

**IN THE MATTER OF A REFERENCE PURSUANT TO THE HEPATITIS C
1986-1990 CLASS ACTION SETTLEMENT AGREEMENT
(Parsons v. The Canadian Red Cross et al.
Court File No. 98-CV-141369)**

BETWEEN

Claimant File 1000129

- and -

The Administrator

**(On a motion to oppose confirmation of the decision of S. Bruce Outhouse, Q.C.,
released June 12, 2006)**

Reasons for Decision

WINKLER J.:

Nature of the Motion

1. This is a motion to oppose confirmation of the decision of a referee appointed pursuant to the terms of the Settlement Agreement in the Hepatitis C litigation for the class period January 1, 1986 to July 1, 1990. The Claimant made a claim for compensation pursuant to the Agreement which was denied by the Administrator charged with overseeing the distribution of the settlement monies. The Claimant appealed the denial to a referee in accordance with the process set out in the Agreement. The referee upheld the decision of the Administrator and denied the appeal. The Claimant now opposes confirmation of the referee's decision by this court.

Background

2. The Settlement Agreement is Pan-Canadian in scope and was approved by this court and also approved by courts in British Columbia and Quebec. (See *Parsons v. The Canadian Red Cross Society* (1999), 40 C.P.C. (4th) 151 (Ont. Sup. Ct.)). Under the Agreement, persons infected with Hepatitis C through a blood or specified blood product transfusion, within the period from January 1, 1986 to July 1, 1990, are entitled to varying degrees of compensation depending primarily on the progression of the Hepatitis C infection.

Facts

3. The Claimant is a Nova Scotia resident who is infected with HCV. She has applied for compensation pursuant to the Transfused HCV Plan.

4. The Claimant believes that she received a blood transfusion while undergoing back surgery at Dartmouth General Hospital. In her submissions to the referee, the Claimant indicated that she recalled hearing the anesthetist saying something about “the blood being good” and she and her husband indicated that they saw bags of intravenous fluids on her I.V. pole. Although the Claimant indicated on her Blood Transfusion History Form (“TRAN 5”) that her back surgery took place in October 1986, it appears that the surgery in fact occurred in December 1987.

5. The hospital records indicate that blood was cross-matched for the Claimant on December 13, 1987, but none of the Claimant’s hospital records indicate that she ever received blood.

6. The Administrator denied the Claimant’s claim in a letter dated February 27, 2003 on the basis that there was insufficient evidence to establish that she received blood during the Class Period. The Administrator’s decision was upheld by a referee on June 12, 2006.

7. In detailed written submissions made in support of this motion, the Claimant and her husband stated that they were told by a nurse at Dartmouth College that the Claimant had received blood by-products. The Claimant referred to certain notes in her medical records that she believes may provide evidence that she received blood products. The Claimant also indicated, “I believe when my spinal sac was nicked, the person could have nicked themselves and bled in me or my illness came from I.V. Blood By Products”.

8. Also in submissions made in support of this motion, the Claimant stated:

I didn’t know I would have to have prove of all these things or else I would have done so. Dr. John Banks + Dr. Lee also I believe knew of all the medications I was given. Dr. Lee escorted me to the emergency that night. He was aware of all the spinal fluid I lost.

...

I ... feel that Dr. Banks and Dr. Lee should be contacted.

9. The Claimant indicated that she would provide a letter from her mother to this court but I have not received any such letter.

Standard of Review

10. In a prior decision in this class proceeding, the standard of review set out in *Jordan v. McKenzie* (1987), 26 C.P.C. (2d) 193 (Ont. H.C., aff’d (1990), 39 C.P.C. (2d) 217 (C.A.) was adopted as the appropriate standard to be applied on motions by a rejected claimant to oppose confirmation of a referee’s decision. In *Jordan*, Anderson J. stated that the reviewing court “ought not to interfere with the result unless there has been some error in principle demonstrated by the [referee’s] reasons, some absence or excess

of jurisdiction, or some patent misapprehension of the evidence.”

Analysis

11. In order to succeed, the Claimant must establish that she received blood or an eligible blood product during the Class Period.

12. Due to section 3.01(2) of the Transfused HCV Plan, only evidence that is independent of the personal recollection of the Claimant or her Family Members can be considered when determining whether the Claimant received blood. The only independent evidence that the Claimant has referred to are certain notes in the Claimant's medical records. However, none of these medical records indicate that she received blood or blood by-products. The fact that blood was cross-matched does not establish that the Claimant received this blood since blood is sometimes cross-matched but not used.

13. The Claimant seems to have indicated that someone involved with one of her surgeries may have wounded themselves, and that blood from this wound may have mixed with her blood. No compensation is available under the Transfused HCV Plan for infections that are transmitted in this manner.

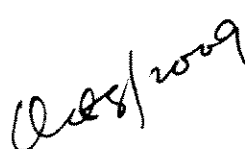
14. The Claimant has submitted that Dr. Banks and Dr. Lee may have relevant information, but she has not provided any letters or other evidence from these doctors nor has she provided their current contact information. She also has not indicated what efforts she has made, if any, to contact these doctors. To the extent that the Claimant wished to rely on evidence from these doctors, it was her obligation to attempt to obtain evidence from them and to submit any relevant evidence to the referee or to this court. This appeal has been deferred for some time awaiting further evidence from the claimant.

Result

15. I have not found any evidence that establishes “on a balance of probabilities” that the Claimant received blood products during the Class Period. In that respect, the referee committed no errors in principle, with respect to jurisdiction or by misapprehending the evidence before him and his decision is hereby confirmed.

16. However, should the claimant obtain further evidence that supports her claim that she received a blood transfusion, she may apply for reconsideration.


Winkler C.J.O


Released: