

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

DIANNA LOUISE PARSONS, deceased
by her Estate Administrator, William John Forsyth,
MICHAEL HERBERT CRUICKSHANKS,
DAVID TULL, MARTIN HENRY GRIFFEN, ANNA KARDISH,
ELSIE KOTYK, Executrix of the Estate of Harry Kotyk, deceased
and ELSIE KOTYK, personally

Plaintiffs

and

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

Defendants

and

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

Intervenors

Proceeding under the *Class Proceedings Act, 1992*

Court File No. 98-CV-146405

B E T W E E N:

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

Plaintiffs

and

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

Defendants

and

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

Intervenors

Proceeding under the *Class Proceedings Act, 1992*

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

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO : 500-06-000016-960

SUPERIOR COURT
Class action

DOMINIQUE HONHON

Plaintiff

-vs-

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

Defendants

-and-

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

PETITIONER

-and-

FONDS D'AIDE AUX RECOURS COLLECTIFS

-and-

LE CURATEUR PUBLIC DU QUÉBEC

Mis-en-cause

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO : 500-06-000068-987

SUPERIOR COURT
Class action

DAVID PAGE

Plaintiff

-vs-

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

Defendants

-and-

FONDS D'AIDE AUX RECOURS COLLECTIFS

-and-

LE CURATEUR PUBLIC DU QUÉBEC

Mis-en-cause

FACTUM/SUBMISSIONS/WRITTEN ARGUMENT OF CLASS MEMBER 2213
(JOINT HEARING ALLOCATION APPLICATIONS)

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PART I

OVERVIEW

1. These submissions are made on behalf of a Class Member, claimant number 2213, (the “Class Member”) who has been given the privilege to make submissions to the Courts at the Joint Hearing in June 2016.
2. The Class Member is an Ontario-based claimant entitled to benefits under the Hemophilic Plan. The Class Member is a Primarily-Infected Hemophilic who is an Approved HCV Infected Person who is also infected with HIV and has received benefits under Article 4.08 (2) of the Plan.
3. The submissions of the Class Member relate to the three issues before the courts:
 - a. the amount of actuarially unallocated assets in the Trust Fund;
 - b. the nature and scope of the discretion of the Courts with respect to unallocated assets in the Trust Fund;
 - c. the proposals with respect to the allocation of the unallocated assets in the Trust Fund.
4. The submissions of the Class Member with respect to these issues are that:
 - a. the amount of the actuarially unallocated assets of the Trust Fund should be determined to be \$206,900,000 for the reasons advanced by the Joint Committee;
 - b. the discretion given to the Courts under the Modification to the Settlement Agreement¹ to allocate or pay² unallocated assets in the Trust Fund was intended by the Courts and the parties to be exercised only when such allocations or payments will benefit Class Members. The terms of the

¹ Modification in the form of Schedule F/Annexe F is excerpted below in Part III

² The term “allocate” and its counterpart in the French language version are plainly intended to include payment.

and

- b. the request by the Governments for payment of unallocated assets without any benefit to or for Class Members

a conservative approach is appropriate to determine the amount of the unallocated assets.

6. The Class Member notes that prior to the Termination of the Trust Fund, the Governments have expressly forgone any legal entitlements to the assets of the Trust Fund under the Funding Agreement, whether these assets be allocated or unallocated.⁵
7. The Class Member is generally in agreement with the Joint Committee and the factual and legal considerations set out in paragraphs 84 to 93 and 210 to 213 of the factum of the Joint Committee.

Issue #2: The nature and scope of the Courts' Discretion

8. The Class Member is in general agreement with the position taken by the Joint Committee in its factum and strongly opposes the position taken by the Attorney General for Canada and other Governments.
9. The Class Member respectfully submits that, unless and until the Trust Fund created by the Funding Agreement is terminated and the Settlement Agreement itself is terminated, the Governments have no legal entitlements to the Trust Fund.

⁵ See Article 5.03 on "Legal Entitlements" and the Termination provisions in the Funding Agreement.

10. The Funding Agreement is express about what constitutes the “Trust Fund”, its “Purposes’ and “Legal Entitlements” to the Trust Fund.⁶
11. Article 2.01 of the Funding Agreement contemplates payments out of the Trust Fund only for “the benefit of Class Members and other persons entitled to be paid out of the Trust in accordance with this Agreement and the Settlement Agreement”.
12. None of the Governments are beneficiaries of the Trust Fund under the Funding Agreement or the Settlement Agreement.
13. Indeed, the Governments were the Settlers of the Trust and are divested of the Trust Fund upon payment of the money and assets comprising the Trust Fund.⁷
14. The rights of the Governments to the Trust Fund under the Settlement Agreement and the Funding Agreement only arise upon termination and are expressly limited to the transfer of the assets in the Trust Fund upon termination – not before termination.⁸
15. The nature and scope of the discretionary powers contained in the Modification to the Settlement Agreement and in the orders of the Courts do not make the Governments a beneficiary of the Trust Fund. This discretion must be understood and applied in order to respect the terms of the private Trust. The discretion must also be understood and applied within the context of the shared view of the Courts about the requirement for the Modification to the Settlement Agreement, that is:

It is therefore in keeping with the nature of the settlement and in the interests of consistency and fairness that some portion of the surplus may be applied to benefit Class Members⁹.

⁶ See the definition of “Trust Fund”, Article Two “Purposes and Effect of Agreement” and Article Five “Settlement of Trust” in the excerpts from the Funding Agreement in Part III below.

⁷ Article 5.01 of the Funding Agreement and definition of “Trust Fund”. This principle applies as a rule of trust law both under the Civil Code (Article 1265) and within “common law” jurisdictions.

⁸ See the Termination provisions in the Settlement Agreement and the Funding Agreement.

⁹ Parsons v Canadian Red Cross as per Winkler J.

16. The common intention of the parties and the circumstances in which the Modification to the Settlement Agreement came about are such that the surplus is only intended to be applied to benefit Class Members, including Family Class Members.
17. Either the money stays in the Trust Fund to benefit Class Members or it is allocated or paid out in such a way to benefit Class Members.
18. It is respectfully submitted that the discretion to “pay”, in whole or in part, the Trust Fund to Governments as contemplated by the Modification must necessarily be interpreted to mean “paid” to Governments that present the Courts with a proposal that will “benefit Class Members”. Otherwise, the “payment” to a Government would in effect be a “transfer” that would terminate part of the Trust- something that is simply not permitted by the Settlement Agreement, or the Funding Agreement, or in these circumstances, the trust law of any Canadian jurisdiction.
19. The Class Member notes that none of the Governments have proposed a plan to benefit Class Members or any beneficiaries of the Trust Fund.
20. It is simply inconsistent, unreasonable and unfair for the Governments to take the position that Governments “paid too much” and that the unallocated assets of an ongoing private Trust Fund should now be “returned to the public purse”.

Issue #3: Proposal for Allocation

21. The Class Member requests the Courts to allocate funds so that those Primarily-Infected Hemophiliacs who are an Approved HCV Infected Person who are also infected with HIV may be entitled to receive full compensation and benefits pursuant to the Plan, without restriction, but subject to a deduction of any amounts received under Article 4.08(2).

22. Article 4.08(2) of the Plan permitted an eligible Class Member to elect to be paid \$50,000 in full satisfaction of all his or her past, present or future Claims and the Claims of Dependents and Family Members.

23. The expressed purpose of the election of a one-time lump sum payment was described as follows in the words of Class Counsel:

This option reflects the reality that many co-infected individuals, given the current state of their health, do not wish to become involved in a long term program.¹⁰

24. Candidly, it was expected that those selecting this option would be too sick to participate in the full Plan and would likely die sooner, rather than later.

25. The Class Member is among a small group of others- thought to be now less than 20- in similar circumstances. The Class Member was very sick- but did not die.

26. Even on a cursory review of the differences between the options, the compensation to which the Class Member would have been entitled had he not taken this option out of desperation and due to his illness is significantly more than the lump sum.

27. The Class Member has written about his experiences.

Knowing what I know now I question whether I should have elected to take the package at all. I could not have guessed how awful Hepatitis C treatment would have been for my physical, emotional and mental health. I could never have guessed the burden my wife would carry while I endured 48 weeks of treatment. I would never have imagined that I would get depressed and have to take a leave from work due to the myriad of treatment side effects. The health care system was virtually vacuous in its support of myself and my family during this time of treatment. Every support that helped me through this time was sourced by me and paid for by me. I have rarely felt more abandoned.

¹⁰ Para 49 iv. of the Factum filed on behalf of the Representative Plaintiffs in the Hemophiliac Class Action as attached in Exhibit C to the affidavit of Asvini Krishnamoorthy sworn 29 January 2016 [which affidavit is filed herein on behalf of the Attorney General for Canada]

28. The Class Member's complete correspondence and Impact Statement about "The Cost of Treatment" are incorporated into these submissions and may be found below at pages 8-12.

29. The allocation required to benefit Class Members in these circumstances may be easily funded given the small number surviving whose compensation entitlement under the Plan actually exceed the lump sum.

PART III RELEVANT DOCUMENTS

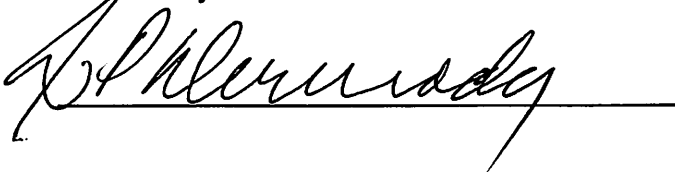
30. See attached immediately following these submissions

PART IV CONCLUSION

The Class Member has attempted to state his position in the Overview.

The Class member will be present at the Joint Hearing and will provide information and answers to any questions arising out of these submissions or the Impact Statement.

All of which is respectfully submitted on behalf of the Class Member by his Counsel on this 9th day of June 2016.



William P. Dermody LSUC # 21237F

DERMODY LAW 550 Concession Street, Hamilton ON L8V 1A9

TEL: 905-383-3331 FAX:905-574-3299 EMAIL: bill@dermody.ca

Dear Kathryn Podrebarac,

I have a piece of paper in my files dated April 17, 2001 acknowledging receipt of my signed Release and a compensation directly deposited into my account "Hemo23 Payment" the value of which was \$52,075.65. At that point I had been with my girlfriend (now wife) for a little over a year, I was new to my career and we were deciding to make a life together.

When the 1986-1990 settlement agreement became available I explained to her that I have been through these sorts of things before. Legal battles are mind and heart consuming, drawn out and hard on your soul. The last time I endured this sort of process my health dropped considerably, I dropped out of university and was so very angry. I explained to her that I felt that taking the package was the best option based on my experience to date. I didn't think I could go through that sort of pain again.

Knowing what I know now I question whether I should have elected to take the package at all. I could not have guessed how awful Hepatitis C treatment would have been for my physical, emotional and mental health. I could never have guessed the burden my wife would carry while I endured 48 weeks of treatment. I would never have imagined that I would get depressed and have to take a leave from work due to the myriad of treatment side effects. The health care system was virtually vacuous in its support of myself and my family during this time of treatment. Every support that helped me through this time was sourced by me and paid for by me. I have rarely felt more abandoned.

I am a husband and father now. I have a career and a demanding life. I am free of Hepatitis C because I managed to withstand 48 weeks of treatment. I am certain that it has affected me permanently. I know, now, that the compensation package was not in line with what my wife and I had to endure in the slim hopes of getting better.

I would like the opportunity to opt back into settlement discussions (less what I have already received) because I now understand what it means to have Hepatitis C and what the real costs are to get cured.

[Redacted] [claimant 2213]
[Redacted]
[Redacted]
[Redacted]
(Redacted)

████████████████████

████████████████████

████████████████████

████████████████████

IMPACT STATEMENT

The Cost of Treatment

How do you worry about something that you have no personal, tangible proof even exists?

How can I believe a mythical beast is inside of me? They tell me it's killing me and I don't see it, I don't feel it, and if it were not for the doctors telling me so (and the medications every day), I'd have no reason to believe I have HIV or (had) Hepatitis C at all. I am reminded that I have Hemophilia every day. It is very real. It hurts.

I have been poisoned because of blood products and other peoples' decisions. I didn't do anything wrong. It's not as if I lead some risky lifestyle in my early teens to get myself here. I was just a kid. But here I am with difficult issues that need to be dealt with.

I was learning about medication side effects, drug plan paper work, lawyers, co-morbidities and the social necessity for anonymity, when other kids my age were learning how to drive. I remember lawyers asking me what I figured my life was worth. I remember doctors telling me that I needed to realize that I was eventually going to die from these diseases. These are traumatic statements for a young teenager to face, yet alone actually deal with appropriately. I wish someone would ask me some of those questions now that I'm older. I know what I'm worth. I know what a good life is worth.

When we started the discussion for me to begin Hepatitis C treatment life was going exceptionally well. I was married with my now wife and we were living the "double income and no kids" (at the time) phase of our lives. We are both teachers and at the time I was an intermediate teacher at an inner city school with a team of colleagues who I would consider some of my best friends. Work was intense and difficult, but my professional community really was a pedagogical dream team.

At the time I was also doing graduate studies and actively pursuing the idea of leadership in our board. I had definitely received "the tap" to move forward in my career and was putting the plan in place to move forward if that is what we decided as a family. I was the fittest I have (probably) been in my life. I was going to the gym with my friend three to four days a week. I brought intensity to my work and my work out. I am six feet tall and I was 180 lbs. of undeniable fitness. My wife and I had life by the tail. So when my HIV doctor told me that my

HIV was under control and she worried that the Hepatitis C was going to be the thing that “gets me in the end”, we decided to pursue treatment.

I had strain 1A and the odds were not especially good, but now was the time. I would start just before school ended so that if I struggled with side effects at the beginning it would be summer holiday. Decades of being a hemophiliac made me confident that I could put up with the physical discomfort so I basically said “bring it!” Together we will do our best, and our best is pretty exceptional.

48 weeks later we barely made it. Every Friday night, every cursed, f-ing Friday I would say “I wish I didn’t have to do this” and my wife would say “I know, we will get through this”. I can’t even type these words now without crying. Wipe away the tears lest my son ask, “What’s wrong Daddy?”

You see when a person goes through cancer treatment they are a hero. They light candles for you on the high school track. There is no heroes walk for me. No ribbons on my car for Hep. C. My bravery, my suffering, the bravery and suffering of my wife is a silent secret known by very few. No one can ever know my hardships and success. It would be a career ender. Instead I protected myself and I lied out my face to almost everyone around me for a whole year. Everyone knew there was something going very wrong.

For 48 Fridays I’d give myself those injections and over time they would, essentially, pretty much destroy my understanding of myself.

My hair fell out for a while and I had irritation at the injection sites the whole time. Big red spot on my stomach. It was a blackfly bite – liar. Red bald spot on my thigh. Must be my underwear rubbing – liar

I went from 180 lbs. of tall and lean muscle to 155lbs. of sickly concern. Most people have a healthy respect for my space, but what could I say when my beloved colleagues ask if I’m ok, could they help me. What do I say to a female colleague who drums up the courage to tell me that she is worried about me? It was so obvious I was getting sick. So I lied and said I was going through a pain management problem (whatever that was supposed to mean).

I made it to the Christmas holidays and had to take a leave. I felt weak. I felt like a quitter. I felt like I was abandoning my beloved team and students. I felt people were talking about me. I

remember talking to the superintendent of human resources about whether this leave would affect my prospects at leadership. There was no way I could go through this treatment and work with kids. I was emotionally and mentally unwell.

I was in physical pain for the whole treatment. I couldn't prepare food. I was basically nauseated the whole time. I had to buy food whenever any sort of willingness to eat would occur. My wife would prepare meals and by the time she was done I often couldn't bring myself to eat. I even had to buy new clothes because I was getting so thin.

I turned to the health care system but they did not have the resources or experience to support me. It was as if no one had ever really finished this program. One doctor told me "the first Christians got the hungriest lions" which I interpreted as it was a curse to always be at the front of the learning curve. I was poisoned and now I was abandoned to endure the antidote which had slim chances of success to begin with.

During my Hepatitis C Treatment I had to secure my own resources which included:

- Nutritionist to help me fight the weight loss
- Social worker who would be able to "handle" my intellectual processes
- Reiki was a new thing that helped me to heal and rest
- Massage therapy as I was in constant "flu like symptom" and pain
- Cannabis – at one point the doctors prescribed a cannabis pill but it made me cry so I got my own. Cannabis really played a huge part in my success. Without it I am certain I would have lost so much weight, and become so angry, that I would have quit.
-

During my Hepatitis C Treatment I:

- Needed to quit work
- Needed to become a recluse. I couldn't drink alcohol (or be around food) and therefore, to avoid the scrutiny, I would not take part in celebrations and social events. I missed an entire year of my friends and families lives.
- Needed to lie about my appearance and wellness
- Couldn't do anything around the house including preparing meals
- Was nauseous, and, sore all over, all the time
- Was depressed and angry and impatient

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- Had no tolerance for others, especially children
- Felt weak and frail and vulnerable
- Struggled with concentrating and stamina
- Cried

Eventually my treatment ended. I had to wait to see if the process worked. It did.

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ARTICLE FOUR COMPENSATION TO APPROVED HCV INFECTED PERSONS

4.01 Fixed Payments (top)

1. Each Approved HCV Infected Person will be paid the amounts set out below as compensation for damages:
 - a. the amount of \$10,000 as compensation for damages upon his or her Claim being approved by the Administrator;
 - b. the amount of \$20,000, provided that payment of \$5,000 will be postponed and will only be paid in accordance with the provisions of Section 7.03(2), upon delivering to the Administrator a PCR Test report;
 - c. unless waived pursuant to the provisions of Section 4.01(3), the amount of \$30,000 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 \$65,000 upon delivering to the Administrator evidence demonstrating that he or she has developed (i) 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 tests blood tests for a minimum of three months demonstrating: which is caused by his or her HCV; and
 - 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 30×10^9 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 \$100,000 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 case is caused by his or her infection with HCV.

2. Each Approved 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 fibrous) 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 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 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 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 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 \$30,000 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 \$30,000. 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 \$30,000 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 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 \$10,000 referred to in Section 4.01(1)(a), the \$15,000 and the postponed amount up to \$5,000

referred to in Section 4.01(1)(b) and, unless waived pursuant to the provisions of Section 4.01(2), the \$30,000 referred to in Section 4.01(1)(c), as well as the \$65,000 referred to in Section 4.01(1)(d).

5. The evidence to be delivered pursuant to this Article Four 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 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.

4.02 Compensation for Loss of Income (top)

1. Each Approved 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 \$30,000 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 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, subject to the provisions of Section 7.03, an amount each calendar year equal to 70% of 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 HCV 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 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 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 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,

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- (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 \$75,000 multiplied by the ratio that the Pension Index for the year bears to the Pension Index for 1999, minus
- ii. the Ordinary Deductions that would be payable by the Approved HCV Infected Person on the amount determined under Section 4.02(2)(b)(i) on the assumption that such amount was the Approved HCV Infected Person's only income for such year.
- c. "Post-claim Net Income" of an Approved HCV Infected Person for a year means an amount determined as follows:
- i. the total of (A) the Approved HCV Infected Person's Earned Income for the year or, if the Administrator demonstrates on a balance of probabilities that the Approved 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 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 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 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 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.

4.03 Compensation for Loss of Services in the Home (top)

- 1. Each Approved 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 \$30,000 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 \$12 per hour to a maximum of \$240 per week.
3. Notwithstanding any of the provisions hereof, an Approved 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 (top)

An Approved 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 \$50,000;
- 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 (top)

An Approved 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 \$1,000 for each completed month of therapy.

4.06 Compensation for Uninsured Treatment and Medication (top)

An Approved 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 (top)

An Approved 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 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.

4.08 Compensation for HIV Secondarily-Infected Persons (top)

1. An Approved 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. Notwithstanding any of the provisions of this Plan (including Section 4.08(1)), a Primarily-Infected Hemophiliac who is an Approved HCV Infected Person who is also infected with HIV may elect to be paid \$50,000 in full satisfaction of all his or her past, present or future Claims pursuant to this Plan (including all potential Claims of his or her Dependents or other Family Members pursuant to Article Six) but such payment will not affect the personal Claim of a Spouse or Child who is also a HCV Infected Person. Evidence that an Approved HCV Infected Person 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 (top)

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

FUNDING AGREEMENT

THIS AGREEMENT is made as of 15 June 1999

BETWEEN:

THE ATTORNEY GENERAL OF CANADA
 ("Canada"), **HER MAJESTY THE QUEEN**
IN RIGHT OF THE PROVINCE OF
BRITISH COLUMBIA ("British Columbia"),
HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF ALBERTA
 ("Alberta"), **HER MAJESTY THE QUEEN**
IN RIGHT OF THE PROVINCE OF
SASKATCHEWAN ("Saskatchewan"), **HER**
MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF MANITOBA
 ("Manitoba"), **HER MAJESTY THE QUEEN**
IN RIGHT OF ONTARIO ("Ontario"), **LE**
GOVERNMENT DU QUÉBEC ("Québec"),
HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF NEW
BRUNSWICK ("New Brunswick"), **HER**
MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF NOVA SCOTIA
 ("Nova Scotia"), **HER MAJESTY THE**
QUEEN IN RIGHT OF THE PROVINCE
OF PRINCE EDWARD ISLAND ("PEI"),
HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF
NEWFOUNDLAND ("Newfoundland"), **THE**
GOVERNMENT OF THE NORTHWEST
TERRITORIES ("Northwest Territories"),
THE GOVERNMENT OF NUNAVUT
 ("Nunavut"), **THE GOVERNMENT OF THE**
YUKON TERRITORY ("Yukon Territory"),
 (collectively, the "FPT Governments"),

-and-

ANITA ENDEAN, plaintiff in the British
 Columbia Transfused Class Action (the "British
 Columbia Transfused Plaintiff"), **MARTIN**
HENRY GRIFFEN and **ANNA KARDISH**,

“Trust” means the Trust to be created pursuant to this Agreement.

“Trustee” means the trustee appointed by the Courts from time to time pursuant to the provisions of the Settlement Agreement.

“Trust Fund”, at any time, means each of the following money and other assets that are at such time held by the Trustee pursuant to this Agreement:

- (a) the funds received by the Trustee on trust from time to time from the FPT Governments;
- (b) any investments in which such funds may from time to time be invested;
- (c) any proceeds of disposition of any investments; and
- (d) 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.

“Withheld Amount” means an amount equal to the sum of the Expert Costs plus the Program Disbursements and Costs plus an amount equal to the aggregate of all fees, costs, disbursements and applicable taxes of Class Action Counsel, each as at the Approval Date, which have been paid by the FPT Governments prior to or on the Approval Date.

1.02 Headings

The division of this Agreement 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 Agreement. The terms “herein”, “hereof”, “hereunder” and similar expressions refer to this Agreement 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 Appendices are to Articles, Sections and Appendices of this Agreement.

1.03 Extended Meanings

In this Agreement words importing the singular number only 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”.

1.04 No Contra Proferentum

The Parties acknowledge that their respective legal counsel have reviewed and participated in settling the terms of this Agreement and they agree that any rules of

habitual abode, or, if the person has no habitual abode in any such Province or Territory or an habitual abode in more than one such Province or Territory, in any such Province or Territory where his or her Spouse is ordinarily resident or, if the person has no such Spouse resident in any such Province or Territory or if the Spouse is ordinarily resident in more than one such Province or Territory, in any such Province or Territory where the majority of his or her Dependants are ordinarily resident, or, if the person has no such Dependants or the majority of such Dependants are not ordinarily resident in any one such Province or Territory, in any such Province or Territory in which the person has the closest personal property and social ties.

1.08 Currency

All references to currency herein are to lawful money of Canada.

ARTICLE TWO PURPOSES AND EFFECT OF AGREEMENT

2.01 Purpose

The purpose of this Agreement is to (i) provide for the establishment of the Trust for the benefit of Class Members and other persons entitled to be paid out of the Trust in accordance with this Agreement and the Settlement Agreement, (ii) provide for the payment of the Contribution Amount to the Trust, (iii) provide that the Federal Government is severally liable to pay an amount equal to the Proportionate Contribution of the Federal Government to the Trust on or prior to the Approval Date representing 8/11 (i.e., 72.7273%) of the Contribution Amount as at the time of such payment minus the Withheld Amount, (iv) provide that each PT Government is severally liable to pay to the Trust a portion of 3/11 (i.e., 27.2727%) of the Contribution Amount as at the time that the liability is being determined, (v) provide that the several liability of each PT Government is based on the Sharing Proportion of the PT Governments as at the time that the liability is being determined, and (vi) provide for the payment of the Disbursements out of the Trust, in the manner set out in this Agreement.

2.02 Binding Effect

On the Approval Date this Agreement will become effective and be binding on and after the Approval Date on all the FPT Governments and all the Class Members including the Class Action Plaintiffs.

ARTICLE THREE SETTLEMENT AMOUNT

3.01 Settlement Amount

The Administrator will be entitled to receive amounts from the Trustee from time to time on behalf of Class Members pursuant to this Agreement, provided that in no event will

(2) The Administrator will notify the Trustee and each of the FPT Governments of the Plan Disbursements to be made in respect of the preceding month within five Business Days after the end of each month. The notice from the Administrator will set out the facts upon which the calculation of such Plan Disbursements is based and the residence information set out in the statutory declaration declared by each claimant.

(3) The Program Administrator will notify the Trustee and each of the FPT Governments of the Program Disbursements to be made in respect of the preceding month within five Business Days after the end of each month. The notice from the Program Administrator will set out the facts upon which the calculation of such Program Disbursements is based and the residence information set out in the application of each claimant.

(4) The Trustee will notify each of the FPT Governments of the amounts to be paid pursuant to paragraphs (b) (c), (d) and (e) of the definition of Other Fees and Disbursements in Section 1.01 in respect of the preceding month within five Business Days after the end of each month.

4.05 No Additional Liability

For greater certainty, subject to Section 3.02, no FPT Government will be liable to pay any additional amounts pursuant to this Agreement if the Contribution Amount as at any time is insufficient to fund the Disbursements as at such time.

ARTICLE FIVE SETTLEMENT OF TRUST

5.01 Settlement of the Trust

The FPT Governments will settle on and pay to the Trustee the sum of \$100 for the purpose of creating and settling the Trust. The Trustee will accept such sum on trust to deal with the same, and all other assets at any time forming part of the Trust Fund, upon the trusts and subject to the terms contained in this Agreement.

5.02 Nature of the Trust

The Trust will be trust established for the following purposes:

- (a) to acquire the funds payable by each of the FPT Governments pursuant to the provisions of Article Four;
- (b) to hold the Trust Fund;
- (c) to make the Disbursements pursuant to the provisions of Article Six;

- (d) to invest cash in investments pursuant to the provisions of Article Seven; and
- (e) to do such other acts and things as are incidental to the foregoing, and to exercise all powers that are necessary or useful to carry on the activities of the Trust or to carry out the provisions of this Agreement.

5.03 Legal Entitlements

The legal ownership of the assets of the Trust and the right to conduct the business of the Trust will be, subject to the specific limitations contained herein, vested exclusively in the Trustee and the Class Members and other beneficiaries of the Trust have no right to compel or call for any partition, division or distribution of any of the assets of the Trust except in an action to enforce the provisions of the Settlement Agreement. No Class Member or any other beneficiary of the Trust will have or is deemed to have any right of ownership in any of the assets of the Trust.

ARTICLE SIX DISBURSEMENTS

6.01 Monthly Payments for Plans

(1) Within eight Business Days after the end of each month, the Administrator on behalf of the Class Members will requisition from the Trustee an amount equal to the amount of all Plan Disbursements to be paid by the Administrator pursuant to the Plans in respect of the immediately preceding month as set out in the notice given pursuant to Section 4.04(2).

(2) Within 10 Business Days after the end of each month, the Trustee will transfer an amount equal to the amount requisitioned by the Administrator pursuant to Section 6.01(1) to the Administrator on behalf of the Class Members by electronic fund transfer to an account specified by the Administrator.

6.02 Monthly Payments for Program

(1) Within eight Business Days after the end of each month, the Program Administrator on behalf of HIV Secondly-Infected Persons will requisition from the Trustee an amount equal to the amount of all Program Disbursements to be made to HIV Secondly-Infected Persons pursuant to the Program in respect of the immediately preceding month as set out in the notice given pursuant to Section 4.04(3).

(2) Within 10 days after the end of each month, the Trustee will transfer an amount equal to the amount requisitioned by the Program Administrator pursuant to Section 6.02(1) to the Program Administrator on behalf of the HIV Secondly-Infected Persons by electronic fund transfer to an account specified by the Program Administrator, provided that the aggregate amount of such disbursements cannot exceed \$57.6 million.

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SCHEDULE "F"

MODIFICATION NUMBER 1 - NOVEMBER 2, 1999

The Settlement Agreement is hereby modified as follows:

1. By the addition of the following provisions to Section 10.01 of the Settlement Agreement:

"p. 1) In their unfettered discretion, the Courts may order, from time to time, at the request of any Party or of the Joint Committee, that all or any portion of the money and other assets that are held by the Trustee pursuant to the Settlement Agreement and are actuarially unallocated be:

- (i) allocated for the benefit of the Class Members and / or to the Family Class Members in the Class Actions;
- (ii) allocated in any manner that may reasonably be expected to benefit the Class Members and / or the Family Class Members even though the allocation does not provide for monetary relief to individual Class Members and / or Family Class Members;
- (iii) paid, in whole or in part, to the FPT Governments or some or one of them considering the source of the money and other assets which comprise the Trust Fund; and / or
- (iv) retained, in whole or in part, within the Trust Fund;

in such manner as the Courts in their unfettered discretion determine is reasonable in light of all the circumstances provided that in distribution there shall be no discrimination based upon where the Class Members received Blood or based upon where that Class Member resides;

"p. 2) In exercising their unfettered discretion under paragraph p.1) hereinbefore, the Courts may consider, but are not bound to consider, among other things, the following factors:

- (i) the number of Class Members and Family Class Members;
- (ii) the experience of the Trust Fund;

Sent By: PIERRE R LAVIGNE;

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- (iii) the fact that the compensation provided under the Plans may not reflect, in certain cases, extra-contractual liability models;
 - (iv) article 1036 of the *Code of Civil Procedure of Quebec*;
 - (v) whether the integrity of the Settlement Agreement will be maintained and the benefits particularized in the Plans ensured;
 - (vi) whether the progress of the disease is significantly different from the medical model used in the Eckler actuarial report;
 - (vii) the fact that Class Members and Family Class Members bear the risk of insufficiency of the Trust Fund;
 - (viii) the fact that the contributions of the FPT Governments pursuant to the Settlement Agreement are capped;
 - (ix) the source of the money and other assets which comprise the Trust Fund;
 - (x) any other fact the Courts consider material."
-

LA JUGE NICOLE MORNEAU

ANNEXE F MODIFICATION NUMÉRO 1 - 2
NOVEMBRE 1999

La Convention de règlement est modifiée comme suit :

1. Par l'ajout au paragraphe 10.01 de la Convention de règlement des alinéas suivants :

"p. 1) Dans le cadre du libre exercice de leur pouvoir discrétionnaire, ordonner, de temps à autre, sur demande de toute partie ou du Comité conjoint, que les fonds et les autres éléments d'actif détenus par le fiduciaire en vertu de la Convention de règlement et qui ne font pas l'objet d'une attribution actuarielle soient en tout ou en partie :

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

p. 2) Dans le cadre du libre exercice de leur pouvoir discrétionnaire qui leur est conféré par l'alinéa p. 1) ci-devant, les tribunaux peuvent prendre en considération, mais sans être liés par aucun d'entre eux, notamment les facteurs suivants :

- (i) le nombre de membres des recours collectifs et de membres de la famille;
- (ii) l'expérience du fonds en fiducie;

- (iii) le fait que les indemnités prévues par les régimes peuvent, dans certains cas, ne pas refléter le régime de responsabilité en matière extra-contractuelle;
 - (iv) l'article 103 6 du Code de procédure civile du Québec;
 - (v) la question de savoir si l'intégrité de la Convention de règlement sera maintenue et si les versements des indemnités prévues dans les régimes seront assurés;
 - (vi) la question de savoir si la progression de la maladie est très différente de celle prévue dans le modèle médical utilisé dans le rapport actuariel Eckler;
 - (vii) le fait que les membres des recours collectifs et les membres de la famille assument le risque d'insuffisance du fonds en fiducie;
 - (viii) le fait que les contributions des gouvernements FPT sont limitées en vertu de la Convention de règlement;
 - (ix) la source des fonds et des autres éléments d'actif que comprend le fonds en fiducie;
 - (x) tout autre fait que les tribunaux estiment important."
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