

**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 12055**

**- and -**

**The Administrator**

**(On a motion to oppose confirmation of the decision of C. Michael Mitchell released November 13, 2007)**

**Reasons for Decision**

**WINKLER C.J.O.:**

**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 estate of 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. (4<sup>th</sup>) 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 initial Claimant in this matter (the "deceased") passed away prior to the release of this decision. The deceased's claim has been continued by his Personal Representative.

4. The deceased was an Ontario resident who had been diagnosed with Hepatitis C. Prior to his death, the deceased took the position that his hepatitis C infection was a result of a blood transfusion that he allegedly received on May 7, 1986 after a car accident.

5. There are no records that the deceased received blood, or was even admitted to the hospital in 1986.

6. At the hearing before the referee, the deceased provided evidence regarding the car accident and the alleged blood transfusion. The referee summarized this evidence as follows:

8. The Claimant testified that he was in a car accident on May 6, 1986 in which his small car was, in the vernacular, "totaled" when it was struck head-on by another vehicle which had lost control. The Claimant says there were police reports completed and ambulance attendants at the scene, but he was not taken to hospital. In fact, he was permitted to go home and advises that he walked home which was only several blocks from the scene of the accident. However, the Claimant also claims that he received lacerations on his hands and face as a result of glass from the front windshield which struck him and from banging his head against the side window of his car.
9. The morning following the accident, the Claimant says that the towel which he used to wrap his hands the day before was soaked with blood (because of the lacerations). He testified that he called his friend, BJ, to ask him to take him to the hospital. Instead, BJ's girlfriend, RT, came and took the Claimant to the hospital.
10. The Claimant says that he was admitted into the emergency room where, after a period of time, he received a blood transfusion. He recalls seeing the blood hooked up, receiving the transfusion and feeling much better that day.
11. As a result of the lacerations, the Claimant claims in his evidence to have received stitches on his hands and face at the same time as the blood transfusion, and said that there must have been approximately 30 stitches.
12. Later that afternoon, on the recommendation of his girlfriend, he went to see Dr. R.G.M. Barel because of neck and back pain he was experiencing. He does not remember whether he told Dr. Barel that he had been seen in emergency that day and had received a blood transfusion or that he had received stitches at the hospital.
13. In 2002, when he was interviewed by Dr. Ghent, who was trying to determine the nature and source of his liver disease, the Claimant responded to Dr. Ghent's question in the negative as to whether or not he had ever received a blood transfusion. On the

other hand, he admitted to cocaine use in the 1990s. His explanations for giving this answer were variously that at that point he did not think that it mattered, that he was shortly thereafter truthful with Dr. Ghent, that he was very ill at the time and "who knows where my head was at", and finally that he had no explanation as to why he said no in response to Dr. Ghent's question. He did not claim to have forgotten about the transfusion. Dr. Ghent's evidence was that he did not learn until 2005, three years later, of the Claimant's assertion that he had received a blood transfusion in 1986.

7. At the hearing before the referee, evidence was given by a woman referred to by the referee as "RT". RT claims that she escorted the deceased to the hospital on May 7, 1986. She did not see a transfusion being administered. However, she says that the deceased told her that he would be receiving a transfusion and she saw staff bring a blood bag into the room.

8. The automobile accident of May 6, 1986 is referred to in two letters by doctors to a lawyer retained by the deceased. In the first letter, dated June 20, 1986, Dr. R.G.M. Barel indicates that he saw the deceased the day after the accident, and that the deceased appeared "obviously hurt". Dr. Barel provided details in this letter regarding pain that the deceased was suffering in the deceased's neck and back, but does not make any mention of lacerations or a blood transfusion.

9. The second letter is written by Dr. Howard S. Cameron dated September 10, 1986. Dr. Cameron indicates that he examined the deceased on the date of the letter, and the doctor provides details regarding the effect of the accident on the deceased's health. Dr. Cameron notes that the day after the accident, the deceased "did call Dr. Barel, his family physician in the morning and was examined by home on the 7<sup>th</sup> of May". However, Dr. Cameron makes no mention of lacerations, a blood transfusion, or the hospitalization of the deceased.

10. The deceased's claim was denied by the referee on the basis that the deceased had failed to establish, on a balance of probabilities, that a transfusion had occurred.

11. In submissions provided in support of this motion, the Claimant indicated that "There is an additional witness ... who observed me receiving the blood transfusion". The Claimant provided the name of the witness, but no further details.

### **Standard of Review**

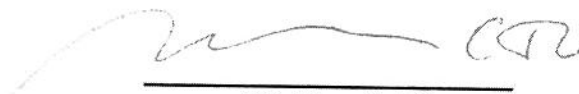
12. In a prior decision in this class proceeding, the standard of review set out in *Jordan v. McKenzie* (1987), 26 C.P.C. (2d) 193 (Ont. H.C., aff'd (1990), 39 C.P.C. (2d) 217 (C.A.)) was adopted as the appropriate standard to be applied on motions by a rejected claimant to oppose confirmation of a 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

13. In order to succeed, the Claimant must establish, on the balance of probabilities, that the deceased received a blood transfusion during the Class Period. Proving a blood transfusion when there are no hospital records is difficult, although not impossible.
14. Having considered all of the evidence, I find that it was reasonable for the referee to deny the claim. This is particularly the case when considering that:
- a) The deceased admits that he did not go to the hospital on the night of his accident, and that he walked home.
  - b) The letters of Dr. Barel and Dr. Cameron provide significant details regarding the impact of the accident on the deceased, but make no mention of lacerations, bleeding or a blood transfusion. This is despite the fact that Dr. Barel met with the deceased on the day that the deceased allegedly received the transfusion.
  - c) In 2002, the deceased informed his doctor that he had never had a blood transfusion.
15. The best evidence in support of the Claimant's case comes from RT, who asserts that she attended the hospital with the deceased, and saw a blood bag. Although this is significant evidence, it is not sufficient, particularly in light of the aforementioned evidence.

### Result

16. 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.

  
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Winkler C.J.O.

Released: Oct 12 / 2010