

**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 No. 12926 and 12927

- and -

The Administrator

**(On a motion to oppose confirmation of the decision of Shelley L. Miller, Q.C.,
released March 1, 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.

3. The following factual summary pertinent to this motion is taken from the referee's decision:

1. On October 17, 2003 the Administrator denied the claim for compensation of certain family members of the deceased HCV Infected Person on the basis that the Claimants did not satisfy the criteria for entitlement required by section 3.07 of the Settlement Agreement.
2. The hearing took place on July 8, 2003 but was adjourned for receipt of written submissions, received January 19, 2004.
3. Neither party disputed the following facts:
 - (a) the Claimants on this Appeal are twin siblings born January

27, 2003 who are children of the son of the deceased

Primarily Infected Person.

- (b) The Claimants applied for compensation in their capacity as grandchildren born after the death of their grandparent, the Primarily Infected Person.
- (c) The Administrator denied the application for compensation under the 1986-1990 Hepatitis C Settlement Agreement upon consideration of section 3.07 ...

Standard of Review

4. 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 to motions to oppose confirmation of a referee's decision by a rejected claimant. 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

5. The issue before the referee was whether the term "Grandchild", as defined in the Transfused HCV Plan, included individuals who were conceived after the death of the relevant infected person.

6. The Claimants' representative made a number of submissions regarding the definition of "Grandchild". In short, the Claimants' representative takes the position that the definition of "Grandchild", as provided in section 1.01 of the Transfused HCV Plan, does not exclude children conceived after the death of the relevant infected person and she argues that there is no reason to look beyond the plain wording of the Settlement Agreement.

7. The referee focused on the definition of "Child" under the Plan, which includes "a child conceived before and born alive after his or her parent's death", thus implicitly excluding children conceived after their parents' deaths. The referee also notes that at common law, an individual who is conceived before his or her grandparent's death has no right of action in relation to the grandparent's death.

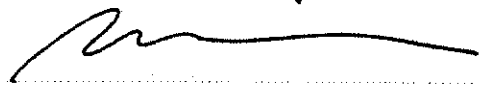
8. The referee concluded that the drafters of the Transfused HCV Plan would not have intended to leave the class of "Grandchild" open indefinitely.

9. In my view, the referee's interpretation of the term "Grandchild" was reasonable,

particularly in light of the definition of "Child" that is provided in section 1.01 of the Transfused HCV Plan. The definition of "Child" is sufficiently clear as to exclude children conceived after the death of the parent. It would be unreasonable to interpret the Transfused HCV Plan as enabling grandchildren who were conceived after the death of the relevant infected person to qualify for compensation when children in this situation do not qualify.

Result

10. 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