amount to protect the class members from major adverse experience or catastrophe, by an amount between \$236,341,000 to \$256,594,000.

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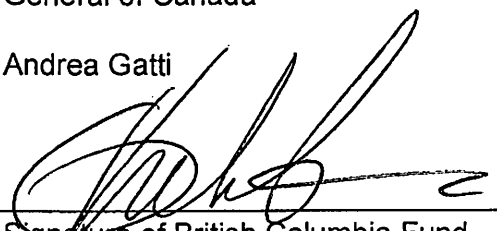
THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of British Columbia
Joint Committee Member

J.J. Camp, Q.C.

Signature of lawyer for the Attorney
General of Canada

Andrea Gatti



Signature of lawyer for Her Majesty the
Queen in Right of the Province of British
Columbia

D. Clifton Prowse, Q.C.

Signature of British Columbia Fund
Counsel

Gordon J. Kehler

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

ORDER MADE AFTER APPLICATION

CAMP FIORANTE MATTHEWS MOGERMAN
Barristers & Solicitors
#400 – 856 Homer Street
Vancouver, BC V6B 2W5

Tel: (604) 689-7555
Fax: (604) 689-7554
Email: service@cfmlawyers.ca

Aj:MB:Ke

*THE ATTACHED IS EXHIBIT "F" 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.

COUR SUPÉRIEURE

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE **MONTREAL**

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

DATE : 16 juillet 2015

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

500-06-000016-960

DOMINIQUE HONHON

Requérante

c.

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

Intimés

Et

ME MICHEL SAVONITTO, ès qualités de membre du Comité conjoint

REQUÉRANT

Et
FONDS D'AIDE AUX RECOURS COLLECTIFS
Et
LE CURATEUR PUBLIC DU QUÉBEC

Mis en cause

500-06-000016-960 - 500-06-000068-987

PAGE : 2

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

Requérant

c.

PROCUREUR GÉNÉRAL DU CANADA

et

PROCUREURE GÉNÉRALE DU QUÉBEC

et

SOCIÉTÉ CANADIENNE DE LA CROIX-ROUGE

Intimés

et

FONDS D'AIDE AUX RECOURS COLLECTIFS

et

LE CURATEUR PUBLIC DU QUÉBEC

Mis en cause

**JUGEMENT SUR LA REQUÊTE POUR DIRECTIVES PRÉSENTÉE PAR LE MEMBRE
DU COMITÉ CONJOINT AUX FINS DE RÉÉVALUER LES ASPECTS FINANCIERS
DU FONDS**

- [1] **ATTENDU QUE** le tribunal est saisi d'une *Requête pour directives présentée par le membre du comité conjoint aux fins de réévaluer les aspects financiers du fonds* présentée par Me Michel Savonitto, ès qualités de membre du Comité conjoint pour le Québec;
- [2] **CONSIDÉRANT** la requête et l'ensemble des pièces déposées devant le tribunal par les parties, notamment :

DATE DU DOCUMENT

- a) "Estimating the Prognosis of Canadians Infected with the Hepatitis C Virus through the Blood Supply 1986-1990, The Fifth Revision of Hepatitis C Prognostic Model Based on the Post-Transfusion Hepatitis C Compensation Claimant Cohort, Septembre 2014" préparé par Wendon Chen, Wilong Yi, Murray Wong et Murray Krahn, (le « **Rapport MMWG** ») et joint à l'affidavit du Dr. Murray Krahn;

16 mars 2015

500-06-000016-960 - 500-06-000068-987

PAGE : 3

- b) "Report of the Joint Committee Relating to the Financial Sufficiency of the 1986-1990 Hepatitis C Trust, as at December 31, 2010" préparé par le Comité conjoint; 16 mars 2015
- c) "Actuarial Report to the Joint Committee Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2013" préparé par Eckler Ltd (Richard Border et Wendy Harrison) et joint à l'affidavit de Richard Border; 11 mars 2015
- d) Affidavit détaillé de Dr. Vincent Bain et ses annexes; 11 mars 2015
- e) « Actuarial Report Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust Fund as at 31 December 2013 » préparé par Morneau Shepell et joint à l'affidavit de Peter Gorham; 8 avril 2015

(collectivement, les « Rapports »);

- [3] **CONSIDÉRANT** que le Comité conjoint et le Procureur général du Canada consentent au présent jugement et que les autres intimés ne prennent pas position ni ne contestent la requête;
- [4] **PAR CES MOTIFS, LE TRIBUNAL :**
- [5] **ACCUEILLE** la requête;
- [6] **DÉCLARE** que les Rapports ont été déposés conformément aux dispositions prévues à l'article 10.01(1)(i) du Règlement Relatif à l'Hépatite C 1986-1990;
- [7] **DÉCLARE** que les éléments d'actifs de la fiducie excèdent les obligations financières estimées de sorte que le Fonds en fiducie est financièrement suffisant à la date d'évaluation du 31 décembre 2013, selon les dispositions prévues à l'article 10.01(1)(i) du Règlement Relatif à l'Hépatite C 1986-1990;
- [8] **DÉCLARE** qu'après avoir pris en compte un montant pour protéger les membres d'une expérience majeure défavorable ou d'une catastrophe, les éléments d'actifs de la fiducie excèdent les obligations financières estimées d'un montant évalué entre 236 341 000 \$ et 256 594 000 \$ à la date du 31 décembre 2013;
- [9] **DÉCLARE** que le présent jugement ne prendra effet qu'au moment où des ordonnances similaires auront été rendues par la Cour supérieure de l'Ontario et la Cour Suprême de la Colombie-Britannique;

500-06-000016-960 - 500-06-000068-987

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[10] **LE TOUT** sans frais.

CHANTAL CORRIVEAU, j.c.s.

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

Me Nathalie Drouin
Me Pascale-Catherine Guay
Procureur général du Canada/Attorney general of Canada
Ministère de la Justice Canada
Pour le Procureur général du Canada

Me Manon Des Ormeaux
Bernard Roy (Justice-Québec)
Pour la Procureure générale du Québec

Me Philippe Dufort-Langlois
Me Mason Poplaw
McCarthy, Tétrault
Conseillers juridiques du Fonds

THE ATTACHED IS EXHIBIT "G" 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.

Court file # 98-CV-141369

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR. JUSTICE) MONDAY THE 15th DAY
)
PAUL PERELL) OF AUGUST, 2016

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,
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

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



2

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,
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 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

ORDER

THESE MOTIONS made by the Joint Committee by amended notice of motion dated April 1, 2016 and by the Attorney General of Canada by notice of motion dated January 29, 2016 in these actions and in *Endean v. The Canadian Red Cross Society et al.* Court File No. C965349 Vancouver Registry and in *Honhon v. The Attorney General of Canada et al.* Court File No. 500-06-000016-960 and *Page v. The Attorney General of Canada et al.* Court File No. 500-06-000068-987 District of Montreal for orders in respect of unallocated assets of the 1986-1990 Hepatitis C Trust Fund were heard on June 20th to June 22nd, 2016, at a special joint hearing of the Superior Court of Ontario, Supreme Court of British Columbia and Superior Court of Quebec (the “Courts”) at Toronto, Ontario,

ON READING the:

- (a) Affidavit of Heather Rumble Peterson sworn November 23, 1999, her Affidavit #5 sworn August 7, 2012, her Affidavit #9 sworn November 22, 2013 re-sworn May 3, 2016, her Affidavit #10 sworn November 25, 2013

- re-sworn May 3, 2016, her Affidavit sworn November 29, 2013, her Affidavit #13 sworn October 16, 2015, and her Affidavit #15 sworn April 1, 2016;
- (b) Affidavit of J.J. Camp made November 23, 1999, his Affidavit made June 28, 2007, and his Affidavit made May 12, 2014;
 - (c) Affidavit of R. Douglas Elliott sworn July 12, 1999;
 - (d) Affidavit of Bonnie A. Tough sworn November 25, 1999;
 - (e) Affidavit #23 of Sharon D. Matthews sworn January 14, 2010;
 - (f) Affidavit of Asvini Krishnamoorthy sworn May 10, 2016;
 - (g) Affidavit #4 of Richard Border made March 11, 2015 re-sworn May 9, 2016, his Affidavit #5 made October 14, 2015 re-sworn May 9, 2016, and his Affidavit #6 made March 31, 2016 re-sworn May 9, 2016;
 - (h) Affidavit #4 of Peter Gorham sworn April 8, 2015, and his Affidavits sworn January 29, 2016, and April 19, 2016;
 - (i) Affidavits #1 and 2 of Dr. Vince Bain sworn March 11, 2015, and March 31, 2016;
 - (j) Affidavit #4 of Dr. Murray Krahn sworn March 16, 2015 re-sworn May 4, 2016, and his Affidavit #5 sworn April 1, 2016 re-sworn May 4, 2016;
 - (k) Affidavits of Dr. Samuel S. Lee sworn January 26, 2016, and April 20, 2016;
 - (l) Affidavits #7, 8, 10 and 13 of Lise Carmichael-Yanish made November 22, 2013, November 26, 2013, December 9, 2013, and April 1, 2016;
 - (m) Affidavit #1 of Alan Melamud sworn October 15, 2015;

- (n) Affidavits #1 and 2 of Arnaud Sauvé-Dagenais sworn October 15, 2015, and April 1, 2016;
- (o) Affidavits #1, 2 and 3 of Shelley Woodrich affirmed October 16, 2015, April 1, 2016, and June 16, 2016;
- (p) Affidavit #1 of Chya R. Mogerman sworn October 16, 2015;
- (q) Affidavit #1 of Julie-Lynn Davis sworn April 1, 2016;
- (r) Factum/Submissions/Written Argument of the Joint Committee, and Appendix A thereto, and the Joint Committee's Book of Authorities,
- (s) Factum and Book of Authorities of the Attorney General of Canada for the motion to Allocate Excess Capital,
- (t) Submissions and Book of Authorities of the Defendant Her Majesty of the Queen in Right of the Province of British Columbia;
- (u) Factum and Book of Authorities of the Responding Party, Her Majesty the Queen in Right of Ontario;
- (v) Argumentation Écrite de L'intimée et Cahier des Autorités de la Procureure Générale du Québec;
- (w) Factum and Brief of Authorities of the Intervenors/Respondents;
- (x) Factum and Book of Authorities of the Objecting Class Member;
- (y) Factum/Submissions/Written Argument of Class Member 2213; and
- (z) Factum/Submissions/Written Argument of Class Member 7438

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

Counsel, counsel for Class Members 2213 and 7438, counsel for the objecting Class Member, and several Class Members in person and by video-link,

1. THIS COURT ORDERS AND DECLARES that additional assets of the 1986-1990 Hepatitis C Settlement Agreement Trust Fund are required to be allocated to meet ongoing liabilities and therefore the order of this Court, dated July 10, 2015, is varied such that the actuarially unallocated assets of the 1986-1990 Hepatitis C Settlement Agreement Trust Fund as at December 31, 2013 are restated to be in the amount of \$206,920,000 (the “**Excess Capital**”).

2. THIS COURT DECLARES that the restrictions on payments of amounts for loss of income payable under section 4.02(2)(b)(i) of the Transfused HCV Plan and the Hemophiliac HCV Plan (the “**Plans**”) and for loss of support under section 6.01(1) of the Plans, as previously varied by the Courts, are not varied or removed, in whole or in part, at this time.

3. THIS COURT ORDERS that the motion made by the Attorney General of Canada dated January 29, 2016 is dismissed.

4. THIS COURT ORDERS AND DECLARES that none of the payments allowed by this Order shall in any way modify or affect the financial obligations and the monthly payments of any of the Provincial and Territorial Governments under the 1986-

1990 Hepatitis C Settlement Agreement. Nothing in this Order shall amend the 1986-1990 Hepatitis C Settlement Agreement.

5. THIS COURT ORDERS AND DECLARES that a discrete HCV Late Claims Benefit Plan funded from Excess Capital, in the amount of \$32,450,000 plus administrative costs of \$51,000 and required capital in an amount to be agreed upon by the Joint Committee and the Attorney General of Canada or directed by the Court, be established for the benefit of Class Members (as that term is defined in section 1.01 of the Plans) unable to claim under the Plans because they did not apply prior to June 30, 2010 and are not eligible for the exceptions provided in the Plans and the existing court approved protocols pertaining thereto to provide benefits that are not better or different than the benefits provided to other Class Members who claim under the Plans, in accordance with terms which shall be prepared by the Joint Committee for approval by the Courts.

6. THIS COURT ORDERS that the sum of \$130,970,000 plus related administrative costs of \$61,000 and required capital in an amount to be agreed upon by the Joint Committee and the Attorney General of Canada or as directed by the Court is allocated for the following “**HCV Special Distribution Benefits**,” which shall be indexed to the 1st day of January of the year in which they are paid (using the Pension Index in the manner provided in section 7.02 of the Plans, except that for the purpose of these HCV Special Distribution Benefits the reference in the section to the year 1999 be

replaced with the year 2014) and paid as special distributions solely from the Excess Capital:

- (a) \$1,143.91 (8.5% of \$10,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 4.01(1)(a) of the Plans;
- (b) \$2,287.82 (8.5% of \$20,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 4.01(1)(b) of the Plans;
- (c) \$3,431.72 (8.5% of \$30,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 4.01(1)(c) of the Plans;
- (d) \$7,435.40 (8.5% of \$65,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 4.01(1)(d) of the Plans;
- (e) \$11,439.08 (8.5% of \$100,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 4.01(1)(e) of the Plans;
- (f) \$5,719.54 (8.5% of \$50,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 4.08(2) of the Hemophiliac HCV Plan;
- (g) \$5,719.54 (8.5% of \$50,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 5.01(1) of the Plans;

- (h) \$13,726.89 (8.5% of \$120,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 5.01(2) of the Plans;
- (i) \$8,236.14 (8.5% of \$72,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 5.01(4) of the Hemophiliac HCV Plan;
- (j) \$6,190.56 (\$4,600 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment to a Child 21 years or older under section 6.02(c) of the Plans;
- (k) \$6,190.56 (\$4,600 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment to a Parent under section 6.02(d) of the Plans;
- (l) an amount equivalent to 10% of loss of income payments made to any Class Member who has qualified or who hereafter qualifies under section 4.02(2) of the Plans, subject to a cap of \$20,000 per year for those years prior to 2014 and \$20,000 per year indexed for the years 2014 and following;
- (m) \$32.30 per week (2 hours per week at \$12 per hour in 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for loss of services payments based on the maximum hours permitted per week under sections 4.03(2) and 6.01(2) of the Plans;
- (n) up to an additional \$13,457.74 per year (\$10,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for costs of care compensation under section 4.04 of the Plans

for any costs of care incurred in excess of \$67,288.69 (\$50,000 per year in 1999 dollars adjusted to 2014 dollars);

- (o) \$200 (2014 dollars) for each occasion, after August 16, 2016, that a Family Member (as that term is defined in section 1.01 of the Plans) accompanies an HCV Infected Person to his or her medical appointment(s) seeking medical advice or treatment due to his or her HCV infection. For greater certainty, the payment shall be limited to \$200 per occasion irrespective of whether more than one Family Member is in attendance and irrespective of whether the attendance requires more than a single day.

7. THIS COURT ORDERS that each payment of HCV Special Distribution Benefits that is based upon a prior payment having been made to a Class Member be made by way of lump sum to the Class Member or such other legal representative as may be provided for by the standard operating procedures in place for the administration of the Plans, without the necessity of a further claim or request from the Class Member.

8. THIS COURT DECLARES that the recommendations made by the Joint Committee for payment of additional uninsured funeral expenses and for the elimination of certain deductions on loss of income calculations under the Plans are not approved.

9. THIS COURT DECLARES that the request for removal of the cap recommended by the Joint Committee on maximum income loss to be used to calculate

a pension loss benefit made by the objecting Class Member at the joint hearing is not approved.

10. THIS COURT DECLARES that the Joint Committee may apply to the Courts for consideration of special distribution benefits which address the circumstances of Class Members such as Class Members 2213 and 7438.

11. THIS COURT ORDERS that the costs associated with establishing and administering the payments allowed by this Order be paid solely from the Excess Capital allocated for HCV Special Distribution Benefits in accordance with paragraph 6 of this Order.

12. THIS COURT ORDERS that any Excess Capital not utilized to establish and administer the HCV Late Claims Benefit Plan provided for in paragraph 5 of this Order or not paid out as HCV Special Distribution Benefits and/or related administrative costs as provided for by paragraph 6 of this Order shall be retained in the Trust Fund, subject to the motions contemplated in paragraphs 5 and 10 of this Order or future motions made pursuant to the 1986-1990 Hepatitis C Settlement Agreement and/or the settlement approval orders of the Courts.

13. THIS COURT ORDERS that there shall be no costs of the motions, provided however that the \$60,562.22 expense for translation services and webcast video-conferencing of the joint hearings and the \$29,539.29 expense for the joint motion

record be paid one half by the Trust Fund and one half by the Attorney General of Canada.

14. THIS COURT ORDERS that the Joint Committee and counsel for the Attorney General of Canada shall discuss such changes as may be required to give effect to this Order. In the absence of agreement, any one of them may apply to the Court for directions. In the event a change is subsequently approved by the Court, any payment made or expense paid pursuant to this Order which is recorded in a manner inconsistent with the approved change shall be rectified so that it is accounted for in accordance with the approved change.

15. THIS COURT DECLARES that this Order shall take effect upon the date when the last judgment of the Quebec Superior Court or order of the Supreme Court of British Columbia, with no material differences, becomes final.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JAN 23 2017


PERELL J.

1441865

PER / PAR: CD.

PARSONS et al.
KREPPNER et al.

vs. THE CANADIAN RED CROSS SOCIETY et al.

Plaintiffs

Defendants

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

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT TORONTO

ORDER

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Windsor ON N9A 6V4

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PODREBARAC BARRISTERS
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Toronto, ON M5S 1S4

KATHRYN PODREBARAC
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Tel: 416.348.7502
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Lawyers for the Joint Committee

FILE: 44.901.002
REF: HRP/sw

*THE ATTACHED IS EXHIBIT "H" 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

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

ORDER MADE AFTER APPLICATION

BEFORE)	THE HONOURABLE)	16/Aug/2016
)	CHIEF JUSTICE HINKSON)	
))	
))	

THE APPLICATION of the Joint Committee (dated 16/October/2015 and amended 1/April/2016) and the Application of the Attorney General of Canada (dated 29/January/2015) coming on for hearing by video conference at the Courthouse, 800 Smithe Street, Vancouver, British Columbia on 20/June/2016 through 22/June/2016, before the Honourable Chief Justice Hinkson, who

- 2 -

presided over the hearing from Toronto, Ontario at a special joint hearing of the Superior Court of Ontario, Supreme Court of British Columbia, and Superior Court of Quebec (the "Courts").

AND ON hearing J.J. Camp, Q.C. Sharon D. Matthews, Q.C., Harvey Strosberg, Q.C., Heather Rumble Peterson, Kathryn Podrebarac, Michel Savonitto and Martine Trudeau, counsel for the Joint Committee; Mark Polley, counsel for the Objecting Class Member; William P. Dermody, counsel for Claimants 2213 and 7438; John Callaghan, Fund Counsel for Ontario, Gordon J. Kehler, Fund Counsel for British Columbia; Philippe Dufort-Langlois, Fund Counsel for Québec; Paul B. Vickery, John Spencer, William Knights, Nathalie Drouin, Stéphane Arcelin, Sarah-Dawn Norris, Matthew Sullivan and Nathalie Haman, counsel for the Attorney General of Canada; D. Clifton Prowse, Q.C. and Keith Johnston, counsel for Her Majesty the Queen in Right of the Province of British Columbia; Lise Favreau and Erin Rizok, counsel for Her Majesty the Queen in Right of Ontario; Manon Des Ormeaux, counsel for la Procureure générale du Québec; and Caroline Zayid and J. Michael Rosenberg, counsel for the provinces and territories other than British Columbia, Ontario and Québec;

AND ON READING the:

- (a) Affidavit of Heather Rumble Peterson sworn November 23, 1999, her Affidavit #5 sworn August 7, 2012, her Affidavit #9 sworn November 22, 2013 re-sworn May 3, 2016, her Affidavit #10 sworn November 25, 2013 re-sworn May 3, 2016, her Affidavit sworn November 29, 2013, her Affidavit #13 sworn October 16, 2015, and her Affidavit #15 sworn April 1, 2016;
- (b) Affidavit of J.J. Camp made November 23, 1999, his Affidavit made June 28, 2007, and his Affidavit made May 12, 2014;

- 3 -

- (c) Affidavit of R. Douglas Elliott sworn July 12, 1999;
- (d) Affidavit of Bonnie A. Tough sworn November 25, 1999;
- (e) Affidavit #23 of Sharon D. Matthews sworn January 14, 2010;
- (f) Affidavit of Asvini Krishnamoorthy sworn May 10, 2016;
- (g) Affidavit #4 of Richard Border made March 11, 2015 re-sworn May 9, 2016, his Affidavit #5 made October 14, 2015 re-sworn May 9, 2016, and his Affidavit #6 made March 31, 2016 re-sworn May 9, 2016;
- (h) Affidavit #4 of Peter Gorham sworn April 8, 2015, and his Affidavits sworn January 29, 2016, and April 19, 2016;
- (i) Affidavits #1 and 2 of Dr. Vince Bain sworn March 11, 2015, and March 31, 2016;
- (j) Affidavit #4 of Dr. Murray Krahn sworn March 16, 2015 re-sworn May 4, 2016, and his Affidavit #5 sworn April 1, 2016 re-sworn May 4, 2016;
- (k) Affidavits of Dr. Samuel S. Lee sworn January 26, 2016, and April 20, 2016;
- (l) Affidavits #7, 8, 10 and 13 of Lise Carmichael-Yanish made November 22, 2013, November 26, 2013, December 9, 2013, and April 1, 2016;
- (m) Affidavit #1 of Alan Melamud sworn October 15, 2015;
- (n) Affidavits #1 and 2 of Arnaud Sauvé-Dagenais sworn October 15, 2015, and April 1, 2016;
- (o) Affidavits #1, 2 and 3 of Shelley Woodrich affirmed October 16, 2015, April 1, 2016, and June 16, 2016;
- (p) Affidavit #1 of Chya R. Mogerma sworn October 16, 2015; and
- (q) Affidavit #1 of Julie-Lynn Davis sworn April 1, 2016;

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

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

THIS COURT ORDERS THAT:

1. Additional assets of the 1986-1990 Hepatitis C Settlement Agreement Trust Fund are required to be allocated to meet ongoing liabilities and therefore the order of this Court, dated July 23, 2015, is varied such that the actuarially unallocated assets of the 1986-1990 Hepatitis C Settlement Agreement Trust Fund as at December 31, 2013 are restated to be in the amount of \$206,920,000 (the "Excess Capital").
2. The restrictions on payments of amounts for loss of income payable under section 4.02(2)(b)(i) of the Transfused HCV Plan and the Hemophiliac HCV Plan (the "Plans") and for loss of support under section 6.01(1) of the Plans, as previously varied by the Courts, are not varied or removed, in whole or in part, at this time.
3. The application of the Attorney General of Canada (dated 29/January/2016) is dismissed.

4. None of the payments allowed by this Order shall in any way modify or affect the financial obligations and the monthly payments of any of the Provincial and Territorial Governments under the 1986-1990 Hepatitis C Settlement Agreement. Nothing in this Order shall amend the 1986-1990 Hepatitis C Settlement Agreement.
5. A discrete HCV Late Claims Benefit Plan funded from Excess Capital, in the amount of \$32,450,000 plus administrative costs of \$51,000 and required capital in an amount to be agreed upon by the Joint Committee and the Attorney General of Canada or directed by the court, be established for the benefit of Class Members (as that term is defined in section 1.01 of the Plans) unable to claim under the Plans because they did not apply prior to June 30, 2010 and are not eligible for the exceptions provided in the Plans and the existing court approved protocols pertaining thereto to provide benefits that are not better or different than the benefits provided to other Class Members, the terms of which shall be prepared by the Joint Committee for approval by the Courts.
6. The sum of \$130,970,000 plus related administrative costs of \$61,000 and required capital in an amount to be agreed upon by the Joint Committee and the Attorney General of Canada or as directed by the Court is allocated for "**HCV Special Distribution Benefits**," which shall be indexed to the 1st day of January of the year in which they are paid (using the Pension Index in the manner provided in section 7.02 of the Plans, except that for the purpose of these HCV Special Distribution Benefits the reference in the section to the year 1999 be replaced with the year 2014) and paid as special distributions solely from the Excess Capital:

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- (a) \$1,143.91 (8.5% of \$10,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 4.01(1)(a) of the Plans;
- (b) \$2,287.82 (8.5% of \$20,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 4.01(1)(b) of the Plans;
- (c) \$3,431.72 (8.5% of \$30,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 4.01(1)(c) of the Plans;
- (d) \$7,435.40 (8.5% of \$65,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 4.01(1)(d) of the Plans;
- (e) \$11,439.08 (8.5% of \$100,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 4.01(1)(e) of the Plans;
- (f) \$5,719.54 (8.5% of \$50,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 4.08(2) of the Hemophiliac HCV Plan;
- (g) \$5,719.54 (8.5% of \$50,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 5.01(1) of the Plans;

- 7 -

- (h) \$13,726.89 (8.5% of \$120,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 5.01(2) of the Plans;
- (i) \$8,236.14 (8.5% of \$72,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment under section 5.01(4) of the Hemophiliac HCV Plan;
- (j) \$6,190.56 (\$4,600 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment to a Child 21 years or older under section 6.02(c) of the Plans;
- (k) \$6,190.56 (\$4,600 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for the fixed payment to a Parent under section 6.02(d) of the Plans;
- (l) an amount equivalent to 10% of loss of income payments made to any Class Member who has qualified or who hereafter qualifies under section 4.02(2) of the Plans, subject to a cap of \$20,000 per year for those years prior to 2014 and \$20,000 per year indexed for the years 2014 and following;
- (m) \$32.30 per week (2 hours per week at \$12 per hour in 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for loss of services payments based on the maximum hours permitted per week under sections 4.03(2) and 6.01(2) of the Plans;

- 8 -

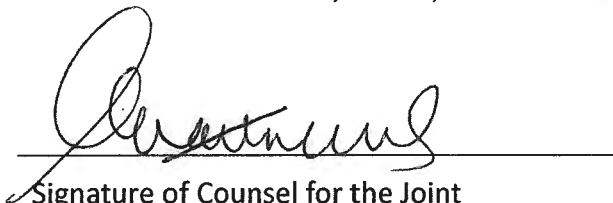
- (n) up to an additional \$13,457.74 per year (\$10,000 1999 dollars adjusted to 2014 dollars) for any Class Member who has qualified or who hereafter qualifies for costs of care compensation under section 4.04 of the Plans for any costs of care incurred in excess of \$67,288.69 per year (\$50,000 per year in 2014 dollars);
 - (o) \$200 (2014 dollars) for each occasion, after August 16, 2016, that a Family Member (as that term is defined in section 1.01 of the Plans) accompanies an HCV Infected Person to his or her medical appointment(s) seeking medical advice or treatment due to his or her HCV infection. For greater certainty, the payment shall be limited to \$200 per occasion irrespective of whether more than one Family Member is in attendance and irrespective of whether the attendance requires more than a single day.
7. Each payment of HCV Special Distribution Benefits that is based upon a prior payment having been made to a Class Member be made by way of lump sum to the Class Member or such other legal representative as may be provided for by the standard operating procedures in place for the administration of the Plans, without the necessity of a further claim or request from the Class Member.
8. The recommendations made by the Joint Committee for payment of additional uninsured funeral expenses and for the elimination of certain deductions on loss of income calculations under the Plans are not approved.

9. The request for removal of the cap recommended by the Joint Committee on maximum income loss to be used to calculate a pension loss benefit made by the objecting Class Member at the joint hearing is not approved.
10. The Joint Committee may apply to the Courts for consideration of special distribution benefits which address the circumstances of Class Members such as Class Members 2213 and 7438.
11. The costs associated with establishing and administering the payments allowed by this Order shall be paid solely from the Excess Capital allocated for HCV Special Distribution Benefits in accordance with paragraph 6 of this Order.
12. Any Excess Capital not utilized to establish and administer the HCV Late Claims Benefit Plan provided for in paragraph 5 of this Order or not paid out as HCV Special Distribution Benefits and/or related administrative costs as provided for by paragraph 6 of this Order shall be retained in the Trust Fund, subject to the motions contemplated in paragraphs 5 and 10 of this Order or future motions made pursuant to the 1986-1990 Hepatitis C Settlement Agreement and/or the settlement approval orders of the Courts.
13. There shall be no costs of the applications, provided however that the \$60,562.22 expense for translation services and webcast video-conferencing of the joint hearing and the \$29,539.29 expense for the joint motion record shall be paid one half by the Trust Fund and one half by the Attorney General of Canada.
14. The Joint Committee and counsel for the Attorney General of Canada shall discuss such changes as may be required to give effect to this Order. In the absence of agreement,

any one of them may apply to the Court for directions. In the event a change is subsequently approved by the Court, any payment made or expense paid pursuant to this Order which is recorded in a manner inconsistent with the approved change shall be rectified so that it is accounted for in accordance with the approved change.

- 15. This Order shall take effect upon the date when the last judgment of the Quebec Superior Court or order of the Ontario Superior Court of Justice, with no material differences, becomes final.

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



Signature of Counsel for the Joint Committee

SHARON MATTHEWS, Q.C.



Signature of lawyer for the Attorney General of Canada

SARAH-DAWN NORRIS

Signature of British Columbia Fund Counsel

GORDON J. KEHLER

Signature of lawyer for Her Majesty the Queen in Right of the Province of British Columbia

KEITH JOHNSTON


By the Court
Registrar

ENDORSEMENTS ATTACHED



- 10 -

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Signature of Counsel for the Joint
Committee

SHARON MATTHEWS, Q.C.

Signature of lawyer for the Attorney
General of Canada

SARAH-DAWN NORRIS

Signature of British Columbia Fund Counsel

for GORDON J. KEHLER

Signature of lawyer for Her Majesty the
Queen in Right of the Province of British
Columbia

KEITH JOHNSTON

By the Court

Registrar

ENDORSEMENTS ATTACHED

- 10 -

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

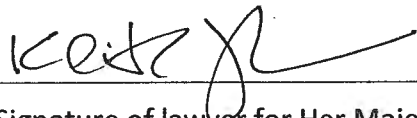
Signature of Counsel for the Joint
Committee

SHARON MATTHEWS, Q.C.

Signature of lawyer for the Attorney
General of Canada

SARAH-DAWN NORRIS

Signature of British Columbia Fund Counsel
GORDON J. KEHLER



Signature of lawyer for Her Majesty the
Queen in Right of the Province of British
Columbia

KEITH JOHNSTON

By the Court

Registrar

No. C965349
Vancouver Registry

In the Supreme Court of British Columbia

Between

Anita Endean, as representative plaintiff

Plaintiff

and

**The Canadian Red Cross Society,
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 MADE AFTER APPLICATION

CAMP FIORANTE MATTHEWS MOGERMAN
Barristers & Solicitors
#400 – 856 Homer Street
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Email: service@cfmlawyers.ca

Ag. McB. Ke

*THE ATTACHED IS EXHIBIT "1" 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.

SUPERIOR COURT

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

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

DATE: August 15, 2016

PRESENT: THE HONOURABLE CHANTAL CORRIVEAU J.S.C.

500-06-000016-960

DOMINIQUE HONHON

Petitioner

v.

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

Respondents

And

MTRE. MICHEL SAVONITTO, in his capacity as member of the Joint Committee
Petitioner

And

**FONDS D'AIDE AUX RECOURS COLLECTIFS
PUBLIC CURATOR OF QUÉBEC**

Impleaded parties

500-06-000068-987

DAVID PAGE

Petitioner

v.

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

Respondents

And

**FONDS D'AIDE AUX RECOURS COLLECTIFS
PUBLIC CURATOR OF QUÉBEC**

Impleaded parties

500-06-000016-960

500-06-000068-987

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JUDGMENT

[1] In 1999, the Court approved agreements settling the class actions commenced by the victims of blood tainted with the Hepatitis C virus between 1986 and 1990.¹ Compensation plans were established for the Class Members, one for transfused persons and one for persons with hemophilia.

[2] The Joint Committee, representing the Class Members, is asking the Court to allocate the excess capital to it; the federal government is also asking to benefit from the allocation. Large sums are involved, considered as excess capital by the parties' actuaries and thus not required for the payments anticipated under the compensation plans.

[3] The sum concerned is at least \$206 920 000.

[4] This file was a unique opportunity to bring together in one courtroom in Toronto the three judges responsible for these class actions, namely, Chief Justice Christopher Hinkson of the Supreme Court of British Columbia; Justice Paul Perell of the Ontario Superior Court of Justice, and the undersigned. The hearing took place over three days.²

[5] Though many attorneys made submissions before the bench of three judges, the hearing was video-linked and audio-linked³ to Montréal and Vancouver.

[6] The Court must decide:

- 1) What is the amount of excess capital?
- 2) If this amount is to be allocated, what amounts will go to which party?

[7] The Joint Committee asks the Court to allocate, under nine items of compensation, the amounts concerned by the excess capital, for a total of \$206 920 000.

¹ *Honhon c. Canada (Procureur général)*, 1999 CanLII 11813 (QC CS), [1999] J.Q. no 4370 (C.S.); *Page c. Canada (Procureur général)*, 1999 CanLII 11906 (QC CS); *Honhon c. Canada (Procureur général)*, 1999 CanLII 11242 (QC CS); *Page c. Canada (Procureur général)*, 1999 CanLII 12145 (QC CS); *Honhon c. Canada (Procureur général)* and *Page c. Canada (Procureur général)*, November 21, 2000, Judge Nicole Morneau, J.S.C.

² From June 20 to 23, 2016 at the Toronto Courthouse, the three judges discussed their views concerning this file prior to, during and following the hearing.

³ At the end of the afternoon of June 20, 2016, the video link to courtroom 15.04 in Montréal was not functional, but the audio link remained operational.

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500-06-000068-987

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[8] The federal government opposes any distribution, being of the opinion that the total amount of excess capital must be returned to it since the Fund is publicly funded. Alternatively, the federal government submitted that only certain types of claims may be allocated to the Class Members in so far as it is a matter of improving certain compensation provided for in the settlement agreements and not to create new items of compensation.

[9] In fact, according to the federal government, the courts do not have the power to rewrite or substantially amend the agreements negotiated by the parties and approved by the Court.

[10] The provincial and territorial representatives are not claiming any reimbursement or allocation of additional funds, in whole or in part, of the excess capital.

[11] Their contribution to the victim compensation fund follows a model distinct from that of the federal government. In fact, the provinces and territories did not contribute to the amounts being addressed herein.

[12] In addition, the provinces and territories are asking the Court to state that they will not be called upon to pay any additional contribution in connection with the claims of the members being addressed herein.

[13] Moreover, the provinces and territories support the federal government's arguments.

(1) What is the amount of the excess capital?

[14] Both parties are working in collaboration with actuaries: the Joint Committee with the firm Eckler Ltd. and the federal government with Morneau Shepell Inc.

[15] According to Eckler, the excess capital was \$236 341 000 on December 31, 2013.

[16] According to Morneau Shepell, the excess capital was, instead, \$256 549 000 on the same date.

[17] These calculations were made by evaluating all the amounts to be paid to the benefit of the Class Members as well as all the ensuing administrative costs (accountant, attorneys, managers, advisors, etc.) up until the end of the Plan, that is, 80 years following implementation of the agreements.

500-06-000016-960

500-06-000068-987

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[18] In the summer of 2015,⁴ the three courts rendered orders according to which the amount of excess capital on December 31, 2013 had a value of between \$236 341 000 and \$256 594 000.

[19] At the hearing, a number of parties present pleaded in favour of a conservative approach in order to not jeopardize the sufficiency of funds so as to be able to respect the agreements and compensate the members.

[20] Shortly before the hearing, the Joint Committee re-evaluated the amount of the excess capital and lowered it to \$206 920 000.

[21] This re-evaluation was in connection with a disagreement concerning the reclassification of persons. We will now address it.

- Reclassification of certain victims from level 2 to level 3

[22] According to the medical protocol adopted by the courts in the framework of the settlement agreements, the program Administrator uses a table for the purpose of determining a claimant's level of qualification. There are six levels, based on the progression of the illness, going from a person infected with the virus at level 1, up to level 6 for a person requiring a liver transplant.

[23] This means that for a person to reach level 3, he or she must be qualified to receive a compensable drug therapy for HCV. According to the agreements concluded in 1999, compensable drug therapy means Interferon or Ribavirin alone or in combination or any other treatment causing undesirable side effects and that had been approved by the courts for reimbursement purposes.

[24] Section 4.01(1)(c) of the agreements provides that a lump sum of \$30 000 is payable to Level 3 Class Members should any of the following situations arise:

. . . 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;

[Emphasis added.]

[25] A protocol was developed by the Joint Committee in consultation with medical experts and approved by the courts. It contains rules for the Administrator to follow

⁴ *Jugement sur la requête pour directives présentée par le membre du comité conjoint aux fins de réévaluer les aspects financiers du Fonds* dated July 16, 2015 of the undersigned. The decision of Ontario Superior Court Justice Paul Perrell bears the date July 10, 2015 and that of Chief Justice of the Supreme Court of British Columbia, July 23, 2015.

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concerning the evidence required to establish the different levels of illness for the approval of a claim, including level 3.

[26] The court-approved protocol provides for three situations where HCV drug therapy satisfies the eligibility criteria at level 3 of the disease:

(1) have received Compensable HCV Drug Therapy;

(2) by meeting the conditions of a protocol for Compensable HCV Drug Therapy founded on medical criteria;

(3) by obtaining a medical confirmation that the person meets the conditions of a protocol for Compensable HCV Drug Therapy. The person does not have to have received the drug nor does the treatment have to have been recommended. This complies with the terms of the Settlement Agreement.

[27] However, a new generation of medications designated as DAA appeared first in 2011 then in 2014. We will be returning to that matter. For the subject at hand, it is of note that these new drugs contain neither Interferon nor Ribavirin. Certain patients can receive DAA without having to also take Interferon or Ribavirin.

[28] The Joint Committee is seeking a declaration to the effect that a recommendation to take this new drug must be recognized by the courts. The consequence of this would be to see some patients reclassified to level 2 or 3.

[29] The Court holds the opinion that the evolution of medical treatments as a result of the availability of new drugs whose composition is different than what was anticipated in 1999, taking into account the scientific data of that time, cannot be an obstacle to integrating this new reality into a model of chosen compensation. It is not a matter of changing the agreements but of evaluating them in light of the new medical discoveries.

[30] The Court concludes that there is a need to confirm that the sum of \$30 M must be excluded from the allocation of the excess capital being addressed here. In addition, the Arbitrator must consequently compensate the victims who are eligible for this new medication by reclassifying them from level 2 to level 3.

[31] The Court therefore declares that the excess capital amount be established at \$206 920 000.

(2) Must there be a distribution of the excess capital and, if so, what amounts will go to which party?

[32] Before answering the question, the agreements and the judgments must be reviewed, then the different criteria examined. The Court will then re-examine each claim for which the Joint Committee has made a recommendation and dispose of it accordingly. To conclude, certain specific questions were raised concerning Class Members.

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OVERVIEW OF PREVIOUS JUDGMENTS

[33] In 1998, the FTP⁵ (federal, provincial and territorial) Governments publicly announced their intention to compensate victims of Hepatitis C from 1986 to 1990 in an effort to settle the different class actions.

[34] They offered victims a maximum of \$1 118 000 000.

[35] The counsel of all the parties succeeded in developing a complex distribution model for compensating the primarily-infected and secondarily-infected (family members, spouses, children, parents) victims under a number of items of compensation and according to the level of evolution of the illness of the infected person.

[36] Central to the negotiations is the matter of knowing which party must bear the consequences of an insufficiency of funds before the end of the implementation of the agreements, specifically, at the end of 80 years.

[37] The sufficiency of funds is a major concern for the Joint Committee. As well, the FPT Governments do not want to be called on to contribute more, should there be insufficient funds.

[38] The federal government undertook, from the outset, to isolate under its control 8/11ths of the amount of \$1 118 000 000. The amount offered in settlement was to guarantee a return on investment equivalent to that of long-term bonds of the Government of Canada.

[39] In concluding the discussions, the parties instead agreed that the federal government's portion of the monies be put into a Trust Fund ("**the Fund**") to be invested and managed by professionals independent of the parties.

[40] The agreements also provide that the provincial and territorial governments must pay their share as the need arises.

[41] Lastly, according to Section 12.03, it is anticipated that at the end of the agreements, 80 years later, any residue will be remitted to the governments in proportion to their contribution. It is expressly mentioned that the Fund is set up for the benefit of the members, but that it does not belong to them.

[42] On September 21, 1999, Nicole Morneau J. was the first of the three judges to give effect to the agreements submitted in Québec.⁶ Her judgment, according to the terms of the agreements, became effective once the judgments of the judges of Ontario and British Columbia were rendered, provided that they incorporated essentially the same terms.

⁵ It may be recalled that this announcement was made in the context of the defendant, the Canadian Red Cross Society, being placed under the protection of the courts under the *Companies' Creditors Arrangement Act*, RSC (1985) c. C-36.

⁶ 1999 CanLII 11813 (QC CS).

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[43] On September 22, 1999, Warren K. Winkler J. of the Ontario Superior Court of Justice⁷ approved the agreements on a temporary basis, provided that three questions be addressed to his satisfaction before pronouncing the final approval order.

[44] In paragraphs 115 and following, Winkler J. summarizes the objection raised by the Hepatitis C Society of Canada concerning the reversion of a surplus to the defendants. According to the objector, it appears unfair for any surplus to revert in its entirety to the governments.

[45] In addition, at that time, there was no thought given to a surplus, as the most probable scenario was that of fund insufficiency, with the deficit evaluated at \$58 M.⁸

[46] Given the fear of deficit, holdbacks with regard to certain items of compensation were planned in order to optimize the payment of minimum compensation. Certain awards were thus partially compensated, with the remainder to be paid later, if the sufficiency of funds so allowed.

[47] Also, there was the possibility of eventually raising the income cap of \$75,000, if the Fund's resources proved sufficient.

[48] Winkler J. then asks whether, in the context of the Agreement, it was appropriate for the full amount of an eventual residue be paid to the defendants.⁹

[49] The judge recognizes that a settlement is never perfect, despite the variable compensation provided for according to the different levels of recipients:

122 (...) It is therefore in keeping with the nature of the settlement and in the interests of consistency and fairness that some portion of a surplus may be applied to benefit class members.

[50] In the case of a surplus, the Administrator of the Fund must make a recommendation to be approved by the courts.¹⁰

[51] Winkler J. concludes in saying that three elements of the agreements must be modified for the latter to be approved:

- (1) the benefits provided from the Fund for an opt-out claimant cannot exceed those available to a similarly injured class member who remains in the class;
- (2) the surplus provision must be altered [TRANSLATION] to permit an allocation to the parties or to the benefit of the victims;

⁷ *Parsons v. Canadian Red Cross Society*, [1999] O.J. No. 3572.

⁸ *Idem.* at paras.117 and 131.

⁹ *Idem.* at para. 121.

¹⁰ *Idem.* at para. 124.

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(3) [. . .] a sub-class must be created.¹¹

[52] Lastly, his paragraph 133 deserves to be cited in full in order to understand the parameters of the agreements to be approved:

133 The victims of the blood tragedy in Canada cannot be made whole by this settlement. No one can undo what has been done. This court is constrained in these settlement approval proceedings by its jurisdiction and the legal framework in which these proceedings are conducted. Thus, the settlement must be reviewed from the standpoint of its fairness, reasonableness and whether it is in the best interests of the class as a whole. The global settlement, its framework and the distribution of money within it, as well the adequacy of the funding to produce the specified benefits, with the modifications suggested in these reasons, are fair and reasonable. There are no absolutes for purposes of comparison, nor are there any assurances that the scheme will produce a perfect solution for each individual. However, perfection is not the legal standard to be applied nor could it be achieved in crafting a settlement of this nature. All of these points considered, the settlement, with the required modifications, is in the best interests of the class as a whole.

[53] Shortly afterward, Smith J. of British Columbia echoed the comments of Winkler J., with which he agrees¹² and integrates into his judgment the amendments requested by Winkler J.

[54] For Smith J., the parties had agreed to distribute among the Class Members the possible awards for damages, based on the availability of the predetermined funds, and not the opposite. In addition, he pointed out that it is the members who bear the risk of fund insufficiency.

[55] The negotiations then resumed between the parties and the agreements were amended through additions.

[56] The counsel for the parties and intervenors together prepared draft judgments to respond to the courts' concerns, which specifically amend the Settlement Agreement as follows:

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:

¹¹ *Idem*, at para. 129.

¹² *Endean v. Canadian Red Cross Society*, 1999 CanLII 6357 (BC SC), [1999] B.C.J. No. 2180.

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(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;

[57] Winkler J. approved the amended agreements and signed the approval order for Ontario and the other intervening provinces and territories. His judgment is dated October 22, 1999.

[58] On October 28, 1999, Smith J. of British Columbia approved a similar agreement, the above-cited provision of which is found in paragraph 5(b).

[59] Morneau J. rendered a similar order in her text and its effects while approving, through her judgment of November 19, 1999, Schedule F, Amendment No. 1 of the Agreement, approved earlier on September 21, 1999. Below is the addition to her initial judgment cited in full:

10. Paragraph p.1) of Section 10.01 (1) provides the following:

"10.01 (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:

[. . .]

p.1) In their unfettered discretion, the Courts may order, from time to time, at the request of any Party or of the Joint Committee, that all or any portion of the money and other assets that are held by the Trustee pursuant to the Settlement Agreement and are actuarially unallocated be:

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(i) allocated for the benefit of the Class Members and / or to the Family Class Members in the Class Actions;

(ii) allocated in any manner that may reasonably be expected to benefit the 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 light of all the circumstances provided that in distribution there shall be no discrimination based upon where the Class Members received Blood or based upon where that Class Member resides;

[TRANSLATION]

According to the aforementioned approval orders, the courts may consider in their unfettered discretion certain factors.

[60] The orders in Ontario and in British Columbia as well as Schedule F added to the Settlement Agreement in Québec ("**the Approval Orders**") lists 10 factors that the courts may consider in exercising the unfettered discretion conferred on them, but are not bound to consider: in the unfettered discretion conferred to them under paragraph 9(b) [5(b) in the approval judgment of British Columbia and Schedule F, para. 1, p. 2) in Québec], the courts may consider, in particular and without being bound by any of them, the following factors:

(i) the number of Class Members and Family Class Members;

(ii) the experience of the Trust Fund;

(iii) the fact that the compensation provided under the Plans may not reflect, in certain cases, extra-contractual liability models;

(iv) [TRANSLATION] section 26 (10) of the Act [s. 35(5) of the British Columbia *Class Proceedings Act*, and art. 1036 of the *Code of Civil Procedure of Québec*];

(v) whether the integrity of the Settlement Agreement will be maintained and the benefits particularized in the Plans ensured;

(vi) whether the progress of the disease is significantly different from the medical model used in the Eckler actuarial report;

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(vii) the fact that Class Members and Family Class Members bear the risk of insufficiency of the Trust Fund;

(viii) the fact that the contributions of the FPT Governments pursuant to the Settlement Agreement are capped;

(ix) the source of the money and other assets which comprise the Trust Fund;

(x) any other fact the Courts consider material.

ANALYSIS

[61] Do the courts have the authority or the power to assign to the Class Members, in whole or in part, excess capital allocations?

[62] According to the Joint Committee, the judgments having approved the agreements that are effective and bind the parties are those rendered at the conclusion of the second round of agreement negotiations.

[63] The power of the Court stems from the agreements and amendments to them approved by judgments. The latter are the initial judgments combined with the final judgments and they form a whole.

[64] These judgments give the courts authority to allocate the capital surplus to the victims.

[65] The federal government, supported by the provincial and territorial governments PTG, is opposed to any such allocation.

[66] In the first place, the governments point out that when the first agreement was approved, at a time when no thought was given to allocating excess capital, the Joint Committee contended that the agreements were fair, reasonable and benefited Class Members. In addition, although the compensation model was not based on the classic compensation approach, the proposed sums are beneficial and similar to what the victims would have received had the compensation plan been followed.

[67] The FPT Governments also argue that the requests of the Joint Committee result in over compensation¹³ of the Class Members with respect to what the parties had negotiated.

[68] Consequently, they advocate that all the surplus amounts be reimbursed to the federal government, which is the party that provided the funds.

[69] The model retained divided into items of compensation is not a compensation model given that it is based on a classification of compensation according to the level of

¹³ In English, counsel uses the expression "overcompensation".

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disease afflicting the members. As the disease progresses, the model makes it possible to receive additional compensation. It enables members infected from 1986-1990 whose symptoms appeared after the conclusion of agreements, to make a claim from the compensation plan provided that the claim is made within three years of the diagnosis.

[70] Within the framework of the motion for approval of the agreements and applications for approval of counsel fees, counsel found that the agreements presented are fair and reasonable. It was thus emphasized that Class Members did not have to demonstrate the fault of the governments, which were reproached for the lack of rigour in requiring that the societies administrating blood banks conduct screening tests, despite the scientific knowledge and what had taken place in United States.

[71] One of the major unknowns during the negotiations, when the agreements were approved and even now, is the number of persons to compensate. The initial estimate was that the class would have 22 000 Members. Then, when the agreements were concluded it appears that a total of about 8000 Class Members better reflected the reality.

[72] With the number of victims being a very important variable, the compensation model was established by dividing up the amounts available among the potential victims.

[73] Initially, there were fears of a deficit that would make it impossible to compensate the Class Members by paying the full amount of the compensation permitted (which would have penalized the youngest victims and the more recent claimants joining the class later, as the funds would be depleted). Winkler J. was the first to realize, followed by Smith J., then Morneau J., that should there be a surplus of funds, that is, funds not required for the full compensation of the Class Members, a review would have to be conducted, based on past experience, to determine to whom and in what portion the surplus may be allocated.

[74] The agreements provide, in compliance with the jurisprudence, that in weighing a series of criteria to resolve this matter (and, consequently, any other criterion that the Court deems must apply), the courts must refrain from substantially modifying the terms of the agreements, despite exercising their unfettered discretion.

[75] The Court must therefore exercise its discretion in a manner that is fair to and reasonable for all the parties involved. This may require that it weigh different criteria. Indeed, the Court is not bound by the criteria set out in the agreements and may even eliminate or add criteria. The onus is on the Court to assess the weight of the criteria set out.

[76] Needless to say, this assessment must take into account the agreements, the context, the parties' intentions and the reality as illustrated by the application of the agreements from 1999 to 2013 as well as the reasonably foreseeable prospects with regard to the future, up to the end of the agreements.

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[77] In the opinion of the Court, the analysis of the factors to consider and the specifics of the requests made may lead to an additional distribution of benefits being awarded to the Class Members.

[78] Is it nonetheless possible to speak of overcompensation? In listening to the tragic accounts of the Class Members who wanted to speak before the Court and in reading the numerous testimonies of the Class Members who put their stories into writing or those whose statements were reported in the affidavits made following the country-wide consultation meetings of the Class Members in the summer of 2015, it is questionable or difficult to speak of overcompensation.

[79] As Winkler J. notes in his decision,¹⁴ no compensation will ever be adequate for the victims of Hepatitis C who, it should be remembered, are all innocent victims. Similarly, after an infected family member dies, the secondarily-infected victims continue to suffer.

[80] Nonetheless, the Court understands that it must not be driven by compassion, but must take into account all the circumstances of this sad affair in deciding what is fair and reasonable, so as to abide by the legal principles.

[81] We will now analyze the criteria offered to the Court for its consideration, and will then review the Joint Committee's requests, evaluating them one by one.

Criterion (1) The number of Class Members and Family Class Members

[82] According to the information compiled in the file, on December 31, 2013, 5283 Class Members infected with HCV had either been approved, had transmitted a claim or were considered approved.¹⁵ Of them, 1585 had already died (959 because of HCV); 240 of infected persons who were still living had already developed cirrhosis and 121 of the persons deceased had progressed to the cirrhosis stage when they died; and 137 of the infected persons still living had already progressed to level 6 of the disease. Among the deceased persons, 467 had reached level 6 of the disease when they died.¹⁶

[83] Some 390 claims were also being processed on September 30, 2015 including 265 claims from persons infected, that is, 207 primarily-infected and transfused persons, 29 primarily-infected hemophiliacs and 29 secondarily-infected persons, in addition to 125 claims from family members. Among the claims being processed from infected persons, 23 persons died before January 1, 1999, 87 died after January 1, 1999, and 155 were still living on September 2015.¹⁷

¹⁴ *Supra* (Winkler), note 7, at para. 133.

¹⁵ According to the original estimate, there should be 9825 victims, that is, 8180 transfused victims and 1645 hemophiliacs.

¹⁶ *Mémoire du comité conjoint*, at para. 61.

¹⁷ *Idem*, at para. 62.

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[84] The ultimate size of the entire group of primarily-infected and secondarily-infected victims remains unknown. Though the risk of under-evaluating the number of Class Members to come is low, it still remains, since there is no way of being certain. The actuaries take it into account by applying, for that purpose, a reserve of the capital required. If the number of victims is wrong, the financial impact is \$5 300 000 for every 25 persons who are added to the Class Members.

[85] The FPT Governments rely heavily on a lower than anticipated number of recognized members, to argue that the contribution of \$1 118 000 000 was too high from the outset.

[86] The FPT Governments believe that the lower number of claimants substantiates their request for reimbursement in their favour. In examining the compensation model based on a distribution among the members according to the level of severity of affliction with the virus, they conclude that fewer claimants means that the surplus must be returned to them.

[87] The Court sees the lower number of claimants as pointing to significant excess capital.

[88] Furthermore, the phenomenon of late claims, which will be addressed below, must certainly not be overlooked. There are 246 persons who made a claim after the deadline and who could perhaps have been included in the Class Members. Since December 31, 2013, the Joint Committee has evaluated an average of 24 persons per year submitting a claim for the first time.

[89] One of the explanations given by the claimants in their oral, written or reported statements has to do with the complexity of the process.

[90] Persons afflicted with the Hepatitis C virus all suffer varying degrees of fatigue and lack of concentration depending on the stage of the disease. A number of people also express great difficulty completing the claims process. For some, the many questionnaires and the medical proof required represent an insurmountable obstacle.

[91] That is one factor among others that can explain the fewer than anticipated number of claims.

Criterion (2) The experience of the Fund

[92] The Fund is administered by independent managers. The sums paid by the federal government are invested in order to make the Fund grow for the benefit of the Class Members. The monies do not belong to the latter. The program administration costs are taken from the Fund itself.

[93] The costs that have accumulated since the beginning are close to \$39 M.¹⁸

¹⁸ Affidavit of Heather Rumble Peterson sworn April 1, 2016.

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[94] Each party claims that the Fund surplus is to be allocated to it alone. The Joint Committee contends that the Class members are financing the aforementioned supervision costs since they are taken from the Fund.

[95] The Fund is an autonomous entity established for the benefit of the Class Members. Administration costs are inherent. Indeed, without a manager or supervision, the Fund would run the risk of going into deficit.

[96] Lastly, the federal government claims that the surplus is the result of its initial contribution. That is perhaps part of the answer. However, it must be remembered that had the Fund invested its assets in Treasury bills, as the governments had intended, instead of having a surplus on December 31, 2013, it would have had, according to the actuaries, an actuarial deficit of \$348 M.¹⁹

[97] What is more, the fact that the governments agreed not to collect taxes on the sums invested in the Fund needs to be taken into account. That element adds a value of \$357 953 000 to the Fund's profitability²⁰ because that sum would otherwise have been deducted.

[98] Based on these elements, the Court finds that this criterion is not decisive to the position of any of the parties.

Criterion (3) The progression of the disease

[99] In evaluating this criterion, the Court is invited to compare the medical model considered in 1999 to establish the method of compensation with the information known today. This involves taking into account the Class Members' levels of the disease and the anticipated and actual progression of the disease.

[100] The initial model was based on the medical knowledge of the time. There is no way of accurately predicting how the illness would have progressed for individual Class Members.

[101] Over time and through triennial actuarial reviews, it was possible to evaluate the data relative to the Class Members. These analyses, in light of the Class Members' experiences and advances in science, provided a means by which to re-evaluate financial needs to ensure payment of compensation in accordance with the agreements.

[102] According to the summary table prepared by the actuarial firm Eckler, it can be seen that the variances between deficits and surpluses varied greatly.

¹⁹ Affidavit of Peter Gorham, sworn January 29, 2016, vol. 6, Tab 26, Exhibit B, at paras. 83-87, at 2324-2325.

²⁰ Factum AG Canada at para. 35; Affidavit of Peter Gorham, sworn January 29, 2016, Exhibit A, at para. 77, vol. 6, Tab. 26, at 2323.

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[103] The medical model used gradually became based on Class Member data. One of the consequences of incorporating this information was the variance in the actuarial results according to which:²¹

[TRANSLATION]

- (a) from the settlement approval date to 2001, the actuarial results deteriorated by \$84 M (the financial obligations having increased);²²
- (b) from 2001 to 2004, the actuarial results improved by \$5 M;
- (c) from 2004 to 2007, the actuarial results deteriorated by \$44 M;
- (d) from 2007 to 2010, the actuarial results deteriorated by \$62 M;
- (e) from 2010 to 2013, the actuarial results improved by \$305 M, reduced by \$146 M in processing costs.

[104] Returning to the matter of disease progression in connection with the level of excess capital, paragraphs 94 and following of the Joint Committee's factum describe in detail the extent of the damage caused by the Hepatitis C virus, the treatments developed and the consequences and side effects.

[105] In short and without doing justice to the disease's impact on its victims, we concur with the following.

[106] Hepatitis C is an inflammation of the liver. In 75% of cases, it is a chronic, progressive disease that is life-threatening, with or without treatment.

[107] 25% of victims may clear Hepatitis C spontaneously in the first 12 months from its appearance. Beyond that period, it very rarely disappears.

[108] In the case of a chronic infection, the inflammation of the liver can lead to cirrhosis of the liver, for which a transplant may be required. Nonetheless, some persons do not survive. Hepatocellular carcinoma is one of the known consequences.

[109] As regards the disease's effects, even at its most benign stage, Hepatitis C results in present and lasting fatigue, concentration difficulties, depression and anxiety.

[110] Hepatitis C is treated using an anti-viral treatment.

²¹ *Mémoire du comité conjoint*, at para. 73.

²² Following changes to the medical model combined with other experiences of gains and losses.

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[111] Up until 2011, the principle forms of anti-viral treatments were monotherapy using Interferon by injection or a combination of Interferon and Ribarivin, either by injection and/or tablets. The latter is associated with very significant side effects.²³

[112] In 2011, a new medication, DAA, which could be taken with Interferon and Ribavirin, appeared. Its side effects, which were very serious, persisted and the trials of the new drug were stopped.

[113] In 2014, a new generation of the DAA medication was introduced, being markedly more promising both with respect to the real possibility of it leading to the disease disappearing (or at least stopping it from progressing) and to a significant reduction in side effects.

[114] According to the federal government's expert, the new medication can lead to a full recovery.

[115] The Joint Committee medical expert has indicated that the symptoms of fatigue, headache, insomnia, etc. continue to be experienced. It also contends that while the 2014 DAA is very promising, the suffering that persons afflicted with the disease for 20 or 25 years have endured remains significant.

[116] Lastly, it should be noted that, in evaluating the surplus at December 31, 2013, the two expert actuaries took into consideration the DAA medications that had been approved up to 2014.

[117] With the new generation of DAA having fewer side effects, there is growing hope for an improved quality of life for the victims of Hepatitis C.

[118] However, in the opinion of the two medical experts, despite a recovery from the disease for some, the victims remain at risk.

[119] Where the progression of the disease and the treatments offered are concerned, the Court finds that the development of new medications has given patients access to promising therapies. This finding constitutes significant dissimilarities from the medical model contemplated in 1999.

[120] Note that the most recent generation of DAA has not yet been approved by Health Canada; however, the experts consulted are of the opinion that it should be approved before the end of the current year.

[121] The progress made with respect to the medication offered is certainly favourable for the victims. That said, it must be acknowledged that these new medications do not erase all the consequences of having lived with the disease for a number of decades.

²³ The duration of the treatment is 48 weeks. A number of victims described in their oral and written testimony their state of complete incapacitation during the entire period. Some victims abandoned the treatment before completing it, as the side effects were too hard on them.

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[122] Inflammation of the liver, a major organ of the human body, is a serious condition that leaves its mark, despite the prospect of recovery.

Criterion (4) The fact that the compensation provided for in the Plans may not, in some cases, reflect the rules of indemnification in extra-contractual matters

[123] The federal government contends that according to the terms of the agreements and given the structure of the Plans, victims must not be over-compensated. The categories have been established so as to be able to address the progression of the disease when the infected person sees his or her medical condition deteriorate.

[124] If a single payment had been attributed by judgment, it would not have been possible to make adjustments thereafter.

[125] One characteristic of Hepatitis C is its ability to progress after a long period of latency.

[126] Morneau J. recognized in her judgment approving the agreements that, in comparison with the application of article 1615 C.C.Q., the provision enables a victim to claim increased compensation in the three years following an award for damages for bodily injury paid in accordance with a judgment.

[127] The compensation model based on the six levels of progression of the disease that enables victims to make a claim in relation with the stage presented, throughout the term of the agreements, is clearly favourable to the victims.

[128] We are thus moving away from the compensation model stemming from the extra-contractual compensation plan.

[129] The federal government therefore finds that it would be inappropriate to reopen the terms of the agreements, as doing so would result in overcompensation if the Court followed the Joint Committee's recommendations.

[130] The federal government holds the opinion that when the Class Members agreed to sign releases in exchange for their participation in the plans, they forfeited their right to again claim compensation.

[131] We already addressed this point in a previous section and given the full text of the agreements, such a reconsideration is possible where there is a surplus, despite the releases. The latter cannot nullify an allocation of the excess capital to a party who so requests.

[132] The Court, in its analysis of the claims of the Joint Committee, is aware that no new agreement or overcompensation must result from it.

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Criterion (5) Article 1036 C.C.P.

[133] This article applies where the distribution of compensation under a class action was effected and a balance remains. The parties hold the opinion, as does the Court, that this is not such a situation, since this is not a balance as provided for in article 597 C.C.P. currently in force.²⁴

Criterion (6) Maintaining the integrity of the Agreement and the payment of the compensation provided for under the insured plan

[134] Maintaining the integrity of the Agreement is central to the present judgment.

[135] The Court's power is limited to deciding what is to become of the excess capital, established after taking into account the payment of the total compensation provided for in the Plans, to which is added a contingency reserve based on estimated catastrophic scenarios to be remedied in the future.

Criteria (7) and (8) The fact that the FPT Governments' contributions are limited and that the Class Members and Family Class Members bear the risk of the Fund being insufficient

[136] These elements are central to the agreements concluded. Both parties have acknowledged in their factum and arguments that these are essential conditions of the settlement. The FPT Governments refuse to be forced to pay more to the victims if the funds should be insufficient. Initially, it had been anticipated that the Fund would be insufficient. The victims were aware of the fact and nonetheless accepted the agreements.

[137] It is precisely by measuring the impact of the contribution limit and Section 12.03 of the Settlement Agreement, by which any remaining assets of the Fund upon termination of the agreements (after 80 years) would be returned to the FPT Governments, that the agreements were amended.

[138] It was in analyzing the vision of a surplus, which was unlikely in 1999, that Winkler J. responded favourably to the argument of the Hepatitis C Society of Canada in order to invite the parties to renegotiate this element. It resulted in the remedy that now affords the Court the authority to undertake this exercise.

Criterion (9) The source of the Fund and other elements of assets

[139] The federal government states that the excess capital is proof that its contribution to the Fund was excessive.

²⁴ The new article 597 C.C.P. replacing former article 1036 C.C.P. is to the same effect.

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[140] For the Court, just as the Class Members bore the risk of the funds being insufficient, the FPT Governments, in deciding that the total compensation was \$1 118 000 000, took the risk of excess contributions.

[141] The provision states that at the end of the implementation of the agreements, any surplus is to be reverted to the governments having contributed. The judgment that approved the amended agreements provides for the possibility of remitting excess capital in whole or in part to the Class Members and FPT Governments during the implementation of the agreements.

[142] Therefore, had there been no amendment, the governments would have been required to wait until the agreements expired, after 80 years, before recovering a portion of the amounts invested.

[143] The FPT Governments negotiated and agreed to this possibility. The said amounts and terms and conditions are to be determined by the courts.

[144] Undoubtedly, the fact that the federal contribution was advanced at the beginning of the Plan and that the amount would not be taxed contributed to the Fund's growth.

[145] Good management by competent professionals whose fees are paid directly from the Fund also generated excess capital.

[146] For the Court, these elements contributed to the accumulation of a capital surplus and ensured that the Class Members would be paid the compensation promised.

Criterion (10) All other facts

[147] The Court does not deem it necessary to include other criteria of analysis.

ANALYSIS OF THE ITEMS OF COMPENSATION CLAIMED BY THE JOINT COMMITTEE

[148] The claims made by the Joint Committee will be analyzed taking into account the above comments.

(1) Late claims

[149] According to the agreements, the Class Members were to have submitted their claim before the June 30, 2010 deadline.²⁵

²⁵ Certain exceptions apply to the deadline.

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[150] Between June 30, 2010 and September 30, 2015, 246 persons (without the benefit of exceptions) submitted claims. They were rejected on grounds of tardiness, but the claims were not examined as to their merit.

[151] The Joint Committee is asking the Court to authorize the Arbitrator to admit the late claims in order to examine them. The Arbitrator could decide whether the ground of tardiness is serious and reasonable. Then, if the Arbitrator is satisfied, the claim could be evaluated to determine whether the claimant meets the terms of the agreements to qualify as a Class Member.

[152] The cost of this measure is valued at \$32 450 000 by the actuaries with administration costs of \$51 000.

[153] The FPT Governments are strongly opposed to this measure. They believe that the allocation would result in allowing the courts to rewrite the terms of the agreements, which is not in keeping with judicial decisions and is contrary to the agreements.

[154] Failing the agreement of all parties, the amendment cannot be made.

[155] The federal government's arguments are based on a cryptic distinction between compensation to benefit the Class Members, which is permissible under the agreements, and an allocation of funds to benefit the Class Members that is not permissible.

[156] The federal government adds that no direct payment may be made to the Class Members, only the implementation of a program to benefit the Class Members may be contemplated.

[157] The Court does not agree.

[158] The agreements explicitly allow the Court, in exercising its unfettered discretion, to dispose of excess capital either to benefit Class Members or governments. It is also possible for the Court to allocate funds for a program to be set up to benefit Class Members. No party submitted an application to that effect.

[159] The Joint Committee's request to reconsider the late claims may be allowed if the payments are strictly derived from the surplus capital. There can be no withdrawal of funds from the initial capital invested, fiscally permissible.

[160] According to the many testimonies collected from Class Members, a recurrent problem they all seem to face, even in the most benign form of the illness, is a lack of concentration and fatigue. Victims find it difficult to force themselves to read, understand and complete the steps required under the agreements to qualify for and claim compensation.

[161] It is therefore in this very specific context that the issue of late claims must be considered.

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[162] Given that the Joint Committee proposes to give the Arbitrator the authority to evaluate the reasonableness of the tardiness prior to evaluating the merit of the claim, the Court believes that the claim should be granted.

[163] Only the claims showing valid reasons would then be examined as to the merits. The compensation would then be paid solely from the separate funds of the excess capital. Once the Arbitrator has evaluated the late claims, the Court invites the Joint Committee to make recommendations to the courts in order to propose a compensation plan for approval.

[164] The Fund manager would then create separately managed accounts for the excess capital of \$32 450 000 plus the administration costs so that the required allocations derive therefrom, if applicable.

[165] There would therefore be no additional financial costs for the provincial and territorial governments.

(2) The claim concerning fixed payments

[166] The Joint Committee requests an increase in the amount payable to Class Members as fixed-sum payments. These are lump sums payable to living Class Members or Class Members who died after January 1, 1999, as non-pecuniary general damages at different levels of illness. The options of fixed-sum payments of \$50 000 and \$120 000 concern Class Members who died of HCV before January 1, 1999 and the options of \$50 000 and \$72 000 concern hemophiliac Class Members who were co-infected with HIV.

[167] According to the modified recommendation of the Joint Committee, the requested increase in payments is 8.5%, indexed to January 1, 2014. The measure would compensate 5320 Class Members and 1650 successions, valued at \$51 320 000.

[168] The federal government is opposed to the measure on the same grounds as those previously discussed. However, as an alternative, the government accepts the compensation to the extent that it believes that the claim does not involve a substantial amendment to the agreements.

[169] The Court wished to ascertain that the claim to increase the non-pecuniary damages does not result in departing from the jurisprudential framework recognized and complied with in Canada since the 1978 trilogy.²⁶ The Court wished to ensure that the cap is upheld, in particular for Level 6 victims, who are most affected.

[170] The Joint Committee's recommendation to increase the lump sums by 8.5%, indexed to 2014, equals compensation valued at \$329 569.²⁷

²⁶ *Andrews v. Grand & Toy Alberta Ltd.* [1978] 2 SCR 229; *Arnold v. Teno*, [1978] 2 SCR 287; *Thornton v. School Dist. No. 57 (Prince George) et al.*, [1978] 2 SCR 267.

²⁷ *Mémoire du comité conjoint* at para. 243.

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[171] For the Court, the increase is not only justified, but also reasonable. It respects the parameters of the judicial decisions and may bring increased relief to the victims and their families.

(3) Increase in compensation from \$5000 to \$9600 for children over 21 years and for parents of victims

[172] The Joint Committee recommends an additional increase in compensation of \$4600 to be indexed, for children over 21 years of age and for the parents of victims. The total cost of the measure is \$22 449 000.

[173] Once again, although the government is opposed at the outset to the request, as an alternative, it agrees to this item of compensation.

[174] The Court considers the request reasonable for the victims. It is understood that no amount can adequately compensate the loss of a loved one, but in a context of allocation of excess capital, the request is fair and reasonable.

(4) Retroactive payment to compensate for deductions made under the programs

[175] The Joint Committee requests that the Court eliminate the deduction with respect to collateral benefits when calculating the loss of income and support.

[176] According to the Joint Committee expert, the cost of the measure is \$27 530 000 plus \$143 000 in administration costs. According to the federal government actuary, it is valued at \$36 094 000.

[177] According to the Joint Committee, the Class Members are faced with significant reductions when their loss of income is calculated. The deductions relate to the disability benefits from the Canada Pension Plan and the Québec Pension Plan, employment insurance, health insurance benefits, accident insurance or disability insurance as well as compensation paid by the Extraordinary Assistance Plan (EAP), the Multi-Provincial/Territorial Assistance Program (MPTAP) and the Nova Scotia compensation program, which were all established with respect to HIV.

[178] According to the federal government, the measure would result in double compensation. It would mean overcompensation (with compensation) for a majority of claimants (2/3) and under-compensation for the balance (1/3).

[179] For the provincial and territorial representatives, the measure would entail an important change to the terms of the agreements negotiated. Moreover, it would result in significant discrepancies between them and the residents of the various territories and provinces.

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[180] All the parties refer to *Cunningham v. Wheeler*²⁸ to support their position.

[181] In the decision, the victim of a wrongful act could receive compensation for injury, but would not be entitled to double compensation. The Court recognizes two exceptions, in the case of charitable donations and where insurance benefits are received in consideration of payment by the victim.

[182] In this specific case, the Court accepts that despite the specific plan pursuant to article 1608 C.C.Q. in Québec and the judicial decisions rendered since the above-cited *Cunningham* decision, the parties to the agreements had full knowledge of the situation when they negotiated this aspect.

[183] The deductions derive from significant concessions made by the Class Members following requests to that effect from all the FPT Governments.

[184] If the Court agrees to the Joint Committee's claim, it would entail a fundamental change that the defendants oppose.

[185] Moreover, the allocation of a surplus cannot be adopted if it has discriminatory effects on the Class Members. Given the multiple different programs throughout Canada and the varying results of such an important compensation, the Court's view is that the Joint Committee's claim should not be granted.

[186] The Court thus exercises its judicial discretion taking into account all the interests in question and declines this item of claim.

(5) Claim of an increase in loss of remuneration to take into account the loss tied to pension funds

[187] The Joint Committee is claiming an increase of 10% in loss of salary due to the disease in order to compensate the victims who have also lost the possibility of accumulating a pension fund.

[188] The past and future value of this measure is \$19 787 000 according to Eckler.²⁹

[189] The federal government is opposed to the request arguing that it constitutes a new claim and therefore does not fall within the established framework respecting the allocation of excess capital.

[190] The Joint Committee believes that this claim is the extension of an under-compensated item of compensation.

²⁸ [1994] 1 SCR 359.

²⁹ *Eckler Report*, R-5 at 11, Schedule B at 29.

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[191] With respect to compensation for income of which victims were deprived because of Hepatitis C, the agreements provided for a maximum income of \$75 000 for the purposes of calculation.

[192] Over time, the cap was eventually increased to compensate for loss of income of up to a maximum of \$200 000.

[193] The Court's view is that the present request for compensation stems from compensation for loss of income. It is not an entirely new claim having no link with the terms of the negotiated agreements.

[194] In the context of allocation of excess capital, the claim limited to increases of 10% for loss of income remains subject to the \$200 000 cap established in 2014. The Court concludes that the claim is founded and reasonable.

- Claim presented by Mr. Polley representing a hemophiliac victim

[195] A Class Member intervened to request that the cap be increased with respect to himself, despite the lack of support for his request by the Joint Committee.

[196] Mr. Polley's client is a unique case.

[197] Hemophiliac from birth, his life's path was sown with obstacles that seemed insurmountable.

[198] As a young adult living not only with hemophilia, he battled two cancers. He pursued his studies and obtained a doctorate in physics and in administration. He made a career in the field of finance.

[199] He has had tremendous success in his profession, earning an annual salary in the millions of dollars.

[200] He contracted Hepatitis C and continued to fight the disease, all the while raising his family, being subjected to debilitating treatments and continuing to work until he was no longer able to do so.

[201] He is claiming the removal of all salary caps. In 2013, the Arbitrator awarded him \$2 300 000 in retroactive compensation, when the salary cap was raised to \$200 000. He considers the compensation insufficient.

[202] He indicated that four other Class Members established having an income higher than \$200 000. One of them has died and two others had an income between \$200 000 and \$300 000. He was the only Member to be earning over a million dollars at the time the disease rendered him unable to work. He considers himself a victim of discrimination.

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[203] The Joint Committee maintains its recommendations as currently stated, thereby maintaining the cap.

[204] The Court feels compassion, but especially a great deal of admiration for Mr. Polley's client. How can a person have the strength to keep fighting after having experienced all of these dramatic situations?

[205] However, by agreeing to the terms of the agreements, that person relinquished a higher amount than that negotiated. At the time, compensation for loss of income was limited to \$75 000, with a holdback of 25% in order to verify whether, in time, at the end of the triennial reviews, the funds were sufficient. Afterwards, once the holdbacks were lifted and paid to the Class Members, the 1999 salary cap of \$75 000 was increased in 2014 to \$200 000.

[206] By participating in the settlements, Mr. Polley's client agreed to an important compromise. The Court's view is that this specific claim should not be granted.

(6) Claim for loss of home services

[207] The Joint Committee requests compensation for loss of home services payable to Class Members and to dependants of deceased Class Members whose death was caused by HCV. According to the agreements, the claims for loss of home services are limited to a maximum of 20 hours per week, at a rate of \$12 an hour and may not be claimed in addition to the loss of income and support.

[208] Many written and verbal representations made by Class Members and Family Class Members describe how vital for their survival and insufficient the compensation for loss of home services is (the current rate is \$16.50 per hour) to cover the cost of a replacement for effecting household duties.

[209] The Joint Committee recommends an increase of two hours per week in compensation paid to Class Members and their dependants for the loss of home services, given the illness afflicting the Class Members.

[210] The measure is valued at \$34 364 000 plus \$196 000 in administration costs according to the *Eckler Report*. According to Morneau Shepell, the value is \$37 384 000.

[211] The government is opposed by virtue of the same arguments discussed above. It agrees to the measure as an alternative, since the compensation does not substantially modify the agreements.

[212] The Court's view, in exercising its unfettered discretion, is that it is fair and reasonable to allocate the excess capital for the compensation of Class Members in this regard.

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[213] The testimonies of the victims are very eloquent with respect to their inability to carry out their personal activities as much as they would like and given their dependence on their entourage.

[214] Moreover, the salaries that the victims must pay are often higher than the amounts provided for in the agreements. The request for compensation is therefore most reasonable.

(7) Recommendations concerning compensation for costs of care

[215] This Joint Committee's request concerns the increase in costs related to the care required at disease level 6. The costs in question are those that are not covered by a public or private health insurance plan or included in the compensation for loss of home services.

[216] The recommendation aims to increase the maximum payable for Level 6 victims from \$50 000 to \$60 000 including administration costs. This measure is valued at \$627 000 plus \$2000 in administration costs.

[217] As in the preceding case, the government is opposed to the request, but agrees to it as an alternative.

[218] The Court is of the opinion that the compensation is reasonable, since the victims must document their claim.

[219] In conclusion, in exercising its unfettered discretion, the Court is of the opinion that the compensation is fair and reasonable.

(8) Claim to compensate Family Class Members accompanying victims to medical appointments

[220] This compensation request aims to reimburse a maximum amount of \$200 for costs or expenses by Family Class Members who accompany victims to medical appointments, since there is no such compensation under the agreements.

[221] The Joint Committee's recommendation is to compensate the Family Class Members prospectively, that is, only for the future. The testimonies collected during consultations quite often reported the difficulties inherent to the Hepatitis C victims' need for assistance when they have medical appointments. Those requiring accompaniment depend on persons close to them, who very often have to take unpaid leave of absence from work and take on alone the expenses incurred as a result.

[222] This measure is valued by Eckler at \$1 957 000, whereas Morneau Shepell values it at \$8 370 000. The federal government is opposed to this request for compensation.

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[223] The difference between the two valuations lies in the federal government experts' fear that the compensation will result in a significant increase in the number of persons who, in future, will want to be accompanied for medical visits.

[224] In reality, however, a high number of Hepatitis C victims rely on family members, given the victims' fragile condition.

[225] The Court's view is that this item results indirectly from the very limited claim for loss of home services.

[226] This claim is a somewhat different application, but of the same type as the latter compensation whose objective is to address the significant limitations to the self-sufficiency of persons affected by the disease.

(9) Funeral expenses

[227] The Joint Committee recommends increasing the reimbursement of uninsured funeral expenses to raise the limit from \$5000 to \$10 000.

[228] On presentation of invoices, the Joint Committee recommends an increase in that amount, because in several cases, the costs are higher than the maximum currently allocated.

[229] The Eckler actuaries value this measure at \$2 050 000, whereas for the federal government actuaries Morneau Shepell, the value is rather \$2 025 000.

[230] The federal government is opposed to this measure, but agrees to it as an alternative measure.

[231] The Court is unable to grant the request, despite the position of the federal government.

[232] Funeral expenses are an unavoidable expense which will vary with individual choices. The claims submitted show that for some, the \$5000 allowance is reasonable, whereas for others, it may be insufficient. There are too many variables involving personal choices made by the families.

[233] Therefore, the Court is of the opinion that this item of compensation should not be granted.

SPECIFIC CLAIMS

[234] During the hearings, different victims of Hepatitis C present in Toronto, Vancouver and Montréal wished to address a few words to the courts about their specific situation.

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[235] Many wanted to express in person to the courts their support for the recommendations of the Joint Committee. Some wish to shed light on their daily problems, given their status as carriers of Hepatitis C, as they are all, it should be recalled, innocent victims.

[236] Three Class Members intervened through attorneys. The Court has already dealt with the case of Mr. Polley's client.

[237] Others, as the member from Québec, emphasized the feeling of injustice of which he is a victim.

[238] The Court will deal with these specific cases below.

(i) Mr. Dermody's client No. 1, Member No. 2213

[239] This Hepatitis C victim represented by Mr. Dermody came to argue his specific situation by addressing the courts.

[240] Under the agreements, Hepatitis C victims who also contracted HIV could choose to receive, since 1999 or 2000, a single lump-sum payment of \$50 000.

[241] This mechanism was set up to allow these victims, whose chances for survival were extremely limited, to rapidly receive a single lump-sum payment in exchange for a release.

[242] This client came to explain that at the time he signed the agreements, he was very ill, confused and angry. As the father of two young children, he is very worried about his family's future.

[243] This Class Member supports the Joint Committee's recommendations. He wishes however, that he could review his choice, since the agreements would have allowed him to obtain a much more generous compensation.

[244] For the Court, it is desirable that the Joint Committee take into consideration this situation in order to meet the needs of such victims and to present the appropriate recommendations.

(ii) Mr. Dermody's client No. 2, Member No. 7438

[245] The second client represented by Mr. Dermody is an indirect victim of this tragedy.

[246] This person is handicapped and has always been dependent on his parent who died from Hepatitis C.

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[247] He received compensation for loss of a parent for a certain time. The payment was terminated at the time the parent would have died according to the life expectancy index for Canadians.

[248] This handicapped person remains dependent on the compensation. Terminating payment is extremely prejudicial for him.

[249] He is asking the courts to continue the payment, without identifying the period for which the compensation should continue to be paid.

[250] Again in this case, it is the Joint Committee's task to take this situation into account and make a recommendation if deemed necessary.

(iii) Québec Class Member

[251] A Hepatitis C victim spoke from the courtroom in Montréal.

[252] He declared that before receiving compensation provided by the agreements and before being infected with Hepatitis C, he was already receiving compensation benefits. They were not linked to Hepatitis C.

[253] But, when his income was analysed in order to determine his entitlement to compensation, his other benefits were deducted from his earning capacity to determine the amount of lost income.

[254] It seems that this person has been unfairly penalized. Benefits without any link to Hepatitis C should not be deducted in order to calculate the loss in earning capacity.

[255] This is another case that should be submitted to the Joint Committee and a recommendation could potentially be presented.

[256] In conclusion, the Court's view is that the residual amounts of excess capital –amounts that are not due to Class Members for future disbursements– should not be remitted to the federal government. Despite the refusal to grant certain claims made by the Joint Committee, a portion of the amounts known as excess capital will not be allocated to any of the parties.

THEREFORE, THE COURT:

[257] **DECLARES that:**

- (a) the amounts from which the "benefits" claimed are payable are solely and exclusively payable from the assets of the Trust that correspond to the amounts paid at the outset by the Government of Canada and invested under the terms of the Settlement Agreement and Funding Agreement,

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(b) no request for additional funds will be made of the Québec government with respect to these “benefits” and that the financial obligations of that government provided for in the Agreement will not be amended or affected in any way whatsoever;

(c) the monthly payments that are made and will continue to be made by the Québec government will in no way be amended or affected by the allocation of “benefits”.

[258] **DECLARES** that the Trustee of the 1986-1990 Hepatitis C Settlement Agreement (“Settlement Agreement”) holds \$206 920 000 in assets that were actuarially unallocated at December 31, 2013 (“Excess capital”);

[259] **ORDERS** that the restrictions on the payment of amounts with respect to claims for loss of income provided for in Section 4.02(2)(b)(i) of the Transfused HCV Plan and in Section 4.02(2)(b)(i) of the Hemophiliac HCV Plan and for loss of support provided for in Section 6.01(1) of the Transfused HCV Plan and Section 6.01(1) of the Hemophiliac HCV Plan, as previously amended, not be otherwise amended or deleted in whole or in part at this stage;

[260] **ORDERS** the allocation of excess assets to benefit Class Members including Family Class Members by approving the following:

(a) the proposed protocol for late claims made after the deadline of June 30, 2010, in order to allow Class Members who omitted to make their first claim before the June 30, 2010 deadline to obtain the initial claim forms and to have their claim submitted in the context of a new application by the Joint Committee, to the extent that they will have convinced an Arbitrator that their tardiness was due to reasons beyond their control or that there is a reasonable explanation for the delay, the amounts being withdrawn from a separate fund of \$32 450 000 plus administration costs, the whole having to be submitted to the courts for approval;

(b) an increase of 8.5%, indexed on January 1, 2014, with respect to the fixed amounts payable under Section 4.01(1) of the Transfused HCV Plan and the lump sum of \$50 000 (in 1999 dollars) and of \$120 000 (in 1999 dollars) payable under Sections 5.01(1) and 5.01(2) of the said Plan; the fixed amounts payable under Section 4.01 of the Hemophiliac HCV Plan and the lump sum of \$50 000 (in 1999 dollars) payable under Section 4.08(2) of the said Plan; the lump sum of \$50 000 (in 1999 dollars) payable under Section 5.01(1) of the Hemophiliac HCV Plan, the lump sum of \$120 000 (in 1999 dollars) payable under Section 5.01(2) of the said Plan as well as the lump sum of \$72 000 (in 1999 dollars) payable under Section 5.01(4) of the Hemophiliac HCV Plan; to be paid retroactively and prospectively;

(c) an increase in the fixed amount awarded to a Child aged 21 or older on the date of death of a HCV Infected Person under Section 6.02(c) of the Transfused HCV Plan and Section 6.02(c) of the Hemophiliac HCV Plan, raising the

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compensation from \$5000 (in 1999 dollars) to \$9600 (in 1999 dollars), indexed on January 1, 2014, to be paid retroactively and prospectively;

(d) an increase in the fixed amount awarded to a Parent under Section 6.02(d) of the Transfused HCV Plan and Section 6.02(d) of the Hemophiliac HCV Plan, raising the compensation from \$5000 (in 1999 dollars) to \$9600 (in 1999 dollars), indexed on January 1, 2014, to be paid retroactively and prospectively;

(e) an increase of 10% in the amounts paid for loss of income and loss of support under Section 4.02 of the Transfused HCV Plan and Section 4.02 of the Hemophiliac HCV Plan, calculated on a maximum loss of income of \$200 000 for the years before 2014 and calculated on a maximum loss of income of \$200 000 with indexation for the years 2014 and following, as compensation for the reduced pension benefits due to disability; to be paid retroactively and prospectively;

(f) an increase with respect to the maximum hours eligible in claiming loss of services under Sections 4.03(2) and 6.01(2) of the Transfused HCV Plan and Sections 4.03(2) and 6.01(2) of the Hemophiliac HCV Plan, raising the number of hours per week from 20 to 22; to be paid retroactively and prospectively;

(g) an increase in the maximum amount of compensation payable for costs of care under Section 4.04 of the Transfused HCV Plan and Section 4.04 of the Hemophiliac HCV Plan, raising the amount from \$50 000 per year (in 1999 dollars) to \$60 000 per year (in 1999 dollars); to be paid retroactively and prospectively;

(h) the payment of an allowance of \$200 (in 2014 dollars) payable to a Family Class Member (as defined in Section 1.01 of the Plans) accompanying a HCV Infected Person to a medical appointment required due to the HCV infection, in addition to the reimbursable costs pursuant to Section 4.07(a) of the Plans; to be paid prospectively;

(i) the payment of costs associated with administration costs relative to the recommendations described above in paragraphs (a) to (h).

[261] **ORDERS** that all retroactive payments be effected as a global amount to Class Members and/or Family Class Members or to their Personal Representative as defined in Section 1.01 of the Plans;

[262] **ORDERS** that all the amounts payable to the Class Members and Family Class Members be paid from the Trust Fund;

[263] **ORDERS** that the balance of the excess capital be kept in the Trust Fund, with the exception of the amount stipulated in paragraph 260(a), subject to any other Court order;

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[264] **ORDERS** that this judgment will take effect only at the time similar orders have been rendered by the Ontario Superior Court of Justice and the Supreme Court of British Columbia;

[265] **DISPOSES** concurrently of the application of the Attorney General of Canada for the allocation of assets that are actuarially unallocated dated January 29, 2016;

[266] **THE WHOLE**, without legal costs.

(s)

CHANTAL CORRIVEAU J.S.C.

Kathryn Podrebarac, Sharon D. Matthews, Q.C., Harvey Strosberg, Q.C., Heather Rumble Peterson, J.J. Camp, Q.C., Mtre. Michel Savonitto, Mtre. Martine Trudeau and Mtre. Arnaud Sauv -Dagenais
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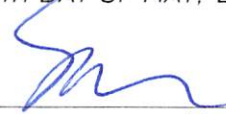
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Counsel for the Intervenors representing the Provinces and Territories

THE ATTACHED IS EXHIBIT "J" 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.

Court File # 98-CV-141369

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE

PAUL PERELL

)
)
)

Tuesday THE 28th DAY
OF November 2017

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

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*

ORDER

(HCV Late Claims Benefit Plan, Notice Plan, Late Claims Referees
& Administration Budget)

THIS MOTION made by the Joint Committee members for Ontario for the relief granted herein was heard in writing this day.

ON READING the affidavits of Heather Rumble Peterson, sworn October 13, 2017 and Patrick Gervais sworn October 11, 2017,

ON BEING ADVISED that the Public Guardian and Trustee for Ontario and the Children's Lawyer for Ontario were served with the motion and each has advised that they take no position,

ON BEING ADVISED that implementation of the Late Claim Benefits Plan may require the Intervenors to promulgate regulatory amendments or take other measures to give effect to the social benefits exclusion found in Section 8.02 of the HCV Late Claims Benefit Plan,

AND ON BEING ADVISED that the Parties consent to the making of this Order, save and except to the extent that Section 8.02 of the HCV Late Claims Benefit Plan attached hereto as **Schedule "A"** conflicts with the laws, regulations, or directives of any of the Intervenors, in which case that Intervenor will make good faith efforts, as necessary, to address the conflict by promulgating regulatory amendments or taking other measures.

1. THIS COURT ORDERS that the HCV Late Claims Benefit Plan in the form attached hereto as **Schedule "A"** is hereby approved

2. THIS COURT ORDERS that for the purposes of implementing, administering, monitoring and supervising the HCV Late Claims Benefit Plan and the HCV Late Claims Benefit Account, the Administrator, Trustee, Fund Counsel, Auditors, Joint Committee, Investment Advisors, Referees, Arbitrators, Monitor, Late Claims Referees and Courts shall perform the role and have the duties and responsibilities provided for in the Settlement Agreement and in the HCV Late Claims Benefit Plan with all the necessary adaptations, modifications and powers as may be required to do so.

3. THIS COURT ORDERS that Reva Devins and Christian Leblanc are hereby appointed Late Claims Referees under the HCV Late Claims Benefit Plan, and that the Joint Committee may propose for this Court's approval the appointment of other persons to serve as Late Claims Referees.

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

5. THIS COURT ORDERS that:

- (a) the Notice Plan in respect of the HCV Late Claims Benefit Plan in the form attached hereto as **Schedule "B"** is hereby approved and directs that the active notice campaign proposed in Budget C therein, at a cost of \$987,400 (plus applicable taxes), together with the proposed post-campaign notice program for two years following the completion of the

active notice campaign, budgeted at \$37,000 per year (plus applicable taxes), be implemented; and

- (b) the expenditure of funds from the HCV Late Claims Benefit Account is hereby approved to implement the notice option.

6. THIS COURT ORDERS that the Administrator's 2017 Late Claim Administration Proposal dated November 15, 2016, attached hereto as **Schedule "C"**, is hereby approved and directs that all costs relating thereto (plus applicable taxes) be paid from the HCV Late Claims Benefit Account.

7. THIS COURT ORDERS that the terms of this Order shall not be effective unless and until they are also approved by the Superior Court of Québec and the Supreme Court of British Columbia with no material differences.



JUSTICE

1557340 ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

DEC 7 2017

PER / PAR: 

HCV LATE CLAIMS BENEFIT PLAN

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HCV LATE CLAIMS BENEFIT PLAN

WHEREAS:

A. In October 1999, the actions, causes of actions, liabilities, claims and demands of the Class Members in any way relating to or arising from, in the case of the Transfused Class Members, the infection of a Primarily-Infected Person with HCV from a Blood (Transfused) transfusion during the Class Period and, in the case of Hemophiliac Class Members, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (Hemophiliac) including, in each case, the infection of a Secondarily-Infected Person were finally settled based upon the terms and conditions of the Settlement Agreement as amended and approved by the 1999 Approval Orders.

B. Subject to certain specified exceptions in the Transfused HCV Plan and the Hemophiliac HCV Plan established by the Settlement Agreement and in the court approved protocols implemented for those plans, Transfused/Hemophiliac Plan Claims by Class Members were to be made on or before 30 June 2010.

C. In August 2016, the 2016 Allocation Orders directed, and in November 2017, the HCV Late Claims Benefit Plan Approval Orders established a discrete HCV Late Claims Benefit Plan funded from 2013 Excess Capital for those Class Members unable to claim under the Transfused HCV Plan and the Hemophiliac HCV Plan because they did not apply prior to 30 June 2010 and do not meet the requirements of the exceptions to the deadline in Section 3.08 of the Transfused HCV Plan and Section 3.07 of the Hemophiliac HCV Plan and/or the court approved protocols.

D. In keeping with the directions of the Courts, this HCV Late Claims Benefit Plan is intended to provide benefits to Approved Late Claim Class Members that are not better or different than the benefits provided to Approved Transfused/Hemophiliac Plan Class Members under the Settlement Agreement by means of the Transfused HCV Plan, the Hemophiliac HCV Plan and the HCV Special Distribution Benefits.

ARTICLE ONE INTERPRETATION

1.01 Definitions

“1999 Approval Orders” means the judgments or decisions of the Courts granted in 1999 approving the Settlement 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.

“2013 Excess Capital” means the amount of \$206,920,000 declared by the Courts pursuant to the 2016 Allocation Orders to be actuarially unallocated assets in the Trust Fund from the amounts identified by the actuaries in the 2013 financial sufficiency review.

“2016 Allocation Orders” mean the judgments or orders of the Courts dated 15 August 2016, 16 August 2016 and 15 February 2017 directing the establishment of a discrete HCV Late Claims Benefit Plan and establishing the HCV Special Distribution Benefits, both funded from 2013 Excess Capital.

“2016 Allocation Implementation Orders” means the judgments or orders of the Courts granted in November 2017 directing the establishment of the HCV Late Claims Benefit Account.

“Administrator” means the administrator appointed by the Courts and its successors appointed from time to time pursuant to Articles Five and Ten of the Settlement Agreement.

“Approved Late Claim Class Members” means, collectively, all Late Claim Class Members whose Late Claim made pursuant to this HCV Late Claims Benefit Plan has been accepted by the Administrator.

“Approved Late Claim Dependant” means a Dependant whose Late Claim made pursuant to Section 3.06 has been accepted by the Administrator.

“Approved Late Claim Family Member” means a Family Member referred to in clause (a) of the definition of Family Member in this Section 1.01 whose Late Claim made pursuant to Section 3.07 has been accepted by the Administrator.

“Approved Late Claim HCV Infected Person” means a HCV Infected Person whose Late Claim made pursuant to Section 3.01 or 3.02, as the case may be, has been accepted by the Administrator.

“Approved Late Claim HCV Personal Representative” means a HCV Personal Representative whose Late Claim made pursuant to Section 3.05 has been accepted by the Administrator.

“Approved Transfused/Hemophiliac Plan Class Members” means, collectively, all Class Members whose Transfused/Hemophiliac Plan Claim made pursuant to the Transfused HCV Plan or the Hemophiliac HCV Plan has been accepted by the Administrator.

“Arbitrator” means a person appointed as an arbitrator by the Courts and his or her successors appointed from time to time pursuant to 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 (Hemophiliac)” 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%, 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).

“Blood (Transfused)” means whole blood and the following blood products: packed red cells, platelets, plasma (fresh frozen and banked), white blood cells and cryoprecipitate. 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 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.

“Class Actions” means, collectively, the Transfused Class Actions and the Hemophiliac Class Actions.

“Class Action Counsel” means the respective counsel for each of the Class Action plaintiffs, from time to time.

“Class Member” means, collectively, all Primarily-Infected Hemophiliacs, all Primarily-Infected Persons, all Secondarily-Infected Persons, all HCV Personal Representatives and all Family Members but excludes, for greater certainty, all persons who opted 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.

“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 opted out of the Class Action in which he or she would otherwise have been a Class Member.

“FPT Governments” means, collectively, (i) the government of Canada (the **“Federal Government”**), (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” means the counsel appointed by the Courts and its successors appointed from time to time pursuant to Articles Seven and Ten 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, a Primarily-Infected Person or a Secondarily-Infected Person.

“HCV Late Claims Benefit Account” means the amount of \$39,912,000 ordered by the Courts to be set aside from 2013 Excess Capital of the Trust Fund. plus interest to 31 December 2016 and investment gains or losses from 1 January 2017 onward as calculated in accordance with paragraphs 8(c) and 11 of the 2016 Allocation Implementation Orders, as a separate account of the Trust Fund pursuant to the 2016 Allocation Implementation Orders to provide for payment of compensation to Approved Late Claim Class Members under this HCV Late Claims Benefit Plan and the administrative costs thereof including the HCV Late Claims notice campaign together with (i) any investments in which such funds may from time to time be invested, (ii) any proceeds of disposition of any investments, and (iii) 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, but excluding any amounts which have been paid or disbursed therefrom.

“HCV Late Claims Benefit Plan” means this plan to provide compensation to persons who are Approved Late Claim Class Members including its Appendices, as amended, supplemented or restated from time to time.

“HCV Late Claims Benefit Plan Approval Date” means the date when the last judgment or order of the Courts approving this HCV Late Claims Benefit Plan becomes final and, as a

result, this HCV Late Claims Benefit Plan becomes effective, provided there are no material differences in the judgments or orders of the Courts.

“HCV Late Claims Benefit Plan Approval Orders” mean the judgments or orders of the Courts granted in November 2017 approving this HCV Late Claims Benefit Plan.

“HCV Personal Representative” means the Personal Representative of a HCV Infected Person (whether deceased, a minor or mentally incompetent) who did not opt out of a Class Action.

“HCV Special Distribution Benefits” means the benefits payable to Approved Transfused/Hemophiliac Plan Class Members from 2013 Excess Capital in accordance with the terms of the 2016 Allocation Orders.

“Hemo” in a Section reference means that the Section applies only to a Hemophiliac Late Claim.

“Hemophiliac Class Actions” means (i) Action No. 98-CV-146405 in the Ontario Court (General Division), at Toronto, (ii) Action No. A981187 in the Vancouver Registry of the Supreme Court of British Columbia, and (iii) Action No. 500-06-000068-987 in the Superior Court of the Province of Québec for the District of Montréal.

“Hemophiliac HCV Plan” means the plan to provide compensation to persons who are Primarily-Infected Hemophiliacs, who received or took Blood (Hemophiliac) during the Class Period and were infected with HCV and their respective HCV Personal Representatives, Secondarily-Infected Persons and Family Members pursuant to provisions of the Settlement Agreement.

“Hemophiliac Late Claim” means a Late Claim made by a Primarily-Infected Hemophiliac and/or his or her related HCV Personal Representative, Secondarily-Infected Persons and Family Members under this HCV Late Claims Benefit Plan, as applicable.

“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” means the committee of four counsel appointed by the Courts and its successors appointed from time to time pursuant to Articles Nine and Ten of the Settlement Agreement.

“Late Claim” means a claim made and a claim that may be made in the future pursuant to the provisions of this HCV Late Claims Benefit Plan. For greater certainty, Late Claim does not include a Transfused/Hemophiliac Plan Claim made or that may be made in the future pursuant to the provisions of the Transfused HCV Plan or the Hemophiliac HCV Plan and/or any court approved protocols.

“Late Claim Class Members” means, collectively, all Primarily-Infected Hemophiliacs, all Primarily-Infected Persons, all Secondarily-Infected Persons, all HCV Personal Representatives and all Family Members who are unable to claim under the Transfused HCV Plan and the Hemophiliac HCV Plan because they did not apply prior to 30 June 2010 and do not meet the requirements of the exceptions to the deadline in Section 3.08 of the Transfused HCV Plan and Section 3.07 of the Hemophiliac HCV Plan and/or the court approved protocols who make a Late Claim pursuant to this HCV Late Claims Benefit Plan but excludes, for greater certainty, all persons who opted out of the Class Actions.

“Late Claims Referees” means a person appointed as a referee by the Courts pursuant to the 2016 Allocation Implementation Orders to determine on a summary basis whether a Late Claim application form shall issue to a potential Late Claim Class Member in accordance with the provisions of Appendix E of this HCV Late Claims Benefit Plan and his or her successors appointed from time to time.

“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, an Opted-Out Primarily-Infected Person or a person who would otherwise be a Secondarily-Infected Person but is not because he or she opted out of the Class Action in which he or she would have otherwise been a Class Member.

“Opted-Out Primarily-Infected Hemophiliac” means a person who would otherwise be a Primarily-Infected Hemophiliac but is not because he or she opted out of the Class Action in which he or she would have otherwise been 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 opted out of the Class Action in which he or she would have otherwise been 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.

“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 or has or had Thalassemia Major, and (ii) received or took Blood (Hemophiliac) 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 (Hemophiliac); or
- (b) such person opted out of the Class Action in which he or she would have otherwise been a Class Member.

“Primarily-Infected Person” means a person who received a Blood (Transfused) 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 (Transfused) 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 (Transfused) transfusion received in Canada during the Class Period; or
- (c) such person opted out of the Class Action in which he or she would have otherwise been 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 to perform the duties outlined in this HCV Late Claims Benefit Plan (with the exception of Appendix E) and his or her successors appointed from time to time pursuant to Article Ten of the Settlement Agreement.

“Releasee” has the meaning set out in Appendix B - Tran and Appendix B - Hemo.

“Secondarily-Infected Person” means:

- (a) a Spouse of a Primarily-Infected Hemophiliac or a Primarily-Infected Person or a Opted-Out Primarily-Infected Hemophiliac or Opted-Out Primarily-Infected Person who is or was infected with HCV by such Primarily-Infected Hemophiliac or Primarily-Infected Person or Opted-Out Primarily-Infected Hemophiliac or Opted-Out Primarily-Infected Person; 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 Primarily-Infected Person or Opted-Out Primarily-Infected Hemophiliac 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 opted out of the Class Action in which he or she would have otherwise been a Class Member.

“Settlement Agreement” means the January 1, 1986 – July 1, 1990 Hepatitis C Settlement Agreement made as of 15 June 1999 between the FPT Governments and the plaintiffs in the Class Actions as amended and approved by the 1999 Approval Orders.

“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 HCV Late Claims Benefit 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 HCV Late Claims Benefit Plan Approval Date and ending on the date that this HCV Late Claims Benefit Plan is terminated by the Courts.

“Traceback Procedure” means a targeted search for and investigation of the donor and/or the units of Blood (Transfused) received by a Primarily-Infected Person or a Secondarily-Infected Person who makes a Transfused Late Claim.

“Tran” in a Section reference means that the Section applies only to a Transfused Late Claim.

“Transfused Class Actions” means (i) Action No. 98-CV-141369 in the Ontario Court (General Division), at Toronto, (ii) Action No. C965349 in the Vancouver Registry of the Supreme Court of British Columbia, and (iii) Action No. 500-06-000016-960 in the Superior Court of the Province of Québec for the District of Montreal.

“Transfused HCV Plan” means the plan to provide compensation to persons who were infected with HCV through a Blood (Transfused) transfusion received in Canada during the Class Period and their respective HCV Personal Representatives, Secondarily-Infected Persons and Family Members pursuant to provisions of the Settlement Agreement.

“Transfused/Hemophiliac Plan Claim” means a claim made and a claim that may be made in the future pursuant to the provisions of the Transfused HCV Plan, the Hemophiliac HCV Plan or any court approved protocols.

“Transfused Late Claim” means a Late Claim made by a Primarily-Infected Person and/or his or her related HCV Personal Representative, Secondarily-Infected Persons and Family Members under this HCV Late Claims Benefit Plan, as applicable.

“Trust” means the trust established by the FPT Governments pursuant to the Funding Agreement attached as Schedule D to the Settlement Agreement.

“Trust Fund” means the fund established by the FPT Governments pursuant to the Funding Agreement attached as Schedule D to the Settlement Agreement.

1.02 Headings

(1) Except as provided in Section 1.02(2), the division of this HCV Late Claims Benefit 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 HCV Late Claims Benefit Plan. The terms “hereof”, “hereunder” and similar expressions refer to this HCV Late Claims Benefit 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 Appendices of this HCV Late Claims Benefit Plan.

(2) The insertion of the term Hemo or Tran beside or within a Section reference in this HCV Late Claims Benefit Plan shall mean that Section applies only to a Hemophiliac Late Claim or a Transfused Late Claim, respectively.

1.03 Extended Meanings

In this HCV Late Claims Benefit 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 HCV Late Claims Benefit 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 Late Claim Class Member is deemed to be resident in the Province or Territory where he or she ordinarily resides or, if the Late Claim 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 (Hemophiliac) during the Class Period or the relevant Primarily-Infected Person or Opted-Out Primarily-Infected Person first received a Blood (Transfused) 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

Except as otherwise provided herein, all references to currency herein are to lawful money of Canada expressed in 2014 dollars.

1.08 Appendices

The following are the Appendices to this HCV Late Claims Benefit Plan:

- Appendix A - Social Benefits Legislation;
- Appendix B - Release;
- Appendix C - Reference Rules;
- Appendix D - Arbitration Rules; and
- Appendix E - Eligibility to Make a Late Claim under the HCV Late Claims Benefit Plan.

ARTICLE TWO

PURPOSE, EFFECT AND TERM OF THE HCV LATE CLAIMS BENEFIT PLAN

2.01 Purpose

(1) The purpose of this HCV Late Claims Benefit Plan is to establish benefits for and provide compensation to Late Claim Class Members on the terms and subject to the conditions set out herein and in the 2016 Allocation Orders, the HCV Late Claims Benefit Plan Approval Orders, the 2016 Allocation Implementation Orders and the court approved protocols.

(2) For the purposes of implementing, administering, monitoring and supervising this HCV Late Claims Benefit Plan, the Administrator, Trustee, Fund Counsel, Auditors, Joint Committee, Investment Advisors, Referees, Arbitrators, Monitor, Late Claims Referees and Courts shall perform the role and have the duties and responsibilities provided for each in the Settlement Agreement, with all the necessary adaptations, modifications and powers as may be required to do so, and as provided for in the HCV Late Claims Benefit Plan Approval Orders, the 2016 Allocation Implementation Orders, this HCV Late Claims Benefit Plan, including its Appendices, and the court approved protocols.

2.02 Binding Effect

(1) On the HCV Late Claims Benefit Plan Approval Date this HCV Late Claims Benefit Plan will become effective and be binding on all Late Claim Class Members. Each HCV Late Claims Benefit Plan Approval Order will constitute approval of this HCV Late Claims Benefit Plan in respect of all Late Claim 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 Late Claim Class Member will be necessary.

(2) For greater certainty, Late Claim Class Members are bound by the terms of the Settlement Agreement and the 1999 Approval Orders, except insofar as those terms are modified by the provisions of this HCV Late Claims Benefit Plan.

2.03 No Obligations or Liability of the FPT Governments

(1) The FPT Governments will not have any obligations relating to this HCV Late Claims Benefit Plan, including its ongoing operations.

(2) All of the payments to be made pursuant to this HCV Late Claims Benefit Plan inclusive of the expenses to implement and administer it shall be paid only from the HCV Late Claims Benefit Account and there shall be no recourse to the remainder of the Trust Fund for such payments.

(3) None of the FPT Governments will be liable to provide any funds toward the payments to be made pursuant to this HCV Late Claims Benefit Plan including, for greater certainty, any of the expenses to implement and/or administer the HCV Late Claims Benefit Plan nor will they be liable to provide any funds if the HCV Late Claims Benefit Account is insufficient to make all the payments to be made pursuant to this HCV Late Claims Benefit Plan.

2.04 Cessation of Litigation

Each Approved Late Claim Class Member who has commenced 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 Late Claim, the infection of a Primarily-Infected Person with HCV during the Class Period or (ii) in the case of a Hemophiliac Late Claim, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (Hemophiliac) including, in each case, the infection of a Secondarily-Infected Person, must consent to a dismissal of such action or proceeding without costs before receiving any payment under this HCV Late Claims Benefit Plan.

ARTICLE THREE ELIGIBILITY TO MAKE A LATE CLAIM AND REQUIRED PROOF FOR COMPENSATION

3.01A Eligibility to make a Late Claim

A person desiring to make a Late Claim under this HCV Late Claims Benefit Plan must be determined to be eligible to make a Late Claim in accordance with the provisions of Appendix E of this HCV Late Claims Benefit Plan or be a person referred to in clause (a) of the definition of Family Member in Section 1.01 who is related to a HCV Infected Person whose Late Claim was accepted by the Administrator under this HCV Late Claims Benefit Plan.

3.01Tran Late Claim by Primarily-Infected Person

(1) A person claiming to be a Primarily-Infected Person who is determined eligible to make a Late Claim pursuant to Appendix E of this HCV Late Claims Benefit Plan must deliver to the Administrator a Late Claim 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 the claimant received a Blood (Transfused) transfusion in Canada during the Class Period;
- (b) a 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 (Transfused) 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 (Transfused) transfusion in Canada during the Class Period and at the time of delivery of the Late Claim application hereunder.

(2) Notwithstanding the provisions of Section 3.01Tran(1)(a), if a claimant cannot comply with the provisions of Section 3.01Tran(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 (Transfused) transfusion in Canada during the Class Period.

(3) Notwithstanding the provisions of Section 3.01Tran(1)(c), if a claimant cannot comply with the provisions of Section 3.01Tran(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 (Transfused) transfusion in Canada during the Class Period.

3.01Hemo Late Claim by Primarily-Infected Hemophiliac

(1) A person claiming to be a Primarily-Infected Hemophiliac who is determined eligible to make a Late Claim pursuant to Appendix E of this HCV Late Claims Benefit Plan must deliver to the Administrator a Late Claim 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, or (ii) has or had Thalassemia Major, and (iii) the claimant received or took Blood (Hemophiliac) 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 (as defined for a Hemophiliac Late Claim) 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 (Hemophiliac) during the Class Period and at the time of delivery of the Late Claim application hereunder.

(2) Notwithstanding the provisions of Section 3.01Hemo(1)(a), if a claimant cannot comply with the provisions of Section 3.01Hemo(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, or has or had Thalassemia Major and received or took Blood (Hemophiliac) during the Class Period.

(3) Notwithstanding the provisions of Section 3.01Hemo(1)(c), if a claimant cannot comply with the provisions of Section 3.01Hemo(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 (Hemophiliac).

3.02 Late Claim by Secondarily-Infected Person

(1) A Spouse or Child claiming to be a Secondarily-Infected Person who is determined eligible to make a Late Claim pursuant to Appendix E of this HCV Late Claims Benefit Plan or who is related to a HCV Infected Person whose Late Claim is accepted by the Administrator under this HCV Late Claims Benefit Plan must deliver to the Administrator a Late Claim 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 Primarily- Infected Person or an Opted-Out Primarily-Infected Hemophiliac or Opted-Out Primarily-Infected Person or by a Parent who is a HCV-Infected Person or Opted-Out HCV Infected Person including a statutory declaration of the claimant (i) declaring that he or she never used non-prescription intravenous drugs and, in the case of a Transfused Late Claim only, (ii) declaring that 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) a HCV Antibody Test report, a PCR Test report or similar test report pertaining to the claimant; and
- (c) the evidence required by Section 3.01Tran or 3.01Hemo and Section 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 Late Claim under this HCV Late Claims Benefit Plan or his or her personal Transfused/Hemophiliac Plan 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 Primarily-Infected Person or an Opted-Out Primarily-Infected Hemophiliac or Opted-Out Primarily-Infected Person or his or her 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 (in the case of a Primarily-Infected Person or Secondarily-Infected Person only);
- (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 Late 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 Late Claim.

3.04Tran Traceback Procedure

(1) Notwithstanding any other provision of this HCV Late Claims Benefit Plan, if the results of a Traceback Procedure demonstrate that one of the donors or units of Blood (Transfused) received by a Primarily-Infected Person, Secondarily-Infected Person or Opted-Out Primarily-Infected Person or Opted-Out Secondarily-Infected Person before 1 January 1986 is or was HCV antibody positive or that none of the donors or units of Blood (Transfused) 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 Late Claim of such HCV Infected Person and all Late Claims pertaining to such HCV Infected Person or Opted-Out HCV Infected Person including Late 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 (Transfused) 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 his or her Parent who is a HCV Infected Person or Opted-Out HCV Infected 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 Late 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 and who is determined eligible to make a Late Claim pursuant to Appendix E of this HCV Late Claims Benefit Plan must deliver to the Administrator a Late Claim 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 or Primarily-Infected Person, the proof required by Section 3.01Hemo or 3.01Tran, and Section 3.03, as applicable; 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 mentally incompetent and who is determined eligible to make a Late Claim pursuant to Appendix E of this Late Claim Plan must deliver to the Administrator a Late Claim 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 Hemophiliac or Primarily-Infected Person, the proof required by Section 3.01Hemo or 3.01Tran and Section 3.03, as applicable; 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)(Tran) Notwithstanding the provisions of Section 3.01Tran(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 3.01Tran(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 (Transfused) 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.

(3)(Hemo) Notwithstanding the provisions of Section 3.01Hemo(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 3.01Hemo(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 (Hemophiliac) 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)(Tran) For the purposes of Sections 3.05 (1) and (2), the statutory declaration required by Sections 3.01Tran(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 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 (Transfused) transfusion in Canada during the Class Period 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 Person or Opted-Out Primarily-Infected Person or by his or her Parent who is or was a HCV Infected Person or an Opted-Out HCV Infected Person.

(5)(Hemo) For the purposes of Sections 3.05(1) and (2), the statutory declaration required by Sections 3.01Hemo(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 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 (Hemophiliac) 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 his or her 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 (in the case of a Secondarily-Infected Person only);
- (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 Late 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 Late Claim.

3.06 Late Claim by Dependant

A person claiming to be a Dependant of a HCV Infected Person who has died and who is determined eligible to make a Late Claim pursuant to Appendix E of this HCV Late Claims Benefit Plan or a person claiming to be a Dependant of a deceased HCV Infected Person whose Late Claim is accepted by the Administrator under this HCV Late Claims Benefit Plan must deliver to the Administrator a Late Claim application form prescribed by the Administrator together with:

- (a) proof as required by Sections 3.05(1)(a) and (b) (or, if applicable, Sections 3.05(3)(Tran) or 3.05(3)(Hemo) or 3.05(4)) and 3.05(5)(Tran) or 3.05(Hemo) and 3.05(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 Late Claim by Family Member

A person referred to in clause (a) of the definition of Family Member in Section 1.01 claiming to be a Family Member of a HCV Infected Person who has died and who is determined eligible to make a Late Claim pursuant to Appendix E of this HCV Late Claims Benefit Plan or a person referred to in clause (a) of the definition of Family Member in Section 1.01 claiming to be a Family Member of a deceased HCV Infected Person whose Late Claim is accepted by the Administrator under this HCV Late Claims Benefit Plan must deliver to the Administrator a Late Claim application form prescribed by the Administrator together with:

- (a) proof as required by Sections 3.05(1)(a) and (b) (or, if applicable, Sections 3.05(3)(Tran) or 3.05(3)(Hemo) or 3.05(4) and 3.05(5)(Tran) or 3.05(5)(Hemo) and 3.05(6), unless the required proof has been previously delivered to the Administrator; and
- (b) proof that the claimant was a Family Member of the HCV Infected Person referred to in clause (a) of the definition of Family Member in Section 1.01.

3.08 Late Claim Deadline

(1) A person who is determined eligible to make a Late Claim in accordance with the provisions of Appendix E, must make his or her Late Claim within two years after the date of such eligibility determination.

(2) Except as provided in this Section, a Spouse or Child claiming to be secondarily infected with HCV by a HCV Infected Person must make his or her Late Claim within three years after the date the Late Claim of the Approved Late Claim HCV Infected Person or Approved Late Claim HCV Personal Representative for the deceased HCV Infected Person is accepted by the Administrator under this HCV Late Claims Benefit Plan.

(3) Except as provided in this Section, those persons referred to in clause (a) of the definition of Family Member in Section 1.01 must make their Late Claim within two years after the date the Late Claim of the Approved Late Claim HCV Personal Representative for the deceased HCV Infected Person is accepted by the Administrator under this HCV Late Claims Benefit Plan.

(4) Except as provided in this Section, no person may make a Late Claim for the first time under this HCV Late Claims Benefit Plan unless he or she has made a late claim request to the Administrator in accordance with the provisions of Appendix E on or before 31 March 2025.

ARTICLE FOUR
COMPENSATION TO APPROVED LATE CLAIM HCV INFECTED PERSONS

4.01 Fixed Payments

(1) Each Approved Late Claim HCV Infected Person will be paid the amounts set out below as compensation for damages:

- (a) the amount of \$14,601.65 as compensation for damages upon his or her Late Claim being approved by the Administrator;
- (b) the amount of \$29,203.30 upon delivering to the Administrator a PCR Test report;
- (c) unless waived pursuant to the provisions of Section 4.01(3), the amount of \$43,804.94 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 \$94,910.70 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 angiomata, 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 blood tests for a minimum of three months demonstrating:
 - 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 30×10^9 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 \$146,016.47 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 Late Claim 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 Late Claim 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 Late Claim 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 Late Claim 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 Late Claim 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 \$43,804.94 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 \$43,804.94. 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 \$43,804.94 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 Late Claim 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 \$14,601.65 referred to in Section 4.01(1)(a), the \$29,203.30 referred to in Section 4.01(1)(b) and, unless waived pursuant to the provisions of Section 4.01(3), the \$43,804.94 referred to in Section 4.01(1)(c), as well as the \$94,910.70 referred to in Section 4.01(1)(d).

(5)(Tran) The medical evidence to be delivered pursuant to this Article Four for a Transfused Late Claim is such medical evidence as is generally accepted by the medical profession and approved by the Courts.

(5)(Hemo) Subject to Section 4.01(6)(Hemo), the evidence to be delivered pursuant to this Article Four for a Hemophiliac Late Claim 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 Late Claim 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.

(6)(Hemo) Notwithstanding Section 4.01(5)(Hemo), a Primarily-Infected Hemophiliac who is an Approved Late Claim HCV Infected Person and who has or had Thalassemia Major as his or her underlying condition must comply with the Transfused Late Claim medical evidence provision in Section 4.01(5)(Tran) and/or such court approved protocols concerning medical evidence as are in force from time to time rather than the provision at Section 4.01(5)(Hemo).

4.02 Compensation for Loss of Income

(1) Each Approved Late Claim 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 \$43,804.94 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 Late Claim 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, an amount each calendar year equal to 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 Late Claim HCV Infected 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 Late Claim 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 Approved Late Claim 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 Late Claim 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 \$3,095,279.91 multiplied by the ratio that the Pension Index for the year bears to the Pension Index for 2014, and provided that in the event the amount determined under this Section 4.02(2)(b)(i) exceeds \$403,732.16 multiplied by the ratio that the Pension Index for the year bears to the Pension Index for 2014, the Court having jurisdiction over the Late Claim must approve the amount proposed to be paid as loss of income under Section 4.02 or loss of support under Section 6.01(1) before any payment is made, minus

- (ivi) the Ordinary Deductions that would be payable by the Approved Late Claim HCV Infected Person on the amount determined under Section 4.02(2)(b)(i) on the assumption that such amount was the Approved Late Claim HCV Infected Person's only income for such year.
- (c) "Post-claim Net Income" of an Approved Late Claim HCV Infected Person for a year means an amount determined as follows:
- (i) the total of (A) the Approved Late Claim HCV Infected Person's Earned Income for the year or, if the Administrator demonstrates on a balance of probabilities that the Approved Late Claim 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 Late Claim 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 Late Claim 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 Late Claim 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 Late Claim 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.

4.02A Compensation for Inability to Contribute to Pension Plan

Each Approved Late Claim HCV Infected Person who is entitled to receive compensation for past and/or present loss of income caused by his or her infection with HCV will be paid, an amount each calendar year equal to 10% of his or her Annual Loss of Net Income for such year to a cap of \$20,000 per year for those years prior to 2014 and for the years 2014 and following to a cap of \$20,000 per year multiplied by the ratio that the Pension Index for the year bears to the Pension Index for 2014. For greater certainty, compensation under this Section 4.02A is only payable for those years the Approved Late Claim HCV Infected Person is or was entitled to receive compensation for loss of income. This Section 4.02A does not apply to compensation paid as loss of support following the death of an Approved Late Claim HCV Infected Person.

4.03 Compensation for Loss of Services in the Home

(1) Each Approved Late Claim 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 \$43,804.94 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 \$16.15 per hour to a maximum of \$355.30 per week.

(3) Notwithstanding any of the provisions hereof, an Approved Late Claim HCV Infected Person cannot claim compensation for loss of income and compensation for the loss of services in the home for the same period.

4.04 Compensation for Costs of Care

An Approved Late Claim 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 \$80,746.43;
- (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 Late Claim 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 \$1,345.77 for each completed month of therapy.

4.06 Compensation for Uninsured Treatment and Medication

An Approved Late Claim 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

(1) An Approved Late Claim 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 Late 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.

(2) A Family Member (as defined in Section 1.01) of an Approved Late Claim HCV Infected Person who delivers to the Administrator evidence satisfactory to the Administrator that he or she accompanied the Approved Late Claim HCV Infected Person to the Approved Late Claim HCV Infected Person's medical appointment(s) seeking medical advice or treatment due to his or her HCV infection will be paid an allowance of \$200, provided this provision shall only apply to those appointments occurring after 16 August 2016. For greater certainty, the payment shall be limited to \$200 (2014 dollars) multiplied by the ratio that the Pension Index for the year bears to the Pension Index for 2014 per occasion irrespective of whether more than one Family Member is in attendance and irrespective of whether the attendance requires more than one day.

4.08 Compensation for HIV Secondarily-Infected Persons

(1) An Approved Late Claim 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)(Hemo) Notwithstanding any of the provisions of this HCV Late Claims Benefit Plan (including Section 4.08(1)), an Approved Late Claim Primarily-Infected Hemophiliac who is also infected with HIV may elect to be paid \$73,008.23 in full satisfaction of all his or her past, present or future Late Claims pursuant to this HCV Late Claims Benefit Plan (including all potential Late Claims of his or her Dependents or other Family Members pursuant to Article Six) but such payment will not affect the personal Late Claim of a Spouse or Child who is also a HCV Infected Person. Evidence that an Approved Late Claim Primarily-Infected Hemophiliac 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 Late Claim HCV Infected Persons under this Article Four are inclusive of any prejudgment interest or other amounts that may be claimed by Approved Late Claim HCV Infected Persons.

ARTICLE FIVE COMPENSATION TO APPROVED LATE CLAIM HCV PERSONAL REPRESENTATIVES

5.01 Compensation if Deceased Prior to 1 January 1999

(1) The Approved Late Claim HCV Personal Representative of a HCV Infected Person who died prior to 1 January 1999 is entitled to be reimbursed for the uninsured funeral expenses incurred up to a maximum of \$6,728.87 and, subject to the provisions of Section 5.01(2), the Approved Late Claim HCV Personal Representative will be paid the

amount of \$73,008.23 in full satisfaction of any and all Late Claims that the HCV Infected Person would have had under this HCV Late Claims Benefit Plan if he or she had been alive on or after 1 January 1999. This \$73,008.23 payment to the Approved Late Claim HCV Personal Representative is in addition to any Late Claims of Dependents and other Family Members pursuant to Article Six and will not affect the personal Late Claim of a Spouse or Child who is also a HCV Infected Person.

(2) Instead of the \$73,008.23 payment pursuant to Section 5.01(1), if the Approved Late Claim 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 Late Claims under this HCV Late Claims Benefit Plan agree to be paid \$175,219.76 in full satisfaction of all their Late Claims pursuant to this HCV Late Claims Benefit Plan (including all potential Late Claims pursuant to Article Six), such amount will be paid jointly to them, but such payment will not affect the personal Late 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 Late Claim of the Approved Late Claim HCV Personal Representative and the Late Claims of 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)(Hemo) 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 Approved Late Claim HCV Personal Representative and all the deceased Primarily-Infected Hemophiliac's Dependents and other Family Members having Late Claims under this HCV Late Claims Benefit Plan agree to be paid \$105,131.86 in full satisfaction of all their Late Claims pursuant to this HCV Late Claims Benefit Plan (including all Late Claims pursuant to Article Six), such amount will be paid jointly to them upon receipt of the following:

- (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 3.01Hemo(1)(a);
- (c) the evidence referred to in Section 3.05(3)(Hemo)(a), (b), (c) or (d);
- (d) a statutory declaration referred to in Section 3.05(4); and
- (e) any evidence required by the Administrator pursuant to Section 3.05(5)(Hemo).

Such payment will not affect the personal Late 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 Approved Late Claim HCV Personal Representative after his or her death, the Approved Late Claim HCV Personal Representative will be paid (i) the uninsured funeral expenses incurred up to a maximum of \$6,728.87 and (ii) whether or not the evidence required under Section 3.05(1)(a) is provided, the amount of all Late 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 HCV Late Claims Benefit Plan), but such payments are in addition to the Late Claims of Approved Late Claim Dependents and Approved Late Claim Family Members pursuant to Article Six and will not affect the personal Late 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 Late Claims of the Approved Late Claim HCV Personal Representative and the deceased HCV Infected Person's Approved Late Claim Dependents and other Approved Late Claim Family Members pursuant to Article Six exceed an aggregate of \$240,000.

ARTICLE SIX

COMPENSATION TO APPROVED LATE CLAIM DEPENDANTS AND APPROVED LATE CLAIM FAMILY MEMBERS

6.01 Compensation to Approved Late Claim Dependents

(1) If a HCV Infected Person dies and the death was caused by his or her infection with HCV, the Approved Late Claim Dependents 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 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 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” 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 Late Claim 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 \$16.15 per hour to a maximum of \$355.30 per week.

(3) The amounts payable pursuant to Section 6.01(1) or (2) will be allocated as the Approved Late Claim Dependants may agree or, failing any agreement, as the Administrator so determines based on the extent of support received by each of the Approved Late Claim Dependants prior to the death of the HCV Infected Person. Notwithstanding any of the provisions hereof, the Approved Late Claim 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 Late Claim Family Members

Each Approved Late Claim 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) \$33,644.35 for the Spouse;
- (b) \$20,186.61 for each Child under the age of 21 years at the date of death of the HCV Infected Person;
- (c) \$12,919.43 for each Child 21 years or older at the date of the death of the HCV Infected Person;
- (d) \$12,919.43 for each Parent;
- (e) \$6,728.87 for each Sibling;
- (f) \$672.89 for each Grandparent; and
- (g) \$672.89 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

Approved Late Claim Dependants and other Approved Late Claim Family Members of a HCV Infected Person will only be entitled to make Late 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 Late Claims or to any additional or other compensation. Nothing in this Section will affect the personal Late 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 Late Claim HCV Infected Person or the Approved Late Claim 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 Late Claim HCV Infected Person or the Approved Late Claim Dependants if the Administrator determines that there has been a material change in circumstances.

7.02 Compensation Indexed to Pension Index

Except as provided in this Section, the amount of all of the payments to be made pursuant to Articles Four, Five and Six (other than Sections 4.02, 4.02A, 4.06, 4.07 and the sum of \$240,000 referred to in Sections 4.08(1), 5.01(3) and 5.02(2)) will be adjusted on the first day of January of each calendar year during the Term commencing on 1 January 2017 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 2014.

7.03A Restrictions on Compensation Payments

As one measure to ensure the sufficiency of the HCV Late Claims Benefit Account, 25% of the amount of each payment to be made pursuant to Articles Four, Five and/or Six will be postponed and will only be paid if the Courts amend these restrictions in accordance with the provisions of Section 7.03(2).

7.03 Periodic Re-assessment by Courts and Determination of Unallocated Assets

(1) The Joint Committee must apply to the Courts concurrently with the triennial financial sufficiency review undertaken pursuant to the Transfused HCV Plan and the Hemophiliac HCV Plan to determine whether, among other things, one or more of the 25% restrictions on the payments under this HCV Late Claims Benefit Plan in Section 7.03A and/or the limitation in Section 4.02(2)(b)(i) on loss of income (also affecting loss of support) should be amended (i.e., either increased or decreased) or removed in whole or in part.

(2) If the Courts decide to amend a restriction on the payments under this HCV Late Claims Benefit Plan 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 HCV Late Claims Benefit Plan will be amended by addressing the restrictions upon payment contained in Section 7.03A by deleting the words “25% of” and substituting a revised percentage for one or more of the restrictions. Thereafter, these restrictions will again be amended until such time as they are deleted. Each Person who previously received compensation reduced pursuant to Section 7.03A 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 revised or deleted 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
- (b) Secondly, after the amendments referred to in Section 7.03(2)(a) have been made and all amounts payable under that Section have been paid, the HCV Late Claims Benefit Plan will then be amended by deleting the sum “\$3,095,279.91” in Section 4.02(2)(b)(i) and substituting the maximum sum that is to be used for the calculation in that Section. Thereafter, such restriction(s) may again be amended by the Courts until such time as it is deleted. Once an amendment has been made, each person who previously received compensation pursuant to Section 4.02, 4.02A 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 HCV Late Claims Benefit Account and/or whether the restrictions on the payments in Sections 7.03A and/or 4.02(2)(b)(i) should be amended (i.e., either increased or decreased) or removed in whole or in part.

(4) Once the 25% restriction in Section 7.03A has been removed and all postponed payments have been paid to the persons owed such compensation, the Courts may in their unfettered discretion, at the request of the Joint Committee made from time to time, order that all or any portion of the HCV Late Claims Benefit Account that is actuarially unallocated be allocated for the benefit of the Approved Late Claim Class Members in a way that is not different or better than the way any other actuarially unallocated money and other assets held by the Trustee in the Trust Fund are allocated to Approved Transfused/Hemophiliac Plan Class Members under the Settlement Agreement.

7.04 Interest

Interest will not accrue on amounts payable under this HCV Late Claims Benefit Plan except as specifically provided in Section 7.03(2). Interest payable under this HCV Late Claims Benefit 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.

7.05 Set-Off

In the absence of fraud, any amount paid pursuant to this HCV Late Claims Benefit 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 HCV Late Claims Benefit Plan.

7.06 Payments to Public Trustee

Notwithstanding any of the other provisions of this HCV Late Claims Benefit 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 an Approved Late Claim Class Member pursuant to this HCV Late Claims Benefit 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

HCV Late Claims Benefit Plan, would be the person entitled to the compensation under this HCV Late Claims Benefit 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 Approved Late Claim 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 HCV Late Claims Benefit Plan.

8.02 Social Benefits

(1) If an Approved Late Claim Class Member was receiving any medical, ancillary medical, health or drug benefits on 1 April 1999, the receipt of payments pursuant to this HCV Late Claims Benefit Plan will not affect the quantity, nature or duration of any corresponding benefits that any Approved Late Claim Class Member receives after such date except to the extent that such benefits are related to the Approved Late Claim Class Member's infection with HCV in which case they are recoverable exclusively under this HCV Late Claims Benefit Plan as provided in Sections 4.06 and 4.07.

(2) The receipt of any payments pursuant to this HCV Late Claims Benefit Plan will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to an Approved Late Claim 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 HCV Late Claims Benefit Plan will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to an Approved Late Claim 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 Approved Late Claim Class Member.

8.03 Collateral Benefits

(1) If an Approved Late Claim Class Member is or was entitled to be paid compensation under this HCV Late Claims Benefit 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 HCV Late Claims Benefit Plan will be reduced by the amount of the compensation that the Approved Late Claim 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 Approved Late Claim Class Member will not be taken into account for any purposes whatsoever under this HCV Late Claims Benefit Plan.

8.04 Subrogation

No subrogation payment of any nature or kind will be paid, directly or indirectly, under this HCV Late Claims Benefit 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 HCV Late Claims Benefit Plan;
- (b) no municipality and no department of a municipality will be paid under this HCV Late Claims Benefit Plan;
- (c) no person exercising a right of subrogation will be paid under this HCV Late Claims Benefit Plan; and
- (d) no claimant will be paid compensation if the Late Claim is being asserted as a subrogated Late Claim or if the claimant will hold any money paid under this HCV Late Claims Benefit 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 HCV Late Claims Benefit 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 HCV Late Claims Benefit 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 Late Claims and for obtaining funds from the HCV Late Claims Benefit Account component of the Trust Fund on behalf of Approved Late Claim Class Members under this HCV Late Claims Benefit Plan and distributing such funds as compensation payable to Approved Late Claim Class Members under this HCV Late Claims Benefit Plan. No payments will be made to any Approved Late Claim Class Member under this HCV Late Claims Benefit Plan unless and until the Approved Late Claim Class Member, or if the Late Claim Class Member is deceased, a minor or mentally incompetent, his or her Approved Late Claim HCV Personal Representative, duly executes and delivers to the Administrator a valid and binding release in the form attached to this HCV Late Claims Benefit Plan 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 (i) 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 - Tran) including the Class Actions, or (ii) a Primarily-Infected Hemophiliac with HCV from Blood (Hemophiliac) (including the infection of a Secondarily-Infected Person) commenced against any Releasee (as defined in the form of release attached hereto as Appendix B - Hemo) including the Class Actions as provided in the 1999 Approval Orders.

9.02 Administration of this HCV Late Claims Benefit Plan

In addition to the provisions of Section 2.01(2), the Courts may issue orders in such form as is necessary to implement and enforce the provisions of this HCV Late Claims Benefit Plan and will supervise the ongoing administration and operation of this HCV Late Claims Benefit Plan and, without limiting the generality of the foregoing:

- (a) the Courts may make any order they consider necessary for the administration or operation of this HCV Late Claims Benefit Plan;
- (b) the Joint Committee may apply to the Courts for directions concerning the proper administration or operation of this HCV Late Claims Benefit Plan, including the determination of eligibility and evaluation of applications, at any time; and
- (c) the Courts shall approve all rules, protocols and tariffs necessary for the administration or operation of this HCV Late Claims Benefit Plan.

ARTICLE TEN DISPUTE RESOLUTION

10.01 Reference to Referee or Arbitrator

A person who was determined to be eligible to make a Late Claim in accordance with the provisions of this HCV Late Claims Benefit Plan and who thereafter made a Late Claim may, within 30 days after he or she receives notice of the Administrator's decision respecting his or her Late 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 the Administrator's 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. For greater certainty, this Article Ten and Appendices C and D shall not apply to the determination by a Late Claims Referee of whether a person is eligible to make a Late Claim that is required by Section 3.01A and Appendix E.

10.02 Jurisdiction of Referees and Arbitrators

Each Referee and Arbitrator may exercise all of the jurisdiction and powers granted to him or her hereunder.

10.03 Forwarding Late 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 Late 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 Late 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 Late 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:

Income and Employment Support Act, SNL 2002, c I-0.1

Nova Scotia:

Social Assistance Act, R.S., c.432

Employment Support and Income Assistance Act S.N.S. 2000, c. 27

Disabled Person's Commission Act R.S., 1989. c. 130

Prince Edward Island:

Social Assistance Act, RSPEI 1988, c S-4.3

New Brunswick:

Family Income Security Act, RSNB 2011, c 154

Québec:

Individual and Family Assistance Act, CQLR c A-13.1.1

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 Manitoba Assistance Act, CCSM c A150

The Municipal Act, CCSM, M225

Saskatchewan:

Saskatchewan Assistance Act

Alberta:

Income and Employment Supports Act, SA 2003, c I-0.5

Assured Income for the Severely Handicapped Act, SA 2006, c A-45.1
Income and Employment Supports Act, SA 2003, c I-0.5

British Columbia:

Employment and Assistance Act, SBC 2002, c 40
Employment and Assistance for Persons with Disabilities Act, SBC 2002, c 41

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 - TRAN
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 (Transfused), 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 HCV Late Claims Benefit Plan, including its Appendices. 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”.

THIS RELEASE WITNESSES that in consideration of the right of the Releasor to participate in the HCV Late Claims Benefit 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 1999 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 1999 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).

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

- (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 *, 20*.

SIGNED, SEALED AND DELIVERED)
 in the presence of:)
)
)
)

 * (s)

 Witness

APPENDIX B - HEMO
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 (Hemophiliac), 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 (Hemophiliac),

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 HCV Late Claims Benefit Plan, including its Appendices. 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”.

THIS RELEASE WITNESSES that in consideration of the right of the Releasor to participate in the HCV Late Claims Benefit 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 (Hemophiliac) (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 1999 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 (Hemophiliac) (including the infection of a Secondarily-Infected Person) including the Class Actions as provided in the 1999 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 (Hemophiliac) (including the infection of a Secondarily-Infected Person).

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 (Hemophiliac) (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 (Hemophiliac) (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 (Hemophiliac) (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 (Hemophiliac) (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

- (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 (Hemophiliac) (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 *, 20**.

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 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 \$13,457.74 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 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;

- (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.
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.

APPENDIX E

ELIGIBILITY TO MAKE A LATE CLAIM UNDER THE HCV LATE CLAIMS BENEFIT PLAN

Late Claim Request

1. Where the Administrator has received or receives a request to make a Late Claim from or on behalf of a person who did not make a Claim before the 30 June 2010 first claim deadline (the “**First Claim Deadline**”) and who does not meet the requirements of the exceptions to that deadline set out in Section 3.08 of the Transfused HCV Plan/Section 3.07 of the Hemophiliac HCV Plan and/or the applicable court approved protocols (the “**Exceptions**”), the request shall be referred to as a “**Late Claim Request.**”
2. The Administrator shall request a signed statement from the person making the Late Claim Request which:
 - (a) sets out why the person is seeking to make a Late Claim after the First Claim Deadline and do not meet the requirements and/or timeframe of an applicable Exception; and
 - (b) recites the facts he or she is relying upon in seeking to be relieved from the applicable deadline.

Referral to Late Claims Referee

3. The Administrator shall forthwith deliver each such signed statement it receives to a Late Claims Referee appointed by the Courts to consider Late Claim Requests together with information from the Administrator setting out the first contact with the person making the Late Claim Request and any other information it has relevant to the request.
4. The Late Claims Referee shall determine on a summary basis whether a Late Claim application form under the HCV Late Claims Benefit Plan shall issue to the person making the Late Claim Request based upon the following guidelines:
 - (a) Late Claim Requests by persons who did not receive timely notice of the First Claim Deadline and do not meet the requirements and/or timeframe of an applicable Exception should be allowed if, in the opinion of the Late Claims Referee, the Late Claim Request was made within a reasonable time after, the later of, such notice was acquired or this HCV Late Claims Benefit Plan came into force;
 - (b) Late Claims Requests by persons whose failure to meet the First Claim Deadline or the requirements and/or timeframe of an applicable Exception

was due to matters that, in the opinion of the Late Claims Referee, should reasonably be considered to be beyond their control or are otherwise a reasonable explanation for their delay, should be allowed;

- (c) Late Claim Requests made by persons who had notice of the First Claim Deadline or the requirements and/or timeframe of an applicable Exception before it expired should be disallowed unless they meet the requirements of subparagraph (b) above or, in the opinion of the Late Claims Referee, the timing of the receipt of such notice was inadequate for the purpose of making a Claim under the Transfused HCV Plan or the Hemophiliac HCV Plan; and
- (d) any other Late Claim Requests and those where the Late Claims Referee is uncertain as to the appropriate application of the above guidelines shall be referred by the Late Claims Referee in writing to the appropriate Court to be dealt with summarily.

5. The Late Claims Referee shall have the power to establish any procedures he or she considers necessary and proper to consider the Late Claim Request on a summary basis and shall have the power to require additional submissions from the person making the Late Claim Request and/or the Administrator either orally or in writing and whether admissible in a court of law or not, as he or she considers proper.

6. The Late Claims Referee shall give a written decision within 60 days of his/her receipt of the Late Claim Request.

7. The Administrator shall forthwith provide the Late Claims Referee's decision to the person making the Late Claim Request. Where the Late Claims Referee denies a Late Claim Request, the Administrator shall notify the person making the Late Claim Request in writing that the decision will be automatically confirmed and be final and binding unless he/she serves and files a notice of motion with the Court having jurisdiction opposing confirmation of the decision within 30 days of its' delivery.

8. The provisions of Section 10.04 and Appendix C of the HCV Late Claims Benefit Plan shall have no application to the summary procedure established for the determination by a Late Claims Referee of whether a Late Claim application form under the HCV Late Claims Benefit Plan shall issue pursuant to a Late Claim Request.

Processing the Completed Late Claim Application Form

9. The issuance of a Late Claim application form to a person making a Late Claim Request pursuant to a decision of the Late Claims Referee or the Court shall not be determinative of the eligibility of the person making the Late Claim Request to receive compensation under the HCV Late Claims Benefit Plan.

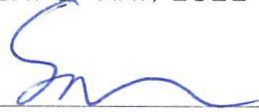
10. Where the Administrator receives a completed Late Claim application form in accordance with the provisions of the HCV Late Claims Benefit Plan, it shall process the Late Claim application form and determine eligibility for compensation by applying the terms of the HCV Late Claims Benefit Plan in light of such Court Approved Protocols and such Standard Operating Procedures as are in place under the HCV Late Claims Benefit Plan at the time of processing of the Late Claims application form.

11. Where the Administrator approves the Late Claim application of a HCV Infected Person (or his/her HCV Personal Representative) under the HCV Late Claims Benefit Plan, the Spouse or Child of such Approved Late Claim HCV Infected Person claiming to be secondarily infected and/or any person referred to in clause (a) of the definition of Family Member in Section 1.01 claiming to be a Family Member of such Approved Late Claim HCV Infected Person who would have been entitled to make a Transfused/Hemophiliac Plan Claim had their Claims been timely, shall be entitled to make his or her Late Claim in accordance with the provisions of the HCV Late Claims Benefit Plan without the necessity of satisfying the requirements of this Appendix E.

Denied Late Claim

12. Where the Administrator denies a Late Claim application, the Administrator shall notify the person making the Late Claim application in writing that the appeal routes at Section 10.01 of the HCV Late Claims Benefit Plan and the appropriate Appendices apply.

THE ATTACHED IS EXHIBIT "K" 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 ~~Suits~~ 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

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

**ORDER MADE AFTER APPLICATION
(HCV LATE CLAIMS BENEFIT PLAN, NOTICE PLAN, LATE CLAIMS REFEREES &
ADMINISTRATION BUDGET)**

The Honourable
 BEFORE Chief Justice Hinkson

) *Tuesday the 19th day*
) *of December 2017*

ON THE APPLICATION of the British Columbia Joint Committee member dated November 9, 2017 before the Honourable Chief Justice Hinkson in writing, and the Attorney General of Canada, Her Majesty the Queen in Right of the Province of British Columbia and British Columbia Fund Counsel all having been served with the application materials;

ON BEING ADVISED that the Public Guardian and Trustee for British Columbia was served with the application and did not respond;

- 2 -

AND ON BEING ADVISED that the British Columbia Joint Committee and the Attorney General of Canada consent to the making of this order and the remaining Parties do not oppose to it;

UPON READING the materials filed, including Affidavit #18 of Heather Rumble Peterson made October 13, 2017 and Affidavit #1 of Patrick Gervais made October 11, 2017;

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

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

THIS COURT ORDERS that:

1. The HCV Late Claims Benefit Plan in the form attached hereto as **"Schedule A"** is hereby approved.
2. that for the purposes of implementing, administering, monitoring and supervising the HCV Late Claims Benefit Plan and the HCV Late Claims Benefit Account, the Administrator, Trustee, Fund Counsel, Auditors, Joint Committee, Investment Advisors, Referees, Arbitrators, Monitor, Late Claims Referees and Courts shall perform the role and have the duties and responsibilities provided for in the Settlement Agreement and in the HCV Late Claims Benefit Plan with all the necessary adaptations, modifications and powers as may be required to do so.
3. Reva Devins and Christian Leblanc are hereby appointed Late Claims Referees under the HCV Late Claims Benefit Plan and that the Joint Committee may propose for this Court's approval the appointment of other persons to serve as Late Claims Referees.
4. The tariffs established by the Courts for the payment of referees, arbitrators and legal counsel representing class members on an appeal shall apply to the HCV Late Claims Benefit Plan with any necessary adaptations and modifications as may be required.
5. (a) The Notice Plan in respect of the HCV Late Claims Benefit Plan in the form attached hereto as **Schedule "B"** is hereby approved and directs that the active notice campaign proposed in Budget C therein, at a cost of \$987,400 (plus applicable taxes), together with the proposed post-campaign notice program for two years following the completion of the active notice campaign, budgeted at \$37,000 per year (plus applicable taxes), be implemented; and

(b) The expenditure of funds from the HCV Late Claims Benefit Account is hereby approved to implement the notice option.

6. The Administrator's 2017 Late Claim Administration Proposal dated November 15, 2016, attached hereto as **Schedule "C"**, is hereby approved and directs that all costs relating thereto (plus applicable taxes) be paid from the HCV Late Claims Benefit Account.

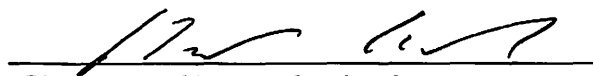
7. The terms of this Order shall not be effective unless and until they are also approved by the Superior Court of Quebec and the Ontario Superior Court of Justice with no material differences.

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



Signature of British Columbia
Joint Committee Member

Sharon Matthews, Q.C.



Signature of lawyer for the Attorney
General of Canada

for
Craig Cameron

See attached

Signature of lawyer for Her Majesty the
Queen in Right of the Province of British
Columbia

Keith L. Johnston

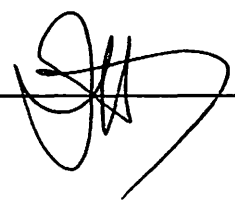
see attached

Signature of British Columbia Fund
Counsel

Gordon J. Kehler



By the Court



Registrar

- 3 -

(b) The expenditure of funds from the HCV Late Claims Benefit Account is hereby approved to implement the notice option.

6. The Administrator's 2017 Late Claim Administration Proposal dated November 15, 2016, attached hereto as **Schedule "C"**, is hereby approved and directs that all costs relating thereto (plus applicable taxes) be paid from the HCV Late Claims Benefit Account.

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Signature of British Columbia
Joint Committee Member

Sharon Matthews, Q.C.

Signature of lawyer for the Attorney
General of Canada

Craig Cameron

Signature of lawyer for Her Majesty the
Queen in Right of the Province of British
Columbia

Fr
Keith L. Johnston

Signature of British Columbia Fund
Counsel

Gordon J. Kehler

By the Court

Registrar

ENDORSEMENTS ATTACHED

- 3 -

- (b) The expenditure of funds from the HCV Late Claims Benefit Account is hereby approved to implement the notice option.

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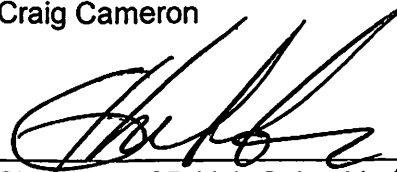
THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of British Columbia
Joint Committee Member

Sharon Matthews, Q.C.

Signature of lawyer for the Attorney
General of Canada

Craig Cameron



Signature of lawyer for Her Majesty the
Queen in Right of the Province of British
Columbia

Keith L. Johnston

Signature of British Columbia Fund
Counsel

Gordon J. Kehler

By the Court

Registrar

*THE ATTACHED IS EXHIBIT "L" 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.

COUR SUPÉRIEURE

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

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

DATE : 29 novembre 2017

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

500-06-000016-960

DOMINIQUE HONHON

Requérante

c.

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

Intimés

Et

ME MICHEL SAVONITTO, ès qualités de membre du Comité conjoint

REQUÉRANT

Et
FONDS D'AIDE AUX RECOURS COLLECTIFS
Et
LE CURATEUR PUBLIC DU QUÉBEC

Mis en cause

500-06-000016-960 - 500-06-000068-987

PAGE : 2

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

Requérant

c.

PROCUREUR GÉNÉRAL DU CANADA

et

PROCUREUR GÉNÉRAL DU QUÉBEC

et

SOCIÉTÉ CANADIENNE DE LA CROIX-ROUGE

Intimés

et

FONDS D'AIDE AUX RECOURS COLLECTIFS

et

LE CURATEUR PUBLIC DU QUÉBEC

Mis en cause

JUGEMENT SUR LA DEMANDE DU COMITÉ CONJOINT POUR APPROBATION DU RÉGIME D'INDEMNISATION POUR LES RÉCLAMATIONS TARDIVES, DE LA CAMPAGNE DE NOTIFICATION, DU BUDGET D'ADMINISTRATION ET POUR LA NOMINATION DES ARBITRES POUR ENTENDRE LES DEMANDES DE RÉCLAMATIONS TARDIVES

- [1] **ATTENDU QUE** le tribunal est saisi d'une *Demande du comité conjoint pour approbation du régime d'indemnisation pour les réclamations tardives, de la campagne de notification, du budget d'administration et pour la nomination des arbitres pour entendre les demandes de réclamations tardives (Application from the Joint Committee for the approval of the HCV late claims benefit plan, notice campaign, administration budget and appointment of late claims referees)* présentée par Me Michel Savonitto, *ès qualités* de membre du Comité conjoint pour le Québec;
- [2] **CONSIDÉRANT** les allégations à la demande et les pièces déposées à l'appui de celle-ci;
- [3] **CONSIDÉRANT** la preuve au dossier;
- [4] **CONSIDÉRANT** que le Procureur Général du Canada et la Procureure Générale du Québec consentent à la présente demande suite à certaines modifications apportées à la Pièce R-1;

- [5] **PAR CES MOTIFS, LE TRIBUNAL :**
- [6] **ACCUEILLE** la demande;
- [7] **APPROUVE** le Régime d'indemnisation pour les réclamations tardives et ses annexes dans leur version anglaise jointe au présent jugement (Annexe A), la version française devant être préparée et rendue disponible dans les meilleurs délais;
- [8] **DÉCLARE** que pour la mise en œuvre, l'administration, la surveillance et la supervision du Régime d'indemnisation pour les réclamations tardives et du Compte des réclamations tardives, l'Administrateur, le Fiduciaire, les Conseillers juridiques du Fonds, les Vérificateurs, le Comité conjoint, les Conseillers financiers, les Arbitres et Juges-Arbitres, le « Court Monitor », les Arbitres des demandes de réclamations tardives et les Tribunaux auront les rôles et devront s'acquitter de leurs devoirs et responsabilités prévus à la Convention de Règlement (telle que modifiée par l'Annexe F) avec toutes les adaptations, modifications et pouvoirs nécessaires le cas échéant, et tel que prévus en vertu du présent jugement approuvant le Régime d'indemnisation des réclamations tardives, en vertu du Régime d'indemnisation des réclamations tardives incluant ses annexes et en vertu des protocoles approuvés par les Tribunaux;
- [9] **NOMME** Me Christian Leblanc pour agir comme Arbitre pour entendre les demandes de réclamations tardives pour la province de Québec et toute autre personne qui pourra être proposée par le Comité conjoint pour agir à ce titre également, au besoin;
- [10] **DÉCLARE** que les tarifs établis par les Tribunaux pour la rémunération des arbitres, juges-arbitres et procureurs représentant les membres en appel soient applicables au Régime d'indemnisation pour les réclamations tardives avec les adaptations et/ou modifications nécessaires requises, le cas échéant;
- [11] **APPROUVE** la campagne de notification jointe au présent jugement (Annexe B) à l'égard du Régime d'indemnisation pour les réclamations tardives dans la forme décrite sous le Budget C au coût de 987,400 \$ (taxes en sus) ainsi que le programme de suivi post-campagne évalué à 37,000 \$ par année (taxes en sus) pour une période de deux ans suivant la campagne de notification ;
- [12] **ORDONNE** que la campagne de notification et le programme de suivi post-campagne approuvés au paragraphe précédent soient mis en œuvre tel que proposé;
- [13] **AUTORISE** l'utilisation des montants du Capital Excédentaire alloués par les Tribunaux pour le Régime d'indemnisation des réclamations tardives pour

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PAGE : 4

assurer la mise en œuvre de la campagne de notification et le programme de suivi post-campagne ci-devant approuvés;

- [14] **APPROUVE** le budget proposé par l'Administrateur et joint au présent jugement (Annexe C) pour l'administration du Régime d'indemnisation pour les réclamations tardives ;
- [15] **ORDONNE** que les frais d'administration du Régime d'indemnisation pour les réclamations tardives (et les taxes en sus) soient payés à même le montant de Capital Excédentaire alloué par les Tribunaux pour le Régime d'indemnisation des réclamations tardives;
- [16] **DÉCLARE** le jugement à intervenir exécutoire sans que les tribunaux de l'Ontario et de la Colombie-Britannique n'aient à rendre de tels jugements;
- [17] **LE TOUT** sans frais.


CHANTAL CORRIVEAU, j.c.s.

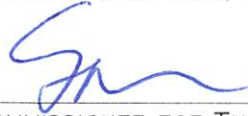
Me Martine Trudeau
Me Michel Savonitto
Savonitto & Ass. inc.
Pour Me Michel Savonitto *ès qualités* de membre du Comité conjoint

Me Nathalie Drouin
Me Stéphane Arcelin
Procureure générale du Canada/Attorney general of Canada
Ministère de la Justice Canada
Pour la Procureure générale du Canada

Me Serge Ghorayeb
Bernard Roy (Justice-Québec)
Pour la Procureure générale du Québec

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

THE ATTACHED IS EXHIBIT "M" 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 **Suits LLP**,
Barristers and Solicitors.
Expires February 22, 2025.

Court File # 98-CV-141369

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE JUSTICE

)

Tuesday THE 12th DAY

)

PAUL PERELL

)

OF Dec. , 2017

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

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*

ORDER
(Implementation of 2016 Allocation Order)



THIS MOTION, made by the Joint Committee members for Ontario, for the relief granted herein, was heard in writing this day.

ON READING the affidavits of Heather Rumble Peterson, sworn October 13, 2017, Richard Border made October 12, 2017 and October 14, 2015, and the Written Arguments of Class Member 2213 and 7438,

ON BEING ADVISED that the Public Guardian and Trustee for Ontario and the Children's Lawyer for Ontario were served with the motion and each has advised that they take no position,

AND ON BEING ADVISED that the Plaintiffs and the Attorney General of Canada consent to the making of this Order and the remaining Parties do not oppose it,

1. THIS COURT ORDERS that the following three separate accounts of the Trust Fund be established as at December 31, 2013, to be held, invested and administered by the Trustee:

- (a) the HCV Late Claims Benefit Account, for the payment of compensation under the HCV Late Claims Benefit Plan, the administrative costs thereof, and the HCV Late Claims Notice Campaign costs;
- (b) the HCV Special Distribution Benefit Account, for the payment of Special Distribution Benefits ordered in:
 - (i) paragraph 6 of the 2016 Allocation Orders and the administrative costs thereof; and

(ii) paragraphs 4 to 7 below.

- (c) the HCV Regular Benefit Account, for the payment of compensation under the Transfused HCV Plan and the Hemophiliac HCV Plan and the administrative costs thereof.

2. THIS COURT ORDERS that \$7,411,000 of the 2013 Excess Capital be allocated to the HCV Late Claims Benefit Account as required capital for the HCV Late Claims Benefit Plan.

3. THIS COURT ORDERS that \$12,199,000 of the 2013 Excess Capital be allocated to the HCV Special Distribution Benefit Account as required capital for HCV Special Distribution Benefits for Approved Class Members under the HCV Transfused Plan and the HCV Hemophiliac Plan.

4. THIS COURT ORDERS AND DIRECTS that:

- (a) Claimant 2213; and
- (b) all other alive Primarily-Infected Hemophiliacs who are Approved HCV Infected Persons co-infected with HIV and who received a lump sum payment under Section 4.08(2) of the Hemophiliac HCV Plan,

may apply to the Administrator and receive by way of Special Distribution Benefits all compensation and benefits to which they would be entitled under the Settlement Agreement as amended by the 1999 Approval Orders, the 2016 Allocation Orders and any future orders, provided that the amount they received prior to their special distribution application is indexed to the date of that application in accordance with

section 7.02 of the Hemophiliac HCV Plan and deducted from the compensation to which they are entitled as a result of their Special Distribution Benefits application.

5. THIS COURT ORDERS that \$4,600,000 of the 2013 Excess Capital plus required capital of \$500,000 be allocated to the HCV Special Distribution Benefit Account to fund the Special Distribution Benefits payments to be made pursuant to paragraph 4.

6. THIS COURT ORDERS AND DIRECTS that:

- (a) Claimant 7438; and
- (b) all other alive permanently disabled Approved Dependents of a deceased HCV Infected Person, who receive or have received compensation for loss of the deceased HCV Infected Person's services in the home, may apply to the Administrator and receive by way of Special Distribution Benefits compensation for loss of services after the actuarially calculated notional life expectancy of the deceased HCV Infected Person up to the Approved Dependant's death.

7. THIS COURT ORDERS that \$3,900,000 of the 2013 Excess Capital plus required capital of \$400,000 be allocated to the HCV Special Distribution Benefit Account to fund the Special Distribution Benefits payments to be made pursuant to paragraph 6.

8. THIS COURT DIRECTS that the value of the HCV Late Claims Benefit Account as at December 31, 2016 shall be comprised of the following allocated from the 2013 Excess Capital:

- (a) the amount of \$32,450,000 plus administrative costs of \$51,000, as ordered in paragraph 5 of the 2016 Allocation Orders;
- (b) the required capital ordered in paragraph 2 above; and
- (c) the amount of interest earned on the sum of 8(a) and 8(b), from January 1, 2014 to December 31, 2016, by applying the annual rate of return for the invested assets of the Trust Fund net of investment expenses.

9. THIS COURT DIRECTS that the value of the HCV Special Distribution Benefit Account as at December 31, 2016, shall be comprised of the following allocated from the 2013 Excess Capital:

- (a) the amount of \$130,970,000 plus related administrative costs of \$61,000, as ordered in paragraph 6 of the 2016 Allocation Orders;
- (b) the required capital ordered in paragraph 3 above;
- (c) the amount for Special Distribution Benefits for co-infected Primarily-Infected Hemophiliacs plus required capital ordered in paragraph 5 above;
- (d) the amount for Special Distribution Benefits for permanently disabled Approved Dependants plus required capital ordered in paragraph 7 above; and
- (e) the amount of interest earned on the sum of 9(a), 9(b), 9(c) and 9(d), from January 1, 2014 to December 31, 2016, by applying the annual rate of return for the invested assets of the Trust Fund net of investment expenses.

10. THIS COURT DIRECTS that the value of the HCV Regular Benefit Account as at December 31, 2016 shall be comprised of the total amount of the Trust Fund minus:

- (a) the value of the HCV Late Claims Benefit Account as at December 31, 2016 calculated in accordance with paragraph 8 above; and
- (b) the value of the HCV Special Distribution Benefit Account as at December 31, 2016 calculated in accordance with paragraph 9 above.

11. THIS COURT ORDERS that from December 31, 2016 onward, the HCV Late Claims Benefit Account, the HCV Special Distribution Benefit Account and the HCV Regular Benefit Account shall be updated monthly as follows:

- (a) the monthly rate of investment return on the total invested assets net of investment fees will be calculated;
- (b) each account balance will then be reduced by the payments (benefits and expenses) out of the account; and
- (c) then interest at the monthly investment return rate will be added to each account balance.

12. THIS COURT DECLARES that each of the HCV Late Claims Benefit Account, the HCV Special Distribution Benefit Account and the HCV Regular Benefit Account include:

- (a) any investments in which such assets may from time to time be invested;
- (b) any proceeds of disposition of any investments; and
- (c) 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, but excluding any amounts which have been paid or disbursed therefrom.

13. THIS COURT DECLARES that for the purposes of implementing, administering, monitoring and supervising:

- (a) the payments to be made pursuant to the 2016 Allocation Orders and this Order; and
- (b) the HCV Late Claims Benefit Account, the HCV Special Distribution Benefit Account and the HCV Regular Benefit Account,

the Administrator, Trustee, Fund Counsel, Auditors, Joint Committee, Investment Advisors, Referees, Arbitrators, Monitor and Courts shall perform the role and have the duties and responsibilities provided for in the Settlement Agreement and the HCV Late Claims Benefit Plan, with all the necessary adaptations, modifications and powers as may be required to do so.

14. THIS COURT ORDERS that the terms of this Order shall not be effective unless and until they are also approved by the Superior Court of Québec and the Supreme Court of British Columbia with no material differences.

Perell J

JUSTICE

1557345
ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

DEC 21 2017

PER / PAR: *[Signature]*

PARSONS et al.
KREPPNER et al.

Plaintiffs

vs. THE CANADIAN RED CROSS
SOCIETY et al.
vs. THE CANADIAN RED CROSS
SOCIETY et al.

Defendants

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

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT TORONTO

ORDER
(Implementation of 2016 Allocation Order)

PODREBARAC BARRISTERS PROFESSIONAL
CORPORATION
First Canadian Place
5600-100 King Street West
Toronto, ON M5X 1C9

KATHRYN PODREBARAC
LSUC#: 35640P
Tel: 416.568.1299

STROSBERG SASSO SUTTS LLP
Lawyers
1561 Quellerie Avenue
Windsor, ON N8X 1K5

HARVEY T. STROSBERG, Q.C.
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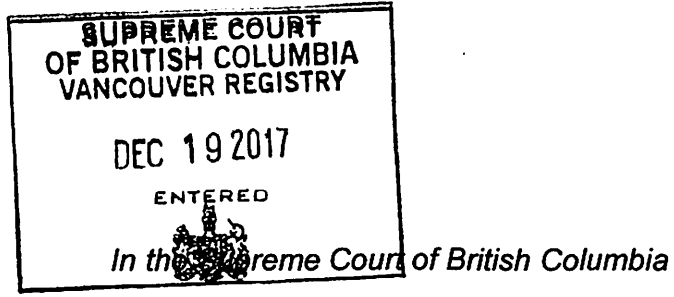
Members of the Joint Committee in Ontario

THE ATTACHED IS EXHIBIT "N" 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

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

**ORDER MADE AFTER APPLICATION
(IMPLEMENTATION OF 2016 ALLOCATION ORDER)**

The Honourable
BEFORE Chief Justice Hinkson

*) Tuesday the 19th day
) of December 2017*

ON THE APPLICATION of the British Columbia Joint Committee member dated November 9, 2017 before the Honourable Chief Justice Hinkson in writing, and the Attorney General of Canada, Her Majesty the Queen in Right of the Province of British Columbia and British Columbia Fund Counsel all having been served with the application materials;

ON BEING ADVISED that the Public Guardian and Trustee for British Columbia was served with the application and did not respond;

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AND ON BEING ADVISED that the British Columbia Joint Committee and the Attorney General of Canada consent to the making of this order and the remaining Parties do not oppose to it;

UPON READING the materials filed, including Affidavit #18 of Heather Rumble Peterson made October 13, 2017, Affidavit #7 of Richard Border made October 12, 2017, and the Written Arguments of Class Member 2213 and 7438;

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

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

THIS COURT ORDERS that:

1. The following three separate accounts of the Trust Fund be established as at December 31, 2013, to be held, invested and administered by the Trustee:
 - (a) the HCV Late Claims Benefit Account, for the payment of compensation under the HCV Late Claims Benefit Plan, the administrative costs thereof, and the HCV Late Claims Notice Campaign costs;
 - (b) the HCV Special Distribution Benefit Account, for the payment of Special Distribution Benefits ordered in:
 - (i) paragraph 6 of the 2016 Allocation Orders and the administrative costs thereof; and
 - (ii) paragraphs 4 to 7 below.
 - (c) the HCV Regular Benefit Account, for the payment of compensation under the Transfused HCV Plan and the Hemophiliac HCV Plan and the administrative costs thereof.
2. \$7,411,000 of the 2013 Excess Capital be allocated to the HCV Late Claims Benefit Account as required capital for the HCV Late Claims Benefit Plan.
3. \$12,199,000 of the 2013 Excess Capital be allocated to the HCV Special Distribution Benefit Account as required capital for HCV Special Distribution Benefits for Approved Class Members under the HCV Transfused Plan and the HCV Hemophiliac Plan.
4. (a) Claimant 2213; and

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- (b) all other alive Primarily-Infected Hemophiliacs who are Approved HCV Infected Persons co-infected with HIV and who received a lump sum payment under Section 4.08(2) of the Hemophiliac HCV Plan,

may apply to the Administrator and receive by way of Special Distribution Benefits all compensation and benefits to which they would be entitled under the Settlement Agreement as amended by the 1999 Approval Orders, the 2016 Allocation Orders and any future orders, provided that the amount they received prior to their special distribution application is indexed to the date of that application in accordance with section 7.02 of the Hemophiliac HCV Plan and deducted from the compensation to which they are entitled as a result of their Special Distribution Benefits application.

5. \$4,600,000 of the 2013 Excess Capital plus required capital of \$500,000 be allocated to the HCV Special Distribution Benefit Account to fund the Special Distribution Benefits payments to be made pursuant to paragraph 4.

6. (a) Claimant 7438; and

- (b) all other alive permanently disabled Approved Dependents of a deceased HCV Infected Person, who receive or have received compensation for loss of the deceased HCV Infected Person's services in the home,

may apply to the Administrator and receive by way of Special Distribution Benefits compensation for loss of services after the actuarially calculated notional life expectancy of the deceased HCV Infected Person up to the Approved Dependant's death.

7. \$3,900,000 of the 2013 Excess Capital plus required capital of \$400,000 be allocated to the HCV Special Distribution Benefit Account to fund the Special Distribution Benefits payments to be made pursuant to paragraph 6.

8. The value of the HCV Late Claims Benefit Account as at December 31, 2016 shall be comprised of the following allocated from the 2013 Excess Capital:

- (a) the amount of \$32,450,000 plus administrative costs of \$51,000, as ordered in paragraph 5 of the 2016 Allocation Orders;
- (b) the required capital ordered in paragraph 2 above; and
- (c) the amount of interest earned on the sum of 8(a) and 8(b), from January 1, 2014 to December 31, 2016, by applying the annual rate of return for the invested assets of the Trust Fund net of investment expenses.

9. The value of the HCV Special Distribution Benefit Account as at December 31, 2016, shall be comprised of the following allocated from the 2013 Excess Capital:

- (a) the amount of \$130,970,000 plus related administrative costs of \$61,000, as ordered in paragraph 6 of the 2016 Allocation Orders;

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- (b) the required capital ordered in paragraph 3 above;
- (c) the amount for Special Distribution Benefits for co-infected Primarily-Infected Hemophiliacs plus required capital ordered in paragraph 5 above;
- (d) the amount for Special Distribution Benefits for permanently disabled Approved Dependants plus required capital ordered in paragraph 7 above; and
- (e) the amount of interest earned on the sum of 9(a), 9(b), 9(c) and 9(d), from January 1, 2014 to December 31, 2016, by applying the annual rate of return for the invested assets of the Trust Fund net of investment expenses.

10. The value of the HCV Regular Benefit Account as at December 31, 2016 shall be comprised of the total amount of the Trust Fund minus:

- (a) the value of the HCV Late Claims Benefit Account as at December 31, 2016 calculated in accordance with paragraph 8 above; and
- (b) the value of the HCV Special Distribution Benefit Account as at December 31, 2016 calculated in accordance with paragraph 9 above.

11. From December 31, 2016 onward, the HCV Late Claims Benefit Account, the HCV Special Distribution Benefit Account and the HCV Regular Benefit Account shall be updated monthly as follows:

- (a) the monthly rate of investment return on the total invested assets net of investment fees will be calculated;
- (b) each account balance will then be reduced by the payments (benefits and expenses) out of the account; and
- (c) then interest at the monthly investment return rate will be added to each account balance.

12. Each of the HCV Late Claims Benefit Account, the HCV Special Distribution Benefit Account and the HCV Regular Benefit Account include:

- (a) any investments in which such assets may from time to time be invested;
- (b) any proceeds of disposition of any investments; and
- (c) 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, but excluding any amounts which have been paid or disbursed therefrom.


13. For the purposes of implementing, administering, monitoring and supervising:

- (a) the payments to be made pursuant to the 2016 Allocation Orders and this Order; and
- (b) the HCV Late Claims Benefit Account, the HCV Special Distribution Benefit Account and the HCV Regular Benefit Account,

the Administrator, Trustee, Fund Counsel, Auditors, Joint Committee, Investment Advisors, Referees, Arbitrators, Monitor and Courts shall perform the roles and have the duties and responsibilities provided for in the Settlement Agreement and the HCV Late Claims Benefit Plan, with all the necessary adaptations, modifications and powers as may be required to do so.

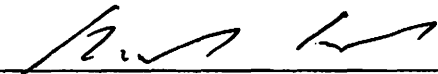
14. The terms of this Order shall not be effective unless and until they are also approved by the Superior Court of Quebec and the Ontario Superior Court of Justice with no material differences.

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



 Signature of British Columbia
 Joint Committee Member

 Sharon Matthews, Q.C.



 Signature of lawyer for the Attorney
 General of Canada

 for
 Craig Cameron

see attached

 Signature of lawyer for Her Majesty the
 Queen in Right of the Province of British
 Columbia

 Keith L. Johnston

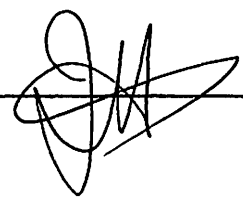
see attached

 Signature of British Columbia Fund
 Counsel

 Gordon J. Kehler



 By the Court



 Registrar

- 13. For the purposes of implementing, administering, monitoring and supervising:
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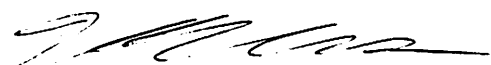
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Signature of British Columbia
Joint Committee Member

Sharon Matthews, Q.C.

Signature of lawyer for the Attorney
General of Canada

Craig Cameron



Signature of lawyer for Her Majesty the
Queen in Right of the Province of British
Columbia

Keith L. Johnston

Signature of British Columbia Fund
Counsel

Gordon J. Kehler

By the Court

Registrar

- 5 -

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the Administrator, Trustee, Fund Counsel, Auditors, Joint Committee, Investment Advisors, Referees, Arbitrators, Monitor and Courts shall perform the roles and have the duties and responsibilities provided for in the Settlement Agreement and the HCV Late Claims Benefit Plan, with all the necessary adaptations, modifications and powers as may be required to do so.

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Signature of British Columbia
Joint Committee Member

Sharon Matthews, Q.C.

Signature of lawyer for the Attorney
General of Canada

Craig Cameron

Signature of lawyer for Her Majesty the
Queen in Right of the Province of British
Columbia

Keith L. Johnston

Signature of British Columbia Fund
Counsel

Gordon J. Kehler

By the Court

Registrar

No. C965349
Vancouver Registry

In the Supreme Court of British Columbia

Between

Anita Endean, as representative plaintiff

Plaintiff

and

**The Canadian Red Cross Society,
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 MADE AFTER APPLICATION

CAMP FIORANTE MATTHEWS MOGERMAN
Barristers & Solicitors
#400 – 856 Homer Street
Vancouver, BC V6B 2W5

Tel: (604) 689-7555
Fax: (604) 689-7554
Email: service@cmmlawyers.ca

Ag: nB:Ke

THE ATTACHED IS EXHIBIT "O" 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.

COUR SUPÉRIEURE

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

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

DATE : 29 novembre 2017

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

500-06-000016-960

DOMINIQUE HONHON

Requérante

c.

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

Intimés

Et

ME MICHEL SAVONITTO, ès qualités de membre du Comité conjoint

REQUÉRANT

Et
FONDS D'AIDE AUX RECOURS COLLECTIFS
Et
LE CURATEUR PUBLIC DU QUÉBEC

Mis en cause

500-06-000016-960 - 500-06-000068-987

PAGE : 2

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

Requérant

c.

PROCUREUR GÉNÉRAL DU CANADA

et

PROCUREUR GÉNÉRAL DU QUÉBEC

et

SOCIÉTÉ CANADIENNE DE LA CROIX-ROUGE

Intimés

et

FONDS D'AIDE AUX RECOURS COLLECTIFS

et

LE CURATEUR PUBLIC DU QUÉBEC

Mis en cause

**JUGEMENT SUR LA DEMANDE DU COMITÉ CONJOINT POUR LA MISE EN
ŒUVRE DES ORDONNANCES D'ALLOCATION 2016**

- [1] **ATTENDU QUE** le tribunal est saisi d'une *Demande du comité conjoint pour la mise en œuvre des Ordonnances d'allocation 2016 (Application from the Joint Committee for the implementation of the 2016 allocation orders)* présentée par Me Michel Savonitto, *ès qualités* de membre du Comité conjoint pour le Québec;
- [2] **CONSIDÉRANT** les allégations à la demande et les pièces déposées à l'appui de celle-ci;
- [3] **CONSIDÉRANT** la preuve au dossier;
- [4] **CONSIDÉRANT** que la demande n'est pas contestée et que le Procureur Général du Canada consent au libellé des ordonnances suivantes;
- [5] **PAR CES MOTIFS, LE TRIBUNAL :**
- [6] **ACCUEILLE** la demande;

- [7] **ORDONNE** la constitution de trois comptes distincts dans le Fonds en fiducie, à la date du 31 décembre 2013, à être détenus, investis et administrés par le Fiduciaire, à savoir:
- a) le **Compte pour les Réclamations tardives**, pour le paiement de l'indemnisation en vertu du Régime pour les réclamations tardives, les coûts reliés à son administration et les coûts reliés à la campagne de financement;
 - b) le **Compte pour les Indemnités de distribution spéciale**, pour le paiement des Indemnités de distribution Spéciale ordonnées :
 - i) au paragraphe 6 des Ordonnances d'allocation 2016¹ et les coûts administratifs y reliés; et
 - ii) aux paragraphes 10 à 13 du présent jugement;
 - c) le **Compte pour les Indemnités régulières**, pour le paiement de l'indemnisation prévue au Régime à l'intention des transfusés infectés par le VHC et au Régime à l'intention des hémophiles infectés par le VHC et des coûts reliés à leur administration;
- [8] **ORDONNE** qu'un montant de 7 411 000 \$ provenant du Capital Excédentaire soit alloué à titre de capital requis (*required capital*) pour le Régime d'indemnisation des réclamations tardives prévu au paragraphe 6 des Ordonnances d'allocation 2016;
- [9] **ORDONNE** qu'un montant de 12 199 000 \$ provenant du Capital Excédentaire soit alloué à titre de capital requis pour les Indemnités de distribution spéciale prévu au paragraphe 6 des Ordonnances d'allocation 2016;
- [10] **ORDONNE QUE** le membre no. 2213 et tous les autres Hémophiles directement infectés vivants qui sont des Personnes reconnues infectées par le VHC co-infectées avec le VIH et qui ont reçu un paiement forfaitaire selon l'article 4.08(2) du Régime à l'intention des hémophiles infectés par le VHC, puissent demander à l'Administrateur et ainsi recevoir par le biais d'une Indemnité de distribution spéciale, toutes les autres indemnités auxquelles ils auraient eu droit selon la Convention de règlement telle que modifiée par l'Annexe F, par les Ordonnances d'allocation 2016 et par toute autre ordonnance et jugement futurs, dans la mesure où les montants qu'ils ont reçus avant leur demande d'Indemnité de distribution spéciale soient indexés conformément à l'article 7.02 du Régime à l'intention des hémophiles infectés par le VHC à la date de cette demande et déduits de l'indemnisation à laquelle ils auront droit suite à leur demande d'Indemnité de distribution spéciale;

¹ Voir le jugement rendu le 15 février 2017 conciliant les ordonnances d'allocation rendues en Ontario et en Colombie-Britannique avec le jugement d'allocation rendu le 15 août 2016.

- [11] **ORDONNE** qu'un montant de 4 600 000 \$ et de 500 000\$ à titre de capital requis, tous deux établis à la date du 31 décembre 2013 et provenant du Capital Excédentaire soient alloués pour financer le versement de l'Indemnité de distribution spéciale ordonnée au paragraphe 10 du présent jugement;
- [12] **ORDONNE** que le membre no. 7438 et toutes les autres Personnes reconnues à charge et présentant une incapacité permanente qui reçoivent ou ont reçu l'indemnisation pour perte des services domestiques suite au décès de la Personne infectée par le VHC puissent demander à l'Administrateur et ainsi recevoir, sous la forme d'une Indemnité de distribution spéciale, l'indemnisation pour perte de services domestiques au-delà de la date présumée d'expectative de vie naturelle de la Personne infectée par le VHC et jusqu'au moment de leur décès;
- [13] **ORDONNE** qu'un montant de 3 900 000 \$ et de 400 000 \$ à titre de capital requis, tous deux établis à la date du 31 décembre 2013 et provenant du Capital Excédentaire soient alloués pour financer le versement l'Indemnité de distribution spéciale ordonnée au paragraphe 12 du présent jugement;
- [14] **DÉCLARE QUE** la valeur du Compte des Réclamations tardives, établie au 31 décembre 2013, soit constituée des montants suivants provenant du Capital Excédentaire:
- a) 32 450 000 \$ plus 51 000 \$ de frais d'administration, tel que prévu au paragraphe 5 des Ordonnances d'allocation 2016;
 - b) le capital requis ordonné au paragraphe 8 du présent jugement;
 - c) les intérêts calculés sur ces montants (14a) et 14b)) en appliquant le taux annuel de rendement sur les actifs investis du Fonds en fiducie, net des dépenses d'investissement et ce, pour la période débutant le 1er janvier 2014 et se terminant le 31 décembre 2016;
- [15] **DÉCLARE** que la valeur du Compte des Indemnités de distribution Spéciale, établie au 31 décembre 2013, soit constituée des montants suivants provenant du Capital Excédentaire:
- a) 130 970 000 \$ plus 61 000 \$ de frais d'administration, tel que prévu à l'article 6 des Ordonnances d'allocation 2016;
 - b) le capital requis ordonné au paragraphe 9 du présent jugement;
 - c) les montants ordonnés au paragraphe 11 du présent jugement pour l'Indemnité de distribution spéciale pour les hémophiles co-infectés et pour le capital requis y étant associé;

- d) les montants ordonnés au paragraphe 13 du présent jugement pour l'Indemnité de distribution spéciale pour les Personnes à charge vivantes et présentant une incapacité permanente et pour le capital requis y étant associé;
 - e) les intérêts calculés sur ces montants (15a), 15b), 15c) et 15d)) en appliquant le taux annuel de rendement sur les actifs investis du Fonds en fiducie, net des dépenses d'investissement et ce, pour la période débutant le 1er janvier 2014 et se terminant le 31 décembre 2016;
- [16] **DÉCLARE** que la valeur du Compte des Indemnités régulières, établie au 31 décembre 2016, soit constituée du montant total des actifs du Fonds en fiducie déduction faites de:
- a) la valeur du Compte des Réclamations tardives au 31 décembre 2016 calculée conformément au paragraphe 14 du présent jugement; et
 - b) la valeur du Compte des Indemnités de distribution spéciale au 31 décembre 2016 calculée conformément au paragraphe 15 du présent jugement;
- [17] **ORDONNE** qu'à compter du 31 décembre 2016 et pour le futur, le Compte des Réclamations tardives, le Compte des Indemnités de distribution spéciale et le Compte des Indemnités régulières sera mis à jour mensuellement de la façon suivante :
- a) le taux mensuel de rendement de l'investissement sur le total des actifs investis sera calculé, net des coûts d'investissement;
 - b) chaque solde de compte sera ensuite diminué des paiements effectués (indemnités et dépenses) sur le compte; et
 - c) l'intérêt au taux mensuel de rendement de l'investissement sera ajouté à chaque solde de compte.
- [18] **ORDONNE** que chacun des Compte pour les Réclamations tardives, Compte pour les Indemnités de distribution spéciale et Comptes pour les Indemnités régulières inclue :
- a) les placements dans lesquels de tels actifs peuvent être investis de temps à autres;
 - b) les produits de disposition des placements; et

- c) tout revenu, intérêt, profit, gains et accroissements et autre actifs additionnels, droits et bénéfices de toute sorte et de toute nature quel qu'ils soient, à survenir directement ou indirectement, à partir de ou en lien avec ou s'ajoutant à l'un ou l'autre des éléments précédents mais excluant tous les paiements et déboursés effectués à partir dudit compte;

[19] **DÉCLARE** que pour les fins de la mise en œuvre, de l'administration, de la surveillance et de la supervision :

- a) des paiements à être effectués en vertu des Ordonnances d'allocation 2016 et du présent jugement; et
- b) du Compte des Réclamations tardives, du Compte des Indemnités de distribution spéciale et du Compte des Indemnités régulières;

l'Administrateur, le Fiduciaire, les Conseillers juridiques du Fonds, les Vérificateurs, le Comité conjoint, les Conseillers financiers, les Arbitres, Juges-Arbitres, le "Court Monitor" et les Tribunaux assumeront la fonction et auront les obligations et responsabilités qui sont prévus à la Convention de règlement et au Régime des Réclamations tardives, avec toutes les adaptations, modifications et pouvoirs nécessaires, le cas échéant.

[20] **DÉCLARE** que le présent jugement ne prendra effet qu'au moment où des ordonnances similaires auront été rendues par la Cour supérieure de l'Ontario et la Cour suprême de la Colombie-Britannique;

[21] **LE TOUT** sans frais.


CHANTAL CORRIVEAU, j.c.s.

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

Me Nathalie Drouin
Me Stéphane Arcelin
Procureure générale du Canada/Attorney general of Canada
Ministère de la Justice Canada
Pour la Procureure générale du Canada

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Me Serge Ghorayeb
Bernard Roy (Justice-Québec)
Pour la Procureure générale du Québec

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

THE ATTACHED IS EXHIBIT "P" 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 Suits LLP,
Barristers and Solicitors.
Expires February 22, 2025.



Court File No. 98-CV-141369

Wednesday, THE 30th
DAY OF May, 2018

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,
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*

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

Intervenor

Proceeding under the *Class Proceedings Act, 1992*

THIS IS TO CERTIFY THAT THIS DOCUMENT, EACH PAGE OF WHICH IS STAMPED WITH THE SEAL OF THE SUPERIOR COURT OF JUSTICE AT TORONTO, IS A TRUE COPY OF THE DOCUMENT ON FILE IN THIS OFFICE DATED AT TORONTO THIS 4th DAY OF June 2018 SAIT A TORONTO LE

REGISTRAR GREFFIER

ORDER
(2016 Financial Sufficiency)

THIS MOTION, made by the Joint Committee, for orders permitting reports to be filed pursuant to the provisions of Clause 10.01(1)(i) of the January 1, 1986-July 1, 1990 Hepatitis C Settlement Agreement (the “**Settlement Agreement**”) and the orders of this Court dated January 16, 2017 and December 12, 2017, regarding the financial sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2016 and the financial status of the three accounts of the Trust Fund as at December 31, 2016, and to maintain the current restriction on payments of amounts for loss of income claims in section 4.02(2)(b)(i) and for loss of support under section 6.01(1) of the Transfused HCV Plan and the Hemophiliac HCV Plan Trust Fund, was heard this day in Toronto, Ontario.

ON READING the Affidavit of Murray Krahn made February 28, 2018, the Affidavit of Richard Border made February 28, 2018, the Affidavit of Vincent Bain made February 26, 2018, the Joint Committee Report, and the Affidavit of Peter Gorham made March 9, 2018,

AND ON BEING ADVISED that the Joint Committee and Canada consent to this Order and that Her Majesty the Queen in Right of Ontario, the Intervenors, Fund Counsel, the Office of the Public Guardian and Trustee and the Office of the Children’s Lawyer take no position on this Order,

1. **THIS COURT ORDERS THAT** the reports listed below are hereby filed pursuant to the provisions of Clause 10.01(1)(i) of the January 1, 1986-July 1, 1990 Hepatitis C Settlement Agreement (the “**Settlement Agreement**”) and the orders of this Court dated January 16, 2017 and December 12, 2017;
 - (a) “Estimating the Prognosis of Canadians Infected with the Hepatitis C Virus Through the Blood Supply, 1986-1990”, The Sixth Revision of Hepatitis C Prognostic Model Based on the Post-Transfusion Hepatitis C

Compensation Claimant Cohort, July 2017, prepared by Murray Krahn, Yeva Sahakyan, Qilong Yi and William Wong;

- (b) Actuarial Report to the Joint Committee Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2016, by Eckler Ltd. (Richard Border and Wendy Harrison);
 - (c) Report of the Joint Committee Relating to Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2016; and
 - (d) Actuarial Report Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust Fund as at 31 December 2016, by Morneau Shepell Ltd. (Peter J.M. Gorham)
2. **THIS COURT ORDERS THAT** the Trust Fund is financially sufficient as at December 31, 2016 and that, after taking into account an allocation of assets necessary to protect the class members from future major adverse experience, the Trust assets exceed the liabilities.
 3. **THIS COURT ORDERS AND DECLARES THAT** the Trustee of the Settlement Agreement holds between \$173,618,000 and \$187,504,000 of actuarially unallocated money and assets as at December 31, 2016.
 4. **THIS COURT ORDERS AND DECLARES THAT**, as at December 31, 2016, the financial status of the three accounts of the Trust Fund is as follows:

HCV Regular Benefit Account	Excess Capital of between \$176,497,000 and \$194,417,000
HCV Special Distribution Benefit Account	Excess Capital of between \$9,868,000 and \$13,947,000
HCV Late Claims Benefit Account	Insufficient Capital of between \$16,781,000 and \$16,826,000

5. **THIS COURT ORDERS THAT** the orders in paragraphs 1 to 4 above shall not be effective unless and until orders and directions, with no material differences, are approved or rendered by the Superior Court of Québec and the Supreme Court of British Columbia.

Perell, J.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUN 4 2018

PER / PAR: 

PARSONS et al.
KREPPNER et al.
Plaintiffs

vs. THE CANADIAN RED CROSS SOCIETY et al.
vs. THE CANADIAN RED CROSS SOCIETY et al.
Defendants

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT TORONTO

**ORDER
(2016 Financial Sufficiency)**

STROSBERG SASSO SUTTS LLP
Lawyers
1561 Ouellette Avenue
Windsor, ON N8X 1K5

HEATHER RUMBLE PETERSON
LSUC#: 24671V

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Toronto, ON M4T 1W7

KATHRYN PODREBARAC
LSUC#: 35640P
Tel: 416.568.1299

Lawyers representing the Joint Committee in Ontario

THE ATTACHED IS EXHIBIT "Q" 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 Suits 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

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

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE CHIEF JUSTICE HINKSON)
) 08-May-2018
)

ON THE APPLICATION of the British Columbia Joint Committee member dated February 28, 2018 before the Honourable Chief Justice Hinkson in writing, and the Attorney General of Canada, Her Majesty the Queen in Right of the Province of British Columbia and British Columbia Fund Counsel all having been served with the application materials;

ON BEING ADVISED that the Joint Committee, the Attorney General of Canada, the British Columbia Fund Counsel and Her Majesty the Queen in Right of the Province of British Columbia consent to the making of this order;

UPON READING the materials filed, including Affidavit #9 of Murray Krahn made February 28, 2018, Affidavit #9 of Richard Border made February 28, 2018, Affidavit #3 of Vincent Bain made February 26, 2018, the Joint Committee Report and the Affidavit #4 of Peter Gorham;

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

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

THIS COURT ORDERS that:

1. The reports listed below are hereby filed pursuant to the provisions of Clause 10.01(1)(i) of the January 1, 1986 – July 1, 1990 Hepatitis C Settlement Agreement (the “Settlement Agreement”) and the orders of this Court dated January 16, 2017 and December 12, 2017;

- (a) “Estimating the Prognosis of Canadians Infected with the Hepatitis C Virus Through the Blood Supply, 1986-1990”, The Sixth Revision of Hepatitis C Prognostic Model Based on the Post-Transfusion Hepatitis C Compensation Claimant Cohort, July 2017, prepared by Murray Krahn, Yeva Sahakyan, Qilong Yi and William Wong;

- (b) Actuarial Report to the Joint Committee Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2016, by Eckler Ltd. (Richard Border and Wendy Harrison);
- (c) Report of the Joint Committee Relating to Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2016; and
- (d) Actuarial Report Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust Fund as at 31 December 2016, by Morneau Shepell Ltd. (Peter J.M. Gorham)

2. The Trust Fund is financially sufficient as at December 31, 2016 and that, after taking into account the allocation of assets necessary to project the class members from future major adverse experience, the Trust assets exceed the liabilities.

3. Declares that the Trustee of the Settlement Agreement holds between \$173,618,000 and \$187,504,000 of actuarially unallocated money and assets as at December 31, 2016.

4. Declares that as at December 31, 2016, the financial status of the three accounts of the Trust Fund is as follows:

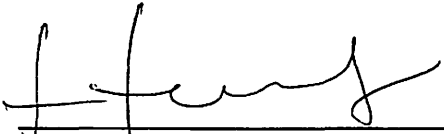
HCV Regular Benefit Account	Excess Capital of between \$176,497,000 and \$194,417,000
HCV Special Distribution Benefit Account	Excess Capital of between \$9,868,000 and \$13,947,000
HCV Late Claims Benefit Account	Insufficient Capital of between \$16,781,000 and \$16,826,000

5. the orders in paragraphs 1 to 4 above shall not be effective unless and until orders and directions, with no material differences, are approved or rendered by the Superior Court of Québec and the Ontario Superior Court of Justice.


BY THE COURT


REGISTRAR

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



Signature of British Columbia
Joint Committee Member

for J.J. Camp, Q.C.

see attached

Signature of lawyer for the Attorney
General of Canada

Craig Cameron



Signature of lawyer for Her Majesty the
Queen in Right of the Province of British
Columbia

Keith L. Johnston

see attached

Signature of British Columbia Fund
Counsel

Gordon J. Kehler


By the Court

Registrar

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

Signature of British Columbia
Joint Committee Member

J.J. Camp, Q.C.



Signature of lawyer for the Attorney
General of Canada

Craig Cameron

Signature of lawyer for Her Majesty the
Queen in Right of the Province of British
Columbia

Keith L. Johnston

Signature of British Columbia Fund
Counsel

Gordon J. Kehler

By the Court

Registrar

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

Signature of British Columbia
Joint Committee Member


J.J. Camp, Q.C.

Signature of lawyer for the Attorney
General of Canada

Craig Cameron

Signature of lawyer for Her Majesty the
Queen in Right of the Province of British
Columbia

Keith L. Johnston



Signature of British Columbia Fund
Counsel

Gordon J. Kehler

By the Court

Registrar

No. C965349
Vancouver Registry

In the Supreme Court of British Columbia

Between

Anita Endean, as representative plaintiff

Plaintiff

and

**The Canadian Red Cross Society,
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 MADE AFTER APPLICATION

CAMP FIORANTE MATTHEWS MOGERMAN
Barristers & Solicitors
#400 – 856 Homer Street
Vancouver, BC V6B 2W5

Tel: (604) 689-7555
Fax: (604) 689-7554
Email: service@cfmlawyers.ca

VIA MIKE BIKE

THE ATTACHED IS EXHIBIT "R" 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.

COUR SUPÉRIEURE

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

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

DATE : 18 mai 2018

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

500-06-000016-960

DOMINIQUE HONHON

Requérante

c.

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

Intimés

Et

ME MICHEL SAVONITTO, ès qualités de membre du Comité conjoint

REQUÉRANT

Et
FONDS D'AIDE AUX RECOURS COLLECTIFS
Et
LE CURATEUR PUBLIC DU QUÉBEC

Mis en cause

500-06-000016-960 - 500-06-000068-987

PAGE : 2

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

Requérant

c.

PROCUREUR GÉNÉRAL DU CANADA

et

PROCUREUR GÉNÉRAL DU QUÉBEC

et

SOCIÉTÉ CANADIENNE DE LA CROIX-ROUGE

Intimés

et

FONDS D'AIDE AUX RECOURS COLLECTIFS

et

LE CURATEUR PUBLIC DU QUÉBEC

Mis en cause

**JUGEMENT SUR LA DEMANDE PRÉSENTÉE PAR LE MEMBRE DU COMITÉ
CONJOINT AUX FINS DE RÉÉVALUER LES ASPECTS FINANCIERS DU FONDS**

- [1] **ATTENDU QUE** le tribunal est saisi d'une *Demande du comité conjoint aux fins de réévaluer les aspects financiers du fonds* présentée par Me Michel Savonitto, *ès qualités* de membre du Comité conjoint pour le Québec;
- [2] **CONSIDÉRANT** la demande et l'ensemble des pièces déposées devant le tribunal par les parties, notamment :

DATE DU DOCUMENT

- a) "Estimating the Prognosis of Canadians Infected with the Hepatitis C Virus through the Blood Supply 1986-1990, The Sixth Revision of Hepatitis C Prognostic Model Based on the Post-Transfusion Hepatitis C Compensation Claimant Cohort" préparé par Murray Krahn, Yeva Sahakyan, Qilong Yi et William Wong (le « Rapport MMWG ») et joint à l'affidavit du Dr. Murray Krahn;

Juillet 2017

- b) "Report of the Joint Committee Relating to the Financial Sufficiency of the 1986-1990 Hepatitis C

- | | |
|---|-----------------|
| Trust, as at December 31, 2016” préparé par le Comité conjoint; | 28 février 2018 |
| c) “Actuarial Report to the Joint Committee Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2016” préparé par Eckler Ltd (Richard Border et Wendy Harrison) et joint à l'affidavit de Richard Border; | 27 février 2018 |
| d) Affidavit détaillé de Dr. Vincent Bain et ses annexes; | 28 février 2018 |
| e) « Actuarial Report Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust Fund as at 31 December 2013 » préparé par Morneau Shepell et joint à l'affidavit de Peter Gorham; | 7 mars 2018 |

(collectivement, les « Rapports »);

- [3] **CONSIDÉRANT** que le Comité conjoint et le Procureur général du Canada consentent au présent jugement et que les autres intimés ne prennent pas position ni ne contestent la requête;
- [4] **PAR CES MOTIFS, LE TRIBUNAL :**
- [5] **ACCUEILLE** la demande;
- [6] **DÉCLARE** que les Rapports ont été déposés conformément aux dispositions prévues à l'article 10.01(1)(i) du Règlement Relatif à l'Hépatite C 1986-1990 et aux ordonnances rendues par cette Cour les 23 janvier 2017 et 21 février 2018;
- [7] **DÉCLARE** que les éléments d'actifs de la fiducie excèdent les obligations financières estimées de sorte que le Fonds en fiducie est financièrement suffisant à la date d'évaluation du 31 décembre 2016, selon les dispositions prévues à l'article 10.01(1)(i) du Règlement Relatif à l'Hépatite C 1986-1990;
- [8] **DÉCLARE** qu'après avoir pris en compte un montant pour protéger les membres d'une expérience majeure défavorable ou d'une catastrophe, les éléments d'actifs de la fiducie excèdent les obligations financières estimées d'un montant évalué entre 173 618 000 \$ et 187 504 000 \$ à la date du 31 décembre 2016;
- [9] **ORDONNE ET DÉCLARE** qu'à la date d'évaluation du 31 décembre 2016, la situation financière des trois comptes du Fonds en fiducie s'établit comme suit :

Compte pour les indemnités régulières	Capital excédentaire entre 176 497 000\$ et 194 417 000\$
Compte pour les Indemnités de distribution spéciale	Capital excédentaire entre 9 868 000\$ et 13 947 000\$
Compte pour les réclamations tardives	Capital insuffisant entre 16 781 000\$ et 16 826,000\$

[10] **ORDONNE ET DÉCLARE** que le présent jugement ne prendra effet qu'au moment où des ordonnances similaires auront été rendues par la Cour supérieure de l'Ontario et la Cour Suprême de la Colombie-Britannique;

[11] **LE TOUT** sans frais.


 CHANTAL CORRIVEAU, j.c.s.

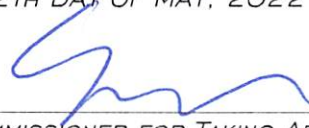
Me Martine Trudeau
 Me Michel Savonitto
 Savonitto & Ass. inc.
 Pour Me Michel Savonitto *ès qualités* de membre du Comité conjoint

Me Nathalie Drouin
 Me Stéphane Arcelin
 Procureure générale du Canada/Attorney general of Canada
 Ministère de la Justice Canada
 Pour la Procureure générale du Canada

Me Serge Ghorayeb
 Bernard Roy (Justice-Québec)
 Pour la Procureure générale du Québec

Me Élisabeth Brousseau
 Me Mason Poplaw
 McCarthy, Tétraut
 Conseillers juridiques du Fonds

THE ATTACHED IS EXHIBIT "S 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 Suttis LLP,
Barristers and Solicitors.
Expires February 22, 2025.

Court File # 98-CV-141369

DATE: 2021/02/18

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

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

Proceeding under the Class Proceedings Act, 1992

PERELL, J.

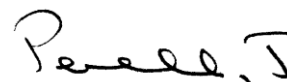
ENDORSEMENT

[1] This is a request for the approval of an order requested by the Joint Committee related to financial sufficiency to the 1986-1990 Hepatitis C Settlement Agreement and Trust Fund.

[2] Having reviewed the motion materials and upon being advised that the request is unopposed, I am satisfied that the request should be granted.

[3] In the circumstances of the Covid-19 emergency, this Endorsement is deemed to be an Order of the court that is operative and enforceable without any need for a signed or entered, formal, typed order. The form of the Order is set out in Schedule A.

[4] The parties may submit formal orders for signing and entry once the court re-opens; however, this Endorsement is an effective and binding Order from the time of release.



Perell, J.

Released: February 18, 2021

SCHEDULE A

Court file # 98-CV-141369

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR. JUSTICE) THE DAY
)
 PAUL PERELL) OF FEBRUARY, 2021

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

**ORDER
 (2019 Financial Sufficiency Assessment)**

THIS MOTION, made by the Joint Committee, for orders: permitting reports to be filed pursuant to the provisions of section 10.01(1)(i) of the January 1, 1986 to July 1, 1990 Hepatitis C Settlement Agreement (“**Settlement Agreement**”) and the order of this Court dated June 30, 2020; regarding financial sufficiency of the 1986-1990 Hepatitis C Trust and the financial status of the three notional Accounts of the Trust Fund as at December 31, 2019; declaring the Trustee holds actuarially unallocated assets as at December 31, 2019; reallocating previously allocated excess assets from the HCV Special Distribution Account to the HCV Late Claims Benefit Account as at January 1, 2020; retaining the restrictions on income loss payments under section 4.02(2)(b)(i) of the Transfused HCV Plan, the Hemophiliac HCV Plan and the HCV Late Claims Benefit Plan (“**Plans**”); removing the holdback under section 7.03A of the HCV Late Claims Benefit Plan; and, directions for further hearings for the allocation of the 2019 actuarially unallocated assets of the Trust Fund, was heard this day in Toronto, Ontario.

ON READING the Joint Committee Sufficiency Report, the Affidavit of Dr. Murray Krahn made November 19, 2020, the Affidavit of Richard Border made November 25, 2020, the Affidavit of Dr. Vince Bain made November 25, 2020, and the Affidavit of Peter Gorham made December 10, 2020,

AND ON BEING ADVISED that the Joint Committee consents to this Order, the Attorney General of Canada does not oppose this Order, and Her Majesty the Queen in Right of Ontario and the Intervenors take no position on this Order,

1. **THIS COURT ORDERS** that the reports listed below be filed with the Court pursuant to the provisions of section 10.01(1)(i) of the January 1, 1986-July 1, 1990 Hepatitis C Settlement Agreement and the order of this Court dated June 30, 2020:
 - (a) 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, November 18, 2020, (Murray Krahn, Yeva Sahakyan, Yi, Qilong, William Wong and Karen Bremner);
 - (b) Actuarial Report to the Joint Committee Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2019, by Eckler Ltd. (Richard Border and Euan Reid);
 - (c) Report of the Joint Committee Relating to Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2019; and
 - (d) Actuarial Report Assessing the Financial Sufficiency of 1986-1990 Hepatitis C Trust Fund as at December 31, 2019, Morneau Shepell Ltd. (Peter J. M. Gorham).
2. **THIS COURT ORDERS** that overall the Trust Fund is financially sufficient as at December 31, 2019 and that, after taking into account an allocation of assets necessary to protect the class members from future major adverse experience, the Trust assets exceed the liabilities.
3. **THIS COURT ORDERS** that the Trustee holds between \$197,596,000 and \$203,578,000 of actuarially unallocated money and assets as at December 31, 2019.

4. **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 \$27,718,000 and \$28,649,000
HCV Late Claims Benefit Account	Insufficient Capital of between \$21,879,000 and \$22,981,000

5. **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 \$4,737,000 and \$5,668,000 as at January 1, 2020.
6. **THIS COURT DECLARES** that the restrictions on payment of amounts for loss of income claims under sections 4.02(2)(b)(i) of the Plans are not varied or removed at this time.
7. **THIS COURT ORDERS** that the 25% holdback on benefit payments provided for in section 7.03A of the HCV Late Claims Benefit Plan be removed at this time and that the administrator be directed to pay out to the affected claimants any monies held back with interest as provided in section 7.03(2)(a) of the HCV Late Claims Benefit Plan.
8. **THIS COURT DECLARES** that the parties may obtain a date through the Court Monitor for a joint hearing of the Courts to consider whether some or all of the actuarially unallocated assets as at December 31, 2019, set out in paragraph 3, should be allocated pursuant to paragraphs 9(b) and 9(c) of the 1999 Approval Order in Ontario.

9. **THIS COURT ORDERS** that the orders, declarations and directions requested herein shall not become effective unless and until orders, declarations and directions, with no material differences, are obtained from the Superior Court of Québec and the Supreme Court of British Columbia.

PERELL J.

PARSONS et al.
KREPPNER et al.

vs. THE CANADIAN RED CROSS SOCIETY et al.

Plaintiffs

Defendants

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

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT TORONTO

ORDER
(2019 Financial Sufficiency Assessment)

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Lawyers for the
Joint Committee

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

DIANE LUISE PARSONS et al

v

THE CANADIAN RED CROSS SOCIETY et al

ENDORSEMENT

PERELL J.

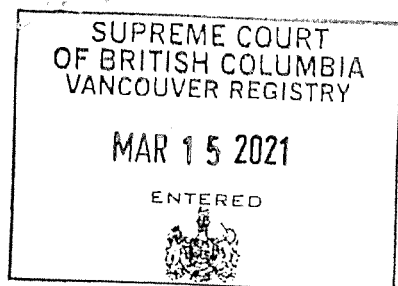
Released: February 18, 2021

THE ATTACHED IS EXHIBIT "T" 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 Suttis 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

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

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE
CHIEF JUSTICE HINKSON

)
) *March 15, 2021*
)

ON THE APPLICATION of the British Columbia Joint Committee member dated November 30, 2020 before the Honourable Chief Justice Hinkson in writing, and the Attorney General of Canada, Her Majesty the Queen in Right of the Province of British Columbia and British Columbia Fund Counsel all having been served with the application materials;

ON BEING ADVISED that the Attorney General of Canada, British Columbia Fund Counsel and Her Majesty the Queen in Right of the Province of British Columbia do not oppose this order.

UPON READING the materials filed, including the Report of the Joint Committee Relating to Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2019, Affidavit #7 of Murray Krahn made November 19, 2020, Affidavit #10 of Richard Border made November 25, 2020, Affidavit #4 of Vincent Bain made November 25, 2020 and Affidavit of Peter Gorham, made December 10, 2020;

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

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

THIS COURT:

1. Orders that the reports listed below are hereby filed pursuant to the provisions of section 10.01(1)(i) of the January 1, 1986 – July 1, 1990 Hepatitis C Settlement Agreement (the “Settlement Agreement”) and the order of this Court dated July 7, 2020;

- (a) “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, November 18, 2020, by Murray Krahn, Yeva Sahakyan, Qilong Yi, William Wong and Karen Bremner;

- 3 -

- (b) Actuarial Report to the Joint Committee Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2019, by Eckler Ltd. (Richard Border and Euan Reid);
- (c) Report of the Joint Committee Relating to Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2019;
- (d) Actuarial Report Assessing the Financial Sufficiency of 1986-1990 Hepatitis C Trust Fund as at December 31, 2019, by Morneau Shepell Ltd. (Peter J.M. Gorham).

2. Orders that overall the Trust Fund is financially sufficient as at December 31, 2019 and that, after taking into account an allocation of assets necessary to protect the class members from future major adverse experience, the Trust assets exceed the liabilities.

3. Declares that the Trustee holds between \$197,596,000 and \$203,578,000 of actuarially unallocated money and assets as at December 31, 2019.

4. Declares 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 \$27,718,000 and \$28,649,000
HCV Late Claims Benefit Account	Insufficient Capital of between \$21,879,000 and \$22,981,000

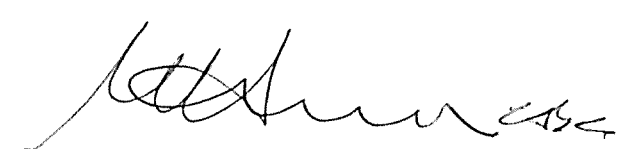
5. Orders that \$22,981,00 be reallocated from the HCV Special Distribution Benefit Account to the HCV Late Claims Benefit Account effective January 1, 2020, so that the HCV Late Claims Benefit Account will be financially sufficient to meet the projected maximum liabilities of the HCV Late Claims Benefit Plan and the HCV Special Distribution Benefit Account will have excess capital of between \$4,737,000 and \$5,668,000 as at January 1, 2020.

6. Declares that the restrictions on payment of amounts for loss of income claims under sections 4.02(2)(b)(i) of the Plans are not varied or removed at this time.
7. Orders that the 25% holdback on benefit payments provided for in section 7.03A of the HCV Late Claims Benefit Plan be removed at this time and that the administrator be directed to pay out to the affected claimants any monies held back with interest as provided in section 7.03(2)(a) of the HCV Late Claims Benefit Plan.
8. Declares that the parties may obtain a date through the Court Monitor for a joint hearing of the Courts to consider whether some or all of the actuarially unallocated assets as at December 31, 2019, set out in paragraph 3, should be allocated pursuant to paragraphs 9(b) and 9(c) of the 1999 Approval Order in British Columbia.
9. Orders that the orders and declarations in paragraphs 1 to 8 above shall not be effective unless and until orders, declarations and directions, with no material differences, are approved or rendered by the Superior Court of Québec and the Ontario Superior Court of Justice.

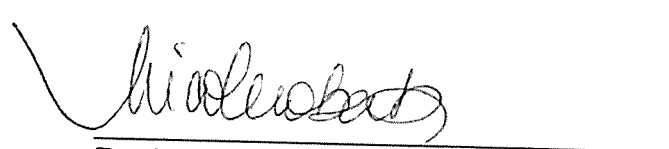


Signature of British Columbia
Joint Committee Member

FOR: Deborah Armour, Q.C.



By the Court



Registrar

THE ATTACHED IS EXHIBIT "U" 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.

COUR SUPÉRIEURE

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

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

DATE : Le 25 janvier 2021

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

500-06-000016-960

DOMINIQUE HONHON

Requérante

c.

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

Intimés

Et

ME MICHEL SAVONITTO, ès qualités de membre du Comité conjoint

REQUÉRANT

Et
FONDS D'AIDE AUX RECOURS COLLECTIFS
Et
LE CURATEUR PUBLIC DU QUÉBEC

Mis en cause

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

Requérant

c.

PROCUREUR GÉNÉRAL DU CANADA

et

PROCUREUR GÉNÉRAL DU QUÉBEC

et

SOCIÉTÉ CANADIENNE DE LA CROIX-ROUGE

Intimés

et

FONDS D'AIDE AUX RECOURS COLLECTIFS

et

LE CURATEUR PUBLIC DU QUÉBEC

Mis en cause

**JUGEMENT SUR LA DEMANDE DU COMITÉ CONJOINT AUX FINS DE RÉÉVALUER
LES ASPECTS FINANCIERS DU FONDS**

- [1] **ATTENDU QUE** le tribunal est saisi d'une *Demande du Comité conjoint aux fins de réévaluer les aspects financiers du Fonds* présentée par Me Michel Savonitto, *ès qualités* de membre du Comité conjoint pour le Québec;
- [2] **CONSIDÉRANT** les allégations à la demande et l'ensemble de la preuve déposé par les parties;
- [3] **CONSIDÉRANT** que la demande n'est pas contestée;
- [4] **PAR CES MOTIFS, LE TRIBUNAL :**
- [5] **ACCUEILLE** la demande;
- [6] **DÉCLARE** que la demande et les rapports à son soutien ont été déposés conformément aux dispositions prévues à l'article 10.01 (1)(i) de la Convention de règlement et dans le délai imparti par le jugement rendu par cette Cour le 30 juin 2020;
- [7] **DÉCLARE** qu'à la date d'évaluation du 31 décembre 2019, en tenant compte d'une allocation d'actifs nécessaire pour protéger les membres de la survenance d'un événement défavorable majeur ou catastrophique, les actifs de la fiducie excèdent les obligations financières estimées de sorte que le Fonds en fiducie est suffisant dans son ensemble;

- [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 197 596 000 \$ et 203 578 000 \$;
- [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 27 718 000 \$ et 28 649 000 \$
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 moment maximum de ses obligations financières estimées, laissant un capital excédentaire entre 4 737 000 \$ et 5 668 000 \$ au Compte pour les Indemnités de distribution spéciale à la date du 1^{er} janvier 2020;
- [11] **ORDONNE** que la restriction financière de 25% en vigueur à l'article 7.03A du Régime d'indemnisation pour les Réclamations tardives et appliquée sur toutes les indemnités payables soit abolie et que l'Administrateur soit requis de verser aux membres reconnus visés toute somme ayant ainsi été retenue, incluant les intérêts tel que prévu à l'article 7.03(2)(a) du Régime d'indemnisation pour les Réclamations tardives;
- [12] **ORDONNE** le maintien de la restriction financière prévue à l'article 4.02(2)(b)(i) du Régime d'indemnisation des Réclamations tardives ainsi que de celle prévue à l'article 4.02(2)(b)(i) des Régime des Indemnités régulières telle que modifiée par les ordonnances des Tribunaux rendues à son égard en 2008;
- [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 197 596 000 \$ et 203 578 000 \$ 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;

[14] **DÉCLARE** que le présent jugement ne prendra effet qu'à compter du moment où des ordonnances au même effet auront été rendues par les tribunaux de l'Ontario et de la Colombie-Britannique;

[15] **LE TOUT** sans frais.

Chantal Corriveau  Signature numérique de Chantal
Corriveau
Date : 2021.01.25 11:19:40 -05'00'

CHANTAL CORRIVEAU, j.c.s

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

Me Nathalie Drouin
Me Stéphane Arcelin
Procureure générale du Canada/Attorney General of Canada
Ministère de la Justice Canada
Pour le Procureur général du Canada

Me Serge Ghorayeb
Bernard Roy (Justice-Québec)
Pour la Procureure générale du Québec

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

THE ATTACHED IS EXHIBIT "V" 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.

Summary of Payments

(Includes payments made in **January** for **December** Approvals)

	Regular	Surplus
Payment Type	As of This Report	As of This Report
Fixed Payments	\$403,965,797.54	\$39,554,929.83
Death < January 1, 1999 (DB9) – Estate & FMD Claims	\$54,292,004.77	\$6,464,981.20
Death > January 1, 1999 (DA9) – FMD Claims	\$37,523,576.20	\$11,522,389.40
Compensable HCV Drug Therapy	\$19,818,625.79	\$-
Cost of Care	\$58,393,474.84	\$870,002.69
Approved HCV Infected Person infected with HIV (4.08(2))	\$2,340,787.66	\$4,319,686.13
Uninsured Medical Expenses	\$33,225,100.07	\$-
Uninsured Funeral Expenses	\$4,082,511.48	\$-
Out of Pocket Expenses	\$11,143,982.80	\$1,226,739.58
Loss of Income	\$144,229,393.17	\$11,476,851.42
Loss of Support	\$46,929,356.61	\$-
Loss of Services	\$251,915,743.97	\$26,646,601.30
Provincial Program Reimbursement	-\$2,636,337.56	\$-
5K Holdback	\$14,885,841.50	\$-
Total	\$1,080,109,858.84	\$102,082,181.55

THE ATTACHED IS EXHIBIT "W" TO THE AFFIDAVIT
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.

Summary of Payments

(Includes payments made January for December Approvals)

Payment Type	Amount Paid
Fixed Payments	\$5,314,048.86
Death > January 1, 1999 (DA9) – FMD Claims	\$1,425,731.88
Death < January 1, 1999 (DB9) – Estate & FMD Claims	\$448,817.31
Drug Therapy	\$104,863.57
Funeral	\$24,327.39
Uninsured Medical Expenses	\$5,248.61
Loss of Support	\$3,135,884.39
Loss of Services	\$2,750,885.10
Out of Pocket (PKT)	\$15,646.38
Cost of Care	\$1,022,845.46
Provincial Program Reimbursement	\$(25,000.00)
Total	\$14,223,298.95

Status of Claims Received as of December 31, 2021

Claim Type	Claims Approved	Claims In-Progress	Claims Denied
Primary	34	0	173
Secondary	1	1	2
Estate	6	19	46
Family Member	166	4	11
Total	207	24	232

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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.

CLAIMS RECEIVED SUMMARY

PROFILE OF CLAIMANTS

CLAIMANT TYPE	APPROVED	DENIED	IN PROGRESS	TOTAL 31-Dec-21	TOTAL 31-Dec-20	TOTAL 31-Dec-19
Primarily-Infected Persons (PIP)						
■ Transfused	2,391	2,094	14	4,499	4,521	4,538
■ Hemophiliac	787	71	1	859	861	872
■ Total	3,178	2,165	15	5,358	5,382	5,410
Secondarily-Infected Persons						
■ Transfused	41	101	1	143	143	143
■ Hemophiliac	10	8	0	18	18	18
■ Total	51	109	1	161	161	161
DB9 PIP (Deceased < January 1, 1999)						
■ Transfused	185	248	0	433	433	433
■ Hemophiliac	302	20	0	322	322	322
■ Total	487	268	0	755	755	755
DB9 SIP (Deceased < January 1, 1999)						
■ Transfused	0	1	0	1	1	1
■ Hemophiliac	0	1	0	1	1	1
■ Total	0	2	0	2	2	2
DB9 FMA (Family Members) Lump Sum Joint Payments						
■ Transfused	780	0	0	780	780	780
■ Hemophiliac	1,036	0	0	1,036	1,035	1,035
■ Total	1,816	0	0	1,816	1,815	1,815
DB9 FMD (Family Members) Pre-Set FMD Payments						
■ Transfused	945	98	4	1,047	1,046	1,046
■ Hemophiliac	581	27	9	617	612	612
■ Total	1,526	125	13	1,664	1,658	1,658
DA9 PIP (Deceased > January 1, 1999)						
■ Transfused	1,370	292	8	1,670	1,644	1,615
■ Hemophiliac	270	9	0	279	277	266
■ Total	1,640	301	8	1,949	1,921	1,881
DA9 SIP (Deceased > January 1, 1999)						
■ Transfused	16	4	1	21	21	20
■ Hemophiliac	0	0	0	0	0	0
■ Total	16	4	1	21	21	20
DA9 FMD (Family Members)						
■ Transfused	5,056	196	58	5,310	5,247	5,223
■ Hemophiliac	1,127	25	9	1,161	1,124	1,104
■ Total	6,183	221	67	6,471	6,371	6,327
Sub-Totals						
■ Transfused	10,784	3,034	86	13,904	13,836	13,799
■ Hemophiliac	4,113	161	19	4,293	4,250	4,230
Total	14,897	3,195	105	18,197	18,086	18,029

*THE ATTACHED IS EXHIBIT "Y" TO THE AFFIDAVIT OF
HEATHER RUMBLE PETERSON SWORN BEFORE ME
THIS 12TH DAY OF MAY, 2022*



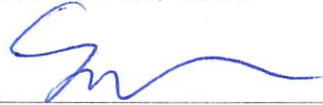
COMMISSIONER FOR TAKING AFFIDAVITS

Shelley Lynn Woodrich, a Commissioner, etc.,
Province of Ontario, for Strosberg Sasso Sutts LLP,
Barristers and Solicitors.
Expires February 22, 2025.

CLAIMS RECEIVED SUMMARY

PROFILE OF CLAIMANTS						
CLAIMANT TYPE	APPROVED	DENIED	IN PROGRESS	TOTAL 31-Dec-21	TOTAL 31-Dec-20	TOTAL 31-Dec-19
Primarily-Infected Persons (PIP)						
■ Transfused	29	77	100	206	182	116
■ Hemophiliac	7	1	1	9	7	6
■ Total	36	78	101	215	189	122
Secondarily-Infected Persons						
■ Transfused	0	0	1	1	2	1
■ Hemophiliac	1	0	0	1	1	1
■ Total	1	0	1	2	3	2
DB9 PIP (Deceased < January 1, 1999)						
■ Transfused	3	6	18	27	24	18
■ Hemophiliac	0	0	1	1	1	0
■ Total	3	6	19	28	25	18
DB9 SIP (Deceased < January 1, 1999)						
■ Transfused	0	0	0	0	0	0
■ Hemophiliac	0	0	0	0	0	0
■ Total	0	0	0	0	0	0
DB9 FMA (Family Members) Lump Sum Joint Payments						
■ Transfused	0	0	0	0	0	0
■ Hemophiliac	0	0	0	0	0	0
■ Total	0	0	0	0	0	0
DB9 FMD (Family Members) Pre-Set FMD Payments						
■ Transfused	15	0	0	15	14	0
■ Hemophiliac	2	0	0	2	2	0
■ Total	17	0	0	17	16	0
DA9 PIP (Deceased > January 1, 1999)						
■ Transfused	2	4	33	39	31	16
■ Hemophiliac	1	0	2	3	2	3
■ Total	3	4	35	42	33	19
DA9 SIP (Deceased > January 1, 1999)						
■ Transfused	0	0	0	0	0	0
■ Hemophiliac	0	0	0	0	0	0
■ Total	0	0	0	0	0	0
DA9 FMD (Family Members)						
■ Transfused	132	0	13	145	125	111
■ Hemophiliac	16	1	0	17	14	11
■ Total	148	1	13	162	139	122
Sub-Totals						
■ Transfused	181	87	165	433	378	262
■ Hemophiliac	27	2	4	33	27	21
Total	208	89	169	466	405	283

THE ATTACHED IS EXHIBIT "Z" 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.

Review of the levels
of damages under
Section 8 of the
Fatal Accidents Act

Fall 2021

Review of the levels of damages under Section 8 of the *Fatal Accidents Act*

Published by Alberta Justice and Solicitor General, Government of Alberta

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Background and Purpose

Section 8 of the *Fatal Accidents Act* (FAA) allows certain close family members of a deceased killed by a wrongdoer the right to claim compensation from that wrongdoer for the grief and loss of guidance, care and companionship of the deceased person.

In Alberta, once a claim is made and the liability of the wrongdoer is established, the amount of compensation is automatic, and there is no requirement for the family members to prove their grief. The family members entitled to make a claim are the spouse, partner, parents and children of the deceased. This compensation is referred to in the Act as “damages for bereavement”.

Section 8 does not deal with compensation to surviving family members for the loss of actual financial benefits that would have been received from the deceased person.¹ It does not deal with criminal law. It does not deal with systems such as workers' compensation that compensate surviving family members regardless of whether the death of the worker was caused by anyone's fault. Other parts of the law apply to these areas.

Section 9 of the Act requires the government to review the levels of damages in section 8 every five years to determine whether the amounts need to be adjusted. The results of the review are reflected in this Report.

The fundamental advantage of a set statutory amount of damages for bereavement is that once a claim is made and liability of the wrongdoer is established, the award is automatic and no testimony or evidence of grief is necessary for the claimant to receive the award. The underlying concept is that the law should acknowledge the grief and loss of guidance, care and companionship and allow the family members to deal with the tragedy without the intrusion of adversarial litigation.

No amount of money can fully compensate a family for their grief and loss of a loved one, so setting an amount for damages is not easy. These damages are not a measure of the value of the lost life. They are meant to give recognition to the seriousness of the family's loss and compensate for grief and loss suffered by the surviving family.

Section 8 acknowledges the grief and loss of guidance, care and companionship suffered by the surviving family members but allows them to deal with the tragedy without the intrusive inquiries that would flow from adversarial litigation. Close family members should not be exposed to questioning or have to testify on the nature of their grief and the quality of the relationship they have lost. This can be particularly difficult in the loss of a child.

¹ The *Survival of Actions Act* (SAA) allows a cause of action to survive for the benefit of the person's estate. Only those damages that resulted in actual financial loss to the deceased or the deceased's estate are recoverable. Damages for loss of expectation of life, pain and suffering and so on are not recoverable. Damages must be proven.

The amount of damages under section 8 must balance a number of factors. The amount must be large enough to be meaningful to the person receiving it. At the same time, it must be justifiable within the context of existing damages awarded across Canada. It must take into account that with a set amount, some survivors may be over compensated while others may be under compensated when the specific circumstances of each case are considered. It must also be recognized that an automatic amount is meant to save the family the stress and aggravation of adversarial litigation.

As previously stated, close family members should not be exposed to questioning or have to testify on the nature of their grief and the quality of the relationship they have lost. However, there is a consequence for keeping caring families out of the litigation arena on issues of grief and loss of guidance, care and companionship. When damages do not require proof there is a loss of discretion and flexibility. Section 8 ensures that the statutory regime compensates the people who would have received compensation under a discretionary system.

Since the cost of compensating surviving family members for grief and loss of guidance, care and companionship is paid by the wrongdoer, often the insurer of the wrongdoer makes the payment when the death results from a motor vehicle collision or other incident with insurance coverage. A change in the cost of the levels of section 8 damages may impact automobile or other insurance rates.

I. Current section 8 of Alberta's *Fatal Accidents Act*

Section 8(2) of the Alberta *Fatal Accidents Act* provides a spouse, partner, parent (mother or father) and each child (son or daughter) the right to claim compensation for the grief and loss of guidance, care and companionship suffered when the death of spouse, partner, parent or child is caused by the wrongful conduct of a third party.

These damages for grief and loss of guidance, care and companionship are paid by the person who caused the death, or, in many cases, by that person's insurance company.

Section 8 of the *Fatal Accidents Act* provides, in part:

Damages for bereavement

8(1) In this section,

- (a) "child" means a son or daughter;
- (b) "parent" means a mother or father.

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

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

(3) The court shall not award damages under subsection (2)(a) to the spouse or adult interdependent partner if the spouse or adult interdependent partner was living separate and apart from the deceased person at the time of death.

(4) Repealed 2002 cA-4.5 s36.

(5) A cause of action conferred on a person by subsection (2) does not, on the death of that person, survive for the benefit of the person's estate.

In addition to statutory grief and loss of guidance, care and companionship damages, section 7 of the *Fatal Accidents Act* also allows certain family members to claim "pecuniary damages" (repayment of out-of-pocket expenses) such as expenses for care of the deceased person between the injury and the death; travel and accommodation expenses in visiting the deceased person between the injury and death; funeral expenses; and grief counseling fees.

The pecuniary damages under the Act are for actual financial loss and these amounts must be proven. These damages may be claimed by a spouse, partner, parent (including a father, mother, grandfather, grandmother, stepfather and stepmother), child (including a son, daughter, grandson, granddaughter, stepson and stepdaughter), or brother or sister of the deceased. As with section 8 damages, these pecuniary damages under section 7 are paid by the person who caused the loss (or his or her insurer).

II. Legislative History, Amendments, and Reviews

Traditionally, under the common law the courts did not award damages for wrongful death to anyone. This was consistent with the principle of tort law that intended to return the injured person to the position he or she was in prior to the act or omission of the wrongdoer. This could not be done when a person was deceased.

The courts also did not recognize the grief and loss inflicted on survivors as a legal wrong committed by the wrongdoer against the surviving relatives.

Consequently, legislatures enacted wrongful death statutes to provide certain surviving relatives of a person wrongfully killed with the right to sue the wrongdoer to recover damages. These damages may include pecuniary damages (actual financial loss) and non-pecuniary damages (proposed compensation for pain and suffering).

Originally, the legislation in Alberta only provided for damages for the loss of financial benefits that the surviving family members could have expected to receive from the deceased person. In 1967, the Act was amended to allow a court to also award damages for reasonable funeral expenses and disposal of the body.

In April 1977, the Alberta Law Reform Institute (ALRI) issued Report No. 24, *Survival of Actions and Fatal Accidents Act Amendment*. The focus of this report was the reform of survival legislation and the adoption in part of the Uniform Survival Legislation Act (issued by the Uniform Law Conference of Canada). In Report No. 24, ALRI recommended that the estate's action for loss of expectation of life be abolished and a new cause of action be created for loss of guidance, care and companionship compensation. Immediate family members would be allowed to sue for damages for loss of guidance, care and companionship. ALRI also recommended that the amount of damages be established in legislation (statutory damages without proof of grief).

The Alberta government acted on the ALRI recommendations by enacting section 8 of the *Fatal Accidents Act*. Section 8 came into force on January 1, 1979. It followed the ALRI recommendations except for one change – ALRI had recommended loss of guidance, care and companionship damages for parents only for the wrongful deaths of minor children but the legislature allowed for loss of guidance, care and companionship damages for the wrongful deaths of children of all ages.

Section 8 empowered the court to award \$3,000 to the parents of a deceased child (to be shared between the parents); \$3,000 to the spouse of a deceased; and \$3,000 to the minor children of a deceased (to be shared between all the children).

The level of damages awarded for loss of guidance, care and companionship under section 8 was criticized from the time of the enactment of the legislation especially in the case of a child's death.

In Report for Discussion (RFD) No. 12, June 1992, ALRI reviewed section 8 of the *Fatal Accidents Act*. ALRI recommended in part that the amount to be paid for loss of guidance, care and companionship continue to be established by statute to relieve the loved ones from having to prove their loss (the degree of suffering and nature of the relationship with the deceased) in an adversarial situation. It recommended that damages for the loss of a child or spouse be increased to \$40,000; and damages to each child be increased to \$25,000 to be meaningful to survivors. It also recommended that the levels of damages be reviewed regularly.

ALRI again recommended that only family members who are likely to have the closest family relationship with the deceased person should be allowed to claim loss of guidance, care and companionship damages (ie. spouses, parents and children). A parent could claim damages for the death of a minor child or an unmarried child who was less than 26 years old. A child could claim damages for the death of a parent if the child was a minor child or an unmarried child less than 26 years old.

In determining the age criteria for the child, ALRI chose 25 years of age as the outer limit of dependency as most children have finished their education by that age and are close to financial independence. ALRI intended to encompass the time in which the child-parent relationship is the closest personal relationship in the child's life.

1994 Amendments

In September 1994, the ALRI recommendations were adopted and the levels of damages were raised to \$40,000 for a spouse, cohabitant or parent losing a minor child or an unmarried child less than 26 years old, and \$25,000 to each minor child or each unmarried child under 26 years of age for the loss of a parent.

1999 Review and 2000 Amendments

In 1999, the levels of damages were reviewed by ALRI and an increase in the amounts for inflation to \$43,000 and \$27,000 respectively was recommended. Those recommendations were implemented in February 2000.

2002 Amendments

In 2002, the levels of damages were significantly increased to \$75,000 and to \$45,000 respectively in conjunction with an amendment to the *Survival of Actions Act*². Adult interdependent partners and

² ALRI recommended the SAA be amended to remove loss of future income claims (Report No. 76, *Should a Claim for the Loss of Future Earnings Survive Death?* 1998). The Government accepted the ALRI recommendation and to give effect to this recommendation amended the SAA to only allow claims for actual financial loss under that Act while

unmarried children with no adult interdependent partner were added as eligible claimants and all age restrictions were removed (age restrictions were required to be removed as a result of court decisions that struck down these restrictions as Charter violations).

2007 Review

The 2007 review was conducted by Alberta Justice and Solicitor General (JSG) in a similar manner to ALRI's 1999 review, and in consultation with ALRI. Changes to the amounts were not recommended.

2010 Amendments

Section 8 of the *Fatal Accidents Act* was amended in 2010 in two respects. The first was to remove the reference to the marital status of claimants (marital status of claimants was required to be removed as a result of court decisions that struck down these restrictions as Charter violations). The second was to remove the reference to "illegitimate" children to modernize the language and make it consistent with other Alberta statutes.

2013 Amendments

In 2012, a review was conducted and a Discussion Paper was used to obtain comments from stakeholders. In 2013, the levels of damages were adjusted for inflation and increased to \$82,000 and \$49,000 respectively.

2017 Review

The 2017 review was conducted by JSG in a similar manner to ALRI's 1999 review. Changes to the amounts were not recommended.

III. Loss of Guidance, Care and Companionship Damages in Other Canadian Jurisdictions

The right to claim loss of guidance, care and companionship damages

The right to claim loss of guidance, care and companionship damages varies throughout Canada. The majority of provinces in Canada have enacted within their fatal accident statutes provisions allowing for recovery of damages for loss of guidance, care and companionship caused by the death of the deceased (Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland, and Yukon). Even where damages for loss of guidance, care and companionship are not expressly included in fatal accident statutes, damages for loss of guidance, care and companionship have

also increasing bereavement damages under the FAA to ensure fair compensation for spouses, parents and children without proof of loss.

been included by the courts as allowable damages under pecuniary loss (British Columbia, Northwest Territories and Nunavut).

Four provinces (Saskatchewan, Manitoba, Yukon and Alberta) provide damages for loss of guidance, care and companionship in fixed amounts with no evidence of damages required (statutory damages). As noted above, the fundamental advantage of this approach is that the family members do not have to put forward evidence that they are grieving or have suffered a loss. The law acknowledges that grief and loss exist.

The remaining provinces and the federal government³ also allow claims for damages for loss of guidance, care and companionship but the usual rules of evidence apply and damages must be proven by the family members making the claim. This approach allows the court to review each set of facts on a case by case basis and set an appropriate amount of damages for the particular circumstances. The drawback is that family members must prove their grief and may have to testify in court, which can aggravate the loss and extend the family's grieving period.

Below is a chart of the legislation across Canada relating to damages for grief and loss of guidance, care and companionship. The amounts of statutory damages and damages in reported case law are shown on pages 11 and 12.

Jurisdiction	Are the amounts set by statute of established by the court on proof of loss?	What do the amounts compensate?
AB	Statute	Grief and loss of guidance, care and companionship
SK	Statute	Grief and loss of guidance, care and companionship
MB	Statute	Loss of guidance, care and companionship
YK	Statute	Grief and loss of guidance, care and companionship
BC	Court	Loss of guidance, companionship and care (pecuniary damages)
ON	Court	Loss of guidance, care and companionship

³ In *Ordon Estate v. Grail* [1998] 3 S.C.R. 437, the Supreme Court of Canada held that the definition of damages in the context of fatal maritime accident claims should include damages for loss of guidance, care and companionship. The Court found that contemporary conceptions of loss include the idea that it is truly a harm for a dependent to lose the guidance, care and companionship of a spouse, parent or child.

QC	Court	<i>Solatium doloris</i> moral compensation for grief and distress
NB	Court	Loss of companionship or grief
NS	Court	Loss of guidance, care and companionship
PEI	Court	Loss of guidance, care and companionship
NL	Court	Loss of guidance, care and companionship
NT	Court	Loss of guidance, companionship and care (pecuniary damages)
NU	Court	Loss of guidance, companionship and care (pecuniary damages)
Canada	Court	Loss of guidance, care and companionship

Loss of guidance, care and companionship damage awards across Canada

Alberta has reviewed the current statutory damages and the relevant reported case law since 2006 in other Canadian jurisdictions. Below is a summary of the findings.⁴

	Relationship to deceased person			
	Spouse	Parent	Child	
AB	\$82,000	\$82,000 (divided equally if both parents claim)	\$49,000	
YK	\$75,000	\$37,500 to each parent but where only one parent claims \$75,000	\$45,000	
SK	\$60,000	\$30,000	\$30,000	

⁴ See Appendix A for a list of the case law considered.

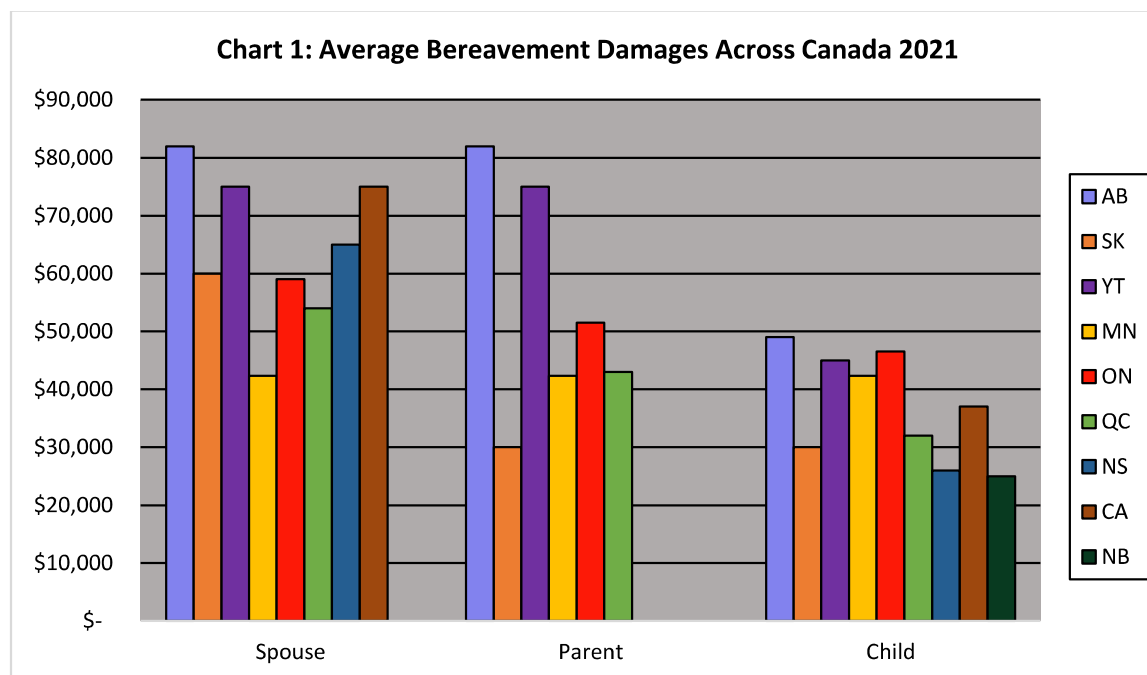
MB	\$42,301 ⁵	\$42,301	\$42,301 (minor child only)	\$14,100 (for child 18 years and older)
BC	Average \$15,000 No range	Average \$7,250 Range \$7,000 to \$7,500	Average \$35,000 No range	
ON	Average \$59,027 ⁶ Range \$7,500 to \$100,000	Average \$51,527 Range \$11,250 to \$125,000	Average \$46,511 Range \$3,000 to \$135,000	
QC	Average \$69,000 Range \$5,000 to \$150,000	Average \$38,400 Range \$6,250 to \$125,000	Average \$42,000 Range \$2,500 to \$125,000	
NS	No reported cases	No reported cases	Average \$4,000 No range	
NB	No reported cases	No reported cases	No reported cases	
PEI	No reported cases	No reported cases	No reported cases	
NL	No reported cases	No reported cases	No reported cases	
NT	No reported cases	No reported cases	No reported cases	
NU	No reported cases	No reported cases	No reported cases	
Canada	\$75,000 No range	No reported cases	Average \$37,000 Range \$25,000 to \$75,000	

⁵ These are required to be adjusted for inflation after 2002 (the amounts in 2002 dollars are \$30,000 each spouse, parent and minor child; \$10,000 for each child 18 years and older). See Bank of Canada Inflation Calculator.

⁶ The amounts in this table reflect reductions for contributory negligence as found by the court.

Comparison of Damage Awards

As shown in Chart 1 below, the current levels of damages under section 8 of the Alberta *Fatal Accidents Act* compare favourably with awards of a similar nature in other provinces across Canada.



A true direct comparison is not possible due to differing rules in each jurisdiction. For example, some jurisdictions provide an amount for each parent, whereas in Alberta damages for parents are divided equally if the action is brought for the benefit of both parents.

This chart compares averages. However, where a court determines the amount of damages based on proof of loss the range of damage awards can vary widely depending on the facts of the case.

A number of provinces have no reported cases. Similarly, there are few federal cases under the *Marine Liability Act*.

IV. *Fatal Accidents Act*, 1976 (U.K.)

England allows statutory loss of guidance, care and companionship damages for wrongful death to the surviving spouse or civil partner or surviving parents of an unmarried minor child. The current statutory amount of damages for loss of guidance, care and companionship is £15,120.

Applying the annual exchange rate for 2020, £15,120 is the equivalent of \$26,004 (Canadian Dollars)⁷.

⁷ See Bank of Canada's website. (2020 1.7199 average)

V. Inflation

According to the Bank of Canada, the Consumer Price Index for April 2021 is 140.0.⁸ If the Alberta amounts were increased for inflation, the damages could be \$88,225 for spouse, partner and parents, and \$52,720 per child.

Some of the other provinces' damages awards already factor in inflation. For example, Manitoba's is built in by statute. Courts in Ontario and Quebec often take into account the effects of inflation when reviewing previous case law to determine an appropriate award in a particular case.⁹

If Alberta increases its amounts to account for inflation, the gap between Alberta's damages amounts and the other jurisdictions would increase.

VI. Insurance premiums

Any change to the amounts of damages will likely have an impact on insurance rates.

In 1993, the Alberta Law Reform Institute (ALRI) estimated that its proposals to increase the amount of damages from \$3,000 to \$40,000 and \$25,000¹⁰ would result in a premium increase per vehicle of no more than \$22.¹¹ As complete information was not available, the analysis was based on a number of assumptions, but at the time the insurance industry agreed that the analysis was reasonably accurate.

The most recent Alberta collision statistics available are for 2018. As noted by ALRI, changes in the amount of statutory damages are most likely to affect automobile insurance premiums as compared to other types of liability insurance.

The Alberta collision statistics for 2018 indicate that 289 people were killed in that year as a result of traffic collisions. Details of the road user class (driver, passenger, or other category) and age of the deceased are included in Appendix B. Appendix B also provides details of the methodology of ALRI.¹²

⁸ See Bank of Canada's website.

⁹ See, for example, *Wilson v. Beck*, 2011 CarswellOnt 6583 at par 251.

¹⁰ \$40,000 to parents for the loss of a child, \$25,000 to each child for the loss of a parent.

¹¹ Alberta Law Reform Institute, Report for Discussion (RFD) No. 12, June 1992.

¹² Alberta Traffic Collision Statistics 2018 include the following statistics on numbers killed: 2014 – 369; 2015 – 330; 2016 – 299; and 2017 – 290 and 2018 – 289. When ALRI did Report for Discussion (RFD) No. 12, June 1992 the report was based on 1989 fatal collision statistics and in that year there were 520 fatalities. Overall it appears that fatal collisions have been less from 2014 to 2018 than in 1989. At the same time as noted in the report, with the requirement to remove the age and marital restrictions imposed by the Courts, the class of individuals able to claim bereavement damages has expanded (all parents regardless of the age or marital status of the deceased child and all children regardless of their age or marital status when their parent dies).

Based on the final 2018 statistics and ALRI's estimation that a maximum of 70% may involve a claim, the result is that claims for section 8 damages could be made in approximately 202 fatalities.

Current information is not available on the possible impacts to insurance premiums resulting from potential changes to the levels of damages. Nevertheless, it is important to note that if the statutory amounts are changed, there may be a resulting change in insurance premiums.

VII. Recommendation

On average, Alberta still has among the highest bereavement damages in Canada. Accordingly, the department recommends that Alberta retain the current amounts for the levels of damages under section 8 at this time.

Appendix A: Case law relating to loss of guidance, care and companionship damages

Québec

Chouinard c. Ailes de Gaspé inc., 2006 QCCS 5760 (CanLII), 2006 CarswellQue 11446

Tremblay c. Kyzen inc., 2006 QCCS 3275 (CanLII), 2006 CarswellQue 5224; affirmed 2008 CarswellQue 3116

De Montigny c. Brossard (Succession de), 2006 QCCS 1677 (CanLII), 40 CCLT (3d) 109, 2006 CarswellQue 2552; amount of damages affirmed 2010 SCC 51, [2010] 3 SCR 64 (appeal partially allowed on other issues)

Gravel c. Édifices Gosselin et Fiset enr., 2007 QCCS 5116 (CanLII), 2007 CarswellQue 10401

Larouche c. Blackburn, 2008 QCCS 1890 (CanLII), 2008 CarswellQue 4057

B.H. c. Centre hospitalier régional de Baie-Comeau, 2009 QCCS 585 (CanLII), 2009 CarswellQue 1212

Savard (Succession de) c. Houle, 2009 QCCS 795 (CanLII), 2009 CarswellQue 1640

L.S. c. Centre hospitalier affilié universitaire de Québec – Hôpital de l'Enfant Jésus, 2009 QCCS 1622 (CanLII); appeal allowed in part (but not on damages), 2011 QCCA 1521 (CanLII), 2011 CarswellQue 9188; leave to appeal to SCC filed Sep 29, 2011, docket 34460 ; no decision as of April 12, 2012

Larouche c. Simard, 2009 QCCS 529 (CanLII), 2009 CarswellQue 1044; appeal allowed in part (but not on damages), 2011 QCCA 911 (CanLII), 2011 CarswellQue 5199

Shaikh c. Kane, 2010 QCCS 1871 (CanLII), 2010 CarswellQue 4432

Thivierge c. Gouriou, 2011 QCCQ 340 (CanLII), 2011 CarswellQue 611

Roussin c. Plan Nagua inc., 2011 QCCS 5301 (CanLII), 2011 CarswellQue 11008

Papatie c. Québec (Procureur general), 2013 QCCS 868, 2013 CarswellQue 1798, 2013 CarswellQue 5657, EYB 2013-219071, 362 D.L.R. (4th) 720 (C.S. Que.)

Sacco c. Paysagistes Izzo et Frères Itée 2014 CarswellQue 7733

Nguyen c. Site touristique Chute à l'ours de Normandin inc. 2014 CarswellQue 519

Émond c. Benhaim 2014 CarswellQue 12131

Nova Scotia

Simpson Estate v. Cox, 2006 NSSC 84 (CanLII), 2006 CarswellINS 135; affirmed 2006 NSCA 125 (CanLII), 2006 CarswellINS 499

Federal

Wilcox v. Miss Megan (Ship), 2008 FC 506 (CanLII), 2008 CarswellNat 1193

McDonald v. Queen of the North (Ship), 2009 BCSC 1129 (CanLII), 2009 CarswellIBC 2188. Court approved settlement.

British Columbia

Stegemann v. Pasemko, 2010 CarswellBC 707 (BCCA)

Camaso Estate v. Egan, 2011 BCSC 456, 2011 CarswellBC 907 (B.C.S.C.)

James Estate v. Gillis, 2011 CarswellBC 1625 (B.C.S.C.)

Haczewski v. British Columbia 2012 BCSC 380, 2012 Carswell 722, 7C.C.L.I. (5ht) 211, 33 M.V.R. (6th) 57 (B.C.S.C.)

Duncan (Litigation guardian of) v. Brown 2014 CarswellBC

Panghali v. Panghali, 2014 BCSC 647.

Ontario

Rupert v. Toth, 2006 CanLII 6696 (ON SC), 2006 CarswellOnt 1345

Wright v. Hannon, 2007 CanLII 240 (ON SC), 2007 CarswellOnt 59

Johnson v. Milton (Town), 2008 ONCA 440 (CanLII)

Madonia v. Stevens, 2008 CanLII 70461 (ON SC), 2008 CarswellOnt 8256

Singleton v. Leisureworld Inc., 2008 CanLII 16071 (ON SC), 2008 CarswellOnt 2128

Fiddler v. Chiavetti, 2010 ONCA 210 (CanLII), [2010] O.J. No 1159, 2010 CarswellOnt 1670

Wilson v. Beck, 2011 CarswellOnt 6583 (On. S.C.J.). *Medical malpractice*

Vokes Estate v. Palmer 2012 ONCA 2012 OJ No 3393 (QL); 218 ACWS (3d) 994; 26 CPC (7th) 13; 294 OAC 342 (Jury Trial award)

Rycroft Estate v. Gilas, 2017 ONSC 1397

The Estate of Carlo DeMarco v. Dr. Martin, 2019 ONSC 2788

Panchyshyn v. Hammond, 2020 ONSC 381

Campeau v. Ontario, 2021 ONSC 129

Appendix B: Alberta Traffic Collision Statistics 2018

Of the 289 fatalities the following applies:

Road User Class

Drivers	164
Passengers	39
Pedestrians	40
Motorcyclists	18
Bicyclists	2
Other	14
Unspecified	12

Age

Under 5	3
5-9	3
10-14	1
15-19	27
20-24	37
25-29	29
30-34	23
35-44	38
45-54	36
55-64	36
65 and over	55
Unspecified	1

As noted by ALRI, some fatalities would not give rise to a claim for damages that would be covered by an automobile insurance policy. These fatalities would include:

- 1) The Workers' Compensation Board (WCB) reported that in 2018 there were 27 motor vehicle incident fatalities accepted by the WCB. These deaths fall under the umbrella of the no-fault workers compensation scheme.
- 2) It can be assumed that a number of drivers who died in traffic fatalities were the cause of their own death. This may apply in the case of a single vehicle accident in which the sole occupant, the driver, dies or in the case of a multi-vehicle collision in which the deceased driver is solely responsible.
- 3) There will also be accidents in which driver error is not the cause of the collision resulting in death of a pedestrian or bicyclist.
- 4) There will be other accidents which cannot be attributed to anyone's fault such as where a car strikes a wild animal on the highway.
- 5) Finally, there will be accidents in which the deceased was contributorily negligent and, therefore, the damages will be reduced accordingly. For example, if the deceased is found to be 20% contributory negligent, the award is reduced by 20%. ALRI suggests that a significant number of drivers who died in traffic collisions will be contributorily negligent.

Taking into account the above noted, ALRI determined that the net result is that a significant number of fatalities would not give rise to a claim for bereavement damages and in another significant number of cases recovery would be reduced by the contributory negligence of the deceased. Factoring in those considerations, ALRI estimated that a maximum of 70% may involve a claim and at least 30% would involve no claim. The result is that claims for bereavement damages based on 2018 statistics could be made in approximately 202 fatalities

Potentially, in these 202 fatalities, claims may be brought by a spouse or partner; a parent of the deceased, and children of the deceased. For example where a deceased is survived by a spouse or partner, a parent and two children the bereavement damages may total \$262,000 (\$82,000 to the spouse or partner; \$82,000 to the parent and \$49,000 to each child). However, there are too many variables to make any reasonable assumptions about whether a deceased would have left a surviving spouse or partner, whether a deceased would have left a surviving parent and whether a deceased would have left surviving children. For example the younger the deceased the less likely he or she is to have a surviving spouse or partner or have surviving children but the more likely he or she is to have a surviving parent. In the absence of specific individual data, it is not possible to determine exact bereavement damage amounts.

THE ATTACHED IS EXHIBIT "AA" 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.

Housekeeping Damages Calculator TM

Hourly Replacement Rates

The following table reflects the hourly replacement rates used in accordance with the province of residence selected. These rates are in 2021 dollars and do not include provincial sales tax or GST.

Province of Residence	Hourly Replacement Rate
Alberta	\$22.75
British Columbia	\$22.61
Manitoba	\$18.56
New Brunswick	\$15.80
Newfoundland & Labrador	\$17.95
Northwest Territories	\$33.63
Nova Scotia	\$21.09
Nunavut	\$33.63
Ontario	\$21.43
Prince Edward Island	\$20.13
Quebec	Not supported by calculator
Saskatchewan	\$21.41
Yukon	\$33.98

The hourly rates for housekeeping claims are researched from NOC 4412, "Home support workers, housekeepers and related occupations" using Statistics Canada's 2001 and 2006 Censuses, Statistics Canada's "2011 National Household Survey", Statistics Canada's 2016 Census, the Federal Government of Canada's JOB BANK website, and various provincial wage surveys (see Table 9-6 in C.L.Brown, *Damages: Estimating Pecuniary Loss* (Toronto, Ontario: Canada Law Book, a Thomson Reuters business), December 2020 (28th edition), Chapter 9, for specific provincial wage surveys used).

We deflate the 2021 rates above by Statistics Canada's "Estimates of Average Weekly Earning" and "Survey of Employment, Payrolls and Hours", NAICS 5617 (services to buildings and dwellings) for Canada.

A survey entitled "Cleaning Survey: A report on the findings of a province wide survey to determine the average hourly cost of having a home cleaned" was carried out by *Profit Matters Inc.* who used the *IPSOS/Reid Alberta Omnibus* survey in the fall of 2005 in Alberta to poll respondents. The results indicated that of the 803 respondents, slightly less than 10% used cleaners. The rates for these urban areas in 2005 were \$17.11 in Calgary, and \$14.66 in Edmonton. Other cities and rural areas reported average hourly costs of \$10.12 to \$11.06. This yielded an average of \$14.64 for the whole province.

Increasing the \$14.64 rate to 2021 \$ for Alberta results in a rate of \$28.14. Note that in the **Housekeeping Damages Calculator**TM and in our assessments, Brown Economic uses \$22.75 for Alberta (see above).

THE ATTACHED IS EXHIBIT "BB" 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.

Estimate for Possible SDB & Late Claim Enhancements

8690 - As of 2019

	# of Benefits	Cost per Unit	Cost
Alive PIP/SIP	3220	\$40.00	\$128,800.00
DA9/DB9 - Family Members	7499	\$40.00	\$299,960.00
Child 21+	1849		
Child under 21	241		
Sibling	1804		
Parent	322		
Spouse	635		
Grandchild	2622		
Grandparent	26		
DB9 - \$72K & \$120K Estates	1709	\$50.00	\$85,450.00
DA9 - Estates	1563	\$62.50	\$97,687.50
DB9 - \$50K Estates	182	\$62.50	\$11,375.00
Loss of Income	338	\$125.00	\$42,250.00
Loss of Services	784	\$125.00	\$98,000.00
Total			\$763,522.50

8690 - Post 2019

	# of Benefits	Cost per Unit	Cost
Alive PIP/SIP	0	\$40.00	\$0.00
DA9/DB9 - Family Members	131	\$40.00	\$5,240.00
Child 21+	35		
Child under 21	0		
Sibling	29		
Parent	5		
Spouse	16		
Grandchild	45		
Grandparent	0		
DB9 - \$72K & \$120K Estates	1	\$50.00	\$50.00
DA9 - Estates	3	\$62.50	\$187.50
DB9 - \$50K Estates	0	\$62.50	\$0.00
Loss of Income	3	\$125.00	\$375.00
Loss of Services	45	\$125.00	\$5,625.00
Total			\$11,477.50

LCBP - As of 2019

	# of Benefits	Cost per Unit	Cost
Alive PIP/SIP	5	\$40.00	\$200.00
DA9/DB9 - Family Members	92	\$40.00	\$3,680.00
Child 21+	33		
Child under 21	0		
Sibling	12		
Parent	4		
Spouse	9		
Grandchild	34		
Grandparent	0		
DB9 - \$72K & \$120K Estates	0	\$50.00	\$0.00
DA9 - Estates	2	\$62.50	\$125.00
DB9 - \$50K Estates	0	\$62.50	\$0.00
Loss of Income	0	\$125.00	\$0.00
Loss of Services	0	\$125.00	\$0.00
Total			\$4,005.00

LCBP - Post 2019

	# of Benefits	Cost per Unit	Cost
Alive PIP/SIP	22	\$40.00	\$880.00
DA9/DB9 - Family Members	63	\$40.00	\$2,520.00
Child 21+	19		
Child under 21	0		
Sibling	12		
Parent	2		
Spouse	6		
Grandchild	24		
Grandparent	0		
DB9 - \$72K & \$120K Estates	0	\$50.00	\$0.00
DA9 - Estates	1	\$62.50	\$62.50
DB9 - \$50K Estates	3	\$62.50	\$187.50
Loss of Income	0	\$125.00	\$0.00
Loss of Services	8	\$125.00	\$1,000.00
Total			\$4,650.00

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 1st Affidavit
of Euan Reid in the BC Action
and was made on May 13, 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

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

AFFIDAVIT OF EUAN REID
(Affirmed May 13, 2022)

I, Euan Reid, FIA, FCIA, of Eckler Ltd., located at 980 – 475 Georgia Street, Vancouver, British Columbia, V6B 4M9, AFFIRM THAT:

1. I am a Principal of Eckler Ltd. ("Eckler").
2. Attached and marked as **Exhibit "A"** is a true copy of the Eckler Actuarial Report to the Joint Committee - Proposed Allocation of the 2019 Sufficiency Assessment Actuarially Unallocated Assets of the 1986-1990 Hepatitis C Trust.
3. In addition to myself, the Eckler personnel involved in reviewing the data and developing the actuarial model that provides a basis for the opinions expressed in the report were Richard Border, Dong Chen and Kevin Chen. Mr. Border and I are the authors of the report and the opinions expressed are ours.
4. I certify that all Eckler personnel involved in the project are aware that our duties are:
 - a) to provide opinion evidence that is fair, objective and non-partisan and related only to matters within our area of expertise; and
 - b) to assist the Courts and provide such additional assistance as the Courts may reasonably require to determine a matter in issue.
5. All Eckler personnel involved in the project are also aware that the foregoing duties prevail over any obligation we may owe to any party on whose behalf we are engaged and we are aware that we are not to be advocates for any party. I confirm that the report conforms with the above-noted duties. I further confirm that if called upon to give oral or written testimony, I and any other Eckler personnel will give such testimony in conformity with these duties.

6. Attached and marked as **Exhibit "B"** is my curriculum vitae. Attached and marked as **Exhibits "C", "D" and "E"**, respectively, are the curricula vitae of Richard Border, Dong Chen and Kevin Chen.

AFFIRMED BEFORE ME at Vancouver,
British Columbia, on May 13th, 2022



A Commissioner for taking
Affidavits for British Columbia

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Euan Reid

LINNAE E. ROACH
Commissioner for taking Affidavits
in and for the Province of British Columbia
856 Homer Street, 4th Floor
Vancouver, BC, V6B 2W5
Tel: 604-689-7555 Fax: 604-689-7564

THE ATTACHED IS EXHIBIT "A" TO THE AFFIDAVIT OF
EUAN REID AFFIRMED BEFORE ME THIS 13th DAY OF
MAY, 2022



COMMISSIONER FOR TAKING AFFIDAVITS

LINNAE E. ROACH
Commissioner for taking Affidavits
In and for the Province of British Columbia
856 Homer Street, 4th Floor
Vancouver, BC, V6B 2W5
Tel: 604-689-7555 Fax: 604-689-7554



Actuarial Report to the Joint Committee

**Proposed Allocation of the
2019 Sufficiency Assessment
Actuarially Unallocated Assets**

1986 - 1990 Hepatitis C Trust

Prepared by:
Richard Border, FIA, FCIA
Euan Reid, FIA, FCIA

Vancouver, British Columbia
February 28, 2022

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I. Introduction

1. Our assessment of the financial sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2019 was documented in our report (referred to in this report as the “2019 Sufficiency Report”) dated November 25, 2020.
2. Our 2019 Sufficiency Report concluded that, after allowing for an appropriate level of Required Capital, there was Excess Capital, or actuarially unallocated assets, of \$197,596,000.
3. The Joint Committee has informed us that there are payments due to 417 entitled class members that were not reflected in the data used for the 2019 financial sufficiency review, and that these have been estimated as \$2,559,000 in total (in 2021 dollars where applicable). These are payments in respect of the additional benefits that were granted by allocating the actuarially unallocated assets arising at the December 31, 2013 financial sufficiency review (the “2013 Allocation Benefits”). After allowing for these additional payments, the available Excess Capital reduces to \$195,037,000.
4. The Settlement Approval Orders give the Courts discretion to allocate the actuarially unallocated assets “for the benefit of class members and family class members”, referred to in this report as “2019 Allocation Benefits”. The Joint Committee has defined a list of specific potential 2019 Allocation Benefits, to be funded by the Excess Capital, or actuarially unallocated assets.
5. We were asked by the Joint Committee to calculate the cost of these potential 2019 Allocation Benefits. Our calculations showed that the total costs, including an appropriate level of Required Capital were \$194,941,000.
6. This report provides actuarial analysis of the 2019 Allocation Benefits recommended by the Joint Committee.

II. Summary of 2019 Sufficiency Report Results

7. As noted above, our 2019 Sufficiency Report concluded that, after allowing for an appropriate level of Required Capital, there was Excess Capital, or actuarially unallocated assets, of \$197,596,000.
8. A summary of the financial position of the Trust as at December 31, 2019 is as follows:

2019 Results (\$,000's) ¹	HCV Regular Benefit Account	HCV Special Distribution Benefit Account	HCV Late Claims Benefit Account	Total Fund
Assets				
Invested Assets	887,810	99,514	48,436	1,035,760
Provincial/Territorial Notional Assets	92,553	n/a	n/a	92,553
Total Assets	980,363	99,514	48,436	1,128,313
Liabilities				
Transfused	370,278	36,091	44,008	450,377
Hemophiliac	219,667	20,963	5,129	245,760
HIV Program	410	n/a	n/a	410
Expenses	67,070	1,749	9,732	78,551
Total Sufficiency Liabilities	657,425	58,803	58,870	775,098
Excess Assets over Liabilities	322,938	40,711	(10,434)	353,216
Required Capital	131,181	12,993	11,445	155,619
Excess Capital	191,757	27,718	(21,879)	197,596
Funded ratio (= Total Assets ÷ Total Sufficiency Liabilities)	149%	169%	82%	146%

9. Subsequent to the 2019 sufficiency review, the courts ordered that \$22,981,000 be reallocated from the HCV Special Distribution Benefit Account to the HCV Late Claims Benefit Account effective January 1, 2020 to ensure that the underfunded HCV Late Claims Benefit Account was financially sufficient.
10. The Joint Committee has also informed us that there are payments totalling \$2,559,000 in respect of certain 2013 Allocation Benefits that were not included in the data provided for the 2019 sufficiency review, and should be added to the liabilities of the notional Special Distributions Benefit Account. We have taken this estimate at face value, as an adjustment for indexing differences between 2021

¹ In some cases in this table and elsewhere in this report, amounts may appear not to add up to the total shown. This occurs because amounts have been rounded to thousands or millions for presentation.

dollars (on which the estimate was based) and 2020 dollars (as used for the 2019 sufficiency review) is unlikely to be material.

11. The revised summary of the financial position of the Trust as at December 31, 2019 after the court orders and additional liability for missing 2013 Allocation Benefit payments is as follows:

2019 Results Restated (\$,000's)	HCV Regular Benefit Account	HCV Special Distribution Benefit Account	HCV Late Claims Benefit Account	Total Fund
Assets				
Invested Assets	887,810	76,533	71,417	1,035,760
Provincial/Territorial Notional Assets	92,553	n/a	n/a	92,553
Total Assets	980,363	76,533	71,417	1,128,313
Liabilities				
Total Sufficiency Liabilities	657,425	61,362	58,870	777,657
Excess Assets over Liabilities	322,938	15,171	12,547	350,656
Required Capital	131,181	12,993	11,445	155,619
Excess Capital	191,757	2,178	1,102	195,037
Funded ratio (= Total Assets ÷ Total Sufficiency Liabilities)	149%	125%	121%	145%

12. The foregoing table indicates that, as at December 31, 2019 the assets exceed the restated sufficiency liabilities by about \$350,656,000.
13. After allowing for the Required Capital buffer of \$155,619,000, which is unchanged by the additional liability for missing 2013 Allocation Benefit payments, the restated Excess Capital is \$195,037,000. This is the amount that is available to fund Allocation Benefits for class members and family class members.
14. All three notional accounts are financially sufficient, and with positive Excess Capital, as provided by the reallocation of 2013 actuarially unallocated assets in the 2019 sufficiency order.
15. The settlement is funded by invested Assets, initially funded by the Federal Government in terms of the settlement, as well as ongoing payments by the Provinces and Territories (PT) equal to 3/11ths of the emerging costs for the HCV Regular Benefit Account. The PTs do not contribute to the HCV Special Distribution Benefit Account or the HCV Late Claims Benefit Account. The overall PT liability is capped at 3/11ths of the original settlement, increased with interest at the rate on three-month treasury bills, less the PT share of costs to date. As at December 31, 2019, this capped PT liability, which equates to the maximum funds available from the PT, was \$92,553,000. This figure can be regarded as the PT Notional Assets.

16. It is illustrative to break down the sufficiency result for the HCV Regular Benefit Account between the portion covered by the Invested Assets and the portion covered by the remaining PT Notional Assets.

HCV Regular Benefit Account as at December 31, 2019			
\$000	Total Assets	Invested Assets	PT Notional Assets
Assets	980,363	887,810	92,553
Sufficiency Liabilities ²	657,425	478,127	179,298
Excess of Assets over Sufficiency Liabilities	322,938	409,683	(86,745)
Reallocation of cost from the PT Notional Fund to the Invested Fund	0	(86,745)	86,745
Excess of Assets over Sufficiency Liabilities after reallocation of cost	322,938	322,938	0
Required Capital	131,181	131,181	0
Restated Excess Capital	191,757	191,757	0

17. We note that:

- The PT Notional Assets is less than 3/11 of the total Sufficiency Liabilities.
- Based on the sufficiency assumptions, our model projects that the PT Notional Assets will be exhausted by 2030.
- The PT shortfall thus emerging has been charged against the Invested Assets. This reflects our expectation that once the PT Notional Assets is exhausted, the full amount of payments will be charged to the Invested Assets (as opposed to reducing the compensation amounts payable).
- Consistent with this we have allocated the full amount of the Required Capital against the Invested Assets.
- The Excess Capital, which is the amount by which the assets exceed the sum of the Sufficiency Liabilities plus a provision to protect the class members from future major adverse experience or catastrophe (the Required Capital), is therefore associated with the Invested Assets only; there is no Excess Capital in the PT Notional Assets.
- From an actuarial perspective, the assets identified as Excess Capital are actuarially unallocated assets.

18. We understand that the Joint Committee recommends that the Allocation Benefits be funded from the Excess Capital in the Invested Assets. Therefore, the time at which the PT Notional Assets would be exhausted does not change as a result of the Allocation Benefits. The fact that PT Notional Assets are less than 3/11ths of the total liability does not affect the amount of actuarially unallocated assets.

² Allocated 8/11 to the Invested Fund and 3/11 to the PT Notional Fund.

III. Approach to our Calculations

19. We have calculated the costs of the specific Allocation Benefits with an effective date of December 31, 2019. The costs consist of two pieces. Firstly, a retroactive component that represents the cost of back dating the 2019 Allocation Benefits to the settlement date; this is our estimate of the costs that would have been paid by December 31, 2019 had the Allocation Benefits always been in place. No interest is paid on retroactive payments, but the payments are indexed to January 1, 2020. Secondly, a future cost that represents the cost of payments after December 31, 2019 and is essentially the increase in the December 31, 2019 liability arising as a result of the Allocation Benefits.
20. The future liability costs have been calculated using the methods and assumptions employed in our 2019 Sufficiency Assessment, as outlined in our 2019 Sufficiency Report. We have not repeated a description of the methods and assumptions in this report. Where additional assumptions are required, we have described them in our outline of the calculations in Appendix A.
21. In our 2019 Sufficiency Report, we set out both Best Estimate and Sufficiency liabilities. As the label suggests, Best Estimate liabilities are calculated using best estimate assumptions, while the Sufficiency liabilities are calculated using assumptions that include, where appropriate, margins for adverse deviations. As the Excess Capital that is being used to fund the 2019 Allocation Benefits is calculated on a Sufficiency basis, for consistency, our estimates of the cost of the 2019 Allocation Benefits set out in this report have also been calculated on a Sufficiency basis.
22. While the 2019 Sufficiency Report assumptions include margins for adverse deviations, not every assumption in the Sufficiency calculations has a margin added, and in many cases the Sufficiency assumption and the Best Estimate assumption is the same. We have taken a similar approach to setting any assumptions needed to calculate the liabilities arising from the 2019 Allocation Benefits and have only added margins where we believe they are required. This is consistent with the assumption setting process that was carried out in conjunction with Morneau Shepell.
23. We have generally calculated the retroactive costs directly from the actual payment history. However, it was not possible to identify from the payment history the year that Loss of Services benefits paid from the Special Distribution Benefit account were incurred. We estimated the amount of these benefits incurred at and after 2014 by assuming the same proportions before 2014 and after 2013 as the Regular Benefit Account. We have not added any margins for adverse deviations in this circumstance as we believe it is immaterial.

IV. 2019 Allocation Benefits

24. The table below contains the costs of the 2019 Allocation Benefits that the Joint Committee is putting forward for approval. The details for each specific 2019 Allocation Benefit are included in Appendix A.
25. Each 2019 Allocation Benefit has two cost components. The retroactive cost is the cost of paying the 2019 Allocation Benefit to claimants who have qualified in the past for the 2019 Allocation Benefit in question.³ The future cost is the cost of payments that are expected to fall due in the future, either to claimants who are currently receiving payments for the head of damage in question, or for claimants who are expected to qualify for such payments in the future.
26. In addition to calculating the cost of the 2019 Allocation Benefits, we have recalculated the Required Capital that would be needed if these 2019 Allocation Benefits are approved. The Required Capital is calculated using the same method employed in the 2019 Sufficiency Report. The approach takes into account the risks that the Trust faces as a whole, and sets aside capital to protect the claimants from these risks. Retroactive payments do not have a need for Required Capital and so we have calculated the increase in Required Capital based on the future liability increase only. The dollar amount of the total increase in Required Capital is set out in the table below. More detail is provided in Appendix B.
27. The Joint Committee has obtained from the administrator an estimate of the administration cost associated with providing the 2019 Allocation Benefits in question, and also provided the estimated cost for other services. We have included these costs in this report, as detailed in Appendix C. We have not reviewed these administration costs for reasonableness.
28. The total cost of the 2019 Allocation Benefits is \$194,941,000, including the increase in Required Capital, which is less than the restated Excess Capital of \$195,037,000.

³ In the case of Loss of Services compensation, the Joint Committee has recommended limiting retroactive payments to those in respect of Services provided at and after 2014.

Cost of 2019 Allocation Benefits by benefit				
\$000	Retroactive increase to benefits already paid	Increase in sufficiency liabilities for future benefits	Increase in required capital	Total
Increase all lump sum payments by 6.8% ⁴	44,614 ⁵	8,219	1,851	54,684
Increase payments to Approved Family Members by 50%	37,503 ⁶	28,010	6,299	71,812
Loss of Income: increase compensation for lost pension benefits from 10% to 14% of net loss of income (capped at \$200,000, indexed from 2014).	4,280 ⁷	1,940	433	6,653
Increase loss of services rate from \$12/hour to \$14/hour (1999 dollars) at and after 2014. (No changes to pre-2014 rate.)	9,543 ⁸	41,472	9,257	60,272
Administration Expense Allowance				1,520
Total Cost of 2019 Allocation Benefits	95,940	79,641	17,840	194,941
Excess Capital				195,037
Remaining Excess Capital				96

⁴ Includes disease level lump sum and other optional lump sum payments

⁵ Assumes all past payments are supplemented by 6.8% of the relevant lump sum in 2020 dollars.

⁶ Assumes all past payments are supplemented by 50% of the relevant amount in 2020 dollars.

⁷ No allowance for indexing or interest on past payments. Total paid to each claimant would be calculated as $14\%/10\% - 1 = 40\%$ of total payments prior to 2020.

⁸ Assumes all past payments are supplemented by $14/12-1 = 16.7\%$ of the relevant amount in 2020 dollars.

V. Rebalancing of Notional Accounts

29. The Joint Committee has proposed that all 2019 Allocation Benefits be paid from the existing notional Special Distribution Benefit Account.
30. A reallocation of Excess Capital between the notional Regular Benefit Account, Special Distribution Benefit Account and Late Claims Benefit Account will be required to maintain the sufficiency of all three accounts. The required amounts of rebalancing are shown in the table below.

\$000	Total Fund	Regular Benefit Account	Special Distribution Benefit Account	Late Claims Benefit Account
Restated Excess Capital as at December 31, 2019	195,037	191,757	2,178	1,102
Cost of 2019 Allocation Benefits, including Required Capital and administration costs	(194,941)	0	(194,941)	0
Reallocation of 2019 Excess Capital among Notional Accounts	0	(191,661)	192,763	(1,102)
Remaining Excess Capital	96	96	0	0

31. Since the 2019 Allocation Benefits will be created from Excess Capital, none of the associated administrative costs should be borne by the provinces and territories. The provinces and territories bear a 3/11ths share of any expenses paid from the Regular Benefit Account, but do not share any part of the expenses paid from the other accounts. We have therefore assumed that all administration costs associated with the 2019 Allocation Benefits will be charged to the existing Special Distribution Benefit account.
32. The table above shows that, effective December 31, 2019, \$191,661,000 should be reallocated from the Regular Benefit Account to the Special Distribution Benefit Account, and \$1,102,000 from the Late Claims Benefit Account to the Special Distribution Benefit Account.

VI. Opinion

33. In our opinion,
- (a) after allowing for the 2019 Allocation Benefits the Trust funds are sufficient to meet the liabilities of the Trust,
 - (b) the claimant data on which the calculations are based are sufficient and reliable for the purposes of the calculations,
 - (c) the assumptions are appropriate for the purposes of the calculations, and
 - (d) the methods employed in the calculations are appropriate for the purposes of the calculations.
34. This report has been prepared, and our opinions given, in accordance with accepted actuarial practice in Canada.
35. To the best of our knowledge, there are no material subsequent events that would affect the results and recommendations of this report.
36. On behalf of the Eckler actuarial personnel who worked on this report, we certify that we are aware that our duties are:
- a) to provide opinion evidence that is fair, objective and non-partisan and related only to matters within our area of expertise; and
 - b) to assist the Courts and provide such additional assistance as the Courts may reasonably require to determine a matter in issue.
37. We are aware that the foregoing duties prevail over any obligation we may owe to any party on whose behalf we are engaged and we are aware that we are not to be an advocate for any party. We confirm that the report conforms with the above-noted duties. We further confirm that if called upon to give oral or written testimony, we will give such testimony in conformity with these duties.



Richard A. Border
Fellow of the Canadian Institute of Actuaries⁹
Fellow of the Institute and Faculty of Actuaries



Euan Reid
Fellow of the Canadian Institute of Actuaries⁹
Fellow of the Institute and Faculty of Actuaries

⁹ Canadian Institute of Actuaries is the Primary Regulator.

Appendix A - Detail on 2019 Allocation Benefits

A.1 Increase Lump Sum Payments by 6.8%

38. The Settlement Orders include lump sum compensation payments to HCV Infected Persons based on their disease progression. The 2013 Allocation Benefits increased the compensation amounts by 8.5%. The current amounts are summarised in the table below, as well as the current amounts including the proposed 6.8% increase.

Payment criteria	Original compensation (1999 dollars)	Current compensation including 8.5% increase from 2013 Allocation Benefits (2020 dollars) ¹⁰	Compensation including 8.5% increase from 2013 Allocation Benefits and 6.8% increase from 2019 Allocation Benefits (2020 dollars)
Approved infected claimant	10,000	16,138	17,235
Positive PCR test	20,000	32,276	34,471
Non-bridging fibrosis	30,000	48,414	51,706
Cirrhosis	65,000	104,897	112,030
Decompensation / hepatocellular cancer / B-cell lymphoma / symptomatic mixed cryoglobulinemia / glomerulonephritis/ renal failure	100,000	161,381	172,355
Total	225,000	363,106	387,797

39. The Joint Committee is of the view that having regard for the severity of illness, pain and suffering of those at disease level 6, including liver failure and liver cancer, the cumulative disease level payments should approach the maximum recoverable for personal injury. We understand that the Supreme Court of Canada has imposed a limit on personal injury damages of \$100,000 in January 1978 dollars. A judgment issued by the British Columbia Supreme Court¹¹ in June 2003 described a method for indexing this cap, using the ratio of the current Consumer Price Index (CPI) with the January 1978 CPI. Using this method, the \$100,000 limit translates to a limit of \$389,744 in January 2020. This is 7.3% greater than the current total fixed payment amount of \$363,106 in 2020 dollars, from the table above.

¹⁰ The conversion factor from 1999 dollars to 2020 dollars is 1.487376509

¹¹ Lee v. Dawson (2003), 17 B.C.L.R.4th 80, 4 (S.C.)

40. Taking into account the amount of available Excess Capital, the Joint Committee has proposed an increase of 6.8% to each of the fixed payment amounts. This is less than the maximum increase of 7.3%, based on the limit imposed by the Supreme Court of Canada. We are comfortable that this also provides a margin for safety to account for differences between the CPI indexing method described in the judgement mentioned above and the method required under the HCV Settlement Orders, so that the cap is unlikely to be breached due to differences in indexing in future years.
41. As well as the lump sums described above that are based on a claimant's disease progression, there are a number of optional lump sums payable under the Settlement Orders:
- a) The estates of HCV related deaths before January 1, 1999 may elect either \$120,000 in full settlement of all claims (\$120K option), or \$50,000 plus claims by the family, including loss of support or loss of services (\$50K+ option).
 - b) The estates of HIV co-infected persons who died before January 1, 1999 may elect to be paid \$72,000 in full satisfaction of all other claims, even if HCV is not the cause of death (\$72K option).
 - c) A claimant who is also infected with HIV may elect to be paid \$50,000 in full satisfaction of all other claims including post death claims of dependents and family members;

The Joint Committee has proposed the same 6.8% increase to these optional lump sum amounts.

A.2 Increase Family Claim Payments on Death to Approved Family Members by 50%

42. The Joint Committee has proposed an increase of 50% to the lump sum compensation paid to Approved Family Members on the death of an HCV Infected Person. Approved Family Members are the HCV Infected Person's spouse, children, siblings, parents, grandparents and grandchildren. The 2013 Allocation Benefits increased the amounts paid to children age 21 and over, and parents.
43. The current compensation amounts in 1999 dollars, and the corresponding amounts with a 50% increase, are shown in the table below:

	Original compensation (1999 dollars)	Increase provided from 2013 Allocation Benefits (1999 dollars)	Total Benefit (1999 dollars)	Total Current Benefit (2020 dollars)	Total Benefit with 50% increase (1999 dollars)	Total Benefit with 50% increase (2020 dollars)
Spouse	25,000	-	25,000	37,184	37,500	55,777
Child <21	15,000	-	15,000	22,311	22,500	33,466
Child 21 and over	5,000	4,600	9,600	14,279	14,400	21,418
Parent	5,000	4,600	9,600	14,279	14,400	21,418
Sibling	5,000	-	5,000	7,437	7,500	11,155
Grandparent	500	-	500	744	750	1,116
Grandchild	500	-	500	744	750	1,116

44. The administrator provided us with a summary of the past payments made to Approved Family Members. For retroactive payments, we tabulated the actual payments, and increased these actual costs by 50% and indexed to 2020 dollars.
45. To calculate the cost for future claims, we assumed that the family profile for the future claims would be the same as the family profile of claims made in the past. In other words, we calculated the ratio of the retroactive cost for each category (e.g. children age 21 and over, parents) to the total past payments (aggregated across all categories, e.g. spouse, child under 21, etc). We applied these ratios to the sufficiency assumption for loss of guidance, care and companionship and reran our model to obtain the increase in the liability to get the future cost for each category.

A.3 Compensation for Diminished Pension Due to Disability

46. Claimants who are unable to work lose not only employment income, but also may lose access to pension benefits. Currently, claimants are compensated for lost pension benefit at a rate of 10% of pre-tax loss of income to a maximum pension of \$20,000 (2014 dollars) per annum.
47. In our report dated October 14, 2015 on the 2013 Allocation Benefits, we suggested a rate of 14% would be an appropriate proxy for compensation for diminished pension due to disability, comprising 10% in relation to missed employment pension and 4% in relation to an employer's contribution to the Canada Pension Plan (CPP).¹² The 2013 Allocation Benefit was limited to 10% in order to ensure that the overall cost of the 2013 Allocation Benefits was less than the available Excess Capital at that time.
48. The previously suggested rate of 14% is necessarily broad brush, given the very wide range of pension arrangements offered by employers, but in our view it remains appropriate.
49. For example, the total contribution rate (employer plus employee) to the Public Service Pension Plan of Canada is around 18%-25% of pay, depending on when a member joined the plan and their level of earnings. At the other end of the spectrum, some employees will have no pension benefits, and others will have defined contribution arrangements often at quite low rates of contribution (e.g. less than 10% of pay). As a very rough rule of thumb, we believe that a reasonable level of retirement income (relative to the pre-retirement income) can be achieved with a contribution of 20% of pay. On average, claimants may be receiving pensions funded at half that rate, so we suggest 10% of pay per year as a proxy for compensation for diminished employment pension due to disability.
50. In addition to lost pension benefits, claimants who are not working lose CPP/QPP benefits for the years they do not work. In 2021, employees and employers contribute equally to CPP at a rate of 5.45% each on income up to the Yearly Maximum Pensionable Earnings (YMPE = \$61,600 in 2021). CPP is phasing in higher contributions and benefits, and from 2025 employers and employees will each pay 5.95% on income up to the YMPE, and an additional 4% on income between the YMPE and a new earnings ceiling equal to 114% of the YMPE. Similar contribution rates and recent enhancements apply to the QPP. Based on the income levels of current claimants and lower contribution rate in the past, in our view 4% remains a reasonable equivalent rate to missed employer contributions to CPP/QPP.

¹² Claimants in Quebec are eligible for the Quebec Pension Plan (QPP) rather than CPP. Employer contribution rates to the CPP and the QPP are similar, and in our view it is appropriate to use the same proxy for both.

51. It is statistically unlikely that another very large loss of income claim will be submitted,¹³ but in the event that one does, it could have a material impact on the Trust. For that reason, we have been instructed by the Joint Committee to assume that the current cap on maximum pension will continue.

¹³ Statistics Canada data shows that based on 2019 earnings, only 1% of the population earn over about \$250,300 annually, 0.1% of the population earn over \$790,100 and 0.01% over \$2.97 million.

A.4 Increasing Loss of Services (SRV) compensation rate to \$14/hour at and after 2014

52. Currently Loss of Services (SRV) claims are compensated at \$12 per hour, in 1999 dollars. Claims were capped at 20 hours per week under the original Settlement Orders, and this was extended to a cap of 22 hours per week as part of the 2013 Allocation Benefits. The Joint Committee is concerned that the current rate, which translates to \$17.85 per hour in 2020 dollars, is too low relative to the actual cost of services, leaving claimants out of pocket.
53. The Government of Canada's Job Bank website (www.jobbank.gc.ca) publishes wage data by occupation and region. The table below shows the range of hourly wages for home support workers, housekeepers and related occupations (National Occupational Classification 4412), with wage data updated in December 2020.

	Wages (\$ per hour)			
	Low	Median	High	Median with estimated 20% fees
Canada	12.91	16.85	24.00	20.22
Newfoundland and Labrador	15.00	16.44	17.30	19.73
Prince Edward Island	13.00	13.00	23.28	15.60
Nova Scotia	12.95	17.93	21.00	21.52
New Brunswick	12.91	14.10	17.00	16.92
Quebec	13.50	15.00	22.00	18.00
Ontario	14.35	18.00	25.00	21.60
Manitoba	12.00	15.00	21.76	18.00
Saskatchewan	13.00	18.00	25.00	21.60
Alberta	15.00	18.65	28.85	22.38
British Columbia	15.20	19.56	24.00	23.47
Yukon Territory	15.00	22.00	31.80	26.40
Northwest Territories	15.30	21.00	36.55	25.20
Nunavut	16.00	25.00	33.17	30.00

54. Based on the table above, the current rate of \$17.85 per hour is insufficient to cover the worker's wages in many jurisdictions. The cost of services to claimants is considerably higher than just the wages received by the worker. The fees charged by housekeeping agencies would typically allow for administration costs, Employment Insurance, CPP/QPP, workers compensation insurance premiums, vacation pay and other employee benefit costs, and we would expect these to add at least 20% to the wage costs. In addition, sales taxes on invoices for services range from 5-15% across country. The final column in the table above shows the median wage costs plus an allowance of 20% for these additional costs. Bearing in mind the amount of available Excess Capital, the Joint Committee has proposed an increase of 16.7% for Loss of Services claims at and after 2014. This

would increase the hourly rate from \$12 to \$14 in 1999 dollars, or from \$17.85 to \$20.83 in 2020 dollars, and in our view such an increase is reasonable and broadly reflects the actual replacement cost of services in the home.

Appendix B - Required Capital on 2019 Allocation Benefits

55. In our 2019 Sufficiency Report, we developed a Hepatitis C specific framework to systematically assess the sources of risk not covered in the sufficiency liability and calculate an appropriate "Required Capital" for the Hepatitis C fund, in order to protect the claimants from future major adverse experience or catastrophe. This "Required Capital" represents the amount of assets, over and above those needed to meet the liabilities, that is to be used for the protection, and benefit, of claimants.
56. Our approach takes into account any existing margins for adverse deviation in the actual liability calculation; to the extent there are margins for adverse deviation in the actual liability calculation, the impact is to reduce the additional Required Capital. Conversely, if there is no margin in the actual liability (i.e. it is a "best estimate" liability), the Required Capital would be higher. This approach prevents inappropriate duplication (between the actual liability and the Required Capital) in providing for uncertainty.
57. The approach takes into account the risks that the Trust faces as a whole, and sets aside capital to protect the claimants from these risks. Retroactive payments are assumed to be paid immediately, meaning there are no longer risks associated with these payments in future, and there is no need for Required Capital in relation to these payments. We have therefore calculated the increase in Required Capital based on the future liability increase only. The consequence of this is that the Required Capital associated with the 2019 Allocation Benefits, expressed as a percentage of the increase in the liability, is less than the Required Capital percent in our 2019 Sufficiency Report.
58. Applying the same methodology and assumptions as set out in our 2019 Sufficiency Report, we have calculated the additional required capital in relation to the 2019 Allocation Benefits as shown in the following table:

Required Capital on Hepatitis C Specific Approach (\$,000's)						
Risk Component		2019 Sufficiency Report			Increase in Risk Component Due to 2019 Allocation Benefits	
		Regular Benefit Account	Special Distribution Benefit Account	Late Claims Benefit Account		Total
Investment Risks		77,158	7,246	5,182	89,586	9,849
Claimant Risks	Disease Progression Rate Risk	38,237	5,653	1,445	45,335	7,590
	Treatment Efficacy Risk	27,947	2,741	1,184	31,873	3,894
	Benefit Amount Uncertainty Risk	26,444	2,596	1,134	30,174	3,688
	Cohort Risk	0	0	5,154	5,154	0
Risk Diversification Credit		(38,605)	(5,243)	(2,654)	(46,503)	(7,181)
Total Required Capital		131,181	12,993	11,445	155,619	17,840
Required Capital as a percentage of the Sufficiency Liability		20.0%	22.1%	19.4%	20.1%	10.2%

The total required capital of \$17,840,000 is allocated to each allocation benefit based on the proportion of their future cost over the total allocation benefit future cost, as shown in Section IV of this report.

Appendix C - Administration Expenses

59. The administrator has provided an estimate of the administration cost associated with the 2019 Allocation Benefits being paid retroactively for the known cohort as of 2019 and currently in both the Regular and LCBP Plans (\$784,000), as well as costs associated with system programming changes (\$14,000) and the administration of missed 2013 Allocation Benefits (\$50,000).
60. The Joint Committee has estimated the additional administration cost for future 2019 Allocation Benefits payments to be \$5,000 per annum. Applying the same methodology and assumptions as set out in our 2019 Sufficiency Report, we have calculated the present value of this future administration cost to be \$127,000.
61. The Joint Committee has estimated further costs of \$75,000 arising from the administration of estates. These are costs associated with the Administrator managing the receipt of estate documents, issuing and mailing cheques, as well as managing returned mail and obtaining current contact information for family members of the deceased.
62. The Joint Committee has estimated that the fees from service providers other than the administrator will be \$300,000.
63. We have assumed a sales tax rate of 13% for the administrative component, assuming this is in Ontario, and an average rate of 10.6% for the other service providers, based on the average sales tax rate used for the Joint Committee expense allowance in the 2019 sufficiency review.
64. The total administration costs are summarized in the following table:

\$000's	Costs	Sales Tax Rate	Costs with Tax
Cost estimates provided by administrator			
Retroactive Payment Cost	784	13.0%	890
Programming Change Cost	14	13.0%	20
Missed 2013 Allocation Benefits	50	13.0%	60
Additional cost estimates provided by Joint Committee			
Future Payment Cost	127	13.0%	140
Estate Administration Cost	75	13.0%	80
Other Service Cost	300	10.6%	330
Total	1,350		1,520

THE ATTACHED IS EXHIBIT "B" TO THE AFFIDAVIT OF
EUAN REID AFFIRMED BEFORE ME THIS 13th DAY OF
MAY, 2022



COMMISSIONER FOR TAKING AFFIDAVITS

LINNAE E. ROACH
Commissioner for taking Affidavits
In and for the Province of British Columbia
856 Homer Street, 4th Floor
Vancouver, BC, V6B 2W5
Tel: 604-689-7555 Fax: 604-689-7554

Euan Reid, FIA, FCIA

Euan is a Principal of Eckler. He joined the firm in 2017, having relocated to Vancouver from London, UK. He began actuarial work in 2004, and is a Fellow of the Institute and Faculty of Actuaries (UK) and the Canadian Institute of Actuaries.

Euan advises Canadian pension plans in the public and private sectors, with a particular focus on identifying, measuring and managing risks such as longevity. He is the primary consultant to several multi-employer pension plans registered in B.C. and Alberta, as well as consulting to the four public sector pension plans in B.C., and to WorkSafeBC.

Euan worked on the 2016 and 2019 sufficiency reviews.

Euan graduated in 2004 and holds a first class degree in mathematics from Durham University.

THE ATTACHED IS EXHIBIT "C" TO THE AFFIDAVIT OF
EUAN REID AFFIRMED BEFORE ME THIS 13th DAY OF
MAY, 2022



COMMISSIONER FOR TAKING AFFIDAVITS

LINNAE E. ROACH
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Richard Border, FIA, FCIA

Richard is a Principal and Shareholder based in the Vancouver office. He has over 30 years of actuarial experience in pension consulting, valuation of long-term liabilities (such as Workers' Compensation plans), investment consulting, technical design of investment and insurance products for pension plans, management information, and financial modeling.

Since joining Eckler in early 2002, Richard has specialized in pensions and workers compensation actuarial consulting. He is the lead actuary to public sector pension plans in British Columbia (specifically, the BC Public Service, Municipal, College, and Teachers' pension plans). His responsibilities for these clients include acting as lead consultant, providing technical actuarial analysis, as well as consulting advice and guidance on plan design issues. He is the external actuary for WorkSafeBC and is responsible for the actuarial opinion on the adequacy of the liabilities in the WorkSafeBC annual report. He has similar responsibilities for the Workers Compensation Board of Manitoba.

Richard has worked on the 2001, 2004, 2007, 2010, 2013, 2016 and 2019 HCV sufficiency reviews and has co-signed each of the associated reports.

Richard graduated from the University of Cape Town in 1986 with a BSc statistics. He is a Fellow of both the Institute and Faculty of Actuaries (UK) and the Canadian Institute of Actuaries.

THE ATTACHED IS EXHIBIT "D" TO THE AFFIDAVIT OF
EUAN REID AFFIRMED BEFORE ME THIS 13th DAY OF
MAY, 2022



COMMISSIONER FOR TAKING AFFIDAVITS

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Commissioner for taking Affidavits
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Dong Chen, FSA, FCIA

Dong is a consulting actuary who joined Eckler Ltd. in 2003, working part time while finishing his university studies. Since graduating from Simon Fraser University in 2004, he has been with Eckler on a full-time basis. Dong specializes in the valuation of private and public sector pension plans. He has worked on the triennial HCV fund sufficiency reviews since 2004.

He is a Fellow of both the Society of Actuaries and the Canadian Institute of Actuaries.

THE ATTACHED IS EXHIBIT "E" TO THE AFFIDAVIT OF
EUAN REID AFFIRMED BEFORE ME THIS 13th DAY OF
MAY, 2022



COMMISSIONER FOR TAKING AFFIDAVITS

LINNAE E. ROACH
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Kevin Chen

Kevin Chen joined Eckler Ltd. in 2009 as a summer student, and then commenced permanent employment in January 2010. He has an undergraduate degree in actuarial science from Simon Fraser University, and completed a Master's degree in actuarial science from the University of Waterloo in 2010. He is making good progress with his Society of Actuaries exams and focuses on technical actuarial work, mainly in the pensions area. He has worked on the 2010, 2013, 2016 and 2019 HCV fund sufficiency reviews.

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, HIS MAJESTY THE KING IN RIGHT OF ONTARIO and
THE ATTORNEY GENERAL OF CANADA

Defendants

and

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

Intervenors

Proceeding under the *Class Proceedings Act, 1992*

Court File No. 98-CV-146405

B E T W E E N:

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

Plaintiffs

and

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

Defendants

and

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

Intervenors

Proceeding under the *Class Proceedings Act, 1992*



This is the 43rd Affidavit
 of Heather Rumble Peterson in the BC Action
 and was made on March 23, 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
 His Majesty the King in Right of the Province of
 British Columbia, and The Attorney General of Canada**

Defendants

and:

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

Third Parties

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

CANADA
 PROVINCE 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

SUPPLEMENTAL AFFIDAVIT OF HEATHER RUMBLE PETERSON
(Sworn March 23, 2023)

1. On May 12, 2022, I swore an affidavit in support of applications filed by the Joint Committee to have the Courts, among other things, exercise their unfettered discretion to allocate the 2019 Excess Capital for the benefit of approved class members and family members to address four compensatory shortfalls in the Settlement Agreement. I swear this supplemental affidavit in support of the Joint Committee's recently amended applications. I have been personally involved in and 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 factual matrix in support of the Joint Committee's applications to allocate the 2019 Excess Capital is set out in my May 12, 2022 affidavit, so I will not repeat it here. In this affidavit I set out some events that have occurred since I deposed my earlier affidavit that led to the Joint Committee's amended applications. I continue to use the terms defined in my earlier affidavit herein.

UPDATE TO CLAIMS EXPERIENCE

3. The regular monthly reporting the Joint Committee receives from Concentra Trust for the Trust Fund's assets indicates that, as of December 31, 2022, approximately \$1,221,876,852 in benefits have been paid to class members since the inception of the Trust. The increase of \$104,349,741 represents benefit payments to class members made between January 1, 2020 and December 31, 2022, since the 2019 Phase One financial sufficiency review period concluded.

4. The Trustee's Q4 notional report indicates that the remaining provincial and territorial unpaid liability to the Trust (plus interest) was \$73,596,832.31 as at December 31, 2022.

RESTATEMENT OF 2019 EXCESS CAPITAL

5. In the original applications, the Joint Committee requested a restatement of the liabilities of the Trust as at December 31, 2019 to reflect an additional liability to the class members for unpaid retroactive 2013 Special Distribution Benefits discovered by the Administrator after the 2019 Phase One financial sufficiency review was completed.

6. The Joint Committee recently requested the Courts consider the restatement request in advance of its 2019 Phase Two financial sufficiency review request for allocation of the 2019 Excess Capital. The Courts did so and ordered a restatement of the liabilities of the Trust as at December 31, 2019. The restatement orders are attached and marked collectively as **Exhibit "A"**.

7. With the liabilities restated to take into account that increase, the Trust Fund held actuarially unallocated assets in excess of liabilities as at December 31, 2019 of between **\$195,037,000** and **\$201,019,000**.

8. Following this restatement of liabilities and the reallocation between the HCV Special Distribution Benefit Account and the HCV Late Claims Benefit Account that was previously ordered to ensure the sufficiency of each account, the status of the Trust Fund's notional accounts as at 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

CHANGE IN FINANCIAL POSITION OF THE TRUST FUND SINCE THE 2019 FINANCIAL SUFFICIENCY REVIEW

9. The regular monthly reporting received by the Joint Committee from Concentra Trust for the Trust Fund's assets, including the real return bonds that comprise a significant portion of those assets, has shown a deterioration in the assets of the Trust Fund since the 2019 Phase One financial sufficiency was completed.

10. The Joint Committee has also been closely monitoring the low volatility equities of the Trust Fund following an initial period of underperformance in the first quarter of 2020. While some of the underperformance has since been recovered, this asset class nonetheless has shown a decline in value since the 2019 Phase One financial sufficiency was completed.

11. 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 excess capital available to fund the 2019 allocation benefits requested. Eckler concluded that the amount available as at June 30, 2022 is approximately **\$174,000,000** in 2022 dollars, which they advise me equates to approximately **\$161,000,000** as at December 31, 2019.

MODIFIED ALLOCATION REQUEST

12. The 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 therein.

13. Given the reduced amount of 2019 Excess Capital available in 2022, the Joint Committee's amended applications request the Courts to allocate only **\$159,914,000** of the 2019 Excess Capital (which equates to about **\$172,000,000** when extrapolated to June 2022).

14. In order to accommodate this reduction, the Joint Committee has modified Recommendation 4 ("**Modified Recommendation 4**"). No modifications are requested in respect of Recommendations 1, 2 or 3. Modified Recommendation 4 is as follows:

Modified Recommendation 4 – create a discrete benefit for class members and dependants entitled to loss of services by increasing the hourly rate payable under the Plans from 2019 and following by **\$1.00/hour** (1999 dollars) at a cost of **\$25,365,000** (2020 dollars).

This is a reduction from the original recommendation, both in terms of the hourly rate increase (now \$1.00 instead of \$2.00) and the effective date of the increase (now from 2019 instead of 2014). Converting \$1.00/hour into 2020 dollars, the recommended increase would be \$1.49/hour, making the hourly rate initially payable under this special distribution benefit **\$19.34**.

15. After considering the competing interests of the other benefits that are sought to be addressed at this time, the Joint Committee chose to modify this particular recommendation to fit within the reduced amount of 2019 Excess Capital available recognizing that the lower hourly rate increase that is requested under Modified Recommendation 4 nonetheless remains within the range of hourly rates for these types of services across the country, albeit less than the median in Canada (\$20.22). For convenience, I have included the evidence on hourly rates from my May 12, 2022 affidavit. Annexed and marked as **Exhibit "B"** is the hourly rate analysis from Statistics Canada data contained in the Eckler 2019 Allocation Report. Annexed and

marked as **Exhibit “C”** is the Brown Economics Consulting Inc. annual survey of Canadian “Housekeeping Replacement Rates”.

16. Removal of the retroactivity of this benefit reduces the number of class members and/or dependants who will currently be entitled to benefit from Modified Recommendation 4 from 778 to 575. It will not reduce the approximate 1,234 current class members and additional class members who may subsequently be approved if entitlement to loss of services arises in the future. Based upon Modified Recommendation 4, current loss of service claimants would be entitled to approximately an additional **\$1,700** a year (2020 dollars) if this allocation is granted.

17. With the elimination of the retroactive component of this proposed benefit, there are reductions associated with the Administrator’s cost estimate contained in my May 2022 affidavit in the amount of **\$120,000** (inclusive of applicable taxes) also reflected in the amended applications. The revised cost of administration information is as follows:

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

THE MODIFICATION IS BASED ON INPUT FROM ECKLER

18. Eckler has played a significant role in extrapolating the updated liabilities, analyzing the impact of the market conditions and estimating the allocations including required capital needed to implement the modification requested. The Eckler Supplementary 2019 Modified Allocation Benefit Report is appended to the December 19, 2022 affidavit of Euan Reid, filed in support of the amended applications.

INPUT FROM CLASS MEMBERS

19. Notice of the amended applications and application hearings will be given to class members by the Administrator by mail, email and website notifications. The notices will advise class members that they may comment upon and/or make their own requests through written submissions received prior to the hearings that will be provided to the Courts or, if the Courts permit, through oral submissions at the allocation hearings.

SWORN BEFORE ME at the City of Windsor, in the County of Essex, this 23rd day of March, 2023.)
)
)
)
)
)
)



Commissioner for taking affidavits
1912271


HEATHER RUMBLE PETERSON

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 23RD DAY OF MARCH, 2023*



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.

COURT FILE NO.: 98-CV-141369 CP00
 COURT FILE NO.: 98-CV-146405

 - 8
 entered February 15, 2023

ONTARIO
 SUPERIOR COURT OF JUSTICE

THE HONOURABLE JUSTICE PAUL M.
 PERELL

THURSDAY THE 9TH DAY OF
 FEBRUARY 2023

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, 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*

AND 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*

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

THIS MOTION made by the Joint Committee by notice of motion dated May 13, 2022 for orders in respect of actuarially unallocated assets of the 1986-1990 Hepatitis C Trust Fund was heard, in part, this day in writing.

ON READING the motion record filed, including the:

- a) Notice of Motion dated May 13, 2022; and
- b) Affidavit of Heather Rumble Peterson made May 12, 2022.

AND ON BEING ADVISED that the Attorney General of Canada, His Majesty the King in Right of Ontario, the Intervenors and Fund Counsel take no position on the motion,

1. **THIS COURT ORDERS** that the Order of this Court dated February 18, 2021 be amended to allocate additional assets of the 1986-1990 Hepatitis C Settlement Trust Fund in the amount of \$2,559,000 on account of additional liabilities subsequently recognized, such that paragraph 3 of the February 18, 2021 Order 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. **THIS COURT ORDERS** that the Order of this Court dated February 18, 2021 be further amended to reflect the reduction of Excess Capital in the HCV Special Distribution Account as a result of the recognition of these additional liabilities, such that paragraph 4 of the February 18, 2021 Order 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:

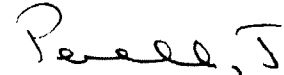
HCV Regular Benefit Account	Excess Capital of between \$191,757,000 and \$197,910,000
HCV Special Distribution Benefit Account	Excess Capital of between \$25,159,000 and \$26,090,000
HCV Late Claims Benefit Account	Insufficient Capital of between \$21,879,000 and \$22,981,000

3. **THIS COURT ORDERS** that the Order of this Court dated February 18, 2021 be further amended to reflect the reduction of Excess Capital in the HCV Special Distribution Account as a result of the recognition of these additional liabilities, such that paragraph 5 of the February 18, 2021 Order 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.

4. **THIS COURT ORDERS** that the balance of the moving parties’ motion is hereby adjourned to a date to be set by this Court.

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

A handwritten signature in black ink, appearing to read "Perell, J.", written in a cursive style.

Perell, J.

COURT FILE NO.: 98-CV-141369 CP00

COURT FILE NO.: 98-CV-146405

**ONTARIO
SUPERIOR COURT OF JUSTICE**

DIANNA LOUISE PARSONS et al

Plaintiffs

-and-

THE CANADIAN RED CROSS SOCIETY et al

Defendants

-and-

**HIS MAJESTY THE KING IN THE RIGHT OF
THE PROVINCE OF ALBERTA et al**

Intervenors

AND BETWEEN:

JAMES KREPPNER et al,

Plaintiffs

-and-

THE CANADIAN RED CROSS SOCIETY et al

Defendants

-and-

**HIS MAJESTY THE KING IN THE RIGHT OF THE
PROVINCE OF ALBERTA et al**

Intervenors

ORDER

(Restatement of 2019 Excess Capital)

PERELL J.

Podrebarac Barristers
Professional Corporation
402-1246 Yonge Street
Toronto, ON M4T 1W7

Kathryn Podrebarac LSO#: 35640P kp@PodrebaracMediation.com Tel: 416.568.1299

Strosberg Sasso Sutts LLP
1561 Ouellette Avenue
Windsor, ON N8X 1K5
Harvey Strosberg LSUC#: 126400
harvey@strosbergco.com

Tel: 1.519.561.6228

Lawyers appointed to the Joint Committee


Entered BC Court Order: 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 <i>Class Proceedings Act, 1992</i>	
	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 <i>Class Proceedings Act, 1992</i>	

SUPREME COURT
 OF BRITISH COLUMBIA
 VANCOUVER REGISTRY

MAR 03 2023

ENTERED



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

- 3 -

**CANADA
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL**

NO : 500-06-000016-960

**COUR SUPÉRIEURE
Recours Collectifs**

DOMINIQUE HONHON

Requérante

-c-

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

Intimés

-et-

**ME MICHEL SAVONITTO, es-qualité de member
du Comité conjoint**

REQUÉRANT

-et-

FONDS D'AIDE AUX RECOURS COLLECTIFS

-et-

LE CURATEUR PUBLIC DU QUÉBEC

Mis-en-cause

**CANADA
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL**

NO : 500-06-000068-987

**COUR SUPÉRIEURE
Recours Collectifs**

DAVID PAGE

Requérant

-c-

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

Intimés

-et-

FONDS D'AIDE AUX RECOURS COLLECTIFS

-et-

LE CURATEUR PUBLIC DU QUÉBEC

Mis-en-cause

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE
CHIEF JUSTICE HINKSON

) *Wed. March 8, 2023*
)
)

ON THE APPLICATION of the British Columbia Joint Committee member dated June 21, 2022, for orders in respect of actuarially unallocated assets of the 1986-1990 Hepatitis C Trust Fund ("2022 Allocation Application") having been heard, in part, by the Honourable Chief Justice Hinkson in writing, and the Attorney General of Canada, His Majesty the King in Right of the Province of British Columbia and British Columbia Fund counsel all having been served with the application materials;

UPON READING the 2022 Allocation Application and paragraphs 19-23 of Affidavit #39 of Heather Rumble Peterson made May 12, 2022, filed in support of the 2022 Allocation Application;

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

THIS COURT ORDERS:

1. The order of this Court made March 15, 2021, be varied to allocate additional assets of the 1986-1990 Hepatitis C Trust Fund in the amount of \$2,559,000 on account of additional liabilities subsequently recognized, such that paragraph 3 of the March 15, 2021, order states:

Declares 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. The order of this Court made March 15, 2021, be further varied to reflect the reduction of Excess Capital in the HCV Special Distribution Account as a result of these additional liabilities, such that paragraph 4 of the order of this Court made March 15, 2021, states:

Declares that as at December 31, 2019, the financial status of the three notional accounts of the Trust Funds 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. The order of this Court made March 15, 2021, be further varied to reflect the reduction of Excess Capital in the HCV Special Distribution Account as a result of these additional liabilities, such that paragraph 5 of the order of this Court made March 15, 2021, states:

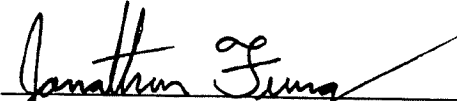
Orders that \$22,981,000 be reallocated from the HCV Special Distribution Benefit Account to the HCV Late Claims Benefit Account effective January 1, 2020, so that the HCV Late Claims Benefit Account will be financially sufficient to meet the projected maximum liabilities of the HCV Late Claims Benefit 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.

4. The balance of the 2022 Allocation Application is hereby adjourned to a date to be set by this Court.

5. The orders and declarations in paragraphs 1 to 4 above shall not be effective unless and until orders, declarations and directions, with no material differences, are

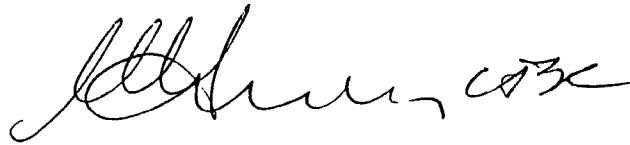
approved and or rendered by the Superior Court of Québec and the Ontario Superior Court of Justice.

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


Signature of British Columbia
Joint Committee Member


David Loukidelis, K.C.

Jonathan Fung signing for
David Loukidelis, K.C., with
permission.



By the Court

Registrar

Form
CHECKED


No. C965349
Vancouver Registry

In the Supreme Court of British Columbia

Between

Anita Endean, as representative plaintiff

Plaintiff

and

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

Defendants

and

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

Third Parties

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

ORDER MADE AFTER APPLICATION

CAMP FIORANTE MATTHEWS MOGERMAN
Barristers & Solicitors
#400 – 856 Homer Street
Vancouver, BC V6B 2W5

Tel: (604) 689-7555
Fax: (604) 689-7554
Email: service@cfmlawyers.ca

VIA MIKE BIKE

LMP

COUR SUPÉRIEURE

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

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

DATE : Le 20 février 2023

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

500-06-000016-960

DOMINIQUE HONHON

Requérante

c.

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

Intimés

Et

ME MICHEL SAVONITTO, ès qualités de membre du Comité conjoint

REQUÉRANT

Et
FONDS D'AIDE AUX RECOURS COLLECTIFS
Et
LE CURATEUR PUBLIC DU QUÉBEC

Mis en cause

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

Requérant

c.

PROCUREUR GÉNÉRAL DU CANADA

et

PROCUREUR GÉNÉRAL DU QUÉBEC

et

SOCIÉTÉ CANADIENNE DE LA CROIX-ROUGE

Intimés

et

FONDS D'AIDE AUX RECOURS COLLECTIFS

et

LE CURATEUR PUBLIC DU QUÉBEC

Mis en cause

**JUGEMENT SUR LA DEMANDE DU COMITÉ CONJOINT POUR ATTRIBUER LES FONDS
ET AUTRES ÉLÉMENTS D'ACTIFS NE FAISANT PAS L'OBJET D'UNE ATTRIBUTION
ACTUARIELLE AU 31 DÉCEMBRE 2019
(ACTUALISATION DES MONTANTS DÉCLARÉS À LA DATE D'ÉVALUATION DU 31
DÉCEMBRE 2019)**

- [1] **ATTENDU QUE** le tribunal est saisi d'une *Demande du Comité conjoint pour attribuer les fonds et autres éléments d'actifs ne faisant pas l'objet d'une attribution actuarielle au 31 décembre 2019* portant la date du 26 mai 2022 présentée par Me Michel Savonitto, *ès qualités* de membre du Comité conjoint pour le Québec (ci-après « Demande »);
- [2] **CONSIDÉRANT** les allégations contenues aux paragraphes 9 à 14 de la Demande et les pièces déposées à l'appui de celles-ci, concernant l'actualisation du montant d'actifs ne faisant pas l'objet d'une attribution actuarielle au 31 décembre 2019 et le solde des comptes théoriques apparaissant au jugement rendu par cette Cour en date du 21 janvier 2021;
- [3] **CONSIDÉRANT** que cette actualisation s'avère nécessaire suite à la découverte subséquente d'obligations financières non encore acquittées qui avaient été considérées payées;
- [4] **CONSIDÉRANT** que les parties ont convenu de procéder par étapes, avec ce premier jugement portant sur les conclusions recherchées dans la Demande concernant cette actualisation, le reste de la Demande étant reporté sine die;
- [5] **CONSIDÉRANT** l'absence de contestation de la part des Intimés à l'égard de ces conclusions concernant cette actualisation;

- [6] **PAR CES MOTIFS, LE TRIBUNAL :**
- [7] **ACCUEILLE** la demande en partie, étant entendu que les conclusions recherchées qui ne font pas l'objet du présent jugement pourront être débattues ultérieurement;
- [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 25 159 000 \$ et 26 090 000 \$
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 1^{er} 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^{er} janvier 2020;
- [11] **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;
- [12] **DÉCLARE** que le présent jugement ne prendra effet qu'à partir du moment où une ordonnance similaire aura été rendue par les tribunaux de l'Ontario et de la Colombie-Britannique;
- [13] **LE TOUT** sans frais.

Chantal Corriveau
 Signature numérique de Chantal
 Corriveau
 Date : 2023.02.20 11:37:21 -05'00'

CHANTAL CORRIVEAU, j.c.s

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

500-06-000016-960 - 500-06-000068-987

PAGE : 4

Me Nathalie Drouin
Me Andréanne Joanne-Lafamme
Procureure générale du Canada/Attorney general of Canada
Ministère de la Justice Canada
Pour le Procureur général du Canada

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

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

*THE ATTACHED IS EXHIBIT "B" TO THE AFFIDAVIT OF
HEATHER RUMBLE PETERSON SWORN BEFORE ME
THIS 23RD DAY OF MARCH, 2023*



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.

53. The Government of Canada's Job Bank website (www.jobbank.gc.ca) publishes wage data by occupation and region. The table below shows the range of hourly wages for home support workers, housekeepers and related occupations (National Occupational Classification 4412), with wage data updated in December 2020.

	Wages (\$ per hour)			
	Low	Median	High	Median with estimated 20% fees
Canada	12.91	16.85	24.00	20.22
Newfoundland and Labrador	15.00	16.44	17.30	19.73
Prince Edward Island	13.00	13.00	23.28	15.60
Nova Scotia	12.95	17.93	21.00	21.52
New Brunswick	12.91	14.10	17.00	16.92
Quebec	13.50	15.00	22.00	18.00
Ontario	14.35	18.00	25.00	21.60
Manitoba	12.00	15.00	21.76	18.00
Saskatchewan	13.00	18.00	25.00	21.60
Alberta	15.00	18.65	28.85	22.38
British Columbia	15.20	19.56	24.00	23.47
Yukon Territory	15.00	22.00	31.80	26.40
Northwest Territories	15.30	21.00	36.55	25.20
Nunavut	16.00	25.00	33.17	30.00

*THE ATTACHED IS EXHIBIT "C" TO THE AFFIDAVIT OF
HEATHER RUMBLE PETERSON SWORN BEFORE ME
THIS 23RD DAY OF MARCH, 2023*



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.

Housekeeping Damages Calculator TM

Hourly Replacement Rates

The following table reflects the hourly replacement rates used in accordance with the province of residence selected. These rates are in 2021 dollars and do not include provincial sales tax or GST.

Province of Residence	Hourly Replacement Rate
Alberta	\$22.75
British Columbia	\$22.61
Manitoba	\$18.56
New Brunswick	\$15.80
Newfoundland & Labrador	\$17.95
Northwest Territories	\$33.63
Nova Scotia	\$21.09
Nunavut	\$33.63
Ontario	\$21.43
Prince Edward Island	\$20.13
Quebec	Not supported by calculator
Saskatchewan	\$21.41
Yukon	\$33.98

The hourly rates for housekeeping claims are researched from NOC 4412, "Home support workers, housekeepers and related occupations" using Statistics Canada's 2001 and 2006 Censuses, Statistics Canada's "2011 National Household Survey", Statistics Canada's 2016 Census, the Federal Government of Canada's JOB BANK website, and various provincial wage surveys (see Table 9-6 in C.L.Brown, *Damages: Estimating Pecuniary Loss* (Toronto, Ontario: Canada Law Book, a Thomson Reuters business), December 2020 (28th edition), Chapter 9, for specific provincial wage surveys used).

We deflate the 2021 rates above by Statistics Canada's "Estimates of Average Weekly Earning" and "Survey of Employment, Payrolls and Hours", NAICS 5617 (services to buildings and dwellings) for Canada.

A survey entitled "Cleaning Survey: A report on the findings of a province wide survey to determine the average hourly cost of having a home cleaned" was carried out by *Profit Matters Inc.* who used the *IPSOS/Reid Alberta Omnibus* survey in the fall of 2005 in Alberta to poll respondents. The results indicated that of the 803 respondents, slightly less than 10% used cleaners. The rates for these urban areas in 2005 were \$17.11 in Calgary, and \$14.66 in Edmonton. Other cities and rural areas reported average hourly costs of \$10.12 to \$11.06. This yielded an average of \$14.64 for the whole province.

Increasing the \$14.64 rate to 2021 \$ for Alberta results in a rate of \$28.14. Note that in the **Housekeeping Damages Calculator**TM and in our assessments, Brown Economic uses \$22.75 for Alberta (see above).

Filed: see page 2 for the Court's stamp

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, HIS MAJESTY THE KING IN RIGHT OF ONTARIO and
THE ATTORNEY GENERAL OF CANADA

Defendants

and

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

Intervenors

Proceeding under the *Class Proceedings Act, 1992*

Court File No. 98-CV-146405

B E T W E E N:

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

Plaintiffs

and

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

Defendants

and

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

Intervenors

Proceeding under the *Class Proceedings Act, 1992*



This is the 2nd Affidavit
 of Euan Reid in the BC Action
 and was made on December 19, 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
 His Majesty the King in Right of the Province of
 British Columbia, and The Attorney General of Canada**

Defendants

and:

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

Third Parties

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

CANADA
 PROVINCE 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

AFFIDAVIT OF EUAN REID
(Affirmed December 19, 2022)

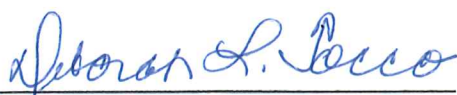
I, Euan Reid, FIA, FCIA, of Eckler Ltd., located at 980 – 475 Georgia Street, Vancouver, British Columbia, V6B 4M9, AFFIRM THAT:

1. I am a Principal of Eckler Ltd. ("Eckler"). I previously affirmed an affidavit dated May 13, 2022 in support of the Joint Committee's applications seeking allocation of the 2019 Excess Capital for the benefit of the class members.
2. Attached and marked as **Exhibit "A"** is a true copy of the Supplementary Eckler Actuarial Report to the Joint Committee in respect of the 1986-1990 Hepatitis C Trust.
3. In addition to myself, the Eckler personnel involved in reviewing the data and developing the basis for the opinions expressed in the report were Richard Border, Dong Chen and Kevin Chen. Mr. Border and I are the authors of the report and the opinions expressed are ours. Our curriculum vitae were marked as exhibits to my May 13, 2022 affidavit.
4. I certify that all Eckler personnel involved in the project are aware that our duties are:
 - a) to provide opinion evidence that is fair, objective and non-partisan and related only to matters within our area of expertise; and
 - b) to assist the Courts and provide such additional assistance as the Courts may reasonably require to determine a matter in issue.
5. All Eckler personnel involved in the project are also aware that the foregoing duties prevail over any obligation we may owe to any party on whose behalf we are engaged and we are aware that we are not to be advocates for any party. I confirm that the report conforms with the above-noted duties. I further confirm that if called upon to give oral or written testimony, I and any other Eckler personnel will give such testimony in conformity with these duties.

Affirmed by Euan Reid, located in the city of Vancouver, in Province of British Columbia, before me, Deborah Tocco, located in the City of Windsor, in the Province of Ontario, via videoconference in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely, on December 19, 2022



Euan Reid



Commissioner for taking Affidavits

The attached is Exhibit "A" to the Affidavit of Euan Reid affirmed remotely by Deborah Tocco at the City of Windsor, in the Province of Ontario, on December 19, 2022, before me in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits

Deborah Lorraine Tocco, a Commissioner, etc.,
Province of Ontario, for Strosberg Sasso Sutts LLP,
Barristers and Solicitors.
Expires March 21, 2025.



Actuarial Report to the Joint Committee

**Proposed Allocation of the
2019 Sufficiency Assessment
Actuarially Unallocated Assets**

1986 – 1990 Hepatitis C Trust

Prepared by:
Richard Border, FIA, FCIA
Euan Reid, FIA, FCIA

Vancouver, British Columbia
November 10, 2022

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I. Introduction

1. Our assessment of the financial sufficiency of the 1986-1990 Hepatitis C Trust ("the Trust") as at December 31, 2019 was documented in our report ("2019 Sufficiency Report") dated November 25, 2020.
2. In our report dated February 28, 2022 (our "2019 Allocation Benefits Report"), we concluded that, after allowing for an appropriate level of Required Capital and an additional liability for missing 2013 Allocation Benefit payments, there was Excess Capital, or actuarially unallocated assets, of \$195,037,000.
3. The Settlement Approval Orders give the Courts discretion to allocate the actuarially unallocated assets "for the benefit of class members and family class members". Our 2019 Allocation Benefits Report set out costs of potential "2019 Allocation Benefits" defined by the Joint Committee to be funded by the actuarially unallocated assets. The total estimated costs, including an appropriate level of Required Capital, were \$194,941,000 at December 31, 2019.
4. The financial sufficiency of the Trust has deteriorated since the 2019 review date. The Joint Committee asked us to provide:
 - a) An extrapolation of the financial sufficiency of the Trust from the 2019 review date to June 30, 2022 (see Section II); and
 - b) An estimate of the costs associated with a reduced set of allocation benefits (see Section III). The Joint Committee has proposed a reduction in the 2019 Allocation Benefits for loss of services given the reduced Excess Capital available to fund 2019 Allocation Benefits.

II. Extrapolation to June 30, 2022

5. As noted in paragraph 13 of our 2019 Allocation Benefits Report, the Excess Capital that was available to fund Allocation Benefits for class members was approximately \$195 million at December 31, 2019.
6. As requested by the Joint Committee, we have extrapolated the financial sufficiency of the Trust from December 31, 2019 to June 30, 2022. In preparing this extrapolation, we have allowed for the following:
 - a) An updated value of invested assets of \$956.6 million at June 30, 2022, provided by Concentra Trust as custodian of the Trust fund.
 - b) A value calculated by Eckler as part of our regular investment performance monitoring work of \$74.3 million for the notional asset in respect of ongoing payments by the Provinces and Territories at June 30, 2022, which are equal to 3/11ths of the emerging costs for the HCV Regular Benefit Account.
 - c) Compensation payments and expenses of \$35.7 million in 2020 and \$42.0 million in 2021, taken from our annual investment performance monitoring reports for the Joint Committee, and \$24.7m in the first 6 months of 2022, as provided by Concentra Trust.
 - d) Annual indexing of compensation payments, based on the 1.0% increase in 2021, 2.7% in 2022 and an estimate of 7.0% for the increase that will apply in 2023.
 - e) An increase in the discount rate, net of inflation, from 0.8% at the 2019 sufficiency review, to 1.3% at June 30, 2022. This is based on Eckler's capital market assumptions applicable at June 30, 2022. We have estimated the increase in liabilities due to the reduction in discount rate based on the sensitivities disclosed in our 2019 Sufficiency Report.
7. We have estimated the required capital at June 30, 2022 by pro-rating based on the estimated change in the sufficiency liabilities.
8. Our calculations are approximate; more detailed calculations based on updated claimant data and medical modelling could reveal material gains or losses that we have not allowed for.
9. The results of our calculations are summarised in the table below. Some figures may appear not to sum correctly due to rounding to the nearest \$ million.

\$ millions	Dec 31, 2019 Sufficiency Review	June 30, 2022 Estimate
Assets	1,128	1,031
Sufficiency Liabilities	(778)	(714)
Excess Assets over Liabilities	351	317
Required Capital	(156)	(143)
Excess Capital	195	174

10. The table shows that the estimated Excess Capital available to fund Allocation Benefits had reduced to \$174 million at June 30, 2022.

III. Revised 2019 Allocation Benefits

11. Our 2019 Allocation Benefits report described four benefits recommended by the Joint Committee. As our estimate of the financial status of the Trust as at June 30, 2022 indicates that the estimated amount of excess capital available for allocation is \$174 million rather than \$195 million, the Joint Committee has revised the proposed 2019 Allocation Benefits to reduce the loss of services benefit, as indicated below.

	Original 2019 Allocation Benefits	Revised 2019 Allocation Benefits
a)	Increase all lump sum payments by 6.8% ¹	Increase all lump sum payments by 6.8% (no change)
b)	Increase payments to Approved Family Members by 50%	Increase payments to Approved Family Members by 50% (no change)
c)	Loss of Income: increase compensation for lost pension benefits from 10% to 14% of net loss of income (capped at \$200,000, indexed from 2014).	Loss of Income: increase compensation for lost pension benefits from 10% to 14% of net loss of income (capped at \$200,000, indexed from 2014). (no change)
d)	Increase loss of services rate from \$12/hour to \$14/hour (1999 dollars) at and after 2014. (No changes to pre-2014 rate.)	Increase loss of services rate from \$12/hour to \$13/hour (1999 dollars) at and after 2019 . (No changes to pre-2019 rate.)

12. All past lump sum payments are to be supplemented by 6.8% of the relevant lump sum in 2020 dollars.
13. All past payments to Approved Family Members are to be supplemented by 50% of the relevant amount in 2020 dollars.
14. There is to be no allowance for indexing or interest on past Loss of Income payments in respect of lost pension benefits. The additional amount to be paid to each claimant will be calculated as $14\%/10\% - 1 = 40\%$ of the total payments in respect of lost pension benefits due prior to 2020.
15. The increase in the loss of services rate is to be limited to payments for claims incurred at and after 2019. Payments are to be supplemented by $13/12 - 1 = 8.3\%$ of the relevant amount in 2020 dollars. The current hourly rate of \$12 in 1999 dollars is equivalent to \$17.85 in 2020 dollars. The revised rate of \$13 per hour in 1999 dollars is equivalent to \$19.34 in 2020 dollars.
16. As detailed in Appendix C of our 2019 Allocation Benefits Report, we had previously estimated the total administration costs associated with the 2019 Allocation Benefits as \$1,520,000. This estimate included an allowance of \$120,000 for the costs of making retroactive loss of services payments, based on figures provided by the administrator. Since these retroactive payments are no longer to be included, we have reduced the allowance for administration expenses to \$1,400,000.
17. The table below shows the costs of the Revised 2019 Allocation Benefits at December 31, 2019. These costs are based on the calculation approach described in our 2019 Allocation Benefits Report.

¹ Includes disease level lump sum and other optional lump sum payments

Cost of 2019 Allocation Benefits by benefit				
\$000	Retroactive increase to benefits already paid	Increase in sufficiency liabilities for future benefits	Increase in required capital	Total
Increase all lump sum payments by 6.8%	44,614	8,219	1,851	54,684
Increase payments to Approved Family Members by 50%	37,503	28,010	6,299	71,812
Loss of Income: increase compensation for lost pension benefits from 10% to 14% of net loss of income (capped at \$200,000, indexed from 2014).	4,280	1,940	433	6,653
Increase loss of services rate from \$12/hour to \$13/hour (1999 dollars) at and after 2019. (No changes to pre-2019 rate.)	-	20,736	4,629	25,365
Administration Expense Allowance				1,400
Total Cost of 2019 Allocation Benefits	86,397	58,905	13,212	159,914

18. The estimated cost of the Revised 2019 Allocation Benefits is approximately \$160 million at December 31, 2019. Using the same methodology and assumptions as described in Section II of this report, we have estimated the updated cost as \$172 million at June 30, 2022. This is slightly less than the estimated Excess Capital of \$174 million at the same date.

IV. Rebalancing of Notional Accounts

19. The Joint Committee has proposed that all 2019 Allocation Benefits be paid from the existing notional Special Distribution Benefit Account.
20. A reallocation of Excess Capital between the notional Regular Benefit Account, Special Distribution Benefit Account and Late Claims Benefit Account will be required to maintain the sufficiency of all three accounts. The required amounts of rebalancing are shown in the table below, with all figures as at December 31, 2019.

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

21. The figures in the table above assume that all the remaining Excess Capital is retained in the Regular Benefit Account. Alternative allocations that apply some of the remaining Excess Capital to the Special Distribution Benefit Account or the Late Claims Benefit Account would also be possible.
22. Since the 2019 Allocation Benefits will be created from Excess Capital, none of the associated administrative costs should be borne by the provinces and territories. The provinces and territories bear a 3/11ths share of any expenses paid from the Regular Benefit Account, but do not share any part of the expenses paid from the other accounts. We have therefore assumed that all administration costs associated with the 2019 Allocation Benefits will be charged to the existing Special Distribution Benefit account.
23. The table above shows that, effective December 31, 2019, \$156,634 should be reallocated from the Regular Benefit Account to the Special Distribution Benefit Account, and \$1,102,000 from the Late Claims Benefit Account to the Special Distribution Benefit Account.

² As shown in paragraph 11 of our 2019 Allocation Benefits Report


ECKLER

V. Opinion

24. In our opinion,
- a) after allowing for the Revised 2019 Allocation Benefits the Trust funds are sufficient to meet the liabilities of the Trust,
 - b) the claimant data on which the calculations are based are sufficient and reliable for the purposes of the calculations,
 - c) the assumptions are appropriate for the purposes of the calculations, and
 - d) the methods employed in the calculations are appropriate for the purposes of the calculations.
25. This report has been prepared, and our opinions given, in accordance with accepted actuarial practice in Canada.
26. To the best of our knowledge, there are no material subsequent events that would affect the results and recommendations of this report.
27. On behalf of the Eckler actuarial personnel who worked on this report, we certify that we are aware that our duties are:
- a) to provide opinion evidence that is fair, objective and non-partisan and related only to matters within our area of expertise; and
 - b) to assist the Courts and provide such additional assistance as the Courts may reasonably require to determine a matter in issue.
28. We are aware that the foregoing duties prevail over any obligation we may owe to any party on whose behalf we are engaged and we are aware that we are not to be an advocate for any party. We confirm that the report conforms with the above-noted duties. We further confirm that if called upon to give oral or written testimony, we will give such testimony in conformity with these duties.



Richard A. Border
Fellow of the Canadian Institute of Actuaries³
Fellow of the Institute and Faculty of Actuaries



Euan Reid
Fellow of the Canadian Institute of Actuaries³
Fellow of the Institute and Faculty of Actuaries

³ Canadian Institute of Actuaries is the Primary Regulator.

Court File No. 98-CV-141369 CP00

**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

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
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
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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

AFFIDAVIT OF RICHARD BORDER

1. I, Richard Border, FIA, FCIA of Eckler Ltd., located at 980 – 475 West Georgia Street, Vancouver, BC V6B 4M9, SWEAR THAT:
2. I am a Principal and Shareholder of Eckler Ltd. (“Eckler”).
3. Attached hereto and marked as **Exhibit “A”** is a true copy of the Eckler Actuarial Report to the Joint Committee Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2019.
4. In addition to myself, the Eckler personnel involved in reviewing the data and developing the actuarial model which provides a basis for the opinions expressed in the report were Euan Reid, Dong Chen and Kevin Chen. Euan Reid and I are the authors of the report and the opinions expressed are ours.
5. I am advised by Heather Rumble Peterson that, in addition to a declaration of financial sufficiency and that the Trustee holds unallocated assets, the Joint Committee will be seeking orders from the Courts as follows:
 - (a) An order that \$21,879,000 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 its projected liabilities and the HCV Special Distribution Benefit Account will have excess capital of \$5,839,000 as at January 1, 2020.
 - (b) An order that the 25% holdback imposed at section 7.03A of the HCV Late Claims Benefit Plan be removed and the Administrator be directed to pay out those monies held back in accordance with the provisions of section 7.03(2)(a) of the Plan.

6. In my opinion, reallocating previously allocated assets from the HCV Special Distribution Benefit Account to the HCV Late Claims Benefit Account is a reasonable means of making the HCV Late Claims Benefit Account sufficient while still maintaining the sufficiency of the HCV Special Distribution Benefits Account. Granting this relief would not impair the financial sufficiency of the Trust Fund as a whole and would facilitate the payment of all allocation benefits created for class members by the orders previously issued by the Courts.

7. In my opinion, if funds are reallocated to the HCV Late Claims Benefit Account such that it is financially sufficient as of January 1, 2020, removing the 25% holdback on benefit payments under the HCV Late Claims Benefit Plan in order to provide benefits under that Plan which are not different from the benefits provided under the other Plans would not impair the financial sufficiency of the HCV Late Claims Benefit Account.

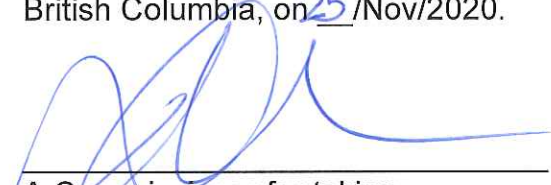
8. I certify that all Eckler personnel involved in the project are aware that our duties are:

- a) to provide opinion evidence that is fair, objective and non-partisan and related only to matters within our area of expertise; and
- b) to assist the courts and provide such additional assistance as the courts may reasonably require to determine a matter in issue.

9. All Eckler personnel involved in the project are also aware that the foregoing duties prevail over any obligation we may owe to any party on whose behalf we are engaged and we are aware that we are not to be advocates for any party. I confirm that the report conforms with the above-noted duties. I further confirm that if called upon to give oral or written testimony, I and the Eckler personnel will give such testimony in conformity with these duties.

10. Attached as **Exhibit "B"** is my curriculum vitae. The curricula vitae of Euan Reid, Dong Chen and Kevin Chen are attached, respectively, as **Exhibit "C", "D" and "E"**.

SWORN BEFORE ME at Vancouver,)
British Columbia, on 25/Nov/2020.)



A Commissioner for taking)
Affidavits for British Columbia)

**Deborah Armour, QC
Barrister & Solicitor
2999A West 2nd Ave
Vancouver, BC V6K 1K5**



Richard Border

ECKLER

Actuarial Report to the

**Joint Committee Assessing the
Financial Sufficiency of the
1986 - 1990 Hepatitis C Trust**

as at December 31, 2019

Prepared by:

Richard Border, FIA, FCIA

Euan Reid, FIA, FCIA

Vancouver, B. C.

November 25, 2020

This is Exhibit "A" referred to in the
affidavit of RICHARD BORDER
sworn before me at VANCOUVER, BC
this 25 day of NOVEMBER 2020

.....
A Commissioner for taking Affidavits
for British Columbia

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1 Introduction

1. A number of class actions against the Federal and Provincial/Territorial governments were initiated at various dates in 1996 and 1998 on behalf of persons infected with the Hepatitis C Virus ("HCV") from the Canadian blood system during the period January 1, 1986 through July 1, 1990. A Settlement Agreement was subsequently reached as of June 15, 1999.
2. The Settlement Agreement (subsequently approved by the Courts) provided for the creation of a Trust and a Trust Fund from which benefits will be paid. Among other things, the Settlement Agreement set out the amounts of and manner in which funds would be paid by the Federal and Provincial/Territorial governments, investment guidelines thereon, and detail as to those eligible for the various benefits and the amounts of those benefits. The benefits differ according to whether the claimant is a hemophiliac or a non-hemophiliac transfused patient. The Settlement Agreement also provided for the appointment of a Joint Committee, which is responsible for the oversight and implementation of the compensation plans.
3. The Settlement Approval Orders give the Courts discretion to allocate Excess Capital, or actuarially unallocated assets "for the benefit of class members and family class members", referred to as "Allocation Benefits". Following the December 31, 2013 Sufficiency Review, the Courts ordered that a benefits plan funded from an allocation of excess capital be created to accommodate late claims requests. These benefits and associated expenses are accounted for in the notional HCV Late Claims Benefit Account. The Courts also approved certain Allocation Benefits, funded from an allocation of Excess Capital and accounted for in the notional HCV Special Distribution Benefit Account.
4. The balance of the benefits and expenses of the Transfused HCV Plan, the Hemophiliac HCV Plan and the HIV Program are accounted for in the notional HCV Regular Benefit Account.
5. In this report we show the financial results separately for each of the three notional accounts – the HCV Late Claims Benefit Account, the HCV Special Distribution Benefit Account and the HCV Regular Benefit Account. For greater clarity, the assets of the Trust are held within a single Trust Fund, and the allocation between the three accounts is notional.
6. Section 10.01(1)(i) of the Settlement Agreement requires a triennial assessment of financial sufficiency. In order to do so, we consider the invested assets within the Trust Fund and the notional assets of the Trust as well as the liabilities of the Trust. We have previously carried out such assessments as at September 30, 1999, December 31, 2001, December 31, 2004, December 31, 2007, December 31, 2010, December 31, 2013 and December 31, 2016. The Joint Committee has asked us to complete an actuarial assessment of the assets and liabilities as at December 31, 2019, and we are pleased to report thereon.

7. The intended users of this report are the Joint Committee, Health Canada, the Department of Justice of the Government of Canada, the Provincial and Territorial Governments, and the courts having jurisdiction over the Trust. This report is not intended for or necessarily suitable for users other than the intended users.

2 Approach to the Valuation

8. As has been our approach for all our previous valuations, we have assessed the sufficiency on a going-concern basis. In other words, we have assumed that the Trust will continue in operation according to the terms of the Agreements.
9. For this report we have continued to apply a seriatim approach to our calculations for the known population, whereby the liability is calculated separately for each individual based on their particular circumstances. Since it is not possible to assess the liability for the unknown claimants on a seriatim basis, we valued the liability for unknown claimants on an aggregate basis whereby the unknown liability is proportional to the known liability for recent claimants.
10. The seriatim model for the known population is based directly on the medical model developed by the Medical Model Working Group (the “MMWG”, described in more detail in Section 8.1) and the “TreeAge” software platform used by the MMWG. Apart from a change to the mortality assumption to use general Canadian population mortality (described in Section 9.5) and a reset of the starting stage distribution of the cohort to reflect the observed claimant data provided by the Administrator (described in Section 8.2), we have relied on the medical model provided by the MMWG. As we are not medical experts, we are not able to verify the suitability of the model.
11. The objective of this valuation is to establish the financial sufficiency, or soundness of the settlement in light of the available funds. We achieve this by comparing the available funds with the projected cost of paying all compensation and related expenses in future. The present value of these projected costs, or liabilities, are calculated using a large number of assumptions about uncertain future events. The Canadian Institute of Actuaries’ Standards of Practice state that “The actuary should select an appropriate ... assumption for a matter as the best estimate assumption relating to that matter, modified, if appropriate, to make provision for adverse deviations.”¹
12. The “best estimate” assumption or liability calculation means, in actuarial terms, that it is without bias. In other words, if the available funds were equal to the best estimate liabilities, there is a 50% probability that they would turn out to be sufficient to pay all future compensation and expenses.
13. As the settlement does not provide for any additional financial resources to be paid into the Trust if the current assets prove to be insufficient, there are no additional sources of funds. It is therefore prudent to include a “provision for adverse deviations” in the liability calculation, so that, if the funds were equal to the liabilities, the probability of the funds being sufficient is more than 50%. This provision is achieved by using assumptions that are more conservative than a best estimate. For each relevant assumption, the difference

¹ General Standards of Practice –Section 1620.02.

between the best estimate and the conservative assumption is referred to as the “margin for adverse deviation”.

14. In this report, the liabilities that must be considered when assessing the financial sufficiency of the Trust are the aggregate of the best estimate liabilities and the provision for adverse deviations, and are referred to as the “Sufficiency Liabilities”.
15. Even allowing for the provision for adverse deviations, there is a risk that the available funds turn out to be insufficient. The fund is subject to volatility arising from factors such as investment gains or losses, and changes in the expected benefit payments that may arise due to variation in disease progression rates and changes in drug treatment options, cost, and effectiveness, and actual benefit payments for non-scheduled benefits such as loss of income or loss of services.
16. As the settlement does not provide for any additional financial resources to be paid into the Trust if the current assets prove to be insufficient, the risk to the claimants is asymmetrical: if the ultimate experience of the fund is such that there is money left over, each claimant will have received the promised benefit, but if the opposite occurs, some claimants may receive less than the Settlement Agreement and Allocation Benefits specify.
17. Given the ongoing uncertainty about future experience of the settlement, it is prudent to conclude that an excess of assets over the Sufficiency Liabilities is required to ensure the ongoing financial soundness of the Trust. The question then arises as to how large the required excess should be.
18. In our 2010 sufficiency review, we developed a Hepatitis C specific framework to systematically assess the sources of risk not covered in the sufficiency liability and develop an appropriate “required capital” for the Hepatitis C fund, in order to protect the claimants from future major adverse experience or catastrophe. This “required capital” represents the amount of assets, over and above those needed to meet the liabilities, that is to be used for the protection, and benefit, of claimants.
19. We have continued with this approach in the 2019 sufficiency review, including some refinements made to the required capital calculations in the 2016 sufficiency review to reflect the current key risks the fund faces.

3 Summary of Sufficiency Results

20. The sections below set out the key results from the 2019 actuarial assessment of financial sufficiency for each of the three notional accounts, including claimant cohort and the corresponding information from the 2016 actuarial assessment and subsequent Court Orders. Our methodology, assumptions and detailed results are discussed later in this report.

3.1 Cohort

Cohort Summary			
	2019		2016
Regular and Special Distribution Benefit Cohort			
Transfused - Total Known	3,999		3,972
Transfused - Total Unknown	44		34
Transfused Total	4,043		4,006
Hemophiliac Total Known	1,370		1,368
Hemophiliac Total Unknown	6		5
Hemophiliac Total	1,376		1,373
Total Transfused and Hemophiliac	5,419		5,379
Late Claims Benefit Cohort			
	2019 Best Estimate	2019 Sufficiency	2016
Primary Claimants - Transfused	108	127	151
Primary Claimants - Hemophiliac	6	7	8
Primary Claimants- Total	114	134	159
Family Claimants - Transfused	204	213	90
Family Claimants - Hemophiliac	24	25	3
Family Claimants - Total	228	238	93
Total Transfused and Hemophiliac	342	372	252

Regular and Special Distribution Benefit Cohort Detail 2019			
	Transfused	Hemophiliac	Total
Alive - Known	2,476	806	3,282
DA9 ¹ - Known	1,338	262	1,600
DB9 ² - Known	185	302	487
Total Known	3,999	1,370	5,369
Alive - Unknown	29	5	34
DA9 - Unknown	15	1	16
DB9 - Unknown	0	0	0
Total Unknown	44	6	50
Total Cohort	4,043	1,376	5,419

¹ DA9: deaths after January 1, 1999

² DB9: deaths before January 1, 1999 due to HCV related causes

3.2 Summary of Results¹

2019 Results (\$,000's)	HCV Regular Benefit Account	HCV Special Distribution Benefit Account	HCV Late Claims Benefit Account	Total Fund
Assets				
Invested Assets	887,810	99,514	48,436	1,035,760
Provincial/Territorial Notional Assets	92,553	n/a	n/a	92,553
Total Assets	980,363	99,514	48,436	1,128,313
Liabilities				
Transfused	370,278	36,091	44,008	450,377
Hemophiliac	219,667	20,963	5,129	245,760
HIV Program	410	n/a	n/a	410
Expenses	67,070	1,749	9,732	78,551
Total Sufficiency Liabilities	657,425	58,803	58,870	775,098
Excess Assets over Liabilities	322,938	40,711	(10,434)	353,216
Required Capital	131,181	12,993	11,445	155,619
Excess Capital	191,757	27,718	(21,879)	197,596
Funded ratio (= Total Assets ÷ Total Sufficiency Liabilities)	149%	169%	82%	146%

Select 2016 Results				
Invested Assets	901,533	185,750	48,573	1,135,856
Provincial/Territorial Notional Assets	123,623	n/a	n/a	123,623
Total Assets	1,025,156	185,750	48,573	1,259,479
Total Sufficiency Liabilities	715,493	152,045	54,631	922,168
Excess Assets over Liabilities	309,663	33,705	(6,058)	337,311
Required Capital	133,166	19,758	10,768	163,692
Excess Capital	176,497	13,947	(16,826)	173,618
Funded Ratio	143%	122%	89%	137%

¹ In some cases (in this table and throughout the report), amounts may appear not to add up to the total shown. This occurs because amounts have been rounded to thousands or millions for presentation.

3.3 Analysis of Change in Excess Assets

21. We have analyzed the change in the excess asset position approximately as follows:

Summary of Change in Excess Assets (\$ millions)	Regular Benefit Account	Special Distribution Benefit Account	Late Claims Benefit Account	Total Fund
Excess of Assets over Liabilities - December 31, 2016	309.7	33.7	(6.1)	337.3
Interest on Excess Assets	30.2	3.3	(0.6)	32.9
Expected Excess of Assets over Liabilities - December 31, 2019	339.9	37.0	(6.7)	370.2
Effect of Experience Differing From Assumptions				
Loss on Investments - Real return lower than assumed	(2.9)	(0.4)	0.5	(2.8)
Loss on Investments - Inflation lower than assumed	(10.7)	(1.4)	(0.5)	(12.6)
Gain on liabilities - indexing of benefit payments for inflation lower than assumed	7.7	1.1	0.6	9.4
Gain / (loss) from claimant experience different than assumed	(17.1)	4.2	5.8	(7.1)
Gain on expenses and fees lower than assumed	1.5	0.1	0.3	1.9
Cohort change	(8.5)	(0.7)	1.8	(7.4)
Subtotal: experience differing from assumptions	(30.0)	2.9	8.5	(18.6)
Effect of Change in Assumptions				
Decrease in net discount rate	(7.8)	(0.8)	(0.2)	(8.8)
Medical model change	(27.8)	(1.8)	(0.9)	(30.5)
Remove margin on pre-treatment rates and associated efficacy	22.4	1.4	0.6	24.4
New drug cost	11.2	0.3	0.3	11.8
Change in cost of care assumption	(16.2)	(0.3)	(0.4)	(16.9)
Change Dependant LOS and SRV rate	36.8	2.7	0.9	40.4
Change in assumptions for fees and expenses	(8.6)	(0.4)	(3.2)	(12.2)
Change in stage distribution for unknown cohort	(3.1)	(0.3)	(9.4)	(12.8)
All other assumption changes	6.6	0.1	0.1	6.8
Subtotal: change in assumptions	13.5	0.9	(12.2)	2.2
Miscellaneous	(0.5)	(0.1)	-	(0.6)
Excess Assets - December 31, 2019	322.9	40.7	(10.4)	353.2

22. The sufficiency of the Regular Benefit Account has improved marginally since 2016, although by less than expected if we simply add interest to the 2016 excess assets. Over the three-year period benefit payments were lower than expected, resulting in a gain, but this was offset by an increase in the claimant cohort. Investment losses due to lower than expected inflation were largely offset by the liabilities increasing by less than expected for the same reason. The net experience gain/loss from other items, including real investment returns, was relatively small. Overall, changes to the assumptions had a small positive effect.

23. The gains and losses for the Special Distribution Account largely mirror those in the Regular Benefit Account, with the excess assets having increased broadly as expected.
24. The shortfall of assets in the Late Claims Benefit Account has worsened since 2016. The main reasons for this are a revision in the assumed stage of disease progression for late claims, which reflects recent claims experience, and an increase in assumed fees and expenses. These factors were partially offset by benefit payments over the 3 years being lower than expected, and by a reduction in the assumed number of approved infected late claims in future.
25. The financial assessment of the Late Claims Benefit Account is based on a calculation of a 100% payment of the benefits provided therein. However, the Late Claims Benefit Plan provides for a 25% holdback on all benefits provided for in the Late Claims Benefit Plan until such time as the Courts determine the Late Claims Benefit Account is financially sufficient. This holdback on benefits which is currently in place is sufficient to cover the \$10,434,000 shortfall in the Late Claims Benefit Account created by the sufficiency liabilities exceeding the available assets. The holdback is not however sufficient to cover the additional \$11,445,000 shortfall which is created by the Required Capital buffer.

3.4 Required Capital

26. The following table summarizes the Hepatitis C specific approach to calculating "Required Capital":

Required Capital on Hepatitis C Specific Approach (\$,000's)					
Risk Component		Regular Benefit Account	Special Distribution Benefit Account	Late Claims Benefit Account	Total
Investment Risks		77,158	7,246	5,182	89,586
Claimant Risks	Disease Progression Rate Risk	38,237	5,653	1,445	45,335
	Treatment Efficacy Risk	27,947	2,741	1,184	31,873
	Benefit Amount Uncertainty Risk	26,444	2,596	1,134	30,174
	Cohort Risk	0	0	5,154	5,154
Risk Diversification Credit		(38,605)	(5,243)	(2,654)	(46,503)
Total Required Capital		131,181	12,993	11,445	155,619
Required Capital as a percentage of the Sufficiency Liability		20.0%	22.1%	19.4%	20.1%

27. The Required Capital should be regarded as an asset, in addition to the assets backing the liabilities in each notional account, that should be held for the protection, and benefit, of claimants within each of the three notional accounts.

4 Events after December 31, 2019

28. Since December 31, 2019, the COVID-19 pandemic has been evolving. The pandemic is likely to affect, directly or indirectly, many aspects of the Trust's financial sufficiency. For example, investment markets have been volatile over the course of 2020, and claimants' HCV prognosis may be affected both by comorbidity with COVID-19 and by difficulty accessing healthcare services. The impact of COVID-19 on the Trust's financial sufficiency cannot be reasonably estimated at this time. Future reviews will reflect any long-term impact of COVID-19, as appropriate.
29. Any investment experience occurring between the valuation date and the report date, which differs from the assumption made, is not reflected in this report and will be reported on in future valuations.
30. To the best of our knowledge there have been no other events subsequent to the valuation date that would have a material impact on the results of this review, or alter our opinion.

5 Opinion

In our opinion,

- (a) the Trust is sufficient;
- (b) the claimant data on which the valuation is based are sufficient and reliable for the purposes of the valuation;
- (c) the assumptions are appropriate for the purposes of the valuation; and
- (d) the methods employed in the valuation are appropriate for the purposes of the valuation.

In our opinion, based on the current notional split of the Trust's assets,

- (e) the Regular Benefit Account is sufficient;
- (f) the Special Distribution Benefit Account is sufficient; and
- (g) the Late Claims Benefit Account is not sufficient.

This report has been prepared, and our opinions given, in accordance with accepted actuarial practice in Canada. Pursuant to the requirements of the settlement agreement, the next valuation should be completed no later than as of December 31, 2022.

On behalf of the Eckler actuarial personnel who worked on this report, we certify that we are aware that our duties are:

- (a) to provide opinion evidence that is fair, objective and non-partisan and related only to matters within our area of expertise; and
- (b) to assist the court and provide such additional assistance as the court may reasonably require to determine a matter in issue.

We are aware that the foregoing duties prevail over any obligation they may owe to any party on whose behalf we are engaged and we are aware that we are not to be an advocate for any party. We confirm that the report conforms with the above-noted duties. We further confirm that if called upon to give oral or written testimony, we will give such testimony in conformity with these duties.



Richard A. Border
Fellow of the Canadian Institute of Actuaries¹
Fellow of the Institute and Faculty of Actuaries



Euan Reid
Fellow of the Canadian Institute of Actuaries¹
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¹ Canadian Institute of Actuaries is the Primary Regulator.

6 Summary of Settlement and subsequent Court Approved Benefits

31. The Settlement Agreement set up three compensation plans: the Transfused HCV Plan ("Transfused Plan"), the Hemophiliac HCV Plan ("Hemophiliac Plan"), and the HIV Secondarily Infected Program ("HIV Program"). These plans encompass what is now being referred to as the Regular Benefits. In addition, the Courts have approved the Special Distribution Benefits and the Late Claims Benefit Plan. The following paragraphs set out the various heads of compensation.

6.1 Transfused Plan

32. The compensation amounts are set out in Articles 4, 5 and 6 of the Transfused Plan. Section 7.03 of the Transfused Plan restricted certain payments initially, subject to revision by the Courts. These restrictions have now all been removed (reduced in the case of loss of income) and are discussed in further detail in the relevant sections below.

33. The cross-references to the relevant sections of the Transfused Plan are shown in parentheses for each item.

34. Most of the prescribed compensation amounts are indexed by inflation each year. In general, we have started with the indexed amounts in effect at January 1, 2020. At January 1, 2020, the prescribed increase over the 1999 values is 48.7377%. Thus, for example, the \$10,000 payment (1999 dollars) to each infected claimant under Section 4.01(1)(a) of the Transfused Plan, is increased to \$14,873.77 where the payment is made in 2020. For ease of reference we continue to refer to the original 1999 amounts below rather than the actual indexed amounts used in the calculation (e.g. \$10,000 instead of \$14,873.77). The base 1999 amounts and the indexed 2020 values are summarized in Appendix A - Appendix H.

35. In some instances, the dollar expenditures are based on current estimates rather than a prescribed amount, e.g. loss of income, costs of care. In these situations, we derived a compensation level by reference to the actual payouts to obtain the amount assumed payable in 2020. This is discussed further in Section 9 Assumptions.

6.2 Heads of Compensation

36. The following lump sum payments are payable:

6.2.1 \$10,000 to Each HCV Infected Claimant (4.01(1)(a))

37. The payments to the known/approved claimants have already been made. All unknown HCV infected claimants who were alive at January 1, 1999 are eligible for this payment on approval as a claimant.

6.2.2 \$20,000 to Each Claimant with Positive PCR Test (4.01(1)(b))

38. The \$20,000 was originally restricted to \$15,000 payable immediately, with \$5,000 deferred until there was a favourable reassessment of the fund's assets and liabilities. Following the 2001 review, the Courts lifted the restriction in July 2002 and the full \$20,000 is now taken into account. We understand that all the claimants who were originally paid \$15,000 have had the additional \$5,000 plus interest paid to them, and there is therefore no further liability in this regard.

6.2.3 \$30,000 to Each Claimant with Non-bridging Fibrosis (4.01(1)(c))

39. The payments here are to those who have developed non-bridging fibrosis or who are undergoing a regimen of drug treatment that includes ribavirin or interferon, or any other treatment that has a propensity to cause adverse side effects and that has been approved by the Courts for compensation.
40. A claimant is allowed to waive the \$30,000 payment under this section and in lieu thereof elect compensation for loss of income (Transfused Plan section 4.02) or loss of services in the home (Transfused Plan section 4.03), provided the claimant is at least 80% disabled.

6.2.4 \$65,000 to Each Claimant with Cirrhosis (4.01(1)(d))

41. A \$65,000 lump sum is payable to all claimants who are at or who enter the cirrhosis stage.

6.2.5 \$100,000 to Each Claimant at Decompensation/Cancer (4.01(1)(e))

42. The Transfused Plan includes some other conditions in addition to liver decompensation or cancer. These are incorporated within the medical model.

6.2.6 Bridging Fibrosis (4.01(2))

43. Claimants who have developed bridging fibrosis are to be paid the amounts under 6.2.1 \$10,000 to Each HCV Infected Claimant (4.01(1)(a)), 6.2.2 \$20,000 to Each Claimant with Positive PCR Test (4.01(1)(b)) and 6.2.3 \$30,000 to Each Claimant with Non-bridging Fibrosis (4.01(1)(c)) above. The stages of fibrosis development and compensation levels in the Settlement do not directly correspond. As in our previous reports, we have assumed that bridging fibrosis is analogous to stage 3 fibrosis in the model. A table showing the medical model stages and corresponding compensation plan levels is included in paragraph 94.
44. A number of ongoing payments are made to claimants as follows:

6.2.7 Loss of Income/Services in lieu of \$30,000 Lump Sum under 6.2.3 above (4.01(3), 4.02(1)(a) and 4.03(1)(a))

45. As noted in 6.2.3 above, claimants at stage 1 or 2 (i.e. non-bridging) fibrosis and who are at least 80% disabled may elect to receive loss of income/services in lieu of the \$30,000 lump sum.

6.2.8 Loss of Income (4.02(1)(b))

46. In addition to the loss of income already discussed in 6.2.7, compensation is provided for loss of income to those who have developed bridging fibrosis (assumed equal to stage 3 fibrosis in the model), cirrhosis or liver decompensation/cancer.
47. Loss of Income compensation is intended to cover the claimant's net after-tax loss, taking into consideration Canada Pension Plan, Quebec Pension Plan, Unemployment Insurance and/or Employment Insurance premiums and benefits, and certain other collateral benefits.
48. The Transfused Plan initially imposed a \$75,000 limit (in 1999 dollars) on the pre-claim gross income used in calculating a claimant's loss of income; this limit was increased by the Courts to \$300,000 (in 1999 dollars) effective October 2004. In 2008, the Courts raised the limitation on the amount of pre-claim gross income which could be used in the calculation of a loss of income claim to a maximum of \$2.3 million (1999 dollars) with the proviso that any claim calculated on pre-claim gross income in excess of \$300,000 (1999 dollars) required express approval from the Court with jurisdiction prior to its payment. Since then five claimants (one with a loss of income of \$2.3 million) have been approved. Of the five claimants approved by the Courts, two have died, one is now over 65 years old and thus not eligible for any further income loss payments, the fourth had a net income loss in 2018 of \$1,472,000, and the fifth had a net income loss in 2018 of \$387,000.

6.2.9 Loss of Services in the Home (4.03(1)(b))

49. Compensation for loss of services is available under the same conditions set out in Sections 6.2.7 and 6.2.8 for loss of income, but only one of the two can be payable in respect of any one period of time.
50. The compensation payable under this head is set at \$12 per hour to a maximum of \$240 per week (4.03(2) of the Transfused Plan). This maximum works out to \$240 x 52 weeks per year = \$12,480 per year (in 1999 dollars).

6.2.10 Costs of Care (4.04)

51. Compensation is available to those who have liver decompensation or cancer, to the extent such costs (other than loss of service in the home) are not recoverable under any public or private health care plan, to a maximum of \$50,000 per year.

6.2.11 HCV Drug Therapy (4.05)

52. This compensation (at \$1,000 per month - 1999 dollars) is available to those undergoing a regimen of drug treatment that includes ribavirin or interferon, or any other treatment that has a propensity to cause adverse side effects and that has been approved by the Courts for compensation.

6.2.12 Uninsured Treatment and Medication (4.06)

53. These costs include claims related to treatments to clear the virus, as well as, for those who do not clear the virus, costs arising from any ongoing treatment related to managing their illness.

6.2.13 Out-of-Pocket Expenses (4.07)

54. Out-of-pocket expenses are expenses other than the uninsured medication costs and costs of care discussed above, and include travel costs to receive medical care and costs of obtaining medical evidence for the purposes of obtaining compensation under the Transfused Plan.

6.2.14 HIV Secondarily Infected (4.08)

55. The Transfused Plan pays compensation above \$240,000 in provable claims to those persons who are also receiving compensation under the HIV Program (see Section 6.4 HIV Secondarily Infected).

6.2.15 Deaths Before January 1, 1999 (DB9) (5.01)

56. The estates of HCV related deaths before January 1, 1999 will be compensated for uninsured funeral expenses up to a maximum of \$5,000 and may elect either \$120,000 in full settlement of all claims, including loss of guidance, care and companionship (\$120K option), or \$50,000 plus claims by the family, including loss of support or loss of services (\$50K+ option).

6.2.16 Deaths after January 1, 1999 (DA9) (5.02)

57. Funeral expenses are payable up to a maximum of \$5,000.

6.2.17 Death Claims after January 1, 1999 - Loss of Support/Services (6.01).

58. Both loss of support and loss of services are payable during the remainder of the deceased's life expectancy, as if the death had not occurred, with loss of support converting to loss of services after age 65.

6.2.18 Death Claims after January 1, 1999 - Loss of Guidance, Care and Companionship (6.02).

59. The lump sum amounts payable vary between \$500 for each grandparent or grandchild, \$5,000 for each parent, sibling, or child aged 21 or over, \$15,000 for each child under age 21, and \$25,000 for a spouse.

6.2.19 Secondarily Infected Persons (3.02)

60. These include spouses and children infected with HCV by their spouse or parent who is an approved claimant. The payments to secondarily infected persons are the same as those to primarily infected persons and are as set out above.

6.3 Hemophiliac Plan

61. The Hemophiliac Plan provides for compensation amounts and conditions that mirror the Transfused Plan, with the following additions:
- a claimant who is also infected with HIV may elect to be paid \$50,000 in full satisfaction of all other claims including post death claims of dependents and family members (4.08(2) of the Hemophiliac Plan);
 - the estates of HIV co-infected persons who died before January 1, 1999 may elect to be paid \$72,000 in full satisfaction of all other claims (5.01(4) of the Hemophiliac Plan), even if HCV is not the cause of death.

6.4 HIV Secondarily Infected Program

62. The fund will pay all claims made under the HIV Program at \$240,000 per claim to a maximum of 240 claims, as well as costs of administering that program to a maximum of \$2 million. No interest is paid on these claims and they are not indexed for the cost of living. In addition, the Transfused Plan and the Hemophiliac Plan both allow for payments in excess of \$240,000 in provable claims to those persons who are also receiving compensation under the HIV Program.

6.5 Fees and Expenses

63. Fees and expenses incurred in administering the fund are payable from the fund on judicial approval.

6.6 Special Distribution Benefits

64. The following benefits are paid out of the Special Distribution Benefit Account:
- Compensation for lost pension benefits at a rate of 10% of pre-tax loss of income to a maximum of \$20,000 (2014 dollars) per annum;
 - An increase to the hours cap on loss of services to 22 hours;
 - An increase to the maximum cost of care benefit of \$10,000 (1999 dollars);
 - Payments of \$200 (in 2014 dollars) per diem to family members accompanying claimants to medical appointments;
 - An increase to payments on death to children over 21 and parents of \$4,600 (1999 dollars);
 - An increase to all regular lump sum payments of 8.5% (this excludes the benefit described in the previous bullet);
 - Allowance for permanently disabled Approved Dependents to apply for and receive continued loss of services payments after the actuarially calculated normal life expectancy of a deceased claimant, for the remainder of the permanently disabled Approved Dependent's life;

- Allowance for alive co-infected hemophiliacs who chose the \$50,000 (1999 dollars) payment in full satisfaction of all other claims to apply for and receive ongoing compensation as per the normal heads of compensation after deduction of the \$50,000 payment indexed to the date of application.
65. The expenses incurred in administering the Special Distribution Benefits are charged to the Special Distribution Benefit Account.

6.7 Late Claims Benefit Plan

66. Class members who did not apply prior to June 30, 2010 and who are not eligible to claim under the Regular Plans exemptions or court approved protocols may be eligible to claim under the Late Claims Benefit Plan. There is a two-part test for qualification under the Late Claims Benefit Plan: 1) the reason for not applying during the original claims period must be approved by a court appointed referee and 2) the claimant must be approved under the eligibility requirements that mirror those in the original plan.
67. The benefits provided under the Late Claims Benefit Plan are the same as the Regular Benefit Plans plus the Special Distribution Benefits, with indexing to the date of payment.

7 Assets at December 31, 2019

68. For the Regular Benefit Account, the costs of the settlement are shared by the Federal and Provincial/Territorial governments in the ratio 8/11 : 3/11. The Federal Government transferred assets in full settlement of its ongoing obligations, while the Provincial/Territorial governments pay their share (3/11ths) of the costs as they arise, subject to a maximum possible payout. Accordingly, there are two types of assets:
- the invested assets, comprising the remaining balance of the Federal Government funds; and
 - the notional assets representing the Provincial/Territorial governments' share of the cost of the agreement; this is increased by interest at the rates on three-month treasury bills, less the Provincial/Territorial governments' share of costs to date.
69. The Provincial/Territorial governments do not share in the costs of the Special Distribution Benefits or the Late Claims Benefit Plan; these benefits are backed by the invested assets of the Trust Fund notionally allocated to the Special Distribution Benefit Account and the Late Claims Benefit Account.
70. The invested assets are invested in two different portfolios: a long term portfolio, divided further into a real return bond portfolio and a portfolio made up of equities and universe bonds, and a short term portfolio invested in short term bonds.

7.1 Asset Development to December 31, 2019

71. We have taken the assets and disbursements of the Trust Fund from the audited financial statements. For previous sufficiency reviews, we used an invested asset value taken from financial statements prepared by RBC Investor and Treasury Services (RBC), the Trust's custodian. With the assets now split between three notional accounts (the Regular Benefit Account, Special Distribution Benefit Account and Late Claims Benefit Account) the RBC statements do not reflect fully the allocation of expenses between the accounts, and in our view the audited financial statements provide the more appropriate split. Since the financial statements are prepared on an accruals basis and the custodial statements on a cash basis, there are some differences between the two sets of figures. In particular, the financial statements include the regular December 2019 benefit and expense payments that had accrued at December 31, 2019 but not been paid out at that date. The impact on our assessment of the Trust's financial sufficiency is immaterial, since we previously made an equivalent allowance for the regular December payments in the liabilities rather than the asset values.
72. The Provinces and Territories' share of the costs of the Regular Benefit Account is taken from the RBC quarterly calculations of interest credits (which are reviewed by us on an ongoing basis), and adjusted by the amount of contributions receivable shown in the audited financial statements. While the Provinces and Territories generally pay their share of the costs as they arise, some have chosen at various times to

prepay in anticipation of future costs. At December 31, 2010, both Yukon and Alberta had prepaid balances to their credit which were included in the invested assets. By June 2011, Alberta's prepaid balance had been used up. As a result of further prepayments, at December 31, 2019 Yukon still had a small prepaid balance, while no other Province or Territory had a prepaid balance at the valuation date.

73. Based on the methods and assumptions used to calculate the Sufficiency Liabilities, our model projects that the Provinces and Territories' notional assets will be exhausted in 2030.
74. The asset development to December 31, 2016 was set out in our previous valuation report. The development of the assets from January 1, 2017 to December 31, 2019 is summarized below.

Trust Fund Asset Development from January 1, 2017 to December 31, 2019 (\$,000's)						
	Regular Benefit Account			Special Distribution Benefit Account	Late Claims Benefit Account	Total Assets
	Invested Assets	Notional Assets	Total: Regular Benefit Account			
Initial, at Jan 1, 2017	901,533	123,623	1,025,126	185,750	48,573	1,259,479
Restatement to remove payables per audited financial statements	(6,358)	-	(6,358)	-	-	(6,358)
Initial, at Jan 1, 2017	895,175	123,623	1,018,798	185,750	48,573	1,253,121
Yukon unused prepayments = credit balance at start	(13)	13	0	-	-	-
Investment income/interest credits	78,296	3,712	82,008	9,075	4,593	95,676
Benefit payments	(79,322)	(33,191)	(112,513)	(94,295)	(2,189)	(208,997)
Fees/expenses	(6,338)	(1,592)	(7,930)	(1,016)	(2,541)	(11,487)
Sub-total	887,798	92,565	980,363	99,514	48,436	1,128,313
Yukon unused prepayments = credit balance at end	12	(12)	0	-	-	-
Closing, at Dec 31, 2019	887,810	92,553	980,363	99,514	48,436	1,128,313

7.2 Composition of Assets

75. The composition of the total invested and notional assets at December 31, 2019 is summarized below:

Asset Distribution at December 31, 2019			
	(\$,000's)	% of sub-total	% of total
Long Term Fund			
Real return bonds	806,095	79.2%	71.0%
Universe bonds	61,988	6.1%	5.5%
Global low-volatility equity	149,744	14.7%	13.2%
Cash & short-term	573	0.1%	0.0%
Sub-total	1,018,400	100.0%	89.7%
Short Term Fund	24,347		2.1%
Total invested assets	1,042,747		91.8%
Provinces and Territories' notional assets	92,553		8.2%
Total invested and notional assets	1,135,300		100.0%
Net current assets	(6,987)		
Total assets	1,128,313		

76. To date the investment strategy has been passive and in general, the assets in the Long Term Fund have been held and not traded. The invested assets, other than the real return bonds that are held directly, have been in a variety of funds managed by TD Asset Management.

77. We understand that the Short Term Fund is drawn down to meet current claims and expenses; it is then reimbursed for the 3/11 share due from the Provinces. We further understand that, from time to time, a portion of the Long Term Fund is re-allocated to the Short Term Fund to rebalance the overall portfolio as per the Investment Guidelines approved by the Courts. The Provinces' notional assets (less their 3/11 share of disbursements) are credited with interest at 3-month treasury bill rates as per the terms of the Settlement Agreement.

7.3 Duration of Fixed Income Assets

78. The duration of the fixed income assets as at December 31, 2019 and 2016 are set out below:

Duration of Fixed Income Assets		
	December 31, 2019	December 31, 2016
Real return bonds	8.7 years	19.2 years
Universe bonds	8.0 years	7.6 years
Short term fund	0.3 years	2.8 years

79. The duration¹ of the fixed income assets has shortened considerably since 2016, in particular for the real return bonds. Reducing the asset duration was a deliberate strategy to better match the duration of the liabilities² as measured in the 2016 assessment. The restructuring was completed in 2019.
80. We recommend the asset mix is reviewed again following this sufficiency review, to ensure the strategy continues to reflect the duration of the liabilities. Approximately 21% of the real return bond portfolio is invested in a bond that matures in December 2021, and the proceeds from the redemption or earlier sale of this bond will need to be invested appropriately.

7.4 Investment Returns to December 31, 2019

81. The nominal investment returns earned during calendar years 2017 to 2019 were:

Investment Returns by Calendar Year			
Calendar Year	On Invested Assets	On Notional Assets	Combined
2017	2.4%	0.7%	2.3%
2018	(0.6%)	1.2%	(0.4%)
2019	7.3%	1.7%	6.8%

82. The actual inflation increases applied to the Plans' 2017 scale of benefits were 1.48%, 2.31% and 1.88% at January 1, of 2018, 2019 and 2020 respectively, giving an average increase over the 3 years of 1.9%.
83. The real investment returns (i.e. returns in excess of inflation) earned during calendar years 2017 to 2019 were therefore as follows:

Investment Returns by Calendar Year			
Calendar Year	On Invested Assets	On Notional Assets	Combined
2017	0.9%	(0.8%)	0.8%
2018	(2.9%)	(1.1%)	(2.7%)
2019	5.4%	(0.2%)	4.9%
3-year average	1.1%	(0.7%)	1.0%

7.5 Excess Investment Returns (Shortfall) to December 31, 2019

84. The 2016 sufficiency review reflected the assumption that the assets (invested and notional) would earn a real rate of return of 0.9% per year net of investment-related expenses.

¹ Duration is the weighted average term of the cash flows associated with an asset or a liability and a measure of its sensitivity to changes in interest rates – the longer the duration the greater the sensitivity.

² When the duration of the liabilities and assets of an arrangement are equal, the effect of interest rate (real return bond yields in this case) fluctuations is broadly the same on both the assets and the liabilities, hence protecting the arrangement from investment volatility arising from interest rate changes.

85. If we bring forward the \$1,253,121,000 (restated) asset value used at December 31, 2016, adjusted for the actual disbursements (excluding investment-related expenses), to December 31, 2019, with the assumed nominal rate of return of 3.15% (i.e. the assumed real rate of return of 0.9% plus the assumed inflation of 2.25%), we would expect a total asset value of \$1,143,723,000. This compares to the actual asset value of \$1,128,313,000. Thus, there was a loss of \$15,410,000 (the difference between the actual and expected asset values) on the actual investment returns to December 31, 2019 compared to the long-term actuarial assumption.
86. The total investment loss of \$15,410,000 comprises a loss of \$2,820,000 due to the actual real return being lower than the assumed real return of 0.9%, and a loss of \$12,590,000 arising from actual CPI increasing less than expected. For greater clarity, since the nominal rate of return is the sum of the real rate of return and inflation, if inflation is lower than expected this reduces the nominal return. The analysis above breaks the overall loss into the real return component, which had a loss, and the inflation component, which, as a result of inflation being lower than assumed, also produced a loss. We note that the inflation related loss on the assets is largely offset by a corresponding inflation related gain on the liabilities (as the liabilities have increased at a slower rate than assumed as a result of inflation being lower than assumed).
87. The total investment loss of \$15,410,000 has been calculated in the same manner for the three accounts, and the results are shown in the table below. Although the assets are invested in the same way for all three accounts, there are differences due to the Provinces and Territories' share of the costs of the Regular Benefit Account, as well as the amount and timing of payments out of each account over the three year period.

Investment gain/(loss)				
Gain / (Loss) due to:	Regular Benefit Account	Special Distribution Benefit Account	Late Claims Benefit Account	Total Assets
CPI inflation higher / (lower) than assumed	(10,650)	(1,423)	(517)	(12,590)
Real return higher / (lower) than assumed	(2,927)	(428)	535	(2,820)
Total	(13,577)	(1,851)	18	(15,410)

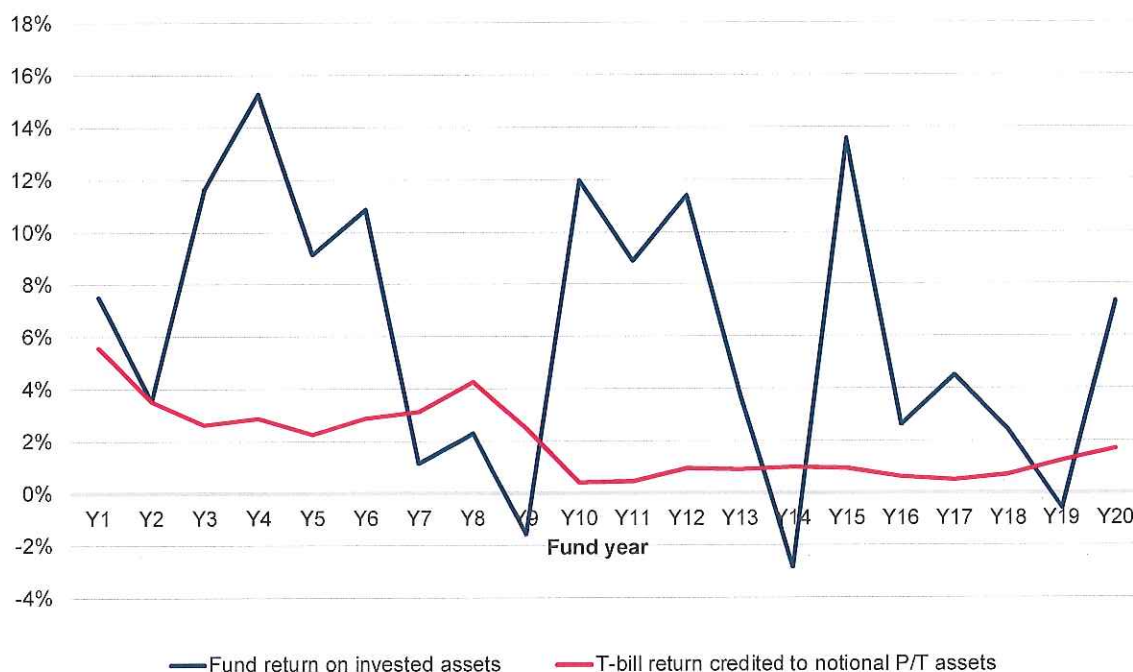
7.6 Other Adjustments

88. The Fund's audited financial statements include current liabilities comprising the December 2019 benefit payments, which had been accrued but not yet paid as of December 31, 2019, and a similar provision for accrued expenses. In addition, loss of income and loss of services payments in respect of 2019 are not payable until 2020. These total approximately \$8.8 million for the regular benefit and \$0.7 million for the

special distribution benefit (combined for the Transfused and Hemophiliac Plans). This amount is not allowed for in the financial statements, so we have included it in the liabilities set out later in this report.

7.7 History of investment returns

89. The Fund's healthy financial position, and the existence of excess capital, can be attributed in large part to the investment returns realized on the assets transferred by the Federal Government when the Trust Fund was established. The returns on the Fund's investments have generally been considerably greater than the interest rates credited to the Provinces and Territories' notional assets, as shown in the chart below.



90. If the Federal Government funds had instead been invested in 3-month treasury bills, or if those assets had not been transferred and were notionally credited with interest in the same way as the Provinces and Territories' notional assets, then there would be a shortfall of assets against liabilities at December 31, 2019, and the Fund would not be sufficient.

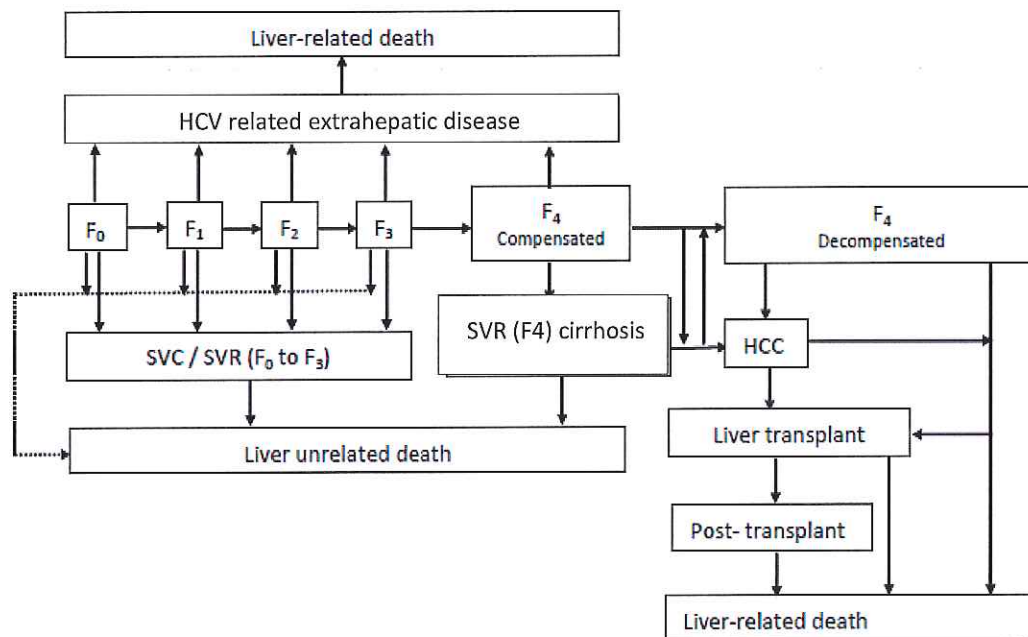
8 Medical Model and Related Actuarial Model

8.1 Medical Model

91. In 1998, the parties to the Settlement Agreement asked the Canadian Association for the Study of the Liver ("CASL") to construct a natural history model of hepatitis C to aid in the calculation of the various amounts of compensation to patients infected with the hepatitis C virus through blood transfusion between 1986 and 1990. The CASL study was led by Dr. Murray Krahn and was completed in April 1999; its results formed the basis of our assumptions regarding the development of the various medical outcomes for our 1999 actuarial valuation.
92. For each of the previous actuarial assessments since 2001, a working group convened by Dr. Krahn was retained to review and update the medical model, taking into account the clinical and demographic data from compensation claimants to date. Each of these successive medical models incorporated refinements based on emerging information, while keeping the structure and methodology largely consistent over time. We used these models as the basis for our previous assessments.
93. For the purposes of the current assessment, Dr. Krahn was again retained to convene a working group (the "Medical Model Working Group" or "MMWG") to review the medical model and update it for the additional experience since 2016. We refer to this revised study as the "2019 MMWG" report/study/model.
94. The MMWG model is a Markov state transition model. In this type of model, a set of relevant health states or stages is defined. For each projection year, the model applies the appropriate probability of progressing to the next stage. The table below sets out the medical model stages and associated compensation plan levels.

MMWG Stage	MMWG Stage Description	Compensation Plan Levels	Compensation Plan Description
F0 (RNA-)	Fibrosis Stage 0 – RNA negative	1	Claimants who have cleared the virus
F0 (RNA+)	Fibrosis Stage 0 – RNA positive	2	PCR test positive
F1	Fibrosis Stage 1	3	Non---Bridging Fibrosis
F2	Fibrosis Stage 2	3	Non---Bridging Fibrosis
F3	Fibrosis Stage 3	4	Bridging Fibrosis
F4	Cirrhosis	5	Cirrhosis
HCC	Hepatocellular Cancer	6	Cancer
Decomp	Decompensated cirrhosis	6	Liver decompensation
Transplant	Liver Transplant	6	Liver transplant
HCV-related extrahepatic disease	HCV-related extrahepatic disease	6	B-cell lymphoma, kidney disease and cryoglobulinemia
Death	Liver related death		Death

95. The medical model structure as described in the 2019 MMWG report is shown below¹. There is also a direct progression to/from F1: F3 to HCC that is not illustrated in the chart. The 2019 MMWG model includes a new assumption that patients with decompensated cirrhosis will be treated.



Source: MMWG

96. While the design of the MMWG model is not very different from the first version that was completed in 1999, the expected outcomes have changed significantly in some iterations of the model.
97. The 2013 MMWG model reflected new drug therapies, referred to in the MMWG reports as Direct Acting Antiviral Agents or DAAs, with significantly higher efficacy than previously available drugs, that were expected to be provided to a much larger proportion of the claimants than the previous therapies. As a result, the HCV prognosis was significantly better than that shown in previous models. The impact of the improved prognosis on the financial outcome was significant, although this was offset to an extent by the high cost of DAA treatment.
98. At the time of the 2013 Sufficiency Review, there was no provincial coverage of the cost of the new drugs, and very few private plans offered coverage, meaning that most drug costs would be met from the fund. Since then Provincial and private healthcare plans have expanded coverage of HCV drug therapies. Our expectation that a lower proportion of costs would be claimed from the fund was reflected to an extent in the 2016 Sufficiency Review, and more so in the 2019 Sufficiency Review.
99. The 2016 and 2019 model continue to reflect certain of the 2013 DAA drug therapies, as well as even newer drug therapies introduced and approved for coverage by provincial health authorities since 2013.
100. The medical model is based on cohort data provided by the Administrator, which includes a label for some individuals to indicate they have received treatment. However, the absence of this information does not necessarily mean that an individual has not been treated, rather, it may simply mean that no update has been provided to the Administrator. We understand the medical model assumes that a certain number of claimants with "blank" data fields for treatment have in fact been treated. Further, the medical model makes an assumption as to how many of these claimants have also been cured.
101. The disease progression rates in the 2019 medical model are generally very similar to the 2016 medical model.
102. As in prior models, the 2019 MMWG model uses a starting age, sex and clinical distribution of the cohort that is based on the observed claimant data, anchored at about May 2019. The MMWG adjusted the observed claimant data to allow for an expected lag in recognition of the actual disease stage of claimants. Since we used the actual individual claimant data, we did not make this adjustment in our model.
103. The MMWG model recognizes the prevalence of HIV infection and hemophilia. While the year-by-year medical transition probabilities do not vary by age, sex or hemophilia in the MMWG model, they are

¹ Sustained Virological Response, or "SVR", is defined for this purpose as an undetectable HCV viral load test 12 weeks after completing a successful course of HCV treatment. Spontaneous Viral Clearance or "SVC" refers to undetectable HCV viral load in serum, in the absence of treatment.

assumed to vary by HIV presence; this, combined with the different age/sex/clinical-stage starting compositions and excess mortality associated with HIV infection, affects the hemophiliac prognosis and leads to different projected outcomes for the hemophiliac cohort compared to the transfused cohort.

104. The MMWG provided the estimated mean and 95% confidence intervals¹ for each of the transition parameters in their report. The 2019 medical model can use either the mean of the distribution in a deterministic² projection or the parameter distributions to model a given transition parameter stochastically.

8.2 Actuarial Model

105. For the 2010 valuation we moved to a seriatim approach for valuing the known population, whereby the liability for each claimant is individually calculated taking into account the claimant's specific details (e.g. age, sex, disease stage, actual loss of income claims, etc.). We have continued with this approach for this valuation.
106. The 2019 Markov model developed by the MMWG was analyzed by them using a software package called TreeAge (an earlier version of this package was used in 2016). In addition to being able to simulate the progression of individuals through the various health states, this software has the ability to generate future cash flows depending on health state, as well as discount these cash flows to the valuation date.
107. The MMWG shared with us a copy of their medical model as implemented in the TreeAge software. We were able to reproduce the MMWG key results, thereby ensuring that we retained the complete medical model as developed by the MMWG; this reduced very significantly any opportunity for errors or misinterpretation arising between the medical model and the actuarial model. After consulting with the MMWG, we made one change to the model, to track whether claimants with decompensated cirrhosis were assumed to have cleared the virus prior to the valuation date. This change affects the proportion of these claimants who are assumed to receive treatment in future, but the MMWG have confirmed that the impact on their analysis would not be material.
108. We therefore, as in 2016, used the TreeAge software to calculate the known liabilities using a stochastic³ technique as follows:

¹ The 95% confidence interval indicates that the MMWG is 95% confident (statistically) that the true value falls in the range.

² In deterministic models, the output of the model is fully defined or determined by the parameter values and the initial conditions. There is no randomness built into the model, and for a given set of inputs, the same outputs will always be produced. In contrast, a stochastic model introduces some randomness to the model, resulting in a statistical range of outputs rather than a single figure.

³ Stochastic models use special modelling techniques to generate a large number of possible scenarios or outcomes. There is an element of indeterminacy, or statistical variability, in the potential outcomes; this indeterminacy is described by probability distributions. The model is run repeatedly (possibly thousands of times) with randomly generated inputs, and

- The starting stage distribution of the cohort for financial sufficiency purposes was reset to the observed claimant data, to ensure the timing of benefit payments is correctly reflected.
 - We simulated the health state of each individual claimant in each future year by applying the statistical distribution of transition rates set by the MMWG. For each future year, we calculated the payments due to the claimants based on their projected health state in that year and then discounted the payment amounts to the valuation date to obtain a present value of the future payments.
 - We added up the discounted cash flows over all future years to provide an estimate of the liability for each claimant if they were to progress through the health states as per that simulation.
 - The future health states and the associated cash flows for each known claimant were simulated 1,000 times, and the average of the 1,000 liability outcomes was calculated for the total known cohort. This then represents the liability for future payments for the known population.
109. The liability for future payments to the unknown claimants was assumed to be proportional to the liability of the known claimants. This is effectively the same as the approach used in previous sufficiency reviews, where the disease stage distribution for the unknown claimants was assumed to be the same as that of the known claimants.
110. In addition to allowing for future payments, there is a liability for amounts payable to unknown claimants immediately upon approval. This liability is for lump sums as well as losses incurred prior to being approved. We allowed for these approximately by calculating the value of lump sum payments based on the assumed stage distribution of the unknowns and allowing for retroactive payment of recurring payments that fell due before the approval date, for example loss of income payments, out-of-pocket expenses, etc. Retroactive recurring payments will be proportionally less than the historic recurring payments to known claimants as people with significant losses or expenses have a greater incentive to claim, i.e. already come forward for approval. We have allowed for retroactive recurring payments by including \$20,000 per unknown claimant in the liability.
111. We calculated the results assuming all unknowns come forward at the valuation date and that past payments are paid immediately and ongoing payments commence at the valuation date. Clearly there will be a delay in unknowns coming forward, but the financial impact of the delay is very small as the unknowns represent a relatively small proportion of the total claimant group and the discounting associated with the delay is small as the net discount rate is so low (see Section 9.4).

these probability distributions affect the pattern and distribution of outcomes. The probability of a certain outcome refers to the proportion of trials (or observed frequency) calculated by the model which resulted in the given outcome.

9 Assumptions

9.1 Development of Assumptions

112. A significant number of assumptions are required to calculate the liabilities of the Trust. The best estimate assumptions with respect to disease progression, treatment rates and treatment efficacy were established by the MMWG and documented in their 2019 report. As review of these assumptions is outside our area of expertise, we have adopted these assumptions without modification for use as best estimates in our actuarial model, except for the assumed treatment rates. Details of our analysis of the treatment rates is included in Section 9.6. With respect to the rates of mortality, Eckler and Morneau Shepell used a different assumption than the MMWG in certain cases, as described further in Section 9.5.
113. We have worked with Morneau Shepell to establish appropriate values for each of the assumptions. In setting the assumptions we have both used the cohort data provided by the administrator, guidance from, and discussion with, the Joint Committee, as well as other external sources including hepatologists and the insurance industry where necessary, to form a view as to the likely future outcomes.
114. In all cases, Eckler and Morneau Shepell agreed that the assumptions (set out below and in Appendices C to H) are appropriate.

9.2 Best Estimate Assumptions and Margins for Adverse Deviations

115. As noted earlier, a "margin for adverse deviation" is an adjustment to the best estimate assumption that results in an increase in the resulting liability; this increase in the liability is the provision for adverse deviation.
116. The provision for adverse deviation is intended to provide protection against experience that is somewhat worse than the "best estimate" assumption.
117. Use of the expected, or mean, transition probabilities and other medical model parameters would reflect a "best estimate" approach to the liability. As discussed previously in this report, a "best estimate" liability is associated with a 50% probability that it will turn out to be too low.
118. As discussed earlier, it is appropriate in this sufficiency review to incorporate some margins for adverse deviation.

9.3 Cohort Size and Development

9.3.1 Overview

119. The assumption as to the number of claimants that will eventually come forward is important to the results of our valuation. Various theoretical estimates of the number of claimants have been produced since 1998.

In addition, there are now about 21 years of actual claims experience. The actual number of claimants who have come forward to date is significantly less than was predicted by the original theoretical estimates. Accordingly, adjustments have been made to the estimated numbers of claimants over the course of the seven reports that we have produced.

9.3.2 2019 Cohort Revision Regular Benefits

120. The Administrator has provided us with data on 5,369 approved infected claimants as at December 31, 2019, split as shown in the table below.

	Transfused	Hemophiliac	Total
DB9	185	302	487
DA9 or alive	3,814	1,068	4,882
Total	3,999	1,370	5,369

121. The claims deadline was June 30, 2010, except for claims made within one year of the person reaching the age of majority or, with Court approval, claims made within 3 years of the person learning of their infection with HCV. Subsequent to the 2010 review, the Courts approved two late claims protocols (CAP1 and CAP2) that allow persons to make claims after this deadline. In addition, there are a number of claims that were submitted prior to the deadline that have not yet been approved. Thus, in addition to the approved or “known” cohort, there is still an “unknown” group of claimants that have yet to be approved, either because their claim has not yet been approved, or because they have not yet applied for approval. An estimate of these unknowns is required. We have arrived at this estimate by making assumptions as to the number of future CAP1 and CAP2 claims and applying assumed approval rates to these as well as the regular in-process claims.

122. Based on the data as at December 31, 2019, the approval rate for CAP1 and CAP2 claims since 2011 are summarized below:

Year	Transfused				Hemophiliac			
	No. of claims	Approved (A)	Denied (B)	Approval rate (A) / [(A)+(B)]	No. of claims	Approved (C)	Denied (D)	Approval rate (C) / [(C)+(D)]
2011	4	1	2	25%	-	-	-	-
2012	53	30	23	57%	4	3	1	75%
2013	22	11	11	50%	-	-	-	-
2014	13	8	5	62%	1	1	-	100%
2015	13	9	4	69%	4	3	1	75%
2016	9	5	4	56%	1	1	-	100%
2017	10	9	1	90%	-	-	-	-
2018	32	11	16	41%	-	-	-	-
2019	15	7	5	58%	1	1	2	100%
Total	171	91	71	56%	11	9	2	82%

123. We understand that the number of claims being assessed under CAP1 and CAP2 in the Regular Benefit Plan has increased in recent years in part due to the advertising campaign that was run for the Late Claims Benefit Plan. This is because a person claiming under Late Claims Benefit Plan who would be eligible under the Regular Benefit Plan is automatically assessed under the Regular Benefit Plan. These elevated claims numbers are unlikely to continue, with the advertising campaign having ended in 2020.
124. With this in mind, and based on the approval rates observed from the table above, we have assumed there will be 71 additional transfused alive or DA9 claims after 2019 (under CAP1, CAP2, or the exceptions to the 2010 deadline), and that 39 of these will be approved for payment (55% approval rate). We have assumed that there will be an additional 6 hemophiliac claims, and that 100% of these will be approved.
125. In addition, the Administrator has provided us with data on 21 alive or DA9 transfused claims in process at December 31, 2019. Of these, 12 were claims made before 2011, which we assumed will not be approved. For the remaining 9 in process claims, we applied the same 55% assumed approval rate, resulting in an additional 5 assumed approved claims. There were 2 transfused DB9 and 1 hemophiliac DA9 claims in process at the valuation date, which we assumed will not be approved since they were made before 2011.

126. The total assumed unknown cohort is therefore 44 alive or DA9 in the Transfused Plan (39 + 5) and 6 alive or DA9 claims in the Hemophiliac Plan. A summary of the total cohort is shown in the table below.

	Transfused	Hemophiliac	Total
Known DB9	185	302	487
Known DA9 or alive	3,814	1,068	4,882
Unknown DA9 or alive	44	6	50
Total	4,043	1,376	5,419

127. To show the sensitivity of the results to the number of claimants coming forward and to variation in the denial rate for the unapproved claims in process, we have calculated the cost of 10 additional approved transfused and hemophiliac claims. This sensitivity is discussed further in Section 15.
128. The distribution of the known alive cohort as at December 31, 2019 is shown in Appendix A. Separate tables are shown, first indicating the number of claimants and percentage allocations of the known transfused cohorts by age and clinical stage at December 31, 2019 (Appendices A-1 and A-2); next, the hemophiliac number of claimants and percentage distributions by age and clinical stage, as at December 31, 2019, are included in Appendices A-3 and A-4.
129. We have assumed that the proportion of future alive claims arising at each clinical stage will be in line with those transfused claims that have come forward in the 6 years prior to December 31, 2019. We have assumed the same distribution of claims for transfused and hemophiliac claims, since the recent hemophiliac data is too sparse to be relied on. This assumed distribution of claims is summarized in the table below, which shows that recent alive claims tend to be at a more advanced clinical stage than the cohort as a whole. For previous sufficiency reviews, we assumed that the distribution of future alive claims would be in line with the known cohort.

	Known Alive Claimants		Assumed future alive claimants
	Transfused	Hemophiliac	
Level 1: Cleared virus	18%	17%	5%
Level 2: PCR positive	29%	15%	20%
Level 3: Non-bridging fibrosis	36%	40%	50%
Level 4: Bridging fibrosis	7%	9%	5%
Level 5: Cirrhosis	7%	11%	10%
Level 6: Decomp/ cancer/ transplant/extrahepatic	3%	8%	10%
Total	100%	100%	100%

130. We have assumed that the proportion of future transfused DA9 claims arising at each clinical stage will be in line with all DA9s approved to date, since there are insufficient numbers of recent DA9 claims from which to derive a more reliable distribution assumption. The same approach was taken for unknown DA9s for previous sufficiency reviews. The assumed distribution of future transfused DA9 claims is summarized in the table below, which shows that DA9s tend to be at a more advanced clinical stage than alive claims, as would be expected.

	Known Transfused DA9 Claimants	Assumed future transfused DA9 claimants
Level 1: Cleared virus	18%	18%
Level 2: PCR positive	24%	24%
Level 3: Non-bridging fibrosis	10%	10%
Level 4: Bridging fibrosis	0%	0%
Level 5: Cirrhosis	3%	3%
Level 6: Decomp/ cancer/ transplant/extrahepatic	9%	9%
Total	100%	100%

131. We assumed that the one assumed future hemophiliac DA9 claim would be at level 6.

9.3.3 Further Hemophiliac Cohort Assumptions Regular Benefits

132. At the valuation date, 75% of the known applicants who were alive at January 1, 1999 are still alive and 25% of the known applicants alive at January 1, 1999 have subsequently died. We have assumed that the 6 unknowns alive at January 1, 1999 who are yet to claim will present in broadly the same proportion, i.e. 5 will be alive and 1 will be DA9 and their stage distribution will be the same as the stage distribution of the known claimants.
133. Currently 22% of the known alive and DA9 claimants are HIV co-infected. We have assumed that the same percentage of the unknown claimants will be co-infected in level 1 and that 100% of the co-infected at level 1 will take the \$50K option. This results in one \$50K option claim. The rest of the alive and DA9 unknowns will claim under the regular heads of compensation, which are triggered by disease progression and other losses.

9.4 Net Discount Rate

134. The lump sum present value of future benefit and expense payments depends on two main economic parameters. The first is the nominal rate of investment return that will be earned or credited on the fund's assets. The second is the rate at which the future payments may be expected to increase (most of the

benefits under the plan are scheduled to increase in accordance with increases in the Consumer Price Index).

135. The foregoing two parameters affect the calculation of the lump sum present value in opposite directions. The higher the rate of investment return that is used in discounting the future payments to the present time, the lower will be the resulting lump sum present value; the higher the rate that the payments are assumed to increase in the future, the higher will be that resulting present value.
136. A precise present value calculation would require a formula incorporating the nominal rate of return and the rate of inflation as separate parameters. However, virtually the same result will flow from a simpler formula where the future payments are discounted at a net rate equal to the excess of the nominal rate of return over the assumed rate of inflation, also referred to as the real rate of return.
137. We developed the net discount rate for this valuation as follows. First, we established expected long term returns for each of the asset classes invested in by the fund (including the Provincial/Territorial notional assets which are effectively invested in treasury bills). Then, taking into account the standard deviation of each asset class's returns (the standard deviation is a measure of how variable returns have been historically and commonly used as an indication of investment risk) and the historical correlations between the asset class returns (the degree to which the asset class returns are related to each other), we modeled the expected return from the overall portfolio based on the target asset mix. This approach allows us to capture the effect of the diversification and rebalancing of the invested assets in the portfolio. We then subtracted an explicit expected inflation assumption, to derive a "best estimate" of the net rate of return.
138. As discussed in Section 9.2, it is not appropriate to use a best estimate of the net return as the discount rate. We therefore included a margin for adverse deviations in assumed investment returns and accordingly reduced the best estimate net discount rate to arrive at the sufficiency valuation assumption. The same margin of 0.25% per year was included in the 2016 sufficiency review.

9.4.1 Asset Allocation

139. The current target asset allocation is the same as assumed for the previous sufficiency review, and is as follows:

Fund	Asset Class	Target Asset Allocation	Fund Allocation	Total Asset Allocation
Long Term Fund			89.1%	
	Real Return Bonds	80.0%		71.2%
	Universe Bonds	6.0%		5.4%
	Global Equity	14.0%		12.5%
Short Term Fund			2.6%	
	Short Term Cash	100.0%		2.6%
Provincial/Territorial Notional Assets			8.3%	
	3 Month Treasury Bills	100.0%		8.3%
Total			100.0%	100.0%

9.4.2 Derivation of the 2019 Discount Rate Assumption

140. Our discount rate was derived using the long term expected returns as per the 2020 version of the Eckler Investment Model. This proprietary model contains Eckler's view of returns by asset class over various time horizons, as well as the associated standard deviations and correlations of these asset classes. The expected nominal returns and standard deviations¹ assumed for each asset class are shown in the table below:

%	Short term and Cash	Universe Bonds	Real Return Bonds	Global Equity
Expected Return	2.29	3.11	2.50	7.11
Standard Deviation	2.27	6.52	10.81	17.15

141. This model allows us to stochastically calculate the expected return for a portfolio, taking into account the weighted average return of the underlying asset classes as well as the extra return arising as a result of annually rebalancing the portfolio to the strategic allocation. In calculating the discount rate, we first calculate the expected nominal return for the fund and then adjust it for the expected inflation to obtain the necessary real return discount rate.

¹ The mean returns and standard deviations were calculated using historical experience by asset class over a 30 year period.

142. The calculation includes an allowance for additional return (above the weighted average expected return) that arises from diversification and rebalancing. As there is no rebalancing between the invested assets and the P/T Notional fund, the diversification and rebalancing adjustment was calculated solely on the invested assets.
143. The resulting best estimate and sufficiency valuation net discount rates are:

Asset Class	Weight	30 Year Expected Return	Contribution to Return
Short Term and Cash (PT Notional Fund and invested short term fund)	10.9%	2.29%	0.25%
Universe Bonds	5.4%	3.11%	0.17%
Global Equity	12.5%	7.11%	0.89%
Real Return Bonds	71.2%	2.50%	1.77%
Weighted Return			3.08%
Rebalancing and Diversification ¹	91.7%	0.26%	0.24%
Investment Expenses			(0.04)%
Best Estimate Return			3.28%
Rounding to nearest 5 th %			0.02%
Less Best Estimate Inflation			2.25%
Best Estimate Net Discount Rate			1.05%
Margin for Adverse Deviations			(0.25)%
Sufficiency Net Discount Rate			0.80%

144. The above method also allows us to investigate the statistical distribution of returns and hence calculate, for example, the 95th percentile returns. This is important when assessing the required capital framework as discussed in Section 11.

¹ There is no rebalancing between the Invested Assets and the PT Assets. Accordingly, we have calculated the diversification and rebalancing effect based on the invested asset allocation, and then reduced its overall addition to the best estimate return to reflect the fact that the invested assets are 91.70% of the total assets.

145. While the discount rate used in the 2019 valuation was derived using the same method in 2016, the nominal rate is lower in 2019. The resulting best estimate and valuation net discount rates are therefore lower in 2019 than in 2016, as set out in the table below:

Key Discount Rate Assumptions	2016	2019
Best Estimate Return After Rounding	3.40%	3.30%
Less Best Estimate Inflation	2.25%	2.25%
Best Estimate Net Discount Rate	1.15%	1.05%
Margin for Adverse Deviations	0.25%	0.25%
Sufficiency Net Discount Rate	0.90%	0.80%

146. The best estimate net discount rate is used when calculating the best estimate liabilities. The sufficiency net discount rate is used in calculating the liabilities with provision for adverse deviations used in assessing the sufficiency of the fund.
147. In order to illustrate the sensitivity of the results to variations in the valuation net discount rate, we have also calculated the liability using a more conservative 0.55% per year (this increases the present value of the liabilities).
148. We have continued to ignore the effect of income tax on the investment returns since the Settlement Agreement provides that if any such taxes are paid they will be reimbursed to the fund.

9.5 Mortality Assumptions

149. In their models prior to 2013, the MMWG used standard Canada Life Table mortality for non-liver related deaths on the basis that any extra mortality related to the health problems that had required blood transfusions was no longer present due to the passage of time. For their 2013, 2016 and 2019 models, the MMWG analyzed cohort mortality experience and used mortality rates derived from the data for most ten-year age bands (see tables 5.1, 5.2 and 5.3 of the 2019 MMWG report). The data used to derive these rates is extremely sparse; for the 2019 model assumption, there were: 147 male hemophiliac deaths, 18 female hemophiliac deaths¹, 415 male transfused deaths and 263 female transfused deaths. In our opinion, this data is insufficient to derive mortality rates that can be considered to be calculated in accordance with accepted actuarial practice and therefore we are unable to use the mortality rates derived by the MMWG in our financial assessment. Instead we assumed non-liver related mortality rates would be as per the Canada Life Tables 2016-2018. The effect of this modification of the MMWG assumption is immaterial.

¹ Hemophilia is a genetic disorder that rarely affects females. However, persons who qualify under the hemophiliac plan have medical conditions broader than hemophilia, hence the presence of female deaths in the hemophiliac data.

Because the results of the assessment are not particularly sensitive to this mortality assumption, no margin for adverse deviation was applied.

150. Life insurance underwriting manuals indicate that hemophiliacs have higher mortality rates than non-hemophiliacs. In previous reports, the MMWG discussed this issue and pointed out that other than increased mortality due to HIV infection and liver disease, the underlying mortality of hemophiliacs was the same as non-hemophiliacs (Page 51 of the 2010 MMWG Report). As the extra mortality associated with HIV co-infection and end stage liver disease is explicitly allowed for in the medical model, no additional mortality adjustment is required for hemophiliac's mortality and the Canada Life Tables 2016-2018 mortality rates are used for non-liver related mortality for hemophiliacs without HIV co-infection.
151. For HIV co-infected, we have concerns regarding developing mortality rates from the cohort data as was done in the MMWG report (page 54 and table 5.3) due to the paucity of data. Accordingly, we have assumed non-liver related mortality rates at 624% of the Canada Life 2016-2018. The 624% adjustment was calculated by the MMWG in their 2010 report based on a meta-analysis of four studies with significantly more data than available from the cohort (the cohort based rates were based on 11 deaths over a ten year period, which in our opinion is insufficient to develop meaningful mortality rates). Because this assumption affects a relatively small portion of the liability, no margin for adverse deviation has been applied.
152. For mortality associated with liver-related diseases, we based our assumption on the rates derived by the MMWG, with one adjustment. For HIV co-infected claimants, at older ages it is possible for the 624% of the Canada Life Table 2016-2018 mortality rates to exceed the liver-related mortality rates derived by the MMWG. As a result, we have assumed that liver related mortality for HIV co-infected claimants will be the greater of the MMWG derived rate and 624% of the Canada Life Table 2016-2018 rates. The data that the MMWG relied on to derive the liver-related mortality rates is somewhat sparse, but we understand that this mortality is significantly higher than general population mortality, and we have no better source for this assumption.
153. The medical model makes explicit allowance for HCV liver-related deaths only at stage 6. In practice, some deaths at earlier stages are determined to be HCV related and claimants compensated as such. Based on an analysis of the proportion of deaths being compensated as HCV deaths at each stage we derived appropriate assumptions to reflect this. No margin for adverse deviation was applied to this modified assumption; rather, an allowance for additional HCV related deaths was made in the required capital calculation.
154. No allowance is made in the medical model for future improvements in mortality rates. We have not changed this assumption.

9.6 Treatment to Clear the Virus

155. The medical model assumes there are four categories of treatment drugs that will be offered to claimants: Harvoni (Sof/Ldv); Epclusa (Sof/Vel), Vosevi (Sof/Vel/Vox) and Zepatier (Elb/Grz). These treatment drugs are referred to as Direct Acting Antiviral Agents, or DAAs.
156. The medical model also makes assumptions as to the percentage of claimants who will receive each of these four categories of treatment drugs. These percentages vary depending on whether the claimant was previously treated, whether the claimant is co-infected with HIV, and by genotype. We have adopted these assumptions, which are set out in Appendix E.
157. The MMWG issued an addendum to their report on November 18, 2020, following comments provided to the Joint Committee by Dr. Bain that Zepatier “*will likely see little if any use in future*”. The MMWG have confirmed in their addendum that “*full discontinuation of Zepatier, and its replacement with other DAA agents would have negligible to no impact on the current model results.*” Accordingly, we have made no adjustments to the medical model in this regard. As described in the following paragraphs, our assumptions for future treatment costs are based partly on the actual costs observed from the claims data and therefore makes implicit allowance for the costs of Zepatier to the extent it has been used historically. Zepatier is only used by claimants with HCV genotypes 1 and 4, and therefore requires a genotype blood test before being prescribed. There may be cost savings in future if alternative DAAs are used that do not require such a test, provided these alternatives do not cost more than Zepatier, but given the considerable uncertainty in the treatment cost assumption, refinement to allow for possible savings is not warranted. Further, any associated savings are not expected to be material to our assessment of the Trust’s financial sufficiency.
158. Based on information provided by the MMWG, we developed an assumed average treatment duration. Treatment durations generally vary from 8 weeks to 24 weeks. As noted previously, the treatment protocols, including treatment duration, vary depending on a number of factors, including whether the individual has been previously treated, the disease stage of the individual (for example, whether the claimant is cirrhotic) and the genotype of the virus. Based on the average treatment length from the data for 2016-2018, we set the best estimate and sufficiency assumption to 4.5 months (in 2016, the assumption was 3.0 months).
159. The HCV Trust pays only the portion of the HCV treatment drugs that is not reimbursed by either a provincial or private health plan, and in recent years many provincial and private insurance programs have been extended to include the treatment drugs. Since private and provincial insurance coverage often differs based on age and/or employment, we have considered the assumed claims on the Trust separately for those under/over age 65.

160. In order to estimate the proportion of future DAA treatments that will result in a claim on the Trust for the cost of treatment drugs, we examined the data on both the number of DAA treatments and number of claims for DAA drug costs.
161. Based on the claims data provided by the Administrator, we were able to analyze treatment data by age for 1,846 of the 1,850 alive claimants at compensation levels 3-6. Of these, 72% have received treatment drugs and made a claim for the cost of treatment drugs, or for Compensable HCV Drug Therapy, or both. The data also indicates the type of drug treatment that was administered, and we have broken these down into three categories:
- Interferon only, meaning treatment included interferon, and the claimant never received treatment with a DAA.
 - Interferon and DAA, meaning the claimant received an initial treatment including interferon and a later treatment with a DAA.
 - DAA only, meaning that there was never any interferon treatment, unless it was combined with a DAA.
162. The treatment data for those at levels 3-6 can then be broken down as follows:

	Under age 65	Age 65+	Total
Treated with:			
Interferon-only	697	240	937
Interferon and DAA	155	41	196
DAA only	169	35	204
Untreated (based on data)	340	169	509
Total alive at level 3-6	1,361	485	1,846

163. In many cases, the data will not accurately reflect that an individual has been treated, for example if the cost of their treatment was met in full by a private or provincial program and there was no claim on the Trust. We assumed that 35% of those that are untreated according to the Administrator's data have in fact previously been treated.
164. Based on the efficacy rate of interferon-based treatments in the MMWG report of 57.8%, we assumed that 42.2% of the interferon-only treatments were unsuccessful, and that 85% of these were subsequently treated with a DAA that is not reflected in the data.
165. The resulting number of assumed treatments are tabulated below, along with the number of claims received for treatment drug costs from currently alive claimants.

	Under age 65	Age 65+	Total
Number of treatments including a DAA, from data	324	76	400
Number untreated in data but assumed treated with DAA	119	59	178
Number treated with interferon only in data but assumed later treated with DAA	174	66	240
Total assumed DAA treatments (A)	617	201	818
Number of claims for DAA drug costs (B)	272	66	338
Proportion of DAA claims resulting in claim for drug costs = (B) / (A)	44%	33%	41%

166. Based on the proportions from the table above (rounded to the nearest 5%) and the average treatment drug cost claim amount from the data of approximately \$50,000, our best estimate is that future DAA treatments will result in average claim amounts of \$22,500 for under-65s and \$17,500 for those age 65 and over. Given the considerable uncertainty in this assumption, we added a margin for adverse deviations of 50%, resulting in assumed average claim amounts of \$33,750 for under-65s and \$26,250 for those age 65 and over. This 50% margin broadly reflects the difference between the observed average claim amounts of around \$50,000 and the cost of a full course of DAA treatment.
167. For the 2016 sufficiency review, the best estimate assumptions were \$45,000 / \$5,000 and the sufficiency assumptions were \$55,000 / \$15,000. These assumptions were based on the expected levels of provincial and private drug coverage rather than an examination of the data, which was very sparse at the time.
168. The medical model assumes that all claimants who are eligible for treatment will be treated over a five year period starting in 2020. The number of claimants who are indicated as having received treatment in the 2016 and 2019 data is significantly lower than would have been expected based on this assumption. In discussion with the Joint Committee on the 2016 sufficiency review, it was pointed out that there could be a number of factors causing this apparent delay in treatment, such as, lack of awareness that claimants at early disease levels are candidates for treatment, or claimants not under the care of a medical specialist who can prescribe and oversee the treatment. For the 2016 review we therefore took the five year treatment horizon as the best estimate, and added a further five year margin, such that all claimants who are eligible for treatment will be treated over a ten year period starting in the year following the valuation date. We have retained the same assumptions for the 2019 sufficiency review.

9.7 Other Assumptions

169. The 2019 valuation required a number of other assumptions, e.g. proportion of claimants claiming loss of income/services/support at various disease levels, their average percentage of disability, income/support

levels, costs of care, drug costs, other expenses, death benefits and so on. We, together with Morneau Shepell, derived appropriate assumptions based on analysis of the claims experience to the valuation date, consideration of the assumptions used in previous valuations, as well as expert medical and other advice.

170. These assumptions differ in some instances between the transfused and hemophiliac plans. We show the assumptions in detail in Appendix F.
171. As discussed in Section 9.2, we start with best estimate assumptions, but for the sufficiency valuation we require assumptions which include margins for adverse deviations. We have not taken margins on all assumptions, only those where there is either a large degree of uncertainty as to the eventual outcome and/or where the overall liability is a large component of the total.
172. This section describes the approach and considerations taken into account in setting the assumptions. The assumptions used are set out in detail in Appendix F.

9.7.1 Lump Sum Payments

173. Lump sum payments are made when a claimant reaches specific stages of the disease. For known claimants, allowance is made for future payments based on their projected progression through the disease per the MMWG model. For unknown claimants, all stage related payments based on their assumed disease stage at the time of approval as a claimant are allowed for, together with future payments based on their projected progression through the disease.

9.7.2 Loss of Income and Loss of Services

174. The assumptions regarding loss of income and loss of services claims may vary depending on the claimant's disease stage, whether the claimant is already claiming one of the benefits, and whether the claimant is projected to clear the virus on treatment or not.
175. For claimants already receiving loss of income or loss of service payments, the actual loss at the valuation date is taken into account. In stochastic projections where the claimant does not clear the virus on treatment, the actual loss is assumed to continue until age 65 or earlier death for loss of income, and for life for loss of services.
176. For claimants not yet receiving loss of income benefits, future loss of income or loss of services benefits are assumed to be paid at an annual rate derived from the average loss of income/loss of services amounts recently in payment.
177. We analyzed the proportion of claimants receiving loss of income/loss of services at each disease stage to derive probabilities of claiming at each disease stage. These probabilities are set such that the proportion of claimants who have not yet cleared the virus receiving such payments in the future is the same as the

proportion of those who have not yet cleared the virus currently receiving such payments. In other words, as current claimants who have not yet cleared the virus move on, or are projected to die, new claimants are projected to replace them at a rate such that the total percentage of claimants who have not yet cleared the virus receiving payments remains constant.

178. For claimants who are projected to clear the virus before going on loss of income or loss of services we assume that they will not receive loss of income or loss of services payments.
179. For claimants who are projected to clear the virus on treatment, allowance needs to be made for recovery and return to work, or return to household duties. We have maintained the same assumptions as were used in the 2013 and 2016 sufficiency reviews, developed as described in the following paragraphs.
180. The amount of data on cured claimants who were receiving loss of income or loss of service benefits is quite limited. It did show, however, that a significant proportion of claimants have continued to receive loss of income/loss of service payments after clearing the virus, especially in cases where the loss has been in payment for a long time.
181. There are no studies that we are aware of that investigate the return to work outcomes for HCV infected people on clearing the virus, so we were unable to identify external data that was directly applicable in this regard.
182. We considered disability tables developed by actuaries for use in life insurance as a further source of information on disability recovery rates. These tables, and associated studies, do not provide any specifically useful data on recovery rates as the disabilities covered are broader than HCV. They do show, however, that recovery rates decline the longer the claimant has been on disability. This is consistent with the recovery data (limited as it is) of the fund, and so we established recovery rates that are duration dependent. In other words, the longer the person has been receiving loss of income or loss of service payments the less likely that these payments will stop on successfully clearing the virus. The rates assumed are shown in Appendix F.
183. The Loss of Income and Loss of Services benefits comprise a significant portion of the liability, and there is considerable uncertainty about the probability of recovery following a cure as a result of HCV treatment. We therefore applied a margin for adverse deviation to the recovery assumption.
184. We developed assumptions regarding the benefit amounts for future Loss of Income and Loss of Services claims based on the experience of the Trust, taking into account differences between transfused and hemophiliac claimants, and trends in the data. We understand that eligible claimants may elect either loss of income or loss of services each year without the possibility to re-elect retroactively. We have therefore

not calculated in this report nor in our six prior financial sufficiency reports the liability to the Trust that would arise from any retroactive re-elections.

185. The Plans initially imposed a \$75,000 limit (in 1999 dollars) on the pre-claim gross income used in calculating a claimant's loss of income; this limit was increased by the Courts to \$300,000 (in 1999 dollars) effective October 2004. In 2008, the limit was raised to \$2.3 million, subject to approval by a Court for claims where the pre-loss income exceeds \$300,000. Since then five claimants (one with a loss of income of \$2.3 million) have been approved. Of the five claimants approved by the Courts, one died in 2010, two are now over 65 years old and thus not eligible for any further income loss payments, the fourth had a net income loss in 2018 of \$1,472,000, and the fifth has a net income loss in 2018 of \$387,000.

9.7.3 Cost of Care

186. Based on analysis of the cohort data and taking into account the trend in recent years, we assumed that average claim amounts will be approximately \$52,500 and that about 50% of those at Stage 6 will claim for cost of care.
187. A review of the cost of care payments to individuals shows considerable variation in benefit amounts; we therefore applied a margin for adverse deviation to this assumption. The assumed average claim amount, including a margin for adverse deviations, is 80% of the maximum claim amount, or \$59,500 including indexing to 2020 and rounded to the nearest \$500.

9.7.4 HCV Drug Therapy

188. HCV Drug Therapy payments are made to claimants receiving a drug treatment regimen that includes ribavirin or interferon, or any other treatment that has a propensity to cause adverse side effects and that has been approved by the Courts for compensation. Prior to the emergence of the recent HCV treatment drugs, all HCV treatments incorporated one or both of these drugs. We have assumed that 5% of the treatments administered to claimants will result in Drug Therapy payments being made to claimants, for the same length of time that we have assumed treatment will take. See section 9.6 for a discussion on assumed treatment length. The same assumption was made for the 2016 sufficiency review.

9.7.5 Uninsured Treatment and Medication

189. For claimants who do not clear the virus, we have allowed for ongoing uninsured treatment and medication. The amount per year was set equal to the average uninsured treatment and medication costs after removing expenses related to treatment aimed at clearing the virus. Likewise the percentage of claimants receiving such payments is derived from the administrator data. The analysis has been done separately for Transfused and Hemophiliacs.

190. For uninsured costs related to treatment to clear the virus we have used the assumptions discussed in Section 9.6 Treatment to Clear the Virus above.

9.7.6 Out-of-Pocket Expenses

191. Out-of-pocket expenses are expenses other than the uninsured medication costs and costs of care discussed above, and include travel costs to receive medical care and costs of obtaining medical evidence for the purposes of obtaining compensation.
192. For claimants who do not clear the virus, we based our out-of-pocket expense assumption on the experience of the Trust. We applied a margin for adverse deviation to this assumption, to reflect the variability in these claims from year to year. A greater margin was included for the 2016 sufficiency review, given the uncertainty at that time about the potential for the introduction of the \$200 per diem for family members accompanying claimants on medical visits in the Special Distribution Benefit Account to create a greater incentive to make out-of-pocket claims on Regular Benefit Account. There is no evidence in the claims data of a greater number of out-of-pocket claims arising under the Regular Benefit Plan, although the average amount claimed was considerably higher in 2019 than in recent years.
193. For claimants who clear the virus, we expect that the out-of-pocket expenses will reduce significantly, but the cohort data is too sparse to be useful in setting an appropriate assumption. We are also aware of only limited evidence from the medical literature. For the 2016 sufficiency review, we reviewed "Patient time costs and out-of-pocket costs in hepatitis C", a study of out-of-pocket expense claims (and other ongoing costs) in BC published in Liver International, 2011. The study showed that out-of-pocket expenses continue to be incurred after successful treatment, but given the generally short period between successful treatment and the study date, it was not conclusive that out-of-pocket expenses will continue in the long term. Accordingly, we have continued to set an assumption (expressed as a single present value payment, payable on successful treatment) that takes into account our expectation that out-of-pocket expenses will reduce considerably on clearing the virus. Because the resulting liability is relatively small, and taking into account the margins we have applied elsewhere, we did not apply a margin for adverse deviation.

9.7.7 Funeral Costs

194. Funeral costs are payable up to \$5,000 for both HCV related deaths before January 1, 1999 and HCV related deaths after January 1, 1999. Analysis of the average funeral costs paid by the fund show that average amount paid per death is not at this maximum rate. We have set an assumption based on the average claim amount and assumed that 85% of deaths will result in a funeral claim. We did not apply a margin for adverse deviation to this assumption.

9.7.8 Deaths Before January 1, 1999

195. The estates of HCV related deaths before January 1, 1999 may elect either \$120,000 in full settlement of all claims (\$120K option), or \$50,000 plus claims by the family, including loss of support or loss of services (\$50K+ option). For previous sufficiency reviews, we made assumptions about the proportion of unknown DB9 claims electing each option. Since there are no unknown DB9 claims assumed for this review, an assumption is no longer required.

9.7.9 Deaths After January 1, 1999

196. Both loss of support and loss of services are payable during the remainder of the deceased's life expectancy, as if the death had not occurred, with loss of support converting to loss of services after age 65.
197. For simplicity we have assumed a life expectancy of 85 for both males and females, and allowed for payments from the age at death to this age. Strictly speaking, life expectancy increases the older the attained age, for example the life expectancy of a 60 year old is higher than the life expectancy of a 40 year old, but our simplified approach will result in a liability that is not materially different to the liability that would be calculated using the slightly more accurate attained age life expectancies.
198. Where loss of income or loss of services were being paid prior to death, it is assumed that 70% of corresponding claims will be made for loss of support and 65% for loss of services after death. The loss of support will be at 70% of the loss of income amount and loss of services will continue at the pre death level.
199. Where loss of income or services were not being paid prior to death we have assumed payments will be made at the average rate in the cohort data and the percentage claiming each type of payment will be as per the cohort data to date. Ideally, different assumptions would be used depending on the assumed status of the primary claimant at death, ie whether they are assumed to be claiming loss of income, loss of services or neither when they die, rather than their status at the valuation date. Since the structure of the medical model does not allow us to make this distinction, we have assumed average rates applied to all claimants not being paid loss of income or services at the date of the sufficiency review that will result in a liability that is not materially different to using different rates based on their status at death.

9.7.10 Death Claims after January 1, 1999 – Loss of Guidance, Care and Companionship.

200. The lump sum amounts payable vary between \$500 for each grandparent or grandchild, \$5,000 for each parent, sibling, or child aged 21 or over, \$15,000 for each child under age 21, and \$25,000 for a spouse. Care and guidance is assumed to be paid at the average rate in the cohort data.

9.7.11 HIV Secondarily Infected Payments in Excess of HIV Program Payments

201. The Plans pay compensation above \$240,000 only in provable claims to those persons who are also receiving compensation under the HIV Program (see Section 6.4). The Joint Committee expects this group to be extraordinarily small or non-existent and therefore, as in previous valuations, we have not performed any calculations pertaining to this limit. There have been no such claims to date.

9.7.12 Secondarily Infected Persons

202. These include spouses and children infected with HCV by their spouse or parent who is a cohort member.
203. We have combined the secondarily infected persons with the primarily infected persons when calculating the liability for each head of compensation, therefore, no liability has been separately identified for those secondarily infected persons.

9.7.13 Outstanding 2019 Payments for Known Claimants

204. As noted in Section 7.6, there were a number of payments relating to calendar year 2019 that were outstanding in respect of the known/approved claimants as at December 31, 2019. These total approximately \$4,655,000 in respect of the Transfused Plan claimants and \$4,175,000 for hemophiliacs.
205. These outstanding payments exclude the regular December 2019 payments, which are already removed from the asset values in the Trust's audited financial statements. For previous sufficiency reviews, we used invested asset values taken from the custodian's statements, and added the regular December payments to the liabilities instead. The net impact of this change on the Trust's financial sufficiency is zero, since the same amount is removed from the assets and liabilities.

9.7.14 Delay in Commencement of Payments to Unknown Claimants

206. As noted in Section 8.2, the above liability amounts assume that all unknowns come forward at the valuation date and that all due amounts are paid immediately. In reality there will be a delay before the payments to the unknowns commence, however, given the small size of the unknown cohort and the low discount rate we have not made allowance for this.

9.8 HIV Program

207. The Joint Committee has instructed us to assume that two additional HIV program claims will be approved, one in 2023 and one in 2027, with no additional administration expenses. Each claim is assumed to be for \$240,000. No interest is paid on these claims and they are not indexed for the cost of living.

9.9 Fees and Expenses

208. The Joint Committee provided us with their estimates of annual expenses up to 2031, broken down by category for each of the Regular Benefit, Special Distribution Benefit and Late Claims Benefit Accounts. These estimates were developed with reference to actual expenses incurred in the recent past, and budgeted expenses for the near future, if applicable.
209. We have allowed for maturing of the fund by reducing annual costs in proportion to projected number of claimants alive after 2031.

9.10 Effect of Emerging Experience

210. When setting the assumptions for this sufficiency review, we used our best efforts based on our understanding of the Trust. We have also made a number of simplifying assumptions or approximations in calculating some of the smaller components of the liabilities; in these cases, we have tried to err on the conservative side, i.e. increasing costs and liabilities. There is, however, significant uncertainty with respect to future experience of the fund, especially arising from changes in the medical model and changes in the benefit payments for non-scheduled benefits such as loss of income or loss of services. Differences from our assumptions will continue to emerge over time. These differences and the related actuarial assumptions will continue to be re-examined at each periodic assessment of the Trust.

10 Detailed Results Regular Benefit Account

10.1 Regular Benefit Cohort

211. The following table sets out the known cohort, and best estimate and sufficiency assumptions for the unknown cohort, for transfused and hemophiliac claimants:

Regular Benefit Cohort Detail 2019			
	Transfused	Hemophiliac	Total
Alive – Known	2,476	806	3,282
DA9 – Known	1,338	262	1,600
DB9 – Known	185	302	487
Total Known	3,999	1,370	5,369
Alive – Unknown	29	5	34
DA9 – Unknown	15	1	16
DB9 – Unknown	0	0	0
Total Unknown	44	6	50
Total Cohort	4,043	1,376	5,419

212. The 2,476 known alive Transfused claimants have an average age of 65.6 years, while the 806 known alive hemophiliac claimants have an average age of 55.1 years.

10.2 Total Liabilities for Transfused and Hemophiliac Claimants Regular Benefit Account

213. The following table sets out the Regular Benefit Account best estimate and sufficiency liabilities for the total (known and unknown) cohort, split between transfused and hemophiliac claimants:

Summary of Regular Benefit Account Total Liabilities for Transfused and Hemophiliac Claimants (\$'000's)					
	Liability - \$000s	Best Estimate		Sufficiency	
		Transfused	Hemophiliac	Transfused	Hemophiliac
	Co-infected taking \$50,000 option	0	74	0	74
1.	\$10,000 to those alive at 1.1.99	642	74	642	74
2.	\$20,000 if PCR positive at 1.1.99	1,160	149	1,160	149
3.	\$30,000 if non-bridging fibrosis	5,895	1,103	7,362	1,414
4.	\$65,000 if cirrhosis	15,152	6,070	23,088	8,499
5.	\$100,000 if decompensation/cancer	24,990	11,874	34,248	14,961
6.	Loss of income/services in lieu of \$30,000 lump sum in 9.1.4	14,664	2,764	15,273	3,005
7.	Loss of income for bridging fibrosis, cirrhosis and decompensation/cancer	17,400	19,612	21,886	21,585
8.	Loss of services for bridging fibrosis, cirrhosis and decompensation/cancer	51,305	35,132	66,733	38,789
9.	Costs of care	46,556	24,683	63,778	31,244
10.	HCV drug therapy	311	75	423	106
11.	HCV drug cost	16,021	4,495	34,118	9,671
12.	Uninsured treatment & medication	3,046	2,844	3,101	2,896
13.	Out-of-pocket expenses	4,335	4,542	5,321	4,612
14.	Excess HIV secondarily infected	0	0	0	0
15.	Pre-1999 deaths	4,668	18,647	4,733	18,986
16.	Deaths after 1.1.99 - funeral	1,688	827	2,141	966
17.	Deaths after 1.1.99 - loss of support /services	49,112	39,371	55,852	43,484
18.	Loss of guidance, care and companionship	20,323	12,822	25,763	14,976
19.	Known outstanding 2019 payments	4,655	4,175	4,655	4,175
20.	Total	281,924	189,333	370,278	219,667

10.3 Liability for Expenses

214. The present value of the assumed expenses, as set out in Appendix G, is \$64,548,000 on the best estimate basis and \$67,070,000 including the provision for adverse deviation.

10.4 Liability for HIV Program

215. The present value of the assumed claim costs for the HIV program, as set out in section 6.4, is \$400,000 on the best estimate basis and \$410,000 including the provision for adverse deviation.

10.5 Regular Benefit Account Assets and Liabilities

216. The assets are taken from Section 7.1.
217. The present values of the various compensation amounts set out in Section 6.2 for Transfused and Hemophiliac claimants, as well as the liabilities for the HIV program and Expenses (above) make up the total liabilities.

Assets	2019		2016
	Best Estimate	Sufficiency	Sufficiency
\$'000's			
Invested Assets	887,810	887,810	901,533
Provincial/Territorial notional asset	92,553	92,553	123,623
Total Assets	980,363	980,363	1,025,156
Liabilities			
Transfused	281,924	370,278	396,188
Hemophiliac	189,333	219,667	257,568
HIV Program	400	410	830
Expenses	64,548	67,070	60,907
Total Liabilities	536,205	657,425	715,493
Excess of Assets over Liabilities	444,158	322,938	309,663

218. The foregoing table indicates that, as at December 31, 2019, the total Regular Benefit Account assets exceed the total Regular Benefit Account sufficiency liabilities by about \$322,938,000.

10.6 Regular Benefit Account Provisions for Adverse Deviations

Provision for Adverse Deviation Included in Sufficiency Liability December 31, 2019 (\$ millions)					
	Total	Trans	Hemo	HIV Program	Expenses
Best Estimate Liability	536.2	281.9	189.3	0.4	64.5
Reduce discount rate to 0.8%	14.5	6.9	5.1	0.0	2.5
Reduce treatment efficacy to 90%	17.4	12.8	4.6	0.0	0.0
Increase treatment costs by 50%	10.3	8.0	2.3	0.0	0.0
Change on pre-treatment and pre-cure rates	38.6	30.9	7.7	0.0	0.0
Extend treatment period from 5 to 10 years	18.7	14.7	4.0	0.0	0.0
Reduce LOI/SVR recovery rates by 50%	8.0	6.1	1.9	0.0	0.0
Margin on Cost of Care Benefit	11.6	7.8	3.8	0.0	0.0
Margin on Out-of-Pocket incident rate	2.1	1.2	0.9	0.0	0.0
Sufficiency Liability	657.4	370.3	219.7	0.4	67.1
Total Provision	121.2	88.4	30.3	0.0	2.5
Provision %	23%	31%	16%	0%	4%

219. The foregoing table indicates that the total provision for adverse deviation for the Regular Benefit Account is \$121 million, or about 23% of the best estimate liability. In our opinion, this is appropriate for assessing the sufficiency of the HCV Trust.

10.7 Analysis of Change in Excess Assets

220. We have analyzed the change in the excess asset position approximately as follows:

Regular Benefit Account - Summary of Change in Excess Assets	\$ millions
Adjusted Excess of Assets over Liabilities – December 31, 2016	309.7
Interest on Regular Benefit Account Excess Assets	30.2
Expected Regular Benefit Account Excess Assets – December 31, 2019	339.9
Effect of Experience Differing from Expected – 3-year period 2017 to 2019	
Loss on Investments - Real return exceeding assumption	(2.9)
Loss on Investments - Inflation lower than assumed	(10.7)
Gain on liabilities - Indexing of benefit payments for inflation lower than expected	7.7
Loss from claimant experience different than expected	(17.1)
Gain on expenses and fees different than expected	1.5
Loss from cohort change	(8.5)
Subtotal: experience differing from assumptions	(30.0)
Effect of Change in Assumptions	
Decrease in net discount rate	(7.8)
Medical model change	(27.8)
Remove margin on pre-treatment rates and associated efficacy	22.4
New drug cost	11.2
Change in cost of care assumption	(16.2)
Change Dependant LOS and SRV rate	36.8
Change in assumptions for fees and expenses	(8.6)
Change in stage distribution for unknown	(3.1)
All other assumption changes	6.6
Subtotal: change in assumptions	13.5
Miscellaneous	(0.5)
Regular Benefit Account Excess assets as at December 31, 2019	322.9

221. The sufficiency of the Regular Benefit Account has improved slightly since 2016.

222. The excess assets would have been expected to grow with the assumed investment return, hence the \$30.2 million increase shown above.

223. The real investment return, i.e. the return above inflation, over the three years since the 2016 assessment was slightly below the assumed return of 0.9% per year. This resulted in the financial position worsening by \$2.9 million.

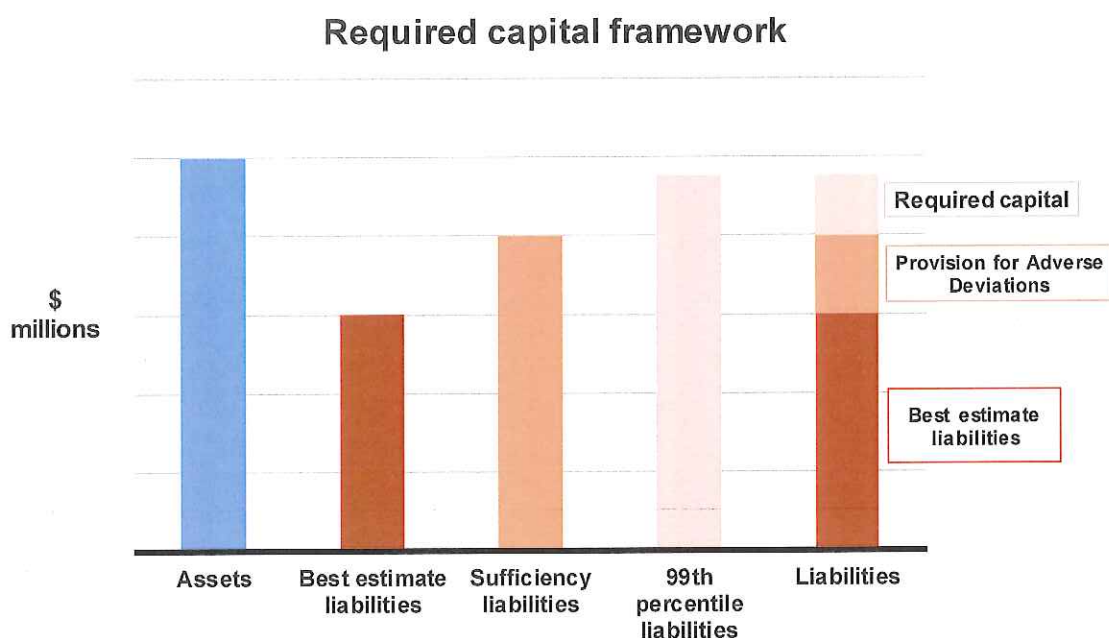
224. Inflation over the period was less than the assumed rate of 2.25% per annum. As a result, the assets grew by \$10.7 million less than expected. Offsetting this, the liabilities increased by less than expected since benefits increased more slowly than assumed. This resulted in the \$7.7 million gain shown above. The gain on the liabilities is less than the associated loss on the assets as the liabilities are smaller than the assets.
225. The \$17.1 million loss as a result of claimant experience being different to what was expected is the net effect of a number of different factors. The number of claimants who received treatment from 2016 to 2019 was lower than expected and the associated treatment costs in the period were lower than expected. One might expect this to generate a gain (due to lower drug treatment costs), however, the eventual number of claimants who will receive treatment is relatively unchanged, so these treatment costs will eventually emerge and the saving in this regard is small (the change in assumption as to these costs is dealt with as a separate item). Offsetting this, and the reason why there is a loss, is that the recent approved cohort appears to be at a more advanced disease stage than the cohort at the 2016 valuation.
226. Actual fees and expenses were lower than assumed at the previous valuation, generating a small gain of \$1.5 million.
227. The reduction in the net discount rate increased the liabilities by a relatively small amount, hence the \$7.8 million loss.
228. Medical model changes from 2016 to 2019 resulted in a \$27.8 million loss.
229. The medical model is based on cohort data provided by the Administrator, which includes a label for some individuals to indicate they have received treatment. However, the absence of this information does not necessarily mean that an individual has not been treated, rather, it may mean simply that no update has been provided to the Administrator. The medical model assumes that a certain number of claimants with “blank” data fields for treatment have in fact been treated. Further, the medical model makes an assumption as to how many of these claimants have also been cured. Due to the uncertainty as to the number of such claimants in the 2016 valuation, we introduced a margin for adverse deviations by reducing the assumed number of such claimants and assuming a lower proportion of these have been cured. With further analysis of the data from 2016 to 2019, we removed the above margin which resulted in a decrease in the liability of \$22.4 million.
230. The assumption for the amount of HCV treatment drug costs was revised to reflect the increased provincial and private coverage of these costs, and our estimates of the numbers of such claims that will emerge in future. These changes, which are described in detail in Section 9.6, resulted in a \$11.2 million gain.

231. For the 50% of claimants at Stage 6 who are assumed to claim for the cost of care, the assumed average claim amount was increased from \$47,000 (2017 dollars) to \$59,500 (2020 dollars), or 80% of the maximum claim, to reflect the upward trend in recent years. This resulted in a \$16.2 million loss.
232. For claimants who are not currently receiving loss of income or loss of services payments we reduced the proportion that are expected to result in a loss of support or loss of services claim on death. This followed an analysis of the data for claimants that were receiving loss of income or loss of services on death before/after age 55, and results in a gain of \$36.8 million.
233. The Joint Committee updated the assumptions as to the future expenses, resulting in a \$8.6 million loss.
234. For previous sufficiency reviews, we assumed that the distribution of future alive claims would be in line with the distribution of the entire known cohort. However, the data shows that recent claims tend to be at a more advanced stage of the disease than claims made in earlier years. We have therefore assumed that the distribution of future claims at each clinical stage will be in line with those that have come forward in the 6 years prior to December 31, 2019, resulting in a loss of \$3.1 million. The impact of this change in assumptions is much more significant for the Late Claims Benefit Plan, where the majority of assumed claims have yet to be approved.
235. The net effect of the remaining assumption changes is a \$6.6 million decrease in excess assets.
236. Other minor changes make up the balancing miscellaneous item of (\$0.5) million.

11 Required Capital Regular Benefit Account

237. The liabilities include some margin for adverse deviation, as discussed earlier in this report. There is, however, significant uncertainty with respect to future experience of the fund that is not provided for in the liability calculation. The fund is subject to volatility arising from factors such as investment gains or losses, and changes in the expected benefit payments that may arise due to variation in disease progression rates and changes in drug treatment options, cost, and effectiveness, and actual benefit payments for non-scheduled benefits such as loss of income or loss of services.
238. We have identified the key risk factors for the Regular Benefit Account as investment risks, disease progression rate uncertainty risk, treatment efficacy risk, and benefit amount risk. Cohort risk is no longer material to the Regular Benefit Account.
239. Investment risks include market risk (e.g. a fall in equity markets) and mismatch risk (the risk that changes in interest rates affect the plans' assets and liabilities to a different degree). To the extent that the actual benefits and expenses payable under the HCV Agreement differ from those assumed in the valuation, interest mismatch may exist even if the duration of the assets is set equal to the duration of the liabilities, but it is not possible to quantify this in any meaningful way.
240. In the event that the fund assets are not sufficient to fund the promised benefits, there are no additional sources of funds. Claimants cannot turn to capital markets to raise additional funds. The risk to the claimants is asymmetrical: if the ultimate experience of the fund is such that there is money left over, each claimant will have received the promised benefit, but if the opposite occurs, later claimants may receive less than the Agreement specifies.
241. In our view, these are compelling reasons for applying a framework, specific to the Hepatitis C fund, to methodically assess what additional buffer (in excess of the sufficiency liability) would be appropriate. We refer to this additional buffer as "required capital" representing the amount of assets, over and above those required to meet the liabilities, that is to be used for the protection, and benefit, of claimants.
242. We first implemented such an assessment in the 2010 sufficiency review. For the 2010 and 2013 reviews, we developed a Hepatitis C specific required capital framework by borrowing concepts from the regulation of life insurance companies in Canada, and adapting them as appropriate for the Trust. For the 2016 sufficiency review, we refined our approach by combining stochastic models for investment risk (comprising market and mismatch risk) and disease progression rates risk. Our stochastic model randomly combines positive, neutral and adverse outcomes from each of investment and parameter uncertainty risk, which allows for the likelihood that not all risk factors are adverse at the same time. We have retained the same approach for the 2019 sufficiency review as we used in 2016.

243. We seek to calculate the amount of assets that, taking into account the variability and uncertainty of investment experience and future benefit payments, are associated with a very high probability (99%) of being sufficient. This is referred to in actuarial literature as the "99th percentile" liability. The difference between this 99th percentile liability and the actual liability reported in the balance sheet becomes the required capital risk amount. Therefore, to the extent there are margins for adverse deviation in the actual liability calculation, the impact is to reduce the additional required capital. Conversely, if there is no margin in the actual liability (i.e. it is a "best estimate" liability), the required capital would be higher. This approach prevents inappropriate duplication (between the actual liability and the required capital) in providing for uncertainty. This is illustrated in the diagram below, which is not to scale.



244. The ideal way to calculate the assets needed to attain the target quantile liability is to use stochastic modeling; in other words, to use a statistical model that produces a large number of possible future outcomes, reflecting the inherent uncertainty of the model inputs. In the context of the Hepatitis C fund, statistical models are available and appropriate for some risks, such as investment risk, and disease progression, but not for all risks e.g. drug efficacy risk, or the risk that the amounts claimed for benefits will be higher than expected.
245. By running the stochastic models for investment and disease progression risks separately, and comparing the sum of the relevant quantile results to the corresponding result from the combined stochastic model, we can quantify the reduction in risk amount from combining the risks in one model; we refer to this as the risk diversification credit. Details of this are set out below.

246. The reason we can include investment and disease progression risks in a stochastic model is that the relevant assumptions can be represented by a statistical distribution of potential future outcomes. For example, the medical model produced by the MMWG includes a probability distribution for each of the key disease progression rates. For other risks, stochastic modelling is not possible because the assumptions used in the calculation of the sufficiency liabilities are single figures rather than the average of a statistical distribution. We therefore need to take a different approach to the required capital calculation for these other risks.
247. For drug efficacy risk, we incorporated an additional margin into the assumed drug efficacy rates used in the sufficiency valuation.
248. For benefit uncertainty, we selected specific benefit amounts and somewhat arbitrarily hypothesized higher costs, such that the additional Required Capital was reasonable in light of the variability in benefit amounts observed in the past.
249. Although we are not able to model drug efficacy risk or benefit uncertainty risk stochastically, we believe that these risks are not correlated with each other, or with the other risks included in the required capital calculation. This means that experience of each risk is very unlikely to be adverse at the same time, so simply adding the individual risk amounts would overstate the overall risk.
250. To reflect this, we took the risk diversification credit calculated for the investment and disease progression risks, and increased this pro rata, based on the individual risk amounts.

11.1 Investment Risks

251. In order to assess investment risks, we have modelled 1,000 possible scenarios. For each of the next 30 years, our model generates CPI inflation and investment returns for each of the major asset classes the fund is invested in (real return bonds, equities etc.). The assumed investment return, standard deviation and correlations for each asset class are based on historic returns, current yields and forecasts. The overall fund return in each year is calculated based on the current allocations to each asset class, and rebalanced at the end of each year in the projection.
252. As described in paragraph 140, we used the expected investment return and CPI inflation from this model to develop the best estimate and sufficiency discount rates. The investment model is therefore consistent with the liability calculations, while capturing the variability of possible future experience.

253. The modelled distribution of the cumulative investment returns¹ over the next 10 years is illustrated in the chart below. We have excluded the top 1% and the bottom 1% of scenarios as these tend to distort the picture.



11.2 Disease Progression Probability Uncertainty

254. As noted earlier, the MMWG cannot know with certainty what the actual disease progression rates or probabilities are, and have provided the estimated mean (representing the best estimate of the disease progression probability), variance, and associated distribution for each one.

255. We modified our liability calculation to use the distribution specified by the MMWG, rather than the mean of the distribution, for seven² key disease progression parameters. Using these distributions in the TreeAge

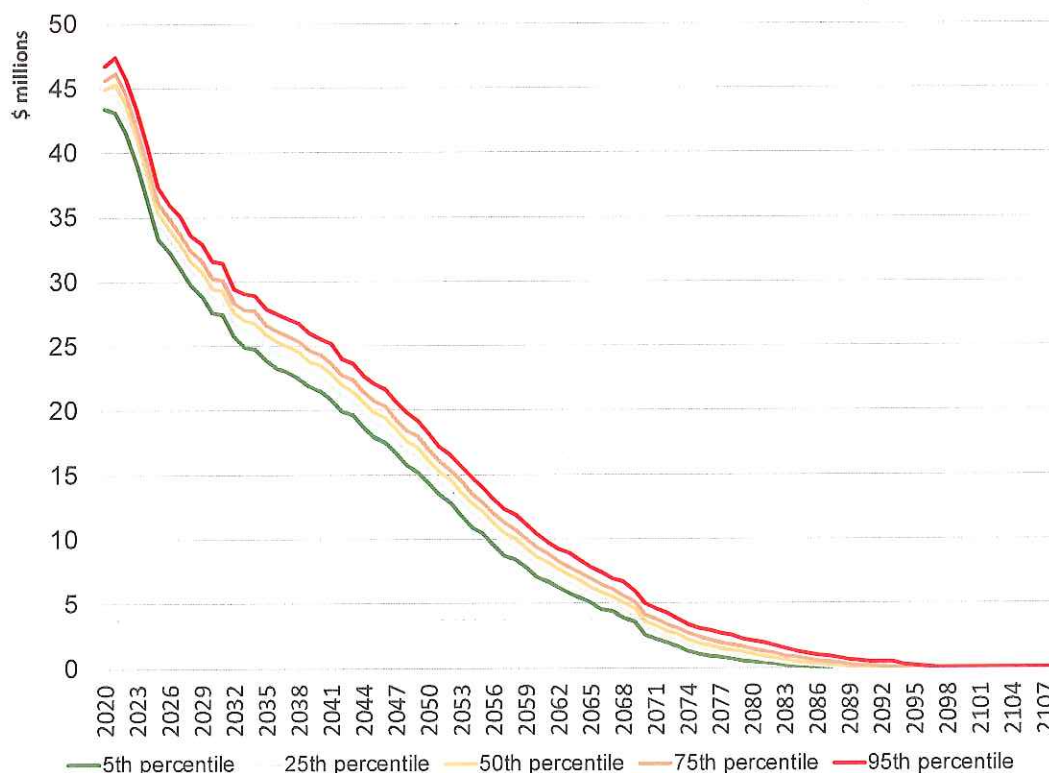
¹ For example, if the plan's investment returns are 2% in the first year and 3% in the second year, the cumulative return after 2 years is approximately 5%. This would be shown as 105% in 2021.

² The stochastic analysis was restricted to seven disease progression parameters to limit the changes needed to TreeAge. The seven specific parameters chosen were those that we understand will have the most significant impact on the results.

software, we generated 1,000 possible patterns of future benefit payments scenarios. These projections do not allow for future inflation.

256. The distribution of these future benefit and expense payment scenarios is illustrated in the chart below; again, we have excluded the top and bottom 5% of scenarios for clarity. For this illustration, we have assumed future CPI inflation is 2.25% per annum, in line with the best estimate.

Distribution of projected benefit and expense payments: Regular Benefit Account



11.3 Combined Stochastic Model for Investment and Parameter Uncertainty Risks

257. Our combined stochastic model uses the distributions of future CPI inflation and benefit and expense payments (before inflation) to produce a distribution of future payments including inflation. We then use the projected future investment returns corresponding to each inflation scenario to calculate the amount of assets that would be required as at December 31, 2019 to meet all the projected payments.
258. The combined model is therefore based on 1,000 financial scenarios and 1,000 payment scenarios. Combining these randomly, we have 1,000 future scenarios being modelled with investment returns, inflation and disease progression rates all varying.

259. Since the projected payments extend nearly 90 years into the future and the projected financial scenarios extend only 30 years, we have assumed that investment returns and inflation will be in line with the sufficiency assumptions after 30 years. Since most of the benefit and expense payments are expected to be made well before 30 years, in our view this assumption does not have a material impact on the required capital calculation.
260. To calculate the parameter uncertainty risk in isolation, we use the combined model described above, but with the sufficiency assumptions for inflation and investment returns used in place of the full distribution of 1,000 financial scenarios. The parameter uncertainty component of the required capital is equal to the difference between the 99th percentile liability and the mean liability (which formed the basis for the sufficiency liability).
261. To calculate the investment risk in isolation, we use the model described above, but with the average of the 1,000 projected patterns of benefit and expense payments in place of the full distribution. The investment risk component of the required capital is equal to:
- the difference between the 99th percentile liability and the median liability (which formed the basis for the sufficiency liability); minus
 - the margin for adverse deviations already reflected in the discount rate (by reducing the net discount rate from the best estimate of 1.05% pa to 0.80% pa).
262. As noted in paragraph 245 above, using the combined stochastic model results in a lower required capital figure than modelling the two risks separately and simply adding the results together. We refer to the difference between these two approaches as the risk diversification credit.

11.4 Efficacy Rate of New HCV Treatments

263. Over the past decade, there have been dramatic developments in the drugs available to treat HCV. More claimants can be treated by these new drugs, they are tolerated far more easily, and clinical trials indicate very high cure rates.
264. These new drug treatment options were first incorporated into the medical model (and our valuation) in the 2013 review, and resulted in a net reduction of liability. At that time, the drugs were very new (recently approved for use in Canada), we identified the potential for variability in their effectiveness: arising from a number of sources: fewer claimants than expected able to be treated, unexpected drug toxicity results in drugs being pulled from market, and/or the actual efficacy (cure) rate lower than anticipated based on the clinical trials.
265. Since the 2013 sufficiency review, additional drugs (that can be used to treat the rare genotypes) have been approved. The MMWG report cites cure rates for some of these drugs in the range of 95% to 99%.

While the additional three years of experience may increase the confidence in these efficacy rates, we believe there is still a significant element of risk, especially for the drugs most recently approved for use. We therefore maintained the same approach to addressing this risk as the 2016 sufficiency review, which reflected the greater certainty around cure rates compared to the 2010 and 2013 reviews.

266. We have included a provision for adverse deviation for drug efficacy in our sufficiency liability by multiplying the best estimate drug efficacy rate by a factor of 90%. As discussed above, given the relative newness of these drugs, and the sensitivity of the liability to this assumption, we have calculated an additional buffer for drug efficacy, equal to the increase in liabilities if we substituted a factor of 80% for the 90% factor in the liability calculation. We took the same approach for the 2016 sufficiency review. The resulting additional buffer for drug efficacy is \$27.9 million.
267. Calculating the additional buffer in this way ensures that there is no double counting, since the provision for adverse deviation for drug efficacy in the actuarial liability is excluded from the additional buffer.

11.5 Uncertainty Regarding Other Benefit and Claim Amounts

268. For benefits other than the lump sums, the dollar amount of benefits that will be paid in the future is not known.
269. Ignoring for the moment the claimants who exceeded the \$300,000 cap, above which court approval is required before the loss can be paid, the average loss of income payment in each year has remained reasonably stable, despite the individual variation. There have, however, been five claimants approved as at December 31, 2019 whose pre-claim income exceeded the \$300,000 cap on loss of income benefits (one claimant's pre-claim income was about \$2 million annually); initially four had their benefits limited by the cap, but this cap was lifted to \$2.3 million in 2008 and these claimants received (or are receiving) the full benefit defined in the Agreement, with no limit. It is statistically unlikely that another very large loss of income claim will be submitted, but in the event that one does, it seems reasonable to earmark some amount for this potential future claim; a \$1 million annual loss of income claim payable for 12 years would require about \$11.4 million in assets.
270. Other benefits also have significant variation in individual payments, in particular the costs of care, uninsured treatment and medication, and out-of-pocket expenses. We have incorporated a specific provision for adverse deviation in the sufficiency liability for costs of care, and out-of-pocket expense claims for those claimants who clear the virus, and therefore believe an additional buffer for these benefits is not warranted. Similarly, we have incorporated a specific provision for adverse deviation for the cost of HCV treatment drugs, and so no additional buffer is required.
271. Our valuation incorporates an assumption regarding the proportion of deaths (other than deaths at level 6) that are deemed to be HCV related (with the ensuing additional benefits). There is considerable

uncertainty around this outcome, as it depends on a number of factors, including the co-morbidities and the interpretation of “death materially contributed to by HCV”. If the assumed proportion of deaths at levels 2 through 5 that are deemed to be caused by HCV were increased by adding 10% at each level, the liability would increase by \$15.0 million.

272. Considering only this subset (one additional large loss of income claim and additional deaths attributed to HCV) of the possible variation in benefit and claim amounts, and calculating the impact of a plausible change in average benefit amount or claim rate for each gives a total increase in liability of \$26.4 million. We believe this is a reasonable risk amount in respect of benefit uncertainty.

11.6 Actual Size of Unknown Cohort

273. Even though the official cut-off date for claimants coming forward was 30 June 2010, there is still some uncertainty regarding the size (and profile) of the unknown cohort, however, with the passage of time, we believe this risk has diminished materially and is no longer one of the key risks of the Regular Benefit Account. We have therefore dropped it from the Required Capital Risk Components.

274. Note that cohort size is a key risk for the Late Claims Benefit Plan, discussed in Section 14.5.

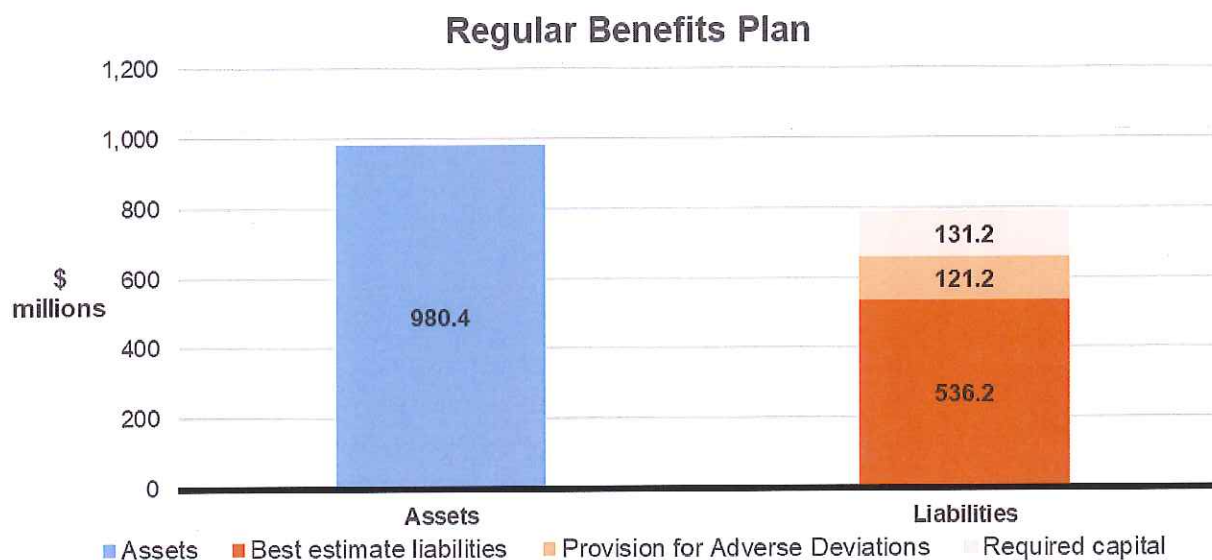
11.7 Total Diversification Credit

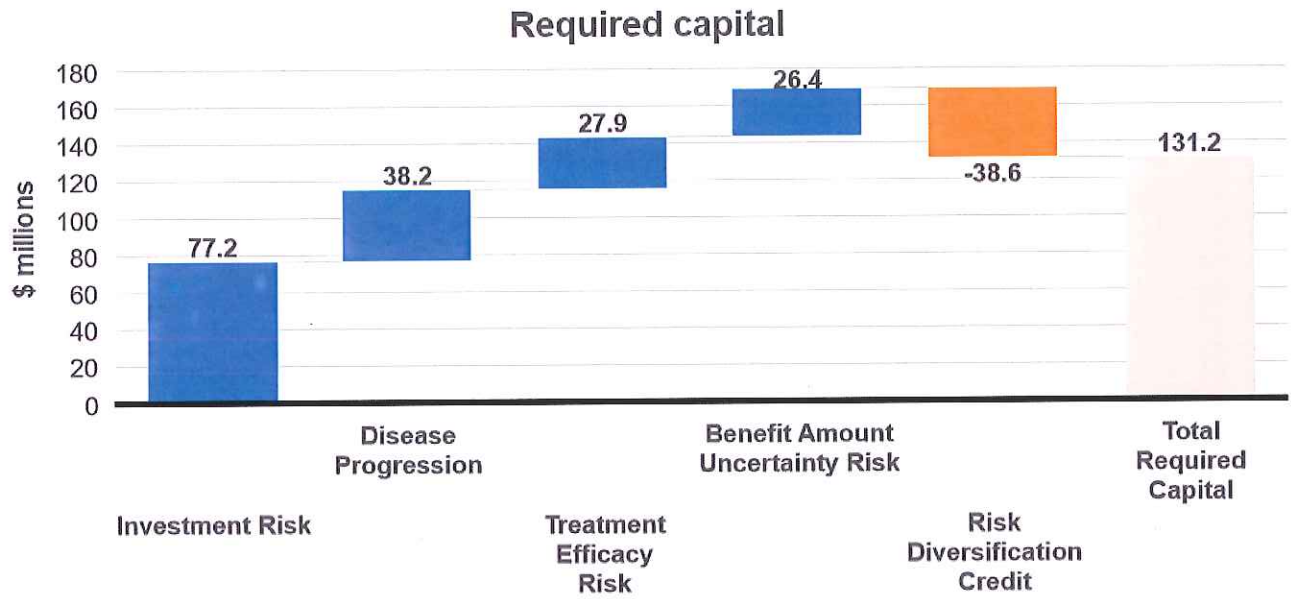
275. As described in paragraph 250, we calculated the total risk diversification credit by increasing the credit emerging from the stochastic model for investment and disease progression risks pro rata, based on the total required capital for each individual risk. The resulting risk diversification credit was \$38.6 million.

11.8 Results of Hepatitis C Specific Approach to Required Capital

276. The results of the Hepatitis C specific approach to calculating required capital are set out in the following table and charts:

Estimated Required Capital on Hepatitis C Specific Approach		
Risk Component	Hepatitis C Specific Risk Amount (\$000s)	
Investment Risks	77,158	
Claimant Risk	Disease Progression Rate Risk	38,237
	Treatment Efficacy Risk	27,947
	Benefit Amount Uncertainty Risk	26,444
Risk Diversification Credit	(38,605)	
Total Required Capital	131,181	
Required Capital as a percentage of the Sufficiency Liability	20.0%	





12 Financial Position Regular Benefit Account

277. The following table summarizes the financial position of the Regular Benefit Account as at December 31, 2016 and 2013.

Regular Benefit Account (\$000s)			
	2019		2016
Assets	Best Estimate	Sufficiency	Sufficiency
Invested Assets	887,810	887,810	901,533
Provincial/Territorial notional asset	92,553	92,553	123,623
Total Assets	980,363	980,363	1,025,156
Liabilities			
Transfused	281,924	370,278	396,188
Hemophiliac	189,333	219,667	257,568
HIV Program	400	410	830
Expenses	64,548	67,070	60,907
Total Liabilities	536,205	657,425	715,493
Excess of Assets over Liabilities	444,158	322,938	309,663
Required Capital	n/a	131,181	133,166
Excess Capital	n/a	191,757	176,497

278. The foregoing table indicates that, as at December 31, 2019 the assets exceed the sufficiency liabilities by about \$322,938,000.

279. After allowing for the required capital buffer of \$131,181,000 as discussed in Section 11.8, the excess capital is \$191,757,000.

280. In our opinion, the Regular Benefit Account is sufficient.

13 Detailed Results Special Distribution Benefit Account

13.1 Special Distribution Benefits Cohort

281. The Special Distribution Benefits are paid to eligible members receiving Regular Benefits. Please see Section 10.1 Regular Benefit Cohort for details.

13.2 Special Distribution Benefits Assumptions

282. For many of the Special Distribution Benefits, the benefit is expressed as a percentage applied to a particular benefit under the Regular Benefits Plan e.g. the increase of 8.5% applied to all lump sum payments. For such Special Distribution Benefits, we calculated the liability by applying the appropriate percentage to the corresponding liability in the Regular Benefit Account and no additional assumptions for the Special Distribution Benefits liability were needed.

283. In some cases, however, additional assumptions were required. These are set out below.

284. While the additional out-of-pocket amount per visit under the Special Distribution Benefits is defined, an assumption as to the number of visits per year is needed. Based on our analysis of recent claims, we assumed that 2.5% of transfused claimants that have not cleared the virus will claim for family members' out-of-pocket expenses of \$200 (2014 dollars) per visit, and those that claim will make an average of 14 visits claimed per year. For hemophiliacs, we assumed 7.0% would claim, with an average of 16 visits claimed per year.

285. The Special Distribution Benefits include a payment of \$4,600 (1999 dollars) to the parents and children over age 21 of infected claimants who died as a result of HCV. Based on our analysis of the data, we assumed the liability would be equal to the following percentages of the corresponding liability in the Regular Benefit Account:

Special Distribution Benefit Account Family Benefit Liability % of Corresponding Regular Benefit Account Liability				
Claimant Status	Transfused		Hemo	
	DA9	DB9	DA9	DB9
% of Regular Benefit Liability	30%	n/a ¹	20%	n/a ¹

¹ This liability is for unknown deceased claimants as these benefits have already been paid in respect of all known deceased claimants. We have assumed that there are no Unknown DB9s, hence no % of Regular Benefit Liability assumption is required

286. The Special Distribution Benefit Account will pay for cost of care expenses over the maximum of \$50,000 (1999 dollars) per year payable under the Regular Benefits up to an additional \$10,000 (1999 dollars) per year. Based on our analysis of the data, we have assumed this is an extra 1.3% of the corresponding cost of care liability in the Regular Benefit Account.
287. Co-infected hemophiliacs who elected the \$50,000 lump sum in lieu of other benefits payable under the settlement may now apply to receive the other benefits instead, net of the \$50,000 already paid. According to the data, there are 60 claimants (19 alive at level 1, 23 alive at level 2, and 18 DA9s) who made this election. Of the 23 alive claimants who were at level 2 when they elected the \$50,000 lump sum, 7 have already made a successful application to receive the other benefits, based on information provided to us by the Joint Committee. Based on the medical model, the 19 claimants who were at level 1 at the time of their election will not progress in the disease, and so the other benefits will not be paid, even if a successful application were made.. As DA9s are not posthumously given the option to apply for the other benefits, we have calculated the additional cost assuming that only the 23 alive claimants who were at level 2 when they elected the \$50,000 lump sum will apply for and receive the other benefits, net of the \$50,000 already paid.
288. For the continuation of loss of services payments to permanently disabled Approved Dependents after the actuarially calculated normal life expectancy of a deceased claimant, we first calculated the liability for the four known permanently disabled Approved Dependent children who are eligible for this benefit. We then assumed that the liability for future eligible permanently disabled Approved Dependents would be two times the known liability. The Administrator has identified one permanently disabled Approved Dependent parent who is currently receiving loss of services payments. It is extremely unlikely that this claimant will survive beyond the deceased claimant's normal life expectancy, and we have assumed that this will not occur. At the previous sufficiency review, there was also one permanently disabled Approved Dependent spouse eligible for continued loss of services payments from the Special Distribution Benefits Account, but this claimant died before December 31, 2019.

13.3 Financial Position Special Distribution Benefit Account

Assets	2019			2016
	Best Estimate	Sufficiency	Provision for Adverse Deviations	Sufficiency
Invested Assets	99,514	99,514	n/a	185,750
Provincial/Territorial notional asset	0	0	n/a	0
Total Assets	99,514	99,514	n/a	185,750
Liabilities				
Compensate for lost pension benefits at 10% of pre-tax loss of income	3,435	4,097	661	4,370
Increase hours cap on loss of services to 22 hours	18,978	21,868	2,890	24,466
Increase maximum benefit payable for Cost of Care by \$10,000 in 1999 dollars	926	1,235	309	1,087
Co-infected Hemophiliac option to apply for alternative benefits, net of \$50,000 already paid	2,153	2,840	686	2,336
\$200 in 2014 dollars per diem for family member out-of-pocket expenses	2,685	3,266	581	2,240
Increase payments on death to children over 21 and parents by \$4,600 in 1999 dollars	8,661	10,724	2,063	11,252
Increase all regular lump sum payments by 8.5%	5,711	7,792	2,082	7,997
Continue payments to permanently Disabled Approved Dependants	4,189	4,491	301	4,224
Outstanding (Retroactive) Payments	742	742	0	91,750
Expenses	1,690	1,749	59	2,323
Total Liabilities	49,171	58,803	9,633	152,045
Excess of Assets over Liabilities	50,343	40,711	n/a	33,705
Required Capital	n/a	12,993	n/a	19,758
Excess Capital	n/a	27,718	n/a	13,947

289. The foregoing table indicates that, as at December 31, 2019 the Special Distribution Benefit Account assets exceed the Special Distribution Benefit Account sufficiency liabilities by about \$40,711,000.

290. After allowing for the required capital buffer of \$12,993,000 as discussed below in Section 13.5, the excess capital is \$27,718,000.

291. In our opinion, the Special Distribution Benefit Account is sufficient.

13.4 Analysis of Change in Financial Position Special Distribution Benefit Account

292. The following table sets out the change in the Excess Assets of the Special Distribution Benefit Account:

Special Distribution Benefit Account - Summary of Change in Excess Assets	\$ millions
Excess of Assets over Liabilities as at December 31, 2016	33.7
Interest on Special Distribution Benefit Account Excess Assets	3.3
Expected Special Distribution Benefit Account Excess Assets as at December 31, 2019	37.0
Effect of Experience Differing from Assumptions During 3-year period 2017 to 2019	
Loss on Investments – Real return lower than assumed	(0.4)
Loss on Investments – Inflation lower than assumed	(1.4)
Gain on liabilities – Indexing of benefit payments for inflation lower than expected	1.1
Gain from claimant experience different than expected	4.2
Gain on expenses and fees different than expected	0.1
Loss due to cohort change	(0.7)
Subtotal: experience differing from assumptions	2.9
Effect of Change in Assumptions	
Decrease in net discount rate	(0.8)
Medical model change	(1.8)
Remove margin on pre-treatment rates and associated efficacy	1.4
New drug cost	0.3
Change in cost of care assumption	(0.3)
Change Dependant LOS and SRV rate	2.7
Change in assumptions for fees and expenses	(0.4)
Change in stage distribution for unknown	(0.3)
All other assumption changes	0.1
Subtotal: change in assumptions	0.9
Miscellaneous	(0.1)
Special Distribution Benefit Account Excess Assets as at December 31, 2019	40.7

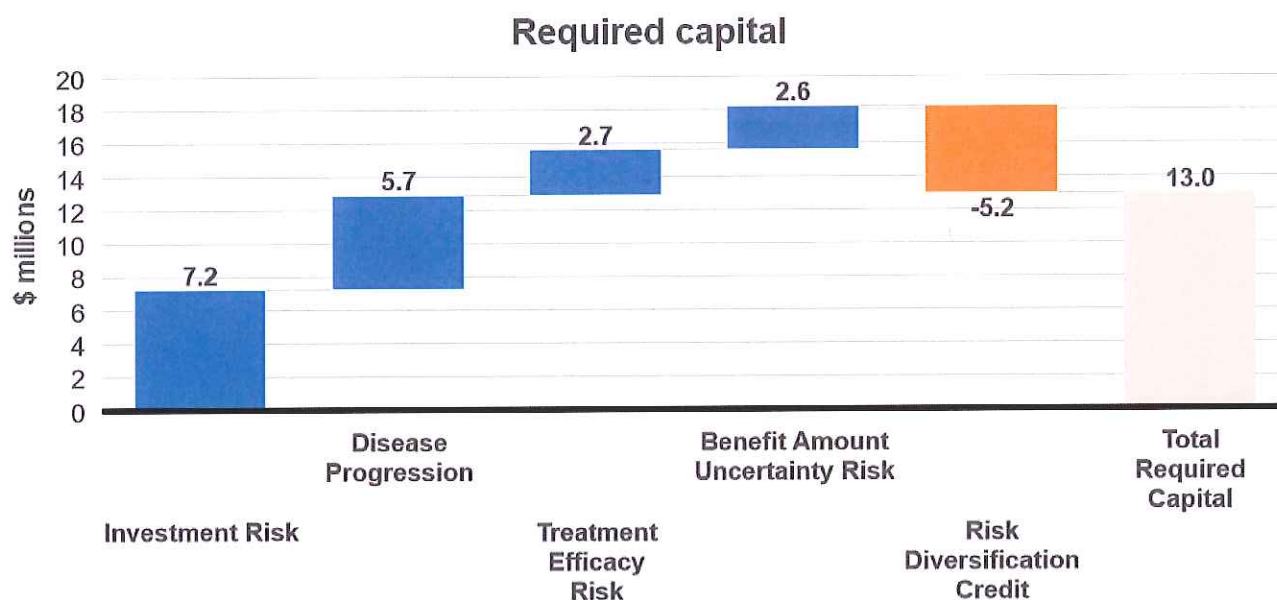
293. Although the size of the Special Distribution Benefit Account has reduced by nearly half, the Excess Assets increased broadly as expected, from \$33.7 million in 2016 to \$40.7 million in 2019. The 2016 liabilities included a provision for retroactive payments of \$91.8 million, and these were paid out following the 2016 Sufficiency Review.

294. The pattern of gains and losses for the Special Distribution Account largely mirror those in the Regular Benefit Account, except that the Special Distribution Account experienced a gain of \$4.2 million due to claimant experience over the 3-year period differing from the assumptions, while the Regular Benefit Account experienced a small loss. The overall effect of changes in assumptions was a \$0.9 million gain, which represents less than 2% of the Sufficiency Liabilities.

13.5 Required Capital Special Distribution Benefit Account

295. The required capital of \$12,993,000 shown in section 13.3 is made up of the components shown in the table and chart below.

Estimated Required Capital on Hepatitis C Specific Approach Special Distribution Benefit Account		Hepatitis C Specific Risk Amount (\$000s)
Risk Component		
Investment Risks		7,246
Claimant Risk	Disease Progression Rate Risk	5,653
	Treatment Efficacy Risk	2,741
	Benefit Amount Uncertainty Risk	2,596
Risk Diversification Credit		(5,243)
Total Required Capital		12,993
Required Capital as a percentage of the Sufficiency Liability		22.1%



296. We calculated the required capital for the Special Distribution Benefits Account using the same approach as for the 2016 Sufficiency Review.
297. We did not model investment risks and disease progression rate risk for the Special Distribution Benefits directly in our stochastic model, because the statistical distribution of this subset of future benefit payments is not available directly from the medical model.
298. For investment risk, we adjusted the required capital calculated for the Regular Benefits pro rata based on sufficiency liabilities and increased the result by 5% to reflect differences in the expected pattern of future payments. In particular, the average payment from the Special Distribution Benefits is approximately 15.0 years after the valuation date, compared to 12.7 years for the Regular Benefits. The increase of 5% was calculated using the stochastic model for the Regular Benefits, and adjusting the projected benefit cashflows to reflect the difference in average term to payment.
299. The required capital for disease progression rate risk was calculated directly. We modified our liability calculation to use the statistical distributions specified by the MMWG, rather than the mean of each distribution, for seven key disease progression parameters. Using these distributions in the TreeAge software, we generated 1,000 possible liability values. The required capital for this risk is calculated as the difference between the 99th percentile liability and the median (50th percentile) liability.
300. We calculated the risk diversification credit in respect of investment and disease progression rate risks on an approximate basis, by assuming that the square of the combined risk is equal to the sum of the squares of the individual risks.
301. The required capital for treatment efficacy risk was calculated in the same way as for the Regular Benefits, based on the change in sufficiency liability due to multiplying the best estimate drug efficacy rate by a factor of 80% rather than 90%.
302. We calculated the required capital for benefit amount uncertainty risk as 4.6% of the sufficiency liabilities, excluding the provisions for retroactive benefit payments and administrative expenses. This is the same proportion as for the Regular Benefits.
303. The overall risk diversification credit was calculated in the same way as for the Regular Benefits, by increasing the diversification credit calculated for the investment and disease progression risks pro rata, based on the individual risk amounts.
304. The Special Distribution Benefit Account Required Capital of \$13.0 million is lower than the 2016 required capital of \$19.8 million in absolute dollar terms, but represents a greater proportion of the corresponding sufficiency liabilities (22% in 2019 compared to 13% in 2016). The main reason for this is that both the assets and liabilities have reduced considerably following retroactive payments of over \$90 million, and the residual liabilities in the Special Distribution Benefit Account are longer term in nature.

14 Detailed Results Late Claims Benefit Account

14.1 Late Claims Benefit Plan Regular Cohort

305. Claimants under the Late Claims Benefit Plan go through a two-stage approval process. At Stage 1, they must provide an explanation satisfactory to the referee for why they are late. At Stage 2, they must complete an application package for assessment by the Administrator.
306. An advertising campaign was launched in January 2018 to inform potential claimants of the Late Claims Benefit Plan. By June 2018, 1,433 infected claims had been registered, as well as 262 claims by family members of deceased persons. The number of new claims being registered has slowed considerably since then.
307. Although there had been 1,579 late claims registered by infected persons and 315 by family members of deceased infected persons who were registered under the Regular Benefit Plan by December 31, 2019, most of these had not yet been adjudicated. A summary is shown in the table below.

	Infected	Family members
Claim registered but Stage 1 forms not sent to claimant	217	30
Stage 1 forms sent to claimant but not yet returned	794	121
Stage 1 forms returned and awaiting referee's decision	24	6
Claims denied at stage 1	83	2
Stage 2 forms sent to claimant but not yet returned	300	34
Stage 2 claim in process with Administrator	113	13
Claims denied at stage 2	32	1
Approved claims	16	108
Total claims registered by December 31, 2019	1,579	315

308. Accordingly, we made several assumptions in order to reach an appropriate cohort to assess the sufficiency of the Late Claims Benefit Plan. We incorporated claims data up to June 30, 2020, and based on this data assumed that:
- 5% of registered claims that had not been sent Stage 1 forms would be sent these forms. (After the claimant's initial telephone call, the Administrator has determined that most of these claims either do not satisfy the Late Claims criteria, or that they should be assessed under CAP1 or CAP2 of the Regular Plans.)
 - 50% of infected claimants and 70% of family members who receive Stage 1 forms will ultimately return them.

- 85% of infected claimants and 99% of family members who return their Stage 1 forms will be approved by the referees to proceed to Stage 2.
 - 50% of infected claimants and 90% of family members who receive Stage 2 forms will ultimately return them.
 - 35% of infected claimants and 99% of family members who return their Stage 2 forms will have their claims approved.
 - There will be 100 new infected claims and 60 new family member claims registered after June 30, 2020.
309. This results in a best estimate assumption that there will ultimately be 228 approved late claims by family members of deceased infected persons who were registered under the Regular Benefit Plan, and 114 approved late claims by infected claimants who were not registered under the Regular Benefit Plan. Given the considerable uncertainty in this assumption, we have added a margin of 20 infected claimants and 10 family members, resulting in an assumed cohort of 134 infected persons and 238 family members. Family members of the 134 assumed “new” infected claimants will be eligible to claim for benefits from the Late Claims Benefit Plan when the infected claimant dies. These future family member claims are included in the liabilities in respect of the infected claimants and are excluded from the assumed cohort of 238 family member claims.
310. The Administrator has provided data part way into 2020, which includes 113 infected claimants who had either been approved or were having their Stage 2 forms assessed by the Administrator. Of these, 95% were transfused claims and 5% were hemophiliac claims. We have assumed that the same split will apply to all claims by infected persons.
311. The Administrator also provided a split of 106 family member claims received part way into 2020, showing 95 related to transfused claimants and 11 to hemophiliacs. Again, we assumed that the same proportions will apply to future claims by family members of deceased claimants.
312. A summary of the assumed Late Claims Benefit Plan cohort is shown below.

Cohort	Transfused	Hemophiliac	Total
Infected claimants	127	7	134
Family members	213	25	238
Total	340	32	372

14.2 Late Claims Benefit Plan Assumptions

313. The Late Claims Benefit Plan liability was calculated using the same assumptions as were used for the Regular Benefits and the Special Distribution Benefits.

14.3 Financial Position Late Claims Benefit Account

Late Claims Benefit Account (\$'000s)				
	2019			2016
Assets	Best Estimate	Sufficiency	Provision for Adverse Deviations	Sufficiency
Invested Assets	48,436	48,436	n/a	48,573
Provincial/Territorial notional asset	0	0	n/a	0
Total Assets	48,436	48,436	n/a	48,573
Liabilities				
Transfused	34,556	44,008	9,452	40,700
Hemophiliac	4,421	5,129	709	5,180
HIV Program	-	-		-
Expenses	9,397	9,732	335	8,751
Total Liabilities	48,374	58,870	10,496	54,631
Excess of Assets over Liabilities	62	(10,434)	n/a	(6,058)
Required Capital	n/a	11,445	n/a	10,768
Excess Capital	n/a	(21,879)	n/a	(16,826)

314. The foregoing table indicates that, as at December 31, 2019 the Late Claims Benefit Account sufficiency liabilities exceed the Late Claims Benefit Account assets by about \$10,434,000.
315. After allowing for the required capital buffer of \$11,445,000 as discussed below in Section 14.5, the capital shortfall is \$21,879,000.
316. In our opinion, the Late Claims Benefit Account is not sufficient.
317. The financial assessment of the Late Claims Benefit Account is based on a calculation of a 100% payment of the benefits provided therein. However, the Late Claims Benefit Plan provides for a 25% holdback on all benefits provided for in the Late Claims Benefit Plan until such time as the Courts determine the Late Claims Benefit Account is financially sufficient. This holdback on benefits which is currently in place is sufficient to cover the \$10,434,000 shortfall in the Late Claims Benefit Account created by the sufficiency liabilities exceeding the available assets. The holdback is not however sufficient to cover the additional \$11,445,000 shortfall which is created by the Required Capital buffer.

14.4 Analysis of Change in Financial Position Late Claims Benefit Account

318. The following table sets out the change in the Excess Assets of the Late Claims Benefit Plan Account:

Late Claims Benefit Account - Summary of Change in Excess Assets	\$ millions
Excess of Assets over Liabilities – December 31, 2016	(6.1)
Interest on Late Claims Benefit Account Excess Assets	(0.6)
Expected Excess Assets over Liabilities – December 31, 2019	(6.7)
Effect of Experience Differing from Expected During 3-year period 2017 to 2019	
Gain on Investments – Real return exceeding assumption	0.5
Loss on Investments – Inflation lower than assumed	(0.5)
Gain on Liabilities – Indexing of benefit payments for inflation lower than assumed	0.6
Gain from claimant experience different than assumed	5.8
Gain on expenses and fees different than assumed	0.3
Gain due to cohort change	1.8
Subtotal: experience differing from assumptions	8.5
Effect of Change in Assumptions	
Decrease in net discount rate	(0.2)
Medical model change	(0.9)
Remove margin on pre-treatment rates and associated efficacy	0.6
New drug cost	0.3
Change in cost of care assumption	(0.4)
Change Dependant LOS and SRV rate	0.9
Change in assumptions for fees and expenses	(3.2)
Change in stage distribution for unknown	(9.4)
All other assumption changes	0.1
Subtotal: changes in assumptions	(12.2)
Miscellaneous	-
Late Claims Benefit Account Excess Assets as at December 31, 2019	(10.4)

319. The Late Claims Benefit Account experienced a gain of \$5.8 million due to claimant experience differing from the 2016 assumptions; the main reason being that fewer claims were paid over the 3 years than assumed.

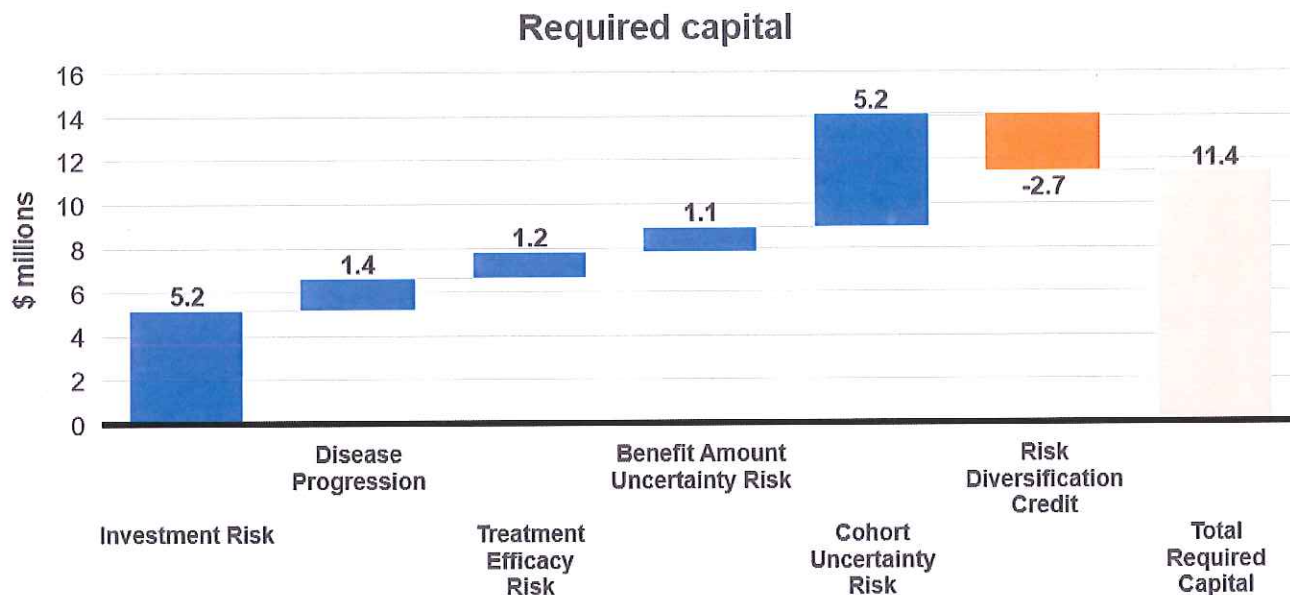
320. There was also a gain of \$1.8 million due to changes in the assumed cohort. In particular, the assumed number of approved infected late claimants was reduced from 159 in 2016 to 134 in 2019, although this was offset to an extent by an increase in the assumed number of family member claims from 93 to 238.

321. However, these positive factors were outweighed by a loss of \$9.4 million due to a change in the assumed disease status of late claimants. For previous sufficiency reviews, we assumed that the distribution of future alive claims would be in line with the distribution of the entire known cohort. As explained in paragraph 234, recent claims have, on average, been at a more advanced stage of the disease than claims made in earlier years, and for this review we have assumed that the distribution of future late claims will be in line with those that have come forward in the past 6 years.
322. The Joint Committee updated the assumptions as to the future expenses attributable to the Late Claims Benefit Account, resulting in a \$3.2 million loss.
323. The remaining sources of gains and losses are broadly in line with those for the Regular Benefit Account.

14.5 Required Capital Late Claims Benefit Account

324. The required capital of \$11,445,000 shown in section 14.3 is made up of the components shown in the table and chart below.

Estimated Required Capital on Hepatitis C Specific Approach Late Claims Benefit Account		
Risk Component	Hepatitis C Specific Risk Amount (\$000s)	
Investment Risks	5,182	
Claimant Risks	Disease Progression Rate Risk	1,445
	Treatment Efficacy Risk	1,184
	Benefit Amount Uncertainty Risk	1,134
	Cohort Uncertainty Risk	5,154
Risk Diversification Credit	(2,654)	
Total Required Capital	11,445	
Required Capital as a percentage of the Sufficiency Liability	19.4%	



325. Each component of the required capital for the Late Claims Benefit Account was calculated in the same way as for the Special Distribution Benefit Account, as described in Section 13.5, with one addition for cohort uncertainty risk.
326. Over time, the risk of additional claimants coming forward has greatly diminished for the Regular Benefits, and we have removed this risk (Cohort Uncertainty Risk) from the required capital calculation. However, the nature of the Late Claims Benefit Plan means that its financial position depends heavily on the actual number of Late Claims emerging, and the denial rates associated with those claims. There is considerable uncertainty attached to both factors.
327. The required capital relating to Cohort Uncertainty Risk for the Late Claims Benefit Plan reflects the impact on the sufficiency liabilities if the proportion of infected claimants who receive Stage 2 forms assumed to ultimately return them were increased from 50% to 55%, and the proportion of returned Stage 2 forms that are assumed to be approved were increased from 35% to 40%.
328. The Late Claims Benefit Account Required Capital of \$11.4 million represents a similar proportion of the sufficiency liabilities as the corresponding required capital in 2016 (19.4% in 2019 versus 19.7% in 2016).

15 Sensitivity Tests

330. The table below shows the sensitivity of the sufficiency results to a number of different factors.

\$ millions	Regular Benefit Account	Special Distribution Benefit Account	Late Claims Benefit Account	Total
Sufficiency liability	657.4	58.8	58.9	775.1
Increase / (decrease) in sufficiency liability due to:				
- Increase existing hemophiliac cohort by 10 claimants	3.8	0.3	n/a	4.1
- Increase existing transfused cohort by 10 claimants	2.8	0.2	n/a	3.0
- Increase late claims transfused primary cohort by 20 claimants	n/a	n/a	6.1	6.1
- Increase late claims transfused family member cohort by 20 claimants	n/a	n/a	0.7	0.7
- Increase assumed treatment period from 10 years to 15 years	16.8	2.1	0.7	19.6
- Increase average Cost of Care by 10%	9.5	0.1	0.4	10.0
- Decrease future treatment efficacy by 10% (for PfAD, that is from 90% to 80% of the efficacy assumed by the MMWG)	27.9	2.7	1.2	31.9
- Increase by 10% future deaths at levels 2 to 5 due to HCV	15.0	3.5	0.7	19.2
- Increase discount rate by 0.25% pa	(20.3)	(2.1)	(1.0)	(23.4)
- Reduce discount rate by 0.25% pa	21.5	2.3	1.0	24.8
- Increase average visitation allowance for accompanying family members by 20%	n/a	0.7	0.0	0.7

16 Comparison with the Morneau Shepell Calculations

331. The assumptions for the best estimate valuation and the sufficiency valuation have been developed in conjunction with Morneau Shepell. As a result, no differences in the financial results arise as a result of assumption differences.
332. The actuarial models employed by Morneau Shepell and Eckler are quite different. As discussed previously, the Eckler model is a stochastic model that has been developed by adding financial overlay to the MMWG TreeAge medical model. The Morneau Shepell model is a deterministic model (i.e. it doesn't incorporate statistical variability into the liability calculation) that Morneau Shepell independently developed to reflect the disease progression described in the MMWG medical model. Eckler and Morneau Shepell spent a considerable amount of time reconciling the results of the two different financial models. Refinements were made to both models to ensure consistency of results.
333. The two models produce substantially the same results, both on a Best Estimate and on a Sufficiency basis. In our opinion, the differences are immaterial.
334. There are some differences in the approaches adopted by Eckler and Morneau Shepell to attributing gains and losses since the previous sufficiency review to the various sources (our analysis is summarized in section 3.3). These differences do not affect the results of the sufficiency review.
335. Both Eckler and Morneau Shepell agree that it is appropriate to hold assets in excess of the liabilities (referred to by Eckler as required capital). Our methods for calculating an acceptable additional buffer are different, but give similar results.

Appendix A – Data

Source of Data

336. The seriatim information with respect to claimants as at December 31, 2019 was provided by the administrator through the Joint Committee. For each known claimant, the data included dozens of data fields, including unique claimant identifier, whether transfused or hemophiliac, gender, date of birth, date of death if applicable, disease level, etc. Additional files including a history of all benefit payments (by benefit type e.g. out-of-pocket or loss of income) made from the Trust, details on previous drug treatments, and information on claims submitted but not approved were provided by the administrator through the Joint Committee.

Data Checks

337. We reviewed the data and subjected it to a number of tests of reasonableness and consistency, including reconciliation of claimant count to the 2016 data; consistency between data fields (such as previous drug therapy claim and previous treatment flag); and consistency of the approved and denied cohort between different data files. In cases of apparent inconsistency, we asked for and received clarification from the administrator, through the Joint Committee. We also make cohort adjustments according to the response from the administrator.

A-1 Transfused Known Claimants by Count¹

Distribution of those alive by stage at December 31, 2019								
Age at Dec-31-19	Number alive at Dec-31-19	Level 1 Cleared virus	Level 2 PCR positive	Level 3 Non-bridging fibrosis	Level 4 Bridging fibrosis	Level 5 Cirrhosis	Level 6 Decomp/cancer/transplant/	Level 6 extrahepatic
0-19	0	0	0	0	0	0	0	0
20-29	6	0	0	6	0	0	0	0
30-39	237	34	51	119	15	12	4	2
40-49	146	31	25	75	4	7	2	2
50-59	535	95	104	248	37	30	14	7
60-69	613	105	134	238	50	62	19	5
70-79	396	82	104	127	35	30	10	8
80-89	263	46	110	57	17	23	8	2
90+	280	54	188	28	4	5	1	0
Total	2,476	447	716	898	162	169	58	26

Average age at December 31, 2019: 65.6

A-2 Transfused Known Claimants Distribution

Distribution of those alive by stage at December 31, 2019								
Age at Dec-31-19	Number alive at Dec-31-19	Level 1 Cleared virus	Level 2 PCR positive	Level 3 Non-bridging fibrosis	Level 4 Bridging fibrosis	Level 5 Cirrhosis	Level 6 Decomp/cancer/transplant/	Level 6 extrahepatic
0-19	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
20-29	0.2%	0.0%	0.0%	0.2%	0.0%	0.0%	0.0%	0.0%
30-39	9.6%	1.4%	2.1%	4.8%	0.6%	0.5%	0.2%	0.1%
40-49	5.9%	1.3%	1.0%	3.0%	0.2%	0.3%	0.1%	0.1%
50-59	21.6%	3.8%	4.2%	10.0%	1.5%	1.2%	0.6%	0.3%
60-69	24.8%	4.2%	5.4%	9.6%	2.0%	2.5%	0.8%	0.2%
70-79	16.0%	3.3%	4.2%	5.1%	1.4%	1.2%	0.4%	0.3%
80-89	10.6%	1.9%	4.4%	2.3%	0.7%	0.9%	0.3%	0.1%
90+	11.3%	2.2%	7.6%	1.1%	0.2%	0.2%	0.0%	0.0%
Total	100.0%	18.1%	28.9%	36.3%	6.5%	6.8%	2.3%	1.1%

¹ Includes secondarily infected claimants.

A-3 Hemophiliac Known Claimants by Count¹

Distribution of those alive by stage at December 31, 2019									
Age at Dec-31-19	Number alive at Dec-31-19	Level 1 Cleared virus	Level 2 PCR positive	Level 3 Non-bridging fibrosis	Level 4 Bridging fibrosis	Level 5 Cirrhosis	Level 6 Decomp/cancer/transplant/	Level 6 extrahepatic	HIV Co-infected
0-19	1	0	1	0	0	0	0	0	0
20-29	0	0	0	0	0	0	0	0	0
30-39	78	24	11	31	7	4	1	0	6
40-49	212	43	34	93	15	20	6	1	46
50-59	246	38	35	97	26	34	12	4	56
60-69	168	17	21	65	16	27	19	3	26
70-79	62	10	7	24	9	4	8	0	4
80-89	32	6	11	7	1	0	6	1	1
90+	7	1	3	1	1	1	0	0	0
Total	806	139	123	318	75	90	52	9	139

Average age at December 31, 2019: 55.1

Included above are 42 HIV co-infected claimants who elected to take the \$50K options for whom no further liability remains under the Regular Benefit Plan, but with an option of applying to receive the other benefits instead, net of the \$50,000 already paid under the Special Distribution Benefit Plan.

A-4 Hemophiliac Known Claimants Distribution

Distribution of those alive by stage at December 31, 2019									
Age at Dec-31-19	Number alive at Dec-31-19	Level 1 Cleared virus	Level 2 PCR positive	Level 3 Non-bridging fibrosis	Level 4 Bridging fibrosis	Level 5 Cirrhosis	Level 6 Decomp/cancer/transplant/	Level 6 extrahepatic	HIV Co-infected
0-19	0.1%	0.0%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
20-29	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
30-39	9.7%	3.0%	1.4%	3.8%	0.9%	0.5%	0.1%	0.0%	0.7%
40-49	26.3%	5.3%	4.2%	11.5%	1.9%	2.5%	0.7%	0.1%	5.7%
50-59	30.5%	4.7%	4.3%	12.0%	3.2%	4.2%	1.5%	0.5%	6.9%
60-69	20.8%	2.1%	2.6%	8.1%	2.0%	3.3%	2.4%	0.4%	3.2%
70-79	7.7%	1.2%	0.9%	3.0%	1.1%	0.5%	1.0%	0.0%	0.5%
80-89	4.0%	0.7%	1.4%	0.9%	0.1%	0.0%	0.7%	0.1%	0.1%
90+	0.9%	0.1%	0.4%	0.1%	0.1%	0.1%	0.0%	0.0%	0.0%
Total	100.0%	17.2%	15.3%	39.5%	9.3%	11.2%	6.5%	1.1%	17.2%

¹ Includes secondarily infected claimants.

Appendix B – Disease Progression

Summary of Transition Probabilities used in the 2019 HCV Markov Prediction Model

Type of Transition Probability	Mean (best estimate)	Standard Deviation
F0 to HCV RNA-	0.0170	0.0028
F0 to F1	0.0370	0.00225
F1 to F2	0.1200	0.01425
F2 to F3	0.1320	0.018
F3 to F4 (Cirrhosis)	0.1380	0.0245
F4 (Cirrhosis) to Decompensated Cirrhosis	0.0750	0.003
Decompensated cirrhosis to Liver transplantation	0.0120	0.00306
HCC to death	0.2650	0.0199
Liver transplantation to Death (first year)	0.0830	0.0398
Liver transplantation to Death (after first year)	0.0440	0.00791
Decompensated Cirrhosis to liver-related death	0.2470	0.01276
F1 to HCC	0.0001	0.0002
F2 to HCC	0.0001	0.0002
F3 to HCC	0.0010	0.0022
F4 (Cirrhosis) to HCC	0.0250	0.00204
Decompensated Cirrhosis to HCC	0.0250	0.00204
HCC to transplant	0.0070	0.00485
HCV-related extrahepatic disease associated with fibrosis	0.0020	0.00018
HCV-related extrahepatic disease to death	0.1150	0.001173

Appendix C – Mortality Assumptions

Mortality Rates

Mortality	Best Estimate	Sufficiency
All causes except HCV	Canada Life Table 2016-2018	Same
All causes except HCV co-infected with HIV	624% of Canada Life Table 2016-2018	Same
Decompensated Cirrhosis	Greater of 24.7% and all-cause mortality	Same
HCC	Greater of 26.5% and all-cause mortality	Same
Liver transplant – first year	Greater of 8.3% and all-cause mortality	Same
Liver transplant – after first year	Greater of 4.4% and all-cause mortality	Same
HCV-related extrahepatic disease	Greater of 11.5% and all-cause mortality	Same
Male / female mix	Actual	Same
Future improvements in mortality rates	No allowance	Same

HCV Deaths: Percentage of total deaths assumed to be deemed to be HCV related

	Claimants who did not clear virus	Claimants who cleared the virus
Stage 1	0%	0%
Stage 2	5%	0%
Stage 3	25%	5%
Stage 4	35%	20%
Stage 5	50%	35%
Stage 6	100%	100%

The best estimate and sufficiency assumptions are the same for percentage of deaths assumed to be deemed to be HCV related.

Appendix D – Economic Assumptions

2019 Economic Assumptions

Fund	Asset Class	Target Asset Allocation	Fund Allocation	Total Asset Allocation	Expected Return
Long term Fund			89.1%		
	Real Return Bonds	80.0%		71.2%	2.50%
	Universe Bonds	6.0%		5.4%	3.11%
	Global Equity	14.0%		12.5%	7.11%
Short term Fund		100.0%	2.6%		
	Short term bonds				
	Cash	100.0%		2.6%	2.29%
Provincial/territorial Notional Assets			8.3%		
	3 Month Treasury Bills	100.0%		8.3%	2.29%
			100%	100.0%	3.08%
Component of Return					%
Weighted Average Return					3.08%
Diversification and rebalancing (invested funds only)					0.24%
Best Estimate Return Gross of investment expenses					3.32%
Investment Expenses					-0.04%
Best Estimate Nominal Return					3.28%
Best Estimate Nominal Return rounded to nearest 10th%					3.30%
Best Estimate Inflation					2.25%
Best Estimate Net Discount Rate					1.05%
Margin for Adverse Deviation					-0.25%
Sufficiency Valuation Net Discount Rate					0.80%

2016 Economic Assumptions

Best Estimate Nominal Return rounded to nearest 10th%	3.40%
Best Estimate Inflation	2.25
Best Estimate Net Discount Rate	1.15
Margin for Adverse Deviation	0.25
Sufficiency Valuation Net Discount Rate	0.90

Appendix E – Treatment Probabilities and Costs

Treatment Patterns – 2019

	Treatment Naïve without HIV	Treatment Naïve with HIV	Previously Treated without HIV	Previously Treated with HIV
Cumulative treatment				
FO(RNA+)	81.0%	88.0%	91.3%	94.0%
F1/F2	89.8%	92.2%	94.9%	96.2%
F3	92.1%	96.0%	94.9%	97.6%
F4	91.2%	96.2%	93.0%	98.2%
Decompensated cirrhosis	73.4%	77.7%	78.0%	84.2%
Annual treatment rate first five years – best estimate				
FO(RNA+)	28.3%	34.6%	38.6%	43.0%
F1/F2	36.7%	40.0%	44.9%	48.0%
F3	39.8%	47.5%	44.9%	52.6%
F4	38.5%	48.0%	41.2%	55.2%
Decompensated cirrhosis	23.3%	25.9%	26.1%	30.9%
Annual treatment rate first ten years – sufficiency				
FO(RNA+)	15.3%	19.1%	21.7%	24.5%
F1/F2	20.4%	22.5%	25.7%	27.9%
F3	22.4%	27.5%	25.7%	31.1%
F4	21.6%	27.9%	23.4%	33.1%
Decompensated cirrhosis	12.4%	13.9%	14.1%	16.9%

Treatment Patterns – 2016

The assumed treatment rates were the same in 2016 as the 2019 rates shown above, except that claimants with decompensated cirrhosis were assumed to have a 0% probability of treatment in the 2016 model.

Treatment Preference – 2019 and 2016

	Genotype 1	Genotype 2	Genotype 3	Genotype 4-6
Treatment Naïve without HIV				
Harvoni (Sof/Ldv)	60%			
Epclusa (Sof/Vel)	30%	100%	90%	90%
Vosevi (Sof/Vel/Vox)	0%			
Zepatier (Elb/Grz)	10%		10%	10%
Treatment Naïve with HIV				
Harvoni (Sof/Ldv)	50%			
Epclusa (Sof/Vel)	40%	100%	100%	100%
Vosevi (Sof/Vel/Vox)	0%			
Zepatier (Elb/Grz)	10%			
Previously Treated without HIV				
Harvoni (Sof/Ldv)	50%			
Epclusa (Sof/Vel)	30%	80%	70%	70%
Vosevi (Sof/Vel/Vox)	20%	20%	20%	20%
Zepatier (Elb/Grz)	0%		10%	10%
Previously Treated with HIV				
Harvoni (Sof/Ldv)	40%			
Epclusa (Sof/Vel)	40%	80%	80%	80%
Vosevi (Sof/Vel/Vox)	20%	20%	20%	20%
Zepatier (Elb/Grz)	0%			

Treatment Efficacy – Best Estimate – 2019 and 2016

	Genotype 1	Genotype 2	Genotype 3	Genotype 4-6
Treatment Naïve without HIV				
Harvoni (Sof/Ldv)	97%	-	-	-
Epclusa (Sof/Vel)	99%	99%	95%	99%
Vosevi (Sof/Vel/Vox)	-	-	-	-
Zepatier (Elb/Grz)	95%	-	93%	95%
Treatment Naïve with HIV				
Harvoni (Sof/Ldv)	96%	-	-	-
Epclusa (Sof/Vel)	95%	95%	95%	95%
Vosevi (Sof/Vel/Vox)	-	-	-	-
Zepatier (Elb/Grz)	95%	-	-	-
Previously Treated without HIV				
Harvoni (Sof/Ldv)	96%	-	-	-
Epclusa (Sof/Vel)	99%	99%	95%	99%
Vosevi (Sof/Vel/Vox)	97%	97%	97%	97%
Zepatier (Elb/Grz)	-	-	93%	92%
Previously Treated with HIV				
Harvoni (Sof/Ldv)	96%	-	-	-
Epclusa (Sof/Vel)	95%	95%	95%	95%
Vosevi (Sof/Vel/Vox)	97%	97%	97%	97%
Zepatier (Elb/Grz)	-	-	-	-

Treatment Efficacy – Sufficiency – 2019 and 2016

All Sufficiency assumption efficacy rates are 90% of the corresponding Best Estimate assumption.

Discontinuation Rate – 2019 and 2016

Treatment Regimen	Discontinuation Rate
Harvoni (Sof/Ldv)	1.0%
Epclusa (Sof/Vel)	0.7%
Vosevi (Sof/Vel/Vox)	n/a
Zepatier (Elb/Grz)	1.0%

Treatment Rate and Cured Rate for previously treated

	2019 Best Estimate	2019 Sufficiency	2016 Best Estimate	2016 Sufficiency
Percentage of previously treated (F1-F4 and Decomp for 2019)				
Transfused	78%	48%	65%	55%
Hemo	78%	65%	73%	62%
Pre-cured rate for previously treated	96%	58%	60%	45%

Treatment Costs

	2019 Best Estimate	2019 Sufficiency	2016 Best Estimate	2016 Sufficiency
Treatment Costs met by Fund for all types of drugs				
Below age 65	22,500	33,750	45,000	55,000
Above age 65	17,500	26,250	5,000	15,000

Appendix F – Compensation Assumptions

The following tables show the 1999 base amounts of compensation, together with the 2020 indexed figures for amounts specified in the Plan. We also show the comparative amounts used in the 2016 valuation in 2017 dollars. Where the payment amounts are not specified, we show the assumed amounts.

Type of Benefits	1999 Original Amount	2019 Best Estimate and Sufficiency	2016 Best Estimate and Sufficiency
Level 1	\$10,000	\$14,874	\$14,061
Level 2	20,000	29,748	28,123
Level 3	30,000	44,621	42,184
Level 5	65,000	96,679	91,400
Level 6	100,000	148,738	140,615
Stage 2 HCV drug therapy			
Amount	30,000	44,621	42,184
Percentage claiming		2.5% of claimants being treated	5% of claimants being treated
Lump Sum Payments – Special Distribution Benefit			
8.5% of the regular benefit			

Type of Benefits	2019 Best Estimate and Sufficiency	2016 Best Estimate and Sufficiency
Loss of Income Amounts		
Already in payment	Actual claim	Actual claim
Commencing in the future		
Transfused	40,500	40,000
Hemophiliac	57,500	55,000
Already in payment and not cleared virus	100%	100%
Not cleared the virus and commencing in the future		
Level 3	2%	3%
Level 4		
- not yet at level 4	10%	12%
- already level 4, but not yet claiming		
- transfused	3.7%	4.2%
- hemophiliac	0.0%	1.6%
Level 5		
- not yet at level 4 or 5	25%	25%
- already level 4, but not yet claiming		
- transfused	16.7%	14.8%
- hemophiliac	16.7%	14.8%
- already level 5, but not yet claiming		
- transfused	5.1%	1.0%
- hemophiliac	7.1%	6.5%
Level 6		
- not yet at level 4, 5 or 6	25%	25%
- already level 4 or 5, but not yet claiming	0.0%	0.0%
- already level 6, but not yet claiming		
- transfused	6.8%	0.6%
- hemophiliac	5.6%	0.0%
Cleared the virus and not currently claiming ¹	0.0%	0.0%
Cleared virus and currently claiming ¹	Per recovery rates	Per recovery rates
Loss of Income – Special Distribution Benefit		
Percentage of regular benefit	10%	10%
Maximum Amount	\$22,104	\$20,897

¹ Also applies to loss of services.

Loss of Income and Loss of Services Recovery Rates	2019 and 2016 Best Estimate			2019 and 2016 Sufficiency		
	3 + 4	5	6	3 + 4	5	6
Stage When Clearing the Virus						
Duration since claim commenced						
One year	50%	25%	0%	25%	13%	0%
Two years	30%	15%	0%	15%	8%	0%
Three years	25%	13%	0%	13%	7%	0%
Four years	25%	13%	0%	13%	7%	0%
Five years	15%	8%	0%	8%	4%	0%
Six years	10%	5%	0%	5%	3%	0%
Seven years	5%	3%	0%	3%	2%	0%
Eight years	5%	3%	0%	3%	1%	0%
Nine or more years	0%	0%	0%	0%	0%	0%

Type of Benefits	2019 Best Estimate and Sufficiency	2016 Best Estimate and Sufficiency
Loss of Services Amounts		
Transfused and Hemophiliacs	17,600	17,000
Percentage Claiming Loss of Services (Below Age 65)		
Level 3	3%	3%
Level 4		
- not yet at level 4	30%	30%
- already level 4, but not yet claiming		
- transfused	8.0%	16.3%
- hemophiliac	0.0%	0.00%
Level 5		
- not yet at level 4 or 5	35%	30%
- already level 4, but not yet claiming		
- transfused	7.1%	0.0%
- hemophiliac	7.1%	0.0%
- already level 5, but not yet claiming		
- transfused	13.3%	2.6%
- hemophiliac	0.6%	0.0%
Level 6		
- not yet at level 4, 5 or 6	55%	50%
- already level 4 or 5, but not yet claiming	30.8%	28.6%
- already level 6, but not yet claiming		
- transfused	26.1%	14.5%
- hemophiliac	0.0%	0.0%
Percentage Claiming Loss of Services (Above Age 64)		
Level 3	9%	6%
Level 4		
- not yet at level 4	40%	38%
- already level 4, but not yet claiming		
- transfused	22.2%	14.8%
- hemophiliac	0.0%	0.0%
Level 5		
- not yet at level 4 or 5	50%	44%
- already level 4, but not yet claiming		
- transfused	16.7%	9.7%
- hemophiliac	16.7%	9.7%
- already level 5, but not yet claiming		
- transfused	6.8%	9.2%
- hemophiliac	0.0%	10.4%
Level 6		
- not yet at level 4, 5 or 6	65%	65%
- already level 4 or 5, but not yet claiming	30.0%	37.5%
- already level 6, but not yet claiming		
- transfused	30.0%	42.3%
- hemophiliac	0.0%	0.0%
Loss of Service – Special Distribution Benefit		
Percentage of regular benefit	10%	10%

Type of Benefits	2019 Best Estimate	2019 Sufficiency	2016 Best Estimate	2016 Sufficiency
Costs of care - Level 6 only				
Average amount	52,500	59,500	39,000	47,000
Percentage claiming	50%	50%	50%	50%
Costs of care - Special Distribution Benefit				
Percentage of regular benefit	1.3%	Same	1.6%	Same
HCV drug therapy				
Compensation per month	\$1,487	Same	\$1,406	Same
Number of months of treatment	4.5	Same	3.0	Same
Percentage claiming	5% of claimants being treated	Same	5% of claimants being treated	Same
Uninsured treatment and medication for those who have not cleared the virus				
Transfused	\$2,200	Same	\$2,000	Same
Hemo	\$3,300	Same	\$3,000	Same
Level 2 or worse - Transfused	4.0%	Same	4.5%	Same
Level 2 or worse - Hemo	7.0%	Same	8.5%	Same
Uninsured treatment and medication for treatment to clear the virus	Appendix E	Appendix E	Appendix E	Appendix E
Out-of-pocket expenses – not cleared virus				
Transfused	\$2,000	Same	\$1,700	Same
Hemo	\$2,200	Same	\$2,000	Same
Percentage of people will claim - Transfused	6%	9%	6%	12%
Percentage of people will claim - Hemo	12%	18%	12%	24%
Out-of-pocket expenses – present value of all payments to those who have cleared the virus				
Transfused	\$1,500	Same	\$1,200	Same
Hemo	\$5,500	Same	\$5,000	Same
Percentage of people will claim	All, at date assumed cleared	Same	All, at date assumed cleared	Same
Out-of-pocket expenses – Special Distribution Benefit				
Compensation per visit	\$221	Same	\$209	Same
Number of visits per year - Transfused	14	Same	1.8	Same
Number of visits per year - Hemo	16	Same	1.8	Same
Percentage of people will claim - Transfused	2.5%	Same	Same as regular benefit	Same
Percentage of people will claim - Hemo	7.0%	Same	Same as regular benefit	Same
HIV Program	2 additional claims at \$240,000 per claim	Same	4 additional claims at \$240,000 per claim	Same

Type of Benefits	2019 Best Estimate and Sufficiency	2016 Best Estimate and Sufficiency
Payments related to all deaths		
Assumed funeral costs	\$4,700	\$4,500
Deaths before January 1, 1999		
\$50K option	\$74,369	\$70,307
\$120K option	\$178,485	\$168,738
Co-infected taking \$72K option – Hemo	\$107,091	\$101,243
Payment to family – Transfused	n/a	\$75,000
Payment to family – Hemo	n/a	n/a
Special Distribution Benefit Family as % of Regular benefit		
Transfused	n/a	20%
Hemo	n/a	n/a
Loss of services	17,600	\$17,000
Loss of Service – Special Distribution Benefit		
Percentage of regular benefit	10%	10%
Loss of support – Transfused	n/a	\$30,000
Loss of support – Hemo	n/a	n/a
Percentage electing \$50K option	n/a	52%
Percentage electing \$120K option	n/a	48%
Of those electing the \$50K option (%)		
Loss of support – Transfused	0%	20%
Loss of services – Transfused	100%	80%
Loss of support – Hemo	n/a	n/a
Loss of services – Hemo	n/a	n/a

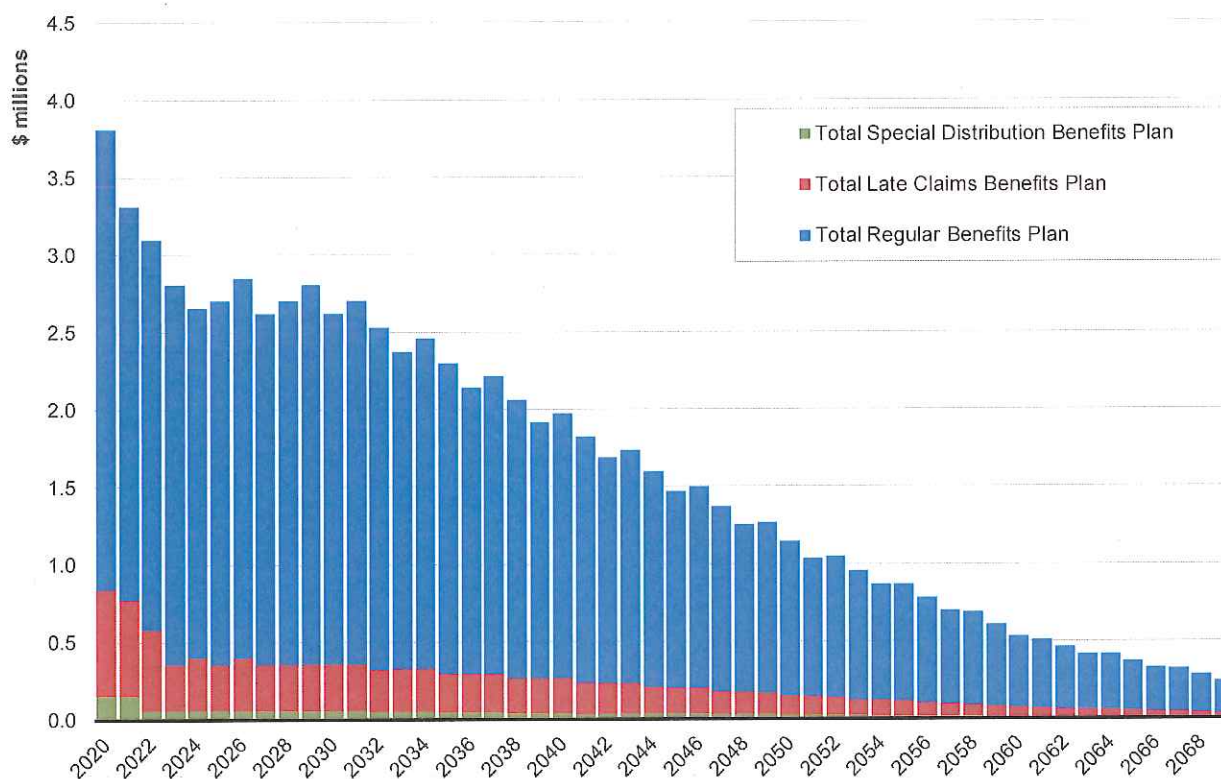
Type of Benefits	2019 Best Estimate and Sufficiency	2016 Best Estimate and Sufficiency
Deaths after January 1, 1999		
Loss of support where loss of income was being paid	70% of loss of income	70% of loss of income
Loss of support where income loss was not being paid – Transfused	\$31,000	\$30,000
Loss of support where income loss was not being paid – Hemo	\$39,500	\$37,000
Loss of services	\$17,600	\$17,000
Loss of Service – Special Distribution Benefit		
Percentage of regular benefit	10%	10%
Of those DA9 deaths caused by HCV		
Percent claiming where loss of income is already being paid	70%	70%
Percent claiming where loss of service is already being paid	65%	70%
Percent claiming where loss of income or loss of service is not being paid		
Loss of support (younger than age 65)	12%	55%
Loss of service (younger than age 65)	11%	17%
Loss of service (older than age 65) – Transfused	28%	65%
Loss of service (older than age 65) – Hemo	26%	65%
Total care/guidance – Transfused	\$56,520	\$51,000
Total care/guidance – Hemo	\$72,881	\$63,000
Special Distribution Care / Guidance as % of Regular benefit		
Transfused	30%	30%
Hemo	20%	20%

Appendix G – Expense Assumptions and Liability

338. The Joint Committee provided us with their estimates of annual expenses up to 2031, broken down by category for each of the Regular Benefit, Special Distribution Benefit and Late Claims Benefit Accounts. These estimates were developed with reference to actual expenses incurred in the recent past, and budgeted expenses for the near future, if applicable.
339. Beyond 2031, we have allowed for the maturing of the fund by reducing annual costs in proportion to number of surviving claimants alive, based on the Hepatitis C prognosis table projected with general population mortality (Table 18) in the MMWG report. We truncated the projection at 50 years, by which point 93% of the claimants alive in 2031 are assumed to have died. The present value of any expenses beyond that date would not be material to the results of the valuation.
340. Many of these expenses vary on a 3-year cycle, reflecting the extra costs associated with triennial sufficiency reviews. These cycles are assumed to continue.
341. Goods and services tax/harmonized sales tax (GST/HST) are applied to each expense category based on a weighted average for that category across the applicable provinces. The tax rates for each province are assumed to remain at their current level.
342. The estimates provided by the Joint Committee were in 2020 dollars. We have allowed for inflation by discounting the projected expenses at the net discount rate of 1.05% for best estimate and 0.55% for sufficiency liabilities. For simplicity, we have assumed that the annual expenses are payable at the middle of each year.
343. The only difference between the best estimate and the sufficiency liability is the effect of the different discount rates for these two liabilities.
344. The methodology described above is consistent with the approach used for the 2016 review and is based on the premise that the HCV Settlement Agreement continues on a going concern basis until all benefits due to claimants have been paid. If the fund were to be wound up prior to that point, significant windup expenses would be incurred; these wind-up expenses could be considered as an acceleration of the expenses projected under the going concern scenario. In this way, the alternate scenario of wind up is allowed for implicitly.

345. The overall projected expenses (in 2020 dollars) are illustrated in the chart below.

Projected expenses (in 2020 dollars)



346. The chart above illustrates:

- the cyclical nature of the overall expenses;
- the assumed gradual tailing off of expenses from 2032 onwards;
- the significant up-front expenses associated with administration set-up costs for the Special Distribution Benefits and communications strategy for the Late Claims Benefit Plan; and
- expenses are assumed to cease after 50 years.

347. A detailed breakdown of the projections supplied by the Joint Committee, and the resulting expense liabilities are summarized in the following tables.

Expense category	Assumption	Assumed split by province for sales tax			Present value at December 31, 2019 (\$,000's)	
		BC 5%	Ont 13%	Qué 14.975%	Best Estimate	Sufficiency
Regular Benefits						
Actuarial Financial Sufficiency	\$650,000 in 2020; \$200,000 in 2021; then 3-year cycles of \$600,000 / \$300,000 / \$100,000	100%	-	-	8,991	9,334
Actuarial Regular	3-year cycles of \$50,000 / \$50,000 / \$75,000	100%	-	-	1,497	1,557
Accounting Expert Testimony	\$20,000 pa	-	100%	-	554	576
Administration services	\$640,000 in 2020, 2021 and 2022; then \$565,000 pa	-	100%	-	15,901	16,523
Arbitors/ Referees	\$20,000 pa	20%	70%	10%	547	569
Auditors	3-year cycles of \$85,000 / \$85,000 / \$110,000	-	100%	-	2,580	2,683
Fund Counsel	3-year cycles of \$60,000 / \$120,000 / \$60,000	20%	70%	10%	2,190	2,277
Joint Committee Administration	\$775,000 in 2020, 2021 and 2022; then \$675,000 pa	35%	45%	20%	18,626	19,354
Joint Committee Financial Sufficiency	3-year cycles of \$535,000 / \$535,000 / \$80,000	35%	45%	20%	10,480	10,889
Medical Modelling	3-year cycles of \$110,000 / \$0 / \$110,000	-	-	-	1,796	1,867
Monitor	3-year cycles of \$20,000 / \$80,000 / \$20,000	-	100%	-	1,109	1,153
Software development	\$10,000 pa	-	100%	-	277	288
Regular Benefits Total					64,548	67,070

Expense category	Assumption	Assumed split by province for sales tax			Present value at December 31, 2019 (\$,000's)	
		BC 5%	Ont 13%	Qué 14.975%	Best Estimate	Sufficiency
Late Claims Benefit Plan						
Actuarial LCBP distribution	\$25,000 pa	100%	-	-	643	669
Administration services	\$250,000 in 2020/21; \$175,000 in 2022; then \$100,000 pa	-	100%	-	3,188	3,299
Arbitors/Referees	\$75,000 in 2020/21/22; then \$35,000 pa	20%	70%	10%	1,089	1,128
Auditors	\$10,000 pa	-	100%	-	277	288
Class Member Communications	\$37,000 in 2020, 2024 and 2026	-	100%	-	121	122
Joint Committee	\$200,000 in 2020; \$175,000 in 2021; \$150,000 in 2022; then \$100,000 pa	35%	45%	20%	2,957	3,065
Fund Counsel	\$85,000 in 2020/21/22; then \$35,000 pa	20%	70%	10%	1,122	1,161
Late Claims Benefit Plan Total					9,397	9,732
Special Distribution Benefits						
Actuarial	\$25,000 pa	100%	-	-	643	669
Administration services	\$65,000 in 2020/21; then \$10,000 pa	-	100%	-	400	411
Auditors	\$10,000 pa	-	100%	-	277	288
Joint Committee	\$55,000 in 2020/21; then \$10,000 pa	35%	45%	20%	370	381
Special Distribution Benefits Total					1,690	1,749
Grand Total					75,635	78,551

Appendix H – Payments and Amounts Specified in the Plan

348. As provided for in Section 7.02 of the Transfused HCV Plan, the payment amounts and limits identified in Articles Four, Five and Six of the Plan are adjusted each year to reflect the increase in the CPI. The original 1999, and 2020, amounts are summarized below.

Section	1999 amount (\$)	2020 amount (\$)
4.01(1) (a)	10,000	14,873.77
(b)	20,000	29,747.53
(c)	30,000	44,621.30
(d)	65,000	96,679.47
(e)	100,000	148,737.65
4.02(2)(b)(i) ¹	2,300,000	3,420,965.97
4.03(2)	12	17.85
	240	356.97
4.04(a)	50,000	74,368.83
4.05	1,000	1,487.38
4.08	240,000	356,970.36
5.01(1)	5,000	7,436.88
	50,000	74,368.83
(2)	120,000	178,485.18
(3)	240,000	356,970.36
5.02(1)	5,000	7,436.88
(2)	240,000	356,970.36
6.01(2)	12	17.85
	240	356.97
6.02(a)	25,000	37,184.41
(b)	15,000	22,310.65
(c), (d), (e)	5,000	7,436.88
(f), (g)	500	743.69

¹ This amount was previously limited to \$300,000 in 1999 dollars.

349. The Hemophiliac HCV Plan provides for similar payments and amounts, with the following two additional items:

Section	1999 amount (\$)	2020 amount (\$)
4.08(2)	50,000	74,368.83
5.01(4)	72,000	107,091.11

350. Following the 2013 valuation, the Courts approved in 2016 a number of “special distribution benefits”. Payment of these benefits began in 2017. The various payment amounts and limits applicable in calendar 2020 are adjusted from those in paragraph 6 of the court order. The original 1999 or 2014, and the 2020, amounts are summarized below.

Paragraph 6 of court order	Section	1999 amount (\$)	2014 amount (\$)	2020 amount (\$)
a	4.01(1) (a)	850		1,264.27
b	(b)	1,700		2,528.54
c	(c)	2,550		3,792.81
d	(d)	5,525		8,217.76
e	(e)	8,500		12,642.70
f	4.08(2)	4,250		6,321.35
g	5.01(1)	4,250		6,321.35
h	(2)	10,200		15,171.24
i	(4)	6,120		9,102.74
j	6.02(c)	4,600		6,841.93
k	(d)	4,600		6,841.93
l	4.02(2)		20,000	22,104.40
m	4.03(2)/6.01(2)	24		35.70
n	4.04	10,000		14,873.77
		50,000		74,368.83
o	1.01		200	221.04

351. We have also updated the payment amounts and limits identified in Articles Four, Five and Six to reflect the increase in the Pension Index for the year 2020, as provided for in Section 7.02 of the HCV Late Claims Benefits Plan.

Section	2014 amount (\$)	2020 amount (\$)
4.01(1) (a)	14,601.65	16,138.04
(b)	29,203.30	32,276.07
(c)	43,804.94	48,414.11
(d)	94,910.70	104,897.23
(e)	146,016.47	161,380.35
4.02(2)(b)(i)	3,095,279.91	3,420,965.97
	403,732.16	446,212.95
4.02A	20,000.00	22,104.40
4.03(2)	16.15	17.85
	355.30	392.67
4.04(a)	80,746.43	89,242.60
4.05	1,345.77	1,487.38
4.07(2)	200.00	221.04
4.08(2)	73,008.23	80,690.18
5.01(1)	6,728.87	7,436.88
	73,008.23	80,690.18
(2)	175,219.76	193,656.42
(4)	105,131.86	116,193.85
5.02(1)	6,728.87	7,436.88
6.01(2)	16.15	17.85
	355.30	392.67
6.02(a)	33,644.35	37,184.41
(b)	20,186.61	22,310.65
(c), (d)	12,919.43	14,278.81
(e)	6,728.87	7,436.88
(f), (g)	672.89	743.69

Appendix I – Glossary of Abbreviations and Terminology

The following summarizes some of the abbreviations and terminology used in the report.

CASL: the Canadian Association for the Study of the Liver; developed the 1999 CASL report/study/model on the progression of hepatitis C, led by Dr. Murray Krahn; used by us in our 1999 actuarial assessment of the fund's assets and liabilities; published the special article *An update on the management of chronic hepatitis c: 2015 Consensus guidelines from the Canadian Association for the Study of the Liver* which sets out current treatment protocols in Canada.

CAP 1 and CAP 2: The Plans provide that claims be made before a first claims deadline of June 30, 2010, subject to certain listed exceptions (section 3.07 Hemophiliac Plan and section 3.08 Transfused Plan). Subsequent to the 2010 sufficiency assessment, the Courts approved two protocols which govern the making of claims post June 30, 2010 under these exceptions as provided in Recent HCV Diagnosis Exception to the June 30, 2010 First Claims Deadline Protocol (CAP1) and Issuance of Initial Claims Packages after the June 30, 2010 First Claims Deadline Protocol (CAP 2)

DA9: deaths after January 1, 1999

DB9: deaths before January 1, 1999 due to HCV related causes

DAA: Direct Acting Antiviral Agent

Fibrosis Stages 0, 1, 2, 3, 4: indicating the disease development in the MMWG models, from infection (stage 0) through cirrhosis (stage 4); these stages do not correspond directly to the disease-based compensation Levels in the Plans

HCV: hepatitis C virus

Hemophiliac Plan: the Hemophiliac HCV Plan provided for in the Settlement Agreement

HIV Coinfection: the situation where a claimant is infected with both HCV and HIV. Additional benefits may be payable to co-infected claimants.

HIV Program: the HIV Secondarily Infected Program provided for in the Settlement Agreement

Known(s) or Known Claimant(s): those claimants who are known and approved before the actuarial assessment date

Level: a disease-based compensation level as defined under the Plans. Disease levels for the purpose of the Settlement Agreement do not correspond directly to the Fibrosis Stages, in the MMWG models.

MMWG: Medical Model Working Group; led by Dr. Krahn; convened to review and update the medical model for the 2001, 2004, 2007, 2010, 2013, 2016 and 2019 assessments

Plans: Comprises the Hemophiliac and Transfused Plans

Previously Treated: refers to treatment with HCV treatment drugs prior to the actuarial assessment date.

Settlement Agreement: the agreement made as of June 15, 1999 between the governments and the counsel for the class action plaintiffs

SVC, short for Spontaneous Viral Clearance, refers to undetectable HCV viral load in serum, in the absence of treatment

SVR, short for Sustained Virological Response, refers to an undetectable HCV viral load test 12 weeks after completing a successful course of HCV treatment.

Transfused Plan: the Transfused HCV Plan provided for in the Settlement Agreement

Unknown(s) or Unknown Claimant(s): those claimants included in the actuarial assessment who are yet to be approved as claimants, and who are presumed to be approved after the actuarial assessment date. Unknowns consist of those who are known to the Administrator, but not yet approved as claimants, as well as those who have not yet lodged a claim

\$50K+ option: for deaths before January 1, 1999, the option of choosing \$50,000 plus claims by the family, including loss of support or loss of services

\$120K option: for deaths before January 1, 1999, the option of choosing \$120,000 in full settlement of all claims

Appendix J – Source Material

Document	Date	Author/Source
Copy of the data regarding the approved claimant cohort as at May 31, 2019, provided to the MMWG by the administrator, including claimant details such as disease state, drug therapy history, and HCV Treatment drugs paid.	February 2020	Epiq
Copy of the data regarding the approved claimant cohort as at December 31, 2019, prepared at the request of the Joint Committee, including cohort details and payment history and a “worksheet references” document setting out field name definitions for claimant data	February 2020	Epiq
2019 MMWG report: Estimating the Prognosis of Canadians Infected with the Hepatitis C Virus through the Blood Supply, 1986-1990 The Sixth Revision of Hepatitis C Prognostic Model Based on the Post-Transfusion Hepatitis C Compensation Claimant Cohort	October 2020	MMWG
2019 medical model in TreeAge software, corresponding to the 2019 MMWG report	January 2020	MMWG
Annual reports for the HCV Trust from inception to 2019, including the audited financial statements	Various	Joint Committee
Custodial statements for the Trust for 2017 through 2019 inclusive	Various	RBC Investor Services
Copy of the original Settlement Agreement	June 1999	Joint Committee
Copy of the Justice Perell re Implementation of 2016 Allocation Orders	December 2017	Joint Committee
Correspondence between Joint Committee and Eckler providing input from medical experts and the administrator regarding assumptions and the operations of the Trust	Various	Various
Correspondence between Morneau Shepell and Eckler regarding development of assumptions and methods	Various	Morneau Shepell

Richard Border, FIA, FCIA


Richard is a Principal and Shareholder based in the Vancouver office. He has over 30 years of actuarial experience in pension consulting, valuation of long-term liabilities (such as Workers' Compensation plans), investment consulting, technical design of investment and insurance products for pension plans, management information, and financial modeling.

Since joining Eckler in early 2002, Richard has specialized in pensions and workers compensation actuarial consulting. He is the lead actuary to public sector pension plans in British Columbia (specifically, the BC Public Service, Municipal, College, and Teachers' pension plans). His responsibilities for these clients include acting as lead consultant, providing technical actuarial analysis, as well as consulting advice and guidance on plan design issues. He is the external actuary for WorkSafeBC and is responsible for the actuarial opinion on the adequacy of the liabilities in the WorkSafeBC annual report. He has similar responsibilities for the Workers Compensation Board of Manitoba.

Richard has worked on the 2001, 2004, 2007, 2010, 2013, 2016 and 2019 HCV sufficiency reviews and has co-signed each of the associated reports.

Richard graduated from the University of Cape Town in 1986 with a BSc statistics. He is a Fellow of both the Institute and Faculty of Actuaries (UK) and the Canadian Institute of Actuaries.

This is Exhibit " B "referred to in the
 affidavit of RICHARD BORDER
 sworn before me at VANCOUVER, BC
 this 25 day of NOVEMBER 2020


 A Commissioner for taking Affidavits
 for British Columbia

Euan Reid, FIA, FCIA

Euan is a Principal of Eckler. He joined the firm in 2017, having relocated to Vancouver from London, UK. He began actuarial work in 2004, and is a Fellow of the Institute and Faculty of Actuaries (UK) and the Canadian Institute of Actuaries.

Euan advises Canadian pension plans in the public and private sectors, with a particular focus on identifying, measuring and managing risks such as longevity. He is the primary consultant to several multi-employer pension plans registered in B.C. and Alberta, as well as consulting to the four public sector pension plans in B.C., and to WorkSafeBC.

Euan worked on the 2016 and 2019 sufficiency reviews.

Euan graduated in 2004 and holds a first class degree in mathematics from Durham University.

This is Exhibit "C" referred to in the
affidavit of RICHARD BORDER
sworn before me at VANCOUVER, BC
this 25 day of NOVEMBER 2020


.....
A Commissioner for taking Affidavits
for British Columbia

Dong Chen, FSA, FCIA

Dong is a consulting actuary who joined Eckler Ltd. in 2003, working part time while finishing his university studies. Since graduating from Simon Fraser University in 2004, he has been with Eckler on a full-time basis. Dong specializes in the valuation of private and public sector pension plans. He has worked on the triennial HCV fund sufficiency reviews since 2004.

He is a Fellow of both the Society of Actuaries and the Canadian Institute of Actuaries.

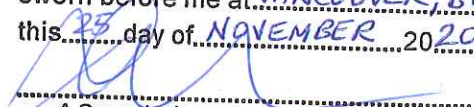
This is Exhibit "D" referred to in the
affidavit of RICHARD BORDER
sworn before me at VANCOUVER, BC
this 29 day of NOVEMBER 2020


.....
A Commissioner for taking Affidavits
for British Columbia

Kevin Chen

Kevin Chen joined Eckler Ltd. in 2009 as a summer student, and then commenced permanent employment in January 2010. He has an undergraduate degree in actuarial science from Simon Fraser University, and completed a Master's degree in actuarial science from the University of Waterloo in 2010. He is making good progress with his Society of Actuaries exams and focuses on technical actuarial work, mainly in the pensions area. He has worked on the 2010, 2013, 2016 and 2019 HCV fund sufficiency reviews.

This is Exhibit " E " referred to in the
affidavit of RICHARD BORDER
sworn before me at VANCOUVER, BC
this 25 day of NOVEMBER 2020


A Commissioner for taking Affidavits
for British Columbia

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

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT TORONTO

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

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