

**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 4953 and 4955

- and -

The Administrator

**(On a motion to oppose confirmation of the decision of Judith Killoran, released
April 28, 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.

Facts

3. The Claimants are the surviving family members of a deceased HCV infected person. The deceased acquired HCV through a blood transfusion in Canada during the Class Period.

4. The Claimants seek compensation as surviving family members pursuant to section 6 of the Transfused HCV Plan.
5. On September 18, 2003, the Administrator denied the Claimants' requests for compensation on the grounds that the deceased's death was not caused by HCV.
6. On April 28, 2004, the referee upheld the Administrator's decision.
7. The last note on the deceased's hospital file indicated that the "most responsible diagnosis" was "carcinoma of the esophagus with pulmonary and bony metastases (left hip, ribs, thoracic spine)". Four comorbid conditions are identified, including hepatitis C.
8. The deceased's treating physician has indicated that HCV did not materially contribute to the deceased's death.
9. In submissions made to the referee, the Claimants argued that even if the deceased died of cancer, the HCV infection caused her to die earlier by hastening the spread of the cancer.

Standard of Review

10. 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


11. Pursuant to section 6.01 of the Transfused HCV Plan, compensation is available to Approved Family Members of an HCV infected person if "the death was caused by his or her infection with HCV." This requirement is also reflected in section 3.05(1)(a).
12. I have reviewed all of the doctors' reports that were submitted to me, including reports by Dr. John McKaigney and Dr. R.J. Gay. Although it is undisputed that the deceased was infected by HCV, there is simply no proof that the death was caused by

HCV. Moreover, the Claimants' argument that the HCV hastened the spread of the deceased's cancer has not been substantiated.

13. In the absence of conflicting evidence, considerable weight must be given to the note in the deceased's hospital file and the evidence provided by the deceased's treating physician.

Result

14. In my view, the referee committed no errors in principle, with respect to jurisdiction or by misapprehending the evidence before her. Accordingly, the referee's decision is confirmed.



Winkler R.S.J.

Released: October 20, 2006