

*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

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**NOTICE OF APPLICATION  
(HCV Late Claims Benefits Plan, Notice Plan, Late Claims Referees &  
Administration Budget)**

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**Name of Applicant:**      **British Columbia Joint Committee Member**

TO:              The Attorney General of Canada

AND TO:      Her Majesty the Queen in Right of the Province of British Columbia

AND TO:      Fund Counsel

TAKE NOTICE that an application will be made by the British Columbia Joint Committee Member to the Honourable Chief Justice Hinkson on November 22 and 23, 2017 in Toronto, Ontario at a place and time be provided for the order(s) set out in Part 1 below.

## PART 1: ORDERS SOUGHT

1. An order approving the HCV Late Claims Benefit Plan in the form attached hereto as **Schedule "A"**.
2. An order declaring that for the purposes of implementing, administering, monitoring and supervising the HCV Late Claims Benefit Plan and the HCV Late Claims Account, the Administrator, Trustee, Fund Counsel, Auditors, Joint Committee, Investment Advisors, Referees, Arbitrators, Monitor, Late Claims Referees and Courts shall perform the role and have the duties and responsibilities provided for in the Settlement Agreement with all the necessary adaptations, modifications and powers as may be required to do so, and as provided for in this order, the order approving the HCV Late Claims Benefits Plan, the HCV Late Claims Benefit Plan and the court approved protocols.
3. An order appointing Reva Devins and Christian Leblanc as Late Claims Referees under the HCV Late Claims Benefit Plan, and such other persons as may be proposed by the Joint Committee and approved by the Court as a Late Claims Referee.
4. An order declaring that the tariffs established by the Courts for the payment of referees, arbitrators and legal counsel representing class members on an appeal, shall apply to the HCV Late Claims Benefit Plan with any necessary adaptations and modifications as may be required.
5. An order:
  - (a) approving the Notice Plan in respect of the HCV Late Claims Benefit Plan in the form attached hereto as **Schedule "B"** and directing that the notice campaign proposed in Budget C be implemented at a cost of \$987,400 (plus applicable taxes), together with the proposed post-campaign notice program, budgeted at \$37,000 per year (plus applicable taxes), for two years following the notice campaign; and

- (b) approving the expenditure of funds from the Excess Capital allocated by the Court for the HCV Late Claims Benefit Plan to implement the notice option approved by the Court.
- 6. An order approving the Administrator's 2017 Late Claim Administration Proposal dated November 15, 2016, attached hereto as **Schedule "C"**, and directing that all costs relating thereto (plus applicable taxes) to be paid from the Excess Capital allocated by the Court for the HCV Late Claims Benefit Plan.
- 7. An order declaring that the terms of the order shall not be effective unless and until they are approved by the Superior Court of Québec and the Supreme Court of British Columbia.
- 8. Such further and other relief as counsel may request and this Honourable Court may permit.

## **PART 2: FACTUAL BASIS**

### ***Background***

- 9. In their Orders/Judgment dated August 15, 2016, August 16, 2016 and February 15, 2017 (the "**2016 Allocation Orders**"), the supervising Courts approved the establishment of a discrete HCV Late Claims Benefit Plan and allocated Excess Capital in the amount of \$32,450,000 plus administrative costs of \$51,000 and required capital in an amount to be agreed upon by the Joint Committee and the Attorney General of Canada or directed by the Courts.
- 10. The plan was ordered to be for the benefit of Class Members<sup>1</sup> unable to claim under the Transfused HCV Plan or Hemophiliac HCV Plan (collectively, the "**Plans**"), because they did not apply prior to June 30, 2010 (the "**First Claim Deadline**") and do not meet the requirements of the exceptions to that deadline set out in section 3.08 of the Transfused HCV Plan and section 3.07 of the

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<sup>1</sup> Class Members as defined in section 1.01 of the Plans

Hemophiliac HCV Plan and/or the applicable court approved protocols (the “Exceptions”).

11. The stated purpose of the plan is to provide benefits that are not better or different than the benefits provided to other Class Members. The 2016 Allocation Orders further provided that the terms of the plan shall be prepared by the Joint Committee for approval by the Courts.

Heather Rumble Peterson #18 made October 13, 2017 (“Peterson #18”) at para 2, 3 and 4.

12. At paragraph 190 of his decision dated August 15, 2016, Justice Perell suggested that the plan might include a new notice program and a new deadline for making claims for compensation. His Honour opined that it might be necessary to introduce holdbacks depending on the take up by qualifying Class Members.

*Parsons v. Canadian Red Cross Society*, 2016 ONSC 4809 (“Parsons”), at para 190.

### ***The Proposed HCV Late Claims Benefit Plan***

13. The attached HCV Late Claims Benefit Plan provides benefits (in 2014 dollars) that are not better or different than the benefits provided to other Class Members, including the Special Distribution Benefits approved in the 2016 Allocation Orders. It also contains terms and conditions similar to the Plans, and is subject to the same court approved protocols and tariffs, with any necessary modifications.

Peterson #18 at para 6 and at Exhibit “A”.

14. Based on the trust and accounting advice received by the Joint Committee, the HCV Late Claims Account will be one of three accounts of the Trust Fund, as at December 31, 2013, held, invested and administered by the Trustee. The other two accounts will be the Special Distribution Benefits Account and the Regular Benefits Account.

Peterson #18 at para 26.

15. For the purposes of implementing, administering, monitoring and supervising the HCV Late Claims Benefit Plan and the HCV Late Claims Account, the Administrator, Trustee, Fund Counsel, Auditors, Joint Committee, Investment Advisors, Referees, Arbitrators, Monitor, Late Claims Referees and Courts will perform the role and have the duties and responsibilities provided for in the Settlement Agreement, with all the necessary adaptations, modifications and powers as may be required to do so, and as provided for in this order, the order implementing the HCV Late Claims Benefit Plan, the HCV Late Claims Benefit Plan and the court approved protocols.

Peterson #18 at para 11.

16. As one measure to ensure the sufficiency of the HCV Late Claims Account, section 7.03A of the HCV Late Claims Benefit Plan imposes an initial 25% holdback on payments to be made, subject to triennial financial sufficiency reviews undertaken concurrently with those required by the Settlement Agreement. Each of the holdbacks may be amended or removed by the Courts, on application by the Joint Committee. The priority scheme for eliminating holdbacks set out in Section 7.03(2) requires all of the 25% holdbacks to be removed before the cap on Pre-Claim Gross Income, set out in 4.02(2)(b)(i), is amended or removed.

Peterson #18 at para 12.

17. Once the 25% restrictions in Section 7.03A have been removed and all postponed payments have been paid, Section 7.03(4) provides that, at the request of the Joint Committee, the Courts may, in their unfettered discretion, order that all or any portion of the HCV Late Claims Account that is actuarially unallocated be allocated for the benefit of the Approved Late Claim Class Members in a way that is not different or better than the way any other actuarially unallocated money and other assets held by the Trustee are allocated to Approved Transfused/Hemophiliac Plan Class Members under the Settlement Agreement.

Peterson #18 at para 13.

18. Section 9.03 provides that the HCV Late Claims Benefit Plan may only be amended on order of the Courts, on application of the Joint Committee.

Peterson #18 at para 14.

19. Section 2.05 provides that the HCV Late Claims Benefit Plan will continue until the Courts declare it to be terminated, on application of the Joint Committee. Any assets remaining in the HCV Late Claims Account on termination are to be allocated to Approved Late Claim Class Members, Approved Transfused/Hemophiliac Plan Class Members, and/or in such other manner as the supervising Courts direct.

Peterson #18 at para 15.

20. Under the HCV Late Claims Benefit Plan, only Late Claim Class Members have a right and interest in how the HCV Late Claims Benefit Plan is administered or amended, how holdbacks are addressed, what happens in the event of financial insufficiency, and what happens to any funds/assets in the HCV Late Claims Account upon termination. That is because the Courts allocated those funds in favour of Late Claim Class Members and rejected Canada's competing application for those same funds. None of the governments has an interest in or obligation to the HCV Late Claims Benefit Plan or the HCV Late Claims Account.

Peterson #18 at para 16.

21. In order to be eligible to make a claim under the HCV Late Claims Benefit Plan, a person must meet the requirements in Appendix E to the HCV Late Claims Benefit Plan. A Late Claims Referee appointed by the Courts will determine on a summary basis whether a Late Claim application form under the HCV Late Claims Benefit Plan shall issue to the person making the Late Claim Request based upon the following guidelines:

- (a) Late Claim Requests by persons who did not receive timely notice of the First Claim Deadline and do not meet the requirements and/or the timeframe of an applicable Exception should be allowed if, in the opinion of the Late Claims Referee, the Late Claim Request was made within a

reasonable time after, the later of, such notice was acquired or the HCV Late Claims Benefit Plan came into force;

- (b) Late Claims Requests by persons whose failure to meet the First Claim Deadline or requirements and/or the timeframe of an applicable Exception was due to matters that, in the opinion of the Late Claims Referee, should reasonably be considered to be beyond their control or are otherwise a reasonable explanation for their delay, should be allowed;
- (c) Late Claim Requests made by persons who had notice of the First Claim Deadline or the requirements and/or timeframe of an applicable Exception should be disallowed unless they meet the exceptions in the preceding subparagraph or, in the opinion of the Late Claims Referee, the timing of the receipt of such notice was inadequate for the purpose of making a claim under the Plans; and
- (d) any other Late Claim Requests and those where the Late Claims Referee is uncertain as to the appropriate application of the above guidelines shall be referred by the Late Claims Referee in writing to the appropriate Court to be dealt with summarily.

Peterson #18 at para 17, 18 and at Exhibit "A".

- 22. Where a Late Claim Request is denied by the Late Claims Referee, the Class Member may appeal to the appropriate Court, consistent with the Plans.

Peterson #18 at para 19.

### ***Appointment of Late Claims Referees***

- 23. In the interest of efficient and effective case management of Late Claims Requests and to ensure consistent application of the eligibility requirements nationally, the Joint Committee proposes:

- (a) Reva Devins, Vice-Chair of the Referees and Arbitrators who reports to the Courts annually as part of the Joint Committee's Annual Report, to

determine all Late Claims Requests made in English (excluding those made in Quebec); and

- (b) Christian Leblanc, Referee/Arbitrator appointed recently by the Superior Court of Québec, to determine all Late Claims Requests made in French, and those made in English in Quebec.

Peterson #18 at para 20.

- 24. A new application deadline is not proposed in the HCV Late Claims Benefit Plan at this time. Given the breadth of the proposed notice campaign, and what can be learned from it on why class members are late and how to communicate with them to make claims, it is premature to set a deadline for late claims.

Peterson #18 at para 24.

- 25. Moreover, the experience in this settlement has been that Class Members miss deadlines and may have reasonable explanations for doing so, such as HCV-related illness. While it is hoped that the proposed notice plan will be effective, it is a virtual certainty that there will always be late Class Members if a new deadline is imposed. The eligibility criteria and guidelines are intended to ensure that those who have a reasonable explanation for being late will be entitled to apply, and those who do not will not.

Peterson #18 at para 25.

### ***The Late Claims Notice Plan***

- 26. In keeping with Justice Perell's suggestion, concerning provision of notice, the Joint Committee retained BRAD, the Montreal based firm behind the successful DRAM settlement notice campaign and other Canadian class notice campaigns, to create a notice plan to reach late Class Members.

Peterson #18 at para 21.

- 27. BRAD has proposed a two-phase approach. In phase 1, awareness is ignited. Phase 2 drives conversions, by having potentially eligible persons react by going to a new interactive website. BRAD has opined that television is the most



effective media to reach most of the target demographic (age 35-60). It proposes to supplement the television campaign with social media, and support the notice campaign with a public relations campaign using a trained spokesperson to support the advertising.

Affidavit of Patrick Gervais #1 made October 11, 2017 ("Gervais #1") at Exhibit "B".

28. BRAD's proposal provides three notice options for a combined television and digital national campaign, ranging in cost from \$855,000 (Budget A) to \$987,400 (Budget C). The budgets vary principally by (1) the amount spent on media buys and public relations support and (2) the estimated target reach, 70% (Budget A) to 90% (Budget C). BRAD has also proposed a post-campaign budget of \$37,000 per year for the next two years.

Peterson #18 at para 22.

29. The Joint Committee recommends the notice option described in Budget C. In the Joint Committee's view, the incremental cost of \$132,000 for superior notice to reach 20% more of the target is warranted. The Joint Committee also recommends the proposed two-year post-campaign notice, aimed at reaching those class members who are not reached during the initial campaign for whatever reason. The sustained approach to notice also has the potential to reach class members who are not late at the time of the campaign, but become late in the next year or two by, for example, not making a claim within 3 years of their HCV diagnosis.

Peterson #18 at para 23.

30. BRAD has opined that a successful national campaign cannot be achieved with a lesser budget of \$500,000, as this would preclude using television, the most effective media for the target demographic and message, and would restrict the campaign to the web, which is less effective at creating awareness, the critical first step.

Gervais #1 at Exhibit "B".

***Administrator's Late Claim Administration Proposal***

31. The Administrator provided a proposal dated November 15, 2016 to administer the HCV Late Claims Benefit Plan in 2017 based on a fixed fee activity level contract, modeled after the hourly rate and efficiency factors in the adjustment mechanism for its contract to administer the settlement. Similar to its existing contract, the proposed fixed fee includes all aspects of the administration of the HCV Late Claims Benefit Plan as well as the time and expense of the appeals coordinator. It does not include travel expenses, expert fees, translation costs or notice plans. The Joint Committee recommends approval of the proposal, to be paid from the Excess Capital allocated by the Court for the HCV Late Claims Benefit Plan.

Peterson #18 at paras 28, 29 and 30 and at Exhibit "B"

**LEGAL BASIS**

32. The Settlement Agreement as modified by Schedule F and the 1999 Approval Orders, the 2016 Allocation Orders and decisions of the supervising courts on the allocation hearings.
33. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**PART 3: MATERIAL TO BE RELIED ON**

34. Affidavit of Heather Rumble-Peterson #18, made October 13, 2017
35. Affidavit of Patrick Gervais #1, made October 11, 2017
36. Such further and other evidence as counsel may advise and this Honourable Court may permit.

The applicant estimates that the application will take **n/a**.

- ☐ This matter is within the jurisdiction of a master.
- ☒ This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed application response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: October 13, 2017



Signature of the British Columbia  
Joint Committee Member

Sharon Matthews, Q.C.

*To be completed by the court only:*

Order made

- ☐ in the terms requested in paragraphs ..... of Part 1 of this notice of application
- ☐ with the following variations and additional terms:

.....  
.....  
.....

Date: ..... Signature of ☐ Judge ☐ Master

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## APPENDIX

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### THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts

## SCHEDULE A

### **HCV LATE CLAIMS BENEFIT PLAN**

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## HCV LATE CLAIMS BENEFIT PLAN

### WHEREAS:

A. In October 1999, the actions, causes of actions, liabilities, claims and demands of the Class Members in any way relating to or arising from, in the case of the Transfused Class Members, the infection of a Primarily-Infected Person with HCV from a Blood (Transfused) transfusion during the Class Period and, in the case of Hemophiliac Class Members, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (Hemophiliac) including, in each case, the infection of a Secondarily-Infected Person were finally settled based upon the terms and conditions of the Settlement Agreement as amended and approved by the 1999 Approval Orders.

B. Subject to certain specified exceptions in the Transfused HCV Plan and the Hemophiliac HCV Plan established by the Settlement Agreement and in the court approved protocols implemented for those plans, Transfused/Hemophiliac Plan Claims by Class Members were to be made on or before June 30, 2010.

C. In August 2016, the 2016 Allocation Orders directed, and in [INSERT] 2017, the HCV Late Claims Benefit Plan Approval Orders established a discrete HCV Late Claims Benefit Plan funded from 2013 Excess Capital for those Class Members unable to claim under the Transfused HCV Plan and the Hemophiliac HCV Plan because they did not apply prior to June 30, 2010 and do not meet the requirements of the exceptions to the deadline in section 3.08 of the Transfused HCV Plan and section 3.07 of the Hemophiliac HCV Plan and/or the court approved protocols.

D. In keeping with the directions of the Courts, this HCV Late Claims Benefit Plan is intended to provide benefits to Approved Late Claim Class Members that are not better or different than the benefits provided to Approved Transfused/Hemophiliac Plan Class Members under the Settlement Agreement by means of the Transfused HCV Plan, the Hemophiliac HCV Plan and the HCV Special Distribution Benefits.

## ARTICLE ONE INTERPRETATION

### 1.01 Definitions

**1999 Approval Orders**” means the judgments or decisions of the Courts granted in 1999 approving the Settlement Agreement as being a good faith, fair, reasonable and adequate settlement of the Class Actions pursuant to the class proceedings legislation in British Columbia, Ontario and Quebec.

**“2013 Excess Capital”** means the amount of \$206,920,000 declared by the Courts pursuant to the 2016 Allocation Orders to be actuarially unallocated assets in the Trust Fund from the amounts identified by the actuaries in the 2013 financial sufficiency review.



**“2016 Allocation Orders”** mean the judgments or orders of the Courts dated August 15, 2016, August 16, 2016 and February 15, 2017 directing the establishment of a discrete HCV Late Claims Benefit Plan and establishing the HCV Special Distribution Benefits, both funded from 2013 Excess Capital.

**“2016 Allocation Implementation Orders”** means the judgments or orders of the Courts granted in November 2017 directing the establishment of the HCV Late Claims Account.

**“Administrator”** means the administrator appointed by the Courts and its successors appointed from time to time pursuant to Articles Five and Ten of the Settlement Agreement.

**“Approved Late Claim Class Members”** means, collectively, all Late Claim Class Members whose Late Claim made pursuant to this HCV Late Claims Benefit Plan has been accepted by the Administrator.

**“Approved Late Claim Dependant”** means a Dependant whose Late Claim made pursuant to Section 3.06 has been accepted by the Administrator.

**“Approved Late Claim Family Member”** means a Family Member referred to in clause (a) of the definition of Family Member in this Section 1.01 whose Late Claim made pursuant to Section 3.07 has been accepted by the Administrator.

**“Approved Late Claim HCV Infected Person”** means a HCV Infected Person whose Late Claim made pursuant to Section 3.01 or 3.02, as the case may be, has been accepted by the Administrator.

**“Approved Late Claim HCV Personal Representative”** means a HCV Personal Representative whose Late Claim made pursuant to Section 3.05 has been accepted by the Administrator.

**“Approved Transfused/Hemophiliac Plan Class Members”** means, collectively, all Class Members whose Transfused/Hemophiliac Plan Claim made pursuant to the Transfused HCV Plan or the Hemophiliac HCV Plan has been accepted by the Administrator.

**“Arbitrator”** means a person appointed as an arbitrator by the Courts and his or her successors appointed from time to time pursuant to Article Ten of the Settlement Agreement.

**“Average Industrial Wage in Canada”** means the Average Weekly Earnings (all Industries), as published in Statistics Canada’s on-line statistical data base created from The Canadian Socio-Economic Information Management System (CANSIM) data base or any successor data base, for the most recent period for which such information is published at the date the determination provided for in Section 4.02 or 6.01 is to be made.

**“Blood (Hemophiliac)”** means whole blood and blood products including packed red cells, platelets, plasma (fresh frozen and banked), white blood cells and cryoprecipitate and clotting factor products including Factor VII, Factor VIII and Factor IX, supplied, directly or

indirectly, by the Canadian Red Cross Society. Blood does not include Albumin 5%, Albumin 25%, Cytomegalovirus Immune Globulin, Hepatitis B Immune Globulin, Rh Immune Globulin, Varicella Zoster Immune Globulin, Immune Serum Globulin, Tetanus Immune Globulin, Intravenous Immune Globulin (IVIG) and Antithrombin III (ATIII).

**“Blood (Transfused)”** means whole blood and the following blood products: packed red cells, platelets, plasma (fresh frozen and banked), white blood cells and cryoprecipitate. Blood does not include Albumin 5%, Albumin 25%, Factor VIII, Porcine Factor VIII, Factor IX, Factor VII, Cytomegalovirus Immune Globulin, Hepatitis B Immune Globulin, Rh Immune Globulin, Varicella Zoster Immune Globulin, Immune Serum Globulin, (FEIBA) FEVIII Inhibitor Bypassing Activity, Autoplex (Activate Prothrombin Complex), Tetanus Immune Globulin, Intravenous Immune Globulin (IVIG) and Antithrombin III (ATIII).

**“Business Day”** means a day other than a Saturday or a Sunday or a day observed as a holiday under the laws of the Province or Territory in which the person to whom notice is given is situated or the federal laws of Canada applicable in the said Province or Territory.

**“Child”** includes:

- (a) an adopted child;
- (b) a child conceived before and born alive after his or her parent’s death; and
- (c) a child to whom a person has demonstrated a settled intention to treat as a child of his or her family;

but does not include a foster child placed in the home of a HCV Infected Person for valuable consideration.

**“Class Actions”** means, collectively, the Transfused Class Actions and the Hemophiliac Class Actions.

**“Class Action Counsel”** means the respective counsel for each of the Class Action plaintiffs, from time to time.

**“Class Member”** means, collectively, all Primarily-Infected Hemophiliacs, all Primarily-Infected Persons, all Secondly-Infected Persons, all HCV Personal Representatives and all Family Members but excludes, for greater certainty, all persons who opted out of a Class Action.

**“Class Period”** means the period from and including 1 January 1986 to and including 1 July 1990.

**“Cohabit”** means to live together in a conjugal relationship, whether within or outside marriage.

**“Compensable HCV Drug Therapy”** means interferon or ribavirin, used alone or in combination, or any other treatment that has a propensity to cause adverse side effects and that has been approved by the Courts for compensation.

**“Courts”** means, collectively, the Supreme Court of British Columbia, the Superior Court of Justice for Ontario and the Superior Court of Québec.

**“Dependant”** means a Family Member of a HCV Infected Person referred to in clauses (a) and (c) of the definition of a Family Member in this Section 1.01 to whom that HCV Infected Person was providing support or was under a legal obligation to provide support on the date of the HCV Infected Person’s death.

**“EAP”** means the HIV Extraordinary Assistance Plan announced by the government of Canada on 14 December 1989.

**“Family Member”** means:

- (a) the Spouse, Child, Grandchild, Parent, Grandparent or Sibling of a HCV Infected Person;
- (b) the Spouse of a Child, Grandchild, Parent or Grandparent of a HCV Infected Person;
- (c) a former Spouse of a HCV Infected Person;
- (d) a Child or other lineal descendant of a Grandchild of a HCV Infected Person;
- (e) a person of the opposite sex to a HCV Infected Person who Cohabited for a period of at least one year with that HCV Infected Person immediately before his or her death;
- (f) a person of the opposite sex to a HCV Infected Person who was Cohabiting with that HCV Infected Person at the date of the HCV Infected Person’s death and to whom that HCV Infected Person was providing support or was under a legal obligation to provide support on the date of the HCV Infected Person’s death; and
- (g) any other person to whom a HCV Infected Person was providing support for a period of at least three years immediately prior to the HCV Infected Person’s death,

unless any person described above opted out of the Class Action in which he or she would otherwise have been a Class Member.

**“FPT Governments”** means, collectively, (i) the government of Canada (the **“Federal Government”**), (ii) the governments of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland (collectively, the **“Provinces”**) and (iii) the governments of the Northwest Territories, Nunavut and the Yukon Territory (collectively, the **“Territories”**).

**“Fund Counsel”** means the counsel appointed by the Courts and its successors appointed from time to time pursuant to Articles Seven and Ten of the Settlement Agreement.

**“Grandchild”** means the Child of a Child.

**“Grandparent”** means the Parent of a Parent.

**“Guardian”** includes a litigation guardian, guardian *ad litem* and other representative of a minor or mentally incompetent in litigation proceedings.

**“HCV”** means the Hepatitis C virus.

**“HCV Antibody Test”** means a blood test performed in Canada using a commercially available assay acceptable to the Administrator demonstrating that the HCV antibody is present in the blood of a person.

**“HCV Infected Person”** means a Primarily-Infected Hemophiliac, a Primarily-Infected Person or a Secondarily-Infected Person.

**“HCV Late Claims Account”** means the amount of \$XXXX ordered by the Courts to be set aside from 2013 Excess Capital of the Trust Fund as a separate account of the Trust Fund pursuant to the 2016 Allocation Implementation Orders to provide for payment of compensation to Approved Late Claim Class Members under this HCV Late Claims Benefit Plan and the administrative costs thereof together with (i) any investments in which such funds may from time to time be invested; (ii) any proceeds of disposition of any investments; and (iii) all income, interest, profit, gains and accretions and additional assets, rights and benefits of any kind or nature whatsoever arising, directly or indirectly, from or in connection with or accruing to any of the foregoing, but excluding any amounts which have been paid or disbursed therefrom.

**“HCV Late Claims Benefit Plan”** means this plan to provide compensation to persons who are Approved Late Claim Class Members including its Appendices, as amended, supplemented or restated from time to time.

**“HCV Late Claims Benefit Plan Approval Date”** means the date when the last judgment or order of the Courts approving this HCV Late Claims Benefit Plan becomes final and, as a result, this HCV Late Claims Benefit Plan becomes effective, provided there are no material differences in the judgments or orders of the Courts.

**“HCV Late Claims Benefit Plan Approval Orders”** mean the judgments or orders of the Courts granted in November 2017 approving this HCV Late Claims Benefit Plan.

**“HCV Personal Representative”** means the Personal Representative of a HCV Infected Person (whether deceased, a minor or mentally incompetent) who did not opt out of a Class Action.

**“HCV Special Distribution Benefits”** means the benefits payable to Approved Transfused/Hemophiliac Plan Class Members from 2013 Excess Capital in accordance with the terms of the 2016 Allocation Orders.

**“Hemo”** in a Section reference means that the Section applies only to a Hemophiliac Late Claim.

**“Hemophiliac Class Actions”** means (i) Action No. 98-CV-146405 in the Ontario Court (General Division), at Toronto, (ii) Action No. A981187 in the Vancouver Registry of the Supreme Court of British Columbia and (iii) Action No. 500-06-000068-987 in the Superior Court of the Province of Québec for the District of Montréal.

**“Hemophiliac HCV Plan”** means the plan to provide compensation to persons who are Primarily-Infected Hemophiliacs, who received or took Blood (Hemophiliac) during the Class Period and were infected with HCV and their respective HCV Personal Representatives, Secondarily-Infected Persons and Family Members pursuant to provisions of the Settlement Agreement.

**“Hemophiliac Late Claim”** means a Late Claim made by a Primarily-Infected Hemophiliac and/or his or her related HCV Personal Representative, Secondarily-Infected Persons and Family Members under this HCV Late Claims Benefit Plan, as applicable.

**“HIV”** means the human immunodeficiency virus.

**“HIV Secondarily-Infected Person”** means a person who is entitled to receive compensation under the Program attached as Schedule C to the Settlement Agreement.

**“Joint Committee”** means the committee of four counsel appointed by the Courts and its successors appointed from time to time pursuant to Articles Nine and Ten of the Settlement Agreement.

**“Late Claim”** means a claim made and a claim that may be made in the future pursuant to the provisions of this HCV Late Claims Benefit Plan. For greater certainty, Late Claim does not include a Transfused/Hemophiliac Plan Claim made or that may be made in the future pursuant to the provisions of the Transfused HCV Plan or the Hemophiliac HCV Plan and/or any court approved protocols.

**“Late Claim Class Members”** means, collectively, all Primarily-Infected Hemophiliacs, all Primarily-Infected Persons, all Secondarily-Infected Persons, all HCV Personal Representatives and all Family Members who are unable to claim under the Transfused HCV Plan and the Hemophiliac HCV Plan because they did not apply prior to June 30, 2010 and do not meet the requirements of the exceptions to the deadline in section 3.08 of the Transfused HCV Plan and section 3.07 of the Hemophiliac HCV Plan and/or the court approved protocols who make a Late Claim pursuant to this HCV Late Claims Benefit Plan but excludes, for greater certainty, all persons who opted out of the Class Actions.

**“Late Claims Referees”** means a person appointed as a referee by the Courts pursuant to the 2016 Allocation Implementation Orders to determine on a summary basis whether a Late Claim application form shall issue to a potential Late Claim Class Member in accordance with the provisions of Appendix E of this HCV Late Claims Benefit Plan and his or her successors appointed from time to time.

**“MPTAP”** means the HIV Multi-Provincial/Territorial Assistance Program announced by the governments of the Provinces and Territories on 15 September 1993.

**“Nova Scotia Compensation Plan”** means the Nova Scotia HIV Assistance Program introduced in 1993 which provides financial assistance and other benefits to persons infected in Nova Scotia by HIV through the Canadian blood supply.

**“Opted-Out HCV Infected Person”** means an Opted-Out Primarily-Infected Hemophiliac, an Opted-Out Primarily-Infected Person or a person who would otherwise be a Secondarily-Infected Person but is not because he or she opted out of the Class Action in which he or she would have otherwise been a Class Member.

**“Opted-Out Primarily-Infected Hemophiliac”** means a person who would otherwise be a Primarily-Infected Hemophiliac but is not because he or she opted out of the Class Action in which he or she would have otherwise been a Class Member.

**“Opted-Out Primarily-Infected Person”** means a person who would otherwise be a Primarily-Infected Person but is not because he or she opted out of the Class Action in which he or she would have otherwise been a Class Member.

**“Parent”** includes a person who has demonstrated a settled intention to treat a Child as a child of his or her family.

**“PCR Test”** means a polymerase chain reaction test result from a commercially available assay acceptable to the Administrator demonstrating that HCV is present in a sample of blood of the person.

**“Pension Index”** has the meaning set out in Section 7.02.

**“Personal Representative”** includes, if a person is deceased, an executor, administrator, estate trustee, trustee or liquidator of the deceased or, if the person is a minor or mentally incompetent, the tutor, committee, Guardian or curator of the person.

**“Primarily-Infected Hemophiliac”** means a person who (i) has or had a congenital clotting factor defect or deficiency including a defect or deficiency in Factors V, VII, VIII, IX, XI, XII, XIII or von Willebrand factors or has or had Thalassemia Major, and (ii) received or took Blood (Hemophiliac) during the Class Period, and (iii) is or was infected with HCV unless:

- (a) such person used non-prescription intravenous drugs, and such person has failed to establish on the balance of probabilities that he or she was infected for the first time with HCV by Blood (Hemophiliac); or
- (b) such person opted out of the Class Action in which he or she would have otherwise been a Class Member.

**“Primarily-Infected Person”** means a person who received a Blood (Transfused) transfusion in Canada during the Class Period and who is or was infected with HCV unless:

- (a) it is established on the balance of probabilities by the Administrator that such person was not infected for the first time with HCV by a Blood (Transfused) transfusion received in Canada during the Class Period;
- (b) such person used non-prescription intravenous drugs, and such person has failed to establish on the balance of probabilities that he or she was infected for the first time with HCV by a Blood (Transfused) transfusion received in Canada during the Class Period; or
- (c) such person opted out of the Class Action in which he or she would have otherwise been a Class Member.

**“Prime Rate”** means the rate of interest per annum established and reported by the Bank of Montreal, or such other bank as the Courts may direct, to the Bank of Canada from time to time as a reference rate of interest for the determination of interest rates that the Bank of Montreal, or such other bank as the Courts may direct, charges to customers of varying degrees of creditworthiness in Canada for Canadian dollar loans made by it in Canada.

**“Referee”** means a person appointed as a referee by the Courts to perform the duties outlined in this HCV Late Claims Benefit Plan (with the exception of Appendix E) and his or her successors appointed from time to time pursuant to Article Ten of the Settlement Agreement.

**“Releasee”** has the meaning set out in Appendix B - Tran and Appendix B - Hemo.

**“Secondarily-Infected Person”** means:

- (a) a Spouse of a Primarily-Infected Hemophiliac or a Primarily-Infected Person or a Opted-Out Primarily-Infected Hemophiliac or Opted-Out Primarily-Infected Person who is or was infected with HCV by such Primarily-Infected Hemophiliac or Primarily-Infected Person or Opted-Out Primarily-Infected Hemophiliac or Opted-Out Primarily-Infected Person; or
- (b) a Child of a HCV Infected Person or Opted-Out HCV Infected Person who is or was infected with HCV by such HCV Infected Person or Opted-Out HCV Infected Person,

but does not include:

- (c) such Spouse or Child, if he or she used non-prescription intravenous drugs, and fails to establish on the balance of probabilities that he or she is or was infected for the first time with HCV by:
  - (i) such Primarily-Infected Hemophiliac or Primarily-Infected Person or Opted-Out Primarily-Infected Hemophiliac or Opted-Out Primarily-Infected Person in the case of a Spouse; or
  - (ii) such HCV Infected Person or Opted-Out HCV Infected Person in the case of a Child; or
- (d) such Spouse or Child if he or she opted out of the Class Action in which he or she would have otherwise been a Class Member.

**“Settlement Agreement”** means the January 1, 1986 – July 1, 1990 Hepatitis C Settlement Agreement made as of 15 June 1999 between the FPT Governments and the plaintiffs in the Class Actions as amended and approved by the 1999 Approval Orders.

**“Sibling”** means a Child of one or both of the Parents of a HCV Infected Person.

**“Spouse”** means:

- (a) either of a man and a woman who,
  - (i) are married to each other;
  - (ii) have together entered into a marriage that is voidable or void, in good faith on the part of the person asserting a right under this HCV Late Claims Benefit Plan;
  - (iii) have Cohabited for at least two years; or
  - (iv) have Cohabited in a relationship of some permanence if they are the natural Parents of a Child; or



- (b) either of two persons of the same sex who have lived together in a close personal relationship that would constitute a conjugal relationship if they were not of the same sex,
  - (i) for at least two years; or
  - (ii) in a relationship of some permanence if they are the Parents of a Child.

**“Term”** means the period commencing on the HCV Late Claims Benefit Plan Approval Date and ending on the date that this HCV Late Claims Benefit Plan is terminated by the Courts.

**“Traceback Procedure”** means a targeted search for and investigation of the donor and/or the units of Blood (Transfused) received by a Primarily-Infected Person or a Secondly-Infected Person who makes a Transfused Late Claim.

**“Tran”** in a Section reference means that the Section applies only to a Transfused Late Claim.

**“Transfused Class Actions”** means (i) Action No. 98-CV-141369 in the Ontario Court (General Division), at Toronto, (ii) Action No. C965349 in the Vancouver Registry of the Supreme Court of British Columbia and (iii) Action No. 500-06-000016-960 in the Superior Court of the Province of Québec for the District of Montreal.

**“Transfused HCV Plan”** means the plan to provide compensation to persons who were infected with HCV through a Blood (Transfused) transfusion received in Canada during the Class Period and their respective HCV Personal Representatives, Secondly-Infected Persons and Family Members pursuant to provisions of the Settlement Agreement.

**“Transfused/Hemophiliac Plan Claim”** means a claim made and a claim that may be made in the future pursuant to the provisions of the Transfused HCV Plan, the Hemophiliac HCV Plan or any court approved protocols.

**“Transfused Late Claim”** means a Late Claim made by a Primarily-Infected Person and/or his or her related HCV Personal Representative, Secondly-Infected Persons and Family Members under this HCV Late Claims Benefit Plan, as applicable.

**“Trust”** means the trust established by the FPT Governments pursuant to the Funding Agreement attached as Schedule D to the Settlement Agreement.

**“Trust Fund”** means the fund established by the FPT Governments pursuant to the Funding Agreement attached as Schedule D to the Settlement Agreement.

## **1.02 Headings**

(1) Except as provided in Section 1.02(2), the division of this HCV Late Claims Benefit Plan into Articles and Sections and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or interpretation of this HCV Late Claims Benefit Plan. The terms “hereof”, “hereunder” and similar expressions refer to this HCV Late Claims Benefit Plan and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Schedules are to Articles, Sections and Appendices of this HCV Late Claims Benefit Plan.

(2) The insertion of the term Hemo or Tran beside or within a Section reference in this HCV Late Claims Benefit Plan shall mean that Section applies only to a Hemophiliac Late Claim or a Transfused Late Claim, respectively.

## **1.03 Extended Meanings**

In this HCV Late Claims Benefit Plan words importing the singular number include the plural and *vice versa*, words importing any gender include all genders and words importing persons include individuals, partnerships, associates, trusts, unincorporated organizations, corporations and governmental authorities. The term “including” means “including without limiting the generality of the foregoing”.

## **1.04 Statutory References**

In this HCV Late Claims Benefit Plan, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as enacted on the date hereof or as the same may from time to time be amended, re-enacted or replaced and includes any regulations made thereunder.

## **1.05 Day for any Action**

If any day on or by which any action required to be taken hereunder is not a Business Day, such action must be taken on or by the next succeeding day which is a Business Day.

## **1.06 Residence**

A Late Claim Class Member is deemed to be resident in the Province or Territory where he or she ordinarily resides or, if the Late Claim Class Member resides outside of Canada, in the Province or Territory where the relevant Primarily-Infected Hemophiliac or Opted-Out Primarily-Infected Hemophiliac first received or took Blood (Hemophiliac) during the Class Period or the relevant Primarily-Infected Person or Opted-Out Primarily-Infected Person first received a Blood (Transfused) transfusion during the Class Period. A HCV Personal Representative will be deemed to be resident in the Province or Territory where the relevant HCV Infected Person is, or was deemed to be, resident.

### **1.07 Currency**

Except as otherwise provided herein, all references to currency herein are to lawful money of Canada expressed in 2014 dollars.

### **1.08 Appendices**

The following are the Appendices to this HCV Late Claims Benefit Plan:

- Appendix A - Social Benefits Legislation;
- Appendix B - Release;
- Appendix C - Reference Rules;
- Appendix D - Arbitration Rules; and
- Appendix E - Eligibility to Make a Late Claim under the HCV Late Claims Benefit Plan.

## **ARTICLE TWO**

### **PURPOSE, EFFECT AND TERM OF THE HCV LATE CLAIMS BENEFIT PLAN**

#### **2.01 Purpose**

(1) The purpose of this HCV Late Claims Benefit Plan is to establish benefits for and provide compensation to Late Claim Class Members on the terms and subject to the conditions set out herein and in the 2016 Allocation Orders, the HCV Late Claims Benefit Plan Approval Orders, the 2016 Allocation Implementation Orders and the court approved protocols.

(2) For the purposes of implementing, administering, monitoring and supervising this HCV Late Claims Benefit Plan, the Administrator, Trustee, Fund Counsel, Auditors, Joint Committee, Investment Advisors, Referees, Arbitrators, Monitor, Late Claims Referees and Courts shall perform the role and have the duties and responsibilities provided for each in the Settlement Agreement, with all the necessary adaptations, modifications and powers as may be required to do so, and as provided for in the HCV Late Claims Benefit Plan Approval Orders, the 2016 Allocation Implementation Orders, this HCV Late Claims Benefit Plan, including its Appendices, and the court approved protocols.

## **2.02 Binding Effect**

- (1) On the HCV Late Claims Benefit Plan Approval Date this HCV Late Claims Benefit Plan will become effective and be binding on all Late Claim Class Members. Each HCV Late Claims Benefit Plan Approval Order will constitute approval of this HCV Late Claims Benefit Plan in respect of all Late Claim Class Members (including minors and mentally incompetent persons) in each jurisdiction so that no additional court approval of any payment to be made to any Late Claim Class Member will be necessary.
- (2) For greater certainty, Late Claim Class Members are bound by the terms of the Settlement Agreement and the 1999 Approval Orders, except insofar as those terms are modified by the provisions of this HCV Late Claims Benefit Plan.

## **2.03 No Obligations or Liability of the FPT Governments**

- (1) The FPT Governments will not have any obligations relating to this HCV Late Claims Benefit Plan, including its ongoing operations.
- (2) All of the payments to be made pursuant to this HCV Late Claims Benefit Plan inclusive of the expenses to implement and administer it shall be paid only from the HCV Late Claims Account and there shall be no recourse to the remainder of the Trust Fund for such payments.
- (3) None of the FPT Governments will be liable to provide any funds toward the payments to be made pursuant to this HCV Late Claims Benefit Plan including, for greater certainty, any of the expenses to implement and/or administer the HCV Late Claims Benefit Plan nor will they be liable to provide any funds if the HCV Late Claims Account is insufficient to make all the payments to be made pursuant to this HCV Late Claims Benefit Plan.

## **2.04 Cessation of Litigation**

Each Approved Late Claim Class Member who has commenced any action or proceeding against any of the Releasees, or against any person who may claim contribution or indemnity from any of the Releasees in any way relating to or arising from (i) in the case of a Transfused Late Claim, the infection of a Primarily-Infected Person with HCV during the Class Period or (ii) in the case of a Hemophiliac Late Claim, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (Hemophiliac) including, in each case, the infection of a Secondarily-Infected Person, must consent to a dismissal of such action or proceeding without costs before receiving any payment under this HCV Late Claims Benefit Plan.

## **2.05 Termination**

(1) This HCV Late Claims Benefit Plan will continue in full force and effect until the date on which the Courts have declared this HCV Late Claims Benefit Plan to be terminated.

(2) The Joint Committee may apply for a declaration pursuant to Section 2.05(1).

(3) If this HCV Late Claims Benefit Plan is declared terminated by the Courts, the Courts shall allocate any assets remaining in the HCV Late Claims Account as they determine to:

- (a) Approved Late Claim Class Members;
- (b) Approved Transfused/Hemophiliac Plan Class Members; and/or
- (c) in such other manner as they direct.

## **ARTICLE THREE ELIGIBILITY TO MAKE A LATE CLAIM AND REQUIRED PROOF FOR COMPENSATION**

### **3.01A Eligibility to make a Late Claim**

A person desiring to make a Late Claim under this HCV Late Claims Benefit Plan must be determined to be eligible to make a Late Claim in accordance with the provisions of Appendix E of this HCV Late Claims Benefit Plan or be a person referred to in clause (a) of the definition of Family Member in Section 1.01 who is related to a HCV Infected Person whose Late Claim was accepted by the Administrator under this HCV Late Claims Benefit Plan.

### **3.01Tran Late Claim by Primarily-Infected Person**

(1) A person claiming to be a Primarily-Infected Person who is determined eligible to make a Late Claim pursuant to Appendix E of this HCV Late Claims Benefit Plan must deliver to the Administrator a Late Claim application form prescribed by the Administrator together with:

- (a) medical, clinical, laboratory, hospital, The Canadian Red Cross Society, Canadian Blood Services or Hema-Québec records demonstrating that the claimant received a Blood (Transfused) transfusion in Canada during the Class Period;
- (b) a HCV Antibody Test report, PCR Test report or similar test report pertaining to the claimant;

- (c) a statutory declaration of the claimant including a declaration (i) that he or she has never used non-prescription intravenous drugs, (ii) to the best of his or her knowledge, information and belief, that he or she was not infected with Hepatitis Non-A Non-B or HCV prior to 1 January 1986, (iii) as to where the claimant first received a Blood (Transfused) transfusion in Canada during the Class Period, and (iv) as to the place of residence of the claimant, both when he or she first received a Blood (Transfused) transfusion in Canada during the Class Period and at the time of delivery of the Late Claim application hereunder.

(2) Notwithstanding the provisions of Section 3.01Tran(1)(a), if a claimant cannot comply with the provisions of Section 3.01Tran(1)(a), the claimant must deliver to the Administrator corroborating evidence independent of the personal recollection of the claimant or any person who is a Family Member of the claimant establishing on a balance of probabilities that he or she received a Blood (Transfused) transfusion in Canada during the Class Period.

(3) Notwithstanding the provisions of Section 3.01Tran(1)(c), if a claimant cannot comply with the provisions of Section 3.01Tran(1)(c) because the claimant used non-prescription intravenous drugs, then he or she must deliver to the Administrator other evidence establishing on a balance of probabilities that he or she was infected for the first time with HCV by a Blood (Transfused) transfusion in Canada during the Class Period.

### **3.01Hemo Late Claim by Primarily-Infected Hemophiliac**

(1) A person claiming to be a Primarily-Infected Hemophiliac who is determined eligible to make a Late Claim pursuant to Appendix E of this HCV Late Claims Benefit Plan must deliver to the Administrator a Late Claim application form prescribed by the Administrator together with:

- (a) medical, clinical, laboratory, hospital, The Canadian Red Cross Society, Canadian Blood Services or Hema-Québec records demonstrating that (i) the claimant has or had a congenital clotting factor defect or deficiency, or (ii) has or had Thalassemia Major, and (iii) the claimant received or took Blood (Hemophiliac) during the Class Period;
- (b) an HCV Antibody Test report, PCR Test report or similar test report pertaining to the claimant;
- (c) a statutory declaration of the claimant including a declaration (i) that he or she has never used non-prescription intravenous drugs, (ii) as to where the claimant first received or took Blood (as defined for a Hemophiliac Late Claim) during the Class Period, and (iii) as to the place of residence of the claimant, both when he or she first received or took Blood (Hemophiliac)

during the Class Period and at the time of delivery of the Late Claim application hereunder.

(2) Notwithstanding the provisions of Section 3.01Hemo(1)(a), if a claimant cannot comply with the provisions of Section 3.01Hemo(1)(a)(i) or (ii), the claimant must deliver to the Administrator corroborating evidence independent of the personal recollection of the claimant or any person who is a Family Member of the claimant establishing on a balance of probabilities that he or she has or had a congenital clotting factor defect or deficiency, or has or had Thalassemia Major and received or took Blood (Hemophiliac) during the Class Period.

(3) Notwithstanding the provisions of Section 3.01Hemo(1)(c), if a claimant cannot comply with the provisions of Section 3.01Hemo(1)(c) because the claimant used non-prescription intravenous drugs, then he or she must deliver to the Administrator other evidence establishing on a balance of probabilities that he or she was infected for the first time with HCV by Blood (Hemophiliac).

### **3.02 Late Claim by Secondarily-Infected Person**

(1) A Spouse or Child claiming to be a Secondarily-Infected Person who is determined eligible to make a Late Claim pursuant to Appendix E of this HCV Late Claims Benefit Plan or who is related to a HCV Infected Person whose Late Claim is accepted by the Administrator under this HCV Late Claims Benefit Plan must deliver to the Administrator a Late Claim application form prescribed by the Administrator together with:

- (a) evidence demonstrating on the balance of probabilities that the claimant was infected with HCV for the first time by a Spouse who is a Primarily-Infected Hemophiliac or Primarily- Infected Person or an Opted-Out Primarily-Infected Hemophiliac or Opted-Out Primarily-Infected Person or by a Parent who is a HCV-Infected Person or Opted-Out HCV Infected Person including a statutory declaration of the claimant (i) declaring that he or she never used non-prescription intravenous drugs and, in the case of a Transfused Late Claim only, (ii) declaring that to the best of his or her knowledge, information and belief, he or she was not infected with Hepatitis Non-A Non-B or HCV prior to 1 January 1986;
- (b) a HCV Antibody Test report, a PCR Test report or similar test report pertaining to the claimant; and
- (c) the evidence required by Sections 3.01Tran or 3.01Hemo and Section 3.03 in respect of his or her Spouse or Parent, as the case may be, unless the required evidence has already been delivered by the Spouse or Parent in respect of his or her personal Late Claim under this HCV Late Claims Benefit Plan or his or her personal Transfused/Hemophiliac Plan Claim.

(2) Notwithstanding the provisions of Section 3.02(1)(a), if a claimant cannot comply with the provisions of Section 3.02(1)(a) because the claimant used non-prescription intravenous drugs, the claimant may still qualify for compensation if the claimant can deliver to the Administrator other evidence establishing on a balance of probabilities that the claimant was infected for the first time with HCV by his or her Spouse who is a Primarily-Infected Hemophiliac or Primarily-Infected Person or an Opted-Out Primarily-Infected Hemophiliac or Opted-Out Primarily-Infected Person or his or her Parent who is a HCV Infected Person or Opted-Out HCV Infected Person notwithstanding the claimant's non-prescription intravenous drug use.

### **3.03 Additional Proof**

If requested by the Administrator, a person claiming to be a HCV Infected Person must also provide to the Administrator:

- (a) all medical, clinical, hospital or other such records in his or her possession, control or power;
- (b) a consent authorizing the release to the Administrator of such medical, clinical, hospital records or other health information as the Administrator may request;
- (c) a consent to a Traceback Procedure (in the case of a Primarily-Infected Person or Secondarily-Infected Person only);
- (d) a consent to an independent medical examination;
- (e) income tax returns and other records and accounts pertaining to loss of income; and
- (f) any other information, books, records, accounts or consents to examinations as may be requested by the Administrator to determine whether or not a claimant is a HCV Infected Person or to process the Late Claim.

If any person refuses to provide any of the above information, documentation or other matters in his or her possession, control or power, the Administrator must not approve the Late Claim.



### **3.04Tran      Traceback Procedure**

(1) Notwithstanding any other provision of this HCV Late Claims Benefit Plan, if the results of a Traceback Procedure demonstrate that one of the donors or units of Blood (Transfused) received by a Primarily-Infected Person, Secondly-Infected Person or Opted-Out Primarily-Infected Person or Opted-Out Secondly-Infected Person before 1 January 1986 is or was HCV antibody positive or that none of the donors or units of Blood (Transfused) received by a Primarily-Infected Person or Opted-Out Primarily Infected Person during the Class Period is or was HCV antibody positive, subject to the provisions of Section 3.04(2), the Administrator must reject the Late Claim of such HCV Infected Person and all Late Claims pertaining to such HCV Infected Person or Opted-Out HCV Infected Person including Late Claims of Secondly-Infected Persons, HCV Personal Representatives, Dependants and Family Members.

(2) A claimant may prove that the relevant Primarily-Infected Person or Opted-Out Primarily-Infected Person was infected, for the first time, with HCV by a Blood (Transfused) transfusion received in Canada during the Class Period or that the relevant Secondly-Infected Person or Secondly-Infected Person who opted out of the Class Action in which he or she would otherwise be a Class Member was infected for the first time with HCV by his or her Spouse who is a Primarily-Infected Person or Opted-Out Primarily-Infected Person or his or her Parent who is a HCV Infected Person or Opted-Out HCV Infected Person, notwithstanding the results of the Traceback Procedure. For greater certainty, the costs of obtaining evidence to refute the results of a Traceback Procedure must be paid by the claimant unless otherwise ordered by a Referee, Arbitrator or Court.

### **3.05      Late Claim by HCV Personal Representative of HCV Infected Person**

(1) A person claiming to be the HCV Personal Representative of a HCV Infected Person who has died and who is determined eligible to make a Late Claim pursuant to Appendix E of this HCV Late Claims Benefit Plan must deliver to the Administrator a Late Claim application form prescribed by the Administrator together with:

- (a) proof that the death of the HCV Infected Person was caused by his or her infection with HCV;
- (b) unless the required proof has already been previously delivered to the Administrator:
  - (i) if the deceased was a Primarily-Infected Hemophiliac or Primarily-Infected Person, the proof required by Sections 3.01Hemo or 3.01Tran, and Section 3.03, as applicable; or
  - (ii) if the deceased was a Secondly-Infected Person, the proof required by Sections 3.02 and 3.03; and

- (c) the original certificate of appointment of estate trustee, grant of probate or of letters of administration or notarial will (or a copy thereof certified to be a true copy by a lawyer or notary) or such other proof of the right of the claimant to act for the estate of the deceased as may be required by the Administrator.

(2) A person claiming to be the HCV Personal Representative of a HCV Infected Person who is mentally incompetent and who is determined eligible to make a Late Claim pursuant to Appendix E of this Late Claim Plan must deliver to the Administrator a Late Claim application form prescribed by the Administrator together with:

- (a) unless the required proof has already been previously delivered to the Administrator:
  - (i) if the HCV Infected Person is a Primarily- Infected Hemophiliac or Primarily-Infected Person, the proof required by Sections 3.01Hemo or 3.01Tran and Section 3.03, as applicable; or
  - (ii) if the HCV Infected Person is a Secondarily-Infected Person, the proof required by Sections 3.02 and 3.03; and
- (b) the court order or power (or a copy thereof certified to be a true copy by a lawyer or notary) or such other proof of the right of the claimant to act for the HCV Infected Person as may be required by the Administrator.

(3)(Tran) Notwithstanding the provisions of Section 3.01Tran(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 3.01Tran(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 (Transfused) transfusion in the absence of any other cause; or
- (c) a diagnosis of cirrhosis in the absence of any other cause.

For greater certainty, nothing in this Section will relieve any claimant from the requirement to prove that the death of the Primarily-Infected Person was caused by his or her infection with HCV.

(3)(Hemo) Notwithstanding the provisions of Sections 3.01Hemo(1)(b), if a deceased Primarily-Infected Hemophiliac died before 1 January 1999 and was not tested for the HCV antibody or HCV, the HCV Personal Representative of such deceased Primarily-Infected Hemophiliac may deliver, instead of the evidence referred to in Section 3.01Hemo(1)(b), evidence of any one of the following:

- (a) the Primarily-Infected Hemophiliac had tested positive for HIV prior to his or her death;
- (b) a liver biopsy consistent with HCV in the absence of any other cause of chronic hepatitis;
- (c) an episode of jaundice within three months of using or taking Blood (Hemophiliac) in the absence of any other cause; or
- (d) a diagnosis of cirrhosis in the absence of any other cause.

For greater certainty, nothing in this Section will relieve any claimant from the requirement to prove that the death of the Primarily-Infected Hemophiliac was caused by his or her infection with HCV except as otherwise provided in Section 5.01(4).

(4) Notwithstanding the provisions of Section 3.02(1)(b), if the HCV Personal Representative of a deceased Secondly-Infected Person cannot comply with the provisions of Section 3.02(1)(b), the HCV Personal Representative must deliver to the Administrator other evidence establishing on a balance of probabilities that such deceased Secondly-Infected Person was infected with HCV.

(5)(Tran) For the purposes of Sections 3.05 (1) and (2), the statutory declaration required by Sections 3.01Tran(1)(c) and 3.02(1)(a) must be made by a person who is or was sufficiently familiar with the HCV Infected Person to declare that to the best of his or her knowledge, information and belief the HCV Infected Person did not use non-prescription intravenous drugs and was not infected with Hepatitis Non-A Non-B or HCV prior to 1 January 1986. If such a statutory declaration cannot be provided because the HCV Infected Person used non-prescription intravenous drugs, the HCV Personal Representative must deliver to the Administrator other evidence establishing on a balance of probabilities that the Primarily-Infected Person was infected for the first time with HCV by a Blood (Transfused) transfusion in Canada during the Class Period or the Secondly-Infected Person was infected for the first time with HCV by his or her Spouse who is or was a Primarily-Infected Person or Opted-Out Primarily-Infected Person or by his or her Parent who is or was a HCV Infected Person or an Opted-Out HCV Infected Person.

(5)(Hemo) For the purposes of Sections 3.05(1) and (2), the statutory declaration required by Sections 3.01Hemo(1)(c) and 3.02(1)(a) must be made by a person who is or was sufficiently familiar with the HCV Infected Person to declare that to the best of his or her knowledge, information and belief the HCV Infected Person did not use non-prescription intravenous drugs. If such a statutory declaration cannot be provided because the HCV Infected Person used non-prescription intravenous drugs, the HCV Personal Representative must deliver to the Administrator evidence establishing on a balance of probabilities that the Primarily-Infected Hemophiliac was infected with HCV by Blood (Hemophiliac) or the Secondly-Infected Person was infected for the first time with HCV by his or her Spouse who is or was a Primarily-Infected Hemophiliac or Opted-Out Primarily-Infected

Hemophiliac or by his or her Parent who is or was a HCV Infected Person or an Opted-Out HCV Infected Person.

(6) If requested by the Administrator, the HCV Personal Representative must also provide to the Administrator:

- (a) all medical, clinical, hospital or other such records in his or her possession, control or power;
- (b) a consent authorizing the release to the Administrator of such medical, clinical, hospital records or other health information as the Administrator may request;
- (c) a consent to a Traceback Procedure (in the case of a Secondarily-Infected Person only);
- (d) a consent to an independent medical examination;
- (e) income tax returns and other records and accounts pertaining to loss of income; and
- (f) any other information, books, records, accounts or consents to examinations as may be requested by the Administrator to determine whether or not a person is a HCV Infected Person or to process the Late Claim.

If any HCV Personal Representative refuses to provide any of the above information, documentation or other matters in his or her possession, control or power, the Administrator must not approve the Late Claim.

### **3.06 Late Claim by Dependant**

A person claiming to be a Dependant of a HCV Infected Person who has died and who is determined eligible to make a Late Claim pursuant to Appendix E of this HCV Late Claims Benefit Plan or a person claiming to be a Dependant of a deceased HCV Infected Person whose Late Claim is accepted by the Administrator under this HCV Late Claims Benefit Plan must deliver to the Administrator a Late Claim application form prescribed by the Administrator together with:

- (a) proof as required by Sections 3.05(1)(a) and (b) (or, if applicable, Sections 3.05(3)(Tran) or 3.05(3)(Hemo) or 3.05(4)) and 3.05(5)(Tran) or 3.05(Hemo) and 3.05(6), unless the required proof has been previously delivered to the Administrator; and
- (b) proof that the claimant was a Dependant of the HCV Infected Person.

### **3.07 Late Claim by Family Member**

A person referred to in clause (a) of the definition of Family Member in Section 1.01 claiming to be a Family Member of a HCV Infected Person who has died and who is determined eligible to make a Late Claim pursuant to Appendix E of this HCV Late Claims Benefit Plan or a person referred to in clause (a) of the definition of Family Member in Section 1.01 claiming to be a Family Member of a deceased HCV Infected Person whose Late Claim is accepted by the Administrator under this HCV Late Claims Benefit Plan must deliver to the Administrator a Late Claim application form prescribed by the Administrator together with:

- (a) proof as required by Sections 3.05(1)(a) and (b) (or, if applicable, Sections 3.05(3)(Tran) or 3.05(3)(Hemo) or 3.05(4)) and 3.05(5)(Tran) or 3.05(5)(Hemo) and 3.05(6), unless the required proof has been previously delivered to the Administrator; and
- (b) proof that the claimant was a Family Member of the HCV Infected Person referred to in clause (a) of the definition of Family Member in Section 1.01.

### **3.08 Late Claim Deadline**

(1) A person who is determined eligible to make a Late Claim in accordance with the provisions of Appendix E, must make his or her Late Claim within two years after the date of such eligibility determination.

(2) Except as provided in this Section, a Spouse or Child claiming to be secondarily infected with HCV by a HCV Infected Person must make his or her Late Claim within three years after the date the Late Claim of the Approved Late Claim HCV Infected Person or Approved Late Claim HCV Personal Representative for the deceased HCV Infected Person is accepted by the Administrator under this HCV Late Claims Benefit Plan.

(3) Except as provided in this Section, those persons referred to in clause (a) of the definition of Family Member in Section 1.01 must make their Late Claim within two years after the date the Late Claim of the Approved Late Claim HCV Personal Representative for the deceased HCV Infected Person is accepted by the Administrator under this HCV Late Claims Benefit Plan.

**ARTICLE FOUR**  
**COMPENSATION TO APPROVED LATE CLAIM HCV INFECTED PERSONS**

**4.01 Fixed Payments**

(1) Each Approved Late Claim HCV Infected Person will be paid the amounts set out below as compensation for damages:

- (a) the amount of \$14,601.65 as compensation for damages upon his or her Late Claim being approved by the Administrator;
- (b) the amount of \$29,203.30 upon delivering to the Administrator a PCR Test report;
- (c) unless waived pursuant to the provisions of Section 4.01(3), the amount of \$43,804.94 upon delivering to the Administrator evidence demonstrating that he or she has (i) developed fibrous tissue in the portal areas of the liver with fibrous bands extending out from the portal area but without any bridging to other portal tracts or to central veins (i.e., non-bridging fibrous) or (ii) received Compensable HCV Drug Therapy or (iii) has met or meets a protocol for Compensable HCV Drug Therapy notwithstanding that such treatment was not recommended or, if recommended, has been declined;
- (d) the amount of \$94,910.70 upon delivering to the Administrator evidence demonstrating that he or she has (i) developed fibrous bands in the liver extending or bridging from portal area to portal area with the development of nodules and regeneration (i.e., cirrhosis), or (ii) in the absence of a liver biopsy demonstrating the presence of cirrhosis, a diagnosis of cirrhosis as follows:
  - A. hepato-splenomegaly and peripheral manifestations of liver disease such as gynecomastia in males, testicular atrophy, spider angiomas, protein malnutrition, palm or nail changes none of which are attributable to any cause other than cirrhosis, and/or
  - B. portal hypertension evidenced by splenomegaly, abnormal abdominal and chest wall veins, or esophageal varices, or ascites none of which are attributable to any cause but cirrhosis; and
  - C. abnormal blood tests for a minimum of three months demonstrating:
    - a. polyclonal increase in gamma globulins on a serum protein electrophoresis with decreased albumin;

- b. significantly decreased platelet count not attributable to any other cause such as auto-immune causes; and
- c. prolonged INR or Prothrombin time not attributable to any other cause,

or (iii) porphyria cutanea tarda which has failed to respond to a trial of phlebotomy, drug therapy, or the treatment of HCV and which is causing significant disfigurement and disability or (iv) thrombocytopenia (low platelets) unresponsive to therapy, and which is associated with purpura or other spontaneous bleeding, or which results in excessive bleeding following trauma or a platelet count below  $30 \times 10^9$  per ml or (v) glomerulonephritis not requiring dialysis, which in any such case is caused by his or her infection with HCV; and

- (e) the amount of \$146,016.47 upon delivering to the Administrator evidence demonstrating that he or she has had a liver transplant or has developed (i) decompensation of the liver or (ii) hepatocellular cancer or (iii) B-cell lymphoma or (iv) symptomatic mixed cryoglobulinemia or (v) glomerulonephritis requiring dialysis or (vi) renal failure, which in any such case is caused by his or her infection with HCV.

(2) Each Approved Late Claim HCV Infected Person who delivers to the Administrator evidence demonstrating that he or she has developed fibrous tissue in the portal areas of the liver with fibrous bands bridging to other portal areas or to central veins but without nodular formation or nodular regeneration (i.e., bridging fibrosis) will be entitled to be paid (i) the compensation pursuant to Sections 4.01(1)(a) and (b) to the extent that he or she has not already received those amounts and (ii), unless waived pursuant to the provisions of Section 4.01(3), the compensation pursuant to Section 4.01(1)(c) to the extent that he or she has not already received that amount.

(3) If an Approved Late Claim HCV Infected Person described in Section 4.01(1)(c) delivers to the Administrator proof that his or her infection with HCV has caused the Approved Late Claim HCV Infected Person to be regularly unable to perform:

- (a) the substantial duties of his or her usual employment, occupation or profession such that the Approved Late Claim HCV Infected Person works no more than 20% of his or her usual work week; or
- (b) the substantial household duties that he or she would normally provide in his or her home such that the Approved Late Claim HCV Infected Person performs no more than 20% of the household services that he or she would normally provide;

he or she may waive payment of the amount of \$43,804.94 payable pursuant to Section 4.01(1)(c) and elect to be paid instead the compensation provided for under Section 4.02 or

4.03, as the case may be. This election must be made by notice in writing in the form prescribed by the Administrator delivered to the Administrator at any time prior to receipt of the said \$43,804.94. A person who has elected to receive the compensation payable under Section 4.02 or 4.03 is not entitled to be paid the said amount of \$43,804.94 pursuant to Section 4.01(1)(c) at any time thereafter under any circumstances whatsoever.

(4) The amounts payable under Section 4.01(1) are cumulative. For example, an Approved Late Claim HCV Infected Person who proves that he or she has a condition described in Section 4.01(1)(d) will be entitled to be paid the \$14,601.65 referred to in Section 4.01(1)(a), the \$29,203.30 referred to in Section 4.01(1)(b) and, unless waived pursuant to the provisions of Section 4.01(3), the \$43,804.94 referred to in Section 4.01(1)(c), as well as the \$94,910.70 referred to in Section 4.01(1)(d).

(5)(Tran) The medical evidence to be delivered pursuant to this Article Four for a Transfused Late Claim is such medical evidence as is generally accepted by the medical profession and approved by the Courts.

(5)(Hemo) Subject to Section 4.01(6)(Hemo), the evidence to be delivered pursuant to this Article Four for a Hemophiliac Late Claim is such medical evidence as is generally accepted by the medical profession and approved by the Courts provided that evidence that a Primarily-Infected Hemophiliac who is an Approved Late Claim HCV Infected Person has developed a condition referred to in Section 4.01(1)(c)(i), (d) or (e) or 4.01(2) may be established on a balance of probabilities by the delivery of the opinion of a medically qualified expert based on non-invasive testing and diagnosis.

(6)(Hemo) Notwithstanding Section 4.01(5)(Hemo), a Primarily-Infected Hemophiliac who is an Approved Late Claim HCV Infected Person and who has or had Thalassemia Major as his or her underlying condition must comply with the Transfused Late Claim medical evidence provision in Section 4.01(5)(Tran) and/or such court approved protocols concerning medical evidence as are in force from time to time rather than the provision at Section 4.01(5)(Hemo).

## **4.02 Compensation for Loss of Income**

(1) Each Approved Late Claim HCV Infected Person who normally had Earned Income (as defined below, except as provided in Section 4.02(2)(f)) who:

- (a) elects to be paid compensation for loss of income instead of \$43,804.94 pursuant to Section 4.01(3); or
- (b) delivers to the Administrator:
  - (i) evidence demonstrating the he or she has developed fibrous tissue in the portal areas of the liver with fibrous bands bridging to other portal areas or to central veins but without



nodular formation or nodular regeneration (i.e., bridging fibrous);

- (ii) the evidence referred to in Section 4.01(1)(d); or
- (iii) the evidence referred to in Section 4.01(1)(e); and

who delivers to the Administrator proof satisfactory to the Administrator that his or her infection with HCV caused loss of income will be paid compensation for past, present and future loss of income.

(2) Each Approved Late Claim HCV Infected Person who is entitled to receive compensation for past, present or future loss of income caused by his or her infection with HCV will be paid, an amount each calendar year equal to his or her Annual Loss of Net Income for such year until he or she attains the age of 65 years determined in accordance with the following provisions:

- (a) “Annual Loss of Net Income” for a year means the excess of the Approved Late Claim HCV Infected Person’s Pre-claim Net Income for such year over his or her Post-claim Net Income for such year.
- (b) “Pre-claim Net Income” of an Approved Late Claim HCV Infected Person for a year means an amount determined as follows:
  - (i) an amount equal to the average of the person’s three highest consecutive years of Earned Income preceding the Approved Late Claim HCV Infected Person’s entitlement to compensation under this Section 4.02 multiplied by the ratio that the Pension Index for the year bears to the Pension Index for the middle year of the foregoing three consecutive years, or, if the Approved Late Claim HCV Infected Person or the Administrator demonstrates on a balance of probabilities that his or her Earned Income for such year would have been higher or lower than such average but for the HCV Infected Person’s infection with HCV, such higher or lower amount, (the applicable amount being hereinafter referred to as the “Pre-claim Gross Income”), provided that the amount determined under this Section 4.02(2)(b)(i) will not exceed \$3,095,279.91 multiplied by the ratio that the Pension Index for the year bears to the Pension Index for 2014, and provided that in the event the amount determined under this Section 4.02(2)(b)(i) exceeds \$403,732.16 multiplied by the ratio that the Pension Index for the year bears to the Pension Index for 2014,

the Court having jurisdiction over the Late Claim must approve the amount proposed to be paid as loss of income under section 4.02 or loss of support under Section 6.01(1) before any payment is made, minus

- (ivi) the Ordinary Deductions that would be payable by the Approved Late Claim HCV Infected Person on the amount determined under Section 4.02(2)(b)(i) on the assumption that such amount was the Approved Late Claim HCV Infected Person's only income for such year.
- (c) "Post-claim Net Income" of an Approved Late Claim HCV Infected Person for a year means an amount determined as follows:
- (i) the total of (A) the Approved Late Claim HCV Infected Person's Earned Income for the year or, if the Administrator demonstrates on a balance of probabilities that the Approved Late Claim HCV Infected Person's Earned Income for such year would have been higher than such amount but for the person claiming a level of impairment greater than the person's actual level of impairment, such Earned Income as determined by the Administrator, (B) the amount paid or payable to the person in respect of the Canada Pension Plan or the Québec Pension Plan on account of illness or disability for the year, (C) the amount paid or payable to the person in respect of Unemployment Insurance and/or Employment Insurance for the year, (D) the amount paid or payable to the person for income replacement under a sickness, accident or disability insurance plan for the year, and (E) the amount paid or payable to the person pursuant to the EAP, MPTAP and/or the Nova Scotia Compensation Plan, (such total being hereinafter referred to as the "Post-claim Gross Income"), provided that the amount determined under this Section 4.02(2)(c)(i) will not exceed the proportion of the amount determined under Section 4.02(2)(b)(i) for such year that the Approved Late Claim HCV Infected Person's Post-claim Gross Income for such year is of such person's Pre-claim Gross Income for such year, minus
  - (ii) the Ordinary Deductions that would be payable by the Approved Late Claim HCV Infected Person on the amount determined under Section 4.02(2)(c)(i) on the assumption that such amount were such person's only income for such year.
- (d) "Earned Income" means taxable income for the purposes of the *Income Tax Act* (Canada) from an office or employment or from the carrying on of an active business and any taxable income for purposes of the *Income Tax Act* (Canada) of a corporation from the carrying on of an active business to the extent that the person establishes to the satisfaction of the Administrator that

the person has a significant shareholding in such corporation and that such income is reasonably attributable to the activities of such person.

- (e) “Ordinary Deductions” means income taxes, Unemployment Insurance and/or Employment Insurance and Canada Pension Plan and/or Québec Pension Plan deductions applicable in the Province or Territory where the person is resident.
- (f) Notwithstanding any of the foregoing, an Approved Late Claim HCV Infected Person who was not working prior to his or her infection with HCV and who was infected either before he or she attains 18 years of age or, if the person had attained 18 years of age, while the person was in full-time attendance at an accredited education institution in Canada and at a time when the person was yet to enter the workforce on a permanent and full-time basis, will be deemed to have Pre-claim Gross Income for the year which includes the date he or she attains 18 years of age and each subsequent year or, if the person had already attained 18 years of age, the year of completion of full-time attendance at an accredited education institution and each subsequent year, in an amount equal to the then most recently available Average Industrial Wage in Canada (such amount will be prorated for the year in which the person attains 18 years of age or, completes full-time attendance at an accredited education institution for the number of days in the year in which the person has attained 18 years of age or, completes full-time attendance at an accredited education institution), or, if such person demonstrates on a balance of probabilities that his or her Earned Income for such year would have been higher than such amount, such higher amount.
- (g) For the purposes of all income tax calculations required under this Section 4.02(2), the only deductions and tax credits that apply to the Approved Late Claim HCV Infected Person which will be taken into account will be his or her alimony and maintenance payments deduction, basic personal tax credit, married person’s or equivalent to married tax credit, disability tax credit, Unemployment or Employment Insurance premium tax credit and Canada Pension Plan or the Québec Pension Plan contribution tax credit.

#### **4.02A Compensation for Inability to Contribute to Pension Plan**

Each Approved Late Claim HCV Infected Person who is entitled to receive compensation for past and/or present loss of income caused by his or her infection with HCV will be paid, an amount each calendar year equal to 10% of his or her Annual Loss of Net Income for such year to a cap of \$20,000 per year for those years prior to 2014 and for the years 2014 and following to a cap of \$20,000 per year multiplied by the ratio that the Pension Index for the year bears to the Pension Index for 2014. For greater certainty, compensation under this Section 4.02A is only payable for those years the Approved Late Claim HCV Infected Person is or was entitled to receive compensation for loss of income. This Section

4.02A does not apply to compensation paid as loss of support following the death of an Approved Late Claim HCV Infected Person.

#### **4.03 Compensation for Loss of Services in the Home**

(1) Each Approved Late Claim HCV Infected Person who normally performed household duties in his or her home and who:

- (a) elects to be paid compensation for the loss of such services instead of \$43,804.94 pursuant to Section 4.01(3); or
- (b) delivers to the Administrator:
  - (i) evidence demonstrating he or she has developed fibrous tissue in the portal areas of the liver with fibrous bands bridging to other portal areas or to central veins but without nodular formation or nodular regeneration (i.e., bridging fibrous);
  - (ii) the evidence referred to in Section 4.01(1)(d); or
  - (iii) the evidence referred to in Section 4.01(1)(e); and

who delivers to the Administrator proof satisfactory to the Administrator that his or her infection with HCV caused his or her inability to perform his or her household duties will be paid compensation for the loss of such services.

(2) The amount of the compensation for the loss of services in the home pursuant to Section 4.03(1) is \$16.15 per hour to a maximum of \$355.30 per week.

(3) Notwithstanding any of the provisions hereof, an Approved Late Claim HCV Infected Person cannot claim compensation for loss of income and compensation for the loss of services in the home for the same period.

#### **4.04 Compensation for Costs of Care**

An Approved Late Claim HCV Infected Person who establishes to the satisfaction of the Administrator that on the balance of probabilities he or she has any of the conditions referred to in Section 4.01(1)(e) and delivers to the Administrator evidence satisfactory to the Administrator that he or she has incurred costs for care due to such condition that are not recoverable by or on behalf of the claimant under any public or private health care plan is entitled to be reimbursed for all reasonable costs so incurred provided:

- (a) the amount of compensation payable for care costs in any calendar year cannot exceed \$80,746.43;
- (b) the care was recommended by the claimant's treating physician;

- (c) the amount of compensation will not include any costs described in Sections 4.03 or 4.06; and
- (d) if the costs are incurred outside of Canada, the amount of compensation cannot exceed the lesser of the amount of compensation payable if the costs had been incurred in the Province or Territory where the claimant resides or is deemed to reside and the actual costs.

#### **4.05 Compensation for HCV Drug Therapy**

An Approved Late Claim HCV Infected Person who delivers evidence satisfactory to the Administrator that he or she has received Compensable HCV Drug Therapy is entitled to be paid \$1,345.77 for each completed month of therapy.

#### **4.06 Compensation for Uninsured Treatment and Medication**

An Approved Late Claim HCV Infected Person who delivers to the Administrator evidence satisfactory to the Administrator that he or she has incurred or will incur costs for generally accepted treatment and medication due to his or her HCV infection which are not recoverable by or on behalf of the claimant under any public or private health care plan is entitled to be reimbursed for all reasonable past, present or future costs so incurred, to the extent that such costs are not costs of care or compensation for loss of services in the home, provided:

- (a) the costs were incurred on the recommendation of the claimant's treating physician; and
- (b) if the costs are incurred outside of Canada, the amount of compensation cannot exceed the lesser of the amount of compensation payable if the costs had been incurred in the Province or Territory where the claimant resides or is deemed to reside and the actual costs.

#### **4.07 Compensation for Out-of-Pocket Expenses**

(1) An Approved Late Claim HCV Infected Person who delivers to the Administrator evidence satisfactory to the Administrator that he or she has incurred or will incur out-of-pocket expenses due to his or her HCV infection that are not recoverable by or on behalf of the claimant under any public or private health care plan is entitled to be reimbursed for all reasonable costs so incurred provided:

- (a) out-of-pocket expenses will include (i) expenses for travel, hotels, meals, telephone and other similar expenses attributable to seeking medical advice or generally accepted medication or treatment due to his or her HCV infection and (ii) medical expenses incurred in establishing a Late Claim; and

- (b) the amount of the expenses cannot exceed the amount therefor in the guidelines in the Regulations issued under the *Financial Administration Act* (Canada) from time to time.

(2) A Family Member (as defined in Section 1.01) of an Approved Late Claim HCV Infected Person who delivers to the Administrator evidence satisfactory to the Administrator that he or she accompanied the Approved Late Claim HCV Infected Person to the Approved Late Claim HCV Infected Person's medical appointment(s) seeking medical advice or treatment due to his or her HCV infection will be paid an allowance of \$200, provided this provision shall only apply to those appointments occurring after August 16, 2016. For greater certainty, the payment shall be limited to \$200 (2014 dollars) multiplied by the ratio that the Pension Index for the year bears to the Pension Index for 2014 per occasion irrespective of whether more than one Family Member is in attendance and irrespective of whether the attendance requires more than one day.

#### **4.08 Compensation for HIV Secondarily-Infected Persons**

- (1) An Approved Late Claim HCV Infected Person who is also a HIV Secondarily-Infected Person may not receive any compensation under this Article Four unless and until his or her entitlement to compensation hereunder exceeds a total of \$240,000 and then he or she will be entitled to be compensated for all amounts payable under this Article Four in excess of \$240,000.

(2)(Hemo) Notwithstanding any of the provisions of this HCV Late Claims Benefit Plan (including Section 4.08(1)), an Approved Late Claim Primarily-Infected Hemophiliac who is also infected with HIV may elect to be paid \$73,008.23 in full satisfaction of all his or her past, present or future Late Claims pursuant to this HCV Late Claims Benefit Plan (including all potential Late Claims of his or her Dependents or other Family Members pursuant to Article Six) but such payment will not affect the personal Late Claim of a Spouse or Child who is also a HCV Infected Person. Evidence that an Approved Late Claim Primarily-Infected Hemophiliac has received payments under MPTAP or EAP or the Nova Scotia Compensation Plan will be proof that he or she also has HIV.

#### **4.09 Compensation is Inclusive**

For greater certainty, the amounts payable to Approved Late Claim HCV Infected Persons under this Article Four are inclusive of any prejudgment interest or other amounts that may be claimed by Approved Late Claim HCV Infected Persons.

**ARTICLE FIVE**  
**COMPENSATION TO APPROVED LATE CLAIM HCV PERSONAL**  
**REPRESENTATIVES**

**5.01 Compensation if Deceased Prior to 1 January 1999**

(1) The Approved Late Claim HCV Personal Representative of a HCV Infected Person who died prior to 1 January 1999 is entitled to be reimbursed for the uninsured funeral expenses incurred up to a maximum of \$6,728.87 and, subject to the provisions of Section 5.01(2), the Approved Late Claim HCV Personal Representative will be paid the amount of \$73,008.23 in full satisfaction of any and all Late Claims that the HCV Infected Person would have had under this HCV Late Claims Benefit Plan if he or she had been alive on or after 1 January 1999. This \$73,008.23 payment to the Approved Late Claim HCV Personal Representative is in addition to any Late Claims of Dependents and other Family Members pursuant to Article Six and will not affect the personal Late Claim of a Spouse or Child who is also a HCV Infected Person.

(2) Instead of the \$73,008.23 payment pursuant to Section 5.01(1), if the Approved Late Claim HCV Personal Representative of a HCV Infected Person who died prior to 1 January 1999 and all the deceased HCV Infected Person's Dependents and other Family Members having Late Claims under this HCV Late Claims Benefit Plan agree to be paid \$175,219.76 in full satisfaction of all their Late Claims pursuant to this HCV Late Claims Benefit Plan (including all potential Late Claims pursuant to Article Six), such amount will be paid jointly to them, but such payment will not affect the personal Late Claim of a Spouse or Child who is also a HCV Infected Person.

(3) Notwithstanding the provisions of Sections 5.01(1) and (2), if the deceased HCV Infected Person was also a HIV Secondarily-Infected Person who died prior to 1 January 1999, no amount will be payable pursuant to Section 5.01(1) unless, and then only to the extent that, the Late Claim of the Approved Late Claim HCV Personal Representative and the Late Claims of the deceased HCV Infected Person's Dependents and other Family Members pursuant to Article Six exceed an aggregate of \$240,000 and no amount will be payable pursuant to Section 5.01(2).

(4)(Hemo) Instead of payment pursuant to either Section 5.01(1) or (2), if a Primarily-Infected Hemophiliac was also infected with HIV and died prior to 1 January 1999 and his or her Approved Late Claim HCV Personal Representative and all the deceased Primarily-Infected Hemophiliac's Dependents and other Family Members having Late Claims under this HCV Late Claims Benefit Plan agree to be paid \$105,131.86 in full satisfaction of all their Late Claims pursuant to this HCV Late Claims Benefit Plan (including all Late Claims pursuant to Article Six), such amount will be paid jointly to them upon receipt of the following:

- (a) the original certificate of appointment of estate trustee, grant of probate or of letters of administration or notarial will (or a copy thereof certified to be a true

copy by a lawyer or notary) or such other proof of the right of the claimant to act for the estate of the deceased as may be required by the Administrator;

- (b) the evidence referred to in Section 3.01Hemo(1)(a);
- (c) the evidence referred to in Section 3.05(3)(Hemo)(a), (b), (c) or (d);
- (d) a statutory declaration referred to in Section 3.05(4); and
- (e) any evidence required by the Administrator pursuant to Section 3.05(5)(Hemo).

Such payment will not affect the personal Late Claim of a Family Member who is also a HCV Infected Person.

## **5.02 Compensation if Deceased After 1 January 1999**

(1) If a HCV Infected Person died or dies on or after 1 January 1999 and the evidence required under Article Three has been submitted to the Administrator by him or her prior to his or her death or by his or her Approved Late Claim HCV Personal Representative after his or her death, the Approved Late Claim HCV Personal Representative will be paid (i) the uninsured funeral expenses incurred up to a maximum of \$6,728.87 and (ii) whether or not the evidence required under Section 3.05(1)(a) is provided, the amount of all Late Claims payable under Article Four to which the deceased HCV Infected Person would have been entitled for the period up to his or her death if he or she had not died (to the extent such amounts have not otherwise been paid pursuant to this HCV Late Claims Benefit Plan), but such payments are in addition to the Late Claims of Approved Late Claim Dependents and Approved Late Claim Family Members pursuant to Article Six and will not affect the personal Late Claim of a Spouse or Child who is also a HCV Infected Person.

(2) Notwithstanding the provisions of Section 5.02(1), if the deceased HCV Infected Person was also a HIV Secondarily-Infected Person, no amount will be payable pursuant to Section 5.02(1) unless, and then only to the extent that, the Late Claims of the Approved Late Claim HCV Personal Representative and the deceased HCV Infected Person's



Approved Late Claim Dependants and other Approved Late Claim Family Members pursuant to Article Six exceed an aggregate of \$240,000.

## **ARTICLE SIX COMPENSATION TO APPROVED LATE CLAIM DEPENDANTS AND APPROVED LATE CLAIM FAMILY MEMBERS**

### **6.01 Compensation to Approved Late Claim Dependants**

(1) If a HCV Infected Person dies and the death was caused by his or her infection with HCV, the Approved Late Claim Dependants of such HCV Infected Person will be entitled to be compensated for their loss of support. The loss of support is an amount each calendar year equal to the deceased HCV Infected Person's Annual Loss of Net Income for such year until he or she would have attained the age of 65 years determined in accordance with 4.02(2), provided, however, that the annual amount payable under this provision will be reduced by an amount equal to 30% of the net amount as calculated to allow for the personal living expenses of the HCV Infected Person, and provided further that, for purposes of calculating the annual amount payable under this provision, "Post-claim Net Income" will be computed without reference to clauses (A), (C) and (D) of the definition of "Post-claim Net Income" and that the words "the person" and "on account of illness or disability for the year" in clause (B) and the words "the person" in clause (E) of the definition of "Post-claim Net Income" were replaced with the words "the Dependants as a result of the death of the person".

(2) If a HCV Infected Person dies and the death was caused by his or her infection with HCV, the Approved Late Claim Dependants of such HCV Infected Person living with such HCV Infected Person at the time of his or her death will be entitled to be compensated for the loss of the services of the HCV Infected Person in the home at the rate of \$16.15 per hour to a maximum of \$355.30 per week.

(3) The amounts payable pursuant to Sections 6.01(1) or (2) will be allocated as the Approved Late Claim Dependants may agree or, failing any agreement, as the Administrator so determines based on the extent of support received by each of the Approved Late Claim Dependants prior to the death of the HCV Infected Person. Notwithstanding any of the provisions hereof, the Approved Late Claim Dependants of a HCV Infected Person whose death was caused by his or her infection with HCV cannot claim compensation for loss of support and compensation for the loss of services in the home for the same period.

### **6.02 Compensation to Approved Late Claim Family Members**

Each Approved Late Claim Family Member of a HCV Infected Person whose death was caused by his or her infection with HCV will be paid the applicable amount set out below for loss of guidance, care and companionship:

- (a) \$33,644.35 for the Spouse;

- (b) \$20,186.61 for each Child under the age of 21 years at the date of death of the HCV Infected Person;
- (c) \$12,919.43 for each Child 21 years or older at the date of the death of the HCV Infected Person;
- (d) \$12,919.43 for each Parent;
- (e) \$6,728.87 for each Sibling;
- (f) \$672.89 for each Grandparent; and
- (g) \$672.89 for each Grandchild.

The above amounts may be reduced on a proportionate basis pursuant to the provisions of Section 5.01(3) or 5.02(2) if the relevant deceased HCV Infected Person was also a HIV Secondarily-Infected Person.

### **6.03 Limitation**

Approved Late Claim Dependents and other Approved Late Claim Family Members of a HCV Infected Person will only be entitled to make Late Claims pursuant to Sections 6.01 and 6.02 (or, in lieu thereof, under Section 5.01(2)) and they will not be entitled to make any other Late Claims or to any additional or other compensation. Nothing in this Section will affect the personal Late Claim of a Spouse or Child who is also a HCV Infected Person.

## **ARTICLE SEVEN ADJUSTMENT OF COMPENSATION PAYMENTS**

### **7.01 Periodic Re-assessment by Administrator**

(1) An Approved Late Claim HCV Infected Person or the Approved Late Claim Dependents may apply to the Administrator to have the compensation payable pursuant to Article Four or Section 6.01, respectively, re-assessed periodically but not more frequently than every two years unless the Administrator is satisfied that there are exceptional circumstances that require a more frequent re-assessment.

(2) The Administrator may at any time and from time to time re-assess the compensation payable to any Approved Late Claim HCV Infected Person or the Approved Late Claim Dependents if the Administrator determines that there has been a material change in circumstances.

### **7.02 Compensation Indexed to Pension Index**

Except as provided in this Section, the amount of all of the payments to be made pursuant to Articles Four, Five and Six (other than Sections 4.02, 4.02A, 4.06, 4.07 and the sum of \$240,000 referred to in Sections 4.08(1), 5.01(3) and 5.02(2)) will be adjusted on the first day of January of each calendar year during the Term commencing on 1 January 2017 to the amounts set out in those Articles multiplied by the ratio that the Pension Index as defined in the *Canada Pension Plan Act* for the calendar year of such adjustment bears to that Pension Index for 2014.

### **7.03A Restrictions on Compensation Payments**

As one measure to ensure the sufficiency of the HCV Late Claims Account, 25% of the amount of each payment to be made pursuant to Articles Four, Five and/or Six will be postponed and will only be paid if the Courts amend these restrictions in accordance with the provisions of Section 7.03(2).

### **7.03 Periodic Re-assessment by Courts and Determination of Unallocated Assets**

(1) The Joint Committee must apply to the Courts concurrently with the triennial financial sufficiency review undertaken pursuant to the Transfused HCV Plan and the Hemophiliac HCV Plan to determine whether, among other things, one or more of the 25% restrictions on the payments under this HCV Late Claims Benefit Plan in Section 7.03A and/or the limitation in Section 4.02(2)(b)(i) on loss of income (also affecting loss of support) should be amended (i.e., either increased or decreased) or removed in whole or in part.

(2) If the Courts decide to amend a restriction on the payments under this HCV Late Claims Benefit Plan referred to in Section 7.03(1) to increase the amount of any payments, then the amendment will be made strictly in accordance with the following priorities:

- (a) Firstly, the HCV Late Claims Benefit Plan will be amended by addressing the restrictions upon payment contained in Section 7.03A by deleting the words “25% of” and substituting a revised percentage for one or more of the restrictions. Thereafter, these restrictions will again be amended until such time as they are deleted. Each Person who previously received compensation reduced pursuant to section 7.03A will be paid the difference between the amount that he or she received and the amount that he or she would have received had the revised or deleted percentage been in place, together with interest on the difference at the Prime Rate commencing on the date of payment of the reduced amount, as amended from time to time; and
- (b) Secondly, after the amendments referred to in Section 7.03(2)(a) have been made and all amounts payable under that Section have been paid, the HCV Late Claims Benefit Plan will then be amended by deleting the sum “\$3,095,279.91” in Section 4.02(2)(b)(i) and substituting the maximum sum

that is to be used for the calculation in that Section. Thereafter, such restriction(s) may again be amended by the Courts until such time as it is deleted. Once an amendment has been made, each person who previously received compensation pursuant to Section 4.02, 4.02A or 6.01 will be paid the difference between the amount that he or she received and the amount that he or she would have received had the amendment or deletion been in place, together with interest on the difference at the Prime Rate commencing on the date of payment of the reduced amount, as varied from time to time.

(3) Notwithstanding the provisions of Section 7.03(1), in the event of a material change in circumstances, the Joint Committee, any Class Action Counsel or the Fund Counsel may apply to the Courts at any time to assess the financial viability and sufficiency of the HCV Late Claims Account and/or whether the restrictions on the payments in Sections 7.03A and/or 4.02(2)(b)(i) should be amended (i.e., either increased or decreased) or removed in whole or in part.

(4) Once the 25% restriction in Section 7.03A has been removed and all postponed payments have been paid to the persons owed such compensation, the Courts may in their unfettered discretion, at the request of the Joint Committee made from time to time, order that all or any portion of the HCV Late Claims Account that is actuarially unallocated be allocated for the benefit of the Approved Late Claim Class Members in a way that is not different or better than the way any other actuarially unallocated money and other assets held by the Trustee in the Trust Fund are allocated to Approved Transfused/Hemophiliac Plan Class Members under the Settlement Agreement.

#### **7.04 Interest**

Interest will not accrue on amounts payable under this HCV Late Claims Benefit Plan except as specifically provided in Section 7.03(2). Interest payable under this HCV Late Claims Benefit Plan must be calculated on the basis of simple interest, not compound interest. There will be no interest paid on the Pension Index adjustment component of any payment.

#### **7.05 Set-Off**

In the absence of fraud, any amount paid pursuant to this HCV Late Claims Benefit Plan is not refundable in the event that it is later determined that the recipient was not entitled to receive or be paid all or part of the amount so paid, but the recipient may be required to account for any amount that he or she was not entitled to receive against any future payments that he or she would otherwise be entitled to receive pursuant to this HCV Late Claims Benefit Plan.

## **7.06 Payments to Public Trustee**

Notwithstanding any of the other provisions of this HCV Late Claims Benefit Plan, any amount payable to a minor or mentally incompetent person hereunder will be paid to the Public Trustee or Public Curator or such other person as the law provides in the Province or Territory where the minor or mentally incompetent person resides or is deemed to reside. The Public Trustee or Public Curator or such other person as the law provides will determine the manner of payment of such amount to or for the benefit of the minor or mentally incompetent person.

## **ARTICLE EIGHT CHARACTER OF PAYMENTS**

### **8.01 Canadian Income Taxes**

The amount of compensation paid to or received by an Approved Late Claim Class Member pursuant to this HCV Late Claims Benefit Plan will not be required to be included in the taxable income of the recipient thereof under the *Income Tax Act* (Canada) or the income tax act of any Province or Territory, provided, however, that this provision will not apply in respect of any amount of compensation paid to or received by a person other than the person that, but for any assignment of any amount of compensation payable under this HCV Late Claims Benefit Plan, would be the person entitled to the compensation under this HCV Late Claims Benefit Plan or in respect of any tax payable under Part XIII of the *Income Tax Act* (Canada) or the equivalent provisions of the income tax act of any Province or Territory by any Approved Late Claim Class Member or any amount required to be withheld by the Trustee or Administrator on account of such tax in respect of any compensation paid or received under this HCV Late Claims Benefit Plan.

### **8.02 Social Benefits**

(1) If an Approved Late Claim Class Member was receiving any medical, ancillary medical, health or drug benefits on 1 April 1999, the receipt of payments pursuant to this HCV Late Claims Benefit Plan will not affect the quantity, nature or duration of any corresponding benefits that any Approved Late Claim Class Member receives after such date except to the extent that such benefits are related to the Approved Late Claim Class Member's infection with HCV in which case they are recoverable exclusively under this HCV Late Claims Benefit Plan as provided in Sections 4.06 and 4.07.

(2) The receipt of any payments pursuant to this HCV Late Claims Benefit Plan will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to an Approved Late Claim Class Member pursuant to any legislation of any PT Government referred to in Appendix A hereto, provided that the receipt of loss of income or loss of support payments pursuant to Section 4.02 or 6.01 may have such an effect. The receipt of any payments pursuant to this HCV Late Claims Benefit Plan will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to an Approved Late Claim Class Member pursuant to any social benefit programs of the

government of Canada such as old age security and Canada Pension Plan, as such payments either are not considered or, if considered, are otherwise exempted in the calculation of benefits under such legislation, provided that the receipt of loss of income or loss of support payments pursuant to Section 4.02 or 6.01 may have such an effect.

(3) Any benefit conferred under Section 8.02(1) or (2) cannot be assigned by the Approved Late Claim Class Member.

### **8.03 Collateral Benefits**

(1) If an Approved Late Claim Class Member is or was entitled to be paid compensation under this HCV Late Claims Benefit Plan and is or was also entitled to be paid compensation under an insurance policy or other plan or claim in any way relating to or arising from the infection of a HCV Infected Person with HCV, the compensation payable under this HCV Late Claims Benefit Plan will be reduced by the amount of the compensation that the Approved Late Claim Class Member is entitled to be paid under the insurance policy or other plan or claim.

(2) Notwithstanding the provisions of Section 8.03(1), life insurance payments received by any Approved Late Claim Class Member will not be taken into account for any purposes whatsoever under this HCV Late Claims Benefit Plan.

### **8.04 Subrogation**

No subrogation payment of any nature or kind will be paid, directly or indirectly, under this HCV Late Claims Benefit Plan, and without restricting the generality of this provision:

- (a) no FPT Government and no department of an FPT Government providing employment insurance, health care, hospital, medical and prescription services, social assistance or welfare will be paid under this HCV Late Claims Benefit Plan;
- (b) no municipality and no department of a municipality will be paid under this HCV Late Claims Benefit Plan;
- (c) no person exercising a right of subrogation will be paid under this HCV Late Claims Benefit Plan; and
- (d) no claimant will be paid compensation if the Late Claim is being asserted as a subrogated Late Claim or if the claimant will hold any money paid under this HCV Late Claims Benefit Plan in trust for any other party exercising a right of subrogation or, except as provided in Section 8.02, if a payment under this HCV Late Claims Benefit Plan will lead to a reduction in other payments for which the claimant would otherwise qualify.

#### **8.05 No Assignment**

Any amount payable under this HCV Late Claims Benefit Plan cannot be assigned, without the written consent of the Administrator.

### **ARTICLE NINE ADMINISTRATION**

#### **9.01 Administrator**

The Administrator will be responsible for the processing of all Late Claims and for obtaining funds from the HCV Late Claims Account component of the Trust Fund on behalf of Approved Late Claim Class Members under this HCV Late Claims Benefit Plan and distributing such funds as compensation payable to Approved Late Claim Class Members under this HCV Late Claims Benefit Plan. No payments will be made to any Approved Late Claim Class Member under this HCV Late Claims Benefit Plan unless and until the Approved Late Claim Class Member, or if the Late Claim Class Member is deceased, a minor or mentally incompetent, his or her Approved Late Claim HCV Personal Representative, duly executes and delivers to the Administrator a valid and binding release in the form attached to this HCV Late Claims Benefit Plan and consents to the dismissal without costs to any party of any action or other proceeding in any way relating to or arising from the infection of (i) a Primarily-Infected Person with HCV during the Class Period (including the infection of a Secondarily-Infected Person) commenced against any Releasee (as defined in the form of release attached hereto as Appendix B-Tran) including the Class Actions, or (ii) a Primarily-Infected Hemophiliac with HCV from Blood (Hemophiliac) (including the infection of a Secondarily-Infected Person) commenced against any Releasee (as defined in the form of release attached hereto as Appendix B-Hemo) including the Class Actions as provided in the 1999 Approval Orders.

#### **9.02 Administration of this HCV Late Claims Benefit Plan**

In addition to the provisions of Section 2.01(2), the Courts may issue orders in such form as is necessary to implement and enforce the provisions of this HCV Late Claims Benefit Plan and will supervise the ongoing administration and operation of this HCV Late Claims Benefit Plan and, without limiting the generality of the foregoing:

- (a) the Courts may make any order they consider necessary for the administration or operation of this HCV Late Claims Benefit Plan;
- (b) the Joint Committee may apply to the Courts for directions concerning the proper administration or operation of this HCV Late Claims Benefit Plan, including the determination of eligibility and evaluation of applications, at any time; and

- (c) the Courts shall approve all rules, protocols and tariffs necessary for the administration or operation of this HCV Late Claims Benefit Plan.

### **9.03 Amendment of the HCV Late Claims Benefit Plan**

This HCV Late Claims Benefit Plan may be amended by order of the Courts on application of the Joint Committee.

## **ARTICLE TEN DISPUTE RESOLUTION**

### **10.01 Reference to Referee or Arbitrator**

A person who was determined to be eligible to make a Late Claim in accordance with the provisions of this HCV Late Claims Benefit Plan and who thereafter made a Late Claim may, within 30 days after he or she receives notice of the Administrator's decision respecting his or her Late Claim, refer that decision to, at his or her option, a Referee or an Arbitrator by filing with the Administrator a notice requiring a reference or arbitration and setting out the objection to the Administrator's decision and the reasons in support of the objection. If no notice requiring a reference or arbitration is filed within the 30 day period, the Administrator's decision will be automatically confirmed and be final and binding. For greater certainty, this Article Ten and Appendices C and D shall not apply to the determination by a Late Claims Referee of whether a person is eligible to make a Late Claim that is required by Section 3.01A and Appendix E.

### **10.02 Jurisdiction of Referees and Arbitrators**

Each Referee and Arbitrator may exercise all of the jurisdiction and powers granted to him or her hereunder.

### **10.03 Forwarding Late Claims**

Upon receipt of a notice requiring a reference or arbitration, the Administrator will forward to a Referee or Arbitrator, as the case may be, in the Province or Territory where the claimant resides or is deemed to reside and to the Fund Counsel the following:

- (a) a copy of the Late Claim and the notice requiring a reference or arbitration, as the case may be;
- (b) a copy of all the written submissions and material in support of the submissions and other evidence pertaining to the Late Claim in the possession of the Administrator;



- (c) a copy of the Administrator's decision; and
- (d) such other information or material as the Referee, Arbitrator or Fund Counsel may request.

#### **10.04 Conduct of Reference and Arbitration**

- (1) A reference will be conducted in accordance with the provisions of Appendix C hereto.
- (2) An arbitration will be conducted in accordance with the provisions of Appendix D hereto.

#### **10.05 Payment of Late Claims**

After a decision of a Referee or Arbitrator becomes final and binding, any amount directed to be paid will be paid promptly.

## APPENDIX A

### SOCIAL BENEFITS LEGISLATION

#### Newfoundland:

*Income and Employment Support Act*, SNL 2002, c I-0.1

#### Nova Scotia:

*Social Assistance Act*, R.S., c.432

*Employment Support and Income Assistance Act* S.N.S. 2000, c. 27

*Disabled Person's Commission Act* R.S., 1989. c. 130

#### Prince Edward Island:

*Social Assistance Act*, RSPEI 1988, c S-4.3

#### New Brunswick:

*Family Income Security Act*, RSNB 2011, c 154

#### Québec:

*Individual and Family Assistance Act*, CQLR c A-13.1.1

#### Ontario:

*Social Assistance Reform Act*, 1997, S.O. 1997, c.25

*Ontario Works Act*, 1997, S.O. 1997, c.25

*Ontario Disability Support Program Act*, 1997, S.O. 1997, c.25

#### Manitoba:

*The Manitoba Assistance Act*, CCSM c A150

*The Municipal Act*, CCSM, M225

#### Saskatchewan:

*Saskatchewan Assistance Act*

#### Alberta:

*Income and Employment Supports Act*, SA 2003, c I-0.5

*Assured Income for the Severely Handicapped Act*, SA 2006, c A-45.1

*Income and Employment Supports Act*, SA 2003, c I-0.5

British Columbia:

*Employment and Assistance Act*, SBC 2002, c 40

*Employment and Assistance for Persons with Disabilities Act*, SBC 2002, c 41

Yukon:

*Social Assistance Act*

North West Territories & Nunavut:

*Social Assistance Act*, R.S. N.W.T. 1988 cs-10 as duplicated for Nunavut by s. 29(1)  
of the *Nunavut Act*

## **APPENDIX B-TRAN**

### **FULL AND FINAL RELEASE**

In this Release:

“Releasees” means, individually and collectively,

- (a) each of the FPT Governments,
- (b) each of the past, present, and future ministers and employees of each FPT Government,
- (c) each of the past and present agents of each FPT Government,
- (d) the Canadian Blood Agency,
- (e) the Canadian Blood Committee or its members,
- (f) each operator of a hospital or health care facility at which a Primarily-Infected Person received Blood (Transfused), or a HCV Infected Person received treatment, care or advice in any way relating to or arising from the infection of the HCV Infected Person with HCV,
- (g) each health caregiver who treated or provided care or advice to a HCV Infected Person in any way relating to or arising from the infection of the HCV Infected Person with HCV, and
- (h) any person engaged in the business of collecting, manufacturing, purchasing, processing, supplying or distributing Blood,

including their respective past, present, and future parent, subsidiary and affiliated corporations, employees, agents, officers, directors, shareholders, volunteers, representatives, executors, administrators, successors and assigns. Each of the FPT Governments is a trustee for the purpose of asserting the benefit of this Release for those persons listed in (b) to (h) inclusive and holds the benefit of this Release on their behalf as well as on its own behalf. For greater certainty, the CRCS is not a Releasee.

“Releasor” means the undersigned on behalf of the undersigned and his or her heirs, administrators, executors, Personal Representatives and successors.

In this Release initially capitalized terms not defined in this Release have the meanings set out in the HCV Late Claims Benefit Plan, including its Appendices. Words importing the singular number include the plural and *vice versa*, words importing any gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations and governmental authorities. The term “including” means “including without limiting the generality of the foregoing”.

THIS RELEASE WITNESSES that in consideration of the right of the Releasor to participate in the HCV Late Claims Benefit Plan and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

### **1. Direct Release**

(a) The Releasor fully and forever releases, acquits and discharges each of the Releasees from any and all actions, causes of action, liabilities, claims and demands, whatsoever of every nature or kind for damages, contribution, indemnity, costs, expenses and interest which the Releasor ever had, now has or may hereafter have in any way relating to or arising from the infection of a Primarily-Infected Person with HCV during the Class Period (including the infection of a Secondarily-Infected Person) whether such claims were made or could have been made in any proceeding including the Class Actions as provided in the 1999 Approval Orders.

(b) The Releasor agrees that the same consideration is in full and final settlement and satisfaction of any and all such claims now and in the future.

### **2. Cessation of Litigation**

(a) The Releasor hereby consents to the dismissal without costs of any claim or proceeding of any kind directly or indirectly against any Releasee in any way relating to or arising from the infection of a Primarily-Infected Person with HCV during the Class Period (including the infection of a Secondarily-Infected Person) including the Class Actions as provided in the 1999 Approval Orders. A Releasee may not claim the benefit of any of the provisions of this Release unless and until the Releasee consents to the dismissal without costs of such claim or proceeding to be so dismissed by the Releasor.

(b) The Releasor undertakes not to now or at any time hereafter:

- (i) commence;
- (ii) assist in;
- (iii) acquiesce in; or
- (iv) permit the Releasor's name to be used in

any claim or proceeding of any kind directly or indirectly against any Releasee in any way relating to or arising from the infection of a Primarily-Infected Person with HCV during the Class Period (including the infection of a Secondarily-Infected Person).

### **3. Complete Bar**

The Releasor agrees that this Release is a complete defence to any claim or proceeding of any kind brought by the Releasor directly or indirectly against any Releasee in any way relating to or arising from the infection of a Primarily-Infected Person with HCV during the Class Period (including the infection of a Secondarily-Infected Person) and this Release will forever be a complete bar to the commencement or prosecution of any such claim or proceeding, and the Releasor does hereby consent to the dismissal without costs of any such future claim or proceeding.

### **4. Claims for Contribution or Indemnity**

The Releasor undertakes not to make any claim or demand or take any actions or proceedings against any Releasee or any other person in any way relating to or arising from the infection of a Primarily-Infected Person with HCV during the Class Period (including the infection of a Secondarily-Infected Person). For greater certainty, the Releasor will not make any claim or demand or take any actions or proceedings in which any claim could arise against any Releasee for damages and/or contribution and/or indemnity and/or other relief over under the provisions of the *Negligence Act* (Ontario) or its counterpart in other jurisdictions, the common law or any other statute of this or any other jurisdiction in any way relating to or arising from the infection of a Primarily-Infected Person with HCV during the Class Period (including the infection of a Secondarily-Infected Person) and the Releasor also hereby consents to a dismissal without costs of any such claim or proceeding which results in such a claim being made, provided that the foregoing excludes claims against the CRCS.

### **5. Claims against the CRCS**

At the option of the FPT Governments or their representatives, the Releasor will either,

- (a) pursue his or her claims against the CRCS in any way relating to or arising from the infection of a Primarily-Infected Person with HCV during the Class Period (including the infection of a Secondarily-Infected Person) and assign to the FPT Governments the proceeds received by the Releasor from any such claims, or
- (b) within the *Companies' Creditors Arrangement Act* (Canada) proceedings relating to the CRCS, prove, vote and otherwise act to promote such claims that the Releasor has against the CRCS in accordance with directions given to the Releasor by the FPT Governments or their representatives or, at the request of the FPT Governments or their representatives, grant to the FPT Governments and their representatives such proxies or other forms of assignment as are necessary for the FPT Governments to vote and otherwise act to promote any such claim of the Releasor, or

- (c) enter into a release of all of such claims against the CRCS substantially in the form of this Release.

THE RELEASOR HEREBY ACKNOWLEDGES that this Release is made with a denial of liability by the Releasees and nothing in it nor any action of any Releasee will be construed as an admission of liability by any Releasee.

THE RELEASOR HEREBY DECLARES that the Releasor has had the opportunity to seek independent legal advice with respect to the terms and effect of this Release and the undersigned fully understands and accepts each and every term and condition of this Release and that this Release is given voluntarily for the purpose of making a full and final compromise and settlement of all claims and other matters in any way relating to or arising from the infection of a Primarily-Infected Person with HCV during the Class Period (including the infection of a Secondarily-Infected Person) whether such claims were made or could have been made in any proceeding including the Class Actions.

THIS RELEASE will be governed by and construed in accordance with the laws of the Province of \*\*\* and the laws of Canada applicable therein.

IN WITNESS WHEREOF the undersigned has executed this Release.

DATED \*, 20\*.

SIGNED, SEALED AND DELIVERED  
in the presence of:

)  
)  
)  
)  
)

\_\_\_\_\_  
\* (s)

\_\_\_\_\_  
Witness

**APPENDIX B-HEMO**  
**FULL AND FINAL RELEASE**

In this Release:

“Releasees” means, individually and collectively,

- (a) each of the FPT Governments,
- (b) each of the past, present, and future ministers and employees of each FPT Government,
- (c) each of the past and present agents of each FPT Government,
- (d) the Canadian Blood Agency,
- (e) the Canadian Blood Committee or its members,
- (f) each operator of a hospital or health care facility at which a Primarily-Infected Hemophiliac received or took Blood (Hemophiliac), or a HCV Infected Person received treatment, care or advice in any way relating to or arising from the infection of the HCV Infected Person with HCV,
- (g) each health caregiver who treated or provided care or advice to a HCV Infected Person in any way relating to or arising from the infection of the HCV Infected Person with HCV,
- (h) any person engaged in the business of collecting, manufacturing, purchasing, processing, supplying or distributing Blood (Hemophiliac),

including their respective past, present, and future parent, subsidiary and affiliated corporations, employees, agents, officers, directors, shareholders, volunteers, representatives, executors, administrators, successors and assigns. Each of the FPT Governments is a trustee for the purpose of asserting the benefit of this Release for those persons listed in (b) to (h) inclusive and holds the benefit of this Release on their behalf as well as on its own behalf. For greater certainty, the CRCS is not a Releasee.

“Releasor” means the undersigned on behalf of the undersigned and his or her heirs, administrators, executors, Personal Representatives and successors.

In this Release initially capitalized terms not defined in this Release have the meanings set out in the HCV Late Claims Benefit Plan, including its Appendices. Words importing the singular number include the plural and *vice versa*, words importing any gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations and governmental authorities. The term “including” means “including without limiting the generality of the foregoing”.



THIS RELEASE WITNESSES that in consideration of the right of the Releasor to participate in the HCV Late Claims Benefit Plan and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

### **1. Direct Release**

(a) The Releasor fully and forever releases, acquits and discharges each of the Releasees from any and all actions, causes of action, liabilities, claims and demands, whatsoever of every nature or kind for damages, contribution, indemnity, costs, expenses and interest which the Releasor ever had, now has or may hereafter have in any way relating to or arising from the infection of a Primarily-Infected Hemophiliac with HCV from Blood (Hemophiliac) (including the infection of a Secondarily-Infected Person) whether such claims were made or could have been made in any proceeding including the Class Actions as provided in the 1999 Approval Orders.

(b) The Releasor agrees that the same consideration is in full and final settlement and satisfaction of any and all such claims now and in the future.

### **2. Cessation of Litigation**

(a) The Releasor hereby consents to the dismissal without costs of any claim or proceeding of any kind directly or indirectly against any Releasee in any way relating to or arising from the infection of a Primarily-Infected Hemophiliac with HCV from Blood (Hemophiliac) (including the infection of a Secondarily-Infected Person) including the Class Actions as provided in the 1999 Approval Orders. A Releasee may not claim the benefit of any of the provisions of this Release unless and until the Releasee consents to the dismissal without costs of such claim or proceeding to be so dismissed by the Releasor.

(b) The Releasor undertakes not to now or at any time hereafter:

- (i) commence;
- (ii) assist in;
- (iii) acquiesce in; or
- (iv) permit the Releasor's name to be used in

any claim or proceeding of any kind directly or indirectly against any Releasee in any way relating to or arising from the infection of a Primarily-Infected Hemophiliac with HCV from Blood (Hemophiliac) (including the infection of a Secondarily-Infected Person).

### **3. Complete Bar**

The Releasor agrees that this Release is a complete defence to any claim or proceeding of any kind brought by the Releasor directly or indirectly against any Releasee in any way relating to or arising from the infection of a Primarily-Infected Hemophiliac with HCV from Blood (Hemophiliac) (including the infection of a Secondarily-Infected Person) and this Release will forever be a complete bar to the commencement or prosecution of any such claim or proceeding, and the Releasor does hereby consent to the dismissal without costs of any such future claim or proceeding.

### **4. Claims for Contribution or Indemnity**

The Releasor undertakes not to make any claim or demand or take any actions or proceedings against any Releasee or any other person in any way relating to or arising from the infection of a Primarily-Infected Hemophiliac with HCV from Blood (Hemophiliac) (including the infection of a Secondarily-Infected Person). For greater certainty, the Releasor will not make any claim or demand or take any actions or proceedings in which any claim could arise against any Releasee for damages and/or contribution and/or indemnity and/or other relief over under the provisions of the *Negligence Act* (Ontario) or its counterpart in other jurisdictions, the common law or any other statute of this or any other jurisdiction in any way relating to or arising from the infection of a Primarily-Infected Hemophiliac with HCV from Blood (Hemophiliac) (including the infection of a Secondarily-Infected Person) and the Releasor also hereby consent to a dismissal without costs of any such claim or proceeding which results in such a claim being made, provided that the foregoing excludes claims against the CRCS.

### **5. Claims against the CRCS**

At the option of the FPT Governments or their representatives, the Releasor will either,

- (a) pursue his or her claims against the CRCS in any way relating to or arising from the infection of a Primarily-Infected Hemophiliac with HCV from Blood (Hemophiliac) (including the infection of a Secondarily-Infected Person), and assign to the FPT Governments the proceeds received by the Releasor from any such claims, or
- (b) within the *Companies' Creditors Arrangement Act* (Canada) proceedings relating to the CRCS, prove, vote and otherwise act to promote such claims that the Releasor has against the CRCS in accordance with directions given to the Releasor by the FPT Governments or their representatives or, at the request of the FPT Governments or their representatives, grant to the FPT Governments and their representatives such proxies or other forms of assignment as are necessary for the FPT Governments to vote and otherwise act to promote any such claim of the Releasor, or

- (c) enter into a release of all of such claims against the CRCS substantially in the form of this Release.

THE RELEASOR HEREBY ACKNOWLEDGES that this Release is made with a denial of liability by the Releasees and nothing in it nor any action of any Releasee will be construed as an admission of liability by any Releasee.

THE RELEASOR HEREBY DECLARES that the Releasor has had the opportunity to seek independent legal advice with respect to the terms and effect of this Release and the undersigned fully understands and accepts each and every term and condition of this Release and that this Release is given voluntarily for the purpose of making a full and final compromise and settlement of all claims and other matters in any way relating to or arising from the infection of a Primarily-Infected Hemophiliac with HCV from Blood (Hemophiliac) (including the infection of a Secondarily-Infected Person) whether such claims were made or could have been made in any proceeding including the Class Actions.

THIS RELEASE will be governed by and construed in accordance with the laws of the Province of \*\*\* and the laws of Canada applicable therein.

IN WITNESS WHEREOF the undersigned has executed this Release.

DATED \*, 20\*\*.

SIGNED, SEALED AND DELIVERED  
in the presence of:

)  
)  
)  
)  
)

\_\_\_\_\_  
\* (s)

\_\_\_\_\_  
Witness

## **APPENDIX C**

### **REFERENCE RULES**

#### **1. Powers of Referee**

A Referee will have the power:

- (a) to establish the procedure to be followed during the reference;
- (b) to determine the location where the reference will be conducted;
- (c) to order production of documents and examinations for discovery, if necessary;
- (d) to summon and enforce the attendance of witnesses and to compel them to give oral or written evidence on oath in the same manner as a court of record in civil cases;
- (e) to accept oral or written evidence as the Referee in his or her discretion considers proper, whether admissible in a court of law or not;
- (f) to mediate the differences at any stage in the proceedings and, if mediation is unsuccessful, to continue with the reference; and
- (g) to determine the subject matter of the reference and, in the exercise of his or her discretion, to award costs, in accordance with a tariff to be established by the Courts.

#### **2. Conduct of Reference**

The only parties to the reference will be the claimant and the Fund Counsel. The Referee must adopt the simplest, least expensive and most expeditious manner of conducting the reference. The Referee must begin the reference within 30 days after being appointed. The language of the reference will be in English or French, as requested by the claimant.

#### **3. Report of Referee**

The Referee must give a written report within 30 days of the completion of the reference which will be automatically confirmed and be final and binding unless the claimant serves and files a notice of motion with the Court having jurisdiction in the Class Action in which he or she is a Class Member opposing confirmation within 30 days of the delivery of the Referee's report, provided, however, that if the amount in issue is less than \$13,457.74 the Referee will be deemed to have carried on an arbitration and the report will be deemed to be an arbitration award.

**4. Appearances on a Motion Opposing Confirmation of a Referee's Report**

The claimant, the Fund Counsel and each Class Action Counsel will each have the right, but not the obligation, to appear on any motion and oppose or support confirmation of a Referee's report.

## APPENDIX D

### ARBITRATION RULES

#### Jurisdiction and Scope

1. The Arbitrator will apply the rules and procedures of the *Arbitration Act* of the Province or Territory in which the Arbitration is conducted, if any, to any Arbitration conducted hereunder except to the extent they are modified by the express provisions of these Rules.
2. Each party acknowledges that it will not apply to the courts of any jurisdiction to attempt to enjoin, delay, impede or otherwise interfere with or limit the scope of the Arbitration or the powers of the Arbitrator; provided, however, that the foregoing will not prevent either party from applying to the Courts for a determination with respect to any matter or challenge provided for in the *Arbitration Act* referred to in Section 1 of these Rules.
3. Each party further acknowledges that the award of the Arbitrator will be final and conclusive and there will be no appeal therefrom whatsoever to any court, tribunal or other authority.
4. The Arbitrator has the jurisdiction to deal with all matters relating to an appeal from a decision of the Administrator (a “Dispute”) including, without limitation, the jurisdiction:
  - (a) to determine any question of law, including equity;
  - (b) to determine any question of fact, including questions of good faith, dishonesty or fraud;
  - (c) to determine any question as to the Arbitrator’s jurisdiction;
  - (d) to request that the parties enter into mediation;
  - (e) to order any party to furnish further details, whether factual or legal, of that party’s case;
  - (f) to proceed with the Arbitration notwithstanding the failure or refusal of any party to comply with these Rules or with the Arbitrator’s orders or directions or to attend any meeting or hearing, but only after giving that party written notice that the Arbitrator intends to do so;
  - (g) to receive and take into account such written or oral evidence tendered by the parties as the Arbitrator determines is relevant, whether or not admissible in law;
  - (h) to make one or more interim awards including, without limitation, orders to secure any amount relating to the Dispute; and

- (i) to order the parties to produce to the Arbitrator and to each other for inspection and to supply copies of any documents or classes of documents in their possession, power or control that the Arbitrator determines to be relevant.

### **Place of Arbitration**

5. The Arbitration will be conducted in the Province or Territory in which the claimant resides at a location determined from time to time by the Arbitrator pursuant to Section 6 of these Rules.

### **Meetings**

6. The Arbitrator will determine the time, date and location of meetings for the Arbitration and will give all the parties 15 days' prior written notice of such meetings.

7. The parties to the Arbitration will be the claimant and the Fund Counsel. The claimant may be represented or assisted by any person during the Arbitration. Where the claimant is represented by another person, the claimant will provide notice in writing of such representation to the Fund Counsel and to the Arbitrator at least five days prior to any Arbitration proceeding.

8. The award of the Arbitrator must be made within 30 days of the completion of the Arbitration.

### **Disclosure/Confidentiality**

9. All information disclosed, including all statements made and documents produced, in the course of the Arbitration will be held in confidence and no party will rely on, or introduce as evidence in any subsequent proceeding, any admission, view, suggestion, notice, response, discussion or position of either the claimant or the Fund Counsel or any acceptance of a settlement proposal or recommendation for settlement made during the course of the Arbitration, except (i) as required by law or (ii) to the extent that disclosure is reasonably necessary for the establishment or protection of a party's legal rights against a third party or to enforce the award of the Arbitrator or to otherwise protect a party's rights under these Rules.

### **Miscellaneous**

10. The parties may modify any period of time provided for in these Rules by mutual agreement.

11. The language of the Arbitration will be English or French, as requested by the claimant.

12. Nothing contained in these Rules prohibits a party hereto from making an offer of settlement relating to a Dispute during the course of an Arbitration.

13. In determining the allocation between the parties of the costs of the Arbitration, the Arbitrator may invite submissions as to costs and may consider, among other things, an offer of settlement made by a party to the other party prior to or during the course of an Arbitration. The Arbitrator, in the exercise of his or her discretion, may award costs in accordance with a tariff to be established by the Courts.

14. The award will be rendered in writing and will contain a recital of the facts upon which the award is made and the reasons therefor.



## Appendix E – Eligibility to Make a Late Claim under the HCV Late Claims Benefit Plan

### **Late Claim Request**

1. Where the Administrator has received or receives a request to make a Late Claim from or on behalf of a person who did not make a Claim before the June 30, 2010 first claim deadline (the “**First Claim Deadline**”) and who does not meet the requirements of the exceptions to that deadline set out in section 3.08 of the Transfused HCV Plan/section 3.07 of the Hemophiliac HCV Plan and/or the applicable court approved protocols (the “**Exceptions**”), the request shall be referred to as a “**Late Claim Request.**”
2. The Administrator shall request a signed statement from the person making the Late Claim Request which:
  - (a) sets out why the person is seeking to make a Late Claim after the First Claim Deadline and do not meet the requirements and/or timeframe of an applicable Exception; and
  - (b) recites the facts he or she is relying upon in seeking to be relieved from the applicable deadline.

### **Referral to Late Claims Referee**

3. The Administrator shall forthwith deliver each such signed statement it receives to a Late Claims Referee appointed by the Courts to consider Late Claim Requests together with information from the Administrator setting out the first

contact with the person making the Late Claim Request and any other information it has relevant to the request.

4. The Late Claims Referee shall determine on a summary basis whether a Late Claim application form under the HCV Late Claims Benefit Plan shall issue to the person making the Late Claim Request based upon the following guidelines:
  - (a) Late Claim Requests by persons who did not receive timely notice of the First Claim Deadline and do not meet the requirements and/or timeframe of an applicable Exception should be allowed if, in the opinion of the Late Claims Referee, the Late Claim Request was made within a reasonable time after, the later of, such notice was acquired or this HCV Late Claims Benefit Plan came into force;
  - (b) Late Claims Requests by persons whose failure to meet the First Claim Deadline or the requirements and/or timeframe of an applicable Exception was due to matters that, in the opinion of the Late Claims Referee, should reasonably be considered to be beyond their control or are otherwise a reasonable explanation for their delay, should be allowed;
  - (c) Late Claim Requests made by persons who had notice of the First Claim Deadline or the requirements and/or timeframe of an applicable Exception before it expired should be disallowed unless they meet the requirements of subparagraph (b) above or, in the opinion of the Late Claims Referee, the timing of the receipt of such notice was inadequate for the purpose of making a Claim under the Transfused HCV Plan or the Hemophiliac HCV Plan; and

- (d) any other Late Claim Requests and those where the Late Claims Referee is uncertain as to the appropriate application of the above guidelines shall be referred by the Late Claims Referee in writing to the appropriate Court to be dealt with summarily.
5. The Late Claims Referee shall have the power to establish any procedures he or she considers necessary and proper to consider the Late Claim Request on a summary basis and shall have the power to require additional submissions from the person making the Late Claim Request and/or the Administrator either orally or in writing and whether admissible in a court of law or not, as he or she considers proper.
6. The Late Claims Referee shall give a written decision within sixty (60) days of his/her receipt of the Late Claim Request.
7. The Administrator shall forthwith provide the Late Claims Referee's decision to the person making the Late Claim Request. Where the Late Claims Referee denies a Late Claim Request, the Administrator shall notify the person making the Late Claim Request in writing that the decision will be automatically confirmed and be final and binding unless he/she serves and files a notice of motion with the Court having jurisdiction opposing confirmation of the decision within thirty (30) days of its' delivery.

8. The provisions of section 10.04 and Appendix C of the HCV Late Claims Benefit Plan shall have no application to the summary procedure established for the determination by a Late Claims Referee of whether a Late Claim application form under the HCV Late Claims Benefit Plan shall issue pursuant to a Late Claim Request.

#### **Processing the Completed Late Claim Application Form**

9. The issuance of a Late Claim application form to a person making a Late Claim Request pursuant to a decision of the Late Claims Referee or the Court shall not be determinative of the eligibility of the person making the Late Claim Request to receive compensation under the HCV Late Claims Benefit Plan.
10. Where the Administrator receives a completed Late Claim application form in accordance with the provisions of the HCV Late Claims Benefit Plan, it shall process the Late Claim application form and determine eligibility for compensation by applying the terms of the HCV Late Claims Benefit Plan in light of such Court Approved Protocols and such Standard Operating Procedures as are in place under the HCV Late Claims Benefit Plan at the time of processing of the Late Claims application form.
11. Where the Administrator approves the Late Claim application of a HCV Infected Person (or his/her HCV Personal Representative) under the HCV Late Claims Benefit Plan, the Spouse or Child of such Approved Late Claim HCV Infected

Person claiming to be secondarily infected and/or any person referred to in clause (a) of the definition of Family Member in Section 1.01 claiming to be a Family Member of such Approved Late Claim HCV Infected Person who would have been entitled to make a Transfused/Hemophiliac Plan Claim had their Claims been timely, shall be entitled to make his or her Late Claim in accordance with the provisions of the HCV Late Claims Benefit Plan without the necessity of satisfying the requirements of this Appendix E.

**Denied Late Claim**

12. Where the Administrator denies a Late Claim application, the Administrator shall notify the person making the Late Claim application in writing that the appeal routes at section 10.01 of the HCV Late Claims Benefit Plan and the appropriate Appendices apply.

AUGUST 11, 2017

# **COMMUNICATION PLAN - CLASS ACTION - HEPATITIS C 86-90**

Proposed to the Joint Committee

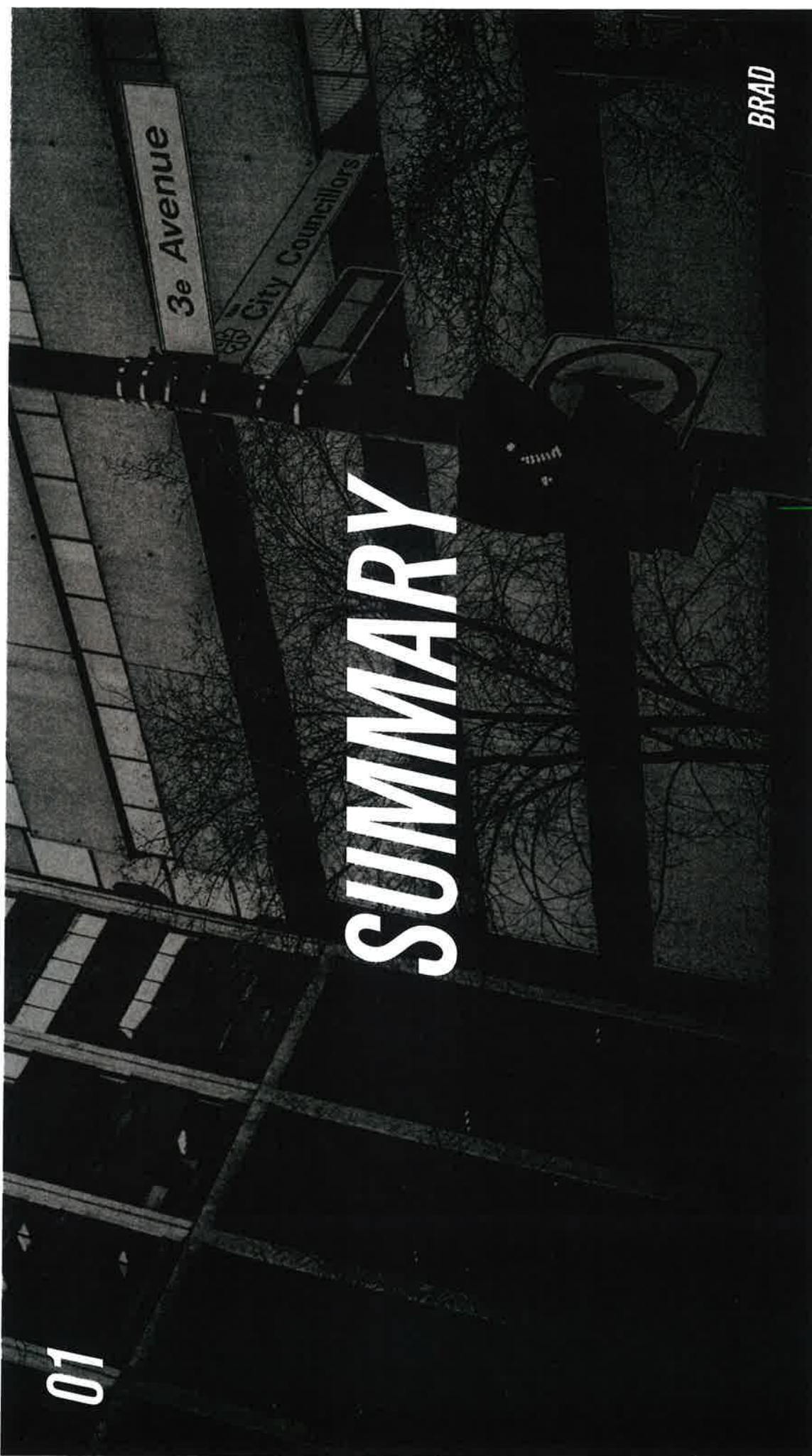
**BRAD**

## Table of Contents

- 01 SUMMARY**
- 02 OUR RECOMMENDATIONS**
- 03 WHO WE ARE**
- 04 OUR TEAM**
- 05 EXAMPLE**

# SUMMARY

BRAD





# Summary

## KEY CHALLENGES

- Detachment on behalf of the target: Revisiting a potential date of infection of 27 years ago or more
- A settlement was reached 18 years ago
- Questioning eligibility for late claims versus regular claims
- Possible confusions with other Hepatitis C class action settlement
- Few people are eligible
- Increase credibility, so people don't think it's a scam
- Motivate them to act so they can receive what they're entitled to
- Complexity of making a claim

# Summary

## ACTION PLAN

We will concentrate our media investments to target of those aged 27 and over.

The campaign will kick off in January 2018 and will deploy in two phases.

We will use media that require more than 3 seconds of attention, to ensure a clearer understanding of our message.

We will use media that are seen as credible in the eyes of the public, and that allows for the delivery of a complex message.

### Phase 1: Ignite Awareness

### Phase 2: Drive Conversion

- Use mass media (television) for efficient reach and to pique curiosity, to encourage people to research the possibility of making a claim
- SEM (Search Engine Marketing) strategy on the resulting internet searches
- New website for a higher rate of conversion and to get people's email address in order to start a conversation. Will also allow updates to email addresses if they are not new to the settlement
- Develop a simple and highly memorable call-to-action message for all media platforms
- Use spokesperson to generate claims
- Use social media to properly profile which people have the potential to make a claim

02

# OUR RECOMMENDATIONS

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## Our understanding of the mandate

- Create a **national campaign** that serves to notify a broad range of people - including those who may not know that this settlement even exists - that a class action was settled, and that anyone who contracted Hepatitis C through a blood transfusion or blood product in the class period has the possibility of filing a late claim and being compensated under.
- Encourage class members consumers to register without conveying in detail the components of the settlement new late claims compensation plan.
- Suggest how the campaign might stay active for the next 2 years with a smaller budget; social media would be a good strategy.

## Targets for media buy purposes

It is important to understand that the target market used in this presentation determines the selection of appropriate media to reach the maximum amount of potential class members between 27 and 75 years old.

Should our communications focus on a specific age group, we will make sure all possible people who have been infected and who qualify will be reached, and we will raise awareness among them about how to make a claim.

There will be a form to screen people on the website (done in collaboration with the administrator) to make sure we funnel only potentially eligible claims to the right people.

## Targets for media buy purposes

Canada-wide (English and French); approximately 10,000 people were infected

- Target the largest population clusters, such as Quebec, Ontario, and BC (larger cities)
- Particular attention should be paid to people outside the larger cities (they have probably been less exposed to specialists and teaching hospitals, where awareness of the settlement is higher)
- People aged 27 and over, with a focus on those aged 50-70
- Friends, families, and children of those infected with Hepatitis C
- Doctors

Many people do not know they had a transfusion at that time because previously, a signed consent was often not required to receive a transfusion.

Even though a high proportion of Canadians (90%) correctly indicate that "someone can have Hepatitis C and not know it", only one in four (23%) say they have been tested for Hepatitis C at some point in their life

Source (Ipsos) <http://www.ipsos-na.com/news-polls/pressrelease.aspx?id=5977>

The most frequently cited sources of infection reported to the administrator of the settlement are:  
Heart Surgery, Anemia, Hysterectomy, Leukemia, M.V.A, Hip Replacement, surgery (not specified as to type),  
GI Bleed, Bleeding Ulcer, Childbirth, Bypass

## **Targets for media buy purposes**

### **Family members**

Family members can apply for compensation if Hepatitis C was the cause of death of someone in their family. Family members are also eligible if their infected family members were already approved for the settlement but could not claim their compensation because they died before they were able to do so.

### **People potentially qualified to claim that are living with Hepatitis C**

### **Secondary infections**

A spouse or child of an infected person, who contracted the disease from them.

Those with secondary infections are also eligible, but the person with the primary infection must be approved for the settlement. Household exposure to the blood of someone who has Hepatitis C is the most common form of secondary infection.

## Objectives

1. Target those who did not file a claim on time or within 1 year of reaching age of majority (before the June 30, 2010 deadline or within 3 years after they were diagnosed)
2. Gather as many names as possible to make first contact
3. Initiate discussion with these individuals to verify whether they are eligible for compensation
4. Reach as many eligible class members and their family members as possible
5. Inform and motivate the general public and the media
6. Raise awareness among health professionals
7. Generate valid claims



## Current challenges

- Complex problem: It's a public health issue; care must be taken when communicating with people who have been cured
- Target detachment: Requesting action when the issue took place over 30 years ago and the settlement was reached 18 years ago
- Potential questioning from the target concerning their eligibility
- Trust and credibility is an important factor of success

## Strategic pillars

Based on our understanding of the mandate and its key issues, here are the strategic pillars for the deployment of the campaign:

- A. Use a spokesperson to assert the legitimacy of the compensation
- B. Develop a message that prompts action; that generates internet research
- C. Ensure we have a web presence, and take the time needed to explain what claimants may be entitled to
- D. All communications should converge on the new website so that people communicate with the administrator, and so that we can start a conversation and ensure all eligible people claim compensation.

## Positioning

- Do you have Hepatitis C?
- Did you receive a transfusion or blood products between 1986 and 1990?
- If so, make a claim
- You could be compensated!

## **Proposed deployment**

### **Media Targets – Establish contact with potential class members who should receive compensation**

- A small percentage of Canadians has been affected by the Hepatitis C case. The campaign will speak mainly to adults aged 27+, with a focus on the segment that is most predisposed to knowing about the case and who is infected with Hepatitis C. The proposed emphasis will be men and women aged 50 to 70 years with Hepatitis C.

# Proposed deployment

## STRATEGY: A TWO-PHASE APPROACH

### Phase 1

- The campaign is designed with two distinct phases. The initial phase, **IGNITE AWARENESS**, will focus on getting the news out loud and clear to a broad Canadian audience aged 27+ (the audience with the highest risk)
- 75% of Canadians who are most at risk for Hepatitis C have not been tested or don't know if they have been tested – Ipsos research 2014
- Approximately 280,000 Canadians nationwide are currently infected with Hepatitis C
- Testing “Baby Boomers” would locate approximately 67% - 75% of all those with Hepatitis C.  
Source: Canadian Health Measures Survey – CHMS: Health Reports 2013; 24 11: 3-13

As shown in research done by Ipsos and the Canadian Health Measures Survey, we certainly need to raise awareness of this disease, as it may potentially affect this segment of the population, some of whom are unaware they have contracted it. We need to generate a reaction and more importantly we need people to act and to follow up on our message (visit the website, call a doctor, search online for more details)

The end results of this phase are:

- Maximizing general awareness for a broad population of Canadians (adults aged 27+)
- Providing detailed information about the steps to follow in order to file a claim
- Credibly persuading the target, while knowing this is a unique case that may generate less interest in the public.

# Proposed deployment

## STRATEGY: A TWO-PHASE APPROACH

### Phase 2

The second phase, **DRIVE CONVERSIONS**, will primarily be designed to accelerate the claim rate for a high-potential segment: adults aged 50-70. The different tactics put forward will:

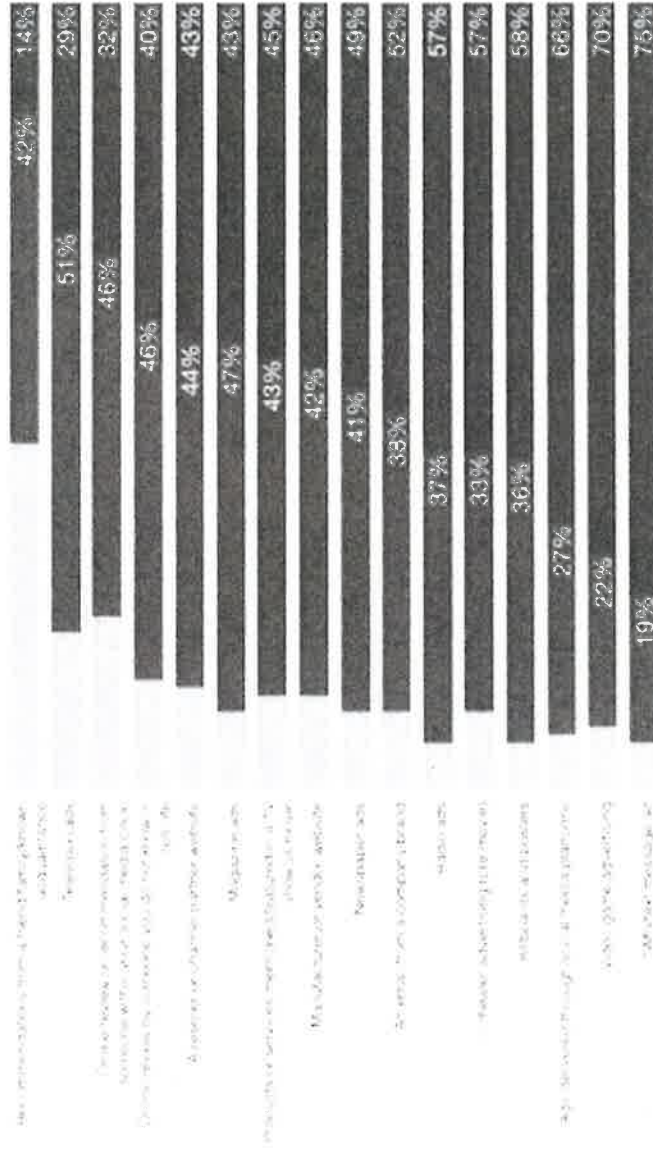
- Create pressure on the target with a higher-frequency approach, as opposed to broad reach in the first phase
  - Allow for geo-targeting by province, by city
- Leverage digital elements from social and search marketing (SEM) to emphasize the call-to-action, with the understanding that message was established in the first phase
  - Allow for specific targeting and incremental reach on Facebook
  - Address all existing and new requests for information with searches on Google and Bing. These consumers are predisposed to engage and to claim (if they qualify)
- Accommodate deployment with a flexibility factor, to react with a regional adjustment
- Exploit social channels and use influencers/bloggers to help expand the discussion, heighten credibility, and first and foremost have people react and connect with the new website in one click. According to the latest consumer research, considering the high penetration of social media in Canada combined with people's established ability to connect with friends, we need to tap into the most important factor that influences decision-making: recommendations made by friends or family.

# Proposed deployment

## US Consumers' Biggest Purchase Influencers

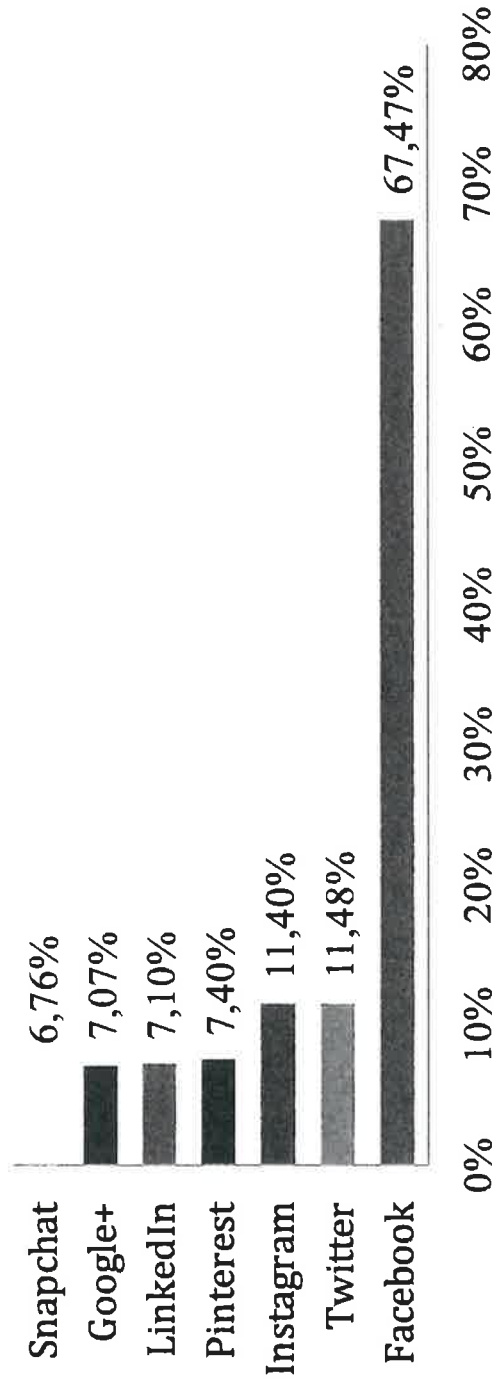
% US consumers aged 14 and above, asked to what degree the following influence their buying decisions

High Medium Low



## Proposed deployment

**Daily Access to social platform in Canada, Age 16+**



Source: *Touchpoints Canada 2016*, Base:



## Media selection & execution

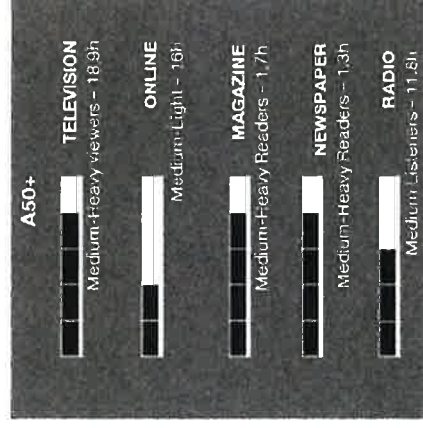
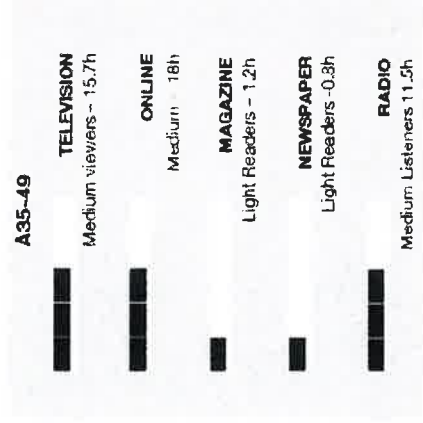
### Television

The campaign is scheduled to start in January 2018 after the holidays, which is ideal timing to leverage a television strategy; our target is more predisposed to watch this medium (19h/week) and their favourite shows are back on air at this time of the year. Television always brings the highest recall level of all media, and as such will help present the message to all Canadians (estimated reach more than three quarters of adults aged 27+). Television will be an ice-breaker for the campaign.

Television will be supported by several other touch points, which are necessary to tell the complete story, from establishing the campaign to facilitating its activation. When we consider the media exposure of our potential segments, we definitely need to complete the mix with digital elements, which will allow for niche targets of more qualified consumers.

## Media selection & execution

Weekly Media Consumption



TV consumption : ROC vs Quebec

Weekly hours and Daily potential reach		
	A35-49	A50+
ROC	15.4h / 82%	18.1h / 86%
Quebec	16.8h / 83%	21.3h / 92%

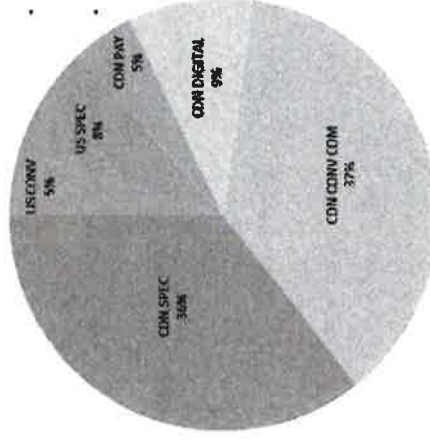
Used as an insight, news environments will be strongly considered in television, in order to ensure credibility and to help arouse interest.

TV remains a major reference as a source of information for the majority of our target (35-60), although the entire 27+ years old spectrum is reached with this media selection.

## Media selection & execution

TV schedules will be purchased in a balanced split between conventional and specialty networks, to align with viewership habits (50/50). The weight allocated to the specialty network portion will allow for much better pricing, resulting in a more efficient strategy and an overall increased return on investment (ROI). The right selection of specialty networks will also create an emphasis on the core target adults aged 50-70: CBC News Network, History, CTV News Channel, TSN, RDI.

Fall 2016 – Share of market



- 45% of buyable hours tuned is spent with Conventional
- 55% of buyable hours tuned is spent with Specialty

\*Source: Intasys PPM Sept-Dec 2016

### News environment is appointment TV for most of the 50+ consumers

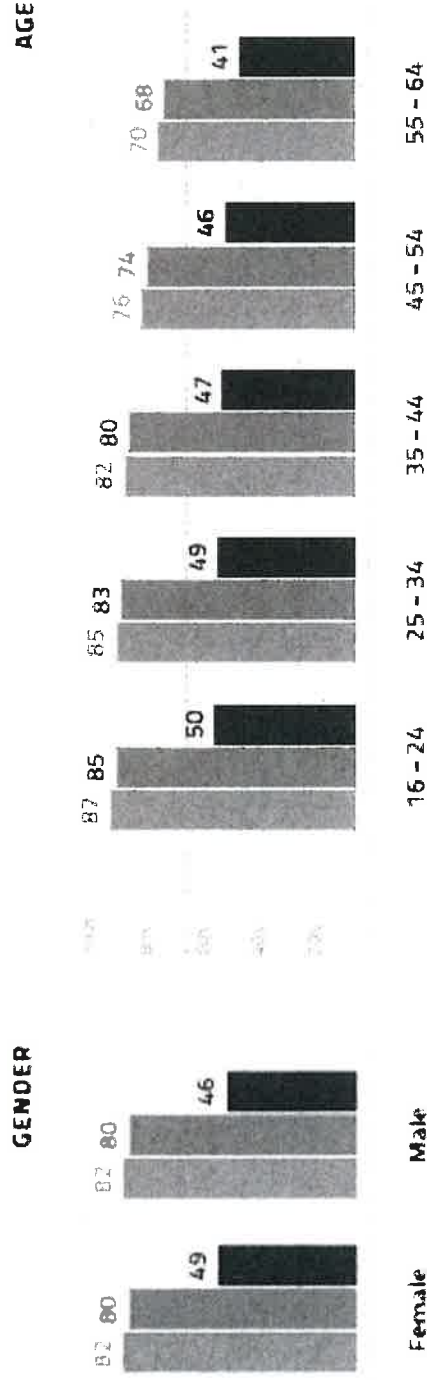
Watched news on television yesterday	2006 %	2012 %	Change
Total	57	55	-2
18-29	49	34	-15
30-49	53	52	-1
50-64	63	65	+2
65+	69	73	+4

NEW RELEASED: May 15, 2013. Consultation: 5/15/13

## Facebook & Instagram



Facebook and Instagram will be leveraged for their ability to effectively reach various segments through very "niche" targeting elements. Not only can we reach our target on their personal devices (mobile, tablet, and desktop) to present our main message, but we also want to engage with them to encourage them to act and file a claim, and to share the information with their family and friends.



Facebook and Instagram audience, Facebook 2016

## Facebook & Instagram



In order to succeed, we will leverage the page [www.Hepc8690.ca](http://www.Hepc8690.ca) to facilitate the push and the link to our ads. This will allow us to broadcast our messages in video format onto the newsfeeds of all Facebook users, and will also allow us to use the Carousel format, which is more likely to generate a higher engagement rate (conversions). Overall, these formats perform better than the usual right-hand column format, and more importantly, they provide access to the mobile inventory which represents more than 50% of all impressions available on Facebook and Instagram.

- Formats to be deployed:

1. **Video ad** mainly to increase **awareness**

2. **Click-to-website ad** (mobile specific) to accelerate conversions: drive to claim site

- Target by demographic:

- 50+ with emphasis on desktops

- 27-50 on all devices

- Geo-target as per ongoing results/responses

- Build look-alike segments based on results (drive to site)

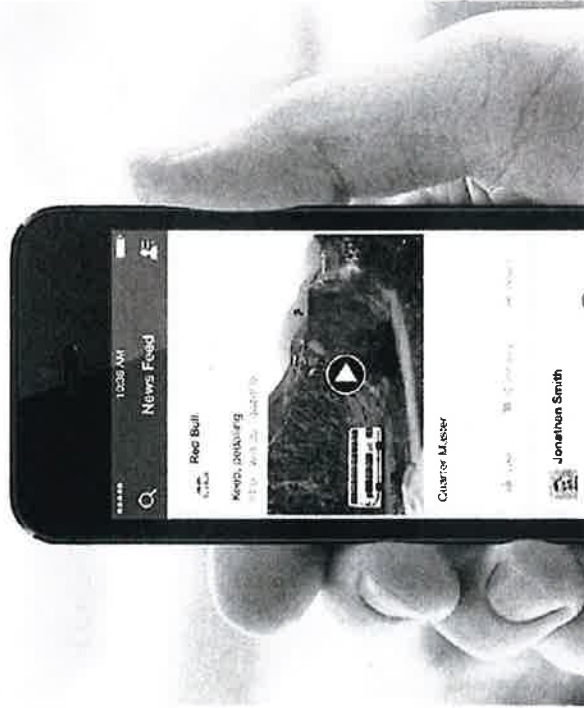
- A retargeting strategy can be deployed with the implementation of a Facebook pixel on our website. People visiting the Hep C site could be retargeted while going through their Facebook/Instagram newsfeed.

## Facebook & Instagram



### Facebook video ad

- awareness



### Facebook click-to-website ad

- conversion



## SEM AdWords

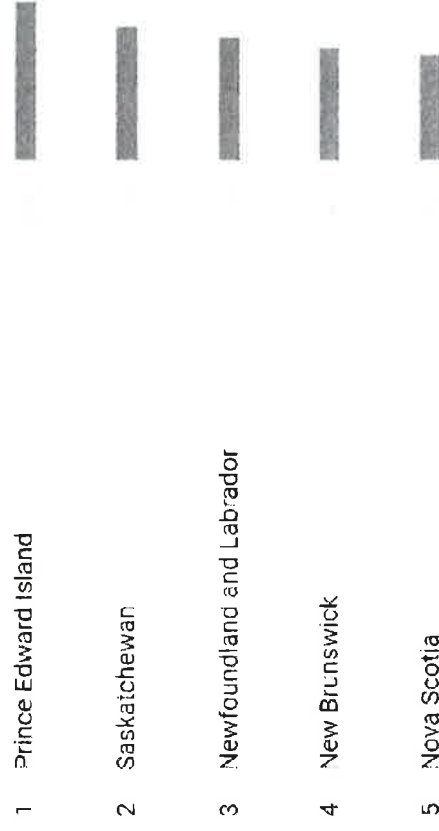
Our target will be in information-seeking mode. Following the mass media campaign, they'll be doing searches based on the following:

- What is Hepatitis C and what are its symptoms?
- Do I have Hepatitis C?
- What happened with blood transfusions between 1986 and 1990?
- Names and list of drug treatments

A list of key words will be generated to cover these questions and to direct the target to the claim site. These key words will be closely monitored and will be optimized to ensure that the clicks we are paying for are actually converting into claims, as opposed to generating a high bounce rate.

## SEM AdWords

The SEM campaign will be executed nationally, but we can expect more activity in the 5 provinces that rank highest for searches related to Hepatitis C.

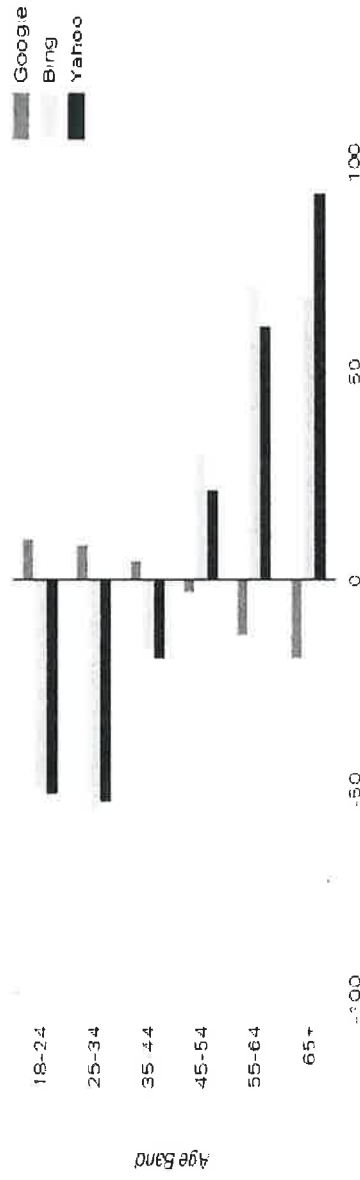




## SEM AdWords

Because a segment of our target is aged over 50, it will be important to keep a portion of the investments on Yahoo and Bing, as these have a much higher penetration with that demographic. We recommend investing a maximum of 20% of the search budget in those engines, with the remaining 80% going to Google.

### Index of Age:



There is a clear line at middle age that split Google users to Bing and Yahoo users. Google are more likely to be younger whereas Bing and Yahoo have a more mature audience.

## Contribution of each touchpoint

### Phase 1: IGNITE AWARENESS

#### Television

- Rapidly build a strong awareness level among all Canadians (74%+) – less than 2 weeks should be required
- Establish a theme and tone for all subsequent communications
- Present the steps to follow to receive compensation

### Phase 2: DRIVE CONVERSIONS

#### Facebook & Instagram

- Platforms allow for precise geographic and demographic targeting of advertising. Text and low-production-cost ads will be presented to these users in an efficient cost-per-click buying strategy.
- Their intrinsic function is sharing pertinent content. The Hep C settlement is not only newsworthy; it's a win-only situation for the Canadian consumer. This means that content pertaining to it will be shared with family members and/or friends.

#### SEM – Search Marketing

- All activities on these engines will drive directly to the registration website; a pay-per-performance approach will be deployed. We will ensure a maximum ROI factor by paying only for users who engage with our message (visit the claim site). Optimization will be required throughout the campaign.

## Social media

### LEGITIMIZING THE CAMPAIGN

One of the problems that is often identified in class action suits that involve payments is the credibility of the information, especially when this information circulates online. Many internet users are reluctant to share their personal information over the internet for fear they could be dealing with a scam.

To address this, Brad's social media management team will ensure they interact with internet users via Facebook, answering any and all questions. We have a lot of experience in this field.

Our objective in managing social media is to make sure people get the right information and make a claim if they are eligible. We have experience engaging and moderating discussions and will liaise with the Administrator and Joint Committee to ensure accurate messaging. Questions about HCV, treatment options, and other medical related inquiries will be referred to a more qualified person or resource.

## Public relations

We suggest a media relations campaign with a PR drive that will support the advertising campaign for the Hepatitis C late claim class action.

Although press conferences no longer easily attract reporters, this kind of campaign will need a starting point to launch interview bookings during the media relations campaign. We will need a series of interviews to kick off the campaign.

These events and the subsequent interviews will feature a spokesperson (yet to be named) who will explain the basics of the class action suit, the targeted consumers, and the procedure to follow in order to register.

The media relations campaign will remind consumers about the class action and the importance of registering in order to start the claiming process.

Before deploying this campaign, we must identify and train a spokesperson in order to maximize the interviews' impact. It may be relevant to train two spokespeople: one for the English interviews, and another for the French interviews.

Spokesperson training materials will include documents (key messages, Q&As) as well as a fact sheet that can be used by media who wish to discuss the class action without conducting an interview.

The media relations campaign will benefit from TACT Intelligence-conseil (public relations firm) wide range of contacts in the media industry. We plan to target mainstream media, considering the large number of Canadians, as well as medical and consumer reporters.

# Budget A

## Agency fees: \$85,000

Includes strategy, account executives, coordination, electronic production design (website) and the production of promotional material.

## Production: \$75,000

Includes production of TV/internet messages, and design of all material

## Media buys: \$620,000

Includes all the media in the base plan

## Community management: \$25,000

Includes management and distribution of content on social networks

## Public Relations: \$50,000

## Grand total: \$855,000

Considering the fact that there are 28,500,000 adults aged 18+ in Canada

Considering the fact that there are 24,886,707 adults aged 27+ in Canada

Considering the fact that there are 11,079,300 adults aged between 50 and 75 in Canada

Considering the fact that the proposed plan is forecast to reach over 70% of Canadian adults aged 27+ when combining all efforts (TV and digital)

**We can estimate we will reach over 70% of Canadians aged 27+ at least 4 times.**

According to our experience, when developing an encirclement strategy, the target must be reached a minimum of three times to gain the desired attention.

According to our experience, we know that more than 70% of our targets will be reached by our message.

# Media plan

## MEDIABRANDS

### Hepatitis C Class Action - 2017

Markets	Stations/Publications/Sites	Format	January												March	April				Impressions	Client Cost
			8	15	22	29	5	12	19	26	5	12	19	26	2	9	16	23	30		
Television	National	English	Conventional & Specialty												Conventional & Specialty				Reach / Frequency		
	National	French	Conventional & Specialty												Conventional & Specialty				Reach / Frequency		

GRPs A27+

160 160

175 175

### DRIVE CONVERSIONS

#### Digital

National	English	Facebook/Instagram - Carousel	Photos/video	4 000 000	\$40 000
National	French	Facebook/Instagram - Carousel	Photos/video	1 000 000	\$10 000
National	English	SEM	AdWords		\$15 000
National	French	SEM	AdWords		\$10 000

Optimization Window - 2 weeks

Client media cost					\$620 000
Total client cost					\$620 000

## Budget B

### **Agency fees: \$85,000**

Includes strategy, account executives, coordination, electronic production design (website) and the production of promotional material.

### **Production: \$75,000**

Includes production of TV/internet messages, and design of all material

### **Media buys: \$650,000**

Includes all the media in the base plan

### **Community management: \$25,000**

Includes management and distribution of content on social networks

### **Public Relations: \$60,000**

### **Grand total: \$895,000**

Considering the fact that there are 28,500,000 adults aged 18+ in Canada  
Considering the fact that there are 24,886,707 adults aged 27+ in Canada  
Considering the fact that there are 11,079,300 adults aged between 50 and 75 in Canada

Considering the fact that the proposed plan is forecast to reach over 75% of Canadian adults aged 27+ when combining all efforts (TV and digital)

**We can estimate we will reach over 75% of Canadians aged 27+ at least 6 times.**

According to our experience, when developing an encirclement strategy, the target must be reached a minimum of three times to gain the desired attention.

According to our experience, we know that more than 80% of our targets will be reached by our message.

# Media plan

## MEDIA BRANDS

### Hepatitis C Class Action - 2017

Markets		Stations/Publications/Sites	Format	January												February				March				April				Impressions	Client Cost				
				8	15	22	29	5	12	19	26	3	10	17	24	31	7	14	21	28	5	12	19	26	2	9	16	23	30				
Television	National	English	Conventional & Specialty	GRP+ A27+ 160 160																												each / Frequency	\$407 000
	National	French	Conventional & Specialty																													73.5% / 4.3x / 4.3x	\$138 000

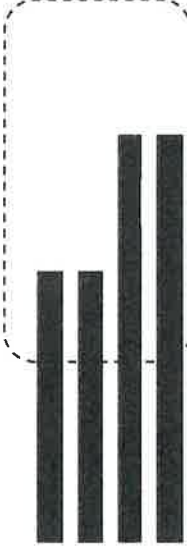
GRPs A27+  
160 160  
175 175

### DRIVE CONVERSIONS

#### Digital

National	English	Facebook/Instagram - Carousel	Photos/video	5 000 000	\$50 000
National	French	Facebook/Instagram - Carousel	Photos/video	1 500 000	\$15 000
National	English	SEM	AdWords		\$25 000
National	French	SEM	AdWords		\$15 000
Client media cost					\$650 000
Total client cost					\$650 000

Optimization Window - 5 weeks





## Budget C

### Agency fees: \$95,000

Includes strategy, account executives, coordination, electronic production design (website) and the production of promotional material.

### Production: \$95,000

Includes production of TV/internet messages, and design of all material

### Media buys: \$702,400

Includes all the media in the base plan

### Community management: \$25,000

Includes management and distribution of content on social networks

### Public Relations: \$70,000

### Grand total: \$987,400

Considering the fact that there are 28,500,000 adults aged 18+ in Canada

Considering the fact that there are 24,886,707 adults aged 27+ in Canada

Considering the fact that there are 11,079,300 adults aged between 50 and 75 in Canada

Considering the fact that the proposed plan is forecast to reach over 80% of Canadian adults aged 27+ when combining all efforts (TV and digital)

**We can estimate we will reach over 80% of Canadians aged 27+ at least 8 times.**

According to our experience, when developing an encirclement strategy, the target must be reached a minimum of three times to gain the desired attention.

According to our experience, we know that more than 90% of our targets will be reached by our message.

# Media plan

## MEDIABRANDS

### Hepatitis C Class Action - 2017

Markets		Stations/Publications/Sites	Format	January				February				March				April				Impressions	Client Cost				
				8	15	22	29	5	12	19	26	5	12	19	26	2	9	16	23	30					
Television	National	English	Conventional & Specialty	GRPs A27+																Reach / Frequency				\$407 000	
				160 160																73.9% / 4.3x					
				175 175																82.4% / 4.2x				\$138 000	
								GRPs A27+																\$30 400	
								20 20																\$12 000	
	National	French	Conventional & Specialty																						

#### DRIVE CONVERSIONS

##### Digital

Markets	Stations/Publications/Sites	Format	January	February	March	April	Impressions	Client Cost
National	Facebook/Instagram - Carousel	Photos/video	160 160	175 175	20 20 20 20	20 20 20 20	5 500 000	\$55 000
National	Facebook/Instagram - Carousel	Photos/video	160 160	175 175	20 20 20 20	20 20 20 20	2 000 000	\$20 000
National	SEM	AdWords	160 160	175 175	20 20 20 20	20 20 20 20		\$25 000
National	SEM	AdWords	160 160	175 175	20 20 20 20	20 20 20 20		\$15 000

Client media cost								\$702 400
Total client cost								\$702 400

## Budget for post-campaign activity

Considering the fact that there will potentially still be late claims after the campaign, we recommend staying active for the next year or two.

Our recommendation is to use the data from the campaign, identify the most efficient profiles, and communicate with similar profiles through social media and on a regular basis, adjusting our communication as claims are made.

We suggest a community management budget of \$25,000 for 12 months  
and

A media placement budget of \$12,000 for 12 months

Grand total: \$37,000 annually

## Budget rationale

We were asked to develop a strategy with a \$500,000 budget

We do not recommend this option, the reason being that we have to cover the whole country: with a budget of \$500,000, we would not be able to use television, which is the most effective media to reach our target, so we would have to deploy 100% on the web.

Our message is complex and we need time to explain it to our different targets: images will help to create awareness and ease understanding.

The web is not as effective as television: we are surrounded by other advertising when browsing the internet, plus 80% of videos on the internet are watched without sound, so it would require considerably more frequency for an individual to be aware of our message and to understand it. The internet and social media are the best means of supporting and converting, but not for creating awareness.

We also want to pay particular attention to people living outside the larger cities, as they have probably have less awareness. For these people, television is certainly the best media choice!

03

# WHO WE ARE

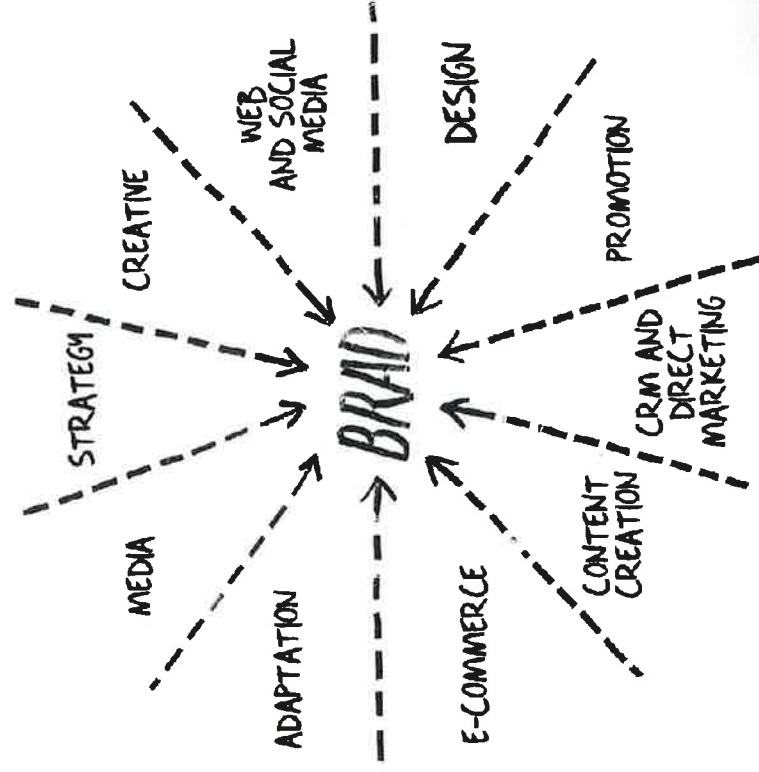
BRAD

## Who we are

Founded in 1994, Brad has earned an excellent reputation based on the quality of its strategic thinking and creativity. A fully integrated agency, Brad has offices in Montreal and Quebec City, with more than 60 employees collectively participating in the development of the firm.

### OUR OFFER

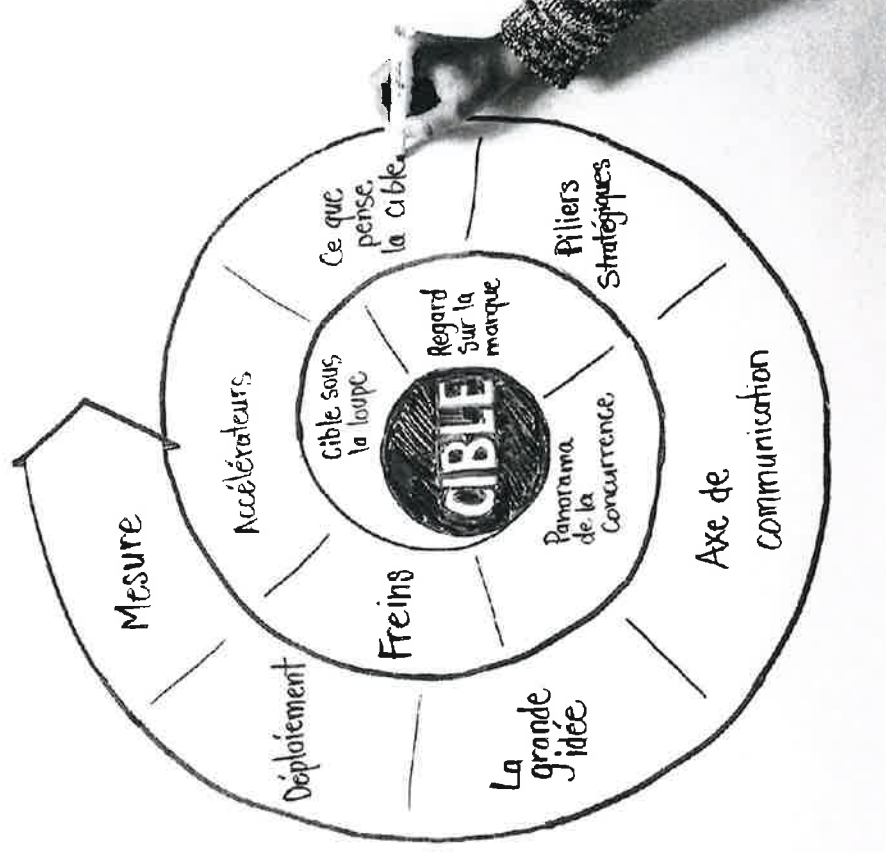
Brad offers the following services:



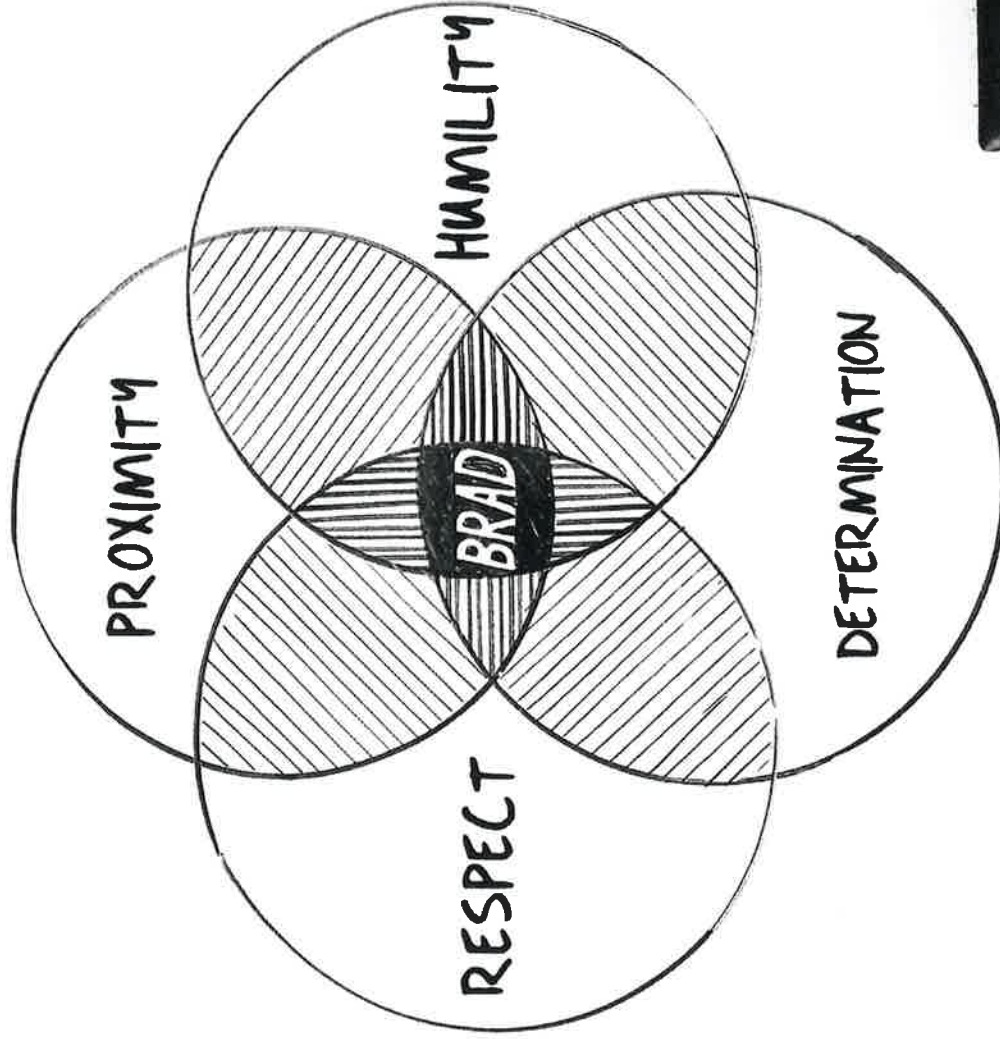
**BRAD**

## Our process

1. Target
2. Target market at the glance
3. Brand Analysis
4. Competitive Landscape
5. Warnings
6. Accelerators
7. What does the target thinks?
8. Strategic Pillars
9. Communication Axis
10. The Great Idea
11. Deployment
12. Measures



## Our values





## Our clients



CNESST

IRVING



BMR

Disney



BORALEX

CAN-AM

SPIDER

XPS

Énergie  
Placements  
Québec



Fondation  
cancer du sein  
du Québec

DOOLY'S

Sobeys

ALLIANCE DE L'INDUSTRIE  
TOURISTIQUE DU QUÉBEC

AVELEDA

J.P. CHENET



a+traction<sup>®</sup>  
RADIO

Produits Neptune

Québec

Canada

VILLE DE  
QUÉBEC

Québec  
ENFORME

BOUR  
DÉE

LAURIE  
RAPHAEL

OPÉRA  
DE MONTREAL



La Table  
des Chefs

Lunottorio Sears

MARCHAND  
GIGUÈRE  
Les Bonnes Manières

LEPAGE  
PHOTO

Pharmaparc

flor de lys

eddyfi

1.111  
SIX PINTS

UBISOFT  
QUÉBEC

NOVABUS

PREVOST

Beau Laminé

Fairmont  
LE REINE ELIZABETH



PENDOPHARM  
7777, BOULEVARD SAINT-JACQUES

TELEFILM  
CANADA

TOURISME

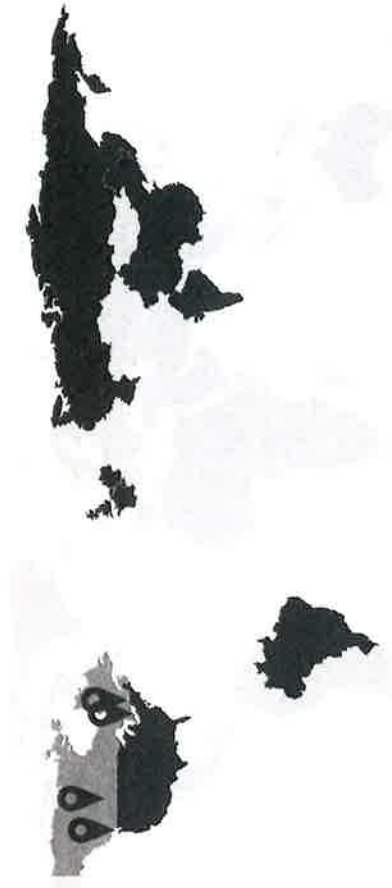
CHARLEVOIX

## IPG Mediabrands

To ensure our presence at the national level, we appeal to our loyal partner, IPG Mediabrands, a media agency service that has offices in four cities across Canada. They have more than 300 specialists who share our passion for media expertise.

### Complete cutting-edge media solutions

The services offered at Mediabrands meet all communication needs, including strategic planning, identification of potential markets, budget allocation, planning, and media-buying channels, as well as financial control and measuring ROI in post-campaign analysis. With evolving technologies and digital channels changing every day, their specialized boutique agencies provide niche expertise that allows for maximized results with the most accurate business solutions.



# OUR TEAM

BRAD

## Our team



### **PATRICK GERVAIS**

*Vice-President - Associate*

An entrepreneur at heart, Patrick is primarily a promotional communications strategy expert. For each mandate, he provides clients with a proactive approach and a passion for innovation. He is results-oriented, and has the exceptional ability to identify promising opportunities for his clients.

Patrick developed the nationwide "C'est mon argent / The Money is Mine" campaign, a class action lawsuit against RAM manufacturers, which was one of the top 10 campaigns in 2015 according to Infopresse.

Over the years, he has developed a strong understanding of the retail industry; he has worked for well-known chains including BMR, Benny&Co., Chocolats Favoris, Bell Canada, GM Canada, and Sobey's. Of particular relevance to your mandate, Patrick is an expert in brand strategy and planning. He has accompanied clients like Chocolats Favoris and Benny&Co. along the path to achieving their business objectives.

Patrick has also collaborated in the marketing of many products and brands on a national level, including Isuzu Canada, Lego, Wines of France, Bell Canada, Wines of Chile, and more.

Patrick will be responsible for overseeing and directing your account strategy. He will provide you with his strategic and planning expertise, as well as his ability to develop high-added-value partnerships.

His ongoing commitment to accompanying clients through the evolution and achievement of their objectives will undoubtedly lead him to suggest the perfect strategy for your needs.

## Our team



### **SANDRA KLEIN**

#### **Account Director**

Energetic, in tune with new trends, and keen on social media, Sandra is a versatile and efficient Project Manager. After her BA in Communications, she completed an internship in public relations and event services at Cirque du Soleil, and then pursued a career in advertising.

Last year, Sandra led the Canada-wide "C'est mon argent / The Money is Mine" campaign, the class action lawsuit against RAM manufacturers.

Over the past few years, she has put her expertise to work for large-scale clients like Labatt, the Régie du Bâtiment du Québec, Spotify, and Gallimard, for whom she managed the Folio campaign, which won a Grand Prix Créa in 2014.

In addition to excellent interpersonal skills and a determined team spirit, she pays close attention to her clients' needs and requirements, thus combining responsiveness and pro-activity, two key qualities for an account manager.

Sandra ensures that all timelines and budgets are respected, while overseeing projects' entire lifespan. She brings considerable rigour and attention to detail in support of her clients' brands. Her sense of organization and her experience will be tremendous assets for your account.

**BRAD**

## Our team



### **BENOIT BOUCHER**

#### **Account Director**

An energetic team-player, Benoit's campaigns benefit from his strong capacity for observation and attention to detail. He ensures that the strategy is respected in all communications, regardless of the media used.

His ability to analyse and strategize, respect budgets and timelines, and maintain regular and effective communication with clients, all combine to ensure he delivers on time and successfully.

Over the past decade, Benoit has worked on numerous major mandates that had North American, Canadian, regional, and local scopes. He always ensures he understands the needs of all partners, in order to create successful stories that are measurable and profitable to the core target market.

He is entrepreneur and full of initiative, and is sure to be a very effective resource for your mandate.

## Our team



### **FABIEN LOSZACH**

#### *Interactive Strategy Director*

With a Ph.D. in Sociology that focused on creativity, Fabien Loszach has long worked as a digital and media consultant, having worked with different agencies over the course of his career. As a result, he has developed an expertise in digital strategy, with a speciality in social media networks. He also hosts a digital segment on the radio show La Sphère, which airs on ICI Radio-Canada Première, and he acts as a consultant and journalist for various media that specialize in digital culture, including Branchez-vous, the Canada Media Fund, and Infopresse.

As Director of Interactive Strategy at Brad, Fabien places his skills at the service of clients including LEGO, Disney, J.P. Chenet, Tourisme Québec, the CNESST, the Régie de l'assurance maladie du Québec (RAMQ), the Curateur public, Irving Oil, Group Marchand, Québecor - Sports and Entertainment Group, and Can-Am Spyder - BRP, where he oversees all web and social media strategies.

Fabien orchestrated the digital part of the pan-Canadian "C'est mon argent / The Money is Mine" campaign with brio, and the campaign attained its objectives in only five days.

He also leads the digital, content, and social media team at Brad, and oversees the development of interactive strategies at the agency. His strategic mind and keen understanding of the multiple possibilities presented by the internet are major assets.



## Our team



### SÉBASTIEN HOULE

*Vice-President, Group Account Director, IPG Mediabrands Montreal*

An established media strategist, Sébastien has 20 years of experience in media and in the development of convergent campaigns. His expertise was acquired mainly at Cossette Media (11 years) where he rose through the ranks to become group media director. He has extensive experience on major accounts, including Bell, Telus, Molson, Metro, Ford, Tourism Montreal, and Aeroplan.

He has detailed knowledge of different communication channels (traditional and digital) and his ability to analyze issues and business opportunities in the local markets of both Quebec and Canada make him a key partner in reaching qualified targets and meeting marketing objectives.

Beyond his media experience, Sébastien spent 18 months at Ig2 in Montreal, to add skills in agency account services to his impressive resume. The key knowledge he acquired, including planning with a strategic approach, creative development, and production management, now allows him to better understand how the consumer is positioned at the heart of marketing plans, and to develop the best environments to interact with them by combining the best media touch points with the appropriate messages.

Through his experience in media and account services, he seeks to contribute to the development of strong campaigns. Working in collaboration with clients and partners using innovation and a rigorous approach to customer benefits are priority elements of his approach.



05

# EXAMPLE

BRAD

**THE MONEY IS MINE.CA**

**themoneyismine.ca**

#### **CONTEXT**

An \$80M settlement was reached in Canada following a class action lawsuit against several dynamic random access memory (DRAM) manufacturers.

#### **MANDATE**

Develop a Canadian campaign to inform citizens of their right to make a claim and how to go about it.

#### **RESULTS**

We reached the objective of **350,000 claims only 5 days** after the campaign launched.

In all, nearly **one million claims** were made in Canada.

By comparison, 376,000 claims were made for the same class-action lawsuit in the United States, where the population is 10 times larger.


Did you purchase an electronic device with a memory chip (DRAM) between 1999 and 2002?



**YOU PAID TOO MUCH.**  
Some memory chip (DRAM) manufacturers reportedly agreed to price fix

**-VISIT-  
THEMONEYISMINE.CA  
TO GET YOUR MONEY BACK.**

No receipt required.



**-VISIT-  
THEMONEYISMINE.CA  
TO GET YOUR MONEY BACK.**

Bellevue Lapointe  
CJM  
SUTTS & ASSOCIATES



**YOU PAID TOO MUCH.**

Some memory chip (DRAM) manufacturers reportedly agreed to price fix, and a settlement was reached. If you purchased an electronic device containing a memory chip (DRAM) between April 1, 1999 and June 30, 2002, **you paid too much.**

All Canadians who bought an electronic device that contains a memory chip (DRAM) between these dates have the right to claim compensation. **No receipt required.**

Bellevue Lapointe  
CJM  
SUTTS & ASSOCIATES



[Click here to watch the video](#)



**THANK YOU!**

**BRAD**

## Contact Information

***PATRICK GERVAIS***

Vice-President

Business Development and Partnerships  
514 871-1616, ext. 291

***patrick.gervais@brad.ca***

## SCHEDULE C



### **Hepatitis C 1986 – 1990 Surplus Benefit Administration Proposal November 15, 2016**

Crawford Class Action Services is pleased to present the following proposal to administer the recently approved surplus benefits under the Hepatitis C 1986-1990 Class Action Settlement Agreement.

Crawford proposes a fixed fee for each retroactive surplus benefit payment that is made, dependent on the type of surplus benefit that is paid. Crawford's costs will be billed on a quarterly basis, based on the number of retroactive payments that are made during the particular quarter being invoiced.

The fixed per claim fee includes the costs to accurately calculate the payment, distribute the payment, the cost of the cheque(s), project management, trust account management and reporting. The fixed fee also includes the time and costs associated with reissuing payments as required due to incorrect addresses or outdated bank information as well as the time and costs associated with explaining, processing and managing all aspects of the process arising from eligible claimants now being deceased and the additional documents that will be required in order to make surplus benefit payments to Estates.

The fixed per claim fees are as follows:

- \$40/claim for approved alive primarily and secondarily infected class members
- \$40/claim for approved class members that have been paid as parents or children over the age of 21
- \$50/claim for DB9 Estates and associated DB9 family members who had elected the \$72,000 or \$120,000 compensation streams
- \$62.50/claim for DA9 Estates
- \$62.50/claim for DB9 Estates who have elected the \$50,000 compensation stream
- \$125/claim for class members who have received Loss of Income compensation
- \$125/claim for class members who have received Loss of Service compensation
- \$125/claim for class members who have exceeded the \$50,000 annual maximum under cost of care

As of November 15, 2016 the total number of claims expected to benefit from a retroactive surplus benefit is as follows:

**Retroactive Fixed Payment Increases:**

<b>Approved Alive Primary &amp; Secondary Claimants</b>	<b>Claims</b>	<b>Hrs</b>	<b>Cost/Hr</b>	<b>TOTAL</b>
DL 1	625	0.32	\$ 125.00	\$ 25,000.00
DL 2	1,012	0.32	\$ 125.00	\$ 40,480.00
DL 3	1,265	0.32	\$ 125.00	\$ 50,600.00
DL 4	257	0.32	\$ 125.00	\$ 10,280.00
DL 5	281	0.32	\$ 125.00	\$ 11,240.00
DL 6	155	0.32	\$ 125.00	\$ 6,200.00
Hemo 23	50	0.32	\$ 125.00	\$ 2,000.00
<b>TOTAL</b>	<b>3,645</b>			<b>\$ 145,800.00</b>

<b>Approved Deceased After 1999 Primary &amp; Secondary Claimants</b>	<b>Claims</b>	<b>Hrs</b>	<b>Cost/Hr</b>	<b>TOTAL</b>
DL 1	193	0.50	\$ 125.00	\$ 12,062.50
DL 2	216	0.50	\$ 125.00	\$ 13,500.00
DL 3	100	0.50	\$ 125.00	\$ 6,250.00
DL 4	31	0.50	\$ 125.00	\$ 1,937.50
DL 5	127	0.50	\$ 125.00	\$ 7,937.50
DL 6	523	0.50	\$ 125.00	\$ 32,687.50
Hemo 23	9	0.50	\$ 125.00	\$ 562.50
<b>TOTAL</b>	<b>1,199</b>			<b>\$ 74,937.50</b>

<b>Approved Deceased Prior to 1999 Claimants</b>	<b>Claims</b>	<b>Total Payments</b>	<b>Hrs</b>	<b>Cost/Hr</b>	<b>TOTAL</b>
50K Election	181	181	0.50	\$ 125.00	\$ 11,312.50
72K Election	133	617	0.40	\$ 125.00	\$ 30,850.00
120K Election	168	1,090	0.40	\$ 125.00	\$ 54,500.00
<b>TOTAL</b>	<b>482</b>	<b>1,888</b>			<b>\$ 96,662.50</b>

<b>Approved Family Member Claimants</b>	<b>Claims</b>	<b>Hrs</b>	<b>Cost/Hr</b>	<b>TOTAL</b>
Child Over 21	1,736	0.32	\$ 125.00	\$ 69,440.00
Parent	315	0.32	\$ 125.00	\$ 12,600.00
<b>Total</b>	<b>2,051</b>			<b>\$ 82,040.00</b>

**Retroactive Supplemental Payment Increases:**

<b>Payment Type</b>	<b>Claims</b>	<b>Hrs</b>	<b>Cost/Hr</b>	<b>TOTAL</b>
Loss of Income 'Pension'	328	1.00	\$ 125.00	\$ 41,000.00
Loss of Services '2hr Increase'	1,513	1.00	\$ 125.00	\$ 189,125.00
Cost of Care 'Increased Annual Max'	9	1.00	\$ 125.00	\$ 1,125.00
<b>Total</b>	<b>1,850</b>			<b>\$ 231,250.00</b>



### Prospective Surplus Benefit Payments

On a prospective basis, Crawford proposes a nominal annual fixed fee of \$5,000 to administer all aspects of prospective surplus benefits on the expectation that the surplus benefit component does not need to be made separately from a normal benefit. For example, if an approved class member is approved at a higher disease level and is therefore owed a 'normal' fixed payment and a corresponding surplus payment that the sum of these two awards can be made on the same cheque or direct deposit.

This annual fee includes the cost to administer prospective surplus benefits for each of the following six categories:

1. Fixed payment increases to HCV Infected Class Members and Estates
2. Fixed payment Increases to children over the age of 21 and parents
3. Loss of income pension amounts
4. Loss of service 2 hour/week increase
5. Cost of care annual maximum increase
6. \$200/day per diem for family members to accompany HCV infected class members for medical appointments.

Should you have any questions please do not hesitate to contact us.

Sincerely,



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