

**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 18293

- and -

The Administrator

**(On a motion to oppose confirmation of the decision of John P. Sanderson, Q.C.,
released on October 2, 2009)**

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 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. The following factual summary pertinent to this motion is taken from the referee's decision dated October 2, 2009:

- (a) The Claimant is an approved HCV Infected Person.
- (b) In her claim, the Claimant stated that her gambling expenses were a consequence of medical treatment she received once she was diagnosed with Hepatitis C. In her own words she stated:

I do believe that going to the casino and playing the slot machines was at that time part of my treatment. It allowed my brain to focus on something else besides the pain.

- (c) The Claimant's medical history is somewhat complicated. Initially, her doctors considered that her condition could be linked to Fibromyalgia. Various medications were prescribed. Several months later, the Claimant was diagnosed as being infected with Hepatitis C. A new and different treatment plan was instituted involving medication suitable to treat Hepatitis C. The Claimant's multiple visits to the casino occurred after this treatment plan was begun. Unfortunately, the Claimant's gambling losses were a very substantial sum and it is this sum that is the basis of this claim.
- (d) In a separate and earlier claim, the Claimant was awarded the sum of \$36,000 as compensation under the Plan for becoming infected with Hepatitis C. She signed a Release in the usual form.
- (e) The Administrator denied the claim ...with regard to gambling expenses incurred at the casino because such expenses are not included in the definition of Out-of-Pocket Expenses under section 4.07 of the Plan. ...

4. The Administrator's decision was upheld by the referee.

Standard of Review


5. 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

6. I am in agreement with the Administrator and the referee that the Claimant's gambling losses are not compensable under the Settlement Agreement. In particular, the Claimant cannot succeed under section 4.07 of the Transfused HCV Plan, since: a) there is insufficient evidence to establish that the Claimant's gambling losses are a result of her HCV infection; b) the Claimant's gambling losses are not "reasonable costs"; and c) gambling losses are not attributable to "generally accepted medication or treatment" nor do they otherwise meet the requirements of section 4.07(a).

Result

7. 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 C.J.O.

Released: March 25, 2010