

**IN THE MATER 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 1169

- and -

The Administrator

(On a motion to oppose confirmation of the decision of Gregory I. North, released March 4, 2005).

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 brought pursuant to the Transfused HCV Plan by a personal representative on behalf of the estate of a deceased person.

4. The Administrator denied the claim on the grounds that there was no evidence that the deceased was infected with HCV. The Administrator's decision was upheld by a referee on March 4, 2005.

5. The referee provided the following summary of the evidence in his decision:

9. The representative of the Estate completed the General Claimant Information Form ("TRAN 1"). That documentation did not reveal that the deceased had undergone an HCV Antibody Test establishing that the Hepatitis C antibody was present in her body.

10. In addition, there was no evidence which confirmed that the deceased has a PCR Test indicating that the Hepatitis C Virus was present in her blood.

11. An Autopsy dated May 18, 1988 states as follows:

"Cause of death is primary pulmonary, due to involvement by tumor and also fibrosis, and mucopus filling bronchi."

12. There was no evidence that has been submitted with this Claim, or any other medical documentation, establishing that the deceased was infected with HCV or that HCV contributed to her death.

6. In submissions made for the purpose of this motion, the personal representative argued that tumors that were found in the deceased's liver constituted evidence that the deceased was infected with HCV. The personal representative also indicated that he did not know whether the deceased was infected with HCV because the doctors mistakenly failed to check the deceased's blood when conducting an autopsy

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

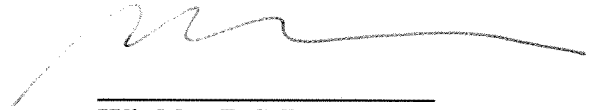
8. The crux of the personal representative's argument is that the existence of tumours on the deceased's liver is sufficient to establish that the deceased was infected with HCV.

9. Section 3 of the Transfused HCV Plan sets out very specific requirements for proving that a party was infected with HCV. Specifically, it is necessary to provide an HCV Antibody Test report, PCR Test report, or similar test report or to provide the evidence set out in section 3.05(3).

10. The existence of tumours is not sufficient to fulfill the requirements of the Transfused HCV Plan. Since the personal representative failed to provide the evidence required by section 3 of the Transfused HCV Plan, the referee was obligated to uphold the Administrator's decision.

Result

11. 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: May 19, 2006