

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
N°: 500-06-000016-960

DATE: November 9, 2005

PRESIDED BY: JUSTICE NICOLE MORNEAU, S.C.J.

DOMINIQUE HONHON

The Applicant

vs

THE ATTORNEY GENERAL OF CANADA

and

THE ATTORNEY-GENERAL OF QUEBEC

and

THE CANADIAN RED CROSS

The Respondents

and

CLAIMANT NO 10274

THE APPELLANT

**DECISION ON A MOTION TO OPPOSE CONFIRMATION OF A REFEREE'S DECISION
(JANUARY 1,1986-JULY 1, 1990, HEPATITIS C CLASS ACTION SETTLEMENT
AGREEMENT)**

[1] The Court is asked to examine a motion to oppose confirmation of the Referee's decision appointed by virtue of the provisions of the January 1,1986-July 1, 1990 Hepatitis C Settlement Agreement related to the Hepatitis C victims during the Class Action Period.

[2] On April 19, 2002, the Claimant submitted his claim to the Administrator as a Primarily Infected Person, further to blood transfusions received during the period of January 1, 1986 to July 1, 1990. His file at the Royal Victoria Hospital indicated that he had indeed received blood transfusions in June 1987. The same file indicated however that he had also received blood transfusions in May 1979. However, the 1979 donors could not be traced back, because the Canadian Red Cross' data bank (or that of Héma-Québec) did not contain this information for blood donations made before 1982.

[3] The blood received by the Claimant during surgeries undergone in 1987 implied 5 donors, 4 of which were located and who tested HCV negative. However, the traceback remained incomplete for the last donor. In order to meet certain deadlines, the Plan Administrator accepted the claim before receiving the required information about the 5th donor. He informed the Claimant of the fact that he would receive a \$10,904.06 amount.

[4] While the parties were exchanging documents, Héma-Québec was completing its traceback and concluded that the 5th donor of blood administered to the Claimant in 1987 was negative. The Administrator informed the Claimant accordingly. In fact, the Claimant never received the announced payment, since the final results establishing that he had probably been infected in 1979 were provided before the payment was made.

[5] On December 3rd, 2003, the Claimant submitted a Request for Review of the Administrator's decision before a Referee on the basis that the Administrateur had previously approved his claim in April, 2003.

[6] As per the Claimant's wish, the Referee reviewed his request based on the evidence contained in the file.

[7] In his decision, the Referee notes that it is not disputed that the Claimant is HCV infected and that he received 5 units of blood in 1987. He underlines however the result of the tests administered to the 5 concerned donors and notes that they proved to be HCV negative. He adds that the Claimant did not provide any evidence allowing him to refute the results and the Traceback Procedure.

[8] The Referee rightly concludes that by virtue of Section 3.04(1) of the Settlement, the Administrator had no choice but to reject the claim. He adds that like the Administrator, he is bound by the terms and conditions of the Settlement Agreement and that he has no authority to change them. Regrettably, the same applied to this Court.

[9] It seems appropriate to mention however that the Claimant's testimony whose honesty is evident, will have allowed to establish that he received no payment under the Settlement Agreement. The results of the traceback concerning the last donor reached the Administrator before any payment was made. As soon as it became evident that the Claimant could not be included as a member of this Class Action and its Settlement, the Administrator could not follow up on his approval of April 24, 2003.

[10] There is no doubt that the Claimant's situation is unfortunate. His handicaps are serious and one can only sympathize with him. Regrettably once again, the Court has no authority to vary from the terms of the Settlement approved by the Quebec, Ontario and British-Columbia Courts.

[11] It is evident here that the Referee made no error and that he correctly applied the terms of the Agreement.

[12] **FOR THESE REASONS, THE COURT:**

[13] **UPHOLDS** the Referee's decision to reject the Claimant's claim dated June 1, 2004.

[10] **ALL THIS**, without costs.

Signature on original
NICOLE MORNEAU, S.C.J.

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Me Christine Kark

MCCARTY TÉTRAULT

Fund Counsel

Claimant No. 10274

Me Michel Savonitto,

Ex officio member of the Joint Committee

MARCHAND MELANÇON MAGNAN

Hearing Date: November 8, 2005