

**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 3949**

**- and -**

**The Administrator**

**(On a motion to oppose confirmation of the decision of Bruce Outhouse, Q.C.,  
released May 12, 2006)**

**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. (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 Claimant is a resident of New Brunswick who is infected with HCV. The Claimant seeks compensation pursuant to Transfused HCV Plan.

4. The Claimant has made no real attempt to argue that he received blood during the Class Period. He indicated on his application for compensation that he did not know whether he had received a blood transfusion during the Class Period. According to the Administrator, he later indicated by phone that he did not believe that he had ever received a transfusion. He also indicated in writing that he believed that he probably became infected with HCV as a result of using contaminated razor blades while incarcerated in the 1980s.

5. The Claimant's application for compensation was denied by the Administrator on August 12, 2004 on the basis that the Claimant had not provided sufficient evidence to establish that he received blood during the Class Period. The Administrator's decision was upheld by a referee on May 12, 2006.

### **Standard of Review**

6. 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**

7. In order to obtain compensation under the Plan, a claimant must establish both that he or she is infected with Hepatitis C and that the infection occurred as a result of a receipt of blood or a specified blood product during the class period. Here the Claimant has established that he has a Hepatitis C infection but has not established that he acquired that infection as a result of a blood transfusion in the class period. Accordingly, he is not entitled to compensation pursuant to the Settlement terms.

### **Result**

8. 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.**