

**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 1001009

- and -

The Administrator

**(On a motion to oppose confirmation of the decision of Gerald J. Charney, Q.C.,
released March 10, 2004)**

Reasons for Decision

WINKLER R.S.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. This motion involves a claim by a personal representative on behalf of the estate of a deceased person.

4. Between January 16, 1989 and April 11, 1989, the deceased received 13 units of blood at North York General Hospital and North York Branson Hospital.

5. The deceased died on April 11, 1989. Her autopsy included a number of major pathological diagnoses including cancer.

6. On June 19, 2003, the Administrator denied the personal representative's claim for compensation pursuant to the Settlement Agreement on the basis that the personal representative had not provided sufficient evidence that the deceased was infected with Hepatitis C. The Administrator's decision was upheld by a referee on March 10, 2004.

Standard of Review

7. 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

8. The referee upheld the Administrator's decision on the grounds that the personal representative was unable to deliver the proof required by the Settlement Agreement. Specifically, the personal representative was unable to provide results from a Hepatitis C antibody test or PCR test or to provide the evidence referred to in section 3.05(3) of the Transfused HCV Plan.

9. In submissions provided for the purpose of this motion, the personal representative took the position that the evidence referred to in section 3.05(3) was provided. She referred to hospital reports that indicated that an episode of jaundice that occurred within three months of a blood transfusion and reports that the deceased suffered from ascites and dropsy. She challenged Dr. Garber's evidence on the grounds that Dr. Garber referred to "ten days in hospital" whereas the deceased was hospitalized for about 3 months. She also claimed that Dr. Armstrong's opinion was irrelevant since he was not the deceased's treating physician.

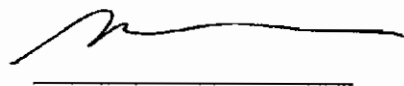
10. Pursuant to section 3.05(3), evidence of jaundice is only sufficient where the jaundice had no other cause. In this case, Dr. Armstrong, one of the deceased's doctors, has indicated that the jaundice was caused by cancer. No other doctors have provided conflicting evidence. While Dr. Armstrong may not have been involved in all aspects of the treatment of the deceased, I do not find that the referee erred in principle by accepting Dr. Armstrong's evidence.

11. No medical evidence has been provided to establish a link between the ascites and dropsy, suffered by the deceased, and cirrhosis. Rather, Dr. Garber specifically indicated that the deceased's "liver showed no cirrhosis or any evidence of disease except as caused by the biliary obstruction."

12. Since the requirements of section 3.05(a) were not met, the referee was obligated to uphold the Administrator's decision to reject the claim.

Result

13. In my view, the referee committed no errors in principle, with respect to jurisdiction or by misapprehending the evidence before him. Accordingly, the referee's decision is confirmed.



WINKLER R.S.J.

Released: April 28, 2005