

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

RECEIVED BY THE REGISTRY

By: 15 OCT 2013

Nos.: 500-06-000016-960/500-06-000068-987

DATE: October 8, 2013

BEFORE THE HONOURABLE FRANCOIS ROLLAND, Chief Justice

CLAIMANT 10566

Applicant

v.

ATTORNEY GENERAL OF CANADA

and

ATTORNEY GENERAL OF QUEBEC

and

CANADIAN RED CROSS SOCIETY

Respondents

and

MR. MICHEL SAVONITTO, in his capacity as a member of the Joint
Committee and

THE CLASS PROCEEDINGS FUND

and

THE CURATEUR PUBLIC DU QUEBEC

and

JEAN-FRANCOIS LEPAGE - REFEREE

Impleaded party

JR 1056

JUDGMENT
ON THE CLAIMANT'S OPPOSITION **TO** THE HOMOLOGATION
OF A DECISION BY THE REFEREE

500-00-016346-131

OCT 15. 2013

[1] The Claimant challenges the homologation of the Referee's decision disallowing her claim.

THE FACTS

[2] The 1986–1990 Hepatitis C Settlement Agreement reached in the outstanding case (hereinafter the Agreement) was approved in 1999 not only by the Superior Court of Quebec, but also by the Supreme Court of British Columbia and the Superior Court of Ontario.¹

[3] Courts are required, in certain circumstances, to intervene in order to ensure the implementation of the Agreement.

[4] In the case at hand, the Court is seized of an application in opposition by the Claimant, who was denied compensation following her husband's death.

[5] The Agreement sets out the eligibility conditions and the evidence required of individuals seeking compensation.

[6] On June 30, 2010, the Claimant submitted to the Compensation Plan Administrator a claim as an "Approved HCV Personal Representative" of a deceased HCV Infected Person, under the Transfused HCV Plan.

[7] The Claimant claims that her husband's death in December 2001 is linked to the six (6) blood transfusions that he previously received, four (4) of which were received during the period covered by the Agreement.

[8] On June 20, 2012, the Administrator disallowed the claim on the grounds that the evidence submitted by the Claimant did not establish that her late husband was infected with HCV.

[9] The Administrator relies on a form completed at the Claimant's request in which Dr. P states that her late husband was never diagnosed with Hepatitis C.

[10] On June 26, 2012, the Claimant appealed the Administrator's decision before a Referee.

¹ This Agreement has settled six similar class actions in three different provinces: 500-06-000016-960 and 500-06-000068-987 (QC), C965349 (BC, two files combined), 98-CV-141369 and 98-CV-146405 (ON).

[11] On April 23, 2013, the Referee dismissed the reference to review, stating the following:

To be eligible for compensation as an "Approved HCV Personal Representative" of a deceased HCV Infected Person, the Claimant has the burden of showing that HCV caused the death of the person who was apparently infected.

Sections 3.01 and 3.05 of the Plan set out the documentary evidence to be submitted in support of such a claim:

((3.01 (1) A person claiming to be a Primarily-Infected Person must deliver to the Administrator an application form prescribed by the Administrator together with: [...]

(b) an HCV Antibody Test report, PCR Test report or similar test report pertaining to the claimant;

[...]

3.05 (3) Notwithstanding the provisions of Section 3.01(1)(b), if a deceased Primarily-Infected Person was not tested for the HCV antibody or HCV the HCV Personal Representative of such deceased Primarily-Infected Person may deliver, instead of the evidence referred to in Section 3.01(1)(b), evidence of any one of the following:

a. a liver biopsy consistent with HCV in the absence of any other cause of chronic hepatitis;

b. an episode of jaundice within three months of a Blood transfusion in the absence of any other cause; or

c. a diagnosis of cirrhosis in the absence of any other cause."

Based on an analysis of the file, as it stands before me, the Claimant has not discharged her burden of proof, as none of the requirements set out in sections 3.01(1)(b) and 3.05(3) are met.

Rather, the file, as it stands before me, shows that the person who was supposedly infected with HCV, according to the Claimant, has not undergone any tests to detect HCV, as confirmed by the claimant in a letter dated July 27, 2006.

Furthermore, still according to the file analysis, a physician confirmed in writing on September 5, 2002, in a medical certificate that the person who was apparently infected with HCV, according to the claimant, had never been diagnosed as infected with HCV.

The file, as it stands before me, does not contain any document that establishes any of the situations set out in section 3.05(3) of the Plan and that would enable the Claimant to address the lack of an HCV detection test.

Having reviewed the entire file, I note the lack of evidence indicating that the Claimant's spouse, on whose behalf she is submitting this reference to review, was infected by HCV. Consequently, there is also no evidence that HCV caused her spouse's death.

Having reviewed all the documentation that was sent to me, I conclude that the Administrator's decision to refuse to compensate this claimant had merit. (*quoted verbatim*)

[12] The Claimant now requests that this decision not be homologated.

[13] In order to facilitate the Claimant's application, the Court suggested that she submit her arguments in writing. The Claimant agreed. A similar offer was made to the Fund Counsel and the Joint Committee member who acts as a friend of the Court for such applications.

[14] The Claimant submitted her representations in writing on August 22, 2013, and the Fund Counsel did so as well on September 11, 2013. The Joint Committee member chose not to add anything to the debate.

[15] In her letter to the undersigned, the Claimant emotionally reports her late husband's health problems, as well as her personal difficulties in overcoming this tragic event. She recognizes that no medical test shows an HCV infection but struggles to explain why these tests were never performed at the time. She is seeking compensation for all these years of distress and financial hardship.

[16] The Fund Counsel argues that the Court cannot intervene because the Referee's decision is not unreasonable.

[17] The Court is moved by what the Claimant has experienced. Unfortunately, this cannot allow it to dispense with the Agreement's requirement.

[18] To be eligible for compensation, the Claimant had the burden of demonstrating that her late husband was infected with HCV, which she failed to establish.

[19] The Claimant herself acknowledges that her evidence does not meet the Agreement's requirements. Therefore, the Administrator had no choice but to disallow her claim for compensation.

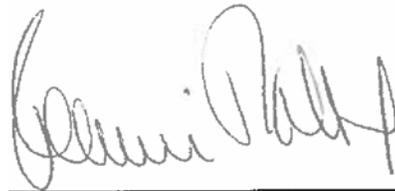
[20] The Referee could not, in turn, overrule the Administrator's decision.

[21] The role of the Court is limited to ensuring that the Referee acted within his jurisdiction and that his decision does not contain a patently unreasonable error.

[22] However, despite all the sympathy the Court may have for the Claimant, the Referee's decision meets the Agreement's requirements.

[23] **FOR THESE REASONS, THE COURT:**

[24] **UPHOLDS** the Referee's decision.



FRANÇOIS ROLLAND, Chief Justice

The Claimant
Representing herself

Ms. Martine Trudeau
Savonitto & Ass. inc.
for Michel Savonitto, **in** his capacity as a member of the Joint Committee

Mr. Philippe Dufort-Langlois
McCarthy, Tetrault
Fund Counsel

Hearing date: Judgment on file