

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO: 500-06-000016-960

SUPERIOR COURT
Class action

DOMINIQUE HONHON

Plaintiff

-vs-

THE ATTORNEY GENERAL OF CANADA
THE ATTORNEY GENERAL OF QUÉBEC
THE CANADIAN RED CROSS SOCIETY

Defendants

-and-

MICHEL SAVONITTO, in the capacity of the
Joint Committee member for the province of
Québec

PETITIONER

-and-

FONDS D'AIDE AUX RECOURS COLLECTIFS
-and-
LE CURATEUR PUBLIC DU QUÉBEC

Mis-en-cause

CANADA
PROVINCE OF QUÉBEC
DISTRICT O.F MONTRÉAL

NO: 500-06-000068-987

SUPERIOR COURT
Class action

DAVID PAGE

Plaintiff

-vs-

THE ATTORNEY GENERAL OF CANADA
THE ATTORNEY GENERAL OF QUÉBEC
THE CANADIAN RED CROSS SOCIETY

Defendants

-and-

FONDS D'AIDE AUX RECOURS COLLECTIFS
-and-
LE CURATEUR PUBLIC DU QUÉBEC

Mis-en-cause

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N

**DIANNA LOUISE PARSONS, MICHAEL HERBERT CRUICKSHANKS, DAVID TULL,
MARTIN HENRY GRIFFEN, ANNA KARDISH, ELSIE KOTYK, Executrix of the Estate of Harry Kotyk,
deceased and ELSIE KOTYK, personally**

Plaintiffs

and

**THE CANADIAN RED CROSS SOCIETY, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
and
THE ATTORNEY GENERAL OF CANADA**

Defendants

and

**HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF ALBERTA
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF SASKATCHEWAN,
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF MANITOBA,
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NEW BRUNSWICK HER
MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF PRINCE EDWARD
ISLAND,
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NOVA SCOTIA
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NEWFOUNDLAND,
THE GOVERNMENT OF THE NORTHWEST TERRITORIES,
THE GOVERNMENT OF NUNAVUT and THE GOVERNMENT OF THE YUKON TERRITORY**

Intervenors

Proceeding under the Class Proceedings Act, 1992

Court File No. 98-C.V-146405

B E T W E E N:

**JAMES KREPPNER, BARRY ISAAC, NORMAN LANDRY, as Executor of the Estate of the late
SERGE LANDRY, PETER FELSING, DONALD MILLIGAN, ALLAN GRUHLKE, JIM LOVE and
PAULINE FOURNIER as Executrix of the Estate of the late PIERRE FOURNIER**

Plaintiffs

and

**THE CANADIAN RED CROSS SOCIETY, THE ATTORNEY GENERAL OF CANADA and
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

Defendants

and

**HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF ALBERTA,
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF SASKATCHEWAN,
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF MANITOBA,
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NEW BRUNSWICK,
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HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NOVA SCOTIA
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NEWFOUNDLAND,
THE GOVERNMENT OF THE NORTHWEST TERRITORIES,
THE GOVERNMENT OF NUNAVUT AND THE GOVERNMENT OF THE YUKON TERRITORY**

Intervenors

No C965349
Vancouver Registry

In the Supreme Court of British Columbia

Between :

Anita Endean, as representative plaintiff

Plaintiff

and:

**The Canadian Red Cross Society
Her Majesty the Queen in Right of the Province of
British Columbia, and The Attorney General of Canada**

Defendants

and:

**Prince George Regional Hospital, Dr. William Galliford,
Dr. Robert Hart Dykes, Dr. Peter Houghton, Dr. John Doe,
Her Majesty the Queen in Right of Canada, and
Her Majesty the Queen in Right of the Province of British Columbia**

Third Parties

Proceeding under the *Class Proceedings Act*, R.S.B.C. 1996, C. 50

**MOTION FROM THE ATTORNEY GENERAL OF CANADA FOR THE
ALLOCATION OF ACTUARIALLY UNALLOCATED ASSETS
(section 10.01 (1) p) of the 1986-1990 Hepatitis C Settlement Agreement)**

**TO THE HONOURABLE JUSTICE CHANTAL CORRIVEAU DESIGNATED TO HEAR
MOTIONS IN THESE CASES, THE DEFENDANT, THE ATTORNEY GENERAL OF
CANADA, RESPECTFULLY SUBMIT:**

1. This Motion is filed by the defendant, the Attorney general of Canada («Canada»), is response to the October 16, 2015 motion of the Joint Committee member for the province of Quebec and as its own motion for the allocation of the actuarially unallocated assets to be heard jointly with the parallel actions in Ontario (Parsons) and British-Columbia (Endean), where similar applications will be filed before the Superior Court of Ontario and the Supreme court of British-Columbia.

A) Background

2. In the fall of 1999, a pan-Canadian settlement of the January 1, 1986 to July 1, 1990 Hepatitis C class actions (the “Settlement Agreement”) was approved by this Court and the Superior Courts of Ontario and British-Columbia, as it appears from the Approval orders and judgments already filed by the Joint committee as exhibit R-1, supplemented by the judgments rendered in the Quebec Page action annexed as exhibit A to the affidavit of Asvini Krishnamoorthy, sworn on January 29th, 2016 (“the AK Affidavit”) filed in support of this motion as **Exhibit AGC-1**.
3. The Settlement Agreement provided for the creation of a trust fund (the “Trust Fund”), which was to be funded by the federal, provincial and territorial governments (“FPT Governments”) in an amount totaling \$1.118 billion plus interest from April 1, 1998 (the “Settlement Amount”). The federal government was to pay 8/11ths of the total settlement amount and the provincial and territorial governments were to pay 3/11ths. (section 4.01 of the Settlement Agreement: and sections 1.01 and 4.01 of Schedule D Funding Agreement).
4. Canada satisfied its obligation up-front, by transferring its full share, in the amount of \$877.82 million, to the Trust Fund on or about the settlement approval date in 1999. The provincial and territorial governments satisfy their obligation by periodic payments of the liability, as it arises. (section 4.01 of the Settlement Agreement: and sections 4.01 and 4.02 of Schedule D Funding Agreement).

5. The FPT governments agreed to forego the collection of taxes on the investment income earned by the Trust, and on amounts allocated to Class Members under the Settlement Agreement, resulting in a significant increase in the value of the settlement funds. (section 4.01 of Settlement Agreement: and section 3.02 of Schedule D Funding Agreement)
6. The Settlement amount and the tax free investment income generated by it are used to pay scheduled benefits, in accordance with plans incorporated into the Settlement Agreement, to Class Members over the course of their lifetimes depending on the severity of their illness and the extent of losses suffered, and to their dependents and other family class members after a class member's death due to HCV. (Settlement Agreement, Schedules A and B) and as described at para. 20, exhibit A, of the Affidavit of Heather Rumble Peterson sworn October 16, 2015, filed as Exhibit R-2 by the Joint Committee.
7. The parties took the position at the time of settlement that the Settlement Agreement provided compensation that was largely analogous to, or better than, that which could be expected to be awarded to Class Members were they successful personal injury claimants under the tort model, as it appears from the Plan d'argumentation des demandeurs, daté du 20 août 1999 in *Honhon* at p.6, Section 1(D)(1) ("Honhon – Plaintiffs' Settlement Factum" – exhibit D), the Submissions of the Representative Plaintiff on Application for Approval of the Proposed Settlement, 15 August 1999, in *Endean*, at paras. 76, 113, 127, 133 ("Endean – Plaintiffs' Settlement Factum" – exhibit E) and Plaintiffs' Factum in action 98-CV-141369 for August 18, 1999 Motion in *Parsons*, at paras. 11-13 and 123 ("Parsons – Plaintiffs' Settlement Factum" – exhibit B), annexed as exhibit D, E and B to the AK Affidavit (**Exhibit AGC-1**).
8. In particular, the ability to access additional compensation on an individual basis according to the severity of the disease was seen by all parties as a significant benefit over the traditional tort model, as described in the *Honhon* – Plaintiffs' Settlement Factum, at p.6 Section 1(D)(1) and p.22-23, Section VI(D, the *Parsons*

– Plaintiffs' Settlement Factum, at paras. 10, 127 and the *Endean* – Plaintiffs' Settlement Factum, at paras. 134-136, 146.

9. The three approving Courts found that the Settlement Agreement was fair, reasonable and in the best interest of the class as a whole, as it appears from the relevant Court orders and judgment already filed by the Joint committee as Exhibit R-1.
10. As of December 31, 2013, despite compensation payments of some \$776.9 million having been drawn down from the Trust Fund over the fourteen-year administration period, the Trust Fund including tax-free investment gains amounted to \$1.1902 billion that remained available to meet the present and future liabilities of the compensation plan, as it appears from the Actuarial Report Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust Fund as at 31, December 2013 by Morneau Shepell (Peter Gorham) dated April 8, 2015 (at p.39, Table 154) appended to the affidavit of Peter Gorham, sworn April 9, 2015 (the «2015 MS actuarial report») already filed by the Joint committee as Exhibit R-3 B.
11. Actuarial forecasts by Eckler Ltd. and Morneau Shepell found that the Trust Fund assets exceed the liabilities by \$236.3 million and \$256.6 million, respectively. These amounts are not required to fund the settlement, even after taking into account an amount to protect the class members from major adverse experience or catastrophe, as it appears at p.6, Table 26 and para. 30 of the 2015 MS Actuarial Report (Exhibit R-3B) and at paras. 247-249 of the "Actuarial Report to the Joint Committee Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2013" appended to the affidavit of Richard Border, sworn March 11, 2015, already filed by the joint committee as Exhibit R-3 B.
12. By its order dated July 16, 2015, this Court held that as at December 31, 2013, the assets of the Trust Fund exceeded the liabilities by an amount between \$236.3 million to \$256.6 million.

13. The Excess Capital totals \$256 million notwithstanding any reclassification of Level 2 class members to Level 3 which may occur, as set out in the Joint Committee's Notice of Application, as it appears from the Actuarial report on proposed allocation of the actuarially unallocated funds as of 31 December 2013, at paras. 14, 36-53, prepared by Morneau Shepell (Gorham, Peter), dated January 29, 2016 (« the 2016 MS Actuarial Report»), appended as exhibit A to the affidavit of Peter Gorham sworn January 29, 2016, filed as **Exhibit AGC-2**.
14. The Settlement Agreement provides that upon judicial declaration of the termination of the agreement, once the Plans and programs have been fully administered and all obligations satisfied, any assets which remain in the Trust Fund are to be the sole property of and transferred to the FPT governments. (Settlement Agreement, s.10.01(1)(i) (o) and 12.03)
15. In the interim, the Courts are directed by the approval orders to conduct triennial reviews to determine the sufficiency of the Trust Fund and the existence of any actuarially unallocated amounts. In the event of such an amount at any interim point, the parties or the Joint Committee may apply to the Courts to have the amount allocated according to the Settlement Agreement, detailed below, in a manner that is reasonable in all the circumstances.

B) Terms of the Settlement Agreement

16. Section 10.01 (1) p) of the Settlement Agreement (which was added though Schedule F approved by the Quebec Superior Court on November 19, 1999 in Honhon and Page), that is substantially the same as the provisions approved by the Superior courts in Ontario and British-Columbia, allows for allocations of actuarially unallocated amounts:
 - 1) Dans le cadre du libre exercice de leur pouvoir discrétionnaire, ordonner, de temps à autre, sur demande de toute partie ou du Comité conjoint, que les fonds et les autres éléments d'actif détenus par le fiduciaire en vertu de

la Convention de règlement et qui ne font pas l'objet d'une attribution actuarielle soient en tout ou en partie :

- (i) attribués aux membres des recours collectifs et/ou aux membres de la famille;
- (ii) attribués de toute manière dont on peut raisonnablement s'attendre qu'elle bénéficie aux membres des recours collectifs et/ou aux membres de la famille, même si l'attribution ne prévoit pas le versement d'une indemnité aux membres des recours collectifs et/ou aux membres de la famille;
- (iii) payés, en tout ou en partie, aux gouvernements FPT, à certains ou à un seul d'entre eux, compte tenu de la source des fonds et des autres éléments d'actif que comprend le fonds en fiducie; et/ou
- (iv) conservés, en tout ou en partie, dans le fonds en fiducie; de la manière que, dans le cadre du libre exercice de leur pouvoir discrétionnaire, les tribunaux estimeront raisonnable n tenant compte de toutes les circonstances, pourvu que, dans la distribution, aucune discrimination n'ait lieu selon l'endroit où le membre du recours collectif a reçu du sang ou selon l'endroit où il réside.

17. The intent and purpose of Schedule F was to modify the provisions of paragraph 10.01(1) of the Settlement Agreement, pertaining to the Courts' supervisory role, and not section 12.03. In Quebec, this is acknowledged in that paragraph 10.01(1)(p) was added to the Settlement Agreement.
18. Canada moves under Section 10.01 (1) p) 1) (iii) of the Settlement Agreement. The Joint Committee seeks an allocation under Section 10.01 (1) p) 1) (i). No party has sought an allocation under Section 10.01 (1) p) 1) (ii).
19. Settlement Agreements are binding contracts whose terms must be respected by the parties and enforced by the courts.

20. Section 10.01 (1) p) does not permit substantive amendments to the Settlement Agreement. It merely permits the allocation of Excess Capital in a way not otherwise provided for in the Settlement Agreement.
21. Substantive changes to the agreement can only be made through the amending formula in Article 12.02 of the Settlement Agreement, as has already been determined by the Courts on the motions heard in the fall of 2013 concerning the late claims protocols, copy of the relevant Court orders and judgment is filed in support thereof: *Honhon c. Canada (Procureur général)*, 2014 QCCS 2032 as **Exhibit AGC-3A**, *Endean v. The Canadian Red Cross Society*, 2014 BCSC 621 as **Exhibit AGC-3B** and *Parsons v. Canadian Red Cross Society*, 2013 ONSC 7788 as **Exhibit AGC-3C**.
22. The allocations proposed by the Joint Committee require substantive amendments to the Settlement Agreement, which are beyond the jurisdiction of the Courts.
23. The Courts may, in their unfettered discretion as referred to hereafter, allocate monies to the benefit of class members provided that such allocations do not require that the Settlement Agreement be amended.
24. In particular, the Joint Committee's proposals to (1) permit late claimants to come into the settlement agreement, (2) cease the deduction of collateral benefits from revenue in determining loss of income, (3) compensate family members for accompanying infected class members on medical appointments, and (4) compensate for loss of pension in determining income loss, all require substantive amendment of the Settlement Agreement.

C) Fair and judicial exercise of discretion

25. This Court's discretion in making the allocation under Section 10.01 (1) p) of the Settlement Agreement is unfettered, but such discretion must be exercised reasonably and judicially.

26. In making reasonable and judicial allocation of the unallocated actuarially assets, section 10.01 (1) p) 2) of the Settlement Agreement indicates that:

- p. 2) Dans le cadre du libre exercice de leur pouvoir discrétionnaire qui leur est conféré par l'alinéa p. 1) ci-devant, les tribunaux peuvent prendre en considération, mais sans être liés par aucun d'entre eux, notamment les facteurs suivants :
- (i) le nombre de membres des recours collectifs et de membres de la famille;
 - (ii) l'expérience du fonds en fiducie;
 - (iii) le fait que les indemnités prévues par les régimes peuvent, dans certains cas, ne pas refléter le régime de responsabilité en matière extra-contractuelle;
 - (iv) l'article 1036 du Code de procédure civile du Québec;
 - (v) la question de savoir si l'intégrité de la Convention de règlement sera maintenue et si les versements des indemnités prévues dans les régimes seront assurés;
 - (vi) la question de savoir si la progression de la maladie est très différente de celle prévue dans le modèle médical utilisé dans le rapport actuariel Eckler;
 - (vii) le fait que les membres des recours collectifs et les membres de la famille assument le risque d'insuffisance du fonds en fiducie;
 - (viii) le fait que les contributions des gouvernements FPT sont limitées en vertu de la Convention de règlement;
 - (ix) la source des fonds et des autres éléments d'actif que comprend le fonds en fiducie;
 - (x) tout autre fait que les tribunaux estiment important.

Integrity of the Agreement

27. Allocations which result in substantial amendments to the Settlement Agreement are not only impermissible, but, ought to be disallowed as a matter of fairness because they jeopardize the integrity of the Settlement Agreement, contrary to section 10.01 (1) p) 2) (v).

Overcompensation

28. In order to be reasonable, an allocation must not overcompensate class members.
29. The Class Members have received full and fair compensation in accordance with the terms of the Settlement Agreement.
30. Class Counsel (now the Joint Committee) took the position during the motions to approve the Settlement Agreement that it was a fair settlement. They took this position even though there had been a risk (which has not matured) of fund insufficiency. Class Counsel emphasized the Settlement Agreement was preferable to the tort model of compensation because it permitted Class Members to seek further compensation in accordance with the progression of their disease, as it appears from Honhon – Plaintiffs’ Settlement Factum, at p.6, Section 1(D)(1) and p.22-23, Section VI(D) Endean– Plaintiffs’ Settlement Factum, at paras. 76, 146, 156 Parsons – Plaintiffs’ Settlement Factum, at paras. 10-13, 123, 127 (Exhibit AGC-1 - D, E, B).
31. In particular, any allocations to Class Members that permit recovery of more than the amount of any actual loss sustained by a class member are unreasonable and unfair. To the extent that the Joint Committee’s proposal that amounts deducted from a loss of income claim be repaid and that such deductions in future cease, when those deductions pertained to the Canada Pension Plan, disability payments, disability insurance, Employment Insurance, and the Multi-Provincial and Territorial Assistance Program under sections 4.02 and 6.01(1) of the Transfused HCV Plan and sections 4.02 and 6.01(1) of the Hemophiliac HCV Plan, such allocations would overcompensate the majority of class members, as would its proposal to increase loss of support payments.

Canada is the source of the Excess Capital

32. The sufficiency of the Trust Fund and the existence of the Excess Capital are the result of Canada's up-front contribution of settlement monies in 1999. The investment of these monies since 1999 has permitted the Trust Fund to grow. This is a factor that should be given significant weight in the interest of fairness, and is reflected in 10.01 (1) p) 2) (ix), which invites the Court to consider "the source of the money and other assets which comprise the Trust Fund".
33. Further, Canada agreed to tax remission on investment income generated by the Trust Fund, and on allocations paid to Class Members under the Settlement Agreement, which amounted to a significant increase in the value of the settlement monies. (Settlement Agreement: section 4.01 and Schedule D Funding Agreement, section 3.02)

Overfunding of Settlement

34. The past 14 years of claims experience indicates that the 1999 estimates of potential class members, which underpinned the Settlement Agreement, were significantly overstated, as it appears from the 2016 MS actuarial report (AGC-2) at paras. 67-72. This is a factor the Court should consider under Section 10.01 (1) p) 2) (i) of the Settlement Agreement.
35. At the time of settlement, the probable number of HCV-infected class members was assumed to be 9,825 persons comprising 8,180 transfused and 1,645 hemophiliac class members as it appears from at paragraphs 55 and 56 of the Approval judgment in *Parsons v. Canadian Red Cross Society*, [1999] O.J. No. 3572 (OSCJ) at paras. 55, 56.
36. Historical claims experience over the fourteen-year period ending December 31, 2013 has garnered a compensation cohort consisting of 5,563 primarily and secondarily infected persons that comprises: 3,924 known transfused claimants;

254 still unknown transfused claimants; 1,359 known hemophiliac claimants; and 26 still unknown hemophiliac claimants, amounting to approximately one half the number of transfused persons and 80% of the number of hemophiliac persons predicted to be potential class members in 1999, as it more fully appears from the 2015 MS Actuarial report, Exhibit R-3 B, at p. 35, para. 147, Table 146a) and p.36, Table 146b).

37. For transfused claimants, which comprises the vast majority of the total claimants, a comparison of the projection of the original assumed cohort with the actual 2013 cohort shows that (as appears from the 2016 MS Actuarial report, at para. 71, **AGC-2**):
 - a. In total, there are 4,178 claimants compared with the estimated number of 8,181.
 - b. There are 2,998 alive claimants compared with the estimated number 6,484.
 - c. There are 1,180 deceased claimants compared with the estimated number 1,697.
38. In addition, the advent of new drug therapies, not known in 1999, has fundamentally changed the nature of infection with Hepatitis C. The viral clearance rates of these new drug therapies exceed 90% after a short course of orally ingested medication, and they are dramatically changing the percentage of Class Members who can become virus free, as described in the affidavit of Dr. Samuel S. Lee, affirmed January 26, 2016 at paras. 18-22, 25-26, 28 («Dr. Lee's affidavit») filed in support thereof as **Exhibit AGC-4**.
39. Although expensive, these drug therapies are available to qualifying Class Members at no cost to them, with the costs fully covered by the Trust Fund under the terms of the Settlement Agreement, as described in Dr. Lee's affidavit (AGC-4) at paras. 30-

32 and Settlement Agreement, Schedule A: "Transfused HCV Plan", s. 4.06; and Schedule B: "Hemophiliac HCV Plan", s.4.06.

40. In addition, estimates made in 1999 as to rates of spontaneous clearance underestimated actual rates, as described in Dr. Lee's affidavit (AGC-4), at paras. 36-38.
41. As a result of all of the above, fewer people will experience significant income loss; fewer people will progress through the most severe disease levels; and the amount of money required to fund the Settlement Agreement is very much less than the parties anticipated in 1999. This is also a factor the Court should consider under 10.01 (1) p) 2) (vi) of the Settlement Agreement.
42. The AGC intends to rely in support of the this Motion on the previously filed reports at the approval hearing of the Settlement Agreement, annexed as exhibit F ("1999 CASL Report"), exhibits G and H ("1998 Remis Report"), exhibits I and J ("1999 Remis Report") and exhibits K and L ("1999 Eckler Report") to the AK affidavit (AGC-1), as well as the third, fourth and fifth MMWG revision of HCV Prognostic Model annexed as exhibits M, N and P to the AK affidavit (AGC-1), and the affidavit of J.J. Camp, made November 23, 1999 and exhibits A (tab 1) to ZZZ (tab 78) annexed as exhibit O to the AK affidavit (AGC-1).

D) Return of Excess Capital to Canada

43. For all the reasons outlined above, fairness requires that the Excess Capital be returned to Canada.
44. Returning the Excess Capital to the Consolidated Revenue Fund will permit Canada to use these funds to pursue policy initiatives for the benefit of the public that address the continuing public-health burden of HCV-infected populations in Canada in the

face of highly effective but very costly new drug therapies, as it is described in Dr. Lee's Affidavit (AGC-4).

45. In the alternative, any allocation of Excess Capital to the exclusive benefit of the Class Members should be limited to such changes as would not require any material amendment to the Settlement Agreement, would ensure that such compensation is proportionate to, and not greater than, any losses suffered by the class members affected, and would respect the integrity of the Settlement Agreement. Of the Joint Committee's requested allocations, only the following should reasonably be considered: increased hours for loss of services; increased cost of care; increase in funeral expense costs; increase in payments for surviving children and parents; increase in lump sum payments.
46. The present motion is well founded in facts and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the Attorney General of Canada's Motion for the allocation of the actuarially unallocated assets.

DISMISS the Joint Committee's request for a declaration that as at December 31, 2013, the trustee of the 1986-1990 Hepatitis C Settlement Agreement (the "Trustee") holds \$206,920,000 actuarially unallocated money and assets.

ORDER that the current order of this Honourable Court dated July 10, 2015 that as at December 31, 2013, the Trustee holds actuarially unallocated money and assets in an amount between \$236.3 million to \$256.6 million (the "Excess Capital") not be varied at this time.

ORDER that on consent, that the restrictions on payments of amounts for loss of income claims in section 4.02(2)(b)(i) of the Transfused HCV Plan and section 4.02(2)(b)(i) of the Hemophiliac HCV Plan and for loss of support under section 6.01(1) of the Transfused HCV Plan and section 6.01(1) of the Hemophiliac Plan, as previously varied, not be varied or removed in whole or in part at this time.

ORDER that the allocation of the Excess Capital be directed to Attorney general of Canada.

DISMISS the Joint Committee's request that the Court allocate the Excess Capital for the exclusive benefit of the Class Members as set out in the Joint Committee's Notice of Application.

In the alternative, **ORDER** that any allocation of Excess Capital to the exclusive benefit of the Class Members be limited to such changes as would not require any material amendment to the Settlement Agreement; would ensure that such compensation is proportionate to, and not greater than, any losses suffered by the class members affected; and would respect the integrity of the Settlement Agreement.

ORDER that any unallocated Excess Capital shall be retained by the Trustee subject to any further application by Canada or the Joint Committee.

ORDER for such further and other relief as counsel may request and this Honourable Court may direct.

ORDER that the orders made pertaining to paragraphs above not be effective unless and until corresponding orders are made by the Supreme Court of British Columbia and the Ontario Superior Court of Justice.

THE WHOLE without costs.

Montreal, January 29th, 2016



 Attorney General of Canada

(Me Nathalie Drouin)

Counsel for the Defendant The Attorney
 General of Canada

NOTICE OF PRESENTATION

Me Michel Savonitto
Me Martine Trudeau
SAVONITTO & ASS. INC.
 450, rue St-Pierre, suite 101
 Montréal (Québec) H2Y 2M9


Me Manon Des Ormeaux
BERNARD, ROY (JUSTICE-QUÉBEC)
 Ministère de la Justice du Québec
 Service du Contentieux
 1, rue Notre-Dame Est, bur. 8.00
 Montréal (Québec) H2Y 1B6

Me Mason Poplaw
Me Philippe Dufort-Langlois
McCARTHY TÉTRAULT
 1000, rue de la Gauchetière O., bur. 2500
 Montréal (Québec) H3B 0A3

TAKE NOTICE that the present Motion will be presented for adjudication before the Honourable Chantal Corriveau, J.C.S., at the joint hearing specifically scheduled to take place on June 20, 21 and 22, 2016, in Toronto at a location to be determined.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, this January 29th, 2016


Attorney General of Canada
 Solicitor for the Defendant The Attorney
 General of Canada

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO: 500-06-000016-960

SUPERIOR COURT
Class action

DOMINIQUE HONHON

Plaintiff

-vs-

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-and-

MICHEL SAVONITTO, in the capacity of the
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PETITIONER

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N

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deceased and ELSIE KOTYK, personally**

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HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NEWFOUNDLAND,
THE GOVERNMENT OF THE NORTHWEST TERRITORIES,
THE GOVERNMENT OF NUNAVUT and THE GOVERNMENT OF THE YUKON TERRITORY**

Intervenors

Proceeding under the Class Proceedings Act, 1992

Court File No. 98-C.V-146405

B E T W E E N:

**JAMES KREPPNER, BARRY ISAAC, NORMAN LANDRY, as Executor of the Estate of the late
SERGE LANDRY, PETER FELSING, DONALD MILLIGAN, ALLAN GRUHLKE, JIM LOVE and
PAULINE FOURNIER as Executrix of the Estate of the late PIERRE FOURNIER**

Plaintiffs

and

**THE CANADIAN RED CROSS SOCIETY, THE ATTORNEY GENERAL OF CANADA and
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

Defendants

and

**HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF ALBERTA,
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF SASKATCHEWAN,
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF MANITOBA,
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NEW BRUNSWICK,
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF PRINCE EDWARD ISLAND
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NOVA SCOTIA
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NEWFOUNDLAND,
THE GOVERNMENT OF THE NORTHWEST TERRITORIES,
THE GOVERNMENT OF NUNAVUT AND THE GOVERNMENT OF THE YUKON TERRITORY**

Intervenors

No C965349
Vancouver Registry

In the Supreme Court of British Columbia

Between :

Anita Endean, as representative plaintiff

Plaintiff

and:

**The Canadian Red Cross Society
Her Majesty the Queen in Right of the Province of
British Columbia, and The Attorney General of Canada**

Defendants

and:

**Prince George Regional Hospital, Dr. William Galliford,
Dr. Robert Hart Dykes, Dr. Peter Houghton, Dr. John Doe,
Her Majesty the Queen in Right of Canada, and
Her Majesty the Queen in Right of the Province of British Columbia**

Third Parties

Proceeding under the *Class Proceedings Act*, R.S.B.C. 1996, C. 50

LIST OF EXHIBITS

- EXHIBIT AGC-1:** Affidavit of Asvini Krishnamoorthy, sworn on January 29th, 2016, with annexed exhibits:
- A. Quebec judgment rendered on November 19, 1999 in Page (with *Schedule F*). *Page c. Canada (Procureur général)*, [1999] J.Q. no 5325;
 - B. Plaintiff's Factum in Ontario action 98-CV-141369 dated August 9, 1999 filed in support of the settlement approval motion;
 - C. Factum filed on behalf of the representative plaintiffs in the Ontario Hemophiliac class action (For August 18, 1999 Motion), dated August 9, 1999 (Parsons/Kreppner);
 - D. Plan d'argumentation des requérants (Quebec Honhon/Page class action), daté du 20 août 1999;

- E. Submissions of the Representative Plaintiff on Application for Approval of the Proposed Settlement in the Endean action dated August 15, 1999;
- F. Report of Murray Krahn et al (CASL) entitled "Estimating the prognosis of Hepatitis C patients infected by transfusion in Canada between 1986 and 1999" together with a letter from Dr. Krahn dated June 10, 1999;
- G. Report of Robert S. Remis et al. entitled "Estimating the Number of Blood Transfusion Recipients Infected by Hepatitis C Virus in Canada, 1960-1985 and 1990-1992" dated June 22, 1998;
- H. Report of Robert S. Remis et Als., « Estimation du nombre de transfusés infectés par le virus de l'Hépatite C au Canada, 1960-1985 ET 1990-1992 », 22 Juin, 1998;
- I. Report of Robert S. Remis, "Estimating the Number of Potential Beneficiaries of the Canadian HVC Class Action Settlement for Persons Infected by Transfusions Received From January 1986 to July 1990", dated July 6, 1999;
- J. Report of Robert S. Remis, « Estimation du nombre de bénéficiaires potentiels dans le cadre du règlement intervenu dans le recours collectif canadien relatif à l'hépatite C chez les personnes infectées par voie de transfusion sanguine reçue entre janvier 1986 et juillet 1990 », 6 juillet 1999;
- K. Eckler Partners Ltd., "Actuarial Report on 1986-90 Hepatitis C Settlement, July 9, 1999";
- L. Eckler Associés, "Rapport Actuariel Sur la Convention de Règlement Relative à l'Hépatite C 1986-90", 9 juillet 1999;
- M. Report of the Medical Modelling Working Group ("MMWG"), "Estimating the Prognosis of Canadians Infected with the Hepatitis C Virus through the Blood Supply, 1986-1990", Fourth revision of HCV Prognostic Model Incorporating Data from the Compensation Claimant Cohort, April 2011;
- N. report of the MMWG, "Estimating the Prognosis of Canadians Infected with the Hepatitis C Virus through the Blood Supply, 1986-1990", Fifth revision of HCV Prognostic Model Incorporating Data from the Compensation Claimant Cohort, September 2014;
- O. Affidavit of J.J. Camp, with Exhibits, sworn November 23, 1999 and filed in support of the fee approval motion;

P. Report of the MMWG "Estimating the Prognosis of Canadians Infected With the Hepatitis C Virus Through the Blood Supply, 1986-1990", Third Revision of the Hepatitis C Prognostic Model Incorporating Data From the Compensation Cohort" dated January 2008.

EXHIBIT AGC-2: Affidavit of Peter Gorham sworn January 29, 2016, with annexed exhibits:

A. Actuarial report on proposed allocation of the actuarially unallocated funds as of 31 December 2013, dated January 29, 2016;

B. Administrator's data;

EXHIBIT AGC-3: Court orders and judgment on the Late claim Protocol:

A. *Honhon c. Canada (Procureur général)*, 2014 QCCS 2032;

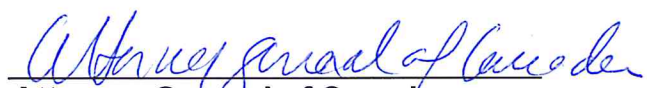
B. *Endean v. The Canadian Red Cross Society*, 2014 BCSC 621;

C. *Parsons v. Canadian Red Cross Society*, 2013 ONSC 7788.

EXHIBIT AGC-4: Affidavit of Dr. Samuel S. Lee, made on January 26th, 2016, with annexed exhibit:

A. Curriculum Vitae of Dr. Samuel S. Lee, updated to January 1st, 2016.

Montréal, this January 29th, 2016


Attorney General of Canada
 Solicitor for the Defendant The Attorney
 General of Canada

No : 500-06-000016-960

COUR SUPÉRIEURE
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

DOMINIQUE HONHON

Requérante

c.

PROCUREUR GENERAL DU CANADA

PROCUREUR GÉNÉRAL DU QUÉBEC

SOCIÉTÉ CANADIENNE DE LA CROIX-ROUGE

Intimés

-et-

Me MICHEL SAVONITTO, es-qualité de membre du Comité conjoint

Requérant

-et-

FONDS D'AIDE AUX RECOURS COLLECTIFS

-et-

LE CURATEUR PUBLIC DU QUÉBEC

Mis en cause

No : 500-06-000068-987

COUR SUPÉRIEURE
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

David Page

Requérant

c.

PROCUREUR GENERAL DU CANADA

PROCUREUR GENERAL DU QUÉBEC

ASOCIÉTÉ CANADIENNE DE LA CROIX-ROUGE

Intimés

-et-

FONDS D'AIDE AUX RECOURS COLLECTIFS

-et-

LE CURATEUR PUBLIC DU QUÉBEC

Mis en cause

MOTION FROM THE ATTORNEY GENERAL OF CANADA FOR THE
ALLOCATION OF ACTUARIALLY UNALLOCATED ASSETS
(section 10.01 (1) p) of the 1986-1990 Hepatitis C Settlement
Agreement)

ORIGINAL

PROCUREUR GÉNÉRAL DU CANADA

Procureurs du Procureur général du Canada

Me Nathalie Drouin

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