

SUPERIOR COURT

Canada
PROVINCE OF QUEBEC
MONTREAL DISTRICT

Number: 500-06-0000 16-960

DATE : March 23, 2004

PRESIDED BY: THE HONORABLE JUSTICE NICOLE MORNEAU, JSC

DOMINIQUE HONHON

Applicant

Vs

THE ATTORNEY GENERAL OF CANADA

And

THE ATTORNEY-GENERAL OF QUEBEC

And

THE CANADIAN RED CROSS SOCIETY

Respondents

And

THE CLAIMANT NUMBER 1200083

APPELANT

JUDICIAL REVIEW OF A
REFEREE'S DECISION
1986-1990 Hepatitis C Settlement Agreement
Transfused HCV Plan

[1] The Claimant is appealing the decision of the Referee who rejected his Request for Review of the Administrator's refusal to accept him as a **Dependent** and consequently, to compensate him under the 1986-1990 HCV Settlement Agreement.

[2] Born on June 9, 1971, the Claimant was 24 years old when his father died on December 28, 1995. Son of a musician, he also wanted to have a career in music. His father had expressed the wish to help him all his life. The evidence revealed, however, that only one payment had been transmitted to the mother in 1988.

[3] Having fallen sick and being unable to work, the father had to file for bankruptcy. He was unable to pay for the boy's music studies but the latter says that he still benefited from his father's tutoring in this area.

[4] According to the Claimant, between 1992 and his father's death in 1995, he operated a small business firm specialized in music recordings.

[5] In his Request for Review, he stated that he resided with his mother from Monday to Friday and with his father from Friday to Sunday. He added that his father provided for his basic needs such as food and lodging. He would have pursued his studies from 1997 to 1999, but quit to accept an offer to participate in the recording of a disk.

[6] During the hearing of his case before the undersigned, the Claimant declared that he had a contract. He added that things were going well for him.

[7] Son and only heir of an HCV infected person, following a blood transfusion and whose death preceded January 1, 1999, the Claimant received the anticipated compensations as provided under the HCV Settlement Agreement, that is \$5,207.56 and \$52,075.65.

[8] The question submitted to the Referee as well as to the undersigned deals strictly with the Claimant's status as a **Dependent** after the death of his father and the receipt of related additional benefits.

[9] To this effect, one must first refer, as did the Referee, to the definition included in Appendix A, entitled TRANFUSED HCV PLAN OF THE 1986-1990 HCV SETTLEMENT AGREEMENT of a:

"Dependant", which 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.

(Added emphasis by the undersigned)

[10] One can only sympathize with the Claimant for the loss of his father. This is not sufficient however to ignore the terms and conditions of the SETTLEMENT AGREEMENT and the submitted evidence.

[11] The definition of **Dependant** that the Appellant claims to be is not without recalling that of the Dependant child in matters of divorce, i.e., the child of two spouses or ex-spouses who, at the material time, is in one of the following circumstances:

- a) he/she is not a person of full age and is still their dependant;
- b) he/she is a person of full age and is their dependant without, for reasons notably of illness or incapacity, being able to become independent of them or provide for his/her own needs.

[12] There are cases where children of full age who have undertaken regular and serious studies benefit from their parents' financial assistance following the granting of an alimony. However, its term is not indefinite. The written promise of a parent having expressed the intention is valid in as much as the person who has attained full age has the status described above.

[13] Notwithstanding his love, the deceased person could not, with his December 3, 1990 letter, modify the definition of **Dependant** and create under the SETTLEMENT AGREEMENT FUND special obligations for his son to the detriment of the other persons involved in the Class Action. The wishes or even the commitments of the deceased person do not allow the Claimant to qualify in this case.

[14] The evidence submitted before the undersigned does not allow to conclude, as the Claimant would so wish, that he met the terms and conditions provided under the SETTLEMENT AGREEMENT at the time of his father's death in December 1995.

[15] There is no reason to modify the Referee's decision.

FOR THESE REASONS, THE COURT:

REJECTS the Request for Review;

CONFIRMS the Referee's decision.

WITHOUT COSTS.

Original signed by:
NICOLE MORNEAU, JSC