

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *HCV Settlement Agreement Claim #19150*,
2026 BCSC 1394

Date: 20260724
Docket: C965349
Registry: Vancouver

**In the Matter of the 1986-1990 Hepatitis C
Settlement Agreement
[Transfused Plan]
Re: Claim No. 19150**

Before: The Honourable Justice Jones

Reasons for Judgment

The Claimant, appearing by video:	Self-represented
Counsel for the British Columbia Fund:	G.J. Kehler
Place and Date of Hearing:	Vancouver, B.C. October 31, 2025
Place and Date of Judgment:	Vancouver, B.C. July 24, 2026

Table of Contents

INTRODUCTION	3
ROLE OF THE COURT AND STANDARD OF REVIEW	4
Role of the Court	4
Standard of Review	4
BACKGROUND	5
ADMINISTRATOR’S DECISION	5
CLAIMANT’S APPEAL OF THE ADMINISTRATOR’S DECISION	6
REFEREE’S DECISION	6
CLAIMANT’S SUBMISSIONS.....	8
ANALYSIS	9
CONCLUSION.....	10

Introduction

[1] British Columbia residents who were infected with the Hepatitis C virus (“HCV”) by transfusion of blood from the Canadian blood supply between January 1, 1986 and July 1, 1990, and their family members and estates, brought a class action seeking damages for their infections.

[2] The action was settled by agreement, and the 1986-1990 Hepatitis C Settlement Agreement dated June 15, 1999 (the “Settlement Agreement”) was approved by this Court on October 1, 1999: see *Endean v. Canadian Red Cross Society*, 1999 CanLII 6357, [1999] BCJ No. 2180 (BCSC).

[3] Similar class proceedings in Ontario and Quebec were settled by the terms of the Settlement Agreement.

[4] A pre-condition to entitlement to compensation under the Settlement Agreement is that a claimant must have been infected with the HCV by a blood transfusion received in the Class Period from January 1, 1986 to July 1, 1990 (the “Class Period”).

[5] The Settlement Agreement provides for the appointment of an “Administrator” to administer the settlement plans established under it.

[6] “Fund Counsel” are appointed by the Court pursuant to Article 7 of the Settlement Agreement, with duties and responsibilities including defending decisions made by the Administrator.

[7] Here, British Columbia Fund Counsel (“BC Fund Counsel”) is defending the decision of the Referee dated September 9, 2016 (the “Referee’s Decision”), which is the subject of the Claimant’s motion in the form of an application to this Court opposing confirmation of that decision.

[8] The Referee’s Decision dismissed the Claimant’s appeal from the Administrator’s determination dated June 1, 2011 (the “Administrator’s Decision”) that the Claimant was not entitled to compensation under the Settlement Agreement,

specifically the Transfused HCV Plan (Schedule A of the Settlement Agreement), because she did not prove, on a balance of probabilities, that she was infected with the HCV for the first time by a blood transfusion received in the Class Period.

Role of the Court and Standard of Review

Role of the Court

[9] Article 10.01 of the Settlement Agreement provides for a supervising role of the Court in the implementation and enforcement of the provisions of the Settlement Agreement, and the supervision of the ongoing performance of the Settlement Agreement, including to “hear motions opposing confirmation of any Referee’s reports.”

[10] Here, the Claimant’s application to the Court is a motion opposing confirmation of the Referee’s Decision dated September 9, 2016. Such a motion is made pursuant to the Transfused HCV Plan, Appendix C – Reference Rules, s. 3.

Standard of Review

[11] In prior decisions of courts in the class proceedings, the standard of review adopted is that set out in *Jordan v McKenzie*, [1987] OJ No 1193, 26 CPC (2d) 193 at para 10 (Lexis)(ONHCJ), aff’d [1989] OJ No 1751, 39 CPC (2d) 217 (ONCA), as follows:

10 ... [the court] ought not to interfere with the results unless there has been some error in principle demonstrated by the [referee’s] reasons, some absence or excessive jurisdiction, or some patent misapprehension of the evidence.

[12] See, for example, *HCV Settlement Agreement Claim No. 11910*, 2004 BCSC 1431 at para 2.

[13] The role of the Court is not to re-hear the appeal from the Administrator’s Decision, nor to weigh and assess the evidence that was adduced before the Referee: see *HCV Settlement Agreement Claim #1300017*, 2007 BCSC 1020 at para 9 [*Claim #1300017*].

[14] The Court, like the Administrator and the Referee, is bound by the terms of the Settlement Agreement: *Claim #1300017* at para 10.

Background

[15] A brief summary of the background to the Claimant's claim for compensation, discussed in more detail below, is that she was admitted to the Hospital in Comox on May 22, 1987 when she was experiencing symptoms relating to her pregnancy. She was transported by air ambulance to the Hospital in Vancouver, ultimately delivering a baby boy by caesarean section on June 3, 1987.

[16] The Claimant received a letter dated April 14, 1997 from the British Columbia Ministry of Health, pursuant to the Blood Recipient Notification Plan (BRNP) (the "BRNP Letter"). The letter stated that hospital blood bank records indicated she likely received a blood product between January 1985 and June 1990, and encouraged her to be tested for Hepatitis C.

[17] The Claimant submitted a claim form dated May 4, 2010, to the Transfused HCV Plan stating that she was an HCV infected person.

[18] In response to the Claimant's inquiries about the BRNP Letter, correspondence from the BC Provincial Blood Coordinating Office dated October 26, 2011 to the Administrator, clarified that the Claimant's name had been submitted to the notification program by the Hospital based on the hospital's record of a crossmatch of blood to allow for four units of compatible blood to accompany the Claimant when she was transported from Comox to Vancouver by air ambulance. The hospital records did not indicate that the Claimant was transfused with blood.

Administrator's Decision

[19] The Administrator's Decision dated June 1, 2011, denied the Claimant's claim on the basis of insufficient evidence to support the claim.

[20] The Administrator's letter to the Claimant refers to the four units of blood sent with the Claimant from the Hospital in Comox to the Hospital in Vancouver, with no

confirmation of a transfusion, the evidence referring to the Claimant having been type-screened and crossmatched only, with no evidence of a blood transfusion.

[21] The Administrator's letter also refers to a review of the two hospitals' medical records, finding no indication of a transfusion.

[22] On that basis, the Administrator denied the Claimant's claim for compensation.

Claimant's Appeal of the Administrator's Decision

[23] The record before me includes the submissions of the Claimant's former counsel dated August 19, 2013 appealing the Administrator's Decision. The submissions refer to the BRNP Letter the Claimant received. The submissions also refer to the four units of blood sent with the Claimant by air ambulance from Comox to Vancouver, and the unavailability of the air ambulance records because the records had been destroyed.

[24] The submissions refer to Standard Operating Procedure, s. 3.01(2) of the Transfused HCV Plan ("SOP 3.01(2)"), which provides that in circumstances of missing hospital records, a claim may be proved by the existence of a BRNP letter, and information confirming the date of the transfusion in issue.

[25] The SOP 3.01(2) includes a clarification that the Administrator must be satisfied on a balance of probabilities that the transfusion referred to in a BRNP notification letter took place during the Class Period.

Referee's Decision

[26] The Referee's Decision refers to the Administrator's denial of the Claimant's claim on the basis that the Claimant was not able to provide sufficient evidence that she received blood during the Class Period.

[27] The Referee's Decision summarizes information regarding the Claimant's admission to the Hospital on May 22, 1987, including reference to her bleeding earlier in her pregnancy, and her pregnancy described as a placenta previa. The

attending physician recommended a transfer to the Hospital in Vancouver because of the likely need for a caesarean section for delivery of the baby.

[28] In preparation for the transport from Comox to Vancouver, four units of blood were typed and crossmatched, and recorded in the medical records. The Hospital records of the crossmatched four units of blood include a space to indicate whether the units were administered, but the spaces are blank, suggesting the units were not administered to the Claimant.

[29] The Referee's Decision refers to the Claimant's transfer to the Hospital, and the specific reference in the admission history to "no transfusion", also noting that there is no apparent reason why such a transfusion would have been required.

[30] The Referee's Decision describes the caesarean section surgery at the Hospital, and the hospital records regarding that surgery, as follows:

The claimant underwent a Caesarean section for delivery of her infant on June 3, 1987. There was an order that 2 units of blood be crossmatched on June 2, 1987 in preparation for that procedure. The detailed operative report of the procedure makes no reference to blood transfusion, nor do the postanesthetic recovery room records or subsequent nursing records. The anesthetic record shows that only Ringer's Lactate ("RL") was administered by way of fluid and there is no indication that any blood was given.

[31] The Referee's Decision also refers to the Hospital records including the records of "intravenous solutions and the administration of any blood or blood products", these records indicating that the Claimant had an IV in place from Comox, with no reference to any blood or blood products being given at any point.

[32] The Referee's Decision addresses the Claimant's submission about the SOP 3.01(2), concluding that it is clear from the records of the two hospitals that no blood products were administered to the Claimant at either hospital.

[33] As a result, the Referee's Decision upheld the Administrator's Decision.

Claimant's Submissions

[34] The Claimant's written submissions dated November 29, 2024 refer again to SOP 3.01(2) and the missing air ambulance records, the BRNP Letter, and concludes with her stating she qualifies for compensation in accordance with the Standard Operating Procedures.

[35] I note again that SOP 3.01(2) includes a clarification that the Administrator must be satisfied on a balance of probabilities that the transfusion referred to in a BRNP notification letter took place during the Class Period.

[36] I understand that clarification to be that in addition to the BRNP Letter, there must be evidence of a transfusion, and that the transfusion took place within the Class Period.

[37] The BRNP Letter is not sufficient by itself to establish a claimant's right to compensation under the terms of the Settlement Agreement, including the SOP 3.01(2).

[38] In the Claimant's case, in response to the Claimant's follow-up inquiries about the BRNP Letter, the BC Provincial Blood Coordinating Office letter dated October 26, 2011 to the Hepatitis Claim Centre clarified that upon review of the Claimant's records, it appeared that the Hospital submitted the Claimant's name to the BRNP based on the fact that she was crossmatched for the four units of blood, not that she had received a transfusion.

[39] I also note that the record before me includes a Claimant's submission dated June 20, 2011, which submits that the Administrator states that the Claimant was not within the Class Period; however, my review of the Administrator's Decision indicates that the Administrator found that there was no evidence to support that the Claimant received a blood transfusion within the Class Period, as the Claimant's admissions to the Hospital and the Hospital in May and June 1987 were clearly within the Class Period.

Analysis

[40] Following my receipt and review of the motion materials, I requested the parties appear before me for oral submissions, which I heard on October 31, 2025.

[41] I specifically requested submissions relating to the Referee's Decision in which she refers to there being "no indication in the records of either hospital of any bleeding which would have given rise to the need for a transfusion."

[42] I made that request for submissions because in the medical records relating to the caesarean section surgery at the Hospital on June 3, 1987, there is a reference to an estimated blood loss of 1,500 cc, an amount noted in the record as "excessive".

[43] Although the Referee's Decision does not specifically refer to the Claimant's blood loss during surgery at the Hospital on June 3, 1987, that blood loss does not necessarily lead to a conclusion that the Claimant received a transfusion of blood.

[44] The Claimant's loss of blood during the surgery is simply some evidence that blood products might have been administered to her; however, the Referee's Decision indicates that she considered whether there was evidence that the Claimant received blood or blood products during the surgery at the Hospital, by stating that the "anesthetic record shows that only Ringer's Lactate ("RL") was administered by way of fluid and there is no indication that any blood was given."

[45] The Referee's Decision reviews the Administrator's Decision and the medical records from the two hospitals, specifically referring to the lack of any evidence of a blood transfusion having been administered to the Claimant.

[46] The Referee's Decision also addresses the Claimant's submissions regarding the BRNP Letter, the missing ambulance records, and SOP 3.01(2), emphasizing that there is no evidence of the Claimant having received blood or blood products.

[47] As a result, the Referee's Decision upheld the Administrator's denial of the Claimant's claim for compensation, based on the finding that it was not open to the Administrator to conclude, on a balance of probabilities, that the Claimant received a blood transfusion in Canada during the Class Period.

Conclusion

[48] For these reasons, I am unable to conclude that there was any error in principle demonstrated by the Referee's Decision, there was no absence or excessive jurisdiction, nor was there any patent misapprehension of the evidence by the Referee that would lead me to interfere in the Referee's Decision upholding the Administrator's Decision to deny the Claimant's claim for compensation under the terms of the Settlement Agreement.

[49] As a result, the Claimant's motion opposing confirmation of the Referee's Decision dated September 9, 2016 is dismissed.

[50] I order that there be no costs of this application to either party.

"Jones J."